CITY COUNCIL AGENDA PACKET

MONDAY,
May 19, 2003

- 6:15 P.M. EXECUTIVE SESSION

- 7:00 P.M. CITY COUNCIL REGULAR SESSION

Please contact Chris Eppley, City Manager if you have any questions or need additional information regarding any of the staff reports or issues contained on the agenda. Thanks!!

CITY OF KEIZER MISSION STATEMENT

KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES TO THE COMMUNITY IN A COORDINATED, EFFICIENT AND LEAST COST FASHION

AGENDA

KEIZER CITY COUNCIL
EXECUTIVE SESSION

Monday, May 19, 2003
6:15 p.m.
Keizer City Hall
Keizer, Oregon 97303

1. CALL TO ORDER

2. ROLL CALL

3. DISCUSSION

a. Pursuant to ORS 192.660(1)(f) (To consider records that are exempt by law from public inspection.)

b. Pursuant to ORS 192.660(1)(h) (To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed

4. ADJOURN

Upon request, auxiliary aids and/or special services for those with disabilities will be provided. To request services, please contact us at (503) 390-3700 or through Oregon Relay 1-800-735-2900 at least two working days(48 hours) in advance.

The Oregon Public Meeting Law authorizes governing bodies to meet in executive session in certain limited situations. An executive session is defined as any meeting or part of a meeting of a governing body which is closed to certain persons for deliberations on certain matters as defined by ORS 192.660. These sessions are closed to the public and under certain circumstances the media also. The governing body is not allowed to take any final action or make any final decisions during the executive sessions. Any final action or decision must be made after returning or at the next regularly scheduled meeting.

FAXED

CITY OF KEIZER

City of Keizer, Oregon

NOTICE OF EXECUTIVE SESSION

NOTICE is hereby given that the City Council of the City of Keizer will meet in executive session on **<u>Monday, May 19, 2003 beginning at 6:15 p.m.</u>** The Executive Session is being held pursuant to ORS 192.660(1)(f) – To consider records that are exempt by law from public inspection and pursuant to ORS 192.660(1)(h) - to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

The Executive Session will be held at Keizer City Hall, 930 Chemawa Road NE, Keizer, Oregon.

Questions regarding this session may be directed to Chris Eppley, City Manager at 390-3700, extension 102.

Dated this 15th, day of May 2003.

Tracy L. Davis, CMC
City Recorder

<u>Notice for Information Purposes Only.</u>

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City of Keizer, Oregon

PUBLIC HEARING SIGN UP SHEET

PUBLIC HEARING RE: CITY OF KEIZER LOGO

DATE: May 19, 2003 **TIME:** 7:00 p.m. **AGENDA ITEM #** 5a

BEFORE THE: KEIZER CITY COUNCIL **PLACE:** ROBERT L. SIMON COUNCIL CHAMBERS

(PLEASE PRINT)

NAME	ADDRESS	GENERAL	PROPONENT	OPPONENT
Jerry McGee	1030 Ridgepoint St. N.E Keizer	X		
~~[illegible]~~				
Robert Shivers	Salem			

CITY OF KEIZER MISSION STATEMENT
KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES TO THE COMMUNITY IN A COORDINATED, EFFICIENT AND LEAST COST FASHION

AGENDA

KEIZER CITY COUNCIL
REGULAR SESSION
Monday, May 19, 2003
7:00 p.m.
Robert L. Simon Council Chambers
Keizer, Oregon 97303

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **FLAG SALUTE**

4. **PUBLIC TESTIMONY**

   This time is provided for citizens to address the Council on any matters other than those on the agenda scheduled for public hearing.

5. **PUBLIC HEARINGS**

   a. **Adoption of New City Logo**

6. **COMMITTEE REPORTS**

   a. **Volunteer of the Quarter Award – Beth Daniell**

   b. **Salem – Keizer Together Presentation**

7. **OTHER BUSINESS**

   This time is provided to allow the Mayor, Council members or staff an opportunity to bring new or old matters before the Council that are not on tonight's agenda.

   - **New Business**

   - **Old Business**

8. **ADMINISTRATIVE ACTION**

   a. **ORDER – Zone Change/Major and Minor Variance – Case No. 2003-03 (500 Bever Drive N)**

   b. **ORDINANCE – Comp Plan Map Amendment/Zone Change No. 2003-09 (Fernwood Park)**

c. **Golf Cart Ordinance**

d. **RESOLUTION – Opposing Proposed Multnomah County People's Utility District**

9. CONSENT CALENDAR

a. **RESOLUTION – Initiating Pierce Drive Street Lighting District**

b. **Approval of April 7, 2003 Regular Session Minutes**

c. **Approval of May 5, 2003 Regular Session Minutes**

10. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications.

11. AGENDA INPUT

June 2, 2003

6:30 p.m. Urban Renewal Agency Meeting

- **2003-2004 Urban Renewal Agency Budget Public Hearing**

7:00 p.m. City Council Meeting

- **2003-2004 City of Keizer Budget Public Hearing**
- **Supplemental Budget**
- **Sewer Administration Fee Increase**
- **Sewer Franchise Fee Increase**

June 9, 2003

12:00 p.m. (Noon) City Council Work Session

- **Keizer Station Development Agreement Review**

June 16, 2003

6:30 p.m. Urban Renewal Agency Meeting

- **Adoption of 2003-2004 Urban Renewal Agency Budget**

7:00 p.m. City Council Meeting

- **Adoption of 2003-2004 City of Keizer Budget**

12. ADJOURN

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City of Keizer, Oregon

May 19, 2003

AGENDA ITEM 5a

ADOPTION OF NEW CITY OF KEIZER LOGO

COUNCIL MEETING: May 19, 2003

AGENDA ITEM NUMBER:

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

THROUGH: CHRIS EPPLEY
CITY MANAGER

FROM: TRACY L. DAVIS, CMC
CITY RECORDER Tracy

SUBJECT: CITY OF KEIZER LOGO

BACKGROUND:

In 1983, the City Council of the City of Keizer adopted Resolution R83-031 – Adopting City Flag and Motto (copy attached). The Resolution outlines the details of the City of Keizer Flag. It notes in the Resolution that the design may be used as a seal or logo in city administration or activities. The "K" logo has been used on City letterhead since this time.

In April 2002, the City initiated a logo design contest for a commemorative logo for the City's 20th anniversary celebration. Guidelines for the logo were as follows:

- The letter "K"
- Seven Stripes (this represents the seven attempts at incorporation)
- Three Stars (representing the City's motto - Pride, Spirit, and Volunteerism)
- An Iris (Keizer is known as the Iris Capital of the World)
- 20 Years (Incorporation in 1982)

David Baker of Keizer submitted the winning design. This design has been used on numerous promotional items during the anniversary year, including the City's web page and Keizer Channel 23.

ISSUE:

Mayor Christopher requested this matter be placed on the agenda to gather public input and initiate Council discussion on adopting the new design, minus the 20-year notation, as the City's logo. This logo will be used on letterhead, business cards, invoices, and other related materials. Notice of this hearing was published in the Keizertimes.

RECOMMENDATION:

It is recommended the City Council open the public hearing, receive input, and close the public hearing. The Council should then deliberate and direct staff how to proceed on this issue.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R83-031

ADOPTING CITY FLAG AND MOTTO

WHEREAS, it is desirable to adopt a distinctive flag and motto for the City of Keizer, Oregon, now therefore,

BE IT RESOLVED by the City Council of the City of Keizer that the following flag description, explanation and rules for display are adopted by the City of Keizer:

a. The standard is a royal blue and white flag, three feet hoist by four feet fly, with a yellow of gold fringe, 2-1/2 inches wide. The field of blue is outlined in the letter "K", signifying the city of "Keizer". The field of blue is separated in gradients of white reflecting the progressive growth and development of the community. Three white stars are imposed on the field of blue. The star is a symbol of the heavens and the divine goal to which mankind has aspired from time immemorial. The three overlapping stars express the fundamental qualities which served as the basis of the incorporation: Pride, Spirit, and Voluntarism. The year of 1982, in white numerals, announces the ascendency of the city to prominence among the other municipalities of this nation.

b. The flag is emblematic of our unity, our power, our thought and purpose as a city. The blue color is derived from the adopted colors of our first institution of secondary education, McNary High School. The student body and now the

FMAGIC

LIEN & HOBSON
Attorneys at Law
3737 Cherry Ave. N.E.
Keizer, Oregon 97303
503/390 1635

city visualizes blue as encompassing the radiant energy of the seas and the sky. The blue field has further historical significance, identifying union with the mother country. The city now extends this union, seeking a harmonious and cooperative relationship within the State and County, and with adjacent cities. The white of the stripes is representative of purity and liberty. The fringe is an honorable enrichment only. The color yellow of gold is symbolic of supreme honor, faith and wisdom.

c. Guidelines for display of the City Flag will follow the traditional customs and practices observed in display of "Old Glory". The formal code of flag etiquette was adopted by the 77th United States Congress in Public Law 829-77 on December 22, 1942.. It is customary to place fringe on flags when carried or used for display purposes, but considered inappropriate on flags flown from halyards or fixed flagstaffs. Suitably reduced facsimiles may be used as a seal or logo in city administration and activities. The fringe is inappropriate for use in the seal or logo.

BE IT FURTHER RESOLVED, that the motto of the City of Keizer is "Pride, Spirit and Voluntarism."

Passed this 8 day of August, 1983.

Signed this 8 day of August, 1983.

[signature]
Mayor

Susan Biasi
City Recorder

LIEN & HOBSON
Attorneys at Law
3737 Cherry Ave. N.E.
Keizer, Oregon 97303
503/390-1635

KEIZER 20

City of Keizer, Oregon

May 19, 2003

AGENDA ITEM 6a

VOLUNTEER OF THE QUARTER AWARD

CITY COUNCIL MEETING: **May 19, 2003**

AGENDA ITEM NUMBER: ______________

TO: **MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS**

THROUGH: **CHRIS EPPLEY**
CITY MANAGER

FROM: **TRACY L. DAVIS, CMC**
CITY RECORDER

SUBJECT: **VOLUNTEER OF THE QUARTER AWARD**

ISSUE:

The Volunteer Coordinating Committee has selected Beth Daniell as the Volunteer of the Quarter for the first quarter 2003. Councilor Judy Smith nominated Ms. Daniell for her volunteer contributions to the community through the Gubser Neighborhood Association, Claggett Creek Watershed Council, and Keizer Parks Department.

Ms. Daniell will be present at the meeting to accept her volunteer award. Our thanks and congratulations to Ms. Daniell for these contributions to our community.

City of Keizer, Oregon

May 19, 2003

AGENDA ITEM 6b

SALEM-KEIZER TOGETHER PRESENTATION

COUNCIL MEETING: May 19, 2003

AGENDA ITEM NUMBER:

TO: **MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS**

FROM: **CHRIS EPPLEY**
CITY MANAGER

SUBJECT: **SALEM-KEIZER TOGETHER PRESENTATION**

ISSUE:

Cyndi Astley, Salem-Keizer Together Director will be attending the City Council meeting to make a presentation on the April 2003 Community Profile of Indicators Related to Alcohol, Tobacco, and other Drug Use and Abuse. The report is attached.

SALEM-KEIZER TOGETHER

Community Drug Prevention Network

A Program of Mid-Willamette Valley
Community Action Agency

COMMUNITY PROFILE
OF INDICATORS RELATED TO
ALCOHOL, TOBACCO, AND OTHER DRUG USE AND ABUSE

April 2003

About Salem-Keizer Together

The Salem-Keizer Together Community Drug Prevention Network (SKT) was established in 1989 and coordinates efforts of local, state, and national resources on substance abuse prevention in the Salem/Keizer area.

VISION: A community that supports all children, youth, and adults to lead healthy lives, free from substance abuse.

MISSION: To reduce the abuse of alcohol, tobacco, and other drugs.

SKT is designed as a network of organizations, agencies and individuals. Partners include:

- City of Salem Department of Community Services
- City of Salem Housing Authority
- City of Salem Police Department
- Kaiser Permanente
- Marion County Children and Families Commission
- Marion County Health Department
- Marion County Sheriff's Office
- Marion County Victims Impact Panel
- Mid-Willamette Valley Community Action Agency
- Oregon Department of Human Services
- Salem Hospital
- Salem-Keizer School District, Curriculum and Evaluation
- Salem-Keizer School District, Student Services
- Salem Leadership Foundation
- South Salem High School Peer Helpers and REACH Club
- West Salem High School REACH Club
- Willamette University
- and others interested in reducing the abuse of alcohol, tobacco & other drugs in Salem-Keizer.

Salem-Keizer Together provides leadership and support for the following programs and services:
Drug-Free Work Place Program
High School REACH Clubs (Responsible, Educated Adolescents Can Help)
Middle School POWER Program (Promoting Outstanding Work, Education and Recreation)
Middle School REACH Clubs (Responsible, Educated Adolescents Can Help)
Responsible Vendor Program (re: alcohol sales)
STOMP Campaign (Sales of Tobacco to Minors Prohibited)

Administrative functions for **Salem-Keizer Together** are provided by Mid-Willamette Valley Community Action Agency. The SKT office is located at MWVCAA, 2475 Center St., Salem, OR 97301. Staff can be contacted at 503-585-6232 or skt@mwvcaa.org.

TABLE OF CONTENTS

I. **Community Issues** **3-5**

- Community Vision and the Disconnect with Reality
- Abuse of Alcohol, Tobacco, and Other Drugs
- Juvenile Crime, Violence, and Gangs
- Teen Pregnancy
- School Drop Out/Retention

II. **Common Threads** **6-12**

- Community Risk Factors
- Family Risk Factors
- School Risk Factors
- Individual and Peer Risk Factors
- Protective Factors
- Social Development Strategy
- Resiliency
- 40 Developmental Assets

III. **Local Realities** **13-61**

- Table of Contents of Data, 13-15
- Data Charts, Tables, and Analysis, 16-61
- Executive Summary, 62-64

IV. **The Next Chapter** **65-75**

- Promising Approaches
- Community Efforts
- Resources and Referrals

For additional information, contact:
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Community Issues

Community Vision and the Disconnect with Reality

As articulated by *Today's Choices: Tomorrow's Community*, the vision of the citizens of Marion and Polk counties is:

A community where everyone is committed to the well being of children,
where families are nurtured and supported,
where neighborhoods are safe and secure,
where all people experience a high quality of life.

The vision of the SKT Community Drug Prevention Network supports this broader community vision, and specifically states that SKT envisions:

A community that supports all children, youth, and adults to lead healthy lives,
free from substance abuse.

The data presented in this Community Profile reveal some of the challenges Salem and Keizer face while working to fulfill these visions. Particular behaviors indicate cause for concern and serve as a *call to action*, including:

- Abuse of Alcohol, Tobacco, and Other Drugs
- Juvenile Crime, Violence, and Gangs
- Teen Pregnancy
- School Drop Out

In order to reduce these negative behaviors, a community must have a working knowledge of local realities and the conditions/actions that lead to such behaviors. Common sense tells us that focusing only on the behavior may suppress it temporarily, but will not significantly reduce and/or eliminate the problem. Similarly, focusing on a "hot topic" without determining the extent of the problem can waste time and community resources.

Therefore, the SKT Community Profile is intended to offer current data, information on trends, and a framework for individual and community action.

> *"When reality doesn't match our vision, it is time to take action."*
> *- Scott Mischke, Past SKT Board Chairperson*

Abuse of Alcohol, Tobacco, and Other Drugs

DEFINITION:	Some adults abuse alcohol, tobacco, and/or other drugs. The definition of drug abuse by adults is fairly universal. Salem-Keizer Together considers any use of alcohol or tobacco by youth to be "abuse". Similarly, SKT considers any use of illicit drugs by individuals of any age as abuse. SKT also acknowledges drug abuse to include the abuse of prescription drugs, household chemicals and over-the-counter drugs.

Over the past decade, the actual drug use, attitudes, and related behaviors of Salem-Keizer youth have begun to counter the national and state trends. Measured at 6th, 8th, and 11th grade, Salem and Keizer youth are turning away from alcohol, tobacco, and other drugs to a greater degree than the rest of the state and nation. A comparison of local and statewide drug use over the past 30 days is provided below:

% of Salem/Keizer Youth Using Substances in Past 30 Days						State Data		
Substance	**Grade**	**2000**	**2001**	**2002**	**change over time**	**2000**	**2002**	**change over time**
Alcohol	6th	9%	9%	7%	↘ 22%	8%	N/A	
	8th	25%	21%	18%	↘ 28%	26%	25%	↘ 4%
	11th	35%	33%	30%	↘ 14%	42%	45%	↗ 7%
Cigarettes	6th	2%	1%	1%	↘ 50%	3%	N/A	
	8th	7%	5%	4%	↘ 43%	13%	12%	↘ 8%
	11th	16%	13%	10%	↘ 38%	22%	21%	↘ 5%
Marijuana	6th	2%	2%	2%	no change	1%	N/A	
	8th	12%	11%	8%	↘ 33%	9%	13%	↗ 44%
	11th	20%	18%	16%	↘ 20%	18%	24%	↗ 33%

While encouraging, particularly at the eighth grade level, lenient parental attitudes about youth drug use, and the declining number of youth who view marijuana and other drugs as dangerous, are cause for continued concern and community attention.

Juvenile Crime, Violence, and Gangs

In the early 1990s, both nationally and locally, communities experienced an increase in the level of violent crimes committed by youth. However, the local juvenile crime rate and number of violent crimes has decreased significantly over the past six years.

On the other side of the equation, more youth report being asked to join gangs and feel threatened by gangs in 2002 than did in 1998.

Teen Pregnancy

The responsibilities of parenting often deny a young parent the time or resources to develop other life skills, education, or career training. Statistically, the teen parent and the child of a teen parent are among those least likely to fare well in our society. Young women who give birth as teenagers are more likely to live a life of poverty than those who become parents later in life. In Oregon, a disproportionate number of adult prison inmates were born to teen mothers. Marion County has one of the highest rate of teen pregnancy in the State of Oregon, yet over the past six years that rate has decreased.

School Drop Out

Whether in a public or private setting, students benefit from school - socially, emotionally, physically and academically. Some students, however, are faced with barriers to school attendance. Other students have needs that are not met in a traditional academic setting. Whatever the reason, dropping out of school is rarely a productive alternative.

The percentage of Salem-Keizer youth who are leaving school prior to graduating increased consistently from 1993, when it was 8.5%, to 1996, when it was 10.1%, representing over 3,000 youngsters. However, over the past three years, the drop-out rate is the lowest it's been in a decade of reporting.

Common Threads

Risk Factors: It's What's Behind it All

Researchers at the University of Washington School of Social Work conducted a review of more than 30 years of research on adolescent problem behaviors. These researchers, Drs. J. David Hawkins and Richard Catalano, identified nineteen risk factors linked to these negative behaviors (see risk factor matrix on page 11). These factors explain the underlying contributions to alcohol, tobacco, and other drug abuse (ATOD), delinquency, teen pregnancy, school drop out, and violence. Another researcher, Dr. Joy Dryfoos has determined that, when one of these problem behaviors is present, there is a seventy-five percent (75%) likelihood of another problem behavior also being present.

Multiple risks increase the likelihood of problem behaviors. Reducing or mitigating even one risk factor can contribute to a more hopeful outcome. These risks are grouped by the domain in which they can be found (community, family, school, and individual/peer):

Community Risk Factors - What the Research Says:

- **Availability of Drugs:** The more available any particular drug, the greater the likelihood of drug abuse.
- **Availability of Firearms:** The more available firearms are, the greater the likelihood that they will be used in a violent act.
- **Community Laws & Norms Favorable Toward Drug Use, Firearms & Crime:** Formal laws, unwritten policies, levels of enforcement, ease of access, product pricing, and media messages are some of the ways in which the community expresses its favor or disfavor.
- **Media Portrayals of Violence:** Research over three decades shows that exposure to media violence has an impact on children in several ways. First, children learn from watching actors model violent behavior, as well as learning violent problem-solving strategies. Second, media portrayals of violence appear to alter children's attitudes and sensitivity to violence.
- **Transitions & Mobility:** The more frequently a child or family moves from one location to another, whether it be different cities, neighborhoods, schools, or homes, the more difficult it is for that child/family to create meaningful community connects and/or support systems outside of the family. Individuals with healthy attachments and strong support systems are less likely to become involved in substance abuse, delinquency, or dropping out of school.
- **Low Neighborhood Attachment & Community Disorganization:** Higher rates of drug problems, delinquency, and violence and higher rates of drug trafficking occur in communities or neighborhoods where people have little attachment to the community, where the rates of vandalism are high and where there is low surveillance of public places.

- **Extreme Economic Deprivation:** Children who live in deteriorating neighborhoods characterized by extreme poverty, poor living conditions and high unemployment are more likely to develop problems with delinquency, teen pregnancy and school drop-out, or to engage in violence toward others during adolescence and adulthood.

Family Risk Factors - What the Research Says:

- **Family History of High Risk Behavior:** Children raised in a family with a history of addiction to alcohol or other drugs or a history of criminal activity/behavior are more likely to have problems with alcohol or other drugs and delinquent behavior. Similarly, children who are born to a teenaged mother or whose parents dropped out of school are more likely to be teen parents and drop out of school, themselves.

- **Family Management Problems:** Poor family management practices are defined as having a lack of clear expectations for behavior, failure of parents to supervise and monitor their children's whereabouts, and excessively severe, harsh, or inconsistent punishment.

- **Family Conflict:** Persistent, serious conflict between primary caregivers or between caregivers and children increases the risk for children raised in these families. Conflict between family members appears to be more important than family structure. Whether the family is headed by two parents, a single parent, or some other primary caregiver, children raised in families with high conflict seem to be at risk for problem behaviors.

- **Favorable Parental Attitudes & Involvement in the Behavior:** Children of parents who approve of or excuse their children for breaking the law are more likely to develop problems with delinquency. Similarly, children whose parents engage in violent behavior are at greater risk for exhibiting violent behavior. Parents who use illegal drugs, are heavy users of alcohol, or are tolerant of children's use contribute to an increased risk that their children will abuse alcohol or other drugs. Risk is further increased if parents involve children in their own drug or alcohol-using behavior, i.e.: asking the child to light the parent's cigarette or get the parent a beer from the refrigerator. Parental approval of young people's moderate drinking, even under parental supervision, increases the risk of the young person using marijuana and developing a substance abuse problem.

School Risk Factors - What the Research Says:

★ **Early & Persistent Antisocial Behavior:** Boys who are aggressive in grades K-3 or have trouble controlling their impulses are at higher risk of adolescent problem behaviors. Risk increases when the boy's aggressive behavior is combined with isolation or withdrawal. This also applies to aggressive behavior combined with hyperactivity or attention deficit disorder.

This risk factor also includes persistent antisocial behavior in early adolescence, such as misbehaving in school, skipping school, and getting into fights with other children. Both adolescent girls and boys who engage in these behaviors are at increased risk.

★ **Academic Failure in Elementary School:** Beginning in the late elementary grades, academic failure increases the risk of drug abuse, delinquency, violence, teen pregnancy, and school drop-out. Children fail for many reasons, but it appears that the *experience of failure itself*, not necessarily ability, increases the risk of these problem behaviors.

★ **Lack of Commitment to School:** Lack of commitment to school means that the child has ceased to see the role of student as a viable one. Young people who have lost this commitment to school are at higher risk for problem behaviors.

Individual/Peer Risk Factors - What the Research Says:

♦ **Alienation/Rebelliousness:** Young people who feel they are not part of society, are not bound by rules, don't believe in trying to be successful or responsible, or who take an active rebellious stance toward society, are at higher risk of drug abuse, delinquency, and school drop-out.

Alienation and rebelliousness may be an especially significant risk for young people of color. Children who are consistently discriminated against may respond by removing themselves from the dominant culture and rebelling against it. On the other hand, many communities of color are experiencing significant cultural change due to integration. The conflicting emotions about family and friends working socializing or marrying outside of the culture may well interfere with a young person's development of a clear and positive racial identity.

♦ **Friends Who Engage in the Problem Behavior:** Young people who associate with peers who engage in a problem behavior are much more likely to engage in the same problem behavior. This is one of the most consistent predictors that research has identified.

♦ **Favorable Attitudes Towards the Problem Behavior:** During the elementary school years, children usually express anti-drug, anti-crime, and pro-social attitudes. However, in middle school, their attitudes often shift toward greater acceptance of these behaviors. This acceptance places them at higher risk.

♦ **Early Initiation of the Problem Behavior:** The earlier young people engage in any of the problem behaviors, the greater the likelihood that they will have chronic problems with these behaviors later. For example, research shows that young people who initiate drug use before the age of 15 are at twice the risk of having drug problems than those who wait until the age of 19.

♦ **Constitutional Factors:** Constitutional factors are factors that may have a biological or physiological basis. These factors are often seen in young people with behaviors such as *sensation-seeking, low harm-avoidance, and lack of impulse control.* These factors appear to increase the risk of young people abusing drugs, engaging in delinquent behavior, and/or committing violent acts.

ADOLESCENT PROBLEM BEHAVIORS

RISK FACTORS	Substance Abuse	Delinquency	Teen Pregnancy	School Drop-out	Violence
Community					
■ Availability of Drugs	✓				
■ Availability of Firearms		✓			✓
■ Community Laws & Norms Favorable Toward Drug Use, Firearms & Crime	✓	✓			✓
■ Media Portrayals of Violence					✓
■ Transitions & Mobility	✓	✓		✓	
■ Low Neighborhood Attachment & Community Disorganization	✓	✓			✓
■ Extreme Economic Deprivation	✓	✓	✓	✓	✓
Family					
● Family History of High Risk Behavior	✓	✓	✓	✓	
● Family Management Problems	✓	✓	✓	✓	✓
● Family Conflict	✓	✓	✓	✓	✓
● Favorable Parental Attitudes & Involvement in the Behavior	✓	✓			✓
School					
★ Early & Persistent Antisocial Behavior	✓	✓	✓	✓	✓
★ Academic Failure in Elementary School	✓	✓	✓	✓	✓
★ Lack of Commitment to School	✓	✓	✓	✓	
Individual / Peer					
♦ Alienation/Rebelliousness	✓	✓		✓	
♦ Friends Who Engage in the Problem Behavior	✓	✓	✓	✓	✓
♦ Favorable Attitudes Towards the Problem Behavior	✓	✓	✓	✓	
♦ Early Initiation of the Problem Behavior	✓	✓	✓	✓	✓
♦ Constitutional Factors	✓	✓			✓

Protective Factors

Some youngsters who are exposed to multiple risk factors do not become substance abusers, juvenile delinquents, drop-outs, teen parents, or violent offenders. Balancing the risk factors are *protective factors* - aspects of people's lives that counter risks or provide buffers against them. Research indicates that protective factors fall into three basic categories:

- **Individual characteristics:** Having a resilient temperament or a positive social orientation are protective factors. These two characteristics can be enhanced, while two other characteristics (gender and intelligence) that serve as protective factors can not. Given equal exposure to risks, girls are less likely to develop health and behavioral problems in adolescence than are boys. Bright children are less likely to become delinquent or drop out of school; however, intelligence does not protect against substance abuse.

- **Bonding:** Positive relationships that promote close bonds are protective. These relationships between youth and positive adults encourage and recognize a young person's competence.

- **Healthy beliefs and clear standards:** The negative effects of risk factors can be reduced when schools, families, and/or peer groups teach children healthy beliefs and set clear standards for their behavior. Examples of healthy beliefs include believing it is best for children to be drug and crime free and to do well in school. Examples of clear standards include establishing clear "no drug and alcohol" family rules.

Social Development Strategy

The Social Development Strategy explains how bonding develops. Three conditions are necessary in order to build bonding to any social unit:

1) Youth must have opportunities to make a meaningful contribution to that unit;
2) They must have skills to effectively contribute; and
3) they must be recognized for their contributions.

Opportunities: Youth must be provided with opportunities to contribute to their community, their school, their family, and their peers. If youth have opportunities that are beyond their abilities, they experience frustration and failure. If youth have opportunities that are too easy, they may become bored. The key is to provide youth with meaningful, challenging opportunities that help them feel responsible and significant.

> *Examples of opportunities that have demonstrated protective effects include stimulating teachers and active roles for children in the classroom.*

Skills: Youth must be taught the skills necessary to effectively take advantage of the opportunities they are provided. If youth do not have the skills necessary to be successful, they experience frustration and/or failure.

Examples of skills that have shown an ability to protect youth include good cognitive skills such as problem solving and reading skills; and good social skills including communication skills, assertiveness, and the ability to ask for support.

Recognition: Youth must be recognized and acknowledged for their efforts. Recognition gives youth the incentive to continue to contribute, and reinforces their skillful performance.

Examples of recognition that have demonstrated a protective effect include supportive teachers and parents who recognize their children's individual efforts (Oregon Together, 1994).

40 Developmental Assets

The Search Institute identified 40 developmental assets (conditions, opportunities, skills, and values) that support youth to be productive, contributing members of a community. Research shows that youth who have more assets are more likely to engage in positive behaviors, such as volunteering or doing well in school. In addition, they are less likely to be engaged in negative risk-taking behaviors.

★ **Internal Assets:** Commitment to learning, positive values, social competencies, and positive identity are the four areas of internal assets.

★ **External Assets:** Support, empowerment, boundaries and expectations, and constructive use of time are the four areas of external assets.

(See the 40 Developmental Assets Chart on the next page for more information.)

40 Developmental Assets

	Asset Type	Asset Name and Definition
EXTERNAL ASSETS	Support	**Family support** - Family life provides high levels of love and support. **Positive family communication** - Young person and her or his parent(s) communicate positively, and young person is willing to seek advice and counsel from parent(s). **Other adult relationships** - Young person receives support from three or more nonparent adults. **Caring neighborhood** - Young person experiences caring neighbors. **Caring school climate** - School provides a caring, encouraging environment. **Parent involvement in schooling** - Parent(s) actively involved in helping young person succeed in school.
	Empowerment	**Community values youth** - Young person perceives that adults in the community value youth. **Youth as resources** - Young people are given useful roles in the community. **Service to others** - Young person serves in the community one hour or more per week. **Safety** - Young person feels safe at home, at school, and in the neighborhood.
	Boundaries and Expectations	**Family boundaries** - Family has clear rules and consequences, and monitors the young person's whereabouts. **School boundaries** - School provides clear rules and consequences. **Neighborhood boundaries** - Neighbors take responsibility for monitoring young people's behavior. **Adult role models** - Parent(s) and other adults model positive, responsible behavior. **Positive peer influence** - Young person's best friends model responsible behavior. **High expectations** - Both parent(s) and teachers encourage the young person to do well.
	Constructive Use of Time	**Creative activities** - Young person spends three or more hours per week in lessons or practice in music, theater, or other arts. **Youth programs** - Young person spends three or more hours per week in sports, clubs, or organizations at school and/or in community organizations. **Religious community** - Young person spends one hour or more per week in activities in a religious institution. **Time at home** - Young person is out with friends "with nothing special to do" two or fewer nights per week.
INTERNAL ASSETS	Commitment to Learning	**Achievement motivation** - Young person is motivated to do well in school. **School engagement** - Young person is actively engaged in learning. **Homework** - Young person reports doing at least one hour of homework every school day. **Bonding to school** - Young person cares about her or his school. **Reading for pleasure** - Young person reads for pleasure three or more hours per week.
	Positive Values	**Caring** - Young person places high value on helping other people. **Equality and social justice** - Young person places high value on promoting equality and reducing hunger and poverty. **Integrity** - Young person acts on convictions and stands up for her or his beliefs. **Honesty** - Young person "tells the truth even when it is not easy." **Responsibility** - Young person accepts and takes personal responsibility. **Restraint** - Young person believes it is important not to be sexually active or to use alcohol or other drugs.
	Social Competencies	**Planning and decision making** - Young person knows how to plan ahead and make choices. **Interpersonal competence** - Young person has empathy, sensitivity, and friendship skills. **Cultural competence** - Young person has knowledge of and comfort with people of different cultural/ racial/ethnic backgrounds. **Resistance skills** - Young person can resist negative peer pressure and dangerous situations. **Peaceful conflict resolution** - Young person seeks to resolve conflict nonviolently.
	Positive Identity	**Personal power** - Young person feels he or she has control over "things that happen to me." **Self-esteem** - Young person reports having a high self-esteem. **Sense of purpose** - Young person reports that "my life has a purpose." **Positive view of personal future** - Young person is optimistic about her or his personal future.

Local Realities

The following section provides specific data and a review of local trends over the past decade. Thanks goes to the State of Oregon, Marion County, the City of Salem, and the Salem-Keizer School District for assistance in providing this data.

TABLE OF CONTENTS OF DATA

A. Perception of ATOD Problem and Harm

Is There a Drug or Alcohol Problem
Among Kids at Your School? (6th, 8th, and 11th grade) 16

How Much Does Someone Risk Harm by Using? (11th grade) 17

B. ATOD Use in the Past 30 Days (6th, 8th, and 11th grade)

Cigarettes 18

Beer/Alcohol 19

Marijuana 20

Methamphetamine 21

Inhalants 22

C. Parental Attitudes (11th grade youth)

How Would Your Parents Feel About Your Doing...? 23-24

D. Accessibility of ATOD (6th, 8th, and 11th grade)

How Difficult Would it be for You to Get Marijuana? 25

How Difficult Would it be for You to Get Meth? 26

Where Do Youth Who Drink Get Alcohol? 27

Where Do Youth Who Smoke Get Cigarettes? 28

Drinking and Drug Use at Parties 29-30

E. Relationship Between Tobacco, Beer, and Marijuana Use and Indicators of Family, School, and Community Connections (11th grade)

Parents Know Children's Whereabouts 31

School Missed 32

Extra School Activities 33

Thought About Dropping Out 34

F. Drug Arrests & Offenses

Drug Offenses 35

DUII Offenses 36

MIP/Delivering Controlled Substance and MIP Alcohol 37

G. Juvenile Health Issues

Adolescent Suicide Attempts 38

Teen Pregnancy Rate 39

H. School Attendance and Discipline

School Drop-outs (Early Leavers/Prior to Graduation) 40

Unauthorized Absences 41

Number of Students Receiving Out-of-School Suspensions 42

Total Number of Out-of-School Suspensions 43

Major Discipline Offenses 44

School Expulsions 45-46

I. School Bonding and Achievement

High School Academics 47

Peer Helpers Program 48-49

Middle School POWER Program 50

J. Juvenile Crime, Violence, Gangs and Weapons

Invited to Join a Gang 51

Feel Threatened by Gangs 52

Gang Membership 53

Weapons 54

Violent Crimes by 11-17 Year Olds 55

Juvenile Crime by Day of Week 56

Juvenile Crime by Hour of Day 57-58

Juvenile Crime by Type of Crime 59

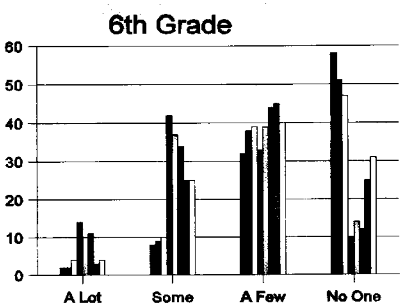
K. Other Data

Domestic Disturbances 60

Where Do You Learn the Most About the Dangers of Drugs and Drinking? 61

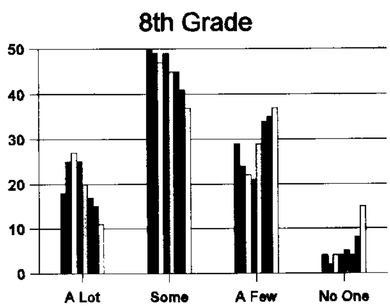
Is There a Drug or Alcohol Problem Among Kids Attending Your School?

Bars represent years, 1993-2002.
Bar furthest to the right is the year 2002.



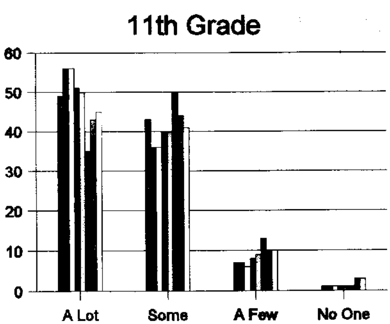
6th Grade: The percent of students who reported a lot or some drug problems among kids attending their school rose sharply from 14% in 1995 to 56%in 1996. This was the first year of 6th graders being in middle school. In 1997 that figure dropped to 47%; then in 2000 it dropped to 28%; and was 29% in 2002.

The good news: In 2002, 31% of 6th graders reported "no one" at their school had a drug or alcohol problem. This figure is up dramatically from 1998, when it was only 12%.



8th Grade: The percent of students who report a lot or some drug problems among kids attending their school has declined consistently over the past eight years to 48% in 2002.

The good news: In 2002, 15% of 8th graders reported "no one" at their school had a drug or alcohol problem. This figure is up nearly 4-fold from 1998, when it was only 4%.



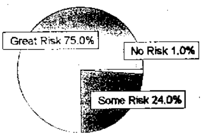
11th Grade: The percent of students who report a lot or some drug problems among kids attending their school stayed fairly constant between 1993 and 1997 (90-92%). In 1998, this figure dropped to 85% and was reported as 87% in 2000.

The good news: There is a slight but steady downward trend in the percent of 11th graders who report "a lot" or "some" drug problems among students at their school, from 90% in 1993 to 86% in 2002.

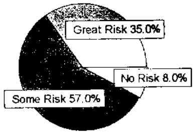
Perceived Risk - 11th Grade

How Much Do You Think People Risk Harming Themselves If They...

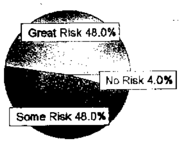
Smoke 1+ packs of cigarettes per day



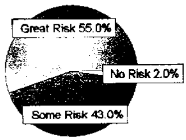
Smoke marijuana occasionally



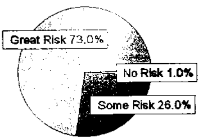
Have 5+ drinks once or twice each weekend



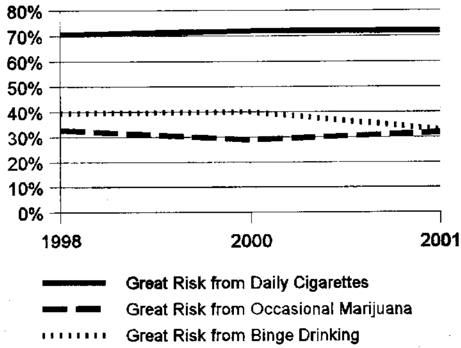
Try meth once or twice



Try ecstasy once or twice

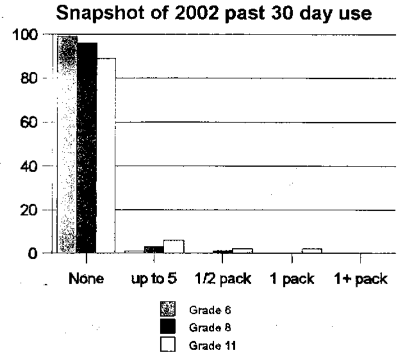


Perception Changes Over Time



Cigarette Use

Youth Cigarette Smoking - the Last 30 Days



The good news: The percent of youth who have not smoked cigarettes in the past 30 days has steadily increased:

Percent of Youth NOT Smoking in the past 30 days

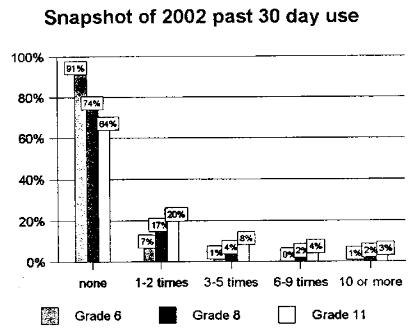
Grade	*1998*	*2000*	*2002*
6th	95%	97%	99%
8th	89%	91%	96%
11th	81%	84%	90%

- Only 1% of sixth graders smoke cigarettes regularly (down from 5% in 1998).
- 4% of eighth graders smoke cigarettes regularly (down from 11% in 1998).
- 10% of eleventh graders smoke cigarettes regularly (down from 20% in 1998).

COMPARISON w/ STATEWIDE	2000	2002
Salem/Keizer 6th graders	**3%**	**1%**
State of Oregon 6th graders	3%	na
Salem/Keizer 8th graders	**9%**	**4%**
State of Oregon 8th graders	13%	12%
Salem/Keizer 11th graders	**16%**	**10%**
State of Oregon 11th graders	22%	21%

Beer/Alcohol Use

Youth Alcohol Use - the Last 30 Days



The good news: Overall, the percent of youth who have not used alcohol in the past 30 days has steadily increased:

Percent of Youth NOT Drinking in the past 30 days

Grade	*1998*	*2000*	*2002*
6th	86%	91%	93%
8th	75%	74%	82%
11th	62%	64%	70%

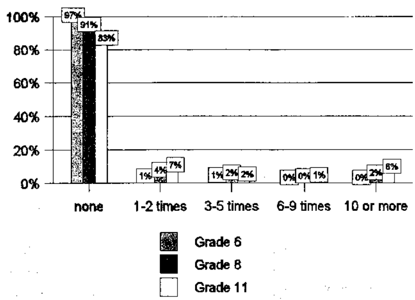
- 7% of sixth graders, 18% of eighth graders (down from 26%), and 30% of eleventh graders (down from 36%) report having used alcohol in the past 30 days.
  NOTE: Use includes beer, wine, wine coolers, and hard liquor.

COMPARISON w/ STATEWIDE	2000	2002
Salem/Keizer 6th graders	**9%**	**7%**
State of Oregon 6th graders	8%	na
Salem/Keizer 8th graders	**26%**	**18%**
State of Oregon 8th graders	26%	25%
Salem/Keizer 11th graders	**36%**	**30%**
State of Oregon 11th graders	42%	45%

Marijuana Use

Youth Marijuana Use - the Last 30 Days

Snapshot of 2002 past 30 day use



The good news: The percent of sixth and eighth graders who have not used marijuana in the past 30 days has increased:

Percent of Youth NOT Smoking Marijuana in the past 30 days

Grade	*1998*	*2000*	*2002*
6th	95%	97%	97%
8th	86%	88%	91%
11th	81%	79%	83%

- 3% of sixth graders, 9% of eighth graders and 17% of eleventh graders report using marijuana in the past 30 days. **More good news locally:** Salem/Keizer use has gone down, while state use has gone up:

COMPARISON w/ STATEWIDE	2000	2002
Salem/Keizer 6th graders	**2%**	**2%**
State of Oregon 6th graders	1%	na
Salem/Keizer 8th graders	**12%**	**8%**
State of Oregon 8th graders	9%	13%
Salem/Keizer 11th graders	**20%**	**16%**
State of Oregon 11th graders	18%	24%

Methamphetamine Use

Youth Meth Use - At Least Once Per Month

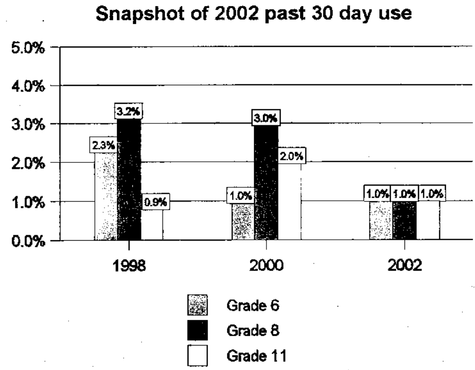
The percent of youth who do not use methamphetamine at least once monthly:

Grade	*% Not Using*
6^{th}	100%
8^{th}	100%
11^{th}	99%

The consensus of practitioners from education, youth work, and law enforcement is that, while the percent of youth using methamphetamine is relatively small the youth who do use methamphetamine are no longer in the formal school system, therefore, not participating in the surveys conducted there.

Inhalant Use

Youth Inhalant Use - At Least Once Per Month



The percent of youth who do not use inhalants at least once monthly has risen to 99%.

Grade	*1998*	*2000*	*2002*
6th	98%	99%	99%
8th	97%	97%	99%
11th	99%	98%	99%

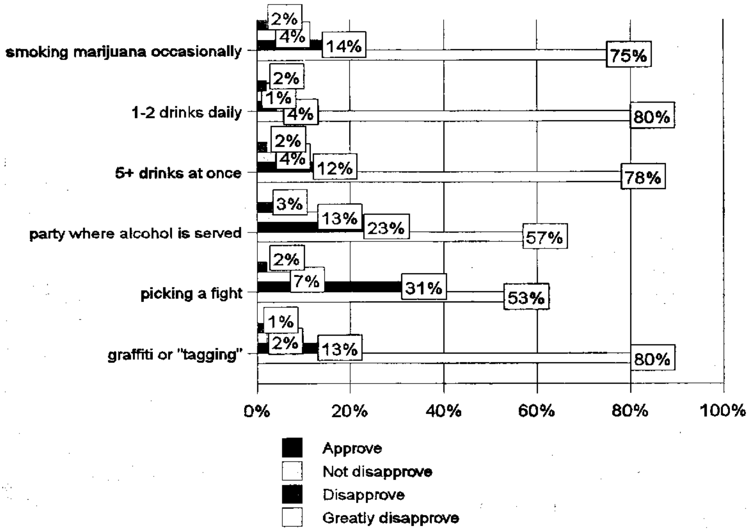
The good news locally: Salem/Keizer use has gone down, while state use has gone up:

COMPARISON w/ STATEWIDE	2000	2002
Salem/Keizer 6th graders	**1%**	**1%**
State of Oregon 6th graders	5%	na
Salem/Keizer 8th graders	**3%**	**1%**
State of Oregon 8th graders	6%	7%
Salem/Keizer 11th graders	**2%**	**1%**
State of Oregon 11th graders	2%	3%

Parental Attitudes

Reported by 11th Grade Youth

How Would Your Parents Feel About Your Doing the Following?



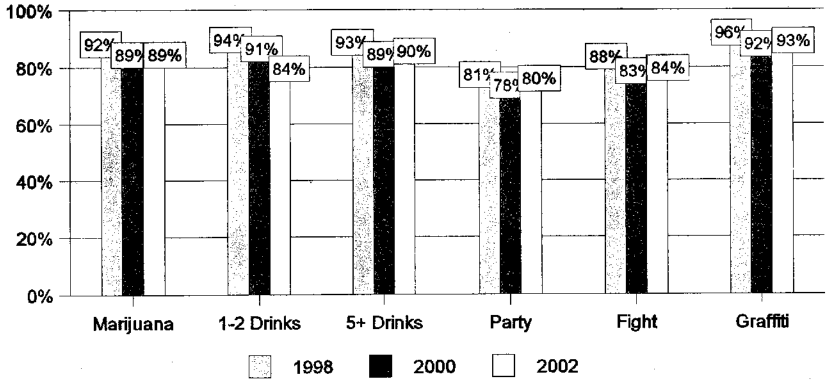
The percent of 11th grade youth who report that their parents would feel <u>any</u> disapproval about them engaging in any of the above behaviors ranges from 84% to 93%.

Research indicates that parental attitudes greatly influence a young person's behaviors. The next page shows how the answers to this question have shifted over time.

Parental Attitudes

Reported by 11th Grade Youth

Disapproval Ratings Over Time
How Would Your Parents Feel About Your Doing the Following?



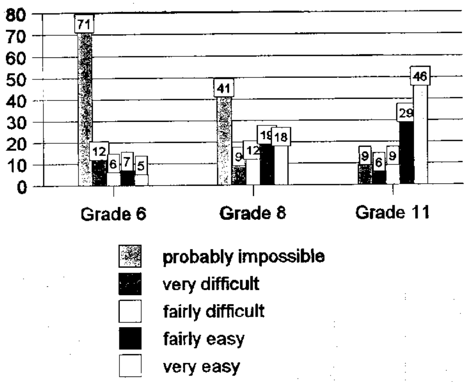
Percent of youth who perceive that their parents would either disapprove or greatly disapprove of them participating in these activities has remained fairly steady, with the exception of having 1-2 drinks daily.

From 1998 to 2002, the percent of 11th grade youth who perceive that their parents would either disapprove or greatly disapprove of them having 1-2 drinks daily fell by 10 percentage points to a low of 84%.

The perceptions about parents' disapproving of each of the other behaviors have also lessened, but to a smaller degree (1%-4%).

Youth Access to Drugs

How Difficult Would it be for You to Get Marijuana?



The good news: The percent of students who report that marijuana is fairly or very easy to get has decreased over time:

Youth Reporting Marijuana is Fairly or Very Easy to Get:

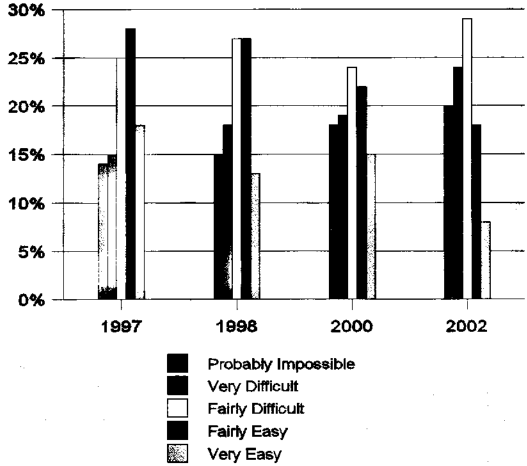
Grade	*1998*	*2000*	*2002*
6th	26%	13%	12%
8th	53%	42%	37%
11th	83%	82%	75%

Research shows that availability has an influence on the level of use. The data on this page shows that youth are finding marijuana harder and harder to get, and the data on page 19 shows that fewer and fewer Salem/Keizer youth are using marijuana.

Youth Access to Drugs

How Difficult Would it be for You to Get Meth?

Reported by 11th Grade Youth



The good news: The percent of students who report that meth is fairly or very easy to get has decreased over time:

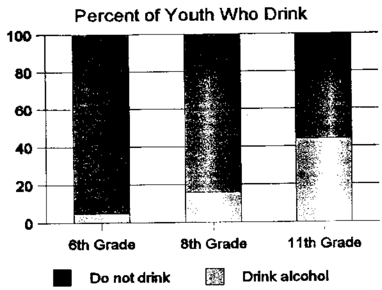
11th Graders Reporting Meth is Fairly or Very Easy to Get:

1998	***2000***	***2002***
40%	37%	26%

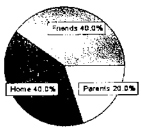
Research shows that availability has an influence on the level of use. The data on this page shows that youth are finding meth harder and harder to get, and the data on page 20 shows that only 1% of Salem/Keizer 11th graders are using meth.

Youth Access to Drugs

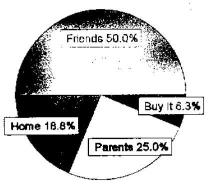
Where Do Youth Who Drink Usually Get Alcohol?



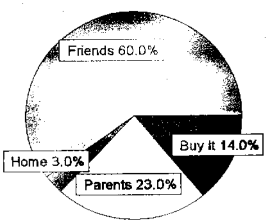
7% of 6th graders,
18% of 8th graders, and
30% of 11th graders report drinking regularly.



Fewer 6th graders report drinking. However 60% of the **sixth graders** who do drink report that they usually get the alcohol they drink from home, with or without parents' knowledge. This figure rose from 52% in 1998 to 60% in 2002.



Fewer 8th graders report drinking. However 34% of the **eighth graders** who do drink report that they usually get the alcohol they drink from home, with or without parents' knowledge. This figure dropped from 42% in 1998 to 34% in 2002.



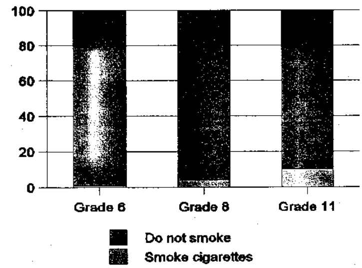
Fewer 11th graders report drinking. However 26% of the **eleventh graders** who do drink report that they usually get the alcohol they drink from home, with or without parents' knowledge.

KEY

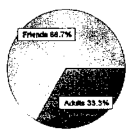
Friends	From friends
Home	From home, ***without*** parents' knowledge
Parents	From home, ***with*** parents' knowledge
Buy It	Buy it from a store

Youth Access to Drugs

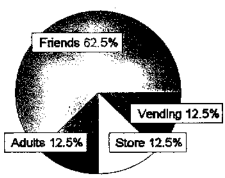
Where Do Youth Who Smoke Usually Get Cigarettes?



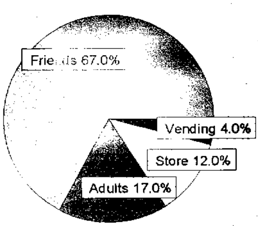
1% of 6th graders,
4% of 8th graders, and
10% of 11th graders report smoking regularly *(defined as the past 30 days).*



Only 2% of 6th graders say they smoke regularly (down from 5% in 1998). However, 67% of the **sixth graders** who do smoke report that they usually get their cigarettes from friends, and 33% report getting them from adults.



Only 4% of 8th graders say they smoke regularly (down from 11% in 1998). However, 63% of the **eighth graders** who do smoke report that they usually get their cigarettes from friends, followed by 23% from adults.

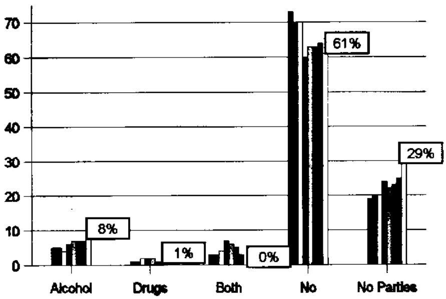


10% of 11th graders say they smoke regularly (down from 19% in 1998). However, 63% of the **eleventh graders** who do smoke report that they usually get their cigarettes from friends. The other 37% report getting their cigarettes from parents, or buying them from stores and vending machines.

More good news: In 1996, 47% of eleventh graders who smoked reported that they usually bought their cigarettes from stores, making stores the primary source. In 1997, that figure dropped to 31%, and in 1998 and 2000, it dropped to 24% and 25% respectively. ***In 2002, it dropped to 12%.***

Drinking and Drug Use at Parties

Bars represent years, 1993-2002. Bar on the far right is year 2002.

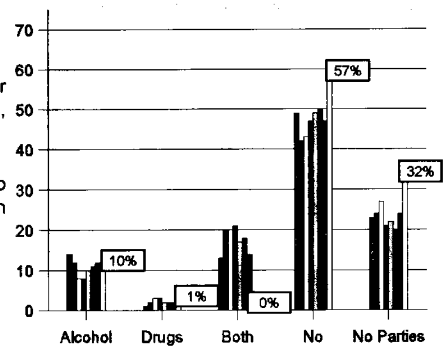


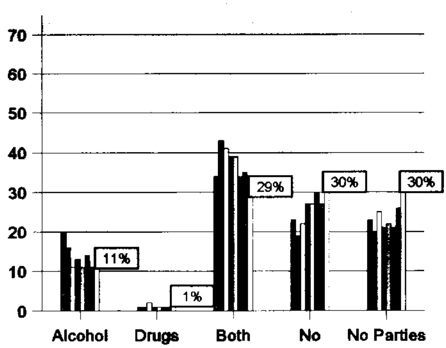
9% of 6th graders report alcohol and/or drug use among kids at most parties they attend--down from 11% in 2000.

Mixed reviews: Between 1997 and 2000 there was a steady increase in the percent of 6th graders who reported NO alcohol and/or drug use among kids at most parties they attend. This dropped to 61% in 2002.

11% of eighth graders report alcohol and/or drug use among kids at most parties they attend, significantly less than 28% in 2000.

The good news: Exposure of eighth graders to alcohol and other drugs at parties is down dramatically.

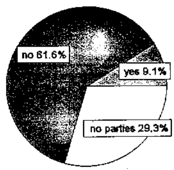




41% of eleventh graders report alcohol and/or drug use among kids at most parties they attend, down from 47% in 2000.

The good news: The percent of eleventh graders exposed to alcohol and/or drug use at most parties they attend has decreased.

Is There Drinking or Drug Use Among Kids at Most Parties You Attend?

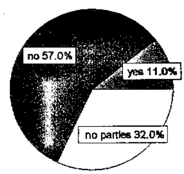


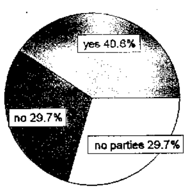
9% of 6th graders report alcohol and/or drug use among kids at parties they attend.

The Numbers:
About 250 sixth graders attend parties where kids are using alcohol and/or drugs.

11% of 8th graders report alcohol and/or drug use among kids at parties they attend.

The Numbers:
About 800 eighth graders attend parties where kids are using alcohol and/or drugs.





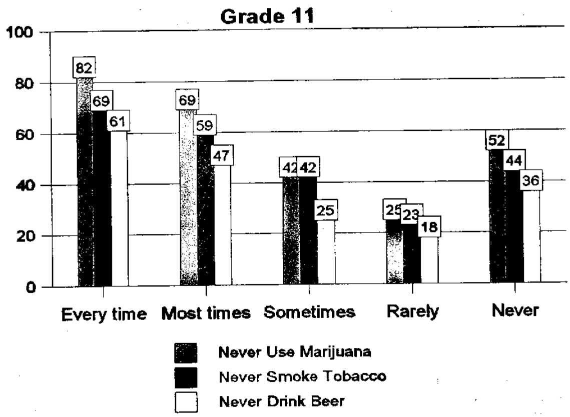
41% of 11th graders report alcohol and/or drug use among kids at parties they attend.

The Numbers:
Over 1,000 eleventh graders attend parties where kids are using alcohol and/or drugs.

Relationships Between Tobacco, Beer, and Marijuana Use and Indicators of Family, School, and Community Connections

There are strong relationships between NOT using tobacco, beer, or marijuana and the following four indicators of family, school, and community bonding and participation.

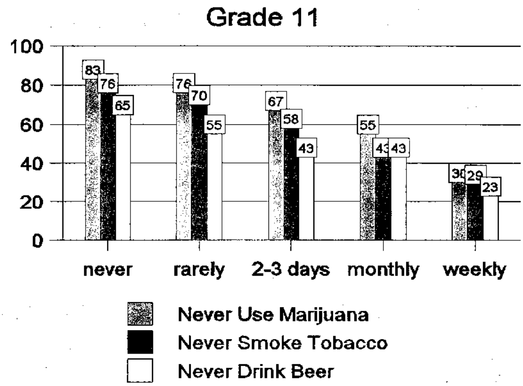
When You Are Away From Home, Do Your Parents Know Where You Are?



Youth with parents who know where their child is every time they are away from home are more likely than other youth to NOT use tobacco, beer or marijuana.

Of the eleventh graders who say that their parents know where they are every time they are away from home, over 80% never use marijuana, nearly 70% never smoke tobacco, and over 60% never drink beer.

How Much School Do You Miss?

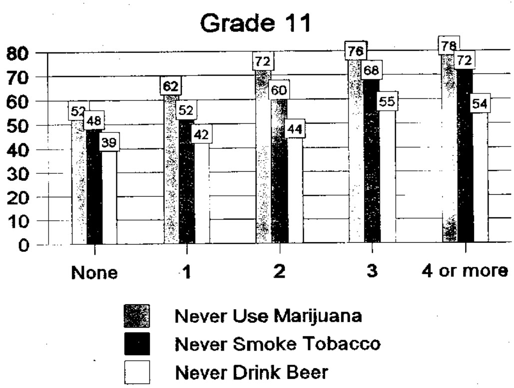


The fewer days of school students miss each semester, the less they use marijuana, tobacco, and beer.

KEY

Never = never miss school
Rarely = hardly ever
2-3 days = per semester
Monthly = some each month
Weekly = some each week

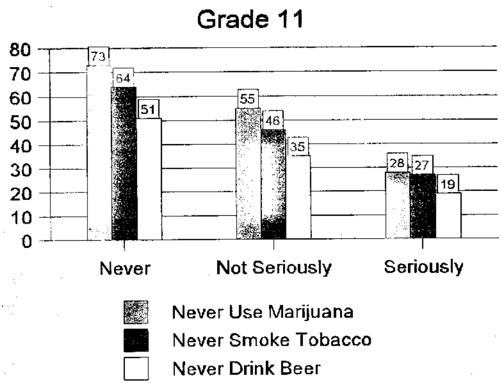
How Many Extra School Activities Do You Participate In Regularly?



Of the eleventh graders who participate in four or more extra curricular activities, over 75% never use marijuana, over 70% never smoke tobacco, and over 50% never drink beer.

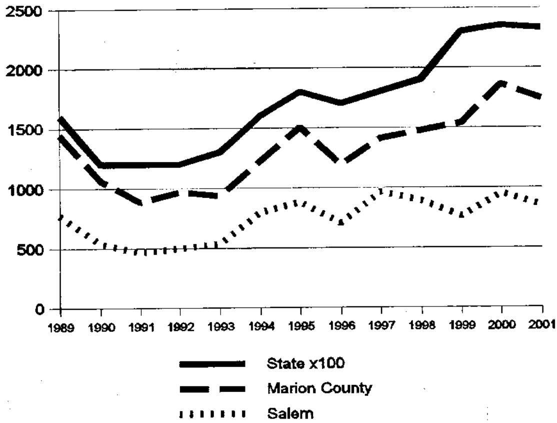
There is a greater correlation between number of extra curricular activities and decreased use of marijuana and tobacco, than extra curricular activities and a decreased use of alcohol.

In the Last Year, Have You Ever Thought About Dropping Out of School?



Of the eleventh graders who have never thought about dropping out of school, over 70% never use marijuana, over 60% never smoke tobacco, and over 50% never drink beer.

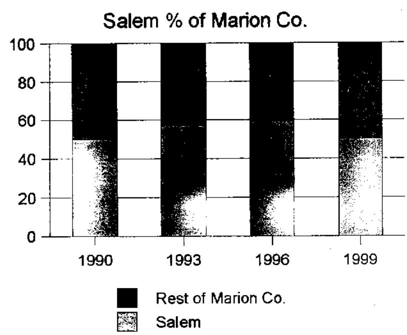
Trends in Drug Offenses



Source: Salem Police Department, Oregon Law Enforcement Data System

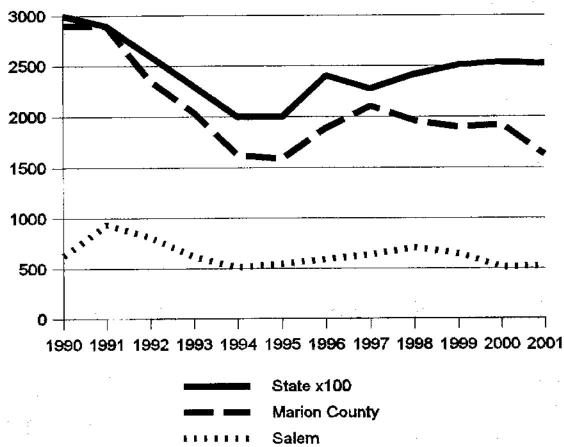
The state, county, and local trends in the number of reported drug offenses have followed similar patterns over the past decade.

The bar chart to the right depicts the percent (not the number) of Marion Co. drug offenses that are within Salem.



Year	89	90	91	92	93	94	95	96	97	98	99	00	01
Salem as a % of Marion	53%	50%	53%	51%	57%	65%	59%	59%	69%	61%	50%	51%	49%

D.U.I.I. Offenses



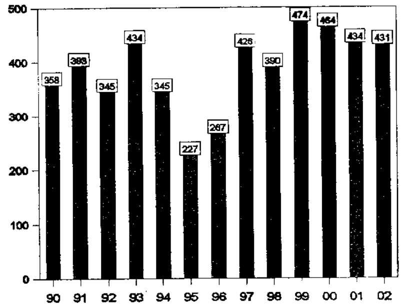
Source: Salem Police Department, Oregon Law Enforcement Data System

In the early 1990's, there were similar trends in the number of D.U.I.I. offenses in the City of Salem, Marion County and the State of Oregon, showing a considerable decline from 1990 to 1994 & 1995.

In the past five years shown (1997-2001) the trend lines have diverged. City of Salem figures decreased slightly; Marion County figures decreased more significantly; and State figures increased.

Minors in Possession of Alcohol

Marion County

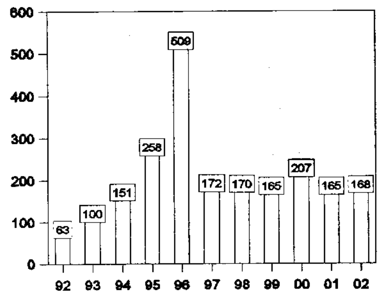


Source: Marion County Juvenile Department

Between 1990 and 1994, the number of minors in possession of alcohol who were referred to the Marion County Family Court averaged 375 per year. In 1995 and1996, the average fell to 247 per year (a 34% decrease), but has since increased and surpassed previous levels. Between 2000 and 2002, the number of minors in possession of alcohol averaged 443 per year.

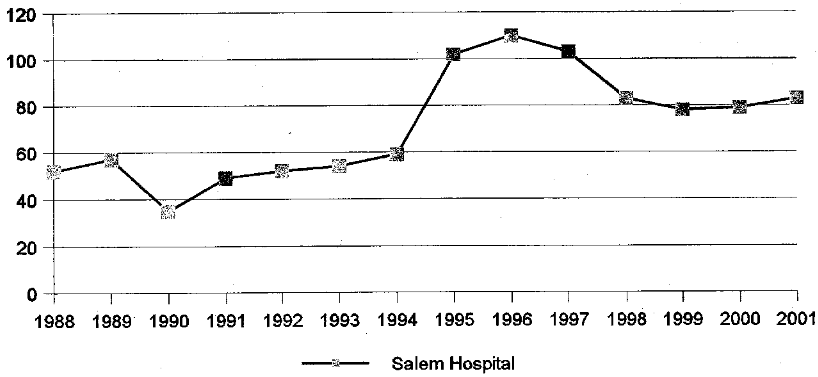
Minors in Possession/Delivery of Controlled Substance Marion County (Marijuana Only)

Source: Marion County Juvenile Department



The number of minors in possession and/or delivering controlled substances who were referred to the Marion County Family Court grew steadily from 1992 to 1996. It has since fallen to approximately 170 referrals annually.

Adolescent Suicide Attempts



Year	88	89	90	91	92	93	94	95	96	97	98	99	00	01
Salem Hospital	52	57	35	49	52	54	59	102	110	103	83	78	79	83
State of Oregon	690	672	551	582	678	712	743	753	778	736	761	738	802	865

Source: Oregon Vital Statistics

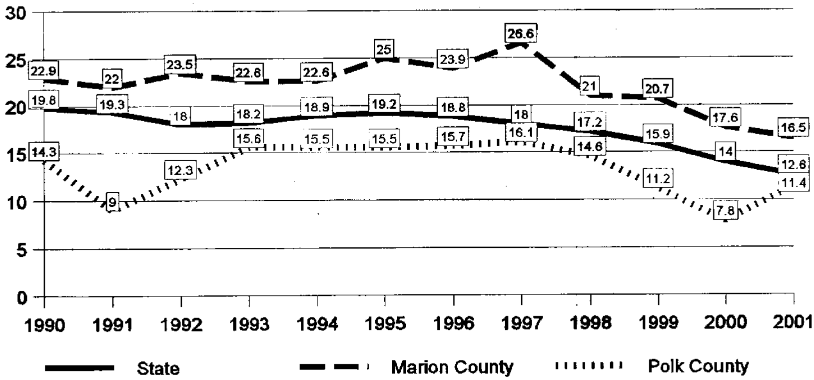
From 1990 to 2000, the number of adolescent suicide attempts recorded at Salem Hospital has more than doubled, from a low of 35 to 79.

For three years (1995-1997), the number was over 100. This increase in reporting is attributed to the implementation of a psychiatric crisis care facility and protocol, affiliated with Salem Hospital.

Statewide, eight out of ten adolescent suicide *attempts* (80%) are by drugs. Seven out of ten of *actual* adolescent suicides (70%) are by gun.

Teen Pregnancy Rate

Rate per 1000 female teens, 10-17 years of age



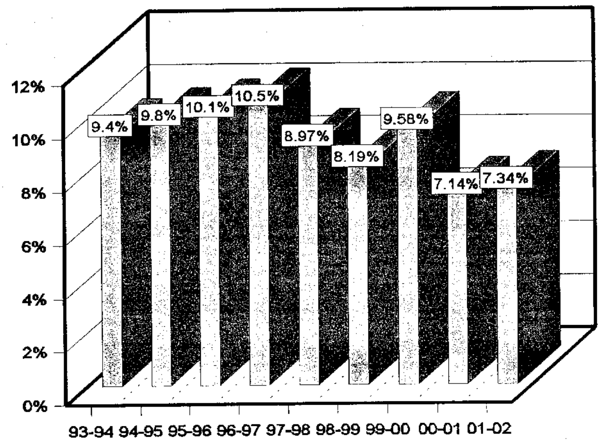
Source: Oregon Center for Health Statistics

While decreasing steadily over the past five years, the teen pregnancy rates in Marion County are higher than the state average and among the highest in Oregon.

Teen Pregnancy Rates (# per thousand for 10-17 year olds)					
Year	Oregon	Marion County		Polk County	
1997	18.0	26.6	2nd highest rate	16.1	21st highest rate
1998	17.2	21.0	4th highest rate	14.6	21st highest rate
1999	15.9	20.7	5th highest rate	11.2	28th highest rate
2000	14.0	17.6	6th highest rate	7.8	30th highest rate
2001	12.6	16.5	6th highest rate	11.4	18th highest rate

Percent of Students Leaving School Before Graduating

Salem-Keizer Public Schools

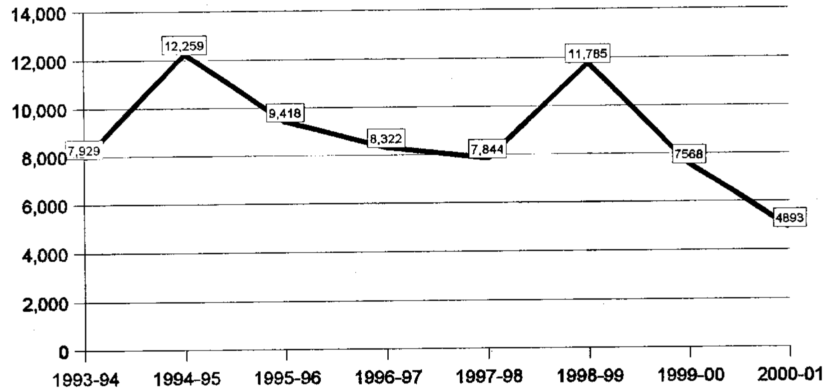


Source: Oregon Department of Education

The percentage of students identified as *early leavers* (drop-outs) increased up until 1998, when the figure dropped to less than 9%. **The good news:** The most recent school years (2000-01 and 2001-02) show the lowest drop-out rates in the past decade.

It should be noted that these figures do not include students who complete high school through an alternative or GED program. When alternative and GED programs are included, the percent drops, i.e.: to 9.3 in the peak year of 1997.

Unauthorized Absences
Salem-Keizer Public Schools



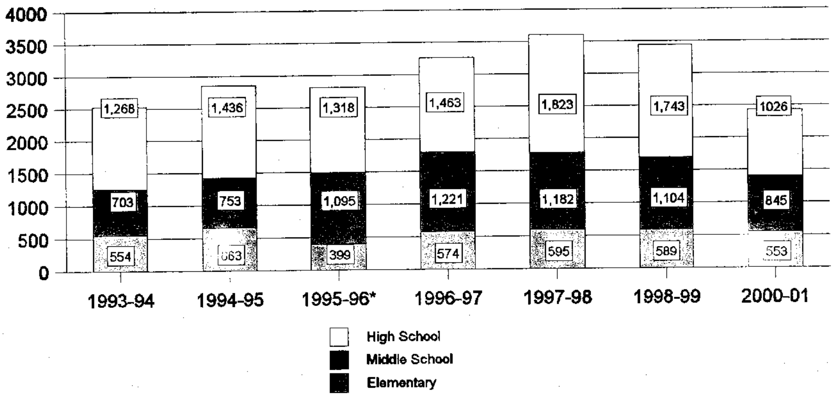
Source: Salem-Keizer Public Schools

Year	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01
Elementary School							52	34
Middle School							2,274	1,687
High School							5,242	3,172
Total Absences	7,929	12,259	9,418	8,322	7,844	11,785	7,568	4,893
Enrollment (K-12)	30,896	30,902	31,334	32,140	33,200	34,293	34,574	35,274
absences as a % of enrollment	26	40	30	26	24	34	22	14

The good news: In the past two years, unauthorized absences decreased dramatically, even as enrollment increased.

How Many Individual Students Received an Out of School Suspension?

Salem-Keizer Public Schools



Year	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	2000-01
Elementary	554	663	399	574	595	589	553
Middle School	703	753	1,095	1,221	1,182	1,104	845
High School	1,268	1,436	1,318	1,463	1,823	1,743	1,026
Total	**2,525**	**2,852**	**2,812**	**3,258**	**3,601**	**3,436**	**2,424**

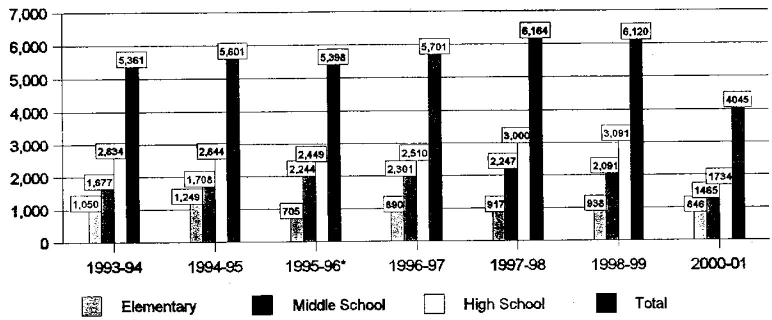
Source: Salem-Keizer Public Schools

The good news: Between 1997-98 and 2000-01, the number of individual students who received an out-of-school suspension decreased by 33% (1,177 fewer students), while total District enrollment rose 4.8%.

* 1995-96 was the year that sixth grade moved from elementary school to middle school.

How Many Total Out-of-School Suspensions Were Administered?

Salem-Keizer Public Schools



• 1995-96 was the year that sixth grade moved from elementary school to middle school.

Year	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	2000-01
Elementary	1,050	1,249	705	890	917	938	846
Middle	1,677	1,708	2,244	2,301	2,247	2,091	1,465
High	2,634	2,644	2,449	2,510	3,000	3,091	1,734
Total	**5,361**	**5,601**	**5,398**	**5,701**	**6,164**	**6,120**	**4,045**

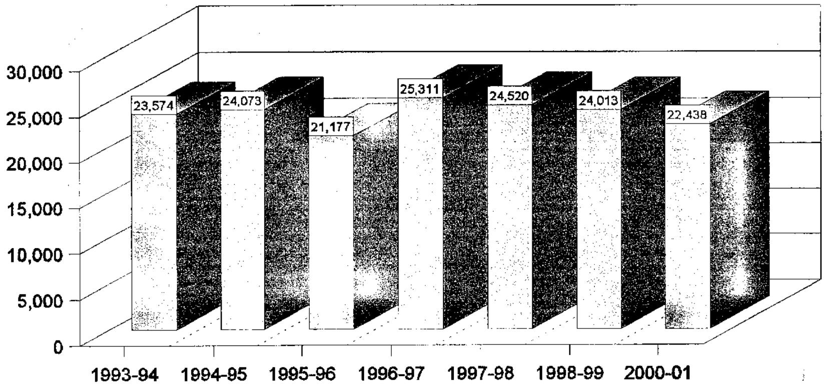
Source: Salem-Keizer Public Schools

Year	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	2000-01
Enrollment	30,896	30,902	31,334	32,140	33,200	34,293	34,785

The good news: Since 1997-98, the total number of out-of-school suspensions fell by 34% (2,119 fewer suspensions), while total District enrollment rose by 4.8%.

Major Discipline Offenses

Salem-Keizer Public Schools



Source: Salem-Keizer Public Schools

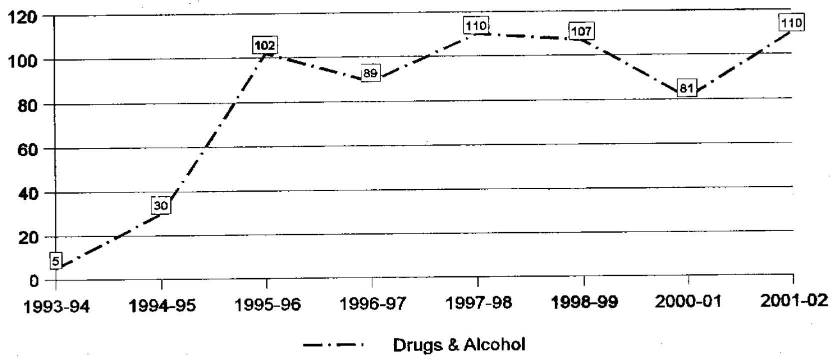
Year	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	2000-01
Enrollment (K-12)	30,896	30,902	31,334	32,140	33,200	34,293	34,785

The good news: There has been a steady decline in the number of major discipline offenses since 1996-97 (2,873 fewer offenses, an 11% decrease), while District enrollment rose 8.2%.

Major discipline offenses include verbal and physical assault, fighting, injuring or attempting to injure, harassment, intentional property damage or theft, alcohol, tobacco, and other drug offenses, insubordinate behaviors, weapons offenses, and fire-setting.

Expulsion Comparison Over Time

Salem-Keizer Public Schools

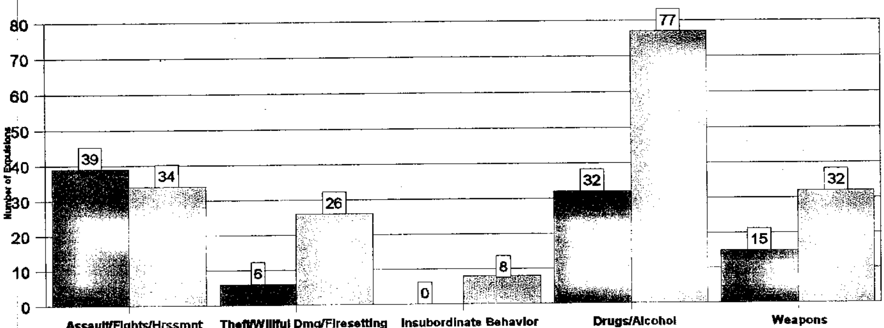


Offenses	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	2000-01	2001-02
Assault	0	24	51	39	25	40	28	37
Fighting	11	13	17	21	18	6	16	14
Harassment	0	0	3	11	4	11	11	22
Gang Activity	0	0	0	1	12	3	0	0
Theft/Willful Damage	6	12	19	19	19	12	15	19
Fire Setting	0	6	10	5	4	3	4	13
Insubordinate Behavior	4	13	15	19	8	15	3	3
Drugs & Alcohol	5	30	102	89	110	107	81	110
Weapons (Real Guns)	5	11	6	3	3	0	0	2
Weapons (Knives)	39	57	52	56	28	38	29	34
Weapons (Misc.)	26	40	12	20	11	12	12	14
Total	**98**	**206**	**287**	**283**	**242**	**247**	**200**	**268**
District enrollment	30,896	30,902	31,334	32,140	33,200	34,293	34,785	36,187

NOTE: In 1994-95, *Zero Tolerance* for weapons was implemented. In 1995-96, *Zero Tolerance* for weapons and drugs was implemented.

Expulsions by Grade Level & Ethnicity, 2001-2002

Salem-Keizer Public Schools

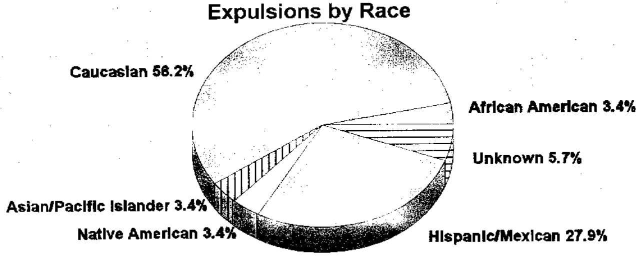


Number of Students Expelled 2001-2002

	African American	Asian/Pacific Islander	Caucasian	Hispanic/ Mexican	Native American	Unknown	Total
Middle School	3	2	47	30	5	4	92
High School	6	7	98	44	4	11	172
Secondary Expulsions	9	9	149	74	9	15	265
% of Expulsions	3.4%	3.4%	56.2%	27.9%	3.4%	5.7%	100%
Secondary Enrollment % of Enrollment	274 1.4%	619 3.3%	13,542 71.4%	2,943 15.5%	292 1.5%	1,066 5.6%	18,957

Source: Salem-Keizer School District

Expulsions by Race



High School Academics
2001-02 School Year

Students on Academic Honor Roll

	McKay		McNary		North		South		Sprague	
Honor Roll Members 3.5 + in all grade levels	281	15%	360	22%	359	21%	593	31%	469	26%

Student Participation in Honor Society
(only open to 11th and 12th graders)

	McKay		McNary		North		South		Sprague	
National Honor Society members open to 11th & 12th grade	35	4%	31	4%	49	7%	90	11%	157	18%

Students Graduating with Honors

	McKay		McNary		North		South		Sprague	
Graduates with 3.5 GPA or better 12th grade only	76	19%	72	20%	83	23%	101	24%	105	25%

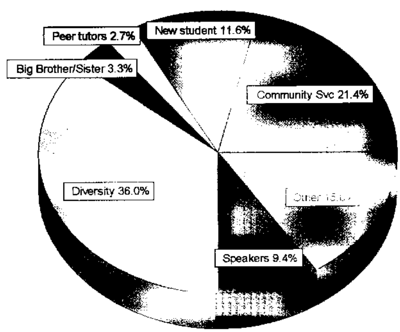
This is the first year to include these statistics in this document and will be used as a base line for future reference.

Peer Helper Program
2001-02 Activities

Number of peer helpers:
1st semester 218
2nd semester 158

	Occurrences	Peer Helpers Involved	People Impacted
Community service projects	142	241	1,825
New student orientation/welcoming	784	312	989
Peer tutors	493	86	230
Big Brother/Sister/Mentors	316	127	278
Diversity activities	47	89	3,066
Sponsoring speakers	40	172	804
Other	450	216	1,331
Total	**2,272**	**1,243**	**8,523**

People Impacted / Type of Activity



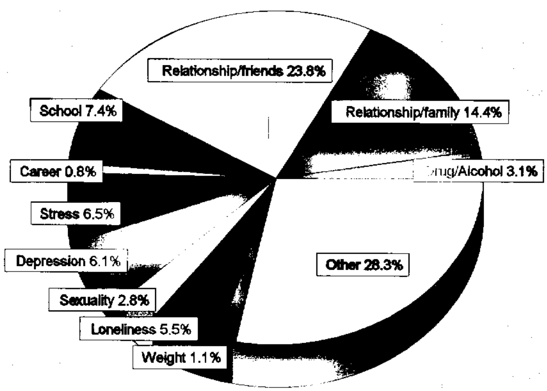
The Peer Helper Program trains students to serve as a resource to other students. Each Salem/Keizer School District middle school and high school has a Peer Helper Program, supported by a staff advisor. Students determine the specific educational programs they will offer, while also ensuring that their peers have "helpers" available to listen and refer them to resources, should they desire them. Peer Helpers hold "office hours" in every middle and high school. *See the next page for related data.*

2001-02 Peer Helpers

Issues and Needs

Issue	Total # Helped	Wanted Listener	Wanted Information	Wanted Help w/Decision	Wanted Referral
Drugs/alcohol use/abuse	233	198	154	122	65
Relationships w/family	1,069	731	298	192	56
Relationships w/friends	1,770	1,341	500	883	18
School achievement	553	1,202	199	224	79
Career choice	63	71	26	42	1
Stress	486	376	130	151	4
Depression	454	415	261	268	123
Sexuality	211	153	96	109	5
Loneliness	408	371	250	268	113
Weight control	84	61	36	17	1
Other	2,099	136	40	32	1
Total	**7,430**	**5,055**	**1,990**	**2,308**	**466**

Total Number Helped

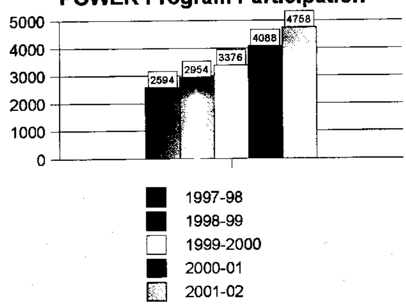


Middle School POWER Program
2001-02 School Year

The middle school after school POWER Program began as a pilot program at one school in 1995. It has since expanded to every middle school in the Salem/Keizer School District. The 1997-98 school year was the first year that the program operated at every middle school.

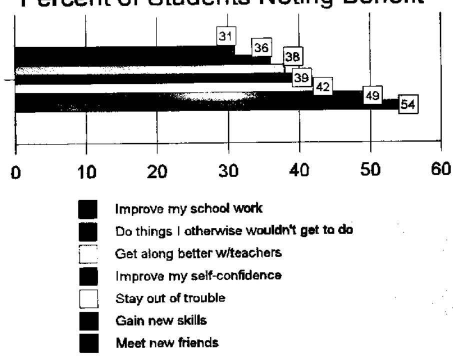
POWER stands for Promoting Outstanding Work, Education, and Recreation. The menu of after school activities is offered to students for a nominal fee and includes academic enrichment, social and recreational activities, individual and team sports, and community service programs.

POWER Program Participation



Middle school students are surveyed annual and asked to identify benefits of participating in the after school program. The top two benefits noted by students are social/recreation benefits, followed by a grouping of interpersonal skills, all of which are proven to reduce drug/alcohol abuse, school drop-out, and other negative behaviors:

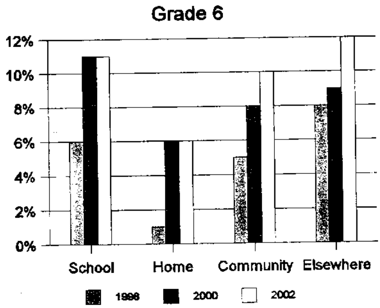
Percent of Students Noting Benefit

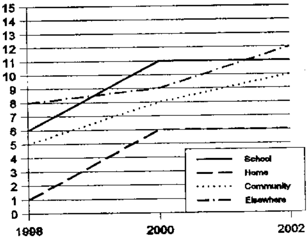


2001-02 School Year
Only the students who participated in after school programs were asked to select from a list of seven options how their participation has helped them.

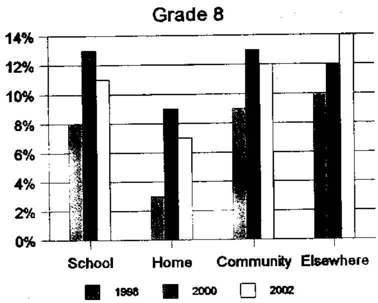
Gangs

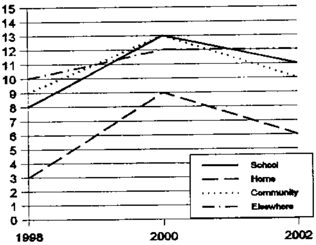
Have You Ever Been Invited to Join a Gang at Any of the Following Locations?



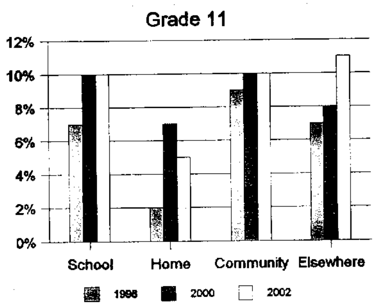


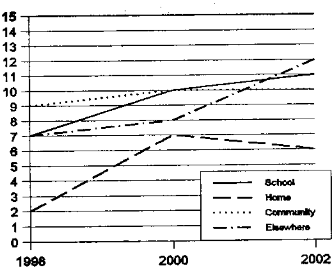
While the vast majority of students are not faced with gang recruitment, the number of 6th graders who reported being invited to join a gang has increased.





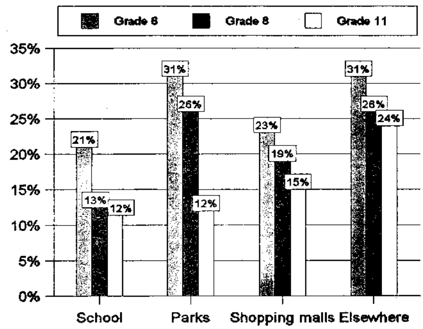
Reports of gang recruitment have decreased for 8th graders and held steady for 11th graders.





Do You Feel Threatened By Gangs At the Following Locations?

(students identified all that applied)

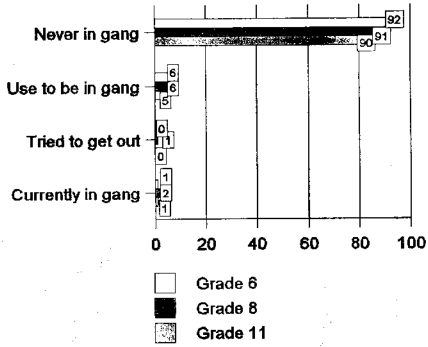


6th GRADE	***1998***	***2000***	***2002***
School	12%	24%	21%
Parks	16%	42%	31%
Shopping Malls	13%	32%	23%
Elsewhere	19%	38%	31%
8th GRADE	***1998***	***2000***	***2002***
School	9%	14%	13%
Parks	13%	31%	26%
Shopping Malls	14%	23%	19%
Elsewhere	18%	29%	26%
11th GRADE	***1998***	***2000***	***2002***
Schools	9%	9%	12%
Parks	11%	21%	19%
Shopping Malls	14%	23%	15%
Elsewhere	17%	23%	24%

A much greater percentage of students reported feeling threatened by gangs in 2000 than they did in 1998. While these figures dropped in 2002, they are still higher (and in some cases, significantly higher) than they were in 1998.

The good news: Students feel least threatened by gangs when they are at school.

Which of the Following Best Describes You?



The Numbers: Of the 8-10% of students in these grade levels who have ever been in a gang, the following chart reflects actual numbers of those students surveyed.

Grade	*Number Surveyed*	*Used to be in a gang*	*Tried to get out, but still in a gang*	*Currently and plan to stay in a gang*
6th	2,253	135	0	20
8th	2,030	34	20	40
11th	1,344	67	2	13

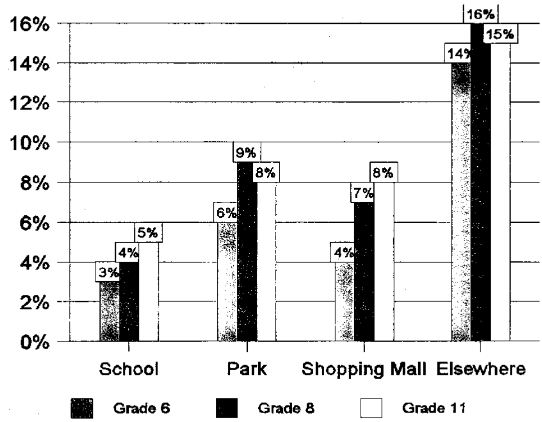
Weapons

In the Last 30 Days, Have You Carried a Weapon at the Following Locations?

3% of sixth graders,
4% of eighth graders, and
5% of eleventh graders
report having carried a
weapon **at school**
within the past 30 days.

6% of sixth graders,
9% of eighth graders, and
8% of eleventh graders
report having carried a
weapon **at parks**
within the past 30 days.

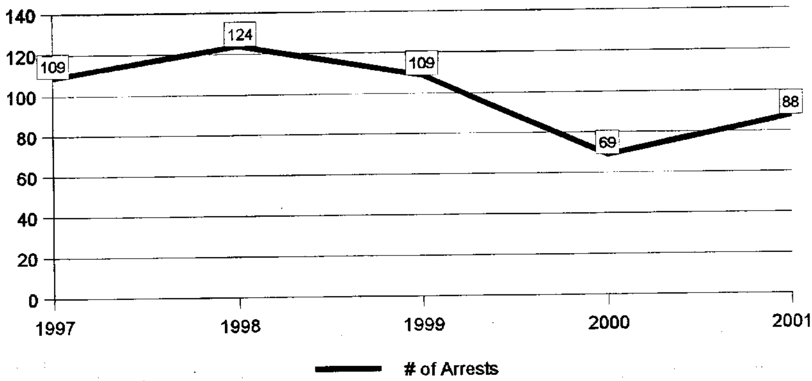
4% of sixth graders,
7% of eighth graders, and
8% of eleventh graders
report having carried a
weapon **at shopping malls**
within the past 30 days.



The Numbers: Of the 3%-16% of students in these grade levels who have carried a weapon in the past 30 days, the following chart reflects actual numbers of those students surveyed.

Grade	*Approx. Enrollment*	*Carried a weapon at school*	*Carried a weapon at parks*	*Carried a weapon at shopping mall*
6th	2,900	87	174	116
8th	2,970	119	267	208
11th	2,750	138	220	220

Violent Crimes by 11-17 Year Olds
in Salem

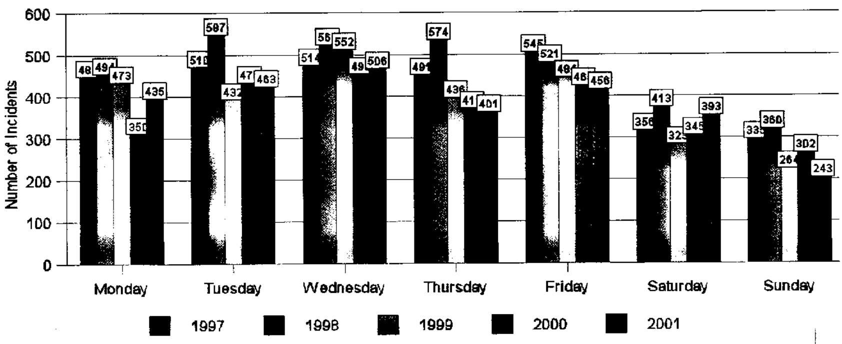


Source: Salem Police Department

The good news: Between 1997 and 2001, violent crimes by 11- to 17-year-olds dropped 19%. At the same time, enrollment in 6th-12th grade in the Salem-Keizer Schools rose by 8%.

Juvenile Crime by Day of Week in Salem

(Ages 0-17)
All Crime



2001 Juvenile Crime Summary

Day of Week	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
# of Incidents	435	463	506	401	456	393	243	2897
% of Crime	15%	16%	17.5%	13.8%	15.7%	13.6%	8.4%	100%

The good news: Juvenile crime trends clearly continue downward for all days of the week except Saturdays.

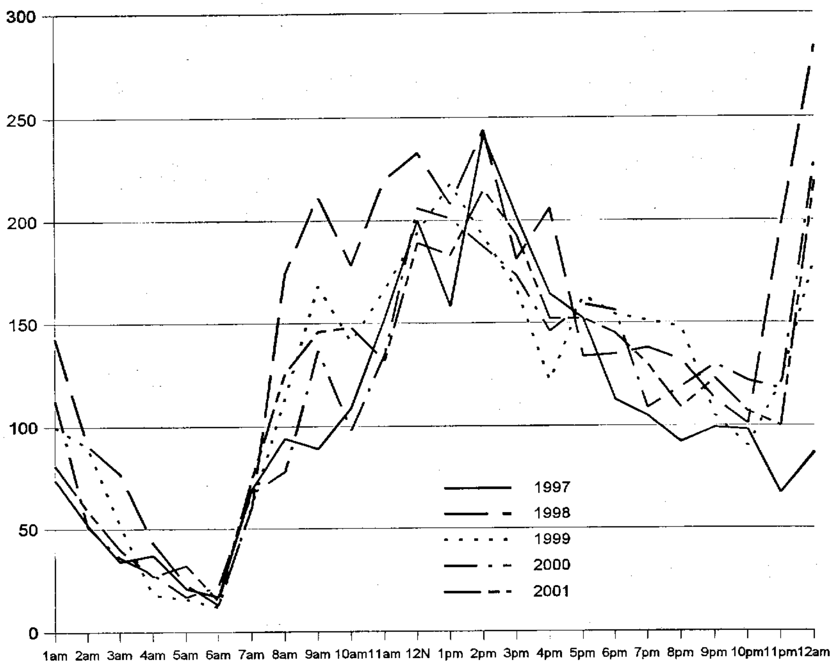
<u>Description of Crime</u>

Person Crimes: Rape, Sex Offenses, Murder, Aggravated Assault, Armed Robbery, and all other assaults.

Property Crimes: Burglary-Resident, Burglary-Non-Resident, Vandalism, Arson, Auto Theft, and Stolen Property.

Other Crimes: Larceny, Weapons, Trespass/Prowler, Disorderly Conduct, Fraud/Counterfeit, Curfew, Prostitution, and all other part II crimes, i.e., reckless driving, traffic violations, fugitive, custody, and other misc.

Juvenile Crime by Hour of Day in Salem
(Ages 0-17)
All



Source: Salem Police Department

Total # of Juvenile Crime Incidents in Salem:

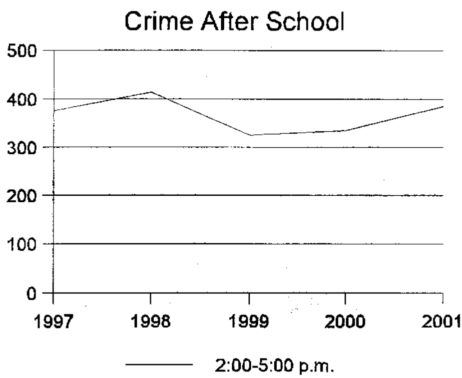
year	#	peak hour
1997	3,238	2:00-3:00 pm
1998	3,512	2:00-3:00 pm
1999	2,964	1:00-2:00 pm
2000	2,838	12:00-1:00 pm
2001	2,897	2:00-3:00 pm

The good news: From 1997 to 2001, juvenile crime decreased 11% while school enrollment increased 8%. However, the peak daytime hour in 2001 is slightly higher and later in the day than in 2000.

Description of Crime

Person Crimes: Rape, Sex Offenses, Murder, Aggravated Assault, Armed Robbery, and all other assaults.
Property Crimes: Burglary-Resident, Burglary-Non-Resident, Vandalism, Arson, Auto Theft, and Stolen Property.
Other Crimes: Larceny, Weapons, Trespass/Prowler, Disorderly Conduct, Fraud/Counterfeit, Curfew, Prostitution, and all other part II crimes, i.e., reckless driving, traffic violations, fugitive, custody, and other misc.

Juvenile Crime by Hour of Day in Salem
on School Days/ During the School Year
(Ages 0-17)



Source: Salem Police Department

Total Incidents	Year	School Day Incidents 2:00-5:00pm	2:00-5:00 pm School Day Percentage of Total
3,238	1997	376	11.6%
3,512	1998	414	11.8%
2,964	1999	326	11.0%
2,838	2000	335	11.8%
2,897	2001	385	13.3%

Description of Crime

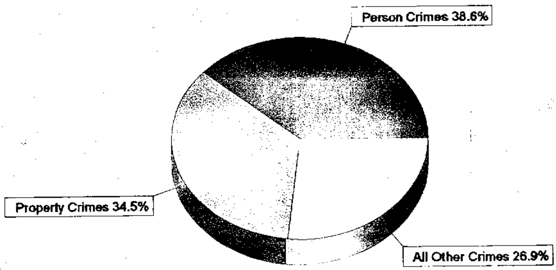
Person Crimes: Rape, Sex Offenses, Murder, Aggravated Assault, Armed Robbery, and all other assaults.

Property Crimes: Burglary-Resident, Burglary-Non-Resident, Vandalism, Arson, Auto Theft, and Stolen Property.

Other Crimes: Larceny, Weapons, Trespass/Prowler, Disorderly Conduct, Fraud/Counterfeit, Curfew, Prostitution, and all other part II crimes, i.e., reckless driving, traffic violations, fugitive, custody, and other misc.

Juvenile Crime in Salem, 2001
(Ages 0-17)

All Juvenile Crime



Type of Incident	Person Crimes	Property Crimes	All Other Crimes
Number of Incidents	986	880	688
Percent of Incidents	38.6%	34.5%	26.9%

Source: Salem Police Department

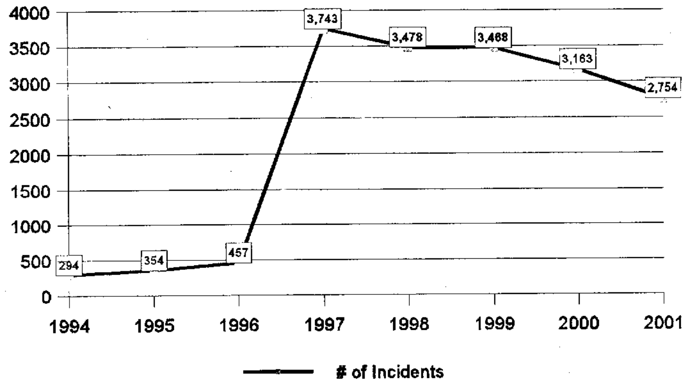
Description of Crime

Person Crimes: Rape, Sex Offenses, Murder, Aggravated Assault, Armed Robbery, and all other assaults.

Property Crimes: Burglary-Resident, Burglary-Non-Resident, Vandalism, Arson, Auto Theft, and Stolen Property.

Other Crimes: Larceny, Weapons, Trespass/Prowler, Disorderly Conduct, Fraud/Counterfeit, Curfew, Prostitution, and all other part II crimes, i.e., reckless driving, traffic violations, fugitive, custody, and other misc.

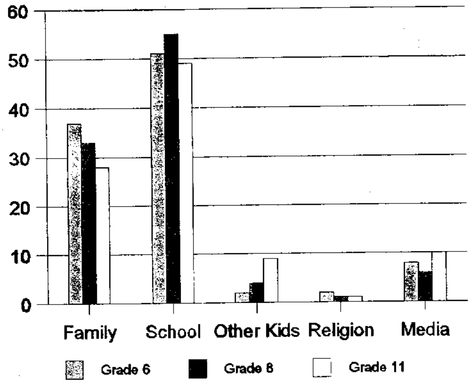
Domestic Disturbance Reporting in Salem



Source: Salem Police Department

Since the new programs were instituted in 1997 to help law enforcement focus on domestic disturbances, reports of incidents have decreased by 26%, from 3,743 to 2,754 in 2001.

Where Do You Learn the Most About the Dangers of Drugs and Drinking?



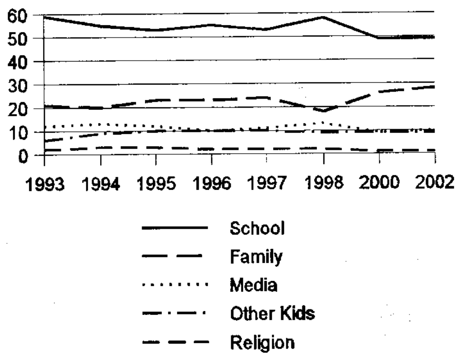
Whether in sixth, eighth, or eleventh grade, youth learn the most about the dangers of drugs and drinking from these sources, in this order:

1st	School
2nd	Family
3rd	Media
4th	Other kids
5th	Religion

In 2002, more youth report learning the most about the dangers of drugs and drinking **from family** than in previous years:

Grade	*1998*	*2000*	*2002*
6th	26%	37%	37%
8th	18%	27%	33%
11th	18%	26%	28%

Grade 11



Executive Summary

The following is synopsis of the data included in the previous pages.

Issue	Grade Level 6th	8th	11th	The Good News	The Concerns
Perceived Problems	✘			In 1998 only 12% said that "no one" at their school had a drug or alcohol problem; in 2002 it rose to 31%.	29% report "a lot" or "some" drug problems among students at their school.
Perceived Problems		✘		In 1998 only 4% said that "no one" at their school had a drug or alcohol problem; in 2002 it rose to 15%.	48% report "a lot" or "some" drug problems among students at their school.
Perceived Problems			✘		The percent who report "a lot" or "some" drug problems among students at their school has stayed above 85% for a decade (1993-2002).
Self-Reported Use	✘			Past 30 days cigarette use is down to only 1%; alcohol use is down to 7%; marijuana use is down to 2%; and inhalant use is only 1%.	
Self-Reported Use		✘		Past 30 days cigarette use is down to only 4%; alcohol use is down to 18%; marijuana use is down to 8%; and inhalant use is only 1%.	18% of 8th graders still use alcohol regularly (within past 30 days).
Self-Reported Use			✘	Past 30 days cigarette use is down to 10%; alcohol use is down to 30%; marijuana use is down to 16%; and inhalant use is only 1%.	30% of 11th graders still use alcohol regularly; and 16% still use marijuana regularly (within past 30 days).
Access to Marijuana	✘			The percent of 6th graders who report that marijuana is easy to get has been cut in half since 1998 - down to 12%.	
Access to Marijuana		✘		The percent of 8th graders who report that marijuana is easy to get is down from 54% in 1998 to 37% in 2002.	Over a third of the 8th graders report that marijuana is easy to get.

Issue	Grade Level 6th	8th	11th	The Good News	The Concerns
Access to Marijuana and Meth			✘	The percent of 11th graders who report that marijuana is easy to get is down from 84% in 1998 to 75% in 2002. Those that report meth is easy to get is down from 40% to 26%.	3/4 of the 11th graders report that marijuana is easy to get; ¼ report that meth is easy to get.
Access to Cigarettes			✘	In six years the percent of 11th graders who reported that they usually bought their cigarettes from stores went from 46% down to 12%. (1996-2002)	
Parties	✘				8% of 6th graders report alcohol use among kids at most parties they attend.
Parties		✘		Exposure of 8th graders to alcohol and other drugs at most parties has been cut by more than half (from 28% in 2000 to 11% in 2002).	10% of 8th graders still report alcohol use among kids at most parties they attend.
Parties			✘	The percent of 11th graders reporting alcohol and/or drug use at most parties is down from 47% to 41%. (2000-2002)	11% of 11th graders report just alcohol use among kids at most parties they attend, but <u>another 29%</u> report BOTH alcohol and drug use at most parties they attend.
Parents & Family			✘	11th graders reported that their parents knew where they were every time they were away from home, were also the ones who reported the least amount of beer, tobacco, or marijuana use.	From 1998 to 2002 the percent of 11th graders who think that their parents would disapprove of them having 1-2 drinks daily fell by 10 percentage points to a low of 84%.
Correlating Behaviors			✘	11th graders who report that they don't miss school days and don't think about dropping out, are also those who report the least amount of beer, tobacco or marijuana use.	11th graders who report missing school and thinking about dropping out are also more likely to use alcohol, tobacco, and other drugs.
School Attachment			✘	The more extra school activities that a student participates in, the less likely they are to use alcohol, tobacco, and other drugs.	The fewer extra school activities that a student participates in, the more likely they are to use alcohol, tobacco, and other drugs.

Issue	Grade Level 6th	8th	11th	The Good News	The Concerns
School Attachment	✘	✘	✘	The most recent school years (2000-01 and 2001-02), show the lowest drop-out rates in the past decade (pg. 40). Un-authorized absences is at the lowest point recorded in the past decade (pg. 41).	
Discipline Offenses	✘	✘	✘	There has been a steady decline in the number of major discipline offenses since the 1996 school year - an 11% decrease while enrollment increased by 8%. From the 1997 school year through the 2000 school year, the number of individual students who received an out-of-school suspension decreased by 33% (1,177 fewer students), while District enrollment rose by 5%. This figure is also at the lowest point in the past decade.	
Juvenile Crime	✘	✘	✘	From 1997 to 2001, juvenile crime decreased 11%, while District enrollment increased 8%. Juvenile crime trends clearly continue downward for every day of the week, except Sat.	
Student Programs	✘	✘	✘	Peer Helpers helped over 7,400 individual students in 6th-12th grade, who wanted information, someone to listen to them, help with a decision, or a referral for services during the 2001 school year.	
Student Programs	✘	✘		There has been an 87% increase in the number of students participating in the middle school POWER Program, since it expanded District-wide in 1997 and served 2,549 students to 2001-02, when it served 4,758 students. The following percent of students report these benefits: Improved schoolwork - 31% New opportunities - 36% Get along better w/teachers - 38% Improve self-confidence - 39% Stay out of trouble - 42% Gain new skills - 49% Make new friends - 54%	

The Next Chapter

The Salem-Keizer community has made great strides toward reducing adolescent problem behaviors. Efforts by families, schools, agencies, churches, businesses, youth, civic groups, the media, and other community resources have helped to prevent the onset of such behaviors. Additional efforts intervene, as negative behavior patterns emerge and/or continue.

> ***Research shows that the most successful efforts are comprehensive approaches that include reducing risks and developing positive environments, guidelines, opportunities, and individual skills.***

Promising Approaches

The federal Center for Substance Abuse Prevention has identified six prevention strategies to be included in a comprehensive plan. Utilizing a single strategy is not as effective because it may impact only one part of the problem. A comprehensive plan includes elements from several, if not all of the six strategy areas:

- ***Information Dissemination:*** Communication in this strategy is generally one-way, from the source to the audience. Provides up-to-date and accurate knowledge and awareness about the nature and extent of the behavioral problems (substance abuse, delinquency, teen pregnancy, school drop-out, and violence) and their effects on individuals, families, and communities.

  Examples: media campaigns, health-promotion activities, lectures.

- ***Prevention Education:*** Provides two-way communication and activities. Activities focus on helping an individual develop interpersonal skills, clear and purposeful goals and values, self control, and the ability to build and maintain healthy relationships. These activities build social skills, decision-making and refusal skills, as well as critical analysis and systematic judgment abilities.

  Examples: classroom curricula, parenting education, and peer leadership/helpers activities.

- ***ATOD-Free Alternatives:*** Provides activities that are constructive and healthy alternatives to ATOD use. Target audiences should be included in the planning.

  Examples: community service, school/church/community activities, challenge courses, ATOD-free dances, and other events/activities.

- ***Community-Based Processes:*** This strategy aims to enhance the ability of a community to mobilize more effectively to provide prevention, early intervention, and treatment services. Community mobilization includes assessment of community services and resources, a risk/protective factor assessment, community action planning, and team building.

  Examples: Oregon TOGETHER, Salem-Keizer Together, service integration projects, community coalitions and partnerships.

- ***Social Policy and Environmental Approaches:*** Establishes or changes written or unwritten community laws, standards, policies, and/or norms, thereby reducing the incidence and prevalence of ATOD use, delinquency, teen pregnancy, school drop-out, and violence.

  Examples: workplace and school ATOD and violence policies, modifying advertising, pricing policies, influencing the marketing of alcohol or tobacco products, and enhancing enforcement of existing policies/laws.

- ***Problem Identification and Referral:*** Aims at early identification of the problem behavior in order to assess if the behavioral patterns can be reversed through early intervention activities or strategies.

  Examples: Employee Assistance Programs (EAP), Student Assistance Programs (SAP), and DUII and MIP education programs.

Community Efforts in Salem and Keizer

Assets In Motion (AIM) **503-588-7975**
A networking group dedicated to advancing the 40 developmental assets that support healthy youth and a healthy community.

Assets Leadership Council **503-362-9313**
A consortium of leaders in Marion and Polk counties working to create purposeful asset-building organizations. Web page: www.buildingassests.com.

Community Progress Teams
Launched in partnership with the Marion County Children and Families Commission **(503-588-7975)**, Community Progress Teams are formed through community-based leadership to ensure that every child and family has the opportunity to achieve their full potential. CPTs work to develop communities that foster healthy children and families. CPTs in the Salem-Keizer urban area include:

Keizer United
Contact: Tracy Torres
Phone: 503-390-2600

North Neighbors
Contact: Beverly Hughes
Phone: 503-370-6955

McKay Area CPT
Contact: Susann Kaltwasser
Phone: 503-363-3998

South Salem Connectors
Contact: Holly Berry
Phone: 503-588-5301

Neighborhood Associations .... **(Salem) 503-588-6261 and (Keizer) 503-390-3700**
Neighborhood Associations meet regularly to discuss issues important to the people who live and work in that neighborhood. Topics may include traffic, land use, social issues, crime, youth opportunities, etc.

Salem-Keizer Together Community Drug Prevention Network **503-585-6232**
A community coalition of agencies, groups, and individuals seeking to reduce the abuse of alcohol, tobacco, and other drugs. Efforts include advocating for smoke-free environments, conducting the STOMP Tobacco Campaign, providing public information, and supporting the middle school POWER Program.

Strengthening Families Council **503-362-8326**
A community effort to engage the faith community, schools, agencies, and businesses in creating a community that provides strong support for families.

Salem Leadership Foundation **503-315-8924**
A non-profit catalyst for 1) linking churches together in community service, and 2) building bridges of collaboration between the faith community and the community at large to serve people in need.

Salem Neighborhoods Inc. (SNI) **503-588-6261**
A non-profit Association comprised of member Neighborhood Associations, the purpose of SNI is to provide and promote opportunities for increasing and improving communication and cooperation within and among neighborhoods and residents in the Salem area through public discussion, community education, and the exchange of information. SNI also encourages and sponsor activities and projects to increase the livability of the physical and social environments of the Salem area.

Teen Activity Network (TAN) 503-588-6261
A network of agencies, organizations, churches, and businesses that serve Salem and Keizer teenagers. This group meets monthly to share information, discuss common issues, and create joint programs and services. TAN produces the local Youth Yellow Pages (5th edition, 2003).

Today's Choices: Tomorrow's Community 503-362-9313
A non-profit organization aimed at identifying and supporting the community's vision and values for today and for the future. Encompasses Marion and Polk counties.

West Salem Service Integration Team 503-623-9664
This team works in collaboration with Polk County Service Integration and is comprised of representatives from agencies, organizations, and schools. The team meets monthly to share information, develop plans, and implement activities that serve the needs of children, youth, and families in West Salem.

Resources and Referrals

■ Emergencies

Emergency	911
Salem Hospital Emergency Room	503-370-5373
Poison Control Center	1-800-452-7165
Northwest Human Services Crisis Line	503-581-5535
Marion County Drug Treatment	503-588-5358

■ Hotlines/Helplines

Alcohol/Drug Help Line	1-800-621-1646
Alcoholics Anonymous (24-hour, Salem area)	503-399-0599
Al Anon & Alateen (24-hour, Salem area)	503-370-7363
Alcoholics Victorious (Christian support)	503-362-4355
Cocaine Information Hotline	1-800-COCAINE
which is	1-800-262-2463
Graffiti Hotline (Salem)	503-371-4264
Oregon Drug & Alcohol Information Center	1-800-452-7032
Oregon Partnership Youth Helpline	1-800-621-1646
Pregnancy 24-hour Hotline	1-800-342-6688
Teen Health Infoline	1-800-998-9825

■ National Resources

Community Anti-Drug Coalitions of America (CADCA)	1-800-54-CADCA
National Runaway Shelter	1-800-231-6946
National Runaway Switchboard	1-800-621-4000

■ State/Regional Resources

Oregon Prevention Resource Center	503-378-8000
The Oregon Partnership	1-503-239-7999
State Office of Alcohol and Drug Abuse Prevention (OADAP)	503-945-5763
Oregon TOGETHER!	503-945-5763
Confederation of Oregon School Administrators Project Graduation and More	503-581-3141
Northwest Regional Educational Laboratory	1-800-547-6339

■ Local Resources

A.C. Gilbert Discovery Village	503-371-3631
American Cancer Society	503-581-4577
Boy Scouts	503-581-6601
Boys and Girls Club	503-581-7383
Camp Fire USA	503-581-0477
Chemeketa Community College	
GED	503-399-5224
High School Completion	503-399-5115
City of Salem	
Community Services Department	503-588-6261
Library	503-588-6315
Police Department	503-588-6123
Drug Abuse Resistance Education (DARE)	
City of Keizer	503-390-3713
City of Salem	503-588-6257
Marion County	503-588-5032
Polk County	503-623-9251
Girl Scouts	503-581-2451
HOME Youth and Resource Center	503-391-6428
Kaiser Permanente, Member Services	503-361-5400
Mano a Mano Youth and Family Center	503-363-1895
Marion County Children and Families Commission	503-588-7975
Marion County 4-H Youth Programs	503-588-5301
Marion County Health Department	
Community Development	503-588-5357
Alcohol/Drug Programs	503-588-5358
Child/Adolescent Mental Health	503-588-5352
Adult Mental Health	503-588-5351
Marion County Juvenile Department	
Applied Career Education (ACE Program)	503-588-8496
Family Court	503-588-5411
Parole and Probation	503-588-5316
Mid-Willamette Valley Community Action Agency	503-585-6232
Northwest Human Services	
General Information	503-588-5855
Crisis Hotline	503-581-5535
HOST Program	503-588-5825
POWER Program, call middle schools or City of Salem Community Services Dept.	
Polk County Commission on Children and Families	503-623-9317
Polk County Health Department	
Alcohol/Drug Programs	503-623-9289
Child/Adolescent Mental Health	503-623-2731
Adult Mental Health	503-623-9289
Rainbow Youth	503-315-8124
REACH Club Program, call individual schools or City of Salem Community Services Dept.	
Salem Friendship and Support Association	503-390-4068
Salem Hospital, Community Relations	503-370-5269
Salem Housing Authority	503-588-6368
Salem-Keizer School District	
Downtown Learning Center	503-399-3421

Migrant Education 503-399-3111
Structured Learning Center 503-399-5550
Student Services/Prevention and Intervention 503-399-3327
Teen Parent Program 503-399-3105
Salem-Keizer Together Community Drug Prevention Network 503-585-6232
Salem Leadership Foundation 503-315-8924
Street Vision 503-363-7261
Today's Choices: Tomorrow's Community 503-362-9313
United Way of the Mid Willamette Valley 503-363-1651
YMCA, Salem Family
Classes and General Information 503-581-9622
Mentor Program 503-399-2774
Child Development 503-399-2769
Youth and Camping 503-399-2762
Youth With A Mission 503-364-3837
YWCA of Salem 503-581-9922

ACKNOWLEDGEMENTS

Salem-Keizer Together respectfully acknowledges the outstanding efforts of the many individuals and organizations contributing to the overall quality of life and improved health of this community.

Please utilize the form at the back of this document or forward your comments and suggestions for future editions of the SKT Community Profile to:

Salem-Keizer Together
Community Drug Prevention Network
2475 Center Street
Salem, OR 97301

Salem-Keizer Together
Planning Board

Roger Appelgate, Marion County Health Department

Jan Calvin, City of Salem Community Services Department

Scott Cantonwine, Youth Representative

Annette Chrisemer, Marion County Victims Impact Panel

Shannon Fraser, Community Member

Lyle Gembala, Salem Police Department

Larry Feller, Marion County Sheriff's Office

Tami Goettsch, Marion County Children and Families Commission

Carrie Harp, State of Oregon, Community Human Services

Toni Locker, Kaiser Permanente

Carla Moyer, Salem/Keizer Public Schools

Jill Washburn, Salem Housing Authority

Cyndi Astley, SKT Director

Katey Axtell, SKT Outreach Manager

Connie Lee, SKT Communications Specialist

The Salem-Keizer Together Community Profile is created through the cooperative efforts of community agencies, organizations, and individuals. Printing and distribution costs are covered by the pre-paid document fee.

2002 SKT Community Profile Order
Name:
Address:
City/State/Zip:
Daytime Phone:

Number of copies:	**x $ 5.00 =**	**$**
Handling fee (per 1-5 copies)	**x $ 2.00 =**	**$**
Total Enclosed		**$**

Enclose check made out to **Salem-Keizer Together** and mail to:
Salem-Keizer Together
Community Drug Prevention Network
2475 Center Street
Salem, OR 97301

****

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Salem, OR 97301

COMMENTS AND SUGGESTIONS FOR SKT COMMUNITY PROFILE

General Comments/Suggestions:

Data to be Included:

Format of Data:

Resources to be Included (please provide contact and phone number):

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General Comments/Suggestions:

Data to be Included:

Format of Data:

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City of Keizer, Oregon

May 19, 2003

AGENDA ITEM 8a

ORDER – ZONE CHANGE/MAJOR MINOR VARIANCE – CASE NO. 2003-03 (500 BEVER DRIVE N)

CITY COUNCIL MEETING: May 19, 2003

AGENDA ITEM NUMBER:__________

TO: **MAYOR CHRISTOPHER AND COUNCIL MEMBERS**

THROUGH: **CHRISTOPHER C. EPPLEY, CITY MANAGER**

FROM: **E. SHANNON JOHNSON, CITY ATTORNEY**

SUBJECT: ***ZONE CHANGE/VARIANCE CASE NO. 2003-03 (ANIL KHANNA)***

At its last meeting, the Council directed staff to prepare an appropriate Order denying the requested zone change. Such Order is attached for your review.

RECOMMENDATION:

Adopt the attached Order.

Please contact me if you have any questions in this regard. Thank you.

ESJ/tmh
attachment

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

ORDER

IN THE MATTER OF THE APPLICATION OF ANIL KHANNA FOR A ZONE CHANGE FROM CO (COMMERCIAL OFFICE) TO CM (COMMERCIAL MIXED) AND A MAJOR AND MINOR VARIANCE TO REDUCE THE MINIMUM STREET FRONT SETBACK, TO REDUCE THE MINIMUM STREET FRONTAGE AND TO REDUCE THE NUMBER OF REQUIRED PARKING SPACES FOR PROPERTY LOCATED AT 500 BEVER DRIVE NORTHEAST, KEIZER, OREGON (CASE NO. 2003-03)

The City of Keizer orders as follows:

Section 1. THE APPLICATION. This matter came before the Keizer City Council upon the application of Anil Khanna for property owned by Wilhelm Family Limited Partnership for a zone change from CO (Commercial Office) to CM (Commercial Mixed) and a variance to reduce the minimum street front setback, to reduce the minimum street frontage and to reduce the number of required parking spaces for property located at 500 Bever Drive Northeast, Keizer, Oregon (within Township 7 South; Range 3 West; Section11BC; Tax Lots #900 and #1000). The property is located on the east side of River Road North at the northeast corner of the intersection of Bever Drive Northeast and River Road North.

Section 2. JURISDICTION. The land in question in this Order is within the city limits of the City of Keizer. The City Council is the governing body for the City of Keizer. As the governing body, the City Council has the authority to make final land use decisions concerning land within the city limits of the City of Keizer.

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

Section 3. PUBLIC HEARING. In addition to the public hearing before the Hearings Officer, a public hearing was held on this matter before the Keizer City Council on May 5, 2003. The following persons either appeared at the City Council hearing on the application before the Council:

1) Cheryl Vafakos, Interim Planning Director
2) Anil Khanna, Applicant
3) Jeff Tross, Land Planning and Development Consultant for Applicant
4) David Glennie, Property Owner's Representative
5) Carl Berkey, Engineer with ATEP
6) Ken Gierloff, Chair of the South East Keizer Neighborhood Association
7) David Wilson

Section 4. EVIDENCE. Evidence before the City Council in this matter is summarized in Exhibit "A" attached.

Section 5. OBJECTIONS. No objections have been raised as to notice, jurisdiction, alleged conflicts of interests, bias, evidence presented or testimony taken at the hearing.

Section 6. CRITERIA AND STANDARDS. The criteria and standards relevant to the decision in this matter are set forth in Exhibit "B" attached.

Section 7. FACTS. The facts before the City Council in this matter are set forth in Exhibit "C" attached.

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Keizer, Oregon 97303
(503) 390-1635

Section 8. JUSTIFICATION. Justification for the City Council's decision in this matter is explained in Exhibit "D" attached.

Section 9. ACTION. The decision of the City Council is set forth in Exhibit "E" attached.

Section 10. FINAL DETERMINATION. This Order is the final determination in this matter.

Section 11. EFFECTIVE DATE. This Order shall take effect immediately upon its passage.

Section 12. APPEAL. A party aggrieved by the final determination in a proceeding for a discretionary permit or a zone change may have it reviewed under ORS 197.830 to ORS 197.834.

PASSED this ____________ day of ____________________, 2003.

SIGNED this ____________ day of ____________________, 2003.

____
Mayor

____
City Recorder

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

EXHIBIT "A"

Evidence

Official notice has been taken of the Planning Department files and reports in this matter, including the application and the exhibits contained therein.

City Attorney Shannon Johnson noted the applicable criteria in the staff report. With no objection to the reading of the criteria the reading was waived.

City Attorney Shannon Johnson encouraged the Council to declare any exparte contacts or conflicts of interest. Councilor Smith reported that the applicant contacted her by phone at her residence whereupon she explained that she could not discuss the case with him.

Mayor Christopher opened the public hearing.

Interim Planning Director Cheryl Vafakos summarized the property's current zoning and the applicant's request to change the zoning from CO (Commercial Office) to CM (Commercial Mixed Use). Staff recommended consideration of the Hearings Officer and staff's recommendation for denial of the application.

Responding to questions Ms. Vafakos indicated that the traffic analysis was conducted after the Hearings Officer submitted his recommendation for denial of the application.

To assist with answering questions from the Council, City Attorney Shannon Johnson read from the Keizer Development Code pertaining to CM and CO zones.

Staff addressed additional questions from the Council.

Anil Khanna, South Salem, Oregon, expressed his hope to be able to develop a small business on this property.

Jeff Tross, 1720 Liberty St SE, Salem, Land Planning and Development Consultant for the applicant. Mr. Tross noted that the applicant wished to develop a convenience store with a gas station. He summarized the parcel in question and what he believed was the appropriateness of the application based on the information provided, which also included a traffic analysis. Mr. Tross also outlined the zone change criteria and the Hobson Ferrarini report that indicated that there was an adequate supply of CO property. He encouraged the Council to makes its decision based on the information provided.

Mayor Christopher thanked Mr. Tross for his testimony.

David Glennie, 200 Hawthrone, Suite 3-310 SE, Salem, representing Wilhelm Management Development. Mr. Glennie testified on the behalf of the applicant and encouraged the consideration of the Council. Responding to questions, Mr. Glennie indicated that the applicant did not currently own the property, but the final purchase would be based on the decision tonight.

City Attorney Shannon Johnson noted conditions as set by the Hearings Officer if the Council decided in favor of the applicant. He encouraged the Council to review these conditions prior to the closure of the public hearing.

For the benefit of the Council, Ms. Vafakos summarized the Recommendations and Conditions on pages 15-18 as outlined in the staff report.

Carl Berkey, 1155 13th Street SE, Salem, Engineer with ATEP. Mr. Berkey responded to questions regarding the traffic analysis. He outlined the concept of "pass by" traffic as used by traffic engineers and the standards used for peak period traffic.

Ken Gierloff, 4035 Arnold St NE, Keizer, speaking as chair of the South East Keizer Neighborhood Association (SEKNA). Mr. Gierloff reported that it was the consensus of SEKNA to keep the property zoned CO. If not, it was requested that the application be conditioned in such a way that the development would not adversely affect the neighborhood.

Responding to questions, City Attorney Shannon Johnson noted a Limited Use Overlay was possible to meet SEKNA's concerns, but that a limit specific to ownership could not be done.

David Wilson, 5500 River Road North, Keizer, expressed concern regarding the proposed use of the property as a gas station. He noted other areas in town that were currently gas stations and encouraged denial of the application.

Mayor Christopher thanked everyone for their testimony.

With no additional testimony Mayor Christopher closed the public hearing.

EXHIBIT "B"

Criteria and Standards

The criteria and standards relevant to the application are found in the Keizer Development Code (KDC). The specific criteria are set forth below:

1. KDC 3.110 (Zone Change Criteria).

2. KDC 3.105 (Variance Criteria).

No other specific criteria and standards were raised at the hearing.

EXHIBIT "C"

Facts

FINDINGS: GENERAL

1. The property is owned by Wilhelm Family Limited Partnership.

2 The applicant is Anil Khanna.

3 The subject property is located on the east side of River Road N at the northeast corner of the intersection of Bever Dr NE and River Road N. The property is addressed as 500 Bever Dr NE. The County Tax Assessor's map identifies the properties as being located within Township 7 South; Range 3 West; Section 11BC; Tax Lots #00900 and 01000.

4 The subject properties combined contain approximately 16,800 square feet (0.38 acres).

5 The property is currently vacant and has frontage along two public streets (River Road N and Bever Drive NE). The properties may both be served by public water and sewer.

6. The property is designated Commercial on the Comprehensive Plan and zoned CO (COMMERCIAL OFFICE).

7 Properties to the north, east and to the west across River Rd N are designated Commercial on the Comprehensive Plan Land Use map and are zoned CM (COMMERCIAL MIXED USE). Property to the south is designated Commercial on the Comprehensive Plan Land Use map and zoned CO (COMMERCIAL OFFICE).

8 The applicant is requesting approval of a zone change to change the zoning from CO (COMMERCIAL OFFICE) to CM (COMMERCIAL MIXED). The purpose of the zone change is to allow for development of a future convenience market and gasoline service station establishment on the property. Included with this application are three variance requests: 1) to reduce the minimum street front setback, which is required to be landscaped, to 5 feet of landscaped area per Section 2.110.06.B and 2.110.07.G of the Keizer Development Code; 2) to reduce the minimum street frontage to 111.7 feet where 120 feet is required per Section 2.419.A of the Keizer Development Code; and 3) to reduce the number of required parking spaces from 9, where a minimum of 8 is required per Section 2.303.06.A of the Keizer Development Code.

9. The, Oregon Division of State Lands, Marion County Surveyor's, Salem Transit District, and AT & T Cable Services (Broadband), reviewed the proposal and responded that they reviewed the proposal and have no comments.

10. The Keizer Police Department responded stating, "[A]ll new development increases the work load of the Police Department. The City needs to grow the Police Department at the same rate as growth of development."

11. The Keizer Public Works Department and City Engineer provided comments regarding public facility improvements.

12. The Keizer Fire Department provided the following comments for recommendation of conditions of approval. "Keizer Fire District has no objections to the requested zone change application. The applicant will however, be required to meet all Fire Code requirements for items such as access, water supplies, addressing. This may not include all Fire Code requirements, but does identify common requirements."

13. The South East Keizer Neighborhood Association submitted comments in opposition to the request.

14. City of Salem, Public Works Department submitted the following comments, "[T]he sanitary sewer connection must meet City of Salem and State Plumbing code requirements. Site is within two tax lots which may require agreements for common sewers. Two services are available, any unused service will require a disconnect permit. Sanitary sewer permits required from City of Salem."

15. Salem Electric submitted the following comments, "Salem Electric will provide electric service according to the rates, services and policies at the time of installation."

16. Salem/Keizer School District submitted comments.

FINDINGS: ZONE CHANGE:

17. Section 1.103.02 of the Keizer Development Code identifies four zones appropriate for the Commercial Comprehensive Plan designation: CO (COMMERCIAL OFFICE), CR (COMMERCIAL RETAIL), CG (COMMERCIAL GENERAL), and CM (COMMERCIAL MIXED USE). The primary difference between these zones is the level of commercial activity allowed in each zone. Of the four zones, the applicant chose the CM (COMMERCIAL MIXED USE) zone for this request.

18. The zone change will permit the establishment of a wider range of commercial and retail uses on the subject property than is currently allowed with the Commercial Office zone.

19. The zone change review criteria are found in Section 3.110 of the Keizer Development Code. These criteria and associated findings are noted below:

(a) The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.

Section 1.103.02 identifies Comprehensive Plan designations and their corresponding appropriate zones. Pursuant to this Section, the CM (COMMERCIAL MIXED USE) zone is appropriate for the Commercial Comprehensive Plan Land Use designation.

The Goals and Policies found within the Comprehensive Plan applicable to the land use classification are as follows:

CHAPTER III

A. Significant Natural and Cultural Features:

This section refers to Agricultural Land; Natural, Historical and Cultural Resources; Environmental Quality Policies; Energy and Resource conservation; Willamette Greenway; and, the 100-year flood plain. There are no known agricultural, natural, historical, or cultural resources, or Resource Conservation Area designations on the subject property. Any development on the property will be required to conform to all City, State and Federal standards regarding pollutants including odor and noise. The subject properties are not located within the 100-year flood plain. The in-filling of passed over vacant land is encouraged.

B. Urban Growth and Growth Management:

Preserve and enhance the livability of the area. The request for a zone change to CM would allow more intensive use of the property than the current CO zoning would allow. The properties to the east of the subject property and properties along Bever Drive are predominantly residential in use. No information or analysis is provided by the applicant to verify potential traffic impact upon the area. The CM (COMMERCIAL MIXED USE) zone allows for uses that would have greater impact upon surrounding properties, i.e., amusement and recreation, hotels, motels, food stores. The CM zone also allows Special Permitted uses which must meet specific development requirements. Some examples of Special Permitted Uses within a CM zone are; manufacturing and assembly facilities; adult entertainment business; and, automobile services.

The proposed development will impact the residential neighborhood to the east. Bever Drive has approximately 15 single family homes that have frontage directly onto Bever Drive. Bever Drive was reclassified as a local street upon adoption of the SATS Functional Classification roadway network as outlined in the Comprehensive Plan Chapter III Section E.4.c.1.f page 58 and is a through street from Cherry Ave NE to River Road N. The type of business proposed requires the consistent steady flow of traffic to be successful as opposed to commercial office uses. There currently are no fuel stations located along Cherry Avenue, and no other fuel stations in Keizer will have direct street access from Cherry Avenue. This may result in additional traffic from patrons accessing the proposed business from Cherry Avenue via Bever Drive NE.

Comments received from the neighborhood association indicate concerns regarding the noise, traffic and lights affecting the quality of life within the neighborhood and to the adjacent residence. They expressed concerns regarding the hours of operation of businesses that could develop on the property should it be changed from CO to CM indicating some of the businesses allowed could be in operation on a 24 hour schedule. They expressed opposition that the proposed use is incompatible with existing uses in the neighborhood which is primarily residential.

C. Land-Use and Economic Development:

(2)(a). RESIDENTIAL DEVELOPMENT *Stabilize and protect the essential characteristics of residential environments, including natural features. Ensure compatibility among all types of residential uses, both new and existing, and between residential and non-residential uses. Protect existing and proposed residential areas from conflicting non-residential uses while providing for compatible mixed-use development (residential and non-residential). Discourage through traffic in residential neighborhoods.*

The Comprehensive Plan discourages through traffic in residential neighborhoods. The CO zone allows uses that are less intensive than the CM zone. The request to change the zoning from CO to CM may cause additional traffic through the residential neighborhood on Bever Dr NE. Although it is not possible to describe the impacts on the neighborhood with any specificity without a Traffic Impact Study, gas stations and mini-marts both require a relatively constant flow of cars and customers to be successful. Most office uses, and other uses customary in the existing zone do not. Consequently, through trips on Bever, and turn movements onto and off of River Road would be increased significantly by the proposed use.

Section 2.110 of the Keizer Development Code identifies uses permitted in the Commercial Mixed (CM) zone. Section 2.124 *Limited Use Overlay Zone* establishes a method to reduce the list of permitted uses within a zone to those that are suitable for particular location. In addition, Section 2.110.04 *Use Restrictions* specifies a description of that are prohibited from being developed in the area described at the intersection of River Road and Chemawa Road, just three blocks north of the location of the subject property. This section is suggested to be used as a base model for limiting some vehicle-based uses that can limit the impact on the adjacent residential neighborhood. The applicant indicates that a gasoline service station with a convenience store may be an acceptable use on the property. Council disagrees with this statement. The *Revised Economic Opportunities Analysis* indicates a need for Gasoline Service Stations within the City of Keizer. However, the projected future need for gas stations is questionable as it applies to this location as the use exists at two gasoline service stations with convenience stores within two to three blocks south of this location, and one gasoline service station within 4 to 5 blocks north on River Road., and is not necessary at this location.

(4) ECONOMIC, COMMERCIAL AND INDUSTRIAL DEVELOPMENT. The goals and policies for *Economic, Commercial and Industrial Development* identified in the Keizer Comprehensive Plan support the intent of the proposal. The proposal also meets the goal to encourage public and private efforts to increase economic development in Keizer. In addition, the Comprehensive Plan requires that commercial and industrial developments provide adequate landscaping and appropriate setbacks from adjacent residential uses. The Keizer Development Code outlines buffering guidelines to help reduce adverse visual impacts, dust, noise or pollution and provide compatibility between dissimilar adjoining uses. It provides the City with the ability to require alternative buffering requirements. If the request is granted several buffering methods should be employed.

D. PLAN DIAGRAM AND SPECIAL LAND USE POLICIES

(2)(a) *Provide appropriately designated vacant buildable land in adequate quantities to meet the forecast needs of Keizer to 2005.*

This issue will be discussed in detail under criteria (f)(1) and (2) below.

(3)(d) Ensure that future improvements and land use changes in the area provide adequate sound, light and visual buffers to adjacent residential areas. When design review is feasible, buffering and other visual methods will be required to reduce the impact on adjacent residential area.

If the request is granted, buffering methods must be employed.

(b) <u>The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity.</u>

The ground is relatively flat, has no unusual features, and presents no apparent physical limitations or conditions that require special measures or considerations, or that would prevent or impair the development of the proposed use. Based on the parcel's size and the parcel's topography, there does not appear to be any physical limitations which would prohibit a commercial retail development on the property.

The applicant submitted a statement and a site plan proposing that the property will be developed with a convenience store and gasoline service station. Based on the parcel's size there may be physical limitation, which could prohibit certain types of commercial retail development on the property. However, with limitation on vehicular-oriented commercial business, the Commercial Mixed (CM) may appropriately suit the property and surrounding uses. The ground is flat and level, and has no unusual features. River Road is designated a Major Arterial by the adopted 2000 Keizer Transportation Systems Plan. Access to River Road is limited due to this designation to limit ingress/egress to promote safe traffic circulation. With appropriate restrictions of uses permitted in the CM zone and limited access to River Road, development of the subject property as some form of commercial retail use would not exceed its physical capacity.

Section 2.110 of the Keizer Development Code identifies uses permitted in the Commercial Mixed (CM) zone. Section 2.124 *Limited Use Overlay Zone* establishes a method to reduce the list of permitted uses within a zone to those that are suitable for particular location. In addition, Section 2.110.04 *Use Restrictions* specifies a description of that are prohibited from being developed in the area described at the intersection of

River Road and Chemawa Road, just three blocks north of the location of the subject property. This section is suggested to be used as a base model for limiting some vehicle-based uses that can limit the impact on the adjacent residential neighborhood. The applicant indicates that a gasoline service station without a mini-mart may be an acceptable use on the property. However, the use exists across the street on River Road and is not necessary at this location. If the request is granted, Gasoline Service Stations, Fast Food Restaurants, and Banks with drive-through windows should be eliminated from the permitted uses within the CM zone for the subject property, if not the proposal does not comply with this criterion..

(c) <u>Allowed uses in the proposed zone can be established in compliance with the development requirements in this Ordinance.</u>

The Keizer Development Code outlines specific requirements for property development. These standards govern parking, buffering, vision clearance areas, special setbacks, and other applicable development requirements. The applicant submitted a statement and a preliminary site plan proposing that the property will be developed with a convenience store and a gasoline fuel station.

The proposed convenience store is listed as a permitted use in the CM (Commercial Mixed Use) zone (Keizer Development Code, Section 2.110.02 - Miscellaneous retail). Gasoline fuel stations are listed as a Special Permitted use (Keizer Development Code, Section 2.110.03 (14 - Service stations) and therefore must meet special development requirements outlined in Section 2.419 of the Keizer Development Code. *Section 2.419.*A. outlines the following specific requirements: Lot area and dimensions. Minimum lot size 10,000 square feet, minimum of 100 feet of street frontage for an interior lot and minimum of 120 feet of frontage on each street abutting a corner lot. The applicant's preliminary site plan and the Marion County Tax Assessor's map indicate the property is located on a corner lot and does not have sufficient street frontage to meet the minimum street frontage of 120 feet.

In addition, the applicant is requesting approval of three variances to accommodate the size restrictions of the property; 1) to reduce the required street front setback area required to be landscaped, 2) to reduce the required minimum street frontage, and, 3) to reduce the required number of parking spaces.

Compliance with the Keizer Development code is a criterion of approval of the zone change application. Variances from quantifiable standards are permitted providing the request can meet the criteria outlined in the Code.

If the variances are granted, the proposal can comply with this criterion.

(d) Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property.

River Road is designated a Major Arterial by the adopted 2000 *Keizer Transportation Systems Plan*. Access to River Road is limited due to this designation to limit ingress/egress to promote safe traffic circulation. No left turn movements from the subject property onto River Road will be permitted. The Public Works Department noted sewer and water facilities must be extended to the site. Improvements for sanitary sewer and the water system are required by the Public Works Department.

The proposal could conditionally comply with this criterion.

(e) For residential zone changes, the criteria listed in the purpose statement for the proposed zone shall be met.

This criterion is not applicable because the proposed zone change does not involve residential use.

(f) The following additional criteria shall be addressed:

(1) The supply of vacant land in the proposed zone is inadequate to accommodate the projected rate of development of uses allowed in the zone during the next five years, or the location of the appropriately zoned land is not locationally or physically suited to the particular uses proposed for the subject property, or lack site specific amenities required by the proposed site.

The recent approval of the Keizer Station Plan on February 3, 2003 included a *Revised Economic Opportunities Analysis* for the City of Keizer. Included in this analysis is an inventory of existing vacant CM (COMMERCIAL MIXED USE) sites within the City of Keizer. The total inventory of vacant CM zoned parcels is 25.26 acres. A recent field study by city staff found this inventory to be in error by approximately a negative 2.76 acres, resulting in an actual 22.5 acres of a vacant CM sites. The Council's recent adoption of the Keizer Station Plan further reduced the Commercial Mixed Use inventory to approximately 21.31 acres. The analysis did not provide a demand analysis for Commercial Mixed Use zones.

The addition of the subject parcel into the CM (COMMERCIAL MIXED) zone would add to the inventory of properties available for development. The supply of vacant land in the CM zone continues to be absorbed, including commercial office developments within the CM zone. The applicant has not provided an adequate analysis of commercial zoned properties on River Road or within the City of Keizer to be able to determine whether the rate of absorption of Commercial Mixed zoned properties indicates that the supply of vacant land in the proposed zone is inadequate to accommodate the projected rate of development of uses allowed in the zone during the next 5 years. However, it is very likely that the supply of land <u>currently</u> zoned CM (COMMERCIAL MIXED) may be inadequate to accommodate the current rate of development of retail and other related uses allowed within the CM Zone.

The proposal does not comply with this criterion.

(2) <u>The supply of vacant land in the existing zone is adequate, assuming the zone change is granted, to accommodate the projected rate of development of uses allowed in the zone during the next 5 years.</u>

The recent approval of the Keizer Station Plan on February 3, 2003 included a <u>*Revised Economic Opportunities Analysis*</u> for the City of Keizer which included an inventory of existing vacant Commercial Office sites within the City of Keizer. The inventory of total vacant CO (COMMERCIAL OFFICE) land available according to this report was 12.46 acres. A recent field study found this inventory to be in error by at least a negative .36 acres or 4 tax parcels, resulting in an actual 12.1 acres of vacant CO sites. The Council's adoption of the Keizer Station Plan reduced the Commercial Office inventory by approximately 11.15 acres, resulting in .95 acres currently available. The following is a list of this inventory:

073W02CB02100	.47 acres	
073W02CB02300	.11 acres	Unbuildable. (This lot is a 10' wide strip included within a church parking lot.)
073W11BC00900	.19 acres	Subject Property
073W11BC01000	.18 acres	Subject Property

The applicant states that the property is only a minor part of the CO (COMMERCIAL OFFICE) inventory. However, as the analysis and staff field study indicate this parcel accounts for two of only three vacant parcels left within the City of Keizer's CO (COMMERCIAL OFFICE) inventory. The *Revised Economic Opportunities Analysis* also includes a calculation on the projected amount of demand for Office Land for 2001 to 2006 (less than a 5 year supply). The study shows that at least 5.1 acres of cumulative land is needed to meet City of Keizer's future needs to the year 2006. Therefore, Council concludes that this request would further reduce the five year supply of vacant land for the Commercial Office (CO) zone to an inadequate amount of land available to accommodate the projected rate of development during the next 5 years.

Council recognizes that uses permitted in the Commercial Office zone are also primarily permitted in the CM (COMMERCIAL MIXED USE) zone. However, the supply of vacant land in the existing CO zone is inadequate to accommodate the projected rate of development of uses allowed in the zone during the next 5 years.

The proposal does not comply with this criterion.

(3) The proposed zone, if it allows uses more intensive than other zones appropriate for the land use designation, will not allow uses that would destabilize the land use pattern of the area or significantly adversely affect adjacent properties.

The proposed zone change to Commercial Mixed (CM) will allow uses more intensive than the current zoning on the subject property. Council finds the proposed zone change will significantly affect the characteristics of the residential environment in the area. Therefore, Council finds this request does not satisfy this criterion.

FINDINGS: MAJOR AND MINOR VARIANCE CRITERIA

20. Because some of the zone change criteria cannot be complied with, the variance request is rendered moot.

EXHIBIT "D"

Justification

The applicant has the burden of proving that the application meets relevant standards and criteria to be applied in the particular case.

In this application, the applicant is requesting a zone change from Commercial Office (CO) to Commercial Mixed (CM) to allow the establishment of a gasoline service station/mini-mart. To allow the development as proposed, the applicants is also requesting three variances.

The applicable criteria can be complied with for the most part. However, the supply of vacant in the proposed zone and the supply of vacant in the existing zone are problematic. As set forth in Exhibit "C" (Facts), there is either an inadequate supply, or the applicant has not met his burden of proof showing an adequate supply on both of these issues. Therefore, the application must be denied.

Because the zone change request must be denied, the variance requests are moot.

EXHIBIT "E"

Action

The City of Keizer hereby ORDERS as follows:

The application for a zone change from CO (Commercial Office) to CM (Commercial Mixed) and a variance to reduce the minimum street front setback, to reduce the minimum street frontage and to reduce the number of required parking spaces for property located at 500 Bever Drive Northeast, Keizer, Oregon (within Township 7 South; Range 3 West; Section11BC; Tax Lots #900 and #1000) is hereby DENIED.

City of Keizer, Oregon

May 19, 2003

AGENDA ITEM 8b

ORDINANCE – COMP PLAN MAP AMENDMENT/ZONE CHANGE NO. 2003-09 (FERNWOOD PARK)

CITY COUNCIL MEETING: May 19, 2003

AGENDA ITEM NUMBER:___________

TO: **MAYOR CHRISTOPHER AND COUNCIL MEMBERS**

THROUGH: **CHRISTOPHER C. EPPLEY, CITY MANAGER**

FROM: **E. SHANNON JOHNSON, CITY ATTORNEY**

SUBJECT: ***COMPREHENSIVE PLAN MAP AMENDMENT/ZONE CHANGE CASE NO. 2003-09 (CITY OF KEIZER - FERNWOOD PARK)***

At its last meeting, the Council directed staff to prepare an appropriate Ordinance granting the requested comprehensive plan map amendment/zone change for the property formerly known as Fernwood Park. Such Ordinance is attached for your review.

RECOMMENDATION:

Adopt the attached Ordinance.

Please contact me if you have any questions in this regard. Thank you.

ESJ/tmh
attachment

BILL NO. ____ A BILL ORDINANCE NO. 2003-________

FOR

AN ORDINANCE

IN THE MATTER OF THE APPLICATION OF THE CITY OF KEIZER FOR A COMPREHENSIVE PLAN MAP AMENDMENT FROM LOW DENSITY RESIDENTIAL (LDR) TO COMMERCIAL (C) AND A ZONE CHANGE FROM RESIDENTIAL SINGLE FAMILY (RS) TO COMMERCIAL MIXED (CM) FOR THE SOUTHEASTERN MOST PORTION OF THE PROPERTY LOCATED AT 250 CHEMAWA ROAD NORTH, KEIZER, OREGON (CASE NO. 2003-09)

The City of Keizer ordains as follows:

Section 1. THE APPLICATION. This matter came before the Keizer City Council on the application of the City of Keizer for a comprehensive plan map change and zone change for property on the southeastern most portion of the property located at 250 Chemawa Road North, Keizer, Oregon and identified on the County Assessor Map as within Township 7 South; Range 3 West; Section 02BB; Tax Lot 200. The applicant is requesting a comprehensive plan change from Low Density Residential (LDR) to Commercial (C) and a zone change from Residential Single Family (RS) to Commercial Mixed (CM).

Section 2. JURISDICTION. The land in question in this Ordinance is within the city limits of the City of Keizer. The City Council is the governing body for the City of Keizer. As the governing body, the City Council has the authority to make final land use decisions concerning land within the city limits of the City of Keizer.

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

Section 3. PUBLIC HEARING. A public hearing was held on this matter before the Keizer City Council on May 5, 2003. The following persons either appeared at the City Council hearing or provided written testimony on the application before the Council:

1) Cheryl Vafakos, Interim Planning Director

2) Christopher Eppley, City Manager

Section 4. EVIDENCE. Evidence before the City Council in this matter is summarized in Exhibit "A" attached.

Section 5. OBJECTIONS. No objections have been raised as to notice, jurisdiction, alleged conflicts of interests, bias, evidence presented or testimony taken at the hearing.

Section 6. CRITERIA AND STANDARDS. The criteria and standards relevant to the decision in this matter are set forth in Exhibit "B" attached.

Section 7. FACTS. The facts before the City Council in this matter are set forth in Exhibit "C" attached.

Section 8. JUSTIFICATION. Justification for the City Council's decision in this matter is explained in Exhibit "D" attached.

Section 9. ACTION. The decision of the City Council is set forth in Exhibit "E" attached.

Section 10. FINAL DETERMINATION. This Ordinance is the final determination in this matter.

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

Section 11. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days after its passage.

Section 12. APPEAL. A party aggrieved by the final determination in a proceeding for a discretionary permit or a zone change may have it reviewed under ORS 197.830 to ORS 197.834.

PASSED this ____________ day of ____________________, 2003.

SIGNED this ____________ day of ____________________, 2003.

____
Mayor

____
City Recorder

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

EXHIBIT "A"

Evidence

Official notice has been taken of the Planning Department files and reports in this matter, including the application and the exhibits contained therein.

Mayor Christopher opened the public hearing.

Interim Planning Director Cheryl Vafakos reported that the subject property was located at 250 Chemawa Rd N, located behind properties located at 307 and 356 Kestrel St N. She summarized the zoning of the surrounding properties and the city as the applicant requesting the comprehensive plan map designation from Low Density Residential (LDR) to Commercial (C) with the conditions identified in the staff recommendation.

Staff recommended approval of the application as outlined in the staff report.

Responding to questions, City Manager Christopher Eppley noted the best use of this property would be to allow for the use by the residents as opposed to its prior park designation.

With no one wishing to testify Mayor Christopher closed the public hearing.

EXHIBIT "B"

Criteria and Standards

The criteria and standards relevant to the application are found in the Keizer Development Code (KDC). The specific criteria are set forth below:

1. KDC 3.109.04 (Comprehensive Plan Map Amendments Criteria).

2. KDC 3.110.04 (Zone Change Criteria).

No other specific criteria and standards were raised at the hearing.

EXHIBIT "C"

Facts

FINDINGS: GENERAL

1. The applicant is the City of Keizer.

2. The subject property is located at 250 Chemawa Rd N (Kestrel St N). This property is identified on the County Assessor's map as within Township 7 South; Range 3 West; Section 02BB; Tax Lot 00200.

3. The subject property is approximately 40,511 sq ft; the area of the proposed Comprehensive Plan and Zone Change is approximately 15,464 sq ft which is the southeastern most portion of the property.

4. Lot Line Adjustment Case No. 2002-18 creating the corner area of this parcel has not been recorded. Upon recordation this lot will not have access except from the adjacent parcel to the east and south of this lot. The subject property has no street frontage after recordation of Lot Line Adjustment Case No. 2002-18. The subject property is vacant.

5. The subject property is designated Low Density Residential (LDR) in the Comprehensive Plan and zoned RS (Residential Single Family).

6. Surrounding properties to the north and west are zoned RS (Residential Single Family) and contain single family dwellings. Properties to the south and east are zoned CM (Commercial Mixed Use) and the predominant uses are retail sales. Property to the northeast is zoned RM (Medium Density Residential) and an apartment complex currently occupies the property.

7. The applicant is requesting approval of a Comprehensive Plan Map Amendment and Zone Change. The request is to change the Comprehensive Plan Designation from Low Density Residential (LDR) to Commercial (C) and the zoning designation from Residential Single Family (RS) to Commercial Mixed Use (CM) on the southeastern most portion of the subject property. The proposal is to develop the property for parking in conjunction with the retail shopping center adjacent to the subject property. Access to the parcel will be obtained through an existing retail complex adjacent to the subject property.

8. The Keizer Public Works Department; Keizer Fire District; Marion County Surveyor's Office; Keizer Police Department; AT & T Cable Services; and, Salem Keizer School District 24J, each submitted they have reviewed the proposal and have no comments.

9. The City of Salem submitted the following comments: "City of Salem's public sewer is available within Elizabeth St N".

10. No comments were received from interested citizens.

FINDINGS: COMPREHENSIVE PLAN MAP AMENDMENT

11. The proposal would change existing Comprehensive Plan designation from Low Density Residential (LDR) on the southeastern most portion of the subject parcel to Commercial (C) to accommodate a parking lot for the adjacent retail businesses. This action is classified as a non-legislative action as it involves 5 acres or less adjacent land in separate ownership.

12. The decision criteria for non-legislative Comprehensive Plan Map Amendments are found in Section 3.109 of the Keizer Development Code. The specific criteria and the related findings are set forth below:

A. <u>Compliance is demonstrated with the statewide land use goals that apply to the subject properties or to the proposed land use designation. If the proposed designation on the subject property requires an exception to the Goals, the applicable criteria in the LCDC Administrative Rules for the type of exception needed shall also apply.</u> KDC 3.109.04(A).

FINDINGS: This action will occur entirely within the City limits; no goal exceptions are required. Compliance with the Statewide Land Use Goals is reviewed below:

Goal 1 - Citizen Participation: Consistent with local requirements, the application was considered at a public hearing with the final decision resting with the City Council. Citizens had an opportunity to comment and testify.

Goal 2 - Land Use Planning: The proposal is considered to be within the framework of the City's Comprehensive Plan and Development Code. The Comprehensive Plan specifically provides for amendments to reflect changing conditions and circumstances in the community. These changes were reviewed consistent with those procedures outlined in the Comprehensive plan and Development Code.

Goal 3 - Farm Land: The proposal does not involve land located within designated farm land.

Goal 4 - Forest Land: The proposal does not involve land located within designated forest land.

Goal 5 - Natural Resources: Based upon the Comprehensive Plan, the subject property does not contain any significant resources.

Goal 6 - Air, Water and Land Quality: This action does not involve uses or activities which will have an adverse impact on the City's air, water and land quality. To ensure public health is maintained, public sewer and water connections are available and connection to these systems shall be placed as a developmental condition.

Goal 7 - Natural Hazards: The subject property is not located within the identified flood plain or other identified natural hazards.

Goal 8 - Recreation: This action will not affect any developed or utilized park or recreation sites. The property was previously designated as a park. However; the lot remains undeveloped and unused.

Goal 9 - Economic Development: Benefits are expected to accrue from the construction of the parking lot.

Goal 10 - Housing: The proposal does not involve land designated for housing development.

Goal 11 - Public Facilities: The proposal does not involve the connection of any public facilities. The subject property is proposed to be developed as an auxiliary parking area.

Goal 12 - Transportation: The City of Keizer adopted its Transportation Systems Plan (TSP) in September 2000. The Keizer TSP identifies Chemawa Road as a Minor Arterial. After the recordation of Lot Line Adjustment Case No. 2002-18 the area of the subject property proposed for the Comprehensive Plan Map Amendment and Zone Change will have no street frontage. Access for the proposed Commercial development will be off Chemawa Rd N through the adjacent parcel to the south.

Goal 13 - Energy Conservation: In general, the proposal will likely be neutral with regard to energy conservation.

Goal 14 - Urbanization: The subject property is within the urban growth boundary and the city limits of the City of Keizer. There is no extension of urban services to a rural area.

Goal 15 - Willamette Greenway: The proposal does not involve land within the identified Willamette Greenway.

Goal 16 to 19 - Estuarine Resource, Coastal Shorelands, Beaches and Dunes, and, Ocean Resources: This proposal does not involve property subject to these goal requirements.

Based on the above findings, the proposal complies with the Statewide Land Use Goals.

B. <u>Consistency with the applicable goals and policies in the Comprehensive Plan is demonstrated</u>. KDC 3.109.04(B).

FINDINGS: The primary Comprehensive Plan goals and policies which are applicable are related to Land-Use and Economic Development: Economic, Commercial and Industrial Development; Plan Diagram and Special Land Use Policies; and, Public Facilities to Support Development: Parks and Recreation.

The proposal meets the Comprehensive Plan goal to "Ensure compatibility between commercial and industrial lands and lands adjacent to them" through design development and use conditions. Such conditions should include: Screening and buffering to help mitigate visual impact; sensitive building placement to buffer residential use from the impacts of automobiles; and, the possible employment of a Limited Use Overlay Zone to limit high impact uses. Section 2.309.05 (Screening and Buffering) of the Keizer Development Code requires commercial uses to screen, and to use buffering methods to eliminate or reduce the visual impacts to adjacent residential uses. In addition, the development of commercial buildings must maintain setbacks in accordance with Section 2.110.05.B of the CM zone, which states that the minimum setback for all structures shall be the minimum rear yard setback for the adjacent zone. In this case, the minimum setback would be 14 feet from the north and west property lines.

The subject property is an undeveloped parcel of land designated for park use. The park is not located along the Willamette River or Claggett Creek and does not contain any significant wildlife or riparian vegetation. There are no waterways or scenic, recreation or natural resources at this site. There are currently a number of parks awaiting development within the City of Keizer, however, funding is unavailable to improve and maintain the subject property. In addition, the property is not easily accessible to Keizer residents except through a private parking lot. Funding would be better served in improving parks that have more attributes to offer Keizer residents.

The goals and policies for Economic, Commercial, and Industrial Development identified in the Keizer Comprehensive Plan support the intent of the proposal. As the adjacent property to the east and south is zoned CM (Commercial Mixed Use) compatible and uniform zoning would be advantageous at this particular site, due to the access from Chemawa Rd N. An opportunity to develop a joint commercial use on the subject property in conjunction with the adjacent property to the south and east may promote additional landscaping site improvements.

The proposal also meets the Comprehensive Plan Goal for Economic, Commercial and Industrial Development to encourage public and private efforts to increase economic development in Keizer to the extent possible by incorporating strict performance standards for the potential development of the site. This can be achieved by restricting the zoning of the property through a Limited Use Overlay (LUO) zone beyond the standards of the CM (Commercial Mixed Use) zone.

The Comprehensive Plan encourages diversification in the local economy while ensuring compatibility with adjacent residential properties. Design features such as special setbacks and screening are encouraged to reduce potential impacts on adjacent residential properties. In addition, commercial development is encouraged to develop and be located along major arterials to avoid traffic filtering through residential areas.

When properly conditioned, the proposal complies with the Comprehensive Plan goals and policies of the Comprehensive Plan.

C. <u>The Plan does not provide adequate areas in appropriate locations for uses allowed in the proposed land use designation and the addition of this property to the inventory of lands so designated is consistent with projected needs for such lands in the Comprehensive Plan.</u> KDC 3.109.04(C).

FINDINGS: The City limits are for the most part expanded to the Urban Growth Boundary. Land availability for the majority of zones within Keizer is diminishing within the City. The proposal will help the City provide commercial retail uses as allowed in the Commercial designation.

This proposal satisfies this criterion.

D. The Plan provides more than the projected need for lands in the existing land use designation. KDC 3.109.04(D).

FINDINGS: The existing Comprehensive Plan Designation for this property is Low Density Residential (LDR). The City of Keizer does not maintain a projection of the land available for development in the LDR designation. However, the subject property is a minor part of the supply of LDR designated parcels and its effect upon the supply will be minimal.

This proposal satisfies this criterion.

E. The proposed land use designation will not allow zones or uses that will destabilize the land use pattern in the vicinity.

FINDINGS: The proposed Plan designation of Commercial is specifically designed to permit the development of retail office centers. The surrounding properties are RS (Residential Single Family), RM (Medium Density Residential, and CM (Commercial Mixed Use). The property has recently gone through a lot line adjustment providing a buffering area between this parcel and the majority of residential properties in the area. In addition, none of the surrounding home owners adjacent to this property have submitted any objections to the proposed designation change.

Based on the parcel's location in relationship to residential uses there may be a need for a limitation which could prohibit certain types of commercial retail development on the property. With limitations on vehicular orientated commercial business, screening, buffering, and setbacks; the CM (Commercial Mixed Use) zone may appropriately suit the property and surrounding uses. Section 2.110 of the Keizer Development Code identifies uses permitted in the CM (Commercial Mixed Use) zone. Section 2.124 (Limited Use Overlay Zone) establishes a method to reduce the list of permitted uses within a zone to those that are suitable for a particular location. In addition, Section 2.110.04 (Use Restrictions) specifies a description of uses that are prohibited from being developed in the area described as the intersection of River Road and Chemawa Road. This section is suggested to be used as a base model for limiting some vehicle-based uses which will limit the impact on the adjacent residential neighborhood.

The proposal complies with the Comprehensive Plan goal to create compatibility between commercial and residential uses.

Conditioned in accordance with the limit of uses as described above, and with additional screening and buffering requirements the proposal complies with this criterion.

F. Uses allowed in the proposed designation will not significantly adversely affect existing or planned uses on adjacent lands. KDC 3.109.04(F).

FINDINGS: This criterion was addressed part in Section in E. above. In addition Section 2.309.05 (Screening and Buffering) of the Keizer Development Code requires commercial uses to screen and to use buffering methods to eliminate or reduce the visual impacts to adjacent residential uses. In addition, the development of commercial buildings must maintain setbacks in accordance with Section 2.110.05 B of the CM zone, which states that all structures shall be placed no less than the minimum rear yard setback for the adjacent zone. In this case, the minimum setback would be at least 14 feet from the rear property line.

With the proposed Council's recommendations in F above, the proposed Plan amendment and subsequent zone change proposal will not adversely affect the existing uses on adjacent parcels.

Properly conditioned, the proposal meets with this criterion.

G. Public facilities and services necessary to support uses allowed in the proposed designation are available or are likely to be available in the near future. KDC 3.109.04(G).

FINDINGS: Public services can be extended to the site; however the proposed development should not create a need for the extension.

Based on the above findings, the proposal complies with the decision criteria for the proposed change in Comprehensive Plan designation.

FINDINGS: ZONE CHANGE

13. The zone change review criteria are found in Section 3.110 of the Development Code. The specific criteria and the related findings are noted below:

A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and polices for the applicable Comprehensive Plan land use classification. KDC 3.110.04(A).

FINDINGS: The applicant is requesting a Comprehensive Plan Designation change to Commercial (C). The CM (Commercial Mixed Use) zone proposed is appropriate for the Comprehensive Plan designation of Commercial (C).

This proposal satisfies this criterion.

B. The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity. KDC 3.110.04(B).

FINDINGS: The ground is relatively level, does not contain unusual features and presents no apparent physical condition that requires special measures or consideration. Based on the parcel's size and topography, there does not appear to be any physical limitation which would prohibit the proposed parking lot development. Development in conjunction with the existing retail complex will not exceed the properties physical capacity.

This proposal satisfies this criterion.

C. Allowed uses in the proposed zone can be established in compliance with the development requirements in this Ordinance. KDC 3.110.04(C).

FINDINGS: It appears that the proposed parking lot can be established on the subject property in compliance with the development requirements of the Keizer Development Code. Screening and buffering requirements as outlined in Section 2.309.05 will be required. In addition, one tree shall be required for every eight parking spaces dispersed throughout the parking lot per Section 2.110.07 H of the Keizer Development Code.

This proposal satisfies this criterion.

D. Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property. KDC 3.110.04(D).

FINDINGS: Public facilities, services and transportation networks are available to support the proposed use. In conjunction with future development the applicant will be required to extend public facility lines as required by the Keizer Development Code and approved by the Department of Public Works.

This proposal satisfies this criterion.

E. <u>For residential zone changes, the criteria listed in the purpose statement for the proposed zone shall be met.</u> KDC 3.110.04(E).

FINDINGS: This criteria is not applicable as the proposed zone is not a residential zone.

F. <u>The following additional criteria shall be addressed:</u> KDC 3.110.04(F).

<u>The supply of vacant land in the proposed zone is inadequate to accommodate the projected rate of development of uses allowed in the zone during the next 5 years, or the location of the appropriately zoned land is not locationally or physically suited to the particular uses proposed for the subject property, or lack site specific amenities required by the proposed use.</u> KDC 3.110.04(F)(1).

FINDINGS: The City limits are for the most part expanded to the limits of the Urban Growth Boundary. Land availability for the majority of zones within Keizer is diminishing within the City. Approval of the proposal will help the City provide Commercial Retail uses as allowed in the CM zone.

The proposal satisfies this criterion.

<u>The supply of vacant land in the existing zone is adequate, assuming the zone change is granted, to accommodate the projected rate of development of uses allowed in the zone during the next five years.</u> KDC 3.110.04(F)(2).

FINDINGS: The existing property is zoned RS (Residential Single Family). As noted above, a majority of zones within Keizer are diminishing. The City does not maintain a projection of land available for development in the RS zone. However the portion of the parcel proposed for change from RS to CM is approximate 15,464 sq ft in area. This is a minor portion of the existing supply of RS zoned property.

The proposal satisfies this criterion.

<u>The proposed zone, if it allows uses more intensive than other zones appropriate for the land use designation, will not allow uses that would destabilize the land use pattern of the area or significantly adversely affect adjacent properties.</u> KDC 3.110.04(F)(3).

FINDINGS: The CM zone allows uses which are more intensive than the current zoning of the property. The proposal with appropriate restrictions will not create a use that will destabilize the land use pattern of the area or that will significantly adversely affect surrounding properties.

The proposal satisfies this criterion.

EXHIBIT "D"

Justification

The applicant has the burden of proving that the application meets relevant standards and criteria to be applied in the particular case.

The applicant is requesting a comprehensive plan map change and a zone change to allow development of the property for parking in conjunction with the retail shopping center adjacent to the subject property.

The applicant has demonstrated that the proposal meets the applicable criteria set forth in the Keizer Development Code Sections KDC 3.109.04 and KDC 3.110.04. (See Exhibit "C") In addition, compliance has been shown with regard to any identified comprehensive plan provisions that may apply.

Since the property cannot be realistically developed for park use, the subject property is well suited for providing parking for the adjoining commercial development. The comprehensive plan change and zone change should be granted.

EXHIBIT "E"

Action

The City of Keizer hereby GRANTS the requested comprehensive plan map change to Commercial (C) and also hereby GRANTS the requested zone change to Commercial Mixed (CM), subject to the following conditions:

1. Landscaping on the property shall meet the standards of the Keizer Development Code at the time of development including Screening and Buffering from adjacent residential properties.

2. Upon development of the subject property, including construction of parking lots, the following screening and buffering method shall be used:

   A. A six-foot sight obscuring fence or wall shall be constructed along the entire width of the west and north property line in conjunction with standards in the Keizer Development Code.

   B. One row of deciduous or evergreen trees staggered and spaced not more than 15 feet apart shall be planted between the west and north property lines. Prior to issuance of a building permit or any paving of the parking lot, a landscaping plan is required to exhibit how this requirement will be met, using either existing or new trees.

3. The minimum setback requirement for development and parking of vehicles on the subject property shall be 14 feet from the west and north property line. All other setbacks shall comply with the Keizer Development Code.

4. One tree shall be required for every eight parking spaces dispersed throughout the parking lot per Section 2.110.07 H of the Keizer Development Code. Parking shall be located to the east or south of any proposed structure. Parking lot design shall comply with the Keizer Development Code.

5. The zone shall be changed to "CM (Commercial Mixed Use) Limited-Use " Zone. Uses permitted on the subject property shall include those in the Commercial Mixed zone, <u>excluding</u> Gasoline Service Stations, Drive-Through windows or car service associated with eating and drinking; Vehicle sales and secondary repair; Public utility structures and buildings; Recreational vehicle parks; Automobile parking not associated with an allowed use; Automotive Dealers; Automotive rental and leasing; Automotive repair shops; Automotive services; Utilities - secondary truck parking and material storage yard; and, Banks with Drive-through Windows.

6. The proposed commercial development on the subject property must comply with all applicable development standards contained in the Keizer Development Code. This includes, but is not limited to such standards as landscaping requirements, height requirements, structural design requirements, and on-site parking. Several specific Zoning Ordinance requirements affect the proposed development associated with the Zone Change request as follows:

A. Outdoor storage facilities to be screened from view of the public road and from adjacent residential uses.

B. Exterior lighting to be designed to provide illumination to the site and not cause glare into the public right-of-way and adjacent properties.

C. Roof equipment to be screened from view of nearby residential uses.

City of Keizer, Oregon

May 19, 2003

AGENDA ITEM 8c

GOLF CART ORDINANCE

CITY COUNCIL MEETING: May 19, 2003

AGENDA ITEM NUMBER:___________

TO: **MAYOR CHRISTOPHER AND COUNCIL MEMBERS**

THROUGH: **CHRISTOPHER C. EPPLEY, CITY MANAGER**

FROM: **JOHN A. LIEN, CITY ATTORNEY**

SUBJECT: ***GOLF CART ORDINANCE***

The Traffic Safety Commission has requested that the City Council consider an ordinance regulating the use of golf carts on City streets. ORS 810.070 allows the City of Keizer as a "road authority" to regulate the use of golf carts on its City streets. The statute requires the City to adopt an ordinance regulating golf cart operation on City streets only where the combined use by motor vehicles and golf carts can be accomplished safely. The statute further imposes certain specific limitations as follows:

1. Golf cart use is limited to traveling between the golf course and the place where the golf cart is stored.

2. The golf cart operation is only permitted within the real estate development associated with the golf course or within one-half mile of the golf course.

3. The City shall prescribe rules and regulate the combined operation of the golf carts and vehicles including speed limits and other operating standards, but the City cannot require the golf carts to conform to vehicle equipment laws under the motor vehicle code.

4. Appropriate signs giving notice of the combined operation of vehicles and golf carts must be posted along the affected streets and the rules are not effective without such signage.

The Traffic Safety Commission reviewed examples of golf cart regulations from other jurisdictions and proposed the draft ordinance attached to this staff report as a starting point for your consideration. If the Council decides to move forward with an ordinance, the draft proposed ordinance will be put into final form incorporating any changes by the Council and brought back for adoption at a subsequent meeting.

The proposed ordinance incorporates the state motor vehicle code definition of a golf cart. The proposed ordinance also includes the full legal definition of McNary Estates. That definition is quite lengthy and in the final version of an ordinance, I would suggest referring the McNary Estates Planned Unit Development that has been filed with the City of Keizer Planning Department. I believe that would still incorporate the McNary Estates legal boundaries without having to write it all out in the ordinance.

The proposed ordinance refers to an area defined in attachment A. The area defined is a circle with a one-half mile radius around the entrance to McNary Estates. As you can see from the map, some, but not all of McNary Estates is included within the circled area. For clarification, I would suggest adding a provision that states that golf carts are permitted in all of the McNary Estates Planned Unit Development as well as the streets outside of the McNary Estates Planned Unit Development that are within the one-half mile radius of the entrance to the golf course. However, golf carts both within McNary Estates Planned Unit Development and outside McNary Estates, but within the circled area would be subject to the regulations of the ordinance.

The proposed ordinance imposes other regulations on golf cart use:

1. Most importantly, golf carts would only be allowed on residential streets with a speed limit of 25 miles per hour or less. That means that golf carts would not be permitted on River Road or Wheatland Road. The ordinance would allow golf carts to cross over the higher speed limit streets, but only at signalized intersections.

2. Though the state statute requires it, for purposes of clarity, I believe we should add to the ordinance that the golf cart operation is limited to going to and returning from the golf course.

3. Golf cart operation is only allowed between sunrise and sunset.

4. The golf cart operator must observe all applicable requirements of the Oregon Motor Vehicular Code and must yield the right-of-way to motor vehicles, bicycles, and pedestrians when crossing a street.

5. The golf cart operator must have a valid Oregon driver's license or disabilities cart permit when operating the golf cart.

I suggest the Council include a provision setting the speed limit for golf carts at fifteen miles per hour. The statutory definition of a golf cart suggests that it is operated at not more than fifteen miles per hour. However, I believe for enforcement purposes, we should establish a speed limit and prohibit traveling faster than that. The Council can then also make violation of the speed limit an infraction and establish a forfeiture amount for that violation.

As you know, McNary Estates is a private development and they have chosen to retain their streets as private streets. Many provisions of the motor vehicle code do not apply to private streets. To allow enforcement of the motor vehicle code in McNary Estates, the City Council adopted Ordinance No. 94-298 which applied the motor vehicle code to McNary Estates streets. A copy of such ordinance is attached. In addition, Section 4 of that ordinance permits golf cart operation on McNary Estates streets. If the Council decides to adopt a new ordinance regulating golf cart operation, I would recommend that the new ordinance include a provision revoking Section 4 of Ordinance No. 94-298 to avoid conflict and confusion about golf cart operation.

If the Council adopts an ordinance regulating golf carts, signs will have to be posted along the affected streets to make the ordinance effective. I believe the signs really serve two purposes. The first purpose is to alert drivers of motor vehicles to be on the lookout for golf carts on the affected streets. The signs also identify which streets permit golf cart operation for enforcement purposes. Obviously, there will be some costs associated with the required signage.

RECOMMENDATION:

Discuss the proposed ordinance and instruct staff how to proceed.

Please let me know if you have any questions. Thank you.

JAL/tmh
attachment

City of Keizer
Ordinance No.________

An Ordinance permitting the use of golf carts in designated areas and regulating such use pursuant to the requirements of State Law.

Section 1. Definitions

(1) A golf cart is defined as it is ORS 801.295, as a motor vehicle that has not less than three wheels in contact with the ground, has an unloaded weight less than 1,300 pounds, is designated to be and is operated at not more than 15 miles per hour, and is designed to carry golf equipment and not more than two persons, including the driver.

(2) McNary Estates: is defined as the area platted as McNary Estates and golf course, which is described as: (legal definition of McNary Estates residential community and golf course to be added)
____
____
____
as filed with Marion County.

(3) McNary Estates Main Entrance: is defined as the primary vehicle entrance from River Road North at McNary Estates Drive NE and serves McNary Estates residential community and McNary Golf Course pro shop and clubhouse.

Section 2. Where Golf Carts Are Permitted

Golf carts are permitted to be operated on all streets within the area defined in attachment A within the City of Keizer, provided such streets are considered for residential use and have a posted speed limit of not more than 25 mph. Golf carts may cross other streets with higher speed limits within this area at signalized intersections.

Section 3. Qualifications of Drivers

Drivers of golf carts shall have in their possession a valid Oregon Drivers License or Oregon Department of Motor Vehicles Disabilities Cart permit when operating golf carts under this ordinance.

Section 4. Regulations for Use of Golf Carts

Golf carts shall be operated under this ordinance only between sunrise and sunset and shall observe all applicable requirements of the Oregon Motor Vehicle Code. Golf carts must yield the right-of-way to motor vehicles, bicycles and pedestrians when crossing a public street.

Section 5. Registration and Licensing Exemption

Golf carts operated pursuant to this ordinance are exempt from registration and licensing requirements as provided for in ORS 820.210.

Section 6. Vehicle Equipment Exemption

Golf carts operated pursuant to this ordinance are exempt from vehicle equipment laws as provided for in ORS 810.070.

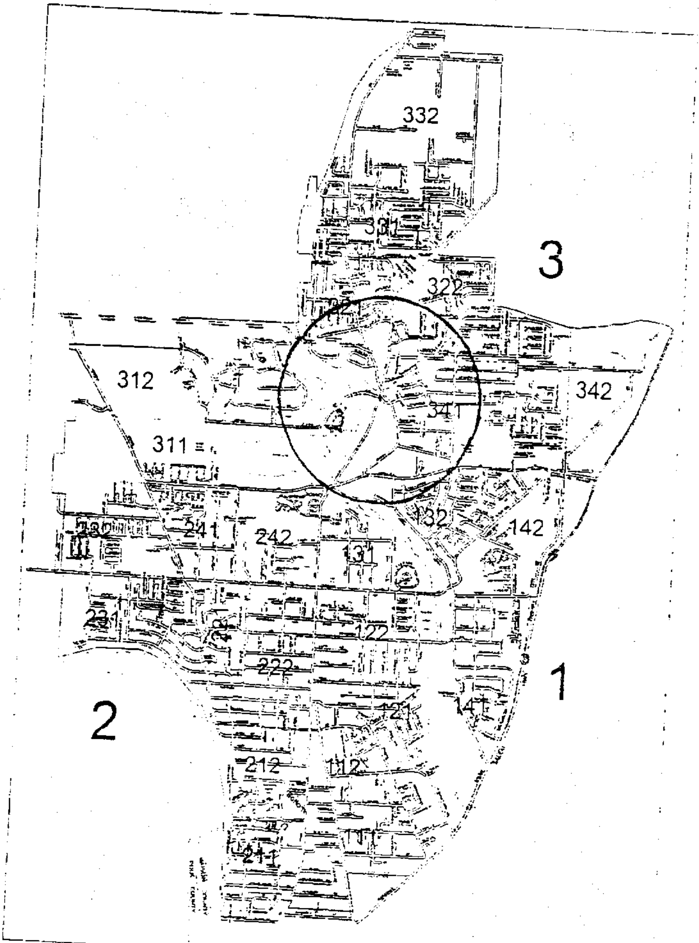
Section 7. Liability

The operation of golf carts under this ordinance shall be totally the risk and responsibility of the operator. The City, by passing this ordinance of permission and designation under Oregon law, assumes no responsibility for the operation of the golf carts and shall be held harmless in any action arising from the operation of golf carts on or off any public way within the City.

Section 8. Violations

(a) Violation of Sections 2 and 4 is an infraction punishable by a forfeiture of $50 for the first offense, or $100 for subsequent offenses within a three-year period.

(b) Violation of Section 3 is an infraction punishable by a forfeiture of $100.



District Boundaries

Grid Boundaries

Keizer City Limits

Grid Numbers

SCALE

Title

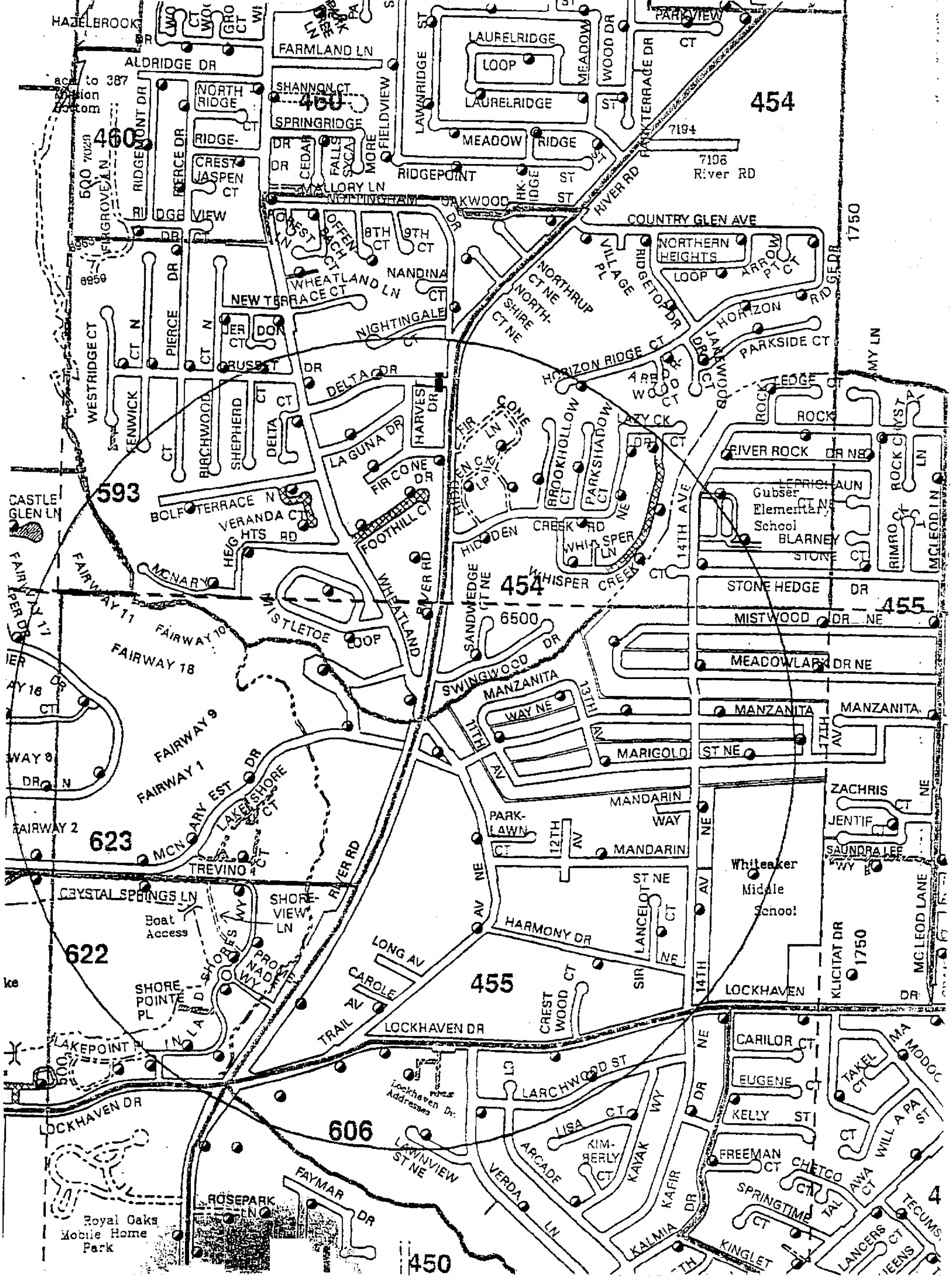
Keizer Police Districts

Mid-Willamette Valley Council of Governments

Revisions	Date
3	January 1997

Scale

As Shown



HAZELBROOK
FARMLAND LN
ALDRIDGE DR
PARKVIEW CT
LAURELRIDGE LOOP
LAURELRIDGE
MEADOW WOOD DR
PARKTERRACE DR
454
460
NORTH RIDGE CT
SHANNON CT
SPRINGRIDGE
FIELDVIEW
LAWNRIDGE ST
MEADOW RIDGE
7194
7196
River RD
RIDGE-CREST
JASPEN CT
CEDAR FALLS
SYCAMORE
RIDGEPOINT
MALLORY LN
NOTTINGHAM
OAKWOOD DR
RIVER RD
COUNTRY GLEN AVE
1750
FIRGROVE LN
RIDGEMONT DR
PIERCE DR
RIDGE VIEW DR
CT
6959
FOREST LN
OFFENBACH CT
8TH CT
9TH CT
NORTHERN HEIGHTS LOOP
ARROW PT CT
VILLAGE PL
RIDGETOP DR
NORTHRUP CT NE
NORTHSHIRE CT NE
WHEATLAND LN
NANDINA CT
NEW TERRACE CT
HORIZON RIDGE
NIGHTINGALE CT
PARKSIDE CT
HORIZON RIDGE CT
JANEWOOD DR
WESTRIDGE CT
CT N
RUSSET
DELTA DR
ARROWWOOD CT
ROCK LEDGE CT
ROCK CRYSTAL
RENWICK
BIRCHWOOD CT
SHEPHERD
DELTA CT
LA GUNA DR
HARVEST DR
FIR CONE LN
FIR CONE DR
BROOKHOLLOW CT
PARKSHADOW CT NE
LAZY CK CT
RIVER ROCK DR NE
LEPRECHAUN CT NE
Gubser Elementary School
593
CASTLE GLEN LN
GOLF TERRACE N
VERANDA CT
HEIGHTS RD
FOOTHILL CT
HIDDEN CK LP
HIDDEN CREEK RD
WHISPER CREEK LN
14TH AVE
BLARNEY STONE CT
RIMROCK CT
MCLEOD LN
MCNARY
WHEATLAND
RIVER RD
SANDWEDGE CT NE
454
WHISPER CREEK CT
STONE HEDGE DR
455
FAIRWAY 17
FAIRWAY 11
FAIRWAY 10
MISTLETOE LOOP
6500
MISTWOOD DR NE
FAIRWAY 18
SWINGWOOD DR
MEADOWLARK DR NE
FAIRWAY 16
MANZANITA WAY NE
13TH AV
MANZANITA
FAIRWAY 9
11TH AV
17TH AV
FAIRWAY 8
FAIRWAY 1
MARIGOLD ST NE
MCNARY EST DR
LAKESHORE CT
MANDARIN WAY
ZACHRIS CT
PARK-LAWN CT
12TH AV
JENTIF CT
FAIRWAY 2
623
TREVINO CT
MANDARIN
SAUNDRA LEE WY
Whiteaker Middle School
CRYSTAL SPRINGS LN
Boat Access
SHORES WY
SHOREVIEW LN
RIVER RD
AV NE
LANCELOT CT
ST NE
HARMONY DR
MC LEOD LANE
KLICITAT DR
1750
622
PROMENADE WY
LONG AV
CAROLE AV
455
SIR
NE
CRESTWOOD CT
14TH
LOCKHAVEN DR
SHORE POINTE PL
LA DUNA
TRAIL
LOCKHAVEN DR
CARILOR CT
MODOC
LAKEPOINT
LARCHWOOD ST
EUGENE CT
TAKEL CT
Lockhaven Dr. Addresses
KELLY ST
LOCKHAVEN DR
606
LISA CT
KIMBERLY CT
KAYAK WY
DR NE
FREEMAN CT
CHETCO CT
WILLAPA ST
LAWNVIEW ST NE
VERDA LN
ARCADE
KAFIR DR
SPRINGTIME CT
TAL
AWA CT
TECUMSEH
FAYMAR DR
ROSEPARK
Royal Oaks Mobile Home Park
KALMIA
KINGLET
LANCERS CT
QUEENS
450

BILL NO. 280 A BILL ORDINANCE NO. 94-298

FOR

AN ORDINANCE

ADOPTING THE OREGON VEHICLE CODE FOR ENFORCEMENT WITHIN THE MCNARY ESTATES PLANNED UNIT DEVELOPMENT

WHEREAS, the McNary Estates Planned Unit Development in Keizer is a private development and all streets therein are private streets not maintained by the City of Keizer; and

WHEREAS, traffic laws with few exceptions do not apply on private streets; and

WHEREAS, the City of Keizer, under general police powers, desires to apply State traffic laws in McNary Estates to provide for the safety of its citizens; and

WHEREAS, the City of Keizer desires to adopt the Oregon Vehicle Code for the limited area of McNary Estates; NOW, THEREFORE,

The City of Keizer ordains as follows:

Section 1. DEFINITIONS.

(a) Oregon Vehicle Code: Those laws set forth in Title 59 of Oregon Laws (1993) codified at ORS Chapters 801 through 822, as now enacted or later amended.

///

///

LIEN, HOBSON & JOHNSON
Attorneys at Law
4855 River Rd. N.
Keizer, Oregon 97303
(503) 390-1635

(b) McNary Estates Streets: The streets now existing or later constructed that are platted for common use within the development known as "McNary Estates" whether or not such streets are premises open to the public.

Section 2. ADOPTION OF THE OREGON VEHICLE CODE. The entirety of the Oregon Vehicle Code is adopted in this Ordinance by this reference as if fully set forth.

Section 3. VIOLATIONS. It is a violation of this Ordinance for any person to violate any section of the Oregon Vehicle Code while operating a vehicle on McNary Estates Streets.

Section 4. GOLF CART EXEMPTION. Golf carts operated on McNary Estates Streets when operated by licensed drivers between the golf course and the place where the cart is parked or stored within McNary Estates are exempt from this Ordinance with the exception that it is a violation of this Ordinance for a golf cart to exceed the speed limit of fifteen (15) miles per hour or be operated in a careless manner.

Section 5. INFRACTIONS. A violation of this Ordinance is an infraction, and may be prosecuted under the Keizer Civil Infraction Ordinance (No. 86-063). The citation or complaint may cite to the relevant Oregon Revised Statutes number. The forfeiture/fine schedule to be applied shall be the same as the Oregon Supreme Court Uniform Bail Schedule.

///

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(503) 390-1635

Section 6. <u>EFFECTIVE DATE</u>. This ordinance shall be effective thirty (30) days after its passage.

PASSED this 1st day of August, 1994.

SIGNED this 1st day of August, 1994.

Mayor

City Recorder

824COK2.026

LIEN, HOBSON & JOHNSON
Attorneys at Law
4855 River Rd. N.
Keizer, Oregon 97303
(503) 390-1635

City of Keizer, Oregon

May 19, 2003

AGENDA ITEM 8d

RESOLUTION – OPPOSING PROPOSED MULTNOMAH COUNTY PEOPLE'S UTILITY DISTRICT

CITY COUNCIL MEETING:____________________

AGENDA ITEM NUMBER: ____________________

TO: **MAYOR AND CITY COUNCIL**

FROM: **CHRISTOPHER C. EPPLEY**
CITY MANAGER

SUBJECT: **SALE OF PGE TO THE CITY OF PORTLAND AND A DISCUSSION ON THE CREATION OF MULTNOMAH COUNTY PEOPLE'S UTILITY DISTRICT**

BACKGROUND

Portland General Electric (PGE) is a privately held power distribution company that also has limited generation capabilities. PGE was recently acquired by Enron. Enron is actively seeking to sell PGE as a whole asset and is taking bids from multiple entities that wish to purchase PGE.

The City of Portland, OR is currently exploring the merit of either purchasing PGE or condemning all of PGE and running the company as a public utility. Additionally, the Multnomah County People's Utility District (PUD) was recently formed and is considering condemning a portion of the distribution assets owned by PGE within a defined geographic boundary inside of Multnomah County, OR and forming a separate public utility. This would have the effect of breaking up PGE into at least two pieces.

Keizer is likely to be effected by the end result of these happenings since PGE is a franchise holder in Keizer and provides power to a majority of Keizer residents. The extent to which Keizer will be effected, however, is still unknown to staff as of yet.

Over the past month, the Council has received presentations from representatives of PGE, who opposes the formation of Multnomah County PUD and members of the Oregon Public Power Coalition, who are advocates in favor of the formation of Multnomah County PUD.

At the last Council Meeting, the Council voted to table to a date uncertain a resolution presented by PGE that would claim opposition to the formation of the Multnomah

County PUD. Mayor Christopher asked that I place this item back on the agenda for you to reconsider and continue deliberations.

RECOMMENDATION

Staff recommends that the City Council deliberates on the benefits to the City for approving a resolution that voices opposition to the formation of the Multnomah County PUD and votes on the issue.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2003-_____

IN THE MATTER OF OPPOSING PROPOSED MULTNOMAH COUNTY PEOPLE'S UTILITY DISTRICT

WHEREAS, the proposed initiative to form a people's utility district in Multnomah County fails to take into account the interest and well-being of PGE and PacifiCorp customers in other counties;

WHEREAS, a process is under way to sell PGE and there is strong interest by utility customers, community leaders and state and local officials to see the utility retained in its current form, including its valuable generating and transmission assets;

WHEREAS, condemnation of PGE and PacifiCorp assets eliminates private-sector jobs and sends the wrong messages to businesses looking to invest in the community;

WHEREAS, separating a utility service district from generating assets deprives customers, who have paid for those assets through their rates, from the benefits of those assets;

WHEREAS, a newly formed people's utility district would qualify under federal law for preference power from the Bonneville Power Administration, but inadequate power is available from BPA for current preference customers, which could result in further electricity price increases for customers, both inside and outside Multnomah County;

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WHEREAS, the piecemeal acquisition of PGE service territory could thwart credible attempts by state and local officials to explore a regional, consumer-owned utility that may provide economic benefits to customers and communities;

WHEREAS, the petition to create the people's utility district excludes areas served by other PUDs, even though they are not electric utilities, which raises questions about what entity will supply their electricity service;

WHEREAS, under Oregon law, if a majority of residents of cities within Multnomah County oppose formation of the people's utility district, they also will be excluded from its service territory;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Council of the City of Keizer oppose the formation of a people's utility district in Multnomah County because it will have negative economic consequences for PGE and PacifiCorp customers and there are better ways to retain PGE as a complete utility, providing benefits to its customers and the communities it serves.

PASSED this _________ day of _______________, 2003.

SIGNED this _________ day of _______________, 2003.

____
Mayor

____
City Recorder

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

City of Keizer, Oregon

May 19, 2003

AGENDA ITEM 9a

RESOLUTION – INITIATING PIERCE DRIVE STREET LIGHTING DISTRICT

COUNCIL MEETING: May 19, 2003

AGENDA ITEM NUMBER:__________

TO: **MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS**

THROUGH: **CHRIS EPPLEY**
CITY MANAGER

FROM: **TRACY L. DAVIS, CMC**
CITY RECORDER

SUBJECT: **INITIATING PIERCE DRIVE STREET LIGHTING LOCAL IMPROVEMENT DISTRICT**

ISSUE:

Shall the City Council initiate Pierce Drive Street Lighting Local Improvement District?

DISCUSSION:

A petition was filed on May 7, 2003 by the developer of the subdivision to form a local improvement district for street lights in this area of Keizer. The petition contained the required signatures of the property owner as outlined by City of Keizer Ordinance 94-278.

RECOMMENDATION:

It is recommended that the City Council approve the Resolution initiating Pierce Drive Street Lighting Local Improvement District and direct the City Engineer to prepare a survey of the area.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2003-_______

DECLARING THE CITY'S INTENT TO INITIATE A STREET LIGHTING LOCAL IMPROVEMENT DISTRICT (PIERCE DRIVE) AND DIRECTING THE CITY ENGINEER TO MAKE A SURVEY AND FILE A WRITTEN REPORT WITH THE CITY RECORDER

WHEREAS, the City Council of the City of Keizer has received a petition from the developer to initiate a street lighting district in Pierce Drive in the City of Keizer, Oregon; and

WHEREAS, pursuant to City of Keizer Ordinance 94-278, the necessary signatures of land owner comprising two-thirds of the property to be included within Pierce Drive Street Lighting District have requested the formation of the district; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

1. The City Council declares its intent to initiate Pierce Drive Street Lighting Local Improvement District;
2. The map attached hereto, marked Exhibit "A", and by this reference incorporated herein sets forth the proposed boundaries of the district;
3. The City Engineer is hereby directed to make a survey of the District;
4. The City Engineer shall file a written report with the City Recorder to be considered by the City Council on June 16, 2003.

PASSED this ____ day of ______________________, 2003.

SIGNED this ____ day of ______________________, 2003.

____

Mayor

____

City Recorder

PETITION TO FORM LOCAL IMPROVEMENT DISTRICT FOR STREET LIGHTING

To the City Council for the City of Keizer:

The undersigned being the owner or contract purchaser of the described property hereinafter set opposite my or its name, hereby petition the Keizer City Council to form a STREET LIGHTING LOCAL IMPROVEMENT DISTRICT for:

Apple Tree Annex

within the City of Keizer.

The legal description of the proposed district is:

SW¼ Sec34 T6S R3W WM

PLEASE ATTACH A MAP OF THE AREA

This petition to form this district is in conformity with the charter, ordinances and regulations of the City of Keizer.

PETITION SUBMITTED BY:

NAME: Lydon Construction

ADDRESS: 3795 River Rd. N., Keizer, Oregon 97303

PHONE NUMBER: (503) 390-1559

DATE	DEED HOLDER/CONTRACT BUYER	SIGNATURE	ADDRESS OF PROPERTY (IF VACANT - LOT NUMBER/SECTION)
	Bill Lydon	Bill Lydon	

City of Keizer, Oregon

May 19, 2003

AGENDA ITEM 9b

APPROVAL OF APRIL 7, 2003 REGULAR SESSION MINUTES

MINUTES

KEIZER CITY COUNCIL
Monday, April 7, 2003
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Christopher called the regular meeting to order at 7:00 p.m. Roll Call was taken as follows:

Present:
Lore Christopher, Mayor
Michel Gaynor, Councilor
Charles E. Lee, Councilor
Jacque Moir, Council President
Judy K. Smith, Councilor
James Taylor, Councilor
Richard Walsh, Councilor

Staff:
Chris Eppley, City Manager
Susan Gahlsdorf, Finance Director
Rob Kissler, Public Works Director
Dianne Hunt, Human Resources Director
Cheryl Vafakos, Interim Planning Director
Shannon Johnson, City Attorney
Kent Barker, Captain
Tracy L. Davis, City Recorder

FLAG SALUTE

Executive Director of the Keizer Chamber of Commerce Christine Jones led the Council through the Pledge of Allegiance.

PUBLIC TESTIMONY

Robin Barney and Markey Humberstadt 980 Chemawa Rd NE, Keizer-speaking on behalf of the Keizer Chamber of Commerce requested volunteer assistance of the Council and Keizer citizens during the Iris Festival. Those interested were encouraged to contact the Chamber of Commerce office.

Christine Jones, 980 Chemawa Rd NE, Keizer, Keizer Chamber of Commerce-offered to answer questions regarding the Keizer Iris Festival Sign Variance.

PUBLIC HEARINGS

a. Wall Street Bar and

City Manager Eppley reported that on March 14, 2003

Grill Liquor License Application

an application was submitted for an On-Premises Sales liquor license for Wall Street Bar and Grill. With the addition of kitchen facilities at the Wittenberg Inn, the OLCC has required a new application relocating the license to the Wittenberg Inn kitchen.

The requirements for the public hearing and notice were outlined and met by the city.

Staff recommended that the public hearing be opened to allow for testimony and upon completion to close the hearing and submit approval to the OLCC for a Full On-Premise liquor license for the Wall Street Bar and Grill.

Mayor Christopher opened the public hearing.

With no one wishing to testify Mayor Christopher closed the public hearing.

<u>Council President Moir moved to approve the application for a Full On-Premise Liquor License for the Wall Street Bar and Grill under the Guidelines as Established by ORS 471.178 and the Ordinances of the City of Keizer and to Forward the Recommendation to the Oregon Liquor Control Commission. Councilor Walsh seconded the motion.</u>

<u>The motion passed unanimously as follows:</u>

<u>AYES:</u> Christopher, Gaynor, Lee, Moir, Smith, Taylor and Walsh (7)
<u>NAYS:</u> None (0)
<u>ABSTENTIONS:</u> None (0)
<u>ABSENT:</u> None (0)

b. <u>ORDINANCE</u>- Repealing Alarm Ordinance No. 2001-459

City Manager Eppley reported that on July 16, 2001 the City Council approved this ordinance in the attempt to curb the number of false alarms. He indicated that the ordinance had failed to produce the intended results and by vote of the Community Policing Committee it was recommended that the ordinance be repealed.

Staff also recommended reimbursement of the fees collected.

Mayor Christopher opened the public hearing.

Testimony:
Ken Gierloff, 4035 Arnold Street NE, Keizer-as chair of the Community Policing Committee reiterated the support of the repeal of the ordinance.

With no one else wishing to speak Mayor Christopher closed the public hearing.

Responding to questions City Manager Eppley indicated that volunteers could be used to assist with the mailing process for the refund checks. He indicated that records would also be disposed of accordingly.

Council President Moir moved a Bill for an Ordinance Repealing the False Alarm Ordinance, Repealing Ordinance No. 2001-459. Councilor Lee seconded the motion.

The motion passed unanimously as follows:

AYES: Christopher, Gaynor, Lee, Moir, Smith, Taylor and Walsh (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

It was the consensus of the Council to refund the permit fees.

c. RESOLUTION-Increase of Fees for Producing Certain Public Records ORDINANCE-Amending Water Rate Ordinance

Finance Director Susan Gahlsdorf reported that staff was recommending an increase in these fees to offset the costs for their production and staff time. She noted the resolution and some minor amendments, and addressed questions from the Council.

Mayor Christopher opened the public hearing

With no one wishing to testify Mayor Christopher closed the public hearing.

Recommended changes to resolution included:

Page One; Line 19-Records search (requests taking 30 minutes or less) first 15 minutes at no charge over 15 minutes $5.00.

Page Two; Line Three-Agenda and City Calendar mailing and Property address list $30.00 per year

Page Two; Line Seven-Pre-printed Maps over 11 x 17 $10.00 per sheet. Pre-printed maps 11 x 17 $5.00

Include separate GIS Mapping Query Charge

Page Two; Line 19 omit this sentence.

Page Two; Line 21 reword to fit records request for City Hall and Police Department records.

Council President Moir moved a Resolution Establishing Fees for Certain Administrative Services (Repealing R94-764) as amended. Councilor Gaynor seconded the motion.

The motion passed unanimously as follows:

AYES: Christopher, Gaynor, Lee, Moir, Smith, Taylor and Walsh (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

Council President Moir moved to Adopt a Bill for an Ordinance Amending the Water Rates with Regard to Miscellaneous Fees; Amending Ordinance 2002-473. Councilor Smith seconded the motion.

The motion passed unanimously as follows:

AYES: Christopher, Gaynor, Lee, Moir, Smith, Taylor and Walsh (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

COMMITTEE REPORTS

a. South East Keizer Neighborhood Association Annual Report

Ken Gierloff, 4035 Arnold Street NE, Keizer-speaking as President of SEKNA he summarized the history of the neighborhood association and requested the continued support of the City Council.

Mr. Gierloff responded to questions from the Council pertaining to the accomplishments of SEKNA.

The Council commended Mr. Gierloff for his work with SEKNA.

Council President Moir moved to accept the Annual Report and to Extend the recognition of the South East Keizer Neighborhood Association for an additional year. Councilor Lee seconded the motion.

The motion passed unanimously as follows:

AYES: Christopher, Gaynor, Lee, Moir, Smith, Taylor and Walsh (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

OTHER BUSINESS

Letters From Home
Mayor Christopher noted the campaign initiated by the Council and the Keizer Times to start a pen pal program for the soldiers serving the country. She outlined the 12-month program.

Bikeways Committee
Councilor Walsh reported at the last meeting that with summer drawing closer that the committee was requesting more emphasis being placed on the enforcement of the helmet ordinance.

Willamette River Project
Councilor Walsh reported that at the last meeting the group discussed water trails along the river to designate public ownership.

Willamette River Celebration
Councilor Walsh reported that this would take place on June 7th and would include a boat float and a BBQ celebration at Willamette Mission Park in addition to other activities.

Oregon State Park
Councilor Walsh expressed interest by the Director of Oregon State Parks for Keizer to develop a Task Force to review the possibilities for the 85-acres of State Park Land. He indicated a proposal for starting the Task Force would be presented to the Council during the next meeting.

SKAATS
Councilor Walsh reported that the buses for Cherriots were not fully funded as expected. SKAATS would be picking up the balance of this deficit, which in contrast would move the development of the bridge on Chemawa Road back by one year.

MWACT
Councilor Walsh summarized their last meeting pertaining to future development.

Keizer Soccer Club
Councilor Gaynor reported that the Rotary submitted a check to the Keizer Soccer Club for $10,000. He also provided an update on the work being done on the Whiteaker athletic fields.

Civic Center Task Force
Councilor Gaynor reported that this Task Force was in the process of being developed with requests for proposals being reviewed by this group in the near future.

Quake-X
Council President Moir complimented staff and volunteers during the process.

City Manager Eppley especially noted Sgt. John Teague's work as the Emergency Manager and he complimented Sgt. Teague on a job well done.

Making After School Count Task Force
Councilor Lee summarized the work being conducted by the Task Force to organize funding options and criteria for evaluating these options. He indicated that members of the Task Force would be making a presentation to the Council on April 21st.

Focal Point Dedication
Councilor Lee reported that the dedication of the focal point would take place on May 18th at 3:30 p.m.

Yellow Ribbons
City Manager Eppley reported that citizens be allowed to place yellow ribbons on the city's light poles to show support for the troops.

After a brief discussion the Council voiced their support of the project as long as those placing the ribbons would keep them in good repair.

Police Updates
Captain Barker noted the K-9 seminar hosted by the Keizer Police Department. He also summarized the COP Talk show on Channel 23 and some of the issues being discussed.

Human Resources Update
Dianne Hunt reported that 266 applications he been received for the Utility Billing position and 140 applications were received for the Clerical Specialist. Interview to fill these positions would take place in the near future.

Public Works Update
Public Works Director Rob Kissler reported that the stops signs as part of the Gubser Neighborhood Traffic Plan would be placed between April 15th and April 30th. The traffic signal improvements at Lockhaven and River Road would be completed May 15th. He noted that once the design was complete for the widening of Harmony and Trail that it would be put out for a bid process.

Responding to questions Mr. Kissler indicated that the volunteer mowing and an adopt a park program were in the process of being put together.

ADMINISTRATIVE ACTION

a. Sign Variance-Keizer Iris Festival

Interim Planning Director Cheryl Vafakos reported that the applicant for the request was the Keizer Chamber of Keizer for property located at 5188 Wittenberg Lane and the vacant property west of this address. The variance requested was to allow up to six banners up to 150 square feet in area.

Staff reported that sections within the Development Code allowed for Council to offer this variance for special events.

Staff recommended approval of the variance request as submitted.

Council President Moir moved to direct staff to provide the necessary documentation to grant the Keizer Chamber of Commerce the Variance request and Waiver of fees. Councilor Smith seconded the motion.

The motion passed unanimously as follows:

AYES: Christopher, Gaynor, Lee, Moir, Smith, Taylor and Walsh (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

b. Juvenile Accountability Incentive Block Grant Allocations 2003-2004

City Manager Eppley reported that this was the fourth year of re-authorization for these funds. The service was a coordinated effort with surrounding cities to assist Marion County Juvenile Department's guaranteed Attendance Program. (GAP)

Staff recommended the allocation of the funds as outlined in the staff report.

Captain Barker responded to questions from the Council pertaining to the Peer Court and it's low participation numbers, which caused the department to recommend that these grant funds be allocated to the GAP Program. He expressed his belief that there were other programs that would impact more youth than the Peer Court Program.

Councilor Walsh provided handouts related to the Peer Court. He expressed his wish to continue support of this program.

To enable Captain Barker to locate requested information regarding the program Mayor Christopher recessed the meeting for ten minutes.

The meeting reconvened at 8:52 p.m.

Captain Barker reported that the deadline to apply for the grant was April 25th.

Council President Moir moved to authorize the Chief of Police to notify the Marion County Juvenile Department that the City of Keizer wishes to pool Keizer's portion of the 2003-2004 Juvenile Accountability Incentive Block Grant with other Marion County cities to fund the Block Grant Program. Councilor Lee seconded the motion.

Council Smith indicated she would vote no on the motion as she wished to have more information regarding whether the other cities would also be pooling their portion of the grant.

Councilor Walsh spoke in favor of the Peer Court Program for the grant funds being discussed.

Captain Barker addressed additional questions from the Council regarding Peer Court and the GAP Program. He offered to make further contacts to discern what agencies would actually be pooling their portion of the grant to Marion County.

Council President Moir expressed her support of the GAP Program and the use of the grant funds as outlined.

The Council further debated the programs, their benefits to the youth, and the cost effectiveness of each.

The motion failed as follows:

AYES: Christopher and Moir (2)
NAYS: Gaynor, Lee, Smith, Taylor and Walsh (5)
ABSTENTIONS: None (0)
ABSENT: None (0)

Councilor Smith moved to bring back the issue on April 21, 2003 to allow staff to coordinate the information requested. Councilor Walsh seconded the motion.

Information that the Council was interested in included:

- Who would be participating in the Peer Court and GAP Programs?
- What other jurisdictions would be participating?
- Number of youth that participated in the Peer Court program during its two years of operation.
- Number of youth given the opportunity to participate in Peer Court that opted not to participate in the program.
- True costs and impacts on budget that Peer Court would have.

Councilor Walsh suggested a friendly amendment to the motion to include a comparison of GAP and Peer Court and a recommendation from staff. Councilor Smith accepted the friendly amendment.

The motion with the friendly amendment passed as follows:

AYES: Christopher, Gaynor, Lee, Moir, Smith, Taylor and Walsh (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

CONSENT CALENDAR

a. Insurance Coverage for KARE Animal Shelter

b. Approval of March 10, 2003 Work Session Minutes

c. Approval of March 17, 2003 Regular Session Minutes

Councilor Taylor pulled item "c".

Councilor Gaynor pulled item "a".

Council President Moir moved for approval of Consent Calendar item "b". Councilor Lee seconded the motion.

The motion passed unanimously as follows:

AYES: Christopher, Gaynor, Lee, Moir, Smith, Taylor and Walsh (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

Council President Moir moved for approval of Consent Calendar item "c". Councilor Lee seconded the motion.

The motion passed as follows:

AYES: Christopher, Gaynor, Lee, Moir, Smith and Walsh (6)
NAYS: None (0)
ABSTENTIONS: Taylor (1)
ABSENT: None (0)

Council President Moir addressed questions regarding the KARE Program and its location in a donated warehouse during an emergency.

Council President Moir moved for approval of item "a" on the Consent Calendar. Councilor Gaynor seconded the motion.

The motion passed unanimously as follows:

AYES: Christopher, Gaynor, Lee, Moir, Smith, Taylor and Walsh (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

WRITTEN COMMUNICATIONS

Mayor Christopher addressed a letter from the League of Oregon Cities regarding assigning a member to the Youth Advisory Council. She encouraged members of the Council to submit youth names to the City Manager.

AGENDA INPUT

April 14, 2003
5:30 p.m. City Council Work Session

- Review of City of Keizer Ground Lease Agreements

April 21, 2003
7:00 p.m. City Council Meeting

- Public Hearing-Closure of Tepper Lane
- Cade Avenue-Public vs. Private
- Keizer Texaco Food Mart Liquor License-Change of Ownership
- Presentation and Adoption of Plan-Home Funds

May 5, 2003
7:00 p.m. City Council Minutes

Mayor Christopher noted the agenda items.

ADJOURNMENT

Mayor Christopher adjourned the meeting at 9:37 p.m.

Cindy Perry
Recording Secretary

APPROVED:
MAYOR:

Lore Christopher

COUNCIL MEMBERS:

Councilor #1 - Judy K. Smith

Councilor #4 - Jacque Moir

Councilor #2 - Michel Gaynor

Councilor #5 - Richard Walsh

Councilor #3 - Charles E. Lee

Councilor #6 - James Taylor

Minutes approved:

City of Keizer, Oregon

May 19, 2003

AGENDA ITEM 9c

APPROVAL OF MAY 5, 2003 REGULAR SESSION MINUTES

MINUTES

KEIZER CITY COUNCIL
Monday, May 5, 2003
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Christopher called the regular meeting to order at 7:00 p.m. Roll Call was taken as follows:

Present:
Lore Christopher, Mayor
Michel Gaynor, Councilor
Charles E. Lee, Councilor
Judy K. Smith, Councilor
James Taylor, Councilor
Richard Walsh, Councilor

Absent:
Jacque Moir, Council President

Staff:
Chris Eppley, City Manager
Rob Kissler, Public Works Director
Marc Adams, Chief of Police
Dianne Hunt, Human Resources Director
Cheryl Vafakos, Interim Planning Director
Shannon Johnson, City Attorney
Tracy L. Davis, City Recorder

FLAG SALUTE

Chief of Police Marc Adams led the flag salute.

PUBLIC TESTIMONY

Joan Horton, member of the Oregon Power Coalition- explained what the Coalition believed would be the benefits of organizing a PUD. She noted that taxes by Enron were not being paid although the taxpayers had already paid these taxes. Ms. Horton summarized the issue as a monopoly which the rate payers and the community as a whole were not being protected against. She urged the Council's support of a PUD.

Eulia Quan Mishima, 840 NW Sixth, Gresham, OR 97030- member of the Oregon Power Coalition. Ms. Mishima addressed what she believed were the manipulations of rates and the lack of taxes being paid by PGE through Enron. She strongly advocated a PUD to assist some of the issues outlined and, urged the Council to do the same.

Responding to questions Ms. Horton indicated passage of the resolution would be a vote of confidence for a PUD.

Ms. Mishima noted that decisions pertaining to the PUD would be up to the elected officials of each district.

Members of the Council expressed concerns regarding Keizer's future role if a PUD was in place and whether the purchase PGE by a PUD would be beneficial to the rate payers.

Mayor Christopher thanked them for their testimony

Monte Graham 3647 Wolverine Street NE, Marion Soil Conservation District-addressed his and the district's role in the Claggett Creek wetland mitigation project.

Garry Miller 4375 Bren Loop, Keizer, member of the Claggett Creek Watershed Council-provided an update of the Claggett Creek Wetland Mitigation Project. Mr. Miller provided various timelines, including permits and planting times.

The Council expressed their thanks for the work conducted by the Claggett Creek Watershed Council to see the project to completion.

Lucinda Moeller, Rupp Avenue, Keizer-expressed concerns with the noise being emitted by individuals playing basketball at Forrest Ridge School. She requested assistance from the Council to help resolve her problem.

Mayor Christopher sympathized with Ms. Moeller's concerns, but noted that the city is only able to address ordinances in place.

Responding to questions Chief Adams indicated that decibel readings had been conducted and were not found to be outside of normal neighborhood noise.

Mayor Christopher requested that the City Manager contact Ms. Moeller to conduct an additional decibel check. If the decibel check rates above what is written in the ordinance it would be addressed, if not no further action will be taken.

Ms. Moeller submitted questions regarding basketball hoops placed on sidewalks. Mayor Christopher indicated that she would have the City Manager follow up on the ordinance regarding this and would supply her with this information during their meeting.

Mayor Christopher thanked Ms. Moeller for her testimony.

PUBLIC HEARINGS

a. Zone Change/Major and Minor Variance-Case No. 2002-2003 (500 Bever Drive N)

City Attorney Shannon Johnson noted the applicable criteria in the staff report. With no objection to the reading of the criteria the reading was waived.

Counselor Johnson encouraged the Council to declare any exparte contacts or conflicts of interest.

Councilor Smith reported that the applicant contacted her by phone at her residence whereupon she explained that she could not discuss the case with him.

Mayor Christopher opened the public hearing.

Interim Planning Director Cheryl Vafakos summarized the property's current zoning and the applicant's request to change the zoning from CO (Commercial Office) to CM (Commercial Mixed Use).

Staff recommended consideration of the Hearings Officer and staff's recommendation for denial of the application.

Responding to questions Ms. Vafakos indicated that the traffic analysis was conducted after the Hearings Officer submitted his recommendation for denial of the application.

To assist with answering questions from the Council, Counselor Johnson read from the Keizer Development Code pertaining to CM and CO zones. Staff addressed additional questions from the Council.

Anil Khanna, South Salem, Oregon-expressed his hope to be able to develop a small business on this property.

Jeff Tross, 1720 Liberty St SE, Salem-Land Planning and Development Consultant for the applicant. Mr. Tross noted that applicant wished to develop a convenience store with a gas station. He summarized the parcel in question and what he believed was the appropriateness of the application based on the information provided, which also included a traffic analysis.

Mr. Tross also outlined the zone change criteria and the Hobson Ferrerri reported that indicated that there was an adequate supply of CO property. He encouraged the Council to makes its decision based on the information provided.

Mayor Christopher thanked Mr. Tross for his testimony.

David Glennie, 200 Hawthorne, Suite 3-310 SE, representing Wilhelm Management Development. Mr. Glennie testified on the behalf of the applicant and encouraged the consideration of the Council.

Responding to questions Mr. Glennie indicated that the applicant did not currently own the property, but the final purchase would be based on the decision tonight.

Counselor Johnson noted conditions as set by the Hearings Officer if the Council decided in favor of the applicant. He encouraged the Council to review these conditions prior to the closure of the public hearing.

For the benefit of the Council Ms. Vafakos summarized the Recommendations and Conditions on pages 15-18 as outlined in the staff report.

Carl Burkey, 1155 13th Street SE, Salem-Engineer with ATEP.

Mr. Burkey responded to questions regarding the traffic analysis. He outlined the concept of "pass by" traffic as used by traffic engineers and the standards used for peak period traffic.

Ken Gierloff, 4035 Arnold St NE, Keizer-speaking as chair of the South East Keizer Neighborhood Association. Mr. Gierloff reported that it was the consensus of SEKNA to keep the property zoned CO. If not it was requested that the application be conditioned in such a way that the development would not adversely affect the neighborhood.

Responding to questions Counselor Johnson noted a Limited Use Overlay was possible to meet SEKNA's concerns, but that a limit specific to ownership could not be done.

David Wilson, 5500 River Road North, Keizer-expressed concern regarding the proposed use of the property as a gas station. He noted other areas in town that were currently gas stations and encouraged denial of the application.

Mayor Christopher thanked everyone for their testimony.

With no additional testimony Mayor Christopher closed the public hearing.

Councilor Gaynor verbalized his agreement for denial of the application as written by the Hearings Officer.

<u>Councilor Smith moved to accept the Hearing Officer's recommendation. Councilor Gaynor seconded the motion.</u>

Councilor Smith indicated her concern with future ownership of the property if the application was granted would allow for drive-thru restaurants which she did not feel was appropriate for that corner. She also questioned the traffic analysis presented and the amount of property that is currently zoned CO (Commercial Mixed Use).

Councilor Walsh spoke in favor of staff's recommendations although he did question the CO requirement. He did encourage the applicant to seek an alternative site along River Road.

Councilor Lee spoke against the motion. With the traffic study he believed the Hearings Officer may have approved the application.

Councilor Walsh recommended a friendly amendment to the motion that the applicant be allowed to re-submit an application for a major and minor variance if new criteria are submitted for zone changes.

Councilor's Smith and Gaynor accepted the friendly amendment.

The motion passed as follows:

AYES: Christopher, Gaynor, Smith, Taylor and Walsh (5)
NAYS: Lee (1)
ABSTENTIONS: None (0)
ABSENT: Moir (1)

Counselor Johnson indicated an ordinance would be brought before the Council for approval at the next Council meeting.

Mayor Christopher recessed the meeting and reconvened at 9:30 p.m.

b. COMP PLAN MAP AMENDMENT/ZONE CHANGE NO. 2003-09-(Fernwood Park)

Interim Planning Director Cheryl Vafakos reported that the subject property was located at 250 Chemawa Rd N, located behind properties located at 307 and 356 Kestrel St N. She summarized the zoning of the surrounding properties and the city as the applicant requesting the comprehensive plan map designation from Low Density residential to Commercial with the conditions identified in the staff recommendation.

Staff recommended approval of the application as outlined in the staff report.

Responding to questions City Manager Eppley noted the best use of this property would be to allow for the use by the residents as opposed to its prior park designation.

With no one wishing to testify Mayor Christopher closed the public hearing.

Councilor Walsh moved to accept staff's recommendation for the Comprehensive Plan Map Amendment/Zone Change Case No. 2003-09. Councilor Gaynor seconded the motion.

The motion passed as follows:

AYES: Christopher, Gaynor, Lee, Smith, Taylor and Walsh (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Moir (1)

COMMITTEE REPORTS

Civic Center Task Force
Councilor Gaynor summarized the initial meetings of this task force. He expressed enthusiasm with the process.

Traffic Safety Commission
Councilor Taylor reported that the Commission would be re-addressing their by-laws at May's meeting.

Focal Point
Councilor Lee reported that the dedication of the Focal Point was scheduled to take place on May 18th at 3:30 p.m.

Today's Choices Tomorrows Committees
Councilor Lee summarized his participation with this committee.

Safe Schools Healthy Student Advisory Board
Councilor Lee reported that he was appointed by Kay Baker to participate in this program, which may be of assistance to the Power Program.

Storm Water Task Force
Councilor Smith summarized this group's interview of consultants for the Storm Water Management Plan.

SKATS/MWACT Transportation Corridor
Councilor Walsh reported that this group had designated the River Road corridor, at Broadway and along River Road, as its top priority. He summarized bus use and the possibility of making changes to allow buses a better access without hindering traffic. He requested input from the Council pertaining to this group brining a proposal before the Council.

The Council was in consensus with the process.

MWACT
Councilor Walsh reported that the Sunset Street improvements were dropped from ODOT's list. He read from the list of plans that were proposed for funds by ODOT.

T-Program
Councilor Walsh noted that this program was ending this year and would be replaced with another program for transportation. He outlined what the new programs would entail.

OTHER BUSINESS

✓ New Business

- Setting Time for City Council Work Session

It was the consensus of the City Council for the regular work sessions to take place from noon to 1:30 p.m.

Salem Futures
City Manager Eppley reported that the City of Salem via the Salem Futures would be seeking grant funding to work on the transportation portion of the transportation planning rule. It was requested that Keizer, Marion and Polk counties act as co-applicants for the grant.

Responding to concerns City Manager Eppley indicated by co-sponsoring Keizer would receive their portion of the grant to work on its own portion of the transportation plan. He answered additional questions from the Council.

It was the consensus of the Council for the City of Keizer to co-apply for the grant.

✓ Old Business
None

ADMINISTRATIVE ACTION

a. ORDER-Closure of Tepper Lane at Railroad Crossing

Councilor Walsh moved an Order In the Matter of the Closure of Tepper Lane Northeast. Councilor Gaynor seconded the motion.

Councilor Smith spoke against the motion. She did not believe it was in the city's best interest to close Tepper and felt the railroad should be responsible for the cost of closing grade crossings.

Councilor Gaynor noted the lower costs for participating with the railroad in this project. He addressed the need to work in a cooperative effort to make this project take place.

Councilor Lee reiterated Councilor Gaynor's comments and the importance of reviewing concerns by the fire department to provide additional emergency access.

Councilor Taylor spoke in favor of the motion and agreed with the comments regarding an additional emergency access.

The motion passed as follows:

AYES: Christopher, Gaynor, Lee, Taylor and Walsh (5)
NAYS: Smith (1)
ABSTENTIONS: None (0)
ABSENT: Moir (1)

b. RESOLUTION-Opposition to Multnomah County PUD

City Attorney Johnson reported at the last meeting Council directed staff to prepare a resolution opposing the creation of a proposed Multnomah County People's Utility District. He indicated that the language was verbatim to the Marion County resolution.

Councilor Walsh moved a Resolution in the Matter of Opposing Proposed Multnomah County People's Utility District. Councilor Taylor seconded the motion.

Councilor Walsh expressed his uneasiness with issue due to its complexity and conflicting arguments.

Councilor Gaynor urged the Council to table any decision to see how other entities would be handling the issue.

Councilor Gaynor moved to table the motion until an indefinite date. Councilor Smith seconded the motion.

The motion passed as follows:

AYES: Christopher, Gaynor, Lee, Smith, Taylor and Walsh (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Moir (1)

c. Elimination of Planning Director and Creation of Community Development Director

City Manager Eppley proposed that the classification of Planning Director be eliminated and to replace this position with a Community Development Director to meet the long range planning needs of the city.

Councilor Gaynor moved to eliminate the classification of Planning Director and to create the classification of a Community Development Director. Councilor Walsh seconded the motion.

City Manager Eppley answered questions from the Council pertaining to the role of this position.

The fiscal impact of the position was approximately $1,500 more per month and was included in FY 2003-2004 Manager's recommended budget.

The motion passed as follows:

AYES: Christopher, Gaynor, Lee, Smith, Taylor and Walsh (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Moir (1)

d. RESOLUTION- Ratifying and Authorizing the City Manager to Enter Into an Agreement to

City Attorney Johnson reported that the property located at 2100 Chemawa Road NE became available for sale and could be a piece for future right-of-way alignment in the Keizer Station Plan area. It was noted

purchase Property Located at 2110 Chemawa Rd NE, Keizer (Axen)

that the funds for this property would be available from the Street Fund.

Responding to questions regarding the property City Manager Eppley indicated that this property would be used for future alignments.

Councilor Smith expressed concern that she did not have enough information to vote on resolution.

City Attorney Johnson indicated that this was the direction recommended by the Council earlier this year.

Councilor Walsh moved a Resolution Ratifying and Authorizing the City Manager to Enter into an Agreement to Purchase Property Located at 2110 Chemawa Road Northeast, Keizer, Marion County, Oregon (Terron J. Axen and Lillian E. Axen) Councilor Gaynor seconded the motion.

Responding to questions Public Works Director Rob Kissler noted projects in the TSP and the 1997 Chemawa Activity Center Plan and its recommendation to make a connection between Ridge Drive and Chemawa Road to allow for better traffic circulation in the area.

The motion passed as follows:

AYES: Christopher, Gaynor, Lee, Taylor and Walsh (5)
NAYS: Smith (1)
ABSTENTIONS: None (0)
ABSENT: Moir (1)

CONSENT CALENDAR

a. RESOLUTION-Authorizing the City Manager to Award Bid for Harmony Drive Improvements

b. RESOLUTION-Approving Engineer Report for Pleasantview Street Lighting District

c. RESOLUTION-Appointment of Budget Officer for the City of Keizer

d. Approval of April 14, 2003 Work Session Minutes

e. Approval of April 21, 2003 Work Session Minutes

f. Approval of April 21, 2003 Regular Session Minutes

Councilor Walsh moved for approval of the Consent Calendar. Councilor Lee seconded the motion.

Councilor Smith pulled item "d" from the Consent Calendar.

Consent Calendar items "a", "b", "c", "e" and "f" passed as follows:

AYES: Christopher, Gaynor, Lee, Smith, Taylor and Walsh (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Moir (1)

Councilor Smith noted a correction in the minutes of April 14, 2003.

Councilor Smith moved for approval of the April 14, 2003 minutes as amended.

The motion passed as follows:

AYES: Christopher, Gaynor, Lee, Smith, Taylor and Walsh (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Moir (1)

WRITTEN COMMUNICATIONS

Mayor Christopher made Iris Festival announcements.

Mayor Christopher addressed the American Cancer Society's Walk for Life. It was the consensus of the Council to have the City Manager contact the Salem City Manager to work in coordination with this event.

Mayor Christopher read a letter from SEDCOR applauding the efforts of Keizer pertaining to the Keizer Station Plan.

Mayor Christopher noted a letter from West Linn pertaining to Legislative Resolutions. The Council expressed interest in seeing more information regarding this before taking any action.

AGENDA INPUT

May 12, 2003
5:30 p.m. City Council Work Session
- ✓ Presentation of Draft DDA-Keizer Station

May 19, 2003
7:00 p.m. City Council Meeting
- ✓ Volunteer of Quarter Award
- ✓ Review of Golf Cart Ordinance
- ✓ Salem-Keizer Together Presentation

June 2, 2003
7:00 p.m. City Council Meeting
- ✓ 2003-2004 City of Keizer Budget Public Hearing

Mayor Christopher noted the agenda items.

ADJOURNMENT

Mayor Christopher adjourned the meeting at 10:50 p.m.

Cindy Perry
Recording Secretary

APPROVED:
MAYOR:

Lore Christopher

COUNCIL MEMBERS:

____
Councilor #1 - Judy K. Smith

_________ABSENT_____________
Councilor #4 - Jacque Moir

____
Councilor #2 - Michel Gaynor

____
Councilor #5 - Richard Walsh

____
Councilor #3 - Charles E. Lee

____
Councilor #6 - Jim Taylor

Minutes approved:

____

City of Keizer
Keizer City Hall, P.O. Box 21000, Keizer, OR 97307-1000

FAXED

Fax Cover Sheet

DATE: May 13, 2003

TO:	Keizertimes - Scotta	FAX:	(503) 390-8023
FROM:	Tracy L. Davis, CMC City Recorder	**PHONE:** **FAX:**	(503) 390-3700 Ext. 108 (503) 393-9437

RE: Public Notice – Logo

Number of pages including cover sheet: 2

Message:

Please publish the attached notice in the ***May 16, 2003*** edition of the Keizertimes. I will put the original in your box here at City Hall.

If unable to publish in this edition or if you have any questions, please give me a call.

Thanks!

NOTICE OF PUBLIC HEARING

City of Keizer, Oregon

CITY OF KEIZER LOGO

NOTICE is hereby given that the City Council of the City of Keizer will hold a public hearing to gather input on the adoption of a new City logo. The logo being considered is the 20 year anniversary design, minus the 20 year notation. This logo will be used for all City letterhead, invoices, business cards, and other such promotional and business materials.

The hearing will be held on Monday, May 19, 2003 at 7:00 p.m. at the Robert L. Simon Council Chambers, Keizer City Hall, 930 Chemawa Road NE, Keizer, Oregon.

Anyone wishing to make comment on this matter may provide testimony at the hearing or submit written response to the City Recorder no later than 5:00 p.m. on May 19th, 2003. Responses may be mailed to Tracy L. Davis, City Recorder, P.O. Box 21000, Keizer, Oregon 97307.

The location of the hearing is accessible to the disabled. Please contact the City Recorder at 390-3700, extension 108 at least 48 hours prior to the hearing if you will need any special accommodations to attend or participate in the hearing.

If you have any questions, please contact Chris Eppley, City Manager at 390-3700.

Dated this 13th day of May 2003.

Tracy L. Davis
City Recorder

Publish May 15, 2003 edition of Keizertimes

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: DAN MEEK

Address: 10949 SW 4th AVE
PORTLAND

Subject or Agenda Item Number: MULTNOMAH COUNTY PUD

Your Comments:

Proponent ______ Opponent ✓ OF YOUR RESOLUTION General ______

Date 5/19/03

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Bill Quinn

Address: 4918 Shoreline Lp
Keizer Or.

Subject or Agenda Item Number: Traffic on River Road.
Less Curb Cuts—

Your Comments:

Proponent ______ Opponent ______ General ______

Date ______________________

PUBLIC TESTIMONY

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EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Marlene Kelly

Address: 275 Lakepoint Pl N
Keizer

Subject or Agenda Item Number: update on parks board

Your Comments:

Proponent ______ Opponent ______ General ______

Date 5/19/03

PUBLIC TESTIMONY

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EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Jerry McGee

Address: 1030 Ridgepoint St. N.E
Keizer

Subject or Agenda Item Number: Comm

Your Comments:

Proponent ______ Opponent ______ General ✓

Date 5/19/03

PUBLIC TESTIMONY

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EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: ERIC MEURER

Address: 517 LAKEFAIR PL.

Subject or Agenda Item Number: 8 (C)

Your Comments:

Proponent X Opponent ______ General ______

Date ______________________

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Arnie Vohland

Address: 6350 River Rd N

Subject or Agenda Item Number: 8C

Your Comments:

Proponent X Opponent ____ General ____

Date 5-19-03

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: G RANDY MUNSON

Address: 741-C BEVER DR. N.E

KEIZER

Subject or Agenda Item Number: NOISE ORDINANCE

Your Comments:

Proponent ______ Opponent ______ General ✓

Date 19 MAY 03

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Greg Pedersen

Address: 1345 Harmony

Subject or Agenda Item Number: 4 (8c)

Your Comments:

Proponent ______ Opponent ______ General ______

Date ______________________

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Robert Jacobs

Address: 1394 Marigold [illegible]
Salem OR

Subject or Agenda Item Number: [illegible]

Your Comments:

Proponent ______ Opponent ______ General ______

Date ______________________

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

NOTICE OF DECISION
FLOODPLAIN DEVELOPMENT PERMIT
CASE NO. 03-03

DAN KERR

APPLICATION: Application of Keizer Equestrian Center, LLC for a floodplain development permit to place 7 buildings within the identified 100-year floodplain of the Little Pudding River in an EFU (EXCLUSIVE FARM USE) zone for property located at 2828 Zee Lane NE, Keizer. (T6S; R3W; Section 25; Tax Lots 2900, 3501).

DECISION: Notice is hereby given that the Planning Director for Marion County has **APPROVED** the above described Floodplain Development application subject to certain conditions.

EXPIRATION DATE: This Floodplain Development Permit is valid only when exercised by **May 27, 2005**. The effective period of an approved application may be extended for an additional year subject to approval of an extension (Extension form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposed division or use is for land use purposes only. To be sure the subject property can accommodate the proposed use the applicant needs to check with the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before the approved use can be established:

1. Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest acknowledging that the property and the approved development are located in a floodplain. (Copy Enclosed)

2. The applicant shall submit a certification from a registered civil engineer meeting the requirements in Marion County Rural Zoning ~~Ordinance~~ (MCRZO) Section 178.050(D).

3. At the time of application for a building permit, the applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures meets the requirements of Section 178.060 where applicable.

4. At the time of application for a building permit, the applicant shall obtain a driveway permit for any new road access.

5. Prior to issuing a building ~~permit the~~ applicant shall provide a storm water drainage plan to Public Works. (Public Works; Matt Hendrick 588-5036)

6. The applicant shall comply with the construction requirements as they apply from section 178.060 (C), (D), (E), and (F) regarding elevation, floodproofing, anchoring, material, construction methods, and utilities.

7. Prior to issuance of any building permits, the applicant shall submit a manure management plan for review by the Marion County Planning Manager.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for obtaining other permits or satisfying any restrictions or conditions thereon.

8. The applicant shall contact and obtain all necessary permits from the following federal, state, and local agencies such as Division of State Lands.

9. Site grading shall not impact surrounding properties in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. (Public Works; Matt Hendrick 588-5036)

10. Any utility work in the public right-of-way will require a utility permit from Public Works. (Public Works; Matt Hendrick 588-5036)

11. The applicant shall prevent animal waste from discharging into the State waterways.

12. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.

APPEAL PROCEDURE: The Marion County Zoning Ordinance provides that Floodplain Development applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Any interested person who disagrees with the Director's decision may request that the application be considered by the Marion County Hearings Officer after a public hearing. The applicant may also request a reconsideration (one time only and a fee of $200) on the basis of new information subject to signing an extension of the 150-day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a $250.00 fee. Requests for reconsideration, or consideration by the Hearings Officer, must be in writing and be received in the Marion County Planning Division, 555 Court St. NE, 2nd Floor, Salem, by 4:30 p.m. on **May 27, 2003**. Please note an appeal directly to the Land Use Board of Appeals is not allowed under ORS 197.830. If you have any question about this application or the decision please call 588-5038 or visit the County Planning Office at the above address. This decision is effective **May 28, 2003** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: The findings and conclusions on which the Director based his decision are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan (MCCP) and correspondingly zoned Exclusive Farm Use (EFU). The primary intent of both the designation and zone is to promote and protect commercial agriculture. These areas are generally well suited for large-scale farming.

2. The property is just north of the Volcano Baseball Field. Access to the property is from the western end of Zee Lane or from 35th Avenue. The 72.85-acre property contains a 1985 dwelling, two machine sheds to the south, one large horse-barn to the west, a greenhouse, and an old barn to the east to be replaced. The southern portion of the subject property is in the 100-year floodplain of the Pudding River and Lake Labish. The Federal Insurance Rate Map #41047C0213C identifies the area as Zone A.

   The subject property is a legally formed parcel. In 1987 an application for a lot line adjustment was filed to transfer 19 acres to a 50 acre parcel, creating a 69-acre parcel and a 6-acre parcel. The Planning Director approved the application, LLA 87-14, on July 7, 1987. The actual resulting parcels created were the subject property of 72.85 and another parcel of 3.86 acres. Tax Lots 2900 and 3501 are considered on parcel; a lot line adjustment does not create a new parcel.

3. All surrounding properties are zoned EFU and are rural residential with a mixture of small and large farm uses. The Keizer city limits are towards the south and southwest. The Volcano Baseball Field is to the southeast of the subject property.

4. The applicant is obtaining a floodplain permit to place seven structures in the 100-year floodplain of the Lake Labish floodplain portion of the Pudding River. The requested structures are planned to be placed on the subject property over a period of time, along with other structures that will be out of the floodplain. The proposed structures in the floodplain are five barns (one is a replacement), a greenhouse, and a farm stand. A caretaker's dwelling is also proposed in the future, but it is proposed to be out of the floodplain.

5. Comments below are from other interested agencies. They may be a narrative of comments received. The full comments can be reviewed in the planning file.

FEMA Regional Office: Since this is greater than 5 acres, the Base Flood Elevation will need to be determined.

Marion County Emergency Management: With as many as 9 apparent stabling barns, what is the plan for bedding/animal waste management? Without some kind of runoff control, will some of the manure effluent runoff into Labish ditch?

Marion County Public Works:

- The subject property is within the unincorporated area of Marion County. Transportation and Parks System Development Charges shall be assessed upon application for building permits.
- In accordance with Marion County Driveway Ordinance #651, driveway permits will be required for any new access or change in existing access to the public right-of-way. Through the building permit process, the applicant shall be required to apply for a driveway permit or an exemption from the permit process. Public Works' staff will review the driveway at that time and determine if it is in compliance with current County standards. If an exemption is denied, the applicant will be required to apply for a driveway permit and make necessary changes to establish a compliant access.
- Any utility work in the public right-of-way will require a utility permit from Public Works.
- The County requires any development 0.5 acre or larger to provide storm water detention. The system shall be sized so that it will detain the difference between a 5-year frequency storm with pre-developed conditions and a 10-year frequency storm with developed conditions. Prior to issuing building permits, the applicant shall provide a storm drainage plan for the site that addresses drainage issues and includes detention elements.
- Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. Site grading shall no impact surrounding properties in a negative manner.

Salem Keizer Public Schools: Served by Gubser Elementary, Whiteager Middle, and McNary High.

Oregon Department of Agriculture: Owner/Operator needs to address animal waste issues, storage, application, etc. Prevent animal waste from discharging into waters of the State, ORS 468B.025. Prevent placing waste where they are likely to escape. ODA inspector for assistance: Jamie Bansen (503) 986-4780. Also contact Marion County Soil and Water Conservation District for technical assistance.

Marion County Building Inspection:

- Building Permits are required for all agricultural building within an identified 100-year floodplain;

- Elevation certificates of the site are required at the time of application for permits.
- Additional elevation certificates will be required during construction;
- All other applicable permits required by Building Inspection well be required;
- Septic Review and Permits will be required;
- Need more detailed information and an acceptable site plan for septic issues.

All other contacted agencies either failed to respond, or stated no objection to the proposal, at the time this report was written.

6. The purpose of the Floodplain Overlay Zone is to promote public health, safety and general welfare to minimize public and private losses due to flood conditions. The criteria and standards, which must be satisfied, are listed in Section 178.050, 178.060, and 178.070 of the Marion County Rural Zoning Ordinance (MCRZO).

7. Flood Insurance Rate Map # 41047C0213G indicates that the property is in an A Zone and the base flood elevation has not been determined. The applicant submitted a topography map of the site, but it does not indicate flood elevations.

8. Section 178.050 (A) of the Marion County Rural Zoning Ordinance (MCRZO) states the following:

   "Except as provided in Section 178.040 a conditional use permit (Floodplain Development Permit) shall be obtained before construction or development begins within the Floodplain Overlay Zone. The conditional use permit shall include conditions ensuring that the Flood Protection standards in Section 178.060 are met."

   The proposed project is not exempt from the regulations of the Floodplain Overlay Zone and requires a conditional use permit, as stated in MCRZO 178.040. The applicant needs to meet the Conditional Use requirements, which will be reviewed with this application process.

9. Section 178.050(C) of the MCRZO requires the following for any development in the floodplain:

   "Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest acknowledging that the property and the approved development are located in a floodplain."

   This will be made a condition of any approval.

10. Section 178.050(D) of the MCRZO requires the following for any activity in the floodplain:

   "Prior to obtaining a building permit, commencing development or placing fill in the floodplain the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill."

   Any approval will be conditioned to require this certification prior to issuance of building permits.

11. Section 178.050 (F) of the MCRZO requires the following prior to issuance of a building permit:

   "The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved manufactured homes, dwellings and structures meets the requirements of Section 178.060(A), (B) and (C) where applicable, as follows:

   (a) Prior to construction (based on construction drawings), and

(b) Once the floor elevation can be determined (based on the building under construction), and

(c) Prior to occupancy (based on finished construction)."

This will be a condition of approval for each of the proposed structures.

12. Section 178.060 of the MCRZO contains the following flood protection standards that apply in this case.

"(C) Non-residential development:

(1) New construction and substantial improvement of any commercial, industrial or other non-residential structures shall either have the lowest floor, including basement, elevated to two (2) feet above the level of the base flood elevation. Where the base flood elevation is not available, the lowest floor, including basement, shall be elevated to two (2) feet above the highest adjacent natural grade (within 5 feet) of the building site; or together with attendant utility and sanitary facilities, shall:

(a) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.

(b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(c) Be certified by a registered professional engineer or architect that the standards in this subsection and subsection (E) are satisfied. This certificate shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed.

(d) Non-residential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in 178.060(A)(4).

(e) Applicants floodproofing non-residential buildings shall be notified by the Zoning Administrator that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).

(2) New construction of any commercial, industrial or other non-residential structures are prohibited in the floodway. An exception to this prohibition may be granted if a floodplain development permit, and variance consistent with Section 178.080, are obtained. This prohibition does not apply to water dependent uses.

As a condition of approval the applicant will be required to build the structures two feet above the highest adjacent natural grade within five feet, or meet the floodproofing requirements as listed above. No identified floodway is on the subject property.

(D) Anchoring:

(1) All new construction and substantial improvements shall be anchored to prevent floatation, collapse or lateral movement of the structure.

This will be a condition of approval.

(E) Construction materials and methods:

(1) All new construction and substantial improvements below base flood level shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.

This will be a condition of approval.

(F) Utilities:

(1) Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.

This will be a condition of approval.

(H) Storage of materials and equipment - Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.

This will be a condition of approval.

13. Where elevation data is generalized, such as the unnumbered A Znes on the FIRM, conditional use permits shall include a review and determination that proposed construction will be reasonably safe from flooding and meet the flood protection standards. In determining whether the proposed floodplain development is reasonably safe, applicable criteria shall include, among other things, the use of historical data, high water marks, photographs of past flooding, or data (e.g. an engineering study or soil and landscape analysis) may be submitted by qualified professionals that demonstrate the site is not in a floodplain. In such cases, a letter of map amendment may be required by the Zoning Administrator. Based on the above discussion, Planning Division staff finds that the proposal, subject to certain conditions, is in conformance with the criteria in the Marion County Floodplain Ordinance.

14. One of the structures the applicant is proposing to place in the floodplain is a farm product stand. A farm stand is considered farm use if the only items sold are grown on the subject property. No permit is needed for a farm use. However, if items are obtained from neighboring farms to be sold, an Administrative Review application will need to be obtained prior to the sale of other farmer's products.

15. A caretaker's residence is proposed on the subject property in the future. At the time the applicant is ready to obtain the dwelling, the applicant shall apply for an Administrative Review Permit for a secondary dwelling that meets the requirements of MCRZO.

16. Based on the above information, the applicant's request to place 7 farm related structures in the floodplain would meet the criteria need for development within the floodplain. The proposed application is APPROVED.

Date: 5/14/03

Craig O. Luedeman
Director - Planning Division
Community Development Department

If you have any questions please contact Diane Rolph at (503) 5038.

5/18/03
Info submitted by
Don Meeks

OregonLive.com
Everything Oregon

Adding insult to injury at PGE

05/01/03

W e were mistaken last year in thinking there was no particular urgency to resolving the ownership of Portland General Electric. Tomorrow, PGE's parent company, Enron, crosses the 17-month mark since it filed for bankruptcy on Dec. 2, 2001.

The catalog of outrages just keeps growing.

As reported by The Oregonian's Gail Kinsey Hill, Enron paid the top five executives at PGE bonuses of $975,000 last year, the same amount they stand to collect this year. These are not bonuses as conventionally understood, for success in hitting an earnings goal or cost-cutting target; these are retention bonuses -- extra pay for just showing up.

We've been told that retention bonuses aren't unusual. They are often used to keep a troubled organization from losing top management.

But it's the wrong tactic for a company whose workers lost their 401(k) savings in worthless Enron stock. And it's an insult to customers hit with 30 percent and 50 percent power rate increases.

The disclosure of bonuses for the top executives at American Airlines forced it to renegotiate union contracts to stave off bankruptcy. It also forced the airline's chief executive to resign.

That apparently doesn't mean much at Enron. In addition to signing bonus checks, it has reportedly run up almost $400 million in fees and legal costs.

With the welcome news that the Oregon Public Utility Commission staff has recommended a more thorough investigation of PGE's practices comes the thought that there is greater urgency to the city of Portland's efforts to buy the company.

When Enron bought PGE, its main interest was Enron, not the well-being of the Northwest. PGE ownership by Portland would change that.

It can't happen soon enough.

Taxes down the rabbit hole

04/12/03

Lewis Carroll would feel right at home at Portland General Electric. The author of "Through the Looking Glass" would surely understand how PGE paid $10 in state taxes on taxable income of $21 million. It had a lot of deductions.

Ratepayers have every right to be as mad as March hares over PGE's earnings and tax statements. In fact, with deductions and special items, PGE reported total after-tax earnings of $66 million. But by PGE standards, 2002 was a tough year.

While PGE was saddled with costly contracts to buy power, the market cost of electric power declined. That cut into PGE's ability to make money selling power. Customer usage dropped 8 percent. The dramatic rate increases for commercial and residential customers simply weren't enough to offset all the business downturns.

On the bright side for PGE, it is permitted to add what it expects to collect in the future to its earnings today. That's all in line with generally accepted accounting procedures.

But what ratepayers should still want to know is: Where is the $10 million to $12 million PGE collected from ratepayers as taxes in 2002? The Oregon Public Utility Commission permits the utility to collect those taxes from ratepayers based on its projected earnings. But because PGE didn't make as much as it expected, and its costs were higher than projected, its tax bill came in much lower than forecast. Ten dollars to the state and $210,508 to the feds.

If ratepayers can't understand that, it's because taxes are so confusing. Right. That sounds remarkably like the dismissive explanations Enron once gave stock analysts who couldn't make sense of its financial reports.

After the demise of PGE's parent company Enron, The Oregonian reported on the disappearance of Oregon ratepayers' tax collections down the Enron rabbit hole. That's also legally permissible when a company is owned by an out-of-state corporation.

Oregon could change that. There are certainly downsides to making subsidiaries of out-of-state corporations pay taxes directly to the states in which they do business. But PUC member Joan Smith says there's no reason why Oregon lawmakers can't explore doing that for regulated state utilities.

And given the experience Oregon taxpayers have had with Enron and PGE, there's every reason that they should.

Read this. Then sign the petition!

Oregon Public Power Coalition

818 SW 3rd Ave, PMB #1335; Portland, OR 97204-2405 – http://www.oppc.net
Call Bill at 503 916-4102 or email liz@oppc.net or joan@oppc,net

Why *Public* Power Is The *Best* Power

People's Utility Districts solve the **PGE/*E*nron mess** for Oregonians:

Provide stable, local control:

- **Locally owned** and **controlled**: board of directors **directly elected by voters**
- **Stable power supply**: Cannot be sold at the whim of a private corporation
- Independent of the **Oregon Public Utility Commission**, which **approved the sale of PGE to Enron** and than **OK'd the largest rate hike** in Oregon history

Good for Labor:

- **Must honor existing union contracts** of PGE's workers
- **No over-priced executives** draining money from workers
- **No absentee ownership**: Local control is invested in employees
- Multiple PUDs = a **larger job market** No corporate mergers = **stable jobs**

Lower Costs:

- Will get PGE's assets at the **lowest price** by using eminent domain: **doesn't bid at the Enron bankruptcy auction**
- Get wholesale power at **low rates unavailable to private utilities**
- **More money stays at home**: doesn't pay Federal income taxes
- **Provide power to citizens,** not profits to shareholders: *14% of your PGE bill goes to shareholders!*
- **No over-priced executives** draining money from the ratepayers

Good for the Environment:

- Can make decisions based on **best environmental practices, not** highest income to shareholders
- Can develop **renewable**

With a **People's Utility District**, we can **control our energy future**.

We will **not be subject to absentee owners** who put profit before public service!

Enron Corruption:
The Oregon Connection

Oregon will suffer more economic loss from Enron's corruption than any other state, largely because in 1997 Enron bought Oregon's largest electric utility, Portland General Electric Co., which it still owns.

Oregon was first with a bottle recycling bill and first with public access to beaches. And now Oregon is definitely in first place when it comes to being swindled by Enron.

Oregon is # 1 per capita in:

1. **Political campaign contributions by Enron and its executives since 1997 (mainly through PGE).** PGE has contributed money to a majority of the senators and representatives in the Oregon legislature.
2. **Dollars lost on Enron stock by the State employee pension fund ($80 million).**
3. **Dollars lost by employees in their 401k pension plans (over $100 million).** Enron executives urged employees to put all of their 401k money into Enron stock, while they were urgently selling off their shares.
4. **Electric rate increases imposed by Enron/PGE (over $400 million per year).** The Oregon Public Utility Commission allowed Enron/PGE to raise rates by 41% overall, 53% for business customers, in October 2001.
5. **Money collected from ratepayers to pay PGE federal taxes was sent to Enron, but never paid to the IRS. ($357 million over past 4 years)**
6. **Money in the hands of multi-millionaires due to cashing out of Enron stock.** PGE's former CEO, Ken Harrison, cashed out his options in 2000 for a cool $75 million! Former PGE treasurer, Joe Hirko, cashed his for a measly $35 million.

IT'S TIME FOR PUBLIC POWER IN OREGON

Instead of transferring PGE to another private company and suffering more rounds of financial manipulations, the **Oregon Public Power Coalition** is calling for transferring PGE assets to a public power entity.

Consequently, the **OPPC** is working to **create a People's Utility District (PUD) that would own and operate PGE's assets.**

Last summer, voters in the PGE service area began collecting signatures to place People's Utility District on the May ballot. One need look no further than McMinnville or Forest Grove to see that publicly-owned utilities have rates far below PGE's. A 1999 study by a consultant to the City of Portland concluded that public ownership of PGE would reduce electricity costs by about 20%.

Oregon Public Power Coalition

Public Power: Good for Business

"These rates, and they are very high rates, are sucking the life out of the local economy."
Ken Canon, Executive Director, Industrial Customers of Northwest Utilities, on PGE/Enron rates.

Business Suffers In a Volatile Power Market

- Small businesses – without the profit margin to absorb higher rates – get hit first and hardest.
- It's impossible to stay ahead of spiking rates in manipulated markets.
- The volatility that devastated Oregon's economy would not have occurred if PGE **had been** in the hands of ratepayers instead of in Enron's.
- Electric rates affect the costs of everything we buy, from apples to airplanes.

When business suffers, we all suffer.

Electric Utilities Are Different From Other Businesses

- Utilities are monopolies. They are **guaranteed a profit**!
- Businesses can't choose a power company.
- Ratepayers acquire utility assets through our rates. When they are sold, we pay for them **again!** You wouldn't pay for equipment to be used by another company, and then buy it again for twice its value when the first company went belly up and was replaced by another.
- Making PGE public is not stealing private assets. We're just claiming what we've paid for.

That's just plain good business!

People's Utility Districts Protect Business Interests

- A PUD pays the depreciated book value of PGE (*just compensation*) under eminent domain, not whatever the market will bear. This can **save** up to several **billion** dollars.
- A PUD replaces the Public Utility Commission's ineffectual oversight with a board of directors **elected by the ratepayers.** They'll have our local interests at heart.
- A PUD is run by the excellent front line employees who handle the day-to-day functions of PGE right now. What's missing? The huge money top management has been getting.

PGE workers and the communities in PGE's service area have lost 100s of millions of dollars. This doesn't happen with PUDs.

<u>Public Power Is In All Our Interests</u>

We can protect our businesses and our families far into the future by securing this vital resource.

During the recent nightmare in California, the only ratepayers who did not suffer rolling blackouts were those served by public power. Public power makes sense for business. Privately held power is a gamble – we've already lost at the table once, why would we go there again?

Join us. Let's create public power and bring utility costs under control.

UTILITY REFORM PROJECT

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* PRESS RELEASE * PRESS RELEASE * PRESS RELEASE * PRESS RELEASE *

April 29, 2003

OPUC STAFF DENIES 1997 ENRON TAKEOVER OF PGE AGREEMENT COMMITMENTS HOLD WATER

In a report released today, the Staff of the Oregon Public Utility Commission (OPUC) examined the tip of the iceberg of PGE transactions with Enron which the staff of the Federal Energy Regulatory Commission (FERC) have found to be unlawful or suspicious. The OPUC Staff recommended that the Commission "open an investigation into possible mismanagement by PGE related to the 17 day transactions and the posting errors."

Looking at only these transactions amounts to disregarding the vast bulk of PGE's questionable transactions. For all of the other suspicious trading activities, the OPUC Staff recommends waiting for the FERC to complete its ongoing proceeding.

> **In addition, and more important, the OPUC Staff took a new position--that the agreements made by Enron, in writing, as conditions attached to the approval of its takeover of PGE in 1997, are not enforceable.**

The OPUC's 1997 order granting OPUC approval for the takeover contained "Conditions" that Enron affirmatively agreed to. "In 1997, I testified before the OPUC that these Conditions were vague and meaningless," said Dan Meek, attorney for the Utility Reform Project (URP). Enron, PGE, and the OPUC Staff responded that the Conditions were indeed enforceable and amounted to a great benefit for PGE ratepayers. The Commission itself stated:

> **The Commission finds that the conditions which URP labels "meaningless" enhance the** ability of the Commission to control affiliate abuse, prevent cross-subsidy, and protect Oregon ratepayers. [OPUC Order No. 97-196, approving Enron takeover of PGE]

"Condition 10" was supposed to guarantee that PGE ratepayers "shall be held harmless if the merger between Enron and PGC results in a higher revenue requirement to PGE than if the merger had not occurred." Now the OPUC Staff has changed its tune and claims that "Condition 10" cannot be enforced, because Enron is bankrupt.

Under "Condition 21," Enron agreed that, if PGE or Enron violates any of Conditions 1-20 (except 11 and 18), then the OPUC can impose penalties upon Enron without first obtaining a court order. Now, the OPUC Staff states that "Condition 21" also cannot be enforced, because it somehow "conflicts with the language and interpretation of ORS 756.990 and cannot trump the statute."

"This makes no sense," said Meek. "A corporation can lawfully agree to enforcement procedures that are more strict than required by statute. But I am certainly not surprised that the OPUC would back away from enforcing the Conditions agreed to by Enron."

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May 16, 2003

PGE STIFFS STATE OF OREGON AND IRS AGAIN ON 2003 1st QUARTER INCOME TAXES

PGE SENDS TO THE ENRON RATHOLE ANOTHER $21 MILLION IN "TAXES" PAID BY OREGON RATEPAYERS

Yesterday, Portland General Electric Co. (PGE) revealed in its 1st Quarter 10-Q Report to the Securities and Exchange Commission (SEC) that PGE is again stiffing the State of Oregon and the federal government of all income tax payments.

The PGE report stated that, instead of sending any money to Oregon Department of Revenue or to IRS for the 1st Quarter of 2003, PGE sent $21 million of "income taxes" to Enron, which will not be paying any of that money to any government. PGE collected this money from Oregon electricity ratepayers. In fact, PGE is currently charging Oregon ratepayers $15.6 million for "state income taxes" and $77 million for "federal income taxes" for 2003. But PGE is not paying any of this money to the state or federal governments.

The PGE 10-Q states:

> Based on discussions with Enron's management, PGE management understands that Enron has treated PGE as having ceased to be a member of Enron's consolidated group on May 7, 2001 and becoming a member of Enron's consolidated group once again on December 24, 2002. On December 31, 2002, PGE and Enron entered into a tax sharing agreement pursuant to which PGE agreed to make payments to Enron that approximate the income taxes for which PGE would be liable if it were not a member of Enron's consolidated group. As of April 30, 2003, PGE has paid $21 million to Enron under the tax sharing agreement.

The PGE 10-Q further states that Enron will not be paying any of the $21 million to any government:

> Enron's 2002 tax return has not yet been filed. As noted in paragraph B. above, Enron expects to have substantial NOLs [net operating losses] from operations in years preceding 2002. Enron expects that, in addition to offsetting its income tax liabilities for years before 2002, **these NOLs will be sufficient to fully offset Enron's regular and alternative minimum income tax liabilities for 2002 and its regular income tax liability for all subsequent periods through the date of consummation of its plan of reorganization.**

"It is outrageous that the Oregon Public Utility Commission continues to allow PGE to charge ratepayers $93 million per year for federal and state income taxes, when it knows full well that none of that money is going to the federal or state governments," said Dan Meek, attorney for URP. "The Commission has refused to do anything about this, despite our requests."

Since the Enron takeover of PGE in 1997, PGE ratepayers have now paid over $453 million to PGE to cover the alleged cost of its "federal income taxes" and over $93 million to cover the cost of its alleged "state income taxes," for a total of over $446 million. To date, there is no evidence that any of this money went to any government, except that PGE for 2002 paid $221,000 in federal income taxes in 2002 and $10 in state income taxes. For the 1st Quarter of 2003, PGE ratepayers paid to PGE $19 million for "federal income taxes" and $4 million for "state income taxes."

For more information, consult: http://www.oppc.net

PGE ENGAGED IN LARGEST TAX AVOIDANCE SCHEME IN OREGON HISTORY

In 1997, Enron bought up and took over PGE, with the approval of the Oregon Public Utility Commission (OPUC). I testified at the OPUC against the takeover:

> "The purchase would harm PGE ratepayers and impair the development of competitive markets in power supply and energy conservation. . . . Protecting Oregon ratepayers from complicated shell games will be an entirely new and more difficult task for the PUC."

I fought the takeover in the Oregon courts for 3 years but lost (December 2000).

One element of Enron's "shell games" was avoidance of income taxes. PGE became part of Enron's "consolidated tax group" for filing of all federal, state, and local corporate income taxes. During the years 1997-2001, PGE included in its electric rates a line item for "federal income taxes" of $71.4 million and a line item of $14.7 million for "state income taxes." PGE then collected these amounts from us, the Oregon ratepayers, for a total of $286 million for federal income taxes and $74 million for state income taxes for those 5 years.

But then PGE never paid these taxes. Instead, PGE just sent to money to Enron, which had created over 800 subsidiary corporations in the Cayman Islands and other offshore tax havens in order to defraud the governments of tax payments. Enron documents show that Enron considered its tax department as a "profit center" and required the use of tax avoidance schemes which have been found fraudulent in subsequent investigations by the U.S. Senate Finance Committee and by special examiners in the Enron bankruptcy case.

In the year 2002, PGE was "de-consolidated" from Enron. PGE in 2002 collected from Oregon ratepayers $77 million to pay its federal income taxes and $15.6 million to pay its state income taxes, for a total of $92.6 million out of our pockets. **But PGE actually paid only $10 in state income taxes and $211,000 in federal income taxes. PGE kept 99.8% of the money for itself!**

PGE is now re-consolidated with Enron for 2003 taxes. That means that the $92.6 million PGE is collecting **right now** from Oregon ratepayers will never be paid to any government. Enron has stated in its reports to the SEC that it has such huge losses that it will not be paying any income taxes in any year. **Thus, the scam is continuing right now and is costing us $1.8 million per week!** As of the end of 2003, we will have paid to PGE over $440 million for "federal income taxes" and $105 million for "state income taxes," when in fact none of that money will go to the governments, except the $10 and $211,000 that went there in 2002. **In my opinion, this is the biggest tax fraud in Oregon history.**

I have filed complaints and petitions for investigation at the OPUC, but the Commissioners have done absolutely nothing, except spread false information about the "taxes" that PGE has "paid." The PUC refused to even ask PGE to disclose how much money it has paid in state and local income taxes since it was taken over by Enron. It appears from my examination of the records that the federal and state governments have actually paid millions of dollars to PGE in the form of tax credits, even though PGE had paid essentially nothing in federal income taxes since 1995.

PGE claims it has "paid" its taxes merely by paying some of the money to Enron, which in turn merely kept the money. The universal dictionary definition of "tax" is money assessed by and paid to the government. It does not include money paid to and kept by other corporations.

This is not just a corporation avoiding its fair share of taxes. It is a state-granted monopoly corporation collecting "income tax" money from Oregon ratepayer under fraudulent premises and then keeping the money--more than enough to pay PGE's enormous bonuses for the executives. PGE president Peggy Fowler was paid $979,000 in 2002, with a phalanx of other officers being paid over $500,000 each.

'S NEWS

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Report links PGE to scheme

The utility disputes regulators' claim that it helped Enron devise a deceptive trading strategy during the 2000-01 energy crisis

By **GAIL KINSEY HILL**
THE OREGONIAN

Portland General Electric helped Enron Power Marketing develop a scheme to manipulate California's electricity grid during the 2000-01 energy crisis, according to the staff of the Federal Energy Regulatory Commission.

The trading scheme, nicknamed "Death Star" by Enron traders, allowed the Houston-based Enron to receive payments from California for relieving congestion on the state's transmission lines even though no electricity actually flowed on the system.

The staff report, obtained Friday by The Oregonian, claims that the arrangements between PGE and Enron Power Marketing violated codes of conduct outlined in federal regulatory tariffs. The transactions also undermined the federal energy commission's ability to ensure just and reasonable wholesale power prices, the staff said.

PGE, a subsidiary of Enron and Oregon's largest utility, emphatically objected to the way the report characterized the trades. The assertions are "just the first step in the trial process" aimed at investigating energy markets during the power crisis, said Jay Dudley, PGE's associate general counsel.

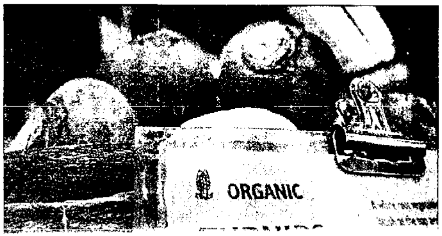
The staff report, which lays out assertions from a three-month investigation, will help provide the basis for a hearing before the full federal commission.

"We resolutely disagree with the FERC trial staff's assertions and with their characterization of PGE's actions," PGE Chief Executive Peggy Fowler said in a statement. "In all the information we have provided to FERC, we found no evidence of intentional wrongdoing on PGE's part."

Earlier this year, PGE submitted to federal regulators a detailed report of trades conducted with Enron in which it admitted it may unwittingly have helped complete "Death Star" transactions on 15 to 17 days beginning in April 2000. It also admitted that it failed to correctly account for many of its transactions

Please see **PGE,** Page B5

Organics stake out their turf



Organic turnips are clearly marked at the

WorldCom taps H-P's Capellas as new CEO

Utility	Residential			Commercial			Industrial			Year
	Revenue ($ millions)	Sales (MWh)	Price (cents /MWh)	Revenue ($ millions)	Sales (MWh)	Price (cents /lwh)	Revenue ($ millions)	Sales (MWh)	Price (cents /lwh)	
Portland General Electric Co	**567000**	**7058000**	**8.033**	550000	**7101000**	**7.745**	**269000**	**4612000**	**5.833**	2002
Oregon Trail Coop	19450	255587	7.610	12220	187783	6.508	8808	170836	5.156	2001
Douglas Electric Coop	7727	110932	6.966	1204	17300	6.960	713	17699	4.028	2001
Consumers Power	16708	244126	6.844	3155	48746	6.472	2568	48958	5.245	2001
Tillamook P.U.D.	13793	202794	6.801	6363	114434	5.560	2690	70264	3.828	2001
Blachly-Lane Cnty Coop El Assn	3435	52479	6.545	2179	45054	4.836	2093	55692	3.758	2001
PacifiCorp	323610	4961181	6.523	242617	4406128	5.506	183152	3928226	4.662	2001
Lane Electric Cooperative	11708	181421	6.453	1915	30799	6.218				2001
Central Electric Coop	22316	356232	6.264	4324	72131	5.995	1112	27083	4.106	2001
Midstate Electric Coop	11073	185433	5.971	3678	60916	6.038	1429	28460	5.021	2001
Coos-Curry Electric Coop	10830	182596	5.931	5324	91425	5.823	1992	41953	4.748	2001
Columbia River P.U.D.	10236	175362	5.837	4936	81857	6.030	6462	180822	3.574	2001
Emerald P.U.D.	13588	239089	5.683	4976	85212	5.840	5021	106822	4.700	2001
Umatilla Electric Coop Assn	8433	150110	5.618	17406	430153	4.046	6201	187618	3.305	2001
Salem Electric	9374	166927	5.616	4845	97753	4.956	5095	114975	4.431	2001
Eugene Water Electric Board	53648	980424	5.472	69289	1666700	4.157				2001
Central Lincoln P.U.D.	21302	404369	5.268	9590	202084	4.746	16846	544405	3.094	2001
Northern Wasco County P.U.D.	5698	113623	5.015	1290	29973	4.304	4826	145239	3.323	2001
Canby Utility Board	3418	68543	4.987	1940	40860	4.748	1331	28891	4.607	2001
City of Ashland	4015	86856	4.623	3186	77650	4.103				2001
City of Springfield	16915	367654	4.601	7020	55914	12.555	6775	277937	2.438	2001
City of Forest Grove	4112	105049	3.914	1688	45737	3.691	2806	84879	3.306	2001
City of McMinnville	7000	188626	3.711	7661	172137	4.451	11062	460744	2.401	2001
Clatskanie P.U.D.	2350	68270	3.442	1084	28085	3.860	17504	521200	3.358	2001

283 B.R. 41
(Cite as: 283 B.R. 41)

H

United States District Court,
N.D. California.

In re PACIFIC GAS AND ELECTRIC CO., Appellant, Cross-Appellee, Debtor and Debtor in Possession.

No. C-02-1550 VRW.
Bankruptcy No. 01-30923 DM.

Aug. 30, 2002.

Interlocutory order was entered disapproving debtor-utility's Chapter 11 disclosure statement. Following certification of order for immediate appeal, 275 B.R. 1, the District Court, Walker, J., ruled that bankruptcy statute indicating that reorganization plan must provide adequate means for its implementation, notwithstanding any otherwise applicable nonbankruptcy law, expressly preempted California state law requirements for agency approval of restructuring of regulated debtor-utility, and suspended such laws to extent necessary for debtor-utility's reorganization.

Reversed and remanded.

West Headnotes

[1] Bankruptcy 3782
51k3782 Most Cited Cases

Bankruptcy court's interpretation of the Bankruptcy Code is reviewed de novo. Bankr.Code, 11 U.S.C.A. § 101 et seq.

[2] Bankruptcy 3553
51k3553 Most Cited Cases

Section of the Bankruptcy Code providing that, "[n]otwithstanding any otherwise applicable nonbankruptcy law, a plan shall...provide adequate means for [its] implementation," was intended by Congress to expressly preempt any nonbankruptcy laws which would otherwise apply to bar, inter alia, transactions necessary to implement a plan of reorganization. Bankr.Code, 11 U.S.C.A. § 1123(a)(5).

[3] Bankruptcy 3553
51k3553 Most Cited Cases

Bankruptcy statute indicating that reorganization plan must provide adequate means for its implementation, notwithstanding any otherwise applicable nonbankruptcy law, expressly preempted California state law requirements for agency approval of restructuring of regulated debtor-utility, and suspended such laws to extent necessary for debtor-utility's reorganization, though it did not exempt reorganized entities from having to comply with otherwise applicable state laws on a going-forward basis. Bankr.Code, 11 U.S.C.A. § 1123(a)(5).

[4] Statutes 181(2)
361k181(2) Most Cited Cases

[4] Statutes 189
361k189 Most Cited Cases

Argument that absurd and/or undesirable consequences flow from a particular statutory construction is of little direct relevance to statutory interpretation, nor must court consider absurd consequences of statutory construction, potentially embraced by the literal language of act, when matters at issue do not test the margins of the act but fall within heartland.

[5] Statutes 199
361k199 Most Cited Cases

Term "notwithstanding" is well recognized as term used to express broad preemptive intent.

[6] Bankruptcy 3501
51k3501 Most Cited Cases

Paramount policy and goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of debtor. Bankr.Code, 11 U.S.C.A. § 1101 et seq.

[7] Bankruptcy 3501
51k3501 Most Cited Cases

Fundamental purpose of Chapter 11 reorganization is to prevent debtor from going into liquidation, with attendant loss of jobs and possible misuse of economic resources.

*42 ORDER

WALKER, District Judge.

PG & E appeals from a March 18, 2002, order of the bankruptcy court, entitled "Order and Judgment Disapproving Disclosure Statement; Rule 54(b) Certification" (bankruptcy order), which embodies a ruling issued on February 7, 2002, entitled "Memorandum Decision Regarding Preemption and Sovereign Immunity" (bankruptcy decision). Doc. # 1. On June 24, 2002, the court denied a motion to dismiss PG & E's appeal filed by The People of the State of California, the California Public Utilities Commission (CPUC) and the City and County of San Francisco (collectively, objectors). Doc. # 68. The court determined that the bankruptcy court's F.R.C.P. 54(b) certification was proper and, consequently, that appellate jurisdiction exists as of right, pursuant to 28 U.S.C. § 158(a)(1). In the alternative, the court granted PG & E's "protective" motion for leave to file an interlocutory appeal, pursuant to section 158(a)(3), determining that in the event the bankruptcy court's F.R.C.P. 54(b) certification was not proper, the court would still exercise its discretion to hear this appeal.

*43 This appeal poses a discrete question of statutory interpretation of tremendous importance to one of the largest bankruptcies in United States history.

I

This matter, like many others currently in federal court and in this district, including an action filed by PG & E against the CPUC, is tied to California's attempt to restructure its regulatory scheme for the generation and sale of electricity. In *PG & E v. Lynch*, 216 F.Supp.2d 1016, 2002 U.S. Dist LEXIS 13895 (N.D.Cal.2002), the undersigned discussed at length California's statutory scheme implementing this restructuring, the energy crisis beginning in the summer of 2000 and the resulting effects on PG & E. The court will not repeat this discussion here, although it provides the backdrop for PG & E's bankruptcy and the instant appeal.

On April 6, 2001, claiming that the combination of the energy crisis and the retail rate freeze enacted as part of California's restructuring scheme had ruined its credit rating and led to "billions of dollars in defaulted debt and unpaid bills," PG & E Br. (Doc. # 14) at 5, PG & E filed a voluntary petition under chapter 11 of title 11 of the United States Code (bankruptcy code) in the United States Bankruptcy Court for the Northern District of California. On December 19, 2001, PG & E and its parent company filed their first amended plan (December plan) of reorganization and their first amended disclosure statement. See E.R. at 153, 207.

Central to the December plan is the disaggregation of PG & E, which involves the creation of three new limited liability companies and the separation of PG & E's operations into four lines of business, reflecting PG & E's historical functions: retail gas and electric distribution; electric transmission; interstate gas transmission and electric generation. As a result of the reorganization contemplated by the plan, four companies, all subsidiaries of PG & E's parent company, would emerge from bankruptcy: ETrans, containing PG & E's electric transmission assets; GTrans, PG & E's gas transmission assets; Electric Generation (Gen), PG & E's generation assets; and the Reorganized PG & E, which would continue in the retail sale and distribution of electricity and gas. According to PG & E, the entities involved in electric transmission, interstate gas transmission and electric generation will no longer be subject to the regulatory jurisdiction of the CPUC after reorganization, but will be under the exclusive ratemaking jurisdiction of the Federal Energy Regulatory Jurisdiction (FERC). The Reorganized PG & E would remain under the CPUC's regulatory jurisdiction, subject, however, to the limits imposed upon that jurisdiction by federal law. See *PG & E v. Lynch*, 216 F.Supp.2d 1016, 2002 U.S. Dist. LEXIS 13895.

Absent preemption, state law poses a formidable obstacle to the execution of several of the central transactions required to carry out the plan. For example, a critical feature of the plan is the transfer of PG & E's retained generation to the new limited liability company, Gen. According to the CPUC, however, such a transfer of generation assets would be illegal under California Public Utilities Code § 377, enacted in January 2001, which prohibits an owner of electric generation facilities from disposing of any such facilities until January 1, 2006. The

CPUC also contends that several of the critical transactions proposed in the plan require state regulatory review and approval under state health, safety, welfare and environmental statutes, including the California Environmental Quality Act *44 (CEQA). Under California Public Utilities Code § 851, for example, PG & E would ordinarily be required to obtain state approval to sell, lease or spin off its utility facilities. According to the CPUC, an application for such approval requires an environmental review under CEQA.

As noted in this court's June 24 order, the CPUC objected to PG & E's disclosure statement in the proceedings below. The CPUC asserted that the proposed reorganization (1) impermissibly sought to preempt state and federal law not subject to preemption and (2) sought declaratory and injunctive relief against California in violation of principles of sovereign immunity. In response to the former objection (the latter is not at issue in this appeal), PG & E asserted that all state--and most if not all other non-bankruptcy--laws are expressly preempted by § 1123(a)(5) of the bankruptcy code insofar as they purport to prohibit, veto or nullify transactions necessary to implement the restructuring proposed in the plan. Pursuant to § 1123(a)(5), PG & E asserted that a confirmation order approving its plan and authorizing the transactions contemplated by the plan would:

> preempt "otherwise applicable nonbankruptcy law" in the following areas: (1) any approval or authorization of the CPUC or compliance with the California Public Utilities Code or CPUC rules, regulations or decisions otherwise required to transfer public utility property (including authorizations to construct facilities), issue securities and implement the Plan; and (2) the exercise of discretion by any other state or local agency or subdivision to deny the transfer or assignment of any of the Debtor's property, including existing permits or licenses, or the issuance of identical permits and licenses on the same terms and conditions as the Debtor's existing permits and licenses where both the Reorganized Debtor and one or more of ETrans, GTrans and Gen requires such permit or license for their post Effective Date operations.

First Am. Disc. Statement (ER 346).

Notably, PG & E contends that the preemption authorized by § 1123(a) occurs "at the time the Plan is implemented." *Id.* In other words, PG & E does not contend that its reorganization plan has the effect of preempting application of nonbankruptcy law that would apply to the reorganized PG & E and the new entities after reorganization. Rather, PG & E explicitly concedes that the four companies emerging from bankruptcy will be subject to all applicable state and federal law on a going-forward basis. Moreover, PG & E states that it intends to follow "the established procedures for the transfer of most permits and licenses," as many of these procedures are "ministerial or governed by objective criteria that make it unlikely that the agency or subdivision could act or fail to act in a way that would interfere with consummation of the Plan." *Id.* PG & E seeks to be free only from nonbankruptcy requirements that threaten the reorganization provided for in the plan. To be sure, PG & E's concern that, absent some form of preemption, state actors such as the CPUC could exercise a veto over PG & E's proposed reorganization is not without basis. Throughout its brief filed in this matter, the CPUC makes clear its displeasure not just with PG & E's attempt to evade state regulatory processes, but with the goal PG & E is pursuing and, in particular, the transfer of regulatory control from the state to FERC over several of PG & E's lines of business. According to the CPUC this is not a desirable outcome, as "federal regulation is not an adequate substitute for state regulation on many practical levels." CPUC Br (Doc. # 78) at 13.

*45 On February 7, 2002, the bankruptcy court issued its memorandum decision regarding preemption and sovereign immunity, rejecting PG & E's "across-the-board, take-no-prisoners" claim that § 1123(a)(5) allows it to "disaggregate with unfettered preemption of any contrary nonbankruptcy law." Bankr. Dec. (ER 863) at 46, 40. In a lengthy decision, the bankruptcy court rejected

> the notion that Congress, without a hint in the legislative history in a section of the Bankruptcy Code entitled "Contents of Plan," and using words calling for "adequate means for the Plan's implementation," intended to permit a debtor's plan--confirmed by a bankruptcy judge (not by legislative act, as in most preemption situations)--to obliterate a whole area of jurisdiction and authority traditionally left to state law.

Id. at 22-23.

Although rejecting PG & E's claim that nonbankruptcy laws otherwise applicable to the restructuring transactions proposed in the plan were expressly preempted by the bankruptcy code, the bankruptcy court did not, however, finally determine that state laws operating as impediments to PG & E's proposed reorganization could not be preempted under principles of implied preemption. Indeed, the bankruptcy court expressed its "belie[f] that the Plan could be confirmed if Proponents are able to establish with particularity the requisite elements of implied preemption;" and noted that "[i]f the Disclosure Statement is amended consistent with this Memorandum Decision, the court will approve it and let the Proponents test preemption at confirmation." *Id.* at 3. The bankruptcy court directed PG & E to identify, as part of its attempt to show implied preemption, the laws it wished to preempt and "to state in summary fashion" why the laws should be preempted. *Id.* at 40.

Recognizing the centrality of the issue it decided, the bankruptcy court certified its decision for immediate appeal, pursuant to F.R.C.P. 54(b), made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 7054(a) and Fed. R. Bankr. P. 9014:

> This is a Chapter 11 case of enormous significance to thousands of creditors owed billions of dollars. It is clearly one of the largest bankruptcies in United States history, and definitely the largest involving a public utility. An attempt by a utility to free itself from state regulation to the extent contemplated by the Plan is virtually without precedent. Further, PG & E expects to pay creditors in full with interest, but already this case is nearly a year old and further delay should be avoided. Creditors have a real economic interest in a speedy resolution of this case. If a court on appeal believes that express preemption is available here, the rule of law should be settled forthwith.

Bankr. Order (ER 924) at 5-6.

[1] As noted, this court determined that certification was proper. The bankruptcy court's judgment is, therefore, properly before the court, pursuant to 28 U.S.C. § 158(a)(1). This appeal poses essentially a single question of statutory interpretation. The bankruptcy court's interpretation of the bankruptcy code is reviewed de novo. See, e.g., *Tighe v. Celebrity Home Entm't, Inc.*, 210 F.3d 995, 997 (9th Cir.2000).

II

A

[2][3] In relevant part, § 1123(a) provides:

> (a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall--
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> * * * * * *
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> *46 (5) provide adequate means for the plan's implementation, such as--
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> * * * * * *
>
> (B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

The court first notes that, although it may sometimes seem so from the parties' briefs and the oral arguments at the hearing on this appeal, this is not a matter of deciding whether § 1123(a) expressly preempts some nonbankruptcy law or impliedly preempts some bankruptcy law. There is, in fact, no question that § 1123 expressly preempts some nonbankruptcy law-- both parties agree that the "notwithstanding" phrase has some express preemptive meaning--the dispute is over which laws are preempted and in what context. With respect to this dispute, the parties' interpretation of the statutory section differ widely.

The CPUC contends, and the bankruptcy court essentially agreed, that § 1123 is merely a "directive" statute, specifying in subsection (a) thereof what *must* be put in a reorganization plan and in subsection (b) what *may* be put in a reorganization plan. The purpose of the section is to require "that adequate information be provided that would enable a hypothetical investor typical of holders or claims or interests of a relevant class to make an informed judgment about the plan." Bankr. Dec. at 22. Under this interpretation, the central phrase in dispute, "[n]otwithstanding any otherwise applicable nonbankruptcy law," merely clarifies that "the debtor's obligation to set forth adequate means for the plan's implementation in the proposed plan may not be altered or varied by any nonbankruptcy law." CPUC Br. (Doc. # 78) at 20. This phrase then is rather innocuous, adding little to the provisions of the section. Indeed, notwithstanding its apparent application to all paragraphs in subsection (a), the CPUC is not completely convinced that "[t]he 'notwithstanding' phrase * * * applies to section 1123(a)(5) at all." *Id.*

PG & E contends, by contrast, that § 1123 does not merely clarify what must and may go into a plan, but substantively empowers debtors to engage in certain actions unfettered by otherwise applicable nonbankruptcy laws, including all the means by which the plan may be implemented specified in § 1123(a)(5). In short, § 1123(a)(5) preempts all nonbankruptcy laws "that are obstacles to the transactions and steps necessary to effect a reorganization plan." PG & E Br. (Doc. # 14) at 3. Under this interpretation, state laws and regulators may not stand as an impediment to the restructuring provisions of a chapter 11 plan of reorganization, although these laws will again apply to the reorganized debtor and any new entities created pursuant to the plan.

The California Hydropower Reform Coalition (CHRC) and the United States Environmental Protection Agency (EPA) have both weighed in on the subject. See Docs 70 and 74. The CHRC essentially mimics the CPUC's position. The EPA, although noting that PG & E has "stated that [it] intend[s] to comply with all federal regulatory laws and obtain all federal approvals necessary to implement its proposed plan," asserts that, in its view, PG & E's interpretation of the preemptive effect of § 1123(a) is too broad.

PG & E is, however, indeed correct that its interpretation of § 1123(a) is consistent with that of every court to address the issue, except, of course, the bankruptcy court below. After careful consideration, the court is convinced that the bankruptcy court's determination that § 1123(a) merely directs the debtor to place certain items *47 in its reorganization plan is erroneous. Rather, a review of the text and legislative history of this section demonstrates that Congress intended expressly to preempt nonbankruptcy laws that would otherwise apply to bar, among other things, transactions necessary to implement the reorganization plan.

B

The CPUC contends that, in interpreting § 1123(a), the court should apply the so-called "presumption against preemption" and that this presumption operates in favor of the CPUC's proposed interpretation. In support of this argument, the CPUC centrally relies on *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996), in which the Supreme Court discussed the proper approach to "interpreting a statutory provision that expressly pre-empts state law." *Id.* at 484, 116 S.Ct. 2240. The Court noted that interpretation of express preemption language "does not occur in a contextual vacuum," but is rather informed by "two presumptions about the nature of pre-emption." *Id.* at 485, 116 S.Ct. 2240.

> First, because the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action. In all pre-emption cases, and particularly in those in which Congress has "legislated * * * in a field which the States have traditionally occupied," *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947), we "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Ibid;* [further citations omitted].
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> * * * * * *
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> Second, our analysis of the scope of the statute's pre-emption is guided by our oft-repeated comment, initially made in *Retail Clerks v. Schermerhorn,* 375 U.S. 96, 103, 84 S.Ct. 219, 11 L.Ed.2d 179 (1963), that "the purpose of Congress is the ultimate touch-stone" in every pre-emption case.

Id. at 485-486, 116 S.Ct. 2240.

The two presumptions about the nature of preemption identified by the Court in *Medtronic* are often collapsed into one "presumption against preemption," which essentially stands for the proposition that state police powers are generally presumed not to be superseded absent indication that such preemption was the "clear and manifest purpose of Congress." See, e.g., *Hillsborough County v. Automated Medical Laboratories, Inc.,* 471 U.S. 707, 715, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985).

The application of this presumption against preemption was recently discussed by the Supreme Court in *New York v. FERC,* 535 U.S. 1, 122 S.Ct. 1012, 1023, 152 L.Ed.2d 47 (2002):

> Pre-emption of state law by federal law can raise two quite different legal questions. The Court has most often stated a "presumption against pre-emption" when a controversy concerned not the scope of the Federal Government's authority to displace state action, but rather whether a given state authority conflicts with, and thus has been displaced by, the existence of Federal Government authority. See, e.g., *Hillsborough County v. Automated Medical Laboratories, Inc.,* 471 U.S. 707, 715, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985)(citing cases); see also *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996); *Cipollone v. Liggett Group, Inc.,* 505 U.S. 504, 518, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992). In such a situation, the Court " 'starts with the *48 assumption that the historic police powers of the States were not to be superseded * * * unless that was the clear and manifest purpose of Congress.' " *Hillsborough County,* 471 U.S. at 715[, 105 S.Ct. 2371] (quoting *Jones v. Rath Packing Co.,* 430 U.S. 519, 525, 97 S.Ct. 1305, 51 L.Ed.2d 604 (1977)). These are not such cases, however, because the question presented does not concern the validity of a conflicting state law or regulation.

Id., 122 S.Ct. at 1023.

As noted by the Court in *New York v. FERC,* the presumption against preemption is commonly applied in order to determine whether particular state laws are either expressly preempted by a federal statute or impliedly preempted by federal regulation in a given field. The question of the validity of a particular state law in light of express or implied preemption by Congress, however, is not the question posed by the instant appeal. Rather to resolve this appeal the court must choose between two radically different arguments about what sort of laws Congress meant expressly to preempt. This determination cannot be made based on a presumption, but must be made in terms of ordinary principles of statutory construction. Once this choice is made, and the "purpose of Congress," *Medtronic,* 518 U.S. at 486, 116 S.Ct. 2240, is clarified, then the presumption against preemption may become relevant-- although this is somewhat doubtful given the seemingly broad reach of the "notwithstanding" phrase--in order to determine whether a particular state law is preempted. But to apply the presumption against preemption to determine Congress' intent would be to place the cart before the horse.

Rather than beginning with a presumption, therefore, as an initial matter at least, the court must look to the plain language of the statute. See, e.g., *Exxon Corp. v. Hunt,* 475 U.S. 355, 106 S.Ct. 1103, 89 L.Ed.2d 364 (1986).

C

As noted, every court except the bankruptcy court below to have considered § 1123(a)(5) has concluded that this section contains an express preemption of nonbankruptcy laws that would otherwise apply to the restructuring transactions provided for in a reorganization plan. The case law on this subject is, however, rather limited. By far, the court to have considered this matter in the most depth is the United States Bankruptcy Court for the District of New Hampshire in *Public Service Company of New Hampshire v. New Hampshire (In re Public Serv. Co),* 108 B.R. 854 (D.N.H.1989). After conducting a quite helpful and thorough analysis of the (again rather limited) legislative history of § 1123(a), the New Hampshire bankruptcy court concluded that the meaning of § 1123(a)(5) is clear:

> With regard to the present statutory provision before the court, i e § 1123(a)(5) providing that "notwithstanding any otherwise applicable nonbankruptcy law" a plan of reorganization "shall" contain adequate provisions for the plan's implementation, in terms of the necessary restructuring of the debtor and its assets and liabilities common to all plans of reorganization in complex cases, the statute would seem to be plain on its face to indicate an express preemptive intent as to such restructuring provisions of a chapter 11 plan of reorganization.

Id. at 882.

Indeed, to the New Hampshire bankruptcy court, the conclusion "seems obvious" that § 1123(a)(5):

> on its face contemplates that restructuring transactions necessary to a plan of *49 reorganization may be provided notwithstanding nonbankruptcy law, and that upon confirmation of the plan pursuant to § 1129(a) of the Bankruptcy Code the confirmed plan--and the reorganized debtor *created* thereby--will be governed by those provisions.

Id.

Besides its thorough consideration of the precise question posed in the instant appeal, *In re Public Serv. Co.* is particularly interesting because it is quite factually similar to the situation here. That case too involved an electric utility debtor in reorganization, seeking to create new limited liability companies, some of which would no longer be under state regulatory control after reorganization, but would be under the jurisdiction of FERC. Similarly, the state commission in that case argued that its approval of the restructuring transactions was required by state law and the utility resisted submitting to this approval.

The New Hampshire bankruptcy court noted that its interpretation of the preemptive force of § 1123(a)(5) was also reached by the Fourth Circuit in *Universal Cooperatives, Inc. v. FCX, Inc.*, 853 F.2d 1149 (4th Cir.1988). In *FCX*, appellee Universal challenged an order of the bankruptcy court, affirmed by the district court on appeal, which, pursuant to § 1123(a)(5)(D), authorized FCX to release collateral securing its indebtedness to Universal in satisfaction of Universal's claim, in a manner that violated Universal's bylaws. Section 1123(a)(5)(D) provides that, "(a) notwithstanding any otherwise applicable nonbankruptcy law, a plan shall--* * * (5) provide adequate means for the plan's implementation, such as--* * * (D) sale of all or any part of the property of the estate either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate." Universal, to which FCX was in debt, had previously issued to FCX "patronage certificates" which were redeemable by Universal at the discretion of Universal's board of directors. FCX desired to offset Universal's claim by the release of the patronage certificates and contended that § 1123(a)(5)(D) preempted any restrictions in Universal's bylaws applying to such a release. The Fourth Circuit reasoned:

> Because "Congress may * * * abrogate state law entitlements in bankruptcy pursuant to its Bankruptcy Clause Power, U.S. Const., art. I, § 8, cl. 4," *In re Farmers Markets*, 792 F.2d 1400, 1403 (9th Cir.1986), we must ask further whether there exists any conflicting bankruptcy law which overrides the discretionary power over the redemption of the patronage certificates vested in Universal's board by state law and its by-laws. FCX here contends that § 1123(a)(5)(D) preempts the restrictive provisions of Universal's by-laws and allows it to release the patronage certificates in satisfaction of Universal's claim.
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> In 1984, the opening clause of § 1123(a) was amended to read: "Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall * * *." By its plain language then, § 1123(a)(5)(D) overrides nonbankruptcy law restrictions on the distribution of collateral to satisfy a claim secured by the same. Accordingly, § 1123(a)(5)(D) supersedes the discretionary power over surrender of the patronage certificates bestowed on Universal's board by its by-laws.
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> *Id.* at 1154.

In the Ninth Circuit, too, the only case to address the issue reached a similar conclusion of the preemptive effect of § 1123(a)(5). In ***50***In re Entz-White Lumber & Supply, Inc.*, 850 F.2d 1338 (9th Cir.1988), the Ninth Circuit considered § 1123(a)(5)(G), which as an example of "adequate means for the plans implementation," specifies the "curing or waiving of any default." Great Western Bank & Trust (Great Western), an Arizona banking corporation, objected to confirmation of a reorganization plan that provided for the cure of debtor's default on a loan by Great Western by the payment of the full principal balance owed as well as interest accrued, at a rate of 1.5%. Great Western asserted that pursuant to the terms of the loan agreement it was entitled to interest at the rate of 18% per annum in the event of default. Debtor (Entz-White) argued that its payment of the debt and interest under the plan amounted to a "cure" of the default and that, pursuant to § 1123(a)(5)(G), this cure "nullified any consequences of the default, including a post-maturity higher interest rate." *Id.* at 1340.

The bankruptcy court, the district court and the Ninth Circuit all ruled in favor of the debtor, accepting this argument. The Ninth Circuit held:

> [B]y curing the default, Entz-White is entitled to avoid all consequences of the default--including higher post-default rates. * * * It is clear that the power to cure under the Bankruptcy Code authorizes a plan to nullify all consequences of default, including avoidance of default penalties such as higher interest.
>
> *Id.* at 1342.

As it is binding precedent, *Entz-White* would seem to be the beginning and the end of the matter. The court of appeals begins its opinion by stating that debtor's argument was made under § 1123(a)(5)(G). Noting that this argument indeed "seems to conform to the broad language of section 1123," the court of appeals discusses § 1124(2), which determines whether a party is impaired by a chapter 11 reorganization plan. Because of this discussion, the CPUC contends that PG & E's reliance upon *Entz-White* is "way off the mark." But the CPUC's attempt to distinguish the case in this manner is "off the mark." The court of appeals considered § 1124(2) at length, but only in response to Great Western's argument that Congress intended in the bankruptcy code "to allow debtors to cure only those defaults the consequences of which are solely acceleration of the remaining payments due." *Entz-White*, 850 F.2d at 1340. The Ninth Circuit rejected this argument by analyzing § 1124(2). More importantly, the Ninth Circuit was not swayed from its belief that Entz-White's argument that a cure provided for in the reorganization plan nullified any consequences of default "conform[ed] to the language of section 1123." *Id.* Indeed, in this light, the most plausible explanation for the Ninth Circuit's lack of an extended discussion of the preemptive effect of § 1123 is that it--as did the New Hampshire bankruptcy court and the Fourth Circuit-- viewed the preemptive effect of this section as evident and not requiring prolonged discussion.

The court is aware of at least one other court holding explicitly that it is "clear" that § 1123(a) affirmatively empowers actions otherwise barred by nonbankruptcy law. See *In re Buttonwood Partners, Ltd.*, 111 B.R. 57, 59- 60 (noting that "§ 1123 clearly contemplates that a plan may impair a class of claims 'notwithstanding any other applicable nonbankruptcy law;' an event occurring here."). See also *In re Public Serv. Co.*, 108 B.R. at 883 n. 25 (listing other cases addressing § 1123(a)(5)).

In contrast, the court is not aware of a single case, other than the decision challenged herein, holding that § 1123(a) is *51 merely a "directive" statute, preempting only nonbankruptcy laws that might direct what should go in a reorganization plan. The CPUC urges the court to follow the decision of the Ninth Circuit in *Baker & Drake v Public Serv Comm'n (In re Baker & Drake)*, 35 F.3d 1348 (9th Cir.1994), and, indeed, this is the case given the most attention by the bankruptcy court in the challenged order. Yet *Baker & Drake* is simply not on point.

Baker & Drake (Baker), a taxicab operator employing approximately 200 drivers, filed for

chapter 11 bankruptcy. As part of its reorganization plan, Baker proposed converting its employee-drivers into independent contractors, who would lease the cabs from Baker. As noted by the Ninth Circuit, "[t]his arrangement would shift the ultimate control over taxi services from Baker to the drivers themselves. Apart from the effect it had on Baker's tort liability and insurance premiums, Baker stood to save a good deal of money because it would no longer be liable for payroll taxes." *Id.* at 1350.

The problem, however, was that Nevada law prohibited certified "common motor carriers," such as Baker, from leasing a taxicab to another person and required " 'every driver of a taxicab [to] be either the holder of a certificate or the employee of a holder of a certificate.' " *Id.*, quoting Nev. Admin. Code (NAC) § 706.371. Notwithstanding this prohibition, the bankruptcy court "not only approved the proposed reorganization plan, but also enjoined the Nevada Public Service Commission (PSC) from enforcing NAC 706.371 against Baker," based on its determination that Nevada's regulation of the taxi business conflicted with the Bankruptcy Act's goal of fostering reorganizations. *Id.* Upon appeal, the district court overturned this decision, holding that the bankruptcy code did not preempt NAC 706.731 and vacated the bankruptcy court's injunction.

The Ninth Circuit, in turn, quite sensibly affirmed this decision, rejecting Baker's claim that "the Bankruptcy Act *impliedly preempts* Nevada's regulation of taxi services," *id.* at 1353 (emphasis added), because, among other things, NAC 706.371 is "not just an economic regulation, but one reasonably intended to secure the public convenience and safety" and, "[m]ore importantly," because NAC 706.371 "does not directly conflict with the purposes of the Bankruptcy Act in any way which could be generalized beyond the facts of the present case." *Id.* at 1354-55.

Baker & Drake is not an express preemption case. Baker did not argue that NAC 706.371 was expressly preempted by § 1123(a)(5), or any other statutory provision, nor would it have made sense to do so. Baker was seeking to preempt ongoing state law, applying not to the transactions necessary for reorganization, but to business activities engaged in by the reorganized debtor after the reorganization. Accordingly, *Baker & Drake* is simply not relevant to the instant appeal.

But the bankruptcy court's heavy reliance upon *Baker & Drake,* see Bankr. Dec. at 12-17, does suggest why that court may have been led astray. The bankruptcy court's decision seems to have been guided by two primary concerns: the scarcity of legislative history on the relevant statutory provisions and the concern that construing § 1123(a)(5) to grant the right "to disaggregate with unfettered preemption of any contrary nonbankruptcy law," *id.* at 40, would lead to "absurd results." *Id.* at 19. The court will discuss the legislative history of § 1123 below. But it is the bankruptcy court's list of the supposedly absurd results of PG & E's urged interpretation, which PG & E refers to as the bankruptcy court's "parade of horribles," *52 that demonstrate how the bankruptcy court was misled. For each of these absurdities contemplates *ongoing illegality,* such as that at issue in *Baker & Drake,* and not conduct or action that is contemplated by PG & E in its restructuring plan. The bankruptcy court was concerned, for example, that under PG & E's interpretation a reorganization plan could approve the sale of alcohol to minors, the dumping of toxic waste or the formation of a monopoly. See Bankr Dec at 19. But such actions involve contemplated ongoing illegality. In contrast, PG & E seeks the suspension of nonbankruptcy law applying only to transactions necessary for reorganization and does not contend that the reorganized companies would be exempt from any laws on a going forward basis by virtue of reorganization. The graphic but undifferentiated nature of the illegalities that the CPUC contends, and the bankruptcy court accepted, would follow from holding that § 1123(a) preempts nonbankruptcy obstacles to PG & E's reorganization highlights the tenuousness of CPUC's position on this appeal.

[4] The argument that absurd and/or undesirable consequences flow from a particular statutory construction is of little direct relevance to statutory construction. See, e g, *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,* 514 U.S. 645, 655, 115 S.Ct. 1671, 131 L.Ed.2d 695 (1995)(in considering preemption claims, courts "begin as * * * in any exercise of statutory construction with the text of the provision in question, and move on, as need be, to the structure and purpose of the Act in which it occurs."). Nor must the court consider absurd consequences of a statutory construction, potentially embraced by the literal language of an act, when the matters at issue do "not test the margins of the Act" but "fall within the heartland * * *." *National Cable & Telecomms. Ass'n Inc. v. Gulf Power Co.,* 534 U.S. 327, 122 S.Ct. 782, 790, 151 L.Ed.2d 794 (2002). Putting the direct relevance of the "parade of horribles" to the court's task of statutory interpretation aside, however, the court is unconvinced that PG & E's interpretation of § 1123(a)(5) leads to absurd or undesirable results.

As noted, the preemption of laws otherwise applicable to restructuring transactions would not authorize ongoing illegality by the reorganized debtor and any new entities created through reorganization. Accordingly, in the unlikely event that a debtor in bankruptcy would propose such things as the sale of alcohol to minors or discharge of toxic wastes into waterways, this conduct would be reachable by the same state and federal laws designed to prohibit such conduct.

Moreover, the bankruptcy code contains several provisions making it highly unlikely that reorganization plans contemplating ongoing illegality would be seriously considered by the bankruptcy court, much less confirmed in a plan of reorganization. Section 1123(a)(5) itself requires that reorganization plans contain "adequate" means of implementation. Section 1129(a)(3) permits confirmation of a reorganization plan by the bankruptcy judge only if, among other things, it is proposed in "good faith," § 1129(a)(3), and "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the plan." § 1129(a)(11). The good faith test of § 1129(a)(3) has been interpreted to mean that "the plan was proposed with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected.' " *Koelbl v. Glessing (In re Koelbl),* 751 F.2d 137, 139 (2d Cir.1984), quoting *Manati Sugar Co. v. Mock,* 75 F.2d 284, 285 (2d Cir.1935). See also *53*Connell v. Coastal Cable TV, Inc.,* 709 F.2d 762, 765 (1st Cir.1983)(to satisfy good faith requirement, reorganization plan "must bear some relation to the statutory objective of resuscitating a financially troubled corporation."). The Ninth Circuit has interpreted § 1129(a)(11) to "prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." *Pizza of Hawaii, Inc. v. Shakey's Inc. (In re Pizza of Hawaii),* 761 F.2d 1374, 1382 (9th Cir.1985), quoting 5 Collier on Bankruptcy, 15th ed., ¶ 1129.02 at 1129-34 (1984). A plan contemplating ongoing illegality, of course, is quite likely to promise more than it can attain. These provisions, among others, therefore, provide ample grounds for the exercise of the bankruptcy court's discretion to refuse to confirm plans contemplating ongoing illegality.

The CPUC also asserts that PG & E's interpretation of § 1123(a)(5) could, irrespective of illegality *after* reorganization, shield debtors from laws designed to prohibit undesirable conduct otherwise applying to the restructuring transactions themselves. The CPUC argues, for example, that the preemption of laws otherwise applicable to transactions necessary to carry out a reorganization plan could permit anticompetitive mergers through reorganization, which would otherwise violate § 7 of the Clayton Act, 15 USC § 18, or analogous state laws, but which would not necessarily result in the formation of a monopoly, prohibited by § 2 of the Sherman Act, 15 U.S.C. § 2. The CPUC and the EPA further argue that PG & E's proposed statutory construction would permit debtors to evade such things as certain laws requiring environmental review by regulators.

The requirements of § 1129(a)(3), of course, would apply here as well, prohibiting confirmation of reorganization plans not proposed in good faith. More importantly, however, the court thinks that the CPUC's worst-case scenarios are rather more equivocal than characterized by the CPUC. Consider, for example, a corporate debtor that could reorganize in order to satisfy creditors and emerge solvent by, among other things, merging with another corporation. If such a merger would result in a monopoly then a reorganization plan proposing it would be unlikely to be confirmed. It is by no means clear, however, that a merger that would perhaps have some anticompetitive impact reachable by § 7 of the Clayton Act or some analogous state law, but which would *not* result in a monopoly--and which would, moreover, rescue a debtor from bankruptcy--would be undesirable.

Nor is the court convinced that the temporary suspension of environmental review requirements that would otherwise apply to (often somewhat fictional) restructuring transactions is undesirable. In the instant case, for example, a CEQA review, according to the CPUC, is triggered by transactions incidental to PG & E's disaggregation. Permitting such review would

permit state regulators to exercise a veto over the restructuring of a utility in bankruptcy, which could potentially impose a dramatic limitation on PG & E's ability to reorganize despite the fact that no change whatever were made to any PG & E operation. It is difficult for the court to discern the countervailing consideration mandating the ability of state regulators to exercise such power, when PG & E itself has, presumably, already gone through CEQA review and the four entities emerging from bankruptcy will be required to comply with all applicable state and federal laws on an ongoing basis.

*54 Indeed, as counsel for PG & E noted at oral argument, given the strong federal interest in the rehabilitation of corporate debtors, it would seem to be the CPUC's interpretation that may well lead to absurd consequences. If § 1123(a)(5) does not permit express preemption, then the only tool for preempting laws that would otherwise bar reorganization is implied preemption, which is a rather blunt tool for such an important task.

D

The bankruptcy court also determined that the legislative history of § 1123 did not support PG & E's interpretation, stressing two features of the legislative history that it asserted supported the interpretation that § 1123 is merely a descriptive statute. First, the bankruptcy court concluded that § 1123(a) was a "carryover from its counterparts under the former Bankruptcy Act," which did not contain a preemption provision, but merely described provisions a bankruptcy petitioner may and must include in a reorganization plan. See Bankr. Dec. at 21. Second, the bankruptcy court found it significant that the legislative history accompanying the 1980 amendment to § 1123(a), which added the phrase "[n]otwithstanding any otherwise applicable nonbankruptcy law" did not discuss preemption, but instead stated that: "This amendment makes it clear that the rules governing what is contained in the reorganization plan are those specified in this section; deletes a redundant word; and makes several stylistic changes." See *id.* at 25, quoting H.R. Rep. 96-1195, at 22, 122-23, 96th Cong., 2d Sess. 1980 (July 25, 1980). "If the words 'notwithstanding otherwise applicable nonbankruptcy law' meant that a debtor could propose a plan contrary to any law," concluded the bankruptcy court, "Congress would not have treated the amendment as merely 'stylistic.' " *Id.* at

25.

The language cited by the bankruptcy court accompanied the first bill proposing the addition of the "notwithstanding" phrase. This bill and a subsequent bill, also including the proposed addition, failed. "The bill that finally became law arose from a Senate bill that referred to this change as a 'technical stylistic change [ ].' " S. Rep. No. 65, 98th Cong., 1st Sess. 84 (1983). There are no committee reports with regard to the 1984 amendments, but the change to § 1123(a)(5) was included verbatim from the prior bills under a subtitle captioned "Miscellaneous Amendments." The 1984 Amendments came out of a conference committee with no report other than the agreed-upon bill itself. On the floor the changes including the change to § 1123(a)(5) were referred to as the "technical amendments" subtitle. 130 Cong. Rec. S8887, S8888 (June 29, 1984). *In re Public Serv. Co.*, 108 B.R. at 865. See App. Leg. History (Doc. # 73) at LH 001, 017, 041.

As discussed at length in *In re Public Serv. Co.*, 108 B.R. at 863-866, however, the most relevant change to the bankruptcy code for present purposes did not occur in 1984, with the addition of the "notwithstanding" phrase, but in 1978 with the adoption of the Bankruptcy Reform Act of 1978. Before that act, public utilities were required to obtain the approval of the utilities' governing commission before plans of reorganization could be approved. The 1978 Reform Act deleted this statutory requirement. A little history is helpful to understand the import of this.

Before 1934, corporate reorganization was primarily accomplished through equity receiverships in the federal courts. See 6 Collier on Bankruptcy, 14th Ed., ¶ 0.04 (1978). In 1933 and 1934, § 77, governing interstate railroad corporations, and § 77B, governing ordinary corporate debtors, *55 were added by amendments to the Bankruptcy Act of 1898. See *id.* Section 77B(e)(2) addressed debtor utilities:

> In case the debtor is a utility subject to the jurisdiction of a regulatory commission or commissions or other regulatory authority or authorities, created by the laws of the State or States in which the properties of the debtor are operated, a plan of reorganization shall not be confirmed until (a) it shall be submitted to each such commission or authority having regulatory jurisdiction over the debtor, (b) an opportunity shall be afforded each such commission or authority to suggest amendments or objections to the plan, and (c) the judge shall consider such amendments or objections at a hearing at which each such commission or authority may be heard. In case the debtor is a public utility corporation wholly interstate in character no court shall approve any plan or reorganization if the regulatory commission of such State having jurisdiction over such public utility certifies that the public interest is affected by said plan, unless said regulatory commission shall first approve of said plan as to the public interest therein and the fairness thereof. If said regulatory commission shall not within thirty days or such additional period as the court may prescribe after the submission of a plan to it file said certificate it shall be deemed that the public interest is not affected by said plan.
>
> Reprinted in 6 Collier on Bankruptcy, 14th Ed., ¶ 0.06 (1978).

Section 77B(f) further provided for state approvals before plan confirmation. The requirement of state approval for public utility plans of reorganization survived the extensive amendments to the Bankruptcy Act by the Chandler Act of 1938. Section 177, in chapter X of the amended act, provided, for example:

> In case a debtor is a public-utility corporation, subject to the jurisdiction of a commission having regulatory jurisdiction over the debtor, a plan shall not be approved * * * until--
>
> (1) it shall have been submitted to each such commission;
>
> (2) an opportunity shall have been afforded each such commission to suggest amendments or offer objections to the plan; and
>
> (3) the judge shall have considered such amendments or objections at a hearing at which such commission may be heard.
>
> Reprinted in Collier on Bankruptcy, 15th Ed., App. Pt. 3(a), (2002). See also § 178 (requiring certification of approval of utility plan by state commission); § 224 (requiring, "in the case of a public-utility commission, the procuring of authorization, approval, or consent of each commission having regulatory jurisdiction over the debtor" for the taking of "all action necessary to carry out the plan.").

In other words, the bankruptcy code at one time explicitly provided precisely what the CPUC urges is presently required to effect PG & E's plan of reorganization. But the provisions requiring approval by public utility commissions for the transactions necessary to carry out a utility's reorganization plan were not made part of the 1978 Reform Act, which, considering the inclusion of such provisions in the bankruptcy code from its origin, is a omission that can be inferred to have some consequence. As the *In re Public Serv. Co.* court noted: "After 44 years of requiring state approval for public utility reorganizations, the statutory law substantially changed with the adoption of the 1978 Code * * *. There is only one reference in chapter 11 of the Bankruptcy Code to any utility regulatory agency approvals and that is for rates." 108 B.R. at 864, *56 citing § 1129(a)(6)(discussed below). Moreover, as PG & E points out, the 1978 Reform Act largely carried forward the regulatory approval requirements for railroads. See §§ 1166 and 1172(b)("If * * * transfer of, or operation of or over, any of the debtor's rail lines by an entity other than the debtor or a successor to the debtor under the plan would require approval by the Commission under a law of the United States, then a plan may not propose such a transfer or such operation unless the proponent of the plan initiates an appropriate application for such a transfer or such operation with the Commission and * * * the Commission * * * approves such application * * *.").

The reason for the removal of state regulatory approval for utility reorganization in the bankruptcy code does not appear to have been discussed in the legislative history accompanying the 1978 Reform Act. It is worth noting, however, that Congress established FERC as an independent agency within the Department of Energy in 1977, see 42 U.S.C. § 7171, shortly before enactment of the 1978 Reform Act, and granted that agency an expanded role in the dual sphere of regulation over the provision of energy, codified in the Federal Power Act, 16 U.S.C. §§ 824-824m. That the withdrawal of the ability of state regulators to veto reorganization of public utilities in federal bankruptcy proceedings followed closely behind an expanded federal role in the regulation of energy is likely not coincidence.

Nevertheless, notwithstanding a lack of legislative history explicitly discussing Congress' reasoning, the removal of the requirement of approval by state commissions is quite significant. See *Muscogee Nation v. Hodel*, 851 F.2d 1439, 1444 (D.C.Cir.1988)("where the words of a later statute differ from those of the previous one on the same or related subject, the Congress must have intended them to have a different meaning.").

Only one paragraph of the committee reports accompanying the 1978 Code is devoted to § 1123(a)(5), appearing in both the House and Senate reports, which reads:

> Paragraph 4 [which later became paragraph (5)] of subsection (a) is derived from section 216 of chapter X with some modifications. It requires the plan to provide adequate means for the plans execution. These means may include retention by the debtor of all or any part of the property of the estate, transfer of all or any part of the property of the estate to one or more entities, whether organized pre- or post-confirmation, merger or consolidation of the debtor with one or more persons, sale and distribution of all or any part of the property of the estate, satisfaction or modification of any lien, cancellation or modification of any indenture or similar instrument, curing or waiving of any default, extension of maturity dates or change in interest rates of securities, amendment of the debtor's charter, and issuance of securities.
>
> H.R. Rep. No. 595, 95th Cong., 1st Sess. 407, (1977), U.S.Code Cong. & Admin.News 1978, 5963, 6363; S. Rep. No. 989, 95th Cong, 2d Sess. 119 (1977), U.S.Code Cong. & Admin.News 1978, 5787, 5905.

This language, if largely by the absence of any reference to the contingency of the specified possibilities on compliance with nonbankruptcy law or regulatory approval, seems to indicate that such actions may be *taken*--and not just put in a plan--notwithstanding any nonbankruptcy law. Significantly, this implication seems to have been made explicit in a statement on the floor of the Senate, by Senator DeConcini, chairman of the Subcommittee on Improvements *57 in Judicial Machinery of the Senate Committee on the Judiciary, "in order to explain the House amendment to the Senate amendment to H.R. 8200." 124 Cong. Rec. 33992 (Oct. 5, 1978). Section 1123, DeConcini noted, "represents a compromise between similar provisions in the House bill and Senate amendment."

> Section 1123(a)(5) of the House amendment is derived from a similar provision in the House bill and Senate amendment but deletes the language pertaining to "fair upset price" as an unnecessary

restriction. Section 1123 is also intended to indicate that a plan may provide for any action specified in section 1123 in the case of a corporation without a resolution of the board of directors. If the plan is confirmed, then any action proposed in the plan may be taken *notwithstanding any otherwise applicable law* in accordance with section 1142(a) of title 11.

Id. at 34005, emphasis added.

DeConcini's reference to § 1142(a), which imposes a duty on the debtor to carry out the plan "[n]otwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition * * *," in a discussion of § 1123, would seem on first glance to make his remarks somewhat ambiguous. Section 1142 provides that a reorganized debtor and any newly created entity are obligated to carry out the plan "[n]otwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition." Section 1123(a)(5) governs the obligation of a plan to provide adequate means for reorganization "[n]otwithstanding any otherwise applicable nonbankruptcy law." Read together, these sections direct that the reorganization transactions themselves may be accomplished without hinderance from nonbankruptcy law, but that going forward from bankruptcy, the reorganized debtor and any new entities must comply with all laws in carrying out the reorganization, except those relating to financial condition.

Significantly, the very language used by DeConcini, with the insertion of the word "nonbankruptcy," in explaining the House and Senate compromise embodied in the 1978 Reform Act found its way into the act by the 1984 amendment. This may explain why the addition of the "notwithstanding" phrase was characterized as technical and stylistic; the addition of this phrase merely clarified and reaffirmed the preemptive scope of § 1123(a), intended by Congress by the enactment of the 1978 Reform Act.

The legislative history, therefore, supports PG & E's interpretation of § 1123(a)(5). But this attention to legislative history, in turn, merely supports the plain language of this section, to which, with this background, the court will now return.

[5] The term "notwithstanding" is well recognized as a term used to express broad preemptive intent. Indeed, as noted by the Supreme Court, courts have long held that a clearer statement of an intent "to supersede all other laws" is " 'difficult to imagine.' " *Cisneros v. Alpine Ridge Group,* 508 U.S. 10, 18, 113 S.Ct. 1898, 123 L.Ed.2d 572 (1993), quoting *Liberty Maritime Corp. v. United States,* 928 F.2d 413, 416 (D.C.Cir.1991) and citing, among other authority, *In re FCX,* 853 F.2d at 1154. Moreover, the phrase "notwithstanding any otherwise applicable nonbankruptcy law" clearly expresses an intent affirmatively to authorize actions that are otherwise prohibited by nonbankruptcy law, which accords with PG & E's interpretation of the section. The interpretation of the CPUC and the bankruptcy court, however, would not have § 1123(a) authorize otherwise prohibited actions, but would *58 rather have the "notwithstanding" phrase serve a much more limited role, merely clarifying that § 1123(a) is *the* section that designates what must go into a reorganization plan.

As PG & E correctly notes, the CPUC and the bankruptcy court have trouble coming up with any otherwise applicable nonbankruptcy laws that this phrase would override. The bankruptcy court "imagined" that the statute could preempt a state law that "would prohibit a party from even submitting a plan to the bankruptcy court without first obtaining approval from a debtor's shareholders." Bankr. Dec. at 18, citing remarks by DeConcini. But § 1123(a) does not concern the procedure for submission of a plan to the bankruptcy court; it concerns what must be provided for in a plan. The same defect is present in the bankruptcy court's example of "labor laws that might obligate a plan proponent to negotiate in good faith before submitting a plan." *Id.* The CPUC's examples are no more apt.

The CPUC mentions state statutes "that provide for a dissolving corporation to file a plan of distribution containing specified mandatory elements" and suggests that § 1123(a) merely provides that those statutes "do not govern, and that section 1123(a) alone says what must be in the plan." CPUC Br. (Doc. # 78) at 35. Two interpretations are possible under this account. Either the CPUC would have Congress mean that any other statute that specifies what must go in a reorganization plan is invalid, or the CPUC would have Congress mean that § 1123(a) is an independent supplement to other laws specifying what must go in a reorganization plan. In *neither* case would Congress have referred to "otherwise applicable" laws. The reference to "otherwise applicable" laws would appear to reflect Congress' intent temporarily to suspend the operation of laws of general applicability, which is not the meaning of the phrase given by the CPUC's interpretation.

The court also thinks it significant that § 1123(a)(5) requires the provision of "*adequate* means for the plan's implementation" in the plan. If state regulatory approval were required for all the transactions necessary to effect reorganization, how would the debtor, the court or, in the words of the bankruptcy court, "a hypothetical investor typical of holders of claims or interests of a relevant class," know whether the plan provisions were adequate or otherwise "make an informed judgment" about the plan? Bankr. Dec. at 22. At best, a utility could guess whether what was provided for in a plan would be adequate for reorganization based on an estimate of the chances of regulatory approval. "[S]ince the language of Section 1123 is obviously intended to provide for plans that could go forward for confirmation subject only to the requirements of section 1129--including the rate approval power of a state regulatory agency--it would be nonsensical to interpret Section 1123 to simply list what a plan may include but with the result that such a plan could not be confirmed." *In re Public Serv. Co.,* 108 B.R. at 884.

Moreover, other elements of the bankruptcy code support the conclusion that Congress intended to preempt nonbankruptcy laws otherwise applicable to transactions necessary for reorganization. In particular, § 1129(a), which specifies the conditions precedent for approval of the plan by the bankruptcy court, provides that:

> (a) The court shall confirm a plan only if all of the following requirements are met:
>
> * * * * * *
>
> (6) Any governmental regulatory commission with jurisdiction, after *59 confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Congress, in other words, expressly provided that a plan contemplating a rate change by a utility under the jurisdiction of a regulatory commission cannot be confirmed unless the rate change is approved by the appropriate regulatory commission. "[W]here Congress includes particular language in one section

of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion." *INS v. Cardoza-Fonseca,* 480 U.S. 421, 432, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987). See also *United States v. Jones,* 567 F.2d 965, 967 (10th Cir.1977)(noting that "if a statute specifies one exception to the general application, other exceptions are excluded * * *."). The clear implication of § 1129(a)(6) is that state regulatory approval is not required for plan provisions unrelated to rate changes.

The addition of § 1123(d), added by Congress in 1994, which carves out an express limitation to the preemptive effect of § 1123(a), further supports the interpretation that § 1123(a) preempts laws that may obstruct transactions contemplated by a reorganization plan. See Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 305(a), 108 Stat. 4106, 4134. Section 1123(d) provides:

> Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

Although the addition of this section arguably calls the specific holding of *Entz-White* into question, see *Southland Corp. v. Toronto-Dominion,* 160 F.3d 1054, 1059 n. 6 (5th Cir.1998), it would indeed seem to confirm a reading of § 1123(a) as expressly preempting laws otherwise applying to plan provisions. On its face, § 1123(d) appears to carve out an exception from the broad preemptive effect of § 1123(a)(5)(G), which governs the curing or waiving of any default in a debtor's plan, by requiring that the amount necessary to cure a default *shall* be determined by the underlying agreement and applicable nonbankruptcy law. If § 1123(a) did not (otherwise) broadly preempt otherwise applicable laws governing, among other things, the curing of any default, the reference in § 1123(d) to "subsection (a)" would make little sense. PG & E's query aptly exposes the strained interpretation given to § 1123(d) by the CPUC: "[W]hy would Congress have bothered to prohibit a proponent from *merely proposing* that a plan accomplish something that the Code bars a plan from actually accomplishing?" PG & E Supp. Br. at 3, emphasis in original.

[6][7] Finally, the court notes that PG & E's interpretation comports more closely with the purposes of chapter 11 of the bankruptcy code. "The paramount policy and goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr.S.D.N.Y.1989). "The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1984), citing H.R. Rep. No. 95-595, p. 220 (1977), U.S.Code Cong. & Admin.News 1978, 5963, 6179-80. *60 As in *In re Public Serv. Co.*, "the issue is a narrower one than may first appear." 108 B.R. at 861. PG & E contends that the bankruptcy code expressly prohibits the exercise of a veto power by state regulators over the transactions necessary to reorganize. PG & E's concern that its contemplated reorganization would be thwarted by state regulators is hardly an idle one; the CPUC's discussion of the inadequacies of federal regulation evince an entrenched resistance to relinquishing regulatory jurisdiction over PG & E's operations. See CPUC Br (Doc. # 78) at 13. But the ability of debtors to reorganize and thereby avoid liquidation under chapter 11 would be severely compromised if state regulators could thwart otherwise adequate means of reorganization. As the New Hampshire bankruptcy court observed: "Corporate reorganization cannot work without substantial restructuring of the corporate entity that is relatively prompt and free from litigation costs and delays and fragmented proceedings in numerous other forums apart from the reorganization court." 108 B.R. at 890.

The preemption issues raised by reorganization are particularly acute in the case of a public utility in bankruptcy, as perhaps no other debtor is subject to as much state regulation as the public utility. But the removal of the statutory right of approval by state commissions of the restructuring of public utilities by the 1978 Bankruptcy Reform Act is powerful evidence that Congress concluded that public utilities should no longer be subject to the costs, delays and uncertainty accompanying such a requirement. The bankruptcy code at one time permitted state regulatory commissions to wield considerable power over the reorganization of public utilities. But now--with the exception of the right to approve rate changes--it does not. Nonbankruptcy laws otherwise applicable to the "restructuring transactions necessary to an effective and feasible reorganization" are expressly preempted by the bankruptcy code. *In re Public Serv. Co.*, 108 B.R. at 891.

III

Accordingly, the bankruptcy court's March 18, 2002, order disapproving disclosure statement must be REVERSED and the matter remanded for proceedings consistent with this order.

IT IS SO ORDERED.

283 B.R. 41

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REVENUE TABLES: **per kWh** for **OREGON RESIDENTIAL & COMMERCIAL** in 2000 & 2001; for **AVERAGE RESIDENTIAL BILL for 1000 kWh; &** for **non-farm AVERAGE COMMERCIAL BILL of less than 15 KW demand & 10,000 KW in Oregon & Washington as of 2/25/03. 2002 figures not yet available from Energy Information Administration (E.I.A.),**
at http ://www.eia.doe.gov/cneaf/electricity/page/eia861.html. More sources below at *.

	2000		2001		Aver Bill 2/25/03	
	Per kWh		Per kWh		for 1000 kWh	for less than 15 KW demand & 10000 KW consumption
Name of Utility	**Res**	**Com**	**Res**	**Com**	**Res**	**Com**
Ashland City of	$ .043	.051	$ .046	.041	$ 52.03	$ 512.11
Bandon City of	.054	.052	.057	.056		
Canby Utility Board	.045	.044	.050	.047		
Cascade Locks City of	.059	.049	.070	.061		
Central Lincoln Peoples Utl Dt	.051	.047	.053	.047		
Clatskanie Peoples Utl Dt	.029	.033	.034	.039		
Columbia River Peoples Utl Dt	.051	.050	.058	.060	68.00	659.00
Drain City of	.055	.061	.059	.062		
Emerald People's Utl Dt Excluding Eugene and Springfield	.057	.058	.057	.058	73.99	
Eugene City of	.047	.039				
Eugene Water & Electric Brd					70.79	
Forest Grove City of	.038	.035	.039	.037		
McMinnville City	.035	.043	.037	.045		
Milton-Freewater City of	.038	.035				
Monmouth City of	.039	.043	.049	.053		
Northern Wasco County PUD	.047	.048	.046	.0126		
Springfield City of	.042	.106				
Tillamook Peoples Utility Dt	.059	.048	.068	.056		
Clark PUD (Washington)					76.20	670.00
Tacoma Utilities						586.20
Oregon Investor Owned						
Idaho Power Co	.049	.045	.050	.046		
PacificCore	.064	.054	.065	.055	63.85	
Pacific Power						575.85
Portland General Electric Co	.060	.051	.066	.056	90.31	855.18
Others						
Eweb						505.57
Seattle City Light					67.15	694.00
Salem Electric Cooperative					65.94	

* At Yahoo, **search for** www.media.publicpowernow.org/statecomp.
In middle of page click on OR at state selections. Information above offered by
Oregon Public Power Coalition, 818 S. W. Third Avenue, #1335, Portland, OR 97204

YOU ARE INVITED TO WWW.OPPC.NET FOR THE LATEST INFORMATION ABOUT ENRON/PGE AND THE PEOPLE'S UTILITY DISTRICT!

Keizer City Council Hearing on the MCPUD

My name is Joan Horton. I'm a member of the Oregon Public Power Coalition and a Chief Petitioner on the Mult Cty PUD petition. Thank you for inviting us here tonight.

Why have a PUD?

In 1997 Enron bought PGE. Since then it has succeeded in working over PGE ratepayers very well. First a rate hike of 30% for residential customers & 50% for commercial customers. These hikes have created severe economic difficulties. Several businesses have had to lay-off workers in order to cut costs: Blue Heron Paper Co. laid off 70 workers earlier this spring, citing high energy costs as a reason.

You may have read about the missing taxes. PGE ratepayers were charged for and paid state and local income taxes. PGE paid them over to ENRON. ENRON, by virtue of being bankrupt, hasn't paid those taxes over to the state and local agencies. So Oregon localities, which are hurting for money, haven't received the taxes that Oregonians have paid.

Where did this tax money go? Most likely it's going to pay multi-million dollar salaries and retention bonuses to the people still running ENRON. And to pay enormous the legal and accounting fees involved in dealing with the bankruptcy. And to pay huge consulting fees to the consulting firm owned by Steve Cooper, ENRON's current CEO, for advice on getting through the bankruptcy. These costs are discussed in the May 5, 2003 article from US News and in Steve Duin's column in last Thursday's Oregonian.

97-2000
FED = $286 m
OR = $74 m

ENRON has a captive supply of customers. PGE's ratepayers don't have a choice of electric providers. We're stuck paying these bills until we somehow get out from under ENRON.

2002 charged
FED = $77 m
OR = $16.6 m
paid = $10. to oregon
paid $211,000 To IRS

ENRON has been ordered by the US Bankruptcy court to sell off its assets to satisfy its creditors. PGE is one of those assets. PGE will be sold to someone else somewhere, unless ENRON cooks up a successful scheme to hold onto PGE, which it has tried to do.
All this money it's collecting from us gives Enron a very compelling reason to hang onto PGE for as long as it possibly can.

However selling PGE to another Investor-Owned Utility [IOU] isn't necessarily going to solve the problem. We will always be a captive supply of ratepayers, with no protection from this type of exploitation.

This is why I'm in favor of some sort of public ownership of PGE. The ratepayers have been neglected, forgotten and left behind in this squabble. We have to look out for our own interests. I believe the PUD provides the best choice for ratepayers. It is a public entity which must abide by the open-access laws & hold public meetings. Ratepayers have the chance to choose who will run the company & get rid of them if they want. This is more choice than we have now.

The Oregon Public Utilities Commission has done a poor job of protecting us from ENRON. They allowed the sale in the first place, they approved the 30%/50% rate hike. Their protection has cost us plenty.

They would still oversee the health & safety issues for the PUD.

Public power entities exist all through out the US, with plenty of them in Oregon, Washington & California. They have strong track records of providing good energy at low rates. During the 2001 energy crisis in California, public power customers did not experience shortages and spiking rates. IOU customers did.

Public power entities also have good track records in investing in renewable and sustainable energy sources. They also have many programs that help low-income people and help homeowners with high-efficiency appliances and weatherizing, etc.

I believe that there are many benefits of public ownership that Multnomah County residents haven't ever experienced. It's time we had the chance. We know what private ownership is like.

Opponents' arguments:

One of PGE's arguments against public ownership is that they aren't ENRON & that ENRON is out of the picture.

This simply isn't so. ENRON owns 100% of PGE's stock. There ARE no other shareholders in PGE. ENRON isn't out of the picture. It still owns PGE, is exploring ways to keep PGE, and is in no hurry to sell off PGE. The bankruptcy proceedings have gone on for 17 months and show no sign of ending anytime soon.

Another of PGE's arguments is that they've been a great corporate citizen, donating money and volunteer hours to charities.

The PGE Foundation is a fully-funded foundation. It was funded with $10 million when ENRON took over. There's nothing to stop it from continuing to donate money to good causes.

Same with the volunteer hours donated by PGE employees. Most of these same people will be employed by the PUD. Those who are charity-minded will not be stopped from volunteering their time and skills. Here is a list of several items related to charity work from the CR PUD website. (www.crpud.net)

Opponents maintain that local governments will lose revenue since PGE won't be paying income taxes anymore.

As noted above, these governments haven't received income tax revenue from PGE since ENRON took it over anyway, so there's no real lost revenue. PUDs do pay property taxes, same as any other business. And they pay franchise fees. According to its website, the Columbia River PUD paid $712,036 in franchise fees & property taxes in 2003 based on its 2002 income. PUDs also pay "in-lieu" fees and utility transfer taxes.

Opponents claim that creating a PUD to buy PGE is "Stealing".

You can't steal what you've already paid for. Part of our rates pays for the physical assets of PGE. The ratepayers are already part-owners of these assets. Using eminent domain to buy these assets makes use of the partial-ownership. Under eminent domain, the PUD would buy the remaining portion of the assets for their adjusted book value, which by law is what ENRON is entitled to. The PUD doesn't "take" anything.

There's plenty of reason to support a People's Utility District. The possibility of creating one has existed since 1932, when the Oregon Grange amended the Oregon Constitution to allow it. It's high time we tried it.

"Public Power is a Bright Idea".

Joan Horton
OPPC
joan@oppc.net
503-228-4468

YAHOO! Mail

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From: "Dan Meek" <dan@meek.net>
To: "Central PUD" <pud-central@oppc.us>
Subject: [Pud-central] PUDs do pay franchise fees
Date: Fri, 02 May 2003 15:42:59 -0700

This is from the web site of Columbia River PUD:

PUD Property Tax, Franchise Fee Payments Total $712,036

(St. Helens, OR) Columbia River PUD paid local governments $712,036 in franchise fees and property taxes for 2002.

Franchise fees are fees paid by utilities to local municipalities to be permitted to operate in their rights of way. The fee amounts are based on revenues collected from customers within the city limits.

The PUD's 2003 franchise fee payments to each city are based on the total revenues collected in 2002 from PUD customers within each city's boundaries. The 2003 franchise fee payments were:

- St. Helens - $274,047
- Scappoose - $94,787
- Columbia City - $30,874
- Rainier - $6,255
- Prescott - $1,198

Property taxes are paid to Columbia County and help to fund schools, police departments, fire districts and other city and county services. The PUD's 2002 property tax bill of $304,875 is the seventh largest in the county.

PUD Offering Community Involvement Scholarships

January 17, 2003 (St. Helens, OR)

Columbia River People's Utility District (PUD) is offering four $1,000 college scholarships to graduating seniors from local high schools.
The PUD Board of Directors awards the scholarships to recognize outstanding community service throughout a student's high school career. Students will be asked to explain how they have made a difference in the community and to list their community involvement activities. All seniors who live within the PUD's service area and have a minimum accumulated 2.5 GPA are eligible to apply.

Applications are available in the counseling offices of Scappoose, St. Helens and Rainier High Schools, at South Columbia Learning Center, at the PUD office in Deer Island and online at www.crpud.net.
To apply, students must complete the application and mail it with the attachments to: Columbia River PUD Scholarship Team, P.O. Box 1193, St. Helens, OR 97051. Scholarship finalists will be interviewed by the PUD's Scholarship Team, and one recipient will be chosen from each school. Applications must be received by 5:00 p.m. March 15, 2003. Incomplete applications will not be considered.

PUD Tree Crews Help with Boy Scouts Fundraiser

January 13, 2003
(St. Helens, OR) Tree trimming crews from Columbia River People's Utility District (PUD) assisted Boy Scout Troop 106 with a fundraising project this week.
Each year, the Boy Scouts collect Christmas trees from the Scappoose area for recycling and deliver them to the Columbia County Fairgrounds. The PUD's tree crews then chip the trees and deliver the chips to customers who have requested them. This is the seventh year in a row that the PUD has participated in this project.

PUD Receives Award from Oregon Fair Association

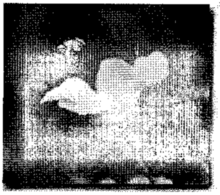
January 13, 2003
(St. Helens, OR) Columbia River People's Utility District (PUD) received the 2002 Local Fair Supporter Award from the Oregon Fair Association, one of two awards the association presents each year.
The PUD was nominated by the Columbia County Fairgrounds, in recognition of their significant contributions to the fairgrounds.
The PUD has been represented on the Columbia County Fair Board since 1984. In 1998, the PUD "adopted" the Pavilion Building at the fairgrounds and since then has installed a new kitchen, replaced bathroom fixtures, painted the building and upgraded the lighting.

The PUD also takes an active role in sponsoring the Columbia County Fair each year. In addition to being a financial contributor, PUD employees assist with cleaning and minor repairs to prepare the grounds for fair time. The PUD is a co-sponsor of the My Fair Lady Pageant, which honors the volunteer service of senior women from the county, and of the Junior Rodeo. The PUD also prints the daily schedules, sets poles for the logging show and provides staffing for the information booth.

"The PUD supports the fairgrounds year round, and we do appreciate their valuable time and contributions," said Fair Administrator Evelyn Hudson.
Columbia County also received a certificate of recognition from the OFA for the Columbia County Megga Easter Egg Hunt, a free Easter Egg Hunt that attracted over 4,000 people last year.
The Oregon Fair Association is an alliance of the 36 county fair boards in Oregon and is dedicated to improving fair operations and management, and promoting development and interest in agriculture, industry and home economics.

Fallen Tree Causes Outage in Goble

January 6, 2003
(St. Helens, OR) A tree fell across a power line in Goble on Sunday, causing an outage for 140 customers of Columbia River People's Utility District (PUD).
The outage occurred at 3:10 a.m. PUD line crews removed the tree from the power lines, replaced fuses and restored power at 5:10 a.m. The outage was attributed to the wet and windy weather.



COLUMBIA RIVER PUD
A COMMUNITY-OWNED UTILITY

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About Columbia River PUD

What is CRPUD

Columbia River People's Utility District is a customer-owned utility serving in Columbia County, Oregon. As granted in the Oregon Constitution, PUDs are formed or exist in areas where a majority of the public has sought local ownership and control of their utility, and lower electric costs. The PUD can offer lower rates because its products and services are sold at cost-based rates. There is no profit added in. The PUD's Board of Directors is elected by the voters in the District and live in the communities we serve.

History

Sixty-five Columbia County residents initiated formation of Columbia River PUD on November 18, 1939, at Beaver Homes Grange Hall, to be a voice of the people in the utility industry. The Hydroelectric Commission of Oregon declared the District formed on January 11, 1940. The PUD held regular meetings and elections but was not an energy provider for the first 44 years of its existence. Private utility rates increased dramatically in the 1970's, renewing interest in activating the PUD. After several years and many legal battles the PUD was energized on August 31, 1984.

OregonLive.com
Everything Oregon

Adding insult to injury at PGE

05/01/03

W e were mistaken last year in thinking there was no particular urgency to resolving the ownership of Portland General Electric. Tomorrow, PGE's parent company, Enron, crosses the 17-month mark since it filed for bankruptcy on Dec. 2, 2001.

The catalog of outrages just keeps growing.

As reported by The Oregonian's Gail Kinsey Hill, Enron paid the top five executives at PGE bonuses of $975,000 last year, the same amount they stand to collect this year. These are not bonuses as conventionally understood, for success in hitting an earnings goal or cost-cutting target; these are retention bonuses -- extra pay for just showing up.

We've been told that retention bonuses aren't unusual. They are often used to keep a troubled organization from losing top management.

But it's the wrong tactic for a company whose workers lost their 401(k) savings in worthless Enron stock. And it's an insult to customers hit with 30 percent and 50 percent power rate increases.

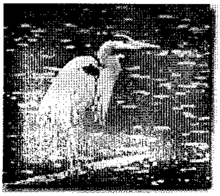
The disclosure of bonuses for the top executives at American Airlines forced it to renegotiate union contracts to stave off bankruptcy. It also forced the airline's chief executive to resign.

That apparently doesn't mean much at Enron. In addition to signing bonus checks, it has reportedly run up almost $400 million in fees and legal costs.

With the welcome news that the Oregon Public Utility Commission staff has recommended a more thorough investigation of PGE's practices comes the thought that there is greater urgency to the city of Portland's efforts to buy the company.

When Enron bought PGE, its main interest was Enron, not the well-being of the Northwest. PGE ownership by Portland would change that.

It can't happen soon enough.



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Energy Efficiency

Our Energy Experts have a wide range of products and services available to help you use energy wisely. Give them a call today at 503-366-5470, or send an email to experts@crpud.org, to find out how you can save energy - and money.

Community Partners Loan Program

We've teamed up with St. Helens Community Federal Credit Union to help you make improvements to your home or business The Community Partners Loan Program provides low-interest loans for a wide variety of energy efficiency and electrical improvements.

Duct Sealing

Improve your home's comfort, efficiency and air quality with help from the Climate Crafters Duct Sealing Program.

Appliance Rebates

You can earn a rebate from the PUD when you purchase an energy efficient appliance, such as a clothes washer, dishwasher or refrigerator. You can also earn a rebate by turning in your old, inefficient second refrigerator or freezer. Read more about the PUD's Appliance Rebate Program.

Comfort Crafted Heat Pump Program

A heat pump is one of the most energy-efficient ways you can heat and cool your home. Through the PUD's Comfort Crafted Heat Pump Program, you can earn a rebate of $300 or $1,000 and receive 6% financing, for installing an energy efficient heat pump system.

Columbia River PUD brings you ENERGY STAR®

ENERGY STAR® qualified products use less energy than conventional products. And by purchasing ENERGY STAR® qualified products, money isn't all you're saving-you're also helping to save the environment. As the symbol for energy efficiency, the ENERGY STAR® label identifies highly efficient products, homes, and commercial buildings.

We proudly promote ENERGY STAR®. For more information about ENERGY STAR® qualified products, visit www.energystar.gov.

Other resources

Visit these sites to learn how to save energy:

- ENERGY STAR®
- Consumer Energy Information
- The Home Energy Saver
- Oregon Office of Energy
- Energy Ideas Clearinghouse
- Energy Savers

Our Energy Experts can also answer any questions you may have. Contact them for more information:

Columbia River PUD
Energy Experts
PO Box 1193, St. Helens, OR 97051
64001 Columbia River Hwy
Deer Island, OR 97054
(503) 366-5470 phone
experts@crpud.org email

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Looting persists at a modern shrine to greed

05/01/03

When one accountant in the Enron bankruptcy case billed her time at $930 an hour . . .

When Weil, Gotshal & Manges of New York -- Enron's primary bankruptcy attorneys -- racked up $67 million in fees in 15 months, including such gems as hiring a temp paralegal in Houston for $28 an hour and billing her time to Enron at $105 an hour . . .

When the "administrative fees" in Enron's reorganization exceed $360 million and increase by $1 million each day . . .

You can hardly blame the city of Portland for trying to steer Portland General Electric, Oregon's lifeboat on this Titanic, back into Oregon waters before the state's largest utility, like the rest of the Enron "estate," disappears in the whirlpool of greed.

Sixteen months after Enron filed for bankruptcy protection, its creditors and most of its former employees are still unprotected, and another set of profiteers is getting rich looting the ruins.

"The pigs are feeding at the trough," Lynn LoPucki, a bankruptcy expert at UCLA, told The New York Daily News in February. Added Texas Attorney General Greg Abbott in the same article, "The widows and orphans are being left out in the cold, while the lawyers are lining their warm, wool pockets."

True, the $930-an-hour accountant eventually settled for $700 an hour when the bankruptcy fee committee squawked, but similar examples of altruism are few and far between. As Jane Shepperd, Abbott's press secretary, noted Tuesday, "The attorney general has long been concerned about the legal and professional fees that are eating away at the Enron estate. Frankly, we remain very concerned that little or no money will be left for the unsecured creditors at the end of the day."

At the beginning of the week, the difference between the secure and unsecured at Enron/PGE was clarified by the news that five top employees at PGE are collecting a total of $1.95 million in retention bonuses while company employees who lost $1.3 billion in pensions are waiting for crumbs from the bankruptcy table. That quintet, by the way, includes Mary Turina, who's only working part time.

How does Executive Vice President Fred Miller justify accepting retention bonuses of $400,000 and a performance bonus of $100,000 when so many of his colleagues have lost their retirement accounts? He protests he's getting less than what he was promised when Enron bought PGE in 1997.

Miller and Peggy Fowler, the chief executive officer, haven't had much good to say about the city's pitch to buy PGE. One wonders what's not to like for cash-strapped creditors in the $2 billion-plus offer the city has on the table?

"What we're hearing," said Roy Hemmingway, the Public Utility Commission chairman, "is there have been multiple offers. But none of those deals has reached the point where the powers that be, including Enron and the creditors, think there's enough money to make the sale."

And, heck, why hurry to finalize anything when you are a bankruptcy buffet line for 2,750 lawyers and 650 accountants, according to the Daily News?

T he PUC has the power to veto any sales proposal that isn't in the public interest, Hemmingway said, but it's hard to imagine the agency being particularly aggressive, given that it waited almost two years to propose an investigation into deceptive trading practices at PGE.

Thus, city Commissioner Erik Sten is left to make the case that Oregon is a lot better off if the city buys the utility rather than a profit-seeking shark like Kohlberg, Kravis, Roberts & Co.

"We bring a pretty strong argument to buy it," Sten said. "The question is are we competent to run it?" He envisions a regional operator motivated by unique incentives: "They should get more profit when your rates go down, not incentives to pad their pockets by raising rates or playing games with taxes."

Rewarding civic responsibility and not greed? How un-Enron can you get? And given the feeding frenzy at this legal trough, how completely un-American.

Reach Steve Duin at 503-221-8597, Steveduin@aol.com or 1320 S.W. Broadway, Portland OR 97201.

YAHOO! Mail

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From: "Dan Meek" <dan@meek.net>
To: "PUD Central" <pud-central@oppc.us>
Subject: [Pud-central] US News Article on Enron Conflicts of Interest in Bankruptcy
Date: Fri, 02 May 2003 16:29:51 -0700

U.S. News
May 5, 2003

By Megan Barnett
On most days, the midtown Manhattan office of Stephen Cooper is deserted, except for a pet lizard he keeps in a glass cage in the corner. The chairman of a financial advisory firm, Cooper is nearly always on the road, jetting from one executive suite to another to help bankrupt companies get back in the black.

One day he touches down in Burlington, Ontario, headquarters of Laidlaw Inc., a transportation giant. <a><img> Then, he's off to Houston, where he serves as the interim chief executive of Enron, the energy firm that collapsed spectacularly in 2001, wiping out the retirement funds of thousands of employees and investors. All the traveling pays off handsomely. Cooper and the firm he runs, Kroll Zolfo Cooper, will rake in about $20 million a year for as long as it takes to dig Enron out of the gutter. The Laidlaw salvage job will yield $17.5 million.

Pros. Cooper is a star performer in the booming bankruptcy business, one of a small group of big-time turnaround specialists skilled at raising corporate carcasses from the dead. More than 400 public companies filed for bankruptcy during the past two years. These cases are growing ever more complex, and that's where the turnaround pros come in. Their bottom line is the bottom line: Get the balance sheet healthy enough to satisfy big creditor banks so the company can emerge from bankruptcy. Typically, they can fire senior management, restructure debt, sell off assets, lay off workers, and cut back benefits. "They take the ship that's headed to the rocks and steer it safely to calm waters," says Elizabeth Warren, a Harvard Law School professor. "And they do it with macho swagger."

Cooper can strut with the best of them. But critics have raised troubling questions about the operating methods of his company, until recently known as Zolfo Cooper. Shareholder groups, institutional investors, the Securities and Exchange Commission, and a bankruptcy judge have complained about excessive fees, fat employment contracts, and side business deals, court records show. The critics suggest fundamental conflicts of interest: A company managed by Cooper simultaneously maintains investments for some major banks that are the chief creditors of the bankrupt companies he is working to revive. In the end, critics say, even after some of Cooper's clients come out of bankruptcy, most employees and shareholders emerge empty-handed.

Cooper and two partners sold Zolfo Cooper last September to Kroll Inc., a security firm, in a deal that paid Cooper $50 million in cash with an expectation of another $50 million down the road. Cooper, 56, now runs a Kroll subsidiary, Kroll Zolfo Cooper. In a review of his operations, *U.S. News* found:

At Laidlaw, Cooper and most other board members voted in late 2001 to keep secret a report detailing $75,000 in questionable campaign contributions at a Laidlaw subsidiary. The report indicated that an executive of the subsidiary used corporate funds to reimburse some employees for federal campaign gifts. Federal law bars corporations from making such reimbursements. Over the strenuous objections of a prominent director, the board decided against disclosing the internal findings to the Federal Election Commission.

At Polaroid, Cooper's firm advised the photography pioneer to declare bankruptcy. Shareholders and retirees have sharply questioned that decision. In June 2002, investment bankers, working with Cooper's firm, sold the assets at auction. Because of concerns that the assets were undervalued, a court-appointed examiner is investigating the sale for indications of fraud. Critics say the assets were sold for a net price of only $24 million.

At Colt Manufacturing, a judge refused in 1994 to approve nearly $800,000 in fees that Cooper's firm was to receive from the Hartford, Conn., gun maker--this after Cooper acknowledged he did not disclose a personal investment in an equity fund that sought to buy Colt.

At Malden Mills, a bankruptcy judge called Zolfo Cooper's appointment "troubling." The judge cited a possible conflict--the financial ties between Zolfo Cooper and a large mill creditor that had pushed for the appointment.

At Enron, the Securities and Exchange Commission took the unusual step of intervening to protest Cooper's employment contract and his business conflicts. A group of institutional investors also objected to the size of his fees and other terms in his contract. Cooper cut his fees and revised his terms.

Cooper, defending his actions, says he has managed hundreds of troubled companies in the past 20 years. "Criticism is bound to turn up somewhere," he explains. "Our focus is always on the task at hand: maximizing value and returning that to economic stakeholders."

Cooper isn't the only turnaround specialist facing scrutiny. The Justice Department, in a settlement in late 2001, forced another firm to return $3 million in fees to bankrupt companies. Among the reasons: the firm's close ties to creditor banks. Separately, the Justice Department recently cited conflicts of interest among restructuring specialists as a growing problem.

Cooper and others in the restructuring business say their first duty, once a company has filed for reorganization under the U.S. Bankruptcy Code, is to the creditors. Those with secured debt, such as big banks, are at the front of the line. Still, the code warns restructuring agents and others from engaging in financial relationships that might create a conflict.

That's easier said than done, given the often close ties between creditor banks and restructuring specialists. In some cases, critics complain, banks request a board of directors to hire a specific restructuring adviser before providing a new round of financing to a struggling company. Shareholders are then left to question whether the new boss is looking out for the company in trouble or the banks. "A turnaround management firm won't succeed as a viable business if it's not pleasing the principal creditors," says Harvard's Warren. "The conflict is obvious."

A warning. The courts sometimes take notice of potential conflicts. In the bankruptcy of Massachusetts textile manufacturer Malden Mills, the judge repeatedly expressed concerns that General Electric Capital Corp. might have requested that Cooper's firm handle the restructuring. The judge noted that GECC is both a partner of a Cooper-run venture capital fund, Catalyst Equity Partners, and a secured lender to Malden Mills. "It's troubling that [GECC] insisted on Zolfo," said Judge Joel B. Rosenthal, according to a transcript of a hearing. "They put the court in a very difficult position by taking somebody . . . that they're an investor with and putting them [Cooper's firm] in that position." The judge allowed Cooper's firm to stay on the case but said it would face serious consequences if it acted improperly. A GECC lawyer insisted that it did not demand that Cooper's firm be hired.

Cooper's Catalyst Equity Partners, affiliated with Kroll Zolfo Cooper, invests in small, distressed companies. Other investors in his fund include J. P. Morgan Chase, Citibank, FleetBoston, and GECC. These institutions also have been secured creditors in bankruptcy cases in which Cooper has served as restructuring agent.

In an interview, Cooper says this web of relationships doesn't pose a conflict, since Catalyst Equity Partners is a separate entity. Moreover, he says, he always discloses potential conflicts to the courts, as required by law. "Since we have disclosed all of this, it puts even more pressure on us to behave appropriately at all times," Cooper says. "When you walk around with no clothes on, so to speak, people can determine whether or not you're being aboveboard in all of your undertakings."

Not everything, however, takes place in the open. It was behind closed doors that Cooper and others on the board of directors of Laidlaw, a diversified concern, decided against revealing to federal officials potentially serious violations of campaign laws. Cooper was named chief restructuring officer of Laidlaw, which filed for bankruptcy in Buffalo two years ago. Martha Hesse, a board member and former head of the Federal Energy Regulatory Commission under President

Reagan, discovered that a Laidlaw subsidiary apparently had been illegally reimbursing some employees who had made federal campaign contributions.

Laidlaw's law firm, Jones, Day, Reavis & Pogue, launched an investigation into the campaign activities at the subsidiary, American Medical Response Inc. During the period 1995 through 2001, its review showed, some employees who contributed to federal campaigns received "bonus" payments from a "supplemental compensation plan." The firm examined $75,000 in contributions and said that employees denied that their donations were linked in any way to the compensation plan. But "there is a risk," the law firm's report said, "that a prosecutor would conclude that [plan] funds are partially used for illegal purposes." In the past, the lawyers said, prosecutors had dealt harshly with companies that made illegal campaign gifts.

Nonetheless, the law firm advised Laidlaw's board not to inform the Federal Election Commission of the findings. "The potential harm to the corporation resulting from voluntary disclosure," the law firm wrote, "significantly outweighs the perceived benefits associated with governmental disclosure." Hesse disagreed, but Cooper and the other directors endorsed the law firm's approach, according to minutes of a Dec. 17, 2001, meeting. Ivan Cairns, general counsel at Laidlaw, describes the board's action as "appropriate," and adds, "Mr. Cooper was very supportive of that action." Hesse, Cooper, and a Jones, Day attorney declined to comment.

Polaroid's bankruptcy also is troubling. The judge in the case recently appointed an independent examiner to investigate the company's bankruptcy and sale; critics want to know who bought Polaroid and to understand how the company was valued. "This was a highly peculiar bankruptcy proceeding," says Mark Agrast, an aide to Rep. William Delahunt, a Massachusetts Democrat. "There was a failure to ask obvious questions. It's going to decimate a lot of people."

When Polaroid took the advice of Cooper's firm and filed for reorganization in 2001, it reported $1.8 billion in assets. Last summer at an auction, the Waltham, Mass., company was sold to a fund called One Equity Partners for $255 million. Critics of the sale say the buyer got $231 million in cash, meaning the effective price for Polaroid was a mere $24 million--a steal by any measure. Bankruptcy records show Cooper's firm was intimately involved in the deal. It assisted both Polaroid management and One Equity Partners in valuing the assets and in negotiations. One Equity Partners, the venture capital arm of Chicago-based Bank One, never disclosed its investors in bankruptcy proceedings. Cooper says he has no business dealings with any of the investors but declined to disclose their identities.

Cooper's firm has earned more than $3 million in fees and expenses for its Polaroid work, and it is still billing. Cooper says the Polaroid outcome was a success. "We helped save a company that currently employs 3,500 worldwide when the prospect of liquidation was very real," he says. "Secured lenders recovered nearly all of their principal." Not everyone is happy, though: Three days before the bankruptcy filing in October 2001, the company eliminated life and health insurance benefits for more than 12,000 retirees. They had hoped to recover their benefits in bankruptcy court; the sale dashed those hopes. "Cooper may consider this a success," says Steve Morgan, a Polaroid shareholder. "Obviously, we see it differently." He opposes Cooper's continued employment.

Controversy. The Enron bankruptcy, the most complex in history, has been even more difficult. Cooper's appointment as interim CEO has been controversial from the start. **Both the SEC and a group of institutional investors objected to his initial employment contract that would have paid him a multimillion-dollar bonus and allowed him to bring on more staff without court approval.**

Bankruptcy records show that objections about his ties to secured creditors also were raised. Eight investors in Cooper's Catalyst Equity Partners fund, including J. P. Morgan Chase and Citibank, are also secured creditors in the Enron case. Those creditors "were tremendously exposed in the Enron case," says Andrew Entwistle, attorney for an institutional shareholder in the Enron case. "They wanted to bring in someone who was going to be friendly to them."

After the objections were raised, bankruptcy judge Arthur J. Gonzalez required Cooper to recuse himself from any Enron-related litigation involving the eight Catalyst investors. He allowed him to remain as CEO. Meanwhile, Cooper also revised his contract to satisfy critics, eliminating his success fee and agreeing to work full time for his $1.3 million salary, among other things. Cooper plans to give the court a plan to reorganize Enron by summer.

As a turnaround boss, Cooper is following a well-trod path to riches. At the conclusion of the Drexel Burnham Lambert bankruptcy case, **Judge Francis Conrad said: "Whenever we have dealt with investment bankers and financial advisers, we have been left with the strong impression that for them the debtor is the cash cow to be milked." In the 16 months since Enron's collapse, more than $360 million has been paid to lawyers, accountants, investment bankers, and others. Cooper recently added 15 employees from his firm to the Enron account, at a cost of $864,000 each per year.**

REBOUND

Turnaround artist Stephen Cooper commands top dollar for trying to bring failed companies back to life.

CLIENTS ESTIMATED FEES

Enron $20.0 mil.

Laidlaw $17.5 mil.

Washington Group International $5.7 mil.

Polaroid $3.4 mil.

Note: Enron fee is per year. Fees are for work done by Cooper and associates at his firms.

Source: U.S. Bankruptcy Court records

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Give PGE power to the people

As President Franklin D. Roosevelt said, it is not-for-profit public utilities that provide the "yardstick of competition" for investor-owned utilities. If an investor-owned utility's rates are higher than those of neighboring public utilities, it's time to look at other options. We should take FDR's advice.

Luckily the Northwest is chock-full of great examples of successful public power utilities. Just to the south we have the Emerald People's Utility District, with 10 percent lower rates than PGE's average customer pays, and the Eugene Water & Electric Board, with 21 percent lower rates — two of the best-run, most innovative and progressive utilities in the country. And despite their lower rates, these utilities have equal or better service and reliability than PGE.

City Commissioner Erik Sten said in the **Portland Tribune** that he estimates a consumer-owned utility could save Portlanders 10 percent to 30 percent on their monthly bills (Counties ponder PGE alternative, Feb. 26). And no taxes would be used to buy or operate PGE and its generation projects. All costs would be paid through rates — lower rates!

Although public utilities still pay property taxes and franchise fees, they are cheaper because they have access to lower interest rates and don't pay enormous CEO salaries. More important, they do not have to pay profits to stockholders. PGE adds a whopping 9.1 percent to your bill to pay profits to its stockholders.

Freed of the focus on stockholders, public utilities — with locally elected boards of directors who have to pay the same electricity rates you would — are more accountable to customers.

Equally important is that with a public utility, the community has its hands on the controls. You can meet with, talk to and persuade the elected directors of a public utility. You can go to board meetings, speak your mind and be heard, and affect the way the utility is operated.

This is why public utilities like Emerald People's Utility District and the Eugene Water & Electric Board reflect the long-term values of their communities and are more responsive to the needs of their customers. What do you think an average Portland citizen's influence would be with the board of directors at a company such as Enron? Do you think you could meet with the board of directors of a large corporate utility? ...

...Public utilities such as Emerald People's Utility District and the Eugene Water & Electric Board embrace the local desire for conservation and more environmentally friendly resources. They have aggressively invested in conservation efforts, a landfill gas power plant and wind power. These utilities are nationally recognized for their efforts. In the Northwest, the public utilities are the vanguard of innovation. A community-owned PGE could do the same.

And the best part of switching PGE to public power is that you don't even have to change the name: We can just make it more responsive, better and cheaper!

Alan Zelenka is the power resources manager for the Emerald People's Utility District in Lane County; Susie Smith was a Eugene Water & Electric Board commissioner for 12 years.

People's Utility District

The best option for PGE workers

The days of a local, independently owned Portland General Electric are no more. As a wholly owned subsidiary of Enron, PGE no longer controls its own future and will soon be auctioned off in federal bankruptcy court.

A People's Utility District is the best way out of this mess for PGE workers as well as ratepayers because it means:

Stability for PGE workers

Of all the plans on the table, a PUD is the only option that guarantees existing union contracts and wages will be honored. Under state law (ORS 261.345) a PUD which acquires investor-owned utility property must:

- retain the existing workforce relating to the acquired territory;
- honor all existing collective bargaining agreements;
- provide all benefits to all employees (union and non-union) for at least one year; and
- recognize the collective bargaining unit. Additionally, a PUD must pay BOLI prevailing wages to all contractors and subcontractors at all times.

Neither the proposed Willamette Valley Power (WVP), nor the City of Portland would have to meet these requirements. In fact, both WVP and the City of Portland have strongly indicated that they will "outsource" the operation of the electric utility to the private sector should their plans prevail.

Employees would be eligible for PERS

Under a PUD, Oregon's Public Employee Retirement System (PERS) will become an option for PGE workers. Among the best public retirement plans in the country, PERS will be a significant improvement for most PGE employees over their now depleted 401ks.

Lower electricity rates under a PUD

- No more multimillion dollar executives or shareholder profits to pay.
- Eligibility for BPA power at preferred rates only available to public power entities.
- The lowest purchase price for PGE assets when the PUD uses its power of eminent domain to buy PGE for "just compensation", an amount determined by an Oregon jury, that takes into account the considerable investment ratepayers have already made in PGE facilities.
- No federal income taxes paid by a PUD.

Workers can elect their own bosses

A PUD is run by a board of five directors, elected by district. Workers can ensure that we have a progressive, pro-union Board through solidarity and political campaigning. With the WVP and City of Portland options we will not have that choice.

Oregon Public Power Coalition

818 SW 3rd Ave, PMB #1335; Portland, OR 97204-2405 – http ://www.oppc.net
Call Judy at 503-232-1911 or email liz@oppc.net, bill@oppc.net or joan@oppc.net

Why *Public* Power Is The *Best* Power

People's Utility Districts solve the
PGE/*Enron* mess for Oregonians:

Provide stable, local control:

- **Locally owned and controlled**: board of directors **directly elected by voters**
- **Stable power supply**: Cannot be sold at the whim of a private corporation
- Independent of the **Oregon Public Utility Commission**, which **approved the sale of PGE to Enron** and **than OK'd the largest rate hike** in Oregon history

Good for Labor:

- **Must honor existing union contracts** of PGE's workers
- **No over-priced executives** draining money from workers
- **No absentee ownership**: Local control is invested in employees
- Multiple PUDs = a **larger job market** No corporate mergers = **stable jobs**

Lower Costs:

- Will get PGE's assets at the **lowest price** by using eminent domain: **doesn't bid at the Enron bankruptcy auction**
- Get wholesale power at **low rates unavailable to private utilities**
- **More money stays at home**: doesn't pay Federal income taxes
- **Provide power to citizens**, not profits to shareholders: *14% of your PGE bill goes to shareholders!*
- **No over-priced executives** draining money from the ratepayers

Good for the Environment:

- Can make decisions based on **best environmental practices**, not highest income to shareholders
- Can develop **renewable resources**

With a **People's Utility District**, we can **control our energy future**. We **will not be subject to absentee owners** who put profit before public service!

ENRON CORRUPTION:
THE OREGON CONNECTION

Oregon will suffer more economic loss from Enron's corruption than any other state, largely because in 1997 Enron bought Orego largest electric utility, Portland General Electric Co., which it s owns.

Oregon was first with a bottle recycling bill and first with pub i access to beaches. And now Oregon is definitely in first place wh it comes to being swindled by Enron.

Oregon is # 1 per capita in:

1. Political campaign contributions by Enron and its executives since 1997 (mainly through PGE). PGE has contributed money to a majority of the senators and representatives in the Oregon legislature.

2. Dollars lost on Enron stock by the State employee pensi fund ($80 million).

3. Dollars lost by employees in their 401k pension plans (ov $100 million). Enron executives urged employees to put all of th 401k money into Enron stock, while they were urgently selling their shares.

4. Electric rate increases imposed by Enron/PGE (over **$400 million per year).** The Oregon Public Utility Commission allowed Enron/PGE to raise rates by 41% overall, 53% for busin customers, in October 2001.

5. Money collected from ratepayers to pay PGE federal taxes was sent to Enron, but never paid to the IRS. ($357 million ov past 4 years)

6. Money in the hands of multi-millionaires due to cashing out of Enron stock. PGE's former CEO, Ken Harrison, cashed out options in 2000 for a cool $75 million! Former PGE treasurer, Hirko, cashed his for a measly $35 million.

IT'S TIME FOR PUBLIC POWER IN OREGON

Instead of transferring PGE to another private company suffering more rounds of financial manipulations, the **Oreg Public Power Coalition** is calling for transferring PGE assets to a public power entity.

Consequently, the **OPPC** is working to **create a People's Util District (PUD) that would own and operate PGE's assets.**

On August 24, 2002, voters in the PGE service area began collecti signatures to place People's Utility District on the March or M ballot. One need look no further than McMinnville or Forest Gr to see that publicly-owned utilities have rates far below PGE's. 1999 study by a consultant to the City of Portland concluded th public ownership of PGE would reduce electricity costs by ab 20%.

Public Acquisition of Portland General Electric: A *Pro Forma* Study of Potential Savings to Customers

Prepared for the Regional Power Study Group
by
Lon L. Peters
Northwest Economic Research, Inc.
Portland, Oregon
February 2003

INTRODUCTION

This study estimates the potential savings (cost reductions) for customers associated with public acquisition of the utility properties of Portland General Electric (PGE), currently a wholly-owned subsidiary of Enron, compared with private acquisition. The focus of the study is fairly narrow: it concentrates almost exclusively on the capital costs and tax consequences of public versus private acquisition. Except for some modest savings in corporate administrative and general (A&G) costs due to public ownership, the remaining costs of service to PGE's customers are assumed to be invariant to the nature of ownership, including the cost of power and the basic operating and maintenance costs for generation, transmission, and distribution.

It is important to note that this study does not calculate or estimate the changes from current PGE rate levels that would occur due to either public or private acquisition. Rather, only the differences between public and private acquisition are analyzed in a number of different scenarios.

Because of the number and potential combinations of variables associated with this analysis, several scenarios were developed. One major question is whether a new owner would be able to assume PGE's outstanding long-term debt, or would have to finance the entire acquisition price with new capital. This report shows results for both possibilities, by creating two "cases". A second major question is the price that the new owner would pay for the initial acquisition of PGE's assets. This report shows results for three purchase prices that reflect a range from PGE's current capital structure, including long-term debt, preferred stock, and common equity (on the low end) to approximately the price that Northwest Natural offered in November 2001 (including the assumption of PGE's outstanding debt).

In two of the three scenarios analyzed here (for each case described above), the price paid for PGE's assets is assumed to be higher than PGE's current net book value (or "rate base", which is used to set retail rates in Oregon). If the price paid by either a public or a private purchaser is higher than PGE's current rate base, the result may be rate increases for PGE customers, compared with either current rate levels or rate levels that would prevail in the future without the sale of PGE. (The result depends on a number of different variables, including the actual purchase price, the cost of capital, and the potential cost savings under new ownership.)

SOURCES OF SAVINGS FOR CUSTOMERS

There are five areas in which public acquisition might reduce costs paid by customers, compared with private acquisition.

1. Lower cost of capital for the initial acquisition
   - investor-owned utilities rely on a combination of debt (long- and short-term), preferred stock (equity), and common stock (equity)
   - publicly-owned utilities rely mainly on debt and debt service coverage requirements; this study examines the possible use of both taxable and tax-exempt debt for the initial acquisition
   - a debt-financed acquisition of PGE by a publicly-owned entity would presumably face debt service coverage requirements from lenders: retail rates would have to be set to generate a certain amount of revenues in excess of the actual debt service on outstanding bonds; however, these excess revenues could be used to offset the need to borrow additional amounts for capital investments over time; documentation from both PGE and Northwest Natural Gas indicates that these new capital investments are likely to be substantial over the next ten years

2. Avoided state and federal income taxes
   - investor-owned utilities pay income taxes, both federal and state
   - publicly-owned utilities do not pay income taxes; this study assumes that other forms of taxes (e.g., franchise fees and payroll taxes) are paid by a publicly-owned utility

3. Tax-exempt financing of new capital assets
   - there is a possibility that new capital investments made after public acquisition of PGE could be financed with tax-exempt debt, even if the original acquisition has to rely on taxable debt

4. Tax-exempt refinancing of the original acquisition cost
   - there is a possibility that the original acquisition may be refinanced over time using tax-exempt debt

5. Avoided corporate overheads (A&G costs)
   - publicly-owned utilities have been demonstrated to have a "competitive advantage" in distribution services, and so a very modest level of savings in corporate overheads is assumed to result from public acquisition

This is a *pro forma* analysis: it is entirely driven by assumptions rather than proprietary or confidential data specific to PGE. However, the assumptions are deliberately chosen to represent a reasonable range of values for key variables, and documentation is relied on wherever available for such assumptions. Sources of documentation include: the proposed acquisition of PGE by Northwest Natural Gas in 2001, PGE's retail rate filing in Oregon Public Utility Commission Docket No. UE 115 and the Commission's order in that docket, PGE's filing before the Federal Energy Regulatory Commission in the

TransConnect dockets (ER02-323 and RT01-15), and a prior study on the potential benefits of municipalization performed by Northwest Economic Research et al. for the City of Portland in 1999. Several tables are appended to this report, showing the assumptions and results.

MAJOR VARIABLES

Table 1 lists the major variables, the ranges of values assigned to these variables in the analysis, and the sources or documentation used for these values.

Initial purchase price

- High – this assumes that a private buyer would pay a price similar to that implicit in the proposed acquisition of PGE by Northwest Natural Gas in 2001: approximately $2.9 billion, which includes both the amount that would have been paid to Enron and the amount of PGE debt that would have been assumed by Northwest Natural
- Medium – this is the midpoint between the High and Low cases
- Low – this assumes that a private buyer would only pay a price equal to PGE's current capital structure in 2002, which is close to the basis on which the Oregon PUC would permit retail rates to be set, thus limiting the rate of return of the private buyer

Interest rates for municipal debt

- Taxable – federal tax law may require that the initial acquisition rely on taxable debt
- Tax-exempt – this form of debt may be available for capital additions over time after the initial acquisition

Interest rates for private debt/preferred stock

- High – capital markets may view electric utilities as somewhat more risky than in the past, due to recent volatility in power (commodity) markets, the decline in stock values of numerous power marketers, and uncertainty in the federal regulation of both power and transmission
- Low – PGE's application before the OPUC in Docket No. UE 115 is used for this variable

Return on equity

- High – capital markets may view electric utilities as somewhat more risky than in the past, due to recent volatility in power (commodity) markets, the decline in stock values of numerous power marketers, and uncertainty in the federal regulation of both power and transmission
- Low - PGE's application before the OPUC in Docket No. UE 115 is used for this variable

Capital additions

- High – capital additions from PGE's application before the OPUC in Docket No. UE 115 are used for this variable
- Medium – this is the midpoint between the High and Low cases
- Low – forecasted capital additions from Northwest Natural's application before the OPUC to acquire PGE are used for this variable

Refinancing of initial purchase

- Optimistic – in the scenario where taxable debt is used for the initial purchase, that debt would be refinanced on a straight-line basis over ten years at tax-exempt interest rates
- Pessimistic – this assumes that no refinancing at tax-exempt rates takes place

Private financial structure

- Highly leveraged – the Northwest Natural application to acquire PGE is used for this capital structure; this means that the private acquisition starts out highly leveraged (75 percent debt) and gradually moves toward a more balanced debt/equity ratio (60 percent debt)
- Balanced per OPUC – PGE's application before the OPUC in Docket No. UE 115 is used for this variable; the capital structure is more balanced, with 48 percent of the capital assumed to be financed by debt or preferred stock, and the remainder with equity

Avoidable income taxes

- Federal – information from the OPUC's Order 01-777 in Docket No. UE 115 is used for this variable, net of deferred taxes
- State – information from the OPUC's Order 01-777 in Docket No. UE 115 is used for this variable

<u>Avoidable corporate costs (A&G)</u>

- High – the 1999 municipalization study for Portland is used for this variable
- Medium – this is the midpoint between the High and Low cases
- Low – at a minimum, the actual corporate officers' compensation in 2001 is assumed to be avoidable, although not in the first year of operation by the new owner

<u>Other assumptions</u>

- No adjustments have been made for inflation. This assumes that inflation would affect utility costs, whether publicly- or privately-owned.
- No other potential sources of savings are assumed. For example, if the publicly-owned entity relied on competitive bidding for some services, additional savings may be possible. However, no such savings are included in this analysis.
- There is no difference in this analysis in the amortization schedule for new debt issued by a private or public buyer. That is, the principle is assumed to be paid off over the same term, but the interest rates are assumed to differ depending on the nature of the owner (i.e., public versus private).

SCENARIOS

Three scenarios were constructed, based on various combinations of the above variables. The three scenarios are intended to represent two ends of a spectrum of results, plus a point in the middle. Scenario 1 is labeled "pro-private", because it uses assumptions that would tend to narrow the difference between the costs of private and public acquisition. Scenario 2 is labeled "pro-public", because it uses assumptions that tend to widen the difference between the costs of private and public acquisition. Scenario 3 is labeled "moderate", because it uses a combination of assumptions from Scenarios 1 and 2. Scenario 3 is <u>not</u> intended to be the "most realistic" case, however, because this study does not take a position on the likelihood of the ability to rely on tax-exempt debt, for example. Scenario 3 is intended only to provide a point somewhere in the middle of the spectrum defined by the two more extreme cases.

Table 2 shows the differences in the values used for the major variables in the three scenarios. In addition, because of the different vintages of the assumed interest rates for municipal and corporate debt, and the recent proposal by the Administration to exempt dividends from federal income taxes, an additional sensitivity case was constructed, based on the "moderate" scenario but increasing both the taxable and tax-exempt rates assumed for the municipal bonds associated with the initial acquisition by 100 basis points. These increases are meant to reflect the possibility that the exemption of dividends from federal income tax liability would tend to increase municipal bond interest rates. (For example, see the article by Jonathan Fuerbringer, "Questions Over Munis, But for Now No Panic", *The New York Times*, January 12, 2003, Section 3, p. 7.)

RESULTS

Due to the combination of three possible initial purchase prices, three scenarios for the other major variables, the possibility that PGE's existing debt would be assumed by the new owner, and changes in private capital structure and potential A&G savings over time, there are several sets of results, which are shown in Tables 3-1, 3-2, 3-3, 4-1, 4-2, 5-1, and 5-2.

Case 1: New Owner Does Not Assume PGE's Existing Long-Term Debt

In Tables 3-1 through 3-3, each of the three scenarios is shown for the three purchase prices and Years One, Five, and Ten. These time periods represent snapshots of possible results in the first, fifth, and tenth year of public operations. Each source of potential savings due to public acquisition is shown, as well as the total savings. The amounts shown are positive (i.e., greater than zero), but represent savings to PGE's customers.

Tables 4-1 and 4-2 summarize these savings for all purchase prices and scenarios. Table 4-1 simply replicates the amounts shown in the "total" rows in Tables 3-1 through 3-3. Table 4-1 shows that in all of the scenarios analyzed here, PGE customers would be better off on average due to public acquisition.

Table 4-2 shows the sensitivity analysis associated with the increase in both the taxable and tax-exempt interest rates that a publicly-owned entity would have to pay for debt by 100 basis points. These higher interest rates are used in all calculations across all scenarios: the cost of the initial acquisition, the cost of refinancing (if available), and the cost of additional capital investments. As would be expected, the increased interest rates reduce the potential savings associated with public acquisition. However, public acquisition is still able to provide net cost savings for PGE's customers compared to private acquisition. It is important to note that the amounts in Tables 4-1 and 4-2 represent differences in costs comparing public and private acquisition for different purchase prices and scenarios. These are not cost reductions from current PGE rate levels.

Case 2: New Owner Assumes PGE's Long-Term Debt

Because the new owner might be willing and able to assume PGE's existing long-term debt, the analysis described above was repeated with lower amounts of new capital raised by the new owner. In Tables 5-1 and 5-2, the new buyer, public or private, assumes PGE's outstanding long-term debt: $888 million, which carries a weighted average interest rate of 7.51%. That is, the new buyer would not refinance this debt, at least initially, and would continue to charge customers $93.5 million annually for interest and amortization. (The detailed analysis shown in Tables 3-1 through 3-3 is not shown for this case. The structure of Tables 5-1 and 5-2 parallels that of Tables 4-1 and 4-2.) The assumption of the existing long-term debt means that the buyer would have to raise about $1 billion to $2 billion in new capital, depending on the purchase price, instead of the $1.9 billion to $2.9 billion assumed in the first set of results. Tables 5-1 and 5-2 show that public acquisition can yield savings for customers for this Case 2 as well, compared with private acquisition.

DISCUSSION

Tables 4-1 through 5-2 show that for all three scenarios, the cost savings associated with public acquisition increase with the purchase price. That is, the higher the price paid for PGE, the higher the benefits to customers of public acquisition. This result may be counter-intuitive, but it simply reflects the fact that the cost of capital for a public owner would be lower than the cost of capital for a private owner: the higher the price paid for PGE, the more valuable is public ownership to customers. It does not mean that the acquiring party should be indifferent to the price paid. As was noted above, payment of a price higher than PGE's current rate base could mean rate increases, compared with today.

Table 1
MAJOR ASSUMPTIONS AND INPUTS

						Notes
Potential acquisition prices						
High	$	2,900,000,000				1
Medium	$	2,400,000,000				2
Low	$	1,900,000,000				3
Interest rates for municipal debt (percent per year)						
Taxable		6.25%				4
Tax-exempt		5.25%				5
Debt-service coverage		1.25				6
Interest rates for private debt/preferred stock (percent per year)						
High		8.30%				7
Low		7.80%				8
Return on equity for private buyer (percent per year)						
High		13.80%				9
Low		11.50%				10
Capital additions (dollars/year)						
High	$	179,000,000				11
Medium	$	164,500,000				12
Low	$	150,000,000				13
Refinancing of initial acquisition (percent per year)						
Optimistic	Initial purchase refinanced over ten years @ tax-exempt rates					14
Pessimistic	No refinancing permitted over first ten years					
Private financial structures (debt/equity ratio)						
		Year One		Year Five	Year Ten	
Highly leveraged		75/25		65/35	60/40	15
Balanced per OPUC		48/52		48/52	48/52	16
Avoidable income-taxes (for public buyer; dollars/year)						
Federal	$	60,000,000				17
State	$	15,000,000				18
Avoidable A&G costs (annually)						
High	$	10,000,000				19
Medium	$	7,500,000				20
Low	$	5,000,000				21

No inflation adjustments

No other savings (e.g., due to competitive contracting-out for services)

Sources and Notes

1 Approximate price offered by NW Natural for PGE, plus debt retained by PGE.
2 Mid-point between High and Low potential acquisition prices.
3 Approximate PGE rate base in 2002; Barnes testimony in UE-115 @ 2.

4 Source: local municipality.
5 Source: local municipality.
6 Source: typical level of debt service coverage (DSC) for a municipal utility; cash generated by DSC is assumed to be used for capital additions.

7 PGE's filing in UE-115; low case + 50 basis points;
Hagar/Valach Exh. 1104, using the spread between Aaa and Baa corporate bonds
8 PGE's filing in UE-115; Hager/Valach testimony @ 2.

9 Wgtd ave. incr. in ROE requested for PGE, et al. in TransConnect proposal to FERC; Exh. TC-2 (Piro).
10 PGE's filing in UE-115; Hager/Valach testimony @ 1.

11 PGE's filing in UE-115; Barnes testimony @ 27.
12 Mid-point between High and Low capital additions.
13 NW Natural application to acquire PGE; DeBoldt testimony Exhibit 407, PGE cash flow statement.

14 Refinancing assumed to proceed at 10% per year over ten years.

15 NW Natural application to acquire PGE, at 13; DeBoldt testimony @ 14.
16 PGE's filing in UE-115; Hager/Valach testimony @ 2 (preferred equity rolled into debt).

17 OPUC Order 01-777, August 31, 2001, Appendix G, p. 3.
18 OPUC Order 01-777, August 31, 2001, Appendix G, p. 3.

19 Municipalization study for City of Portland, 1999.
20 Mid-point between Low and High avoidable A&G costs.
21 PGE's officer salaries for 2001, listed on FERC Form 1.

(All amounts rounded.)

Table 2
SCENARIOS

	1 "Pro-private"	2 "Pro-public"	3 "Moderate"
Municipal debt	Taxable	Tax-exempt	Taxable
Private debt cost	Low	High	High
Return on equity for private buyer	Low	High	High
Financing of new capital additions	Taxable	Tax-exempt	Tax-exempt
Refinancing of original acquisition at tax-exempt rates	No	N/A	Yes
Debt/equity structure for private buyer	Leveraged	Balanced	Leveraged
Avoidable corporate A&G	Low	High	Medium
Avoidable income taxes	Federal + state	Federal + state	Federal + state

Table 3-1
SUMMARY OF ANNUAL COST SAVINGS DUE TO PUBLIC ACQUISITION
Buyer Relies Only on New Capital
SCENARIO 1 - "Pro-Private"

Year One	Purchase prices =>		$2.9 billion		$2.4 billion		$1.9 billion
1 Lower cost of capital for acquisition		$	26,462,500	$	21,900,000	$	17,337,500
2 Avoided income taxes		$	75,000,000	$	75,000,000	$	75,000,000
3 Tax-exempt financing of new assets		$	5,173,414	$	4,430,750	$	3,688,086
4 Tax-exempt refinancing of purchase		$	-	$	-	$	-
5 Avoided A&G costs		$	-	$	-	$	-
	Total	$	106,635,914	$	101,330,750	$	96,025,586

Year Five	Purchase prices =>		$2.9 billion		$2.4 billion		$1.9 billion
1 Lower cost of capital for acquisition		$	37,192,500	$	30,780,000	$	24,367,500
2 Avoided income taxes		$	75,000,000	$	75,000,000	$	75,000,000
3 Tax-exempt financing of new assets		$	29,178,570	$	25,197,000	$	21,215,430
4 Tax-exempt refinancing of purchase		$	-	$	-	$	-
5 Avoided A&G costs		$	5,000,000	$	5,000,000	$	5,000,000
	Total	$	146,371,070	$	135,977,000	$	125,582,930

Year Ten	Purchase prices =>		$2.9 billion		$2.4 billion		$1.9 billion
1 Lower cost of capital for acquisition		$	42,557,500	$	35,220,000	$	27,882,500
2 Avoided income taxes		$	75,000,000	$	75,000,000	$	75,000,000
3 Tax-exempt financing of new assets		$	83,506,641	$	73,506,250	$	63,505,859
4 Tax-exempt refinancing of purchase		$	-	$	-	$	-
5 Avoided A&G costs		$	5,000,000	$	5,000,000	$	5,000,000
	Total	$	206,064,141	$	188,726,250	$	171,388,359

Table 3-2
SUMMARY OF ANNUAL COST SAVINGS DUE TO PUBLIC ACQUISITION
Buyer Relies Only on New Capital
SCENARIO 2 - "Pro-Public"

Year One	Purchase prices =>		$2.9 billion		$2.4 billion		$1.9 billion
1 Lower cost of capital for acquisition		$	133,327,500	$	110,340,000	$	87,352,500
2 Avoided income taxes		$	75,000,000	$	75,000,000	$	75,000,000
3 Tax-exempt financing of new assets		$	10,727,377	$	9,630,075	$	8,532,773
4 Tax-exempt refinancing of purchase		$	-	$	-	$	-
5 Avoided A&G costs		$	-	$	-	$	-
	Total	$	219,054,877	$	194,970,075	$	170,885,273
Year Five	Purchase prices =>		$2.9 billion		$2.4 billion		$1.9 billion
1 Lower cost of capital for acquisition		$	133,327,500	$	110,340,000	$	87,352,500
2 Avoided income taxes		$	75,000,000	$	75,000,000	$	75,000,000
3 Tax-exempt financing of new assets		$	53,636,883	$	48,150,375	$	42,663,867
4 Tax-exempt refinancing of purchase			N/A		N/A		N/A
5 Avoided A&G costs		$	10,000,000	$	10,000,000	$	10,000,000
	Total	$	271,964,383	$	243,490,375	$	215,016,367
Year Ten	Purchase prices =>		$2.9 billion		$2.4 billion		$1.9 billion
1 Lower cost of capital for acquisition		$	133,327,500	$	110,340,000	$	87,352,500
2 Avoided income taxes		$	75,000,000	$	75,000,000	$	75,000,000
3 Tax-exempt financing of new assets		$	107,273,766	$	96,300,750	$	85,327,734
4 Tax-exempt refinancing of purchase			N/A		N/A		N/A
5 Avoided A&G costs		$	10,000,000	$	10,000,000	$	10,000,000
	Total	$	325,601,266	$	291,640,750	$	257,680,234

Table 3-3
SUMMARY OF ANNUAL COST SAVINGS DUE TO PUBLIC ACQUISITION
Buyer Relies Only on New Capital
SCENARIO 3 - "Moderate"

Year One	Purchase prices =>		$2.9 billion		$2.4 billion		$1.9 billion
1 Lower cost of capital for acquisition		$	54,012,500	$	44,700,000	$	35,387,500
2 Avoided income taxes		$	75,000,000	$	75,000,000	$	75,000,000
3 Tax-exempt financing of new assets		$	6,873,914	$	5,993,500	$	5,113,086
4 Tax-exempt refinancing of purchase		$	-	$	-	$	-
5 Avoided A&G costs		$	-	$	-	$	-
	Total	$	135,886,414	$	125,693,500	$	115,500,586
Year Five	Purchase prices =>		$2.9 billion		$2.4 billion		$1.9 billion
1 Lower cost of capital for acquisition		$	69,962,500	$	57,900,000	$	45,837,500
2 Avoided income taxes		$	75,000,000	$	75,000,000	$	75,000,000
3 Tax-exempt financing of new assets		$	39,292,070	$	34,491,250	$	29,690,430
4 Tax-exempt refinancing of purchase		$	27,006,250	$	22,350,000	$	17,693,750
5 Avoided A&G costs		$	7,500,000	$	7,500,000	$	7,500,000
	Total	$	218,760,820	$	197,241,250	$	175,721,680
Year Ten	Purchase prices =>		$2.9 billion		$2.4 billion		$1.9 billion
1 Lower cost of capital for acquisition		$	77,937,500	$	64,500,000	$	51,062,500
2 Avoided income taxes		$	75,000,000	$	75,000,000	$	75,000,000
3 Tax-exempt financing of new assets		$	83,506,641	$	73,506,250	$	63,505,859
4 Tax-exempt refinancing of purchase		$	54,012,500	$	44,700,000	$	35,387,500
5 Avoided A&G costs		$	7,500,000	$	7,500,000	$	7,500,000
	Total	$	297,956,641	$	265,206,250	$	232,455,859

Table 4-1
SUMMARY OF ANNUAL COST SAVINGS DUE TO PUBLIC ACQUISITION
Buyer Relies Only on New Capital

Year One

	Purchase Price		
Scenario	$2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 106,635,914	$ 101,330,750	$ 96,025,586
2 - "Pro-Public"	$ 219,054,877	$ 194,970,075	$ 170,885,273
3 - "Moderate"	$ 135,886,414	$ 125,693,500	$ 115,500,586

Year Five

	Purchase Price		
Scenario	$2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 146,371,070	$ 135,977,000	$ 125,582,930
2 - "Pro-Public"	$ 271,964,383	$ 243,490,375	$ 215,016,367
3 - "Moderate"	$ 218,760,820	$ 197,241,250	$ 175,721,680

Year Ten

	Purchase Price		
Scenario	$2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 206,064,141	$ 188,726,250	$ 171,388,359
2 - "Pro-Public"	$ 325,601,266	$ 291,640,750	$ 257,680,234
3 - "Moderate"	$ 297,956,641	$ 265,206,250	$ 232,455,859

Table 4-2
SUMMARY OF ANNUAL COST SAVINGS DUE TO PUBLIC ACQUISITION
Municipal bond interest rates 100 basis points higher than Table 4-1
Buyer Relies Only on New Capital

Year One

Scenario	Purchase Price $2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 65,212,500	$ 84,900,000	$ 68,587,500
2 - "Pro-Public"	$ 172,077,500	$ 173,340,000	$ 138,602,500
3 - "Moderate"	$ 92,762,500	$ 107,700,000	$ 86,637,500

Year Five

Scenario	Purchase Price $2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 105,050,758	$ 118,758,250	$ 96,465,742
2 - "Pro-Public"	$ 229,737,820	$ 225,521,625	$ 185,305,430
3 - "Moderate"	$ 159,315,508	$ 165,022,500	$ 134,729,492

Year Ten

Scenario	Purchase Price $2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 159,673,516	$ 166,288,750	$ 136,903,984
2 - "Pro-Public"	$ 277,398,141	$ 267,703,250	$ 222,008,360
3 - "Moderate"	$ 215,316,016	$ 212,768,750	$ 174,221,484

Table 5-1
SUMMARY OF ANNUAL COST SAVINGS DUE TO PUBLIC ACQUISITION
Buyer Assumes PGE's Long-Term Debt

Year One

	Purchase Price		
Scenario	$2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 98,484,827	$ 93,179,663	$ 87,874,498
2 - "Pro-Public"	$ 178,184,674	$ 154,099,873	$ 130,015,071
3 - "Moderate"	$ 119,300,277	$ 109,107,363	$ 98,914,448

Year Five

	Purchase Price		
Scenario	$2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 134,934,753	$ 124,540,683	$ 114,146,612
2 - "Pro-Public"	$ 231,094,180	$ 202,620,173	$ 174,146,165
3 - "Moderate"	$ 197,291,233	$ 175,771,663	$ 154,252,092

Year Ten

	Purchase Price		
Scenario	$2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 192,985,208	$ 175,647,318	$ 158,309,427
2 - "Pro-Public"	$ 284,731,063	$ 250,770,548	$ 216,810,032
3 - "Moderate"	$ 274,045,328	$ 241,294,938	$ 208,544,547

Table 5-2
SUMMARY OF ANNUAL COST SAVINGS DUE TO PUBLIC ACQUISITION
Municipal bond interest rates 100 basis points higher than Table 5-1
Buyer Assumes PGE's Long-Term Debt

Year One

	Purchase Price		
Scenario	$2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 78,363,827	$ 78,058,663	$ 77,753,498
2 - "Pro-Public"	$ 158,063,674	$ 138,978,873	$ 119,894,071
3 - "Moderate"	$ 99,179,277	$ 93,986,363	$ 88,793,448

Year Five

	Purchase Price		
Scenario	$2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 114,813,753	$ 109,419,683	$ 104,025,612
2 - "Pro-Public"	$ 210,973,180	$ 187,499,173	$ 164,025,165
3 - "Moderate"	$ 177,170,233	$ 160,650,663	$ 144,131,092

Year Ten

	Purchase Price		
Scenario	$2.9 billion	$2.4 billion	$1.9 billion
1 - "Pro-Private"	$ 172,864,208	$ 160,526,318	$ 148,188,427
2 - "Pro-Public"	$ 264,610,063	$ 235,649,548	$ 206,689,032
3 - "Moderate"	$ 253,924,328	$ 226,173,938	$ 198,423,547

February 10, 2003
Regional Power Study Group

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Study Indicates Customers Would Benefit from Public Acquisition of PGE

Study shows potential cost savings from proposed public ownership of PGE

PORTLAND, Ore. - February 10, 2003 - A study released today shows a potential customer benefit to public ownership of Portland General Electric (PGE), compared with private acquisition. The pro forma study was conducted by economist Lon L. Peters for the Regional Power Study Group, which is comprised of Clackamas, Marion, Multnomah and Washington county representatives.

In all scenarios analyzed, a public purchaser and its customers could benefit, in both the short- and long-term, from cost savings related to lower cost of capital, avoided income taxes and reduced corporate overhead, the study shows.

Potential cost savings to PGE in the first year after purchase range from $68 million to $219 million, and up to $325 million by the 10th year. While the ultimate purchase price will largely determine the benefit to ratepayers, a public operator of PGE has advantages in keeping rates as low as possible, primarily from tax-exemptions, according to the study.

"PGE customers could see potentially substantial savings on the order of $100 to $200 million per year from public ownership, compared with private ownership," said Peters, a respected energy economist.

The study not only shows that there is a potentially positive economic outcome for customers, but it also makes a compelling case for the continued investigation and study of public ownership of PGE," said Clackamas County Commissioner Michael Jordan.

The pro forma analysis relied on non-proprietary data available in the public domain, including PGE filings with the Oregon Public Utility Commission and Northwest Natural Gas Company's proposed acquisition of PGE in 2001.

The complete study is available online at www.co.clackamas.or.us.

County commissioners formed the Regional Power Study Group in November 2002 as an intergovernmental organization to study potential economic impacts of a public acquisition of PGE, a wholly owned subsidiary of bankrupt Enron Corp. The proposed purchase aims to ensure local control of Oregon's largest utility and keep rates affordable for PGE's more than 730,000 customers in Portland, Salem and nearby communities.

LINKS

About PGE:
http://www.portlandgeneral.com/about_pge/corporate_info/about_us.asp
FAQs about the City of Portland's role in the future of PGE:
http://www.pge.ci.portland.or.us/faq.html
Multnomah County Commissioners Resolution No. 02-122 authorizing county participation in public acquisition of PGE:
http://www.co.multnomah.or.us/cc/chair/powerres.htm

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Executive Summary

The Regional Power Study Group, formed by an intergovernmental agreement among Clackamas, Marion, Multnomah and Washington counties, commissioned an economic analysis. Dr. Lon Peters assessed the potential economic benefit of public acquisition of Portland General Electric (PGE), which is being sold because of Enron's bankruptcy.

Peters, an economist with an extensive background in the energy field, conducted a pro forma economic analysis to determine the difference in cost between acquisition of PGE by a private entity and a public entity. In conducting his analysis, Peters relied on non-proprietary data available in the public domain, such as PGE filings with the Oregon Public Utility Commission and information relating to Northwest Natural Gas Company's proposed purchase of PGE in 2001.

The analysis shows economic benefits to public acquisition of PGE under all options studied. The economic benefit of public acquisition ranges from $68 million to $219 million in the first year after purchase and goes up to as much as $325 million in annual cost savings by the 10th year after purchase.

Electricity rates paid by customers will be determined largely by the actual purchase price. However, annual cost savings as identified in Peters' analysis would give a public operator of PGE the ability to charge lower rates. Cost savings result from a lower cost of capital, avoided income taxes and reduced corporate overhead costs for a public purchaser of PGE.

The study analyzed three basic acquisition scenarios – one with terms favorable to a private buyer, another with terms favorable to a public buyer and a third that combines some of the terms in the first two. Peters then applied those scenarios to three purchase prices, expressing the potential range of what it might cost to buy PGE. Finally, Peters evaluated the scenarios in light of different financing schemes – one in which the buyer finances the entire purchase price, the other in which the buyer finances only the difference between the purchase price and nearly $900 million in existing PGE long-term debt. He also calculated the difference in cost savings between private and public acquisition if federal tax legislation is approved that reduces the tax burden on corporate dividends and increases interest rates for municipal bonds.

Public Power Costs Less

Residential customers of investor-owned utilities paid average rates that were 16 percent above those paid by customers of publicly owned systems during 2000. Public power customers paid an average of 7.3 cents per kilowatt-hour for residential electric service, compared to 8.5 cents per kilowatt-hour paid by residential customers of investor-owned utilities, and 7.6 cents per kilowatt-hour paid by residential customers of cooperative systems.

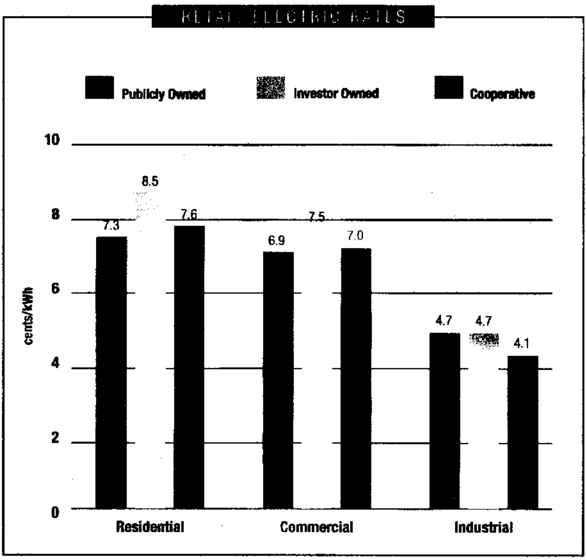
Across the country, publicly owned electric utilities continue to lead the way in providing residential, commercial and industrial customers with low-cost energy for homes, businesses, large industry and the public. The chart below compares the national average residential, commercial and industrial revenue per kilowatt-hour paid by customers of publicly owned, investor-owned and cooperative electric utilities in 2000.

Commercial customers of investor-owned utilities paid 9 percent more for electricity than public power customers in 2000. Public power commercial customers paid an average of 6.9 cents per kWh, compared to 7.5 cents per kWh paid by commercial customers of investor-owned utilities and 7.0 cents per kWh paid by commercial customers of cooperative systems. There was essentially no difference in average rates paid by industrial customers of publicly owned and investor-owned electric utilities in 2000: industrial customers of publicly owned utilities and industrial customers of investor-owned utilities paid an average of 4.7 cents per kWh, while industrial customers of cooperative systems paid an average rate of 4.1 cents per kWh.

Publicly owned utilities' average rate advantage has narrowed a moderate amount in the last three years, and the most important reason was the addition of a very large, new public power utility, Long Island Power Authority, which displaced a high-cost private power company. LIPA's one million customers represent almost 6 percent of all public power customers, so LIPA's rates have a statistically noticeable effect on public power's average revenue per kilowatt-hour. Importantly, LIPA's customers have benefited from their switch from Long Island Lighting Co. to public power. In 1999, LIPA reduced the average rate to residential customers by 16 percent and the average rate to commercial customers by 8 percent, compared to LILCO's 1998 rates. Neither LIPA nor LILCO have distinguished between commercial and industrial customers.

State restructuring activities in several states have also narrowed the gap between publicly owned and investor-owned utility rates as some states have required investor-owned utilities to implement rate reductions or rate freezes as part of retail choice. In addition, the rate comparisons do not cover sales to all ultimate customers, as customers served by an alternative supplier are excluded from the database. These customers typically are investor-owned utility customers in high-cost states. The exclusion of sales to customers served by alternate suppliers changes the overall composition of the database, so care should be taken in making year to year comparisons.

The 2000 data presented here are based on information reported to the Department of Energy, Energy Information Administration (EIA) on Form EIA-861, "Annual Electric Utility Report." Data were reported by 2,009 publicly owned electric utilities, 240 investor-owned utilities and 894 rural electric cooperatives operating in the 50 states and the District of Columbia. The following table shows revenue per kilowatt-hour information by state. ■



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Adding insult to injury at PGE

05/01/03

W e were mistaken last year in thinking there was no particular urgency to resolving the ownership of Portland General Electric. Tomorrow, PGE's parent company, Enron, crosses the 17-month mark since it filed for bankruptcy on Dec. 2, 2001.

The catalog of outrages just keeps growing.

As reported by The Oregonian's Gail Kinsey Hill, Enron paid the top five executives at PGE bonuses of $975,000 last year, the same amount they stand to collect this year. These are not bonuses as conventionally understood, for success in hitting an earnings goal or cost-cutting target; these are retention bonuses – extra pay for just showing up.

We've been told that retention bonuses aren't unusual. They are often used to keep a troubled organization from losing top management.

But it's the wrong tactic for a company whose workers lost their 401(k) savings in worthless Enron stock. And it's an insult to customers hit with 30 percent and 50 percent power rate increases.

The disclosure of bonuses for the top executives at American Airlines forced it to renegotiate union contracts to stave off bankruptcy. It also forced the airline's chief executive to resign.

That apparently doesn't mean much at Enron. In addition to signing bonus checks, it has reportedly run up almost $400 million in fees and legal costs.

With the welcome news that the Oregon Public Utility Commission staff has recommended a more thorough investigation of PGE's practices comes the thought that there is greater urgency to the city of Portland's efforts to buy the company.

When Enron bought PGE, its main interest was Enron, not the well-being of the Northwest. PGE ownership by Portland would change that.

It can't happen soon enough.

The New York Times nytimes.com

April 30, 2003

National Briefing: Washington

U.S. TO END ENRON POWER CONTRACTS The Justice Department approved an agreement to let the Bonneville Power Administration end nearly $500 million in high-priced power contracts with Enron. Officials at the utility in Portland, Ore., said the accord should save ratepayers as much $200 million and help reduce a projected 15 percent rate increase by 2 percentage points. Bonneville, a federal agency, supplies 45 percent of the energy in the Northwest by selling power from federal dams. The agency will pay Enron's creditors $99 million in exchange for canceling long-term contracts that could have required the utility to pay nearly $500 million through 2006. (AP)

Extra copy

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Panel recommends investigation of PGE

04/30/03

GAIL KINSEY HILL

The staff of the Oregon Public Utility Commission is recommending that the regulatory agency investigate possible mismanagement by Portland General Electric during the energy crisis of 2000-01.

If commissioners go ahead with the inquiry -- which they are expected to do -- it would represent their first formal review of the inner workings of the energy crisis and of PGE's potential participation in trading strategies that drove up wholesale prices.

Of more significance to PGE's 740,000 customers, any findings of mismanagement could result in rate reductions, although rollbacks probably would be relatively small and only partially counter the 30 percent residential rate increase instituted in late 2001, PUC staff said.

The staff's long-awaited report, released Tuesday, calls on regulators to zero in on PGE's involvement in an Enron trading scheme known as Death Star, one of several strategies used by Enron to manipulate energy markets. The report also keys in on PGE's failure to properly account for, or post, electricity trades with Enron, which owns PGE, Oregon's largest utility.

"We think there's enough evidence with the Death Star trades and the posting errors to make an argument that PGE mismanaged that portion of its trading," said Lee Sparling, administrator of the PUC's electricity division, who led the staff review.

The staff also suggested that an investigation into possible misconduct by PGE might be warranted but recommended delaying any action on that issue until an ongoing federal investigation into the utility's trading practices was completed.

Findings of misconduct, which involve violations of federal trading regulations, known as tariffs, also could result in rate reductions, state regulators said.

PGE officials objected to the staff recommendations.

"We disagree with the staff conclusions about our mismanagement," said PGE attorney Jay Dudley. "Characterizing minor administrative errors as mismanagement goes too far."

Dudley also questioned whether the PUC could rely on findings of past mismanagement to order future rate reductions.

"We're looking very carefully at whether it has the authority to order that kind of relief," he said.

Consumer groups encouraged Oregon consumer advocacy groups, which have criticized the utility commission for failing to aggressively dissect the energy crisis and expose potential perpetrators, said they were encouraged by Tuesday's report.

Oregon's largest utility.

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Consumer groups encouraged Oregon consumer advocacy groups, which have criticized the utility commission for failing to aggressively dissect the energy crisis and expose potential perpetrators, said they were encouraged by Tuesday's report.

"The bad news is it took this long, and it's not particularly definitive," said Jason Eisdorfer, an attorney for the Citizens' Utility Board. "On the positive side, it confirms what a lot of people have been saying -- that something fishy was going on."

The energy crisis, which lasted from May 2000 through May 2001, was characterized by huge run-ups in wholesale electricity prices. It was blamed on a variety of factors, including California's botched deregulation plan, the Northwest's drought and greedy energy companies.

Enron became the symbol of opportunistic corporate behavior when, in May of last year, information surfaced that Enron was using trading strategies nicknamed Death Star, Fat Boy and Get Shorty to exploit markets and scoop up extra profits.

PGE was drawn into the controversy as a result of a series of trades it conducted with Enron on 17 days in April, May and June of 2000. The transactions turned out to be Death Star, a strategy that enabled Enron to collect payments from California for relieving congestion on overcrowded transmission lines, even though no power actually flowed and no congestion ever threatened.

Affiliated companies, such as PGE and Enron, may conduct only limited types of trades with each other. Those trades must be posted on electronic bulletin boards so that similar deals are available to other traders.

The Federal Energy Regulatory Commission began its formal investigation into PGE's trading activities in August and is scheduled to hold a key hearing in June. An initial decision is expected by mid-July.

A state investigation would focus on essentially the same issues as those involved in the FERC inquiry. But the utility commission would concentrate more directly on potential harm to ratepayers.

The staff report issued Tuesday also was to address whether PacifiCorp or Idaho Power, the two other investor-owned utilities that serve Oregon customers, were involved in questionable trading practices. But regulators said they needed more time to gather and review relevant information. They said they would issue their findings later this summer.

Neither PacifiCorp nor Idaho Power is involved in formal FERC investigations, although agency staff have recommended that the commission require the utilities to provide more details of their trading practices in California.

Commissioners plan to hold a public meeting in June to review the staff report on PGE and to decide whether to go ahead with an investigation.

Commission Chairman Roy Hemmingway for some time has said he favors a formal investigation into PGE's trading activities. He confirmed his leanings Tuesday.

"I'm going to vote for that," he said of the staff recommendation.

Commissioner Lee Beyer said he hadn't yet read the full report but "there's probably a basis to take a hard look at this."

Joan Smith, the remaining member of the commission, completes her term today. A replacement has yet to be named.

Gail Kinsey Hill: 503-221-8590, gailhill@news.

Eulia Quan Mishima

From: "Press" <press@voters.net>
To: <undisclosed-recipients:>
Sent: Tuesday, April 01, 2003 6:22 PM
Subject: [Pud-announce] INQUIRY INTO WHETHER PGE PAID ITS TAXES SQUASHED BY OREGON PUBLIC UTILITY COMMISSION

April 1, 2003

INQUIRY INTO WHETHER PGE PAID ITS TAXES SQUASHED BY OREGON PUBLIC UTILITY COMMISSION

UTILITY REFORM PROJECT SOUGHT INVESTIGATION OF WHETHER PGE OR ENRON EVER PAID TO STATE GOVERNMENT THE $90 MILLION+ CHARGED TO PGE RATEPAYERS FOR "STATE INCOME TAXES" SINCE ENRON TAKEOVER IN 1997

OREGON PUC = NOT INTERESTED IN FINDING OUT OR TELLING THE PUBLIC

Yesterday, the Oregon Public Utility Commission (OPUC) rejected the petition of the Utility Reform Project (URP) for an investigation to determine whether PGE or Enron has paid to the State or Oregon (or to local governments in Oregon) any of the "state income taxes" that PGE has charged to ratepayers since 1997.

Since then, PGE ratepayers have paid over $90 million to PGE to cover the alleged cost of its "state income taxes." To date, there is no evidence that PGE or Enron actually paid any of that money to any government in Oregon (although it is possible that PGE paid $3 million in state income taxes in 2001). This is in addition to the $430 million ratepayers have paid to PGE to cover the asserted cost of its federal income taxes. None of that money has been paid to the IRS.

The chairman of the Commission, Roy Hemmingway, refused to allow Dan Meek, the representative of the Utility Reform Project to present his testimony to the Commission, constantly interrupting him and then shouting him down and gavelling him into silence. Hemmingway later apologized to the audience for "losing his temper."

"I wonder why the Commission is so nervous about letting the public know whether PGE or Enron pocketed the $90 million in so-called taxes," said Meek. "The Commission is going out of its way to keep the public in the dark." PGE had indicated it would provide records at the public meeting to show the amount of state and local income taxes it has paid since 1997, but in fact PGE provided no such information.

"PGE has been claiming that it pays $15 million per year in state income taxes and has been charging us that in its rates, along with amounts for local taxes. We have seen no evidence that PGE or Enron actually paid any of this to governments in Oregon during the years 1997, 1998, 1999, 2000, and at least the first 4 months of 2001. It also appears they may have paid nothing in 2002. Instead, it appears that PGE 'paid its taxes' to Enron, which then hid the money in the Cayman Islands."

PGE became "de-consolidated" from Enron for income tax purposes in May 2001. The period of deconsolidation apparently lasted through the end of 2002. PGE supposedly filed its own income tax returns during that period. PGE then re-consolidated with Enron for income tax purposes in December

2002 and is apparently again "paying its taxes" to Enron and not to the State of Oregon or its local jurisdictions.

The testimony **Meek was not allowed to talk about** and other related documents are available at:

ftp://ftp.voters.net/urp/public

After going to that site with your browser, you may need to hit "Refresh" for the list of files to appear.

Utility Reform Project
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Panel Finds Manipulation by Energy Companies

By RICHARD A. OPPEL Jr.

W ASHINGTON, March 26 — California electricity and natural gas prices were driven higher because of widespread manipulation and misconduct by Enron and more than 30 other energy companies during the 2000-2001 energy crisis that threatened the state's solvency, federal energy regulators said today.

Despite those findings, the Federal Energy Regulatory Commission strongly signaled that it was likely to refuse to overturn any of the more than $40 billion in long-term power contracts that California and others on the West Coast signed at the height of the crisis. The state had agreed to the high-cost contracts as a means of bringing raging power prices under control, but state officials now say that pervasive evidence of price manipulation means the deals should be abrogated.

At the same time, the commission today increased to $3.3 billion the refund it contends is owed to California to compensate for electricity overcharging. An administrative law judge had previously recommended $1.8 billion in refunds, but commission officials said manipulation of the prices paid for natural gas used to fuel many power plants in the state meant that the refund should be larger.

Because the state still owes the power suppliers $3 billion, it is unlikely to gain much money from this ruling. California signaled today that it was likely to go to court to try to increase its refunds.

In a series of reports and orders released today, the commission demanded that Enron, Reliant Energy Services and BP Energy show why their ability to trade electricity at market rates should not be revoked, citing "numerous" manipulations by Enron and "apparent manipulation" of electricity prices at the Palo Verde hub in Arizona by Reliant and BP.

Reliant noted that the commission had not taken formal action yet and said the episode was "an isolated incident" and that the employee responsible for those trades had been fired. Nevertheless, shares of Reliant Resources dropped 24 percent, to $3.05, in trading after the ruling today. Shares of other larger energy traders named by the commission also fell sharply.

In addition, the commission staff proposed requiring more than 30 other large companies, including Dynegy, Idaho Power, the Los Angeles Department of Water and Power, Mirant and the Williams Companies, to return "any unjust enrichment related to their misconduct" that stemmed from inflated bidding, withholding of power or other violations of market rules. The commission will decide whether to take action against these companies later.

In an exhaustive report today, Donald Gelinas, who led the commission's investigation of market abuses, said investigators had found "significant market manipulation" but that the root causes of the state's meltdown were a shortage of electricity and a "fatally flawed market design."

All the same, Mr. Gelinas said investigators had found an "epidemic" number of efforts to manipulate gas prices. In one of the more blatant examples, Reliant was able to inflate the average price paid for gas in California during December 2000 by $8.54 per million British thermal units — what investigators described as a very significant amount — by "churning" gas trades.

In addition, the Gelinas report found that Enron's online trading platform was "a key enabler" of gas-price manipulation. The platform, Enron Online, generated more than $500 million in speculative profits for Enron in 2000 and 2001 by manipulating actual physical prices for gas and electricity that greatly boosted Enron's profits on derivative financial contracts tied to those physical prices, the report stated.

These high prices for electricity, Mr. Gelinas found, "significantly influenced" longer-term electricity sales agreements signed during 2000 and 2001. Mr. Gelinas also recommended a number of changes to ensure better reporting and monitoring of energy trading and price reporting. His report also found that accusations that Williams had "cornered" the market for gas in California in January 2001 were "unsubstantiated." A former Williams executive stated in a news article in June 2002 that the company had managed to drive up gas prices in California.

All of the rulings by the commission today are likely to be reviewed eventually by a federal appeals court.

For California officials, the decisions are a bittersweet result to more than two years of efforts to obtain refunds and penalties for what they have long maintained was widespread price gouging.

On one hand, the findings by the commission, which is made up of two members appointed by President Bush and one selected by President Bill Clinton, are likely to put to rest any serious arguments that manipulation and misconduct played little or no role in the California energy crisis. Initially, state officials were widely mocked for accusing the energy companies of profiteering, but an increasing body of evidence has emerged that illegal behavior contributed to price spikes.

On the other hand, the commission still made it clear today that the state's own deregulated electricity marketplace was naïvely constructed and severely flawed, and made possible the abuses since documented. Moreover, the commission has agreed to return only a small portion of what the state claims as overcharges. In addition to wanting to tear up the high-priced power contracts, state officials also want $9 billion in refunds.

"It took two years for FERC to confirm what we knew all along: there was widespread market manipulation and a massive rip-off of California ratepayers," Gov. Gray Davis of California said today. Mr. Davis, a Democrat, added: "Talk is cheap. Until California gets its money back, the FERC hasn't done its job. They still have an opportunity to do. If not, we'll see them in court."

The energy companies, by and large, blame the crisis on a shortage of electricity and California's poorly designed electricity marketplace, and they say that accusations of manipulation are vastly overstated.

Steve Malcolm, the chairman and chief executive of Williams, one of the largest energy traders, said in a statement this afternoon that he was "confident that further, detailed review of the outstanding issues will confirm that Williams operated in accordance with market rules and ethical business practices."

The three commissioners were deeply divided today over whether contracts for long-term electricity sales signed during the height of the crisis should be torn up.

William Massey, who was appointed by President Clinton, said the findings of widespread manipulation could not be squared with comments today by the other two commissioners, Pat Wood III and Nora Brownell, in which they indicated an extreme reluctance to overturn contracts.

"I do think that these two notions are kind of at war with each other," Mr. Massey said.

However, Ms. Brownell said, "I don't think it's fair to say there's an absolute correlation between the evidence of manipulation and the long-term contracts."

SEC charges 5 former Enron EBS execs with fraud

Reuters - *May 1, 2003*

WASHINGTON, May 1 (Reuters) - The Securities and Exchange Commission on Thursday charged five former executives of Enron Corp.'s ((ENRNQ.PK)) broadband unit with fraud and unlawful insider trading.

The SEC filed an amended civil complaint, accusing them of reaping more than $150 million in unlawful profits and engaging in a wide-ranging scheme to inflate Enron stock with false and misleading statements and failing to publicly disclose material information about Enron Broadband Services Inc.

The SEC named former EBS chief executive officers Kenneth Rice and Joseph Hirko, former EBS Chief Operating Officer Kevin Hannon and former EBS senior vice presidents Rex Shelby and Scott Yeager.

The civil action came as criminal prosecutors unveiled charges against the former EBS unit executives and new charges against former Enron Chief Financial Officer Andrew Fastow and his wife.