- SPEAK INTO THE MICROPHONE AND STATE YOUR NAME AND RESIDING CITY
- Limit Comments to 3 MINUTES.
- Give to the Clerk in Chambers prior to the meeting.



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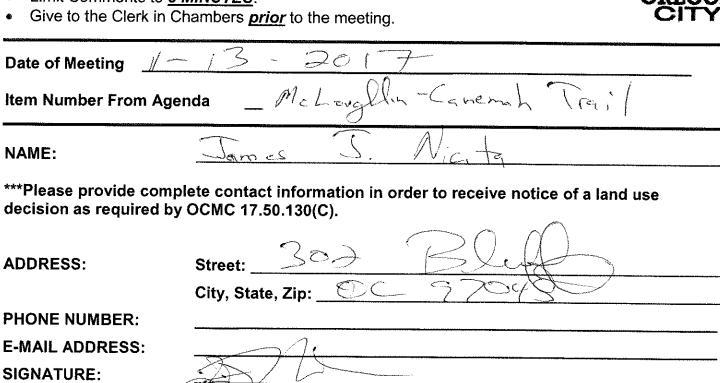
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U.S. Bancorp Tower 111 S.W. Fifth Avenue, Suite 3400 Portland, Oregon 97204.

OFFICE 503.224.5858
FAX 503.224.0155

William L. Rasmussen, P.C. william.rasmussen@millernash.com 503.205.2308 direct line

November 13, 2017

BY FIRST CLASS MAIL AND ELECTRONIC MAIL kreid@orcity.org

Oregon City Planning Commission c/o Ms. Kelly Reid, Planning Division 221 Molalla Avenue, Suite 200 Oregon City, Oregon 97045

Subject:

LE 17-02, Amendment to the Comprehensive Plan for the McLoughlin-

Canemah Trail—Public Comment

#### **Dear Commissioners:**

As we mentioned on the phone to Ms. Reid last week, this law firm represents Delbert and Mary Bullock, owners of Bud's Towing, Inc., which is located at 126 S. McLoughlin Blvd. Please include this comment in the record for the subject land use review.

Bud's Towing has been a fixture in Oregon City since 1968 and is currently being run by the third generation of the Bullock family. It employs seven people. The current recommended path alignment would split Bud's Towing's property in half. Splitting the property would force this long-time, locally family owned business to close and would substantially devalue the property. Bud's Towing has contracts with the City of Oregon City Police Department and other jurisdictions that require the continued existence of the buildings and parking on the property.

The Bullocks are in support of a new shared-use path to help connect the Canemah Bluff Natural Area with the Willamette Falls Legacy Project. We provide this comment, however, to respectfully request that the Planning Commission immediately adjust the proposed segment of the trail that would run from the end of Tumwater Drive through at least three private properties (including the Bullock's business).

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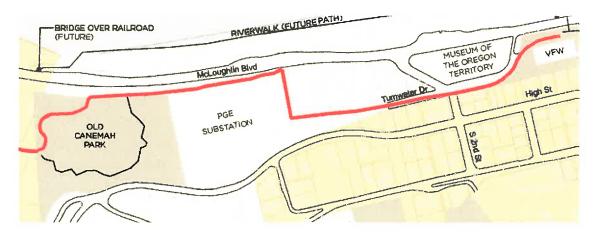


As explained below, this portion of the proposed permanent trail—through an industrial area and along Highway 99—is, unsightly, inefficient, and dangerous. There are at least two alternatives that would be better suited to accomplish the City's goals. Furthermore, this proposed segment will be the most expensive part of the trail as it will require three condemnation proceedings for land that has greatly appreciated due to the Willamette Falls Legacy Project. Alternatively, if the City tried to force landowners to split their properties through exactions in future permit processes, the City will face substantial takings claims.

The severing of this private property would also hinder and constrain its redevelopment. Accordingly, the current design does not comport with project goals or the Oregon City Comprehensive Plan. We respectfully ask the Planning Commission to reroute the trail as described below.

# 1. The problematic segment through Bud's Towing is the least attractive and most dangerous portion of the proposed trail.

The subject application proposes that the McLoughlin-Canemah Trail run from the end of Tumwater Drive through at least three private properties, cut over to Highway 99 in front of the PGE substation, and continue along the basalt cliffs over the busy highway for around 1,000 feet, before finally entering the northwest corner of Old Canemah Park:



This design places the trail in the midst of industrial businesses (along with a couple taverns), which is not only unattractive for trail users, but also hinders the redevelopment of this land.



On July 29, 2017, the planning staff held the "Greenway for a Day" public event to evaluate the McLoughlin-Canemah Trail options. As part of its evaluation, the City asked participants a series of survey questions, including "What was your least favorite part?" The respondents overwhelmingly identified this segment along Highway 99 and the PGE substation as the worst component of the trail.¹ Conversely, numerous survey respondents identified Old Canemah Park as their favorite potential trail route.²

Inexplicably, the route in the subject application does not heed these comments, but places the proposed trail along the least favorite location—missing much of the preferred Old Canemah Park. Given the uniform opposition to this placement by the general public, the proposed design threatens the long term public adoption and use of the trail. This segment will place trail users directly next to the speeding traffic on Highway 99, along with the concomitant noise, pollution, and danger. The route down Tumwater Drive across South Second Street also creates a dangerous crossing for path users because of the intersection's proximity to Highway 99. Accordingly, this placement violates several of the project goals adopted by the Community Advisory Group and planning staff, including:

- Minimize risk and conflicts between automobile traffic, bicycle traffic, and pedestrians.
- Celebrate experiences of nature while protecting and enhancing native vegetation and habitat within the corridor.
- Discourage criminal activity and provide a secure environment for all users.
- Responsibly utilize public funds to provide a high-quality trail experience both now and into the future.
- 2. The alternative route on South End Road (High Street) is safer and more attractive.

The Community Advisory Group strongly considered an alternative route along South End Road into Old Canemah Park above the PGE substation. In fact, in a

Portland, OR Seattle, WA Vancouver, WA Long Beach, CA

 $<sup>^1</sup>$  Greenway for a Day Event | July 29, 2017; Report and Results, at 4; see also Ex. 1 at 17 and 57.  $^2$  Id. at 3.



public comment (Ex.<sup>3</sup> 3 at 5-6), one member of the advisory group explains that the group was evenly split between the South End Road (High Street) route and the segment advanced and ultimately proposed by the City.



The South End Road (High Street) trail route shown above (B-1)<sup>4</sup> is vastly superior because (a) it is not on Highway 99 or along the PGE substation, (b) the street is in a heavily-wooded area that provides pleasant scenery and shade, (c) the route would run the entire length of Old Canemah Park, and (d) the crossing of South Second Street could occur at a safer location for pedestrians (at High Street and South End Road). In fact, there is already a trail into Old Canemah Park from South End Road:

<sup>&</sup>lt;sup>3</sup> All references to Exhibits are to the attachments submitted by the City for LE 17-02, file # PC 17-136. <sup>4</sup> In the feasibility evaluation (Ex. 1), the City included this segment in Alternative C, but did not place the trail through Old Canemah Park, instead using B-2 above)—which is far inferior.





Of course, South End Road is not without some drawbacks. There can be traffic at times, but South End Road could have wide shoulders in most places, and speed dampers could be utilized to limit conflict between trail users and cars.

# 3. The proposed condemnation of private property or exaction effort will be very expensive.

It appears that the McLoughlin-Canemah Trail Plan Community Advisory Group did not prefer (or more accurately split the preference) for the current design along Highway 99 and the PGE substation until they were told that the South End route would present geotechnical difficulties and thus would cost substantially more to construct.<sup>5</sup> The final evaluation show, however, that even by the City's own estimates, the cost of the two trail routes would be very similar. (Ex. 1 at 75.)

But, the City's estimate for the cost of constructing the currently proposed route is based on flawed assumptions. The planning-level cost estimates for the proposed route, does not show any cost for the taking of private property. (Ex. 1 at 75, 77-80.) It appears that the City believes it can avoid this cost by making the property owners dedicate land and construct the trail as part of any future redevelopment. *See* Ex. 1 at 62 ("improvements packaged into re-development."). But the City cannot reasonably force the property owners to provide land or force them to build a trail as a

<sup>&</sup>lt;sup>5</sup> See minutes from McLoughlin-Canemah Trail Plan Community Advisory Group Meeting #2, August 15, 2017, and Meeting #3, September 21, 2017.



condition of development because the trail is not related to the impact from the development. Kountz v. St. Johns River Water Management District, 133 S. Ct. 2586,  $2595 (2013)^6$ .

The cost to condemn or take private property through unconstitutional exactions from at least three owners—destroying several buildings—will be substantial. In addition to the legal costs, the property owners will be entitled to the fair market value of the land taken and the reduction of the remaining property values. State By & Through Dep't of Transp. v. Lundberg, 312 Or 568, 574, 825 P2d 641, cert den, 506 US 975 (1992). This fair market value is not based on the current use of the property, but its highest and best use. State By & Through State Highway Comm'n v. Assembly of God, Pentecostal, of Albany, 230 Or 167, 176, 368 P2d 937 (1962). Future land regulations or public projects—such as the Willamette Falls Legacy Project—are relevant considerations for determining the fair market value of the fairest and best use of the property. Unified Sewerage Agency of Washington Cnty. v. Duyck, 33 Or App 375, 377, 576 P2d 816 (1978). Furthermore, if the severance of the property by the trail leaves too small of remnant for future development, the property owners will be entitled to full value for that land too. City of Lake Oswego v. Babson, 97 Or App 408, 776 P2d 870, rev den, 308 Or 465 (1989).

In short, this segment of trail over private property will cost far more than the other portions, even if they require greater construction costs.

# 4. As presently designed, the proposed Trail Plan is not in compliance with the Comprehensive Plan.

Because of the cost and safety issues identified above, the current design of the McLoughlin-Canemah Trail in the proposed amendments to the Oregon City Transportation System Plan, Parks Master Plan, and Trails Master Plan does not comply with the City's comprehensive plan. Among other criteria that are not met, the current trail design through private property and along Highway 99 and the PGE substation does not comply with the following criteria:

Goal 2.1. Efficient Use of Land. Ensure that property planned for residential, commercial, office, and industrial

<sup>&</sup>lt;sup>6</sup> "the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts."



uses is used efficiently and that land is developed following principals of sustainable development.

The placement of the trail directly through private property that would force closure of a longtime business is not an efficient use of land. Likewise, splitting properties in a way that leaves small remainder properties that are difficult to impossible to use violates Goal 2.1.

Policy 11.1.1. Ensure adequate public funding for the following public facilities and services, if feasible: \* \* \* Transportation infrastructure \* \* \*

Policy 11.1.5. Design the extension or improvement of any major public facility and service to an area to complement other public facilities and services at uniform levels.

Unnecessarily placing the trail so as to split private property will result in much higher costs and less funding for other transportation infrastructure, including other development related to the McLoughlin-Canemah Trail. This condemnation or attempted exaction of private property for a trail does not complement the current use of surrounding land.

Policy 11.1.7. Develop and maintain a coordinated Capital Improvements Plan that provides a framework, schedule, prioritization, and cost estimate for the provision of public facilities and services within the City of Oregon City and its Urban Growth Boundary.

The cost estimates included in the proposed amendments for this section of the trail are not reasonable and lacks a factual basis.

Goal 12.5. Safety. Develop and maintain a transportation system that is safe.

Policy 12.5.2. Identify and implement ways to minimize conflict points between different modes of travel.

As repeatedly stated in survey responses, the placement of the trail along Highway 99 is not safe and is undesirable. Furthermore, the location of the trail across South Second Street at Tumwater Drive is dangerous (as evidenced by the \$80,000 in



safety improvements planned for this intersection). The current design violates these criteria because safer routes are available.

Policy 12.8.1. Maximize the efficiency of the Oregon City transportation system, thus minimizing the required financial investment in transportation improvements, without adversely impacting neighboring jurisdictions and facilities.

The placement of the trail to split private property (necessitating expensive condemnation proceedings or takings litigation), over dangerous intersections, and along busy highways does not maximize the efficiency of the transportation system, nor minimize the required financial investment.

#### 5. Conclusion.

Our client supports the construction of a McLoughlin-Canemah Trail, but asks the Planning Commission to alter the present design so that it does not needlessly bisect private property owners, waste City funds, and result in a less desirable trail.

The South End Road (High Street) trail route is far superior to the segment proposed by the City across private property and along Highway 99. This route offers a wooded setting, greater safety, and possible future expansion as reliance on cars is diminished. Placing the trail route on or even near Highway 99 threatens the long-term public adoption and use of the entire shared-use path, potentially wasting the substantial public investment in the McLoughlin-Canemah Trail project.

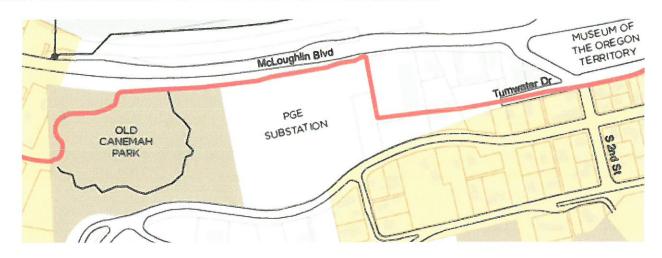
Please contact me with any questions or concerns.

Very truly yours,

William L. Rasmussen, P.C.

#### McLOUGHLIN-CANEMAH TRAIL—BUD'S TOWING COMMENT

#### Deficiencies of the Tumwater Drive – Highway 99 Segment:



- 1. Least attractive portion of the proposed trail (based on survey responses);
- 2. Placement along Highway 99—especially interim trail—undermines safety, beauty, and likely use of trail;
- 3. Fails to optimize forest setting by not running deeper into Old Canemah Park;
- 4. Requires dangerous and inefficient crossing of South 2nd Street at Tumwater Drive; and
- 5. Placement over private property will impact local businesses, possibly hinder redevelopment, and may necessitate condemnation (or takings) litigation.

#### Advantages of the High Street/South End Road Alternative (B-1):



- Pleasant forested setting along South End Road;
- 2. Avoids route along Highway 99;
- 3. Incorporates more of Old Canemah Park into the trail route;
- 4. Allows for safe and efficient crossing of South 2nd Street at High Street; and
- 5. Does not negatively impact local businesses or take private property, thus avoiding expense of condemnation or takings litigation.



221 Molalla Ave. Suite 200 | Oregon City OR 97045 Ph (503) 722-3789 | Fax (503) 722-3880

#### MEMORANDUM

To: Planning Commission From: Kelly Reid, AICP, Planner

Re: LE 17-02 Additional Findings and Response to Public Comments

Date: November 13, 2017

The McLoughlin-Canemah Trail Plan recommendation for permanent alignment includes a trail segment through privately-owned properties on McLoughlin Boulevard. The alignment is recommended to be located behind future new development on these properties, rather than in front of them along the McLoughlin Blvd frontage, where traffic speeds and driveway curb cuts create a less-than-ideal environment for pedestrians and bicyclists. The alignment of this segment retains the existing shared used path alignment shown in the adopted Transportation System Plan (Project #S36).

Public input gathered during the trail planning process included a strong desire to use the Old Canemah Park trail and to avoid McLoughlin Blvd as much as possible. To accomplish these goals, the final recommendation is for Alignment option B, with the permanent trail behind future development and away from the street, where users can be more protected from traffic, noise, and exhaust.

Recognizing the existing businesses along this segment of McLoughlin Blvd, the City does not propose to utilize condemnation to obtain land for a new trail. Instead, the plan includes an interim alignment along McLoughlin Blvd until such future time when these properties redevelop. A vast majority of the parcels along the segment of McLoughlin are zoned Mixed Use Corridor (MUC-1). Currently, the properties include a tavern, a one-story 13-unit apartment building, a towing business, and an auto repair business. There is also a single family home on a property zoned R-6 (low density residential) in the area. This property may be a good candidate to consider for future rezoning. On the whole, these sites are underdeveloped, and therefore represent future development opportunities. In recognition of the likelihood of redevelopment in the future, the City intends to place conditions of approval on future developers to integrate the trail into their redevelopment plans. The trail would be conveyed to the City either through an easement or dedication.

In order to have the least impact on redevelopment plans for these sites, the trail is shown in the plan just below a steep slope, where the grade of these properties becomes 35% and greater (see figure 1). The trail could hug the bottom of this hillside and potentially be integrated into a future alley or rear parking lot. If developers have alternative ideas for how to integrate the trail into their sites, the planning division would be happy to consider variations. Most importantly, however, the development should not turn its back on the trail. Having windows, entrances, open space, and potentially even outdoor patio seating areas located adjacent to the trail would create a safe trail for users and provide a pleasant setting at the rear of the properties.



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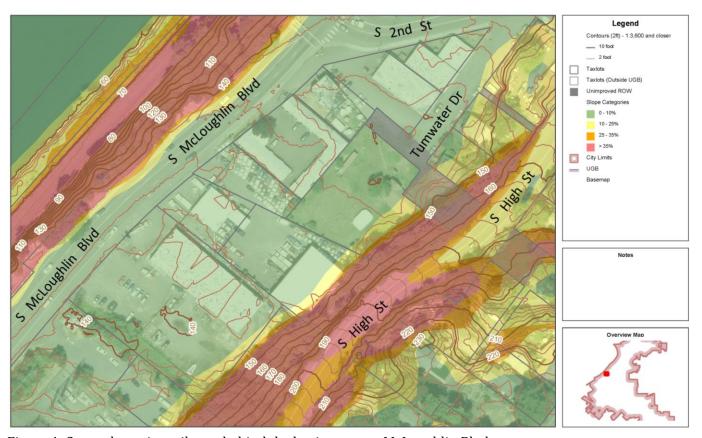


Figure 1: Steep slopes in trail area behind the businesses on McLoughlin Blvd.

The community advisory group considered alignments behind the neighboring PGE substation as well. However, the PGE substation includes a barbed-wire fence and a building along the back edge, which reduces visibility and creates places for people to hide. The advisory group found that security concerns outweighed the desire to be farther away from vehicle traffic on McLoughlin Blvd, and instead recommended that the trail jog back up to the street frontage for the length of the PGE property.

On Monday, November 13<sup>th</sup> at 3:00 p.m. the Planning Division received a letter from attorneys representing a property owner on McLoughlin Blvd. The Planning Division also received an email from Paul Edgar, Canemah resident and member of the Community Advisory Group for the trail plan. Both of these letters are added to the record, along with this memorandum. These letters raised several concerns, for which I wish to provide more context for the Planning Commission. I also propose a condition of approval to address some of the concerns, which is discussed below.

Concern: The trail "bisects" private property, which hinders the redevelopment of the site.

Response: As shown on the alignment map, the trail is proposed to run along the back of the property along the hillside. Oregon City code discourages development on slopes greater than 35%, and it is not expected that this hillside would be part of any redevelopment. Also,



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the City intends to work collaboratively with developers to determine a trail alignment that integrates with development. The trail plan, as written, does not make this intention explicit. Thus, staff recommends adding a condition of approval to revise the trail plan to say explicitly that exact trail location through private properties is flexible and will be determined through coordination with future developers or owners.

Concern: A trail through industrial businesses is unattractive.

Response: With mixed-use zoning, the properties may develop with residential uses, commercial uses, and/or offices. These types of uses are complementary to a trail that provides bicycle and pedestrian connections from neighborhood areas. The City does not intend to construct a trail through the existing businesses.

Concern: Public input largely desired a trail away from Mcloughlin Blvd.

Response: The permanent alignment aims to provide as much of the trail area behind development rather than on the street, in direct response to this public input.

Concern: The recommendation misses much of the preferred Old Canemah Park.

Response: The recommendation fully utilizes Old Canemah Park from end to end. It is the only alignment of the three options considered that is able to use the park.

Concern: The crossing at South  $2^{nd}$  Street is dangerous and violates the goals of the Community Advisory Group.

Response: The advisory group was in fact uncomfortable with all of the existing options for crossing at South 2<sup>nd</sup>. Currently, the safest option was identified as South 2<sup>nd</sup> and High Street where there is a four way stop and an eventual signal planned (unfunded TSP project D31). There was not full consensus on which intersection could offer the safest crossing in the future. Staff and consultants shared a crossing design concept for South 2<sup>nd</sup> and Tumwater at the end of the third advisory group meeting, and continued to refine it after hearing positive feedback from group members and Public Works officials. This crossing design concept is included in the final trail plan report and is a necessary project for the permanent alignment to be feasible. The City proposes to add this project to the Transportation System Plan Project list as Project C37.

Concern: The South End Road option (Option C) should have been recommended over Option B. There is already a trail into Old Canemah Park from South End Road.

Response: There is not an existing trail into Old Canemah Park; the aerial photo provided in the letter shows a small clearing that is not connected to the park and is not easily accessible due to steep slopes around it. Staff has visited the area. The High Street/South End Road option was supported by several of the advisory group members, but was ultimately not selected by the group.



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Concern: Exacting the trail from developers will constitute a taking because the trail is not related to the impact from the development.

Response: Development of mixed use sites with residential, commercial or offices uses is related to the trail. Bicycle and pedestrian access to properties is required by city codes, and the Comprehensive Plan and Transportation System Plan both include multiple goals and policies to create safe and convenient pedestrian routes, connect neighborhood areas to commercial areas with shared use paths, and encourage travel using non-vehicular modes. Staff and the City's attorneys believe there will be a proportional nexus for exaction in this instance.

Concern: The trail is not compliant with the Comprehensive Plan.

Response: See findings in the staff report.

In conclusion, staff recommends adding the following condition of approval in order to clarify the intent of the plan:

The applicant shall revise the trail plan to say explicitly that exact trail location through private properties is flexible and will be determined through coordination with future developers or owners.

From: Paul Edgar
To: Kelly Reid

Subject: : McLoughlin to Canemah Trial report , I would like to talk to you about this. (Please print this for tonight"s

Planning Commission meeting)

**Date:** Monday, November 13, 2017 5:14:47 PM

The Trail Committee did not agree to this! **In bold font.** This is what I and others understood is in (In Red)!

PERMANENT (Long Term) ALIGNMENT RECOMMENDATION for the McLoughlin to Canemah Trail

The Permanent trail alignment recommendation begins at the McLoughlin Promenade and connects to Tumwater Drive via the Three Rivers VFW Post 1324 parking lot and a dedicated non-motorized path down the existing driveway.

From there, the trail follows Tumwater Drive, crosses at S. 2nd Street, and continues south/southwest on Tumwater Drive through re-developed parcels, turning toward McLoughlin Blvd/Hwy 99E just north of the Portland General Electric (PGE) substation property.

From the PGE entrance, the Interim and Permanent trail recommended alignments are identical.

The trail connects between the PGE substation and McLoughlin Blvd/Hwy 99E, enters Old

Canemah Park, and connects to the Canemah National Register District neighborhood.

The route through the neighborhood follows Marshall Street and 3rd Avenue west/southwest, turns onto Ganong Street, and follows 4th Avenue until reaching the Canemah Neighborhood Children's Park.

https://www.orcity.org/sites/default/files/fileattachments/planning/page/11196/lowres\_final\_report\_with\_corrections.pdf

We recommended for what is in this wording of the: INTERIM ALIGNMENT RECOMMENDATION

The Interim trail alignment recommendation begins at the McLoughlin Promenade and connects via 2nd Street going east to High Street.

Travels south on the west side of High Street to 2nd Avenue and crosses 2nd Avenue at a new cross walk light (that will be part of replacing the Stop and Go light, with a timed Stop Light), where the alignment follows the south side of 2nd Avenue to McLoughlin Blvd.

The trail continues on the east side of McLoughlin Blvd/Hwy 99E until reaching the Portland General Electric (PGE) substation entrance.





