

775 Fir Gardens St. NW ♦ Salem, OR 97304  
emeasterly@comcast.net ♦ 503-363-6221

May 12, 2020

Mr. Daniel Atchison, City Attorney  
City of Salem  
555 Liberty St. SE  
Salem, OR 97301-3513

**Updated:**

May 18, 2020

copy: Salem City Council  
via: citycouncil@cityofsalem.net

Dear Mr. Atchison;

Thank you for providing the administration's response to my written testimony to the FY 2020-2021 Salem budget committee.

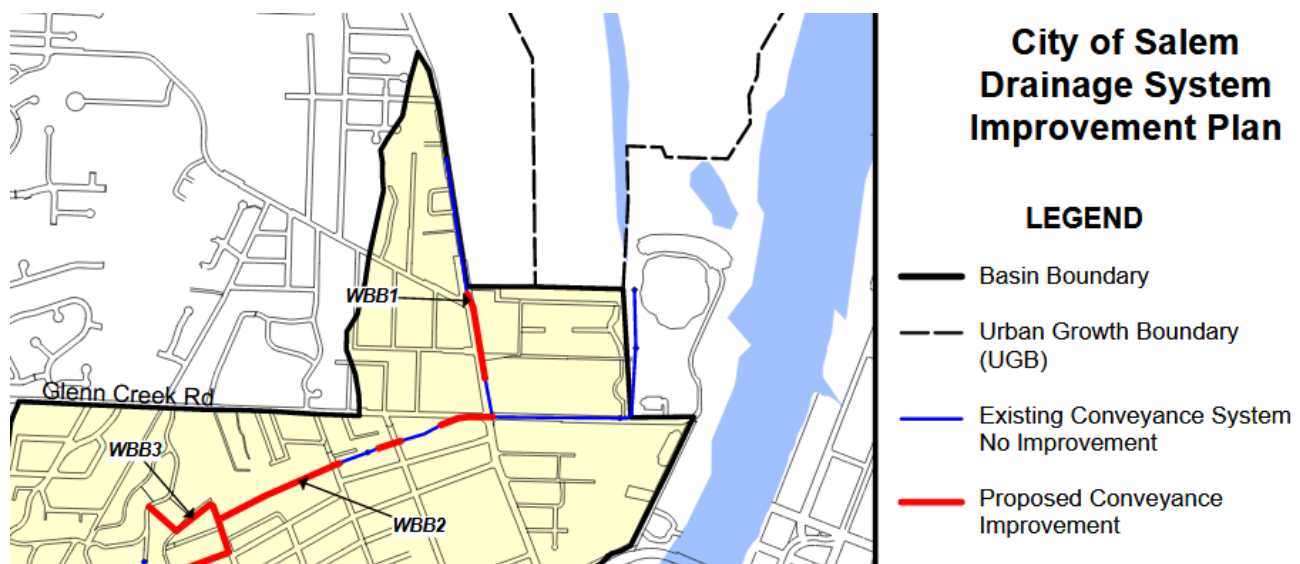
Your summary of the 309 list application regarding System Development Charge fees and eligible projects is appreciated. Your reference to the yet to be adopted 2019 Stormwater Master Plan which will replace the September 2000 Stormwater Master Plan when adopted by Council is illuminating.

You cite ORS 223.307 which stipulates the following:

“(4) Any capital improvement being funded wholly or in part with system development charge revenues must be included in the plan and list adopted by a local government pursuant to ORS 223.309 (Preparation of plan for capital improvements financed by system development charges).”

This language declares that a project funded with SDC fees requires that the project be included in an adopted 309 list. There is no Stormwater project associated with the drainage way between Glenn Creek Road and Taybin Road along Wallace Marine Park in the 309 projects listed for the West Bank Drainage of the **draft** 2019 Stormwater Master Plan. The map segment from the **draft** 2019 Stormwater Master Plan below highlights in Red projects eligible for Stormwater SDC funding.

According to Map 15.2 the parcel of land purchased with Stormwater SDC funds November 2019 was not and is not a 309 listed stormwater conveyance or flow control project.



Page 15-9

As the legend states the drainage way between Glenn Creek Rd and the city-limits north of Cameo Rd is listed as “Existing Conveyance System: No Improvement.” Nevertheless, staff recommended and Council approved the purchase of land for the designated purpose of supporting “Reliable and Efficient

Infrastructure”. What stormwater infrastructure did this purchase accomplish?

Also, thank you, Mr. Atchison, for referencing the **draft** 2019 Stormwater Master Plan and more specifically the “small conveyance improvement allowance” language included in the **draft** 2019 Stormwater Master Plan quoted below.

“The costs for projects in the 2000 Stormwater Master Plan also include allowances for permitting, acquisition, pre-design, and final design (15%); administration (6%); construction management (9%); and contingency (40%). A small conveyance improvement allowance of five-percent is also applied to the subtotal.”

Page 3-1

You claim: “... the projects that utilized FY19 and FY20 Stormwater SDC revenues were all included within the 5 percent allowance for small projects in the City’s stormwater master plan and in the City’s Stormwater Methodology and 309 list.” Mr. Atchison, you offer no evidence in support of this declaration.

The five-percent financial addendum appears to address a level of flexibility which would allow for Stormwater SDC funds to be used for non-309 list projects. But it also raised questions.

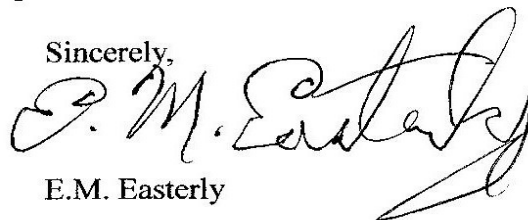
The West Bank section of the **draft** 2019 Stormwater Master Plan 309 list shows 5 projects with a total estimated SDC funding of \$2,934,157. Five-percent of that amount is \$146,707.85; not the \$375,000 expended to acquire the Taybin parcel of land with stormwater SDC funds. Nor is the Taybin site included in West Bank 309 project list. And while some future “small” stormwater conveyance may be the end result, the cost of the land far exceeds the permitted five-percent utilization granted by the **draft** Stormwater Master Plan for “small conveyance improvements.”

Please understand when Council authorized the Taybin property purchase, November 2019, the Salem 2000 Stormwater Master Plan was in effect and still is. Therefore, while the Atchison citation of **draft** 2019 Stormwater Master Plan provisions is informative, those provisions do not and cannot apply to City of Salem SDC expenditures until adopted by Council.

Simply put, your effort to cite and utilize the policy statements of the **draft** 2019 Stormwater Master Plan is inappropriate. That plan has not been adopted by the Salem City Council. Therefore, the use of Stormwater SDC funds must be guided by the Council adopted 2000 Stormwater Master Plan 309 listed projects and the language ORS Chapter 223. [May 18<sup>th</sup> update below.]<sup>1</sup>

When Council initiates the replacement of the 2000 Stormwater Master Plan with a version of the **draft** 2019 Stormwater Master Plan. I shall happily participate. Until then the utilization of Stormwater SDC funds for projects and/or land purchases in the West Bank basin is limited to the 2000 Stormwater Master Plan adopted 309-list projects. Therefore, the purchase of 298 Taybin Road NW was illegally funded.

Sincerely,



E.M. Easterly

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<sup>1</sup> Mr. Atchison offered a revision to his May 6<sup>th</sup> memo by correcting the original cited page reference numbers to page 5-8 of the 2000 Stormwater Master Plan. That plan page contains a defined 5% pipes and ditches conveyance allowance rather than a general 5-percent conveyance allowance.

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May 20, 2020

Salem City Council  
City of Salem  
555 Liberty St. SE  
Salem, OR 97301-3513

via: [citycouncil@cityofsalem.net](mailto:citycouncil@cityofsalem.net)

Subject: Appeal of FY 2019-2020 expenditure of Stormwater SDC revenue

Dear Mayor and Council Members:

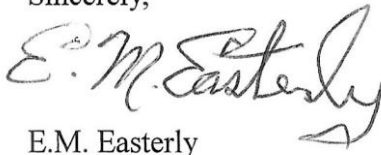
Autumn 2019 the City of Salem Management asked the City Council to authorize the expenditure of Stormwater System Development Charges (SDC) revenue. Moneys in the amount of \$401,764.52 were expended January 2020 to purchase land not included in the list eligible projects identified in the current Salem Stormwater Master Plan in violation of the limitations described in ORS 223.307.

Pursuant to ORS 223.302(2) I challenge that expenditure. I request that the City Council replace the misspent amount with moneys derived from sources other than Stormwater system development charges as prescribed by ORS 223.302(1) and detailed in SRC 41.180(c).

I leave it to Council to decide whether the reasoning offered during an earlier executive discussion by staff in support the November 25, 2019 Consent Calendar Council approval exemplified a misinterpretation of the Salem Stormwater Master Plan and/or the appropriate utilization of those funds.

Details and supporting documentation are provided in an email I sent to City Manager Powers on May 15<sup>th</sup> and in the earlier May 12<sup>th</sup> letter to the City Attorney copied to the Council. By this reference those two documents are included in this appeal. Included with this letter of appeal are a revised version of the May 12<sup>th</sup> document and a document challenging the assumed City right to use Stormwater SDC small conveyance funds for an expensive land purchase.

Sincerely,

A handwritten signature in black ink that reads "E.M. Easterly". The signature is written in a cursive style with a large, stylized "E" and "M".

E.M. Easterly

To Salem City Council  
From E.M. Easterly  
Re West Bank Basin Stormwater SDC small conveyance funds land purchase appeal  
Date May 20, 2020

The 2000 Stormwater Master Plan does, in fact, offer a 5% allowance for small conveyance improvements to each of the basin project lists. However, this allowance includes specific restrictions – size and purpose. The size restriction is not directly defined but certainly new projects must be less than Project WBB8 listed on Table 6-9.

“An allowance of 5% was added to the project total for small conveyance improvements.”

Page 5-8

The phrase “small conveyance improvements” is further focused and explained:

“The DSIP project development process did not recommend drainage improvements for relatively small pipes and ditches which were beyond the scope of the modeling effort.”<sup>1</sup>

Page 5-8

The allowance clearly permits small conveyance improvements outside the project list offered on Table 6-9, reproduced on page 2. The total moneys available for these future pipe & ditch drainage improvements is \$200,554.

The 5% allowance raises several questions:

1. How much of the \$200,554 small conveyance pipe and ditches moneys has been expended between 2000 and 2019?
2. Is there any restraint other than amount of SDC revenue available that limits expenditure of the full \$200,554 in one year on a single project?
3. What are the processes that allow the City to expend more than \$200,554<sup>2</sup> from Stormwater SDC revenue on small conveyance pipe and ditch projects in a single year?
4. In 2020 the City expended \$401,764.52 stating that the funding source was from the Stormwater SDC 5% small conveyance improvement allowance. How does the City justify this more than doubling the allowed expenditure of the small conveyance pipe and ditch adopted allocation? Adding the inflation factor offered in the 2019 draft Stormwater Master Plan brings the original 5% allowance to \$334,524 not \$401,000 plus expended in 2020.
5. What are the pipe and ditch improvements secured with the \$401,764.52 expenditure?
6. What are the stormwater infrastructure improvements resulting from the 2020 land purchase?
7. What other non-stormwater infrastructure benefits are secured by this stormwater SDC funded purchase?

Absent convincing evidence that the 298 Taybin Road NW land purchase addressed all the issues raised by the above questions, I request that the Salem Stormwater SDC revenues expended be returned to the Stormwater SDC fund in accordance with SRC 41.180(c).

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<sup>1</sup> The draft 2019 Stormwater Master Plan update provides no equivalent descriptive language. The proposed draft entry simply states: “A small conveyance improvement allowance of five-percent is applied to the subtotal of each project.”

Page 5-3

<sup>2</sup> The draft 2019 Stormwater Master Plan update offers an inflation multiplier of 1.668.

Page 5-3

**City of Salem  
Stormwater Master Plan**

**Table 6-9  
West Bank Basin DSIP Project List**

DSIP Proj. ID	City of Salem CIP ID	Location	Recommended Improvement	Total	Early Action Item?	Comments
WB81		Wallace Rd between Orchard Hts and Taybin Rd	Replace undersized pipe	\$ 224,315		
WB82		From Wallace Rd and Glen Creek Rd to Gerth Ave and 9th	Replace undersized pipe	\$ 1,181,238	Yes	Street CIP G.O. Bond F (2000-01, 2004-05) , bad pipe, alignment, debris, proposed Walker School Park
WB83		From Cascade Drive to 9th and Gerth 8th Ave between Gerth Ave and Rosemont Ave	Replace undersized pipe	\$ 229,692	Yes	Adverse grade
WB84		Senate St between 8th Ave and the Willamette River	Replace undersized pipe	\$ 381,480	Yes	High water complaints
WB85		Culvert across the Salem-Dallas Hwy, near Moores Wy	Replace undersized pipe	\$ 725,084		Heavy roots, silt, gravel, bad joints
WB86		Culvert across Eola Dr near the intersection of Eola Dr and Turnage St	Replace undersized culvert	\$ 238,000		ODOT coordinations, LMI implications
WB87		Culvert across Jasper Wy near intersection with Eola Dr	Replace undersized culvert	\$ 81,294		Street CIP (2004-05)
WB88		Along Eola Dr between Gehlar Rd and Sunwood Dr	Replace undersized pipe	\$ 8,628		Street CIP (2004-05)
WB89		Barberry St between 23rd Ct and Eola Dr	Replace undersized pipe	\$ 91,452		Street CIP (2004-05)
WB810		Eola Dr near intersection with Sunwood Dr	Add detention capacity at Woodhaven Detention Facility	\$ 101,065	Yes	Street CIP (2004-05)
WB811				\$ 748,850		
<b>Subtotal</b>				\$ 4,011,097	-	
Small conveyance improvement allowance				\$ 200,554.87	-	This allowance is 5% of the subtotal.
<b>Total (\$)</b>				\$ 4,211,652		

1. INCLUDES ALLOWANCES FOR PERMITTING, ACQUISITION, PREDESIGN, AND FINAL DESIGN (15%), ADMINISTRATION (8%), CONSTRUCTION MANAGEMENT (8%) AND CONTINGENCY (40%).