DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
MULTNOMAH COUNTY PLANNING COMMISSION

MINUTES OF APRIL 6, 2015

I. Call to Order: Chair John Ingle called the meeting to order at 6:30 p.m. on Monday, April 6, 2015 at the Sauvie Island Academy Gymnasium, 14445 NW Charlton Rd, Portland, OR.

II. Roll Call: Present - Ingle, Vice-Chair Jim Kessinger, Paul DeBoni, Chris Foster, Bill Kabeiseman, Jeremy Sievert, Alicia Denney, Susan Silodor, Katharina Lorenz
Absent - None

III. Approval of Minutes: March 16, 2015.
Motion by DeBoni; seconded by Kabeiseman.
Motion passed.

IV. Opportunity to Comment on Non-Agenda Items:
None.

V. Hearing (continued from March 16, 2015): Sauvie Island – Multnomah Channel Rural Area Plan Update (PC-2013-2931)
Ingle read into the record the Legislative Hearing Process for the Planning Commission for a public hearing. The focus this evening is deliberation and possible decision. The Commissioners disclosed no actual or potential financial or other interests which would lead to a member's partiality. Silodor stated that she lives on a moorage. There were no objections to the Planning Commission hearing the matter. Ingle noted that the Planning Commission may elect to call on someone who has provided public testimony in the past for clarification. In that event, the record will be opened, then closed upon completion of the additional clarifying testimony.

Adam Barber, Senior Planner, noted that tonight is our fifth hearing for this project. The first three meetings focused on staff presentations and testimony for the different topic areas formed during the scoping phase. We talked about Natural and Cultural Resources, Public and Semi-Public Facilities, Agriculture and Agri-tourism, Transportation, and Marinas and Moorages. At the March 16th meeting, the Commission began deliberations on those draft policies. Barber reintroduced the tracker tool (Exhibit H.4). He also mentioned that much information can be gleaned from the staff report, dated December 1, 2014, and the minutes of January 5, 2015, February 2, 2015, March 2, 2015 and March 16, 2015.

Barber said since the Planning Commission had requested additional information regarding marinas & moorages before deliberating, he noted the three ways the additional information was gathered, which included a field trip to three moorages on the Channel on April 3, a memorandum dated 4/1/15 regarding the County's Department of Assessment Recording & Taxation (DART) process for assessing marinas and floating infrastructure (Exhibit N), and a letter mailed to Marina/Moorage owners & operators requesting voluntary inventory (Exhibit O). Barber reiterated the purpose of Policy Statement Review document (Exhibit G), which should be helpful for guidance as the process moves forward.

Kevin Cook, Multnomah County Planner, discussed Exhibit N in more detail.

Ingle asked for clarification on the policy tracker, he was under the impression that some consensus had been reached on some of the policies that had been discussed, but it didn't seem to be reflected in the tracker. Cook suggested that although there may have been consensus, it would be good to do a straw poll to confirm. Cook then proceeded to go through the individual policies.

The Policy 1.2 discussion confirmed that the draft text was the consensus at the last hearing. That best reflected what the Planning Commissioners had agreed upon. It was determined that sub (a) was culled from Exhibit 5.6, and it was noted this policy is narrowly focused on the farm stands.

Policy 1.5 is about creating a unified permitting process for review of mass gatherings and other gatherings. The proposed amendment would add more specific language, which was pretty widely supported. DeBoni mentioned that sub (b) may be difficult to enforce since DEQ sound regulations are primarily based on physical health related affects of sound, which he does not believe applies here. Cook said the County has a noise ordinance that resides in the sheriff's code, which might be helpful. DeBoni agrees with having a provision that addresses the concerns of sound levels, he just does not think the DEQ standard is the proper tool. He suggests using more general language. Kabeiseman said he believes DEQ has abandoned its noise ordinances and left it to local jurisdictions. He suggested "all applicable noise ordinance standards", which would encompass local and state ordinances.

The record was opened for clarification from Mark Greenfield, one of the authors of the proposed policy language.

Mark Greenfield, 14745 NW Gillihan Rd, Portland. On the noise issue, he believes Commissioner Kabeiseman is correct; DEQ is not enforcing its noise standards any longer. He thinks that having something like the County noise ordinance would be appropriate. What you often see in land use matters is "all applicable state and local ordinances". Ingle closed the public record.

It was determined that sub (b) would read noise levels associated with gatherings comply with all state and local noise regulations to maintain the rural character of the island.

Policy 1.6 as it is currently written was agreed upon.

The commission went on to deliberate on the Moorages and Marinas policies beginning with 2.1. Cook said this gets at the 1:50 standard, which is in the current code in terms of the Waterfront Uses section that is applicable to moorages and marinas. It specifies that a marina can have one dwelling unit per fifty feet of water frontage. We have heard very clearly from the Department of Land Conservation & Development (DLCD) that they do not believe retaining that standard comports with Goal 14 urbanization. That kind of density is clearly an urban density. This issue was taken up in the recent LUBA (Land Use Board of Appeals) case, which came out after this staff report. That case centered around whether the 1:50 is applicable to the existing code prior to this process. LUBA said we do have an acknowledged plan, the 1:50 still stands currently, and you do not need a goal exception. That was the focus of that decision. But now we're talking about a new plan, and DLCD has said they are okay with the existing approvals at each marina, and every marina has approval for some number of floating homes. This proposed policy essentially locks in those approvals without the ability to expand further. During the CAC discussions, there were folks that wanted to retain the 1:50 if at all possible. However, we understand that we would risk not being acknowledged by DLCD.

Cook said there was an alternate proposal submitted from Peter Fry (E.1.3), which recommends retaining the 1:50. I want to highlight the five points in the staff report beginning on page 14, which summarize the particular issues with going beyond existing approvals. There may be an issue with the Rural Reserve designation because more intensive uses are generally not allowed in Rural Reserves. Also, State Goal 14 does not allow urban densities outside of Urban Growth Boundaries (UGB). Number three would be State Goal 15; there are alternate opinions on Goal 15, which is the Willamette River Greenway goal. Many believe that because the dwellings don't necessarily need to be located on the water, they are not exempt from the setbacks that are required in the Greenway, which is 150 feet from the bank. So if that's true, then new floating homes would not be permitted under Goal 15. There is a potential issue with Goal 11, which is the Public Facilities, and depending on the interpretation, if you have to extend sewer to more than one lot, that could be considered a sewer system, and therefore not permitted outside a UGB. Point five is the Climate Action Plan, where each additional dwelling creates additional vehicle miles travelled, so we're putting more demand on the roads and adding more vehicle miles to the system outside of the urban area.

Ingle said it boils down to our comfort level between what we have already and what Mr. Fry submitted. I am actually happy with what staff has. I thought that Peter's comments where a little more flexible than I want to be. For example, "Multnomah County recognizes the existing marinas", I read that to include both legal and illegal operations, whereas when you tag it to a number (17 existing marinas), that clearly defines where our focus is going to be. There's some other language that I thought was either too broad or too flexible. Foster said I think is high time we comply with Goal 14, it's a wonder it's lasted as long as it has. Court cases decided what urban density was in 1986. I'm going with the staff. Kabeiseman said I also agree with the staff, this is a rural area and the density of 1 every 50 lineal feet is inappropriate in a rural area. Ingle said we accept Policy 2.1 as submitted by the draft Rural Area Plan.

2.1(a), Cook read staff's draft policy, and pointed out the proposed amendment to the sub-policy submitted by Squier et.al. Foster said he supports the Squier revision. DeBoni said his only concern was, having background experience in current planning, to use the word "shall" in a policy document. In my mind, it's always code language. A policy needs to be directive, but not to the point of trying to replace ordinance language. Ingle asked if he thought it should read "should" instead of "shall". DeBoni said, I don't have a problem with "should", it's just the word "shall" I have a problem with. Foster said I think the difference in those two words speaks to the problem of how long it may take to actually get this implemented. Given that it could be years away, I think this has been considered to the point that I'm comfortable with "shall". We should get on with it and do it rather than leave this term until who knows when "should" would become "shall". DeBoni said there may be a better word, but I want to go on record as opposing using the word "shall" *ever* in a comprehensive plan. Foster said we need some certainty and we need it now. Kessinger said it goes along with some of the other comments that we had in this process where specificity was desired, so I like "shall". Sievert said I would agree, I think we've heard a lot about strong language and accountability. Silodor said I understand the difficulty with the language and I understand how difficult it can be when it gets to the commissioners and how it can be tweaked, changed, made better, made worse. But I also think we have to consider that there have been big communication gaps, and one thing the community has been really intent on is language that will say to the commissioners, this is what we want. What they do with that is up to them. What we give to them is representative of what the community wants. Denney prefers the way staff has written it. The majority favored the Squier version.

2.1(b) is directing the County to work with the experts to develop standards. The consensus was in agreement to accept as written.

2.1(c), there was discussion about whether to change "consider" to "adopt". Ingle said adopt sounds more like code development language and is concerned that it directs staff to adopt building, plumbing, electrical and mechanical standards for floating structures. He questions how big of a task that is, how time consuming, how costly, and if we have staff capability to do it. Cook said staff didn't really have a concern with adopting this. The majority went with the Squier version.

Cook said that DEQ was very interested in the County adopting policy 2.1(d) and further developing standards for safe and easy collection and disposal of sewage from marine uses in Multnomah Channel. He noted there is a lot of support from both the community and the state regulators. Silodor asked, in terms of these policies for electrical, plumbing, etc., is there a way to make the homeowners themselves responsible? It can be hard on the moorage finances, as well as the other moorage residents, when one doesn't comply. Cook said we would not direct DEQ, but when we develop these standards, if there is a desire to explore responsible parties as we develop these standards locally, that would be the time to discuss it.

Kessinger basically supported it, but thought it seemed too specific, Cook said, while acknowledging that staff has cautioned sometimes about being too specific, this was expressly written to be specific to give clear direction in terms of what we need to do next. So even though we want you to be aware when policies are too specific, this is one of those cases where you might want to consider being more specific because we have a very narrow, specific issue we're dealing with. Barber added that if there were some other grouping of standards that the Commission thinks would be good to tackle, there's nothing in this policy that would prevent us from tackling it. If there is an issue that wasn't captured here, we could always bring it to the Commission, we don't have to have a policy in place in order to advance a proposal. 2.1(d) was approved unanimously.

2.1(e) Anne Squier recommended this particular addition (Exhibit E.7.9). Cook said this does get a little specific, but you have a proposal where there is code violation or unapproved numbers of units, the County would be directed to work with the moorage/marina owners to have them come up with a plan in terms of how they would comply.

Denney thought it was redundant. Ingle said he thought it was kind of addressed 2.4 and 2.5, just maybe not with the same degree of specificity. Also, do we have the enforcement capacity to carry that out? Barber said we've really tried to think about this plan as the community's vision for the future and we would caution against establishing compliance requirements within these policies. We don't think this is the right place to do that. We believe it's a valid conversation, but not within policy statements. That's one concern at the staff level that we do have, particularly with the ending of this policy. The beginning of the policy is informative, that floating homes/combos/live-aboards all are considered residential units, and that's how, at the staff level, we think about them as well, and there is a need for that clarity. Maybe that concept could be folded into an existing policy elsewhere. Ingle said that's where I was going with that, I'm comfortable with the first half but not the back half. Silodor agreed.

Cook said I would add that this doesn't say what we're doing with code compliance, it just says that the marinas have one year to essentially tell us what they're going to do about it. Foster said

he would be for adding it. As I recall, this is actually very similar to a proposal that the Planning Commission made in 1997 when the original plan was adopted and it got turned on its head by one of the Board of County Commissioners in Policy 10. I would very much like to go in the direction that this is going. It acknowledges that we have a problem, and we need to plan our way out of it. We certainly don't need another solution like Policy 10. As far as the decision about whether or not we're burdening the County with enforcement, that's something for our elected officials to decide whether they want to spend the money. I'm going to recommend it and I'm not going to back away from making a recommendation to them because someone thinks we're spending the County's money.

Silodor said I do like this beginning portion, which talks about equal dwellings. I think that's important and it's the right thing to do. I don't really have a problem with saying you need to come into compliance, and tell us how you're going to do that. I think the wording is not the best here, it's scary. And I could imagine it would be scary to a moorage owner because it's not clear that you have a year to say, in twenty years, when half of the people that leave here, I'm not going to replace them. So, while I like the concept, I'm not exactly sure about the particulars of this language. But I do like the idea of telling moorage owners, especially those who are over their approved limit; you have to tell us what you're going to do to come into compliance, even if it takes twenty years for it to happen. Which I imagine would have to be through natural attrition. Foster said he thinks everybody imagines it's going to be through attrition over a long period of time. Silodor said she would like the language to be clear so there are no misunderstandings.

Kabeiseman said the explanation from Commissioner Silodor helped clarify what the policy is, and I think she's right, some language…and I don't have great language to suggest, but the idea that all homes are equal, and if there is an issue, we need to know how we're going to resolve it. So it takes it out of code enforcement to some extent and gives something for the County to be able to do. So I think I'm in support of the policy, but maybe some different language. Ingle said I'm assuming you're also accepting of the language "if a moorage owner fails to provide such a plan, the County shall implement this Policy for the moorage". Kabeiseman said that's part of the language I'm not completely comfortable with. I think the intent of it is, give us a plan, if you don't you're essentially cut off. That's when code enforcement kicks in and that language might need some work as well. Foster said I think maybe we could benefit by opening the record for just a moment and have Ms. Squier offer a compromise or a tweak.

DeBoni said he would like to hear from County Counsel on this issue. Jed Tomkins, Assistant County Attorney said I see two things in the back half of this statement, I think there's a bit of a timing element with the phrase "currently exceeds" and then a year within the effective date of this. If somebody is not in violation until the day <u>after</u> this became effective, then they're not subject to it. That could be cleared up. And the very last phrase, the County shall implement this policy for the moorage, I would caution the Commission against inserting the County in the place of the property owner, and stop short of that statement. If you want to require a plan, the plan's required. If a plan's not provided, then we can use the tools we already have in our toolbox. I also want to point out, you were talking about attrition, and this is touching upon a fairly complicated landlord/tenant relationship intertwined with the land use planning issues. Foster said that County Counsel had reasonable comments, but still wanted to hear from Ms. Squier.

Ingle opened the record for Anne Squier, 13402 NW Marina Way. First of all, I would like you to know why we submitted this additional piece. During the sub-committee and/or CAC meetings, we heard from some moorage residents who were very concerned that their moorage had more

dwellings than shown as approved on the chart we were working from. That puts a great fear in people who have a huge investment in their home. This was an attempt to say to those people, the day this plan is adopted, that doesn't mean that you're going to be pushed out and float down the river. It was intended to say that the resolution of how to deal with that is something the moorage owner should develop, hopefully in conversation with the moorage residents. This was intended to give some comfort to people who are in a place where there are more residences than allowed. I think Mr. Tomkins comment about "currently" is well taken, and probably that should come out. I also have no real problem with just deleting the last sentence that says the County will implement it if the moorage owner doesn't because this is intended to be an opportunity. Perhaps the penultimate sentence, which would then be the last sentence, should say the moorage owner shall provide the County with a plan to bring the moorage into compliance over the coming year, to make it very clear that it is not one year to get rid of everybody, it is a year to develop the plan and submit it to the County. Ingle closed the record.

Ingle said on Policy 2.1(e) (NEW), in the second to last sentence, we would say "bring the moorage into compliance over the coming year, and scratch the last sentence and the word "currently". Barber said staff could work on the language based on what we've heard, and bring it back to the next hearing for discussion.

Kabeiseman said I'm struggling with the idea of taking out "currently" because then it reads as if we're anticipating that we're going to have moorages go over the limit again. You don't typically see something that says if there's a violation, we'll figure out a plan to fix it. You've got this investment that goes backwards in time, but going forward, there shouldn't be any reason for somebody to put in more floating homes. I think the "currently" was there to catch something. I'd like to capture that somehow and I don't know how to do it. Tomkins said what I think I'm hearing you say is if you didn't have something like the "currently" concept in there, it sounds like the number of residential units will count towards what's been authorized and you cannot exceed that. But if you do, you can submit a plan, which sounds like some sort of pass. Instead, you want to retain the concept that currently was intended to provide here, which is, we have this point in time and we're aware that there are certain overages. Kabeiseman said he thought that captured it pretty well. Maybe the nature of landlord/tenant is such that we can't force that even if there is a violation in the future, but that doesn't seem likely. But yes, you've captured my unease. Ingle noted that 2.1(e) will be revisited at the next meeting.

Policy 2.4 addresses live-aboards. Cook read Policy 2.4 and 2.5, as well as the proposal from Peter Fry to replace them both with one policy (Exhibit E.1.3). Policy 2.4 gets at full time use of live-aboard boats within a marina. 2.5 would allow temporary use of live-aboard boats, which are subject to the same standards, but would be considered more along the lines of camping as opposed to full-time residences. The CAC stopped short of developing a specific threshold, but the idea would be, whatever threshold that is, say it's 90 days, which is similar to our camping standards on land, anything below that would be temporary stays on a live-aboard, anything above that would be considered full-time. These thresholds would be developed as we develop the standards subject to these policies. But I wanted to say a little bit more about the conversation that really led to these policies. The idea is, these are boats, and boats come and go; the issue at hand is a marina serving a residential use. We want to be clear that this is not an attempt to regulate a boat directly; this gets at the use of the marina. When boat slips were approved in these marinas, they were approved for boat moorage, they were not approved for full-time residences. So these policies would allow some ability to stay aboard one's vessel in the marina, whether it's full time or part-time. They would be subject to standards through a Community Service (CS) permit. So

when we're talking about live-aboards, we're talking about the land use on the water in the marina, which are subject to zoning, as well as residential density. This is an attempt to accommodate the uses on the water that we've heard about over time that we haven't approved, nor do we currently regulate. The corollary on land would be RV's, they can be used full-time or part-time and on land, RV Parks are subject to zoning approval and mobile home parks are full-time residences. When a vessel disembarks from a marina, it's subject to the Oregon Marine Board and we're not concerned with what they are doing out in the middle of the channel or sailing the seven seas.

Silodor said when you put it like that, it gives me room for some new thought. If marinas' were meant to actually be a place to store boats, is there any difference in environmental impact between boats that are stored and boats that are lived on. Cook said we believe there is. If folks are living on a boat, there are additional demands on parking, vehicle trips to and from their place of employment, and increased demand on the sanitation system. If they're not hooked up to a sanitation system, we have a potentially bigger issue because we don't know where the effluent is going. We also heard from a lot of the folks in the community that they want to make sure the hook-ups in general are safe. We've heard about electrocution hazards and certainly the sanitation issues. Silodor said I understand that and I'm completely in agreement with all of that. I think a dwelling is a dwelling, and should have the same standards, whether you can float away or not. But if you are in a marina and the marina is going to reorganize, they are allowed 13 spots for houses and 3 of those spots are going to be for live-aboards, there really would be no difference in environmental impact if everything else is equal, right? Cook said, yes we would tend to look at them as pretty much the same kind of impacts. We heard during the CAC deliberations debate about one having a bigger footprint, but we don't look at that level of detail when we're talking about unit and impact. Silodor said so would the marina then become a marina/moorage? Does it have a different designation? It seems a little complicated. Cook said it is complicated, and one of the draft policies does speak to the issue of consistent definitions. The terms moorage and marina tend to be used interchangeably to some degree, although they do have traditional meanings. That would be part of our work moving forward.

Foster said I support the policies as they are written, 2.4 and 2.5, and in this case, I believe "consider" standards in 2.5 is the correct tack because that is going to be a complicated matter to sort out and I don't believe it's really been considered at all. I support it the way it is. Cook added that the proposed policy that would replace 2.4 and 2.5 specifically omits any reference to a cap on density, so it would essentially treat them as something different than dwelling units. Ingle said he's more concerned about the use of the term short term occupancies and long term occupancies without clear definitions. Silodor said in terms of short term versus live-aboard permanent, would you count slips for short term as part of the allowed number in total? Cook said under 2.5, that would essentially be a separate consideration from the density. This lines up with existing standards for creating basically a campground. Stays of 90 days or less is considered camping as opposed to a full-time residential use. As we develop these standards, we can use 90 days or we can choose a different threshold, it could be a certain amount of days out of the month, it could be any number of things, but the CAC did not make a specific recommendation. Part of the consideration of 2.5 would be what that threshold would be. It was generally agreed upon to adopt Policy 2.4 and 2.5 as written.

Lorenz said in the Fry policy recommendation, they mentioned the Willamette River Greenway (WRG) approval and compliance, do we need to add that into the staff recommendation? Cook said the next policy we're looking at has a proposal with respect to the WRG. Barber said this is a difficult one because currently the WRG standards don't really get into boats, full-time or

residential, so without amending the WRG standards, this policy as drafted would be awkward to implement. So maybe that decision could be deferred because we're going to be talking about that shortly in another policy. Ingle reiterated that there was agreement to adopt Policy 2.4 and 2.5.

Under Natural and Cultural Resources, Policy 3.3 added an additional sub (a) in response to Commissioner Foster's WRG concerns. The addition is simply to update the WRG standards in the County code for clarity consistent with implementing rules and statutes. Kabeiseman agreed with the concept of updating the WRG, but it seems odd to have it as a subsection of Policy 3.3. Maybe Policy 3.4 would be Update the WRG so it wouldn't be a subset of the fisheries policy. Cook said staff would have no issue with that as a standalone policy, and will make sure the numbering is consistent. There was no opposition to this.

The discussion about Policy 5.9 included DeBoni's suggested addition. DeBoni said I've had a number of residents approach me regarding this issue since I brought it up at the Planning Commission meeting, and there seems to be strong sentiment that there is a significant difference on Sauvie Island regarding recreational bicycle use as opposed to commute type of bicycle use. There is not a lot of commute bicycle activity on the island. The preponderance of bicycle activity on the island is recreational in nature that occurs normally during good weather, sunshine, weekends; when we have a lot of automobile traffic, a lot of agricultural equipment moving on the roads, and it creates potential for additional conflicts. While there is nothing wrong with recreational bicycling, and it will continue to occur, the question in our minds is, it should be recognized as something that creates a different kind of an impact than the transportation trips that would be generated with normal bicycling. And from a resident's standpoint, I think a lot of us feel strongly that, while it's certainly going to occur, as a policy statement, it shouldn't be advocated for increase of recreational activity, and that it should be distinguished.

Cook pointed out that Exhibit P included some examples of Transportation Demand Management (TDM) strategies. This is what Policy 5.9 is aimed at in terms of new businesses on the island. Exhibit P gives examples such as parking management, exploring an on-island shuttle during peak days, and carpool/ride-matching for events. These are examples of what could be used for approval for any kind of new business; it would be subject to a traffic study to understand what the additional load on the system would be. These TDM strategies could then be employed as off-sets.

Denney said if we leave in "support the use of bicycle transportation alternative to automotive use without encouraging purely recreational bicycle activities", could that be interpreted that bike paths would not be necessary or considered? Cook said it could be problematic. You could read it as discouraging recreational bicycling. Barber said the intent, as I recall, was to try to minimize on-road conflicts. DeBoni agreed. Barber said I wonder if a clarification might help to address the comment that Commissioner Denney just raised. DeBoni said I don't think the intention of this language would be to forestall any opportunities for improving safety, whether it's a bicycle path or some other means. It's mostly a question of whether the County should be in a position of promoting increases of traffic of any kind. Denney said if somebody else were to look at this, they might interpret it to mean that by not increasing recreational bicycling on the island, we don't need to put in bicycle paths. DeBoni said I wouldn't see that because there are a lot of provisions in here that focus on safety, and safety would be the primary issue for any decisions that come out of the policy. Foster said I see it as taking a neutral position. Kabeiseman said I think a better neutral position is the one that was originally drafted, because this singles out one particular form of transportation, it's says let's not encourage that. I think Kevin's clarification that this is not a policy about recreation or transportation or use of the road, it's within the context of transportation

demand management. What do we do when something comes on board to deal with the traffic, and how do we distribute those trips? And that's really what it's talking about. I think this idea of let's go out and try to make sure we don't encourage purely recreational things, to me, does not seem appropriate in this location. I would be in favor of the staff drafted policy. DeBoni said I think it was the word increase that got my attention, because it suggests that the County is promoting a net increase in bicycle traffic. Kabeiseman asked if it would satisfy DeBoni to have the policy say help reduce vehicle miles traveled, maximize use of existing facilities and alleviate congestion on US 30 and not get into a distinction among the different modes? Take away the increase in general. DeBoni said certainly, it's the issue of promoting an increase that is a concern. Kabeiseman asked transportation if that language would present any problem.

Joanna Valencia, Senior Transportation Planner said I believe the suggested language is okay, and it addresses the intent of TDM strategies. Ingle wanted it restated for the record. Kabeiseman said, "Implement a range of Transportation Demand Management (TDM) policies encouraging existing businesses and requiring new development (beyond single family residential use and agricultural uses) to help reduce vehicle miles traveled (VMT), maximize use of existing facilities and alleviate congestion on US 30 and county roads caused by seasonal and special event traffic". There was general agreement for this suggested language.

Cook said I think it's also important to consider equity in conversations about cars versus bicycles. If we're talking about a mode of transportation, from a planning perspective, all modes of transportation have equal merit.

On to Table 2, which are proposed Policies and Goals not currently in the draft plan. Kessinger said to identify farm animal exhibits, cow trains, etc, seems a little specific on a policy level; what if something is left out? Foster said it also states "and similar farm-related uses", so it allows additions to the list, which takes away the concern about being too specific.

Tomkins said the statement following the bold words New Policy is a very similar statement of the test the Planning Director has been applying for a number of years in reviewing proposed promotional activity to determine whether it's allowed at the farm stand. I noted to both LUBA and to the Court of Appeals that this is the test we're using and they didn't say anything about it. But so far the Planning Director has been affirmed on every decision made pursuant to that test. So I think that's where that language is coming from. As for sub (a) and sub (b) paragraphs, those appear to be a consistent list of the do's and don'ts that both LUBA and the court of appeals have recited. For instance, we've talked about the lack of definition for harvest festival. I think that term comes from the fact that there are farm stand permits with approved harvest festivals. The application described what that applicant meant by harvest festival, and it was that particular harvest festival that was approved. Farm to plate dinners is another example that is not a known thing. We have taken proposals and within those review processes, refer to that proposal for purposes of that application as a farm to plate dinner and a planning director or hearing's officer has determined whether that particular farm to plate dinner is allowable. What I would interpret this as, if you adopted this language, they referred to farm to plate dinners, but didn't define it, however, there's a history of review of things called farm to plate dinners, so it must be something consistent with that. I think you could add a couple things that would lend a little clarity. Concerts is in (b), and that is an activity that LUBA called out as not something that would be allowed, however, the legislature referred to it as music at farm stands. So to off-set the reference to concerts, we approved something called a musical act. By having something like musical act in (a), you'll have some juxtaposition; musical act is okay, concerts are not. And you can go to code

development to figure out what those are. So I suggest that insertion. I know there's been discussion about amplification versus unamplified, that to me is a policy choice and I don't really know the depth of that discussion. The only other addition you might consider is something like farm to plate dinners of limited scale or something along those lines. If that phrase wasn't added, "of limited scale", I would interpret it as meaning something consistent with prior approvals.

Kabeiseman said when I first read this, I shared some of Commissioner Kessinger's comments that it seems like a really specific list and it seems like, if I'm understanding counsel right, (a) were examples of what have been approved in the past and (b) were examples of what have been disallowed in the past. I think that's helpful guidance, but I wonder if there's a way to structure it that says these are examples of what's been approved in the past and examples of what's been disallowed in the past. That seems to get away from the prescriptive feeling. Make it clear that it's not so tight. Tomkins said that is fine, I don't really have a legal lens to lay over that, I just want to point out that paragraph (a) is permitted farm stand and promotional activities include …. I don't think there's much of an argument that that is an exhaustive list, so it could be added and subtracted. Then (b) has a similar way of not restricting it too far. I'm not concerned that these are too limiting.

Kabeiseman said I'm just thinking fifteen years ago, nobody was doing any farm to plate dinners and it wasn't' really on anybody's radar. The Court of Appeals and LUBA have said that farm to plate dinners make sense in a farm location. My thought is these are uses that have been allowed in the past and these are uses that are disallowed opens it up a little bit more to changes in farming, and that's to the extent you have farmers running farm stands to allow a little more creativity. Ingle asked if we wanted to move forward with what we've got written as stated. Kessinger said I like the idea of adding musical act in (a).

Ingle said so we have agreement for musical act in (a) and the inclusion of "similar farm related uses" leaves some flexibility for future additions. There's similar language in the prohibited uses that also allows for flexibility. Kabeiseman said how about instead of "and similar farm related uses", we say "and activities that meet the promotional activities in the policy above", so you can take away that concept of similarity. It may be something dissimilar that nobody's thought of yet, but still meets that policy above. Ingle said, so just tie the last sentence on (a) into something supportive of the new policy.

Cook said I'm hearing add "music acts" under sub (a), and instead of farm related uses, something along the lines of and activities consistent with the first paragraph. There was consensus.

Policy 1.9 is another new policy that discusses the 25/75% split in terms of farm stand income. Denney asked if the County traditionally does audits. Cook said farm stand approvals have varied on that condition of approval that would ask for specifics moving forward. We had a hearing's officer case that said the County doesn't have the ability to ask for this kind of information. I think we've since had a reversal on that; it's a condition of approval, it's a standard that needs to be met, so of course we have the ability to ask moving forward through conditions of approval. This particular policy would get at what we ask for in a condition of approval if we approve a farm stand. The policy is just directing us to make sure we're clear with sufficient detail to assess that compliance. Whether that's asking for an annual report from a CPA; I'm sure there's different ways of getting at that. It further says we can audit, so if we think there's reason to doubt, we can ask for additional information. Denney said, so the County's not actually doing the audit, they're asking the owner to provide that audit for them. Cook said that's right, we don't have the ability to just say

show us the books unless there's a condition or something that specifies what we're asking for. Kessinger said but the wording here says the County can audit, so that could be interpreted a couple of ways, Cook said I think the term audit is really, we have the ability to ask for the information. I think this concern came out of the fact there was confusion at some point about whether we could ask for that information, so this is simply making that clear that we can. But it does use the word shall, and it says develop reporting requirements.

Tomkins said Kevin's right about some of the historical context; for some reason, the hearing's officers question planner recommendations to have some audit requirement. LUBA has affirmed that the ability to impose a condition of approval to ensure compliance with the 25% standard would include the ability to conduct an audit. When LUBA was talking about that, they were talking about the County conducting the audit. It's beyond a reporting requirement where we ask for information, it's an affirmative action. In the most recent farm stand permit issuance, the hearing's officer authorized the County to conduct audits at the County's expense. If it resulted in the affirmation of a violation, that expense could be recovered.

DeBoni said currently, this 25% provision is in the statute, so it applies now. My question is whether the adoption of this policy would have any affect on a previously approved farm stand. Tomkins said no, it wouldn't. Permits that have been issued and are final in the final sense, we cannot go back and retroactively affect those permits. DeBoni said could it be utilized in the case where a farm stand comes in for a revision to their permit? Tomkins said yes, if somebody is asking for a modification to their permit, and this would be in any realm of land use review, they are subject to current standards.

Kessinger said one of the issues on this particular issue is the confidentiality of the data. That's been a concern in the past where the data has been public, and I don't know if it's possible for the County to keep it private. Cook said that may be where the CPA has to certify something so there's that intermediary, but they're still putting their stamp on the line, essentially their professional license. So there are ways to help minimize exposure. Kessinger said I would feel better if there was some language to that effect. Cook said we could add some language that would address financial privacy. Denney would also like it clarified that the audit be done at the County's expense. Foster said unless it's reversed, then it goes back to the farm stand owner to pay for it. Ingle said we will revisit this at the next meeting.

Policy 1.10 – Cook said this policy considers banning amplified music events at farm stands. We've heard from the community that amplified music is not in keeping with the rural character of the island, so I think a number of people would like you to consider disallowing amplified music at farm stands and events. That may or may not be applicable to existing farm stand permits. If they specifically allowed amplified music, there may be an issue there. Silodor said, in talking about existing permits, are you saying that if a farm has an existing permit, it's in perpetuity? Cook said if a farm stand permit was issued, and they are actively implementing their farm stand, it doesn't go away, so approvals are essentially permanent. Further discussion for this issue was continued to the next hearing.

Ingle said we are now ready to close the meeting tonight for case PC-2013-2931. No decisions have been made by the Planning Commission. The hearing will be continued to the next meeting at 6:30 pm on Thursday, April 23rd in the Sauvie Island Academy Gymnasium at 14445 NW Charlton Road, Portland Oregon 97231. The April 23rd meeting will be dedicated to final deliberation amongst the members of the Planning Commission.

Meeting adjourned at 9:05 p.m.

The next Planning Commission meeting will be Thursday, April 23, 2015.

Recording Secretary,

Kathy Fisher