

ORDINANCE NO. 1050-A

Introduced by Commissioner: D. Keith Dyer

Amending the City of Warrenton Combined Comprehensive Plan and Zoning Ordinance Map and Changing the Plan and Zoning Designation of tax lots 8-10-23BD-600, 700, 900 (portion), 1000 (portion), and 1100 (portion), Containing about 14 acres from General Commercial (C1) to Aquatic Natural (A3) and Adopting Findings of Fact In The Matter Of City File No. ZC 01-1.

WHEREAS, certain changes are necessary to revise, update and amend the City of Warrenton Zoning Ordinance and Comprehensive Plan combined map; and

WHEREAS, the Warrenton City Commission reviewed and held a public hearing to obtain public comment on this application on 19 September 2001, and closed the public hearing on that date and thereafter found it necessary to revise, update and amend the City of Warrenton combined Comprehensive Plan and Zoning Map, and adopt Findings which are attached hereto as "Exhibit A" and by this reference made a part hereof; and

WHEREAS, the Warrenton City Commission has determined to approve this application with the attached findings and conditions of approval,

NOW, THEREFORE, the Warrenton City Commission does ordain as follows:

Section 1: The City of Warrenton combined Comprehensive Plan and Zoning Map Zoning and Plan designations is changed on tax lots 8-10-23BD-600, 700, 900 (portion), 1000 (portion), and 1100 (portion). The Findings adopted by the City Commission supporting this action are in "Exhibit A", attached hereto and incorporated by reference herein.

Section 2: If any article, section, subsection, subdivision, phrase, clause, sentence or word in this ordinance shall, for any reason, be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of the ordinance but shall be confined to the article, section, subdivision, clause, sentence or word so held invalid or unconstitutional.

Section **3**: The City Commission hereby adopts the findings in the staff report and all referenced exhibits.

PASSED by the City Commission of the City of Warrenton, Oregon, this 19th day of September, 2001.


APPROVED by the Mayor of the City of Warrenton, this 19th day of September, 2001.



Jeff Hazen, Mayor

FIRST READING: 19 September 2001.

SECOND READING: 19 September 2001.



Scott Derickson, City Manager



CITY OF WARRENTON

FILE NO.: ZC-01-1

DATE: September 19, 2001

STAFF REPORT

TO: The Honorable Mayor and Members of the Warrenton City Commission
FROM: Patrick Wingard, City Planner
SUBJECT: Zone Change; Combined Comprehensive Plan Map/Zoning Map Amendment for property identified as Tax Lots 600 and 700 of Section 23BD in Twp. 8N, Rng. 10W plus portions of Tax Lots 900, 1000, and 1100 of Sec. 23BD, Twp. 8N, Rng. 10W. See Exhibit 1 for map.
LOCATION: Approximately 14.02 acres of property located roughly 1000 feet north of the Harbor Street/US Hwy 101 intersection. The property abuts Youngs Bay.
APPLICANT: Warrenton Land & Investment LLC
17940 NE Hillsboro Hwy
Newburg, OR 97132

EXHIBIT LIST

- Exhibit 1* – Subject Property Map, Harbor Street Site
- Exhibit 2 – Article 14 Findings
- Exhibit 3 – Findings Addressing Statewide Planning Goals
- Exhibit 4 – Findings Addressing 26 January 2001 LCDC Order
- Exhibit 5 – Kittleson & Associates 4 August 200 letter describing traffic mitigation measures
- Exhibit 6 – LUBA No. 2000-182; Final Order and Opinion for ZC-99-1
- Exhibit 7 – Selected portions of Ordinance No. 1041-A
- Exhibit 8 – Unofficial Minutes from the August 8, 2001 Planning Commission hearing for this matter
- Exhibit 9 – Letter from applicant explaining changes to the subject property acreage and proposed findings demonstrating consistency with Ordinance 1041-A
- Exhibit 10* *Late Submission** – M. Barnes letter & map dated 18 September 2001

*Note that the one-page city application in this matter and the one-page DLCD 45-day Notice of Proposed Amendment immediately precede Exhibit 1.

BACKGROUND

In December 2000, the applicant in this matter, Warrenton Land & Investment LLC, successfully petitioned the City of Warrenton for a zone change (City File No. ZC 1-99; Ordinance No. 1041-A) on 17.4 acres of property located along US Hwy 101 near its intersection with SE Dolphin

Road (also known as Rodney Acres Road). The original and subsequent application in this matter encountered various appeals by the Oregon Department of Land Conservation and Development (DLCD) and the Oregon Department of Transportation (ODOT). The City's decision to approve the petition was ultimately affirmed by the Oregon Land Use Board of Appeals on June 1, 2001. Please find LUBA's Final Opinion and Order for this matter attached to this report as **Exhibit 6**. Also, note that pertinent sections of City Ordinance No. 1041-A have been attached to this report as **Exhibit 7**.

Note that Ordinance No. 1041-A (**Exhibit 7**) requires that prior to issuance of commercial building permits for the ZC-1-99 subject property, a combined plan/zoning map amendment must occur for properties identified as the "Harbor" site and the "Marlin" site. This application (ZC-01-1) attempts to fulfill this requirement for the "Harbor" site.

PROCEDURAL REQUIREMENTS

Section 14.050(1) of the Warrenton Zoning Ordinance states that the "Planning Commission will consider a proposed amendment after holding a public hearing in accordance with the provisions of Section 15.045". This Section subsequently points out that "The City Commission will consider a proposed amendment after holding a public hearing in accordance with the provisions of Section 15.045. The hearing will be held as soon as practical after receiving the Planning Commission's recommendation".

Staff Proposed Finding No. 1

The applicant has submitted an application for a combined Comprehensive Plan Map / Zoning Ordinance Map amendment in the manner prescribed by Section 14.040 of the Warrenton Zoning Ordinance. All requirements pertaining to the mailing and publication of notice for the two public hearings have been completed in accordance with Section 15.035 of the Warrenton Zoning Ordinance.

Section 14.080 of the Warrenton Zoning Ordinance states that "Before an amendment to the Zoning Ordinance map is approved, findings will be made that the following standards have been satisfied: (a) The amendment shall be consistent with the Comprehensive Plan; (b) The use permitted by the amendment is compatible with the land use development pattern in the vicinity of the request; (c) The land is physically suitable for the uses to be allowed in terms of slope, geologic stability, flood hazards and other relevant considerations; (d) Public facilities, services and streets are available to accommodate the uses to be provided by the proposed zone designation."

Staff Proposed Finding No. 2

The applicant has submitted findings that address the requirements of Section 14.080 of the City's zoning ordinance. In addition, the applicant has submitted findings that address other relevant matters, including the Statewide Planning Goals, LCDC Order No. 001284, and the requirements of Ordinance No. 1041-A.

PLANNING COMMISSION RECOMMENDATION

On August 8, 2001 the Warrenton Planning Commission conducted a public hearing for this matter. The Commission voted unanimously, 7-0, to adopt staff's and the applicant's

findings and to forward a recommendation of approval to the City Commission. Please find the unofficial Minutes from that meeting attached to this staff report as Exhibit 8.

SPECIAL NOTE

Subsequent to the Planning Commission hearing in this matter, the applicant recalculated the acreage of the "Harbor" site property and found the acreage to be ± 14.02 acres instead of the originally calculated estimate of ± 11.9 acres. Due to the acreage increase of this site, the applicant decided to reduce the acreage of the "Marlin" site property from ± 8.83 acres to ± 6.84 acres. The change in the overall size of both subject properties is a net increase of about 0.13 acres (5,600 square feet). On September 7, 2001 the applicant submitted additional findings and an updated map for the "Marlin" site (see Exhibit 9) to demonstrate that the fore discussed net change in acreage for the two sites would remain consistent with the traffic mitigation requirements of Ordinance No. 1041-A.

ACTION ALTERNATIVES

1. Adopt staff's and the applicant's findings and approve the request for a zone change and combined comprehensive plan map/zoning map amendment.
2. Adopt staff's and the applicant's findings, with modifications, and approve the request for a zone change and combined comprehensive plan map/zoning map amendment.
3. Deny the request based on appropriate findings of fact.
4. Request additional information and continue the hearing to a date and time specified.
5. Take other action as deemed appropriate by the Commission.

EXHIBIT LIST
ZC-01-1
the "Harbor" site

Exhibit 1* – Subject Property Maps, Harbor Street Site

Exhibit 2 – Article 14 Findings

Exhibit 3 – Findings Addressing Statewide Planning Goals

Exhibit 4 – Findings Addressing 26 January 2001 LCDC Order

Exhibit 5 – Kittleson & Associates 4 August 2000 letter describing traffic mitigation measures

Exhibit 6 – LUBA No. 2000-182; Final Order and Opinion for ZC-99-1

Exhibit 7 – Selected portions of Ordinance No. 1041-A

Exhibit 8 – Unofficial Planning Commission Minutes dated 8 August 2001

Exhibit 9 – Additional findings and amended "Marlin" site map dated 7 September 2001

Exhibit 10 - **Late submission* - M. Barnes letter + map dated 18 Sept. 2001*

*Note: The one-page application and the one-page DLCD 45-day Notice of Proposed Amendment immediately precede Exhibit 1.

the "harbor" site

CITY OF WARRENTON _____
Warrenton, Oregon 97146-0250 _____
P.O. Box 250 • 503/861-2233 _____



COPY

APPLICANT INFORMATION:

APPLICATION FOR AMENDMENT TO ZONING ORDINANCE TICKET & MAP

NAME Warrenton Land & Investment LLC

STREET ADDR 17940 NE Hillsboro Hwy

ORDINANCE 878-A / ARTICLE 14

MAIL ADDR _____

NO. 20-01-1

CITY/ST/ZIP Newberg, OR 97132

FEE \$ 300.00

TELEPHONE 503-537-9128

Owner/Partnership Name: Warrenton Land & Investment LLC

Legal Description of Property; Attached

Street Address of Property; Attached

Preliminary Plans (Attached) consist of; NONE

Describe briefly the Amendment requested and cite reasons; Attached

Dalman
Signature of Applicant

Dalman
Signature of Owner/Partnership

6-22-01
Date

AN APPLICATION SHALL CONSIST OF:

- (a) A complete application form;
- (b) Proof that this property is in the exclusive ownership of the applicant, or that the applicant has the consent of all partners in ownership;
- (c) Legal description of the property;
- (d) Preliminary Plans/drawings illustrating the amendment requested; and
- (e) Written response to the Basic Amendment Standards as stipulated in Section 14.080 of the Zoning Ordinance.

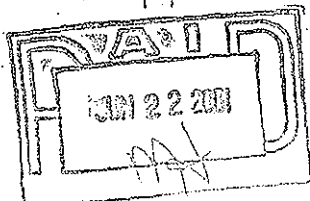
Additional information may be required as stipulated by the Zoning Administrator. If an application is deemed incomplete, the Applicant will be notified within 30-days, of any additional information required. A completed application must be received within 180-days of the date the application was first submitted.

***** OFFICE USE ONLY - DO NOT WRITE BELOW THIS LINE *****

Date Recv'd _____ Initial MA Paid Y N

Date Application deemed Complete 8/1/01 Initial Pw.

a:\amendmt 10/91



Ex. 1-1

the "Harbor" site

COPY

DLCD NOTICE OF PROPOSED AMENDMENT

This form must be received by DLCD at least 45 days prior to the first evidentiary hearing per ORS 197.610, OAR Chapter 660 - Division 18 and Senate Bill 543 and effective on June 30, 1999. (See reverse side for submittal requirements)

Jurisdiction: Warrenton Local File No.: 2C-01-1
(If no number, use none)

Date of First Evidentiary Hearing: 8 Aug. 2001 Date of Final Hearing: 5 Sept. 2001
(Must be filled in) (Must be filled in)

Date this proposal was sent or mailed: 22 June 2001
(Date mailed or sent to DLCD)

Has this proposal previously been submitted to DLCD? Yes: No: x Date:

- Comprehensive Plan Text Amendment x Comprehensive Plan Map Amendment
 - Land Use Regulation Amendment x Zoning Map Amendment
 - New Land Use Regulation Other:
- (Please Specify Type of Action)

Briefly summarize the proposal. Do not use technical terms. Do not write "See Attached."

Zone change from C-1 general commercial, to A3, Aquatic Conservation

Plan Map Changed from: Development to Conservation
Zone Map Changed from: C-1 to A3

Location: near Harbor Drive / 101 intersection Acres Involved: 11.9

Specified Change in Density: Current: commercial Proposed: none

Applicable Statewide Planning Goals: 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16

Is an Exception Proposed? Yes: No: x

Affected State or Federal Agencies, Local Governments or Special Districts: DLCD, ODOT

Local Contact: Patrick Wingard Area Code + Phone Number: 503/86-0920

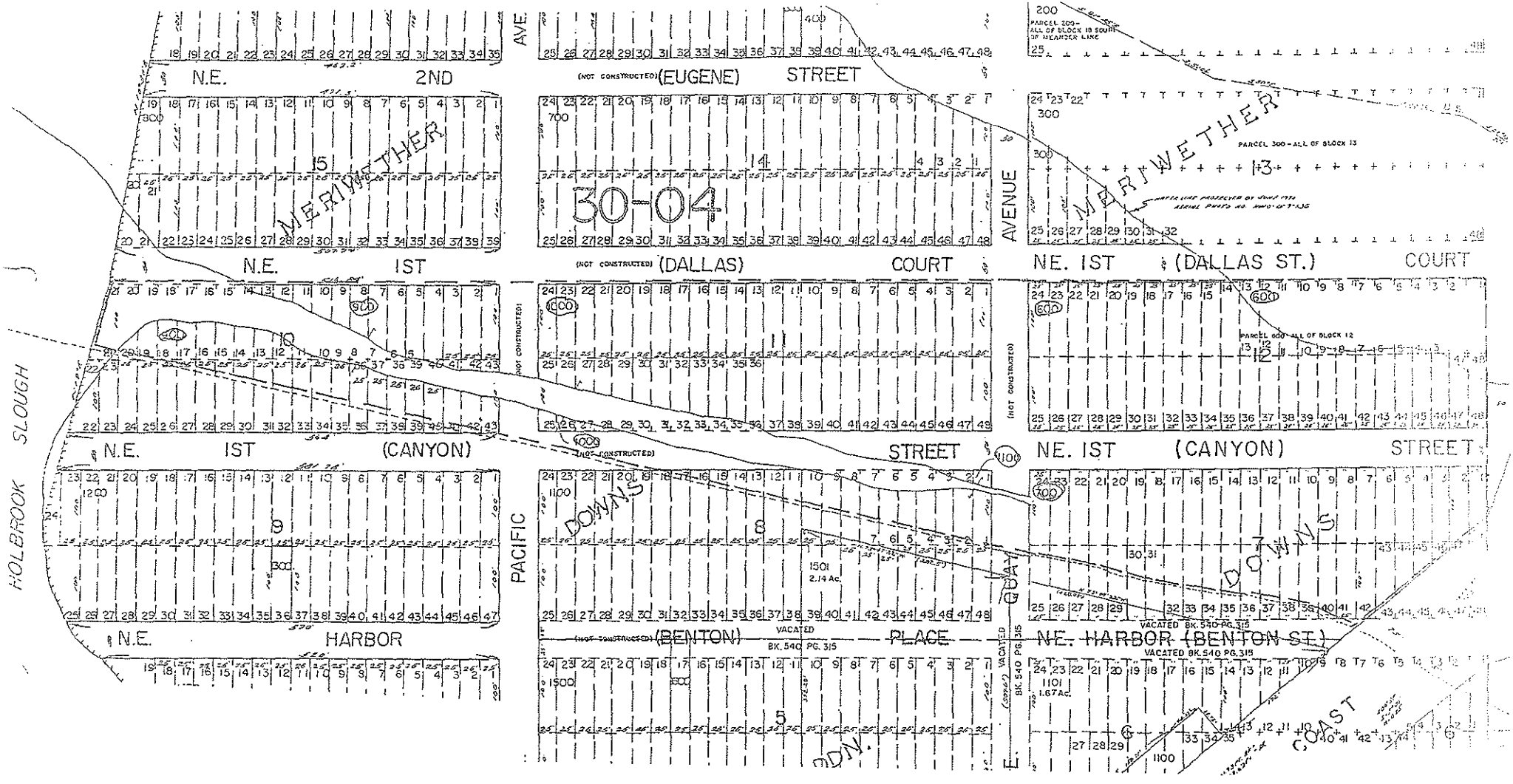
Address: P.O. Box 250

City: Warrenton, OR Zip Code - 4: 97146

DLCD No.:

Ex. 1-2

Ex. 1-3



source: Clatsop County Assessment & Taxation maps 8-10-23BC and 8-10-23BC

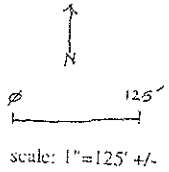
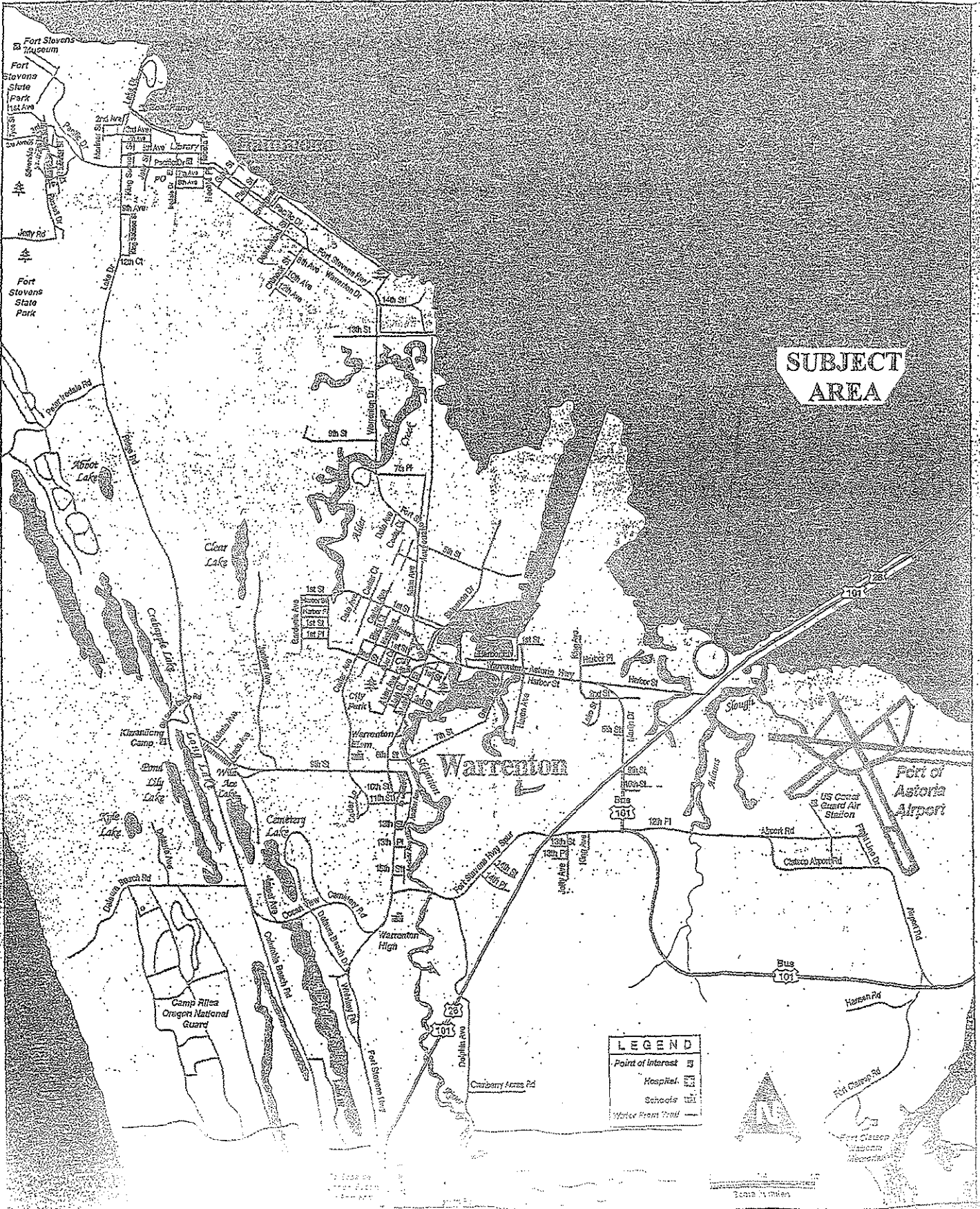


Exhibit I:
Subject Property
Harbor Drive Site

VICINITY MAP
ZC-01-1

Warrenton Street Map



EX. 1-4

Exhibit 2: Article 14 Findings

Summary

This request is for an amendment to the City's zone/plan map for property owned by Warrenton Land & Investment LLC (WLI) north of Harbor Drive in the vicinity of the Shilo Inn and the Premarq Center. The amendment would place about 11.9 acres in the City's Aquatic Conservation (A3) zone. The area to be rezoned is currently in the City's General Commercial (C1) zone. The purpose of this zone change is to implement a part of condition 5 of Warrenton Ordinance No. 1041-A:

5. The applicant shall mitigate transportation impacts a required by the TPR and OHP by undertaking those specific mitigation measures described in the August 4, 2000 letter from Kittleson & Associates, a copy of which is attached hereto. The mitigation measures are described as follows:

a. A subsequent post-acknowledgment combined comprehensive plan map/zoning map amendment to change the existing plan map and zoning map designation on a 11.9 acre parcel from its current C-1 zoning to the R-10 zone or a lesser-intense zone. (the "Harbor Site")

b. A subsequent post-acknowledgment combined comprehensive plan/zoning map amendment to change the existing plan map/zoning map designation on a 8.18 acre parcel from its current C-1 zoning to the R-10 zone or a lesser intense zone. (the "Marlin Site".)

This condition was adopted by the City in December 2000 as an approval condition of a zone/plan map amendment for a 17.4-acre site at the corner of Dolphin Avenue and Highway 101 owned by WLI.

This proposed zone/plan map amendment is for the "Harbor site", and involves the following tax lots, all owned by WLI:

| | |
|--|-------------|
| 8-10-23BC-900 (partial – see Exhibit 1) | 2.49 acres |
| 8-10-23BC-1000 (partial – see Exhibit 1) | 2.75 acres |
| 8-10-23BC-1100 (partial – see Exhibit 1) | 2.44 acres |
| 8-10-23BD-600 | 2.75 acres |
| 8-10-23BD-700 | 2.47 acres, |

together with surrounding street right-of-ways. The total size of this request is about 11.9 acres. The subject property and surrounding land is shown on the attached map, labeled Exhibit 1.

For an amendment such as this one, the substantive criteria are in section 14.080(2) of the City's zoning ordinance:

- a. *The amendment shall be consistent with the Comprehensive Plan.*
- b. *The use permitted by the amendment is compatible with the land use development pattern in the vicinity of the request.*
- c. *The land is physically suitable for the uses to be allowed in terms of slope, geologic stability, flood hazards and other relevant considerations.*
- d. *Public facilities, services and streets are available to accommodate the uses to be provided by the proposed zone designation.*

These criteria are addressed below.

1. Consistency with the Comprehensive Plan

City zoning ordinance section 14.080(2a) reads as follows:

Before an amendment to the Zoning Ordinance map is approved, findings will be made that the following standards have been satisfied:

- a. *The amendment shall be consistent with the Comprehensive Plan.*

The City's Comprehensive Plan contains several policies pertaining to the proposed amendment. These are excerpted below, followed by findings.

Policy 3.320(1) reads as follows:

It is the City's policy to promote convenient and attractive commercial areas that, along with other commercial facilities in the County, provide an adequate level of trade and services for local citizens, other County residents and tourists. Commercial enterprises may be permitted in these three kinds of areas.

(a) Marine Commercial: The district is reserved for water-dependent developments and associated uses on shorelands adjoining the Skipanon waterway. A mixture of commercial service activities, recreation-oriented uses and industrial uses will be encouraged. Examples of suitable uses include marina facilities, charter fishing offices, waterfront loading and unloading operations, boat building and repair establishments and marine storage establishments. Due to the variety of uses allowed, precautions will have to be taken to assure that a compatible mixture of uses can be attained. Adequate attention should also be given to access, parking and utilities.

(b) Tourist Commercial: The intent of this district is primarily to provide

suitable locations for tourist facilities and certain other water-oriented uses which would benefit from being close to the water-oriented uses which would benefit from being close to the waterfront but are not necessarily water-dependent. Among the uses which should be encouraged are restaurants, motels, gift shops, seafood markets, establishments selling marine equipment and marina facilities. Water-oriented uses, such as boat building enterprises and large marine storage buildings, which might hinder tourist operations, should be particularly well located and designed. Satisfactory utilities and transportation facilities are necessary.

(c) General Commercial: The primary purpose of this zone is to allow a broad range of commercial uses providing products and services in both the central (downtown) and Highway 101 areas of the City.

The proposal involves a zone change from the General Commercial zone (C1) to the Aquatic Conservation zone (A3). Subsection (c) of the policy quoted above, concerning the General Commercial zone, is not violated by removing about 11.9 acres from the City's inventory of land in this category. The City should find the proposal consistent with policy 3.320(1).

Policy 3.320(2) reads as follows:

Precautions will be taken to minimize traffic congestion associated with nearby commercial uses, particularly on U.S. Highway 101, Main Avenue, East Harbor Drive and Marlin Avenue. Groupings of businesses, common access points and other appropriate techniques will be encouraged. Sufficient parking on either jointly-used lots or individual business sites will be required for new commercial developments.

The proposed zone change will prevent commercial development on this site. This will eliminate the subject property's traffic-generating potential. The city should find that the proposed zone change is consistent with policy 3.320(2).

Section 5.100 includes the following language describing the City's Conservation Aquatic designation:

Conservation Aquatic areas are designated for long-term uses of renewable resources that do not require major alterations of the estuary, except for the purpose of restoration. They are managed for the protection and conservation of the resources found in these areas. The Conservation Aquatic designation includes areas needed for the maintenance and enhancement of biological productivity, recreational resources, aesthetic features and aquaculture. The Conservation Aquatic designation includes areas that are smaller or of less biological importance than Natural Aquatic areas. Areas that are partially

altered and adjacent to existing moderate intensity development which do not possess the resource characteristics of other aquatic areas are also included in this designation. These areas are in the City's Conservation Aquatic Zone (A-2).

The proposal to place this site in the Aquatic Conservation zone is consistent with this policy.

Based on this analysis, the City should find the proposed amendment consistent with applicable comprehensive plan policies, and thus consistent with section 14.080(2a).

2. Compatibility

City zoning ordinance section 14.080(2b) reads as follows:

Before an amendment to the Zoning Ordinance map is approved, findings will be made that the following standards have been satisfied:

b. The use permitted by the amendment is compatible with the land use development pattern in the vicinity of the request.

The development pattern in this part of Warrenton consists of estuarine open space to the north, Highway 101 to the east, and the Port of Astoria's property on the East Skipanon Peninsula to the west.

The proposed uses of this site is for estuarine open space, consistent with existing estuarine areas to the north. Potentially conflicting commercial development to the south can be made compatible with this use through setbacks, runoff management, maintenance and enhancement of riparian vegetation, and similar measures.

The City should find that the proposal is compatible with the land use pattern in the vicinity, or can be made compatible through specific design features to be determined at the time of the building permit.

3. Land Suitability

City zoning ordinance section 14.080(2c) reads as follows:

Before an amendment to the Zoning Ordinance map is approved, findings will be made that the following standards have been satisfied:

c. The land is physically suitable for the uses to be allowed in terms of slope, geologic stability, flood hazards and other relevant considerations.

The site is suitable for uses allowed in the Conservation Aquatic zone because it contains the kinds of resources found on other parcels in the Conservation Aquatic zone. These resources include estuarine hydrology and an intertidal plant community.

4. Infrastructure

City zoning ordinance section 14.080(2d) reads as follows:

Before an amendment to the Zoning Ordinance map is approved, findings will be made that the following standards have been satisfied:

d. Public facilities, services and streets are available to accommodate the uses to be provided by the proposed zone designation.

The site is not served by City water or sewer, or by any improved city streets. None of the uses allowed in the proposed Aquatic Conservation zone require these types of facilities or services.

Ex. 2-5

Exhibit 3: Findings Addressing Statewide Planning Goals

Summary

This request is for an amendment to the City's zone/plan map for property owned by Warrenton Land & Investment LLC (WLI) north of Harbor Drive in the vicinity of the Shilo Inn and the Premarq Center. The amendment would place about 11.9 acres in the City's Aquatic Conservation (A3) zone. The area to be rezoned is currently in the City's General Commercial (C1) zone. The purpose of this zone change is to implement a part of condition 5 of Warrenton Ordinance No. 1041-A:

5. The applicant shall mitigate transportation impacts as required by the TPR and OHP by undertaking those specific mitigation measures described in the August 4, 2000 letter from Kittleson & Associates, a copy of which is attached hereto. The mitigation measures are described as follows:

a. A subsequent post-acknowledgment combined comprehensive plan map/zoning map amendment to change the existing plan map and zoning map designation on a 11.9 acre parcel from its current C-1 zoning to the R-10 zone or a lesser-intense zone. (the "Harbor Site")

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| 8-10-23BD-600 | 2.75 acres |
| 8-10-23BD-700 | 2.47 acres, |

together with surrounding street right-of-ways. The total size of this request is about 11.9 acres. The subject property and surrounding land is shown on the attached map, labeled Exhibit 1. Amendments such as this one must be consistent with the statewide planning goals. Compliance with the goals are addressed below.

Goal 1

Statewide Planning Goal 1, addressing Citizen Involvement, reads as follows:

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process. The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process. The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues. Federal, state and regional agencies, and special-purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities. The citizen involvement program shall incorporate the following components:

1. Citizen Involvement -- To provide for widespread citizen involvement. The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized committee for citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land-use decisions. Committee members shall be selected by an open, well-publicized public process. The committee for citizen involvement shall be responsible for assisting the governing body with the development of a program that promotes and enhances citizen involvement in land-use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement. If the governing body wishes to assume the responsibility for development as well as adoption and implementation of the citizen involvement program or to assign such responsibilities to a planning commission, a letter shall be submitted to the Land Conservation and Development Commission for the state Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program. If the planning commission is to be used in lieu of an independent CCI, its members shall be selected by an open, well-publicized public process.

2. Communication -- To assure effective two-way communication with citizens. Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.

3. Citizen Influence -- To provide the opportunity for citizens to be involved in all phases of the planning process. Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including Preparation of Plans and

Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.

4. Technical Information -- To assure that technical information is available in an understandable form. Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.

5. Feedback Mechanisms -- To assure that citizens will receive a response from policy-makers. Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policy-makers. The rationale used to reach land-use policy decisions shall be available in the form of a written record.

6. Financial Support -- To insure funding for the citizen involvement program. Adequate human, financial, and informational resources shall be allocated for the citizen involvement program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

Warrenton's Comprehensive Plan contains citizen involvement policies that are in turn implemented through the City's zoning ordinance. Warrenton's approach to citizen involvement is similar to the approach used in other Oregon cities. With respect to this proposal, Warrenton requires at least one public hearing before the planning commission, and at least one public hearing before the City Commission. The hearings must be advertised according to statutory and ordinance requirements; written material used in the decision-making process must be available to decision makers and to the public; the hearings must be conducted according to statutory and ordinance requirements; and the final decision on this proposal must be made in a public manner, with appropriate and timely post-decision notification.

A Planning Commission hearing on this proposal is scheduled for 8 August 2001. Public notices of this hearing must be published in the *Columbia Press*, the newspaper of record in Warrenton, and mailed to property owners within the notice area.

Copies of all documents pertaining to this proposal, as well as copies of the City's Comprehensive Plan and Zoning Ordinance, are available for examination and photocopying at Warrenton City Hall. Additionally, most of the application material was provided by mail or facsimile to the Oregon Department of Land Conservation and Development, and to the Oregon Department of Transportation.

For these reasons the City should find that the process used to review this proposal is consistent with Statewide Planning Goal 1, and that approval of the proposal will not

compromise the City's ongoing ability to meet the requirements of Statewide Planning Goal 1.

Goal 2

Statewide Planning Goal 2, addressing land use planning, consists of three parts: Planning, Exceptions, and Use of Guidelines. The first part, Planning, reads as follows:

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.

All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents. The plans, supporting documents and implementation ordinances shall be filed in a public office or other place easily accessible to the public. The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans. Each plan and related implementation measure shall be coordinated with the plans of affected governmental units.

All land-use plans and implementation ordinances shall be adopted by the governing body after public hearing and shall be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances, in accord with a schedule set forth in the plan. Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.

Warrenton's Comprehensive Plan was acknowledged in 1984 by the Land Conservation and Development Commission as complying with Statewide Planning Goal 2. The proposal would amend the City's combined comprehensive plan/zoning map. The City has several policies relating to land use planning and Statewide Planning Goal 2. These policies are addressed in Exhibit 2. Warrenton's planning documents establish a framework for making and implementing decisions concerning the use of Warrenton's land and water area. The proposal does not seek to alter this basic framework; rather, it would amend the zoning on the subject property in a manner consistent with this basic framework.

Warrenton's planning documents, including its Comprehensive Plan, Zoning Ordinance, Zoning map, and supporting documents, are available for examination or purchase at Warrenton City Hall. Preparation of Warrenton's planning documents was coordinated with a wide range of local, state, and federal agencies, including the following:

(local agencies)

Clatsop Soil and Water Conservation District
Clatsop County
Port of Astoria

(state agencies)

Oregon Department of Transportation (ODOT)
Oregon Department of Fish and Wildlife
Oregon Department of Land Conservation and Development (DLCD)
Oregon Department of Environmental Quality
Oregon Water Resources Department
Oregon Health Division
Oregon Parks and Recreation Department
Oregon Department of Economic Development
Oregon Division of State Lands
Oregon National Guard (Camp Rilea)

(federal agencies)

US Fish and Wildlife Service
US Environmental Protection Agency
US Coast Guard
US National Marine Fisheries Service
US Army Corps of Engineers.

City ordinance 1041A was the subject of extensive public discussions involving two state agencies: ODOT and DLCD. Condition 5 of that ordinance provides the basis for this zone change.

Statewide Planning Goal 2, addressing land use planning, consists of three parts: Planning, Exceptions, and Use of Guidelines. The second part, Exceptions, is not applicable to this proposal.

Statewide Planning Goal 2, addressing land use planning, consists of three parts: Planning, Exceptions, and Use of Guidelines. The final part, Use of Guidelines, reads as follows:

Governmental units shall review the guidelines set forth for the goals and either utilize the guidelines or develop alternative means that will achieve the goals. All land-use plans shall state how the guidelines or alternative means utilized achieve the goals.

Guidelines --are suggested directions that would aid local governments in activating the mandated goals. They are intended to be instructive, directional and positive, not limiting local government to a single course of action when some other course would achieve the same result. Above all, guidelines are not intended to be a grant of power to the state to carry out zoning from the state level under the guise of guidelines. (Guidelines or the alternative means selected by governmental bodies will be part of the Land Conservation and Development Commission's process of evaluating plans for compliance with goals.)

Warrenton's Comprehensive Plan and implementing ordinances use the guidelines in the statewide planning goals, as well as alternative means for achieving the goals. This proposal neither amends or deletes any of the methods used in Warrenton for achieving any of the applicable Statewide Planning Goals.

Goal 3

Statewide Planning Goal 3 concerns agricultural lands. The proposal is applicable to land within the Warrenton City limits. This land has not been designated as agricultural land under Statewide Planning Goal 3. For these reasons, Statewide Planning Goal 3 is not applicable to the proposal.

Goal 4

Statewide Planning Goal 4 concerns forest lands. The proposal is applicable to land within the Warrenton City limits. This land has not been designated as forest land under Statewide Planning Goal 4. For these reasons, Statewide Planning Goal 4 is not applicable to the proposal.

Goal 5

Statewide Planning Goal 5 establishes planning processes and protection strategies for 15 resources, including the following:

Riparian corridors, including water and riparian areas and fish habitat;
Wetlands;
Wildlife Habitat;
Federal Wild and Scenic Rivers;
State Scenic Waterways;
Groundwater Resources;
Approved Oregon Recreation Trails;
Natural Areas;
Wilderness Areas;
Mineral and Aggregate Resources;

Energy sources;
Cultural areas;
Historic Resources;
Open Space;
Scenic Views and Sites.

The proposal does not remove or alter the City's Goal 5 protections from any of these protected resources, nor does it alter the analysis used by the City to reach its decision concerning individual resource sites. The site includes estuarine wetlands, regulated under Goal 16. The proposal does not change Federal or State regulatory programs. The State of Oregon's wetland regulatory program is administered by the Oregon Division of State lands. Activities in these wetlands must follow existing state and federal rules regulating wetlands.

The Goal 5 administrative rule does not require the City to revise its Goal 5 element for this proposed map amendment.

For these reasons, the City should conclude that the proposal is consistent with statewide planning Goal 5.

Goal 6

Statewide Planning Goal 6 concerns air and water pollution:

To maintain and improve the quality of the air, water and land resources of the state.

All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not

- 1. exceed the carrying capacity of such resources, considering long range needs;*
- 2. degrade such resources; or*
- 3. threaten the availability of such resources.*

No amendments to the City's Goal 6 element are proposed or necessary for this project. Warrenton's Goal 6 program relies on State and Federal regulatory programs to regulate air and water discharges. For these reasons, the City should find that the proposal is consistent with Statewide Planning Goal 6 and with the City's Goal 6 element.

Goal 7

Statewide Planning Goal 7 addresses areas subject to natural disasters and hazards. The Goal reads as follows:

To protect life and property from natural disasters and hazards.

Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazards.

Areas of Natural Disasters and Hazards -- are areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.

No development is proposed for this site. Because of this, the City should find that the proposal is consistent with Statewide Planning Goal 7 and with the City's Goal 7 element.

Goal 8

Statewide Planning Goal 8 addresses recreational needs. The Goal reads as follows:

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

The requirements for meeting such needs, now and in the future, shall be planned for by governmental agencies having responsibility for recreation areas, facilities and opportunities: (1) in coordination with private enterprise; (2) in appropriate proportions; and (3) in such quantity, quality and locations as is consistent with the availability of the resources to meet such requirements. State and federal agency recreation plans shall be coordinated with local and regional recreational needs and plans.

The subject property is not identified in the City's Goal 8 element as a recreational site, nor has it been identified as a potential future recreational site. Goal 8 also addresses destination resort siting in rural areas. The subject property is in an urban area, so the destination resort provisions of Goal 8 are not applicable. For these reasons, the City should find that the proposal is consistent with Statewide Planning Goal 8 and with the City's Goal 8 element.

Goal 9

Statewide Planning Goal 9 concerns economic development. The goal reads as follows:

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Comprehensive plans and policies shall contribute to a stable and healthy economy in all regions of the state. Such plans shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability and cost; labor market factors; educational and technical training programs; availability of key public facilities; necessary support facilities; current market forces; location relative to markets; availability of renewable and non-renewable resources; availability of land; and pollution control requirements.

Comprehensive plans for urban areas shall:

- 1. Include an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends;*
- 2. Contain policies concerning the economic development opportunities in the community;*
- 3. Provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies;*
- 4. Limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses.*

In accordance with ORS 197.180 and Goal 2, state agencies that issue permits affecting land use shall identify in their coordination programs how they will coordinate permit issuance with other state agencies, cities and counties.

Goal 9 is applicable to this proposal because the zone change would remove commercially-zoned lands from the City's inventory. The proposal is consistent with Statewide Planning Goal 9 because the City recently added about 18 acres to its inventory of vacant developable commercial lands (ordinance 1041-A) with the understanding that other vacant sites in the commercial zone would be down-zoned. The subject property is specifically identified in condition 5 of ordinance 1041-A. For these reasons, the City should find that the proposal is consistent with Statewide Planning Goal 9 and with the City's Goal 9 element.

Goal 10

Statewide Planning Goal 10 addresses housing. The Goal reads as follows:

To provide for the housing needs of citizens of the state. Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

The subject property is currently in a commercial zone. The proposed amendment would place the 8.8-acre site in an Aquatic conservation zone, which does not allow housing. Because the City has residentially-zoned lands sufficient to meet its Goal 10 needs, and because this amendment does not alter the City's inventory of buildable residentially-zoned lands, the proposal is consistent with Statewide Planning Goal 10 and with the City's Goal 10 element.

Goal 11

Statewide Planning Goal 11 concerns public facilities and services. The Goal reads as follows:

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan.

Counties shall develop and adopt community public facility plans regulating facilities and services for certain unincorporated communities outside urban growth boundaries as specified by Commission rules.

Counties shall not allow the establishment of new sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow new extensions of sewer lines from within urban growth boundaries or unincorporated community boundaries to land outside those boundaries.

For land that is outside urban growth boundaries and unincorporated community

boundaries, county land use regulations shall not rely upon the establishment or extension of a water system to authorize a higher residential density than would be authorized without a water system.

In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties.

The subject property is not presently served, nor does the Aquatic Conservation zone allow uses that demand city serves. Because of this, the proposal is consistent with Goal 11.

Goal 12

Statewide Planning Goal 12 covers transportation. The goal reads as follows:

To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall

- 1. consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian;*
- 2. be based upon an inventory of local, regional and state transportation needs;*
- 3. consider the differences in social consequences that would result from utilizing differing combinations of transportation modes;*
- 4. avoid principal reliance upon any one mode of transportation;*
- 5. minimize adverse social, economic and environmental impacts and costs;*
- 6. conserve energy;*
- 7. meet the needs of the transportation disadvantaged by improving transportation services;*
- 8. facilitate the flow of goods and services so as to strengthen the local and regional economy; and*
- 9. conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.*

The Aquatic Conservation zone does not allow any uses that generate motor vehicle traffic. Because of this, the proposal is consistent with goal 12.

Goal 13

Statewide Planning Goal 13 addresses energy conservation:

To conserve energy.

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.

The proposal does not change the City's approach to energy conservation. Proposed development on the site must meet energy conservation provisions in the building code.

Goal 14

Statewide Planning Goal 14 deals with urbanization. The Goal reads as follows:

To provide for an orderly and efficient transition from rural to urban land use.

Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. Establishment and change of the boundaries shall be based upon considerations of the following factors:

- 1. Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;*
- 2. Need for housing, employment opportunities, and livability;*
- 3. Orderly and economic provision for public facilities and services;*
- 4. Maximum efficiency of land uses within and on the fringe of the existing urban area;*
- 5. Environmental, energy, economic and social consequences;*
- 6. Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,*
- 7. Compatibility of the proposed urban uses with nearby agricultural activities.*

The results of the above considerations shall be included in the comprehensive plan. In the case of a change of a boundary, a governing body proposing such change in the boundary separating urbanizable lands from rural land, shall follow the procedures and requirements as set forth in the Land Use Planning goal (Goal 2) for goal exceptions.

Any urban growth boundary established prior to January 1, 1975, which includes rural lands that have not been built upon shall be reviewed by the governing body, utilizing the same factors applicable to the establishment or change of urban growth boundaries.

Establishment and change of the boundaries shall be a cooperative process between a city and the county or counties that surround it.

Land within the boundaries separating urbanizable land from rural land shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

- 1. Orderly, economic provision for public facilities and services;*
- 2. Availability of sufficient land for the various uses to insure choices in the market place;*
- 3. LCDC goals or the acknowledged comprehensive plan; and,*
- 4. Encouragement of development within urban areas before conversion of urbanizable areas.*

In unincorporated communities outside urban growth boundaries counties may approve uses, public facilities and services more intensive than allowed on rural lands by Goal 11 and 14, either by exception to those goals, or as provided by Commission rules which ensure such uses do not:

- 1. adversely affect agricultural and forest operations, and*
- 2. interfere with the efficient functioning of urban growth boundaries.*

The subject property is within Warrenton's City Limits and Urban Growth Boundary. It is not within a Growth Management Area in Warrenton. The site is has been placed in a zone (C1) that allows urban levels of development. The proposed Aquatic Conservation zoning does not allow urban services or urban uses. For these reasons, the City should find that the proposal is consistent with Statewide Planning Goal 14 and with the City's Goal 14 element.

Goal 15

Statewide Planning Goal 15 is not applicable to the proposal, as it covers the Willamette River Greenway.

Goal 16

Statewide Planning Goal 16 addresses estuarine resources:

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

The proposal places the site in the City's Aquatic Conservation zone, a zone designed to implement goal 16. The Aquatic Conservation zone is part of the city's acknowledged plan. For this reason, the proposal is consistent with statewide planning goal 16.

Goal 17

Statewide Planning Goal 17 addresses coastal shorelands. The subject property is not within the City's Coastal Shorelands Boundary, so statewide planning goal 17 does not apply.

Goal 18

Statewide Planning Goal 18 addresses beaches and dunes. The subject property is not within the City's inventoried beach and dune area. Because of this, statewide planning goal 18 does not apply.

Goal 19

Statewide Planning Goal 19 concerns ocean resources, and is not applicable to the subject property.

Exhibit 4: Findings Addressing 26 January 2001 LCDC Order

Summary

LCDC adopted an "overdue work task order" at its meeting on 26 January 2001. A copy of the order is attached. Parts of the order are relevant to this application for a zone change.

This proposed amendment to the City's zone/plan map affects property owned by Warrenton Land & Investment LLC (WLI) west of Marlin Avenue. The amendment would place about 11.9 acres of land in the City's Aquatic Conservation (A3) zone. The land to be rezoned is currently in the City's General Commercial (C1) zone. The purpose of this zone change is to implement a part of condition 5 of Warrenton Ordinance No. 1041-A:

5. The applicant shall mitigate transportation impacts as required by the TPR and OHP by undertaking those specific mitigation measures described in the August 4, 2000 letter from Kittleson & Associates, a copy of which is attached hereto. The mitigation measures are described as follows:

a. A subsequent post-acknowledgment combined comprehensive plan map/zoning map amendment to change the existing plan map and zoning map designation on a 11.9 acre parcel from its current C-1 zoning to the R-10 zone or a lesser-intense zone. (the "Harbor Site")

b. A subsequent post-acknowledgment combined comprehensive plan/zoning map amendment to change the existing plan map/zoning map designation on a 8.18 acre parcel from its current C-1 zoning to the R-10 zone or a lesser intense zone. (the "Marlin Site"). This condition was adopted by the City in December 2000 as an approval condition of a zone/plan map amendment for a 17.4-acre site at the corner of Dolphin Avenue and Highway 101 owned by WLI.

This proposed zone/plan map amendment is for the Marlin Avenue site, and involves the following tax lots, all owned by WLI:

| | |
|--|-------------|
| 8-10-23BC-900 (partial – see Exhibit 1) | 2.49 acres |
| 8-10-23BC-1000 (partial – see Exhibit 1) | 2.75 acres |
| 8-10-23BC-1100 (partial – see Exhibit 1) | 2.44 acres |
| 8-10-23BD-600 | 2.75 acres |
| 8-10-23BD-700 | 2.47 acres, |

together with surrounding street right-of-ways. The total size of this request is about 11.9 acres. The subject property and surrounding land is shown on the attached map, labeled Exhibit 1.

The LCDC order contains several provisions. These are excerpted below, followed by findings.

1. Warrenton and Clatsop County shall apply provisions of the transportation planning rule OAR 660 Div 12 to report on applicability of relevant portions of the TPR, to all individual land use decisions and permits for all areas within the Warrenton city limits and urban growth boundary. This order shall be effective immediately and remain in effect until comprehensive plan and land use regulation amendments adopted by Warrenton and Clatsop County to comply with work task #2 are acknowledged pursuant to OAR 660-025 (periodic review). In addition, the city may not amend its comprehensive plan or zoning ordinance or other land use regulation for lands within 1500' of Highway 101 to place land in a comprehensive plan designation or zoning district which:

a) adopts or applies a new zoning district which would allow commercial or institutional uses; or

b) amends zoning or plan designations to allow any other use that would generate a level of traffic that exceeds traffic from uses that are currently "permitted outright" uses in the current zoning designation.

Most of the subject property is within 1,500 feet of Highway 101. The proposed amendment changes the zoning on 11.9 acres (approximately) from C1 to A3. Because of this, it complies with part 1(a) of the order. The proposed zoning would result in no traffic, because it does not allow any traffic-generating uses. Because of this, the proposal complies with part 1(b) of the order.

2. Periodic Review Work Task 5 (Review and Update Goal 5).

Based on ORS 197.636(2)(a) Warrenton and Clatsop County (for the unincorporated area within Warrenton's urban growth boundary), shall:

a. For riparian areas, immediately apply the safe harbor requirements of statewide planning Goal 5 and associated administrative rule directly to all land use decisions (to the extent that such goals and rules are applicable to any particular decision) and,

b. Complete work task 5 and adopt an ordinance to protect Goal 5 wetland resources within the next six months.

Statewide planning goal 5's safe harbor provisions are not applicable to the proposal amendment because the site does not contain any identified freshwater riparian areas. Estuarine riparian areas can be protected under the proposed A3 zoning.

3. Periodic Review Work Tasks 4.2 (Urban Growth Boundary Analysis) and 9, (Comprehensive Plan and Zoning Ordinance Analysis and Update);

Based on ORS 197.636(2)(a) Warrenton and Clatsop County (for the unincorporated area within the Warrenton urban growth boundary), shall:

a. Complete the unfinished work related to work tasks 4.2 and 9 within twelve months.

The proposed amendment does not conflict with Warrenton's obligation to complete this periodic review task.

4. If Warrenton and/or Clatsop County are not making satisfactory progress to complete periodic review work tasks 2, 4.2, 5 and 9, the commission may impose additional interim measures under ORS 197.636(2)(d).

The proposed amendment does not conflict with LCDC's power to impose additional restrictions.

5. This order shall remain in effect until comprehensive plan and land use regulation amendments adopted by Warrenton and Clatsop County to comply with periodic review work tasks 2, 4.2, 5 and 9 are acknowledged under OAR 660-025 (periodic review).

The proposed amendment does not conflict with this provision of the order.

6. The Department shall report as necessary at future commission meetings on the progress that Warrenton and Clatsop County are making to comply with the terms of the above orders and to complete the remaining tasks on the Warrenton periodic review work program. The Department shall recommend to the commission any modifications to the above orders or other actions it believes are warranted to further achieve timely completion of Warrenton's periodic review.

| | |
|--|-------------|
| The pro8-10-23BC-900 (partial – see Exhibit 1) | 2.49 acres |
| 8-10-23BC-1000 (partial – see Exhibit 1) | 2.75 acres |
| 8-10-23BC-1100 (partial – see Exhibit 1) | 2.44 acres |
| 8-10-23BD-600 | 2.75 acres |
| 8-10-23BD-700 | 2.47 acres, |

posed amendment does not conflict with this provision of the order.



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol St. NE, Suite 150

Salem, Oregon 97301-2540

Phone (503) 373-0050

Director's Fax (503) 373-5518

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Web Address: <http://www.lcd.state.or.us>

January 31, 2001

The Honorable Jeff Hazen
Mayor, City of Warrenton
P.O. Box 250
Warrenton, Oregon 97146



The Honorable George Kiepke, Chair
Clatsop County Board of Commissioners
County Courthouse
749 Commercial
Astoria, Oregon 97103

Re: Overdue Periodic Review Work Task Order (PR # 001284)

Dear Mayor Hazen and Chair Kiepke:

On January 26, 2001, the Land Conservation and Development Commission adopted the enclosed order concerning the overdue work tasks listed on Warrenton's periodic review work program. This order was approved pursuant to the provisions in ORS 197.628 - 197.644 and the commission's periodic review rule (OAR 660, Division 025).

As provided on pages 2-3, the order requires as an interim measure under ORS 197.636(2)(d), that your two jurisdictions directly apply certain statewide planning goals and rules to all city and county land use decisions and permits within the Warrenton urban growth boundary (UGB). The order also calls for each city and county land use decision approved under the terms of this order to be submitted to the department within ten (10) working days of the final local decision. This order is effective as of the date shown on page 4.

Unless subsequently modified by the commission, the interim measure (above) will remain in effect until city and county plan and ordinance changes to complete periodic review work tasks 2, 4.2, 5, and 9 are acknowledged pursuant to OAR 660, Division 025.

The new statutory provisions in ORS 197.636(2) require LCDC to impose one or more sanctions in the event that work task time extensions approved under ORS 197.636(1) have been exceeded. This is the case for the Warrenton periodic review.

Since the January LCDC meeting, DLCD has had brief conversations with your staffs about this situation. In these contacts, we have expressed our readiness to work toward prompt resolution of the City of Warrenton periodic review, thereby terminating the overdue work task order as soon as possible.

Ex. 4-4

Please contact Dale Jordan, our regional representative for Warrenton, for questions about the order. I have asked Dale to arrange a meeting soon with your staffs to discuss ways to expedite completion of your remaining work tasks.

Sincerely,



Richard P. Benner
Director

RPB:DJ/CA

<i:\policy\lcde>

cc: Butch Parker, Clatsop County
Blair Henningsgarrr, Clatsop County
Scott Derickson, City of Warrenton
Patrick Wingard, City of Warrenton
Jeanyse Snow, City of Warrenton

(DLCD: DJ, JH, AR, KVV, PR File)

Ex. 4-5

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

| | | |
|--------------------------|---|--------------------------------|
| IN THE MATTER OF |) | |
| THE PERIODIC REVIEW OF |) | OVERDUE WORK TASK |
| THE COMPREHENSIVE PLAN |) | ORDER |
| AND LAND USE REGULATIONS |) | (PR ORDER # 001234) |
| FOR WARRENTON |) | |

This matter came before the Land Conservation and Development Commission (Commission) on January 26, 2001, pursuant to Oregon Revised Statutes (ORS) 197.628 -- 197.644 and Oregon Administrative Rules (OAR) Chapter 660, Division 25. The Commission, having fully considered Lincoln City's failure to submit periodic review work tasks by the prescribed dates, the written report of the Director of the Department of Land Conservation and Development (Department), and the written statements by the city of Warrenton (City) and Clatsop County (County), enters its:

Findings of Fact

1. On July 17, 1999, the Department, acting under ORS 197.636(1), granted the city of Warrenton an extension (PR order # 001070) to June 30, 2000, to complete and submit to the Department periodic review work tasks #'s 2, 4.2, 5 and 9. (Exhibit 1)
2. On June 30, 2000, Warrenton's deadline to submit periodic review tasks 2 (transportation planning), 4.2 (Urban growth boundary review), and 9 (comprehensive plan and zoning ordinance revision/update.) Task 5, (Goal 5 update) passed without a submittal by the City to the Department
3. On October, 6, 2000, the Department, as required by OAR 660-25-090(5)(d), notified the City that it had exceeded its periodic review task submittal deadlines and would be scheduled for a Commission hearing. The department notified Warrenton and Clatsop County of the place and date of the Commission's hearing. (Exhibit 2)
4. On January, 26, 2001, the Commission held a hearing to pursuant to ORS 197.632(2), to consider the matter of Warrenton's overdue periodic review work tasks and the imposition of sanctions as provided under ORS 197.636(2)(a)-(d). As provided in OAR 660-25-090, the Commission granted oral argument to consider the comments of the Department and the city of Warrenton and Clatsop County.

Ex. 4-6

5. As provided in OAR 660-25-090(5), the Commission considered testimony from the Department, the City and the County. Based on this testimony and the Department's January 10, 2001 report, the Commission found that evidence was adequate to justify application of sanctions under ORS 197.636(2)(a)-(d) relative to statewide planning goals 2, 5, 10, 16, 17 and 18.
6. Based upon comments by the Department at the hearing, and advice from legal counsel, the Commission agreed, pursuant to ORS 196.629(2) and 197.636(2), to subject Clatsop County to the sanctions (below) in order to ensure compliance with the statewide planning goals and facilitate completion of periodic review planning work and city/county coordination for the unincorporated area within the City of Warrenton City urban growth boundary (UGB).

Conclusion

Based on the entire record presented, the Commission concludes that the city of Warrenton and Clatsop County have exceeded the deadline to complete and submit to the Department Periodic Review Work Tasks #'s 2, 4.2, 5, and 9, and that the requirements of ORS 197.636(2) calling for the imposition by the Commission of one or more of the sanctions in ORS 197.636(2)(d) have been met.

THEREFORE, IT IS ORDERED THAT

1. Warrenton and Clatsop County shall apply provisions of the transportation planning rule OAR 660 Div 12 to report on applicability of relevant portions of the TPR, to all individual land use decisions and permits for all areas within the Warrenton city limits and urban growth boundary. This order shall be effective immediately and remain in effect until comprehensive plan and land use regulation amendments adopted by Warrenton and Clatsop County to comply with work task #2 are acknowledged pursuant to OAR 660-023 (periodic review). In addition, the city may not amend its comprehensive plan or zoning ordinance or other land use regulation for lands within 1500' of Highway 101 to place land in a comprehensive plan designation or zoning district which:

- a) adopts or applies a new zoning district which would allow commercial or institutional uses; or
- b) amends zoning or plan designations to allow any other use that would generate a level of traffic that exceeds traffic from uses that are currently "permitted outright" uses in the current zoning designation.

2. Periodic Review Work Task 5 (Review and Update Goal 5).

Based on ORS 197.636(2)(a) Warrenton and Clatsop County (for the unincorporated area within Warrenton's urban growth boundary), shall:

- a. For riparian areas, immediately apply the safe harbor requirements of statewide planning Goal 5 and associated administrative rule directly to all land use decisions (to the extent that such goals and rules are applicable to any particular decision) and,
- b. Complete work task 5 and adopt an ordinance to protect Goal 5 wetland resources within the next six months.


3. Periodic Review Work Tasks 4.2 (Urban Growth Boundary Analysis) and 9. (Comprehensive Plan and Zoning Ordinance Analysis and Update):

Based on ORS 197.636(2)(a) Warrenton and Clatsop County (for the unincorporated area within the Warrenton urban growth boundary), shall:

- a. Complete the unfinished work related to work tasks 4.2 and 9 within twelve months.
4. If Warrenton and/or Clatsop County are not making satisfactory progress to complete periodic review work tasks 2, 4.2, 5 and 9, the commission may impose additional interim measures under ORS 197.636(2)(d).
5. This order shall remain in effect until comprehensive plan and land use regulation amendments adopted by Warrenton and Clatsop County to comply with period review work tasks 2, 4.2, 5 and 9 are acknowledged under OAR 660-025 (periodic review).
6. The Department shall report as necessary at future commission meetings on the progress that Warrenton and Clatsop County are making to comply with the terms of the above orders and to complete the remaining tasks on the Warrenton periodic review work program. The Department shall recommend to the commission any modifications to the above orders or other actions it believes are warranted to further achieve timely completion of Warrenton's periodic review.

DATED THIS 1st DAY OF Feb. 2001.

FOR THE COMMISSION:


Richard P. Benner, Director
Department of Land Conservation
and Development

NOTE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provisions of ORS 183.482 and 197.650.

Copies of all exhibits are available for review at the department's Salem office.

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Ex. 4-9



KITTELSON & ASSOCIATES, INC.

TRANSPORTATION PLANNING/TRAFFIC ENGINEERING

610 SW ALDER, SUITE 700 • PORTLAND, OR 97205 • (503) 228-5230 • FAX (503) 273-8169

August 4, 2000

Project #: 4211.00

Michael Robinson
Stoel Rives
900 SW Fifth Avenue, Suite 2600
Portland, Oregon 97204

RE: Warrenton Land & Investment Zone Change

Dear Mike:

At your request, we have evaluated the impact of some additional land use zoning scenarios as potential mitigation for the Warrenton Land & Investment project in Warrenton, Oregon. Specific descriptions of the potential zone changes are described in the attached letter from Mark R. Barnes, A.I.C.P. This letter is a supplement to the Traffic Impact Analysis (dated June of 2000) we prepared for the Warrenton Land & Investment Zone Change. The purpose of this supplemental report is to document the traffic impacts associated with changing the zoning on two additional properties in Warrenton. The first property is approximately 11.9 acres, is zoned general commercial (C1), and is located north of Harbor Drive on the north side of the Shilo Inn property and is located west of Highway 101. The second property is approximately 8.18 acres, is zoned general commercial (C1), and is located west of Marlin and north of Highway 101.

For the purposes of this analysis it was assumed that the zoning on the Harbor Drive property would be changed from general commercial (C1) to residential (R-10) zone. For the Marlin Avenue site, the analysis assumed the zoning would change from general commercial to residential (R-10).

SITE TRIP GENERATION

Trip generation estimates were prepared for both sites under the existing and proposed zoning development scenarios. All of the trip generation estimates were based on empirical data summarized in *Trip Generation 6th Edition* published by the Institute of Transportation Engineers.

Existing Zoning

Under the existing zoning, the reasonable worst-case development scenario for both sites was determined to be a shopping center type development, which is a permitted use under the existing C1 zoning. Based on the analysis performed by Mark Barnes, A.I.C.P., the net buildable area would result in approximately 150,000 gross square feet of floor area for the Harbor Drive site and approximately 90,000 gross square feet of floor area for the Marlin Avenue site. The estimated peak hour traffic volumes generated by the two sites are summarized in Table 1.

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Table 1
Trip Generation - Existing Zoning
(worst case development scenario)

| Land Use | ITE Code | Size (square feet) | P.M. Peak Hour | | |
|----------------------|----------|--------------------|----------------|------------|------------|
| | | | In | Out | Total |
| Harbor Site | | | | | |
| Shopping Center | 820 | 130,000 | 360 | 385 | 745 |
| 30% Pass-by Trips | | | 110 | 110 | 220 |
| <i>Net New Trips</i> | | | <i>250</i> | <i>275</i> | <i>525</i> |
| Marlin Site | | | | | |
| Shopping Center | 820 | 90,000 | 280 | 305 | 585 |
| 30% Pass-by Trips | | | 90 | 90 | 180 |
| <i>Net New Trips</i> | | | <i>190</i> | <i>215</i> | <i>405</i> |

Proposed Zoning

Based on information provided by Mark Barnes, the worst-case development for the proposed zoning at the Harbor Drive site was assumed to include 51 single family housing units. The worst-case development for the proposed zoning at the Marlin Avenue site was assumed to include 40 single family housing units. Table 2 illustrates the trip generation estimates for both sites.

Table 2
Trip Generation - Proposed Zoning

| Land Use | ITE Code | Size (units) | P.M. Peak Hour | | |
|-----------------------|----------|--------------|----------------|-----|-------|
| | | | In | Out | Total |
| Harbor Site | | | | | |
| Single Family Housing | 210 | 51 | 35 | 25 | 60 |
| Marlin Site | | | | | |
| Single Family Housing | 210 | 40 | 30 | 15 | 45 |

SITE TRIP DISTRIBUTION/ASSIGNMENT

The distribution of trips generated by development on both sites onto the road network in the study area used the same general trip distribution pattern that was used in the June 2000 Traffic Impact Study for the Warrenton Land & Investment zone change. Since the critical year for the evaluation is the 2015 horizon, the analysis focused on this horizon year. Figure 1 illustrates the traffic the 2015 total traffic volumes under the Existing Zoning scenario. This scenario also assumes that the zoning for the Dolphin site (evaluated in the June 2000 Traffic Impact Study) is developed with residential housing. Figure 2 illustrates the 2015 total traffic volumes under the Proposed Zoning scenario. Under this scenario it is assumed that the Dolphin site is developed with a 165,000 square foot shopping center, and the Harbor and Marlin sites are developed as described above.

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INTERSECTION CAPACITY ANALYSIS

As with the analysis documented in the original June 2000 Traffic Impact Study, the HCM methodology has been used for unsignalized intersections and the SIGCAP2 model developed by ODOT has been used for signalized intersections. For the unsignalized (two-way stopped controlled) intersections, the volume-to-capacity ratio for the worst critical movement is reported in the tables.

Table 3 illustrates the results of the intersection analysis for each of the study intersections under the year 2015 conditions for both the existing and proposed zoning assuming no mitigation at any study area intersections. As indicated in the tables, none of the intersections along U.S. 101 meet the operational requirements set forth in the 1999 Oregon Highway Plan. Copies of the HCM and SIGCAP2 analysis results are included as an attachment to this letter.

**Table 3
Year 2015 Weekday P.M. Peak Hour
Level of Service and Volume/Capacity Ratio Comparison
(No Mitigation)**

| Intersection | V/C | |
|---|------------------------------|------------------------------|
| | Existing Zoning ¹ | Proposed Zoning ² |
| Highway 101/Harbor Street | 123% | 117% |
| Highway 101/Neptune Avenue | 97% | 97% |
| Highway 101/Marlin Avenue | >150% | >150% |
| Highway 101/Alt. Highway 101 | >150% | >150% |
| Highway 101/Dolphin Avenue | 126% | >150% |
| Highway 101/Fort Stevens Highway-Perkins Road | 135% | 94% |
| Fort Stevens Highway/Dolphin Avenue | 3% | 3% |
| Fort Stevens Highway/Main Avenue | 43% | 39% |

¹Existing Zoning assumes Dolphin site is developed with residential housing, and the Harbor Drive and Marlin Avenue sites are developed as shopping centers.

²Proposed Zoning assumes the Dolphin Avenue site is developed as a shopping center, the Harbor Drive and the Marlin Avenue sites are developed with residential housing.

When evaluating the impact of a plan amendment or zone change, the Oregon Highway Plan states that when an intersection does not meet ODOT's standard, the plan amendment cannot further degrade the operation of the intersection (see action 1F.6). Since Table 3 does not show the relative impact of the zoning at a few of the unsignalized intersections, Table 4 was prepared to summarize which zoning scenario has the greatest impact at each of the intersections along U.S. 101. As indicated in Table 4, the only intersection that does not meet the criteria in Action 1.F.6 standard in the 1999 Oregon Highway Plan is the Highway 101/Dolphin intersection. To avoid further degradation at the Highway 101/Dolphin intersection, a traffic signal would be required at the Dolphin Avenue intersection.

EX-5-3

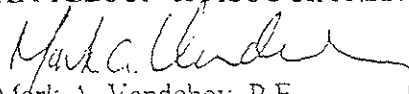
Table 4
Zoning Scenario With Greatest Impact at
Intersections Along U.S. 101

| Intersection | Greatest Impact |
|--|---|
| Highway 101/Harbor Street | Existing Zoning |
| Highway 101/Neptune Avenue | Same Impact for Existing and Proposed Zoning |
| Highway 101/Marlin Avenue | Existing Zoning |
| Highway 101/Alt. Highway 101 | Existing Zoning |
| Highway 101/Dolphin Avenue | Proposed Zoning |
| Highway 101/Fort Stevens Highway-Perkins Road | Existing Zoning |

Based on the results of this analysis, it is concluded that with the mitigation discussed in this letter (mitigation includes the zone changes at the Harbor Drive and Marlin Avenue sites), the proposed Comprehensive Plan Amendment will not significantly affect the transportation system.

We trust the information presented in this supplemental report adequately documents the impact of the potential change in zoning at the Harbor Drive and Marlin Avenue sites. As always, please call me if you have any questions or comments.

Sincerely,
KITTELSON & ASSOCIATES, INC.


Mark A. Vandehey, P.E.
Principal

- cc: Mark Barnes, AICP
- Ed Christie
- Tony Martin, ODOT Region 2
- Gerry Jester, ODOT Region 2
- John Detar, ODOT Region 2
- Mo Dichari, ODOT District

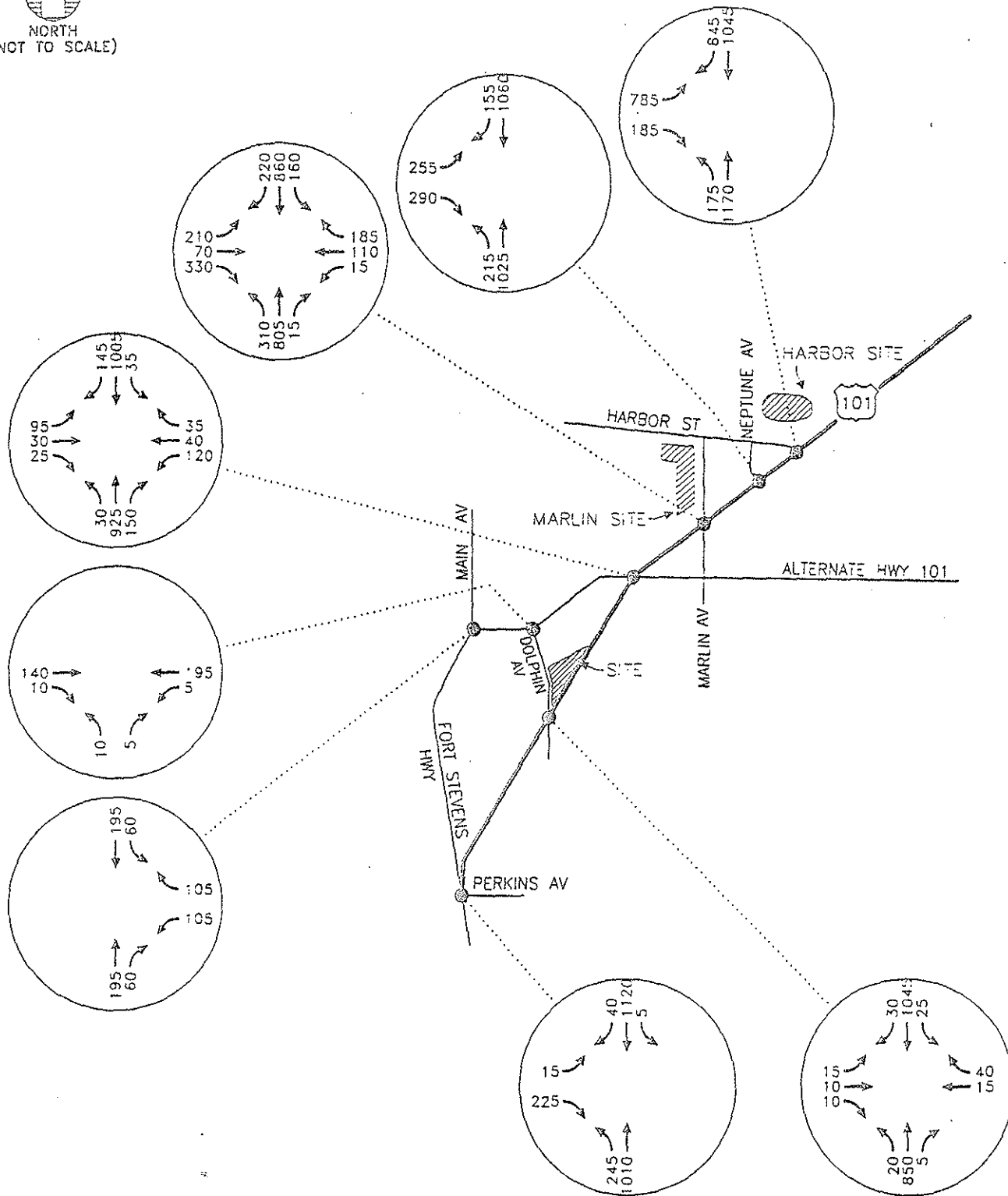
Attachments

EX-5-4

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NORTH
(NOT TO SCALE)



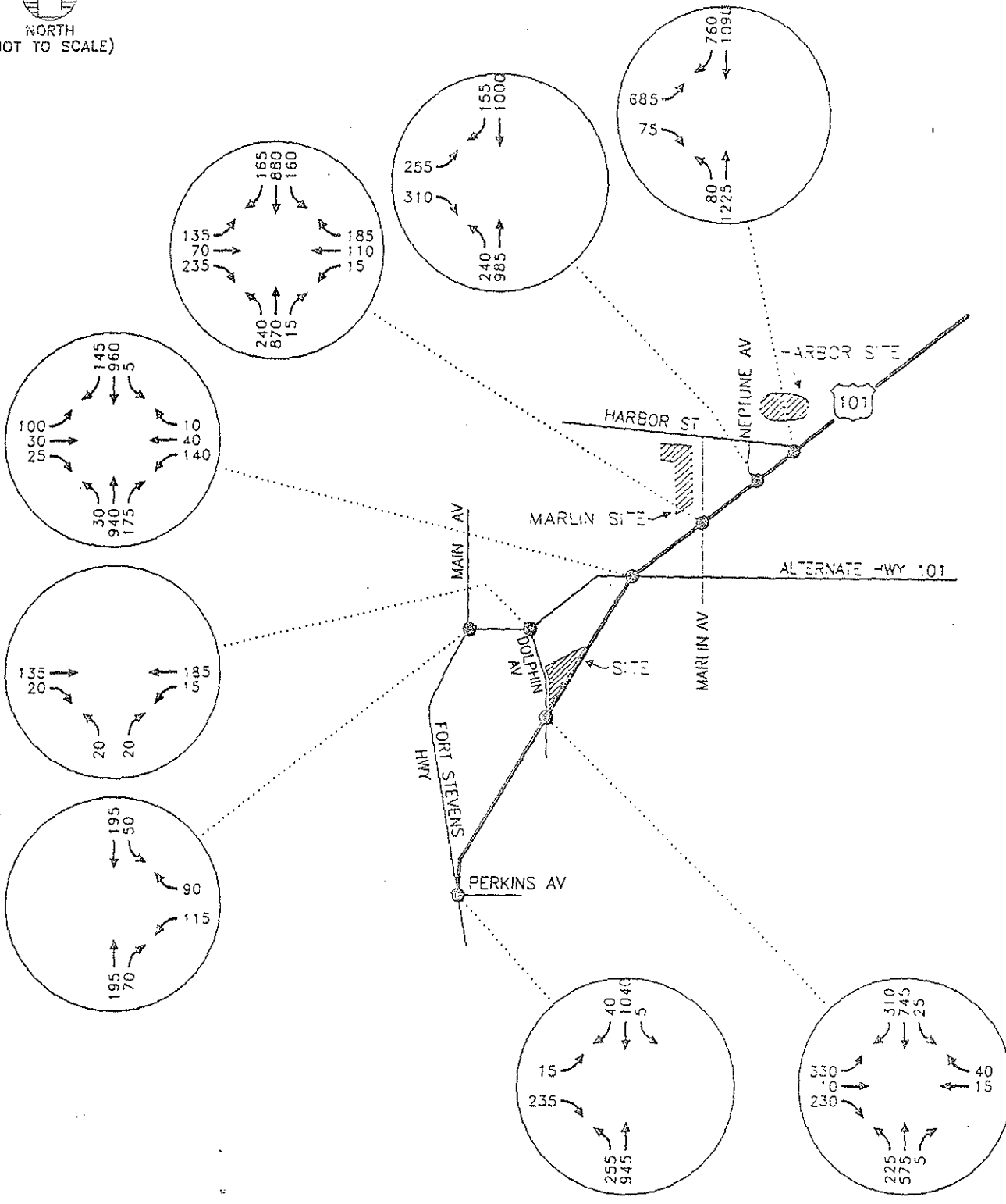
2015 PM PEAK HOUR TRAFFIC VOLUMES WITH EXISTING ZONING

EX.5-5

| | |
|-----------------------|-----|
| WARRENTON ZONE CHANGE | Flt |
| WARRENTON, OREGON | |
| AUGUST 2000 | |



NORTH
(NOT TO SCALE)



2015 PM PEAK HOUR TOTAL TRAFFIC VOLUMES WITH PROPOSED ZONING

| | |
|-----------------------|--------|
| WARRENTON ZONE CHANGE | FIGURE |
| WARRENTON, OREGON | 2 |
| AUGUST 2000 | 414 |

EX. 5-10

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

OREGON DEPARTMENT OF LAND
CONSERVATION AND DEVELOPMENT,
Petitioner.

vs.

CITY OF WARRENTON.
Respondent.

and

WARRENTON LAND AND INVESTMENT
COMPANY, LLC,
Intervenor-Respondent.

LUBA No. 2000-182

FINAL OPINION
AND ORDER

Appeal from City of Warrenton.

Lynne A. Perry, Assistant Attorney General, Salem, filed the petition for review and argued on behalf of petitioner. With her on the brief were Hardy Myers, Attorney General, and Michael D. Reynolds, Solicitor General.

No appearance by City of Warrenton.

Michael C. Robinson, Portland, and Michelle Rudd, Portland, filed the response brief. With them on the brief was Stoel Rives, LLP. Michael C. Robinson argued on behalf of intervenor-respondent.

BRIGGS, Board Chair; BASSHAM, Board Member; HOLSTUN, Board Member, participated in the decision.

AFFIRMED 06/01/2001

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Briggs.

Ex. b-1

NATURE OF THE DECISION

Petitioner Department of Land Conservation and Development (DLCD) appeals a city decision rezoning property from Intermediate Density Residential (R-10) to General Commercial (C-1).

MOTION TO INTERVENE

Warrenton Land and Investment Company, LLC (intervenor), the applicant below, moves to intervene on the side of respondent. There is no objection to the motion and it is allowed.

FACTS

This is the second time this matter has been appealed to LUBA. In *DLCD v. City of Warrenton*, 37 Or LUBA 933, 935-36 (2000) (*Warrenton I*), we set out the relevant factual and procedural background as follows:

"The subject property is a 41-acre parcel located to the west of and adjacent to Oregon State Highway 101 (Highway 101). The property is comprised of five tax lots, and is bisected by Dolphin Avenue (also known as Rodney Acres Road). A majority of the property is zoned R-10; however, a portion of tax lot 8-10-28-1900 is zoned Aquatic Conservation (A5). In March 1999, intervenor applied for a zone change from R-10 to C-1, proposing to lease or sell the property for retail development.

"Dolphin Avenue will be the primary access to the property. Dolphin Avenue intersects with Highway 101, and traffic is controlled by a stop sign on Dolphin Avenue. Traffic on this segment of Highway 101 is uncontrolled, with a general speed limit of 45-55 miles per hour.

"The traffic impact study submitted by the applicant to support the zone change indicates that several improvements to the Dolphin Avenue/Highway 101 intersection will be necessary to lessen the impact the proposed commercial uses will have on Highway 101. The improvements include acceleration/deceleration lanes, turning refuges and traffic signals. The traffic impact study assumes similar improvements will be made to seven other nearby intersections, including five intersections on Highway 101. The traffic impact study also assumes that the relevant segment of Highway 101 will be improved to five lanes within the 20-year study period." (Footnote omitted.)

In *Warrenton I*, DLCD challenged the city's findings of compliance with the Transportation Planning Rule (TPR) set forth in OAR chapter 660, division 12. DLCD also challenged the city's findings that the proposed rezone complies with Statewide Land Use Planning Goal 10 (Housing), arguing that the building inventories the city relied upon to determine there was sufficient land zoned R-10 to satisfy the need for intermediate density residential housing after

EX. 6-2

the rezone was approved were not acknowledged Goal 10 housing inventories. We sustained DLCD's assignments of error pertaining to the TPR and Goal 10, and remanded the decision to the city.

On remand, intervenor modified its application to request that only a 17.4-acre portion of the property located north of Dolphin Avenue be rezoned to C-1, and that retail development be limited to 165,000 square feet. The city council again approved the application. DLCD and the Oregon Department of Transportation (ODOT) appealed the city's decision to LUBA. The city then withdrew its decision for reconsideration, pursuant to OAR 661-010-0021. During its proceedings on reconsideration, the city received additional testimony and evidence regarding compliance with transportation-related criteria. The city adopted a new decision to approve the proposal and adopted additional findings to support its decision. Two conditions of approval require intervenor to apply for and receive approval to rezone two other properties, totaling approximately 20 acres, to the "R-10 zone or a lesser intense zone" before final development approval can be given for the subject 17.4 acres. Record 37. In addition, the city required that intervenor install a traffic signal at a relocated Dolphin Avenue/Highway 101 intersection. DLCD filed a renewed notice of intent to appeal the city's decision on reconsideration.

FIRST ASSIGNMENT OF ERROR

In *Warrenton I*, DLCD alleged that the city's decision violated the TPR because the city prematurely considered proposed mitigation measures in determining whether the proposed rezone would "significantly affect" a transportation facility, as that concept is used in OAR 660-012-0060(1) and (2). 37 Or LUBA at 940. DLCD argued that the local government first had to determine whether the proposed amendment, exclusive of proposed mitigation measures, would significantly affect a transportation facility before proceeding to mitigate those impacts through one or more mitigatory measures. We agreed, concluding that:

* * * OAR 660-012-0060(1) and (2) require a local government to establish whether an amendment will 'significantly affect' a transportation facility, as defined by the rule, without considering potential improvements affecting that facility. * * * In other words, OAR

Ex. 6-3

660-012-0060(1) and (2) contemplate that mitigation necessary to ensure that land uses allowed by amendments remain consistent with a facility's function, capacity and performance standards [is] considered once the local government has determined that the amendment significantly affects that facility." 37 Or LUBA at 941-42.

On remand, the city found that the rezone *would* significantly affect transportation facilities, but that the anticipated effects could be mitigated by satisfying the conditions the city placed on its approval, including rezoning other property in the vicinity to R-10 or a lesser zone, and installing a signal at the Highway 101/Dolphin Avenue intersection. Record 24.

DLCD argues that the city's options for mitigating the impacts caused by the additional traffic are limited to those options set out in OAR 660-012-0060(1). [4] DLCDC concedes that the city's condition requiring that property in the vicinity be rezoned to permit uses that generate less traffic falls within OAR 660-012-0060(1)(a). However, DLCDC argues that the city's condition of approval that requires a traffic signal at Highway 101 and Dolphin Avenue does not fall into any of the options set out OAR 660-012-0060(1). DLCDC argues that the installation of a traffic signal may be an acceptable mitigation measure pursuant to OAR 660-012-0060(1)(b), if the city had a TSP to amend. However, because the city has yet to adopt a TSP, DLCDC argues, it could not rely on the installation of a signal at Highway 101/Dolphin Avenue to demonstrate that the impacts on the transportation facility have been mitigated. DLCDC argues that the rezoning of 20 acres to a less intense use is not sufficient, by itself, to alleviate all of the transportation impacts caused by intervenor's proposed development and, therefore, the city erred in its conclusion that OAR 660-012-0060(1) was satisfied.

Intervenor argues that DLCDC waived its right to raise this issue. According to intervenor, the city's initial decision relied in part on the installation of a signal at various intersections on Highway 101, including Dolphin Avenue, to conclude that the proposed development would not significantly affect a transportation facility. On remand, consistent with our decision in *Warrenton I*, the city concluded that the proposed development would have a significant effect on the Highway 101/Dolphin Avenue intersection and also concluded that a traffic signal would mitigate that impact. Intervenor contends that DLCDC was aware that the city would rely on the signal to satisfy OAR 660-012-0060(1), but failed to raise, either in its petition for review in

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Warrenton I or in the local proceedings after remand, the issue of whether the city could use the installation of a signal at the intersection to mitigate traffic impacts, given that the mitigation measure did not fall within one of the options listed in OAR 660-012-0060(1).

Intervenor argues that DLCD's failure to raise compliance with OAR 660-012-0060(1) below is amplified by the fact that DLCD has an obligation under ORS 197.610(3) to point out deficiencies in proposed amendments and to recommend mechanisms to resolve those deficiencies. Intervenor contends that DLCD had several opportunities to raise the issue below, including the proceedings on remand, and during the proceedings after the city withdrew its decision from LUBA for reconsideration.

DLCD responds that it could not anticipate that the city would rely on the same mitigation measures to offset anticipated impacts in its petition for review in *Warrenton I*. DLCD further argues that it could not know, until the city adopted its decision and findings on remand, that a signal at Highway 101 and Dolphin Avenue would be a basis for the city's conclusion that OAR 660-012-0060(1) is satisfied.

DLCD also relies on *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992) to support its claim that it did not have to raise the issue of compliance with OAR 660-012-0060(1) in *Warrenton I*. DLCD claims that under *Beck*, the only issues that are precluded from being raised in an appeal after remand are "old, resolved" issues, meaning issues "LUBA actually resolved and those that could have been raised in the first appeal." Petition for Review 11. DLCD argues that issues that are the subject of the remand cannot be "old, resolved" issues. LUBA explicitly instructed the city to evaluate the adequacy of mitigating conditions on remand. Therefore, DLCD contends, it cannot be precluded from challenging the adequacy of the mitigation in an appeal of the remand decision.

ORS 197.763(1) provides, in relevant part:

"An issue which may be the basis for an appeal to [LUBA] shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body * * * and the parties an adequate opportunity to respond to each issue."

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Under ORS 197.835(3), our scope of review is limited to issues that are raised below as provided by ORS 197.763 and the corresponding provisions at ORS 197.195 pertaining to limited land use decisions. Implicitly, the raise it or waive it rule in ORS 197.763(1) and 197.835(3) applies only where there was opportunity to raise an issue before the close of the record at or following the final evidentiary hearing. Generally, parties are not required to raise issues below regarding the adequacy of findings, the evidence supporting those findings, or interpretations of applicable criteria, when those findings or interpretations appear for the first time in the challenged decision. *Terra v. City of Newport*, 36 Or LUBA 582, 595 (1999); *Lucier v. City of Medford*, 26 Or LUBA 213, 216 (1993); *Eskandarian v. City of Portland*, 26 Or LUBA 98, 115 (1993); *Washington Co. Farm Bureau v. Washington Co.*, 21 Or LUBA 51, 57 (1991).

DLCD's first assignment of error in the present case is that the city's findings of compliance with OAR 660-012-0060(1) misconstrue the TPR and are not supported by substantial evidence. We agree with intervenor that, under the present circumstances, DLCD had an opportunity to raise those issues during the evidentiary proceedings below and its failure to do so waives the right to raise them before LUBA. The city's initial decision adopted findings of compliance with OAR 660-012-0060(1), based in part on the disputed condition requiring installation of a signal at Highway 101 and Dolphin Avenue. After DLCD appealed that decision to LUBA, the city withdrew the decision for reconsideration. The city then conducted further evidentiary proceedings, after which it adopted the decision challenged in this appeal, which also finds compliance with OAR 660-012-0060(1) based in part on the disputed condition. There is no question that DLCD had an opportunity during the evidentiary proceedings on reconsideration to raise the issues it now seeks to raise for the first time before LUBA under the first assignment of error. Therefore, those issues are waived.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

The city concluded that its inventory of buildable R-10 zoned land will satisfy its Goal 10 housing obligations despite the proposed rezone. It gave two reasons to support its

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conclusions: (1) the city's buildable lands inventory has a surplus of R-10 zoned land; and (2) as a condition of development approval for the subject property, intervenor is required to rezone approximately 19.98 acres of C-1 land to an R-10 or lesser zone. Record 22-24; 37. S1 DLCD contends that the city's findings that the city's inventory of R-10 zoned land will continue to satisfy Goal 10 after the subject property is rezoned to C-1 are not supported by substantial evidence. DLCD argues that the city cannot rely on an outdated buildable lands inventory to support its conclusion that Goal 10 is satisfied. DLCD explains that the buildable lands inventory was first adopted in 1978, and contains projections "to year 2000." Petition for Review 16. DLCD contends that the phrase "to year 2000," is most easily understood to mean "through the year 1999," and not to include the year 2000. DLCD argues that, even if the inventory is considered to be effective through the year 2000, the city's reliance on subsequent rezoning decisions to support a finding that there is a 5.84-acre surplus of R-10 zoned land is misplaced. According to DLCD, the city did not include changes in R-10 zoning designations from the time the buildable lands inventory was created in 1978 to the time the comprehensive plan was acknowledged in 1983. DLCD also argues that one of the properties that was added to the base inventory amount contains far fewer acres than the city's estimate.

DLCD also challenged the city's alternative finding, arguing that the city cannot rely on the additional acreage that is intended to be rezoned as part of this development proposal, because it is not apparent that those two parcels will actually be zoned R-10 or any other residential zone. DLCD points to testimony from one of intervenor's representatives, where he states that the Marlin site and the Harbor site would be suitable for wetlands mitigation zoning, or some other open-space designation. Record 460-63. DLCD contends that if the two sites are not zoned R-10, then the city does not have enough buildable land zoned R-10 to satisfy projected needs.

A. Reliance on the City's 1978 Buildable Lands Inventory

1. The Inventory and Post-Acknowledgement Updates

The Court of Appeals has held that, in adopting a comprehensive plan amendment

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implicating the supply of buildable land, a local government must rely on the planning documents that have been adopted to implement goal policies as a basis for decision making and cannot rely on contrary evidence that was not generated and adopted to implement the goals. *D.S. Parklane Development, Inc. v. Metro*, 165 Or App 1, 22, 994 P2d 1205 (2000); *Residents of Rosemont v. Metro*, 173 Or App 321, 333-34; ___ P3d ___ (2001); *1000 Friends of Oregon v. Metro*, ___ Or App ___, ___ P3d ___ (May 30, 2001). Here, the city relied on a planning document that was acknowledged to implement Goal 10, *i.e.*, its buildable lands inventory, and supplemented it by other evidence, *i.e.*, post-acknowledgement plan amendments, that also were adopted consistent with that goal.

As for DLCD's argument regarding the failure of the city to consider lands rezoned between creation of the buildable lands inventory in 1978 and when the buildable lands inventory was acknowledged in 1983, DLCD does not argue or cite to any evidence that the city rezoned any lands to or from R-10 between 1978 and 1983. Absent an argument that such evidence exists, DLCD had not demonstrated that the city's error, if any, in considering only rezones after 1983 undermined the accuracy of its buildable lands assessment.

2. Inaccuracy in Calculations

DLCD contends that the city erred by including one parcel in its calculation of post-acknowledgement plan amendments that have increased the supply of R-10-zoned land. DLCD explains that the city determined that tax lot 8-10-17-3900 (tax lot 3900) contains 42 acres that were rezoned from R-D to R-10. In fact, DLCD argues, tax lot 3900 currently contains only 16.44 acres, not 42 acres, *and* is currently zoned for open space and institutional use. According to DLCD, the city's open space and institutional zone prohibits residential housing. Therefore, DLCD contends the city's finding that there is a surplus of R-10 zoned lands is in error, because if 42 acres are subtracted from the total number of acres of R-10 zoned lands, there is a net *deficit* of 19 acres of R-10 zoned land. If the subject property is rezoned to C-1, DLCD contends that the net deficit increases to 34 acres.

Intervenor argues that DLCD has waived these arguments by not raising them below. According to intervenor, it presented evidence from DLCD's own files regarding the number of

Ex. 6-8

amendments and the number of acres included in those amendments to show that Goal 10 is satisfied. Intervenor contends that DLCD cannot now challenge that evidence before LUBA, because it did not challenge the evidentiary support for the city's conclusions below. Intervenor also argues that the evidence cited by DLCD regarding the current size and zoning of tax lot 3900 does not undermine the evidentiary support for the city's calculations. Intervenor points out that there is no indication that the current tax lot 3900 is the same tax lot 3900 that was rezoned in 1992. Even if it is assumed to be the same, intervenor argues, the size of tax lot 3900 could have been adjusted sometime after 1992. With respect to zoning, intervenor points to evidence that the current tax lot 3900 is zoned R-10. At best, intervenor argues, there is conflicting evidence in the record regarding the size and zoning of tax lot 3900. Intervenor argues that the Board should defer to the city's choice between conflicting evidence, because a reasonable person could reach the decision made by the city, in view of all the evidence in the record. *Carsey v. Deschutes County*, 21 Or LUBA 118, *aff'd* 108 Or App 339, 815 P2d 233 (1991).

We do not address intervenor's waiver argument because we agree with intervenor that, based on the evidence in the record, a reasonable person could reach the decision made by the city, even considering the contrary evidence cited by DLCD. DLCD has not demonstrated that the city's calculations regarding tax lot 3900 are unsupported by substantial evidence.

B. Rezoning of Land to R-10 as a Condition of Approval

DLCD also challenges the city's alternative findings that Goal 10 remains satisfied because the city required, as a condition of development approval for the 17.4 acres, that 19.98 acres of C-1 land must be rezoned to R-10. DLCD contends that it cannot be assumed that Goal 10 will be satisfied, because the condition of approval permits the city to approve a "lesser intense" zone. DLCD argues that a "lesser intense" zone may not permit the residential densities that are required for the city to continue to comply with Goal 10.

Intervenor responds that development on the subject property will not occur until a comparable amount of acreage is rezoned to R-10. Intervenor contends that the city correctly conditioned development to ensure no net loss of intermediate density housing, and that those

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conditions are sufficient to satisfy Goal 10.

We need not address the city's alternative conclusion that Goal 10 has been met by the imposition of conditions that require other, comparable property to be rezoned to R-10. As we explained above, DLCD has not demonstrated error in the city's conclusion that there currently is sufficient land designated R-10 to satisfy Goal 10, even with the rezoning of the subject property, irrespective of the condition requiring rezoning. *Sullivan v. City of Ashland*, 28 Or LUBA 699, 701 (1995) (an evidentiary challenge does not provide a basis for reversal or remand where the city adopts alternative, unchallenged findings that support a conclusion that a criterion is satisfied).

The second assignment of error is denied.

The city's decision is affirmed.

The 17.4-acre portion is comprised of tax lots 8-10-27-2800, 8-10-27-2802, 8-10-27-2900 and 8-10-27BC-800.

OAR 661-010-0021 provides in relevant part:

"(1) If a local government or state agency * * * withdraws a decision for the purposes of reconsideration, it shall file a notice of withdrawal with the Board on or before the date the record is due. A decision on reconsideration shall be filed with the Board within 90 days after the filing of the notice of withdrawal or within such other time as the Board may allow.

* * * * *

"(4) Petitioner(s) may seek review of the decision on reconsideration * * *."

OAR 660-012-0060(1) and (2) provide, in relevant part:

"(1) Amendments to * * * acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. This shall be accomplished by either:

"(a) Limiting allowed land uses to be consistent with the planned function, capacity, and performance standards of the transportation facility;

"(b) Amending the [transportation systems plan (TSP)] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;

"(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or

"(d) Amending the TSP to modify the planned function, capacity and performance standards, as needed, to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multimodal travel choices are provided.

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“(2) A plan or land use regulation amendment significantly affects a transportation facility if it:

“(a) Changes the functional classification of an existing or planned transportation facility;

“(b) Changes standards implementing a functional classification system;

“(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

“(d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP.”

14 At the time the city initially adopted its decision, OAR 660-012-0060(1) provided only three options for mitigating the significant effects a proposed amendment would have on a transportation facility. In 1998, the Land Conservation and Development Commission (LCDC) adopted OAR 660-012-0060(1)(d) to permit an additional option. Petitioner’s arguments concern only OAR 660-012-0060(1)(a) and (b), which were included in both versions of the rule.

5 ORS 197.610(3) provides, in relevant part:

“When [DLCD] participates in a local government proceeding [to amend an acknowledged comprehensive plan or land use regulation, DLCD] shall notify the local government of:

“(a) Any concerns [DLCD] has concerning [the proposed amendment]; and

“(b) Advisory recommendations on actions [DLCD] considers necessary to address the concerns, including, but not limited to, suggested corrections to achieve compliance with the [statewide land use planning] goals.”

15 The relevant city finding states:

“[Intervenor] shall mitigate transportation impacts as required by the TPR and [the Oregon Highway Plan] by undertaking those specific mitigation measures described in the August 4, 2000 letter from Kittelson & Associates * * *. These mitigation measures are described as follows:

“(a) A subsequent post-acknowledgement combined comprehensive plan map/zoning map amendment to change the existing plan map and zoning map designation on [an] 11.9 acre parcel from its current C-1 zoning to the R-10 zone or a lesser-intense zone (the ‘Harbor Site’).

“(b) A subsequent post-acknowledgment combined comprehensive plan/zoning map amendment to change the existing comprehensive plan map/zoning map designation on [an] 8.18 acre parcel from its current C-1 zoning to the R-10 zone or a lesser intense zone (the ‘Marlin Site’).

“(c) The installation of a traffic signal at the intersection of relocated [Dolphin Avenue] and * * * Highway 101 * * *.” Record 36-37.

17 We note, however, that we do not believe that ORS 197.610(3) imposes on DLCD a *greater* burden to specifically raise issues before the local government or that, if DLCD fails to provide suggestions to achieve compliance with statewide planning goals as required by ORS 197.610(3)(b), DLCD necessarily waives its right to raise the issue before LUBA under ORS 197.763(1) and ORS 197.835(3).

18 The city recognizes that its 1978 buildable lands inventory shows that there is a projected shortage of 20 acres of R-10 zoned land. Record 23. However, the city concluded that a net surplus of 23.14 acres of R-10 zoned land exists in 2000, due to subsequent rezoning decisions. *Id.* The city also concluded that with 17.4 acres being rezoned to C-1 as part of the challenged decision, there remains a net 5.84-acre surplus of R-10 zoned land. *Id.*

Ex. 6-11

Introduced by Commissioner: Jeff Hazen

Amending Ordinance Nos. 911-A and 934-A to the City of Warrenton
Combined Comprehensive Plan and Zoning Ordinance Map
and Changing the Plan and Zoning Designation of Tax Lots 2800, 2802 and 2900
of Tax Map 8-10-27 and Tax Lot 800 of Tax Map 8-10-27 BC
Containing 17.4 Acres from Intermediate Density Residential (R-10) to General
Commercial (C-1) and Adopting Findings of Fact In The Matter
Of City File No. ZC 1-99 (Decision on Reconsideration,
ODOT v. City of Warrenton, LUBA No. 2000-181/182)

WHEREAS, certain changes are necessary to revise, update and amend the city of Warrenton Zoning Ordinance and Comprehensive Plan combined map; and

WHEREAS, the Warrenton City Commission previously approved this application for a larger area, and

WHEREAS, the Oregon Land Use Board of Appeals remanded the approval to the City on appeal; and

WHEREAS, the Warrenton City Commission reviewed and held a public hearing to obtain public comment on this application on July 12, 2000, closed the public hearing on that date but left the written record open until September 27, 2000 for all parties to submit additional argument and evidence and thereafter found it necessary to revise, update and amend the City of Warrenton combined Comprehensive Plan and Zoning Map, and sets forth Findings which are attached hereto as "Exhibit A" and by this reference made a part hereof; and

WHEREAS, the Warrenton City Commission tentatively approved the application on October 4, 2000; and

WHEREAS, the Warrenton City Commission issued a final decision and mailed the notice of the decision to all parties with standing and to the Oregon Department of Land Conservation and Development on October 24, 2000; and

WHEREAS, the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development filed separate Notices of Intent to Appeal as early as November 8, 2000 challenging the decision; and

WHEREAS, pursuant to applicable Oregon Administrative Rules and Oregon Revised Statutes, the City withdrew its decision for reconsideration on November 29, 2000; and

Ex. 7-1
6

WHEREAS, pursuant to a notice of public hearing mailed to those entitled to notice on November 16, 2000, the City held a limited evidentiary hearing on December 6, 2000; and

WHEREAS, on December 13, 2000 the Warrenton City Commission closed the public hearing but left the written record open for all parties until December 13, 2000 at 5 p.m. and until December 15, 2000 at 5 p.m. for the applicant to submit written argument only; and

WHEREAS, the Warrenton City Commission has determined to approve this application with the attached findings and conditions of approval,

NOW, THEREFORE, the Warrenton City Commission does ordain as follows:


Section 1: The City of Warrenton combined Comprehensive Plan and Zoning Map Zoning and Plan designations is changed on Tax Lots Tax Lots 2800, 2802 and 2900 of Tax Map 8-10-27 and Tax Lot 800 of Tax Map 8-10-27 BC, as shown on Exhibit "B." Said area is located on a 17.3 acre parcel at the northeast corner of US Highway 101 and as Rodney Acres Road (also known as Dolphin Road) in the City of Warrenton, Clatsop County. The Findings adopted by the City Commission supporting this action are in "Exhibit A" and the property location map is "Exhibit B" and both are attached hereto and incorporated by reference herein.

Section 2: This ordinance shall become effective subject to the conditions of approval.

Section 3: If any article, section, subsection, subdivision, phrase, clause, sentence or word in this ordinance shall, for any reason, be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of the ordinance but shall be confined to the article, section, subdivision, clause, sentence or word so held invalid or unconstitutional.


PASSED by the City Commission of the City of Warrenton, Oregon, this 20th day of December, 2000.

APPROVED by the Mayor of the City of Warrenton, this 20th day of December, 2000.


Barbara Balensifer, Mayor

FIRST READING: December 20, 2000.

SECOND READING: December 20, 2000.



Scott Derickson, City Manager

Date the Notice of this Decision mailed by the City to parties with standing and to the Department of Land Conservation and Development on the required form:
December 21st, 2000.

Ex. 7-3

8

EXHIBIT "A"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FOR CITY OF WARRENTON COMBINED COMPREHENSIVE
PLAN/ZONING MAP AMENDMENT, FILE NO. ZC 1-99,
WARRENTON LAND AND INVESTMENTS, LLC

DECISION ON RECONSIDERATION PURSUANT TO OAR 661-010-0021;
ODOT V. CITY OF WARRENTON,

LUBA NO. 2000-181/182

Ex. 7-4
9

LUBA held that the City's decision was inadequate because it did not address issues raised regarding local street capacity. LUBA did not reject the finding made by the City that streets be available without respect to capacity.

Affected streets include US Highway 101, a state facility, and several city street intersections with US Highway 101—101/ Harbor Street, 101/Neptune Avenue, 101/Martin Avenue, 101/Dolphin Avenue and 101/Ft. Stevens Highway (Ft. Stevens Highway is also a state facility). The June, 2000 TIS finds that only the local street and Ft. Stevens Highway intersections are affected by this application. As explained elsewhere, the applicant has proposed mitigation, and the City Commission will require such mitigation as conditions of approval, that will ensure that these intersections can accommodate a 165,000 square foot shopping center. The September 27, 2000 Kittelson letter also concludes at page 3 that “. . . the local Warrenton transportation system is not significantly affected . . .” by the application and that the local streets are wide enough to accommodate traffic from this development. The City Commission finds that this is substantial evidence that local streets have sufficient width and capacity to accommodate the proposed use of a retail shopping center limited to 165,000 square feet.

The City Commission finds that this criterion also applies to state facilities. As explained elsewhere, this criterion is capable of being satisfied through appropriate conditions of approval that ensure that state facilities are present with adequate capacity to serve the application.

4. The City Commission Finds That Statewide Planning Goal 10, “Housing”, is Satisfied.

Goal 10 requires cities to “provide for the housing needs of citizens of the state.” LUBA found that the City's finding demonstrating compliance with Goal 10 was inadequate because it did not discuss the City's acknowledged Goal 10 elements or explain why relied-upon evidence was consistent with the acknowledged Plan. LUBA agreed with Petitioners that the City could demonstrate compliance Goal 10 by showing either that the acknowledged Goal 10 inventory shows that there is a surplus of at least 41 acres of intermediate residential housing over the relevant planning period or that the rezoning will not affect the City's housing inventory as the equivalent of a Goal 10 inventory. (*Id.*, slip op 14-15.)

* The City Commission finds that Goal 10 is satisfied for two reasons. First, one of the proposed conditions of approval requires the applicant to seek a subsequent post-acknowledgment amendment approval to rezone approximately 19.98 acres from C-1 to R-10. The applicant has proposed that this application be conditioned on the rezoning of 19.8 acres. Thus, prior to the development of this property, the applicant must obtain approval of a rezoning of more than 17.4 acres from C-1 to R-10. The effect of this condition of approval means that the City loses no residential inventory and, in fact, the City will gain 2.58 acres of residential inventory.

The City Commission also finds, based upon Exhibits 8 and 16 to the September 27, 2000, letter that there is surplus of Goal 10 land within the City. LUBA required the City to discuss the City's acknowledged Goal 10 element and to explain why this proposed amendment is consistent with that element. As of the 1983 acknowledgment, the City had a deficit of 20.0 acres in the R-10 district and a total deficit of 10.5 acres for Goal 10 land. Since the 1983 acknowledgment, the City has processed four (4) post-acknowledgment amendments involving housing land. Considering these amendments, the City now has a surplus of 23.14 acres of R-10 zone land (341.14 acres of vacant buildable land with 318.0 acres needed), with a total surplus of 29.64 acres of Goal 10 land. Even without the mitigation acreage noted above, the reduction of the R-10 surplus by 17.4 acres leaves a surplus of 5.84 acres.

The petitioners argued, and LUBA agreed, that reliance on the CREST report to comply with Goal 10 was unsatisfactory because the City's finding did not explain how the CREST report complied with Goal 10's requirement that a buildable lands inventory meet present and future needs. (*Id.*, slip op 15.) In this case, the City Commission finds that Exhibit 16 meets this requirement. Exhibit 16 contains the notice of adoption for each of the residential post-acknowledgment applications since 1983 and the 1983 Background Report. Taken together, these documents show that the original Goal 10 acknowledgment continues to be satisfied by providing for a sufficient amount of acreage to meet the city's housing needs.

Page 33 of the Warrenton Background report was approved by the City Commission on April 19, 1982. The Background Report is part of the City of Warrenton's acknowledged Comprehensive Plan. Page 33 of the City's Background Report adopts Tables 24 and 25 relevant to vacant buildable acreage and projected building acres needed by housing type. The R-10 zoning district is an intermediate density residential zone shown in Table 24 as "R-0". The June 29, 1983 LCDC Acknowledgment of Compliance Report; Response to Continuance Granted December 21, 1982" at Page 3, under section IV, "Findings", notes that on December 21, 1982, LCDC reviewed the City's compliance request and found, among other Goals, Goal 10 to be satisfied. This followed the City's request for acknowledgment a second time when it submitted amendments to its Plan and implementing measures on June 15, 1982, which is after the April 19, 1982 approval of the Background Report.

LUBA has approved of this kind of analysis to demonstrate that a city satisfies a Goal requirement for land inventory. In Herman v. City of Lincoln City, ___ Or LUBA ___ (LUBA No. 98-146, August 18, 1999), LUBA upheld a challenge to the City's compliance with Goal 10. In its decision, LUBA described the steps the City took to conclude that the City still satisfied Goal 10 after the challenged decision, including the City's reliance on an approved land use development adding about 1000 residential units. LUBA found that the City's analysis was adequate because a "reasonable person could conclude that the additional [residential units] approved [by the City] was sufficient to ensure that the City meets its obligation to provide [Goal 10 Housing]." (*Id.*)

the first phase in the context of a limited evidentiary hearing in which DLCD failed to explain how this criterion is relevant to the scope of that hearing. Further, the City finds that the provision is inapplicable in any event because the proposed amendment will not significantly affect a transportation facility.

Additionally, the City Commission finds that OAR 660-012-0045(3)(a)-(e) are satisfied by this application. This provision requires that bicycle parking facilities be part of new retail developments, that on-site facilities be provided with safe and convenient pedestrian bicycle access, that bikeways be provided along arterials and major collectors and that sidewalks be required along arterials, collectors and most local streets but sidewalks are not required along controlled access roadways, and that internal pedestrian circulation within new commercial development be provided through clustering of buildings, construction of accessways, walkways and similar techniques. The City Commission finds that conditional of approval 4, as previously adopted by the City Commission, and as proposed to be adopted in this decision, addresses these requirements.

Moreover, the City Commission will amend conditional of approval 4 to provide that the "large scale development" approval process include the requirements of OAR 660-012-0045(3). The City Commission finds based on the evidence before it and the representations of the applicant that it is feasible to satisfy these requirements through the large scale development process.

Finally, the City Commission finds that OAR 660-012-0020(2)(b) is satisfied because OAR 660-012-0060(6) provides for the on-site alignment of streets or accessways with existing and planned arterial, collector, and local streets surrounding the site as necessary to implement the requirements in Section 0020 to (b) * * *." The City Commission finds that there are no existing streets necessary for extension nor are any additional connections required to existing or planned streets and that connections to neighborhood destinations exist via Rodney Acres Road (existing and as proposed to be relocated) and U.S. Highway 101.

F. Several of the City Commission members acknowledged ex parte contacts with the applicant. The City Commission members, pursuant to ORS 227.180(3)(a)-(b), announced the substance of the oral ex parte communications concerning the application and concluded that such communications did not cause them to prejudge the application. The ex parte communications were revealed at the first public hearing following the communication. No party requested an opportunity to rebut the substance of the ex parte communications nor did any party object to the disclosure of the ex parte communications.

G. One witness raised the issue of impact on existing sanitary sewer and waterlines in Rodney Acres Road. The City Commission finds that that issue can be adequately dealt with through a public street vacation process, should such an application be submitted in the future.

III. Conditions of Approval.

The City Commission approves this application with the following conditions of approval:

1. This application shall be limited to 17.4 acres on the east side of Rodney Acres Road (also known as Dolphin Road), consisting of Tax Lots 8-10-27-2800, 8-10-27-2900, 8-10-27-BC-800 and 8-10-27-2802. In the event that a condition of approval is implemented to require dedication of right-of-way for the relocation of Rodney Acres Road to US Highway 101 through the northern portion of this property and such relocation would result in a land area less than 17.4 acres, this condition shall allow the applicant to amend this condition of approval through a subsequent post-acknowledgment application process to include additional acreage up to 17.4 acres, subject to the process in Conditions of Approval 8, 9, and 13, below.


2. The use on the site shall be limited to a retail shopping center consisting of no more than 165,000 square feet.


3. No direct vehicular access to US Highway 101 shall be permitted from this site. Vehicular access shall be to adjacent local streets (including but not limited to Rodney Acres Road) or, in the event that Rodney Acres Road is realigned to cross or abut this site, as shown in Exhibit A attached hereto and as described in Condition 10(b), below, to that street, subject to condition 10, below. This condition shall not prohibit access to a state right-of-way for pedestrians or bicyclists or for construction of a transit pullout.

4. Prior to approval of building permits for buildings, the applicant shall submit an application for "Large Scale Development" approval under WZO section 7.700. The Large Scale Development application shall include the requirements of WZO section 7.700, and the location and grouping of buildings, building setbacks, amount and location of off-street parking, common vehicular and non-vehicular access points, transportation improvements, height of buildings, design features to ensure compatibility with near-by residential, business, public and semi-public, open spaces areas and wetlands, and other information that may be required by the City, including the requirements of OAR 660-012-0045(3). The applicant shall also be required to facilitate bicycle/pedestrian/transit (Sunset Transit District) "friendly" development that includes but is not limited to a bus pullout and bus shelter, convenient and safe pedestrian connections between street frontages and buildings, convenient and safe bicycle connections to the site, bicycle parking, and building orientation, where practicable, to streets. The review shall require that issues related to compatibility shall be addressed through at least the consideration of the design features on pages 21 and 22 of LUBA No. 99-153. The City shall process the Large Scale Development application with notice to ODOT, DLCD and property owners as required by state and local law prior to the required Planning Commission hearing.

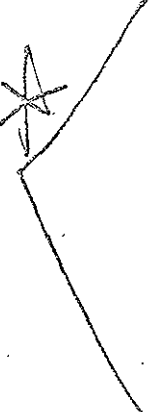
5. The applicant shall mitigate transportation impacts as required by the TPR and OHP by undertaking those specific mitigation measures described in the August 4, 2000 letter from Kittelson & Associates, a copy of which is attached hereto. These mitigation measures are described as follows:

Ex. 7-8
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- a. A subsequent post-acknowledgment combined comprehensive plan map/zoning map amendment to change the existing plan map and zoning map designation on a 11.9 acre parcel from its current C-1 zoning to the R-10 zone or a lesser-intense zone. (the "Harbor Site")
 - b. A subsequent post-acknowledgment combined comprehensive plan/zoning map amendment to change the existing comprehensive plan map/zoning map designation on a 8.18 acre parcel from its current C-1 zoning to the R-10 zone or a lesser intense zone. (the "Marlin Site").
 - c. The installation of a traffic signal at the intersection of relocated Rodney Acres Road and U.S. Highway 101 pursuant to condition of approval 11, below.



This post-acknowledgment amendment (a combined comprehensive plan map/zoning map amendment) shall be final but not effective and no commercial building permits (except for site preparation permits for construction subject to condition of approval 6, below) shall be approved until the applicant completes the mitigation measures described herein except that the applicant is not required to install the traffic signal to relocated Rodney Acres Road/U.S. Highway 101 until such time as the traffic signal is warranted and approved pursuant to condition of approval 11, below. The applicant shall be responsible for obtaining the subsequent post-acknowledgment comprehensive plan map/zoning map amendment of the two parcels and acreage as described above and in the August 4, 2000 Kittelson letter and in a subsequent post-acknowledgment application (enclosed) which shall be subject to required notice and public hearing process consistent with the post-acknowledgment process. No commercial building permits may be issued for this site (except that the City may allow the applicant to prepare the site for construction is noted above.) Until those applications are finally approved by the Warrenton City Commission, applicable appeal periods have ended and the applications are deemed acknowledged.



This amendment shall be final but not effective and no commercial building permits (except for site preparation permits for construction subject to condition of approval 6, below) shall be approved until the applicant completes the mitigation described in the August 4, 2000 letter from Kittelson and Associates. The applicant shall be responsible for obtaining the rezoning of the acreage described in the Kittelson letter in a subsequent post-acknowledgment application(s) which shall be subject to required notice and public hearing process. No commercial building permits may be issued for this site, except that the City may allow the applicant to prepare the site for construction and may issue such site preparation permits, until the subsequent post-acknowledgment applications are finally approved by the Warrenton City Commission, applicable appeal periods have ended and the applications are deemed acknowledged.

Ex. 7-9
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6. Any grading or site preparation activity shall comply with City standards for erosion control and, if applicable, with the erosion control program administered by the Oregon Department of Environmental Quality ("DEQ"). A copy of the completed DEQ permit application and any supporting documents shall be provided to the City. To the extent that any standards for erosion control imposed by the City or DEQ do not so provide, erosion control measures will be implemented as necessary to prevent soil, sediment, and construction debris from being discharged off-site during all clearing, grading, excavation and other site preparation work. Such erosion control measures shall be maintained in place until all landscaping work on the site is complete.

7. A stormwater mitigation plan shall be required at the time of Large Scale Development review. At a minimum, this plan shall include stormwater mitigation measures that address oil and grease and flow volume.

8. Any activities contrary to these conditions shall require prior modification of the conditions of approval requiring public notice and public hearing before the Planning Commission and City Commission as an amendment to this decision. OAR Chapter 734, Division 51 shall apply to any change of use of an approach road to a state highway.

9. Any improvements to local streets or state highways required as mitigation in these conditions shall be made (a) prior to commercial development of the site, or (b) concurrently with commercial development of the site, or (c) after commercial development of the site but in the event of (c), subject to traffic monitoring and development agreement between the City, ODOT and the applicant. Alternatively, the applicant may submit a revised traffic impact study to the City and ODOT demonstrating that some or all of the mitigation measures listed in the June, 2000 traffic study or the August 4, 2000 letter are not warranted. The City shall coordinate its evaluation of a revised traffic impact study with ODOT and DLCDC. The modification is subject to the process in Conditions of Approval 8 and 13.

10(a). Applicant shall install at its expense a mountable separator on U.S. Highway 101 to prohibit the following two turn movements: (1) left turns from U.S. Highway 101 to Spur No. 104 and (2) left turns from Spur No. 104 to U.S. Highway 101. Applicant shall install a deceleration lane and acceleration lane on U.S. Highway 101 to and from Spur No. 101. Applicant shall be responsible for obtaining any necessary approvals and permits from ODOT, including authorization to work in the ODOT right-of-way. Applicant shall make the improvements herein subject to applicable ODOT standards. Applicant shall provide any bonds or other assurances of quality of work as typically required by ODOT.

10(b). Applicant shall construct as a city street Phase I of the Rodney Acres Road Realignment in the general alignment shown in Exhibit A attached hereto provided that it meets any applicable city standards and ODOT standards for a District Highway. Applicant shall be responsible for obtaining any necessary approvals and permits from ODOT, including

authorization to work within the ODOT right-of-way. Any driveway, public road or public street connecting to Phase I of the Rodney Acres Realignment shall be 400 feet from U.S. 101 and as shown on Exhibit A, attached hereto. ODOT shall review and approve the plans and specifications for Phase I of the Rodney Acres Road Realignment. Phase I of the Rodney Acres Road Realignment consists of two segments, which are shown in Exhibit A as Phase I West Leg and Phase I South West Leg. The City or property owner agrees to transfer at no cost the Phase I West Leg of the Rodney Acres Road Realignment as shown in Exhibit A to ODOT at such time as ODOT determines it is in the state's interest to include the Phase I West Leg as a state highway facility.

10(c). The Applicant may apply for the vacation of a portion of existing Rodney Acres Road upon the opening of the relocated Rodney Acres Road and ODOT has agreed to consent to the vacation as an abutting property owner.

10(d). The specific design and timing of these requirements shall be established in the "Large Scale Development" approval under condition of approval (4), above.

11. A traffic signal at relocated Rodney Acres Road/US Highway 101 shall be installed by Applicant when ODOT determines that the intersection meets standard signal warrants and a signal is approved by the State Traffic Engineer. These improvements shall be made consistent with the timing of the requirements in Condition of Approval 9, above.

12. If the improvements listed in Condition of Approvals 10 and 11 are not to be made until after development and subject to a traffic monitoring agreement between the City, ODOT and the applicant, the City shall require a bond, a letter of credit or other acceptable security device or instrument deemed adequate by the City, prior to commercial development, to assure that such improvements will be made, unless subsequently waived or modified by the City in consultation with ODOT in the process required in Conditions of Approval 8, 9 and 13.

13. Consistent with Condition of Approval 8, above, the City shall not waive or modify the improvements listed in Conditions of Approval 4, 5, 10 and 11, above, without first holding a public hearing and following procedures of public notice and opportunity to be heard of the same dignity as this post-acknowledgment process. Such proceeding shall be pursuant to an application to modify or eliminate a condition of approval of this order and shall be subject to the usual appeal rights to LUBA and the Oregon Court of Appeals and the Oregon Supreme Court."

14. This decision and the conditions of approval shall be recorded in the records of deeds of real property for Clatsop County and shall run with the land.

Ex. 7-11
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"Making a difference through excellence of service"



CITY OF WARRENTON

City of Warrenton Planning Commission Minutes – Regular Meeting, August 8, 2001

I. & II. CALL TO ORDER/ROLL CALL

Commission Chair Maggert called the meeting to order at 7:30 PM

Members Present:

Commission Chair Maggert, Vice Chair Camp, Commissioners Smotherman, Shannon, Walter, Johnson, and Williams.

Members Absent:

None.

Staff Present:

Patrick Wingard, City Planner

III. PUBLIC COMMENT

None.

IV. APPROVAL OF MINUTES

Commissioner Smotherman moves to adopt the Minutes of the July 11, 2001 meeting, as presented. Commissioner Shannon seconds. Motion carries unanimously.

V. PUBLIC HEARINGS

Commission Chair Maggert explains that there are two public hearings on tonight's Agenda.

1. Warrenton Land & Investment's application for a zone change from C-1, General Commercial, to A-3, Aquatic Natural Zone, for approximately 11.9 acres of property located about 1000 feet north of the E. Harbor Drive/US Hwy 101 intersection. The property abuts Youngs Bay. ZC-01-1.

Chair Maggert reads a prepared statement that explains the rules and procedures for conducting land use hearings, including the importance of establishing party status.

- Representatives for Warrenton Land & Investment are noted as being present in the audience (Martin Nygaard, Mark Barnes, Mike Robinson)
- An audience member (Don Binckley) erroneously requests party status for this public hearing; City Planner Wingard explains that he is affected by the next public hearing (the "Marlin site") and that he will establish party status at that meeting.

The Planning Commission discloses that there have been no ex-parte contacts or other conflicts of interest in this matter with one exception. Commissioner Williams announces possible conflicts of interest for the next public hearing (ZC-01-2; the "Marlin Site"). He states that he can be objective in this matter. No audience members object to his participation.

City Planner Wingard reads selected portions of the staff report into the record. Wingard adds a Kittleson & Associates letter dated July 18, 2001 to the record as **Exhibit 8**.

TESTIMONY OFFERED IN FAVOR OF THE REQUEST:

Mark Barnes, 800 Exchange Street, Suite 410, Astoria. – Mr. Barnes begins his discussion by referring to an enlarged assessor plat showing the subject property outlined in highlighter. (The same picture is included in the Planning Commission staff report as Exhibit 1.) Mr. Barnes points out that the southerly boundary of the subject property commensurate with the dike. He also states that since the dike is not shown on the assessor plat, that the acreage and location of the highlighted boundary is an approximation.

Mr. Barnes gives a brief background on the matter, explaining that this zone change is resultant from a zone change that took place earlier this year (ZC-1-99; Ordinance 1041-A). He explains that this zone change offers traffic mitigation for US Hwy 101 at its intersection with E. Harbor Drive. Mr. Barnes describes the concept of “down-zoning” where a property is taken from a more intense classification and “down-zoned” to a less intense categorization; in this case taking 11.9 acres of general commercial property and making it aquatic natural zone.

Commissioner Shannon asks why Kittleson’s traffic study was done at 8:15 PM. Commissioner Shannon also wishes to clarify that this application is a voluntary request by the applicant that there shall be no Measure 7-type claims as a result of this “down-zoning”.

Mark Barnes states that he does not know why the traffic study was done in the evening. He concurs that this is a voluntary application.

TESTIMONY IN OPPOSITION:

None.

COMMISSION QUESTIONS FOR THE APPLICANT/STAFF:

Commissioner Williams inquires about the developable potential of this property.

Chair Maggert points out that the property is located on the seaward side of the dike and is inundated during high tides.

Mark Barnes states that while the property does have significant environmental constraints, it is zoned to allow commercial development and several coastal communities have constructed commercial buildings over water.

Commissioner Williams notes that commercial property along Hwy 101 is valuable. Does the applicant want to forego this economic opportunity.

Martin Nygaard, applicant, states that he did not want to down-zone this property but had to to appease state agencies.

CHAIR MAGGERT CLOSES THE PUBLIC HEARING AT 7:50 pm AND BEGINS DISCUSSION BY THE COMMISSION.

Some commissioners concur that this proposal is a win, win for the applicant and the community.

Ex. 8-2

Commissioner Shannon points out that it makes more sense to have a higher residential density adjacent to general commercial property.

Mark Barnes explains the traffic mitigating effect that the R-10 zone offers rather than what high density residential property would offer.

The Planned Unit Developments (PUD) concept and wetland issues for the property are discussed.

Commissioner Johnson discusses the project in the 1960's that included this section of land (aluminum smelting plant on what is now known as the 'North Coast Business Park').

PARTIES IN OPPOSITION:

Don Binkley asks about the impacts that would result to his property as a result of this proposal. He states concerns about access, wildlife habitat, storm drainage, and wetlands. He explains that he hopes that his single-family residence may eventually be bought out, along with other area properties, by a large commercial operation.

Commissioner Shannon assures Mr. Binkley that any residential subdivision proposal will be met with conditions of approval, including provisions for stormwater management.

Planner Wingard explains that residential developments tend to have more open space and less impervious surface than commercial developments.

Don Binkley cites negative drainage impacts that resulted to his property when J&S Appliance went in. He reiterates his concerns about the resale value of his home with regard to being adjacent to residential property rather than adjacent to more commercial land.

REBUTTAL:

Mark Barnes agrees with staff that residential development tends to have less impervious surface than commercial developments. Mr. Barnes points out that the city requires stormwater mitigation plans in conjunction with subdivisions. He points out that he is not a real estate appraiser but it would seem that as the supply of commercial property decreases it may make his remaining commercial property more valuable. Mr. Barnes points out that residential development has better opportunities for greenspace and wildlife habitat than commercial development can.

CHAIR MAGGERT CLOSES THE PUBLIC HEARING AND OPENS THE MATTER FOR DISCUSSION BY THE PLANNING COMMISSION

Commissioner Williams pontificates on the recent visioning process and how it fits in with this proposal. Does this zone change benefit the whole city?

Commissioner Johnson ask how wide the subject property is.

Mark Barnes states about 350' at its widest spot to 230' at its narrowest.

Commissioner Shannon points out that Fort Steven Hwy. offers commercial property and the Planning Commission is being asked to honor an agreement that was made in the past.

Mike Robinson asks the Chair if he may address some new items that have come up during these discussions.

EX. 8-4

Chair Maggert allows him to speak.

Mike Robinson points out that the City has not adopted the Visoing statements. Mr. Robinson points out the largest adjoining property owner (Henry Willener) is not present tonight. He explains the lengthy process that would ensue if a different property were chosen to mitigate the traffic effects of the past zone change.

Other comments are voiced; however, the hearing is closed and the Chair did non grant them the opportunity to offer new testimony.

Commissioner moves to adopt staff alternative no. 1 adopting staff's findings along with the applicant's. Commissioner Johnson seconds. Passes unanimously, 7-0.

VI. OTHER BUSINESS

Planner Wingard announces an upcoming workshop on the Marlin Avenue intersection.

A progress report on Westside Meadows Subdivision is given.

VII. GOOD OF THE ORDER

None.

VIII. ADJOURNMENT

Chair Maggert adjourns the hearing at 8:50 PM.

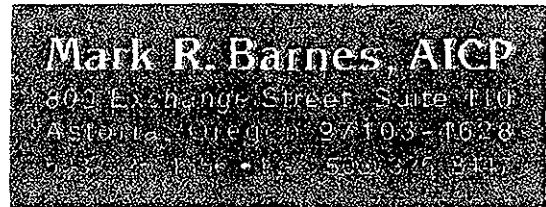
Respectfully submitted,
Patrick Wingard
Warrenton City Planner

Gillian Maggert, Planning Commission Chair

Ex. 8-5

7 September 2001

Patrick Wingard
City of Warrenton
P.O. Box 250
Warrenton, OR 97146
fax: 503/861-2233



re: Warrenton Land and Investment; ZC-01-1 and ZC-01-2

Dear Patrick;

Thank you for taking the time to meet with Martin Nygaard and me last Monday the 27th of August. We described some changes to the two zone changes that Warrenton Land & Investment wishes to make to their two pending applications, and you accepted revised maps pending a confirmation letter from me. This letter confirms our discussion last week, and also provides some additional findings with respect to the relationship between the current proposed zone changes and the approval conditions of the previous amendment for the Dolphin Avenue property.

Warrenton Land & Investment currently has two amendment requests pending before the City: one affecting land located west of Marlin Avenue, and one affecting property located north of the Harbor Drive. The revisions we discussed with you affect both of these amendments.

Warrenton Land & Investment has recalculated the acreage at Harbor Drive site (ZC-01-1). In the original application material for this amendment, I stated that a total of about 11.9 acres were involved. Warrenton Land & Investment has re-calculated the size of this site at about 14.02 acres.

Because the Harbor Drive site is somewhat larger than originally estimated, Warrenton Land & Investment can reduce the acreage of the Marlin Avenue site to 6.84 acres, and still meet the requirements of the approval condition in Ordinance 1041-A and in the Kittelson TIS. The reduction is shown on the attached map.

At our meeting on Monday 26 August you asked for some additional findings demonstrating that the current proposals are sufficient to meet condition five of ordinance 1041-A. These are provided below.

- Condition 5 of ordinance 1041-A reads as follows:

The applicant shall mitigate transportation impacts as required by the TPR and OHP by undertaking those specific mitigation measures described in the August 4, 2000 letter from Kittelson & Associates, a copy of which is attached hereto. The mitigation measures are described as

Ex. 9-1

ZC-01-1 and ZC-01-2

7 September 2001

Page 2

follows:

a. A subsequent post-acknowledgment combined comprehensive plan map/zoning map amendment to change the existing plan map and zoning map designation on a 11.9 acre parcel from its current C-1 zoning to the R-10 zone or a lesser-intense zone. (the "Harbor Site")

b. A subsequent post-acknowledgment combined comprehensive plan/zoning map amendment to change the existing plan map/zoning map designation on a 8.18 acre parcel from its current C-1 zoning to the R-10 zone or a lesser-intense zone. (the "Marlin Site")

- A traffic impact study prepared by Kittelson & Associates, dated 4 August 2000 indicates that zone changes can provide satisfactory mitigation for the traffic impacts of the Dolphin Avenue zone change.
- The Kittelson report reached its conclusion based on about 20.08 acres of downzoning. The proposals now before the City include 20.86 acres of downzoning.
- A letter from Mark Vandehey of Kittelson & Associates dated 18 July 2001, and a part of the record for these proceedings, confirms that the proposed amendments sufficiently mitigate traffic impacts associated with the Dolphin Avenue amendments.
- Based on this, the City should find these zone changes sufficient to meet the requirements of condition 5 of ordinance 1041-A.

I will attend the City Commission hearing on this matter on 19 September 2001. Please let me know if you need any additional information. Thanks for your help and cooperation on this matter.

Yours Sincerely,



Mark R. Barnes, AICP

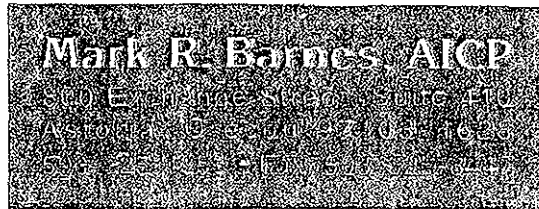
copy: Warrenton Land & Investment, LLC
Michael C. Robinson, Stoel Reeves LLP
Mark Vandehey, Kittelson & Associates

attachments: revised map, Marlin Avenue site

Ex. 9-2

18 September 2001

Patrick Wingard
City of Warrenton
P.O. Box 250
Warrenton, OR 97146
fax: 503/861-2233



re: Warrenton Land and Investment; ZC-01-1 and ZC-01-2

Dear Patrick;

You asked me to provide written confirmation of the difference between the current proposal and the proposal approved by the Planning Commission for ZC-01-2; and to comment on the public notice for both ZC-01-1 and ZC-01-2.

Concerning ZC-01-2, the proposal before the board differs slightly from that reviewed by the Planning Commission. The current proposal does not include anything south of block 43. The proposal as approved by the Planning Commission included a portion of block 48, as well as the adjoining streets. The Current proposal does not include block 48, nor does it include the unimproved street right-of-ways surrounding block 48. This is shown on the attached map.

Concerning the public notices for both ZC-01-1 and ZC-01-2; we have reviewed the notices and are satisfied that they meet the applicable requirements of the City's code and state statute.

Thanks for your help and cooperation on this project.

Yours Sincerely,

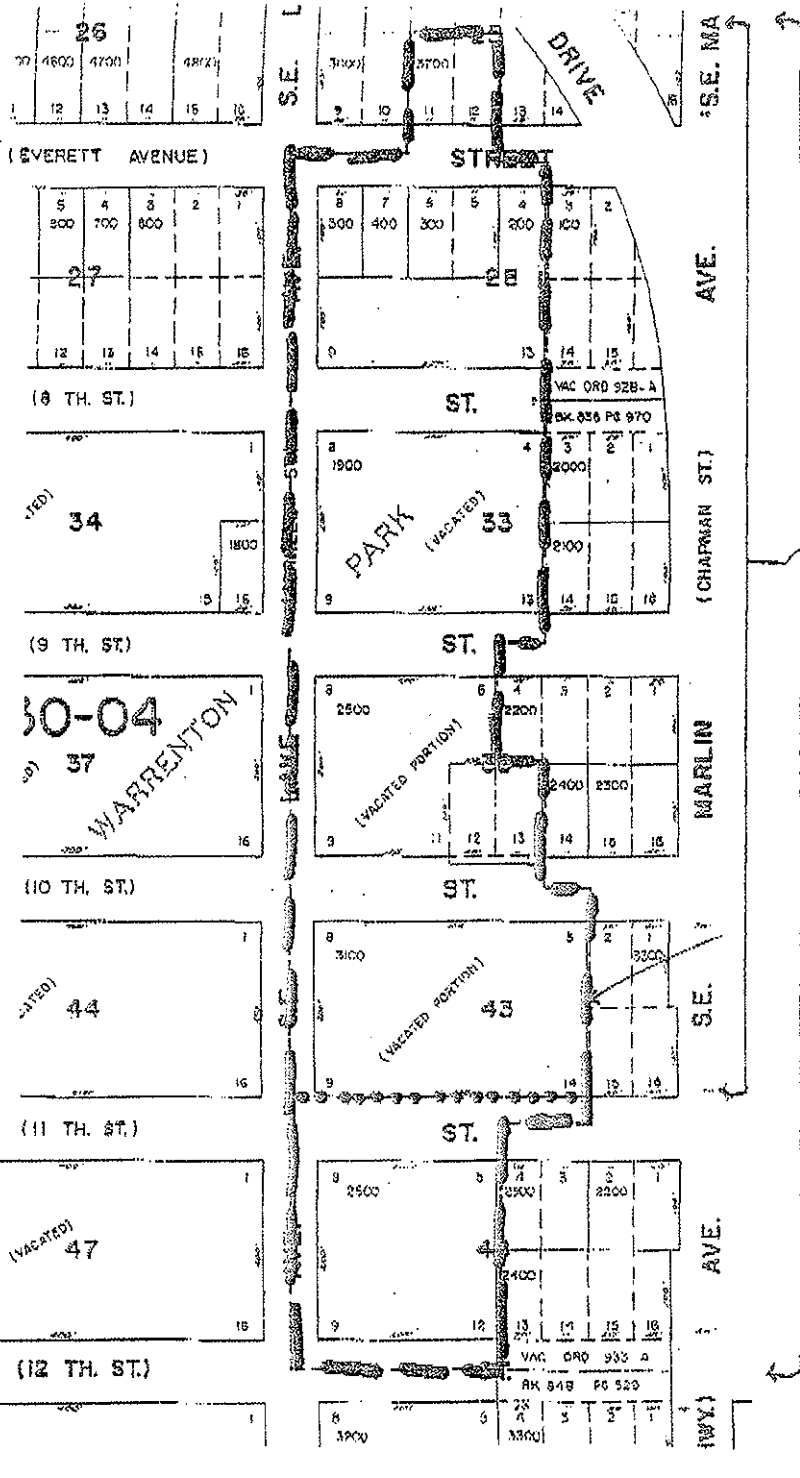
A handwritten signature in black ink, appearing to read 'Mark R. Barnes'.

Mark R. Barnes, AICP

copy: Warrenton Land & Investment, LLC
Michael C. Robinson, Steel Reeves LLP
Blair Henningsgaard, Attorney at Law

attachments: revised map, Marlin Avenue site

Ex. 10-1



with modifications described in the letter

As approved by Warrenton Planning Commission

Ex 10-2