



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

March 17, 2008

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Lincoln City Plan Amendment
DLCD File Number 005-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: March 28, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Laren Woolley, DLCD Regional Representative
Richard Townsend, City of Lincoln City

<paa> ya

PROF

2 Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

DATE STAMP

DEPT OF

MAR 10 2008

LAND CONSERVATION AND DEVELOPMENT
For DLCD Use Only

Jurisdiction: City of Lincoln City Local file number: ZOA 03-07
 Date of Adoption: 1/28/08 Date Mailed: 3/7/08
 Date original Notice of Proposed Amendment was mailed to DLCD: 11/21/07

- | | |
|---|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: _____ |

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Revise appeal procedures for land use decisions.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

No substantive changes

Plan Map Changed from: n/a to: _____
 Zone Map Changed from: n/a to: _____
 Location: _____ Acres Involved: _____
 Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: 1

Was and Exception Adopted? YES NO

DLCD File No.: 005-07 (16543)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

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

Local Contact: Richard Townsend Phone: (541) 996-2153 Extension: _____
Address: P O BOX 50 City: Lincoln City OR
Zip Code + 4: 97367- Email Address: rtown@lincolncity.org

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.

6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **maru.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

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ORDINANCE NO. 2008-01

**AN ORDINANCE OF LINCOLN CITY REVISING APPEAL PROCEDURES OF
ADMINISTRATIVE AND QUASI-JUDICIAL LAND USE DECISIONS AND
AMENDING LINCOLN CITY MUNICIPAL CODE CHAPTERS 17.76.**

The City of Lincoln City finds as follows:

- A. The amendment of the Zoning Ordinance to revise appeal procedures for land use decisions is in conformance with the Statewide Planning Goals for the following reasons:
- (1) Goal 1: "Citizen Involvement" - All proposed documents were made available for public review and purchase and assistance was available to interpret and explain the technical information. Hearing notices were published in the local newspaper in accordance with notice requirements. Therefore, the amendments are consistent with Goal 1.
 - (2) Goal 2: "Land Use Planning" - This goal is to establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to insure an adequate factual basis for such decisions and actions. The Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, was adopted by the City Council of Lincoln City after public hearings and have been reviewed on a periodic cycle to take into account changing public policies and circumstances. Opportunities were provided for review and comment by citizens and affected governmental units during preparation, review, and revision of the plan and implementing ordinances. Review of this application in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions establishes conformance with this goal.
 - (3) Goal 3: "Agricultural Lands" - Because the proposed amendments are procedural in nature, and because there are no agricultural lands within the city, Goal 3 is not applicable.
 - (4) Goal 4: "Forest Lands" - Because the proposed amendments are procedural in nature, and because there are no forest lands within the city, Goal 4 is not applicable.
 - (5) Goal 5: "Open Spaces, Scenic and Historic Areas and Natural Resources" - Because the proposed amendment is procedural in nature, and because the amendment does not by itself authorize any development inconsistent with open space, scenic, significant natural resource, or historic designations, Goal 5 is not applicable.

- 1 (6) Goal 6: "Air, Water and Land Resources Quality" - Because the proposed
2 amendment is procedural in nature, and because the amendment will not serve to
3 increase the waste and process discharges already being generated within the city,
4 Goal 6 is not applicable.
- 5 (7) Goal 7: "Areas Subject to Natural Disasters and Hazards" - Because the
6 proposed amendment is procedural in nature, and because the amendment does
7 not authorize any development inconsistent with the city's existing natural hazard
8 standards, Goal 7 is not applicable.
- 9 (8) Goal 8: "Recreational Needs" - Because the proposed amendment is procedural
10 in nature, and because it does not of itself authorize any development inconsistent
11 with the recreational needs of the community, region, or state, Goal 8 is not
12 applicable.
- 13 (9) Goal 9: "Economic Development" - Because the proposed amendment is
14 procedural in nature, and because the amendment does not affect the availability
15 of land suitable for industrial and commercial development, Goal 9 is not
16 applicable.
- 17 (10) Goal 10: "Housing" - Because the proposed amendment is procedural in nature,
18 and because by itself the amendment does not affect the availability of housing,
19 Goal 10 is not applicable.
- 20 (11) Goal 11: "Public Facilities and Services" - Because the proposed amendment is
21 procedural in nature, and because existing City water and sewer infrastructure and
22 treatment facilities will not be affected by the amendment, nor will their ability to
23 serve surrounding properties be affected, Goal 11 is not applicable.
- 24 (12) Goal 12: "Transportation" - Because the proposed amendment is procedural in
25 nature, and because the amendment does not affect the City's *Transportation*
26 *Master Plan*, Goal 12 is not applicable.
- 27 (13) Goal 13: "Energy Conservation" - Because the proposed amendment is procedural
28 in nature, and because the amendment by itself will have no effect on Energy
29 Conservation, Goal 13 is not applicable.
- (14) Goal 14: "Urbanization" - Because the proposed amendment is procedural in
nature, and because the proposed amendment will not affect the need to expand
the Urban Growth Boundary, Goal 14 is not applicable.
- (15) Goal 15: "Willamette River Greenway" - The City is not located within the
Willamette River Greenway. Therefore, Goal 15 is not applicable.

1 (16) Goal 16: "Estuarine Resources" - Because the proposed amendment is procedural
2 in nature, and because the amendment, by itself, does not authorize any
3 development affecting estuarine resources, Goal 16 is not applicable.

4 (17) Goal 17: "Coastal Shorelands" - Because the proposed amendments are
5 procedural in nature, and because the amendment does not authorize any
6 development in the city's coastal shorelands, Goal 17 is not applicable.

7 (18) Goal 18: "Beaches & Dunes" - Because the proposed amendments are procedural
8 in nature, and because the amendment does not authorize any development in a
9 beach or active dune area, Goal 18 is not applicable.

10 (19) Goal 19: "Ocean Resources" - Because the proposed amendments are procedural
11 in nature, and because the amendment does not authorize any development
12 affecting ocean resources, Goal 19 is not applicable.

13 B. The amendment is in conformance with the Lincoln City Comprehensive Plan
14 goals for the following reasons:

15 (1) Planning Goal

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

19 The Lincoln City Comprehensive Plan and its implementation measure, the
20 Lincoln City Zoning Ordinance, was adopted by the City Council of Lincoln City
21 after public hearing and has been reviewed on a periodic cycle to take into
22 account changing public policies and circumstances. Opportunities were provided
23 for review and comment by citizens and affected governmental units during
24 preparation, review, and revision of the plan and implementing ordinances.
25 Review of this amendment in accordance with the Lincoln City Comprehensive
26 Plan and the applicable zoning ordinance provisions, establishes conformance
27 with this goal.

28 (2) Citizen Involvement Goal

29 *"Develop a Citizen Involvement Program which ensures the continued
participation of citizens in the land use planning process."*

The City has developed a Citizen Involvement Program. In addition, the public
hearing process, with notice to the public and property owners and review of the
amendment by the Planning Commission (a citizen board), and the City Council
(a citizen board) establishes conformance with this goal.

(3) Public Services and Utilities Goal

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"To plan and develop a timely, orderly, and efficient arrangement of public facility and services which compliment the area and serve as a framework for urban and rural development."

Because the proposed amendment is procedural in nature, this goal is not applicable.

(4) Urbanization Goal

"To promote an orderly and efficient transition of land uses from rural to urban."

Because the proposed amendment is procedural in nature, this goal is not applicable.

(5) Natural Hazard Goal

"The City shall control development in hazardous areas to protect life and property from natural disasters and hazards."

Because the proposed amendment is procedural in nature, this goal is not applicable.

(6) Housing Goal

"To provide for the housing needs of all citizens."

Because the proposed amendment is procedural in nature, this goal is not applicable.

(7) Economy Goal

"To support the tourist industry and achieve a degree of diversity in the community which will allow a balanced economy that will, in turn, support an adequate level of services for all members of the area."

Because the proposed amendment is procedural in nature, this goal is not applicable.

(8) Aesthetic Goal

"To develop a livable and pleasing city which enhances man's activities while protecting the exceptional aesthetic quality of the area."

1 Because the proposed amendment is procedural in nature, this goal is not
2 applicable.

3 (9) Transportation Goal

4 *"To provide a safe, convenient and rapid transportation network to*
5 *facilitate the movement of goods and people."*

6 Because the proposed amendment is procedural in nature, this goal is not
7 applicable.

8 (10) Energy Goal

9 *"To conserve energy."*

10 Because the proposed amendment is procedural in nature, this goal is not
11 applicable.

12 (11) Overall Environmental Goal

13 *"To achieve a balance between the need to provide housing and services*
14 *and the need to protect and enhance the natural environment of the city."*

15 Because the proposed amendment is procedural in nature, this goal is not
16 applicable.

17 (12) Shoreland, Beaches, Dunes, Estuary and Ocean Resources Goal

18 *"To conserve, protect, and enhance the coastal resources of the city."*

19 Because the proposed amendment is procedural in nature, this goal is not
20 applicable.

21 C. The amendment is in conformance with the Zoning Ordinance, including, but not
22 limited to, required initiation, processing and noticing requirements.

23 D. On December 26, 2007 the City published notice of hearings on the amendment
24 before the Planning Commission and the City Council in the *News Guard*.

25 E. The Planning Commission, on January 8, 2008, held public hearing at which it
26 considered the Zoning Ordinance amendment contained within this ordinance.
27 The Planning Commission, on January 22, 2008, adopted a Final
28 Recommendation recommending to the City Council that the amendment be
29 adopted.

1 F. The City, on November 21, 2007, duly notified the Oregon Department of Land
2 Conservation and Development of its consideration of the proposed amendment.

3 G. The City Council held a public hearing on January 28, 2008 during which the
4 Council considered the proposed amendment transmitted by the Planning
5 Commission. All persons who wished to present testimony orally or in writing
6 were given an opportunity to do so.

7 **The City of Lincoln City ordains as follows:**

8 **Section 1.** The recitals of the preamble of this ordinance are incorporated by
9 reference herein as if fully set forth and are adopted as part of this ordinance.

10 **Section 2.** The amendments to Lincoln City Municipal Code Sections 17.76.040,
11 17.76.050 and 17.76.060 as shown in Exhibit A, attached hereto and incorporated herein
12 as if fully set forth, are hereby approved.

13 **Section 3.** The provisions of this ordinance are severable, and the invalidity of any
14 provision shall not affect the other valid provisions, which shall remain in full force and
15 effect.

16 **Section 4.** This ordinance shall take effect thirty (30) days after adoption.

17 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 28th
18 day, of January, 2008.

19 
20 LORI HOLLINGSWORTH, MAYOR

21 ATTEST:

22 
23 CATHY STBERE, CITY RECORDER

**LINCOLN CITY
PLANNING COMMISSION**

IN THE MATTER OF

Amendments to the zoning ordinance)	
to revise Section 17.76,)	Final Recommendation
appeals procedures for land use decisions)	No. 08-01
(ZOA 03-07))	

NATURE OF THE APPLICATION

ZOA 03-07 represents a zoning ordinance amendment to revise appeals procedures for land use decisions. The applicant is the City of Lincoln City.

BACKGROUND INFORMATION

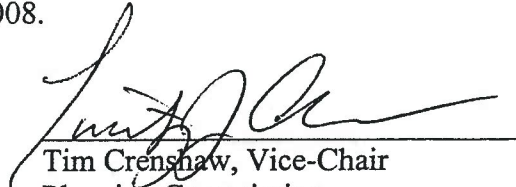
Applicant	City of Lincoln City 801 SW Highway 101 PO Box 50 Lincoln City, OR 97367
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On January 8, 2008 the Planning Commission held a duly noticed public hearing on this matter. A staff report was presented to the Commission. All persons who wished to do so were given an opportunity to present testimony to the Planning Commission.

FINAL RECOMMENDATION

Based on the evidence presented at the public hearing the Planning Commission recommends to the Lincoln City City Council that the City Council adopt the revised appeals procedures for land use decisions.

APPROVED THIS 22nd DAY OF JANUARY 2008.



Tim Crenshaw, Vice-Chair
Planning Commission

ATTEST:



Richard Townsend, Director
Planning & Community Development

Ordinance No. 2008-01

Exhibit A

17.76.040 Appeals.

A. Decision of planning director. A decision of the planning director on the issuance of an administrative permit or discretionary action concerning a land use matter may be appealed to the planning commission by an affected party entitled to notice of decision by filing an appeal with the planning and community development director within twelve days of the mailing of the decision. The notice of appeal that is filed with the city shall indicate the decision that is being appealed and the basis for the appeal. The notice shall indicate in what respects the decision being appealed is a discretionary decision involving a land use matter. The matter at issue will be a determination of the appropriateness of the director's interpretation of the requirements of this title. Notice of the hearing shall be mailed as provided in Section 17.76.020(B)(1).

B. Decision of planning commission. A decision of the planning commission concerning a quasi-judicial land use matter may be appealed to the city council by a party to the hearing by filing an appeal within ten calendar days of the mailing of the order. The notice of appeal filed with the city shall contain the information outlined in subsection C of this section. For purposes of this section, "party" refers to the applicant and any person who appeared orally or in writing at the hearing.

The city council may by motion call up a decision of the planning commission on a quasi-judicial land use application, review of which shall be in the form of an appeal reviewed de novo or on the record as the council determines appropriate. The motion shall set the date, time, and place of hearing.

C. Information required. A request for appeal of a planning commission decision shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of interest of the person seeking review including that the person was a party to the initial proceedings and appeared orally or in writing before the planning commission;
3. The specific grounds relied upon for the review, including a statement that the criteria against which review is being requested were addressed at the planning commission hearing.

D. Review.

1. Except as provided in subsections (6) and (7), city council review is limited to the evidence in the record before the hearing body. If an appeal is confined to the record of the proceeding, the record shall include:

a. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by a party and received or considered in reaching the decision under review;

b. The final order and findings of fact adopted in support of the decision being appealed;

c. The request for an appeal filed by the appellant;

d. The minutes of the public hearing;

e. The transcript of the hearing below if provided. A verbatim transcript of the hearing body proceedings is not required. Any person who appeared before the hearing body on the application may prepare a certified verbatim transcript of all or part of the hearing body proceedings at that person's own expense. The City Manager may prepare a certified verbatim transcript of all or part of the hearing body's proceedings at the city's expense if the city manager deems a transcript necessary or advisable. A certified transcript prepared under this subsection shall be considered part of the record and if offered shall be accepted into evidence and considered by the city council.

2. After receipt of all required fees the director shall set a hearing and provide public notice indicating the date, time and place of the review and the issues that are the subject of the review pursuant to Section 17.76.020(B)(1).

3. The reviewing body shall make its decision based upon the record after first granting the right of argument, but not the introduction of additional evidence, to parties to the hearing.

4. In considering the appeal, the reviewing body need only consider those matters specifically raised by the appellant.

5. The appellant shall bear the burden of proof.

6. Submission of new evidence. The city council may reopen the record and consider new evidence if such a request is made prior to or at the city council hearing by the appellant or any person who testified before the hearing body, and the requesting party demonstrates:

a. The hearing body committed a procedural error that prejudiced the requesting party's substantial rights and that reopening the record is the only alternative to remanding the application to the hearing body to correct the error; or

- b. That new evidence material to the decision on appeal exists and could not have been presented earlier to the hearing body. A requesting party may only qualify for this exception if the person demonstrates that the new evidence concerns an unanticipated event which occurred after the close of the hearing before the hearing body. This exception shall be strictly construed by the city council to ensure that all relevant evidence and testimony is submitted to the hearing body.

7. De novo hearing. In deciding whether to conduct de novo proceedings on an appeal the city council shall consider the following: the matter involves an interpretation of city ordinance; there is new information that was not available at the time the hearing was conducted as demonstrated in subsection (b); or for any other reason the city council determines it would be appropriate to conduct a de novo hearing.

E. Review Body Decision.

1. Upon review, the reviewing body may affirm, reverse or modify the decision of the lower body or staff. The hearing body may also remand the decision of the lower body or staff, with instructions.

2. Notice of the reviewing body decision shall be provided to all parties to the hearing, within five working days of the date of the final decision. The notice of the decision shall include:

- a. A brief description of the decision reached, and a copy of the final order;
- b. If the reviewing body is the planning commission, a statement that the decision may be appealed to the city council on the record, by filing an appeal with ten calendar days of the date that the final order was mailed;
- c. If the reviewing body is the city council, a statement that the decision may be appealed to the land use board of appeals by filing a notice of intent to appeal within twenty-one days of the date that the final order was mailed;
- d. A statement that the complete case is available for review at the city. (Ord. 2000-06-A, § 19; Ord. 91-18; Ord. 84-2 § 9.040)

17.76.050 Final action on application for permit or zone change request.

A. The city shall take final action on an application for a permit or zone change, including the resolution of all appeals, within one hundred twenty days after the application is deemed complete. The one hundred twenty-day period does not apply to an amendment to the comprehensive plan or zoning ordinance, or the adoption of a new land use regulation, notice of which was forwarded to the director of the department of land

conservation and development under Section 17.88.065. At the request of the applicant, the one hundred twenty-day period may be extended for a reasonable period of time by the director, at the director's discretion. In addition, the one hundred twenty-day period shall be extended by an amount of time equal to the length of any continuance or extension of the time for closing the hearing record or of any period during which the hearing record has been reopened, requested or agreed to by the applicant, and by an additional seven days unless the applicant waives in writing the applicant's right to submit final written arguments in support of the application following closing of the record.

B. If the planning commission fails to take action on a quasi-judicial land use matter within thirty days of the close of the public hearing, any party who appeared before the planning commission either orally or in writing may seek review of the matter by the city council on the record. Such review shall be as if on appeal, and all provisions of this title applicable to appeals of planning commission decisions to city council shall apply.

C. If the city has insufficient time to conduct a hearing before the planning commission and allow for appeal of the decision, if required, to city council, the city council on its own motion may call up the matter for hearing prior to hearing by the planning commission. In such a case, the city council shall conduct an evidentiary hearing on the application and make a final decision within the time allowed by law.

D. If the city fails to take final action on an application for a permit or zone change within the time period set out in subsection A of this section, and the applicant files a petition for a writ of mandamus under ORS §§ 227.160 - 227.185, then the city thereafter shall take no further action on the application under the provisions of this title. (Ord. 2000-06-A, § 20; Ord. 91-18; Ord. 84-2 § 9.050)

17.76.060 Filing fees.

A. **Permit Fees.** A schedule of permit fees shall be established by resolution of the city council and paid to the city upon the filing of an application. Such fees shall not be refundable. The failure to submit a required fee with an application, including return of checks unpaid, or other failure of consideration, shall be a jurisdictional defect and the permit application shall not be processed.

B. **Appeal Filing Fees.** A filing fee shall be required for the processing of an appeal and shall be in an amount set by resolution of the city council. The failure to submit a required fee with a notice of appeal, including return of checks unpaid or other failure of consideration, shall be a jurisdictional defect and the city shall deem the appeal abandoned.

C. **Additional Costs.** Where the planning and community development director, with the concurrence of the city manager, deems it necessary and in the public's interest to incur additional costs, such as the hiring of an independent geotechnical or engineering

expert, or other technical expertise during the course of land use proceedings, such costs shall be borne by the applicant. (Ord. 91-18; Ord. 84-2 § 9.060)

ANNING & COMMUNITY DEVELOPMENT
TY OF LINCOLN CITY
D Box 50
NOLN CITY, OR 97367



Attn: Plan Amendment Specialist
Dept. of Land Conservation/Develop.
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540