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**SENT VIA EMAIL**

November 28, 2022

Jeb Bladine, President  
Oregon Lithoprint, Inc.  
jbladine@newsregister.com

**Re: *LUST Site # 36-85-4001, O'Dell Building – Response to Letter dated September 28, 2022, Historic Landmarks Committee Docket No. HL 6-22***

Dear Mr. Bladine,

I am writing to respond to your letter dated September 28, 2022, that included comments relative to Docket No. HL 6-22 and to provide the City of McMinnville's (City) position regarding the associated Leaking Underground Storage Tank (LUST) site associated with the O'Dell building (Site) currently owned by Oregon Lithoprint, Inc. (OLI).

Please note that this letter is specific to the LUST on the Site and should not be construed as a city position on the request for a Certificate of Demolition of the historic O'Dell Building at 609 NE Third Street and the other two historic resources at 611 and 613 NE Third Street, or the proposed new construction of the Gwendolyn Hotel. Those are decisions that will be rendered by the Historic Landmarks Committee based on the appropriate code criteria for the demolition of historic resources, and new construction in the downtown design overlay district.

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Regarding the historical contamination on the site, the City is generally not opposed to the redevelopment of the O'Dell Building and adjacent properties, as redevelopment provides an opportunity to benefit the community through the planned removal of contaminated soil during excavation and site development.

**Background:**

The City understands that OLI is seeking a "No Further Action" determination from Oregon Department of Environmental Quality (DEQ) for the LUST site. The No Further Action determination requires some property owners to record Easements and Equitable Servitudes (EESs) to limit exposure to subsurface contamination associated with the LUST site in the future. The EESs in turn require the property owners to follow the Contaminated Media Management Plan (CMMP) prepared for OLI by Apex Companies, LLC. While the City has not been asked to record an EES on the public rights of way, the CMMP applies to those areas beneath City property, primarily beneath NE Third and NE Ford Street, where contaminated soil and groundwater have migrated from the LUST site. The CMMP requires special handling and disposal of contaminated soil and groundwater encountered during excavation activities within the designated Soil Management Area and Groundwater Management Area.

In addition to the request for a No Further Action determination, Hugh Development is negotiating a Prospective Purchaser Agreement (PPA) with DEQ to limit Hugh Development's liability for residual contamination located beneath the O'Dell building. It is our understanding that Hugh Development will receive protection from contribution claims related to the LUST site when it enters the PPA.

The City's position on OLI's application for a No Further Action determination and Hugh Development's PPA is primarily related to its ability to recover future costs associated with handling contamination originating at the O'Dell LUST Site.

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As you note in your letter, the City anticipates future public works projects beneath NE Third and NE Ford Streets that will likely encounter contaminated soil and groundwater. The City also expects to comply with the requirements in the CMMP (even though such compliance is not required by an EES), but such compliance will cause the City to incur additional costs not associated with the planned public works projects. In other words, the O'Dell LUST site will incrementally increase the City's construction costs. Because the City is not liable under Oregon law for these incremental costs to handle contaminated soil and groundwater, the City will seek contribution for these costs from OLI, the responsible party. The City notes that a No Further Action determination from DEQ does not provide OLI protection from third party claims for contribution in the same way the Hugh Development PPA is expected to do.

**Response:**

With regard to your letter, staff notes that it bases its report, at least initially, on information provided by the Applicant. Thank you for providing additional information related to ownership of the development site.

With regard to whether the City regularly encounters contamination of the magnitude in the public streets identified in the OLI's LUST case, the City has not conducted a survey for purposes of this application, nor would it be appropriate to include those results in this land use case.

With regard to the LUST case, the City has *supported* OLI in its efforts to identify contamination and follow DEQ rules and guidance on appropriately protecting the environment, City and private land affected by circumstances identified in the relevant DEQ cases. For clarification, please note that the City has no authority to "approve" any draft CMMP or "agree" with OLI that such document meets DEQ regulations or guidance. When DEQ opens OLI's case for public comment, the City will likely submit comments at that time and in that forum.

As the City understands the various site investigative reports, no prior development applications, nor investigative reports concerned excavation of

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the magnitude proposed in this development application nor required the City to express its concern over water quality.

Finally, we understand your letter to provide your conclusions based on the meanings various studies and investigative reports provide. Those conclusions may or may not be supported by the factual conclusions expressed in the various reports. We appreciate your letter and look to ensure the decision-makers are fully informed.

Best Regards,

A handwritten signature in black ink, appearing to read "Heather Richards", with a stylized flourish at the end.

Heather Richards, PCED  
Community Development Director