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April 28, 2008

CHARLES F. HINKLE
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By Hand Delivery

Mr. Fred R. Neal
Interim County Clerk
Clatsop County Elections Department
Public Services Building, Suite 220
820 Exchange Street
Astoria, OR 97103.

Re: *Nyberg, et al. v. Marquis* (Ballot Title Review for Petition 08-04)

Dear Mr. Neal:

Pursuant to ORS 250.195(2), I am writing to inform you that a Petition for Review of the ballot title for Clatsop County Petition 08-04 prepared by District Attorney Joshua Marquis and filed with your office on April 17, 2008, was filed today in Clatsop County Circuit Court. I am enclosing a copy of that Petition for Review, along with a copy of the supporting Memorandum that was also filed today, for your information.

Very truly yours,

A handwritten signature in cursive script that reads "Charles F. Hinkle".

Charles F. Hinkle

/cfh
Enclosures

In the Circuit Court of the State of Oregon
For the County of Clatsop

EMIL E. NYBERG, DON ATWOOD, and PETER HACKETT,

Plaintiffs,

vs.

FRED R. NEAL, in his official capacity as Interim Clatsop County Clerk,

Defendant.

Case No.

SUMMONS

To **Joshua Marquis, District Attorney for Clatsop County,**
749 Commercial Street, Astoria, OR 97103

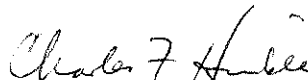
Defendant.

You are hereby required to appear and defend the complaint filed against you in the above-entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.



SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

Charles F. Hinkle 710839
ATTORNEY'S/AUTHOR'S NAME (TYPED OR PRINTED) BAR NO. (IF ANY)

900 SW Fifth Avenue, Suite 2600
ADDRESS

Portland Oregon 97204 (503) 294-9266
CITY STATE ZIP PHONE

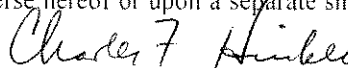
Charles F. Hinkle 710839
TRIAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED) BAR NO.

STATE OF OREGON, County of Multnomah) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.

ATTORNEY OF RECORD FOR PLAINTIFF(S)

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.



ATTORNEY(S) FOR PLAINTIFF(S)

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLATSOP

EMIL E. NYBERG, DON ATWOOD, and
PETER HACKETT,

Petitioners,

v.

JOSHUA MARQUIS, in his official
capacity as District Attorney for Clatsop
County,

Respondent.

No.

PETITION FOR REVIEW OF BALLOT
TITLE (Clatsop County Petition 08-04)

Expedited Consideration Requested under
ORS 250.195(3)

Petitioners allege:

1.

This is a petition to review the ballot title prepared by respondent Joshua Marquis for Clatsop County Petition 08-04, which is a referendum petition relating to Clatsop County Ordinance 08-05. This petition for review is brought pursuant to ORS 250.195, and is supported by an accompanying Memorandum of Law.

2.

Petitioners are residents and electors in Clatsop County, Oregon.

3.

Respondent is the District Attorney of Clatsop County.

4.

The Clatsop County Board of Commissioners adopted Ordinance 08-05 on March 20, 2008. A copy of Ordinance 08-05 is attached to this Petition as Exhibit 1 and by this reference incorporated herein. Sections 5 and 6 of Ordinance 08-05 amended Section 3.586

1 of Clatsop County's Land and Water Development and Use Ordinance ("LWDUO"). A copy
2 of Section 3.580 of LWDUO (of which Section 3.586 is a part) is attached to this Petition as
3 Exhibit 2 and by this reference incorporated herein.

4 5.

5 On April 11, 2008, a referendum petition was filed with the Interim County Clerk for
6 Clatsop County, proposing to refer Sections 5 and 6 of Clatsop County Ordinance 08-05 to
7 the voters of Clatsop County. The Interim County Clerk assigned petition number 08-04 to
8 that referendum petition. A copy of that referendum petition is attached to this Petition as
9 Exhibit 3 and by this reference incorporated herein.

10 6.

11 On April 11, 2008, the Interim County Clerk sent two copies of Petition 08-04 to
12 respondent Marquis, and informed respondent that he had five days from the receipt of those
13 copies to draft a ballot title for Petition 08-04.

14 7.

15 Respondent thereafter prepared a ballot title for Petition 08-04, and on April 17, 2008,
16 he filed that ballot title with the Interim County Clerk. A copy of the Clerk's "Notice of
17 Receipt of Referendum Ballot Title" is attached to this petition as Exhibit 4, and by this
18 reference incorporated herein. That "Notice" contains the text of the ballot title prepared by
19 respondent for Petition 08-04. As the author of the ballot title for Petition 08-04, respondent
20 is the proper respondent to this petition under ORS 250.195(1).

21 8.

22 In a separate action in this court, petitioners have filed a complaint against Interim
23 County Clerk Fred Neal. That action is entitled *Nyberg, et al., v. Neal*, Clatsop County
24 Circuit Court No. 082218. In their complaint in that action, petitioners Nyberg, Atwood, and
25 Hackett are seeking a judgment declaring that Section 5 and 6 of Ordinance 08-05 may not
26 be referred to the voters, on the ground that those sections constitute a land use decision that

1 is not subject to the referendum. Article VI, section 10 of the Oregon Constitution limits the
2 use of the referendum at the county level to “the adoption, amendment, revision or repeal of a
3 county charter” or “to legislation passed by counties which have adopted such a charter.”
4 Sections 5 and 6 of Ordinance 08-05 did not amend the county charter, and they are not
5 “legislation.” The referendum petition that seeks to refer those sections to the voters of
6 Clatsop County is therefore legally insufficient, and may not appear on the ballot.

7 9.

8 The legal sufficiency of the referendum set out in Petition 08-04 will be determined in
9 that separate action, *Nyberg, et al. v. Neal*. Because of the deadline for challenging ballot
10 titles set out in ORS 250.195, petitioners are required to file this Petition for Review of Ballot
11 Title for Petition 08-04 before the court determines whether Petition 08-04 is legally
12 sufficient to qualify for the ballot. If the court determines, in *Nyberg, et al. v. Neal*, that
13 Petition 08-04 is not legally sufficient to qualify for the ballot, then this Petition for Review
14 of Ballot Title will be moot. However, if the court in *Nyberg, et al. v. Neal* rejects
15 petitioners’ contention that Sections 5 and 6 of Ordinance 08-05 constitute a land use
16 decision that is not subject to referendum, and therefore concludes that Petition 08-04 is
17 legally sufficient to qualify for the ballot, then the court must rule on this Petition to review
18 the ballot title for that measure. This Petition for Review of Ballot Title for Petition 08-04 is
19 therefore based on the premise that Petition 08-04 is a legally sufficient referendum petition,
20 without waiving their contentions in *Nyberg, et al. v. Neal* that it is not a legally sufficient
21 referendum petition.

22 10.

23 The Caption prepared by respondent for the ballot title for Petition 08-04 does not
24 comply with the requirements of ORS 250.035(1)(a) because it does not reasonably identify
25 the subject of the measure. The subject of the measure is the proposed amendment to the
26 ////

1 county's Land and Water Development and Use Ordinance, not (as stated by respondent's
2 caption) whether or not certain action by the County Commission should be approved.

3 11.

4 The Question prepared by respondent for the ballot title for Petition 08-04 does not
5 comply with the requirements of ORS 250.035(1)(b) because it does not plainly phrase the
6 chief purpose of the measure. The chief purpose of the measure is to amend the county's
7 Land and Water Development and Use Ordinance, not (as stated by respondent's Question)
8 whether or not to "support [a] decision by [the] County Commission."

9 12.

10 The Summary prepared by respondent for the ballot title for Petition 08-04 does not
11 comply with the requirements of ORS 250.035(1)(c) because it is not concise and impartial,
12 and it does not accurately summarize Ordinance 08-05 and its major effect. The Summary
13 prepared by respondent inaccurately implies that pipelines were never permitted in open
14 space, parks, and recreational lands until Ordinance 08-05 was adopted, but in fact such
15 pipelines were permitted as an accessory development that is customarily provided in
16 conjunction with a permitted use of such lands. The Summary is also inaccurate and not
17 impartial because it states that if Ordinance 08-05 is approved by the voters, a pipeline
18 carrying "Liquid Natural Gas" will be constructed in Clatsop County, but in fact the only
19 pipeline approved by the County Commission is a pipeline that will carry only natural gas.

20 13.

21 Petitioners propose the following ballot title, which will comply with ORS
22 250.035(1):

23 **CAPTION:** CONDITIONALLY ALLOWS PIPELINES IN OPEN
24 SPACE, PARKS, AND RECREATION ZONE [10
words; statute allows 10]
25 **QUESTION:** SHOULD COUNTY ORDINANCE BE AMENDED TO
26 CONDITIONALLY ALLOW CABLE, WATER, SEWER,

1 OTHER PIPELINES IN OPEN SPACE, PARKS, AND
2 RECREATION ZONE? [20 words; statute allows 20]

3 **SUMMARY:**

4 Clatsop County zoning law previously allowed cable, water, gas,
5 sewer and other pipelines in areas zoned as open space, parks, and recreational
6 lands only if the pipelines were customarily connected to a permitted use of
7 such lands. The County Commission recently amended that law to allow
8 cable, water, gas, sewer and other pipelines as a conditional use in those areas
9 whether or not they are customarily connected to another permitted use. This
10 measure asks voters whether they approve that recent amendment, which was
11 set out in sections 5 and 6 of Clatsop County Land and Water Development
12 and Use Ordinance 08-5.

13 A "yes" vote would allow cable, water, gas, sewer and other pipelines
14 in areas zoned for open spaces, parks and recreational uses, only if a
15 conditional use permit is granted.

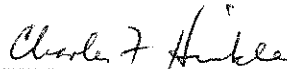
16 A "no" vote would allow construction of cable, water, gas, sewer and
17 other pipelines in open spaces, parks, and recreational lands when customarily
18 connected to other permitted uses. [159 words; statute allows 175]

19 14.

20 As required by ORS 250.195(2), counsel for Petitioners certifies that a copy of this
21 petition and accompanying memorandum was delivered on April 28, 2008, to Fred R. Neal,
22 Interim County Clerk, at Public Services Building, 820 Exchange Street, Suite 220, Astoria,
23 OR 97103.

24 WHEREFORE, petitioners pray for a judgment certifying to the Interim County Clerk
25 of Clatsop County a ballot title for Petition 08-04 in the form set out in Paragraph 13 of this
26 petition.

Dated: April 28, 2008.



Charles F. Hinkle, OSB No. 710839

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Michelle G. Rudd, OSB No. 000950

mrudd@stoel.com

Attorneys for Petitioners Nyberg, Atwood, and Hackett

BEFORE THE BOARD OF COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

AN ORDINANCE RELATING TO THE
BRADWOOD LANDING LNG PROPOSAL
AND AMENDING THE CLATSOP COUNTY
COMBINED COMPREHENSIVE PLAN AND
ZONING MAP, THE TEXT OF THE CLATSOP
COUNTY COMPREHENSIVE PLAN AND
THE TEXT OF THE CLATSOP COUNTY
LAND AND WATER DEVELOPMENT AND
USE ORDINANCE (ORDINANCE 80-14)

ORDINANCE NO. 08- 05

WHEREAS, on December 12, 2006, Bradwood Landing filed an application to amend the combined Clatsop County Comprehensive Plan Map and Zoning Map to change the current zoning of .79 acres identified as Area 1, .39 acres identified as Area 2, and 4.17 acres identified as Area 3 of a property in Clatsop County (the "Property") described generally in Attachment 3 of Exhibit A and shown specifically on Attachment 4 of Exhibit A, attached hereto, from a zoning designation of AN (Aquatic Natural) to a zoning designation of MI (Marine Industrial) and the current plan designation from Natural to Development; and

WHEREAS, on December 12, 2006, Bradwood Landing filed an application to amend the combined Clatsop County Comprehensive Plan Map and Zoning Map to change the current zoning of a portion of a property in Clatsop County described generally in Attachment 3 of Exhibit A and shown specifically as the 2.51 acre mill-pond identified as Area 4 on Attachment 4 of Exhibit A (the "Property"), attached hereto, from a zoning designation of AD (Aquatic Development) to a zoning designation of MI (Marine Industrial); and

WHEREAS, on December 12, 2006, Bradwood Landing filed an application to amend the combined Clatsop County Comprehensive Plan Map and Zoning Map to change the current zoning of 46.4 acres of the Columbia River designated Area 5 on Attachment 4 of Exhibit A, attached hereto, from a zoning designation of AC2 (Aquatic Conservation 2) to a zoning designation of AD (Aquatic Development) and the current plan designation from Conservation - Other Resources to Development in order to accommodate the turning basin as well as to accommodate the liquified natural gas terminal use; and

WHEREAS, on December 12, 2006, Bradwood Landing filed an application for a Clatsop County Comprehensive Plan amendment adopting an exception to authorize dredging in Area 5 (46.4 acres) shown in Attachment 4 of Exhibit A and uses allowed in the Marine Industrial zone on areas designated Area 1 (.79 acres), Area 2 (.39 acres) and Area 3 (4.17 acres) in Attachment 4 of Exhibit A; and

WHEREAS, on December 12, 2006, Bradwood Landing filed an application to amend the Clatsop County Comprehensive Plan to delete language from the Plan relating to small to medium scale development; and

WHEREAS, on February 9, 2007, Bradwood Landing filed an application for an amendment to the Clatsop County Land Development and Water Use Ordinance to add "cable, sewerline, waterline or other pipeline" as permitted uses in the Open Space, Parks, and Recreation (OPR) zone; and

WHEREAS, the applications were considered by the Planning Commission at public hearings on July 10, 2007 and July 17, 2007 and following public deliberations on August 29, 2007 and September 28, 2007 the Planning Commission recommended addition of "cable, sewerline, waterline or other pipeline" as a conditional use in the OPR zone pursuant to the

requirements of ORS 215.050 and 215.060, the Planning Commission recommended approval of the rezonings of Areas 1, 2 and 3 from AN to MI and the rezoning of Area 4 from AD to MI and the approval of exceptions to authorize the uses along with the identified Plan designations and the Planning Commission recommended approval of a conditional use permit for the proposed turning basin and therefore concluded that the proposed rezoning and plan amendment from AC2 to AD and Conservation-Other Resources to Development would not be necessary and the Planning Commission concluded that the deletion of scale language from the Plan was not necessary; and

WHEREAS, consideration for this ordinance complies with ORS 197.610-ORS 197.625 and related Oregon Administrative Rules on post-acknowledgement plan amendments, the County Planning Commission has sought review and comment and has conducted the public hearing process pursuant to the requirements of ORS 215.050 and 215.060, and the Board received and considered the Planning Commission's recommendations on this request and held a public hearing on this ordinance pursuant to law on October 22, 2007 and November 19, 2007 and deliberated on December 13, 2007; and

WHEREAS, all notices to interested property owners and interested parties have been provided pursuant to law; now therefore,

THE BOARD OF COMMISSIONERS OF CLATSOP COUNTY ORDAINS AS FOLLOWS:

SECTION 1. The portion of the property described above and shown in Attachment 4 of Exhibit A (attached) as Area 1 (.79 acres), Area 2 (.39 acres) and Area 3 (4.17 acres) is hereby rezoned from AN (Aquatic Natural) to MI (Marine Industrial) and the Comprehensive Plan designation is changed from Natural to Development.

SECTION 2. The portion of the property described above and shown in Attachment 4 of Exhibit A (attached) as Area 4 (2.51 acres) is hereby rezoned from AD (Aquatic Development) to MI (Marine Industrial). The Comprehensive Plan designation remains Development.

SECTION 3. The portion of the property described above and shown in Attachment 4 of Exhibit A (attached) as Area 5 (46.4 acres) is hereby rezoned from AC2 (Aquatic Conservation) to AD (Aquatic Development). The Comprehensive Plan designation is changed from Conservation – Other Resource to Development and the request for a conditional use permit to allow the proposed dredging in the AC2 zone is denied.

SECTION 4. The amendment to the Comprehensive Plan provided in Attachment 6 to Exhibit A attached hereto is adopted and the Board concludes that goal exceptions requested are not required. Language related to scale of development as small to medium is not deleted from the Comprehensive Plan.

SECTION 5. Provisions of the LWDUO are amended to list "cable, sewerline, waterline, or other pipeline" as a conditional use in the OPR zone, as described in Section 6.

SECTION 6. LWDUO § 3.586(10) is amended to state "10. cable, sewerline, waterline or other pipeline" and the current LWDUO § 3.586(10) is made LWDUO § 3.586(11).

SECTION 7. In support of this ordinance, the Board adopts the March 5, 2008 Findings of Fact and Conclusions of Law as indicated in Exhibit A (attached).

Approved this 20th day of March, 2008.

THE BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

By Patricia J. Best, Chair

By Valerie Crawford
Recording Secretary

SECTION 3.580. OPEN SPACE, PARKS, AND RECREATION ZONE (OPR).

Section 3.582. Purpose.

The OPR zone is intended to provide for the conservation of open space; the protection and development of areas uniquely suited for outdoor recreation and the protection of designated scenic, natural and cultural resource areas.

Section 3.584. Development and Use Permitted.

The following developments and their accessory developments are permitted under a Type I procedure subject to applicable development standards.

- (1) Farm use.
- (2) Forest use.
- (3) Wildlife refuge or management area.
- (4) Public regional park or recreation area excluding campgrounds.
- (5) Historical or archaeological site/area.
- (6) Golf courses except in areas identified as Coastal Shorelands.
- (7) R.V. Park subject to Section S3.550-S3.552 except in the Clatsop Plains Planning Area.
- (8) Other watersheds.
- (9) Public or private neighborhood park or playground.
- (10) Golf driving range.
- (11) Municipally owned watersheds.
- (12) Accessory development customarily provided in conjunction with the above developments.
- (13) Property line adjustment.
- (14) Low intensity recreation.

Section 3.586. Conditional Development and Use.

The following developments and their accessory developments may be permitted under a Type II procedure and Sections 5.000 to 5.030 subject to applicable criteria and development standards and site plan review.

- (1) Campground, primitive except in areas identified as Coastal Shorelands.
- (2) Group camping facilities (e.g. youth, church) except in areas identified as Coastal Shorelands.
- (3) Hunting and fishing clubs except in areas identified as Coastal Shorelands.
- (4) Hiking, nature observation or horse trails.
- (5) Marinas, boat launchings and moorage facilities.
- (6) Structures for viewing or exhibition of natural resources.
- (7) Cemetery except in areas identified as Coastal Shorelands.
- (8) Other developments within a historical structure provided the use would not result in the modification of the outward appearance of the structure.

- (9) Riding stables except in areas identified as Coastal Shorelands.
- (10) Accessory development customarily provided in conjunction with the above developments.

Section 3.588. Conditional Development and Use Criteria.

The following limitations and requirements shall apply to conditional developments:

- (1) The proposed development shall be consistent with the Clatsop County Comprehensive Plan.
- (2) The development shall be compatible with and appropriate to the natural resources and features, recreational characteristics and current predominant land use of the area for which it is proposed.
- (3) In no event shall the proposed development destroy or endanger the natural and recreational resources giving value to the area.
- (4) The proposed development shall include adequate measures to reduce fire hazards and prevent the spread of fire to surrounding areas.
- (5) The location of buildings, signs, parking, recreation areas and open space shall be compatible with adjacent areas and the natural scenic amenities of the locality.

Section 3.590. Development and Use Standards.

The following standards are applicable to permitted and conditional developments in this zone:

- (1) Setbacks. No structures shall be placed closer than 100 feet to perennial streams, lakes or other water bodies or closer than 60 feet to arterials, collectors or public roads and highways or closer than 20 feet to other roads and property lines.
- (2) Utility Services. All utility services, including power and telephone, shall be installed underground where physical conditions permit.
- (3) Building Height. Maximum height for all structures shall be 35 feet or the maximum height allowed in an adjacent zone that has a lower maximum height standard.
- (4) Area and Lot Size. The minimum area and lot size shall be that determined to be necessary for the protection of health and natural resources.
- (5) An accessory structure separated from the main building shall be located in accordance with yard setback requirements.

Section 3.592. State and Federal Permits.

If any state or federal permit is required for a development or use, an applicant, prior to issuance of a development permit or action, shall submit to the Planning Department a copy of the state or federal permit.

