CITY OF OREGON CITY

Community Development Department, 320 Warner Milne Road,
P.O. Box 3040, Oregon City, OR 97045, (503) 657-0891
www.ci.oregon-city.or.us

2017 JUL 14 PM 2:11

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CITY OF OREGON CITY

APPEAL OF A LAND USE DECISION

FILE # **AP** _____ (of File #) HR 17-04 DATE: 7/14/2017

NAME: McLoughlin NA TELEPHONE #: 503-656-4884

ADDRESS: c/o Jesse Buss, 411 5th St., Oregon City OR 97045

ADDRESS OR PROPERTY DESCRIPTION (T/R/S) OF SUBJECT PROPERTY:
122 S. Center St., 122 S. John Adams St., 204 S. John Adams St., 206 S. John Adams St., 220 S. John Adams St.

SUBJECT OF APPEAL: NOTICE OF DECISION DATE: 6/30/17 For File #:
HR 17-04: Historic Review for a new Public Works Operations facility in the McLoughlin Conservation District

The undersigned hereby appeal(s) the decision of the Historic Review Board

concerning the subject case. The decision to approve X deny ____ the application was made at the meeting held on June 27, 2017.

REASONS FOR APPEAL: Please include a statement identifying which approval criteria are violated by the decision and an explanation of how those criteria are violated, or stating how the decision is otherwise in violation of applicable law. Please see Chapter 17.50 of Oregon City Municipal Code for Administration & Procedures concerning Appeals.

See attached letter (22 pages).

FILING FEE PAID: $50 DATE PAID: _____ RECEIPT NO.: _____

~~Property Owner Signature~~ Jesse Buss, MNA — 411 5th St., Oregon City Address

Property Owner Signature — Address

****SIGNATURES REQUIRED IF APPLICABLE****

Signature — Address

_____ Contract Purchaser _____ Lessee _____ Prospective Purchaser

411 FIFTH STREET
OREGON CITY, OREGON 97045-2224
WWW.JESSEBUSS.COM

JESSE A. BUSS
ATTORNEY AT LAW

PH 503-656-4884
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JESSEBUSS@GMAIL.COM

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CITY OF OREGON CITY

July 14, 2017

City of Oregon City
Community Development Department
Attn: Planning Division
221 Molalla Ave., Suite 200
PO Box 3040
Oregon City OR 97045

RE: Notice of appeal regarding the Historic Review Board's decision issued June 30, 2017 in File No. HR 17-04 (Historic Review for a new Public Works Operations facility in the McLoughlin Conservation District)

Planning File No. HR 17-04

To Whom it May Concern:

Please be advised that I represent the McLoughlin Neighborhood Association (MNA) in the above-referenced matter.

On June 30th the Historic Review Board (HRB) issued a Notice of Historic Review Board Decision ("Notice of Decision") regarding Planning File No. HR 17-04 (Historic Review for a new Public Works Operations facility in the McLoughlin Neighborhood). This letter and the attached Appeal of a Land Use Decision form constitute the MNA's Notice of Appeal of the HRB's decision.

The MNA has standing to pursue an appeal of the HRB's decision because the MNA is a recognized Oregon City neighborhood association and the MNA submitted oral and written comments to the HRB before the decision was issued. The MNA is interested in this matter because the proposed development, the site of which is located within the boundaries of the McLoughlin Neighborhood, would impact the neighborhood and its residents.

The grounds for the appeal are as follows:

1. The HRB's Notice of Public Hearing and the posting of that Notice were deficient.
2. The HRB lacked authority to issue the requested permit until August 16, 2017.
3. The HRB failed to consider applicable code and Comprehensive Plan criteria and other requirements for this application.
4. The application fails to meet the requirements of the Oregon City Municipal Code and several Comprehensive Plan goals and policies. The proposed development would

eliminate existing parkland that is part of Oregon City's Goal 8 inventory, detract from the protection, enhancement, and perpetuation of the McLoughlin Historic Conservation District, harm the City's aesthetic heritage, and would discourage the "use of historic districts. . . for the education, pleasure, energy conservation, housing and public welfare of the city." The proposal would destabilize property values and would harm the city's economy over the long-term. The proposed development would harm the surrounding neighborhood and the livability of all of Oregon City. Therefore, the proposed development is inconsistent with the purposes of the historic conservation district as set forth in OCMC § 17.40.010 and other mandatory approval criteria.

5. The proposed development does not comply with the adopted design guidelines, as explained in the written testimony of Trent Premore.
6. The HRB accepted new evidence into the record from staff after the record was closed, but refused to re-open the record for the public to allow for rebuttal.

The grounds for the appeal are explained, without limitation, more fully below. The MNA reserves its right to expand upon the above and below-referenced issues at a later time.

1. The HRB's Notice of Public Hearing issued under ORS 197.763(2)(a) did not comply with ORS 197.763(3).

ORS 197.763(2) requires the issuance of a Notice of Public Hearing for quasi-judicial land use hearings such as the hearing before the HRB for this application. The Notice must contain the information required by ORS 197.763(3). However, as explained below, the Notice issued for the HRB's hearing did not comply with ORS 197.763(3).

ORS 197.763(3)(a) requires a Notice to "[e]xplain the nature of the application and the proposed use or uses which could be authorized." The Notice in this case fails to explain the nature of the application because the Notice makes no mention of the fact that most of the site is designated parkland under the current Oregon City Comprehensive Plan/Parks & Recreation Master Plan. Similarly, the Notice fails to explain that the proposed use of the site for the expansion of the Public Works Operations Facility would eliminate all park use of the site by fencing it off, thereby preventing public access. The combined failures to identify the majority of the site as designated parkland and to mention that all public park access for the site will be eliminated makes the Notice deficient. That is, without additional information, a member of the public looking at the Notice would never know that the proposal, if implemented, would effectively eliminate acres of city parkland.

The Notice also fails to comply with ORS 197.763(3)(b), which requires the Notice to "[l]ist the applicable criteria from the ordinance *and the plan* that apply to the application at issue." (Emphasis added). While the Notice lists several portions of the Oregon City Municipal Code (OCMC) (*e.g.*, OCMC Chapters 17.39, 17.40, and 17.50), no mention is made of the Oregon City Comprehensive Plan, which clearly applies here because the HRB is required to consider Comprehensive Plan provisions in making land use decisions. Some of the Comprehensive Plan criteria that apply here are found on pages 27-41 and 57-61 of the Comprehensive Plan, and are as follows:

Goal 5.1, Open Space: Establish an open space system that conserves fish and wildlife habitat and provides recreational opportunities, scenic vistas, access to nature and other community benefits.

> Policy 5.1.2: Manage open space areas for their value in linking citizens and visitors with the natural environment, providing solace, exercise, scenic views and outdoor education. Built features in open space sites should harmonize with natural surroundings.

Goal 5.2, Scenic Views and Scenic Sites: Protect the scenic qualities of Oregon City and scenic views of the surrounding landscape.

> Policy 5.2.1: Identify and protect significant views of local and distant features such as Mt. Hood, the Cascade Mountains, the Clackamas River Valley, the Willamette River, Willamette Falls, the Tualatin Mountains, Newell Creek Canyon, and the skyline of the city of Portland, as viewed from within the city.
>
> Policy 5.2.2: Maximize the visual compatibility and minimize the visual distraction of new structures or development within important viewsheds by establishing standards for landscaping, placement, height, mass, color, and window reflectivity.

Goal 5.3, Historic Resources: Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.

> Policy 5.3.5: Support efforts to obtain historic designation at the city, state and national levels for public and private historic sites and districts. Natural and cultural landscapes should also be considered.
>
> Policy 5.3.7: Encourage property owners to preserve historic structures in a state as close to their original construction as possible while allowing the structure to be used in an economically viable manner.
>
> Policy 5.3.8: Preserve and accentuate historic resources as part of an urban environment that is being reshaped by new development projects.

Goal 5.4, Natural Resources: Identify and seek strategies to conserve and restore Oregon City's natural resources, including air, surface and subsurface water, geologic features, soils, vegetation, and fish and wildlife, in order to sustain quality of life for current and future citizens and visitors, and the long-term viability of the ecological systems.

> Policy 5.4.1: Conserve and restore ecological structure, processes and functions within the city to closely approximate natural ecosystem structure, processes, and functions.

Policy 5.4.3: Identify, initiate and cooperate in partnership with other jurisdictions, businesses, neighborhoods, schools and organizations to conserve and restore natural resources within and adjacent to Oregon City.

Policy 5.4.4: Consider natural resources and their contribution to quality of life as a key community value when planning, evaluation and assessing costs of City actions.

Policy 5.4.6: Support and promote public education, interpretation, and awareness of the city's ecological resources.

Policy 5.4.8: Conserve natural resources that have significant functions and values related to flood protection, sediment and erosion control, water quality, groundwater recharge and discharge, education, vegetation and fish, and wildlife habitat.

Policy 5.4.12: Use a watershed-scale assessment when reviewing and planning for the potential effects from development, whether private or public, on water quality and quantify entering streams.

Policy 5.4.17. Protect and maintain groundwater recharge through conservation and enhancement of wetlands and open space.

Policy 5.4.18: Encourage use of native and hardy plants such as trees, shrubs and groundcovers to maintain ecological function and reduce maintenance costs and chemical use.

Goal 8.1, Developing Oregon City's Park and Recreation System: Maintain and enhance the existing park and recreation system while planning for future expansion to meet residential growth.

Policy 8.1.1: Provide an active neighborhood park-type facility and community park-type facility within a reasonable distance from residences, as defined by the *Oregon City Park and Recreation Master Plan*, to residents of Oregon City.

Policy 8.1.9: Emphasize retaining natural conditions and the natural environment in proposed passive recreation areas.

Policy 8.1.12: Identify and protect land for parks and recreation within the Urban Growth Boundary.

Further, because the adopted Park and Recreation Master Plan (1999, updated in 2008) is an ancillary document to the Comprehensive Plan, the HRB's decision must be consisted with that document, as well. However, the Notice does not mention the Park and Recreation Master Plan document, either.

The Notice also fails to comply with ORS 197.763(3)(c), which requires the Notice to "[s]et forth the street address or other easily understood geographical reference to the subject property." While the Notice mentions 122 S. Center St. as the location of the project, it fails to list the other property addresses which are included in the proposed project area, namely: 122 S. John Adams St., 204 S. John Adams St., 206 S. John Adams St., and 220 S. John Adams St. Further, the Center Street address is known to most people in the community as the location of the existing Public Works offices, which are located at completely different geographic elevation from the S. John Adams Street addresses. That is, the S. John Adams Street addresses are separated from the Center Street address by a sheer basalt cliff. Further, the Notice does not mention the park at all in describing the location of the proposed project. Because most of the project area is located in designated park land, the Notice should have included that information when describing the location of the proposed project. Listing only the Center Street address is misleading and does not render the location of the proposed project "easily understood," as required by the statute.

2. The notice of hearing was not properly posted on all frontage of the property pursuant to OCMC 17.50.100(B).

Under OCMC 17.50.100(B), a Notice of Public Hearing must be posted "on each frontage of the subject property." If a frontage exceeds six-hundred feet, a copy of the Notice must be posted every six-hundred feet or fraction thereof. *Id.* A "frontage" is "that portion of a parcel of property which abuts a dedicated public street or highway or an approved private way." OCMC 17.04.495. As explained below, the posting of the Notice for his hearing did not comply with OCMC 17.50.100(B).

Per the observations of MNA members during the last few months, while multiple copies of the Notice were posted on the Center Street frontage for the proposed project, only one copy of the Notice was posted on the S. John Adams Street frontage (at its intersection with Waterboard Park Road). Although Waterboard Park Road is frontage for the site, no copies of the Notice were posted along it south of S. John Adams Street even though the site frontage there exceeds 600 feet. The distance of that frontage is at least 665 feet. As a result, people walking through Waterboard Park on Waterboard Park Road would not have seen the Notice unless they continued all the way through to the intersection with S. John Adams Street.

Similarly, even though the generally east-west frontage of S. John Adams Street through the site itself exceeds 600 feet, no copies of the Notice were posted on the frontage within the site.

3. The site contains a historic site and is within a conservation district, so all criteria at OCMC 17.40.060 and 17.40.070 apply. The HRB is not limited to "design review."

The criteria at OCMC 17.40.060 and 17.40.070 apply to this decision. That is, OCMC 17.40.060(E) and (F) apply, respectively, to any "exterior alternations of historic sites" and "construction of new structures" in a conservation district or a historic site. This project qualifies under both subsections (E) and (F) because a historic landmark, the Overlook at Waterboard, is

located on the site, and because new construction is proposed. Also, because the proposal includes demolishing or moving the Camp Adair buildings and other buildings on site, OCMC 17.40.070 applies. However, the application/staff report for the proposed project does not apply all of the above-described criteria.

The HRB's scope of review is greater than the HRB determined it to be. The HRB review is not limited to the design of the proposed structures. Instead, the HRB is to apply all the criteria in OCMC § 17.40.060-070, including § 17.40.060 (E) and (F), and is to review *all* proposed construction connected with the application, including related demolition, clearing, and grading. As part of that analysis, the HRB should have considered the appropriateness of the proposed use of the site.

For example, consideration of the use of land is a key part of the purpose of the HRB. *See* OCMC 17.40.010. Also, the mandatory criteria of decision under OCMC 17.40.060-070 require consideration of the appropriateness of use. The most obvious example is the requirement that the HRB consider "[t]he provisions of the city comprehensive plan," which includes the Parks and Recreation Master Plan. Because those documents make clear that the proposed project site is within city park land, the HRB must consider whether an expansion of the Public Works facility is an appropriate park use. Other obvious examples that require consideration of use are OCMC 17.40.010(H) and (I), which require the HRB to promote the use of historic districts and landmarks for the education, pleasure, energy conservation, housing and public welfare of the city, and to carry out the provisions of LCDC Goal 5, respectively. Accordingly, appropriateness of use is a mandatory consideration for the HRB in making its decision.

The HRB should have considered all aspects of the proposed project as they relate to the required criteria: Phase I construction includes demolition of existing buildings, re-grading, and adding underground utilities, remodeling the Armory, construction of a storage and an office building, building covered parking, building paving bins, "etc.", and building an elevator. It also includes the closure of John Adams Street to public traffic between the Armory and the residential properties along Center Street, which would be accomplished by construction of security fencing around the upper site with 2 gates; construction of a turnaround and limited parking area at the gate from South Center Street; construction of dewatering/sanitary disposal/wash station and covered van and large truck parking; removal of a rock outcropping on the upper site and reuse of the rock as fill; paving of the upper site; and improve landscaping at the upper site to screen new construction.

HRB review is not limited to design guideline compatibility or to "the general compatibility of the exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used in the construction of the new building or structure." OCMC § 17.40.060(F)(5) and (7), and §17.40.070. HRB's review is, among other things, to determine if the proposal is consistent with the purpose of protecting, enhancing, and perpetuating historic districts and their improvements by, for example, fostering civic pride in the beauty and noble accomplishments of the past; protecting and enhancing the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided; promoting the use of historic districts and landmarks for the education, pleasure, energy conservation, housing and public welfare of the city; applying the provisions of the city comprehensive plan; and

considering the economic, social environmental, and energy consequences of the proposed project on the historic overlay district. *See* OCMC § 17.40.060 (E) and (F).

The scope of the criteria in OCMC § 17.040.060(F) is much broader than "the design of the proposed structures," and includes the provisions of the city comprehensive plan and the purposes of an historic overlay district. Because the staff analysis was arbitrarily limited to whether the appearance of the proposed buildings is compatible with the neighborhood, and did not consider all Phase I construction in relation to the OCMC § 17.040.060-070 criteria, the Staff Report ignored violations of the criteria that the HRB must consider.

The Staff Report evaluated the appearance of the proposed structures. Because the development will fence-off and gate the site from public access, it will effectively remove the site from the McLoughlin Historic Conservation District and from public access. The only reasonable message sent to Oregon City residents and visitors viewing the fence and gates is "you are not welcome here." The site will effectively no longer be a part of the neighborhood because access will be denied except on Public Works Department business. The site's use will not be compatible with any mixed residential and commercial neighborhood, but instead will be used by the Public Works Department to store, maintain, and operate heavy equipment, stockpile construction materials, provide office space for Public Works officials, and parking for employees and invitees. The proposed buildings have clean rectangular lines and flat overhanging roofs with a modern style, including large windows and modern materials covering the outside of the buildings. A large vertical elevator will extend from the rear center of the current site to the proposed site. Because of the exclusion of the public, the storage and use of heavy equipment and related materials at the site, the modern architecture, and the elevator, it's hard to imagine a proposal more in conflict with the McLoughlin Historic Conservation District.

Currently, there is a buffer between the high-density Center Street Public Works operations and the natural Upper Waterboard Park and the rest of the uphill neighborhood. The buffer is Lower Waterboard Park, the area of native trees, grasses, and shrubs on either side of John Adams Street interspersed with historic buildings such as the Community Cannery and Armory. This buffer is consistent with Comprehensive Plan policy 2.4.4: "[w]here environmental constraints reduce the amount of buildable land, and/or where adjacent land differs in uses or density, implement Comprehensive Plan and zoning designations that encourage compatible transitional uses." The proposed development would practically eliminate any buffer with the natural portion of Waterboard Park and the McLoughlin Neighborhood, in violation of Comprehensive Plan policy 2.4.4. Therefore the proposed development will be detrimental to the purposes of the historic overlay district, will not "enhance" and "perpetuate" the McLoughlin Historic Conservation District, and will not "safeguard the city's aesthetic heritage."

The proposed expansion also violates several comprehensive plan policies related to livability. Policy 2.4.1 provides "[d]evelop local neighborhood plans to strengthen and protect residential neighborhoods and historic areas from infill development; such as development along linear commercial corridors." The proposed expansion is an infill development that excludes neighborhood residents and visitors. Policy 2.4.2 also applies: "[s]trive to establish facilities and land uses in every neighborhood that help give vibrancy, a sense of place, and a feeling of uniqueness; such as activity centers and points of interest." Rather than give vibrancy, a

favorable sense of place, and favorable feeling of uniqueness, the proposed development will have the opposite effect, conveying the following messages: (a) stay away from this part of the neighborhood, and (b) that the city government does not value either: (1) protecting and enhancing the aesthetic and other benefits of the McLoughlin Historic Conservation District, including Waterboard Park, or (2) promoting the use of historic districts for the education, pleasure, energy conservation, housing and public welfare of the city.

4. The application fails to meet the requirements of OCMC 17.040.060-070.

a. OCMC 17.40.060(C)(2) - Archeological Monitoring Recommendation.

The record does not support a finding that any tribal representative was notified of this project under OCMC 17.40.060(C)(2) or, if a notice was sent, whether any tribal representative responded. While the Staff Report states that SHPO was notified and responded, there is no indication that the appropriate tribal representative(s) were notified and/or responded. Subsection (C)(2) requires a letter or email from the tribal representative.

The proposed project site is located in close proximity to Willamette Falls, which is a well-known historic tribal gathering spot. Further, it is known that during Oregon City's early days, native Americans had a camp in the Waterboard Park area. Accordingly, the record should be supplemented to document compliance with tribal notice requirements.

In fact, staff did attempt to supplement the record regarding this issue after the MNA raised it. However, that attempt to supplement the record was done *after* the record was closed by the HRB. When the MNA and members of the public attempted to respond to that supplemental evidence, the HRB refused to re-open the record or to accept the rebuttal testimony. That was improper.

b. OCMC 17.40.060(F) – For construction of new structures in an historic or conversation district, or on a, historic site, the criteria to be used the board in reaching its decision on the certificate of appropriateness shall include the following:

1. The purpose of the historic conservation district as set forth in Section 17.40.010.

i. OCMC § 17.40.010(A) – Effect and accomplish the protection, enhancement and perpetuation of such improvements and of districts which represent or reflect elements of the city's cultural, social, economic, political and architectural history.

Comment: *The proposed site location is located primarily on city park land. Removing the site from the inventory of city parks and fencing it off from public access does not protect, enhance, or perpetuate the site's status and history, since 1910, as municipal parkland.*

ii. OCMC § 17.40.010(B) – Safeguard the city's historic, aesthetic and cultural heritage as embodied and reflected in such improvements and districts.

Comment: *The proposed project site contains a historic landmark site known as the "Overlook at Waterboard." The landmark site is shown on the attached 2001 map published by the City of Oregon City, which is located on the City's website and which has been posted for years in the Oregon City Municipal Elevator. The map also shows that the proposed project area is located within park land.*

The Overlook at Waterboard, which is within the park land on the bluff directly behind the current Public Works shops (which are located below the bluff), provides views of the McLoughlin Neighborhood and the Willamette River valley. If the proposed project is implemented, the Overlook will be fenced off and inaccessible to the public.

iii. OCMC § 17.40.010(C) – None.

iv. OCMC § 17.40.010(D) – Stabilize and improve property values in such districts.

Comment: *The proposed development of parkland for use as a public works facility will reduce property values in the district, not stabilize and improve them. Removing some of the only accessible and level parkland in the vicinity for neighborhood use would reduce property values. Having more neighborhood parks and open space increases property values. Eliminating parkland reduces property values.*

v. OCMC § 17.40.010(E) – Foster civic pride in the beauty and noble accomplishments of the past.

Comment: *Granting the requested permit would <u>not</u> foster civic pride in the beauty and noble accomplishments of the past. Instead, it would actively help eliminate civic pride in the beauty and noble accomplishments of the past because it would result in the fencing off of parkland that has been parkland since 1910. Further, it would result in the demolition or moving of the Camp Adair buildings, which serve as local reminders of Oregon's role in defeating the axis powers in WWII, as well as appreciation for the sacrifices Oregonians made during that war. It is difficult to conceive of more fitting landmarks for fostering civic pride in noble accomplishments of the past than actual buildings used at Oregon's WWII army training facility.*

vi. OCMC § 17.40.010(F) – Protect and enhance the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided.

Comment: *See above. Granting the requested permit would result in the destruction of valuable park and historic assets that would otherwise serve as tourist/visitor attractions to the community.*

vii. OCMC § 17.40.010(G) – N/A

viii. OCMC § 17.40.010(H) – Promote the use of historic districts and landmarks for the education, pleasure, energy conservation, housing and public welfare of the city.

Comment: *The proposed project site contains a historic landmark site known as the "Overlook at Waterboard." The landmark site is shown on the attached 2001 map published by the City of Oregon City, which is located on the City's website and which has been posted for years in the Oregon City Municipal Elevator. The map also shows that the proposed project area is located within park land.*

The Overlook at Waterboard, which is within the park land on the bluff directly behind the current Public Works shops (which are located below the bluff), provides views of the McLoughlin Neighborhood and the Willamette River valley. If the proposed project is implemented, the Overlook will be fenced off and inaccessible to the public.

Further, the development of the park area on the proposed project site will not promote education, pleasure, and the public welfare because it would fence off and effectively remove parkland that is currently available to residents for those purposes.

ix. OCMC § 17.40.010(I) – Carry out the provisions of LCDC Goal 5.

Comment: *The Staff Report fails to do any analysis of compliance with LCDC Goal 5. The purpose of LCDC's Statewide Planning Goal 5 is "to protect natural resources and conserve scenic and historic areas and open spaces." OAR 660-015-0000(5). To achieve compliance with Goal 5, "[l]ocal governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations." OAR 660-015-0000(5) (emphasis added). In addition, "[s]ignificant natural areas that are historically, ecologically or scientifically unique, outstanding or important, including those identified by the State Natural Area Preserves Advisory Committee, should be inventoried and evaluated." OAR 660-015-0000(5) at B(6) (emphasis added).*

The City of Oregon City initially achieved compliance with LCDC Goal 5 through the adoption of its Comprehensive Plan. The Comprehensive Plan has been amended several times since then, and compliance with LCDC Goal 5 remains a requirement of ongoing Comprehensive Plan implementation. To that end, since initial adoption of the Comprehensive Plan Oregon City has added to its historic resources inventory. Part of the historic inventory update process involves completing historic resource information forms for properties that are potentially eligible for historic designation. For the Camp Adair buildings, historic inventory forms were completed in 2004, but the buildings were not identified as being of historic value at that time because the buildings' Camp Adair history was then unknown. With the recently-discovered information about the buildings' history in Camp Adair, their LCDC Goal 5 values have drastically increased. Accordingly, retention, not demolition or moving of the Camp Adair buildings, would help carry out the provisions of LCDC Goal 5 because retention would protect and conserve valuable national, state, and local historic resources.

Further, Goal 5 requires cities to conserve open spaces. The proposed project would do the opposite by eliminating and fencing off open space and parkland. That does not comply with Goal 5.

2. The provisions of the city comprehensive plan.

Comment: *Some of the applicable provisions of the Oregon City Comprehensive Plan are as follows:*

Goal 5.1, Open Space: Establish an open space system that conserves fish and wildlife habitat and provides recreational opportunities, scenic vistas, access to nature and other community benefits.

Policy 5.1.2: Manage open space areas for their value in linking citizens and visitors with the natural environment, providing solace, exercise, scenic views and outdoor education. Built features in open space sites should harmonize with natural surroundings.

Goal 5.2, Scenic Views and Scenic Sites: Protect the scenic qualities of Oregon City and scenic views of the surrounding landscape.

Comment: ***The proposed development will destroy scenic qualities of Oregon City by fencing off and eliminating park/open space and access to the Overlook at Waterboard.***

Policy 5.2.1: Identify and protect significant views of local and distant features such as Mt. Hood, the Cascade Mountains, the Clackamas River

Valley, the Willamette River, Willamette Falls, the Tualatin Mountains, Newell Creek Canyon, and the skyline of the city of Portland, as viewed from within the city.

Policy 5.2.2: Maximize the visual compatibility and minimize the visual distraction of new structures or development within important viewsheds by establishing standards for landscaping, placement, height, mass, color, and window reflectivity.

Goal 5.3, Historic Resources: Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.

Policy 5.3.5: Support efforts to obtain historic designation at the city, state and national levels for public and private historic sites and districts. Natural and cultural landscapes should also be considered.

Policy 5.3.7: Encourage property owners to preserve historic structures in a state as close to their original construction as possible while allowing the structure to be used in an economically viable manner.

Policy 5.3.8: Preserve and accentuate historic resources as part of an urban environment that is being reshaped by new development projects.

Goal 5.4, Natural Resources: Identify and seek strategies to conserve and restore Oregon City's natural resources, including air, surface and subsurface water, geologic features, soils, vegetation, and fish and wildlife, in order to sustain quality of life for current and future citizens and visitors, and the long-term viability of the ecological systems.

Policy 5.4.1: Conserve and restore ecological structure, processes and functions within the city to closely approximate natural ecosystem structure, processes, and functions.

Policy 5.4.3: Identify, initiate and cooperate in partnership with other jurisdictions, businesses, neighborhoods, schools and organizations to conserve and restore natural resources within and adjacent to Oregon City.

Policy 5.4.4: Consider natural resources and their contribution to quality of life as a key community value when planning, evaluation and assessing costs of City actions.

Policy 5.4.6: Support and promote public education, interpretation, and awareness of the city's ecological resources.

Policy 5.4.8: Conserve natural resources that have significant functions and values related to flood protection, sediment and erosion control, water quality, groundwater recharge and discharge, education, vegetation and fish, and wildlife habitat.

Policy 5.4.12: Use a watershed-scale assessment when reviewing and planning for the potential effects from development, whether private or public, on water quality and quantify entering streams.

Policy 5.4.17. Protect and maintain groundwater recharge through conservation and enhancement of wetlands and open space.

Policy 5.4.18: Encourage use of native and hardy plants such as trees, shrubs and groundcovers to maintain ecological function and reduce maintenance costs and chemical use.

Goal 8.1, Developing Oregon City's Park and Recreation System: Maintain and enhance the existing park and recreation system while planning for future expansion to meet residential growth.

Comment: The proposed project will eliminate, not maintain and enhance, a portion of the existing park and recreation system by developing parkland and removing it from public access.

Policy 8.1.1: Provide an active neighborhood park-type facility and community park-type facility within a reasonable distance from residences, as defined by the Oregon City Park and Recreation Master Plan, to residents of Oregon City.

Comment: The 1999 Park and Recreation Master Plan states that McLoughlin does not have enough neighborhood parks. Eliminating the proposed project area from the parks inventory will further reduce available park land.

Policy 8.1.9: Emphasize retaining natural conditions and the natural environment in proposed passive recreation areas.

Comment: see above. The proposed development will reduce natural conditions and the natural environment in Lower Waterboard Park.

Policy 8.1.12: Identify and protect land for parks and recreation within the Urban Growth Boundary.

Comment: see above. This project would not protect existing and inventoried parkland.

Comment: Many of the above-listed criteria are not even mentioned, let alone analyzed, in the application and Staff Report. This is another reason the

hearing should be continued; a continuance will give the applicant and staff time to undertake the proper analysis and draft findings regarding the above-listed criteria.

3. The economic effect of the new proposed structure on the historic value of the district or historic site.

Comment: *The proposed development would eliminate and fence off acres of public parkland, which contains multiple historic landmarks. The combined economic effect of eliminating public parkland in a residential neighborhood and either demolishing or moving historic landmarks would be negative.*

4. The effect of the proposed new structure on the historic value of the district or historic site.

Comment: *See above. The proposed findings in the Staff Report are inadequate.*

5. The general compatibility of the exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used in the construction of the new building or structure.

Comment: *The proposed design does not comply with the design guidelines. The proposed findings in the Staff Report are inadequate.*

6. Economic, social, environmental and energy consequences.

Comment: *The analysis and proposed findings in the Staff Report assume that the proposed development does not represent a change in use of the site. That is incorrect. The proposal would eliminate public access to a public park, and would destroy the park land that is developed. Further, transportation connectively would be reduced because S. John Adams Street would be closed to the public by the erection of gates. Contrary to the findings of the Staff Report, the proposed project would not "bring the site into context with the rest of the neighborhood." The site is located in a residential neighborhood. Therefore, the contemplated expansion of public works into the park would detract from the site's compatibility with the rest of the neighborhood.*

7. Design guidelines adopted by the historic review board.

Comment: *The proposed project does not comply with the adopted guidelines.*

5. The proposed project will not fulfill the stated need.

The application states that the proposed project will serve Oregon City now and into the future. However, planning documents from the master planning process in the early 2000's show that the site isn't large enough to serve current needs.

6. The site of the proposed development is existing parkland under the Oregon City Comprehensive Plan.

The site of the proposed development (hereinafter "Lower Waterboard Park") is on Oregon City's parks inventory, which is part of the Comprehensive Plan that governs the HRB's decision here. The designation of Lower Waterboard Park as a park was no mistake. That is, the area was intended to be a park from the time it was purchased by the Board of Water Commissioners in 1910 (*see* attached newspaper articles). The area has consistently been considered parkland ever since that time.

Further, before the current parks inventory was adopted in 1999 (via the 1999 Park and Recreation Master Plan), the area had already been designated as parkland several times in Oregon City's land-use planning documents, including in the 1952 Park and Recreation Master Plan, the 1975 Comprehensive Plan, and the 1991 Parks Master Plan. After the 1999 Master Plan was adopted, the park designation was re-affirmed in the 2001 Heritage Sites and Resources Map, the June 2004 Comprehensive Plan, the 2004 Public Ownership Map, and the 2004 Trails Master Plan Map.

a. <u>The 1952 Park and Recreation Master Plan.</u>

The 1952 Park and Recreation Master Plan was adopted by the Oregon City Planning Commission and by the Oregon City Commission. It clearly shows that the proposed project area was considered existing parkland at that time. It also includes a detailed park development plan for Waterboard Park as a whole. The plan calls for developing the parkland in a manner that is compatible with park status, including sports facilities and a recreation center, among other things.

b. <u>The 1975 Comprehensive Plan Map.</u>

The 1975 Comprehensive Plan Map shows Lower Waterboard Park in green, which is labeled "Parks, Schools and Recreation." Discussion of the area throughout the years makes it clear that the area is in "Water Board Park." ("WHEREAS, The National Youth Administration was granted permission by the City Commission of Oregon City on April 2, 1941, to construct a building ... in Water Board Park."); ("BE IT RESOLVED, that permission is hereby given to School District No. 62, Oregon City...to place said two buildings above referred to near the present building in Water Board Park..."). Thus, although the green shading in the 1975 Comprehensive Plan Map is labeled as "Parks, Schools and Recreation," the record shows that the buildings used for school purposes were located *in* Lower Waterboard Park. Accordingly, even though the buildings in Lower Waterboard Park were used for school purposes, the "parks" designation applies to Lower Waterboard Park by virtue of the 1975 Comprehensive Plan Map. Just because the "schools" designation *also* applies to a small portion of the park (i.e.

the buildings used by the vocational school), there is nothing in the record to suggest that *all* of Lower Waterboard Park was used for vocational school purposes.

c. The 1991 Parks Master Plan Map.

The 1991 Parks Master Plan, which was adopted by ordinance, clearly labels Lower Waterboard Park as an "existing park." The City has previously argued that the clear "existing park" designation should be ignored because of supposed inconsistencies within the Master Plan's description of Waterboard Park and its total acreage. However, the City's math does not add up.

The City has noted that the 1991 Parks Master Plan describes Waterboard Park as consisting of 19.3 acres. The City then argued that "the mapped area covers approximately 28 acres." However, the City's math does not add up. That is, the mapped area of Waterboard Park in the 1991 Parks Master Plan totals 21.65 acres, consisting of parcels of 4.56 acres, 9.73 acres, 2.19 acres, 0.03 acres, 0.04 acres, 4.07 acres, and 1.03 acres. That is only 2.35 acres different from the 19.3 acres reported in the 1991 Parks Master Plan. However, if the City's suggestion is correct (i.e. that the 1991 Parks Master Plan designation was "in error"), then the total acreage of the mapped site would be *14.9 acres* (21.65 acres minus the acreage of Lower Waterboard Park, which is 6.75 acres), which is 4.4 acres *smaller* than the acreage as reported in the 1991 Parks Master Plan. Therefore, under the City's prior interpretation, the acreage discrepancy between the 1991 Parks Master Plan and the actual on-the-ground acreage is nearly *twice* as large as under the MNA's interpretation. Accordingly, the City's argument actually supports the MNA's interpretation as being a closer reflection of the total acreage of the site. In summary, although the total acreage as reported in the 1991 Parks Master Plan may not be accurate, the City's prior interpretation ignores *both* the total reported acreage *and* the clearly-labeled "existing park" designation for Lower Waterboard Park.

Further, it is clear that both City staff and the City Commission closely scrutinized the 1991 Parks Master Plan before adopting it. ("Numerous individuals were involved in the development of the Framework Map, including City Staff who are aware of potential developments."); (referencing a City Commission work session: "The developed 'Framework Map' was reviewed. This drawing was revised from the original drawing with the input of the 'sketch plans' which had been developed in a previous work session. *After review, the [Framework Map] was noted to be acceptable as presented.*"). Thus, there can be no serious argument that the "park" designation for Lower Waterboard Park in the 1991 Parks Master Plan was unintentional.

d. The 1999 Park and Recreation Master Plan Map.

The 1999 Park and Recreation Master Plan, which is still effective, shows the same thing as the 1991 Parks Master Plan: namely, Lower Waterboard Park is shown as parkland.

In arguing that the clearly designated boundaries of Lower Waterboard Park as shown by this map should be ignored, the City has previously relied heavily on the inaccurate acreage description which is again (just like the 1991 Parks Master Plan Map) listed as 19.3 acres.

However, as explained above, under the City's prior interpretation (removing Lower Waterboard Park from the acreage count) the acreage discrepancy does not become harmonized with the map.

Because the 1999 Park and Recreation Master Plan is an ancillary document to the Comprehensive Plan, it has the force and effect of the Comprehensive Plan.

e. The 2001 Heritage Sites and Resources Map.

The 2001 Heritage Sites and Resources Map, published by the City, shows the Lower Waterboard Park area as existing parkland. It also shows that the Overlook at Waterboard, a local historic landmark, is located within the proposed project area.

f. The June 2004 Comprehensive Plan Map.

Because both the 1991 and 1999 Parks Master Plans unambiguously designate Lower Waterboard Park as "park," it should come as no surprise that the June 2004 Comprehensive Plan Map reflected, and confirmed, that park designation. The designation was no mistake.

There is ample evidence that the "park" designation was not an "error" or "incongruity." First, as discussed above, two different adopted Parks Master Plans (1991 and 1999 which, as noted above, is still in effect) designated Lower Waterboard Park as "park." This strongly suggests that the June 2004 Comprehensive Plan Map designation of "park" in Lower Waterboard Park was intended to make the Comprehensive Plan Map consistent with the prior-adopted Parks Master Plan Map. Furthermore, there is evidence that the change of Lower Waterboard Park's designation from "park" to "quasi-public" in December 2004 was done *only* so that the Comprehensive Plan Map wouldn't conflict with the (then) very recent proposal to expand the Public Works Operations Facility into Lower Waterboard Park.

In December 2003 the City hired DECA Architecture to develop a Facilities Operations Plan for Public Works. The final report was issued in December 2015. Near the beginning of the development of the Facilities Operations Plan, expanding Public Works into lower Waterboard Park was *not* being considered as an option. *See* Meeting Notes, Jan. 20, 2004, DECA Architecture (discussing seven options for expansion: (1) Old City Hall; (2) Site Adjacent to the Mountain View pump station; (3) Red Soils area; (4) South of the city; (5) PGE's current location; (6) site across from PGE; and (7) the once-proposed 'Wal-Mart' site). However, as stated in the Plan: "[d]uring the course of the study, the City decided not to pursue relocation of the facilities to a new site." That decision was not made until mid-2004, and is reflected in the meeting notes from DECA dated July 15, 2004 ("The architects presented five site plan options, which combine all of the Operations functions on the current office site at South First and Center and the upper site on John Adams Street.").

From a review of the record, it seems that Nancy Kraushaar, then-Director of Public Works, made the decision to expand the Public Works facility into Lower Waterboard Park at approximately the same time as the City Commission adopted the June 18, 2004, Comprehensive Plan Map updates. *See id.* Up until that point, many other options for the

relocation of Public Works were being actively considered. Again, the records reflect that it was not until July 2004, one month *after* adoption of the June 2004 Comprehensive Plan Map amendments (including designation of Lower Waterboard Park as "park"), that DECA reported being directed to pursue only an exploration of expansion into lower Waterboard Park.

The timing of these events cannot be ignored. Simply put, the June 2004 Comprehensive Plan Map amendments, closely followed by the decision to expand Public Works into Lower Waterboard Park (while simultaneously abandoning all other options), and subsequent December 2004 change of Lower Waterboard Park's designation from "park" to "quasi-public," are too closely correlated to be explained as coincidence. Rather, what the timing suggests is that the City Commission intended, through the June 2004 Comprehensive Plan Map amendments, to harmonize the Comprehensive Plan with the 1991 and 1999 Park and Recreation Master Plan (each of which clear show Lower Waterboard Park as "park"). Subsequently, Ms. Kraushaar (and/or others in the department) realized that the Comprehensive Plan Map was problematic for development of the new plan to expand Public Works into the park. Then, without fanfare (or any discussion in the record), by December 2004 Lower Waterboard Park's designation was changed from "park" to "quasi-public" in the Comprehensive Plan "fixes."

There is no indication that the June 2004 "park" designation was a "mistake;" it was an intentional change that proved to be inconvenient for staff's preferred alternative. There is a long history of the City Commission treating lower Waterboard Park as designated city park land, as demonstrated by the 1991 and 1999 Parks Master Plans, as well as the June 2004 Comprehensive Plan Map amendments and 2004 Public Ownership Map. In light of that history, one should not overlook the timing of the development of the 2005 Operations Facilities Plan, which shows that the Lower Waterboard Park Comprehensive Plan Map designation was, without public discussion, inappropriately "tweaked" post-June 2004 only in response to the decision to locate Public Works within the park. There was, in fact, no error. In any event, the park designation of the area still stands because the 1999 Park and Recreation Master Plan is still the operative parks planning document. Therefore, the Lower Waterboard Park area is still in Oregon City's parks inventory and cannot be used for non-park purposes.

g. <u>The 2004 Public Ownership Map.</u>

The 2004 Public Ownership Map clearly shows Lower Waterboard Park as a "park," and not "quasi-public." This is further evidence that the lower park was intended to be designated as park land in the June 2004 Comprehensive Plan, which was then under development.

h. <u>The 2004 Trails Master Plan Map.</u>

The 2004 Trails Master Plan was adopted via ordinance and was effective as of December 2004. That map also designates Lower Waterboard Park as "park." The 2004 Trails Master Plan is still in effect.

7. **Under the City's adopted legal position, the HRB lacks authority to issue the requested permit until August 16, 2017.**

In Oregon City, all permits and permit applications are subject to OCMC Chapter 17. A "permit" is defined by §17.04.920 as "any form of quasi-judicial approval relating to the use of land rendered by the city under Title 16 or Title 17 of this Code, including subdivisions, partitions, lot line adjustments and abandonments, zone changes, plan amendments, conditional use permits, land use and limited land use decisions, and expedited land divisions." ORS 227.160(2) defines "permit" as a "discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation."

On April 18, 2017, City Manager Tony Konkol purported to reject historic landmark designation of the Camp Adair buildings, which are located on the site of the proposed development. The MNA is the applicant regarding that proposed landmark designation, and is disputing Mr. Tonkol's attempt to summarily reject the designation. Under the City's position, however, if Mr. Konkol's rejection under ORS 197.772(1) *was* effective, then the HRB lacked authority to issue the requested permit under ORS 197.772(2), which states that no demolition permit may be issued until 120 days after a rejection under ORS 197.772(1). The requested permit is clearly a demolition permit, as demonstrated by the staff report on page 9: "HRB's review in this project is limited to a certificate of appropriateness for the demolition and new construction[.]" Because the Camp Adair buildings would be demolished or moved as part of the proposed project, the HRB lacked authority to approve the permit until August 16th (120 days after Mr. Konkol's April 18th letter).

Conclusion:

The proposed development would transform the area adjacent to John Adams Street between South Center Street and Spring Street from an area of beautiful trees, a publicly-used street, historic buildings and scenic views across the Willamette River into heavily-used paved parking lots for heavy equipment, employees, and those doing business with the Public Works Department, material storage areas, and office, maintenance, and storage buildings. The entire development would be fenced and gated to prohibit public access to this area that now includes abundant public parking for access to the mixed-use path from the third level of the City through Waterboard Park to John Adams Street. From John Adams Street, pedestrians and bicyclists can access the neighborhoods and businesses in the McLoughlin Conservation District and connect with the Promenade, Municipal Elevator, and Singer Hill stairs to access restaurants and shops Downtown. Or, from South Center Street, they can connect with the Willamette Falls overlook at McLoughlin Boulevard and South 2nd Street, and to the Promenade overlooking Downtown. The fencing and gating of the proposed development would eliminate this path. Instead of adding to the livability of the neighborhoods near this major pedestrian confluence point, the development would discourage pedestrian use of the path through Waterboard Park to the amenities in the McLoughlin Conservation District, the Promenade, the Downtown, and the Willamette Falls Legacy Project due to the presence of heavy equipment, the destruction of scenic views by construction of buildings and parking lots, blocked public access to scenic views, and improvements that restrict public access to areas that are now enjoyed by the public, except for Public Works Department business. This proposed development would be inconsistent with the

trend of growth of new pedestrian-friendly businesses and institutions in the area. It would detract from the aesthetic beauty and livability of the McLoughlin Historic Conservation District, which includes most of Waterboard Park.

Comments submitted by MNA after the HRB closed the record:

After the HRB closed the record, it accepted new evidence from staff into the record, revised the staff report, and then refused to accept new evidence or testimony from the public regarding the new evidence from staff or the revised staff report. The MNA offered the following comments to the HRB at the June 27th HRB hearing, but they were rejected by the HRB. The MNA restates those comments here.

Waterboard Park Road is not "unimproved." It is a paved road that winds through Waterboard Park. Also, Waterboard Park Road is not an "alley." Instead, it is over 20 feet in width in several areas where it abuts the proposed development site area. It is well over 30 feet wide in one area next to the site. Also, Waterboard Park Rd. is the primary access point into the Waterboard Park natural area. Calling the road an alley is inconsistent with any reasonable description of the road. Accordingly, because no land use notices were posted on Waterboard Park Rd., the City must re-notice the original land use hearing as explained in prior MNA comments.

The HRB closed the public hearing and closed the record in May. However, the revised staff report introduces a plethora of new evidence. The agenda for the June 27th HRB meeting (which was not provided in advance to the individuals and entities that submitted comments at or before the May HRB hearing) states that the HR 17-04 file (i.e. the Public Works land use application) was set for a public hearing at that meeting. That is inconsistent with the fact that the HRB announced at the May meeting that it was approving the staff report as written. The changes (including new evidence) in the staff report and record require that the public hearing be re-noticed and re-opened for rebuttal by the public. Unless a person independently went onto the City website and downloaded the HRB agenda for June 27th, nobody would know that the staff report was heavily revised and that new evidence was added to the record. The public deserves a full chance to review and respond to that information, including submitting new evidence into the record.

The HRB is not limited to "demolition review and the design of new and rehabilitated structures." Revised Staff Report at 10. As explained in the MNA's previous comments, the HRB must consider all applicable comprehensive plan provisions and the other criteria in OCMC Chapter 17.40.

The HRB cannot rely on any hypothetical "Phase 2" development or improvements while it's considering this application (i.e. "Phase 1"). That includes the proposed pedestrian path linking Center St. with Waterboard Park Rd. It is irrelevant to the current review.

The propriety of a public works facility at the site (which is a park under the current Comprehensive Plan via the Parks Master Plan) is properly within the scope of the HRB's review.

The staff report introduces new evidence into the record, which is not allowed at this point in the proceedings since the HRB approved the Staff Report at the May meeting and closed the record/hearing. *See* Revised Staff Report at 26 (discussion of HRB activities in 1980s and the Overlook at Waterboard, including work of Dave Pinyerd). In addition, those new materials in the record should be made available to the public for analysis and possible rebuttal. However, none of those new materials were attached to the agenda for tonight's meeting. Other new evidence (that exceeds mere argument) is found throughout the Revised Staff Report (*e.g.* p. 27, p. 28 (discussing letter to tribal representatives), 29-39.

The Camp Adair buildings are eligible for historic landmark designation under the *local* code. The Revised Staff Report purports to make a finding that the Camp Adair buildings do not qualify for designation. However, the discussion is about the National Register, not the local register. If the HRB is going to opine on the Camp Adair buildings on the site, the HRB should hold a full hearing on that issue (for example, under the MNA's application, which was summarily rejected by the City), instead of engaging in a haphazard discussion about them as part of this land use application.

The Revised Staff Report doesn't offer any explanation for the total change in HRB interpretation of the term "historic site." The Revised Staff Report (p. 29) interprets the term one way, but the prior Staff Report interprets the term as "contributing" to the historic district. The change in interpretation is arbitrary and incorrect.

The Revised Staff Report says the Overlook at Waterboard will still be accessible to the public. *Id.* at 30. However, without a change in proposed design, the proposed fence around the site will block access to the Overlook.

Page 33 of the Revised Staff Report effectively admits that the sought Certificate of Appropriateness is a demolition permit. As explained in the MNA's prior comments, no demolition permits may be issued after Mr. Konkol's April 18th letters for 120 days.

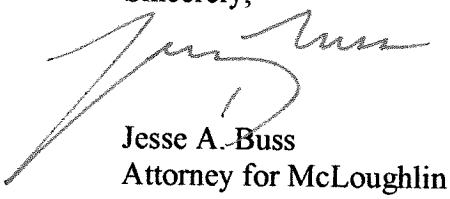
On page 35 the Revised Staff Report states "This development will have no impact [on] Waterboard Park…" However, that finding ignores the Parks Master Plan, which clearly shows the area as designated parkland. Further, the Revised Staff Report admits that "open space" includes recreation areas, which includes parks. *Id.*

The Revised Staff Report repeatedly states that certain Comprehensive Plan provisions are "directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal." *See e.g. id.* at 37. However, OCMC 17.40 requires all applicable Comprehensive Plan provisions to be applied by the HRB for this application. So, those Comprehensive Plan provisions are much more than guidance for legislative decisions.

Fee Waiver Request:

The MNA requests a fee waiver for this appeal. If for any reason the MNA's fee waiver request is denied, enclosed with this letter is a check in the amount of $50.00 to be applied to any required filing fee.

Sincerely,



Jesse A. Buss
Attorney for McLoughlin Neighborhood Association

Enclosures
cc: Client