

**PREPARATION FOR THE APPEAL HEARING ON THE RECORD OF
CONDITIONAL USE PERMIT APPROVAL #CU-12-04
SCHEDULED FOR MARCH 5TH, 2013**

The application under appeal, the Planning Commission's final order of approval, and the complete record of CU-12-04 are recorded for City Council members on the enclosed CD. The complete application can also be reviewed at this link:

https://www.yousendit.com/dl?phi_action=app/orchestrateDownload&rurl=https%253A%252F%252Fwww.yousendit.com%252Ftransfer.php%253Faction%253Dbatch_download%2526send_id%253D1948265316%2526email%253D3b1643a4a9952c72c4da29b0ff112a46&s=19105&cid=tx-02002208350200000000

A copy of the Planning Commission Appeal, the list of Parties That Have Standing, and the Planning Commission approved minutes are attached. A complete copy of all documents pertaining to this appeal can be reviewed on computer laptop at City Hall, 201 Laurel Avenue, Tillamook, OR 97141. A staff report will be available seven days prior to the hearing.

In the meantime, staff recommends that the Council either 1) sets a day-time study session to walk the proposed line routing through the City, which will be noticed to parties with standing and open to the public but will allow no discussion of the merits, only facts; or 2) each Councilor walks the routing individually ahead of the hearing with a location map in hand, but without taking comment from anyone while doing so (this second option will have to be declared as ex parte contact at the beginning of the hearing).

While conducting this field visit, please bear in mind the criterion under which the Planning Commission was appealed: "#4 - The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted use listed in the underlying zone."

Case law warns us to be careful in circumstances involving such criteria to ensure that the review body make a six-part finding:

- 1) What is meant by the "surrounding area"?
- 2) What is the character of that surrounding area?
- 3) How will the proposed use alter that character so as impair the permitted uses of the surrounding area?
- 4) If there are impairments, are they "substantial" as defined by council determination?

- 5) If substantial, can they be mitigated with conditions?
- 6) If so, how?

Please be thinking of these questions as you conduct your review.