



Meeting Notice

Please note that there will not be a 6:00 p.m. Newport Planning Commission work session meeting held prior to the regular 7:00 p.m. session on **Monday, August 22, 2011.**





AGENDA & NOTICE OF PLANNING COMMISSION MEETING

The Planning Commission of the City of Newport will hold a meeting at **7:00 p.m., Monday, August 22, 2011**, at the Newport City Hall, Council Chambers, 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder, 541-574-0613.

NEWPORT PLANNING COMMISSION Monday, August 22, 2011, 7:00 p.m.

AGENDA

A. Approval of Minutes.

1. Approval of the Planning Commission work session and regular session meeting minutes of August 8, 2011.

B. Citizens/Public Comment.

1. A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

C. Consent Calendar.

D. Public Hearings.

Quasi-Judicial Actions:

1. File No. 2-Z-11. A request submitted by Pacific Communities Health District (Chris Minor, authorized representative) (Don Shaw, property owner) for a map amendment to the Zoning Map of the City of Newport changing the zoning designation of a tract of property consisting of approximately 11,000 square feet (involving Tax Lot 9100 of Lincoln County Assessor's Map 11-11-08-CA) from R-3/"Medium Density Multi-Family Residential" to R-4/"High Density Multi-Family Residential". The Comprehensive Plan map designation for the property is currently "High Density Residential" and would not need to be changed.

E. Unfinished Business.

F. New Business.

1. Discuss 2011 Oregon Land Use Legislation.

G. Director Comments.

H. Adjournment.

Please Note: The order of the agenda may change without notice.

Please Note: ORS197.763(6): "Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing." (applicable only to quasi-judicial public hearings)



Draft Minutes
City of Newport Planning Commission Regular Session
Monday, August 8, 2011

Commissioners Present: Jim Patrick, Rod Croteau, Gary East, Mark Fisher, and Glen Small.

Commissioners Absent: Melanie Sarazin and Jim McIntyre (both excused).

City Staff Present: Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:00 p.m.

A. Approval of Minutes.

1. Approval of the Planning Commission work session and regular session meeting minutes of July 25, 2011.

MOTION was made by Commissioner Fisher, seconded by Commissioner Small, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

B. Citizen/Public Comment. No comments regarding non-agenda items.

C. Consent Calendar. Nothing on the consent calendar.

D. Public Hearings.

Legislative Actions:

1. **Continued Hearing on File No. 5-Z-10.** A request submitted by the City of Newport for approval of legislative text amendments to the Newport Zoning Ordinance (NZO) (Ordinance No. 1308, as amended) as part of a comprehensive Zoning Code update that proposes revisions to Section 2-2-1 (Zoning Districts), consolidating the I-2/"Medium Industrial" and I-3/"Heavy Industrial" zone districts under an I-2/"General Industrial" designation and replacing the land use classification for commercial and industrial zoning districts from one that is based upon "Standard Industrial Classifications" (SICs) to one that is based upon use categories. On April 25, 2011, The Planning Commission received testimony regarding this action and continued the hearing to June 27th for further testimony, continued the hearing again to July 25th, and then continued again to tonight. The Commission will forward a recommendation on this matter to the City Council.

Patrick continued the hearing on File No. 5-Z-10. He asked the Commissioners for declarations of conflicts of interest, ex parte contact, bias, or site visits. None were declared. Patrick called for objections to any of the Planning Commissioners or the Commission as a whole hearing this matter; and no objections were raised. He called for the staff report. Tokos noted that this is a continued legislative hearing on File No. 5-Z-10. This is part of the work the Commission has been doing to streamline commercial and industrial uses in the zoning code by going away from a pure list and trying to tie it in with industrial classifications in order to use groupings with examples. The reason is that with the SIC approach, it is pretty inflexible. If something is not listed, we have to go through an interpretation with the Planning Commission through a hearing. The SIC code is difficult to follow. The matrix is long. The SIC approach has been discontinued, so the City would have to go with some other classification system; which the Commission talked about in earlier work sessions. Tokos noted that as we went through the process, early on we consolidated the I-2 and I-3 industrial zones since there is only one I-2 zone. With the concepts that were developed, we weren't able to get issues worked out with Paul Lawson; so at the last meeting, the Planning Commission decided not to go through that and to stick with three industrial zones broke down with groupings. The other testimony received was regarding Nye Beach. Business owners were looking for a threshold over which conditional use review would be required so they could weigh in on whether the development was consistent with the neighborhood. 2,000 square feet was already in the code for certain uses; so they felt the way to go was to make that the standard for conditional uses. Tokos noted that the Commissioners had received a letter from Dennis Bartoldus. The GVR property is currently zoned I-3, and he suggests that the Commission consider creating an industrially-oriented retail subcategory in the I-3 zone where hardware and building supply stores would be listed and allowed outright. Also, Tokos handed out a portion of the Economic Section of the Comprehensive Plan with the goals and policies. Tokos believed that it was last updated in the 2005-06 timeframe to incorporate the South Beach Neighborhood Plan, which was developed in 2005. At that time there was extensive economic analyses done by consultants. One recommendation that Tokos drew the Commissioners' attention to was Policy 3, which talks about the industrial zone being amended to allow only industrial uses. The study said that when we allow commercial in industrial zones, the commercial will out compete the industrial. The City is advised to create an all-industrial zone; and none of the proposals have that. Tokos said that while Bartoldus' proposal is doable, we don't quite get here; and at some point we will have to think about getting to where this policy is going. In order to do that, Tokos said that he wouldn't loosen up the I-3 zone more than

what is drafted. So if the Commission goes with Bartoldus' proposal, Tokos would advise the Commission to make a motion that you want to create an industrially-oriented retail subcategory but also say that general retail is prohibited and bulk retail is either conditional or prohibited. That would give the Planning Commission the ability to review case by case whether the retail proposed is appropriate. Tokos said that is one approach to take (create an industrially-oriented retail subcategory and make it permitted outright in I-3. General retail would be prohibited, and bulk retail would either be conditional or prohibited.) Another approach is to have exclusive industrial in I-3 consistent with the policy of the Comprehensive Plan and, to address Bartoldus' concern, make a motion to do a map change to make the I-3 property I-2. The advantage of this is that we would have an almost exclusive I-3 for properties we bring into the City. Tokos said he just threw these two options out there for the Commissioners to think about. Tokos said that we are talking about three pieces of I-3 property. He did talk to Paul Lawson today, but Lawson wasn't able to make it to the meeting. Lawson said that he found the I-2 changes to be generally acceptable, but he may weigh in at the City Council level. At this point he thought it seemed reasonable and much more acceptable than it was prior. He has one small piece of I-3, which is basically a gravel pit. Most of his property has the I-2 designation. Lawson doesn't care if I-3 is exclusively industrial as long as he has options for who he finds for the property to change the boundaries of the I-3 based on the proposal. Tokos said that moving the boundary probably wouldn't be that difficult. The other I-3 areas are the GVR site and the Hall property under lease to the Port for their dredge spoil area by the LNG plant. Tokos said that is the extent of I-3. Small wondered if we pursue an exclusive I-3 and offer remapping of the Tryon property, is that going to open up additional problems with other properties. Tokos said the only one potentially would be the Hall property because they haven't weighed in on this. He said a motion could be structured that we would offer I-2 to the Halls as well if that was an issue for them. Tokos said that the analysis done in 2005 established that we have a deficiency of industrial land. We have to bring more into it. What this does is provide that if we have that zone, we can apply that zone. If it comes into the City, it has to come into the I-3. He said that Bartoldus' proposal of an industrially-oriented subcategory would be the easiest route. Small asked if that wasn't moving in the opposite direction of this policy. Tokos agreed that doesn't give an exclusive industrial zone. It would provide a subcategory where industrially-oriented retail is permitted outright, maybe general retail is just prohibited, and bulk retail is either prohibited or conditional. It limits the amount of retail allowed in I-3. Bartoldus' proposal is more of a triage of what we have now. Patrick said he is having a hard time thinking of what heavy industrial we would have other than the concrete plant or the asphalt plant. Tokos said it is hard to say what is on the horizon. He is not saying that is the best way to go, but the advantage would be that we would have an exclusive industrial zone to apply to property if we had a heavy industrial use. He sees South Beach having more light industrial type uses and marine types, but there may be a need for heavier industrial uses. Now there are things like the maraschino cherry operation. He wouldn't say there is a mass drive for heavy industrial uses in Newport. Fisher asked if the package maintains the I-2 and I-3, and Tokos said more or less. He said the matrix lists the differences. Fisher said then if somebody chose, they could request a review as an alternative to us setting up a subcategory as we were talking about. Tokos said that the subcategory proposal Bartoldus is offering is addressing their concerns that as I-3 is currently presented they think it's too restrictive on the retail side. Fisher asked if this isn't what we always had. Tokos said it has changed somewhat. Right now in the I-3 building materials, hardware, garden supply, and mobile home dealers are allowed outright, but under the proposal would be conditional. Department stores, general merchandise stores, gas stations, which are currently allowed outright, are conditional. Food stores, apparel, furniture, restaurants, lodging, personal services are prohibited in I-3. Tokos said what Bartoldus is proposing is that building supply, garden supply, hardware should be allowed outright. He said the Commission could do that by motion tonight and move this forward with a recommendation that a subcategory be allowed and whatever other changes you think are appropriate. Fisher said he was torn between which way to go. Croteau thought that we would not lose much in I-3 if we permit this as a subcategory. His inclination is to go with a subcategory in I-3. Patrick said that even though that gives something he wants, he is not sure that is the best approach.

Testimony: Dennis Bartoldus, PO Box 1510, Newport. Bartoldus said that this is kind of picking up where he left off on his testimony before. He said that the ideal change would be to allow bulk sales from conditional to permitted outright in I-3. He gave his analysis of this. He did look at the zoning maps to see where the other I-3 properties are located. He is somewhat familiar with both of those. He noted that the Port lease ends shortly. The City has those three areas (5 acres up north, 40 acres of Port property, and 15 acres of the Tryon property.) Their property essentially has a lake in the middle that divides the property and prevents it from being full acres hard ground; and there is a permitting process to do anything with that. He said there isn't really that much I-3 land. He said the kind of industry we are seeking will determine what needs to go into industrial. He questioned what industry Newport is looking for in the long term. He doesn't think it will probably be heavy industrial. He said Newport needs I-3 for things like concrete or asphalt plants. Bartoldus said one of the worst-kept secrets in Newport is when Lowes or Home Depot come through and look at every piece of commercial property close to Highway 101. He said they are probably not going to want to locate on the Terminal property because of visibility and transportation issues. They probably wouldn't locate on Lawson's 5-acre parcel, because their minimum is probably 10 acres. They are looking for something other than those. It could be commercially zoned as well. He said that one of the things the Tryon family has in mind is for this property to be a backup for their concrete plant if they have to move. Or, if they sold, it gives a place to operate the plant if they have to have that. Bartoldus said that his goal is to keep flexibility here. He noted that anything in South Beach will need a conditional use to satisfy the Transportation System Plan, so they are already going through ODOT. They have a bunch of hurdles and what if there is another situation where they have to get a conditional use for the land use. He questioned what kind of business we want to allow and what kind of land do we want to give them. Bartoldus said to the north of the Tryon property is the PUD property, which he thinks is zoned I-1, and further south is an island of I-3. Tokos said that anything else we have is light industrial, and that would be suitable for retail uses. Bartoldus said that granted they are at least conditional uses, but part of the issue here is they were hoping to maintain flexibility and keep the options on the Tryon's property open and address the

issue of what really is the I-3 property going to be used for in the long term. Their main question is what we will really see as heavy industrial. He doesn't think it will be the same as Portland or manufacturing sites throughout the US. They are seeking flexibility so when businesses are looking to relocate, the City has options to try to accommodate them. He said the bottom line is what options we want to provide if we have a business like this interested in moving into the community. His letter indicated what his client's concerns are. One way to deal with it might be to rezone to I-2 on the lower portion. If it's changed to I-2, that changes the amount of I-3 available. For them, combining I-2 and I-3 wasn't a problem. After that was gone, they had to see what they wanted to do.

Chair Patrick closed the hearing at 7:30 p.m. for Commission deliberation. East said that he would like to see the most flexibility for right now. We have I-3 for heavy industrial, but we don't know exactly what will come in so let's not completely block out his option. Patrick said that his own position is that he would like to do that, but he would argue the other side. Conditional use permits give the citizens an opportunity to come through and make their concerns known, and he hates to see that cut off. That is his major objection. He said the subcategory is a way to do it, but that may be going down the same road we just tried to solve; pieces of uses that didn't make any sense like there were in C-2. He would like to pick a rationale and stick with it. Patrick said, however, that if a motion is made the other way, he is likely to vote for it. Fisher said he feels like Patrick in some ways; like he wants to see I-2 and I-3 kept clearly delineated. Tokos interjected that if the policy position the Commission wants to take is that this is simply to streamline and try to simplify and not a broader policy package at this point that is pretty much what path we have been on all the way through. He noted that when we were grouping these, the Commission said to try to err on the more permissive side. That is the direction the Commission took. Then the approach the Commission could take with Bartoldus' suggestion to create an industrially-oriented retail subcategory permitted outright in I-3 and then have general retail go from conditional to prohibited, and keep bulk retail as conditional. He said that is pretty much how it is currently structured. Patrick asked what bulk retail is, and Tokos explained that they are large consumer products, vehicle sales, furniture stores, and appliance stores. When asked where Costco would fit, he said it would be more general merchandise but the Commissioners could put it in bulk retail. Fisher said that I-3 could be heavy industrial, and we could make the decision that Newport won't have heavy industrial except down along the river. Patrick added or where the City adds property near the airport. He thinks they tend to be near the airport because they have noise issues. Croteau said that he doesn't think we lose I-3 by allowing this category. He said it opens another option that might fit, and it gives more flexibility in that regard. We haven't lost the ability to bring heavy industry; we increased the possibility of something more likely to happen in Newport's future. He said this is not the heavy industry location. He asked why not give ourselves flexibility that could help the local economy. It doesn't preclude the future at all. Bartoldus interjected that he thinks his clients would rather have code remain as it is already with sales and bulk retail considered conditional if the Commission says that one can't happen. New general retail would still be possible conditionally. Tokos said that just keeping those uses conditional gives the Planning Commission the ability to see if it is compatible with the character of the neighborhood; it doesn't mean they can't do it. Small said that if you are talking about flexibility, he thinks we achieve that with leaving that as it is with those two categories as conditional. General and bulk retail are still a possibility with that being a decision of the Planning Commission. It is more restrictive, but it doesn't eliminate them all together. Tokos noted that it does allow some uses as conditional that are currently prohibited. Patrick said that if we keep what we have, you can always make a case. One of the things on the Commission's plate is to go back and look at the mix of commercial and industrial lands anyway. He said it's probably just best leaving it as wide open as we can as conditional and we will make that call as we go. East asked if we have more land to consider converting to heavy industrial. Tokos said we have additional in the UGB to the south that could be brought in. It depends on our ability to extend water and sewer to the south, which we are currently working on.

MOTION was made by Commissioner Fisher, seconded by Commissioner East, to approve File No. 5-Z-10 with the proposed ordinance as presented in the current packet the Commissioners received tonight and forward it to the City Council. The motion carried unanimously in a voice vote.

2. File No. 3-Z-11. Consideration of legislative text amendments proposed by the City of Newport to the Newport Municipal Code (NMC) that codify street naming and addressing provisions contained in Ordinance No. 665, as amended, and establish criteria and procedures for the renaming of public streets and places. The Commission will forward a recommendation on this matter to the City Council.

Patrick opened the hearing for File No. 3-Z-11 at 7:40 p.m. by reading the summary of the file from the agenda. He asked for the staff report. Tokos noted that the Commissioners have in their packets an ordinance that codifies Ordinance No. 665 that the City has had on the books since the mid 60s, which explains how the City does street naming and addressing and puts in place criteria for dealing with street renaming (something the Planning Commission and City Council both wanted to be in place following the recent request and challenges they faced not having anything on the books.) The ordinance also contains a section on renaming public places other than streets. Tokos said the Commission looked at this and considered it at a work session and had some recommendations for adjustments. Those are mainly toward the end where it dealt with placement of numbers on properties. The Commission didn't have the benefit of seeing language on renaming public places because it wasn't in the draft at work session. The Commission did provide direction on that, however. He said that hopefully this fits the Planning Commission's objective of what that should look like. He said it is pretty straight forward. Fisher noted a typographical error in Section 2.35.020 (C) where the second "than" should be "then". Small wondered if there should be a definition of public places included. Tokos thought it was better to leave it somewhat general. The Commissioners held brief discussion about renaming

various public places. Tokos said there is a general scope from the municipal code as compared to state statute. Patrick said he thinks it is the City dealing with public structures, and Small said he was fine with that.

There was no one present wishing to testify, so Chair Patrick closed the hearing at 8:45 p.m. for Commission deliberation. East said that he liked it. He thought it looked good and covered all points discussed at the work session. He thought it should be sent on to the City Council. Fisher concurred. Croteau said it provides guidance where we had none before. He thinks it is useful. Small was in agreement. Patrick said it does the job it needs to do. Fisher thought that the author of this document should offer a motion.

MOTION was made by Commissioner Small, seconded by Commissioner Croteau, to approve the ordinance for File No. 3-Z-11 and forward it to the City Council. The motion carried unanimously in a voice vote. For the record, Small wanted to note that Commissioner Fisher was the real word smith on this document.

F. Unfinished Business. No unfinished business to discuss.

G. Director's Comments.

1. Tokos noted that the Commission had just spent a fair amount of time talking about the Economic Section of the Comprehensive Plan. He said that there is a grant window of August 15th and early September for Technical Assistance Grants from the State. One of those is to submit for funds to do economic opportunities analysis to update the economic figures in the Comprehensive Plan. He hasn't put together a clear concept yet. The Mayor is working with the Chamber to pull together an economic development team. Any grant request we submit should be fairly aligned what our objectives are going to be. Tokos wanted to give the Commission a heads up that we will be applying, which will lead to a planning process that will be before the Planning Commission that will involve additional work on this section of our Comprehensive Plan.
2. Tokos brought up the Territorial Sea Planning process for which the Commission had held a joint meeting with the County. He noted that the City had submitted a letter that we want to be engaged in the process. The State is trying to work with local governments. We still want to work with other partners in Lincoln County and other partners. There will be a conference call later this week. The State is looking to get some work started on aesthetics for structures within the view shed. That conversation is picking up momentum.
3. Tokos said that from time to time the Commission has talked about parking districts. The Bay Front is the last one to form. Their second and maybe last hearing is scheduled for September 6th with the City Council. If that passes, all three areas will have districts in place, which means that payment in-lieu-of parking doesn't apply. Tokos noted that the current draft of the proposal for Bay Front has a clause which none of the others have. We will provide the district with any conditional use application and if the committee weighs in on it, the Planning Commission and the City Council will consider their testimony as expert in regard to parking issues. Those appointed to the advisory committee should have a pretty significant say on conditional use applications, particularly those that would generate a lot of vehicles on the Bay Front. Fisher said that he had heard that one group came with 50 signed petitions that a district not be put in place. Tokos said that is not quite how it worked out. We received petitions from several fishermen saying they weren't happy that they weren't engaged. An ad hoc group was put together to work through the difficulties between the fishermen and the tourism businesses. The Port is now engaged and will be making a contribution on behalf of the fishermen. They will have the opportunity to say more as a result. These issues have been worked through, and Tokos thinks everybody is happy. Because of that different language than for other districts, if the Commission sees a letter in the packet from the Bay Front Parking District Committee with testimony that is where Tokos would advise them to take that as expert testimony. Fisher said that he also heard that there is a million dollars of room tax to be used. He wondered if it wouldn't be a good thing to take that money and buy land for parking lots that tourists could use. He added that a couple of Councilors said the City can't use it for parking lots. Tokos said that is testimony Fisher might want to take to the City Council. His thought was similar to Fisher's. The money is designated for tourist activities. The City Council is setting up a process to make requests for those funds. Tokos said that Fisher should pose that question directly to the Councilors. Patrick asked if the fishermen have input on that committee. Tokos said the framework is that they are looking to collect a certain amount of funds and say this is the scope those funds can be extended toward. The City Council appoints the committee members. To try to keep it relatively balanced, the numbers will be equal with fishermen and tourism businesses. It was set up that way intentionally. Patrick thinks there may be gridlock. Tokos said that with the ad hoc group, they have been able to work out some issues and there is fairly even representation now. Small said that he shared Patrick's concern. He recalled a conditional use permit application for Ocean Bleu Seafood and a competing business was an opponent of that. He wonders if this gives them an avenue to block a competing retail business. He wondered if there was the potential for that kind of thing. Tokos said that he didn't think that was likely. If this gets adopted, the advisory committee wouldn't necessarily weigh in on everything anyway. It would have to be the majority of the committee, which is fairly evenly represented. They can bring a perspective you are not aware of. They can bring meaningful feedback. It's not likely we will have a situation of an individual business versus an individual business.
4. Tokos reminded the Commissioners of the ribbon cutting for NOAA on August 20th, which will also include Marine Science Drive improvements.

5. Tokos wanted to update the Commissioners on the TSP process. There will be a conference call later in the week. ODOT is looking for conversation from us that the trip budget concept is something we want to have them put together. There was no feedback that was problematic from the last open house. Generally people think that was a reasonable way to go. We will be giving them direction to put code language together so the Planning Commission can look at it.

H. Adjournment. There being no further business to come before the Planning Commission, the meeting adjourned at 8:00 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant



PLANNING STAFF REPORT
File No. 2-Z-11

- A. **APPLICANT & OWNER:** Pacific Communities Health District (Donald K. Shaw, property owner) (J. Christopher Minor, authorized representative).
- B. **REQUEST:** The request involves a zoning map amendment. The subject property has a zoning designation of R-3/"Medium Density Multi-Family Residential". The applicant is requesting that the zoning designation be changed to R-4/"High Density Residential". The applicant wishes to purchase the property and convert it to hospital office space and storage for records, which is a use allowed outright under an R-4 zoning designation, but not under the current R-3 zoning.
- C. **LOCATION:** The subject property is located on Tax Lot 9100 of Lincoln County Assessor's Map 11-11-08-CD (749 SW 11th St). See map in Planning Staff Report Attachment "B".
- D. **LOT SIZE:** The size of the subject property is approximately .41 acres per Assessment Maps.
- E. **PLANNING COMMISSION ACTION:** The Planning Commission reviews this request and makes a recommendation to the City Council.
- F. **STAFF REPORT:**
1. **Report of Fact**
 - a. **Existing Plan Designation:** "High Density Residential".
 - b. **Existing Zone Designation:** R-3/"Medium Density Multi-Family Residential".
 - c. **Surrounding Land Uses:** The property abuts R-4 zoned property to the west and south, and is surrounded by a mix of single-family residences, multi-family dwellings, and medical offices. Across SW 11th Street is the Samaritan Pacific Hospital property that is zoned P-1.
 - d. **Topography and Vegetation:** The site is flat with normal landscaping.
 - e. **Existing Structures:** Large single-family residence converted from a 9-plex.
 - f. **Utilities:** All city services are available to the site.
 - g. **Development Constraints:** None known.

h. **Past Land Use Actions:** None known.

i. **Attachments:**

Attachment "A"	Applicant Request
Attachment "A-1"	Preliminary Title Report
Attachment "A-2"	Assessor's Property Information
Attachment "A-3"	Zoning Map of Property
Attachment "A-4"	Aerial Photo of Property
Attachment "B"	Notice of Public Hearing and Map
Attachment "C"	Draft Ordinance
Attachment "D"	Uses Allowed in the R-3 and R-4 Zones
Attachment "D-1"	NZO Section 2-3-5 Table "A"
Attachment "E"	Topography Map of Area

j. **Notification.** The Department of Land Conservation & Development was mailed notification of the proposed amendments on June 30, 2011. Applicable city departments, public agencies, and affected property owners within 300 feet of the subject property were notified on July 28, 2011, for the Planning Commission hearing. Notification of the Planning Commission hearing was published in the Newport News-Times on August 12, 2011.

2. **Explanation of the Request:**

The large house located on the subject property was converted from a 9-unit apartment building and has been used as a single-family residence. The applicant, Pacific Communities Health District, owns property across SW 11th Street from the subject property. The applicant is wishing to purchase the subject property and remodel it into hospital office space and for storage of records. The applicant states that no patient health care services will be provided at this location. Office space for the hospital would be allowed outright under an R-4 zoning designation, but is not allowed under the current R-3 zone. Therefore, the applicant is asking to change the zoning designation from R-3 to R-4. The property abuts R-4 zoned property to the south and west. The zone change would also include the portion of SW Case Street that has not been vacated and lies southerly of and adjacent to the vacated portion of SW Case Street. That would make it contiguous to R-4 zoning across SW Case Street.

3. **Evaluation of the Request:**

a. **Comments:** DLCD was provided notification on June 30, 2011. All applicable property owners, city departments, affected public/private utilities/agencies were notified on July 28, 2011, of the Planning Commission hearing. As of August 15, 2011, no written comments were received by the Community Development Department.

b. **Applicable Criteria:**

Criteria for the Proposed Zoning Map Amendments (Section 2-5-5.005) of the Newport Zoning Ordinance (No. 1308, as amended):

1. The change furthers a public necessity.
2. The change promotes the general welfare.

c. **Staff Analysis:**

The proposed findings submitted by the applicant address the criteria established in the Comprehensive Plan and Zoning Ordinance for approving the request. See Planning Staff Report Attachment "A". Additionally, a list of the uses in the applicable zones and a copy of Table "A" of NZO Section 2-3-5 (summarizing height restrictions, lot coverage restrictions, and other items in the different zones) are attached. See Planning Staff Report Attachments "D" and "D-1".

In regard to the applicable criteria for the proposed Zoning Map amendment:

The change furthers a public necessity and promotes the general welfare.

The requested zoning map change would allow the applicant to purchase property across the street from the existing hospital facility and convert the structure to office space and records storage for the hospital. In addition, this zone change request will not create spot zoning. The subject property abuts R-4 zoning along SW 11th Street to the west and across SW Case Street to the south. The applicant proposes changing the zoning for Tax Lot 9100 of Tax Map 11-11-08-CA and the portion of SW Case Street that has not been vacated and lies to the south and adjacent to the vacated portion of SW Case Street that has attached to Tax Lot 9100. At .41 acres, it is reasonable for the Planning Commission to view this request as a minor adjustment to the boundary of the R-3 and R-4 zoning districts.

The applicant notes that the existing structure will be extensively remodeled to accommodate the anticipated use. In addition, the applicant states that adequate parking space is available and will be provided on the existing hospital grounds.

Samaritan Pacific Hospital lies immediately to the west. It would be reasonable for the Commission to find that the proposal is a logical extension of that facility, which provides essential medical services to the community.

For these reasons, the Planning Commission can find the proposed zoning change to be a public necessity that promotes the general welfare.

4. **Conclusion:**

The applicant requests the zone change in order to purchase the neighboring property and be able to use it for hospital office space and records storage. The applicant believes that the zone change is in conformance with the applicable requirements of the City of Newport; and for this reason, the applicant requests approval of the application.

G. **STAFF RECOMMENDATION:**

The Planning Commission should review the proposed changes to the Zoning Map and the application materials as well as other documentation and testimony that may be submitted during the course of the hearing. The Planning Commission should recommend approval of the request as being in compliance with the applicable criteria if the Commission finds that the criteria have been met. The Commission should identify how the request does not comply with the criteria, or should identify conditions necessary in order to make the request comply with the criteria, if the Commission finds that the criteria have not been met.



Derrick I. Tokos, AICP
Community Development Director
City of Newport

August 16, 2011

Brief description of land use request:

The Pacific Communities Health District, owner of the Samaritan Pacific Hospital Facility, desires to purchase the above property to be used as office space and for the storage (primarily) of records. No patient health care services will be provided at this location. District proposes to purchase an existing single family residence (formerly an apartment building) owned by Donald K. Shaw and remodel it into office space. This use would be allowed outright under an R4 zoning designation, but is not allowed under the current R3 zoning designation. Attached is a title report, showing that Mr. Shaw is the owner. The existing structure will be extensively remodeled to accommodate the anticipated use. Adequate parking space is available, and will be provided, on the existing hospital grounds. The zone change should also include the portion of SW Case Street which has not been vacated and which lies southerly of, and adjacent to the vacated portion of SW Case Street.

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3469 NW Highway 101
Lincoln City, OR 97367
Office Phone: 541-994-8928
Office Fax: 541-994-7075

Western Title & Escrow Company
Attention: Lee Hoover
3469 NW Highway 101
Lincoln City, OR 97367

Date Prepared: May 03, 2011

PRELIMINARY TITLE REPORT FOR ISSUING TITLE INSURANCE

File Number: 46288
Property Address:
749 SW 11th Street
Newport, OR 97365

Western Title & Escrow Company is prepared to issue a title insurance policy, as of the effective date and in the form and amount shown on Schedule A, subject to the conditions, stipulations and exclusions from coverage appearing in the policy form and subject to the exceptions shown on Schedule B. This report is preliminary to the issuance of a policy of title insurance issued by **Fidelity National Title Insurance Company** and shall become null and void unless a policy is issued and the full premium paid.

This report is for the exclusive use of the person to whom it is addressed. Title insurance is conditioned on recordation of satisfactory instruments that establish the interests of the parties to be insured; until such recordation, the Company may cancel or revise this report for any reason.

Thank you for placing the order with **Western Title & Escrow Company**.

Any questions regarding the closing of this transaction should be directed to **Lee Hoover**, your Escrow Officer at 541-994-8928 or email at lhoover@westerntitle.com.

Any questions concerning the Preliminary Title Report should be directed to **Dynelle Hobbs** at 541-265-2288, or email at dhobbs@westerntitle.com.

LINCOLN COUNTY RECORDING FEES (SUBJECT TO CHANGE)

First Page	\$48.00	Each Additional Page	\$5.00
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For standard Deeds, Trust Deeds and other conveyance documents. For all other documents please call (541) 574-1523 for exact fees.

Address for Recording Package:

Western Title and Escrow
Attention: Recording
255 SW Coast Highway, Suite 100
Newport OR 97365

SCHEDULE A

1. The effective date of this preliminary title report is **5:00 P.M. on April 26, 2011**
2. The policies and endorsements to be insured and the related charges are:

Policy/Endorsement Description	Liability	Charge
2006 ALTA Standard Owner's Policy	\$475,000.00	*\$1,300.00
*Above Charge Includes		
Basic Owner	\$1,300.00	
PROPOSED INSURED for Owner's Policy Pacific Communities Health District		
2006 ALTA Extended Lender's Policy	\$1.00	*\$260.00
*Above Charge Includes:		
Simultaneous Loan	\$160.00	
ALTA 9, 116 & 8.1	\$100.00	
PROPOSED INSURED for Lender's Policy To be determined		
Local Government Lien Search		\$5.00

(Agent portion of above Premiums is: \$1,372.80)
 (Underwriter portion of above Premiums is: \$187.20)

3. Title to the land described herein is vested in:

Donald K. Shaw

4. The estate or interest in land is:

Fee Simple

5. The land referred to in this report is described as follows:

Lots 11 and 12, Block 16, BAYLEY AND CASE'S ADDITION TO THE CITY OF NEWPORT, in the City of Newport, County of Lincoln and State of Oregon.

TOGETHER WITH that portion of vacated SW Case Street adjoining that would attach thereto by Ordinance No. 2003, recorded May 10, 2010, Document No. 2010-04765, Lincoln County Records.

SCHEDULE B

Except for the items properly cleared though closing, the proposed policy or policies will not insure against loss or damage which may arise by reason of the following:

STANDARD EXCEPTIONS:

- 1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public record; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
- 2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
- 3. Easements, or claims of easement, not shown by the public records, reservations or exceptions in patents or in acts authorizing the issuance thereof, water rights, claims or title to water.
- 4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
- 5. Any lien, or right to lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

SPECIAL EXCEPTIONS:

- 6. Unpaid taxes for the year 2010-2011

Original Amount:	\$8,619.98
Unpaid Balance:	\$8,619.98, plus interest
Tax Lot No.:	11-11-8-CA-9100
Account No.:	R33395, Code 107
- 7. City liens, if any of the City of Newport. (An inquiry has been sent concerning the status of liens and a report will follow if any liens are found.)
- 8. Subject property is either situated within the urban renewal boundaries or within the shared area of the City of Newport and is subject to the terms and provisions thereof.

9. Trust Deed to secure an indebtedness in the amount shown below, and any other obligations secured thereby:
- Amount: \$500,000.00
Dated: December 13, 2006
Recorded: December 19, 2006
Document No.: 200619190, Microfilm Records
Grantor: Donald K. Shaw, and Bea M. Shaw, As Tenants by the Entirety, an estate in fee simple
Trustee: Fidelity National Title Insurance Co.
Beneficiary: Mortgage Electronic Registration Systems, Inc.
Lender: Countrywide Home Loans, Inc.
10. Easements in vacated street area reserved by Ordinance No. 2003, and the conditions imposed by said Ordinance No. 2003
- Dated: May 3, 2010
Recorded: May 10, 2010
Document No.: 2010-04765, Lincoln County Records
11. Existing leases and tenancies, if any.

Note: **If an ALTA Extended Lenders Policy is desired, Exceptions 1 through 5 may be modified or eliminated from the policy based upon receipt and review of the following:**

- A) A survey of the subject property. (Should a survey not be required for loan purposes, **Western Title & Escrow Company** could consider other alternatives, such as an inspection or review of a site plan. Please contact your Title representative for assistance.)
- B) Proof that there are no parties in possession or claiming to the right to be in possession other than the vestees herein and that there are no existing leases or tenancies.
- C) Proof that there are no statutory liens for labor or material, including liens for contributions due to the State of Oregon for unemployment compensation and for workman's compensation which have not gained or hereafter may gain priority over the lien of the insured mortgage, which liens do not now appear of record.

Note: We find no judgment liens or tax liens against **Pacific Communities Health District.**

Note: Any conveyance or encumbrance by Pacific Communities Health District should be executed pursuant to a proper resolution of the members voted on a duly called meeting of the membership in accordance with the By-Laws or other authority of the corporation.

A certified copy of the resolution authorizing the conveyance and encumbrance and a copy of the minutes of the meeting of the membership and a copy of the By-Laws or other authority for such conveyance or encumbrance should be furnished us in order to determine parties authorized to sign documents.

Note: There have been no vesting changes in the last 24 months.

Note to Lender: **Western Title & Escrow Company** is the correct name to use if you are going to use this company as the trustee for a trust deed in this transaction.

Note: Title Insurance Rate Disclosure Notice

The title insurance charges for this order are disclosed in **Schedule A** of the Preliminary Title Report. In some circumstances, a reduced charge will apply. When it appears to us that a transaction qualifies for a reduced charge, it is our policy in Oregon to identify the reduced charge on Schedule A of the report. The reduction usually is computed as a percentage of the Company's basic rate. If a reduced charge appears on Schedule A, it is one of the following:

Reissue Rate: A discount of 25% of the basic rate applies when there has been title insurance on the property within the previous three years.

Builder-Developer Rate: A discount of 35% of the basic rate may apply when a party to the transaction is a builder or developer and the property is residential.

Lender Post-Foreclosure Rate: A discount of 35% of the basic rate may apply when a seller acquires the property through foreclosure.

Contract Fulfillment Rate: A discount of up to 50% of the basic rate may apply to an owner's policy issued upon fulfillment of a previously insured land sale contract.

Leasehold to Owner's Conversion Rate: A previously insured lessee who exercises an option to purchase in the lease may obtain title insurance for the purchase with a 50% credit from the previous policy.

Post-Construction Permanent Loan Rate: A discount of up to 75% of the basic rate may apply to a loan policy for a permanent mortgage when it refinances a previously insured construction loan.

Reorganization Rate: A discount of up to 65% of the basic rate may apply for title insurance to a business entity that is affiliated with a previously insured business entity.

Corporate Employee Transfer Rate: When a corporation transfers an employee from one area to another and the employee's corporation or one rendering employee transfer services acquires the employee's property with title insurance, a discount of up to 50% applies to the resale.

Simultaneous Issue Rate: A special rate may apply when two or more policies are issued simultaneously, such as a loan policy with an owner's policy or two loan policies.

IF YOU THINK A REDUCED RATE APPLIES TO YOUR TRANSACTION BUT IT DOES NOT APPEAR ON SCHEDULE A OF THE PRELIMINARY TITLE REPORT, PLEASE INFORM YOUR ESCROW OFFICER OR TITLE OFFICER by contacting them at the phone number, email address or mailing address shown on the report.

End of Report

cc: **Prudential Taylor & Taylor Real Estate (via email)**
Attention: Dennis Regen

Compliments of Western Title & Escrow Company.
 This map is not a survey and we assume no liability
 for inaccuracies.

Order 46288
 11-11-8-CA TL 9100



Lincoln County Property Report

PROPERTY ID & LEGAL DESCRIPTION	ACCOUNT DETAILS	OWNER AND ADDRESS
Property ID: R33395 Parcel ID: 11-11-08-CA-09100-00 Map: 11s11w08CA Legal: BAYLEY AND CASE'S ADDN. TO NEWPORT, BLOCK 16, LOT 11 & 12 & ADJ VAC ST, MF379-0961 PLUS DOC201004765 TaxCode: 107 Acres:	Neighborhood: <u>NNNI</u> PropertyClass: <u>101</u>	Owner: SHAW DONALD K Address: PO BOX 1001 NEWPORT, OR 97365-0076 Situs: 749 SW 11TH ST

IMPROVEMENTS								VALUE AND SALES HISTORY				
Description	Area	Yr Built	Foundation	Heat	Plumbing	BDMS	Value	Value Year	Imp.	Land	Total Market	Total Assessed
MAIN AREA	3186	1963	CONC	BB	B3;HB5	3	216450	2010	495,690	145,080	640,770	496,140
FINISHED BSMT	2516	1963		BB			139220	2009	668,100	233,280	901,380	479,220
BASEMENT GARAGE	758	1963		NONE			24580	2008	688,440	240,460	928,900	465,270
MAIN AREA 2ND FLOOR	2366	1963		BB			112980	2007	675,500	216,510	892,010	451,720
								2006	608,870	194,960	803,830	438,570
								SaleDate	Price	Document	Type Code	
								7/23/1994	275000	MF285-1259	33	WD

LAND				RELATED ACCOUNTS	DISCLAIMER
Description	Acres	Market Value	Special Use Value	No Related Accounts	<i>This report was produced using the Lincoln County assessment information. This information is maintained by the county to support its governmental activities. The County is not responsible for errors, omissions, misuse or misinterpretation. Report created: 8/17/2011 using tax data exported on 10/25/10</i>
DEV BAYVIEW LOT	0.25	132,880			
SITE DEVELOPMENT		12,200			



ATTACHMENT "A-3"
File No. 2-Z-11
Zoning Map of Property

104



P-1 "Public Structures"
Zoning Map Designation

R-4 "High Density
Multi-Family Residential"
Zoning Map Designation

R-3 "Medium Density
Multi-Family Residential"
Zoning Map Designation

VACATED
MF 60-1085

VACATED
MF 392-157

VACATED
DV 195-242

SEE MAP 11 11



ATTACHMENT "A-4"
File No. 2-Z-11
Aerial Photo of Property



169 SW Coast Highway Phone: 503.338.1111
Newport, Oregon 97365 Fax: 503.338.1112



This map is for informational use only and has not been prepared for, nor is it suitable for, legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the Newport Community Development Department.



CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING¹

ATTACHMENT "B"
File No. 2-Z-11
Notice of Public Hearing & Map

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on August 22, 2011, to review and make a recommendation to the Newport City Council on the following request. A public hearing before the City Council will be held at a later date, and notice of the City Council hearing will also be provided.

File No.: 2-Z-11.

Applicant & Owner: Pacific Communities Health District (Chris Minor, authorized representative) (Don Shaw, property owner).

Request: The applicant requests an amendment to the Zoning Map of the City of Newport to change the zoning designation of a tract of property consisting of approximately 11,000 square feet (involving Tax Lot 9100 of Lincoln County Assessor's Map 11-11-08-CA (further identified as Lots 11 and 12, Block 16, BAYLEY AND CASE'S ADDITION to Newport, together with portion of vacated street attaching thereto by Ordinance No. 2003 recorded May 10, 2010, and the unvacated portion of SW Case Street right-of-way lying adjacent to and southerly of the vacated portion (the public right-of-way portion)) from R-3/"Medium Density Multi-Family Residential" to R-4/"High Density Multi-Family Residential". The Comprehensive Plan map designation for the property is currently "High Density Residential" and would not need to be changed.

Subject Property: 749 SW 11th Street (currently identified as Tax Lot 9100 of Lincoln County Assessor's Map 11-11-08-CA) (further identified as Lots 11 and 12, Block 16, BAYLEY AND CASE'S ADDITION to Newport, together with portion of vacated street attaching thereto by Ordinance No. 2003 recorded May 10, 2010, and the unvacated portion of SW Case Street right-of-way lying adjacent to and southerly of the vacated portion (the public right-of-way portion)).

Applicable Criteria: For the proposed amendment to the Zoning Map of the City of Newport, the applicable criteria identified in the Newport Zoning Ordinance (NZO) (No. 1308, as amended) Section 2-5-5.005 are as follows: 1) The change furthers a public necessity; and 2) The change promotes the general welfare.

Testimony: Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department (address under "Reports/Materials") must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

Reports/Materials: The staff report may be reviewed or a copy purchased at the Newport Community Development (Planning) Department, City Hall, 169 S.W. Coast Hwy, Newport, Oregon, 97365, seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased for reasonable cost at this address

Contact: Derrick Tokos, Community Development Director (541) 574-0626 (address above in "Reports/Materials").

Time/Place of Hearing: Monday, August 22, 2011; 7:00 p.m.; City Hall Council Chambers (address above in

¹ Notice of the public hearing is being sent to affected property owners (according to Lincoln County Assessor's records) within the notification distance required, affected public/private utilities/agencies, and affected city departments.

"Reports/Materials").

MAILED: July 28, 2011.

PUBLISHED: August 12, 2011/News-Times.



Subject Property
File No. 2-Z-11

CITY OF NEWPORT

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE NO. 1308 (AS AMENDED) OF
THE CITY OF NEWPORT, OREGON, TO AMEND THE ZONING MAP OF
THE CITY OF NEWPORT**

Summary of Findings:

1. A request by Pacific Communities Health District on behalf of the owner Donald K. Shaw, (J. Christopher Minor, attorney, authorized representative) was filed on June 28, 2011 for an amendment to the Zoning Map of the City of Newport Zoning Ordinance (Ordinance No. 1308, as amended).
2. The subject property is approximately .41 acres in size, consisting of Lots 11 and 12, Block 16, Bayley and Case's Addition to Newport, together with a portion of vacated SW Case Street attaching thereto by Ordinance No. 2003, recorded May 10, 2010 (Lincoln County Assessor's Map 11-11-08-CA, Tax Lot 9100), and the unvacated portion of SW Case Street right-of-way lying adjacent to and southerly of said lots.
3. Existing improvements include a large single family residence that was once a nine (9) unit apartment complex. The address for the dwelling is 749 SW 11th Street.
4. Pacific Communities Health District, which owns the nearby Samaritan Pacific Hospital Facility, has indicated that they desire to purchase the privately owned property from Mr. Shaw so that it can be used for hospital medical offices and record storage.
5. The Comprehensive Plan Map designation for the property is High Density Residential, and the Zoning Map designation is R-3 (Medium Density Multi-Family Residential). The R-3 zoning district does not allow hospital or professional office uses.
6. With this amendment, the Zoning Map designation for the property will be changed to R-4 (High Density Residential). The R-4 zoning district lists hospital uses as a permitted use and professional offices as a conditional use.
7. The Newport Planning Commission reviewed the proposed revisions to the Zoning Ordinance (Newport File No. 2-Z-11) at a public hearing on August 22, 2011, and voted _____ to recommend adoption of the amendment, as furthering a public necessity and promoting the general welfare for the following reasons:
 - a. R-4 zoning exists to the south and west of the subject property, and at .41 acres this constitutes a minor adjustment to the boundary between the R-3 and R-4 districts. The zone change will not result in spot zoning.

- b. The Samaritan Pacific Hospital Facility resides immediately to the west, so this proposal provides for the logical extension of that facility, which provides essential medical services to the community.

8. The City Council held a public hearing on September 6, 2011 regarding the question of the proposed revisions, and voted _____ to accept the Planning Commission's recommendation after considering evidence and argument in the record.

9. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted as support for the Council's following amendments.

Section 2. The City Council further accepts the analysis and recommendation contained in the Planning Staff Report as supplemental findings in support of approval of the Zoning Map amendment, as depicted in Exhibit "A."

Section 3. Ordinance No. 1308 (as amended) is amended to establish a Zoning Map designation of "R-4/High Density Residential" for Lots 11 and 12, Block 16, Bayley and Case's Addition to Newport, together with a portion of vacated SW Case Street attaching thereto by Ordinance No. 2003, recorded May 10, 2010 (Lincoln County Assessor's Map 11-11-08-CA, Tax Lot 9100), and the unvacated portion of SW Case Street right-of-way lying adjacent to and southerly of said lots, as illustrated in Exhibit "B."

Section 4. This ordinance shall take effect 30 days after adoption.

Date adopted: _____.

Signed by the Mayor on _____.

Mark McConnell, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

Case File: 2-Z-11
Date filed: June 28, 2011
Hearing Date: August 22, 2011/Planning Commission

PLANNING STAFF REPORT
File No. 2-Z-11

- A. **APPLICANT & OWNER:** Pacific Communities Health District (Donald K. Shaw, property owner) (J. Christopher Minor, authorized representative).
- B. **REQUEST:** The request involves a zoning map amendment. The subject property has a zoning designation of R-3/"Medium Density Multi-Family Residential". The applicant is requesting that the zoning designation be changed to R-4/"High Density Residential". The applicant wishes to purchase the property and convert it to hospital office space and storage for records, which is a use allowed outright under an R-4 zoning designation, but not under the current R-3 zoning.
- C. **LOCATION:** The subject property is located on Tax Lot 9100 of Lincoln County Assessor's Map 11-11-08-CD (749 SW 11th St). See map in Planning Staff Report Attachment "B".
- D. **LOT SIZE:** The size of the subject property is approximately .41 acres per Assessment Maps.
- E. **PLANNING COMMISSION ACTION:** The Planning Commission reviews this request and makes a recommendation to the City Council.
- F. **STAFF REPORT:**
1. **Report of Fact**
 - a. **Existing Plan Designation:** "High Density Residential".
 - b. **Existing Zone Designation:** R-3/"Medium Density Multi-Family Residential".
 - c. **Surrounding Land Uses:** The property abuts R-4 zoned property to the west and south, and is surrounded by a mix of single-family residences, multi-family dwellings, and medical offices. Across SW 11th Street is the Samaritan Pacific Hospital property that is zoned P-1.
 - d. **Topography and Vegetation:** The site is flat with normal landscaping.
 - e. **Existing Structures:** Large single-family residence converted from a 9-plex.
 - f. **Utilities:** All city services are available to the site.
 - g. **Development Constraints:** None known.

h. **Past Land Use Actions:** None known.

i. **Attachments:**

Attachment "A"	Applicant Request
Attachment "A-1"	Preliminary Title Report
Attachment "A-2"	Assessor's Property Information
Attachment "A-3"	Zoning Map of Property
Attachment "A-4"	Aerial Photo of Property
Attachment "B"	Notice of Public Hearing and Map
Attachment "C"	Draft Ordinance
Attachment "D"	Uses Allowed in the R-3 and R-4 Zones
Attachment "D-1"	NZO Section 2-3-5 Table "A"
Attachment "E"	Topography Map of Area

j. **Notification.** The Department of Land Conservation & Development was mailed notification of the proposed amendments on June 30, 2011. Applicable city departments, public agencies, and affected property owners within 300 feet of the subject property were notified on July 28, 2011, for the Planning Commission hearing. Notification of the Planning Commission hearing was published in the Newport News-Times on August 12, 2011.

2. **Explanation of the Request:**

The large house located on the subject property was converted from a 9-unit apartment building and has been used as a single-family residence. The applicant, Pacific Communities Health District, owns property across SW 11th Street from the subject property. The applicant is wishing to purchase the subject property and remodel it into hospital office space and for storage of records. The applicant states that no patient health care services will be provided at this location. Office space for the hospital would be allowed outright under an R-4 zoning designation, but is not allowed under the current R-3 zone. Therefore, the applicant is asking to change the zoning designation from R-3 to R-4. The property abuts R-4 zoned property to the south and west. The zone change would also include the portion of SW Case Street that has not been vacated and lies southerly of and adjacent to the vacated portion of SW Case Street. That would make it contiguous to R-4 zoning across SW Case Street.

3. **Evaluation of the Request:**

a. **Comments:** DLCD was provided notification on June 30, 2011. All applicable property owners, city departments, affected public/private utilities/agencies were notified on July 28, 2011, of the Planning Commission hearing. As of August 15, 2011, no written comments were received by the Community Development Department.

b. **Applicable Criteria:**

Criteria for the Proposed Zoning Map Amendments (Section 2-5-5.005) of the Newport Zoning Ordinance (No. 1308, as amended):

1. The change furthers a public necessity.
2. The change promotes the general welfare.

c. **Staff Analysis:**

The proposed findings submitted by the applicant address the criteria established in the Comprehensive Plan and Zoning Ordinance for approving the request. See Planning Staff Report Attachment "A". Additionally, a list of the uses in the applicable zones and a copy of Table "A" of NZO Section 2-3-5 (summarizing height restrictions, lot coverage restrictions, and other items in the different zones) are attached. See Planning Staff Report Attachments "D" and "D-1".

In regard to the applicable criteria for the proposed Zoning Map amendment:

The change furthers a public necessity and promotes the general welfare.

The requested zoning map change would allow the applicant to purchase property across the street from the existing hospital facility and convert the structure to office space and records storage for the hospital. In addition, this zone change request will not create spot zoning. The subject property abuts R-4 zoning along SW 11th Street to the west and across SW Case Street to the south. The applicant proposes changing the zoning for Tax Lot 9100 of Tax Map 11-11-08-CA and the portion of SW Case Street that has not been vacated and lies to the south and adjacent to the vacated portion of SW Case Street that has attached to Tax Lot 9100. At .41 acres, it is reasonable for the Planning Commission to view this request as a minor adjustment to the boundary of the R-3 and R-4 zoning districts.

The applicant notes that the existing structure will be extensively remodeled to accommodate the anticipated use. In addition, the applicant states that adequate parking space is available and will be provided on the existing hospital grounds.

Samaritan Pacific Hospital lies immediately to the west. It would be reasonable for the Commission to find that the proposal is a logical extension of that facility, which provides essential medical services to the community.

For these reasons, the Planning Commission can find the proposed zoning change to be a public necessity that promotes the general welfare.

4. **Conclusion:**

The applicant requests the zone change in order to purchase the neighboring property and be able to use it for hospital office space and records storage. The applicant believes that the zone change is in conformance with the applicable requirements of the City of Newport; and for this reason, the applicant requests approval of the application.

G. **STAFF RECOMMENDATION:**

The Planning Commission should review the proposed changes to the Zoning Map and the application materials as well as other documentation and testimony that may be submitted during the course of the hearing. The Planning Commission should recommend approval of the request as being in compliance with the applicable criteria if the Commission finds that the criteria have been met. The Commission should identify how the request does not comply with the criteria, or should identify conditions necessary in order to make the request comply with the criteria, if the Commission finds that the criteria have not been met.



Derrick I. Tokos, AICP
Community Development Director
City of Newport

August 16, 2011



Exhibit B

Ordinance No. _____
 Zoning Map Amendment
 (File #2-Z-11)



**R-3/"MEDIUM DENSITY MULTI-FAMILY
RESIDENTIAL:**

Permitted Uses

Single-Family Dwellings
Two-Family Dwellings
Multi-Family Dwellings
Mobile Home Parks
Accessory Uses
Home Occupations
Parks
Child Care Facilities
Residential Care Homes
Condominiums
Residential Facilities
Assisted Living Facilities

Conditional Uses

Publicly Owned Recreation Facilities
Libraries
Utility Substations
Public or Private Schools
Day Care Facilities
Churches
Nursing Homes
Bed and Breakfast Inns
Rooming and Boarding Houses
Colleges and Universities
Golf Courses
Necessary Public Utilities and Public
Service Uses or Structures

**R-4/"HIGH DENSITY MULTI-FAMILY
RESIDENTIAL:**

Permitted Uses

Single-Family Dwellings
Two-Family Dwellings
Multi-Family Dwellings
Mobile Home Parks
Accessory Uses
Home Occupations
Parks
Public or Private Schools
Child Care Facilities
Residential Care Homes
Nursing Homes
Rooming and Boarding Houses
Hospitals
Membership Organizations
Museums
Condominiums
Residential Facilities
Assisted Living Facilities

Conditional Uses

Publicly Owned Recreation Facilities
Libraries
Utility Substations
Day Care Facilities
Churches
Bed and Breakfast Inns
Motels and Hotels
Professional Offices
Beauty and Barber Shops
Colleges and Universities
Hostels
Recreational Vehicle Parks
Necessary Public Utilities and Public
Service Uses or Structures
Movie Theaters
BICYCLE SHOPS



2-3
TABLE "A"

District	Minimum Lot Area (Sq. Ft.)	Minimum Width	Setback Requirements: Front/2nd Front ¹ Side	Rear	Lot Coverage In Percent	Maximum Building Height	Density In Sq. Ft. Per Unit
R-1/"Low Density Single-Family Residential"	7,500	65'	15' and 15' or 20' and 10'	15'	54%	30'	7,500
R-2/"Medium Density Single-Family Residential"	7,500	50'	15' and 15'	10'	57%	30'	3,750
Duplex on interior lot	5,000	50'	5'	10'	57%	30'	2,500
Duplex on corner lot	5,000	50'	20' and 10'	10'	57%	30'	5,000
R-3/"Medium Density Multi-Family Residential"	5,000	50'	15' and 15' or 20' and 10'	10'	60%	35'	1,250 ²
R-4/"High Density Multi-Family Residential" ³	5,000	50'	15' and 15' or 20' and 10'	10'	64%	35'	1,250
C-1/"Retail and Service Commercial"	5,000	0'	0'	0'	85-90%*	50'	n/a
C-2/"Tourist Commercial"	5,000	0'	0'	0'	85-90%*	50'	n/a
C-3/"Heavy Commercial"	5,000	0'	0'	0'	85-90%*	50'	n/a
I-1/"Light Industrial"	5,000	0'	50' from Hwy. 101	0'	85-90%*	50'	n/a
I-2/"Medium Industrial"	20,000	0'	50' from Hwy. 101	0'	85-90%*	50'	n/a
I-3/"Heavy Industrial"	5 acres	0'	50' from Hwy. 101	0'	85-90%*	50'	n/a

* See Section 2-4-4 n/a - not applicable

¹ Front and second front yards shall equal a combined total of 30 feet. All garages shall be set back at least 20 feet from the access.

² Amended by Ordinance No. 1642 (8-3-92).

³ Density of hotels, motels, and nonresidential units shall be one unit per 750 square feet.

2-3-5 (cont)
TABLE "A"

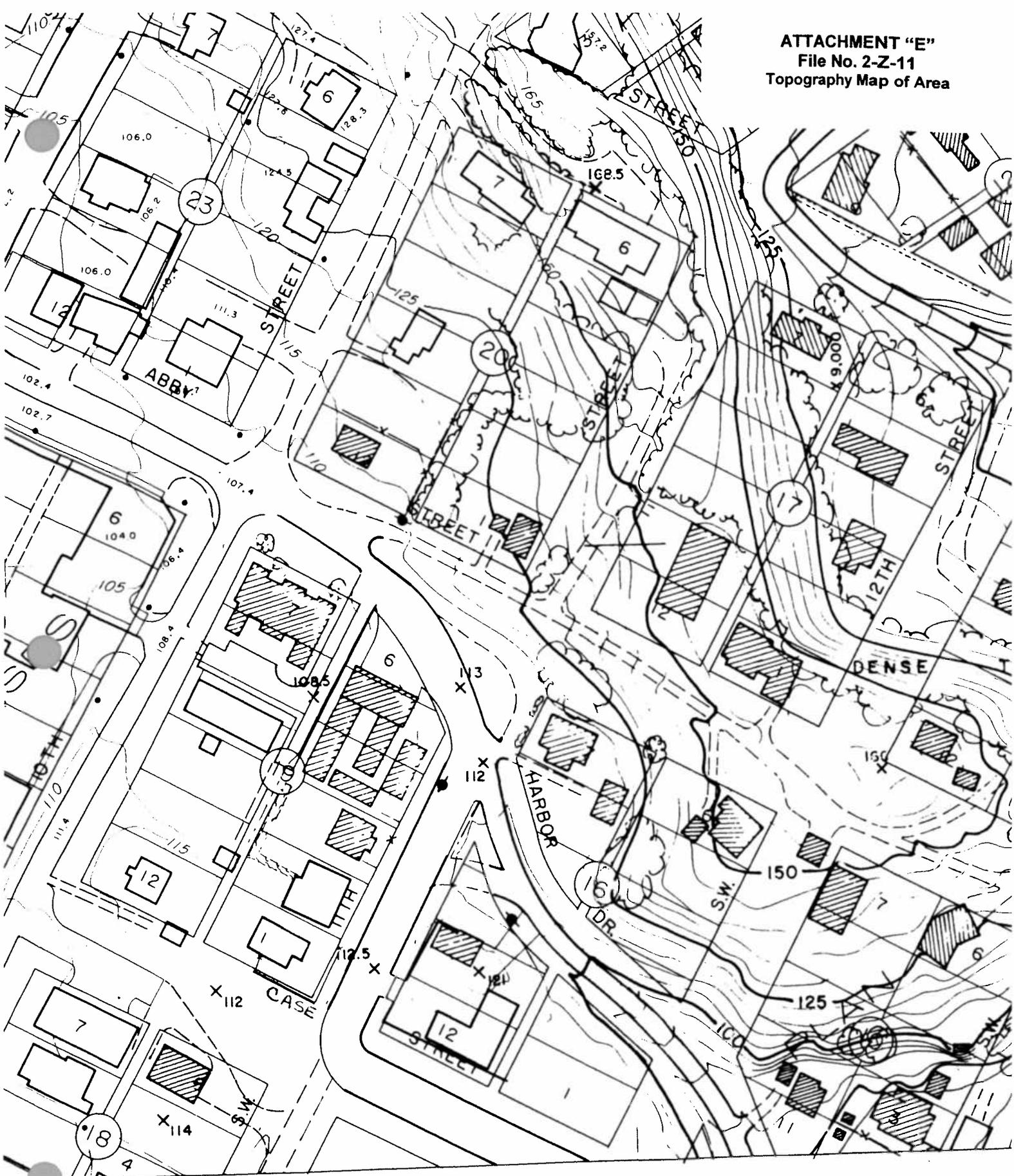
District	Minimum Lot Area (Sq. Ft.)	Minimum Width	Setback Requirements:				Lot Coverage In Percent	Maximum Building Height	Density In Sq. Ft. Per Unit
			Front/2nd Front	Side	Rear				
W-1/"Water Dependent"	0	0'	0'	0'	0'	85-90%*	40'	n/a	
W-2/"Water Related"	0	0'	0'	0'	0'	85-90%*	35'	n/a	
MU-1 thru MU-10 (Management Units)	0	0'	0'	0'	0'	100%	40'	n/a	
P-1/"Public Structures"	0	0'	0'	0'	0'	100%	50'	n/a	
P-2/"Public Parks"	0	0'	0'	0'	0'	100%	35'	n/a	
P-3/"Public Open Space"	0	0'	0'	0'	0'	100%	30'	n/a	
(M-H)/"Mobile Home Overlay"	For mobile homes on individual lots, see underlying zone; for mobile home parks, see ORS 446.100 and OAR 814-28-060.								

* See Section 2-4-4

n/a - not applicable

Front and second yards shall equal a combined total of 30 feet. All garages shall be set back at least 20 feet from the access street.

ATTACHMENT "E"
 File No. 2-Z-11
 Topography Map of Area



369,000/1,072,500

DATE 1-3-74	4-74

SCALE 1" = 100'
 CONTOUR INTERVAL 5'



Memo

To: Planning Commission
From: Derrick Tokos, Community Development Director *DT*
Date: August 18, 2011
Re: Overview - 2011 Legislative Session

Attached are legislative bill summaries prepared by the Department of Land Conservation and Development and League of Oregon Cities related to Community Development. The League of Oregon Cities summary also includes a list of key bills that did not pass. I have circled bills that appear most relevant to the work that we do and will be prepared to discuss them in greater detail at your meeting on August 22nd. If there are other bills that you would like information on, please let me know on Monday and I'll follow-up with that information at a future meeting.

The most relevant legislation is SB 264 and SB 766 which deal with permitting and planning for highway access. HB 2129 is also pertinent in terms of the land use processes the City must follow. All-in-all, Community Development related legislation was minor in nature and largely targeted at streamlining and improving existing laws and rules.

I look forward to our conversation on Monday!





Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



July 12, 2011

TO: Interested Persons, Local Governments and Agencies

FROM: Bob Rindy, Legislative Coordinator
Department of Land Conservation and Development (DLCD)

SUBJECT: 2011 Land Use Legislation

The attached report describes legislation relating to land use planning or similar topics enacted by the 2011 legislature. Note that not all the bills listed here are signed by the governor as of the date of this report. The report is also published on the DLCD web site at:

<http://www.oregon.gov/LCD/docs/legislative/landusebills2011.pdf>

The report provides only a brief summary of each legislative measure. Many of these new laws have elements in addition to those described in the summary, or may include details not apparent in the summary. Therefore, we recommend that you use the report primarily as a reference to new laws that may be of interest. In general, if legislation does not specify an effective date, the effective date of the new law will be January 1, 2012. However, many of the bills enacted in the 2011 session became effective upon passage. The report indicates the effective date of all bills that are signed by the governor at the time of this report.

The report includes hyperlinks for easy reference to a pdf file of the final "enrolled" version of bills published on the state's legislative web site. The home page of the state's legislative web site is <http://www.leg.state.or.us/>. All legislation considered in the 2011 legislative session, including a large number of bills that were considered but did not pass, may be accessed at http://www.leg.state.or.us/bills_laws. Printed copies of enacted legislation may be ordered by calling the Legislative Publication Office at the state capitol: (503) 986-1180. DLCD does not have printed copies of legislative measures available for distribution.

If you have questions or comments about the attached report or other legislation, please call DLCD legislative coordinators: Bob Rindy at (503) 373-0050 Ext. 229; email: bob.rindy@state.or.us; or Michael Morrissey, (503)373-0050 Ext. 320; email: michael.morrissey@state.or.us.

Land Use Legislation Report July 8, 2011

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

The following bills relating to land use planning or similar topics have passed the 2011 Oregon Legislature. Many but not all of the bills listed here have been signed by the Governor at the time of this report (asterisk * indicates bills not signed by the governor by the date of this report).

For questions about this report, contact Bob Rindy, (503)373-0050 Ext 229, bob.rindy@state.or.us; or Michael Morrissey, (503)373-0050 Ext 320, michael.morrissey@state.or.us.

For information about the Oregon Legislature, call (503) 986-1180.

SB 48

Summary: Limits the types of special districts over which the metropolitan service district exercises jurisdiction for boundary changes. Signed by the Governor, effective January 1, 2012 (Chapter 26, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/sb0001.dir/sb0048.en.pdf>

SB 128

Summary: Removes obsolete reporting dates and requires a specified amount of proceeds from Highway User Tax Bonds to be spent on transportation projects. Requires the Department of Transportation to consult with legislative committees before expending certain federal economic stimulus money. Repeals laws requiring development of congestion pricing pilot program. Authorizes parking of up to seven dump trucks and up to seven trailers on lots or parcels of land zoned for forest use or mixed farm and forest use. Signed by the Governor, effective July 6, 2011 (Chapter 629, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/sb0100.dir/sb0128.en.pdf>

SB 264

Summary: Exempts county roads from requirements to get a new approach permit for a change of use of a private approach road. Creates access management system under which the Department of Transportation must process applications for approach permits to owners of property abutting highways. Specifies standards for approach permits. Authorizes ODOT and a city to enter into agreement under which jurisdiction and ownership of a segment of a state highway transfers to a city. Includes other provisions. Signed by the Governor, effective June 14, 2011 (Chapter 330, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/sb0200.dir/sb0264.en.pdf>

SB 535

Summary: Modifies provisions of law that restrict location of armories to land inside a city; provides that an armory may be constructed outside of city limits (does not modify

land use laws that may pertain to location of armories). Signed by the Governor, effective May 19, 2011 (Chapter 87, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/sb0500.dir/sb0535.en.pdf>

SB 592

Summary: Declares that statutes authorizing or mandating award of attorney fees to parties in a proceeding such as judicial review or other appellate review, including statutes that authorize or require award of attorney fees in administrative proceedings, shall be construed as authorizing or mandating that award on appeal. Takes effect January 1, 2012; applies only to judicial review proceedings commenced on or after the effective date of act. Signed by the Governor, effective January 1, 2012 (Chapter 513, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/sb0500.dir/sb0592.en.pdf>

SB 640

Summary: Authorizes division of land in an exclusive farm use zone in order to create a parcel smaller than the minimum lot or parcel size where the parcel is for establishment of fire service facilities providing rural fire protection services. Signed by the Governor: effective May 24, 2011 (Chapter 135, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/sb0600.dir/sb0640.en.pdf>

SB 766

Summary: Establishes the Economic Recovery Review Council as an independent council that reports directly to the Governor and authorizes the council to perform expedited site reviews for proposed industrial development projects that have state significance. Requires the council to designate at least five and not more than fifteen regionally significant industrial areas within three years of the effective date of the act. Authorizes local governments to nominate regionally significant industrial areas for designation by the council and allows expedited permitting of industrial uses in regionally significant industrial areas if the new or expanded use does not require a change to a statewide planning goal, an acknowledged comprehensive plan or a land use regulation. Sets timelines and procedures for local government review of an expedited industrial use permit. Sunsets the council when the annual average unemployment rate for the most recent calendar year in Oregon is less than six percent. Signed by the Governor, effective June 28, 2011 (Chapter 564, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/sb0700.dir/sb0766.en.pdf>

SB 795

Summary: Requires Land Conservation and Development Commission to adopt revisions to the transportation planning rules (OAR 660, division 12) to streamline, simplify and clarify certain aspects of the rules before January 1, 2012. Requires the Oregon Transportation Commission to adopt revisions to the Oregon Highway Plan, streamlining, simplifying and clarifying certain aspects of plan before January 1, 2012. Requires report to Legislative Assembly before February 1, 2012. Signed by the Governor, effective June 17, 2011 (Chapter 432, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/sb0700.dir/sb0795.en.pdf>

SB 960

Summary: Creates processes by which counties may conditionally approve up to 18 agri-tourism events and other commercial events or activities related to and supportive of agriculture in areas zoned for exclusive farm use (EFU), including events in EFU areas designated as rural or urban reserves. Signed by the Governor, effective June 28, 2011 (Chapter 567, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/sb0900.dir/sb0960.en.pdf>

HB 2129

Summary: Modifies and clarifies the process for local government to make post-acknowledgment changes to comprehensive plans and land use regulations, including post-acknowledgment plan amendment notice procedures. Provides for electronic notice. Adjusts notice requirements with respect to a change in a proposed local amendment proposed after the initial notice to DLCD. This legislation was proposed by the Department of Land Conservation and Development. Signed by the governor, effective January 1, 2012 (Chapter 280, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/hb2100.dir/hb2129.en.pdf>

HB 2130

Summary: Modifies provisions regulating periodic review of comprehensive plans and regional framework plans, including provisions for LCDC review of urban growth boundaries and urban reserve designations "in the manner of periodic review," and including provisions regulating judicial review of orders of Land Conservation and Development Commission. Resolves gaps and ambiguities in current procedural requirements and clarifies the record, scope and standards for LCDC review. Ensures concerns are raised and addressed at the local level before being raised at the review level. This legislation was proposed by the Department of Land Conservation and Development. Signed by the Governor, effective June 23, 2011 (Chapter 469, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/hb2100.dir/hb2130.en.pdf>

HB 2131

Summary: Modifies criteria for establishment and review of needed housing within urban growth boundaries (UGBs). This legislation consolidates, re-orders, and otherwise clarifies statutes under ORS 197.303-197.307 but is not intended to change the intent of these statutes (these statutes ensure that cities provide sufficient land to accommodate needed housing for the 20-year UGB planning period). This legislation was proposed by the Department of Land Conservation and Development. Signed by the Governor, effective January 1, 2012 (Chapter 354, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/hb2100.dir/hb2131.en.pdf>

HB 2132

Summary: Modifies provisions of DLCD pilot program that authorize transfer of development rights between properties in areas designated as sending areas and receiving areas. The 2009 Legislature established a Transfer of Development Rights (TDR) Pilot Program administered by DLCD to test TDRs as a market-based method to

conserve forest land for forest use. The 2009 law authorized up to three “pilot projects” to test these TDR ideas on the ground. This bill authorizes additional unincorporated communities as “receiving areas” for transferred rights, and allows higher transfer ratios than the 2009 legislation in certain circumstances. Includes additional incentives. This legislation was proposed by the Department of Land Conservation and Development. Signed by the Governor, effective May 27, 2011 (Chapter 144, 2011 Laws).
<http://www.leg.state.or.us/11reg/measpdf/hb2100.dir/hb2132.en.pdf>

HB 2154

Summary: Expands definitions of farmworker and contributor for purposes of farmworker housing tax credits and makes exception to provisions barring credits for dwellings occupied by relatives of owner in case of manufactured dwelling park nonprofit cooperatives. The expanded definition and exceptions in this legislation do not apply on land zoned exclusive farm use; the existing definitions and other provisions for farmworker housing on EFU land were not modified but were moved by this legislation to ORS 215.277 with related amendments to ORS 215.278. Signed by the Governor, effective September 29, 2011 (Chapter 471, 2011 Laws).
<http://www.leg.state.or.us/11reg/measpdf/hb2100.dir/hb2154.en.pdf>

HB 2688

Summary: Corrects statutory references related to review of urban reserve designations. Signed by the Governor, effective January 1, 2012 (Chapter 150, 2011 Laws). NOTE: Due to conflicts between HB 2130 and HB 2688 (which had passed earlier in the session than HB 2130) section 2 of HB 2688 amending ORS 197.626 is repealed by HB 2130 and does not go into effect.
<http://www.leg.state.or.us/11reg/measpdf/hb2600.dir/hb2688.en.pdf>

HB 2700

Summary: Allows person proposing removal or fill activity for construction or maintenance of a linear facility, including persons who are not the land owner, to apply for a removal or fill permit. Restricts the use of such permit. Signed by the Governor, effective June 16, 2011 (Chapter 370, 2011 Laws).
<http://www.leg.state.or.us/11reg/measpdf/hb2700.dir/hb2700.en.pdf>

HB 2753

Summary: Extends the “sunset”, from 2012 to 2018, for provisions authorizing establishment of guest ranches in EFU areas of eastern Oregon. Prohibits establishment of guest ranches in certain federally designated areas or in an area established by Congress for protection of scenic or ecological resources. Signed by the Governor, effective January 1, 2012 (Chapter 451, 2011 Laws).
<http://www.leg.state.or.us/11reg/measpdf/hb2700.dir/hb2753.en.pdf>

HB 3166

Summary: Establishes ultimate time limits for a person to file a request with Land Use Board of Appeals for review of a land use or limited land use decision due to certain procedural or notice errors. The appeal period may not exceed three years after the

date of the decision in certain circumstances, and may not exceed 10 years in circumstances where notice is required but has not been provided. Signed by the Governor, effective June 23, 2011 (Chapter 483, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/hb3100.dir/hb3166.en.pdf>

HB 3225*

Summary: Authorizes a county to take exception to a statewide planning goal where necessary to allow establishment of transportation facilities in an area designated as urban reserve. Declares emergency, effective on passage.

<http://www.leg.state.or.us/11reg/measpdf/hb3200.dir/hb3225.en.pdf>

HB 3280*

Summary: Modifies statutes regulating establishment of wineries and winery sales and services in exclusive farm use zones. Authorizes up to 25 days of events at wineries and also allows counties that have previously permitted events at wineries to continue to do so. Creates a new "large winery" category; allows restaurants and more than 25 days of events for large wineries. Includes other provisions. Declares emergency; includes a sunset for portions of the bill. Effective on passage.

<http://www.leg.state.or.us/11reg/measpdf/hb3200.dir/hb3280.en.pdf>

HB 3290

Summary: Makes a minor modification to the farm income standard adopted by Land Conservation and Development Commission for establishing primary and accessory dwellings customarily provided in conjunction with farm use in areas zoned for exclusive farm use. Signed by the Governor, effective January 1, 2012 (Chapter 459, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/hb3200.dir/hb3290.en.pdf>

HB 3408

Summary: Modifies provisions and authorizes placement of irrigation reservoirs by certain special districts or corporations as outright permitted uses on land zoned for exclusive farm use. Affects irrigation property of irrigation districts, drainage districts, water improvement districts, water control districts and specified corporations. Signed by the Governor, effective January 1, 2012 Chapter 462, (2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/hb3400.dir/hb3408.en.pdf>

HB 3465*

Summary: Authorizes the expansion of an existing guest ranch in the Silvies Valley area of Grant County to include 575 units of overnight accommodations and commercial uses on a 5,000 acre site. Exempts this development from statutes relating to guest ranches and other specified land use and land division statutes, statewide land use planning goals and provisions of Grant County's acknowledged comprehensive plan and land use regulations. Declares emergency, effective on passage.

<http://www.leg.state.or.us/11reg/measpdf/hb3400.dir/hb3465.en.pdf>

HB 3516

Summary: Authorizes installation and use of solar photovoltaic energy systems on residential or commercial structures in zones in which residential or commercial structures are authorized. Requires local government reviewing a permit application for such systems to make ministerial decision approving or denying permits, and prevents local government from collecting fees for applications to install solar photovoltaic energy systems. Limits certain land use reviews of such sites and creates exceptions. Signed by the Governor, effective January 1, 2012 (Chapter 464, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/hb3500.dir/hb3516.en.pdf>

HB 3572

Summary: Changes the time frame within which the owner of a destination resort site previously proposed in the Metolius River basin but prohibited by 2009 law may apply to the county to develop a small-scale recreation community at another location. Modifies the application of the seasonally-adjusted unemployment rate for the county as a basis for siting a community authorized by the 2009 law. Signed by the Governor, effective January 1, 2012 (Chapter 404, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/hb3500.dir/hb3572.en.pdf>

HB 3620

Summary: Allows a person to file a request for reconsideration of a claim under Ballot Measure 49 (2007) if person's date of acquisition of property was affected by conveyance of the property and the person reacquired the property within 10 days after conveyance (less than ten claims are estimated to be affected by this bill). Signed by the Governor, effective January 1, 2012 (Chapter 612, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/hb3600.dir/hb3620.en.pdf>

HB5032

Summary: Appropriates moneys from General Fund to the Department of Land Conservation and Development for certain biennial expenses and provides funds for local planning grants. Limits certain biennial expenditures from fees, moneys or other revenues. Limits biennial expenditures by the department from federal funds. Signed by the Governor, effective July 1, 2011 (Chapter 254, 2011 Laws).

<http://www.leg.state.or.us/11reg/measpdf/hb5000.dir/hb5032.en.pdf>



COMMUNITY DEVELOPMENT

Building Codes

OVERVIEW

Many of the bills related to building codes aimed to modify bills passed in prior sessions that encouraged or required the use of green technology and increased energy efficiency. While few bills passed in 2011, the Legislature did approve a bill that exempts certain residential and commercial solar energy systems from land use restrictions and fees. The Legislature also passed a bill requiring municipalities to adopt standards and specifications for cluster mailboxes located within the boundaries of streets and rights-of-way.

The Legislature declined to preempt the ability of local governments to develop and require energy performance scores for buildings. Several bills brought forward by the building trade associations also failed to move, including those that would have:

- Reduced from 10 years to six years the statute of limitations period in which public entities could take legal action against those responsible for the faulty construction, alteration or repair of municipal buildings;
- Required cities to approve or disapprove a building permit application within one year of receiving the application and payment of fees; and
- Restricted municipalities to collecting permit fees as follows: one-third with issuance of a permit; one-third when construction begins; and the final one-third upon completion of construction.

BUILDING CODES – PASSED BILLS

HB 2078: Fire Safety

*Effective Dates: January 1, 2012**

**Varying Effective Dates*

HB 2078 streamlines Oregon statute and rescinds portions of statute that are outdated, redundant or in conflict with the state's adopted building or fire codes. The bill requires the state fire marshal to establish fire protection water supply requirements and expands the types of buildings and structures subjected to closure for occupancy limit violations. The bill was drafted through a collaboration of stakeholders, including fire and building officials and representatives from the League.

HB 3361: Local Standards for Cluster Mailboxes within Rights-of-Way

*Effective Dates: June 23, 2011**

**Varying Effective Dates*

HB 3361 will require cities and counties to adopt standards and specifications for cluster mailboxes located within the boundaries of streets and rights-of-way by June 2012. Cities and counties must adopt standards that conform to those established by the Oregon Structural Specialty Code (OSSC). HB 3361 requires the adoption of OSSC standards prior to April 1, 2012. The standards adopted in the OSSC must be consistent with the federal Americans with Disabilities Act and existing accessibility provisions within the OSSC.

HB 3516: Residential and Commercial Solar Bill

Effective Date: January 1, 2012

HB 3516 exempts residential and commercial solar photovoltaic and solar thermal energy systems from land use restrictions and fees. Exempt systems must not exceed the peak height of the roof on which they are placed and must run parallel to the roof. State regulations prohibit the systems from being more than 18 inches off the roof.

HB 3516 continues to allow design review for proposed solar systems on locally and federally recognized historic buildings and buildings within historic districts, as well as on conservation landmarks. The bill also continues to allow local governments to conduct inspections and charge fees for electrical, structural and other safety-related building permits.

BUILDING CODES – FAILED BILLS

SB 586: Green Building Requirements

SB 586 would have broadened the requirement that 1.5 percent of construction, reconstruction or renovation costs of a public building be set aside for “green technology,” as opposed to only solar energy technology. Green technology includes: on-site wind and geothermal generation; hydroelectric generation; biomass; solar electric and solar thermal systems; and passive solar energy systems and conservation techniques that reduce energy usage by 20 percent. The bill does not apply to construction, reconstruction or renovation projects where state funds are not used. This bill was passed by the full Senate and received a public hearing in the House Committee on General Government and Consumer Protection, but no further action was taken.

SB 630: Energy Score Preemption Bill

SB 630, as introduced, would have prohibited local governments from disclosing building energy performance scores in a manner that identifies a building, a group of related buildings or a group of similar buildings. As amended, the bill would have preempted local governments from adopting mandatory building energy performance score programs. The League expressed its opposition to this bill. An amended version of the bill received a public hearing, but was not moved out of committee.

HJR 31: Green Construction Code

HJR 31 would have directed the Oregon Department of Energy and the Department of Consumer and Business Services to adopt and implement a voluntary “green construction code”—a comprehensive approach to energy efficiency and conservation that includes the design, construction and operation of buildings. The resolution urged that the green construction code be integrated with the structural specialty code and the “reach code”—a set of statewide optional construction standards that achieve greater energy efficiency than the standards in the state building code. This resolution did not receive a hearing.

HB 2017: Solar Set-Aside Modification Bill

HB 2017 would have eliminated the requirement that 1.5 percent of construction, reconstruction or renovation costs of a public building be set aside for solar energy technology if the contracting agency determines that solar energy technology “is not appropriate.” However, this bill would have also broadened the requirement that construction, reconstruction or renovation funds be set aside for solar energy technology to apply to all public buildings instead of only those that receive state funds. This bill did not receive a hearing.

HB 2500: Statute of Limitations for Public Buildings

HB 2500 would have reduced from 10 years to six years the statute of limitations period in which public entities could take legal action against the designer, planner, surveyor, architect and/or engineer for the faulty construction, alteration or repair of a large structure. This bill did not receive a hearing.

HB 2592: Building Permit Response Timeline

HB 2592 would have required the Oregon Department of Consumer and Business Services or a municipality that administers and enforces a building inspection program to approve or disapprove a building permit application within one year of receiving the application and payment of fees. The timeline would be extended if notice was sent to the applicant requesting additional information. This bill did not receive a public hearing.

HB 2620: Building Permit Cap

HB 2620 would have restricted municipalities enforcing building and specialty codes to collecting permit fees as follows: one-third at issuance of a permit; one-third when construction begins; and the final one-third upon completion of construction. The bill would have also prevented municipalities from changing the fees charged after the permits were initially issued. This bill did not receive a hearing.

Economic Development

OVERVIEW

Job creation was one of the main goals of legislators in the 2011 session. Whether or not that goal was achieved is open to debate. However, Oregon Business Development Department programs largely remained whole, and the role of the Infrastructure Finance Authority (IFA) was clarified in statute.

ECONOMIC DEVELOPMENT – PASSED BILLS

SB 56: Business Oregon Loan Fees

Effective Date: January 1, 2012

SB 56 permits the Oregon Business Development Department (OBDD) to assess fees to recover certification and administrative costs incurred in certifying sites for industrial or traded sector development. In certain instances cities would be subject to these fees. These costs are generally only incurred when specialists or outside consultants are used. OBDD fee schedules are to be reviewed by the Joint Ways and Means Committee.

SB 494: Business/Entrepreneurial Loan Funds

Effective Date: July 1, 2011

SB 494 makes permanent the changes imposed by SB 1017 (2010) on the Oregon Business Development Fund and the Entrepreneurial Development Loan Fund. These funds provide working capital primarily in rural and distressed areas, and assist micro-enterprise and small businesses. The changes from SB 1017 generally make each program less restrictive.

HB 2070: Infrastructure Finance Authority

Effective Date: January 1, 2012

HB 2070 clarifies the roles of the Oregon Business Development Commission (OBD) and the Oregon Infrastructure Finance Authority Board (IFA) with respect to the IFA's position and policies and clarifies the authority of the OBD to provide comment and direction. The bill states that the IFA shall serve as a body to advise municipalities, state agencies and private persons on the development and implementation of state policies and programs relating to the infrastructure needs in the state and its communities.

Specifically the bill stipulates that the IFA will:

- Advise the governor, the OBD, and the Oregon Business Development Department and its employees on matters identified as being of interest and which relate to infrastructure and public works programs administered by the IFA;
- Provide the OBD with the opportunity to comment and give direction on matters relating to infrastructure and public works programs administration;
- Solicit and receive the views of all levels of government and the private sector with respect to state policies and programs addressing the infrastructure needs of Oregon;
- Prepare and submit to the director suggested administrative rules that the board determines are necessary for the operation of the programs under its direction; and
- Establish policies and procedures for loan and grant programs.

HB 2879: Economic Gardening Task Force

Effective Date: June 16, 2011

HB 2879 renames the Task Force on Stage Two Business Development and Economic Gardening to the Grow Oregon Council, and extends its sunset date from July 1, 2011 to January 2, 2016. The bill also adds four members to the current committee—two from Oregon-based companies and two from trade associations. Two members representing municipal or regional economic development organizations retain their place on the committee.

The council is assigned the following new responsibilities:

- Exploring opportunities for connecting market research and economic gardening services to capital access programs, including but not limited to the Building Opportunities for Oregon Small Business Today (BOOST) account;
- Exploring opportunities for facilitating the access of stage two, high-growth businesses to international markets; and
- Advising the Oregon Business Development Department or other administering entity on a pilot program providing economic gardening services.

HB 5036: Lottery Bond Funding Bill

Effective Date: July 1, 2011

HB 5036 identifies programs for funding by lottery-backed bonds. The bill includes \$10 million in bond funding to recapitalize the Special Public Works Fund.

Administered by the Infrastructure Finance Authority, the Special Public Works Fund issues grants and loans to help local governments finance basic infrastructure needs, including: roadways and bridges; storm, wastewater and drinking water systems; port and airport facilities; and telecommunications infrastructure.

For information on additional lottery-backed bond funding, see [HB 5036](#) under Transportation.

ENTERPRISE ZONES – PASSED BILLS

HB 3672: Omnibus Tax Credit Bill

*Effective Date: January 1, 2012**

**Varying Effective Dates*

HB 3672 extends the sunset date for rural enterprise zones and electronic commerce to June 30, 2018.
For more information about this bill, please see [Energy Bills](#) (page 34).

HB 3017: E-Zone Sunset Extension

Effective Date: January 1, 2012

HB 3017 extends the sunset date of the enterprise zone program from June 30, 2013 to June 30, 2025. The bill also extends the sunset date for businesses to obtain authorization for an enterprise zone property tax exemption. For long-term rural enterprise zones, the date for the property tax exemption has been

extended from June 30, 2013 to June 30, 2025. HB 3017 also removes the sunset extension for the income tax credit associated with long-term rural enterprise zones for businesses obtaining certification after June 30, 2012.

ENTERPRISE ZONES – FAILED BILLS

HB 2586: E-Zone Prevailing Wage/Property Tax Exemption

HB 2586 would have required a city, county or other sponsor of an enterprise zone to notify the commissioner of the Oregon Bureau of Labor and Industries (BOLI) of an exemption from ad valorem property taxation connected with a public works project located in the sponsor's enterprise zone for the purpose of paying prevailing wage rates. This bill would have also required the sponsor of the enterprise zone where the project is located to pay a \$5,000 fee to fund a BOLI survey to determine the prevailing wage rates, administer and provide investigations for compliance purposes and provide education programs on public contracting law. This bill did not receive a public hearing.

HB 3043: E-Zone Employment Requirements

HB 3043 would have allowed an enterprise zone sponsor to suspend employment requirements for exemption from property taxation for qualified business firms under certain economic conditions. It would have also repealed the alternative requirements for qualifying reconditioned, refurbished, retrofitted or upgraded property for an enterprise zone tax exemption. This bill did not receive a hearing.

Environment and Natural Resources

OVERVIEW

Very few environmental and natural resources bills became law during the 2011 session. The Legislature did create a grant program for the control of noxious weeds. They also expanded the focus of the Adopt-a-River program to include the eradication of invasive species.

Lawmakers declined to approve bills to: consolidate the state's natural resource agencies; raise reporting fees on greenhouse gas emitters; require consultation with cities and counties prior to a new state listing on the threatened or endangered species list; and phase out the use of copper in brake pads. Due to the state's struggling economy, bills requiring additional work of state departments also fared poorly. Legislation failed which would have required the Oregon Department of Environmental Quality to study externality pricing, conduct an economic impact analysis on all environmental bills, issue a report on compliance and submit an annual report on the environmental damages of forest fires.

ENVIRONMENT AND NATURAL RESOURCES – PASSED BILLS

HB 3157: Invasive Species Adopt-a-River Program

Effective Date: January 1, 2012

HB 3157 requires the Oregon Marine Board to broaden the focus of the Oregon Adopt-a-River Program to include the removal of invasive species, in addition to the removal of litter. The Adopt-a-River program encourages and facilitates the involvement of volunteer groups in adopting and maintaining a specific river or stream segment. The bill requires the Marine Board to consult with the Invasive Species Council, the Oregon Department of Agriculture, the Oregon Forestry Department and the Oregon Department of Environmental Quality on the list of species appropriate for removal, and to provide volunteers with instructions on removal and best management practices for the disposal of invasive species.

HB 3358: Weed Control District Grant Program

Effective Date: June 16, 2011

HB 3358 establishes a grant program within the Oregon Department of Agriculture to assist weed control districts in their efforts to control noxious weeds. The bill does not provide a funding mechanism for the grants, but the program will be eligible for federal monies.

ENVIRONMENT AND NATURAL RESOURCES – FAILED BILLS

SB 80: Greenhouse Gas Emissions Reporting Fees

SB 80 would have authorized new fees for new greenhouse gas reporting sources that do not currently pay fees. Current fee payers would have seen an offsetting reduction in their fees. Wastewater treatment facilities were not included in the legislation. This bill received a public hearing, but no further action was taken.

SB 83: Subsurface Sewage Disposal System Improvement Fund

SB 83 would have created a fund within the Oregon Department of Environmental Quality (DEQ) and authorized DEQ to make grants and loans available from that fund to property owners for the repair, replacement or decommissioning of their septic systems. The legislation authorized the Environmental Quality Commission to adopt rules for the fund. This bill was approved by a Senate committee, but referred to the Joint Ways and Means Committee and did not move out of this committee prior to adjournment.

SB 84: Enforcement Language Clarification

SB 84 would have clarified the statutory language and corrected internal citations regarding the Oregon Department of Environmental Quality's enforcement of sewage, dry cleaning and hazardous waste law. This bill did not receive a public hearing.

SB 169: Task Force on Natural Resource Agency Consolidation

SB 169 would have created a task force on consolidating the state's 14 natural resource agencies. The task force would have been asked to report its findings to the Interim Committee on Natural Resources by July 1, 2012. This bill received a hearing before the Senate Environment and Natural Resources Committee, but was not passed out of committee.

SB 289: Threatened and Endangered Species Mitigation Act

SB 289 would have required the Oregon Fish and Wildlife Commission to consult with cities and counties on the local economic impacts resulting from additions to the threatened and endangered species list. This bill did not receive a public hearing (*also see [HB 3511](#) and [HB 3656](#)*).

SB 521: Oregon Department of Natural Resources

SB 521 would have established the Oregon Department of Natural Resources and the Oregon Natural Resources Commission by abolishing and transferring to the new department the duties, functions and powers from the Oregon Department of Fish and Wildlife; the Oregon Fish and Wildlife Commission; the Oregon Parks and Recreation Department; the Oregon Parks and Recreation Commission; the Oregon Department of State Lands; the Oregon Department of Land Conservation and Development; the Oregon Land Conservation and Development Commission; the Oregon Land Use Board of Appeals; the Oregon Department of Geology and Mineral Industries; the Oregon Water Resources Department; the Oregon Water Resources Commission; the Oregon Watershed Enhancement Board; the Oregon Department of Forestry; the Oregon Board of Forestry; and the Oregon Forest Resources Institute. The governor would have been responsible for appointing the director of the Oregon Department of Natural Resources and the board members of the Oregon Natural Resources Commission. This bill received a hearing before the Senate Environment and Natural Resources Committee, but no further action was taken.

SB 649: Fish Habitat Improvement Zone

SB 649 would have required the Oregon Department of Fish and Wildlife to conduct a study on the development of a fish habitat improvement zone between the Upper and Lower Bennett Dams, the confluence of the Gardner Ditch and the stem of the North Santiam River. The bill would have required consultation with the cities of Stayton and Salem, as well as the Santiam Water Control District. This bill did not receive a hearing.

SB 945: Copper Brake Pads

SB 945 would have required brake pad manufacturers to reduce the use of copper in brake pads sold in Oregon to no more than 5 percent by 2021, and to 0.5 percent or less thereafter if alternative brake friction

material is available. The bill would have also prohibited all but the de minimis use of cadmium, chromium, lead, mercury and asbestiform fibers in brake pad materials sold in Oregon by 2014. This bill was passed by the Senate, but did not receive a hearing in the House.

HB 2121: EQC and ODA Memorandum of Understanding

HB 2121 would have allowed the Environmental Quality Commission (EQC) and the Oregon Department of Agriculture (ODA) to enter into a memorandum of understanding regarding programs to prevent water pollution from chemical waste and biological material sources.

HB 2195: Externality Pricing

HB 2195 would have required the Oregon Department of Environmental Quality to study externality pricing and report the results of the study to the 77th Oregon Legislative Assembly. This bill did not receive a public hearing.

HB 2201: Economic Impact Statement

HB 2201 would have required environmental bills introduced in the Legislature to include an economic impact analysis. This bill did not receive a hearing.

HB 2485: Septic System Inspections

HB 2485 would have required the seller of a property with a septic system to have the system inspected and share the inspection report with the Oregon Department of Environmental Quality and any potential buyer who makes a written offer to purchase the property. The bill would have allowed the buyer to withdraw the offer within three days of receiving the inspection report or to revoke the offer any time prior to closing if the seller refused to share the report. This bill did not receive a hearing.

HB 2654: Environmental Report

HB 2654 would have required the Oregon Department of Environmental Quality to submit an annual report about the affects of forest fires on the state's air quality, water quality and carbon dioxide emissions. This bill did not receive a public hearing.

HB 2736: Natural Resource Conservation Areas

HB 2736 would have authorized the Oregon Board of Forestry to acquire, designate or exchange state forest lands, Common School Forest Lands and Eliot State Forest Lands to create natural resource conservation areas. This bill did not receive a public hearing.

HB 2876: Fish Habitat Improvement Zone

See [SB 649](#).

HB 3109: Ecosystem Service Expansion Bill

HB 3109 would have:

- Allowed state agencies and local governments to use ecosystem service credits for water quality program and removal-fill project mitigation;
- Specified the conditions for credits and credit usage;
- Encouraged state agencies and local governments to adopt and implement programs that use market-based approaches to meet conservation, economic and environmental regulatory goals;
- Expanded the state's policy regarding ecosystem services to favor approaches that maintain watershed ecosystems and provide incentives to private landowners to conserve ecosystem services; and
- Required the state's Institute for Natural Resources to provide information to assist in the development of ecosystem service methodologies.

HB 3109 was referred by the House Committee on Energy, Environment and Water to the Joint Committee on Ways and Means with a do pass recommendation. However, no further action was taken on this bill.

HB 3378: DEQ Permit Compliance Study

HB 3378 would have required the Oregon Department of Environmental Quality (DEQ) to study issues related to compliance with the terms and conditions of permits issued by DEQ. The bill would have required DEQ to provide data regarding the modification, suspension, revocation, refusal to issue, or refusal to renew permits for those found in noncompliance. This bill did not receive a public hearing.

HB 3511: Threatened and Endangered Species Mitigation Act

HB 3511 would have required the Oregon State Fish and Wildlife Commission to consult with cities and counties on the impact to local economies from additions to the threatened and endangered species list. This bill received a public hearing, but was not moved out of committee (also see [SB 289](#) and [HB 3656](#)).

HB 3656: Threatened and Endangered Species Mitigation Act

This bill was introduced as a priority bill after an amended HB 3511 was scheduled for committee passage but became the inadvertent casualty of a partisan squabble. HB 3656 would have required the Oregon State Fish and Wildlife Commission (OSFWC) to consult with cities and counties on any additions to the state's list of threatened or endangered species. This bill would have also required the OSFWC to work with cities and counties to mitigate any negative economic impacts of a new listing. HB 3656 was passed by the House, but did not move out of committee in the Senate.

Land Use

OVERVIEW

Land use discussions revolved around three primary issues this session: industrial land preservation and project siting; events and wineries on exclusive farm use (EFU) land; and the transportation planning rule (TPR).

The industrial lands bill, SB 766, had strong support from the governor's office and in the Legislature. Cities will benefit from the portion of the bill that expedites the timeframe for state permits related to industrial land project applications. Meanwhile, SB 960 will clarify how counties permit commercial activities on farmland.

Despite strong interest by legislative members in passing legislation that would change the TPR, the only bill that passed was SB 795. The bill requires the Oregon Land Conservation and Development Commission and the Oregon Transportation Commission to adopt revisions to the transportation planning rule and the Oregon Highway Plan before January 1, 2012 for purposes of streamlining, simplification and clarification.

A number of bills were introduced to modify the removal-fill permitting process. A removal-fill permit is required for any project that crosses over, under or through waters of the state and involves the placement or removal of fill exceeding 50 cubic yards. Removal-fill permits are required for many municipal water, wastewater, stormwater and transportation projects, as well as utility and other pipeline projects.

At issue was a change in statute several years ago that narrowed the definition of a potential removal-fill permit applicant to only those in ownership of affected land and/or with permission from affected landowners. As a result, potential applicants were required to either receive permission from a landowner or acquire an ownership interest in the affected land before applying for a permit, a process that could have been laborious, costly and unnecessary if the project is later rejected or rerouted.

In response, the Legislature passed HB 2700, which broadens the definition of applicant to include those proposing a project that would require a permit.

LAND USE – PASSED BILLS

SB 48: Special Districts Within Metro

Effective Date: January 1, 2012

SB 48 limits the types of special districts within the Metropolitan Service District (Metro) over which Metro exercises jurisdiction for major boundary changes and minor boundary changes to:

- Domestic water supply districts (ORS 264);
- Park and recreation districts (ORS 266);
- Metropolitan service districts (ORS 268);
- Sanitary districts (ORS 450);

- Sanitary, water or joint water/sanitary authorities (ORS 450); and
- Districts formed under ORS 451 to provide water or sanitary service.

SB 518: Recurring Removal-Fill Activities

Effective Date: January 1, 2012

SB 518 allows the Oregon Department of State Lands to issue removal or fill permits by order when an applicant or applicants are completing recurring, ongoing or substantially identical projects, or projects that have predictable effects or outcomes.

SB 619: Right to Repurchase for Property Sale Agreements

Effective Date: June 8, 2011

SB 619 provides a right to repurchase for property sale agreements tendered by a condemner after the adoption of a resolution or ordinance for the acquisition of the property, but before entry of a judgment in commendation actions. Additionally, the bill provides that if the property sale agreement does not provide either of the following conditions, then the owner may repurchase the property if the property has not been used for a public purpose and 10 years have expired since the date of the transfer of the property:

- A condition for right to repurchase that specifies the period of time in which a condemner must use the property for a public purpose, or
- A condition that the right to repurchase has been waived by the owner.

City officials will need to ensure that any property sale agreements tendered prior to condemnation action specify one of the above conditions.

SB 640: Division of Land for Fire Facilities on EFU

Effective Date: May 24, 2011

SB 640 authorizes a county to establish criteria and approve a land division for a smaller than minimum lot or parcel for fire service facilities that provide rural fire protection service on land in an exclusive farm use zone.

SB 766: Projects of State Significance/Regionally Significant Industrial Areas

Effective Date: June 16, 2011

SB 766 establishes an Economic Recovery Review Council that reports directly to the governor, and:

- Performs expedited site reviews and permit authorizations for proposed industrial development projects that have state significance; and
- Authorizes the designation of regionally significant industrial areas.

The council will consist of the directors of the Oregon Business Development Department; the Oregon Department of Land Conservation and Development; the Oregon Department of Transportation; the Oregon Department of Environmental Quality; and the Oregon Department of State Lands. The council

may also include a voting representative of the local government whose project or designation is being considered.

The review and permitting of industrial projects by the council requires a resolution of support from the local government with land use jurisdiction over the site where the development would occur. Local and state standards and criteria are applied through the 120-day permit process, including any conditions of approval for the development. The permit binds the state, cities and/or counties to the approval, construction and operation of the project—except for federally delegated permits. A narrow appeals process is provided, bypassing the Oregon Land Use Board of Appeals and going directly to the Oregon Court of Appeals, where the council's decision may be overturned on very limited grounds.

The designation of regionally significant industrial areas (RSIAs) by the council occurs on lands already planned and zoned for industrial use. Local governments may nominate RSIA sites, but a resolution of local approval is not required. After such designation, a local expedited permit process of 63 days may be requested by a land use applicant if the new or expanded use does not require a change to a statewide planning goal, an acknowledged comprehensive plan, or a land use regulation. If a permit is contested, the bill provides a limited appeals process, bypassing the Oregon Land Use Board of Appeals. After designation by the council, the Oregon Land Conservation and Development Commission will administer RSIAs through rules. Local governments may not adopt new land use provisions that would prevent industrial uses or allow conflicting nonindustrial uses, or decrease the size of the designated areas. Cities may adopt other types of regulations, including development standards and overlay zones, as long as the city mitigates the effect by maintaining the employment potential and the characteristics that led to the initial designation. Regulations that protect public health and safety or that implement federal law are exempt from the mitigation requirements.

The council is abolished on January 2 of the first even-numbered year after notification that the annual average employment rate for the most recent calendar year in Oregon is less than 6 percent.

SB 795: Rulemaking Authorization for the Transportation Planning Rule (TPR)

Effective Date: June 7, 2011

HB 795 authorizes rulemaking by the Oregon Land Conservation and Development Commission and revisions to the Oregon Highway Plan by the Oregon Transportation Commission that would better balance economic development and the efficiency of urban development with regard to implementation of the Transportation Planning Rule (TPR). Both commissions need to adopt rules and plan revisions by January 2, 2012. A report to the Legislature is due by February 1, 2012.

The commissions shall consider revisions in the following areas:

- Planning requirements placed on zone changes consistent with comprehensive plans;
- Practical methods that may be used to mitigate transportation impacts of economic development;
- Planning requirements placed on zone changes in urban centers;
- Analysis required for transportation impacts of UGB changes;
- Clarification of planning periods and requirements for transportation system plans;
- Thresholds for analysis of transportation impacts of project proposals;
- Use of average trip generation rates;

- Development of mobility standards, including but not limited to volume-to-capacity ratios or corridor or area mobility standards; and
- Analysis required for transportation impacts of plan amendments that require improvements to avoid further degradation of transportation facility performance by the time of development.

SB 960: Events on EFU Land

Effective Date: June 17, 2011

SB 960 clarifies how counties permit commercial activities on farmland, allowing several types of permits that are personal to the applicant, based on the number and length of events per year. The permits include:

- An authorization for a single agri-tourism or other commercial event or activity on a tract of land zoned for exclusive farm use (EFU) in a calendar year;
- An authorization for an expedited single event license to authorize an event on land zoned for EFU in a calendar year;
- An authorization for a limited use permit for up to six events on land zoned for EFU in a calendar year; or
- An authorization for up to 18 other commercial events or activities that occur more frequently, for longer periods of time or that do not comply with other permits described above on land zoned for EFU in a calendar year.

The bill also provides several sideboards for events at wineries:

- A winery may not conduct events that are authorized by local government under ORS 215.452 and subject to conditional approval of the county;
- A use or structure that exists on the effective date of the bill at a winery sited on EFU lands that produced more than 250,000 gallons of wine in calendar year 2010 may be lawfully continued, altered, restored or replaced;
- A winery sited on EFU lands that produced more than 150,000 gallons and less than 250,000 gallons of wine in calendar year 2010 does not require a commercial activity permit in conjunction with a farm use permit for commercial activities; and
- A winery must comply with all winery conditions in ORS 215.452 except for annual production requirements.

The bill was requested by the Association of Oregon Counties because of continued concerns regarding standards and how events on EFU land are permitted.

HB 2129: Changes to the Post-Acknowledgement Plan Amendment Process

Effective Date: January 1, 2012

HB 2129, introduced by the Oregon Department of Land Conservation and Development (DLCD), modifies the process for local governments to make changes to an acknowledged comprehensive plan or land use regulation—primarily with regard to notice requirements associated with plan amendments, proposed plan submission requirements to DLCD, and the appeals process. The bill additionally deletes

the requirement for a local government to hold a public hearing if a proposed change is only for the purpose of conforming local plans and codes to new statutes, statewide land use planning goals or rules.

HB 2130: Urban Reserves/UGBs – “In the Manner of Periodic Review”

Effective Date: January 1, 2012

HB 2130, introduced by the Oregon Department of Land Conservation and Development (DLCD), clarifies the review of urban growth boundary and urban renewal decisions by the Land Conservation and Development Commission. While DLCD had hoped to achieve an expedited review for these decisions by the Oregon Court of Appeals, the lack of available state funds dictated that the bill achieved relatively minor improvements—clarifying the record in such cases, adding a “raise it or waive it” requirement, and clarifying the scope and standard of review.

HB 2131: Clear and Objective Standards for Needed Housing

Effective Date: January 1, 2012

HB 2131, introduced by the Oregon Department of Land Conservation and Development, modifies criteria for reviewing housing needs within an urban growth boundary by incorporating existing statutory provisions with case law. The bill also changes the existing reporting requirement (for cities with population less than 25,000 and for all cities within a metropolitan service district) applicable to residential permits and residential zone changes, and allows those reports to be submitted electronically.

HB 2132: Transfer of Development Rights

Effective Date: January 1, 2012

HB 2132, introduced by the Oregon Department of Land Conservation and Development, modifies a 2009 voluntary pilot program for the transfer of development rights (TDRs) by authorizing additional “receiving areas” and allowing for higher transfer ratios.

HB 2688: Urban Reserve References

Effective Date: January 1, 2012

HB 2688 provides a technical fix by modifying the statutory references related to the review of urban reserve designations by the Oregon Land Conservation and Development. The bill was requested by the Oregon State Bar Real Estate and Land Use Section.

HB 2700: Removal-Fill Permit Applications

Effective Date: June 16, 2011

HB 2700 broadens the definition of applicant for a removal-fill permit to include those proposing a removal or fill activity for construction or maintenance of a linear facility. Prior to this bill’s passage, only a landowner or person authorized by a landowner to conduct a removal or fill activity could apply for a permit. As a result, cities and other potential applicants had to either receive permission from a landowner or acquire an ownership interest in the affected land before applying for a permit.

HB 2700 also requires the Oregon Department of State Lands to notify all landowners whose land is identified in the permit application and all landowners adjacent to affected landowners of the proposed project.

HB 2753: Extension of Guest Ranch Authority

Effective Date: January 1, 2012

HB 2753 extends the sunset date to 2018 for the authorization of guest ranches. The bill also prohibits guest ranch siting in certain federally designated areas or areas established by Congress for the protection of scenic or ecological resources.

HB 2807: Special District Annexation

Effective Date: September 29, 2012

HB 2807, requested by the Special Districts Association of Oregon, modifies annexation authority for special districts by:

- Adding annexations to ORS 198, which authorizes mergers and consolidations to execute debt distribution plans;
- Clarifying that outstanding indebtedness may be allocated by a debt distribution plan, and that newly annexed territory is subject to the annexing district's permanent tax rate and any existing local option levies; and
- Clarifying that a district may annex the territory of a dissolved district.

HB 3166: Limitation on Timeframe for LUBA Appeals

Effective Date: January 1, 2012

HB 3166 establishes a limit of six years after the date of a land use or limited land use decision for a request to be filed with the Oregon Land Use Board of Appeals (LUBA) for review—if a notice of a hearing or administrative decision had been required but not provided.

HB 3225: Street Development in Metro Urban Reserve

Effective Date: June 16, 2011

HB 3225 allows a local government to take an exception to a statewide land use planning goal to construct a road on land designated for an urban reserve by a metropolitan service district (Metro). The B-Engrossed version of the bill went to conference committee where the above narrow, gut-and-stuff amendment passed. The "B" version, strongly supported in the Senate, allowed construction if the road was identified in an approved, state interchange area map as part of a roadway system that supports the capacity and safety of an existing state highway interchange. The bill was initially written to specifically address concerns in an area of Washington County with a significant amount of industrially-zoned property that has been underutilized because of the lack of available transportation infrastructure, which would be regulated by the yet-to-be-adopted urban reserves in the Metro region. The B-Engrossed version was supported by the cities of Hillsboro, Tualatin, West Linn, Sherwood and Wilsonville.

HB 3280: Wineries

Effective Date: June 28, 2011

HB 3280 deletes the maximum annual production limits for wineries established as a permitted use on exclusive farm use land, and authorizes wineries to market wine, wine tours/clubs and sell items directly related to the sale and promotion of wine produced in conjunction with the winery. This includes private events (limited to 25 days per year) and food and beverage prepared by a limited service restaurant. The bill limits gross income from the sale of items and services to 25 percent of the gross income from the on-site retail sale of wine.

The bill also authorizes allowable uses and activities for a new category of winery, and requires all wineries to provide setbacks of at least 100 feet and on-site parking. The new category of winery may be established as a permitted use on exclusive farm use land of at least 80 acres including at least 50 acres of vineyard. The winery must also own at least 80 additional acres of planted vineyards in Oregon, and have produced at least 150,000 gallons of wine in at least three of the last five years. Numerous lesser provisions are also included in the bill.

HB 3290: Income Test for Farm Dwellings

Effective Date: January 1, 2012

HB 3290 requires that any rules adopted by the Oregon Land Conservation and Development Commission that establish a farm income standard in order to determine whether a dwelling is legal must add an option that considers farm income in:

- At least three of the last five years;
- In each of the last two years; or
- Based on averaged farm income in the best three of the last five years.

HB 3465: Guest Ranch Pilot Projects

Effective Date: June 16, 2011

HB 3465 provides direct authorization for the expansion of a guest ranch (Silvies Valley Ranch Development Area in Grant County), to include up to 575 units of overnight accommodations such as lodging units, cabins, townhomes and fractional ownerships. The bill also authorizes restaurants, meeting facilities, commercial uses and developed recreational facilities, and specifies the content of the master plan and conditions for approval by Grant County.

HB 3572: Metolius Resort Timeframe Extension

Effective Date: January 1, 2012

HB 3572 modifies several provisions for a single Metolius destination resort site, including extending the timeframe the owner has to apply to the county to develop a small-scale recreation community (2015). The bill establishes that the recreational community must be sited on land within the county that had a seasonally adjusted average annual unemployment rate over the preceding 10 years that is more than 110 percent of the state's unemployment rate. HB 3572 is a follow-up to provisions passed by the Legislature in 2009 which authorized the establishment of one or two small-scale recreational communities on forestland in conjunction with the transfer of a development of a recreational community by 2012.

HB 3620: Measure 49 Modifications

Effective Date: January 1, 2012

HB 3620 allows a person to file a request for reconsideration of a claim under Ballot Measure 49 (2007) if the date of property acquisition was affected by the conveyance of the property, and if the person reacquired the property within 10 dates of the conveyance.

HB 5032: DLCD Budget

Effective Date: July 1, 2011

HB 5032 is the Oregon Department of Land Conservation and Development's (DLCD) budget for the 2011-2013 biennium in the amount of \$18,117,015. Appropriation levels include: \$10.9 million from the state's general fund, \$1.4 million from other funds and \$5.9 million in federal funds.

This represents a reduction in DLCD's budget of approximately \$6 million—from \$24,300,937 (2009-11). Approximately \$640,000 in reductions will come from the Local Government Grant Program, affecting grant funds available to cities and counties for planning updates.

This budget also contains four new across-the-board reduction packages, including:

- Package 86 – eliminate inflation;
- Package 87 – 5.5 percent reduction in personal services from current service level;
- Package 801 – 6.5 percent reduction in general fund services/supplies; and
- Package 819 – 3.5 percent reduction in supplemental ending balance hold back.

Budget direction was also given not to expend more than 54 percent of the biennial budget's general fund appropriations prior to the end of the first fiscal year of the biennium.

Other approved policy packages include: the reduction of Measure 49 temporary staff; increased funding (\$178,702) for continued work on greenhouse gas emission targets; increased funding (\$413,911) for an independent soils analysis program; funding (\$272,557) for the Federal Emergency Management Administration's Map Modernization Program; and placeholder funding (\$50,000) for attorney general costs resulting from potential litigation from Measure 49 claimants.

HB 5034: LUBA Budget

Effective Date: July 1, 2011

HB 5034 allocates \$1,295,875 for the Oregon Land Use Board of Appeals (LUBA) budget for the 2011-2013 biennium. Budget direction was also given not to expend more than 54 percent of this amount prior to the end of the first fiscal year of the biennium.

SB 5515: HCSC Budget

Effective Date: July 1, 2011

SB 5515 allocates \$1,053,990,137 for the Oregon Housing and Community Services (HCSD) budget for the 2011-2013 biennium. Appropriation levels include: \$9.5 million from the state's general fund; \$11.2 million from lottery funds, \$145.4 million in other funds; \$203 million in federal funds; and supports 190 positions (168.37 full-time equivalent).

LAND USE – FAILED BILLS

SB 186: Basis for Appeal to LUBA

SB 186 was one of several bills this session that would have limited the current standing requirements for appeal to the Oregon Land Use Board of Appeals (LUBA) to adversely affected owners or those having ownership interest in real property within a certain distance of the location of the land use or limited land use decision. Non-adopted amendments included the following circumstances:

- Owning property within the same county or adjacent county of the property affected by a land use or limited land use decision; or
- Entitled to notice and having a property owner's fair market value diminished by more than \$5,000 as a result of the land use or limited land use decision.

This bill died in committee following one hearing and several work sessions.

SB 261: Removal-Fill Permit Applications

SB 261 would have broadened the definition of "applicant" for the Oregon Department of State Lands (DSL) removal-fill permitting program to allow those proposing a removal-fill activity to apply for a permit. The bill would have required anyone who is issued a permit to obtain, prior to conducting the removal-fill activity, either:

- Landowner consent;
- Right, title or interest in the property; or
- A court order or judgment authorizing use of the property.

SB 261 would also have:

- Required the director of DSL to notify all affected landowners and landowners adjacent to affected lands of any removal-fill applications;
- Allowed any aggrieved or adversely affected individuals to request a hearing with the director of DSL within 21 days of the issuance of a removal-fill permit; and
- Required the director of DSL to hold a public hearing on the proposal if 10 or more affected landowners made a written request for a public hearing.

This bill was one of several aimed at addressing the problems associated with the removal-fill application process. This bill did not receive a public hearing.

SB 265: Removal-Fill Permit Applications

HB 265 would have deleted the definition of "applicant" for the Oregon Department of State Lands removal-fill permitting program in order to allow persons other than a landowner or their representative to apply for a permit for a proposed linear facility (*also see [HB 2589](#)*). This bill never received a public hearing.

SB 452: Appeal Fee Limitation

SB 452 would have limited the amount that a city or county can charge for a quasi-judicial review of a land use application to 10 percent of the original application or \$1,000, whichever is less. One hearing was held on the bill, but no action was taken.

SB 672: Preemption of Policies that Protect Transportation Uses

SB 672 would have prevented cities from adopting or enforcing land use regulations that would limit development on private land for protecting future operation of roads, transit ways and major transit corridors. One hearing was held on the bill, but no action was taken.

SB 771/792: Pilot for Regional Economic Plans

SB 771/792 would have authorized local governments in Crook, Deschutes and Jefferson counties to develop regional economic development plans to designate and maintain high-value employment sites planned and zoned for the development of employment opportunities. In addition to providing exemptions to Goal 14 and access management and mobility standards, the bill would have required extensive public outreach and the adoption of implementation rules by the Oregon Department of Land Conservation and Development. One hearing was held on SB 771, but no action was taken. SB 792 never received a hearing.

SB 829: Winery Regulations

SB 829 would have modified existing provisions by increasing the production limit to 150,000 gallons per year for a winery to be established as an outright permitted use on exclusive farm use (EFU) property when utilized grapes are produced on at least 40 contiguous acres. The bill would also have increased requirements for larger wineries to be established as a permitted use: including at least 80 contiguous acres if at least 50 acres have vineyards planted at least five years before the winery became operational; if an owner has a minimum of 80 additional acres of contiguous planted vineyards; and the winery has produced at least 150,000 gallons of wine in at least three of the last five years before qualifying. Additionally the bill included requirements for set-backs, parking, sales and promotion of other items or services. This bill passed the full Senate and was referred to the House Rules Committee. It was then referred to the House Committee on Business and Labor, where it died upon adjournment.

HB 2181: LUBA Attorney Fee Provision

HB 2181 would have required the Oregon Land Use Board of Appeals (LUBA) and the Oregon Court of Appeals to award attorney fees to the prevailing party if that party was an applicant before the local government whose land use decision was being appealed. The bill would have removed the frivolous standard currently imposed and provided automatic attorney fees to an applicant who prevails before LUBA even if a local government's position was legally well founded and factually supported. One hearing was held on the bill, but no action was taken.

HB 2182: Basis for LUBA Appeal

HB 2182 would have required an appellant of a land use decision to post a deposit with the Oregon Land Use Board of Appeals (LUBA) if they do not have an ownership interest in property adjacent to the one at issue in the land use decision. Deposited funds would have been used to cover expert witness and attorney fee costs to establish that the use or change meets the applicable standards. One hearing was held on the bill, but no action was taken.

HB 2206: Removal-Fill Permit Applications

This bill, the House companion bill to [SB 261](#), did not receive a hearing.

HB 2352: Replacement and Mitigation of Prime Industrial Land

HB 2352 would have required cities to replace prime industrial land with other prime industrial land that is similar in size, serviceability and short-term sustainability when a city has taken action that reduces the amount or usability of prime industrial land within the urban growth boundary. The bill had a single hearing after which proponents (AFL-CIO) focused on the passage of [SB 766](#).

HB 2589: Removal-Fill Permit Applications

See [SB 265](#). This bill did not receive a public hearing.

HB 2610: Standing at LUBA

HB 2610 would have required an appellant to have a demonstrable financial interest in order to appeal a land use decision involving needed housing or industrial development on land within an urban growth boundary. The bill would also have expanded the circumstances under which the Oregon Land Use Board of Appeals (LUBA) has the authority to award attorney fees by eliminating the current standard of lack of probable cause or foundation in law or fact. One hearing was held on the bill, but no action was taken.

HB 2609: Rolling, Five-Year Supply for Residential/Industrial/Commercial Uses

HB 2609 would have required cities with populations greater than 25,000 to provide a continual supply of shovel-ready buildable land for housing, industrial and commercial uses. Introduced for the Oregon Home Builders Association, the bill did not receive a hearing.

HB 2917: Self-Certified UGB Amendments

HB 2917 would have allowed cities to establish a process by which a city would self-certify amendments to an urban growth boundary for compliance with applicable requirements of statewide land use planning goals, rules and statutes. The bill did not receive a hearing.

HB 2945: Prohibition of Annexation Consents for Services

HB 2945 would have prohibited a district or a city from requiring a landowner to consent to future annexation in exchange for providing extraterritorial service when the district or city is providing the service for another local government pursuant to an intergovernmental agreement. The bill would also have voided all consents made prior to the bill's effective date if the annexation consent had been given in exchange for a service provided outside its boundaries for another local government pursuant to an intergovernmental agreement. The bill received a hearing in the House General Government and Consumer Affairs Committee, and was later referred to the House Rules Committee, where it did not move.

HB 2946/HB 3056: Island Annexation Vote Requirement

Both HB 2946 and HB 3056 would have further restricted island annexation for cities with charter provisions that require elections for all annexations by mandating an affirmative double majority vote for islands larger than 20 acres. A double majority election would require a separate majority of votes favoring the annexation in the area to be annexed and in the city. The bill received a single hearing in the House Rules Committee.

HB 3029: TPR Exemption for UGBs of Less Than 10,000

HB 3029 would have provided a statutory exemption to the Transportation Planning Rule for areas within an urban growth boundary with a population of 10,000 or less. The bill stated that the Oregon Department of Land Conservation and Development could not apply the administrative rule related to transportation planning which requires a transportation financing program. After passing near unanimously in the House, the bill did not receive a hearing in the Senate.

HB 3233: County Service District Authority for Planning

HB 3233 would have authorized county service districts to provide comprehensive planning for land use and public facilities through development review and code enforcement services. Introduced for Washington County, the bill did not receive a hearing.

HB 3076: Annexation Service Provision

HB 3076 would have allowed a special district to continue to provide services after being annexed by a city if proposed in a petition for annexation that is subsequently approved by voters in an annexation election. This bill did not receive a hearing.

HB 3144: Annexation Consent Prohibition

HB 3144 would have precluded cities from requiring a consent to annexation in exchange for providing an extraterritorial service (limited to water, sewer or electric utility service), if the city did not require the consent before providing the service. The bill also would have voided all previous agreements that had been made if the landowner or predecessor in interest of the landowner had not given consent before the service had been provided. This bill did not receive a hearing.

HB 3386: Partition and Subdivision Plats

HB 3386 would have defined a “tract” as a unit of land created by a subdivision, partition or submission of land to the condominium form of ownership that can be used for open space, wetlands, private roads, utility infrastructure, recreational facilities or other shared public or private uses, and which cannot be used for purposes such as residential dwellings or commercial buildings. The bill also would have established that any land in a subdivision may not be transferred by a separate deed unless the grantee signs an approval on the face of the plat map. Lastly, the bill would have eliminated the requirement for a mortgage holder either to sign the plat as a declarant or to sign a consent affidavit for the creation of a utility easement on the face of the plat, but which maintains the requirement for consent affidavits for public right-of-way. This bill passed the full House and was referred to the Senate Environment and Natural Resources Committee, where it died upon adjournment.

HB 3467: Destination Resort Modifications

HB 3467 would have made some wholesale revisions to the destination resort laws including:

- Adding water parks, sports/athletic facilities and hiking trails to the definition of “developed recreational facilities;”
- Modifying the definition of “overnight lodging;”
- Specifying that “high value crop area” determinations be made in 1983 value dollars;
- Changing the required investment on recreation facilities/improvements to \$10,000 per residential unit; and
- Changing the ratio of residential units to overnight lodging, based on the amount of dedicated open space within the resort.

HB 3615: Regional Definitions for Ag/Forest Lands

HB 3615 would have authorized Jackson, Josephine and Douglas counties, in conjunction with the Oregon Department of Land Conservation and Development (DLCD), to establish regional definitions for agricultural land and forest land for land use goal setting. The bill also appropriated \$350,000 to DLCD’s budget to provide grant assistance to the three counties. The League opposed the bill, citing fiscal concerns including DLCD’s Local Government Grant Program budget having already suffered large reductions, and its preference for allocating grant funds to cities and counties on a statewide basis to meet existing requirements in the land use planning program. This bill received two public hearings and a work session, but failed to move out of the Ways and Means Subcommittee on Natural Resources.

HB 3531: Inclusionary Zoning

HB 3531 would have lifted the local preemption that restricts local governments from imposing conditions on housing types and density standards for approved new housing permits, otherwise known as “inclusionary zoning.” The bill received a single hearing in the House General Government and Consumer Protection Committee.

Inclusionary zoning allows local jurisdictions to ensure that a certain percentage of new market rate housing units in developments of a certain size are reserved at a mix of income levels. The 1999 Oregon

Legislature, persuaded by private housing developers and other real estate interests, preempted the use of mandatory inclusionary zoning across the state.

HB 3614: Annexation Consent Prohibition

HB 3614 would have precluded cities from requiring a consent to annexation in exchange for providing an extraterritorial service (limited to water, sewer or electric utility), if the city did not require the consent before providing the service. The bill also would have voided all previous agreements that had been made if the landowner or predecessor in interest of the landowner had not given consent before the service had been provided. HB 3614 received a single, well-attended hearing by residents of Roads End (near Lincoln City), but the bill failed to move forward.

HB 3621: Measure 37 Compensation

HB 3621 would have allowed claimants that had received waivers under Measure 37 (2005) to develop or use property pursuant to the waiver if the person had spent more than \$400,000 completing or continuing the use subject to the waiver. This bill would have modified a common law standard to the vested rights provisions that Measure 49 currently authorizes.

Solid Waste

OVERVIEW

Only a few bills addressing solid waste were introduced during the 2011 legislative session, but including were four that were controversial. The Legislature passed two major solid waste bills, updating Oregon's iconic bottle bill and exempting woody biomass from the definition of solid waste. They declined to create a product stewardship program for lights containing mercury, or put into statute the ability of local governments to use the solid waste hauler rate structure to incentivize the reduction, reuse, recycling, composting, recovery and proper disposal of waste materials.

SOLID WASTE – PASSED BILLS

SB 993: Exempting Woody Biomass from the Definition of Solid Waste

Effective Date: January 1, 2012

SB 993 excludes woody biomass combusted as fuel from the definition of solid waste. The woody biomass must also be:

- Combusted by a facility that has received a permit from the Oregon Department of Environmental Quality;
- A by-product of processing wood or manufacturing wood products;
- Not commingled with solid waste; and

- Purchased for fair market value or can otherwise be demonstrated to have fair market value.

HB 3145: Bottle Bill Update

Effective Date: January 1, 2012

HB 3145 will modify Oregon's legendary bottle deposit system in three ways:

- Expanding the types of items covered to include most glass, metal or plastic beverage containers, except those that hold milk, wine or liquor;
- Increasing the current nickel deposit to a dime in 2017 or later if redemption rates fall below 80 percent two years in a row; and
- Requiring the Oregon Liquor Control Commission to approve one beverage container redemption center in a community with a population less than 300,000.

SOLID WASTE – FAILED BILLS

SB 529: Mercury Lighting Product Stewardship

SB 529 would have required producers of lighting that contains mercury to:

- Establish a product stewardship program;
- Specify annual performance goals for the program;
- Issue annual reports; and
- Pay an annual fee to support the newly created Product Stewardship Fund.

The bill also would have set mercury content standards for lighting and imposed a penalty for knowingly accepting for disposal lighting that contains mercury. The Oregon Department of Administrative Services would have been required to consult with the Oregon Department of Environmental Quality on mercury lighting, and issue specifications and make procurement decisions that favor lighting that meets the mercury content standards.

This bill received a public hearing, but was not moved out of committee.

HB 2457: Exempting Woody Biomass from the Definition of Solid Waste

HB 2457 would have modified the solid waste statute to exclude materials derived from forest products. This bill was brought forward by the Oregon Forest Industries Council, but opposed by the Oregon Refuse and Recycling Association. It received a public hearing, but was not passed out of committee (*also see [HB 3687](#)*).

HB 3383: Solid Waste Rate Structure

HB 3383 would have explicitly added to statute the ability of cities and counties to set solid waste hauler rate structures to achieve the state's solid waste hierarchy to reduce, reuse, recycle, compost, recover and properly dispose of waste materials. This bill did not receive a hearing.

HB 3687: Exempting Woody Biomass from the Definition of Solid Waste

HB 3687 would have excluded woody biomass combusted as fuel from the definition of solid waste. The woody biomass must have also been:

- Combusted by a facility that has received a permit from the Oregon Department of Environmental Quality;
- A by-product of processing wood or manufacturing wood products;
- Not commingled with solid waste; and
- Purchased for fair market value or can otherwise be demonstrated to have fair market value.

This bill was passed by the House, but was not heard by the Senate.

Miscellaneous

MISCELLANEOUS – PASSED BILLS

SB 806: Xeriscaping on Commercial and Industrial Property

Effective Date: January 1, 2012

SB 806 grants statutory authority to the owner or occupant of a commercial or industrial property to install xeriscaping on landscaped portions of the property. Xeriscaping is landscaping that reduces or eliminates the need for supplemental water for irrigation. The League worked to amend the bill to allow local governments the ability to regulate xeriscaping for the purposes of stormwater management, the control of invasive species and the preservation of natural habitat or tree canopy.

HB 2069: Modifies Special Public Works Fund Repayment Program

Effective Date: January 1, 2012

HB 2069 will lengthen the loan repayment period for projects funded by the Special Public Works Fund from 25 to 30 years, or the usable life of the project, whichever is less. The bill also enables initial loan terms to be renegotiated.

HB 3325: Brownfield Redevelopment

Effective Date: January 1, 2012

HB 3325 expands the protections afforded to prospective purchasers of contaminated land under the Oregon Department of Environmental Quality's (DEQ) Prospective Purchaser Agreement program. The program allows a developer not responsible for the contamination of a site to conduct a voluntary cleanup or other mitigation effort, receive DEQ approval, and then obtain a shield from third party lawsuits related to the ownership of a contaminated site. The bill enables DEQ and the developer to enter into the agreement via an administrative order, not solely through the courts, as was the case prior to this bill's passage.

MISCELLANEOUS – FAILED BILLS

SB 218: Modifies Special Public Works Fund Repayment Program

See [HB 2069](#).

SB 490: Tenant Notification for Cessation of Utility Service

SB 490 would have required utilities, including municipal utilities, to notify residential tenants whose billing address is different than their service address of a possible termination of services at least 15 days prior to a cessation of services. The bill would have allowed tenants to retain utility service for up to three billing periods or 90 days, whichever is less, by paying current amounts due. SB 490 would have also stipulated the language on any notification. The League opposed this bill and worked with the proponents on potential amendments. This bill received a hearing but was not passed out of committee.

SB 561: Shoreline Sanitary District Exemption

SB 561 would have exempted the Shoreline Sanitary District from Special Public Works Fund requirements. The bill did not receive a hearing.

SB 570: Wood in Public Buildings

See [HB 3429](#).

HB 2831: Woody Debris Material for Removal-Fill Permit

HB 2831 would have added large woody debris to the definition of “material” for purposes of removal-fill provisions. Woody debris would have been defined as “any downed wood that captures gravel or provides stream stability, provides fish habitat and does not pose a direct and demonstrable danger to nearby human structures.” This bill received a hearing, but did not move out of committee.

HB 2082: Brownfields Reuse Bill

HB 2082, requested by the Oregon Department of Environmental Quality (DEQ), would have allowed the director of DEQ to approve a settlement concerning the release of hazardous materials and absolve a person or entity from any future liability to the state. Like [HB 2950](#) (see below), the League submitted testimony in favor of the concepts laid out in the bill. This bill received a public hearing, but was not moved out of committee.

HB 2186: Sewer Utility

HB 2186 would have prohibited a proposed sewer utility from imposing service rates and charges above 2 percent of the median household income in the proposed service area. This bill did not receive a public hearing.

HB 2950: Brownfields Reuse Bill

HB 2950 would have allowed the director of the Oregon Department of Environmental Quality to enter into a covenant limiting the future liability of a landowner that satisfactorily cleaned up a polluted site. The League supported the general concept behind this bill. HB 2950 received a public hearing, but was not passed out of committee (*also see HB 2082 and HB 3325*).