

**MINUTES – TILLAMOOK COUNTY BOARD OF COMMISSIONERS' MEETING**

Monday, February 4, 2008

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**COMMISSIONERS PRESENT:**Charles J. Hurliman, Chair  
Mark Labhart, Commissioner**COMMISSIONER ABSENT:**

Tim Josi, Vice-Chair (AOC)

**STAFF PRESENT:**Paul Levesque, Facilities, Fleet and  
Contracts DirectorFILED  
MAR - 7 2008  
8:35  
TASSI O'NEIL  
COUNTY CLERK

**STAFF PRESENT FOR PORTIONS OF THE MEETING:** Susan Becraft, Staff Assistant; Curtis Hesse, Director, Health Department; Dave Barbour, Community Development; Bill Campbell, Director, Community Development; Liane Welch, Director Public Works; Craig Schwinck, Director, Human Resources; Karen Dye, Treasurer; Neal Lemery, Justice of the Peace and Aaron Palter, Community Development.

**GUESTS:** John Gettman, Gus Meyer and Tilda Jones.

**CALL TO ORDER:** By Chair Hurliman at 9:00 in Commissioners' Meeting Room B.

**ITEM NO. 1: PUBLIC COMMENTS – NON-AGENDA ITEMS – REQUEST TO SIGN**

**GUEST LIST:** Chair Hurliman welcomed everyone and reminded them to sign the guest list.

**ITEM NO. 2: DISCUSSION CONCERNING PROPOSED OREGON LIDAR**

**CONSORTIUM FUNDING:** David Barbour presented samples of the LiDAR, showing the outstanding quality. He described how the data can be used to within about four (4") inches. He felt it was a good return on our Two Thousand (\$2,000) Dollar investment. He said on Wednesday Ian Madin, Oregon Department of Geology and Mineral Industries (ODGAMI), will give a presentation on a State-wide consortium for State-wide LiDAR on a three (3) year rotation. It can be used for planning and flood studies. There was a discussion about the budget process and how this could be included. Bill Campbell said the data could be included under subscription agreements. Mr. Barbour was recommending a Five Thousand (\$5,000) Dollar annual amount. Mr. Barbour said he will need three (3) terabytes of computer space. There was a discussion about the needs and costs for storage space.

**ITEM NO. 3: DISCUSSION CONCERNING AMENDMENT NUMBER 01 TO INTERGOVERNMENTAL AGREEMENT WITH THE DEPARTMENT OF HUMAN SERVICES (AGREEMENT #122712) FOR TILLAMOOK COUNTY'S DRINKING WATER PROGRAM:**

Curtis Hesse said there are a number of changes to the program within this modification. There will be other amendments in the future. This will be brought forward to Wednesday.

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**ITEM NO. 4: HUMAN RESOURCES UPDATE:** Craig Schwinck said there are nine (9) applicants for the Human Resources Director position.

**a) DISCUSSION CONCERNING PROPOSED SCOPE OF WORK FOR THE HUMAN RESOURCES DIRECTOR AFTER RETIREMENT:** Chair Hurliman said it is likely that the replacement will not have all the expertise that Mr. Schwinck does.

Karen Dye said that the Treasurer's office works directly with the Human Resources Department to ensure that everyone is paid the way they should when they are hired, reviewed or retired. She described the relationship to retirements and the complexity of the documentation that used to be handled by Pacific Mutual that we now provide. She said Mr. Schwinck's staff does not have that expertise.

Mr. Schwinck, at the request of the Commissioners, provided them with a Scope of Work after his retirement (see attached). Ms. Dye encouraged the Commissioners to consider the scope of work, which she supports.

Commissioner Labhart asked about item #10 on the letter. Mr. Schwinck said that if there is not a minimum of eighty (80) hours of work, then he would not be interested. He spends a lot of time talking to people. He would keep track of his time but be paid a minimum of eighty (80) hours per month. Hours worked over eighty (80) per month would be paid at an hourly rate. As to #9 he would put it all into a computer format for a good transition to a staff person.

Commissioner Labhart made a motion to support the scope of work. Chair Hurliman said Paul Levesque needs to negotiate a contract. Ms. Dye disagreed saying he would be paid as a one hundred fifty (150) day employee under a Personal Action Form. The Commissioners said they were comfortable with the scope.

**ITEM NO. 5: PUBLIC WORKS UPDATE:** Liane Welch said they have twenty to thirty (20 – 30) projects they are working on with FEMA. It will take a year. We have the highest snow pack since 1979. Chair Hurliman discussed a danger tree on Fraiser Road, in the river.

Ms. Welch said the part time, temporary Office Specialist 2 did not work out. She is proposing a full time Office Specialist 2, half time (½) in Public Works and half (½) time in Solid Waste. Mr. Schwinck said the intent was to hire a one hundred fifty (150) day (part time, temp) for one hundred fifty (150) days to get us through the budget; but that did not work out. If the new position was created, but the Public Works budget decreased, the point five (0.5) Public Works' position would be deleted. Ms. Welch has not yet taken this to the Solid Waste Advisory Committee (SWAC). Ms. Dye said Ms.

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Welch has mentioned this, but she was not qualified to discuss the need. Mr. Schwinck said the Solid Waste Coordinator position does a lot of paperwork instead of education as desired by the SWAC. Ms. Welch is doing her own clerical work.

Mr. Campbell described how his Department imposes a work load on Public Works. He suggested there be permit fee increases. Ms. Dye said there will not be money to support certain public services. Chair Hurliman didn't think the funds would be there.

Mr. Schwinck said we would only be adding health insurance for three (3) months, as the other benefits don't kick in for six (6) months. Commissioner Labhart read an e-mail indicating the administration has included safety net payments in his budget. Ms. Welch will talk to the SWAC about the Office Specialist 2 position. Ms. Welch will poll the members and if they are OK with the position, there is Board consensus to proceed with recruitment.

**ITEM NO. 6: COMMUNITY DEVELOPMENT UPDATE: a) PERMIT REPORT:** Mr. Campbell reviewed his report. Recca Maze has passed her certification. We will learn the amount of our 2006 mitigation funds this week. There are thirteen (13) eligible properties.

**b) SANITATION REPORT:** Work is current. Activities and revenues are down from prior years.

**c) DISCUSSION CONCERNING A MEMO ON MEASURE 49 IMPACTS ON MEASURE 37:** The memo was crafted by staff and County Counsel. We have processed Measure 37 claims. Measure 49 claims will be processed by the State. The Bastach Measure 37 claim is moot because they did not file a State claim. Aaron Palter said there are multiple law suits around the State. Consensus is that many, if not all of these cases, will be mooted with Measure 37 claims that were denied. The State is giving out notices for owners to file a Measure 49 claim except for commercial and industrial claims. Chair Hurliman said the Attorney General could have worked harder on Measure 37 and made sense of it. Mr. Campbell said Measure 49 has a net effect of voiding all County Measure 37 claims. The State will process all Measure 49 claims but some may be referred to the County, if it was solely a County land use measure. Mr. Campbell said Cities and Counties must make determinations of vested rights.

Chair Hurliman recessed the meeting at 10:25 a.m. and reconvened it at 10:30 a.m.

Mr. Campbell said a Board Order will be needed to supersede Measure 37 and establish a vested rights process. Some Counties who have done those are being challenged in the Courts. Mr. Campbell felt there would be three (3) to five (5) parties that would request a vested right, which he described. He also talked about the three

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(3) classes of claimants. Mr. Palter said there were two (2) of our Measure 37 claims that did not file State claims, so they will not receive the State notice. Chair Hurliman said the presentation by Dave Honeycutt video last week will answer a lot of questions.

Mr. Campbell said our focus will be on vested rights determinations. Vested rights are based on case law. Mr. Campbell read some of the criteria. He discussed the Iseri claim. Chair Hurliman shared his concern about Court appeals derailing what would otherwise be legitimate claims. We are preparing a Measure 56 notice. As to a fee for a vested rights determination, Mr. Campbell said more work will be needed on this. They will have a Board Order within two (2) weeks. Chair Hurliman discussed his concern about decisions on vested rights.

**ITEM NO. 7: DISCUSSION CONCERNING RE-PRIORITIZING TILLAMOOK COUNTY PROJECTS FOR THE OREGON ECONOMIC & COMMUNITY DEVELOPMENT DEPARTMENT TO PRESENT TO THE LEGISLATURE DURING THEIR SPECIAL SESSION:** Commissioner Labhart said the Regional Investment Board prioritized three (3) projects but with the flood, the new priorities are now:

1. Jetty staging area;
2. Railroad rehabilitation;
3. Johnson Bridge.

There was consensus on the new priorities proposed.

**ITEM NO. 8: FACILITIES, FLEET AND CONTRACTS DIRECTOR UPDATE: a) DISCUSSION OF ORDER DECLARING SHERIFF'S DEPARTMENT VEHICLES AS SURPLUS:** Mr. Levesque said the surplus vehicles are a 1994 and 1998 Crown Victoria. He proposes to sell them on e-bay. This will be brought forward to Wednesday.

**b) DISCUSSION CONCERNING ID BADGES:** Mr. Levesque described the security lock project currently being funded by the State Courts. That system uses a series of electronic keys. In addition to the Court doors, one (1) such lock is also being installed at the back door to the Courthouse. The system is also designed to accommodate a system of picture ID cards that open the locks. District Attorney Bill Porter wants to implement a picture ID for his offices and is willing to pay the Two Thousand Nine Hundred (\$2,900) Dollar cost for the entire hardware/software components for the entire system. Judge Neal Lemery said the Information Systems (IS) Department is willing to operate the system and take the ID pictures. Mr. Schwinck confirmed that the Personnel Department will issue and control the IDs. They will be issued to every employee and the lawyers in town who use the County Law Library. This item is informational.

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Chair Hurliman recessed the meeting at 11:10 a.m. and reconvened it at 11:15 a.m.

**c) CONSIDERATION OF AN ORDER DECLARING EMERGENCY CIRCUMSTANCES REQUIRING THE PROMPT EXECUTION OF A PUBLIC CONTRACT FOR EMERGENCY FLOOD MITIGATION:** Mr. Levesque said this involves construction of two (2) gated spillways; one on Tone Road and the other on the Wilson property. They will be constructed by Nehalem Marine as an Oregon Solutions project under the same findings of an emergency that were used by the Corps of Engineers in the Advance Measures Program for the modeling. It will be set up as a design/build project.

Commissioner Labhart made a motion to approve and sign an Order declaring emergency circumstances requiring the prompt execution of a public contract for emergency flood mitigation. The motion was seconded by Chair Hurliman. The motion carried with two (2) aye votes. The Commissioners signed Order #08-020.

**d) DISCUSSION CONCERNING CANCELING PUBLIC HEARINGS ON A PROPOSED ORDINANCE ESTABLISHING GUIDELINES FOR THE USE OF INTERNAL COMBUSTION POWERED VEHICLES OPERATED OR PLACED UPON LAKE LYTTLE:** Mr. Levesque reminded the Commissioners that we received a letter from the State Marine Board stating that the County lacked jurisdiction to enact such an Ordinance. The Commissioners concurred that the proposed Ordinance was now moot and agreed that the Public Hearing should be cancelled.

**e) DISCUSSION CONCERNING LETTER OF SUPPORT FOR THE CITY OF ASTORIA'S 2008 APPLICATION FOR THE NORTHWEST OREGON REGIONAL HOUSING REHABILITATION PROGRAM:** Mr. Levesque said that we are part of a housing region consisting of Clatsop, Columbia and Tillamook Counties. Various jurisdictions within the region apply for housing rehabilitation projects and it is customary that the remaining jurisdictions send letters of support. He listed St. Helens and Garibaldi as examples in recent years. This will be brought forward to Wednesday.

**f) DISCUSSION CONCERNING COMMISSIONERS' EVENING MEETING ON FEBRUARY 20, 2008:** Mr. Levesque said that there will be an important meeting on marine reserves that has been scheduled for the same time. There was Board consensus to reschedule the conflicting evening Board meeting back to our regular 9:00 a.m. day time meeting on that day.

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**OTHER:** Mr. Levesque said Tillamook County has been invited to submit a One Hundred Thousand (\$100,000) Dollar Oregon Economic Community Development Department grant application for the fairgrounds grandstand. The application has been completed and he would like to schedule it for Wednesday. There was consensus to put this on the Wednesday agenda.

**ITEM NO. 9: STAFF UPDATE/CALENDAR REVIEW & SCHEDULING/AGENDA REVIEW/SUGGESTION BOX/INTER OFFICE MATTERS:** The Commissioners reviewed, amended and approved the Wednesday agenda.

An Order will be added to appoint Commissioner Labhart to the Northwest Oregon Economic Alliance. Also, an Order re-appointing Van Moe and appointing Val Folkema to the Columbia Pacific Economic Development District Board of Directors will be added to the Agenda. The Commissioners scheduled interviews for the Human Resources Director.

There were no suggestions in the suggestion box.

**ITEM NO. 10: BOARD CONCERNS – NON-AGENDA ITEMS & ANNOUNCEMENTS:**  
There were none today.

**ITEM NO. 11: PUBLIC COMMENTS:** Tilda Jones, Tillamook Bay Habitat Estuary Improvement District, thanked Commissioner Labhart for his Oregon Solutions work. They support the Emergency Mitigation Order. She hoped that a new channel could be put in behind the Dean fill. Mr. Levesque described the difficulty in adding a project at this late date, especially one that requires permitting.

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Ms. Jones suggested the RV repair could be flood proofed. Commissioner Labhart said the RV Repair is moving. She said owners can flood proof their own property. She said a property owner cannot get topo information for his property. Chair Hurliman suggested a tax survey would do the same thing.

There being no further business Chair Hurliman adjourned the meeting at 12:40 p.m.

**RESPECTFULLY SUBMITTED** this 6~~th~~ day of March, 2008.

County Clerk: Tassi O'Neil

Susan J. Becraft  
Susan Becraft, Recording Secretary  
& Special Deputy

**APPROVED BY:**

[Signature]  
Chair

[Signature]  
Vice-Chair

[Signature]  
Commissioner



**NOTICE OF MEETING AND AGENDA**  
**of the**  
**TILLAMOOK COUNTY BOARD OF COMMISSIONERS**  
Also sitting as the Board of the  
SOLID WASTE SERVICE DISTRICT &  
THE 4-H AND EXTENSION SERVICE DISTRICT  
to be held

**Monday, February 4, 2008, at 9:00 a.m.**

**Commissioners' Meeting Room B**  
County Courthouse, 201 Laurel Avenue  
Tillamook, Oregon

**BOARD OF COMMISSIONERS**

Charles J. Hurliman, Chair  
E-mail: [churlima@co.tillamook.or.us](mailto:churlima@co.tillamook.or.us)

Tim Josi, Vice-Chair  
E-mail: [tjosi@co.tillamook.or.us](mailto:tjosi@co.tillamook.or.us)

Mark Labhart, Commissioner  
E-mail: [mlabhart@co.tillamook.or.us](mailto:mlabhart@co.tillamook.or.us)

201 Laurel Avenue  
Tillamook, Oregon 97141  
Phone: (503) 842-3403 FAX: (503) 842-1384

ANY QUESTIONS? Contact  
Paul Levesque (503) 842-1809  
E-mail: [plevesqu@co.tillamook.or.us](mailto:plevesqu@co.tillamook.or.us)

COUNTY WEBSITE: <http://www.co.tillamook.or.us>

WATCH THIS MEETING ON TV: TLCTV Channel 35

Monday – 1:00 p.m.  
Thursday – 1:00 p.m.  
Sunday – 1:00 p.m.

Tuesday – 8:00 p.m.  
Friday – 8:00 p.m.

Wednesday – 9:00 a.m.  
Saturday – 9:00 a.m.

NOTE: The Board of Commissioners reserves the right to recess to Executive Session as may be required at any time during this meeting, pursuant to ORS 192.660(1).

NOTE: The Tillamook County Courthouse is accessible to persons with disabilities. If special accommodations are needed for persons with hearing, visual or manual impairments who wish to participate in the meeting, please contact (503) 842-3403 at least 24 hours prior to the meeting so that the appropriate communications assistance can be arranged.



**CALL TO ORDER: Monday, February 4, 2008 9:00 a.m.**

**BOARD OF COMMISSIONERS**

1. Public Comment – Non-Agenda Items – Request to Sign Guest List
2. Discussion Concerning Proposed Oregon LiDAR Consortium Funding/David Barbour
3. Discussion Concerning Amendment Number 01 to Intergovernmental Agreement with the Department of Human Services (Agreement #122712) for Tillamook County's Drinking Water Program/Curtis Hesse, M.D.
4. Human Resources Update/Craig Schwinck
  - a. Discussion Concerning Proposed Scope of Work for the Human Resources Director after Retirement
5. Public Works Update/Liane Welch
6. Community Development Update/Bill Campbell
  - a. Permit Report
  - b. Sanitation Report
  - c. Discussion Concerning a Memo on Measure 49 Impacts on Measure 37
7. Discussion Concerning Re-Prioritizing Tillamook County Projects for the Oregon Economic & Community Development Department to Present to the Legislature During Their Special Session/Mark Labhart
8. Facilities, Fleet and Contracts Director Update/Paul Levesque
  - a. Discussion of Order Declaring Sheriff's Department Vehicles as Surplus
  - b. Discussion Concerning ID Badges
  - c. Consideration of an Order Declaring Emergency Circumstances Requiring the Prompt Execution of a Public Contract for Emergency Flood Mitigation
  - d. Discussion Concerning Canceling Public Hearings on a Proposed Ordinance Establishing Guidelines for the Use of Internal Combustion Powered Vehicles Operated or Placed Upon Lake Lytle
  - e. Discussion Concerning Letter of Support for the City of Astoria's 2008 Application for the Northwest Oregon Regional Housing Rehabilitation Program
  - f. Discussion Concerning Commissioners' Evening Meeting on February 20, 2008
9. Staff Update/Calendar Review & Scheduling/Agenda Review/Suggestion Box/Inter-Office Matters/Sue Becraft
10. Board Concerns – Non-Agenda Items & Announcements
11. Public Comments

**ADJOURNMENT**

**BOARD MEETINGS AND ANNOUNCEMENTS**

The Commissioners will meet with the Fairgrounds Director and members of the Fair Board on **Friday, February 8, 2008** at 11:30 a.m. at the Rendezvous Restaurant for their regular quarterly luncheon meeting.

The Commissioners will join the City of Manzanita Mayor, City Council and Staff on **Monday, February 11, 2008** at **6:00 p.m.** for a working dinner at the Terra Cotta Café in Manzanita. The Commissioners and officials of the City of Manzanita will be discussing matters of mutual interest to the County and City.

The Tillamook County Courthouse will be **closed** on **Monday, February 18, 2008**, for Presidents' Day. All County offices in the Courthouse, as well as the State Circuit Courts will be closed.

The Commissioners will join the City of Garibaldi Mayor, City Council and Staff and Port of Garibaldi Commissioners and Staff on **Monday, February 25, 2008** at **6:00 p.m.** for a working dinner at the Old Mill Lodge in Garibaldi. The Commissioners and officials of the City of Garibaldi and Port of Garibaldi will be discussing matters of mutual interest to the County, City and Port.

The Commissioners' evening meeting schedule is as follows:

February 20, 2008	Cape Kiwanda Community Center
March 19, 2008	County Courthouse
April 16, 2008	Manzanita City Hall
May 21, 2008	Cape Kiwanda Community Center

All evening meetings will begin at 6:30 p.m.

# BOARD OF COMMISSIONERS' STAFF MEETING

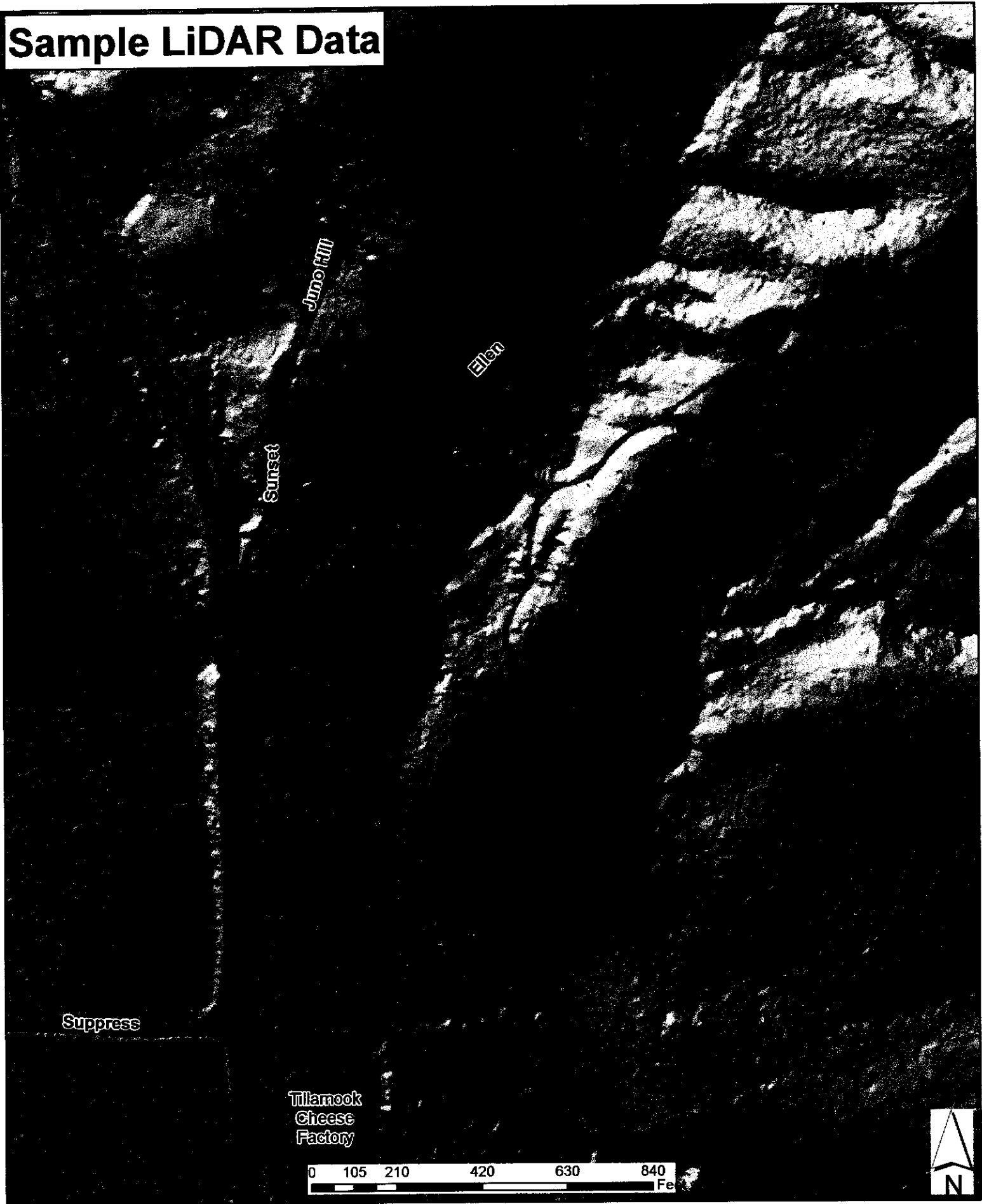
*Monday, February 4, 2008*

PLEASE PRINT

Name	Address	Item of Interest
JOHN GETTMAN		all
GUS Meyer		General
CURTIS HESSE	HEALTH DEPT.	
Dave Barbour	Community Development / GIS	LI DAR
Bill Campbell	TCD	#2 #6 #7
Wane Welch	PW	
Craig Schwinn	TCHR	
Karen Dy		
Haron Palter	BOCC	#6c #8e
Neal Lemm	Justice Court	#8B
Tilda Jones	—	TBHEID   National Board

(Please use reverse if necessary)

# Sample LiDAR Data



Suppress

Tillamook  
Cheese  
Factory

0 105 210 420 630 840  
Feet



# Sample LiDAR Data

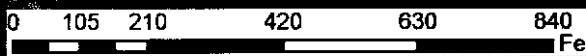
Juno Hill

Ellen

Sunset

Suppress

Tillamook  
Cheese  
Factory





TILLAMOOK COUNTY  
OFFICE OF PERSONNEL

Craig Schwinck, Director  
Lois Muehlbauer, Generalist

201 Laurel Avenue  
Tillamook, Oregon 97141  
(503) 842-3418  
FAX 842-1339  
TTY/TDD 1-800-833-3232

*Land of Cheese, Trees and Ocean Breeze*

January 16, 2008

To: BOCC  
Treasurer

From: Craig Schwinck  
HR Director

RE. Scope of Work after Retirement March 3, 2008

At your request I have put together a scope of work to be accomplished after I retire. I would become an On-Call 150 day employee for Tillamook County. The major duties are as follows:

1. To be available by telephone and email to employees to answer questions and walk them through their prospective retirement paperwork.
2. To calculate employee requests for retirement benefits estimations, produce the required paperwork to file with the County to receive benefits.
3. To calculate voluntary, units and retirement benefits for terminating employees.
4. To produce the forms for employees who need retirement benefit totals for bank loans.
5. To work with Milliman on insuring that retirement payments to retirees are accurate.
6. To work with John Upton to review the investment portfolio and Retirement Trust's performance.
7. To be available to review and make recommendations concerning budget issues as requested by the Treasurer.
8. To be available to answer questions on policy and procedures, collective bargaining agreements, etc to the new HR Director.
9. Produce an organized electronic file of forms, letters, and calculators for the County HR staff to use after June 30<sup>th</sup> to meet the paperwork requirements for payroll, HR and the Treasurer for the employee terminating or retiring for Tillamook County.
10. Answer training and questions of the new HR Director and other duties as assigned.

For this I would receive pay at my current hourly rate for a minimum of 80 hours per month. Actual project hours over 80 would be additional. The duration of this on-call 150 day employee agreement would run for a time certain from March through June 30, 2008. If the County would like to extend my on-call employment it would be reviewed at that time.

Other future issues that will need to be addressed.

- Working with Everett Moreland, ERISA attorney, to make sure the Plan remains IRS compliant.
- Annual Actuarial Evaluation census report done in late August, early September.
- Annual benefits training meeting in October.

1/31/2008

**Dept. of Community Development - Building Section**

<b>Week Ending</b>	<b>Plan Review</b>	<b>Structural Inspections</b>	<b>Mechanical Inspections</b>	<b>M.D. insp.</b>	<b>Mileage for Inspectors</b>	<b>Electrical Inspections</b>	<b>Plumbing Inspections</b>	<b>Investigate Proj. check</b>	<b>Citations Issued</b>	<b>Stop Work Orders</b>	<b>Court Hours</b>
01/02/08	4	43	18	0	586	20	16	0	0	0	0
01/09/08	14	71	14	0	914	48	29	0	0	0	0
01/16/08	9	60	17	1	761	72	35	2	0	0	0
01/23/08	10	66	16	1	860	26	40	0	0	0	0
01/30/08	13	52	19	3	1148	35	27	2	0	0	0
02/06/08											
02/13/08											
02/20/08											
02/27/08											
<b>Total</b>											
<b>YTD</b>	50	292	84	5	4269	201	147	4	0	0	0

**Sanitation Permit Intake: Dec 27<sup>th</sup>, 2007- Jan 30<sup>th</sup>, 2008**

<b>Week</b>	<b>Permit #</b>	<b>Type</b>	<b>rec'd</b>	<b>field</b>	<b>approved</b>	<b>reason held</b>	
12/27-01/02	07-2854-S	Final Inspection	12/27	12/27	01/02		
	07-5166-S	Authorization Notice	12/27	01/25	01/29		
	07-5191-S	Authorization Notice	12/31	01/02	01/02		
	07-4018-S	Final Inspection	01/02	01/07	*	*sand specs req'd	
01/03-01/09	08-0045-S	Site Evaluation	01/07	01/11	01/14		
	07-4772-S	Partial Inspection	01/08	01/09	*	*tank inspection	
01/10-01/16	07-3527-S	Final Inspection	01/10	01/11	*	sand specs req'd	
	08-0126-S	Authorization Notice	01/14	01/28	01/29		
01/17-01/23	08-0175-S	Tank Replacement	01/17	01/18	01/18		
	08-0205-S	Permit to Construct	01/18	01/24			
	08-0209-S	Site Evaluation	01/18	01/17			
	08-0210-S	Site Evaluation	01/18	01/17			
	08-0211-S	Site Evaluation	01/18	01/17			
	07-3875-S	Final Inspection	01/17	01/18	01/24		
	07-4943-S	Final Inspection	01/21	01/24	*	as-built/mat list	
	07-4896-S	Final Inspection	01/22	01/24			
	07-4017-S	Final Inspection	01/22	01/24	01/24		
	08-0266-S	Tank Replacement	01/23	01/24	01/24		
	07-0331-S	Final Inspection	01/23	01/24	*	ATT start up	
	07-3123-S	Final Inspection	01/23	01/24	01/24		
	01/24-01/30	08-0175-S	Final Inspection	01/24	01/24	01/25	
		07-5160-S	Final Inspection	01/28	01/28	01/29	



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MEMORANDUM

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**TO:** BOARD OF COUNTY COMMISSIONERS  
**FROM:** BILL CAMPBELL, DIRECTOR OF COMMUNITY DEVELOPMENT  
**SUBJECT:** MEASURE 49 IMPACTS ON MEASURE 37 – FOR DISCUSSION  
**DATE:** 1/31/2008

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As you know, in 2002 Oregon voters approved Measure 37 and, following the full force and implementation of this new law in 2004, counties across Oregon have been implementing its process. In November of 2007, Oregon voters approved Measure 49, which substantially impacts Measure 37 and counties are, once again, faced with the task of implementing new law.

To date, Tillamook County has received 91 Measure 37 claims, approving 88, denying 1 and tolling 2 by request. Measure 37 Waivers have been prepared and sent to all claimants with approved claims.

Through its processing of Measure 37 claims, Tillamook County has been able to foster a collective effort between local government and the people it represents by using a straightforward, legal process to respond to and meet the voters' intent by processing all claims in the time and manner allowed by law.

Measure 49 went into effect on December 6, 2007; and Tillamook County will work to implement the details of this new and more complex Measure.

Measure 49 differs from Measure 37 greatly in that it rescinds the authority for the County to process claims; new claims are processed at the State level and are only transferred to the County for process following a determination by the DLCD that the land use regulation from which relief is sought was solely enacted by the County.

Measure 49, like its predecessor, is not without conflict, with one of the chief aspects to be addressed being the issue of a Vested Right should claimants assert a right to proceed under Measure 37. Tillamook County may, therefore, be asked to review such claims by claimants wishing to proceed under Measure 37 with a claim of a Vested Right.

Tillamook County's process towards this end should be no different when continuing to provide consistency in a straightforward and legal manner while continuing to foster that collective effort between local government and the people it serves.

When addressing Measure 49, Measure 37 claimants can be grouped into three classes: Class 1 Claimants – those who have a pending Measure 37 claim at the County or State level and have not yet received an order; Class 2 Claimants – those who already have an approved claim at both the County and State level; and Class 3 Claimants – those who have received an order denying their Measure 37 claim.

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The chief impacts of Measure 49 on Measure 37 are:

- The filing of a Measure 37 claim is no longer allowed. Any new claims filed would be introduced through the Measure 49 filings process.
- Orders granted under Measure 37 and any waivers derived therefrom were invalidated by Measure 49.
- State processes all new Measure 49 claims unless it is determined that the County is the sole governing body responsible for enacting the land use regulation in question.
- Measure 49 relief is limited to residential home sites; commercial and industrial development is not allowed. In addition, the number of home sites is limited – up to three. In the case of a claim where three home sites already exist, claimants may be granted one (1) additional home site without a lengthy process.

Two groups of claims: The affect of Measure 49 upon 37 claims and the filing of a new Measure 49 claims.

As of January 22, 2008, DLCD has begun its process of mailing approximately 6,400 Measure 49 Election Notice Packets to claimants. These Packets provide three options to Measure 37 claimants:

- The Express Option allowing eligible claimants to develop up to three home sites;
- A Conditional Option which has more stringent requirements, allowing eligible claimants to develop up to 10 home sites; and
- A Vested Right Option which allows a Measure 37 claimant to proceed with his/her land development project if he/she incurred substantial costs in good faith to carry out a Measure 37 waiver.

Claimants have 90 days to elect one of these options and return their form to the state.

#### PROCESSES FOR DEVELOPMENT:

The State is putting the onus on Counties to process vested rights requests/determinations. Counties, therefore, will need to implement a process for a vested rights determination for claimants who wish to proceed accordingly. This may require a filing of an application request, the review of action(s) taken by the claimant in accordance with the issued Measure 37 Waiver and a determination at some level of whether or not a vested right exists. There would be some level of legal research and staff time needed to complete each vested rights request. Measure 49 leaves an opportunity open to anyone to provide input during this process as well as the ability to challenge a decision which results.

There is no statutory definition in Oregon for a Vested Right; these types of determinations are made through the application of case law. Under decisions of the Oregon courts, Vested Rights are an issue of fact to be decided on a case-by-case basis.

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Other factors which Oregon appellate courts have considered when determining whether or not a Vested Right exists are:

- The amount of money spent on developing the use in relation to the total cost of establishing the use; a ratio of costs.
- Good faith of the property owner.
- Whether the property owner had notice of the proposed change in law prior to beginning the development.
- Whether the improvements made to the property under the existing law could be used for other uses that are allowed under the new law.
- The kind of use, location and cost of the development.
- Whether the property owner's acts rise beyond preparation (i.e., land clearing, planning, etc.).

There is sufficient case law for determinations to be made on vested rights requests under Measure 37.

#### ACTION STEPS:

The following is a listing of the steps the Board should consider when implementing Measure 49's affects upon Measure 37:

- The discard or voidance of the Board's previous order establishing the process for Measure 37 at the County level.
- The development and adoption of a Vested Rights application review process based upon clear and concise criteria, together with appropriate fees to offset administrative and processing costs associated therein.
- The issuance of Measure 56 Notices to all property owners within the 30-day time period mandated by the State. (NOTE: The 30-day deadline is set to expire on February 8, 2008.)

END OF MEMO

Tillamook County



Land of Cheese, Trees and Ocean Breeze

201 Laurel Avenue  
Tillamook, Oregon 97141

Tillamook County Commissioners  
Mark Labhart, Charles Hurliman, Tim Josi  
503-842-3403  
FAX 842-1384  
TTY Oregon Relay Service

October 17, 2007

Bev Thacker, Industrial Lands Specialist  
Oregon Economic & Community Development Department  
775 Summer Street NE Suite 200  
Salem OR 97301-1280

RE: Industrial Site Certification: Sites E6, I4, and K1-K8 Port of Tillamook Bay

Dear Ms. Thacker:

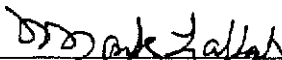
We are expressing our strong support for the Port of Tillamook Bay's application to include three project ready parcels of land in Oregon's Industrial Site Certification program.


The opportunity to have these project ready sites marketed by the state should increase the County's ability to further the local economic development mission to facilitate a healthy business community and infrastructure to increase economic viability for Tillamook County Citizens. This program is consistent with our goals to expand, retain and recruit businesses and industries, and to increase per capita income, diversify the economy and promote economic growth through year-round family wage jobs.

We are pleased that the Port of Tillamook Bay has taken the initiative to participate in this program. We strongly support this application and will work with the Port, through the Economic Development Council of Tillamook County, to promote the sites once the certification process is complete.

Sincerely,

BOARD OF COMMISSIONERS  
FOR TILLAMOOK COUNTY, OREGON

  
Mark Labhart, Chair

  
Charles J. Hurliman, Vice-Chair

  
Tim Josi, Commissioner

cc: Port of Tillamook Bay  
Vicki Goodman

AN EQUAL OPPORTUNITY EMPLOYER