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January 26, 2024

Stephen Shane, Principal Planner  
Department of Land Use & Transportation  
Planning and Development Services Division  
155 N. First Avenue, Suite 350-13  
Hillsboro, OR 97124

**RE:    COMPLETENESS REVIEW, TEMPORARY TRACKING #S2300223**

Dear Stephen:

Thank you for reviewing the Type II Tree Removal Permit application on behalf of Emrick Investments, LLC. This letter and accompanying information respond to your request for additional information that was received in the letter dated September 9, 2023 (attached). The list of additional information requested is shown below in italics, with the Applicant's response directly below.

### **Required Information**

1. *Based on a comparative evaluation of aerial photos from 2021-2022, staff believes some tree removal occurred on Tax Lot 311 within the wetland area as delineated in Figure 8 of the submitted material. Staff notes this general area is also mapped as Metro Title 13 area and a county-mapped Water Areas and Wetland and Fish and Wildlife Habitat Area resource, as noted on Page 1 of the submitted resource report. The biologist report does not address how the tree removal did not seriously interfere with the preservation of fish and wildlife habitat or what mitigation might offset any impacts, pursuant to CDC Section 422.3.6. Please provide additional findings for this section, including a mitigation plan and map of any new plantings proposed.*

**Response:**     For additional findings related to CDC Section 422.3.6, please refer to the updated Tree Removal Application narrative and the Enhancement Planting Plan (Exhibit J). All of the requested information has been provided.

2. *The submitted arborist report notes on Page 4 that additional information was pending that could "provide insights into the extent of pathogen presence and distribution within the assessed area." It was further notes that those results were expected by August 20<sup>th</sup>, 2023. Please provide the updated data in a new comprehensive report, as indicated on Page 4. The report should clarify the impact of any determined pathogen on the number of trees removed.*

**Response:**     Please see the updated Arborist Documentation (Exhibit H). All of the requested information has been provided.

3. *The report correctly notes the Significant Natural Area designation is due to the presence of the Tonquin Scablands Area. Please submit findings to demonstrate that the tree removal has not impacted this feature and if so, what mitigation was or may be provided.*

**Response:**     As discussed in the updated Tree Removal Application narrative and Exhibit E, the geologic features characterized by the scablands are not present on-site. The key areas of this geologic feature are cliffs, bluffs, scoured bedrock knolls, and formations above 300 feet in elevation, which are not located within the study area. The highest elevation on

the site is approximately 260 feet in elevation. As such, this site does not contain characteristics evident of important geologic features. Regardless, according to the interoffice memo from Hal Bergsma (Exhibit F), the major conflicting uses for the Tonquin Scablands Geologic Area are rock quarrying and mining activities which have not occurred and are not proposed on the project site. Tree removal and surface-level improvements would not have any adverse impacts on the geologic character of the site and therefore, no mitigation should be required.

Thank you for your review of the updated materials for this Tree Removal Permit application. With this information, we believe the application is now complete. If you have any questions, please contact me at (503) 563-6151. We appreciate your assistance in reviewing our application.

Sincerely,

**AKS ENGINEERING & FORESTRY, LLC**



Marie Holladay, Land Use Planner  
12965 SW Herman Road, Suite 100  
Tualatin, OR 97062  
(503) 563-6151 | holladaym@aks-eng.com

**Attachments:**

Notice of Incomplete Application, Temporary Tracking #S2300223 (dated September 9, 2023)  
Updated Tree Removal Application (eight copies)



# WASHINGTON COUNTY

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## OREGON

September 9, 2023

**APPLICANT'S REPRESENTATIVE:**

AKS Engineering and Forestry, Inc.  
Chris Goodell/Marie Holladay  
12965 SW Herman Road, Suite 100  
Tualatin, OR 97062

**OWNER:**

Emrick Investments, LLC  
Sean Emrick and Don Brown  
P.O. Box 26439  
Eugene, OR 97402

**SUBJECT: NOTICE OF INCOMPLETE APPLICATION, TEMPORARY TRACKING # S2300223 TO ADDRESS TREE REMOVAL IN THE FD-20 DISTRICT ON TAX LOTS 3S102B 302, 303, 310, AND 311**

Hello:

Staff has received your above-referenced Type II application submitted on August 9, 2023 and determined it to be incomplete.

The following items were lacking from the initial submittal or need further clarification and are required in order for staff to continue its completeness review:

1. Based on a comparative evaluation of aerial photos from 2021-2022, staff believes some tree removal occurred on Taxlot 311 within the wetland area as delineated in Figure 8 of the submitted material. Staff notes this general area is also mapped as Metro Title 13 area and a county-mapped Water Areas and Wetland and Fish and Wildlife Habitat Area resource, as noted on Page 1 of the submitted resource report. The biologist report does not address how the tree removal did not seriously interfere with the preservation of fish and wildlife habitat or what mitigation might offset any impacts, pursuant to CDC Section 422-3.6 Please provide additional findings for this section, including a mitigation plan and map of any new plantings proposed.
2. The submitted arborist report notes on Page 4 that additional information was pending that could "provide insights into the extent of pathogen presence and distribution within the assessed area." It was further noted that those results were expected by August 20<sup>th</sup>, 2023. Please provide the updated data in a new comprehensive report, as indicated on Page 4. The report should clarify the impact of any determined pathogen on the number of trees removed.
3. The report correctly notes the Significant Natural Area designation is due to the presence of the Tonquin Scablands Area. Please submit findings to demonstrate that tree removal has not impacted this feature and if so, what mitigation was or may be provided.

Please review the above and resubmit the missing material with the additional information or revisions as applicable.

Staff will retain the fees and forms you have submitted to date in anticipation of adding any newly submitted material to the original submittal. If the application is deemed complete upon resubmittal

of the materials noted above, staff will notify you and your application will be processed in accordance with Section 203-4 of the Community Development Code.

Should you have any questions, please feel free to contact me at 503-846-8127 or by email at [Stephen\\_shane@washingtoncountyor.gov](mailto:Stephen_shane@washingtoncountyor.gov).

Sincerely,

*Stephen Shane*

Principal Planner, Planning and Development Review

*Pursuant to ORS 215.427(2) and Washington County CDC Section 203-5.4, the application shall be deemed complete upon receipt of: (a) All of the missing information; (b) Some of the missing information and written notice from the applicant that no other information will be provided; or (c) Written notice from the applicant that none of the missing information will be provided. The application will be void if the application has not been made complete 180 days after being submitted, ORS 215.427(4) and CDC Section 203-5.5).*

January 26, 2024

Washington County  
 Department of Land Use & Transportation  
 155 N 1st Avenue, Suite 350  
 Hillsboro, OR 97124

**RE: SW Day Road – Tree Removal Application**

Dear Planning Staff,

Emrick Investments, LLC (Applicant) is requesting approval of an application to permit tree removal activity that took place on their property (Tax Lots 302, 303, 310 and 311 of Washington County Assessor's Map 3S102B). The trees that were removed were believed to be diseased and in hazardous condition, a Oregon Department of Forestry permit (ODF Notification) was obtained; however, due to a misunderstanding with County staff regarding tree removal regulations, the trees were removed without acquisition of a County tree removal permit. This application includes the relevant and necessary information for a tree removal permit.

Portions of Sections 201, 308, 407 and 422 of the Washington County Community Development Code pertain to this application and are discussed below:

Washington County Community Development Code

Article II – PROCEDURES

Section 201 – DEVELOPMENT PERMIT

**201-2 Exclusions from Permit Requirement**

The following activities are permitted in each district but are excluded from the requirement of obtaining a development permit. Exclusion from the permit requirement does not exempt the activity from otherwise complying with all applicable standards, conditions and other provisions of this Code. The activities set forth below are not excluded from the requirement to obtain approval of erosion control measures to the extent the activity is subject to Section 426.

**201-2.6 Propagation or cutting of trees except as specified in Section 407-3 provided the trees are not designated as a significant natural resource area in an urban Community Plan, designated for preservation through the master planning process for a development, designated for preservation in a prior development action or when inside the UGB, located within a flood plain or drainage hazard area;**

**Response:** The property is within Unincorporated Washington County, inside the urban growth boundary (UGB), and designated Future Development 20-acre (FD-20). The subject site is identified in Area of Special Concern 5 (ASC 5) of Policy 41 of the Washington County Comprehensive Framework Plan for the Urban Area. Map B (Exhibit B) illustrates the Goal 5 Resources for Future Development Areas and shows that the northwest portion of the site has a "Water Areas, Wetlands & Fish and Wildlife Habitat" designation, while the entire property and surrounding areas have a "Significant Natural Area" designation. In addition, Metro-mapped Title 13 Riparian Habitat is also identified on-site, as shown in Exhibit C. Therefore, the appropriate development permit is submitted.

## Article IV – DEVELOPMENT STANDARDS

### Section 407 – LANDSCAPE DESIGN

#### 407-3 Tree Preservation and Removal

##### 407-3.1 Applicability

Section 407-3 applies to all tree removal that is not excluded from development permits required by Section 201-2 or is not in conjunction with another Type II or Type III development action.

**Response:** This application is being submitted concurrently, but independently with an application for a Type III application (Development Review) at County staff's request.

##### 407-3.2 Exemptions from Tree Removal Permit Requirement

The requirements of Section 407-3 do not apply to the following:

- A. Trees identified and approved for removal through a Type II or III procedure in an approved Development Plan; or
- B. Removal of trees in conjunction with the development of a "conflicting use" of a Significant Natural Resource as specified in the applicable community plan, which was allowed pursuant to OAR 660-023-0040(5)(c) (effective September 1, 1996), through a Type IV process; or
- C. Trees in a hazardous condition which presents an immediate danger to health or property; or
- D. Trees that are removed as part of stream enhancement or ecological rehabilitation activities as directed and approved by Clean Water Services.

**Response:** Although the trees involved were thought to be diseased and hazardous, they were removed prior to submittal of this permit application. Therefore, the exemption at CDC 407-3.2 is not relevant.

##### 407-3.3 Submission Requirements

Applications for tree removal shall include the following information:

- A. Written narrative containing:
  - (1) A description of the size, species and condition (e.g., diseased, healthy) of each tree or group of trees, proposed for removal or replacement;
  - (2) An explanation of the purpose of removal;
  - (3) A description of any associated floodplain or drainage hazard area alterations;
  - (4) Findings addressing the application requirements of Section 422; and
  - (5) Findings addressing relevant design elements of the applicable community plan.
- B. A Site Plan showing:
  - (1) The location, size and species of trees 6 inches or greater in diameter at 4 feet above grade. For forested areas that are larger than 5 acres, the general locations of trees may be shown with one or more detailed one acre sample areas. Sample areas must be representative of the site.
  - (2) A delineation of any floodplain, drainage or wetland areas in accordance with Sections 421 and 422.
- C. An approved erosion control plan from the Clean Water Services.

**Response:** The trees that were removed consisted primarily, if not exclusively, of Douglas Fir (*Pseudotsuga menziesii*). The presence of conks on the sides and base of these trees were the tell-tale sign of a tree stand that was in trouble. The tree stand at issue had been

contaminated by laminated root rot, caused by the fungus, *Phellinus weirii*. This tree stand also suffered from the presence of *Phaeolus schweinitzii*, which is known as “heart rot” or “butt rot.” In fact, the applicant understood that the stand of trees at issue was diseased and a danger to the safety and welfare of its employees, tenants, and invitees. The symptoms of fungal infestations are often hidden until the disease is well-entrenched. Nonetheless, by the time conks show up on the outside of a tree, the inside is already rotten. Please refer to the Arborist Documentation (Exhibit H), prepared by Integrated Arboricultural Solutions, for specific details on the health of the tree stand.

In February of 2021, winter snow and ice storms damaged many of the trees on the property, and caused many widow-maker branches and limbs to break off and fall. Trees had fallen over the western property line. Other trees were leaning in a manner that threatened the dwellings and accessory structures. What little doubt remained about the condition of the stand vanished in the winter of 2021-22. Though less severe, deadfall continued in that winter, which further reinforced the need to address the safety concerns caused by this forest.

The tree removal occurred in April of 2022. Since that time, additional trees that were alive at the time have died. Although some trees on the property remain, it is likely that additional tree removal will be required. In fact, Douglas Fir (*Pseudotsuga menziesii*) is not that tree species that has any chance of long-term survival in this area. Rather, the long-term solution for this area is to replant undeveloped areas with tree species such as Western Red Cedar (*Thuja plicata*), Big Leaf Maple (*Acer macrophyllum*), or similar genus, that are less susceptible to these issues. The applicant is amenable to planting approximately 20 trees onsite in the area identified for planting, illustrated on Exhibit J.

There is a County mapped drainage hazard area located on adjacent properties to the west, but not on-site as demonstrated on the Preliminary Drainage Exhibit (Exhibit D). The property is not located within Clean Water Services boundary. Please refer to the Exhibits (including Exhibit H arborist documentation) for additional details.

#### 407-3.4 Tagging Required:

Trees proposed for removal shall be identified for field inspection by means of flagging, staking, paint spotting or other means readily visible but not detrimental to a healthy tree.

If a proposed harvest area is located within 25 feet of a rear or side property line, not including property lines adjacent to a public or private street, the applicant shall:

- A. Mark or stake the property line(s) so that it is readily visible; and
- B. Identify trees within 25 feet of the property line that are proposed to be removed in the manner described above.

#### **Response:**

An aerial photograph identifying the areas of tree removal is included in the application materials as Exhibit I.

#### 407-3.5 Removal Standards:

- A. Compliance with Section 422 and any other applicable Code requirement; and
- B. Inside the UGB, the harvesting of forest tree species for the commercial value of the timber shall be subject to the following additional requirement:
  - (1) The harvesting of trees shall use a selective cutting procedure. Clear-cutting shall not be permitted.



- (2) For the purposes of Section 407-3, clear-cut means any harvest unit that leaves fewer than 50 living, healthy and upright trees per acre that are well-distributed over the unit and that measure at least 11 inches in diameter at 4 feet above grade. Species left should reflect the same species proportions existing prior to harvest.
- C. The Review Authority may require the applicant to identify a property line through a boundary survey when evidence has been submitted which indicates that trees that are proposed to be removed may be located on an adjacent property. If required, the boundary survey shall be made and recorded in the county Survey Division prior to the removal of any trees from the area in question.

**Response:** (A) Section 422 is addressed below.

(B) The trees at issue were not harvested for the commercial value of the timber. The trees had no commercial value because they were diseased. To the contrary, Emrick Investments, LLC paid to have the trees and stumps removed. It was important to remove the stumps to get rid of the contagious root rot and heart rot. The trees were removed due to their condition as unhealthy and diseased trees.

(C) The properties at issue have been surveyed. It is understood that the trees that were removed did not belong to adjacent property owners.

#### Section 422 – SIGNIFICANT NATURAL RESOURCES

##### 422-2 Lands Subject to this Section

Those areas identified in the applicable community plan or the Rural/Natural Resource Plan Element as Significant Natural Resources and areas identified as Regionally Significant Fish & Wildlife Habitat on Metro's current Regionally Significant Fish & Wildlife Habitat Inventory Map.

Significant Natural Resources have been classified in the Community Plans or the Rural/Natural Resource Plan Element by the following categories:

- 422-2.1 Water Areas and Wetlands. 100-year flood plain, drainage hazard areas and ponds, except those already developed.
- 422-2.2 Water Areas and Wetlands and Fish and Wildlife Habitat. Water areas and wetlands that are also fish and wildlife habitat.
- 422-2.3 Wildlife Habitat. Sensitive habitats identified by the Oregon Department of Fish and Wildlife, the Audubon Society Urban Wildlife Habitat Map, and forested areas coincidental with water areas and wetlands.
- 422-2.4 Significant Natural Areas. Sites of special importance, in their natural condition, for their ecological, scientific, and educational value.

**Response:** The land where the tree removal took place is not located in a 100-year floodplain, wetland, drainage hazard area, or ponded area. However, tree removal within Metro-mapped Title 13 Riparian Habitat did occur on-site.

The entirety of the subject site is identified in Area of Special Concern 5 (ASC 5) in the Washington County CFP and corresponding Future Development Areas maps. Map B (Exhibit B) illustrates the Goal 5 Resources for Future Development Areas and shows that the northwest corner of the site has a "Water Areas, Wetlands & Fish and Wildlife Habitat" designation, and Metro-mapped Title 13 Riparian Habitat, while the entire property and surrounding areas have a "Significant Natural Area" designation.

##### 422-3 Criteria for Development

422-3.1 The required master plan and site analysis for a site which includes an identified natural resource shall:

- A. Identify the location of the natural resource(s), except in areas where a Goal 5 analysis has been completed and a program decision adopted pursuant to OAR 660, Division 23 (effective September 1, 1996);

**Response:** A Natural Resource Assessment has been prepared and necessary features mapped illustrating the location of the “Water Areas, Wetlands & Fish and Wildlife Habitat” designation and Metro-mapped Title 13 Riparian Habitat. This information is included in the application materials.

The “Significant Natural Area” designation is applied and generated from a map entitled *Tonquin Scablands Geologic Area Map*, dated April 1983 (included as Exhibit F). This map is “Figure 1-18” from an older version of the Washington County Comprehensive Plan and identifies “Major Geologic Features,” “Quarry Sites,” “Spillway Locations and Elevations,” and “Depression Areas above 300’ in Elevation.” As such, the green “Significant Natural Area” shown on Map B is presumed to identify these significant geologic areas.

An interoffice memo from Hal Bergsma, Senior Planner to Brett Curtis, Planning Division Manager, dated April 26, 1984 (included as Exhibit F), provides reason (on page 2) that this site was deemed to be significant as:

“Tonquin Scablands Geologic Area: Widely recognized as among the most important geologic features in Oregon, this area has scientific and educational value for its evidence of the impacts of the Missoula Floods. Geologic features of the area include channels, depressions (often containing ponds or marshes), and scoured bedrock knolls and channel walls. The major conflicting use for this area is quarrying.”

- B. Describe the treatment or proposed alteration, if any. Any alteration proposed pursuant to Section 422-3.1 B. shall be consistent with the program decision for the subject natural resource; and

**Response:** As the tree removal occurred outside of the area designated “Water Areas, Wetlands & Fish and Wildlife Habitat”, there is no alteration to that resource. Trees were removed within portions of the property with the “Significant Natural Area” designation and Metro-mapped Title 13 Riparian Habitat. Please see the discussion provided in response to Section 422-3.5 and 3.6 below.

#### 422-3.5 Significant Natural Areas

Any development requiring a permit from Washington County which is proposed in a Significant Natural Area, as identified by the applicable Community Plan or the Rural/Natural Resource Area Plan Element, shall reduce its impact, to the maximum extent feasible, on the unique or fragile character or features of the Significant Natural Area. Appropriate impact reducing measures shall include:

- A. Provision of additional landscaping or open space; and
- B. Relocation of the proposed site of a building, structure or use on the lot.

**Response:** The Bergsma memo (described above) is noteworthy as it relates to tree removal. It clearly demonstrates that tree preservation is not the reason that the Tonquin Scablands Geologic Area was designated as “Significant Natural Area”. According to the Bergsma

memo, this area was chosen so that it could be studied and protected from quarry operations. Bergsma claimed the key areas to persons studying the geologic record are the cliffs and the hilltop areas above 300-foot elevation, and not located on the subject property (e.g. the highest elevation on the site is approximately 260 feet in elevation). These areas were not impacted by the tree removal activities.

As indicated above, tree removal within on-site Title 13 Riparian Habitat did occur unbeknownst to the Applicant. Enhancement of the Title 13 Riparian Habitat located outside of "Water Areas and Wetlands and Fish and Wildlife Habitat" is proposed to replace functions and values lost from tree removal. An Enhancement Planting Plan is included in Exhibit J. Further impact to Metro-mapped Title 13 Riparian Habitat is not planned to occur in the future, as this area is intended to remain as open space after re-planting efforts have been completed.

422-3.6 For any proposed use in a Significant Natural Resource Area, there shall be a finding that the proposed use will not seriously interfere with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, or how the interference can be mitigated. This section shall not apply in areas where a Goal 5 analysis has been completed and a program decision has been adopted that allows a "conflicting use" to occur pursuant to OAR 660-023-0040(5)(c) (effective September 1, 1996).

**Response:** Based on a December 2022 AKS site visit and further review of Google Earth aerial imagery, no trees removed on-site were rooted within the "Water Areas and Wetlands and Fish and Wildlife Habitat." However, tree removal within on-site Title 13 Riparian Habitat did occur. Enhancement of the Title 13 Riparian Habitat located outside of "Water Areas and Wetlands and Fish and Wildlife Habitat" is proposed to replace functions and values lost from tree removal. An enhancement plan is included in Exhibit J. Additionally, as discussed herein and in Exhibit E, the geologic features characterized by the scablands are not present on-site. Further, according to Bergsma, the major conflicting uses for the Tonquin Scablands Geologic Area are rock quarrying and mining activities which have not occurred and are not proposed on the project site. Tree removal would not have any adverse impacts on the geologic character of the site and therefore no mitigation should be required.

Thank you for your consideration of this application. Please contact me with any questions you may have.

Sincerely,

**AKS ENGINEERING & FORESTRY, LLC**



Chris Goodell, Principal

12965 SW Herman Road, Suite 100

Tualatin, OR 97062

503.563.6151 | [chrisg@aks-eng.com](mailto:chrisg@aks-eng.com)

## Attachments

Exhibit A: Land Use Application

Exhibit B: Washington County SNR Map

Exhibit C: Metro SNR Map

Exhibit D: Preliminary Off-Site Drainage Hazard Area Exhibit

**Exhibit E [UPDATED]: Natural Resource Assessment (from the Brown Contracting DR Application)**

Exhibit F: Geologic Documentation

Exhibit G: Washington County Assessor's Map

**Exhibit H [UPDATED]: Arborist Documentation [Integrated Arboricultural Solutions]**

Exhibit I: Aerial Photography

**Exhibit J [NEW]: Enhancement Planting Plan**

## **Exhibit A: Land Use Application**

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WASHINGTON COUNTY
Dept. of Land Use & Transportation
Planning and Development Services
Current Planning
155 N. 1st Avenue, #350-13
Hillsboro, OR 97124
Ph. (503) 846-8761 Fax (503) 846-2908
http://www.co.washington.or.us

Development Application

PROCEDURE/CATEGORY TYPE: TYPE II

CPO: 5 COMMUNITY PLAN: URBAN CFP

EXISTING LAND USE DISTRICTS: FD-20

ASSESSOR MAP: 3S102B TAX LOT NUMBER(S): 302, 303, 310, AND 311

NOTE: Contiguous property under identical ownership will be reviewed as part of this application and may be subject to conditions of approval. List assessor map and tax lot numbers of all contiguous property under identical ownership: N/A

SITE ADDRESS: 9775, 9779, AND 9805 SW DAY ROAD

SITE SIZE: ±7.32 ACRES

Date of Pre-app. Conference: MARCH 10, 2023
Staff Member: PAUL SCHAEFER
(Please attach copy of Pre-application notes)

CASEFILE #: (to be assigned by county)

APPLICANT:

COMPANY: EMRICK INVESTMENTS, LLC
CONTACT: SEAN EMRICK AND DON BROWN
ADDRESS: P.O. Box 26439
EUGENE, OR 97402
PHONE: PLEASE CONTACT APPLICANT'S CONSULTANT, BELOW
FAX: N/A
E-MAIL ADDRESS: PLEASE CONTACT APPLICANT'S CONSULTANT, BELOW

APPLICANT'S CONSULTANT: NOTE: The Applicant's Representative will be the primary contact for the County.

COMPANY: AKS ENGINEERING & FORESTRY, LLC
CONTACT: CHRIS GOODELL AND MARIE HOLLADAY
ADDRESS: 12965 SW HERMAN ROAD, SUITE 100
TUALATIN, OR 97062
PHONE: (503) 563-6151
FAX: N/A
E-MAIL ADDRESS: HOLLADAYM@AKS-ENG.COM

OWNER(S): (attach additional sheets if needed)

NAME: SAME AS APPLICANT
ADDRESS:

PHONE:
FAX:
E-MAIL ADDRESS:

ALSO NOTIFY:

NAME: ANDREW STAMP, VIAL FOTHERINGHAM, LLP
ADDRESS: 17355 SW BOONES FERRY ROAD, SUITE A
LAKE OSWEGO, OR 97035
PHONE: (503) 594-8149
FAX: N/A

EXISTING USE OF SITE: RURAL RESIDENTIAL DWELLINGS

PROPOSED DEVELOPMENT ACTION: TREE REMOVAL PERMIT

We, the undersigned, hereby authorize the filing of this application and certify that the information contained in this application is complete and correct to the best of our knowledge. This also authorizes the designated Applicant's Representative (if applicable) to act on behalf of the Applicant for the processing of the request.

X [Signature] 8/7/23
[Checked] OWNER [ ] CONTRACT PURCHASER DATE
Print Name: SEAN EMRICK

X [Signature] 8/7/23
APPLICANT DATE
Print Name: SEAN EMRICK

X
[ ] OWNER [ ] CONTRACT PURCHASER DATE
Print Name:

X
APPLICANT DATE
Print Name:

PLEASE NOTE:

- This application must be signed by ALL the owners or ALL the Contract Purchasers of the subject property.
If this application is signed by the Contract Purchaser(s), the Contract Purchaser is also certifying that the Contract Vendor has been notified.
The Applicant or a Representative should be present at all Public Hearings.
No approval will be effective until the appeal period has expired.
Corporations require proof of signature authority for that entity according to their Articles of Incorporation or as registered with the State of Oregon Corporation Division at http://www.filinginoregon.com



**WASHINGTON COUNTY**

Dept. of Land Use & Transportation  
 Development Services Division  
 Current Planning  
 155 N. 1<sup>st</sup> Avenue, #350-13  
 Hillsboro, OR 97124  
 Ph. (503) 846-8761 Fax (503) 846-2908  
<http://www.co.washington.or.us>

**Current Planning Services Application Submittal**

NOTICE TO APPLICANTS: To speed the processing of applications, the following format for submittals must be used.

**Application Packets**

Submit 9 copies

(see matrix below or ask Planner)

- ✍ Application Forms (Development Review Supplemental Application form if necessary)
- ✍ Supporting Information
- ✍ Plans

*Application on top (one must have original signature of property owners).*

Support Information.

Plans (folded to 8½ "x 11 ")

Secure with a paper clip, binder clip or rubber band depending on size.

**Tax Map**

SEE EXHIBIT G

Submit one copy of the most current official Assessment & Taxation Tax Map. You can print this from the Washington County website (Intermap) or obtain an 8½" x 11" copy from A&T in PSB Room 130.

NOTE: If the subject property is within 1000 feet (rural application) or 500 feet (urban application) of an adjacent county, submit official copies of the adjacent county tax maps, ownership names and mailing addresses (from official county records) of property owners within the corresponding notice radius.

**Required Number of Application Packets\***

	Urban	Rural	
		Districts other than EFC	EFC District
Type I	<u>9</u>	2	2
Type II	8	3	8
Type III	9	4	9

NOTE: \* Include 1 (one) additional application packet for sites with Flood Plain, Drainage Hazard Area or Wetlands.

NOTE: \* Include 1 (one) additional application packet for projects which generate 200 ADT or more.

200 ADT or more = 20 or more single-family residential units.  
 31 or more multi-family residential units.  
 5000 sq. ft. or more of most retail uses.  
 8500 sq. ft. or more of office uses.

**Reduced Site Plan for the Public Notice.**

SEE EXHIBIT I

In addition to the full size site plans in the application packets, submit one reduced copy of the site plan (using an even scale 1"=100', 1"=200', 1"=400') on a piece of paper preferably 8½" x 11", but no larger than 11" x 17". Please show property lines and setbacks.

**Neighborhood Review Meeting**

(see CDC §203-3)

N/A

- ✍ Copy of Meeting Notice
- ✍ Copy of Mailing List
- ✍ Affidavit of Mailing
- ✍ Affidavit of Posting
- ✍ Affidavit of Minutes to CPO
- ✍ Copy of Meeting Notes
- ✍ Meeting Sign-In Sheet

**Pre-Application Notes or Waiver**

(Type II & III applications only).

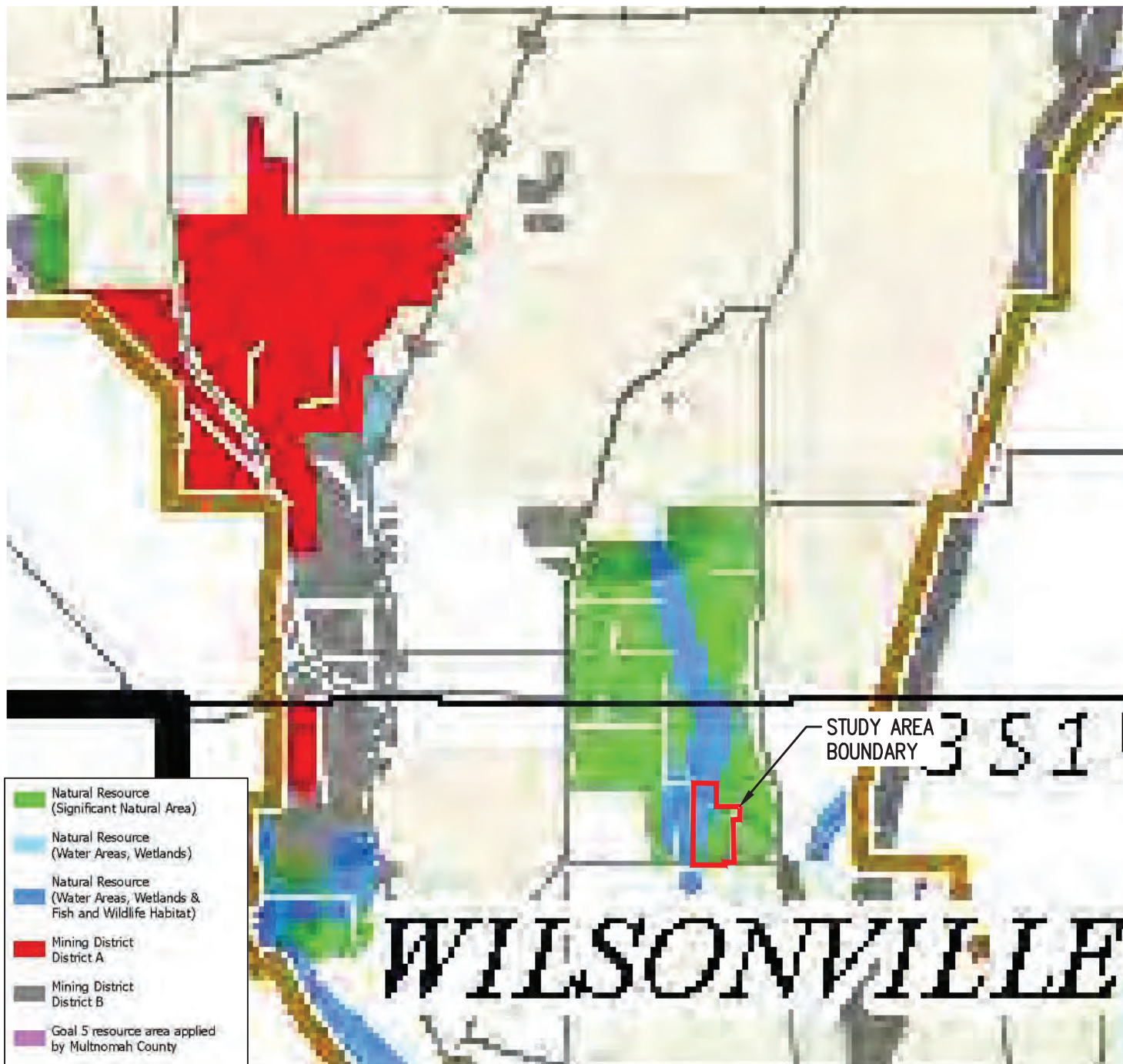
**Fee**

Cash or Check or Money Order (made out to Washington County).

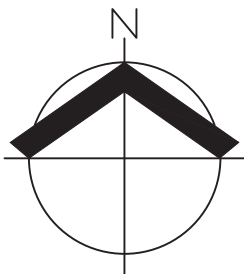
## **Exhibit B: Washington County SNR Map**

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WASHINGTON COUNTY COMPREHENSIVE PLAN  
 MAP B GOAL 5 RESOURCES FOR FUTURE DEVELOPMENT AREAS  
 (JULY 2022)



SCALE: 1" = 2000 FEET



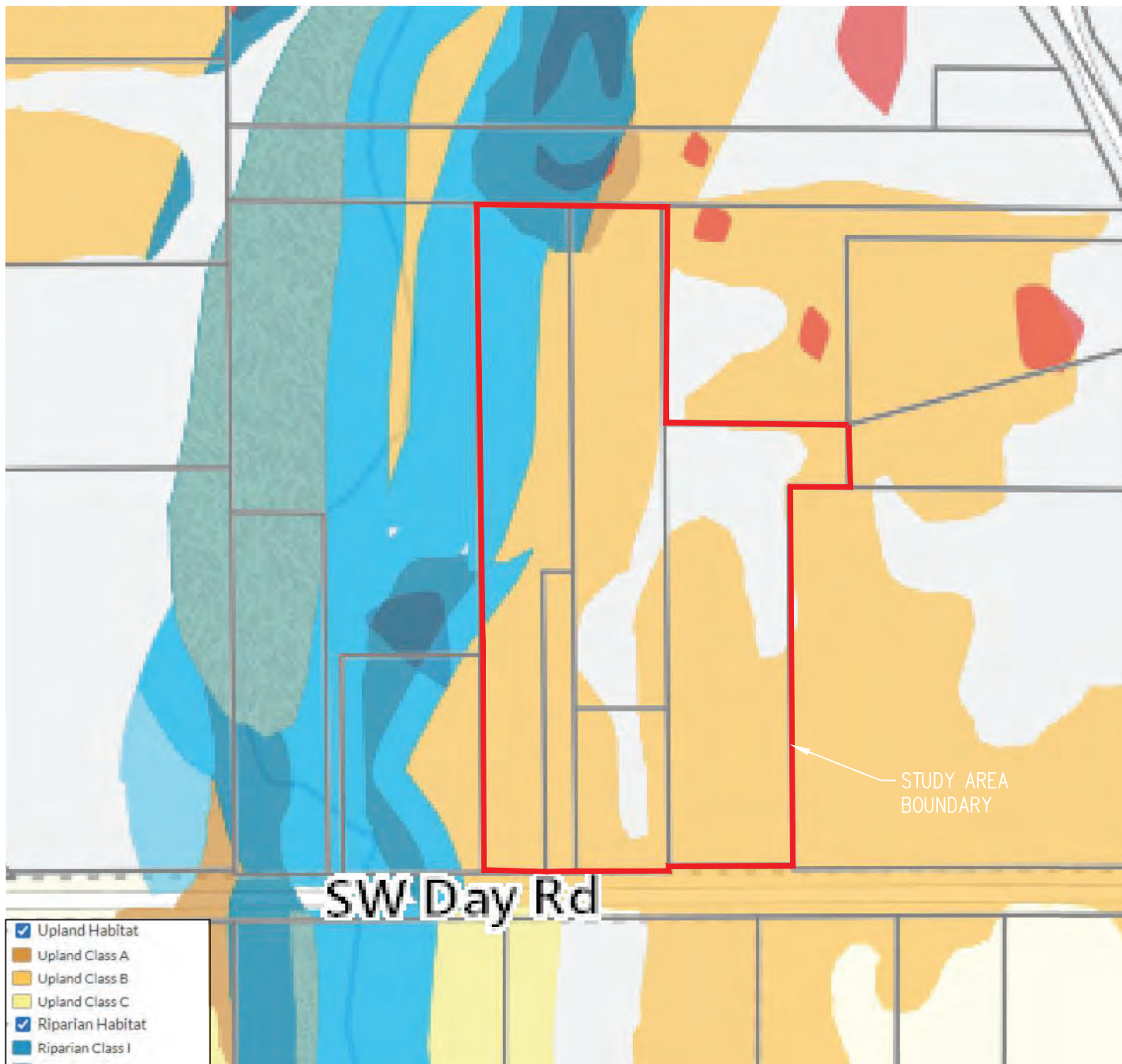
DATE: 08/04/2023

WASHINGTON COUNTY SNR MAP DAY ROAD CONTRACTOR'S ESTABLISHMENT SECTION 422 MEMO		<b>FIGURE</b> <b>5</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151    WWW.AKS-ENG.COM		DRWN: SKT CHKD: MH AKS JOB: 3916



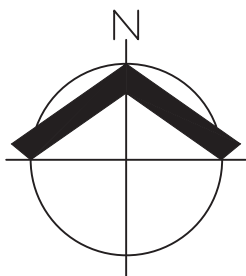
## Exhibit C: Metro SNR Map

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- Upland Habitat
- Upland Class A
- Upland Class B
- Upland Class C
- Riparian Habitat
- Riparian Class I
- Riparian Class II

REGIONALLY SIGNIFICANT FISH & WILDLIFE HABITAT INVENTORY MAP  
 OREGON METRO MAPS ONLINE  
 METRO DATA RESOURCE CENTER (ACCESSED 2023)



SCALE: 1" = 250 FEET



DATE: 08/04/2023

REGIONALLY SIGNIFICANT FISH & WILDLIFE HABITAT INVENTORY MAP  
 DAY ROAD CONTRACTOR'S ESTABLISHMENT SECTION 422 MEMO

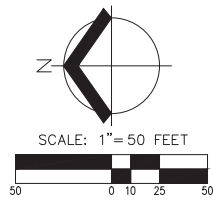
FIGURE  
**6**

AKS ENGINEERING & FORESTRY, LLC  
 12965 SW HERMAN RD, STE 100  
 TUALATIN, OR 97062  
 503.563.6151 WWW.AKS-ENG.COM



DRWN: SKT  
 CHKD: MH  
 AKS JOB:  
 3916

**Exhibit D:**  
**Preliminary Off-Site Drainage Hazard Area Exhibit**



**LEGEND**

EXISTING CONIFEROUS TREE \*

EXISTING DECIDUOUS TREE ○

NEW GRAVEL AREA/EXISTING GRAVEL AREA TO BE RESURFACED ▨



**Exhibit E [UPDATED]: Natural Resource Assessment  
(from Brown Contracting, Inc. DR Application)**

---

**Date:** 10/25/2023  
**To:** Washington County Planning and Development Services  
**From:** Sonya Templeton, Wetland Scientist  
Emma Eichhorn, Natural Resource Specialist  
12965 SW Herman Road, Suite 100  
Tualatin, OR 97062  
**Project Name:** Day Road Contractor's Establishment  
**AKS Job No.:** 3916  
**Project Site:** 9675 SW Day Road, Washington County, Oregon  
Washington County Assessor's Tax Map 3S 1 2B, Tax Lots 302, 303, 309, 310, and 311  
**Subject:** [Article IV: Development Standards, Section 422 Significant Natural Resources](#)

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## Introduction

AKS Engineering & Forestry, LLC (AKS) was contracted by Brown Contracting, Inc (Applicant) to assess mapped Significant Natural Resources (SNR) on-site to address the applicable portions of Washington County (WACO) Community Development Code (CDC) Article IV, Section 422. The project site consists of Tax Lots 302, 303, 309, 310, and 311 of Washington County Assessor's Map 3S 1 2B and is located at 9675 SW Day Road in unincorporated Washington County (Figures 1 and 2).

According to the Urban Comprehensive Framework Plan for Washington County, "Water Areas and Wetlands and Fish and Wildlife Habitat", and "Significant Natural Area" are mapped within the project site (Figure 5), as defined under CDC Section 422-2. According to Metro's current Regionally Significant Fish & Wildlife Habitat Inventory Map, a portion of the project site is mapped as Title 13 Riparian Habitat Class I and II (Figure 6). Therefore, the site is subject to WACO CDC Section 422 (Supp. No 7). Additionally, a portion of the project site is mapped by Metro as Upland Habitat Class A and B; however, per June 2023 correspondence with Washington County, Metro mapped Upland Habitat is not subject to WACO CDC Section 422 and is therefore not covered under this study.

On December 13, 2022 AKS qualified natural resources staff, Sonya Templeton and Emma Eichhorn conducted a site visit and determined one palustrine scrub-shrub/emergent (PSS/PEM) wetland, referred to as Wetland A, and Metro Title 13 Riparian Habitat exists on the site. Wetland A extends off-site to the north and west.

The project involves incorporating additional property owned by the Applicant into the existing contractor's establishment, and the construction of a new open-air, covered structure, intended to relocate existing outdoor storage out of the weather. Existing on-site improvements include paved circulation and parking area, storage enclosures, and landscaping. The remainder of the site is planned to remain as a graveled storage area for continuing operations of the storage and maintenance of heavy machinery, materials, and contractor's equipment. No impacts to the on-site wetland or mapped Title 13 Riparian Habitat Class I and II will occur. This memorandum has been prepared to meet the requirements listed in Section 422 of WACO CDC, which meets Oregon Conservation and Land Development Department, Chapter 660 Division 23 Procedures and Requirements for Complying with Goal 5.

## Existing Conditions and Background

The project site is currently operating as a contractor's establishment for a concrete business, with existing industrial buildings and shops, paved parking areas, and gravel storage areas located in the southeastern portion of the site. Several residential houses are in the southwestern portion of the project site. The site is currently zoned as FD-20 District in the Basalt Creek area for unincorporated Washington County. Surrounding land use consists of similarly zoned land with commercial and industrial use, to the east, south, and west. Rural residential is present to the north. The topography on the site generally slopes to the northwest towards Wetland A.

Vegetation in the developed eastern and southern portion of the site consists of scattered Douglas-fir (*Pseudotsuga menziesii*; FACU) with Scotch broom (*Cytisus scoparius*; NOL), Himalayan blackberry (*Rubus armeniacus*; FAC), English plantain (*Plantago lanceolata*; FACU), prickly lettuce (*Lactuca serriol*; FACU), common nipplewort (*Lapsana communis*; FACU), and other common upland weedy species. The northern portion of the site consists of a maintained field dominated by Kentucky blue grass (*Poa pratensis*; FAC), field meadow-foxtail (*Alopecurus pratensis*; FAC), spreading dogbane (*Apocynum androsaemifolium*; FACU), prickly lettuce, and climbing nightshade (*Solanum dulcamara*; FAC). Scattered Himalayan blackberry, Scotch broom, and English hawthorn (*Crataegus monogyna*; FAC) are also present. The wetland area is dominated by reed canary grass (*Phalaris arundinacea*; FACW) with a dense shrub layer consisting of English Hawthorn, Himalayan blackberry, and willow (*Salix* spp.; assumed FAC) bordering the wetland.

The following soil units are mapped within the study area, according to the Natural Resources Conservation Service (NRCS) Washington County Area Soil Survey Map and Washington County hydric soil list (Figure 3):

- (Unit 5B) Breidwell stony silt loam, 0 to 7 percent slopes; Non-hydric
- (Unit 37B) Quatama loam, 3 to 7 percent slopes; Non-hydric
- (Unit 38B) Saum silt loam; 2 to 7 percent slopes; Non-hydric
- (Unit 38C) Saum silt loam; 7 to 12 percent slopes; Non-hydric
- (Unit 38D) Saum silt loam; 12 to 20 percent slopes; Non-hydric
- (Unit 43) Wapato silty clay loam; Hydric

The study area is not within a, Oregon Department of State Lands (DSL)-approved Local Wetland Inventory (LWI). According to the National Wetland Inventory (NWI) one Freshwater Forested/Shrub wetland is mapped northwest of the study area. The NWI map is included as Figure 4.

According to the Urban Comprehensive Framework Plan for Washington County, "Water Areas and Wetlands and Fish and Wildlife Habitat", and "Significant Natural Area" are mapped within the project site (Figure 5). Additionally, Metro's current Regionally Significant Fish & Wildlife Habitat Inventory Map shows Title 13 Riparian Habitat (Class I and Class II) mapped in the northwestern portion of the project site and Upland Wildlife Habitat (Class A and B) mapped throughout the project site (Figure 6).



## Significant Goal 5 Resources

### Water Areas and Wetlands (422-2.1)

No Water Areas and Wetlands are mapped on-site or immediately off-site.

### Water Areas and Wetlands & Fish and Wildlife Habitat (422-2.2)

“Water Area and Wetlands and Fish and Wildlife Habitat” is mapped on the site on Map B of the Goal 5 Resources for Future Development Areas in the Urban Comprehensive Framework Plan (Figure 5). Additionally, the site is mapped by Metro as Title 13 Riparian Habitat Class I and II. AKS Natural Resource Specialists Sonya Templeton and Emma Eichhorn conducted a site visit on December 13, 2022 to determine the extent of wetland and riparian habitat on-site. AKS agrees with the Metro mapped Title 13 Riparian Habitat boundary. The methodology used to determine the presence of wetlands followed the US Army Corps of Engineers’ (USACE) *Wetland Delineation Manual* (Environmental Laboratory, 1987) and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region* (Version 2.0) (Wakeley et al., 2010). The *National Wetland Plant List 2020* for the Western Mountains, Valleys, and Coast region was used to assign wetland indicator status to species observed on the site.

Soils, vegetation, and indicators of hydrology were recorded at four sample plots on standardized wetland determination data forms (Attachment A). The approximate wetland boundary was mapped based on field observations, high resolution aerial imagery, and topography. AKS agrees with the Title 13 Riparian Habitat boundary. The approximate wetland boundary, Title 13 Riparian Habitat, and plot locations are shown on the attached Figure 7, Existing Conditions. Representative site photos are included as Attachment B.

Wetland A is a PSS/PEM wetland located in the northwestern portion of the study area within the mapped “Water Areas and Wetlands and Fish and Wildlife Habitat” and the Title 13 Riparian Habitat illustrated on Metro’s Regionally Significant Fish & Wildlife Habitat Inventory Map (Figure 6). Vegetation within the wetland is dominant in reed canary grass, willow, and Himalayan blackberry. Wetland A extends off-site to the north and west. Wetland A is adjacent to the off-site Tapman Creek. Tapman Creek is not mapped as an Essential Salmonid Habitat stream by the Oregon Department of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW). According to the Pacific States Marine Fisheries Commission (PSMFC) StreamNet Mapper, the portion of Tapman Creek adjacent to the study area is not mapped as containing fish species, however the downstream portion is mapped potentially containing coastal cutthroat trout. No wildlife (macrofauna) was observed utilizing the site during the December 13, 2022, site visit. It is likely that small mammals and birds common in Washington County utilize the wetland.

### Wildlife Habitat (422-2.3)

No “Wildlife Habitat” is mapped on-site or immediately off-site by WACO. Metro Title 13 Upland Habitat (Class A and B) is mapped within the study area but is not subject to WACO CDC Section 422.

### Significant Natural Areas (422-2.4)

“Significant Natural Area” is mapped on the site according to the Urban Comprehensive Framework Plan (Figure 5), which was generated from the April 1983 Tonquin Scabland Geologic Area Map as part of an older Washington County Comprehensive Plan. An interoffice memo from Hal Bergsma (1984) discusses the Tonquin Scablands Geologic Area as being recognized as an important geologic feature in Oregon for its scientific and educational value and for evidence of the impacts of the Missoula floods. According to

Bergsma, scablands must have the following geologic features: channels, depressions above 300 feet in elevation, and scoured bedrock knolls, cliffs, and channel walls. The Tonquin Scablands Geologic Area was designated as a “Significant Natural Area” (Figure 1-18; April, 1983 Washington County Comprehensive Plan) to prevent quarrying within identified scablands.

There is no presence of scoured bedrock knolls and channel walls within the study area. Additionally, Bergsma identifies scablands located north and northwest of the study area due to the cliffs, bedrock bluffs, and formations above 300 feet in elevation. The highest elevation on the site is approximately 260 feet in elevation. The study area does not contain cliffs, bluffs or scoured bedrock knolls or other characteristics that make up the Tonquin Scablands Geologic Area. Therefore, the Tonquin Scablands likely do not extend within the study area.

### **Project Summary**

The project involves construction of a new open-air industrial storage building with improved vehicle circulation and gravel storage areas. The proposed site plan is included as Figure 8. No impacts to the on-site wetland or mapped Title 13 Riparian Habitat Class I and II are planned to occur with this project.

### **Applicable Washington County Community Development Code Criteria**

The sections below provide evidence of how the project meets the criteria for development listed under WACO CDC Section 422-3.

*422-3.1 The required master plan and site analysis for a site which includes an identified natural resource shall:*

- A. Identify the location of the natural resource(s), except in areas where a Goal 5 analysis has been completed and a program decision adopted pursuant to OAR 660, Division 23 (effective September 1, 1996);*

**RESPONSE:** AKS conducted a site visit on December 13, 2022, to determine the extent of on-site “Water Areas and Wetlands and Fish and Wildlife Habitat” (Wetland A) and Metro mapped Title 13 Riparian Habitat. The attached Existing Conditions (Figure 7) illustrates the approximate wetland boundary and the Title 13 Riparian Habitat Class I and Class II, which were field verified. Wetland A is within the “Water Areas and Wetlands and Fish and Wildlife Habitat” shown on Map B of the Urban Comprehensive Framework Plan and the Title 13 Riparian Habitat shown on Metro’s Regionally Significant Fish & Wildlife Habitat Inventory Map. The remainder of the site is mapped as “Significant Natural Area” (Figure 5) identified as the Tonquin Scablands Geologic Area (Figure 1-18; April 1983 Washington County Comprehensive Plan); however, the site is not characteristic of the Tonquin Scablands Geologic Area. Therefore, the Tonquin Scablands likely do not extend within the study area.

- B. Describe the treatment or proposed alteration, if any. Any alteration proposed pursuant to Section 422-3.1 B. shall be consistent with the program decision for the subject natural resource; and*

**RESPONSE:** The scope of the project is the construction of a new open-air industrial storage building with improved traffic circulation, parking areas, and gravel storage. All site

improvements will occur outside of the “Water Areas and Wetlands and Fish and Wildlife Habitat” and the Title 13 Riparian Habitat.

- C. *Apply the design elements of the applicable Community Plan;*

RESPONSE: The project is located within the Urban Comprehensive Framework Plan area. Design elements of the Urban Comprehensive Framework Plan identify the project as an appropriate activity as it is zoned FD-20. The project will continue to provide light industrial employment opportunities to the local community. General design elements of the Community Plan have been incorporated to the extent they exist and/or apply.

422-3.2 *Open Space Inside the UGB:*

- A. *Shall be identified as provided in Section 404-1, Master Planning - Site Analysis.*

RESPONSE: The project will not impact the “Water Areas and Wetlands and Fish and Wildlife Habitat” or the Title 13 Riparian Habitat providing approximately 105,955 square feet of open space.

- B. *When located in a park deficient area as identified on the significant natural resource map, the applicant shall notify the appropriate park provider of the proposed development.*

RESPONSE: The study area is not located in a park deficient area.

422-3.3 *Development within a Riparian Corridor, Water Areas and Wetlands, and Water Areas and Wetlands and Fish and Wildlife Habitat:*

- A. *No new or expanded alteration of the vegetation or terrain of the Riparian Corridor (as defined in Section 106) or a significant water area or wetland (as identified in the applicable Community Plan or the Rural/Natural Resource Plan) shall be allowed except for the activities listed under 422-3.3(A)(1-12):*

RESPONSE: The project will not result in alteration of the vegetation or terrain of a Riparian Corridor (as defined in Section 106), or significant water area or wetland identified in the Urban Comprehensive Framework Plan, as demonstrated in Figure 8.

- B. *Where development or alteration of the riparian corridor is permitted under the above exceptions, the flood plain and drainage hazard area development criteria shall be followed.*

RESPONSE: No development or alteration of the riparian corridor is proposed.

- C. *Fencing adjacent to stream buffers or other wildlife habitat areas shall be designed to allow the passage of wildlife. Designs must incorporate openings appropriately sized and spaced to accommodate passage of wildlife common to urban Washington County (common mammals needing access to streams in urban Washington County include but are not limited to: deer, beaver, coyote, muskrat, rabbit, raccoon and skunk).*

RESPONSE: No fencing adjacent to the “Water Areas and Wetlands and Fish and Wildlife Habitat” or the Title 13 Riparian Habitat exists or is proposed. The “Water Areas and Wetlands and Fish and Wildlife Habitat” and the Title 13 Riparian Habitat extend off-site to the north and west unconstrained. The project will not limit the passage of wildlife common to urban Washington county.

422-3.4 *Enhancement of a degraded riparian corridor, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat permitted by Section 422-3.3 A. (7) shall meet the criteria listed under 422-3.4(A-D):*

RESPONSE: Enhancement of the “Water Areas and Wetlands and Fish and Wildlife Habitat” or Title 13 Riparian Habitat is not proposed as part of this project.

422-3.5 *Significant Natural Areas*

*Any development requiring a permit from Washington County which is proposed in a Significant Natural Area, as identified by the applicable Community Plan or the Rural/Natural Resource Area Plan Element, shall reduce its impact, to the maximum extent feasible, on the unique or fragile character or features of the Significant Natural Area. Appropriate impact reducing measures shall include:*

A. *Provision of additional landscaping or open space; and*

B. *Relocation of the proposed site of a building, structure or use on the lot.*

RESPONSE: The study area is within mapped “Significant Natural Area” for the Tonquin Scablands Geologic Area. However as discussed above, the geologic features characterized by the scablands are not present within the study area. According to Bergsma, the key areas of this geologic feature are cliffs and hilltop knolls above 300 feet in elevation, which are not located within the study area. The surface level improvements on the project site will not result in impacts to the unique geological character of the area. The major conflicting use identified for the Tonquin Scablands Geologic Area is rock quarrying which is not proposed on the project site. The project avoids impacts to the “Waters Areas and Wetland and Fish and Wildlife Habitat” and does not impact the Title 13 Riparian Area.

422-3.6 *For any proposed use in a Significant Natural Resource Area, there shall be a finding that the proposed use will not seriously interfere with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, or how the interference can be mitigated. This section shall not apply in areas where a Goal 5 analysis has been completed and a program decision has been adopted that allows a "conflicting use" to occur pursuant to OAR 660-023-0040(5)(c) (effective September 1, 1996).*

RESPONSE: The project avoids impacts to “Waters Areas and Wetlands and Fish and Wildlife Habitat” and the Title 13 Riparian Habitat as shown in Figure 8. The project will not seriously interfere with the preservation of fish and wildlife areas, or habitat identified on the County’s Urban Comprehensive Framework Plan. Additionally, while the site is

not characteristic of the Tonquin Scablands, the surface level improvements for the project will not result in impacts to the unique geological character of the area. Therefore, no mitigation should be required for this project.

**Figures**

Figure 1. USGS Vicinity Map

Figure 2. Washington County Assessor's Tax Map

Figure 3. NRCS Soil Survey Map

Figure 4. National Wetland Inventory Map

Figure 5. Washington County Significant Natural Resources Map

Figure 6: Metro Regionally Significant Fish & Wildlife Habitat Inventory Map

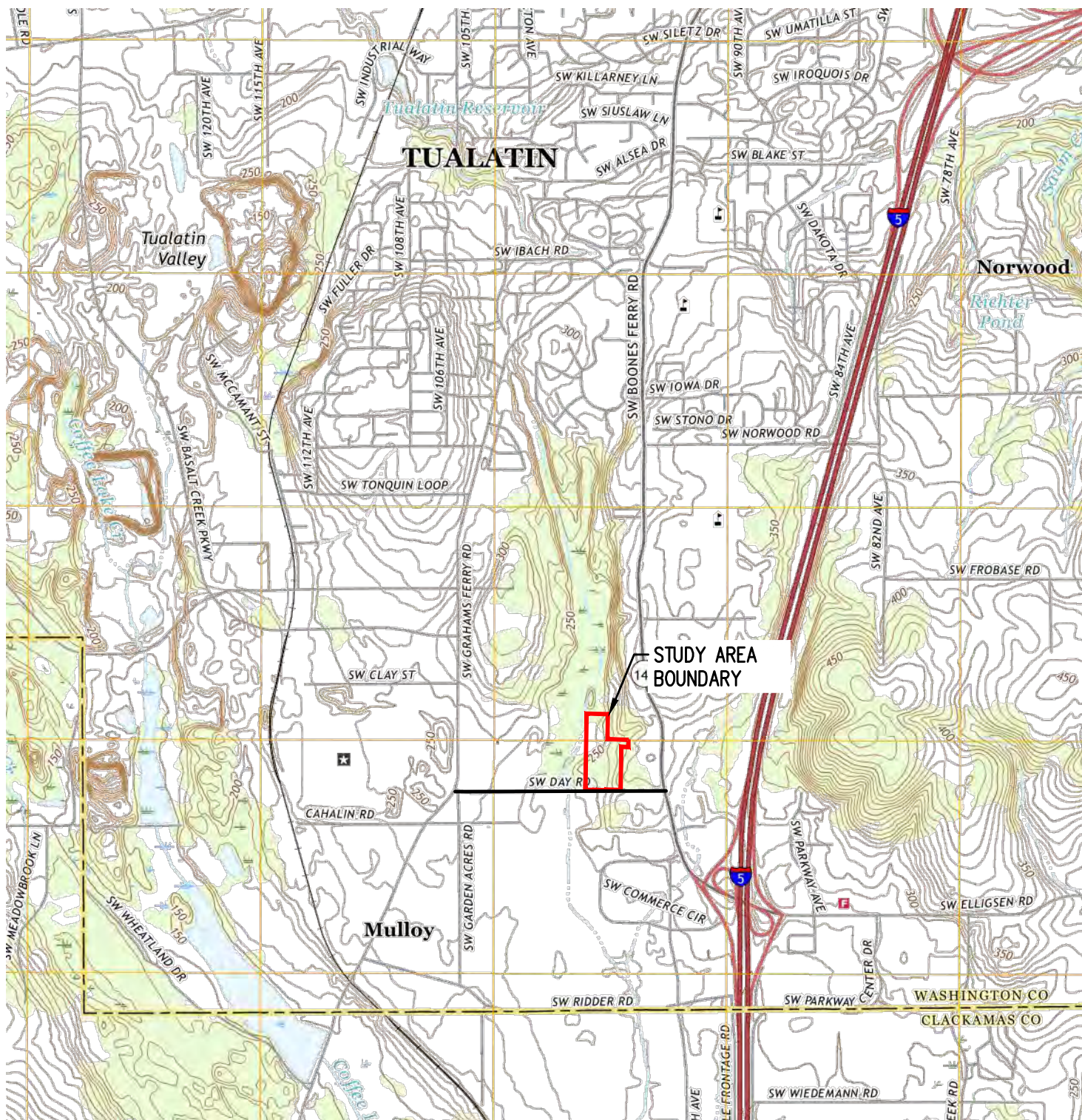
Figure 7. Natural Resource Existing Conditions

Figure 8. Natural Resource Site Plan

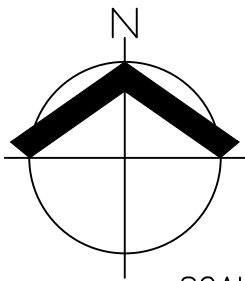
**Attachments**

Attachment A: Wetland Determination Data Sheets

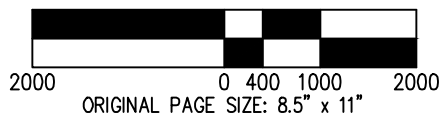
Attachment B: Representative Site Photos



USGS 7.5' TOPOGRAPHIC SERIES  
 QUADRANGLE: SHERWOOD, OR (2020)




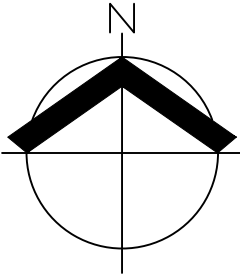
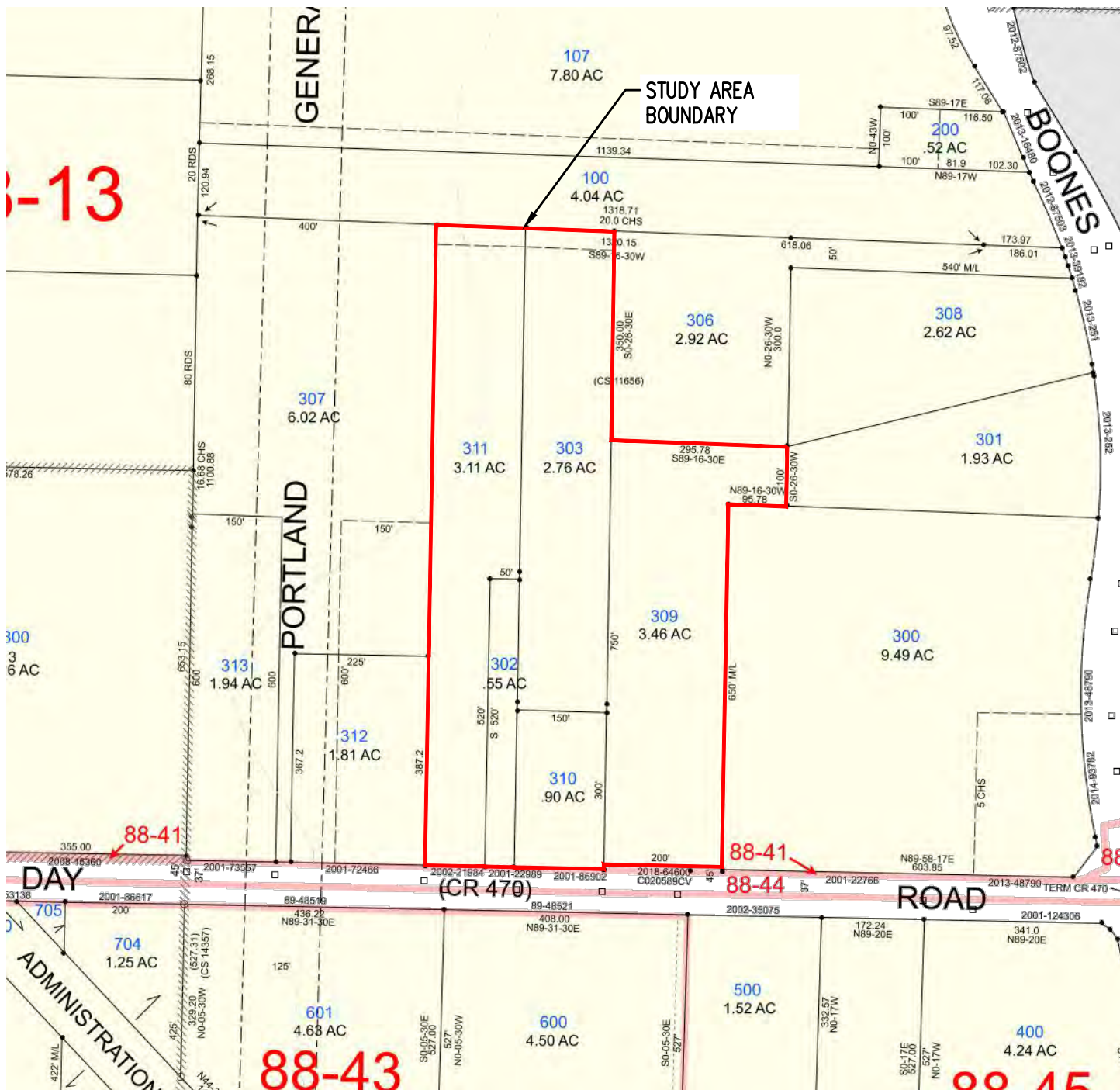
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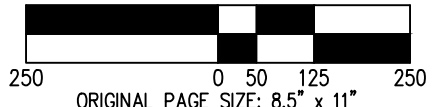
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DATE: 08/04/2023

<b>USGS VICINITY MAP</b> <b>DAY ROAD CONTRACTOR'S ESTABLISHMENT SECTION 422 MEMO</b>		<b>FIGURE</b> <b>1</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151    WWW.AKS-ENG.COM		DRWN: SKT CHKD: MH AKS JOB: 3916
		




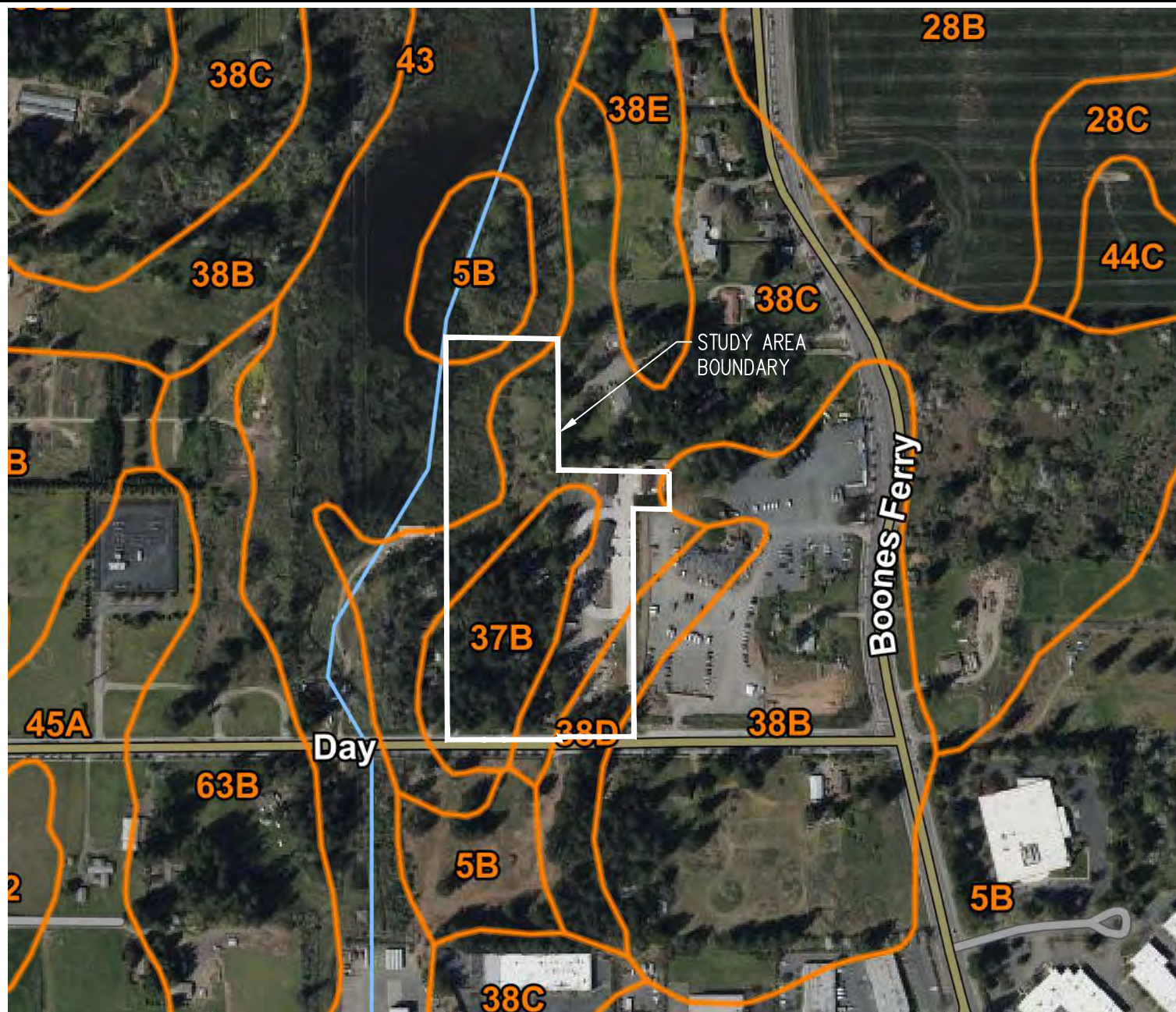
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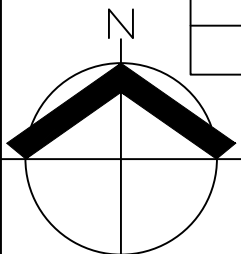
WASHINGTON COUNTY  
 TAX LOTS 302, 303, 309,  
 310, AND 311  
 TAX MAP 3S 1 2B

DATE: 10/25/2023

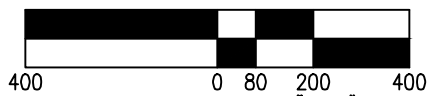
<b>TAX MAP (MAP 3S 10 2B)</b> <b>SW DAY ROAD CONTRACTOR'S ESTABLISHMENT SECTION 422 MEMO</b>		<b>FIGURE</b> <b>2</b>
<b>AKS ENGINEERING &amp; FORESTRY, LLC</b> 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151    WWW.AKS-ENG.COM		
		DRWN: SKT CHKD: MH AKS JOB: <b>3916</b>



MAP UNIT SYMBOL	MAP UNIT NAME
5B	BREIDWELL STONY SILT LOAM; 0% TO 7% SLOPES; NON-HYDRIC
37B	QUATAMA LOAM; 3% TO 7% SLOPES; NON-HYDRIC
38B	SAUM SILT LOAM; 2% TO 7% SLOPES; NON-HYDRIC
38C	SAUM SILT LOAM; 7% TO 12% SLOPES; NON-HYDRIC
38D	SAUM SILT LOAM; 12% TO 20% SLOPES; NON-HYDRIC
43	WAPATO SILTY CLAY LOAM; HYDRIC



SCALE: 1" = 400 FEET



ORIGINAL PAGE SIZE: 8.5" x 11"

NRCS WEB SOIL SURVEY FOR  
WASHINGTON COUNTY

DATE: 10/25/2023

NRCS SOIL SURVEY MAP SW DAY ROAD CONTRACTOR'S ESTABLISHMENT SECTION 422 MEMO		FIGURE <b>3</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151    WWW.AKS-ENG.COM		DRWN: SKT CHKD: MH AKS JOB: 3916





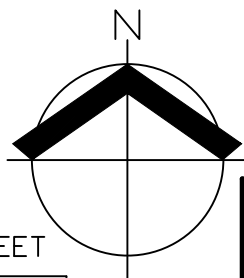


U.S. Fish and Wildlife Service, wetlands\_team@fws.gov

**Wetlands**

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

**US FISH & WILDLIFE SERVICE  
NATIONAL WETLANDS INVENTORY**



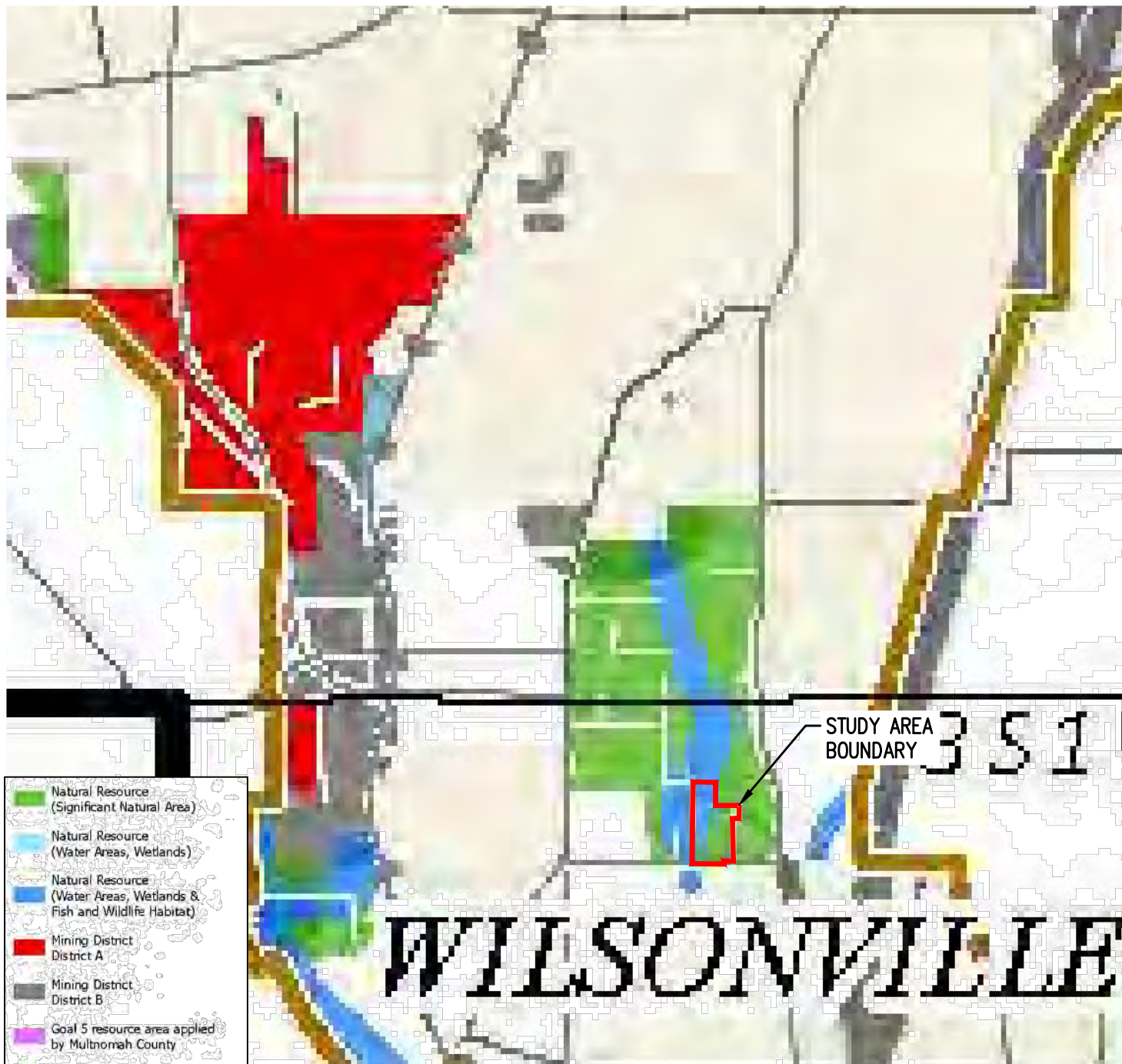
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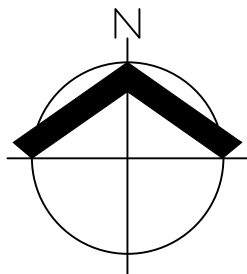
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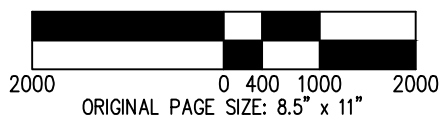
<b>NATIONAL WETLANDS INVENTORY MAP</b> <b>SW DAY ROAD CONTRACTOR'S ESTABLISHMENT SECTION 422 MEMO</b>		<b>FIGURE</b> <b>4</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151    WWW.AKS-ENG.COM		DRWN: SKT CHKD: MH AKS JOB: 3916



URBAN COMPREHENSIVE FRAMEWORK PLAN FOR WASHINGTON COUNTY  
 MAP B GOAL 5 RESOURCES FOR FUTURE DEVELOPMENT AREAS  
 (JULY 2022)



SCALE: 1" = 2000 FEET



DATE: 10/25/2023

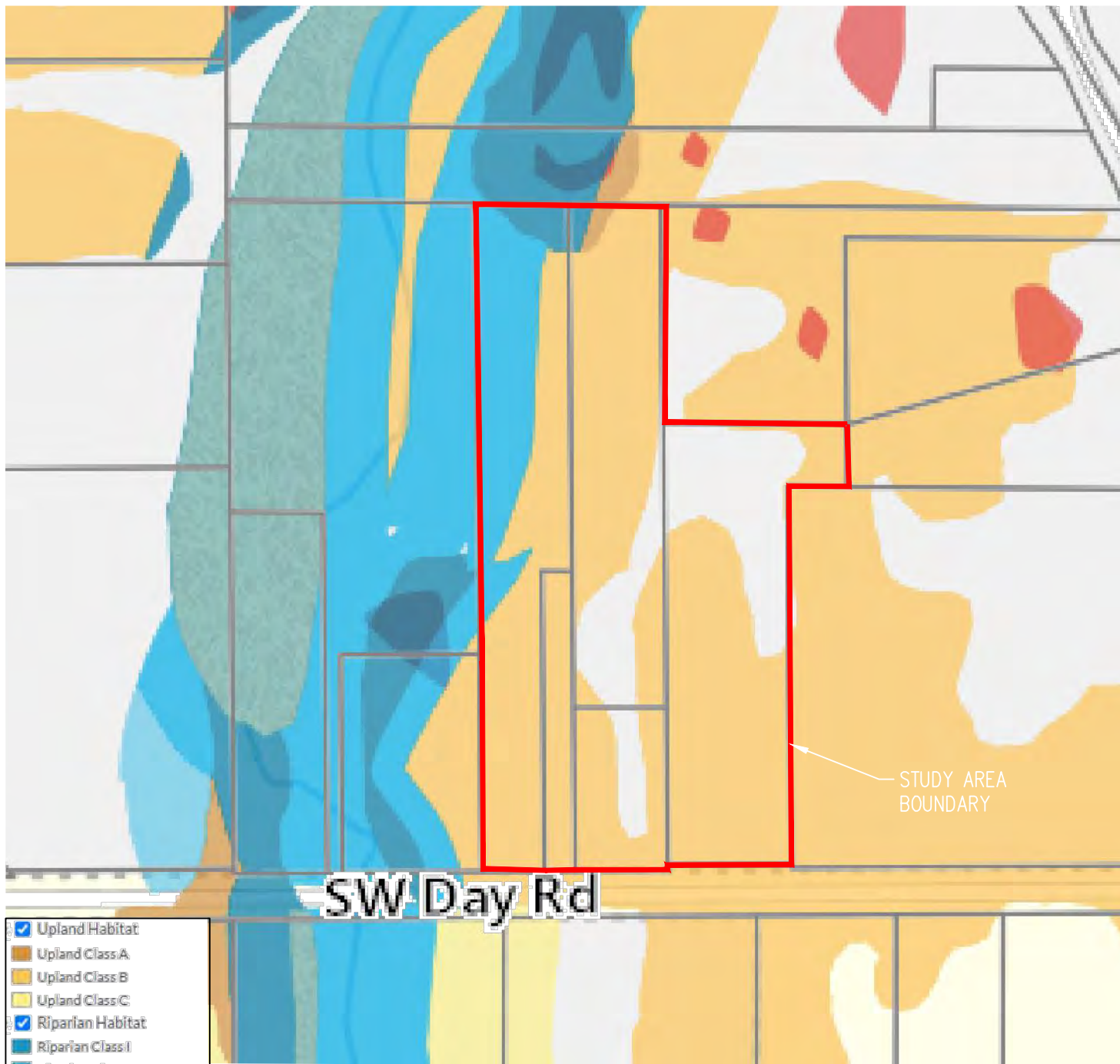
WASHINGTON COUNTY SNR MAP  
 SW DAY ROAD CONTRACTOR'S ESTABLISHMENT SECTION 422 MEMO

FIGURE  
**5**

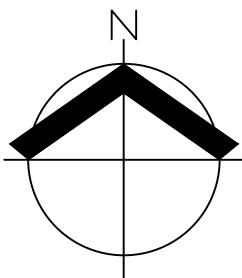
AKS ENGINEERING & FORESTRY, LLC  
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 TUALATIN, OR 97062  
 503.563.6151 WWW.AKS-ENG.COM



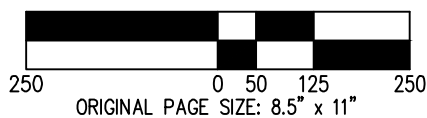
DRWN: SKT  
 CHKD: MH  
 AKS JOB:  
 3916



REGIONALLY SIGNIFICANT FISH & WILDLIFE HABITAT INVENTORY MAP  
 OREGON METRO MAPS ONLINE  
 METRO DATA RESOURCE CENTER (ACCESSED 2023)



SCALE: 1" = 250 FEET



DATE: 10/25/2023

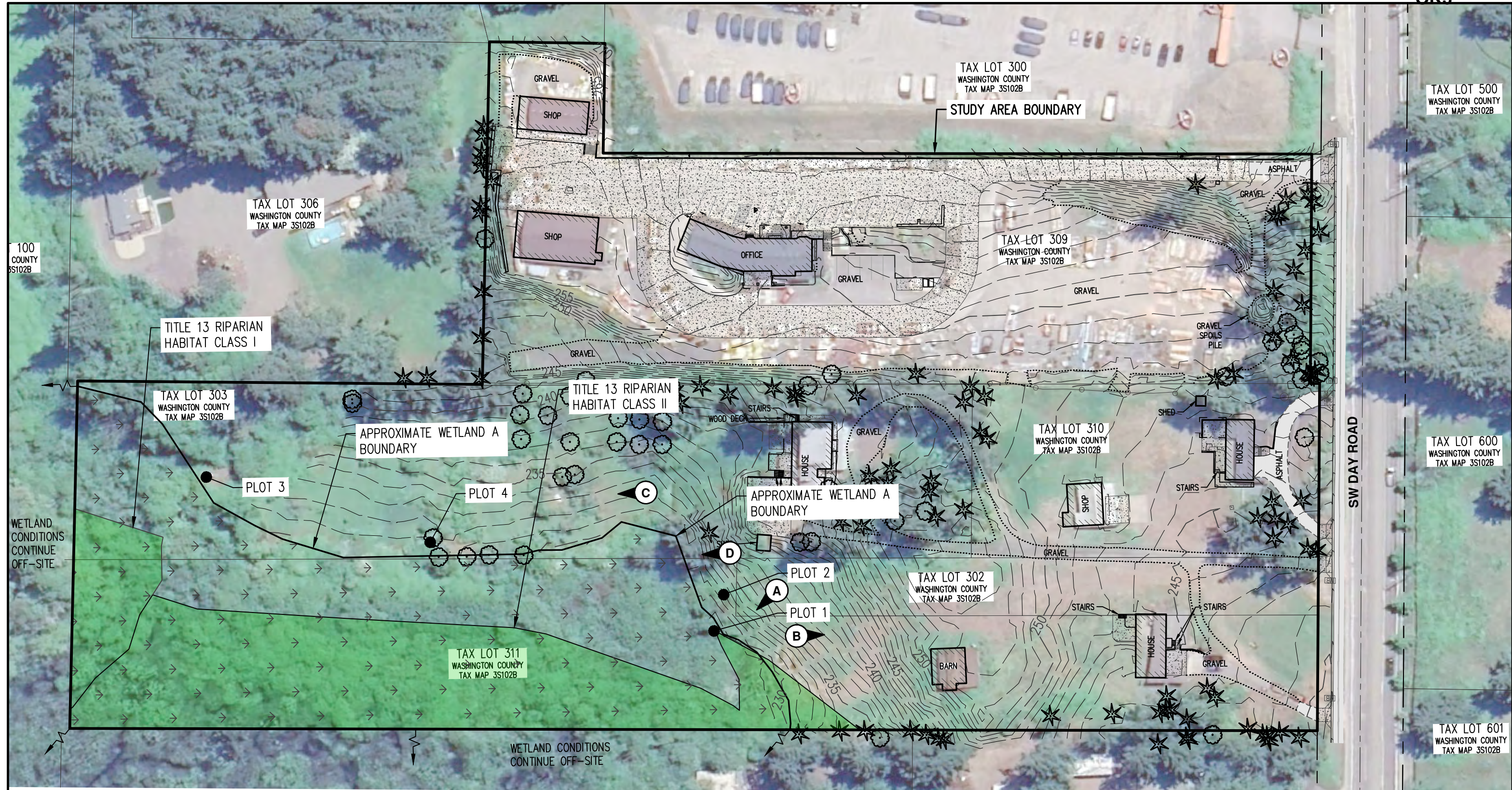
REGIONALLY SIGNIFICANT FISH & WILDLIFE HABITAT INVENTORY MAP  
 SW DAY ROAD CONTRACTOR'S ESTABLISHMENT SECTION 422 MEMO

FIGURE  
**6**


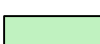

AKS ENGINEERING & FORESTRY, LLC  
 12965 SW HERMAN RD, STE 100  
 TUALATIN, OR 97062  
 503.563.6151 WWW.AKS-ENG.COM



DRWN: SKT  
 CHKD: MH  
 AKS JOB:  
 3916



**LEGEND (COLOR COPY):**

-  APPROXIMATE ON-SITE WETLAND A ("WATERS AREAS AND WETLANDS AND FISH AND WILDLIFE HABITAT") AREA: 104,267 SF± (2.39 ACRES)
-  TOTAL ON-SITE TITLE 13 RIPARIAN HABITAT CLASS I AND CLASS II: 58,690 SF± (1.35 ACRES)
-  PHOTO POINT LOCATION AND ORIENTATION

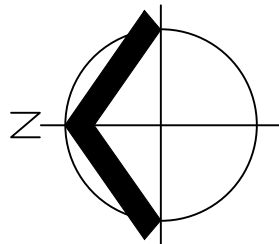
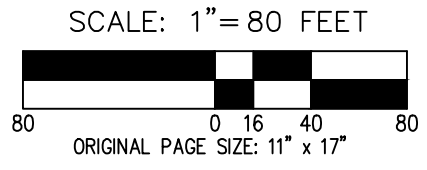
AKS ENGINEERING & FORESTRY, LLC (AKS) CONDUCTED A SITE VISIT ON DECEMBER 13, 2022. WETLAND BOUNDARY SHOWN WAS DIGITIZED POST FIELD USING LIDAR DATA, HIGH RESOLUTION AERIAL IMAGERY, AND ON-SITE FIELD OBSERVATIONS. ACCURACY ±20 FT. DATA PLOTS SHOWN WERE LOCATED BY AKS ON DECEMBER 13, 2022 WITH SUB-METER ACCURACY USING A TRIMBLE GEO 7X HANDHELD GPS RECEIVER.

1-FOOT INTERVAL GROUND CONTOURS, EXISTING CONDITIONS, TREE SURVEY OF TREES >6" DBH, AND STUDY AREA BOUNDARY DERIVED FROM AKS LAND SURVEY.

LIMITS OF TITLE 13 RIPARIAN WILDLIFE HABITAT CLASS I AND II WERE DERIVED FROM THE METRO DATA RESOURCE CENTER AND FIELD VERIFIED BY AKS ON DECEMBER 13, 2022.

WASHINGTON COUNTY COMPREHENSIVE PLAN GOAL 5 RESOURCES (JULY 2022): SIGNIFICANT NATURAL AREAS AND WATER AREAS, WETLAND & FISH AND WILDLIFE HABITAT, ARE MAPPED WITHIN THE STUDY AREA BOUNDARY.

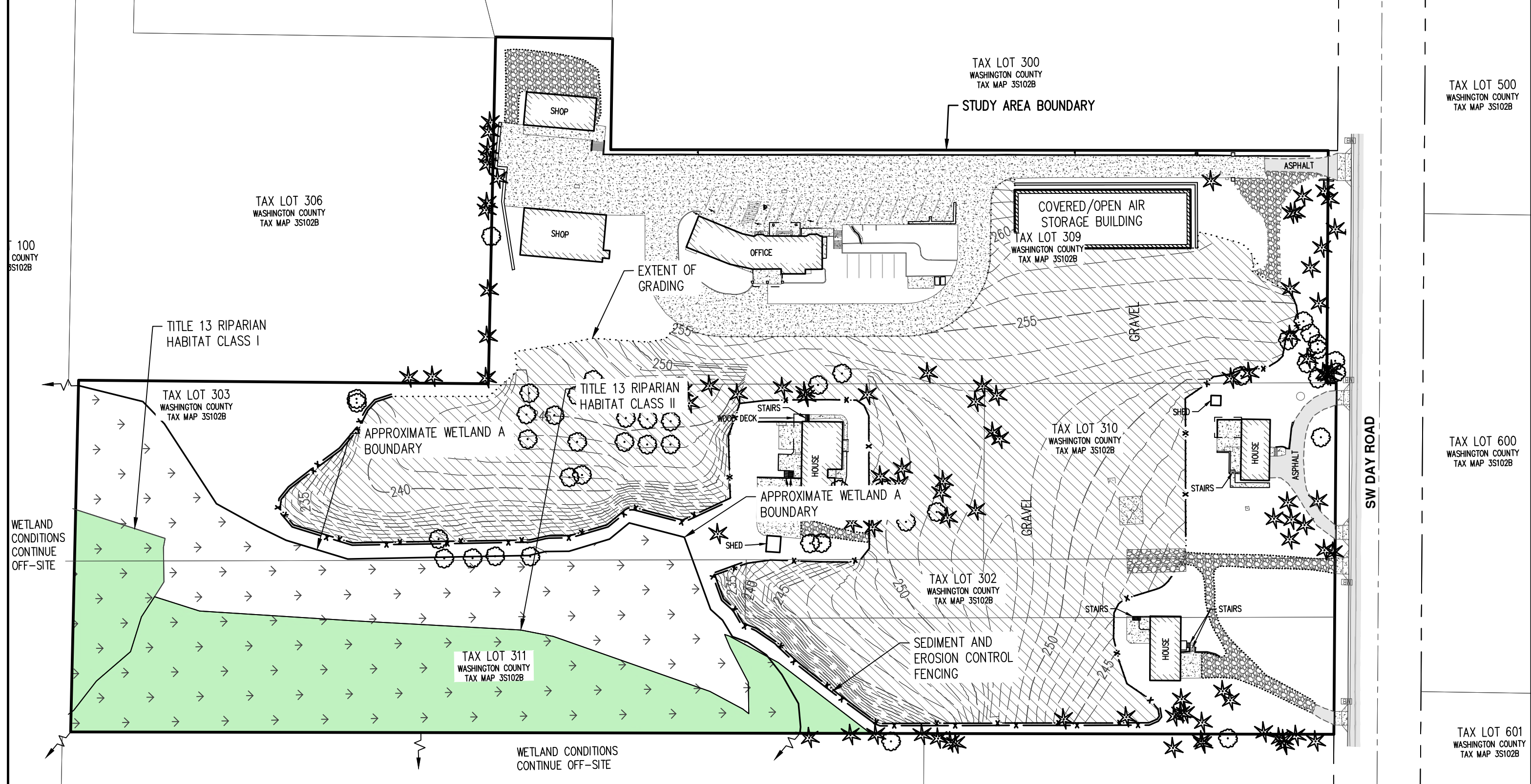
GOOGLE EARTH AERIAL IMAGE (MAY 2023)



DATE: 10/25/2023

<b>NATURAL RESOURCE EXISTING CONDITIONS</b>		<b>FIGURES</b>
SW DAY ROAD CONTRACTOR'S ESTABLISHMENT SECTION 422 MEMO		<b>7</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151 WWW.AKS-ENG.COM		DRWN: SKT CHKD: MH AKS JOB: 3916





**LEGEND (COLOR COPY):**

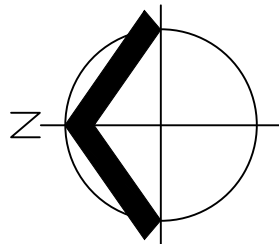
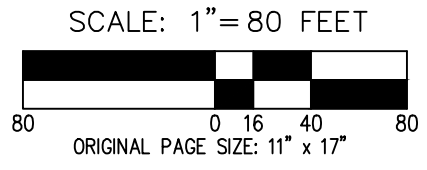
- APPROXIMATE ON-SITE WETLAND A ("WATERS AREAS AND WETLANDS AND FISH AND WILDLIFE HABITAT") TO REMAIN: 104,267 SF± (2.39 ACRES)
- TOTAL ON-SITE TITLE 13 RIPARIAN HABITAT CLASS I AND CLASS II TO REMAIN: 58,690 SF± (1.35 ACRES)

AKS ENGINEERING & FORESTRY, LLC (AKS) CONDUCTED A SITE VISIT ON DECEMBER 13, 2022. WETLAND BOUNDARY SHOWN WAS DIGITIZED POST FIELD USING LIDAR DATA, HIGH RESOLUTION AERIAL IMAGERY, AND ON-SITE FIELD OBSERVATIONS. ACCURACY ±20 FT. DATA PLOTS SHOWN WERE LOCATED BY AKS ON DECEMBER 13, 2022 WITH SUB-METER ACCURACY USING A TRIMBLE GEO 7X HANDHELD GPS RECEIVER.

1-FOOT INTERVAL GROUND CONTOURS, EXISTING CONDITIONS, TREE SURVEY OF TREES >6" DBH, AND STUDY AREA BOUNDARY DERIVED FROM AKS LAND SURVEY.

LIMITS OF TITLE 13 RIPARIAN HABITAT CLASS I AND II DERIVED FROM THE METRO DATA RESOURCE CENTER AND FIELD VERIFIED BY AKS ON DECEMBER 13, 2022.

WASHINGTON COUNTY COMPREHENSIVE PLAN GOAL 5 RESOURCES (JULY 2022): SIGNIFICANT NATURAL AREAS AND WATER AREAS, WETLAND & FISH AND WILDLIFE HABITAT ARE MAPPED WITHIN THE STUDY AREA BOUNDARY.



DATE: 10/25/2023

<b>NATURAL RESOURCE SITE PLAN</b>		<b>FIGURES</b>
SW DAY ROAD CONTRACTOR'S ESTABLISHMENT SECTION 422 MEMO		<b>8</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151 WWW.AKS-ENG.COM		DRWN: SKT CHKD: MH AKS JOB: 3916



# **Attachment A: Wetland Determination Data Sheets**

**WETLAND DETERMINATION DATA FORM – Western Mountains, Valleys and Coast Region**

Project/Site: SW Day Road Contractor's Establishment City/County: Washington County Sampling Date: 12/13/2022  
 Applicant/Owner: Brown Contracting, Inc State: OR Sampling Point: 1  
 Investigator(s): Sonya Templeton and Emma Eichhorn Section, Township, Range: Section 2, T.3.S., R.1.W., W.M.  
 Landform (hillslope, terrace, etc.): Toeslope Local relief (concave, convex, none): Concave Slope (%): <3  
 Subregion (LRR): A. Northwest Forests and Coast Lat: 45.34186739 Long: -122.77794897 Datum: NAD 83  
 Soil Map Unit Name: Wapato silty clay loam (Unit 43); Hydric NWI classification: \_\_\_\_\_  
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No \_\_\_\_\_ (If no, explain in Remarks)  
 Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ significantly disturbed? Are "Normal Circumstances" present? Yes X No \_\_\_\_\_  
 Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic Vegetation Present?	Yes <u>X</u>	No _____	<b>Is the Sampled Area within a Wetland?</b>	Yes <u>X</u>	No _____
Hydric Soil Present?	Yes <u>X</u>	No _____			
Wetland Hydrology Present?	Yes <u>X</u>	No _____			

**Precipitation:**  
 According to the NWS Portland-Hillsboro AP weather station, 0.09 inches of rainfall was received on the day of the site visit and 2.72 inches within the two weeks prior.

**Remarks:**

**VEGETATION**

Tree Stratum (Plot Size: 30' r or _____)	Absolute % Cover	Dominant Species?	Indicator Status	<b>Dominance Test worksheet:</b>	
1. <u>Alnus rubra</u>	15%	Yes	FAC		Number of Dominant Species That Are OBL, FACW, or FAC: <u>4</u> (A)
2. _____	_____	_____	_____	Total Number of Dominant Species Across All Strata: <u>5</u> (B)	
3. _____	_____	_____	_____		
4. _____	_____	_____	_____		
15% = Total Cover					
Sapling/Shrub Stratum (Plot Size: 10' r or _____)	Absolute % Cover	Dominant Species?	Indicator Status	<b>Prevalence Index worksheet:</b>	
1. <u>Cornus alba</u>	50%	Yes	FACW		Percent of Dominant Species That Are OBL, FACW, or FAC: <u>80%</u> (A/B)
2. <u>Rubus armeniacus</u>	5%	No	FAC	<b>Total % Cover of: _____ Multiply by: _____</b> OBL species <u>0</u> x 1 = <u>0</u> FACW species <u>50</u> x 2 = <u>100</u> FAC species <u>45</u> x 3 = <u>135</u> FACU species <u>7</u> x 4 = <u>28</u> UPL species <u>0</u> x 5 = <u>0</u> Column Totals: <u>102</u> (A) <u>263</u> (B) Prevalence Index = B/A = <u>2.58</u>	
3. _____	_____	_____	_____		
4. _____	_____	_____	_____		
5. _____	_____	_____	_____		
55% = Total Cover					
Herb Stratum (Plot Size: 5' r or _____)	Absolute % Cover	Dominant Species?	Indicator Status	<b>Hydrophytic Vegetation Indicators:</b>	
1. <u>Tolmiea menziesii</u>	20%	Yes	FAC		<input type="checkbox"/> 1 - Rapid Test for Hydrophytic Vegetation
2. <u>Carex leptopoda</u>	5%	Yes	FAC		<input checked="" type="checkbox"/> 2 - Dominance Test is >50%
3. <u>Chamaenerion angustifolium</u>	5%	Yes	FACU		<input checked="" type="checkbox"/> 3 - Prevalence Index is ≤3.0 <sup>1</sup>
4. <u>Geranium robertianum</u>	2%	No	FACU		<input type="checkbox"/> 4 - Morphological Adaptations <sup>1</sup> (Provide supporting data in Remarks or on a separate sheet)
5. _____	_____	_____	_____		<input type="checkbox"/> 5 - Wetland Non-Vascular Plants <sup>1</sup>
6. _____	_____	_____	_____		<input type="checkbox"/> Problematic Hydrophytic Vegetation (Explain) <sup>1</sup>
7. _____	_____	_____	_____		<sup>1</sup> Indicators of hydric soil and wetland hydrology must be present.
8. _____	_____	_____	_____		
9. _____	_____	_____	_____		
10. _____	_____	_____	_____		
11. _____	_____	_____	_____		
32% = Total Cover					
Woody Vine Stratum (Plot Size: 10' r or _____)	Absolute % Cover	Dominant Species?	Indicator Status		
1. _____	_____	_____	_____		
2. _____	_____	_____	_____		
0% = Total Cover					
% Bare Ground in Herb Stratum <u>68%</u>				<b>Hydrophytic Vegetation Present?</b> Yes <u>X</u> No _____	

**Remarks:**

<b>SOIL</b>	<b>Sampling Point:</b> 1
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**Profile Description (Describe to the depth needed to document the indicator or confirm the absence of indicators):**

Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type <sup>1</sup>	Loc <sup>2</sup>		
0-11	10YR 2/1	100					SiL	
11-16	10YR 4/1	95	7.5YR 4/4	5	C	M	SiL	

<sup>1</sup>Type: C=Concentration, D=Depletion, RM=Reduced Matrix CS=Covered or Coated Sand Grains.  
<sup>2</sup>Location: PL=Pore Lining, M=Matrix.

<p><b>Hydric Soil Indicators (Applicable to all LRRs, unless otherwise noted):</b></p> <p>___ Histosol (A1)                      ___ Sandy Redox (S5)          ___ Histic Epipedon (A2)            ___ Stripped Matrix (S6)          ___ Black Histic (A3)                ___ Loamy Mucky Mineral (F1) (except MLRA 1)          ___ Hydrogen Sulfide (A4)          ___ Loamy Gleyed Matrix (F2)  <input checked="" type="checkbox"/> Depleted Below Dark Surface (A11)    ___ Depleted Matrix (F3)          ___ Thick Dark Surface (A12)        ___ Redox Dark Surface (F6)          ___ Sandy Mucky Mineral (S1)        ___ Depleted Dark Surface (F7)          ___ Sandy Gleyed Matrix (S4)        ___ Redox Depressions (F8)</p>	<p><b>Indicators for Problematic Hydric Soils<sup>3</sup>:</b></p> <p>___ 2 cm Muck (A10)          ___ Red Parent Material (TF2)          ___ Very Shallow Dark Surface (TF12)          ___ Other (Explain in Remarks)</p> <p><sup>3</sup>Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.</p>
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<p><b>Restrictive Layer (if present):</b></p> <p>Type: _____          Depth (inches): _____</p>	<p><b>Hydric Soil Present?</b>      Yes <input checked="" type="checkbox"/>      No _____</p>
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**Remarks:**

**HYDROLOGY**

<b>Wetland Hydrology Indicators:</b>	
<p><u>Primary Indicators (minimum of one required; check all that apply)</u></p> <p>___ Surface Water (A1)                      ___ Water-Stained Leaves (B9) (except MLRA 1, 2, 4A, and 4B)  <input checked="" type="checkbox"/> High Water Table (A2)  <input checked="" type="checkbox"/> Saturation (A3)                              ___ Salt Crust (B11)          ___ Water Marks (B1)                        ___ Aquatic Invertebrates (B13)          ___ Sediment Deposits (B2)                ___ Hydrogen Sulfide Odor (C1)          ___ Drift Deposits (B3)                      ___ Oxidized Rhizospheres along Living Roots (C3)          ___ Algal Mat or Crust (B4)                 ___ Presence of Reduced Iron (C4)          ___ Iron Deposits (B5)                        ___ Recent Iron Reduction in Tilled Soils (C6)          ___ Surface Soil Cracks (B6)                ___ Stunted or Stressed Plants (D1) (LRR A)          ___ Inundation Visible on Aerial Imagery (B7)    ___ Other (Explain in Remarks)          ___ Sparsely Vegetated Concave Surface (B8)</p>	<p><u>Secondary Indicators (2 or more required)</u></p> <p>___ Water-Stained Leaves (B9) (MLRA 1, 2, 4A, and 4B)          ___ Drainage Patterns (B10)          ___ Dry-Season Water Table (C2)          ___ Saturation Visible on Aerial Imagery (C9)          ___ Geomorphic Position (D2)          ___ Shallow Aquitard (D3)          ___ FAC-Neutral Test (D5)          ___ Raised Ant Mounds (D6) (LRR A)          ___ Frost-Heave Hummocks (D7)</p>

<p><b>Field Observations:</b></p> <p>Surface Water Present?    Yes _____ No <input checked="" type="checkbox"/>      Depth (inches): _____          Water Table Present?     Yes <input checked="" type="checkbox"/>      No _____      Depth (inches): 8"          Saturation Present?       Yes <input checked="" type="checkbox"/>      No _____      Depth (inches): 4"          (includes capillary fringe)</p>	<p><b>Wetland Hydrology Present?</b>      Yes <input checked="" type="checkbox"/>      No _____</p>
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**Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:**

**Remarks:**  
 Surface water ponding located approximately 10 feet from plot.



**WETLAND DETERMINATION DATA FORM – Western Mountains, Valleys and Coast Region**

Project/Site: SW Day Road Contractor's Establishment City/County: Washington County Sampling Date: 12/13/2022  
 Applicant/Owner: Brown Contracting, Inc State: OR Sampling Point: 2  
 Investigator(s): Sonya Templeton and Emma Eichhorn Section, Township, Range: Section 2, T.3.S., R.1.W., W.M.  
 Landform (hillslope, terrace, etc.): Hillslope Local relief (concave, convex, none): Convex Slope (%): <5  
 Subregion (LRR): A. Northwest Forests and Coast Lat: 45.34184533 Long: -122.77782668 Datum: NAD 83  
 Soil Map Unit Name: Saum silt loam (Unit 38C); 7% to 12% slopes; Non-hydric NWI classification: \_\_\_\_\_  
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No \_\_\_\_\_ (If no, explain in Remarks)  
 Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ significantly disturbed? Are "Normal Circumstances" present? Yes X No \_\_\_\_\_  
 Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic Vegetation Present?	Yes _____	No <u>X</u>	<b>Is the Sampled Area within a Wetland?</b>	Yes _____	No <u>X</u>
Hydric Soil Present?	Yes _____	No <u>X</u>			
Wetland Hydrology Present?	Yes _____	No <u>X</u>			

**Precipitation:**  
 According to the NWS Portland-Hillsboro AP weather station, 0.09 inches of rainfall was received on the day of the site visit and 2.72 inches within the two weeks prior.

**Remarks:**

**VEGETATION**

Tree Stratum (Plot Size: 30' r or _____)	Absolute % Cover	Dominant Species?	Indicator Status	<b>Dominance Test worksheet:</b>
1. _____	_____	_____	_____	
2. _____	_____	_____	_____	Total Number of Dominant Species Across All Strata: <u>5</u> (B)
3. _____	_____	_____	_____	Percent of Dominant Species That Are OBL, FACW, or FAC: <u>40%</u> (A/B)
4. _____	_____	_____	_____	<b>Prevalence Index worksheet:</b>
5. _____	_____	_____	_____	
0% = Total Cover				OBL species <u>0</u> x 1 = <u>0</u>
<b>Sapling/Shrub Stratum (Plot Size: 10' r or _____)</b>				FACW species <u>0</u> x 2 = <u>0</u>
1. <u>Rubus armeniacus</u>	<u>50%</u>	<u>Yes</u>	<u>FAC</u>	FAC species <u>60</u> x 3 = <u>180</u>
2. _____	_____	_____	_____	FACU species <u>90</u> x 4 = <u>360</u>
3. _____	_____	_____	_____	UPL species <u>10</u> x 5 = <u>50</u>
4. _____	_____	_____	_____	Column Totals: <u>160</u> (A) <u>590</u> (B)
5. _____	_____	_____	_____	Prevalence Index = B/A = <u>3.69</u>
50% = Total Cover				<b>Hydrophytic Vegetation Indicators:</b>
<b>Herb Stratum (Plot Size: 5' r or _____)</b>				
1. <u>Cirsium arvense</u>	<u>10%</u>	<u>Yes</u>	<u>FAC</u>	
2. <u>Geranium molle</u>	<u>10%</u>	<u>Yes</u>	<u>NOL</u>	
3. <u>Lactuca serriola</u>	<u>10%</u>	<u>Yes</u>	<u>FACU</u>	
4. <u>Chamaenerion angustifolium</u>	<u>5%</u>	<u>No</u>	<u>FACU</u>	
5. _____	_____	_____	_____	
6. _____	_____	_____	_____	
7. _____	_____	_____	_____	
8. _____	_____	_____	_____	
9. _____	_____	_____	_____	
10. _____	_____	_____	_____	
11. _____	_____	_____	_____	
35% = Total Cover				1 - Rapid Test for Hydrophytic Vegetation
<b>Woody Vine Stratum (Plot Size: 10' r or _____)</b>				
1. <u>Hedera helix</u>	<u>75%</u>	<u>Yes</u>	<u>FACU</u>	2 - Dominance Test is >50%
2. _____	_____	_____	_____	3 - Prevalence Index is ≤3.0 <sup>1</sup>
75% = Total Cover				4 - Morphological Adaptations <sup>1</sup> (Provide supporting data in Remarks or on a separate sheet)
% Bare Ground in Herb Stratum <u>65%</u>				5 - Wetland Non-Vascular Plants <sup>1</sup>
				Problematic Hydrophytic Vegetation (Explain) <sup>1</sup>
				<sup>1</sup> Indicators of hydric soil and wetland hydrology must be present.
				<b>Hydrophytic Vegetation Present?</b> Yes _____ No <u>X</u>

**Remarks:**

<b>SOIL</b>	<b>Sampling Point:</b> 2
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**Profile Description (Describe to the depth needed to document the indicator or confirm the absence of indicators):**

Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type <sup>1</sup>	Loc <sup>2</sup>		
0-12	10YR 3/2	100					SIL	

<sup>1</sup>Type: C=Concentration, D=Depletion, RM=Reduced Matrix CS=Covered or Coated Sand Grains.  
<sup>2</sup>Location: PL=Pore Lining, M=Matrix.

<p><b>Hydric Soil Indicators (Applicable to all LRRs, unless otherwise noted):</b></p> <p><input type="checkbox"/> Histosol (A1)                      <input type="checkbox"/> Sandy Redox (S5)</p> <p><input type="checkbox"/> Histic Epipedon (A2)              <input type="checkbox"/> Stripped Matrix (S6)</p> <p><input type="checkbox"/> Black Histic (A3)                    <input type="checkbox"/> Loamy Mucky Mineral (F1) (except MLRA 1)</p> <p><input type="checkbox"/> Hydrogen Sulfide (A4)              <input type="checkbox"/> Loamy Gleyed Matrix (F2)</p> <p><input type="checkbox"/> Depleted Below Dark Surface (A11) <input type="checkbox"/> Depleted Matrix (F3)</p> <p><input type="checkbox"/> Thick Dark Surface (A12)           <input type="checkbox"/> Redox Dark Surface (F6)</p> <p><input type="checkbox"/> Sandy Mucky Mineral (S1)          <input type="checkbox"/> Depleted Dark Surface (F7)</p> <p><input type="checkbox"/> Sandy Gleyed Matrix (S4)          <input type="checkbox"/> Redox Depressions (F8)</p>	<p><b>Indicators for Problematic Hydric Soils<sup>3</sup>:</b></p> <p><input type="checkbox"/> 2 cm Muck (A10)</p> <p><input type="checkbox"/> Red Parent Material (TF2)</p> <p><input type="checkbox"/> Very Shallow Dark Surface (TF12)</p> <p><input type="checkbox"/> Other (Explain in Remarks)</p> <p><sup>3</sup>Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.</p>
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<p><b>Restrictive Layer (if present):</b></p> <p>Type: _____</p> <p>Depth (inches): _____</p>	<p><b>Hydric Soil Present?</b></p> <p>Yes _____ No <b>X</b> _____</p>
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**Remarks:**  
Shovel refusal at 12 inches due to dense cobbles.

**HYDROLOGY**

<p><b>Wetland Hydrology Indicators:</b></p> <p><u>Primary Indicators (minimum of one required; check all that apply)</u></p> <p><input type="checkbox"/> Surface Water (A1)                      <input type="checkbox"/> Water-Stained Leaves (B9) (except MLRA 1, 2, 4A, and 4B)</p> <p><input type="checkbox"/> High Water Table (A2)                      <input type="checkbox"/> Salt Crust (B11)</p> <p><input type="checkbox"/> Saturation (A3)                              <input type="checkbox"/> Aquatic Invertebrates (B13)</p> <p><input type="checkbox"/> Water Marks (B1)                            <input type="checkbox"/> Hydrogen Sulfide Odor (C1)</p> <p><input type="checkbox"/> Sediment Deposits (B2)                   <input type="checkbox"/> Oxidized Rhizospheres along Living Roots (C3)</p> <p><input type="checkbox"/> Drift Deposits (B3)                        <input type="checkbox"/> Presence of Reduced Iron (C4)</p> <p><input type="checkbox"/> Algal Mat or Crust (B4)                    <input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6)</p> <p><input type="checkbox"/> Iron Deposits (B5)                         <input type="checkbox"/> Stunted or Stressed Plants (D1) (LRR A)</p> <p><input type="checkbox"/> Surface Soil Cracks (B6)                   <input type="checkbox"/> Other (Explain in Remarks)</p> <p><input type="checkbox"/> Inundation Visible on Aerial Imagery (B7) <input type="checkbox"/> Sparsely Vegetated Concave Surface (B8)</p>	<p><u>Secondary Indicators (2 or more required)</u></p> <p><input type="checkbox"/> Water-Stained Leaves (B9) (MLRA 1, 2, 4A, and 4B)</p> <p><input type="checkbox"/> Drainage Patterns (B10)</p> <p><input type="checkbox"/> Dry-Season Water Table (C2)</p> <p><input type="checkbox"/> Saturation Visible on Aerial Imagery (C9)</p> <p><input type="checkbox"/> Geomorphic Position (D2)</p> <p><input type="checkbox"/> Shallow Aquitard (D3)</p> <p><input type="checkbox"/> FAC-Neutral Test (D5)</p> <p><input type="checkbox"/> Raised Ant Mounds (D6) (LRR A)</p> <p><input type="checkbox"/> Frost-Heave Hummocks (D7)</p>
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<p><b>Field Observations:</b></p> <p>Surface Water Present?    Yes _____ No <b>X</b> _____    Depth (inches): _____</p> <p>Water Table Present?      Yes _____ No <b>X</b> _____      Depth (inches): <u>&gt;12"</u></p> <p>Saturation Present?        Yes _____ No <b>X</b> _____        Depth (inches): <u>&gt;12"</u></p> <p>(includes capillary fringe)</p>	<p><b>Wetland Hydrology Present?</b></p> <p>Yes _____ No <b>X</b> _____</p>
---	---

**Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:**

**Remarks:**  
Soils dry throughout.

**WETLAND DETERMINATION DATA FORM – Western Mountains, Valleys and Coast Region**

Project/Site: SW Day Road Contractor's Establishment City/County: Washington County Sampling Date: 12/13/2022  
 Applicant/Owner: Brown Contracting, Inc State: OR Sampling Point: 3  
 Investigator(s): Sonya Templeton and Emma Eichhorn Section, Township, Range: Section 2, T.3.S., R.1.W., W.M.  
 Landform (hillslope, terrace, etc.): Hillslope Local relief (concave, convex, none): Convex Slope (%): <5  
 Subregion (LRR): A. Northwest Forests and Coast Lat: 45.34307458 Long: -122.77745287 Datum: NAD 83  
 Soil Map Unit Name: Saum silt loam (Unit 38C); 7% to 12% slopes; Non-hydric NWI classification: \_\_\_\_\_  
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No \_\_\_\_\_ (If no, explain in Remarks)  
 Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ significantly disturbed? Are "Normal Circumstances" present? Yes X No \_\_\_\_\_  
 Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic Vegetation Present?	Yes <u>X</u>	No _____	<b>Is the Sampled Area within a Wetland?</b>	Yes _____	No <u>X</u>
Hydric Soil Present?	Yes _____	No <u>X</u>			
Wetland Hydrology Present?	Yes _____	No <u>X</u>			

**Precipitation:**  
 According to the NWS Portland-Hillsboro AP weather station, 0.09 inches of rainfall was received on the day of the site visit and 2.72 inches within the two weeks prior.

**Remarks:**

**VEGETATION**

Tree Stratum (Plot Size: 30' r or _____)	Absolute % Cover	Dominant Species?	Indicator Status	<b>Dominance Test worksheet:</b>	
1. _____	_____	_____	_____		Number of Dominant Species That Are OBL, FACW, or FAC: <u>1</u> (A)
2. _____	_____	_____	_____	Total Number of Dominant Species Across All Strata: <u>1</u> (B)	
3. _____	_____	_____	_____	Percent of Dominant Species That Are OBL, FACW, or FAC: <u>100%</u> (A/B)	
4. _____	_____	_____	_____	<b>Prevalence Index worksheet:</b>	
5. _____	_____	_____	_____		Total % Cover of: _____ Multiply by: _____
0% = Total Cover				OBL species <u>0</u> x 1 = <u>0</u>	
<b>Sapling/Shrub Stratum (Plot Size: 10' r or _____)</b>				FACW species <u>0</u> x 2 = <u>0</u>	
1. <u>Rubus armeniacus</u>	<u>70%</u>	<u>Yes</u>	<u>FAC</u>	FAC species <u>70</u> x 3 = <u>210</u>	
2. _____	_____	_____	_____	FACU species <u>5</u> x 4 = <u>20</u>	
3. _____	_____	_____	_____	UPL species <u>0</u> x 5 = <u>0</u>	
4. _____	_____	_____	_____	Column Totals: <u>75</u> (A) <u>230</u> (B)	
5. _____	_____	_____	_____	Prevalence Index = B/A = <u>3.07</u>	
70% = Total Cover				<b>Hydrophytic Vegetation Indicators:</b>	
<b>Herb Stratum (Plot Size: 5' r or _____)</b>					
1. <u>Polystichum munitum</u>	<u>5%</u>	<u>No</u>	<u>FACU</u>		<u>1</u> - Rapid Test for Hydrophytic Vegetation
2. _____	_____	_____	_____		<u>X</u> <u>2</u> - Dominance Test is >50%
3. _____	_____	_____	_____		<u>3</u> - Prevalence Index is ≤3.0 <sup>1</sup>
4. _____	_____	_____	_____		<u>4</u> - Morphological Adaptations <sup>1</sup> (Provide supporting data in Remarks or on a separate sheet)
5. _____	_____	_____	_____		<u>5</u> - Wetland Non-Vascular Plants <sup>1</sup>
6. _____	_____	_____	_____		Problematic Hydrophytic Vegetation (Explain) <sup>1</sup>
7. _____	_____	_____	_____		<sup>1</sup> Indicators of hydric soil and wetland hydrology must be present.
8. _____	_____	_____	_____		
9. _____	_____	_____	_____		
10. _____	_____	_____	_____		
11. _____	_____	_____	_____		
5% = Total Cover				<b>Hydrophytic Vegetation Present?</b>	
<b>Woody Vine Stratum (Plot Size: 10' r or _____)</b>					
1. _____	_____	_____	_____	Yes <u>X</u> No _____	
2. _____	_____	_____	_____		
0% = Total Cover					
% Bare Ground in Herb Stratum <u>95%</u>					

**Remarks:**  
 Bare ground covered by leaf litter.



**WETLAND DETERMINATION DATA FORM – Western Mountains, Valleys and Coast Region**

Project/Site: SW Day Road Contractor's Establishment City/County: Washington County Sampling Date: 12/13/2022  
 Applicant/Owner: Brown Contracting, Inc State: OR Sampling Point: 4  
 Investigator(s): Sonya Templeton and Emma Eichhorn Section, Township, Range: Section 2, T.3.S., R.1.W., W.M.  
 Landform (hillslope, terrace, etc.): Hillslope Local relief (concave, convex, none): Sl. Concave Slope (%): <5  
 Subregion (LRR): A. Northwest Forests and Coast Lat: 45.34254078 Long: -122.77766354 Datum: NAD 83  
 Soil Map Unit Name: Saum silt loam (Unit 38C); 7% to 12% slopes; Non-hydric NWI classification: \_\_\_\_\_  
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No \_\_\_\_\_ (If no, explain in Remarks)  
 Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ significantly disturbed? Are "Normal Circumstances" present? Yes X No \_\_\_\_\_  
 Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic Vegetation Present?	Yes <u>X</u>	No _____	<b>Is the Sampled Area within a Wetland?</b>	Yes _____	No <u>X</u>
Hydric Soil Present?	Yes _____	No <u>X</u>			
Wetland Hydrology Present?	Yes _____	No <u>X</u>			

**Precipitation:**  
 According to the NWS Portland-Hillsboro AP weather station, 0.09 inches of rainfall was received on the day of the site visit and 2.72 inches within the two weeks prior.

**Remarks:**

**VEGETATION**

Tree Stratum (Plot Size: 30' r or _____)	Absolute % Cover	Dominant Species?	Indicator Status	<b>Dominance Test worksheet:</b>	
1. <u>Quercus garryana</u>	10%	Yes	FACU		Number of Dominant Species That Are OBL, FACW, or FAC: <u>2</u> (A)
2. <u>Crataegus monogyna</u>	5%	Yes	FAC	Total Number of Dominant Species Across All Strata: <u>3</u> (B)	
3. <u>Prunus species</u>	2%	No	FACU*		
4. _____				Percent of Dominant Species That Are OBL, FACW, or FAC: <u>67%</u> (A/B)	
17% = Total Cover					
<b>Sapling/Shrub Stratum (Plot Size: 10' r or _____)</b>				<b>Prevalence Index worksheet:</b>	
1. <u>Rubus armeniacus</u>	60%	Yes	FAC		Total % Cover of: _____ Multiply by: _____
2. <u>Cytisus scoparius</u>	3%	No	NOL	OBL species <u>0</u> x 1 = <u>0</u>	
3. <u>Alnus rubra</u>	1%	No	FAC	FACW species <u>0</u> x 2 = <u>0</u>	
4. _____				FAC species <u>66</u> x 3 = <u>198</u>	
5. _____				FACU species <u>2</u> x 4 = <u>8</u>	
64% = Total Cover				UPL species <u>3</u> x 5 = <u>15</u>	
<b>Herb Stratum (Plot Size: 5' r or _____)</b>				Column Totals: <u>71</u> (A) <u>221</u> (B)	
1. _____				Prevalence Index = B/A = <u>3.11</u>	
2. _____				<b>Hydrophytic Vegetation Indicators:</b>	
3. _____					1 - Rapid Test for Hydrophytic Vegetation
4. _____					x 2 - Dominance Test is >50%
5. _____					3 - Prevalence Index is ≤3.0 <sup>1</sup>
6. _____					4 - Morphological Adaptations <sup>1</sup> (Provide supporting data in Remarks or on a separate sheet)
7. _____					5 - Wetland Non-Vascular Plants <sup>1</sup>
8. _____					Problematic Hydrophytic Vegetation (Explain) <sup>1</sup>
9. _____					<sup>1</sup> Indicators of hydric soil and wetland hydrology must be present.
10. _____					<b>Hydrophytic Vegetation Present?</b> Yes <u>X</u> No _____
11. _____					
0% = Total Cover					
<b>Woody Vine Stratum (Plot Size: 10' r or _____)</b>					
1. _____					
2. _____					
0% = Total Cover					
% Bare Ground in Herb Stratum	<u>100%</u>				

**Remarks:**  
 Bare ground covered by leaf litter and moss.  
 \*Assumed indicator status

<b>SOIL</b>	<b>Sampling Point:</b> 4
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**Profile Description (Describe to the depth needed to document the indicator or confirm the absence of indicators):**

Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type <sup>1</sup>	Loc <sup>2</sup>		
0-16	10YR 3/2	100					SIL	

<sup>1</sup>Type: C=Concentration, D=Depletion, RM=Reduced Matrix CS=Covered or Coated Sand Grains.  
<sup>2</sup>Location: PL=Pore Lining, M=Matrix.

<b>Hydric Soil Indicators (Applicable to all LRRs, unless otherwise noted):</b>	<b>Indicators for Problematic Hydric Soils<sup>3</sup>:</b>
<input type="checkbox"/> Histosol (A1) <input type="checkbox"/> Sandy Redox (S5) <input type="checkbox"/> Histic Epipedon (A2) <input type="checkbox"/> Stripped Matrix (S6) <input type="checkbox"/> Black Histic (A3) <input type="checkbox"/> Loamy Mucky Mineral (F1) (except MLRA 1) <input type="checkbox"/> Hydrogen Sulfide (A4) <input type="checkbox"/> Loamy Gleyed Matrix (F2) <input type="checkbox"/> Depleted Below Dark Surface (A11) <input type="checkbox"/> Depleted Matrix (F3) <input type="checkbox"/> Thick Dark Surface (A12) <input type="checkbox"/> Redox Dark Surface (F6) <input type="checkbox"/> Sandy Mucky Mineral (S1) <input type="checkbox"/> Depleted Dark Surface (F7) <input type="checkbox"/> Sandy Gleyed Matrix (S4) <input type="checkbox"/> Redox Depressions (F8)	<input type="checkbox"/> 2 cm Muck (A10) <input type="checkbox"/> Red Parent Material (TF2) <input type="checkbox"/> Very Shallow Dark Surface (TF12) <input type="checkbox"/> Other (Explain in Remarks)
<p><sup>3</sup>Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.</p>	

<b>Restrictive Layer (if present):</b>	<b>Hydric Soil Present?</b>
Type: _____	Yes _____ No <b>X</b> _____
Depth (inches): _____	

**Remarks:**

**HYDROLOGY**

<b>Wetland Hydrology Indicators:</b>	
<u>Primary Indicators (minimum of one required; check all that apply)</u>	<u>Secondary Indicators (2 or more required)</u>
<input type="checkbox"/> Surface Water (A1) <input type="checkbox"/> Water-Stained Leaves (B9) (except MLRA 1, 2, 4A, and 4B) <input type="checkbox"/> High Water Table (A2) <input type="checkbox"/> Salt Crust (B11) <input type="checkbox"/> Saturation (A3) <input type="checkbox"/> Aquatic Invertebrates (B13) <input type="checkbox"/> Water Marks (B1) <input type="checkbox"/> Hydrogen Sulfide Odor (C1) <input type="checkbox"/> Sediment Deposits (B2) <input type="checkbox"/> Oxidized Rhizospheres along Living Roots (C3) <input type="checkbox"/> Drift Deposits (B3) <input type="checkbox"/> Presence of Reduced Iron (C4) <input type="checkbox"/> Algal Mat or Crust (B4) <input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6) <input type="checkbox"/> Iron Deposits (B5) <input type="checkbox"/> Stunted or Stressed Plants (D1) (LRR A) <input type="checkbox"/> Surface Soil Cracks (B6) <input type="checkbox"/> Other (Explain in Remarks)	<input type="checkbox"/> Water-Stained Leaves (B9) (MLRA 1, 2, 4A, and 4B) <input type="checkbox"/> Drainage Patterns (B10) <input type="checkbox"/> Dry-Season Water Table (C2) <input type="checkbox"/> Saturation Visible on Aerial Imagery (C9) <input type="checkbox"/> Geomorphic Position (D2) <input type="checkbox"/> Shallow Aquitard (D3) <input type="checkbox"/> FAC-Neutral Test (D5) <input type="checkbox"/> Raised Ant Mounds (D6) (LRR A) <input type="checkbox"/> Frost-Heave Hummocks (D7)

<b>Field Observations:</b>				<b>Wetland Hydrology Present?</b>
Surface Water Present?	Yes _____ No <b>X</b> _____	Depth (inches):	_____	Yes _____ No <b>X</b> _____
Water Table Present?	Yes _____ No <b>X</b> _____	Depth (inches):	>16"	
Saturation Present? (includes capillary fringe)	Yes _____ No <b>X</b> _____	Depth (inches):	>16"	

**Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:**

**Remarks:**  
Soils dry throughout.

## **Attachment B: Representative Site Photos**



**Photo A.** View northwest of Wetland A.



**Photo B.** View south of general site conditions.



**Photo C.** View north of field in northern portion of study area.

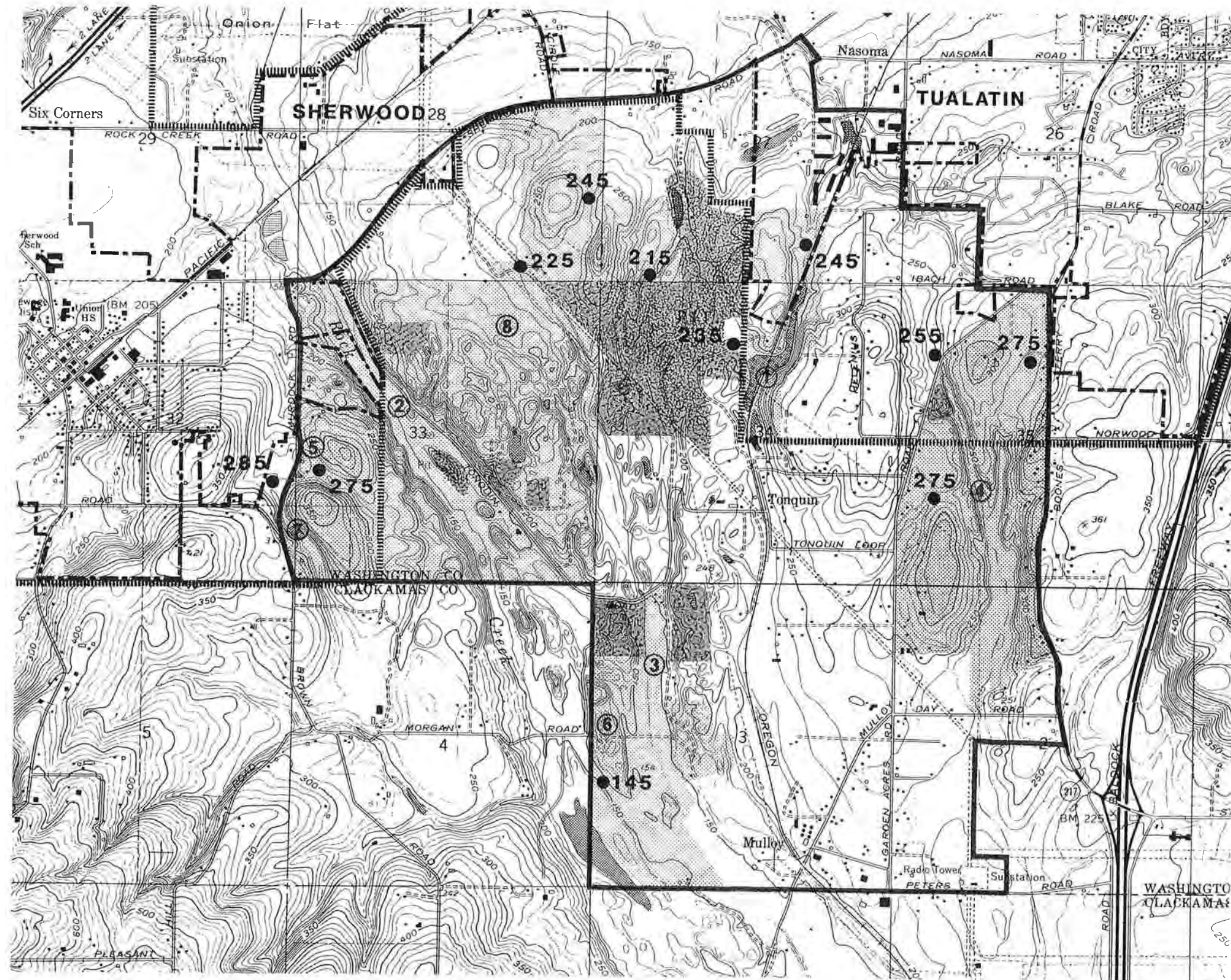






**Photo D.** View north of general site conditions along wetland.








## **Exhibit F: Geologic Documentation**

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-  GEOLOGIC AREA BOUNDARY
-  MAJOR GEOLOGIC FEATURES (entire tax lots shown)
-  QUARRY SITES (disturbed area)
-  SPILLWAY LOCATIONS AND ELEVATIONS

-  DEPRESSIONS
-  AREAS ABOVE 300' IN ELEVATION
-  CITY LIMIT
-  COUNTY BOUNDARY
-  URBAN GROWTH BOUNDARY



WASHINGTON COUNTY  
COMPREHENSIVE PLAN



**TONQUIN SCABLANDS  
GEOLOGIC AREA**

SOURCE: JOHN E. ALLEN, PROFESSOR  
EMERITUS, PORTLAND STATE UNIVERSITY,  
JUNE, 1981, WASHINGTON COUNTY  
PLANNING DEPARTMENT, JUNE, 1981,  
JANUARY, 1983, USGS 1:24000  
SHERWOOD TOPOGRAPHIC MAP, 1975

THIS MAP IS COMPILED FROM ORIGINAL MATERIALS AT  
DIFFERENT SCALES. FOR MORE DETAILS PLEASE  
REFER TO THE SOURCE MATERIALS OR THE WASHINGTON  
COUNTY PLANNING DEPARTMENT.

FIGURE 1-18

WASHINGTON COUNTY PLANNING DEPARTMENT  
APRIL, 1983

# WASHINGTON COUNTY

Inter-Department Correspondence

Date April 26, 1984

To : Brent Curtis, Planning Division Manager

From : Hal Bergsma, Senior Planner *HB*

Subject : SIGNIFICANT NATURAL AREAS IN THE RURAL/NATURAL RESOURCE AREA

Consistent with Goal 5 and OAR 660-16-000 Washington County has identified and evaluated natural areas in the Rural/Natural Resource Area in the following manner:

- (1) A standard form was filled in for each natural area that might be significant. The resource is described in terms of its location, quantity, quality, ownership, existing use, Plan designation, and surrounding Plan designation(s). Additional information on these natural areas is contained on pages I-E.24-28 and I.E.36-43 of the Resource Document.
- (2) Based on information in the work sheet, and using criteria described on page I-F.3 of Appendix I-F of the Resource Document, a decision was made as to the significance of the natural area.
- (3) Uses conflicting with those natural areas identified as significant were identified and the ESEE consequences of allowing the conflicting uses versus protecting the natural area were described specifically on the data sheet for each area and generically on page I-F.7 of Appendix I-F of the Resource Document.
- (4) The decision on protection of the natural areas, and the reasons for that decision are described on pages I-F.8 and 9 of Appendix I-F of the Resource Document.

There are nine natural areas in the R/NR area that are considered to be significant. These are listed and briefly described below. Pages from the Resource Document giving a more detailed description of these areas are attached.

Wolf Creek Falls: The highest known waterfall in the County. Wildlife and rare plants have been observed in the vicinity. The ODF owns the property. Land in the vicinity is scheduled for timber harvest, but this would not conflict with preservation of the waterfall and its base.

Timber Pigeon Springs: This is a rare habitat for band-tailed pigeons. Improved access to the site and cutting of perch trees near the springs are conflicts. Owned by ODF.

McKay Creek Falls, Canyon and Upper Drainage: This is the largest roadless natural area in the County. It contains a deep relatively narrow canyon through which the creek and its tributaries flow. Falls and plunge pools are reported to be prevalent along the entire creek. Vegetation includes mature stands of timber. The vegetation and streams in the area offer excellent fish and wildlife habitat.

Big Canyon: A scenic, steep and narrow canyon. Vegetation is dense and includes a wide variety of species. Old growth Douglas fir and other trees are found in the area. About half of the riparian vegetation, including old growth timber, is on BLM land.

Cedar Canyon Swamp and Marsh: This site is one of the few areas of swamp of any size existing in the County. Trees exist on higher ground. It offers important wildlife habitat. Ownership is private. (EFU District.)

Dooley Aspen/Ash Swale: This area contains quaking aspen, which is rare west of the Cascades, and rare, fragile vernal pool flora. The entire area is in the 100 year flood plain. It is privately owned and in the EFU District.

Upper Tualatin River: This stretch of river includes Haines Falls, Lee Falls and Little Lee Falls and rapids. This was a popular recreation area in the past. Much of the vegetation has been disturbed or removed by logging activity while quarrying activity has compromised some natural features.

Tonquin Scablands Geologic Area: Widely recognized as among the most important geologic features in Oregon, this area has scientific and educational value for its evidence of the impacts of the Missoula floods. Geologic features of the area include channels, depressions (often containing ponds or marshes), and scoured bedrock knolls and channel walls. The major conflicting use for this area is quarrying.

John Blodgett Arboretum: Owned and used by Pacific University as an open classroom because of the diversity of flora and fauna. Protection of these areas is provided by state and local regulations and Federal and institutional ownership. State regulations partially protecting these areas include the Forest Practices Act and State Lands Division regulation of wetland alterations. Local regulations include sections 421 and 422 of the Community Development Code addressing development in Flood Plains and Drainage Hazard Areas and development in Significant Natural Resource Areas. Section 422-3.4 specifically regulates the siting of structures in significant natural areas. Where conflicts occurred between quarrying and protection of a natural area, quarrying was not allowed (e.g., McKay Creek) except for a few properties in the Tonquin Scablands that were owned by quarries.

I.E.24  
Rev 12/83

An authority on wildlife habitats in the Portland metropolitan area, Mike Houck, has called this marsh "extremely valuable wildlife habitat." More than 85 species of birds, including Great Blue Herons, have been observed on the mosaic of open ponds, marshes and swamps at the site. The marsh is listed by the Portland Audubon Society on its Urban Wildlife Habitat map. Wildlife tours have been conducted there. The site is immediately adjacent to two schools. Local residents have expressed great concern that the marsh be preserved.

E.4.1.2 Ash Creek Marsh (1S1 35A tax lots 100, 102, 200, 300, 303, 500, 600, 2000, and 1S1 35AD tax lots 900, 1103, 1200, 1300)

An extensive marsh/wet meadow is located north of Highway 217 between Oak Street and Hall Blvd. Most of the site floods each winter. A beaver has recently been reported in residence. This wetland, like that on Upper Fanno Creek, is virtually surrounded by urban development. The Metzger-Progress Community Plan calls for maintenance of the flood plain in natural open space uses. The topography of the area precludes significant modification under the existing flood plain ordinance. The site is familiar to Planning Department staff.

Reevaluation of this site, during translation of the 1980 Metzger-Progress Community Plan to conform to the 1983 Community Development Code led staff to conclude that it does not qualify as a Significant Natural Area. The intrinsic qualities of the resource as wetland/water area and habitat for fish and wildlife were reaffirmed by more detailed investigation. However, other wetland habitat resources within the urban area of the County have been found to be of comparable or better quality and size. Therefore, the earlier recognition of this site as very rare was inaccurate.

E.4.1.3 Tualatin Wetlands (Hedges Creek) (2S1 22D tax lot 500)

Most of this wetland is within the City of Tualatin. The Oregon Department of Fish and Wildlife considers this one of the most important wetlands in the county. The Portland Audubon Society considers it the most significant wetland in the county, since it is the largest continuous wetland (two miles). Local schools and colleges have used the area as an outdoor biology laboratory for many years. The City of Tualatin has long been aware of the unique character of the area and is working with the private land owners, the Department of Fish and Wildlife, the U.S. Army Corps of Engineers and interested preservationists (e.g., The Wetlands Conservancy) to develop a workable method of protection. The portion in the unincorporated area is shown on a map submitted by Gene Herb of the Oregon Department of Fish and Wildlife. Only narrow portions along drainage hazard areas are covered by the flood plain ordinance.

E.4.1.4 Tonquin Scablands Geological Area (Nature Conservancy Site #6)

During the late Pleistocene Ice Age dozens of catastrophic glacial floods inundated all of the lowland Willamette Valley. The major conduit for the flood waters, other than the Willamette River gorge south of Oregon City, was the Lake Oswego gap and thence the Tonquin lowland in the extreme southeastern part of Washington County, extending into Clackamas County. The Tonquin Scablands left by those floods are widely recognized as among the most important geologic features in the State of Oregon. Preservation of the entire area for scientific and educational purposes will conflict, however, with expanded use of rock and gravel

quarries which have already destroyed major parts of the area, and encroaching urban uses. Management of this area to protect natural values is complicated further by the overlap of counties and the Urban Growth Boundary of two cities: Tualatin and Sherwood.

A overview of its geological history is essential to understand the significance of the Tonquin Scablands. The Missoula Floods--about 40 separate events have been identified--spanned 7,000 years between 18,000 and 11,000 years ago. Prehistoric Lake Missoula in northwestern Montana, hundreds of miles long and thousands of feet deep, periodically broke through the mountain glacier dam which created it. Vast amounts of water swept across the Idaho panhandle and scoured enormous channels, coulees and scablands across much of eastern Washington. The constriction of the Wallula Gap just north of the Oregon border near the Tri-Cities formed a lake 1,250 feet deep. A similar backup east of the Cascades at the Dalles caused the water to rise up 1,000 feet. Within the Columbia Gorge, the flooding was over 700 feet, almost to the top of Crown Point. The rush of floodwaters through the Lake Oswego gap dropped huge amounts of boulders and other large debris in the Durham area; some of these accumulations have been quarried. Finer sands, deposited then along both sides of the Tualatin River to the west and southwest of Durham, are now being mined.

The high velocity floods surged from the Tualatin Valley into the central Willamette Valley across the low-lying hills between Sherwood, Tualatin and Wilsonville. The effects of scouring to bedrock are noticeable up to at least 300 feet above sea level. The high water mark of the floods was over 400 feet; the entire Willamette Valley lowland formed a temporary lake. Icebergs carrying rocks from the Canadian Rockies left their deposits (glacial erratics) scattered all over the valley, including Washington County. One very large erratic can be seen near Highway 18 between Sheridan and McMinnville in Yamhill County.

John Eliot Allen, Professor Emeritus, Department of Earth Sciences at Portland State University, has written a book about the Missoula Floods in which the Tonquin Scablands play a prominent part. The book will be published in Spring 1984. Allen guided Washington County Planning Department Staff on a survey of the area as preparation for this inventory.

Typical geologic features of the area include channels, depressions (often continuing ponds or marshes), and scoured bedrock knolls and channel walls. Major identified features of the Tonquin Geologic Area are summarized below and depicted in Figure I-18.

E.4.1.4.1 A half-mile long depression in Section 34 north of the community of Tonquin is the route for the Burlington Northern Railroad. The southern half is now a swamp and the northern half is a shallow lake. Part of the adjacent west-facing cliffs are vegetated with relatively drought-tolerant plants because of the shallow soil; the dominance of Pacific madrone (*Arbutus menziesii*) is unusual for Washington County. This may be the premier site in the Scablands most deserving of preservation.

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This area is mapped on Figure I-18 as are other identified sites in the Scablands, by legal description rather than descriptions of the actual physical features. The legal descriptions of the properties include: 2S1 27D tax lots 300 and 301, and 2S1 34A tax lots 1500, 1501, 1502, 1503, 1600, 2000, 2001, 2002, and part of lot 8 of North Tonquin subdivision. Almost all of the site is within the Urban Growth Boundary.

Only the wetland portion of the site has any protection at this time and this would indirectly result from the flood plain ordinance. Uses which would significantly modify major portions of the site, such as large buildings and parking lots, would greatly diminish or destroy its geologic value. The steep slope along the channel presents a practical barrier to destructive uses, but there is now no zoning restriction on cutting of trees, for instance.

Rock quarrying west of this site has already destroyed a sizable portion of the scablands. This conflicting use is discussed further in the Aggregate Resources section of this document. Purchase of the wetland, channel slopes, and representative adjacent areas by a public or quasi-public agency would be the preferred solution to preservation of the area. The Oregon Parks and Recreation Division has responsibilities of this type.

E.4.1.4.2 The Rock Creek channel was the lowest elevation avenue for the flood-waters; its steep channel walls contrast markedly with the "underfit" or undersized stream which traverses the flat marsh. Dr. Allen suggests that preservation of the marsh would be valuable to permit pollen analysis showing climatic change since the last Ice Age. Existing topography and drainageways imply that erosion of the southern part of this channel caused it to "capture" smaller tributaries which previously flowed to the south. The Rock Creek channel is the most dramatic feature in the scablands, especially where it narrows to about 500' between 100' bluffs.

The legal descriptions of the properties involved are: tax map 2S1 33 tax lots 100, 300, 400, 401, 403, 500, 600, 700, 800, 900, 1000, 1100, 1200, 1400, 1500, 1600, and 1801. Portions of these lots have already had their geologic value destroyed through rock quarrying, which is still proceeding. Again, the physical features are not coterminous with the tax lot boundaries.

Clackamas County recently approved a new quarry within its part of the channel. The northern part of the channel is within the Sherwood Urban Growth Boundary. The Sherwood Planning Director has suggested protection of the channel and "associated rock cliffs" with a design review process to protect other features. Some protection of the bottomland is possible through the county's flood plain ordinance.

New or expanded quarry operations under conditional use standards would conflict with preservation. Continued urbanization on the western perimeter of the Tonquin area and further expansion of quarries will likely reproduce further conflicts.

E.4.1.4.3 The marshland with underfit stream south of Tonquin Road may be important for future research similar to Rock Creek. The properties in this area are: 3S1 3B tax lots 200, 202, 301, and 302 and 3S1 3C tax lots 100, 200, 400, 401, 403, and 500. A quarry operation on tax lot 301 will extend to only 350 feet north of the south property line. The site is surrounded on half of its perimeter by existing or approved quarries. Extensive industrial uses could be almost as destructive as quarries, but the flood plain ordinance will provide some protection of this site in its existing condition.

E.4.1.4.4 A smaller version of the Rock Creek channel--east of Tonquin Road and south of Ibach Road--also contains scoured 100 foot high bedrock walls and lies just downstream from a major flood spillway. Two other spillways, somewhat higher and much less eroded, are also found in this compact area. The "island" and eastern edge above 300 foot elevation would permit research into the question of the upper boundaires of the scouring. The parcels involved are: 3S1 2B tax lots 100, 200, 303, 304, 306, 308, 311, 1100, 1200, 1300, 1400, and 1500; all of tax map 2S1 35C except tax lot 1900; 2S1 35B tax lots 200, 300, 400, 401, 500, 501, 502, 503, 504, 701, 702, 704, 800, 801, 802, 803, 804, 805, 807, 808, 809, 900, 901, and 1201.

A small inactive quarry is located within this site. Areas along the drainage-way would be somewhat protected by the flood plain ordinance. The relatively large number of dwellings along the roads and absence of operating quarries in the immediate vicinity makes the location of a new active quarry here rather less likely. City of Tualatin plans for the northern portion inside the UGB are for low density residential (up to 5 units per acre). Such a density of residential uses and accompanying infrastructure would degrade the geologic value of the site.

E.4.1.4.5 East of Murdoch Road is a relatively high elevation spillway with lessened scouring. Two knolls on either side were above the level of scouring. Only one parcel is involved: 2S1 33 tax lot 1600. The Sherwood Planning Director has suggested the area is inappropriate for quarrying, since the Sherwood Plan for the area (inside the UGB) designates it for residential use. He also proposes that the design review process should provide adequate protection of natural features.

E.4.1.4.6 East of Morgan Road near the county line is a well-preserved low elevation knoll which was near the center of the large scale flow of water. It is therefore nearly devoid of soil and supports only a shrub vegetation. The lowest spillway in the entire Scablands is located at the southern end of this area next to the county line.

Legal description of the parcels involved are: 3S1 3B tax lots 301 and 400; 3S1 3C tax lots 100, 200, 401, 402, 403, and 500. Again, as with other identified scabland sites, these legal descriptions are used for convenience and are not co-extensive with the actual features of concern. Permission to quarry part of the knoll was recently granted, so only the southernmost part is temporarily protected.



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E.4.1.4.7 East of Murdock Road next to the county line is the downstream channel of the highest spillway in the Scablands. Both sides of the channel rise above the scouring level and there is a small depression within it. Parcels involved are: 2S1 32D tax lots 1300, 1400, 1401; 2S1 33 tax lots 1800 and 1802.

This feature also lies within the Sherwood Urban Growth Boundary and is planned by the city for residential use. The Sherwood Planning Director, however, has suggested preserving it as a significant natural feature or otherwise protecting it through the design review process. This site would also be impacted by expanding residential uses.

E.4.1.4.8 This scoured upland east of the Rock Creek channel is the only major "scabland" not already destroyed by quarrying (northeast of the site) or committed to it by recent decisions (southeast). The parcels involved are: 2S1 33 tax lots 100, 600, 700, and 800; 2S1 28D tax lots 100 and 900; and 2S1 27C tax lot 800. Again, the legal lots are not coterminous with the geologic feature, but do encompass it. The most prominent topographic features--depressions and knobs--are located in the central eastern part of the described area. Small portions of the area have been quarried or otherwise significantly altered.

The northern portion of this site has a 3 1/2 acre wetland, apparently seasonal, below one of the flood spillways. It is located between two knolls, the western one having a dwarf oak and madrone woodland on cliffs above the seasonal pond.

The major potential conflicting use is quarrying. Portions of the site are within one-half mile of planned residential areas along Murdock Rd. to the west. Further discussion of this conflicting use is contained in the Aggregate Resources section of this document.

#### E.4.1.5 Walker Road Ponderosa Pines (Nature Conservancy Site #1)

Stands of Ponderosa pine are relatively uncommon in Washington County, but are found in a few small areas inside the UGB, concentrated in the vicinity of Walker Road at 158th Avenue. One probable reason for their occurrence is that this is near the driest place in the county, with about 40" of precipitation in an average year. Past wildfires may also be partly responsible. These groves of pine may be the northernmost in the Willamette Valley, if not all of Western Oregon.

Preservation of any of these stands under natural conditions may be physically difficult, if not impossible, because of their location. Absence of fire or grazing would in the long run result in their replacement by other species. Human activity such as understory clearing, littering, or trampling would also have adverse effects. Such activities would be inevitable without stringent preservation and exclusion of human use.

These ponderosa pine are unique, however. Under some type of protection they might still be useful for education and scientific purposes for many years. There are four distinct stands, two of which were surveyed by the Natural Heritage Program:

Property with natural values and owned by federal agencies is not subject to county land use regulations. However, these agencies usually try to take into serious consideration the wishes of local government in the management of their land. Plan and zone designations applied to federal property therefore serve a very important advisory function.

Data were hard to come by for sites suggested as significant natural areas in Washington County. The Natural Heritage Program survey of the Nature Conservancy was a worthy first approximation. It includes typical natural areas as well as rare occurrences. However, even that survey often did not provide sufficient data to determine the significance of a site as a natural area.

Other major sources used to compile the list of significant natural areas included a letter from Robert Benson, a founder of Tualatin Valley Heritage, Inc. and a 1975 study of the Tualatin Valley's environmental quality prepared by the Federal Bureau of Reclamation. Consultations with informed personnel of the Oregon Department of Fish and Wildlife, Oregon Department of Forestry, Bureau of Land Management, and other knowledgeable persons were also of value. Site visits by Planning Department staff were conducted in most cases.

Judging the significance of the remaining natural areas of Washington County is still partly an art and not entirely a science. The comparative value of one natural area of a given type with another of the same type is not always easy or even possible to quantify in a meaningful way.

Based on criteria set forth by the Nature Conservancy, several priorities have been used in assessing natural areas in Washington County. The overall importance of the natural area--based in part on information available from professional and staff field work--was examined from the standpoint of 1) the qualities of the natural area as a whole, 2) the verified presence of any special species of plant or animal, and 3) the contribution which the proposed area will make to the representation of one or more natural heritage resources. When known, the representation of the questioned plant or animal and the degree of human caused disturbance was assessed to form a judgment on relative ecological quality.

Natural areas have several compatible uses--educational, scientific and recreational--where low levels of nonconsumptive or nondestructive activities are permitted. Educational day uses such as nature interpretation require quick, easy access. Scientific research in large areas may require alteration of some elements of the system for comparative studies against natural control. Recreational uses include only dispersed activities requiring only light weight equipment. Careful use restrictions are necessary in fragile or sensitive areas or features such as a bog, vernal pool, marsh, bald eagle nest habitat or a rich wildflower area.

The resulting list is as comprehensive as the available data will allow. Destruction of a natural area will in most cases be irreversible. The agreement of the various information sources suggests that only a few sites will, upon closer examination, prove unworthy of some form of protection. In many cases the methods of protection are limited to the legislative tools available at the present time. The adequacy of some of the available methods has been questioned

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by environmental groups and others. Later additions to the list may also be necessary if sites not known at this time are discovered. It should also be noted that the listed sites are located outside of incorporated cities, except where otherwise indicated.

#### E.4.4 Significant Natural Areas in Rural Washington County

Those sites for which sufficient data are available to make land use management decisions are listed as identified significant natural areas. Several sites have been dropped from significant consideration due to their size, updated or corrected information or as a result of ESEE analysis done on economic, social, environmental and energy consequences of development. In some cases the resources have been reclassified from natural areas to water areas and wetlands. These sites are discussed in Section E.4.5.

##### E.4.4.1 Wolf Creek Falls (3N5 6)

The coast range has far fewer waterfalls than the Cascades, but Washington County has more than most counties on the wet side of the Willamette Valley. At 50 feet, Wolf Creek Falls is the highest known waterfall in the county. A plunge pool and small cave are at its base. Beavers are reported as are some rare plants (valerian, angelica, boykinia). The falls and its access canyon appear to be in pristine condition, but litter has begun to accumulate near the entrance. In the past garbage was dumped down the canyon wall about 50 to 200 feet downstream of the fall. Regrowth has covered this material.

The property is owned by the Oregon Department of Forestry (ODF). The area in question includes a 250 foot radius from the base of the falls. A rough overgrown trail about 3/4 mile long was constructed by volunteers, but is difficult to follow, according to Planning Department staff. This is fortunate for the continued natural condition of the site, because of its small size and location just south of U.S. Highway 26. More public awareness or improved accessibility would very rapidly degrade the waterfall's natural quality.

The ODF is concerned about preservation of the canyon, since portions of it are intended for timber harvest. Future logging would probably be done from the top by cable, but there is no certainty at this time that a road would not be constructed in part of the canyon. Preservation of the waterfall and its base would not conflict with ODF plans for the area, but the boundary of the protected site needs to be specified.

##### E.4.4.2 Timber Pigeon Springs (3N5 17)

This important natural habitat of band-tailed pigeons is located on ODF land a few miles northwest of Timber, adjacent to Carlson Creek. This type of habitat is listed as significant by the Nature Conservancy. Although road access is now within 200 yards of the site, the area is still important as habitat. The Oregon Department of Fish and Wildlife district biologist, Gene Herb, maintains that perch trees near the springs should be preserved so that pigeons have a place to sit before going down to water. Pigeons use the area from May through December.

#### E.4.4.3 McKay Creek Falls, Canyon and Upper Drainage (3N3 31; 3N2 31; 2N3 1, 12; 2N2 6, 7)

McKay Creek Flows through a forested canyon 500 to 600 feet deep and only 1/4 to 1/2 mile wide. The canyon is a unique wilderness area in the county because there is no automobile access. The natural area boundary follows the crest of the ridge on the south from 2N3 1D, west to 2N2 6D, thereafter following the 1,100 foot contour line to 3N3 36 where the 1,200 foot contour is followed, back to the starting point. The boundary includes some, but not all, of the canyon and old growth timber. A more precise mapping is on file with the County Planning Department. A portion of the area has been field checked by Planning Department staff. Falls and plunge pools are reported to be prevalent along the entire creek. Two falls--12 feet and 15 feet--are known to exist. The upper drainage has several natural ponds. The natural area affords excellent habitat for deer and grouse in addition to many non-game species. The creek and ponds also provide seasonal fish habitat.

Bureau of Land Management (BLM) owns three large tracts of land throughout the system which are managed for timber production. Reynolds Aluminum has a placer claim within the area. However, the company owns or claims more than 1,100 acres of deposits elsewhere in the county. A private horse trail system is being developed into the area. The Nature Conservancy lists this site as #49.

#### E.4.4.4 Big Canyon (2N3 5 tax lot 700; 2N3 8 tax lot 100)

BLM has designated this scenic, steep, narrow canyon as a Natural Area/Educational Site and is currently formulating a management plan. Willamette Industries owns a part of the southern portion of the canyon. The geographical boundaries of this area include all of 2N3 5 tax lot 700 and, along the creek, 500 feet south, in 2N3 8 tax lot 100. The canyon is located along a tributary of East Fork Dairy Creek and is somewhat unique in vegetational variety and steepness and ruggedness of terrain. Extremely dense riparian vegetation includes a remnant stand of old growth Douglas fir (some of 400 years old), Western red cedar, Western hemlock, Bigleaf maple, Vine maple, devil's club, and abundant ferns and mosses. Access to this relatively undisturbed natural area is becoming increasingly difficult to obtain.

#### E.4.4.5 Cedar Canyon Swamp and Marsh (2N4 34, 35)

This site is one of the few areas of swamp of any size existing in the county. All of it is located in the 100 year flood plain; there is standing water in the winter. Major vegetation is mainly ash and willow. Cottonwood, alder and Bigleaf maple are present on the higher ground. Although the adjacent Wilson River Highway diminishes the waterfowl potential of the site, the Oregon Department of Fish and Wildlife considers it to have important wildlife values and be worthy of further study. Its geographical boundaries were defined by aerial photo interpretation.

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#### E.4.4.6 Dooley Aspen/Ash Swale (2N4 36 tax lots 700 and 701)

This island of unusual vegetation is surrounded by agricultural fields. Aspen areas are very rare west of the Cascades but have also been reported near Dilley. The Dilley site is not verified. The occurrence of quaking aspen in the Tualatin Valley is considered by the Chief Plant Ecologist of the Forest Sciences Laboratory to be botanically significant. The 10 acre site is within the 100 year flood plain. Remnant vernal wildflowers are also reported on the site. Vernal pool flora are very fragile and require protection from disturbance, particularly spraying and fertilizing. These pools and their characteristic vegetation have all but disappeared from the valley as a result of human activity. A Nature Conservancy Site Report for this site, also known as Banks Aspen/Ash Grove, is contained in Appendix I-C.

#### E.4.4.7 Upper Tualatin River Haines Falls, Lee Falls and Little Lee Falls (1S5 tax lots 5500, 5700, 5900, 5902 and 6102)

In the past, opportunities for swimming, fishing and picnicking have attracted members of the public to this scenic four mile stretch of the Tualatin River. This part of the river is forested and contains two large waterfalls, other small falls and rapids. Most views are toward the river which is surrounded by steep terrain. The City of Hillsboro has its water supply intake and holding reservoir at Haines Falls. Further down the river, privately owned Lee Falls contains fine examples of natural punch bowls. A large yew tree--once thought to be the largest in America--is located about 100 yards downstream from Little Lee Falls. The geographic boundary for this area is defined as 25 feet from the bank edge on both sides of the river from Haines Falls to Little Lee Falls.

Members of the public and county employees report recreation use of the area and easy access since the early 1940s. The question of public access has recently become a controversial one. County Counsel maintains that the issue is one that can probably only be solved through litigation. The access road, commonly known as Lee Falls Road, was declared to be a county road (A-47) by the County Surveyor in 1973. This decision was based on historic documents and official surveys made before the turn of the century. His successor removed the road from county road status in 1980 or 1981.

Frequent use of the Upper Tualatin resulted in litter, wood cutting and parking problems; the area has no parking, garbage disposal or sanitation facilities. Unauthorized camping and campfires further served to degrade portions of private property. One of the private property owners installed a chained, metal bar gate across the road approximately two miles south of Lee Falls, and issued keys to other property owners. The City of Hillsboro maintains access rights for maintenance of its water supply facilities and has installed a locked gate at Lee Falls to thwart vehicular access of private property owners to Haines Falls.

Since public access has been blocked, the Oregon Department of Fish and Wildlife has stopped stocking the Upper Tualatin with fish. At county request, the Parks and Recreation Division studied the Upper Tualatin for possible state acquisition. The Division concluded that while the site has enjoyable scenic qualities, it is not large enough nor does it provide the recreational resources at a scale

which warrants state park development; access was cited as a main problem. The Division maintains the area is appropriate for use at a local scale. Sources for acquisition funding were suggested.

Much of the vegetation has been disturbed or removed by logging activity. Quarrying activity (which is reportedly private) is conducted within 50 feet of the river and has compromised some of the natural features. Little Lee Falls and the lower portion of the river would be inundated if the Tualatin Phase II Project was activated.

#### E.4.4.8 Tonquin Scablands Geologic Area

See the discussion of this unique natural resource at E.4.1.4.

#### E.4.4.9 John Blodgett Arboretum (2N5 15 tax lots 500 and 600)

Pacific University owns this arboretum located 14 miles west of Forest Grove along Wilson River Highway. The north portion is being selectively logged and managed and is not considered part of the natural area. South of the highway are the trails, open clearing and picnic area. The arboretum is now open to the public, but no motorized vehicles are allowed inside. Pacific University biology classes utilize the area as an open classroom because of the diversity of flora and fauna. It contains some plants that are not rare, but need to be managed: trilliums, aerechroniums and some orchids such as Calypso Balbosa. The school maintains a listing of plants and animals frequenting the area.

#### E.4.5 Natural Areas Dropped From Consideration

See discussion at E.4.3

##### E.4.5.1 Beehives Area (3N3 3, 4, 9 and 10)

This four square mile area was mistakenly identified by Robert Benson to planning staff as a volcanic area. It is forested and designated EFC. The site has an interesting topography with numerous depressions. However, Dr. Leonard Palmer, Associate Professor of Geology, with the concurrence of Dr. John Elliot Allen, Emeritus Professor of Geology, Portland State University, state that the topography "appears to have the features of a landslide topography rather than of typical volcanic terrain." This is not a unique feature of special value for preservation. Even if it were of volcanic origin, many other volcanic features exist in the near region that are of more exceptional geologic interest and more readily accessible. Forestry practice or development in this region of steep terrain with large landslides is likely to reactivate potential serious sliding.

##### E.4.5.2 Pumpkin Ridge Cedar Grove (2N3 tax lot 400)

Western red cedar over 60 years old is the dominant tree species on this 40 acre site located off a tributary of East Fork Dairy Creek. The presence of this species is very rare in the Coast Range. BLM originally proposed the area be designated for botanical sight-seeing. A recent policy directive from the Department of Interior does not preclude timber harvest from this particular site.

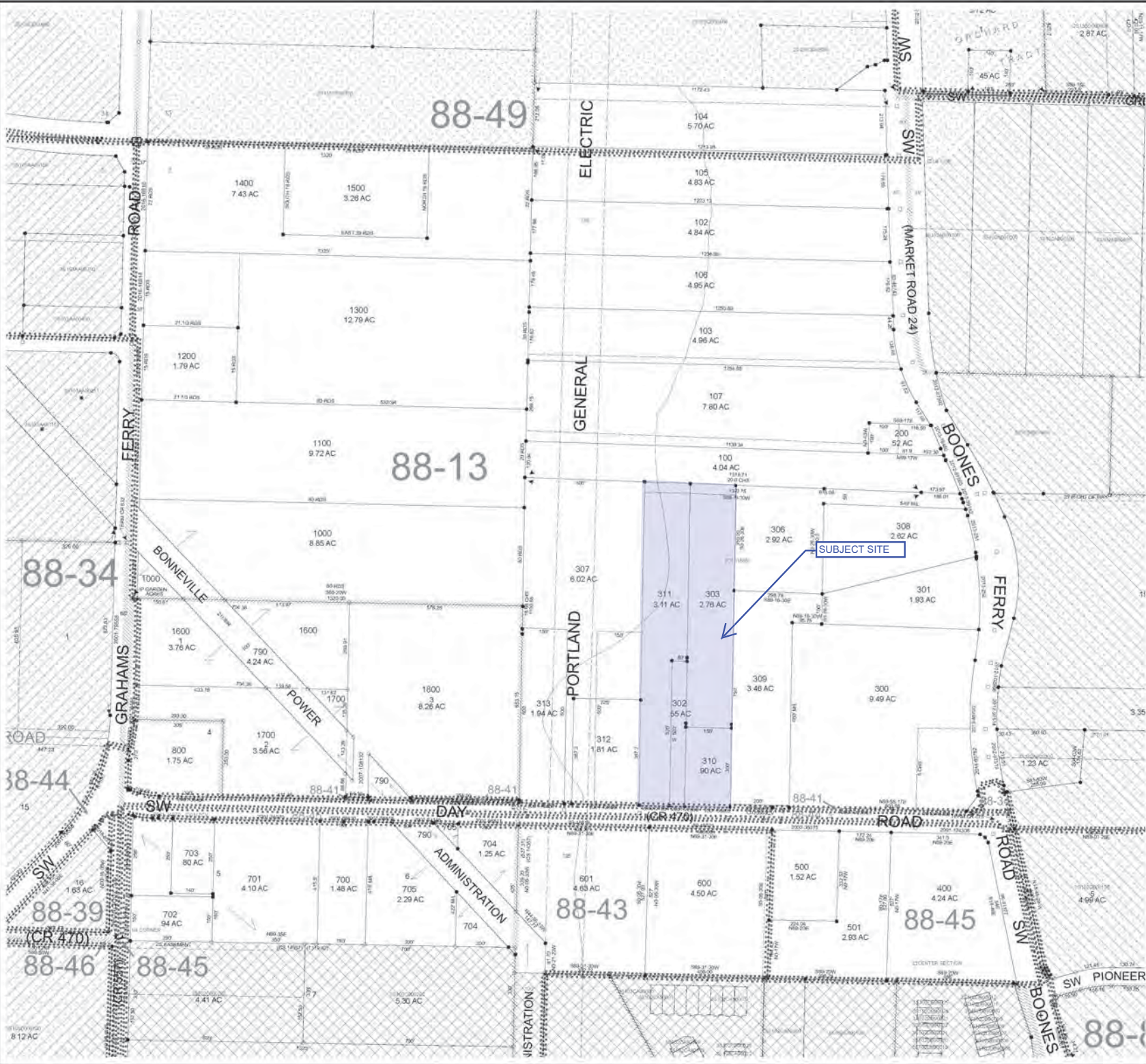
## **Exhibit G: Washington County Assessor's Map**

WASHINGTON COUNTY OREGON  
 NW 1/4 SECTION 2 T3S R1W  
 SCALE 1"= 200'

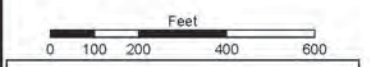


38	31	32	33	34	35	36	31	BB	BA	AB	AA
1	8	5	4	3	2	1	8	BC	BD	AC	AD
12	7	6	9	10	11	12	7	CB	CA	DA	DB
13	18	17	16	15	14	13	18	CC	CD	DC	DD
24	19	20	21	22	23	24	19	SECTION 2			
25	30	29	27	28	25	30					
38	31	32	33	34	35	36	31				
1	8	5	4	3	2	1	8				

FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT  
[www.co.washington.or.us](http://www.co.washington.or.us)



Cancelled Taxlots For: 3S102B  
 101, 305, 304, 500, 1100 A1, 314, 502, 753, 791, 792



**Assessment**  
 CARTOGRAPHY  
 Taxation

PLOT DATE: 2/3/2022  
 FOR ASSESSMENT PURPOSES  
 ONLY - DO NOT RELY ON  
 FOR OTHER USE



**Exhibit H [UPDATED]: Arborist Documentation  
[Integrated Arboricultural Solutions]**

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# **Arborist Report**

**Prepared for:**

**Vial Fotheringham, LLP**

**17355 SW Boones Ferry Rd. Ste. A  
Lake Oswego, OR 97035**

**Prepared by Chris Whitman**

**BCMA WE-10291BU, TRAQ**

**January 24, 2024**

**Integrated Arboricultural Solutions**

**PO Box 68012 Portland, Oregon 97267**

**(971) 335-1414**

**[chris@integratedarbsolutions.com](mailto:chris@integratedarbsolutions.com)**

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## Executive Summary

Following an inquiry into the health of existing trees on site and the presumed health of previously existing trees; an analysis of historical imagery, visual assessment of the remaining trees, and laboratory testing was conducted. Lab results positively identified a portion of trees to have been infected with the fungal pathogen *Phaeolus schweinitzii*, a significant contributing factor in the reduced vigor of the trees on site. Additionally and importantly, many trees are also exhibiting signs of drought stress, increasing their susceptibility to fungal pathogens.

## Introduction

### Background and History

Against the backdrop of concerns surrounding the Douglas Fir Grove's previous health, and its influence on the removal of the trees, this report serves to provide a comprehensive overview of the site assessment conducted through visual observations and laboratory findings. At the time of removal, the grove, spanning Tax lots 302, 303, 310, and 311, was observed by the logging company to be in poor health showing positive indications of both *Phaeolus schweinitzii* and *Phellinus weirii*. After the removal of the trees, attention to the matter was brought by county officials, prompting an investigation into the impact of the removal. The assignment initially focused on a broad understanding of the grove's health by fungal detection in the remaining debris accomplished by sample collection and testing. This report elucidates the tools, methods, and challenges encountered in the assessment, offering insights into the grove's likely state at the time of removal, as well as the implications of the identified pathogens and their effect on the host species.

### Assignment

The assignment is as follows:

1. Assess the condition of remaining trees and assess for fungal presence.
2. Assess available data and imagery to make a determination of the health of the stand over the progression of time up to the point of removal.
3. Conduct laboratory testing of sample material to verify the presence of fungal activity as described by the tree removal contractor.
4. Provide a formal written report detailing the findings.

### Limits of Assignment

Limitations are mainly centered on various environmental factors, sample collection methodologies, and testing procedures.

These limitations reshaped the testing protocols due to the complexities involved in detection, prompting a strategic shift towards a targeted testing strategy. The challenges faced during the testing procedures were initially provided in my letter dated November 9, 2023 and are included here again for quick reference:

1. **Weather and sample degradation:** The site in question has been exposed to the elements for nearly 12 months following the tree removal. Weather conditions, including rainfall, temperature fluctuations, and natural decay processes, play a substantial role in the health of fungal material and DNA integrity. Ultraviolet (UV) light can gradually degrade DNA structures when exposed to the elements. In conjunction with moisture and microbial activity in the soil, these environmental factors contribute to genetic material breakdown. Excessive moisture fosters the growth of new microorganisms that further accelerate DNA degradation. Consequently, the cumulative effects of UV light and moisture present significant challenges to obtaining accurate results from soil samples alone. It is crucial to consider the overarching impact of these environmental factors on the detectability of fungi in the grove's soil.



**2. Significance of fungal hyphae structure:** Fungal hyphae, the thread-like structures forming intricate networks within the soil, are essential indicators of fungal activity. Species like *P. schweinitzii* and *P. weirii* heavily rely on hyphae to colonize, decompose organic matter, and extract nutrients. Detecting these hyphal networks can be particularly challenging due to their uneven distribution in the soil and their typically small quantities, making them difficult to capture in samples.

It is important to note that the viability of fungal hyphae in the soil is subject to various environmental factors. Hyphae can remain viable and detectable for a certain period, but their longevity depends on conditions such as ideal moisture levels, temperature, and the presence of other microorganisms including both beneficial and potentially competitive soil fungi, that can interact with the target fungi. Over time, hyphae can naturally degrade due to exposure to UV light, moisture, and microbial activity in the soil. While exact timelines can vary, it's common for hyphae to remain viable for several weeks to months under favorable conditions. However, as these structures degrade, their detectability diminishes, posing challenges to accurate sampling and testing. Therefore, understanding the dynamics of hyphal viability and degradation is crucial when interpreting soil sample results.

**3. Stump grinding and sample dispersion:** The grove underwent stump grinding, a process involving the mechanical removal of tree stumps and roots. This action can disperse fungal material, including hyphae, throughout the soil, making it challenging to collect concentrated samples from specific areas. It is important to note that this dispersion can complicate sample collection by mixing materials from different parts of the tree, potentially affecting the representativeness of the collected samples.

**4. Narrow testing requirements:** While the initial testing focused on the specific presence of *P. schweinitzii* and *P. weirii* due to their significance, it's important to acknowledge the complexity of fungal communities. The root samples collected may have contained presumed decay associated with the specified fungi, including those related to or different from the two pathogens tested for. Therefore, considering the broader fungal diversity within the grove's soil is a prudent step in gaining a comprehensive understanding of its health and ecological dynamics.

In addition to these items, the limited amount of remaining material on site, lack of access to or direct knowledge of the site prior to removal of the trees additionally limits my findings to a forensic assessment based on firsthand reports, photo evidence, and genetic material remaining at the site.

## Use and Purpose of Report

This report serves as a comprehensive documentation of the health assessment conducted for Vial Fotheringham, LLP. The purpose is to communicate the findings, challenges, and insights gained during the assessment process as well as laboratory results. The report aims to provide a clear understanding of the grove's previous state, the implications of the identified pathogens, and the complexities involved in fungal detection. The information presented herein is crucial for stakeholders, including owners, regulatory authorities, and the community, to make informed decisions regarding the prior condition and utility of the grove as well as the environmental benefits associated.

## Observations

### Tools and Methods Used

Tools used to aid my diagnosis and make my assessment include the following:

1. 36" Steel probe used to determine the depth and extent of hollow areas.
2. Nikon Forestry Pro II laser rangefinder/hypsometer used to determine height of trees remaining on site.
3. Binoculars utilized to examine the canopy from ground level.



4. 10x eye loupe to examine sample material for fungal hyphae.
5. Sample collection material and packaging.

My assessment additionally relied on employing open-source imagery, Metro RLIS aerial maps, and on-site root and soil sampling. This approach allowed for a complete analysis, based on the information available to me, of the Fir grove's presumed condition prior to harvest. The selection of sampling locations aimed to capture the diversity of the grove, ensuring a well-rounded representation. To maintain the integrity of the collected samples, sterile tools and containers were employed during root and soil sample collection, mitigating any risk of contamination. Subsequently, these samples were promptly submitted to the Oregon State University Plant Pathology Lab for in-depth analysis, utilizing Polymerase Chain Reaction (PCR), microscopy, and culture-based methods.

## Site Description

The Fir grove, spans Tax lots 302, 303, 310, and 311, and is situated in T3S, R1W, section 2B. The 6.77-acre area has two residential homes present, flanked by an additional home to the west and a commercial lot to the east. Approximately 25-30 mature Douglas Fir remain on the site, mostly near the homes. Historical aerial images show the property to the east having been cleared between 2015-2016.

The majority of trees remaining on site and removed from site are estimated to be between 60-90 years in age, representing a mature stand of trees.

The northwest quadrant of the site backs up to the Tapman Creek wetland/drainage area potentially increasing soil moisture in the area and having created an unfavorable growing condition for the trees.

## Species Profiles

### Douglas Fir (*Pseudotsuga menziesii*)

Douglas Fir, is perhaps the most universally recognized and identifiable conifer in the Pacific Northwest. The species is well adapted and suited to the region allowing for a growth rate of 12 to 24 inches per year in optimal conditions.

At maturity, Douglas Fir is capable of reaching heights between 70 to 300 feet. Most trees in urban areas rarely exceed 150 feet. Diameters of mature trees commonly range between 20 to 72 inches.

Harvestable size for Douglas Fir varies depending on the intended use. For timber production, trees are typically harvested when they reach a height of 80 to 120 feet with a diameter of 12 to 20 inches. These dimensions ensure the production of high-quality lumber and trees free of decay sometimes found in older trees.

While considered to be resilient to many environmental and external factors, Douglas Fir is susceptible to certain pathogens and insects. Bark beetles have recently begun to pose a significant threat, especially during periods of stress or drought. These pests can weaken the tree's defenses, making it more vulnerable to diseases like root rots, including *Phaeolus schweinitzii*, *Ganoderma applanatum*, *Fomitopsis officinalis*, and *Phellinus weirii*.

Douglas Fir exhibits moderate drought resistance, but extended periods of water scarcity can impact its overall health creating susceptibility to existing pests and pathogens. During drought, the tree may show signs of stress, including reduced growth and needle discoloration.

### *Phaeolus schweinitzii* (Dyer's Polypore)

*Phaeolus schweinitzii*, commonly known as Dyer's Polypore or Phaeolus or Schweinitzii Butt Rot, poses a serious risk to Douglas fir trees. This wood decay fungus presents itself through shelf-like structures with colors ranging



from rusty-brown to dark-brown. Spores are released during humid conditions, facilitating its spread and endangering nearby healthy trees as the fungus infiltrates trees through wounds, bark openings, or root grafting, primarily affecting the heartwood. Its establishment leads to the breakdown of cellulose, compromising the wood's structural integrity and affecting water and nutrient storage and transfer in the trunk and roots. Failures typically occur at the trunk's base or in the root plate, depending on the fungus's entry point.

Beyond Douglas fir, *P. schweinitzii* affects various coniferous species such as true Firs, Larches, White Pines, and Spruce. Although the fungus is nearly always observed in mature trees, the pathogen is opportunistic, initiating infections in roots of varying ages and entering stems through roots or basal wounds.

Disease progression involves distinct stages marked by changes in wood color, cracking, and a distinctive odor of the oxidizing sap. Reproductive structures, known as basidiocarps, emerge annually, developing on the lower trunk or nearby bases of living diseased trees, roots, aiding in the initiation of new infections.

Environmental factors play a pivotal role in spread and infection, with shallow, poorly drained soils predisposing certain conifers to damage. Additionally, water deficit or drought stress in infected trees often accelerates visible signs of infection.

### **Testing and Analysis**

The process of sample collection for the root and soil samples was carried out in four quadrants on the site as detailed in the appendix. Initial sampling involved a comprehensive approach, focusing on the random collection of soil and root material to ensure a representative overview of the grove's health. However, the unexpected negative results from the initial lab testing prompted a reevaluation of methodology.

In response to the challenges faced during the initial testing, the subsequent sampling strategy shifted towards a targeted approach. The goal being to enhance the accuracy of detection and confirm the presence of infected material within each quadrant for confirmation.

The analysis conducted at the Oregon State University Plant Pathology Lab was done by Polymerase Chain Reaction (PCR) testing. PCR testing is the primary method used by the pathology lab to confirm the species of a particular sample. PCR is a technique that amplifies and analyzes DNA, allowing for the detection of specific genetic material associated with target organisms such as fungi. The strengths of PCR lie in its sensitivity and specificity, enabling the identification of even trace amounts of fungal DNA. However, like any methodology, PCR testing has its limitations. Factors such as sample degradation, contamination, or the presence of inhibitors can affect the accuracy of results. In addition to visual identification, a positive result obtained through PCR is substantial in positively identifying the presence of the targeted fungal species.

Visual observation, aided by overhead maps depicting disease progression beginning around 2016, guided locating infected material and structuring the assessment and sampling. Defoliated trees and thinning foliage were observable indicators of the impact of pathogens, providing valuable insights into the health of the grove and localized spread.

On-site tree assessments of remaining trees from ground level were conducted in order to gain a greater understanding of the general health. Signs such as decreased vigor, thinning tops, and a reduction in annual growth were observed and recorded and can be found in photographs included in the appendix.

Utilizing a comprehensive approach by integrating advanced lab testing, targeted sampling, and visual observation, was instrumental in recreating the condition of the site. The information gathered through this process formed the basis for confirming the presence of *P. schweinitzii*.



## **Discussion**

Evidence gathered and relied upon to make the determination of the health of the tree was gathered utilizing three methods; visual tree assessment, imagery analysis, and pathological testing.

**Visual Tree Assessment** - The initial assessment focused on the condition of existing trees on site. The majority of trees are in what would be considered moderate health. Moderate, meaning the trees exhibit a limited number of significant defects and the overall vigor of the trees is average. A handful of trees adjacent to the 9775 address appeared to be in poor condition, one of which a *P. schweinitzii* conk was found present at the base of the tree. Other than the presence of a few stumps and some scattered root material, little remains on site from the trees removed from the site leaving a limited amount of information to draw from. Trees on the neighboring property to the west exhibit many of the same signs and symptoms presumed to be present at the time of removal of the trees from the assessed site.

Visual assessment of the trees did indicate the trees appeared to be drought stressed in comparison to nearby trees of a similar age. Thinning tops and limited annual growth as well as a heavy cone crop in some trees serves as visual confirmation of stress. Within the last ten years, the region has experienced a decrease in critical spring rainfall and longer than average periods of extreme heat during the warm season. The signs associated with drought, observed in these trees, have been well documented in the region. Although many of the signs and symptoms of fungal disease and water deficit may overlap, water deficit nearly always serves as the impetus for lowered defenses in trees and subsequent infection or pest infestation. Experience proves that it is difficult to have one without the other. The nuanced relationship between fungi and tree health becomes even more apparent when considering the compromised vascular systems within the infected trees and their inability to mount an adequate response to drought stress.

**Imagery Analysis**- Examination of the site condition prior to the tree's removal was primarily based on overhead imagery made publicly available. Metro and Washington County overhead imagery dating back to 1997 is available as well as imagery on Google Earth dating back to 1994. Although most images until 2006 offer little assistance due to poor resolution, they offer perspective that is still useful in determining the progressive condition of the stand and local changes. In assessing the imagery, a slight but noticeable change in the density is observable as well as more defoliated trees beginning in 2015-2016 with an even more pronounced change in 2019. Advances in imagery could have enhanced the resolution uncovering a previously existing condition; however commercially available orthogonal photography helps verify the subtle alterations in canopy over the site.

Although in comparison to the fir grove as whole, only a handful of defoliated and thinning trees are present, it still serves as a critical indicator of the health and function of the stand. These visual manifestations are consistent with the characteristic signs of late stage brown rot fungal infection as well as key indicators of water stressed or drought stressed trees. Although drought stress occurs site side, fungal infection normally occurs in a localized manner affecting a clump of trees then spreading outward.

**Pathology**- Lab results serve as tangible evidence of the fungi's presence within the area the trees existed, contributing to the overall context of the grove's health. Similar to most forensic tree assessments, a number of challenges were encountered in the collection of sample material, primarily reflected in the initial negative lab results received on August 18, 2023. The discrepancies in lab results were addressed in detail in prior correspondence and reiterated in this report, emphasizing the influence of weather conditions, fungal hyphae structure, stump grinding, and narrow testing requirements. These factors collectively underscore the challenges in obtaining accurate results, especially considering the exposure of the site to elements for nearly 12 months





post-tree removal. The dispersion of fungal material due to stump grinding added another layer of complexity to sample collection, impacting the representativeness of collected samples.

As a result of the negative findings in the first round of testing, a second submission of targeted material was made and received on November 22, 2023. The results of which indicated positive findings for all three samples submitted.

**Conclusion**

The evidence gathered through visual tree assessment, imagery analysis, and pathology testing collectively indicates the presence of *Phaeolus schweinitzii*, corroborating initial concerns about the grove's health. Visual indicators such as defoliated trees, thinning foliage, and the presence of fungal conks align with laboratory results, providing a comprehensive understanding of the site conditions prior to removal of the trees.

---

***I certify the information provided in this report is true and accurate to the best of my knowledge based on the facts provided to me, the information collected by me and the Limitations of Assignment listed above.***

Name: Chris Whitman Title: Board Certified Master Arborist (WE-10291-BU)

Signature:  Date: Jan 24, 2024



## Bibliography

SelecTree. UFEI. "Pseudotsuga macrocarpa Tree Record." 1995-2023. Cal Poly State University, San Luis Obispo. Accessed on Nov 20, 2023.

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Dunster, J. A., Smiley, E. T., Matheny, N., & Lily, S. (2017). *Tree Risk Assessment Manual Second Edition*. International Society of Arboriculture.

Sinclair, W. A., Lyon, H. H., & Johnson, W. T. (1987). *Diseases of Trees and Shrubs*. Cornell University Press.

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James S. Hadfield, Donald J. Goheen , Gregory M. Filip, Craig L. Schmitt , Robert D. Harvey (1986) *Root Diseases in Oregon and Washington Conifers—R6-FPM-250-86*. U.S. Forest Service



## Supporting Material



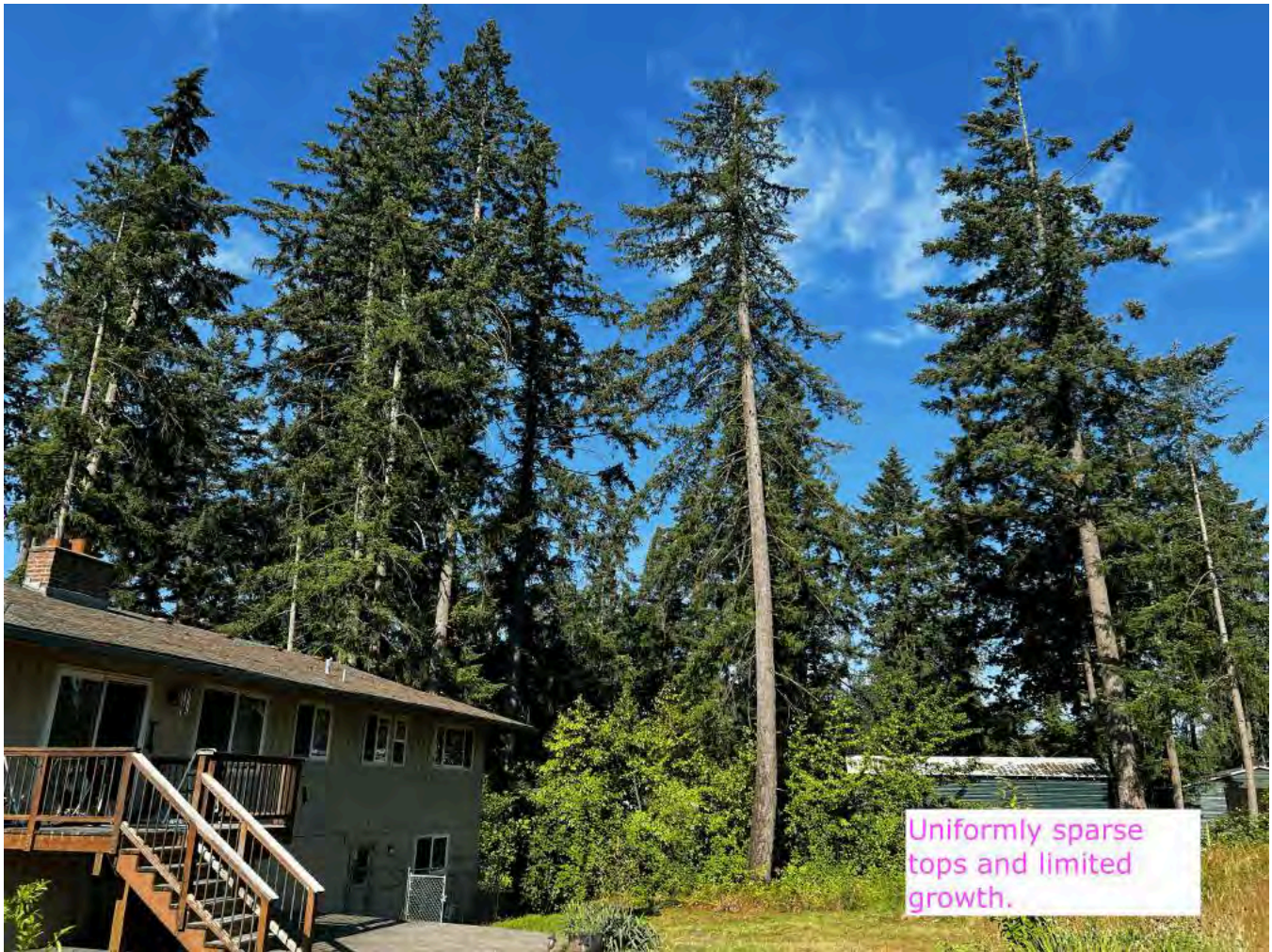
Appendix A - Site Plan

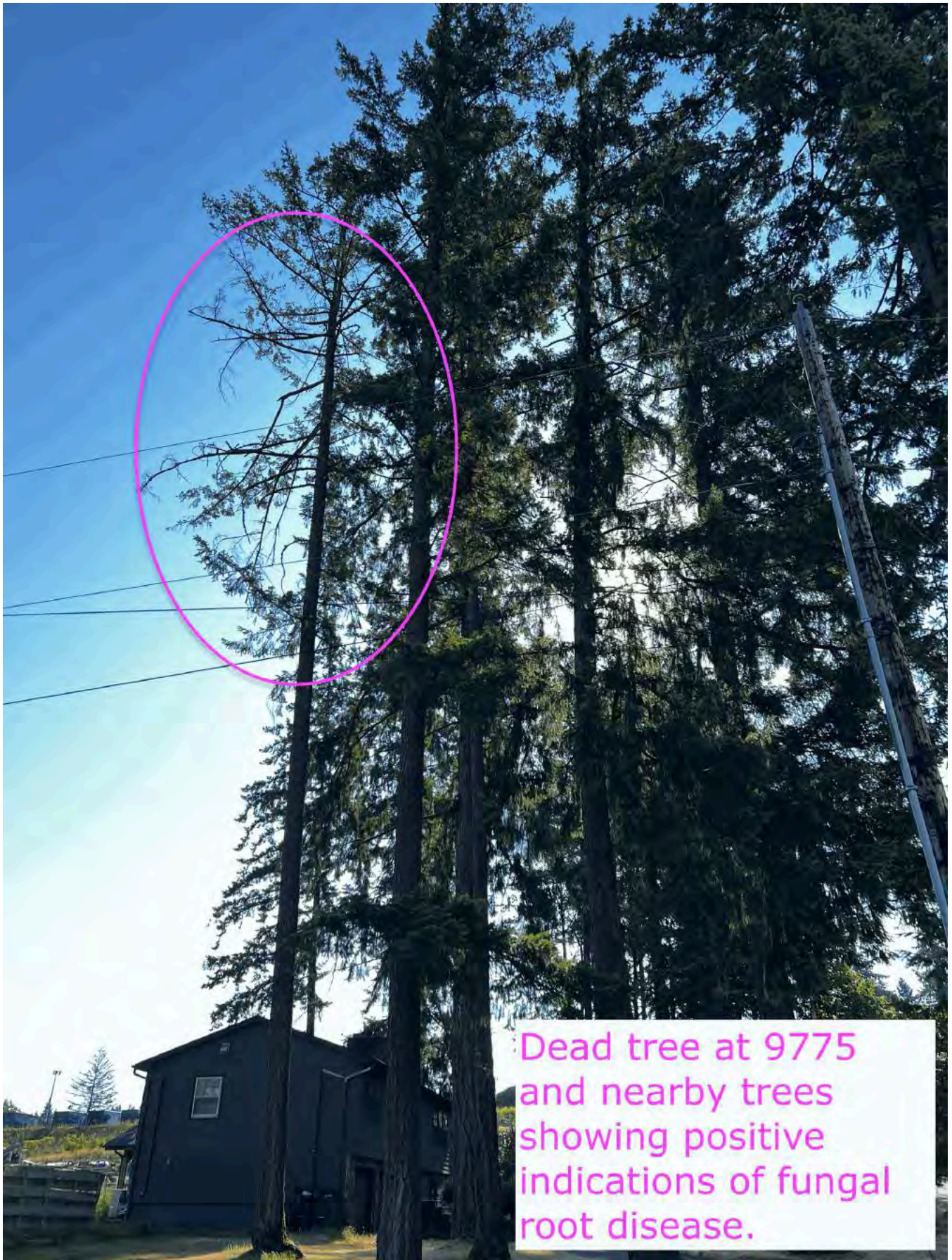




**Appendix B - Site Photos**







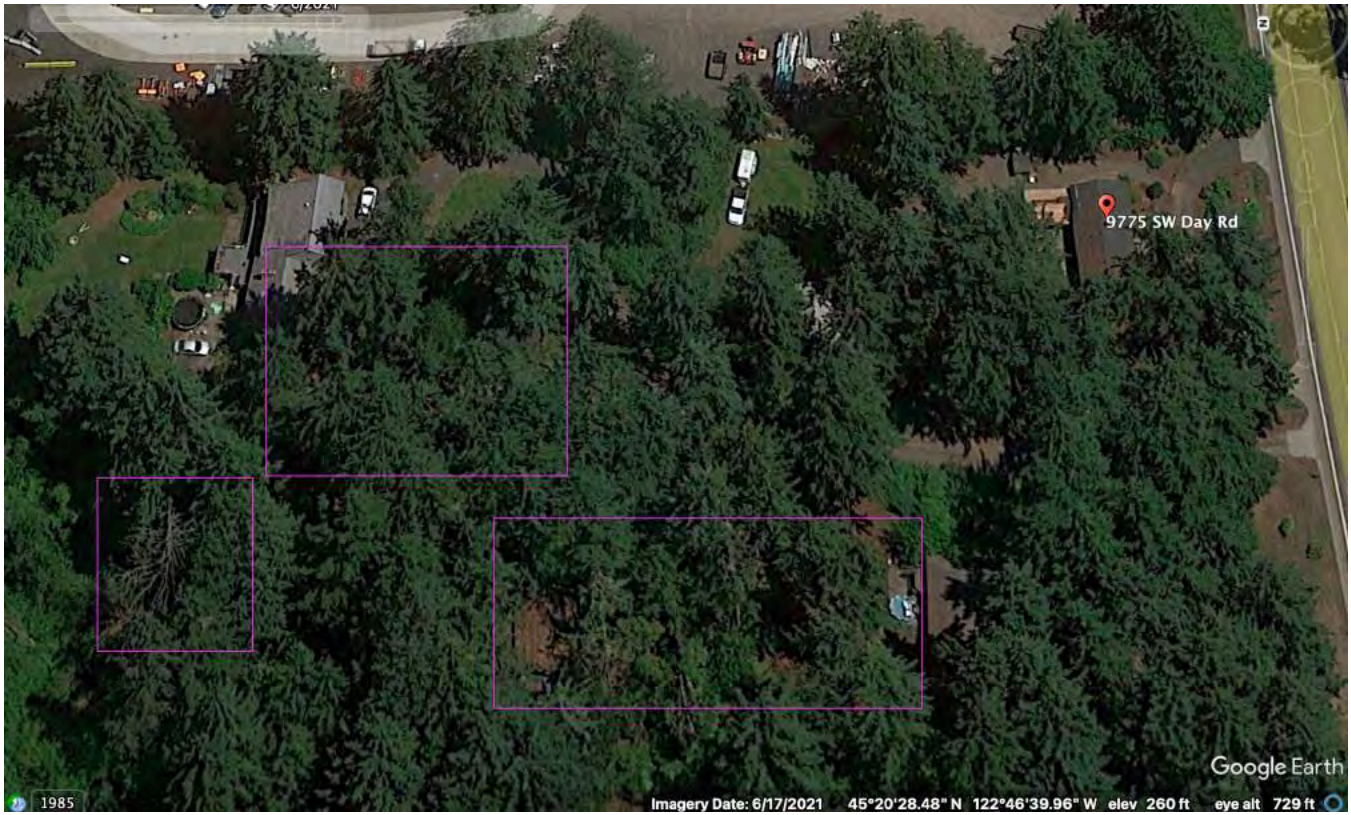


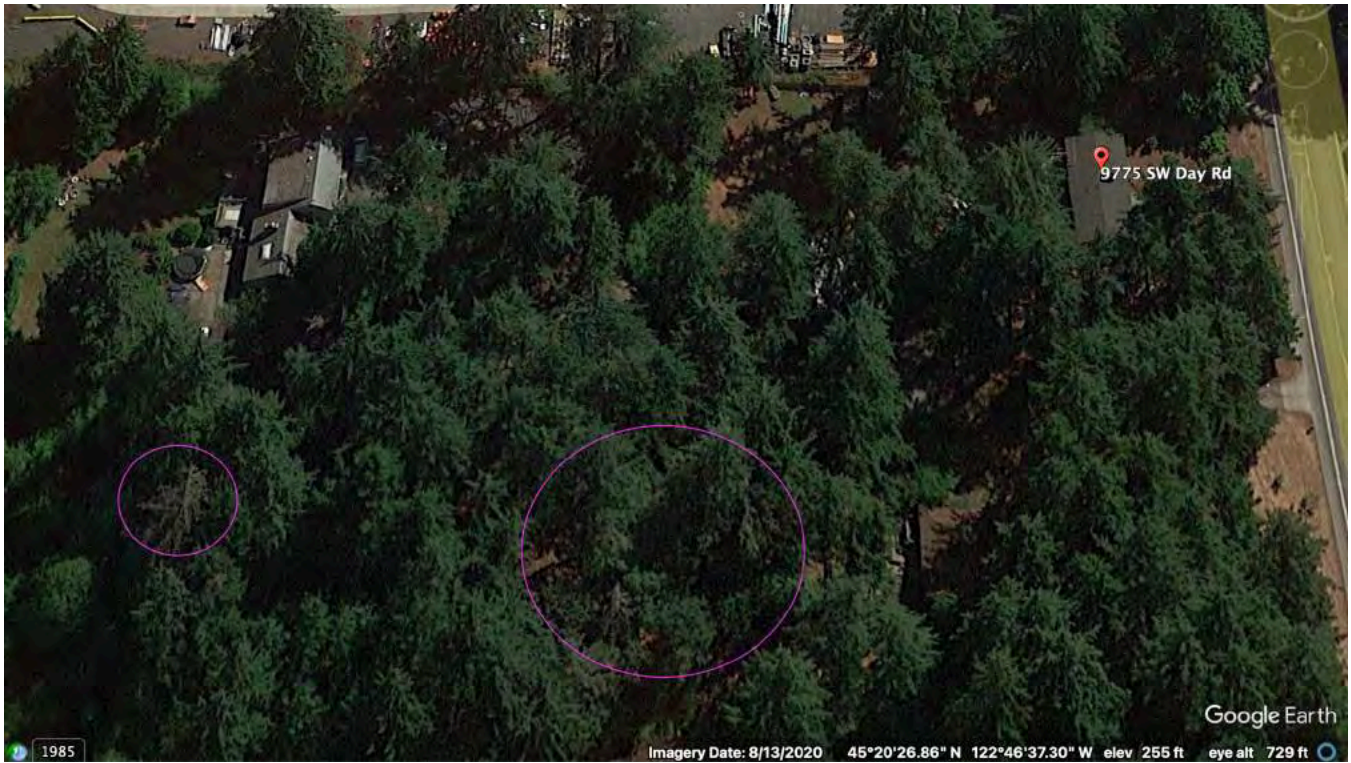


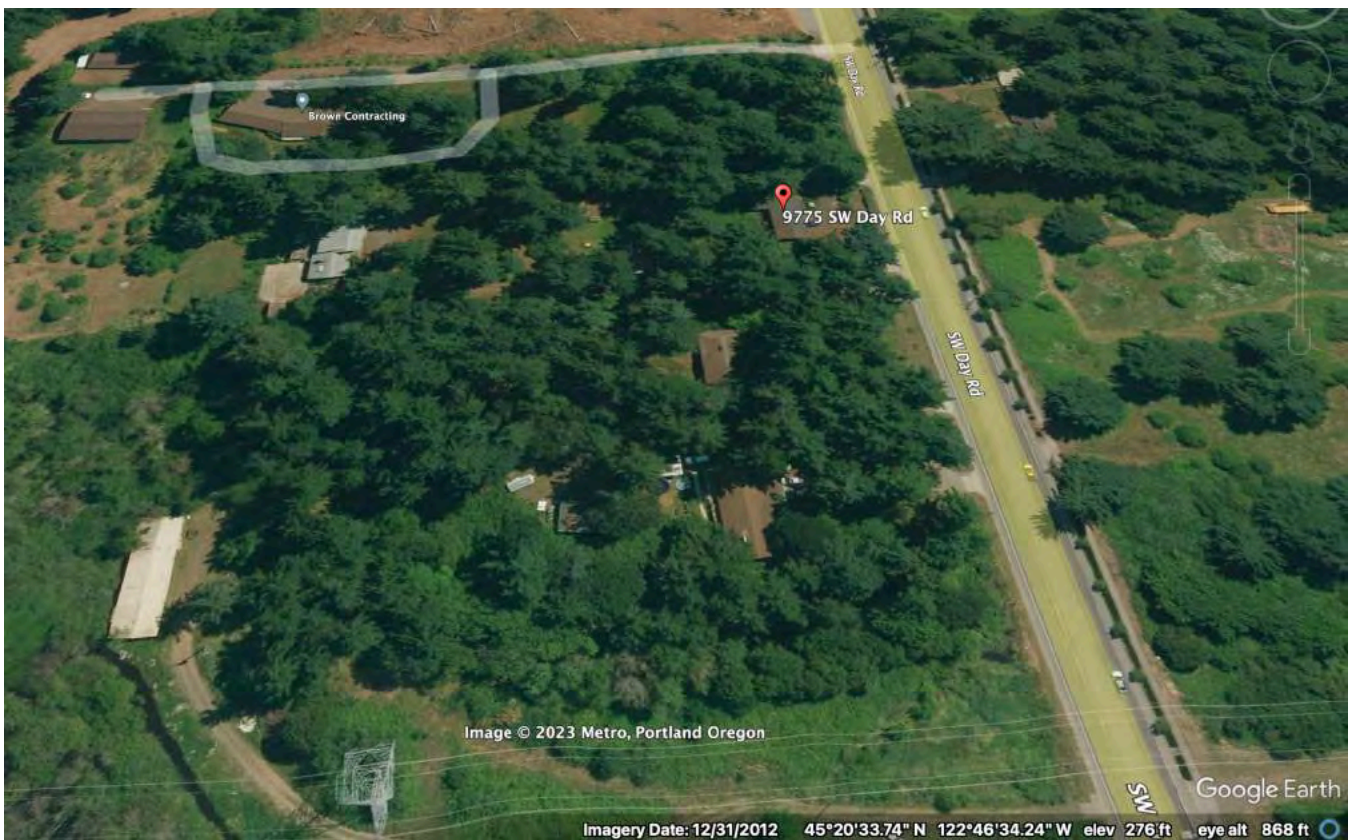


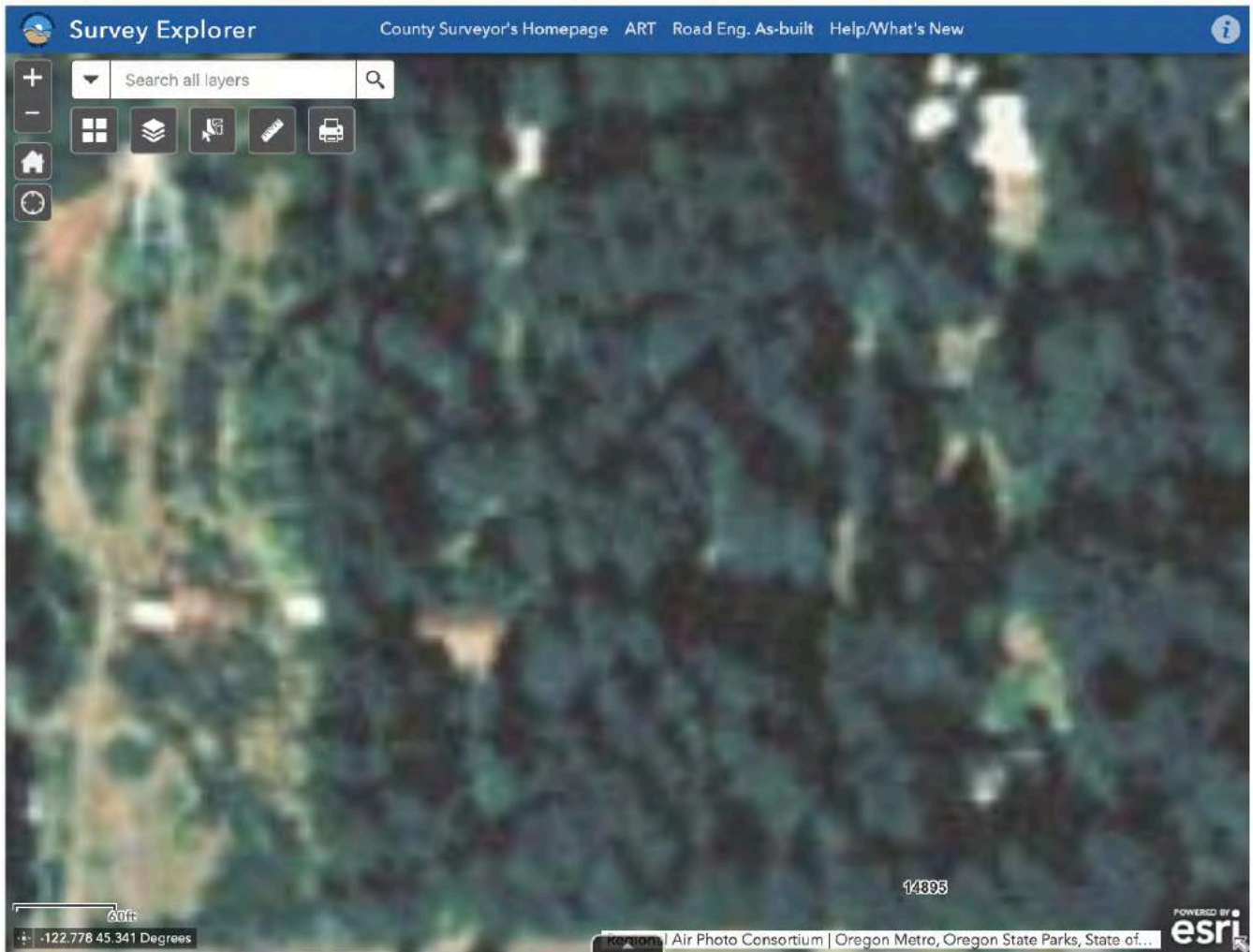
### Appendix C - Aerial Imagery





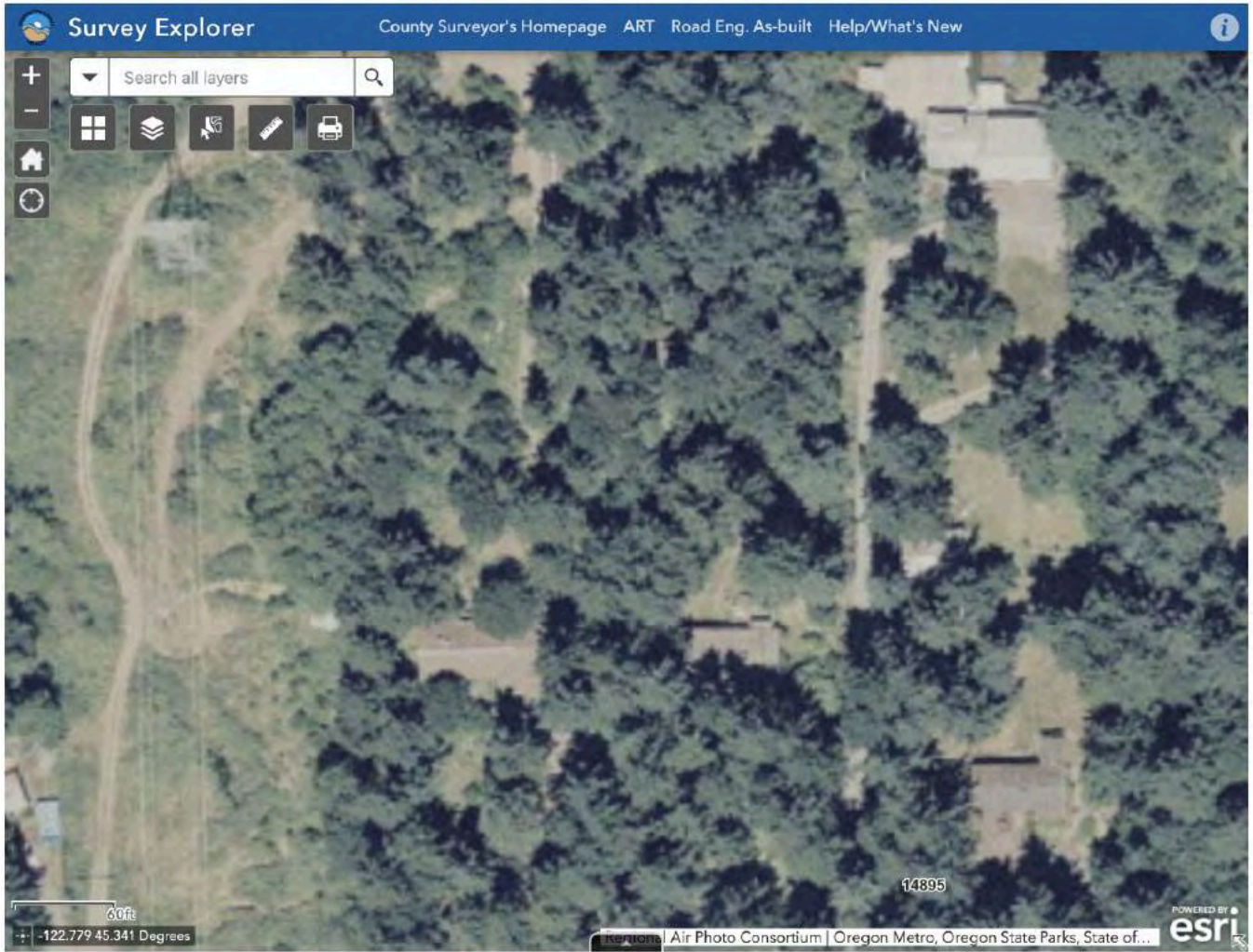






1997

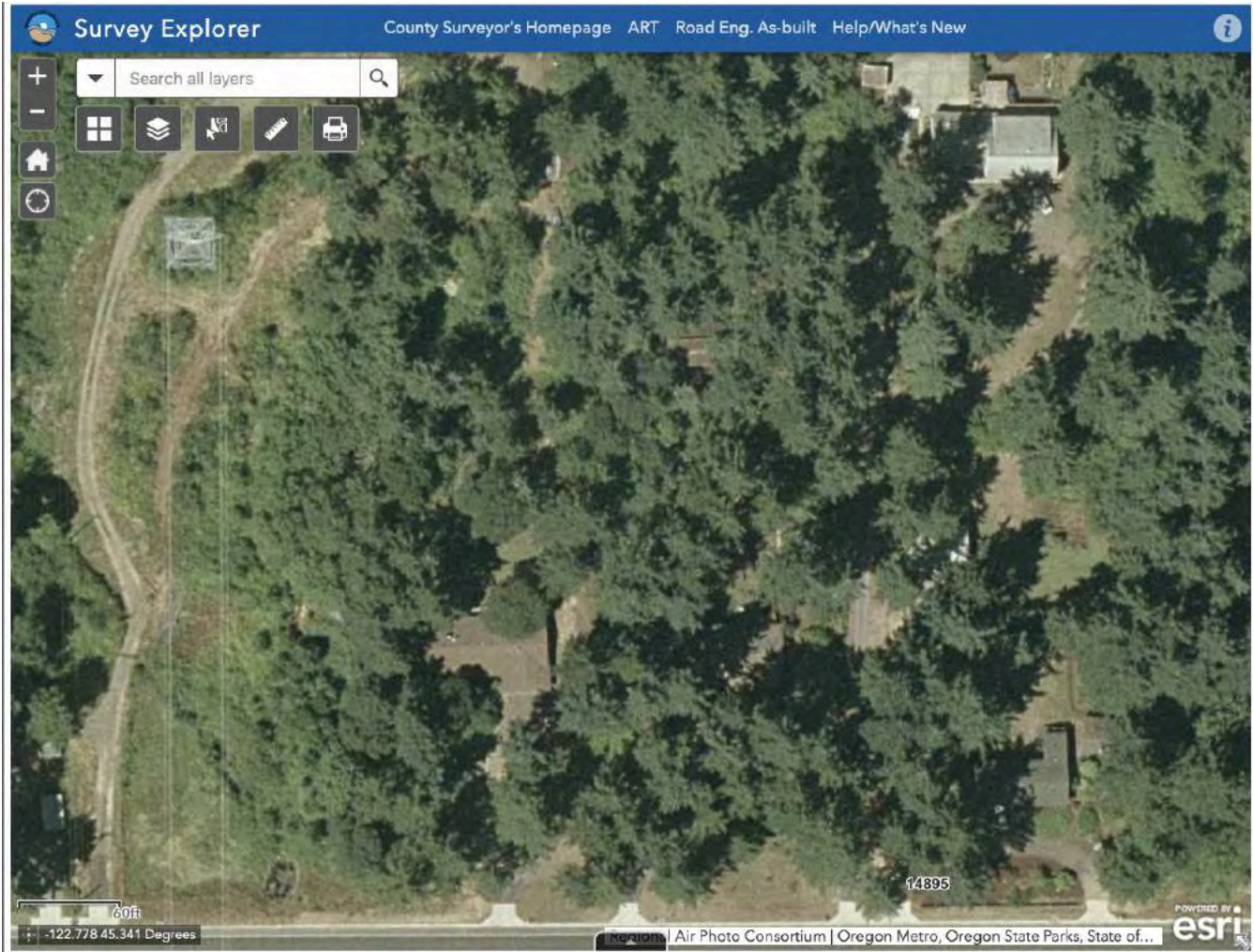




2000

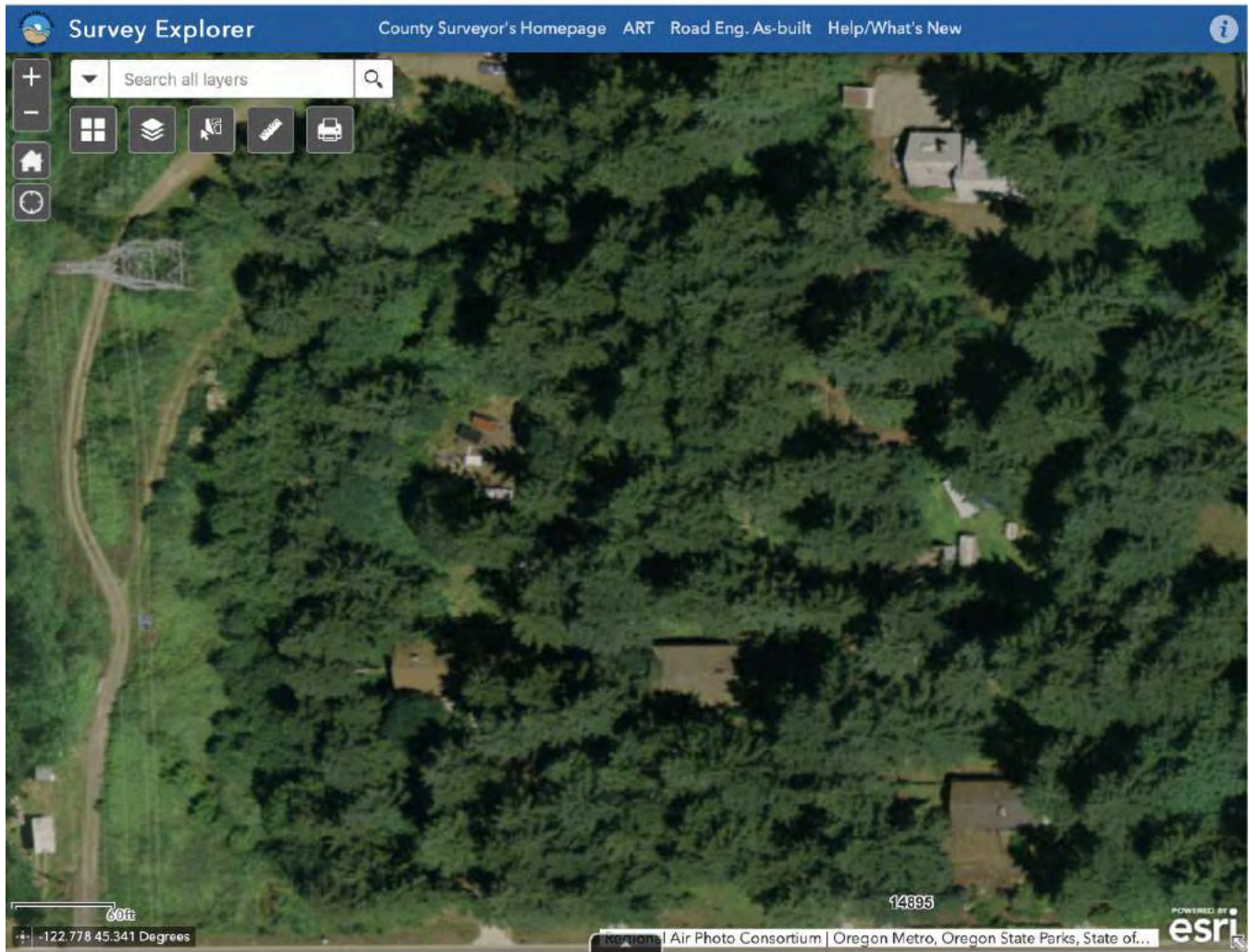






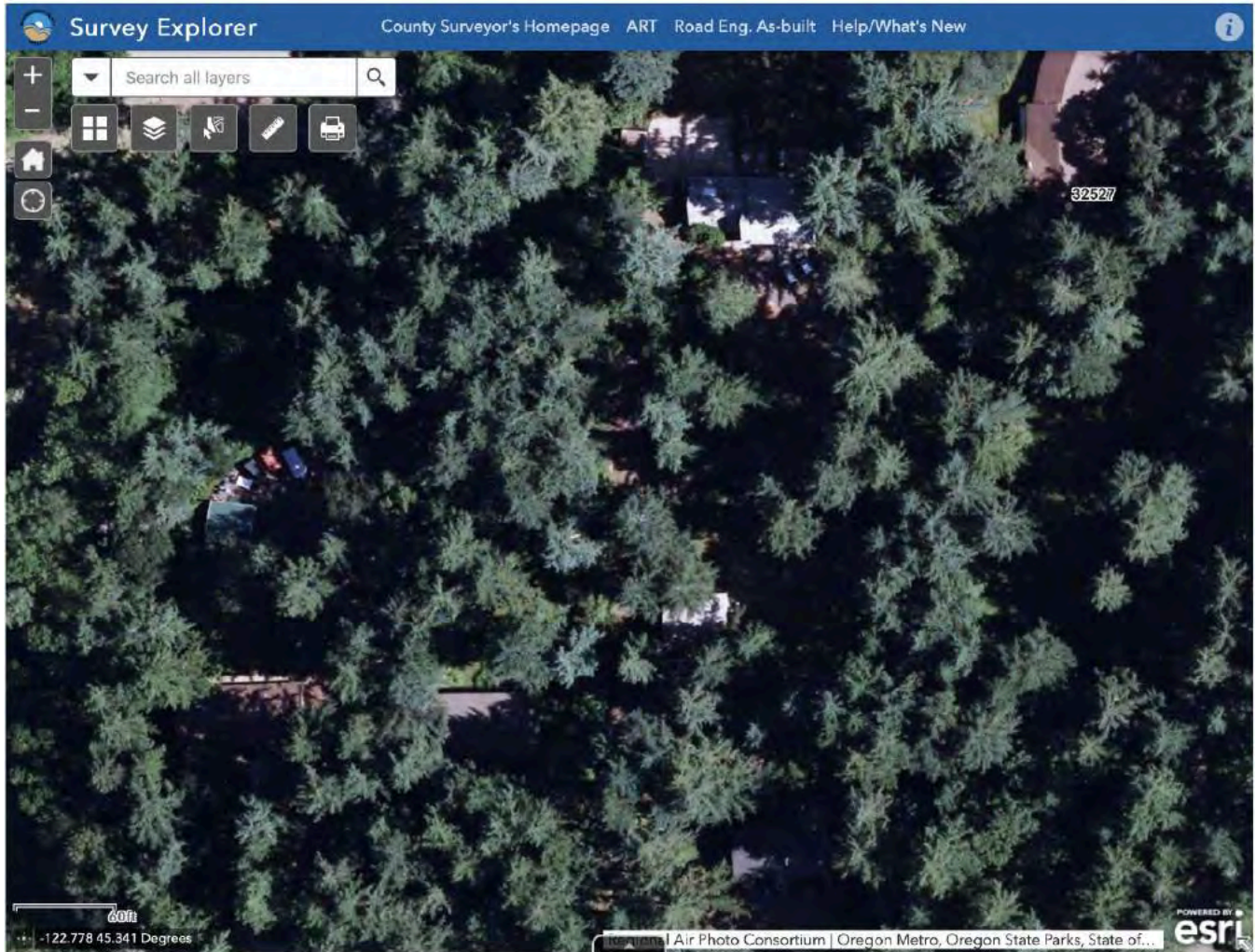
2003





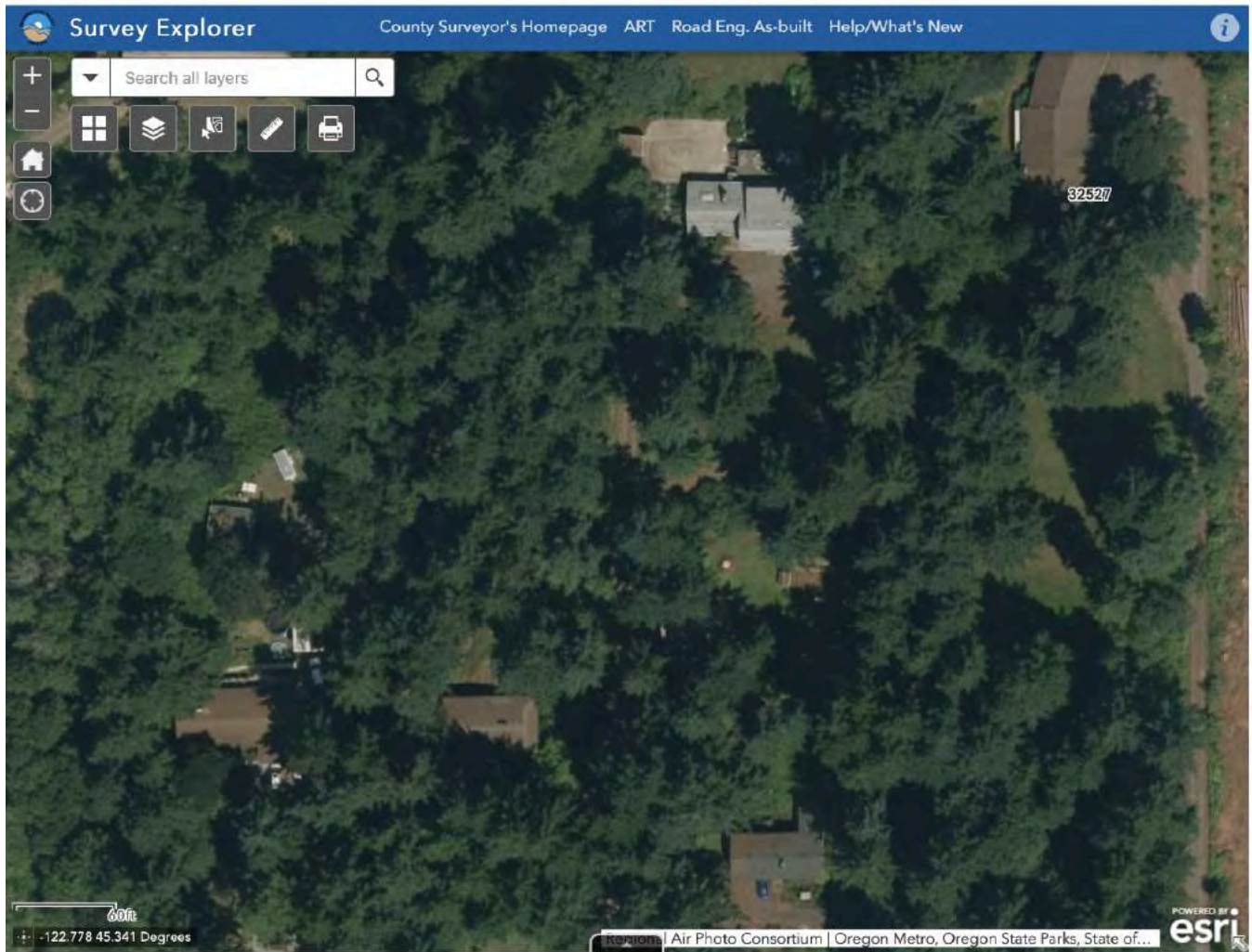
2006





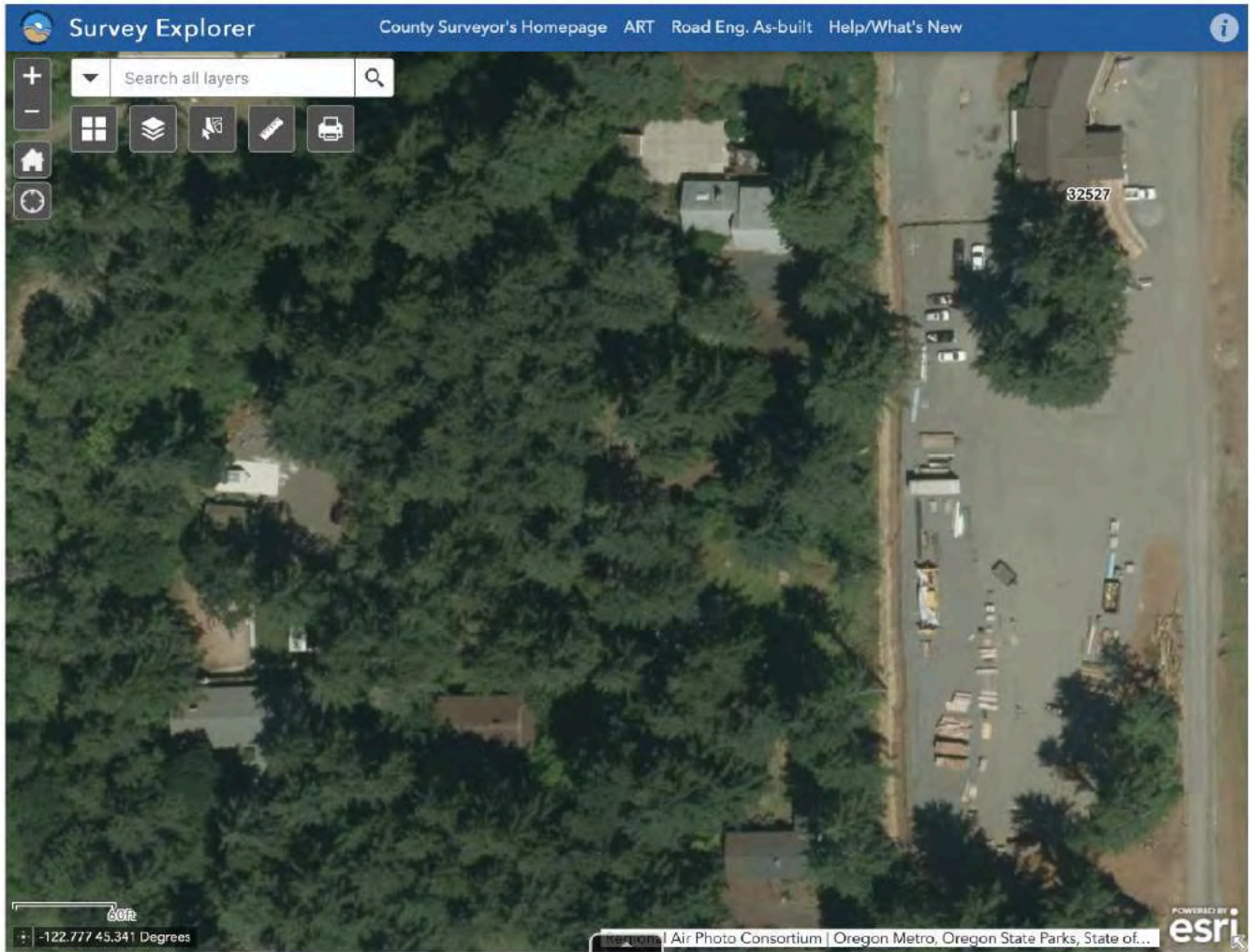
2009





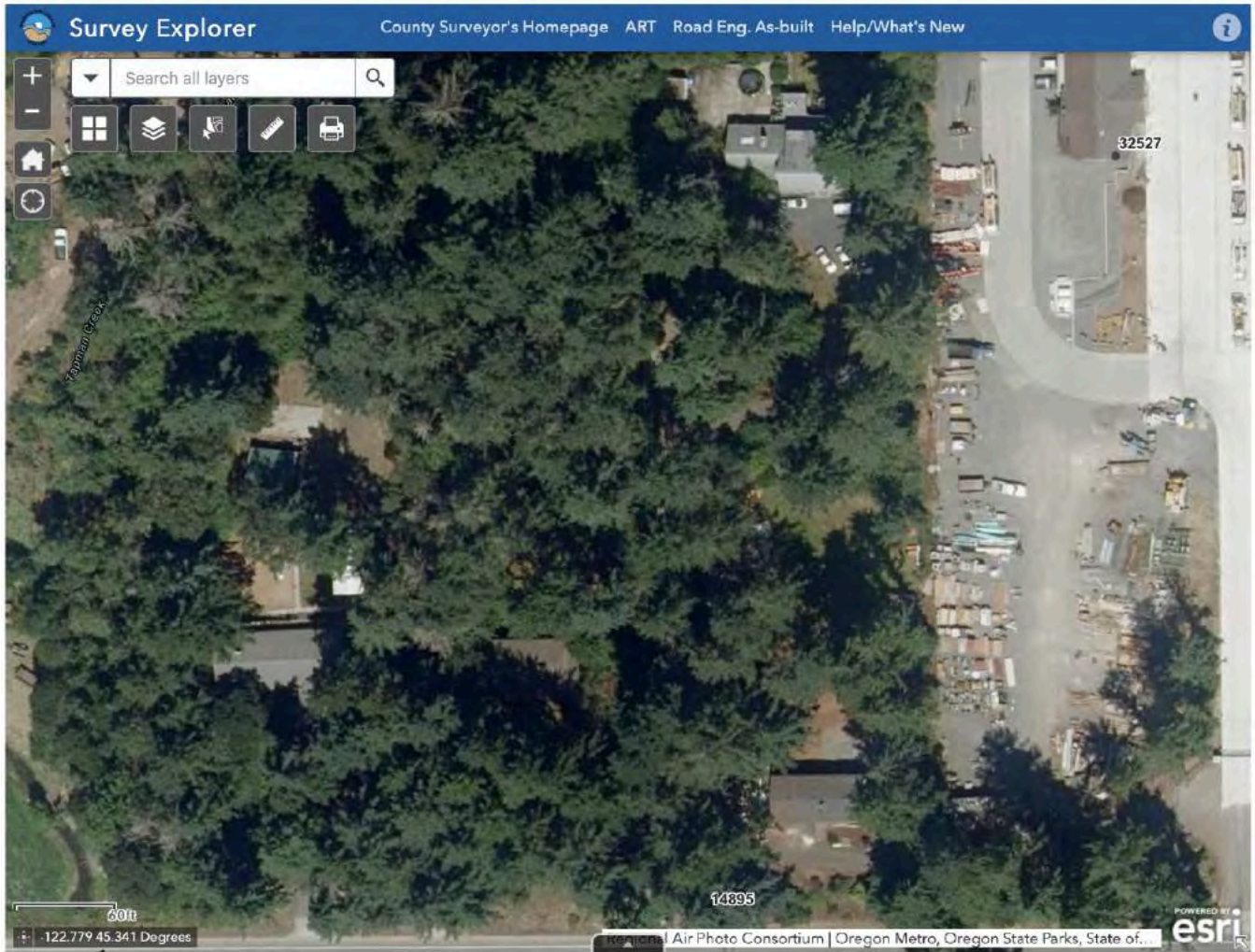
2013





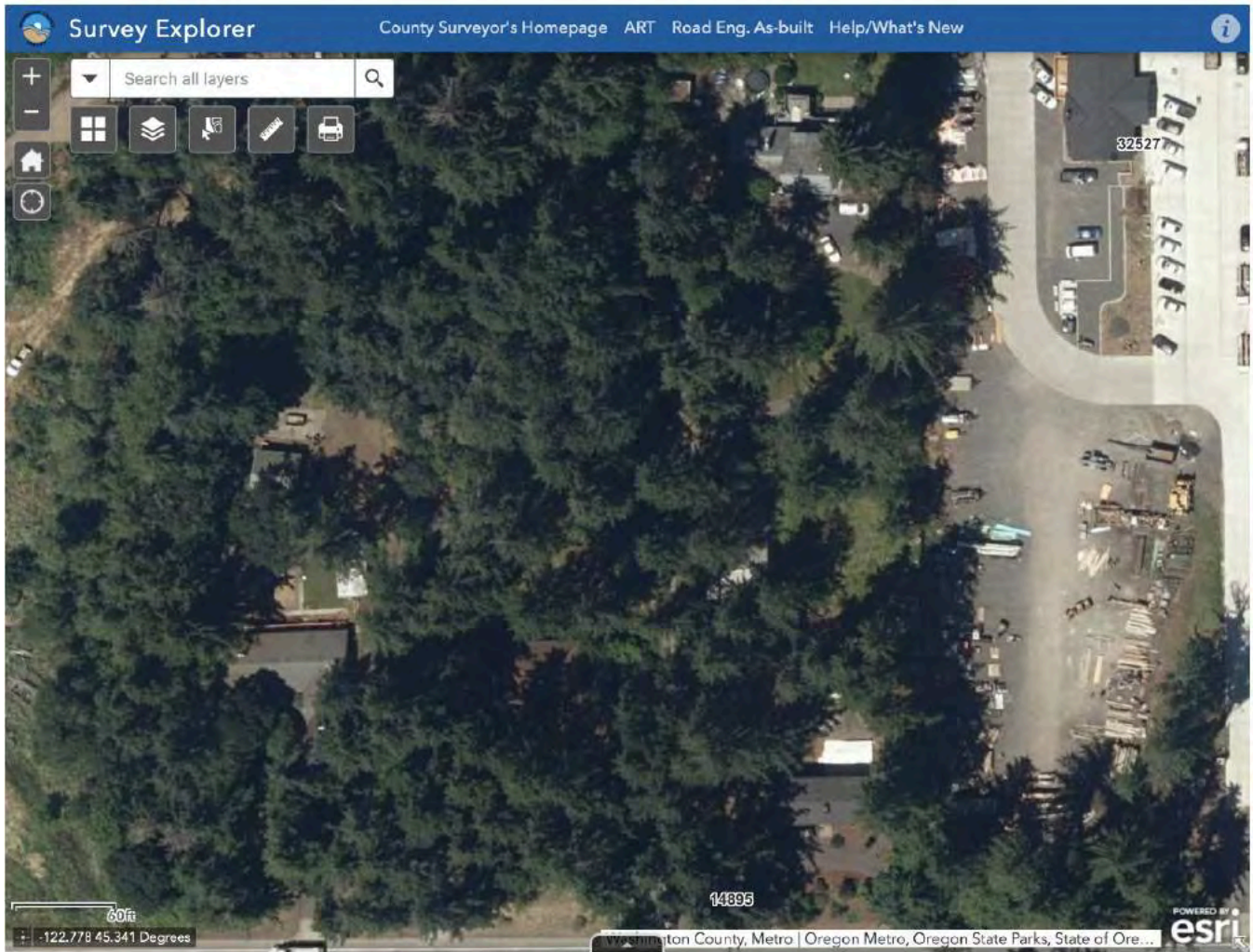
2016





2020





2019



**Appendix D - Laboratory Report**

file:///C:/Users/monfets/Desktop/MultiSampleReply\_2023-08-21T14...



**Oregon State University**

**OSU Botany and Plant Pathology**  
 Attn: Plant Clinic  
 2701 SW Campus Way  
 Corvallis, OR 97331  
 Phone: 541-737-3472  
 Email: sahakivi@oregonstate.edu

**PLANT SPECIMEN DIAGNOSTIC REPORT Specimen # 2023-1302**

SUBMITTED BY Chris Whitman Integrated ARB Solutions P.O. Box 68012 Portland, OR 97267 chris@integratedarbsolutions.com		PLANT Douglas-fir ( <i>Pseudotsuga menziesii</i> )	METHOD SUBMITTED WALK-IN
PHONE (971) 335-1414		COUNTY CLACKAMAS, OR	CLASS NATIVE PLANT
CONDITION UPON ARRIVAL		INTERNAL LAB NO.	LAB FEE \$100.00
GENERAL OBSERVATIONS [Submitter Comments:] Testing root and soil for <i>Phellinus weirii</i> and <i>Phaeolus schweinitzii</i> .		PLANT MATERIAL	REPLY FROM LAB August 18, 2023
		DIAGNOSTICIAN(S) Victor Sahakian	RECEIVED BY LAB July 26, 2023
		DIAGNOSTIC TECHNIQUE(S) <input type="checkbox"/> Bioassay <input type="checkbox"/> Biochemical <input type="checkbox"/> Culture <input type="checkbox"/> Image <input type="checkbox"/> Incubation <input type="checkbox"/> Lab Test <input checked="" type="checkbox"/> Microscope <input checked="" type="checkbox"/> Molecular <input type="checkbox"/> Nematode Extraction <input type="checkbox"/> Serological <input type="checkbox"/> Soil Analysis <input checked="" type="checkbox"/> Visual Observation	

**Diagnosis/Recommendations**

**Diagnosis:** Laminated root rot; Wood rot fungus (*Phellinus weirii*)  
**Category:** NOT DETECTED

**Diagnosis:** Red root and butt rot (*Phaeolus schweinitzii*)  
**Category:** NOT DETECTED

**Comments:** Thank you for sending Douglas fir roots and wood pieces mixed with soil for testing. We did not observe any rhizomorphs or fruiting bodies in the sample material.

Composite sample of root and wood tissue tested **negative** for both *Phellinus weirii* and *Phaeolus schweinitzii*.

Kind regards,  
 Victor Sahakian





Questions or comments about this service should be directed to Victor Sahakian, Plant Clinic Interim Director at sahakivi@oregonstate.edu.

Mention or omission of product names does not imply endorsement or exclusion; product names are included as examples only. Always read, understand, and follow all label instructions including safety precautions, required personal protective equipment (PPE), range of target organisms, rates of application, risks of phytotoxicity, and compatibility with other chemicals before application. The applicator assumes all liability for following the label and any application activities or outcomes.

Oregon has a broad open-records law. Any email communications to/from this address may be subject to public records requests.





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University

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2701 SW Campus Way  
Corvallis, OR 97331  
Phone: 541-737-3472  
Email: sahakivi@oregonstate.edu

**PLANT SPECIMEN DIAGNOSTIC REPORT Specimen # 2023-1303**

SUBMITTED BY Chris Whitman Integrated ARB Solutions P.O. Box 68012 Portland, OR 97267 chris@integratedarbsolutions.com		PLANT Douglas-fir ( <i>Pseudotsuga menziesii</i> )	METHOD SUBMITTED WALK-IN
PHONE (971) 335-1414		VARIETY Q2	CLASS NATIVE PLANT
COUNTY CLACKAMAS, OR	INTERNAL LAB NO.	LAB FEE \$72.00	REPLY FROM LAB August 18, 2023
CONDITION UPON ARRIVAL	PLANT MATERIAL	RECEIVED BY LAB July 26, 2023	
GENERAL OBSERVATIONS [Submitter Comments:] Testing root and soil for <i>Phellinus weirii</i> and <i>Phaeolus schweinitzii</i> .	DIAGNOSTICIAN(S) Victor Sahakian	DIAGNOSTIC TECHNIQUE(S)	
	<input type="checkbox"/> Bioassay <input type="checkbox"/> Biochemical <input type="checkbox"/> Culture <input type="checkbox"/> Image	<input type="checkbox"/> Incubation <input type="checkbox"/> Lab Test <input checked="" type="checkbox"/> Microscope <input checked="" type="checkbox"/> Molecular	<input type="checkbox"/> Nematode Extraction <input type="checkbox"/> Serological <input type="checkbox"/> Soil Analysis <input checked="" type="checkbox"/> Visual Observation

**Diagnosis/Recommendations**

**Diagnosis:** Red root and butt rot (*Phaeolus schweinitzii*)

**Category:** NOT DETECTED

**Diagnosis:** Laminated root rot; Wood rot fungus (*Phellinus weirii*)

**Category:** NOT DETECTED

**Comments:** Thank you for sending Douglas fir roots and wood pieces mixed with soil for testing. There was extensive mycelial growth on plant material with white rhizomorphs present. We did not observe any fruiting bodies in the sample material.

Composite sample of root and wood tissue tested **negative** for both *Phellinus weirii* and *Phaeolus schweinitzii*.

Kind regards,  
Victor Sahakian



Questions or comments about this service should be directed to Victor Sahakian, Plant Clinic Interim Director at sahakivi@oregonstate.edu.

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Corvallis, OR 97331  
Phone: 541-737-3472  
Email: sahakivi@oregonstate.edu

**PLANT SPECIMEN DIAGNOSTIC REPORT Specimen # 2023-1304**

SUBMITTED BY Chris Whitman Integrated ARB Solutions P.O. Box 68012 Portland, OR 97267 chris@integratedarbsolutions.com		PLANT Douglas-fir ( <i>Pseudotsuga menziesii</i> )	METHOD SUBMITTED WALK-IN
VARIETY Q3		INTERNAL LAB NO.	LAB FEE \$72.00
PHDNE (971) 335-1414	COUNTY CLACKAMAS, OR	PLANT MATERIAL	CLASS NATIVE PLANT
CONDITION UPON ARRIVAL		DIAGNOSTICIAN(S) Victor Sahakian	REPLY FROM LAB August 21, 2023
GENERAL OBSERVATIONS [Submitter Comments:] Testing root and soil for <i>Phellinus weirii</i> and <i>Phaeolus schweinitzii</i> .		DIAGNOSTIC TECHNIQUE(S)	RECEIVED BY LAB July 26, 2023
		<input type="checkbox"/> Bioassay	<input type="checkbox"/> Incubation
		<input type="checkbox"/> Biochemical	<input type="checkbox"/> Lab Test
		<input type="checkbox"/> Culture	<input checked="" type="checkbox"/> Microscope
		<input type="checkbox"/> Image	<input checked="" type="checkbox"/> Molecular
			<input type="checkbox"/> Nematode Extraction
			<input type="checkbox"/> Serological
			<input type="checkbox"/> Soil Analysis
			<input checked="" type="checkbox"/> Visual Observation

**Diagnosis/Recommendations**

**Diagnosis:** Red root and butt rot (*Phaeolus schweinitzii*)

**Category:** NOT DETECTED

**Comments:** Thank you for sending Douglas fir roots and wood pieces mixed with soil for testing. We did not observe any rhizomorphs or fruiting bodies in the sample material.

Composite sample of root and wood tissue tested **negative** for *Phellinus weirii* and *Phaeolus schweinitzii*.

Kind regards,  
Victor Sahakian

**Diagnosis:** Laminated root rot; Wood rot fungus (*Phellinus weirii*)

**Category:** NOT DETECTED

**Comments:** Thank you for sending Douglas fir roots and wood pieces mixed with soil for testing. We did not observe any rhizomorphs, mycelia or fruiting bodies in the sample material.

Composite sample of root and wood tissue tested negative for both *Phellinus weirii* and *Phaeolus schweinitzii*.

Kind regards,  
Victor Sahakian

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Questions or comments about this service should be directed to Victor Sahakian, Plant Clinic Interim Director at sahakivi@oregonstate.edu.



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Phone: 541-737-3472  
Email: sahakivi@oregonstate.edu

**PLANT SPECIMEN DIAGNOSTIC REPORT Specimen # 2023-1305**

SUBMITTED BY Chris Whitman Integrated ARB Solutions P.O. Box 68012 Portland, OR 97267 chris@integratedarbsolutions.com		PLANT Douglas-fir ( <i>Pseudotsuga menziesii</i> )	METHOD SUBMITTED WALK-IN
PHDNE (971) 335-1414		VARIETY Q4	CLASS NATIVE PLANT
COUNTY CLACKAMAS, OR	INTERNAL LAB NO.	LAB FEE \$72.00	REPLY FROM LAB August 18, 2023
CONDITION UPON ARRIVAL	PLANT MATERIAL	RECEIVED BY LAB July 26, 2023	
GENERAL OBSERVATIONS [Submitter Comments:] Testing root and soil for <i>Phellinus weirii</i> and <i>Phaeolus schweinitzii</i> .	DIAGNOSTICIAN(S) Victor Sahakian	DIAGNOSTIC TECHNIQUE(S)	
	<input type="checkbox"/> Bioassay <input type="checkbox"/> Biochemical <input type="checkbox"/> Culture <input type="checkbox"/> Image	<input type="checkbox"/> Incubation <input type="checkbox"/> Lab Test <input checked="" type="checkbox"/> Microscope <input checked="" type="checkbox"/> Molecular	<input type="checkbox"/> Nematode Extraction <input type="checkbox"/> Serological <input type="checkbox"/> Soil Analysis <input checked="" type="checkbox"/> Visual Observation

**Diagnosis/Recommendations**

**Diagnosis:** Red root and butt rot (*Phaeolus schweinitzii*)

**Category:** NOT DETECTED

**Comments:** Thank you for sending Douglas fir roots and wood pieces mixed with soil for testing. We did not observe any rhizomorphs or fruiting bodies in the sample material.

Composite sample of root and wood tissue tested **negative** for *Phellinus weirii* and *Phaeolus schweinitzii*.

Kind regards,  
Victor Sahakian

**Diagnosis:** Laminated root rot; Wood rot fungus (*Phellinus weirii*)

**Category:** NOT DETECTED

**Comments:** Thank you for sending Douglas fir roots and wood pieces mixed with soil for testing. The sample material had quite rotted. No mycelia, rhizomorphs or fruiting bodies were observed.

Composite sample of root and wood tissue tested **negative** for both *Phellinus weirii* and *Phaeolus schweinitzii*.

Kind regards,  
Victor Sahakian

Questions or comments about this service should be directed to Victor Sahakian, Plant Clinic Interim Director at sahakivi@oregonstate.edu.



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---





**Oregon State University**

**OSU Botany and Plant Pathology**

Attn: Plant Clinic  
2701 SW Campus Way  
Corvallis, OR 97331  
Phone: 541-737-3472

Email: ohkuram@oregonstate.edu

**PLANT SPECIMEN DIAGNOSTIC REPORT Specimen # 2023-1841**

**SUBMITTED BY**

Chris Whitman  
Integrated ARB Solutions  
P.O. Box 68012  
Portland, OR 97267  
chris@integratedarbsolutions.com

**PLANT**

Douglas-fir (*Pseudotsuga menziesii*)

**VARIETY**

**INTERNAL LAB NO.**

**LAB FEE**

\$87.00

**PLANT MATERIAL**

**DIAGNOSTICIAN(S)**

Mana Ohkura  
Wendy Sutton  
Victor Sahakian

**DIAGNOSTIC TECHNIQUE(S)**

- Bioassay
- Biochemical
- Culture
- Elongation
- Incubation
- Lab Test
- Microscope
- Molecular
- Nematode Extraction
- Serological
- Soil Analysis
- Visual Observation

**METHOD SUBMITTED**

MAIL

**CLASS**

NATIVE PLANT

**REPLY FROM LAB**

November 22, 2023

**RECEIVED BY LAB**

October 18, 2023

**PHONE**

(971) 335-1414

**COUNTY**

WASHINGTON, OR

**CONDITION UPON ARRIVAL**

**GENERAL OBSERVATIONS**

**Diagnosis/Recommendations**

**Diagnosis:** Red root and butt rot (*Phaeolus schweinitzii*)

**Category:** FUNGAL

**Comments:** Thank you for submitting the conk from Douglas fir.  
We tested the conk for *Phaeolus schweinitzii* using PCR and the result was positive.

Here is some information on managing the disease:  
<https://pnwhandbooks.org/node/3770/print>

Please let me know if you have any questions.  
Kind regards,  
Mana Ohkura and Victor Sahakian

Questions or comments about this service should be directed to Mana Ohkura, Plant Clinic Director, at ohkuram@oregonstate.edu.

Invoices are sent separately.

Mention or omission of product names does not imply endorsement or exclusion; product names are included as examples only. Always read, understand, and follow all label instructions before application. The applicator assumes all liability for following the label and any application activities or outcomes.

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**Oregon State University**

**OSU Botany and Plant Pathology**

Attn: Plant Clinic  
 2701 SW Campus Way  
 Corvallis, OR 97331  
 Phone: 541-737-3472  
 Email: ohkuram@oregonstate.edu

**PLANT SPECIMEN DIAGNOSTIC REPORT Specimen # 2023-1840**

**SUBMITTED BY**

Chris Whitman  
 Integrated ARB Solutions  
 P.O. Box 68012  
 Portland, OR 97267  
 chris@integratedarbsolutions.com

**PLANT**

Douglas-fir (*Pseudotsuga menziesii*)

**VARIETY**

**INTERNAL LAB NO.**

**LAB FEE**

\$87.00

**PLANT MATERIAL**

**DIAGNOSTICIAN(S)**

Mana Ohkura  
 Wendy Sutton  
 Victor Sahakian

**DIAGNOSTIC TECHNIQUE(S)**

- |                                      |   |  |
|--------------------------------------|---|--|
| <input type="checkbox"/> Bioassay    | <input type="checkbox"/> Incubation           | <input type="checkbox"/> Nematode Extraction           |
| <input type="checkbox"/> Biochemical | <input type="checkbox"/> Lab Test             | <input type="checkbox"/> Serological                   |
| <input type="checkbox"/> Culture     | <input type="checkbox"/> Microscope           | <input type="checkbox"/> Soil Analysis                 |
| <input type="checkbox"/> Image       | <input checked="" type="checkbox"/> Molecular | <input checked="" type="checkbox"/> Visual Observation |

**METHOD SUBMITTED**

MAIL

**CLASS**

NATIVE PLANT

**REPLY FROM LAB**

November 22, 2023

**RECEIVED BY LAB**

October 18, 2023

**PHONE**

(971) 335-1414

**COUNTY**

WASHINGTON, OR

**CONDITION UPON ARRIVAL**

**GENERAL OBSERVATIONS**

**Diagnosis/Recommendations**

**Diagnosis:** Red root and butt rot (*Phaeolus schweinitzii*)

**Category:** FUNGAL

**Comments:** Thank you for submitting the conk from Douglas fir.  
 We tested the conk for *Phaeolus schweinitzii* using PCR and the result was positive.

Here is some information on managing the disease:  
<https://pnwhandbooks.org/node/3770/print>

Please let me know if you have any questions.  
 Kind regards,  
 Mana Ohkura and Victor Sahakian

Questions or comments about this service should be directed to Mana Ohkura, Plant Clinic Director, at ohkuram@oregonstate.edu.

Invoices are sent separately.

Mention or omission of product names does not imply endorsement or exclusion; product names are included as examples only. Always read, understand, and follow all label instructions before application. The applicator assumes all liability for following the label and any application activities or outcomes.

Oregon has a broad open-records law. Any email communications to/from this address may be subject to public records requests.







**Oregon State University**

**OSU Botany and Plant Pathology**

Attn: Plant Clinic  
 2701 SW Campus Way  
 Corvallis, OR 97331  
 Phone: 541-737-3472  
 Email: ohkuram@oregonstate.edu

**PLANT SPECIMEN DIAGNOSTIC REPORT Specimen # 2023-1839**

**SUBMITTED BY**

Chris Whitman  
 Integrated ARB Solutions  
 P.O. Box 68012  
 Portland, OR 97267  
 chris@integratedarbsolutions.com

**PHONE**

(971) 335-1414

**COUNTY**

WASHINGTON, OR

**CONDITION UPON ARRIVAL**

**GENERAL OBSERVATIONS**

[Submitter Comments]: PCR Test for specific pathogen that is the cause of decay.

**PLANT**

Douglas-fir (*Pseudotsuga menziesii*)

**VARIETY**

**INTERNAL LAB NO.**

**LAB FEE**

\$87.00

**PLANT MATERIAL**

**DIAGNOSTICIAN(S)**

Mana Ohkura  
 Wendy Sutton  
 Victor Sahakian

**DIAGNOSTIC TECHNIQUE(S)**

- Bioassay
- Biochemical
- Culture
- Fringe
- Incubation
- Lab Test
- Microscope
- Molecular
- Nematode Extraction
- Serological
- Soil Analysis
- Visual Observation

**METHOD SUBMITTED**

MAIL

**CLASS**

NATIVE PLANT

**REPLY FROM LAB**

November 22, 2023

**RECEIVED BY LAB**

October 18, 2023

**Diagnosis/Recommendations**

**Diagnosis:** Red root and butt rot (*Phaeolus schweinitzii*)

**Category:** FUNGAL

**Comments:** Thank you for submitting the Douglas fir sample.  
 We tested the root for *Phaeolus schweinitzii* using PCR and the result was positive.

Here is some information on managing the disease:  
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Please let me know if you have any questions.  
 Kind regards,  
 Mana Ohkura and Victor Sahakian

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## **Appendix E - Assumptions and Limiting Conditions**

Knowledge in this matter is limited to arboriculture. This report is not intended to be legal advice. I do not and cannot guarantee the safety, health, or condition of the subject trees. No warranty or guarantee is expressed or implied. The trees in this report are subject to nature and forces beyond human control. There can be no guarantee that problems or deficiencies may not arise in the future.

Arborists are experts who use their knowledge, education, training, and experience to examine trees, recommend measures to enhance them, provide guidance, and attempt to mitigate the risk of living trees. The client is ultimately responsible for choosing whether to accept or disregard the recommendations of the arborist, or to seek additional advice.

Arborists cannot detect every condition that could possibly lead to structural failure of a tree. Conditions are often hidden within trees and below ground. Arborists cannot guarantee that a tree will be healthy or safe under all circumstances, or for a specified period of time. It is presumed that all of the historical information and data provided to me regarding the project and the trees is factual. If any information is later revealed to be false or inaccurate, the findings and valuations in this report may be invalidated. Trees can be managed, but they cannot be controlled. To live near trees is to accept some degree of risk. The only way to eliminate all risks associated with trees is to eliminate all trees.

This report is for the exclusive use of the client. No other use is authorized under the signed Consulting Agreement. The client may not distribute or convey this report or the included recommendations to any other person or organization other than those identified in the assignment description without Consultant's written authorization.



## **Exhibit I: Aerial Photography**

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BEFORE

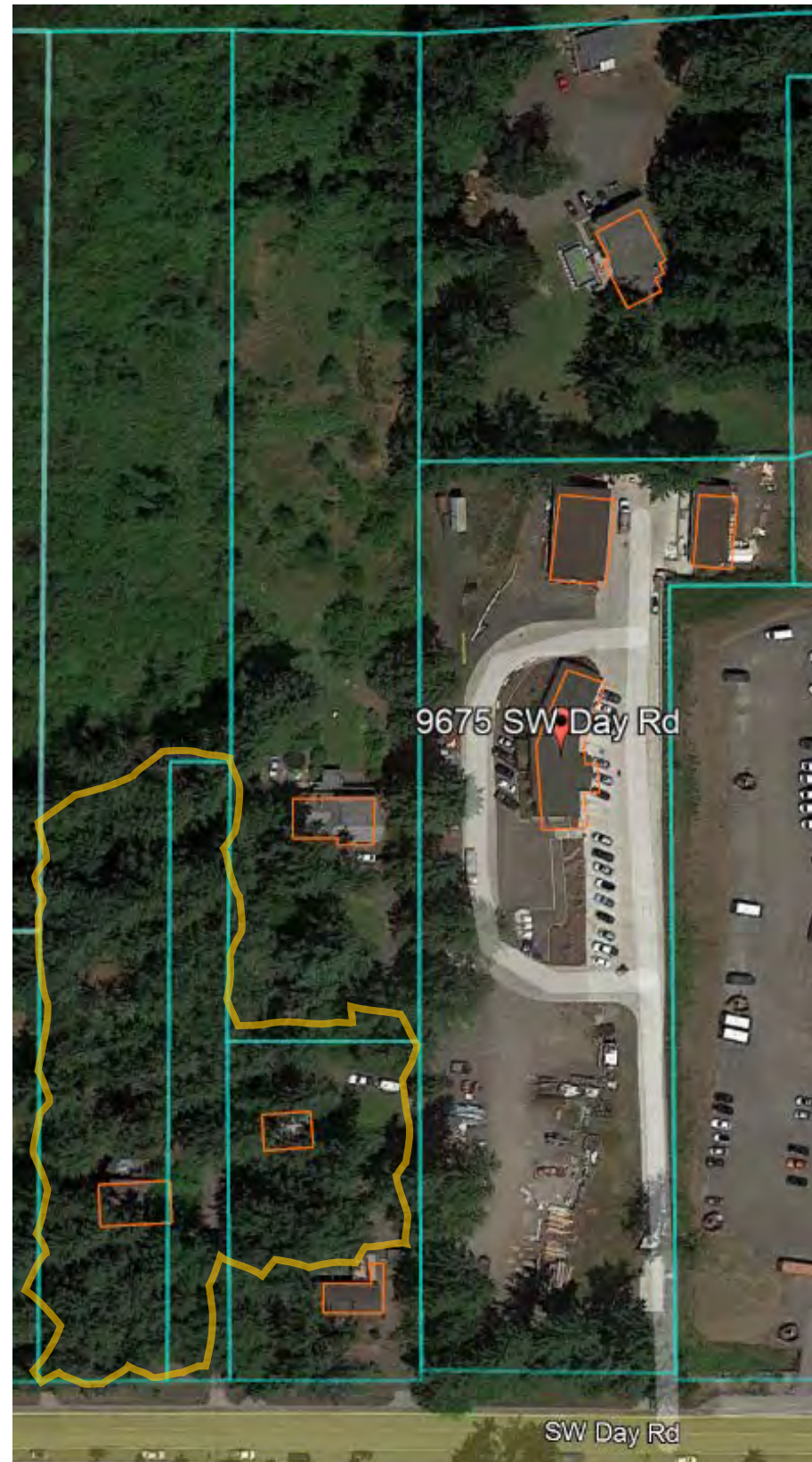


Photo 1: "Before" [Google Earth imagery dated June 17, 2021]

AFTER



Photo 2: "After" [Google Earth imagery dated May 13, 2023]



Tree Planting Area



Photo 3: "Tree Planting Area" [Google Earth imagery dated May 13, 2023]

## Exhibit J [NEW]: Tree Removal Application Enhancement Planting Plan

---

**Date:** 10/24/2023  
**To:** Washington County Planning and Development Services  
**From:** Sonya Templeton, Wetland Scientist  
12965 SW Herman Road, Suite 100  
Tualatin, OR 97062  
**Project Name:** SW Day Road  
**AKS Job No.:** 3916  
**Project Site:** 9675 SW Day Road, Washington County, Oregon  
Washington County Assessor’s Tax Map 3S 10 2B, Tax Lots 302, 303, 309, 310, and 311  
**Subject:** [SW Day Road – Tree Removal Application Enhancement Planting Plan](#)

On December 13, 2022 AKS qualified natural resources staff, Sonya Templeton and Emma Eichhorn conducted a site visit and determined one palustrine scrub-shrub/emergent (PSS/PEM) wetland, referred to as Wetland A, and Metro Title 13 Riparian Habitat exists on the site. Tree removal on-site occurred in April 2022 prior to this application. Based on the December 2022 AKS site visit, it does not appear that trees within the on-site “Waters Area and Wetland and Fish and Wildlife Habitat” (Wetland A) were removed; however, trees within the Title 13 Riparian Habitat were removed. Enhancement to the Title 13 Riparian Habitat (outside of Wetland A) is proposed to replace the functions and values lost from the 2022 tree removal and is shown in Figure 1. Table 1 below includes the planting specifications for the enhancement of ±1,688 square feet of Title 13 Riparian Habitat.

**Table 1: TITLE 13 RIPARIAN HABITAT ENHANCEMENT AREA (±1,688 square feet)**

Scientific Name	Common Name	Size*	Spacing/Seeding Rate	Quantity
<b>Trees (total 20)</b>				
<i>Thuja plicata</i>	western red cedar	1 gallon	10 feet on center	10
<i>Acer macrophyllum</i>	vine maple	1 gallon	10 feet on center	10
<b>Seed Mix</b>				
<i>Bromus carinatus</i>	native California brome	seed	2 lb pls/acre	As needed for bare soil areas >25 square feet
<i>Festuca roemerii</i>	Roemer’s fescue	seed	1 lbs pls/acre	

\*Bare root plants may be substituted for container plants based on availability. If bare root plants are used, they must be planted during the late winter/early spring dormancy period.

**Enhancement Planting Notes\***

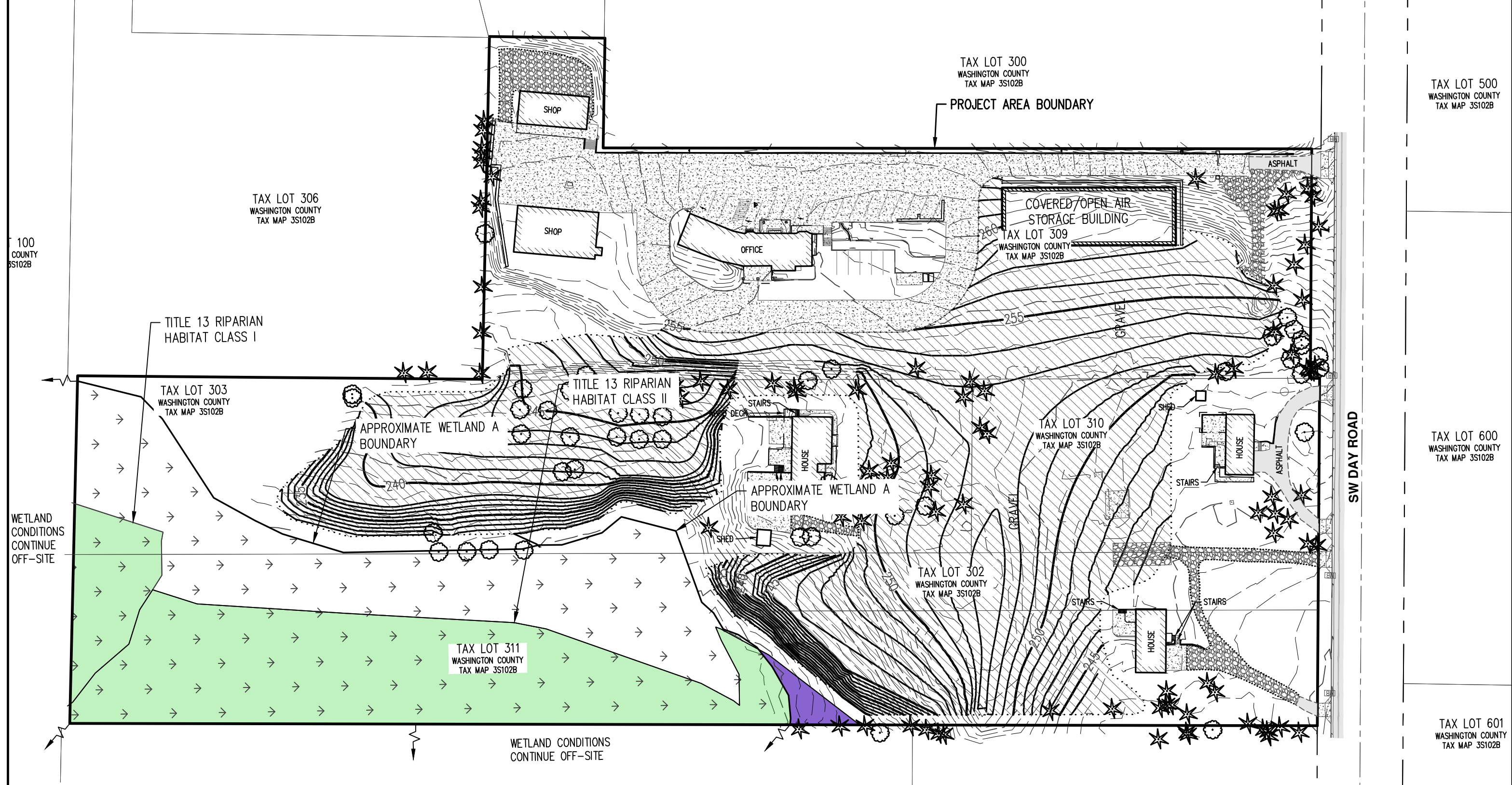
- 1) Prior to installing native enhancement plantings, a targeted removal of non-native/invasive vegetation shall be implemented by the most appropriate means. Invasive species control shall be consistent with Clean Water Services’ June 2019 *Integrated Pest Management (IPM) Plan*. Existing native plants shall be preserved as much as practicable during invasive removal.
- 2) Appropriate native plant selection, along with adequate site preparation and maintenance, reduces the need for irrigation. However, unless site hydrology is currently adequate, a County approved irrigation system or equivalent (i.e., polymer, plus watering) shall be used during the two-year plant establishment period. Watering shall be at a minimum rate of at least one inch per week from June 15 through October 15. Other irrigation techniques, such as deep watering, may be allowed with prior approval by District staff.

- 3) Woody plantings shall be mulched at a minimum of three inches in depth and 18 inches in diameter, to retain moisture and discourage weed growth around newly installed plant material in the Title 13 Riparian Habitat. Appropriate mulches are made from composted bark or leaves that have not been chemically treated.

*\*Recommended Planting Notes were derived from CWS Design & Construction Standards R&O 19-5, amended by R&O 19-22, December 2019 Appendix A Planting Requirements and using best professional judgement. Project area is located outside of CWS jurisdictional boundaries.*

**Attachment:**

Figure 1. Natural Resource Enhancement Site Plan



**LEGEND (COLOR COPY):**

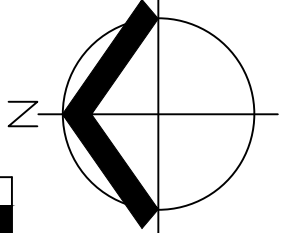
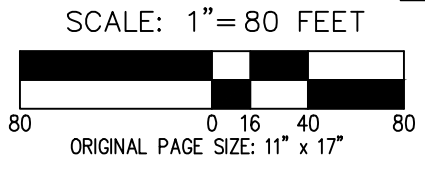
- APPROXIMATE ON-SITE WETLAND A ("WATERS AREAS AND WETLANDS AND FISH AND WILDLIFE HABITAT") TO REMAIN: 104,267 SF± (2.39 ACRES)
- TOTAL ON-SITE TITLE 13 RIPARIAN HABITAT CLASS I AND CLASS II: 58,690 SF± (1.35 ACRES)
- ON-SITE RIPARIAN HABITAT TO BE ENHANCED: 1,688 SF± (0.04 ACRES)\*

AKS ENGINEERING & FORESTRY, LLC (AKS) CONDUCTED A SITE VISIT ON DECEMBER 13, 2022. WETLAND BOUNDARY SHOWN WAS DIGITIZED POST FIELD USING LIDAR DATA, HIGH RESOLUTION AERIAL IMAGERY, AND ON-SITE FIELD OBSERVATIONS. ACCURACY ±20 FT. DATA PLOTS SHOWN WERE LOCATED BY AKS ON DECEMBER 13, 2022 WITH SUB-METER ACCURACY USING A TRIMBLE GEO 7X HANDHELD GPS RECEIVER.

1-FOOT INTERVAL GROUND CONTOURS, EXISTING CONDITIONS, TREE SURVEY OF TREES >6" DBH, AND STUDY AREA BOUNDARY DERIVED FROM AKS LAND SURVEY.

LIMITS OF TITLE 13 RIPARIAN HABITAT CLASS I AND II DERIVED FROM THE METRO DATA RESOURCE CENTER AND FIELD VERIFIED BY AKS ON DECEMBER 13, 2022.

\*ENHANCEMENT AREA IDENTIFIED PER TREES REMOVED WITHIN TITLE 13 RIPARIAN HABITAT AREA.



<b>NATURAL RESOURCE ENHANCEMENT SITE PLAN</b>		FIGURE <b>1</b>
SW DAY ROAD TREE REMOVAL APPLICATION <b>AKS ENGINEERING &amp; FORESTRY, LLC</b> 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151    WWW.AKS-ENG.COM		DRWN: SKT CHKD: MH AKS JOB: <b>3916</b>

DATE: 10/25/2023

DWG: 3916 ENHANCEMENT SITE PLAN | FIGURE 1

**WASHINGTON COUNTY**

Dept. of Land Use & Transportation  
Planning and Development Services  
Current Planning Section  
155 N. 1<sup>st</sup> Avenue, #350-13  
Hillsboro, OR 97124  
Ph. (503) 846-8761 Fax (503) 846-2908

---

**NOTICE OF APPLICATION ACCEPTANCE**  
**TYPE II AND III LAND USE APPLICATIONS**

---

RURAL

Date Accepted for Processing Purposes: 2/5/2024

Casefile No.: L2400019-TREE

**APPLICANT:**

Sean Emerick and Don Brown  
Emerick Investments, LLC  
PO Box 26439  
Eugene OR 97402

**APPLICANT'S REPRESENTATIVE:**

Chris Goodell and Marie Holladay  
AKS Engineering & Forestry  
12965 SW Herman Rd Ste 100  
Tualatin OR 97062

## TYPE II APPLICATION

PROPOSED DEVELOPMENT ACTION: Application for a Type II Tree Removal submittal to address ENFPDS23-00024.

This notice is to inform you that your application has been reviewed and determined to be complete. We will now begin the process of reviewing your application for conformance with the appropriate development standards. The expected review period for your request is 150 days.

If adverse public comments are submitted or if unforeseen problems are found during our review, additional time may be required to adequately address these issues.

The project planner assigned this Casefile is **Stephen Shane, Principal Planner**. For additional information, please contact him/her at (503) 846-8761.

You can check the status of your Casefile on the Washington County web page at <http://www.washingtoncountyor/LUT/Divisions/CurrentPlanning/Projects/projectsunderreview.cfm>.



**WASHINGTON COUNTY**  
 Department of Land Use & Transportation  
 Planning and Development Services  
 Development Review/Current Planning  
 155 N. 1<sup>st</sup> Avenue, #350-13  
 Hillsboro, OR 97124  
 Ph. (503) 846-8761 Fax (503) 846-2908  
 Mon - Thurs 8 am - 4 pm; (Closed Friday)

**Type II Public Notice**

**WASHINGTON COUNTY STAFF CONTACT:**  
 Stephen Shane, Principal Planner  
 (503) 846-8127; mailing address in letterhead

**EXISTING LAND USE DISTRICT(S):**  
 Future Development 20-Acre District (FD-20)

**ASSESSOR MAP: TAX LOT NUMBER(S):**  
 3S1 02 B0 00302, 00303, 00310 & 00311

**SITE SIZE:** 7.2 acres

**SITE ADDRESS:** 9775, 9779 & 9805 SW Day Road,  
 Sherwood, OR 97140

**PROPOSED DEVELOPMENT ACTION:** Review to abate code enforcement file # ENFPDS23-00024 for tree removal in a Significant Natural Resource Area.

**COMMENT PERIOD:**  
 2/8/24 to 2/22/24  
 mailed date closing date (4:00 p.m.)

To comment on the proposed development, please address your letter to the Staff Contact listed above, with reference to the casefile number, or visit <https://www.washingtoncountyor.gov/lut/resources/comment-project>

Include your full mailing address (legibly printed) to be included as a party of record. The County Planning Director will consider all written comments received within 14 calendar days from the date this Notice is mailed.

The complete application, applicable standards and other information are available for review at the Department of Land Use and Transportation. A copy of this material will be provided at reasonable cost.

The Notice of Decision for this Proposed Development Action and Appeal Information will be mailed to those persons entitled to receive a Notice of Decision pursuant to ORS Ch. 215.416(11) (i.e. individuals who receive this Public Notice, and persons who submit written comments).

The decision of the Director may be appealed by those persons entitled to appeal the decision pursuant to ORS Ch. 215.416(11).

**CASEFILE / PROJECT #:** L2400019-TREE

**APPLICANT:**  
 Emrick Investments, LLC  
 Sean Emrick & Don Brown  
 PO Box 26439  
 Eugene, OR 97402

**APPLICANT'S REPRESENTATIVE:**  
 AKS Engineering and Forestry  
 Chris Goodell & Marie Holladay  
 12965 SW Herman Road, Ste 100  
 Tualatin, OR 97062

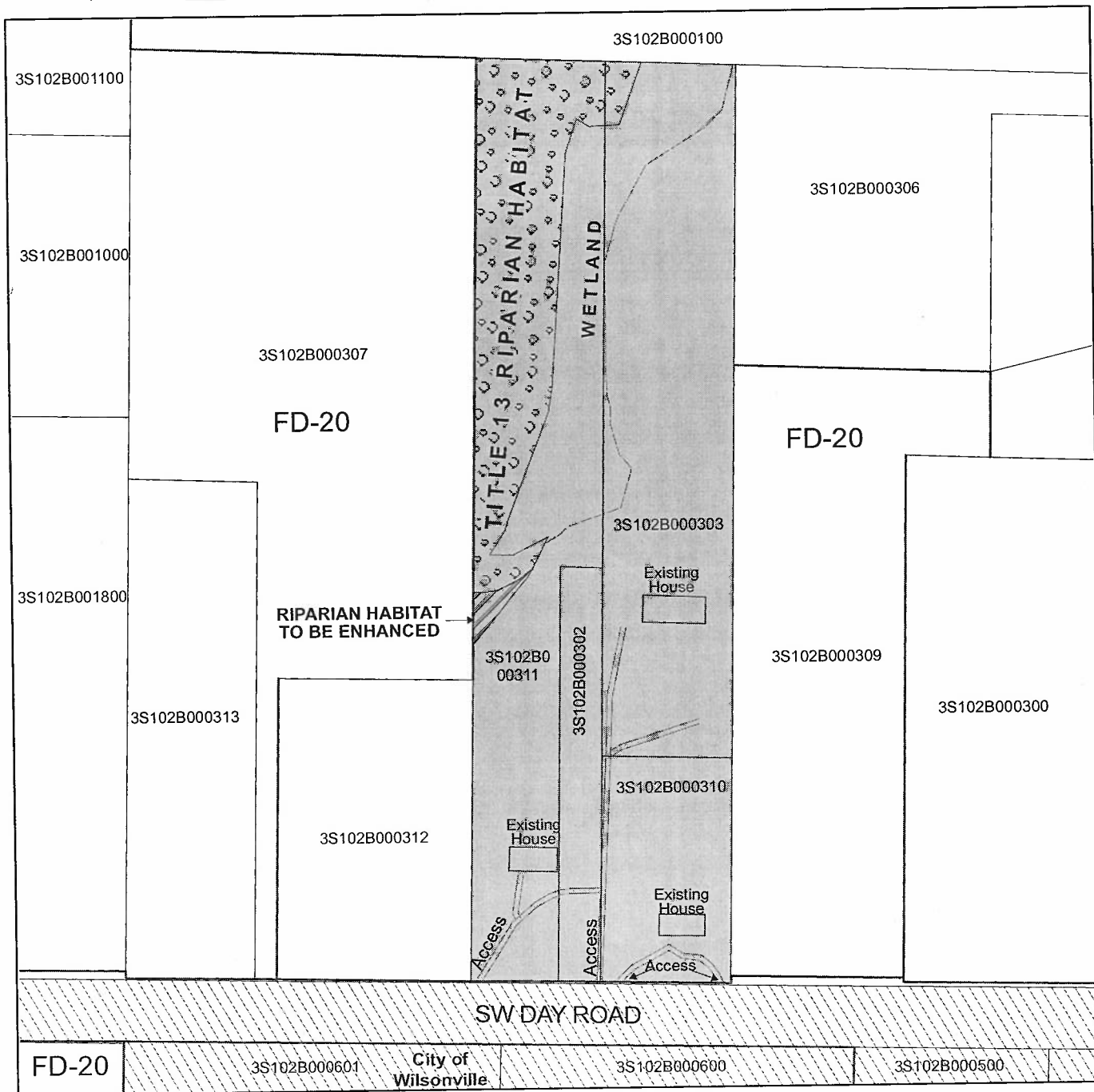
**OWNER:**  
 Emrick Investments, LLC  
 Same Address As Applicant

**LOCATION:** On the north side of SW Day Road approximately 900 feet west of its intersection with SW Boones Ferry Road..

**AREA MAP WITH SUBJECT PROPERTY ↓**



**Notice to Mortgagee, Lien Holder, Vendor or Seller:**  
 ORS Chapter 215 requires if you receive this notice it must promptly be forwarded to the purchaser.



↑ NORTH

■ AREA OF CONSIDERATION

NOT TO SCALE

**SITE & SURROUNDING LAND USE DISTRICTS:**

Future Development 20-Acre District (FD-20)

City of Wilsonville

**REVIEW STANDARDS FROM CURRENT OR APPLICABLE ORDINANCE OR PLAN**

- A. Washington County Comprehensive Plan
- B. Applicable Community Plan (See Front of Notice)
- C. Transportation System Plan
- D. Washington County Community Development Code:
  - ARTICLE I, Introduction & General Provisions
  - ARTICLE II, Procedures
  - ARTICLE III, Land Use Districts
  - ARTICLE IV, Development Standards
  - ARTICLE V, Public Facilities and Services
  - ARTICLE VI, Land Divisions & Lot Line Adjustments
  - ARTICLE VII, Public Transportation Facilities
- E. R & O 86-95 Traffic Safety Improvements
- F. ORD. NO. 738, Road Design and Construction Standards
- G. ORD.691-A, 729, 741, 746, 751, 793-A Transp. Development Tax





WASHINGTON COUNTY  
Department of Land Use & Transportation  
Current Planning  
155 North First Avenue, Suite #350-13  
Hillsboro, Oregon 97124-3072  
phone: (503) 846-8761 fax: (503) 846-2908  
www.co.washington.or.us

# NOTICE OF DECISION & STAFF REPORT

PROCEDURE TYPE II

CPO: 5  
RURAL/NATURAL RESOURCE PLAN

LAND USE DISTRICT:  
FD-20 (Future Development -20 Acres)

ASSESSOR MAP#: 3S102BO  
LOT#s: 00302, 00303, 00310 & 00311  
SITE SIZE: 7.3 acres  
SITE ADDRESS: 9775, 9779 & 9805 SW Day Road

CASEFILE: L2400019-TREE

APPLICANT:  
Emrick Investments, LLC  
Sean Emrick and Don Brown  
PO Box 26439  
Eugene, OR 97402

APPLICANT'S REPRESENTATIVE:  
AKS Engineering & Forestry, LLC  
Chris Goodell & Marie Holladay  
12965 SW Herman Road, Suite 100  
Tualatin, OR 97062

OWNER:  
Emrick Investments, LLC  
Same as above

LOCATION: On the north side of SW Day Road  
approximately 900 feet west of the intersection with  
SW Boones Ferry Road.

PROPOSED DEVELOPMENT ACTION: Review to Abate Code Enforcement File #ENFPD S23-00024  
for Tree Removal in a Significant Natural Resource Area.

Approval

Approval with Conditions

Denial

Signature

Stephen Shane, Principal Planner: Current Planning Services

Date 4-12-2024

- Attachments:
- A. Vicinity Map
  - B. CONDITIONS OF APPROVAL**
  - C. Staff Report
  - D. Appeal Information

## Attachment B CONDITIONS OF APPROVAL

- I. Within 45 Days of Approval of this Staff Report, Complete Installation of Required Mitigation Planting per the Submitted Enhancement Plan (Exhibit J) and as Required Below:
- A. Within the approximate 1,688 square feet of impacted area to the Metro Title 13 Riparian Resource on Lot 3S102B000311, install:
- Ten (10) western red cedar (*T. plicata*) ten feet on center;
  - Ten (10) vine maple (*A. circinatum*) ten feet on center;
  - Ten (10) red elderberry (*S. racemosa*) or salmonberry (*R. spectabilis*) interspersed with above; and
  - Native Brome, fescue and *Carex* or *Agrostis* spp. per Enhancement Plan
- Planting shall adhere to Clean Water Services Design and Construction Standards R & O 19-5, Amended by R & O 19-22, December 2019 Appendix A Planting requirements.
- B. By September 10, 2024 request site visit by the casefile planner (Stephen Shane, 503-846-8127) to confirm in-ground work conforms to Exhibit J. of the submitted material (Enhancement Planting Plan) and planting is complete. (Section 207-5).

## Casefile L2400019-TREE

residence built in 1971. This lot retained a majority of its Douglas Firs during the April harvest; however, the remaining three lots were clearcut of the Douglas firs on the southern areas of the lots.

4. The four tax lots associated with this review are subject to resource overlays included in the county's Comprehensive Plan maps and described in Section 422 of the Community Development Code (CDC). Specifically, the entirety of each lot is mapped as Significant Natural Area and the northern area of tax lots 303 and 311 are also mapped as Water Areas and Wetlands and Fish and Wildlife Habitat. A small area of the northwest corner of Lot 302 is also mapped with this resource. The majority of trees removed from the project area were in the southern portions of these tax lots and outside of this latter resource. The east riparian boundary of Tapman Creek is also mapped as Metro Title 13 habitat on Lot 311 and a small portion of Lot 303. Tree removal occurred in Title 13 areas on Lot 311. Mitigation is required and proposed in those resource-mapped areas where trees were removed.
5. The Significant Natural Area designation was included as part of the adoption by the Board of Commissioners of Ordinance No. 219 in April of 1982. The designation was intended to draw attention to the significant geologic features associated with the historic Missoula Flood(s) that extended into portions of south Washington County. The area is mapped and reference in county documents as the Tonquin Scablands. Mitigation for tree removal associated with this resource designation is not required. See Section 422 of this staff report for findings.
6. The subject lots also have county-mapped Drainage Hazard Area (DHA) that approximately correlates with the habitat overlay noted above. These areas are mapped county-wide and are typically associated with stream headwaters and steeper areas of drainage basins. Field verification of these mapped areas is required for any development proposed within 250 feet of the mapped boundary. If development is proposed within a DHA, engineering and hydraulic standards found in CDC Section 421 must be addressed and met. Staff concurs with the applicant's submitted engineering information and maps that show tree removal was over 250 feet from the centerline of Tapman Creek to the west and hence outside of the DHA. Accordingly, any address of tree removal pursuant to Section 421 is not required in this application.
7. Three Code Compliance violations were opened as a result of the tree removal activity. On 11/02/22, a grading violation was opened for Tax lot 310 based on a submitted complaint. Compliance staff were directed to close this violation at the behest of the county's Grading Engineer based on his site visit and discussion with the applicant, when it was determined that the site had been cleared but neither grading nor fill placement had occurred. The violation was closed on 02/13/23. A violation (ENFPDS 22-00004) was opened 04/25/22 specific to the tree removal and closed 02/06/23. This violation was reopened as ENFPDS 23-00024 on 05/02/23. See Section 215 of this staff report for further discussion.
8. Emrick Investments LLC currently operates a commercial Contractor's Establishment approved through Casefile L14-00431 in 2014 and located on Tax lot 309, the lot furthest east of the five lots owned by the applicant. The

Casefile L2400019-TREE

**STAFF:** This application is being reviewed through a Type II procedure in accordance with CDC Section 202-2.1, 308-3.7 and 407-3. The application retroactively accounts for tree removal across the subject lots pursuant to applicable standards in the CDC. No development is proposed under this application.

#### **Section 204 Notice of Type I, II, or III Development Actions**

**STAFF:** Public notice was mailed to nearby property owners. As previously noted, 21 comment letters were received in response to the notice for this application. The majority of submittals were from residents residing in either Tigard, King City, Wilsonville or Tualatin. Four submittals were from residents either abutting the site or within a quarter mile, and one was from City of Wilsonville planning staff.

The most referenced complaints in the submittals were loss of wildlife habitat from the tree removal and the request for replanting mitigation across the four lots. Most comments addressed more than one issue. Other issues addressed were:

- AKS issue with integrity and mapping discretion (5);
- noise impacts to surrounding properties from loss of trees (4);
- request to impose a monetary penalty(3);
- support for county overlays protecting wildlife (3);
- harvesting without a permit (2);
- potential impacts to soil stability (2); and
- concern with wetland/water hydrology and well sourcing (1).

A discussion of the mapped Significant Natural Resources on the four tax lots ("site") is found below under Section 422 findings. Staff notes here in response to loss of habitat that while there are mapped habitat and riparian-related resources on the site, the majority of the tree removal occurred outside of these areas, including all area of Lot 310 and the majority of Lot 302. The entirety of the site is mapped as a Significant Natural Area, a subset of the Significant Natural Resources addressed in Section 422. Significant Natural Areas are mapped areas throughout the county that have been acknowledged as being important for their ecological and/or scientific value and are addressed in Plan Policy 10 of the Comprehensive Framework Plan for the Urban Area and in the Development Code under Section 422-3.5. The subject site is recognized as a Significant Natural Area for the geologic feature referenced in county documents as the Tonquin Scablands. The Development Code does not contain regulations specific to development in Significant Natural Areas generally or the Tonquin Scablands attribute specifically. Section 422-3.5 includes standards to reduce impacts through provision of additional landscaping or open space and to relocate any proposed structures and uses on a site away from the resource to the extent possible.

The trees removed from the site were mostly if not entirely Douglas Fir in excess of 80 years old in a generally contiguous stand. Staff recognizes that the loss of this resource likely has habitat impacts to birds and mammals that use the area of the Tapman Creek drainage and wetland system to the northwest for resting, feeding, and breeding. However, the majority of the site outside the mapped areas noted above (and discussed below) was not created and mapped for wildlife or riparian habitat, separate sub-categories of Significant Natural Resources addressed under Section 422 and found in other areas of the county. Had the owner submitted the

## Casefile L2400019-TREE

Growth Boundary and a commercial harvest permit was not required. Responsibility for managing harvest activities within the UGB falls to the local jurisdiction.

The county generally does not regulate tree removal on private property. Tree removal within mapped Significant Natural Resource areas does require a type II application prior to removal so that staff can evaluate the overall proposal, including any needed mitigation. An exception exists for trees considered an imminent danger, in a diseased condition, or that are hazardous to property. See further discussion in staff findings for Section 215 below.

Two comments stated soil stability would be affected from the harvest with one submittal noting impacts to water quality and resident wells. No evidence was submitted in support of these assertions and staff has no basis to comment specific to deleterious effects of tree removal on hydrology in the area. Staff notes that the county grading engineer has not required grading review submittal or permit application for the harvest given his site visit determination that the grade on the site had not changed from the tree removal.

Staff received a letter of comment from City of Wilsonville Planning Director Miranda Bateschell requesting the following :

- to mitigate for all areas where trees were removed, including upland area.
- to remove all gravel, pavement, or other impervious material from the previously treed area, and
- ensure a wetland concurrence letter has been obtained from the Division of State Lands.

As noted in this report, the upland areas over the four tax lots of this site are mapped as Significant Natural Area for the Tonquin Scablands. Though wildlife undoubtedly used the removed tree grove as habitat during at least a portion of the life cycle of various mammals, birds and amphibians, the area was not placed on adopted county resource maps as Wildlife Habitat, which is the only mapped upland Significant Natural Resource throughout the county. The applicant is only required to mitigate in the mapped riparian areas of the site.

No addition of gravel or pavement occurred on the site as a result of the tree removal and staff knows of no mechanism in the code to require a private property owner to remove existing infrastructure not in violation of code standards. County grading staff have confirmed through site visit that reseeding over at least some of the impacted areas is complete.

A state permit is required for  $\geq 50$  cubic yards of fill, removal, or ground alteration in wetlands or waterways. Per the applicant's submitted materials, wetland staff from the Division of State Lands (DSL) visited the site on June 3, 2022 for a wetland determination and found that "the majority of the area is not wetlands", noting the presence of wetlands in the north part of the site and outside the impact area. Erosion control measures ("wattles") were documented as placed between the wetlands and the impact area. A follow-up email to the field visit was sent to the applicant on July 29, 2022 and stated, "while we didn't determine that more than 50 cubic yards of wetland soil was disturbed, we request that you smooth out the disturbed wetland soil and spread a wetland seed mix" (email in casefile). As noted above, staff confirmed the reseeding took place.

nature and extent of the tree removal was contained in the letter. Staff determined through follow up with the owner/representative that the submitted letter was not signed by a certified arborist and requested a second letter from a certified arborist, which staff received on February 4, 2023. This letter generally repeated the same information as the first submittal with some additional detail, including that it was their "professional opinion that removing these trees was required to reduce potential hazard to property, people and structure." Staff discussed the submittals internally and felt that while a good deal of detail was still missing as to the particulars of the harvest, staff closed the violation given the certified submittal and general lack of clarity about the burden of proof in a situation like this.

On May 2, 2023, Staff reopened the violation for tree removal (ENFPDS23-00024) upon learning that the arborist who signed the second letter was not employed by the tree removal company represented on the letterhead ('Mr. Tree, Inc.'). The violation remains open and is addressed under this application. Subsequent to reopening the violation, staff engaged with AKS Engineering, the current applicant, in trying to resolve both the tree issue and to address the proposed expansion of the existing Contractor's Establishment immediately east and also owned by the same property owner (Emrick Investments, LLC). That proposal is currently under review as Casefile L24-00001.

A third violation was opened as a grading violation (ENFPDS 22-00044) on November 2, 2022 from reports that the owner had created new interior drive aisles on portions of the subject site. Grading staff visited with the owner at the site in February of 2023 and determined that no change in grade had occurred and that the site was only being cleared of vegetation and reseeded. Compliance staff closed the grading violation at the behest of the county Grading Engineer on February 13, 2023.

Staff notes the Grading Engineer has not required the applicant to obtain a grading permit for this application.

## **2. Article III Land Use Districts**

### **Section 308 FD-20 District (Future Development 20 Acres)**

#### **STAFF:**

The subject parcel is located within the FD-20 District. The FD-20 District recognizes the desirability of encouraging and retaining limited interim uses until the urban comprehensive planning for future urban development of these areas is complete. Tree removal from properties in this land use district is reviewed under Section 308-3.7 and the requirements of Section 407 (Landscaping) and Section 422.

This report presents findings applicable to now-completed tree removal in the spring of 2022. No structures or new access locations were created as a result of this activity and further address of this section, including dimensional standard requirements, is not applicable.

## **3. Article IV Development Standards:**

### **Section 407 Landscape Design**

given the inherent need to some extent extrapolate based on a post-discovery of the tree conditions. Nevertheless, he maintained that a “comprehensive understanding” of the conditions prior to removal has been obtained.

Staff finds the report comprehensive and it correlates, with greater detail, what was found in the second submitted arborist report submitted to the county 01/30/23 by Dan Dunn, also a certified arborist. This report is supplemented by applicant findings that noted the presence of various fungal pathogens in the stand as well as a statement of how the winter snow and ice storm of February 2021 and the following winter destabilized existing trees, creating unsafe conditions for the existing dwellings on the site. Staff acknowledges that with a clearcut harvest such as what occurred, some trees may have been removed that were not diseased and it's possible some diseased trees may have been able to be treated, to counter pathogens that were in the early stages of effecting any given tree. Staff further notes that the natural creation of snags is a positive attribute for some wildlife species in the natural life cycles of a forest. However, staff notes this Significant Natural Resource was not adopted into county plans for wildlife habitat preservation and the applicant has met the burden of proof through submittal of a report by a certified arborist that the stand was compromised. Mitigation for tree removal in a Significant Natural Area is not codified in county plan documents and is not required in the same manner of mitigation within mapped riparian and wildlife habitat areas. The applicant has proposed mitigation in these areas.

#### **Section 422 Significant Natural Resources**

422-2 *Lands Subject to this Section*

\*\*\*

422-2.2 *Water Areas and Wetlands and Fish and Wildlife Habitat. Water areas and wetlands that are also fish and wildlife habitat.*

\*\*\*

422-2.4 *Significant Natural Areas. Sites of special importance, in their natural condition, for their ecological, scientific, and educational value.*

\*\*\*

422-3 *Criteria for Development*

422-3.3 *Development within a Riparian Corridor, Water Areas and Wetlands, and Water Areas and Wetlands and Fish and Wildlife Habitat:*

#### **STAFF:**

The applicant has included as part of their submittal a natural resource assessment, including narrative and exhibits denoting mapped Significant Natural Resources on the site and delineated resource features on site plans. County maps show the site as mapped with Water Areas and Wetlands Fish and Wildlife Habitat over Tax lots 0302, 0303, and 0311 as well as Metro Title 13 mapping for the northwest portion of the site area over Tax lot 0311. These resources are associated with the riparian features of Tapman Creek, the centerline of which is over 250 feet to the west per the applicant's field

Resources map. Metro Title 13 area is mapped on Lot 0311 and the county's Water Areas and Wetland Fish and Wildlife Habitat Area resource is mapped on this lot and the northwest corner of Lot 303 and a small portion of 0302. The SNA map was incorporated into county Comprehensive Plan Documents in April 1983 over these four lots and the surrounding vicinity in recognition of the ecological attributes of the Tonquin Scablands, a geologic feature associated with the historic Missoula Floods and found throughout portions of southern Washington County.

Exhibit G of the applicant submittal contains a copy of the county Comprehensive Plan document map illustrating the extent of the Tonquin Scablands Geologic Area. The subject parcels are located in the southeast corner of the mapped area, away from the concentration of geologic features that comprise the Scablands located to the northwest. These features, as discussed in county memo "Significant Natural Areas in the Rural/Natural Resource Area" from Senior Planner Hal Bergsma to Brent Curtis, include "channels, depressions (often containing ponds or marshes), and scoured bedrock knolls and channel walls." The memo notes that the major conflicting use for this area is quarry activity, which has occurred to the northwest of the site for several decades at least.

The applicant asserts on page four of the narrative that the above features are not found on site, that the highest elevation on the site is 260 feet, and that "the Tonquin Scablands likely do not extend within the study area" and further, that "surface level improvements on the project site will not result in impacts to the unique geological character of the area." SW Day Road and properties adjacent to it are at the southeast periphery of the Scablands map noted above and staff review of topographic maps and aerial photographs would indicate that the features noted above are not present on the site, being more located to the north and northwest.

Section 422 has no direction for how to regulate development or how to mitigate for development in an SNA outside of 422-3.5 A. and B. above. This application is for retroactive tree removal within the resources on site; no structures were constructed or proposed and landscaping standards of Section 407-4.2 are clearly focused on structural development. What is required with tree removal in a resource area is mitigation and the only standards for mitigation under Section 422 are for riparian-associated resources and areas mapped specifically as Wildlife Habitat. The SNA was not established as Wildlife Habitat and the applicant has proposed appropriate mitigation in the impacted riparian areas. The applicant has made the case through the arborist report submitted with this application that the stand had at minimum a number of diseased trees and that others were in a compromised state, from both disease and severe weather events.

Section 422-3.6 above is the primary section of 422 directing mitigation but again, this section for mitigation calls out "*the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan.*" Significant Natural Areas are not called out for these purposes in the Comprehensive Plan. The applicant has submitted a 1998 memo from Planning Manager Joe Grillo that clarifies Section 422-3.6 is only applicable to Sections





**WASHINGTON COUNTY**  
 Dept. of Land Use & Transportation  
 155 N. 1<sup>st</sup> Avenue, #350-13  
 Hillsboro, OR 97124  
 Ph. (503) 846-8761 Fax (503) 846-2908  
 www.washingtoncountyor.gov

ATTACHMENT "D"  
 TYPE II

## APPEAL INFORMATION

CASEFILE # L2400019-TREE

Attached is a copy of the Land Use and Transportation Department's Review Authority decision on this request for a Development Action.

Any person who is adversely affected or aggrieved, or who is entitled to written notice pursuant to ORS 215.416(11) may appeal the decision by filing a written appeal.

**Failure to file a petition for review with the Department of Land Use and Transportation by 4:00 p.m. on the due date, with the fee specified in the Notice of Decision, shall be a jurisdictional defect.**

The decision, including conditions of approval, may be appealed and a public hearing held by filing a signed petition for review (appeal) within twelve (12) calendar days of date written notice is provided (date mailed).

**APPEAL PERIOD: 4/12/2024 (Date Mailed) to 4:00 p.m. on 4/24/2024 (Appeal Due Date)**

This decision will be final if an appeal is not filed by the due date.

The complete file is available at the County Department of Land Use and Transportation for review.

A petition for review (appeal) must contain the following: L2400019-TREE.

1. The name and signature of each petitioner filing the petition for review (appeal). If a group consisting of more than one person is filing a single petition for review, one individual shall be designated as the group's representative for all contact with the Department. All Department communications regarding the petition, including correspondence, shall be with this representative;
2. A statement of the interest of each petitioner;
3. The date the Notice of Decision was sent as specified in the notice (date mailed);
4. The nature of the decision and the specific ground for appeal. For applications with multiple requests, specify the particular request(s) and/or specific conditions of approval being appealed;
5. A statement listing the number of pages of the petition and that all pages are present;
6. A statement setting forth the appeal fee as specified in the Notice of Decision; and
7. The appropriate appeal fee of \$250.00

For further appeal information, contact the Appeal Secretary at the Washington County Department of Land Use and Transportation. Phone 503-846-3849 or [louisa\\_bruce@washingtoncountyor.gov](mailto:louisa_bruce@washingtoncountyor.gov).



**ANDREW H. STAMP**

503.684.4111 x400050

FAX 503.598.7758

[ANDREW.STAMP@VF-LAW.COM](mailto:ANDREW.STAMP@VF-LAW.COM)

*Admitted to practice in:*

Oregon

March 25, 2024

P18379-001

**SENT VIA EMAIL AND FIRST-CLASS MAIL**

Mr. Rob Bovett  
Senior Asst County Counsel  
Office of County Counsel, Washington Co.  
Public Services Building  
155 N. First Ave, Suite 340, MS. #24  
Hillsboro, OR 97124

Mr. Stephen Shane  
Principal Planner  
Dept. of Land Use & Transp, Washington Co.  
Public Services Building  
155 N. First Ave, Suite 350, MS. #13  
Hillsboro, OR 97124

*Re: Brown Contracting Tree Cutting Permit  
County Casefile L2400019-Tree*

Dear Mr. Bovett and Mr. Shane,

There has been a lot of confusion and misinformation surrounding the tree-cutting event that occurred in April of 2022 on land operated by Emrick Investments.<sup>1</sup> In this letter, I respond to public comments submitted in this case, and in so doing, I seek to dispel some of the rumors and factual untruths that have been circulated in this case. I also preserve objections to the enforcement of the tree ordinance based on statutory and constitutional grounds.

**I. Introduction.**

First, it is true that Brown Contracting's forester did not obtain a tree removal permit prior to cutting trees. Much of the blame for this has been unfairly placed on Brown Contracting. Brown Contracting specifically asked the County if a permit was necessary and they were told that no such permit was needed. We have been told, in response, that "Brown Contracting, Inc. did not ask the right people at the County," or words to that effect. Of course, that begs the question, why should Brown Contracting have to "ask" anybody? Why aren't the County's laws written in a way that are even remotely understandable? Why aren't they posted online in a manner that is easily findable? We believe that the County shares in the responsibility for this incident, and there are three primary problems that led to this unfortunate situation:

- (1) The County's regulations related to tree removal are both byzantine and utterly incomprehensible, particularly as those regulations relate to

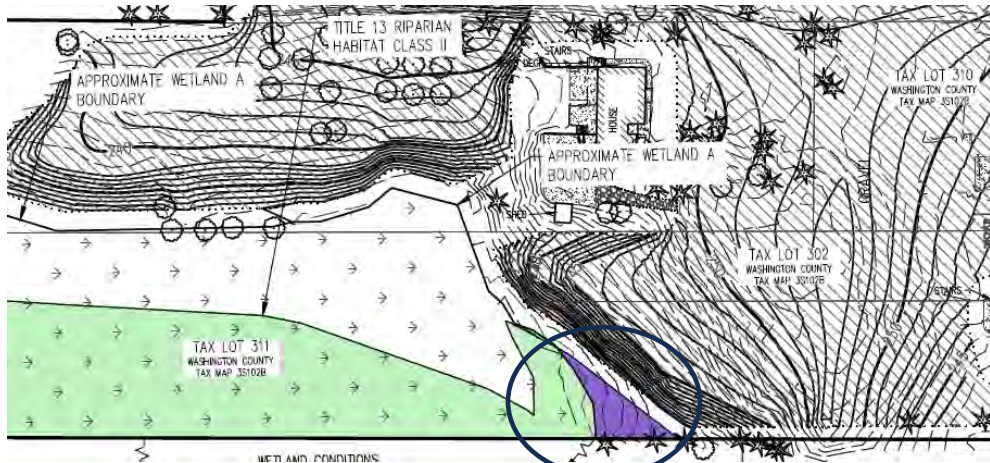
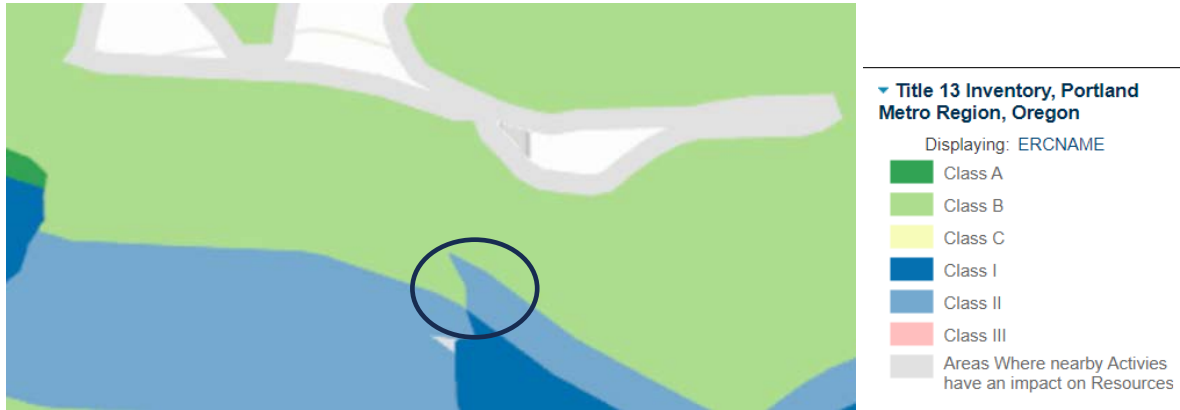
<sup>1</sup> The subject property is being used residential purposes, and is separate from the contractor's establishment located next door. A recent land use application proposes some expansion onto the subject properties.

Statewide Planning Goal 5, Areas of Special Concern (ASC), and Significant Natural Resources” regulations. *See* Flowchart at [Exhibit 1](#).

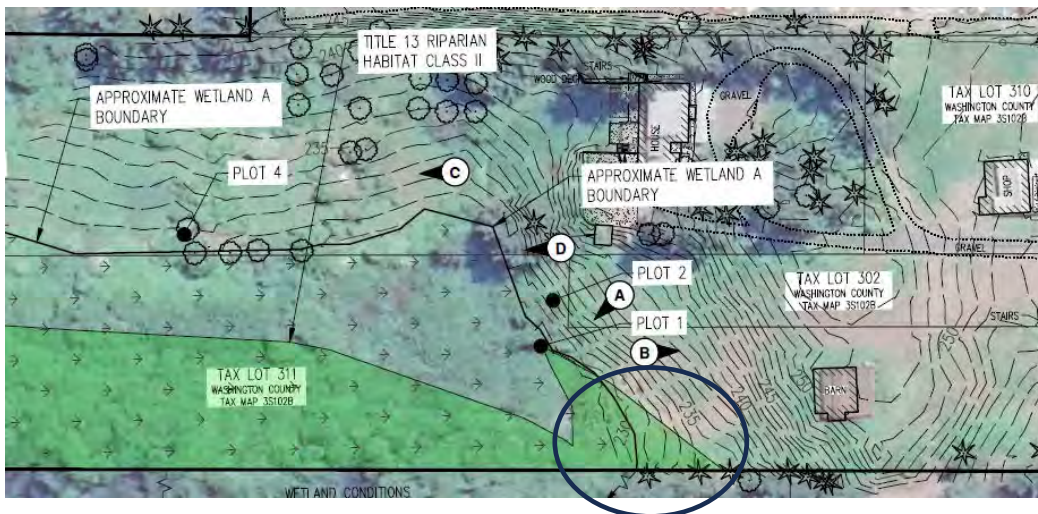
- (2) The County has done an inadequate job of publishing the laws that apply to this area of law, or otherwise making the laws accessible to the public. Two of the two key maps applicable to this case (the Geonet drainage hazard map and the Significant Natural Resources map) are not only unofficial maps, they are only available “upon request.” Other maps, such as the map set forth in Policy 41 and FEMA FIRM maps, can only be located with considerable effort, and only via the assistance of a land use professional. Other maps, such as Audubon Society Urban Wildlife Map, cannot be found under any circumstance, despite formal requests. The County has Comprehensive Plan provisions, such as a “Area of Special Concern” provisions that are not available online, even though the County purports to have the entire Comprehensive Plan available for review.
- (3) As a direct consequence of the first and second problems, most of the County’s staff are inadequately trained on this topic, and as a result are unable to communicate to the public, whose rights the County regulates, with regard to compliance issues related to Goal 5 and tree cutting.

The second key point is that the amount of removed trees that were actually located in any sort of “regulated” area is very small in comparison to the overall site area and the overall tree-cutting operation. As I discussed in my letter to Senior Asst. County Counsel Rob Bovett dated July 14, 2023, the Area of Special Concern 5 (*i.e.*, Policy 41 of the Comprehensive Framework Plan for the Urban Area) is a Mineral and Aggregate overlay district that was intended to protect certain geologic sites from conflicting uses – primarily mining. Tree-cutting is not an identified conflicting use, and therefore is not prohibited.

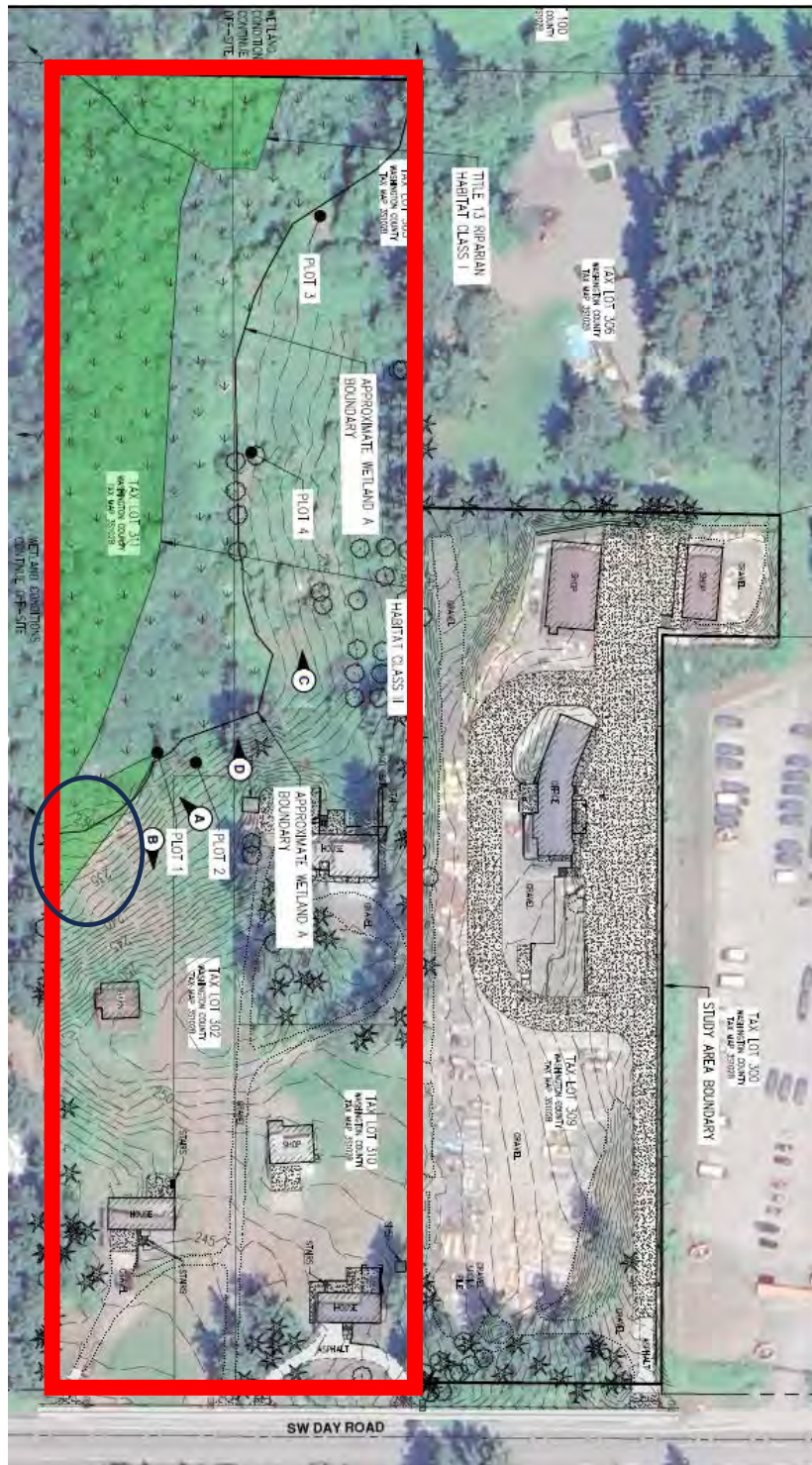
The only area where trees probably should not have been cut was in a small triangle of land which is conceptually regulated as Class II “Riparian Habitat” on Metro’s Regionally Significant Fish & Wildlife Habitat Inventory Map. Frankly, that Metro map was created at such a broad scale that the triangle at issue is within the margin of error for the map’s accuracy:



The map above shows proposed / desired “post-development” conditions (i.e. grading improvements planned with the contractor’s establishment “expansion” site plan). The small area where tree cutting occurred in a regulated area is shown via a purple triangle. In contrast, the map below depicts existing conditions, showing current contours/topography onsite prior to the planned site grading for the contractor’s establishment “expansion” site plan:



This image, taken from the land use application for the proposed expansion of the contractor's establishment, shows the subject property outlined in red and the small area of mapped riparian area circled:



As a third key point, the hysteria and consternation generated by this case far exceeds any actual environmental damage caused by the minor incursion into the small sliver of Metro's "Class II riparian habitat." Part of that problem stems from the fact that Brown Contracting, Inc. has the misfortune of building their business next to a vexatious litigant, Mr. Eric McClendon, who has done everything he can to stir up the neighborhood with lies and half-truths. The ensuing comments from the public have been over the top, to say the least. Even the letter from the City of Wilsonville reflects serious misunderstandings of applicable law, which again speaks to the fact that the County laws are so incomprehensible that they are unenforceable.

With those three points in mind, we turn to a discussion of what actually occurred between April of 2022 and August of 2023.

## **II. Facts.**

We have assembled this set of facts largely from the record of emails that have been made available to this office. These documents create a relatively clear picture of the events that transpired.

In the spring of 2022, Brown Contracting realized that the recent ice storms had damaged trees on their property. Multiple trees had fallen on a neighbor's property, creating both a safety and liability concern. They could see that many of the trees on their property were dead or dying, and needed to be removed. Brown Contracting sought the advice of Wilber Akins, the owner of Mr. Tree Co. as to the safety of the trees to their removal. Wilbur is a well-known expert with decades of experience identifying the difference between a compromised and safe tree. He specifically advised upon which trees should be removed and which trees could safely remain.

In March of 2022, representatives of Brown Contracting called Washington County Building Department to ask if they needed a permit to remove trees. According to Mr. Brown, a County staff member named Josh Pitner, Building Permit Tech II, told Brown Contracting that "you do not need a tree cutting permit to remove trees on private property." I understand that Mr. Pitner does not remember the conversation, but has stated that he would normally tell members of the public to call the Planning Department. Don Brown denies having been given any such guidance.

Mr. Tree, Inc., a local tree service company with almost three decades of experience in Portland and Clackamas County, began tree removal operations in the first week of April. A neighbor, Tina McClendon, immediately complained to the County about the operation by email and phone calls, but the County initially did nothing. The email record from that time reflected a certain degree of confusion on the County's part as to what, if anything, could or should be done. Exhibit 2. Tina McClendon filed a formal complaint on April 20, 2022. *Id.* On or about April 22, 2022, Mr. Wilber Akins sought a "Notice of Operations / Permit to Operate Power Driven

Machinery (NO/AP)”<sup>2</sup> from the Oregon Department of Forestry. This permit was issued on May 11, 2022. Exhibit 3.

County Planning staff member Sean Harrasser sent a letter to Brown Contracting, Inc. on May 6, 2022 informing Brown Contracting, Inc. that various permits were needed because the land in question was within a “Drainage Hazard Area” and a “Significant Natural Resource Area.”<sup>3</sup> Exhibit 4. Mr. Harrasser also stated that the tree removal required a grading permit.

On May 20, 2022, Brown Contracting, Inc. found a “stop work order” notice on the property which apparently has been posted the day before. Kimberly Allen explained to Mr. Brown that the stop work order originally was posted regarding the need for a grading permit to complete stump removal. This led to additional confusion. That same day, Don Brown emailed Kimberly Allen:

Ms. Allen,

We discovered a stop work notice on our subject property today. I called all the phone numbers on the notice. Spoke to Josh Pitner at Wa Co. Josh indicated that the number on the sign off of the notice was yours. He also gave me another cell number for you (971-329-5667) that I left message on earlier today. We removed a bunch of dead and dangerous trees. Conk and serious damage from most recent snow storms. That’s all we did. No grading operations have occurred. We installed erosion control measures for the tree removal operation and we’ve hydro seeded the site as well. No other work has occurred. Incidentally, we were previously informed by Wa Co that tree removal permits were not required for private property. We removed the diseased and dying trees. Then, after the removals we received a tree removal violation notice and direction to acquire a permit. That notice included grading related direction notice as well. Again, there was no grading. The tree removal permit was applied for by Mr. Tree Co. In short, we applied for the permit that we were previously informed we did not need.

<sup>2</sup> The Oregon Forest Practices Act (FPA) requires forest landowners and operators to notify the Oregon Department of Forestry (ODF) at least 15 days before they begin forest operations on any non-federal lands in Oregon. As defined in the FPA, forest operations include timber harvesting, road construction and reconstruction, site preparation, slash treatment, woody biomass removal, chemical application, land use changes, and certain non-commercial forest activities, among other activities; permits are required for any operation using power driven machinery or fire. The Notification of Operations and Application for Permit (NO/AP) process is conducted through the ODF Private Forests and Protection from Fire divisions.

<sup>3</sup> Note that maps that show these designations are not readily available online, and only a person with considerable skill and experience in land use matters would be able to find them. The Comprehensive Plan Policy 41 map that shows the Significant Natural Resources for this area is not detailed enough to provide site-specific information.

We are a bit perplexed as to what the problem is so we'd appreciate an opportunity to speak with you to alleviate any concerns or potential violations.

\* \* \* \* \*

Thank you, *Don Brown*

Exhibit 5. County Planning staff member Sean Harrasser sent a follow-up letter to Brown Contracting, Inc. on May 26, 2022 reiterating the points set forth in the May 6, 2022 letter.

Exhibit 6. Mr. Harrasser noted that the "County grading staff" had posted a stop work order on the property on May 19, 2022. On June 28, 2022, County Code Enforcement staff member Michelle Wilkins sent a second follow-up letter, entitled "Final Notice," to Brown Contracting. It reiterated points made in **earlier** letters. Exhibit 7.

Brown Contracting requested a site visit from the Dept of State Lands after the McClendon's filed a complaint with that agency. On July 29, 2022, Michael De Blasi, Dept. of State Lands, sent the following email to Don Brown:

Don, Chris Stevenson and I visited the property on June 3. The majority of the property is not wetlands. However, the lower area of disturbance, on the north end of the clearing, is wetlands. We observed that a wattle<sup>4</sup> was placed just north of the cleared area but that was approximately 20 feet beyond the wetland boundary. While we didn't determine that more than 50 cubic yards of wetland soil was disturbed, we request that you smooth out the disturbed wetland soil and spread a wetland seed mix.

Thank you for your cooperation and contact DSL if you have any questions about this or any other site.

Thank you, *Michael De Blasi, Aquatic Resources Coordinator  
Washington County*

Exhibit 8. This "disturbance" was tracks from equipment traversing the wetland to trees outside of the wetland. Attached to his email was a "Onsite Wetland Determination Report" dated June 22, 2022. Exhibit 9. All things considered, this report was favorable to Brown Contracting.

On August 17, 2022 at 12:10 pm, Don Brown wrote the following to County staff:

Dear Mr. Shane, Ms. Wilkins and Ms. Allen,

<sup>4</sup> As a point of clarification, we note that DSL uses the term "wattle" without defining the term. A "wattles" is a man-made tube of compressed straw, wheat, or rice, and is also known as an "erosion log." They provide perimeter protection along contours or at the base of slopes, inlets, and roadways to reduce soil erosion, runoff and retain sediment. Wattles are also used to intercept water running down a slope.



1. We have removed diseased/dangerous Douglas fir trees. We applied for permit to do so even after Mr. [Pitner] at Wa Co informed us we did not need a permit to remove trees on private property. To our knowledge we have not received a WaCo response.
2. There exist gravel driveways upwards of 50 years old that were damaged via time and the heavy equipment that removed the trees. We repaired those gravel driveways like for like and it resulted in zero change to grade or surface area.
3. Nothing was widened or paved. We have not added any new driveways or roads. Only repaired existing. We have not increased impermeable area by a single square foot. We have not modified grades or drainage patterns.
4. Properly repairing a pre-existing and completely legal private property gravel access does not with all due respect require geotechnical engineering, civil engineering, grading plans, topographic analysis, permeability studies, or even a permit. We've built nothing. We've constructed nothing.
5. Your note states, Wa Co requires us to submit Type 2 Land Use Application. It's our understanding that a Type 2 Land Use Application would apply if/when we wish to change or alter use of the site. We are not requesting to change the use of this site at this time. Nor, have we changed the use of this site. If/when we desire to do so we'd certainly retain appropriate design professional services and submit for Wa Co permits as required.
6. It's perplexingly apparent that Wa Co does not believe that this is all that has occurred which is precisely why we have requested on numerous occasions an on site meeting. No response from Wa Co in this regard other than one previous refusal to meet from Ms. Allen via phone. Other written requests to meet on site have been ignored by WaCo to date.
7. We here-by re-request an on-site meeting with Mr. Shane and whomever Mr. Shane feels necessary from Wa Co such that we may discuss and discern whatever it is Waco believes was done in non-compliant fashion and/or whatever specific scope of work that Waco believes occurred that dictates we owe a permit application for.
8. WaCo appears to be demanding we retain a team of design professionals and apply for a permit for a road we ostensibly "constructed" when we never "constructed" a road in the first place.
9. It seems no matter how many times we re-assert the above facts WaCo representation either does not believe us or just

doesn't understand. An on-site review of specific WaCo concerns and our prospective clarifications could/would be the most efficient way for us to satisfy whatever it is that Wa Co needs and/or for WaCo to see/believe what we are stating to be true.

10. We do not wish to apply to permit a scope of work that per Co Code and extensive Co precedence does not require a permit application. Especially, when / while Wa Co is demanding we retain geotechnical and civil engineering services as well as professional land surveyor.
11. Finally, we respectfully request a complete copy of the County file pertaining to this matter. We are happy to pay for the copy expense and whatever ORS requires. We are happy to pick up the file at your office or you could bring a copy of it with you to our prospective on-site meeting?

Exhibit 10. On August 17, 2022 at 4:49, County Planner Stephen Shane responded to Don Brown with the following:

Mr. Brown: At this time, there are no less than two violation components for Tax lot 0311 (at least), a potential grading violation and a land use violation for unpermitted tree removal in a resource zone. The land use violation appears to extend to the adjacent lots owned by Emrick Investments. To that end, this email addresses #1, 5 and 7 below, in addition to #11. Grading concerns and subsequent address of the need for grading review and permitting is through Kofi Nelson-Owusu and Kim Allen, cc'd herein.

Attached are two maps that show the applicable land use overlays on the Emrick properties in the area. The green and blue layer shows mapped Significant Natural Resources on the site(s) that reflect the county's compliance with State Land Use Goal 5. Goal 5 is addressed at the county level through Development Code Section 422. The pink overlay is floodplain-related (see below).



Mr. [Pitner] does not recall discussing tree removal at this site but noted to me he directs people if they come to the counter to discuss pending tree removal with planning staff. The comment that planning does not regulate tree removal on

private property is generally true for sites that do not have the Significant Natural Resource Overlay. These properties do and tree removal within these areas is not allowed. The exception is for trees subject to disease or danger, as you've alluded to below in #1. However, that's a determination both a certified biologist and a certified arborist has to make in a submitted staff report to planning, given the presence of the overlay. Moreover, photo evidence does not seem to support either contention, both in looking at the prior aerial canopy and the cross-cuts of numerous Douglas fir boles stacked on the property post-harvest. The site quite clearly appears to have been clear cut for pending future development. I don't need to be present for a site visit as the photo evidence is instructive in that regard.

Staff is not aware of any 'permit' for tree removal having been submitted for this site/area and again, an over-the-counter permit is not sufficient in any case to abate this violation. A Type II land use application needs to be submitted that (retroactively) discusses in detail the tree removal operation, what was there initially, what was removed, and what a professional biologist thinks is needed for mitigation for the unauthorized removal of the resource. Address of Code Section 422 will be necessary in the report that evaluates the impact to the resource area. My recommendation is to contact planning staff for a pre-application conference to go over in detail what the requirements are. \* \* \* \* \*

The attached pink map shows what is known as a Drainage Hazard Area, which reflects a 25-year flood event area on the property. Here too, development, including driveway maintenance, requires county planning to review the proposal in accordance with Development Code Section 421, Floodplains and Drainage Hazard Areas. While not yet noted in county records as a violation, failure to obtain development review for any work in these areas is in fact a violation of code and will need to be addressed with the county flood plain manager. \* \* \* \* \*



For review and receiving county records, you may submit a public records request and staff will address your inquiry per statutory requirements. Public record request information can be found here: \* \* \* \* \*

I also note at this time that any physical and/or use expansion of the existing permitted Contractor's Establishment located on Taxlot 0309 to the east would need new land use review for any work not covered under the scope of Casefile 14-431(D)IND.

Ms. Wilkins can coordinate with you or other Emrick representative(s) a timeline for compliance and eventual abatement of these issues. Please continue to work with her toward this effort.

Thank you. Stephen Shane

Exhibit 11. The email exchange was continued, in order for both parties to gain a better understanding of the confusing situation. Exhibit 12.

The next day, County Engineering staff members Kofi Nelson and Kim Allen conducted a site visit. After the site visit, Washington County Engineering associate Kim Allen wrote to Don Brown on August 18, 2022 at 7:25 pm, and stated:

Thank you for meeting us on site to discuss the recent private road/driveway work and tree removal. We consider the road/driveway work to be maintenance of the existing driveway serving an existing dwelling and the tree removal was done under forestry notification number 2022-531-05598, therefore a grading permit is not required. Any additional grading work adding to the existing impervious area will require a grading permit, keep in mind compacted gravel is considered impervious. Please continue to work with Current Planning and Code Compliance to address any land use review and approvals required.

Exhibit 13.

On January 24, 2023, Michelle Wilkins and Mr. Brown engaged in a phone conversation in which they discussed what needed to be done to close out the tree removal violation from April of 2022. In that conversation, Ms. Wilkins expressed that even though the County knew that the trees were long gone, a detailed arborist letter would allow them to close the matter. Moments after that conversation, Ms. Wilkins emailed Don Brown, Sean Emrick, Megan Ferris, and Greg Reinert and said "Please see the attached letter and templates." Exhibit 14. The email included two sample letters from arborists documenting the inspection of trees. Exhibit 15.

On January 25, 2023, Michelle Wilkins sent Emrick Investments, LLC another "Final Notice" letter requesting that the Emrick Investments, LLC address the unpermitted tree removal under County Regulations. Exhibit 16. The letter states:

“The arborist report you submitted lacks detail and substance. I am attaching arborist report templates that outline the amount of information they should contain. If a report like this is submitted, then we will be able to close out violation ENFPDS22-00004.

The letter included the same two samples Ms. Wilkins provided by email the day before. The letter also requests that Emrick Investments, LLC address the unpermitted grading violation ENFPDS22-00044. That same day, Don Brown wrote to Wilber Akins of Mr. Tree, Inc., and said:

“Waco is asking for you to provide a bit more elaborate narrative of how/why etc. those trees were diseased and/or dying. If you can muster up a little more detail they told me off the record that this could go away. I’d be happy to pay you for your time. Please advise, Don.

Exhibit 17. On January 30, 2023, ISA Certified Arborist Dan Dunn wrote the following letter on Mr. Tree, Inc. letterhead, the body of which stated:

To whom it may concern:

Upon visiting the Day Rd site, we observed several tree’s exhibiting the following characteristics.

Blown out top’s via the numerous previous ice seasons and wind storms.

Rampant Ganoderma Applenatun (Conk)

Coniophora Puteana (heart rot)

Pphellinus Noxious (root rot)

Several trees had lost huge branches, and had fallen upon damages surrounding properties with a few falling across property line, access roadways, and even a private service power line.

Additionally, there were several unsafe leaners slated to fall in unpredictable fashion.

In was our professional opinion that removing these trees was required to reduce potential hazard to property, people, and structures.

Additionally, and arguably most important, reducing the spread of diseases noted above and potentially extending the life of trees that remain would be best achieved via the removals that we recommended.

Sincerely,

Dan Dunn

ISA Certified Arborist WE8139 AUT

Certified tree care safety professional #252

Exhibit 18. Don Brown forwarded Mr. Dunn's letter on to the county the same day he received it. On Thursday, February 16, 2023 12:04 PM, Code Enforcement Officer Michelle Wilkins sent an email to Don Brown, which stated:

Good afternoon Don,

\* \* \* \* \*

Additionally, violation ENFPDS22-00004 (unpermitted tree removal) and ENFPDS22-00044 (unpermitted grading) have been closed.

Exhibit 19.

But that turned out to not be the case. On June 1, 2023, Sr. Asst. County Counsel Rob Bovett wrote a letter to Emrick Investments, which stated in part:

However, as you know, that arborist report is fraudulent, in the sense that the arborist who purportedly signed it did not, has relocated to another state, and hasn't worked for "Mr. Tree" for many years.

As a result, Washington County has reopened that code enforcement matter and is now requiring that you go through a retroactive Type II procedure as required by Section 308-3.7 of the Development Code. If you do not comply, Washington County will escalate this matter to a code enforcement public hearing, which might result in the imposition of a fine.

Exhibit 20. It is unclear why Mr. Bovett assumes that Emrick Investments, LLC / Brown Contracting, Inc. would "know" that the letter was "fraudulent," even assuming that it was (which is both unproven and wrong). Don Brown states that he was certainly not aware that Mr. Dunn had not personally been to the site prior to writing the January 20, 2023 letter. To the contrary, Mr. Brown had not given any thought to the issue prior to passing on the letter to the county. Had he done so, he would have reasonably assumed that Mr. Dunn worked for Mr. Tree, Inc., and that either: (1) Mr. Dunn personally appeared on the job site at the time the trees were logged, or (2) that he signed the document based upon his interactions with Wilber Akins, as well as any documentation that Mr. Tree, Inc. had recorded from the site.

Nonetheless, Brown Contracting, Inc. followed the recommendation of both AKS and counsel and, on August 8, 2023, submitted this application for a retroactive tree-cutting permit.

/// /// ///

### III. Evaluation of Public Comments.

I read the comment letters with great interest. I was struck by the comments in three respects.

First, only four (4) of the fifteen (15) persons commenting actually live within sight and sound of the subject property, and two of *those* four comments are from the household of the primary opponent and instigator, Eric McClendon. The remaining eleven (11) commentors have no geographic relationship to the property and are therefore not adversely affected by the matter. That is highly unusual in a matter addressing any land use matter, let alone a mere tree removal permit.

Second, many of the comments contained an unusual amount of anger and vitriol, and all of the comments reflect a poor understanding of the facts and application of the law. It is apparent, in this regard, that a lot of well-intentioned but ill-informed people have been encouraged to submit comments by Eric McClendon. For example:

- ❖ Kelly Andrews, a resident of NE Portland, accuses Brown Contracting of “illegal land clearing” and stated that “[n]o fine is large enough for this scumbag.” It makes me wonder what story she was told to make her so angry and unprofessional, especially when she lives in a different county.
- ❖ Chad Fribley, who lives a mile away from the subject property, states that AKS should “not be allowed to work in the County” because they have “no regard for rules or laws or the people that live here.” He complains that AKS did the forestry work for the “Autumn Sunrise” subdivision and “cut more trees than they were supposed to,” a claim that is both untrue and unsubstantiated. His ignorance is on full display when he states that AKS and Brown Contracting, Inc. “are not professional people.” As an example, he accuses AKS of conducting the tree-cutting on the subject property, when in fact that actual work was done by a different company, Mr. Tree, Inc. Of course, everyone gets to have an opinion, regardless of how uninformed it is, but Mr. Fribley should probably stick to topics he knows more about.
- ❖ Carly J. Cais, who lives in the same distant neighborhood as Mr. Fribley, states that “AKS falsified wetland map data to assist Brown Contracting / Emick Investments.” This is pure fiction, and we suspect that Mr. McClendon is the source of this false information. As discussed above, AKS had no involvement in the logging operation. Furthermore, nothing in the January 30, 2023 letter was “falsified.”
- ❖ Kyle Allison, a resident of Wilsonville, stated that removing a wetland is “short sighted at best, idiotic at worse [*sic*].” It is unclear why he believes that a wetland was “removed.” No wetland was disturbed in any meaningful way by the tree

cutting at issue. DSL conducted a site visit and obviously did not consider there to be any sort of violation warranting action on their part. They just requested that Brown Contracting reseed the area and regrade a single equipment track.

- ❖ Joni O’Donahue, a resident of King City, states that she is “horrified” that the “property owner cleared trees and made other disfigurements illegally, without permits.” She opines that “no one is above the law,” even though an ordinary citizen such as herself would likely have absolutely no idea what the “law” in question actually is, and would have no ability to figure it out if tasked to do so. She would likely need to hire a team of professionals to determine how to implement these “laws,” as is the case herein. The reality is that the vast majority of Washington County residents could not afford to undertake the analysis demanded by the tree-cutting regulations.
- ❖ Linda Ness, a resident of West Linn, says that it is “important for Oregon residents to stand by the wild areas that need protecting,” and that the County should “do the right thing,” whatever that means. She does not expand on why she thinks that the subject property, which is zoned for “Future Development,” is a “wild area” that needs “protecting.” The vast portion of the property where the tree removal occurred is not zoned in a manner that requires “protection.”
- ❖ Greg Malinowski, a retired Washington County Commissioner and resident of the Bethany area, asks whether the County is going to “enforce its obligation to protect SNR areas, or is it best to go directly to DLCD.” As a former Commissioner, one would think that Mr. Malinowski would have a better understanding of the nature of the SNR overlay, and would not be so prone to comment on a quasi-judicial matter without a better understanding of the facts or law. Other than enforcement orders, there is nothing in this case over which DLCD would have jurisdiction, and this is not a situation that would trigger a DLCD enforcement order.
- ❖ April Smith, who lives in Tigard, asserts that Brown Contracting, Inc. removed “old growth trees.” This is certainly untrue, as there are virtually no remaining “old growth” trees left in this region. The region’s “old growth” trees were harvested over 100 years ago to build homes for people like Ms. Smith. However, we are aware that Eric McClendon has been spreading the “old growth” rumor, apparently to fire up self-proclaimed “environmentalists” such as Ms. Smith.

Third, the comments did not discuss anything of legal relevance. The issues raised in the public comments received fall into six broad categories.

1. Alleged Increase in noise pollution. Three commentors from two households mentioned an increase in noise resulting from the tree cutting. As an example, Lindsey Severson, who lives on the same property as Eric McClendon, states that the



“damage to the wetland” has caused “a huge increase in noise pollution to the large lot of residential properties to the north.” Deborah Hall states that “the noise we hear from Day Road and I-5 is significantly louder. We never heard noise from these roads like we do now.” None of what Ms. Hall states makes any sense, since I-5 is located to the east of her property, whereas the tree removal occurred to the southwest. Her home is located 120 yards from SW Boones Ferry Road, and 350 yards away from the portion of Day Road in the vicinity of the tree removal. So it appears that she was coached by Mr. McClendon to say things that cannot be factually true. Jackie Mathys, who lives at 24305 SW Boones Ferry Rd, Tualatin, OR 97062, approximately 1,000 feet north of the site, states that the “unfulfilled requirement to plant trees on the northern edge of 9675 Day Road” has “already contributed to undue noise and disruption for the surrounding residents.” Again, that is an odd thing for a neighbor to say when she is unaffected by that issue, and is a clear indication that she has been coached by Eric McClendon.

Having said that, the criteria for a tree removal permit do not contain criteria related to noise. In addition, the Washington County Noise Ordinance (“WCNO”) does not regulate increases in background noise related to tree removal. Furthermore, a landowner does not have a property right that guarantees any particular level of quietness. So these concerns provide no basis for denial of a tree-cutting permit, nor do they demand any curative mitigation.

2. Loss of wildlife habitat. Lindsey Severson states that the “damage to the wetland” has caused “a noticeable decrease in wildlife.” Jackie Mathys states that the “removal of trees has decimated wildlife habitat.” Ironically, both of these people were granted permits to build within Metro’s SNR upland wildlife area without any mitigation. They obviously did not care about wildlife habitat when it was their turn to build on their own private property. Nor were they required to dedicate resources addressing the Goal 5 issues on their own property. Moreover, these comments do not make any sense, since Washington County does not regulate areas shown as “Class B” upland wildlife habitat on Metro’s Regionally Significant Fish & Wildlife Habitat Inventory Maps. See Exhibit 28 (Metro Staff summary of Title 13, stating that “regulatory protection on [riparian] Classes I and II only. New UGB additions will need to look at some protection for [Upland] Classes A and B.”
3. Soil Stability. Lindsey Severson states, without evidence, that “runoff from these lots was clearly visible and has caused long-term damage.” Jackie Mathys chimes in with a similar refrain, stating that the logging has “compromised the soil stability critical for wetland health.” There is simply no evidence to support these statements, and neither Ms. Severson or Ms. Mathys claim to have scientific expertise. They are therefore not allowed to give opinion testimony on scientific topics.<sup>5</sup>

<sup>5</sup> Expert testimony differs from lay person testimony in that an expert is allowed to give his or her “opinion” about whether a science-based standard is met. LUBA has often stated that a local government may rely on the *opinion* of

4. Protection of the “Significant Natural Area.” From reading the comments, it is clear that the members of the public who submitted comments do not understand the “Significant Natural Area” regulations. For example, Carly Cais opines that the “trees are there as a buffer zone between developments - for a reason.” While we understand Ms. Cais’ preference for there to be a protected buffer between the developments she identifies, these trees are on private property. Only a small area of the property is regulated for tree cutting, and those few trees would not provide the type of buffer Ms. Cais desires in any event. The only trees that are protected on this property are the ones that are located in a delineated wetland or in the Class I or II “Riparian Habitat” as identified on Metro’s Regionally Significant Fish & Wildlife Habitat Inventory Map. Those trees are not a “buffer” required as a condition of approval for a specific development, and it is unclear where Ms. Cais got that misunderstanding. In this case, the record is unclear if tree cutting occurred in the Metro Class II habitat (mapped as a small triangle of land). There are other regulated areas onsite, and we understand that the landowner would not be able to cut trees or develop within the delineated wetland (without a DSL fill permit) or within the Metro Class I or II riparian habitat.
5. Alleged loss of property value. Jackie Mathys stated that the tree removal has “potentially affected our property value.” This is complete nonsense and hysteria. Ms. Mathys lives approximately 1,000 feet from the closest area where trees were removed. These types of comments simply lower the credibility of the person who states them. Regardless, property value is not an approval criterion.
6. General misunderstandings of the legal zoning status of the subject property. The commentors are generally uninformed as to the zoning and regulated status of the property. As an example, Kyle Allison states, as a general matter, that “[w]e need to keep our urban green spaces” because “they are good for everyone.” He further states that “[w]e do not want *our* areas becoming concrete jungles.” (Emphasis added). It is unclear why Mr. Allison believes the subject property is a “green space” or that the area belongs to the public. Similarly, one comment requested that the County “[p]lease support the wildlife and nature preserves in Washington [County].” Again, the commenters have apparently been told that the land in question is some sort of protected zone, wildlife preserve, or green space. With the exception of the tree cutting that occurred in the small triangle of Metro’s Class II Riparian Habitat, the law does not prevent the other tree cutting that occurred on the upland portion of the subject property. Note that no tree-cutting occurred in Metro Class I Riparian Habitat

an expert in making a determination as to whether a proposal satisfies an applicable standard. *Thormahlen v. City of Ashland*, 20 Or LUBA 218, 236 (1990). Additionally, LUBA has stated that an expert witness is generally not required to explain the basis for assumptions underlying the expert’s evidence, nor is evidence supporting those assumptions required to be included in the record. *Citizens for Resp. Growth v. City of Seaside*, 26 Or LUBA 458, 465 (1994); *Miller v. City of Ashland*, 17 Or LUBA 147, 170 (1988); *Hillsboro Neigh. Dev. Comm. v. City of Hillsboro*, 15 Or LUBA 426, 432 (1987).

or in a delineated wetland.

Thus, the public comments are wholly without merit and should be disregarded.

We also wish to separately respond to the letter from Ms. Miranda Bateschell, Planning Director, City of Wilsonville, to Mr. Stephen Shane, dated March 4, 2024. We do not believe that the city analyzes the law correctly, and, as a result, it greatly overstates the amount of required mitigation. Having said that, the City's letter does highlight the fact that the applicable law is overly complicated and incomprehensible. We address five separate issues raised by the City's letter. Some of this discussion is repeated from my letter to Mr. Rob Bovett dated July 14, 2023.

*The city states: A substantial portion of the properties is identified as Significant Natural Resources by Washington County, as shown in Attachment 1 (see also applicant's Exhibit B), and Metro Title 13 lands, as shown in Attachment 2 (see also applicant's Exhibit C).*

The city's "Attachment 1" is a different map than the one the applicant included at its Exhibit B. The City's map seems to be derived from some sort of Metro map. We do not believe that Washington County has formally adopted the map referenced by the City. Unlike the map attached to the City's letter, the Applicant's map at Application Exhibit B is an adopted and published map, which is found at Comprehensive Plan Policy 41. This Plan Policy tasks the County to continue to apply the "Significant Natural Resources designations on the Rural / Natural Resources Plan." That map shows the area as a "Significant Natural Area." Washington County's LDO, Section 422, does cross-reference Metro's "current" Regionally Significant Fish & Wildlife Habitat Inventory map, but the County never formally adopted it as a Washington County Comprehensive Plan map, as far as we can tell. CDC 422-2. A mere cross-reference is not legally sufficient to constitute an "adoption." Moreover, a local government can never adopt future versions of a map, as that constitutes an unlawful delegation of legislative authority. The fact that there are so many different maps floating around contributes to the confusion associated with this case. We recommend that the County formally adopt a single map, or series of related maps, and make those maps available online and copies made available for purchase. ORS 215.050.

The City is also wrong to assume that the County's formally adopted maps regulate upland habitat. The Rural / Natural Resources Plan map is not an upland habitat map, which of course makes sense because the land was zoned for "Future Development," not conservation. CDC 308-7.3 is one of the base zone regulations for the FD-20 zone. It states that "[p]roperty in an Area of Special Concern on the Future Development Areas Map in the Comprehensive Framework Plan for the Urban Area is subject to the applicable Area of Special Concern provisions in Plan Policy 41." The subject property is in the Area of Special Concern ("ASC 5"), so Comprehensive Plan Policy 41 applies on some level, and it, in turn, includes a "Map B" showing Goal 5 resources. The operative map is entitled "Tonquin Scablands Geologic Area map, dated April 1983." This map is "Figure 1-18" from an older version of the

Washington County Comprehensive Plan.<sup>6</sup> Exhibit 21. The map covers a broad area, and the subject property is located on the periphery of the Scablands, in an area designated partially on that map as “Fish and Wildlife habitat” and partially as “Natural Resources, Significant Natural Area.” An Interoffice Memo from Hal Bergsma, Senior Planner to Brett Curtiss, Planning Division Manager, dated April 26, 1984, provides the reason that this site was deemed to be significant:

Tonquin Scablands Geologic Area: Widely recognized as among the most important geologic features in Oregon, this area has scientific and educational value for its evidence of the impacts of the Missoula floods. Geologic features of the area include channels, depressions (often containing ponds or marshes), and scoured bedrock knolls and channel walls. The major conflicting use for this area is quarrying.

Exhibit 22. The memo goes on to discuss the Missoula floods, which were a series of 40+ separate flooding events that occurred somewhere between 11,000 – 18,000 years ago. The Bergsma memo discusses various sub-areas within the Tonquin Scablands Geologic Area. With regard to unrelated lands located southeast of the Tigard Sand and Gravel site, the memo states:

E.4.1.4.1 A half-mile long depression in Section 34 north of the community of Tonquin is the route for the Burlington Northern Railroad. The southern half is now a swamp and the northern half is a shallow lake. Part of the adjacent west-facing cliffs are vegetated with relatively drought-tolerant plants because of the shallow soil; the dominance of Pacific madrone (*Arbutus menziesii*) is unusual for Washington County. This may be the premier site in the Scablands most deserving of preservation.

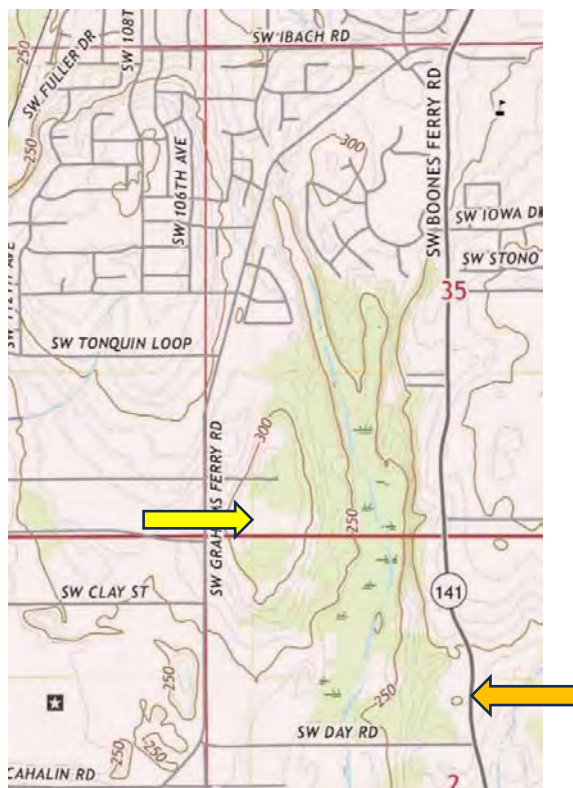
The memo also discusses the swampy area and associated cliffs located north and northwest of the subject property:

E.4.1.4.4 A smaller version of the Rock Creek channel--east of Tonquin Road and south of Ibach Road--also contains scoured 100-foot-high bedrock walls and lies just downstream from a major flood spillway. Two other spillways, somewhat higher and much less eroded, are also found in this compact area. The "island" and eastern edge above 300-foot elevation would permit research into the question of the upper boundaries of the scouring. The parcels involved are: 3SI 2B tax lots 100, 200, 303, 304, 306, 308, 311, 1100, 1200, 1300, 1400, and 1500; all of tax map 2SI 35C except tax lot 1900; 2SI 35B tax lots 200, 300, 400, 401, 500, 501,

<sup>6</sup> We are working under the assumption that Figure 1-18 is still operative and has not been repealed.

502, 503, 504, 701, 702, 704, 800, 801, 802, 803, 804, 805, 807, 808, 809, 900, 901, and 1201. [note: to make sense of the tax lot references, the reader must refer to the 1982 version of the Tax Assessor's Map] Exhibit 23.

The “island” formed by the 300 msl contour is easily seen on a modern USGS Topo map. What is noteworthy as it relates to tree cutting is that the Bergsma memo makes clear that tree preservation is not the reason that the Tonquin Scablands Geologic Area was designed as a Significant Natural Area. Rather, the area was chosen so that it could be studied and protected from quarry operations, which are common in this area. The portion of the tax lots that were logged by Mr. Tree do not offer anything useful to persons studying the geologic record: the key study areas are the cliffs and the areas above 300 msl. The “island” is shown via a yellow arrow on the accompanying topographic map, and the other key 300 msl hilltop study area is shown via an orange arrow.



The City cites to the “Basalt Creek Concept Plan” (“BCCP”) as if it is a regulatory document. We do not understand the BCCP to be a mandatory approval standard for a tree cutting permit in Washington County, and we question its relevance to this case. We did ask the City of Wilsonville to clarify their position on this point, but they did not respond despite having three weeks to do so.

The city also cited to provisions of the Metro Functional Plan that we do not believe apply to Washington County. Metro Code Title 13, §3.07.1340(b)(2)(B)(i) and §3.07.1340(b)(2)(C) apply to cities and counties “that chose to rely upon their comprehensive plans and implementing ordinances to comply, in whole or in part, with Metro Code §3.07.1330(b)(2).” See Metro Code §3.07.1340, entitled “Performance Standards and Best Management Practices for Habitat Conservation Areas.” Although we are not 100% certain,<sup>7</sup> we believe that Washington County proceeded under a different path, which is discussed at MC

<sup>7</sup> Metro’s Title 13 is a law that is primarily aimed at regulating the actions of the 27 jurisdictions within Metro’s jurisdiction. The intent is that these 27 jurisdictions would incorporate Title 13 requirements into their comprehensive plans and land use regulations. As such, Title 13 is written in a manner that is directed at professional staff planners, and is generally only comprehensible to those individuals who have a factual background in the Title 13 planning process. Title 13 was not written with the intent that members of the public would have to read its provisions to know whether they can cut a tree down.

§3.07.1330(b)(5). This led to a document known as the “Tualatin Basin Program decision.” This is discussed in the “Findings” document attached to Washington County Ord. 869.

We further understand that Metro Title 13 does not require jurisdictions to limit development in mapped Class A or Class B upland habitat areas. Exhibit 28. It only requires development limitations in Class A and B upland habitat areas that were added to the Metro UGB after December 28, 2005. MC §3.07.1320(b)(1); MC §3.07.1330(b)(5). The subject property was added to the UGB in 2004. While an area may have been inventoried as significant upland habitat, and even classified as having greater value ecologically than for development, Metro does not necessarily mandate that particular upland habitat area be protected if it was already in the UGB by December of 2005.

The findings for the now vacated Washington County Ordinance 869, dated Oct 27, 2020 seem to confirm this understanding:

“The ordinance clarifies reference to the Regionally Significant Fish and Wildlife Habitat found on Metro’s Inventory Map is to the “Class I and II Riparian Habitat.” This is in keeping with Metro Title 13 requirements and the Tualatin Basin Program decision. When Metro conducted the Regional Inventory of Significant Fish and Wildlife Habitat in the early 2000s, the natural resource categories were distinguished by habitat type: Riparian and Upland Habitat. Metro scientists also assessed the quality of the two habitat types through three quality classifications. Using this inventory, the Tualatin Basin Program decision agreed that Class I and II Riparian Habitat should be regulated, and development within those areas should be strictly or moderately limited. The clarification of the specific category of resources intended to be regulated per Metro Title 13 and previously adopted by the County through A-Engrossed Ordinance No. 662 does not add a new resource category subject to § 422.”

#### Exhibit 24.

The DLCD Hearings Officer decision on the enforcement matter that City staff previously referenced in its letter dated March 4, 2024 also discussed this issue. DLCD summarized the status of Washington County’s Goal 5 program, as follows:

The county has a Goal 5 program that relies on the provisions of CDC 422, including CDC 422-3.3, 422-3.4, and 422-3.6 to implement the Goal 5 program. The provisions that are currently in effect are the same provisions that were in effect during the 2020 enforcement proceedings. For the same reasons articulated in the 2020 enforcement order, the county's provisions are out of

compliance with Goal 5. Specifically, CDC 422-3.6 is the only regulation that applies to protect the upland habitat. LUBA's and the Court of Appeal's decisions in *Warren v. Washington County* resulted in a determination that this regulation not clear and objective and thus invalidated as to housing applications by ORS 197.307(4). (Emphasis added).

See Attachment entitled “DLCD Enforcement 2023-04 Item 6.” Exhibit 25.

The City states: *Due to recent litigation against the County for lack of compliance with Goal 5 particularly as it relates to upland habitat, the City respectfully stipulates the County’s mitigation standards cannot be relied upon and, therefore, request mitigation be required consistent with Clean Water Services and City of Wilsonville both of whom have been found to have standards in compliance with Goal 5.*

This suggestion violates Oregon law. ORS 215.416(8)(a); ORS 215.427(1). We emailed the City staff and City attorney on March 5, 2024 and presented them with our position and interpretation of the law. Exhibit 26. We politely asked them to respond to the extent that they thought we had misinterpreted the law. They did not give us the courtesy of a response, and at this point we are strongly inclined to believe that *they* were operating under an incorrect understanding of the law. The City’s comments should therefore be disregarded.

#### **IV. As Applied to This Case, the Tree Removal Ordinance Violates the Adoption & Publication Requirement and the Codification Requirement.**

The provisions of the Washington County Code related to tree removal run into a number of problems that make them unenforceable. The first problem is that some of the maps referenced in the Code, discussed below, are not actually formally adopted, as required by law. In this regard, ORS 215.050 requires the County to adopt and publish its comprehensive plan and zoning maps:

*ORS 215.050 Comprehensive planning, zoning and subdivision ordinances; copies available.*

*(1) Except as provided in ORS 527.722, the county governing body shall adopt and may from time to time revise a comprehensive plan and zoning, subdivision and other ordinances applicable to all of the land in the county. The plan and related ordinances may be adopted and revised part by part or by geographic area.*

*(2) Zoning, subdivision or other ordinances or regulations and any revisions or amendments thereof shall be designed to implement the adopted county comprehensive plan.*

***(3) A county shall maintain copies of its comprehensive plan and land use regulations, as defined in ORS 197.015, for sale to the public at a charge not to exceed the cost of copying and assembling the material.***

As such, any map used to implement a land use regulation must be formally adopted and “copies” must be made available to the public. In addition, both ORS 215.416(8)(a) and its counterpart applicable to cities, ORS 227.173(1), set forth what is known to land use practitioners as the “codification requirement.” It requires that permits be decided based on text and maps adopted into zoning codes:

***Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.***

The primary purpose of the codification requirement is to assure that permit decisions will be based on pre-existing legislation. *BCT Partnership v. City of Portland*, 130 Or App 271, 276 n2, 881 P2d 176 (1994); *Zirker v. City of Bend*, 233 Or App 601, 227 P3d 1174 (2010). An example of how a zoning ordinance can run afoul of this requirement is provided by *State ex rel. West Main Townhomes v. City of Medford*, 233 Or App 41, 43, 225 P3d 56 (2009), *adhered to as modified on recons*, 234 Or App 343, 228 P 3d 607 (2010).<sup>8</sup> *See also Oster v. City of Silverton*, 79 Or LUBA 447 (2019); *Waveseer of Oregon, LLC v. Deschutes County*, 81 Or LUBA 583 (2020), *aff'd*, 308 Or App 494, 482 P3d 212 (2021);<sup>9</sup> *Hollander Hospitality v. City of Astoria*, \_\_\_ Or LUBA \_\_\_ (LUBA No, 2021-061, Sept. 30, 2021), *Landwatch Lane County v. Lane County* (Fallon), 81 Or LUBA 656 (2020).

<sup>8</sup> The relevant section of the Medford zoning code stated that all development must be consistent with an adopted neighborhood circulation plan and, if such a plan did not exist, it was the developer's responsibility to demonstrate that the development “will not impair the future development of a comprehensive neighborhood circulation system.” The parties agreed that there was no plan for the neighborhood at issue. The Court of Appeals held that the code did not give sufficient notice of what was required. The Court noted that the standard refers to eventual development of adjoining property and future provision of access, and there was no way to show compliance with such future standards.

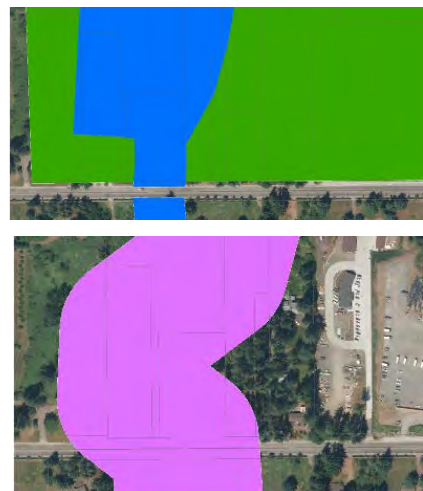
<sup>9</sup> In *Waveseer*, the county denied an application for a marijuana production facility based upon a 10-factor analysis and conclusion that the proposed facility would be too close to a “youth activity center.” The court held that “nothing in the provisions of the code signal[ed] the notion of a 10-factor analysis, let alone the particular 10 factors identified by the county as relevant. Under those circumstances, the court held that LUBA was correct to conclude that the county's interpretation of the ‘youth activity center’ criterion in [the code] violate[d] the codification requirement of ORS 215.416(8).”



Here, the County has identified certain areas as “wildlife habitat, including “[s]ensitive habitats identified by the Oregon Department of Fish and Wildlife, the Audubon Society Urban Wildlife Habitat Map.” CDC 422-2.3. The wording of this provision is ambiguous, because it is unclear whether the referenced maps are intended to have independent regulatory effect, or whether these maps are merely being mentioned as the factual / evidentiary base for the development of the Community Plans and Rural/Natural Resource Plan Element. If the latter was intended, then the references to ODFW and the Audubon map should have been made in the findings document, not the actual regulation. The County has been unable to provide a copy of these maps despite our requests for the same

The code clearly attempts to incorporate Metro’s “current” “Regionally Significant Fish & Wildlife Habitat Inventory Map.” CDC 422-2. Metro Ordinance 05-1077C, dated September 29, 2005, created Title 13 and adopted the Regionally Significant Fish & Wildlife Habitat Inventory Map. Merely cross-referencing the Metro map is not the same as formally adopting it as an exhibit to an Ordinance. The Metro map cannot be used to decide this case because it has not been formally adopted and codified.

The County can also not rely on GIS maps that have not been formally adopted. In this case, staff presented Mr. Brown with the two maps shown to the right. We have been told by Washington County Counsel’s office that these maps are from a GIS system called “GeoNet” / “Intramap.”<sup>10</sup> There is no evidence that these digital maps have been formally adopted. To the extent that is true, those maps cannot be used for regulatory purposes. These maps are also not published, and are not available for sale within the meaning of ORS 215.050. We understand that these maps are digital adaptations of a 1974 USACE map referenced at CDC 421-1.1.B, which states: “Where base flood elevation data has not been provided (approximate A Zone): (1) "Floodplain Series, Washington County, Oregon, revision 5/01/1974, 1/03/1978, 1/1981, 5/25/1983 and 12/12/1983" based upon data from the U.S. Army Corps of Engineers.” We do not find copies of these USACE maps available online or otherwise published and available for purchase. ORS 215.050.

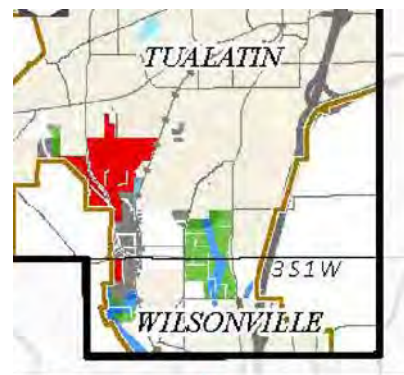


<sup>10</sup> On its website, the County encourages would-be applicants to call County staff, which will then provide a map using GIS technology that shows whether the would-be applicant’s property is in an area shown in one of the maps the county references. A would-be applicant is entitled to review the maps for themselves, without being filtered by staff. It is impossible to determine the source of the information in a GIS map provided by the County, and it is impossible to tell if the County made an error in its production of the GIS map, which is notably not a full copy of any of the maps referenced in the WCDC. We would not encourage the County to stop providing this service, but it cannot be the only way for a would-be applicant to research their property and the laws that apply to it.

The codification requirement also demands that the County's standards and criteria be set forth with enough specificity to enable the participants "to know what \* \* \* must [be shown] during the application process." *Lee v. City of Portland*, 57 Or App 798, 646 P 2d 662 (1982); *Oswego Properties, Inc. v. City of Lake Oswego*, 108 Or App 113, 814 P 2d 539 (1992).

In this case, Map B of Plan Policy 41 of the Comprehensive Plan shows the ASC-5 map is not drawn to a sufficient scale which would make it understandable and comprehensible for a tree-cutting permit within a specific property boundary.

In *Larson v. Willowa County*, 23 Or LUBA 527 (1992), *aff'd in part, rev'd and rem'd in part*, 116 Or App 96; 840 P2d 1350 (1992), LUBA noted that the small scale of a zoning map created an ambiguity, but stated that the text of the zoning code could be relied upon to resolve the location of the relevant boundary. In *Oregon Shores Conservation Coalition v. Curry County*, 60 Or LUBA 415 (2010), LUBA held that when a County's Comprehensive Plan map is scaled in a manner that makes it difficult to draw site-specific conclusions from the map, it is permissible to use related text from the Plan as "context" to assist in the required interpretation. LUBA stated that in the absence of other evidence, the County could even attempt to create a composite map by enlarging the small-scale Comprehensive Plan Map and superimposing it on top of a tax lot-specific map.



In this case, AKS attempted to make a composite map. See Figures 5 and 6 set forth in the application. These composite maps give a general sense of the regulated areas, but are not useful for differentiating between areas where removal of an individual tree would be regulated. The only way to know for sure if a tree requires a permit to be cut is to hire an attorney and a natural resources scientist.

Governments in Oregon have a responsibility to make laws available to the public. Washington County is out of compliance with this responsibility regarding CDC 422-2, because the maps it references are not available. They are not incorporated into the Code anywhere, including in appendices. They are also not included in the ordinances that the County lists as the origin of the Code's current text<sup>11</sup>. We submitted a public records request to the County prior to writing this letter, and the response we received said that "the County is unsure whether it is the custodian of the records." If even the County cannot tell whether it has the maps that constitute part of its code or not, then it would certainly be impossible for a would-be applicant to review those maps and determine whether its property is on one or not.

<sup>11</sup> We reviewed Washington County Ordinances 833, 858A, 885A, and 890A, which are the ordinances listed as implementing WCDC 422. None of these ordinances appear to create or alter WCDC 422-2 specifically, however. It is possible that the County did not cite to all of the relevant ordinances. This would still constitute noncompliance with the requirement that laws be made available to the public.

## V. Unconstitutional Delegation Under Article I, Section 21 of the Oregon Constitution.

At least four of the maps listed in CDC 422-3 and CDC 421 are sourced from authorities that are not Washington County. One map is created by Metro, a special regional government authority; the second is from FEMA, and third is from USACE. The fourth map is from the Audubon Society<sup>12</sup>, which is not a governmental organization. This creates two problems:

First, while it is allowed for lawmakers to reference work done by other jurisdictions and non-governmental experts when making law, to have regulatory effect, the referenced work must be formally adopted as an exhibit to the ordinance that adopts it. Otherwise, it is impossible to know if the referenced map is the same as what was adopted.

Second, Oregon's Constitution does not allow lawmakers to delegate their authority in most circumstances, including in these circumstances. Article I, §21 of the Oregon Constitution reads in relevant part: "... nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution ..." Or. Const. Art. 1, § 21.

The case of *Advocates for Effective Regulation v. City of Eugene*, 160 Or App 292, 981 P2d 368 (1999) mirrors the facts in the current matter in certain ways. In *Advocates*, citizens voted to force companies which stored or used hazardous substances to report that storage or usage, among other things. The voter initiative drew its list of hazardous substances from the federal government. The court first found that a municipal charter amendment voted on by the citizens of the City of Eugene constituted a "law" for purposes of Art I, §21:

Whether the rule against prospective delegation applies to municipal charters has not been addressed directly by the courts. The matter requires little discussion, however. Article I, section 21, applies to "laws." Certainly, a municipal charter is a "law." Charters are the organic laws of municipalities. *See Harder et ux. v. City of Springfield et al.*, 192 Or. 676, 683, 236 P.2d 432 (1951) ("A city charter constitutes the organic law of a municipality."). *See generally* 2A McQuillin Mun. Corp. § 9.03 (3d ed 1996) ("the city charter represents the supreme law of the city \* \* \*"). The City and intervenors read Article I, section 21, to apply only to a particular species of law enacted by a legislative body, such as a statute adopted by a legislature or an ordinance adopted by a city council. To be sure, the term "law" can be used in that fashion. Even if the rule against prospective delegation applies only to legislative enactments, however, the fact remains that a city charter

<sup>12</sup> The Audubon Society recently changed its name to Bird Alliance of Oregon. To avoid confusion, since we refer to both older maps that were published under the name Audubon Society as well as the organization in its current state, we will continue to refer to it as Audubon Society in this letter.

amendment adopted by a vote of the people is a legislative enactment.

*Id.* at 312. Next, the court found that the law was an unconstitutional delegation of authority from the City to the federal government because it gave the federal government power to unilaterally change the City's laws:

Article I, section 21, of the Oregon Constitution provides: "nor shall any law be passed, the taking effect of which shall be made to depend upon any authority \* \* \*." That provision has been construed to prohibit laws that delegate the power of amendment to another governmental entity. A state statute, for example, cannot incorporate future federal regulations not yet promulgated at the time of enactment; the effect of doing so is to delegate the power to amend the statute to the federal regulatory authority. *Seale et al. v. McKennon*, 215 Or. 562, 572–73, 336 P.2d 340 (1959); *State v. Charlesworth/Parks*, 151 Or.App. 100, 106, 951 P.2d 153, *rev. den.* 327 Or. 82, 961 P.2d 216 (1997). Likewise, a local government ordinance cannot incorporate state statutes not yet enacted. *City of Salem v. Jungblut*, 83 Or.App. 540, 543, 732 P.2d 919 (1987); *Brinkley v. Motor Vehicles Division*, 47 Or.App. 25, 27, 613 P.2d 1071 (1980). [Footnote omitted.]

*Id.* at 311-12. If the initiative drafters had instead attached a list they obtained from federal law as an exhibit to their initiative, they would have been in compliance with the constitution. The initiative failed because it attempted to incorporate an ongoing, updating version of its list, which the court considered to be an unconstitutional delegation.

A similar result occurred in *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010). In *Barnes*, the City delegated authority to the Port of Portland regarding land surrounding the Hillsboro Airport. Rather than a voter initiative amending the City's municipal code, this was implemented as part of the City's Comprehensive Plan. LUBA found that the Comprehensive Plan was law, stating that "[r]espondents have not cited any authority suggesting that zoning ordinance amendments are not "laws" for purposes of Article I, section 21." Furthermore, the city wrote this part of its Comprehensive Plan in a way that allowed the Port of Portland to make updates to it, which LUBA found unconstitutional, referencing the Court of Appeals' decision in *Advocates*.

[T]he legislation at issue in both *Advocates* and in the present case explicitly and unambiguously require compliance with other entity's regulations as they may subsequently be amended. It is impossible to construe the language of HZO 135A(D)(6) to require compliance only with environmental regulations in effect when the ordinance was adopted. HZO 135A(D)(6) expressly requires compliance with future regulations not promulgated at the time of adoption, and therefore violates the Article

I, section 21 prohibition on delegation of the power to amend the city's legislation.

*Id.* Based on these two cases, it is well-established that the concept of “law” as stated in Article 1, Section 21 of the Oregon Constitution is broad enough to include Washington County’s Development Code. It is also clear that one government entity cannot give another government entity the power to change its laws into the future.

When it comes to incorporation of documents by reference, maps can be even more problematic than text. As mentioned above, CDC 422-2 references “Metro’s current Regionally Significant Fish & Wildlife Habitat Inventory Map.” (Emphasis added). Use of the word “current” creates an ambiguity, because it is not clear if the drafters meant for the use of the version of the Metro map that was “current as of the date of Ordinance adoption” or whether they intended the operative map to be whatever version of the map was “current” as of the date of application of the Ordinance to a specific property seeking a tree cutting permit.

Caselaw suggests that the Ordinance is unconstitutional to the extent that the intent was to adopt whatever new version of the map Metro adopts in the future. In *Seale v. McKennon*, 215 Or 562, 572-3, 336 P2d 340 (1959), the Oregon Supreme Court stated:

When a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference, and not as subsequently modified; whereas, where the reference is general, such as a reference to a system or body of laws or to the general law relating to the subject in hand, the referring statute takes the law or laws not only in their contemporary form but also as they may be changed from time to time. *Palermo v. Stockton Theatres*, 32 Cal.2d 53, 195 P.2d 1. See, also, *State ex rel. Washington-Oregon Inv. Co. v. Dobson*, 169 Or. 546, 551, 130 P.2d 939; *Noble v. Noble*, 164 Or. 538, 551, 103 P.2d 293; 82 C.J.S. Statutes § 370, p. 847. Here, the legislature has not directly adopted any federal statute or regulation, but has authorized and directed an agency of the state to do so. We see no reason why the rules of construction should be different in such a case. Of course, the ultimate question is, what was the legislative intent? Doubt should be resolved in favor of constitutionality.

A reference to a map is not a reference to a “system or body of laws or to the general law relating to a subject in hand.” We must therefore conclude that the intent behind CDC 422-2 was to implement the Metro map and the Audubon Society map in their static state as of the adoption of the text referencing them. See also *Meyer v. Lord*, 37 Or.App. 59, 586 P.2d 367 (1978); Or. Op. Atty. Gen. OP-5870 (1985).

Unfortunately, this makes it even more difficult to comply with the CDC 422-2, since it is not clear whether the “current” version of the Metro map found on its website is the same version that was in effect when Washington County enacted CDC 422.

Even more troubling is CDC 422-2.3, which references “sensitive habitats identified by the Oregon Department of Fish and Wildlife, \* \* \*.” It is not clear if this provision making a reference to a ODFW map, or if this is a pure delegation of authority to ODFW. If it does refer to a map, which specific map does it refer to?

It is impermissible for the county to require a would-be applicant to obtain information on the law from third parties such as Metro, ODFW, or the Audubon Society. For example, in *Hillman v. Northern Wasco County People’s Utility District*, 213 Or. 264, 323 P.2d 664 (1958), the Oregon Supreme Court held that the Public Service Commission did not have the right to adopt prospectively without hearing or further consideration of subsequent changes, modifications or alterations in such code issued or adopted by the Bureau of Standard or such other national agency as might take over the work of providing electrical standards.

Similarly, in *Corvallis Lodge No. 1411 Loyal Order of Moose v. Oregon Liquor Control Com’n*, 67 Or.App 15, 677 P.2d 76 (1984), the Lodge challenged an administrative rule which required the Lodge to obtain information from other liquor licensees that would determine its ability to obtain an event permit. The court found this arrangement unconstitutional because it constituted an unconstitutional delegation of authority. The court stated:

Accountability of government is the central principle running through the delegation cases. When, as in this case, governmental power to make decisions granting or denying privileges is, in whole or in part, delegated to private individuals who have a self-interest in the decisions, accountability is necessarily attenuated.

*See also City of Damascus v. Brown*, 266 Or App 416, 337 P3d 1019 (2014).

## **VI. As Applied to This Case, the Tree Removal Ordinance Is Void for Vagueness.**

The “void-for-vagueness” doctrine arises out of the Fourteenth Amendment to the United States Constitution. It requires that a statute, rule, or ordinance must be sufficiently definite to give a person of ordinary intelligence fair notice that their contemplated conduct is forbidden, in order to provide a basis for sanctions. *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212, 200 L. Ed. 2d 549 (2018) (plurality) (applying void-for-vagueness doctrine in context of immigration removal proceedings; explaining, “[t]he void-for-vagueness doctrine, as we have called it, guarantees that ordinary people have ‘fair notice’ of the conduct a statute proscribes”). Under the Due Process Clause, a statute is unconstitutionally vague when it contains no identifiable standard; employs a standard that relies on the shifting and subjective judgments of the persons who are charged with enforcing it; or it fails to provide fair warning. *State v. A. R. H.*, 371 Or 82, 530 P3d 897 (2023).

The Oregon Supreme Court has recognized that a zoning ordinance “must be sufficiently certain as to the place or area of its operation so that persons subject to it will know its provisions and when they violate it. *Lane County v. R. A. Heintz Construction Co.*, 228 Or 152, 364 P2d 627 (1961). The U.S. Supreme Court has expressed similar sentiments when addressing other types of City Ordinances: “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294 (1972).

In the context of zoning laws, perhaps the easiest way for a law to be declared void for vagueness is when no zoning map exists or is not drawn to a scale that is understandable and comprehensible. *Brantley County Dev'l Partners, LLC v. Brantley County*, 559 F.Supp.3d 1345, 1377 (S.D. Ga. 2021) (zoning ordinances cannot be so vague to allow those applying the ordinance to “make the law up as they go, based on wholly subjective judgments, such that [they] have unfettered discretion to label property a particular designation on an ad hoc basis.”); *City of Carthage v. Walters*, 375 So. 2d 228 (Miss. 1979) (finding the official zoning map to be vague and indefinite because there was “no way to tell from the map what precise lands were embraced within the various use districts”).

Another case, *Cunney v. Board of Trustees*, 660 F.3d 612 (2d Cir. 2011), concerned a village ordinance intended to protect views of the Hudson River from a road that parallels the river. The zoning law prohibited intervening houses “which shall rise more than ... four and one-half (4 1/2) feet about the easterly side of River Road.” However, in the plaintiff’s 149 feet of road frontage, the elevation of the road above the river varied from thirty feet to twenty-four feet at various points. The question that arose, therefore, was, “Four and one-half feet above what?” The Second Circuit held that the zoning code was unconstitutionally vague as applied to Plaintiff for two independent reasons. First, it found that the code “fail[ed] to give specific notice of how a permit applicant should design his site plan so that [a] proposed building complies with that restriction,” and that “it also fail[ed] to provide an objective standard that the Village itself [could] apply in determining the project’s compliance once an application has been submitted and thereafter when an approved project has been built.” *Id.* at 621. In this way, the zoning code violated Plaintiff’s right to due process because “it fail[ed] to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.” *Id.* (quoting *Hill v. Colorado*, 530 U.S. 703, 732 (2000)). Second, it found that the zoning code “could encourage potentially arbitrary or ad hoc enforcement,” *Id.* at 623 (quoting *Cunney v. Bd. of Trs.*, 675 F. Supp. 2d 394, 400 (S.D.N.Y. 2009)); see also *Id.* at 621 (noting that a law is unconstitutionally vague “if it authorizes or even encourages arbitrary and discriminatory enforcement.” (quoting *Hill*, 530 U.S. at 732)).

In this case, the County’s failure to formally adopt and publish the maps and laws needed to figure out whether a tree cutting permit is needed prevents a person of ordinary intelligence from being able to figure out if his or her property is within an area that requires a tree-cutting permit. The code is also needlessly complex and hopelessly byzantine in its application. See, e.g., Exhibit 27 (Grillo Memo). Even the City of Wilsonville Planning Director proved via her March 4, 2024 letter that she did not understand the code. And I point that fact out intending no

disrespect to her. I do not blame her for not understanding the code, because the code does not provide people of ordinary intelligence a reasonable opportunity to understand when a tree-cutting permit is required. I drafted a flowchart that I *believe* is fairly accurate in depicting the decision-making tree, but even so, I have some lingering doubts on a few points. Exhibit 1. In fact, I doubt very seriously whether *any* member of society, including learned judges and experienced attorneys (and possibly even County planning staff tasked with enforcing the law) could figure out with certainty whether a tree cutting permit is required in any given circumstance. Under such circumstances, the law violates due process and cannot be enforced.

## **VII. The Trees in the Surrounding Area Are Mostly Diseased and Dying.**

We submitted an arborist report that the general health of the trees in the area surrounding where the tree cutting occurred. When the County condemned Bob Jonas's property to make room for the Day Road widening project in 2013, the County's contract arborist submitted a report concluding that the trees on the Jonas property were generally in poor condition. Mr. Jonas' 2015 land use application makes note of this fact, via the following paragraph:

The site is located in the ASC #5, and staff noted that there was a grove of trees on the subject site. Those trees were removed in 2013 on the advice of Washington County staff that cruised the on-site timber in preparation for the 2012 Washington County initiated ROW widening/ improvements to SW Boones Ferry and Day Roads. Washington County staff informed the applicant that the on-site trees were unsafe and would be subject to blow down, which cause the trees to fall onto adjacent tax lots and/or the existing dwellings on the subject site. Based on those facts, the trees were removed.

Exhibit 29 at p. 7. Oregon law is clear that a landowner can be liable for dead or dying trees that cause damage to persons or property. It was a prudent decision for Brown Contracting to remove the trees. In fact, the remainder of the dead and dying trees should also be removed.

/// /// ///



**VIII. Conclusion.**

Brown Contracting has applied for a retroactive tree-cutting permit in good faith. Brown Contracting is prepared to mitigate for the tree cutting that occurred in the Class II “Riparian Habitat” on Metro’s Regionally Significant Fish & Wildlife Habitat Inventory Map. Given everything that has transpired to date, we believe that the best resolution of this case is for the County staff to accept the applicant’s offer of mitigation, issue the permit, and close the file once the mitigation is completed.

Sincerely,

**VF-Law, LLP**

*/s/ Andrew H. Stamp*

Andrew H. Stamp

AHS/nbro

Enclosure

cc: Client

AKS Engineering & Forestry, LLC



**ANDREW H. STAMP**

(503) 684-4111

Andrew.Stamp@vf-law.com

*Admitted to Practice in*

Oregon

VIA EMAIL

June 3, 2024

P18379-001

Joe Turner, Land Use Hearings Officer  
 c/o Dept. of Land Use & Transportation  
 Washington County  
 Public Services Building  
 155 N 1<sup>st</sup> Ave, Ste 350, MS 350-13  
 Hillsboro, OR 97124  
 Email: [stephen\\_shane@co.washington.or.us](mailto:stephen_shane@co.washington.or.us)  
 Email: [Paul\\_Schaefer@co.washington.or.us](mailto:Paul_Schaefer@co.washington.or.us)

Re: *Case File L2400001-D(IND), Brown Contracting Contractor Establishment Application*

Dear Mr. Turner,

Please find attached the following rebuttal evidence, hereby submitted by the applicant into the second open record period of the above-captioned case file:

- The following documents that were originally part of a tree cutting permit application by the same applicant. These documents are submitted as rebuttal to Mr. Eric McClendon's letter that was submitted in the first open record period. Please note that the decision is final and was not appealed.
  - A letter from AKS Engineering & Forestry to Mr. Stephen Shane dated January 26, 2024 and its attachments;
  - A notice from Washington County stating that the County determined that the tree cutting permit application was complete on February 5, 2024;
  - A public notice from Washington County describing the comment period for the tree cutting permit application as extending from February 8, 2024 to February 22, 2024
  - A letter from VF Law to Mr. Stephen Shane and Mr. Rob Bovett dated March 25, 2024 and its 30 exhibits;
  - A Notice of Decision & Staff Report approving, with conditions, the tree cutting permit application on April 12, 2024; and
  - Emails from Ms. Marie Holladay and Mr. Stephen Shane, respectively dated May 28 and 29, 2024, discussing that mitigation complying with a condition of approval in the Notice of Decision had been installed.
- A transcript titled Excerpt of Proceedings, Examination of [Washington County Sherrif's] Deputy Todd Kibble Excerpt, June 28, 2023, Beaverton, Oregon. This transcript is also submitted as rebuttal to Mr. Eric McClendon's letter that was submitted in the first open record period.

The applicant is submitting these documents early as a courtesy to staff, and intends to submit additional rebuttal evidence prior to the time that the second open record period closes.

Thank you for your consideration.

Sincerely,  
**VF LAW**

/s/ *Andrew H. Stamp*

Andrew H. Stamp  
*Of Counsel*

ASTA\nbro  
Enclosures

# Is a Tree-Cutting Permit Required?

CDC 201-2 Exclusions from Permit Requirement

CDC 407.3.5: Tree cutting removal standards

CDC 422: Significant Natural Resources

Base Zone: FD-20  
CDC 308-3: The following uses may be permitted unless specified otherwise by the applicable Community Plan or Policy 41 of the Comprehensive Framework Plan for the Urban Area.  
\* \* \* \* \*  
CDC 308-3.7 "Tree removal in areas identified in the applicable Community Plan as Significant Natural Resources, Section 407-3."

CDC 308-7.3 Identified as Area of Special Concern (ASC) on Future Development Map See WCCP Policy 41

**106-185 Riparian Corridor (Water Areas and Wetlands). (1)**  
For areas that have not been the subject of a Goal 5 analysis completed and a program decision adopted pursuant to OAR 660-023 (effective September 1, 1996), riparian corridor shall mean the area, adjacent to a water area, which is characterized by moisture-dependent vegetation, compared with vegetation on the surrounding upland, as determined by a qualified botanist or plant ecologist, or in no case less than a ground distance of 25 feet on either side of the channel. Where, in its existing condition, a wetland or watercourse has no discernible channel which conveys surface water runoff, the riparian zone shall be measured from the center of the topographic trough, depression or canyon in which it is located.

CDC 422-2 Land identified in the Rural / Natural Resource Plan Element as "Significant Natural Resource."

CDC 422-2 Land identified in the Applicable Community Plan [Urban] (N/a)

CDC 422-2 Land identified As "Regionally Significant Fish and Wildlife Habitat" on Metro's current "Regionally Significant Fish & Wildlife Habitat Inventory" map

Urban Comprehensive Plan, Policy 41: Continue to apply the Significant Natural Resource designations on the Rural/Natural Resource Plan to properties designated FD-10 or FD-20.  
5. Area of Special Concern 5 is comprised of approximately 645 acres of land located generally between Tualatin and Wilsonville and between I-5 and the Burlington Northern railroad alignment. The boundary of ASC 5 is shown on Map C (Future Development Areas Detailed Areas) of Policy 41. \* \* \* b) Until the effective date of new regulations adopted pursuant to Title 11, development applications within this Area of Special Concern shall be subject to Community Development Code Section 308, except as otherwise provided below: 1) Day care facilities, cemeteries, religious institutions and schools are prohibited due to the area's designation as an Industrial Area.

See "Tonquin Scablands Geologic Area map, dated April 1983." ("Figure 1-8" of the Washington County Comprehensive Plan). The subject property is located in an area designated partially on that map as "Fish and Wildlife habitat" and partially as "Natural Resources, Significant Natural Area." The Bergsma memo makes clear that tree preservation is not the reason that the Tonquin Scablands Geologic Area was designed as a Significant Natural Area. Rather, the area was chosen so that it could be studied and protected from quarry operations.

CDC 422-2.1 Water Areas and Wetlands

CDC 422-2.2 Water Areas and Wetlands and Fish and Wildlife Habitat

CDC 422-2.3 Wildlife Habitat

CDC 422-2.4 Significant Natural Areas See also CDC 422-3.5 & 3.6

Riparian Class I (high value)

Riparian Class II (med value)

Riparian Class III (low value)

Upland Class A (high value)

Upland Class B (med. value)

Upland Class C (low value)

Shown "Medium" Blue on the Rural / Natural Resources Map

Sensitive Habitats identified by ODFW (Map Not Available)

Audubon Society Urban Wildlife Habitat Map (Map Not Available)

Forested areas coincidental with water areas and wetlands.

SNAs are located on Community Plan Maps (Urban)

MC 3.07.1330(b)(5) re: TBNRCC Goal 5

Not regulated if land was brought into UGB Prior to Dec. 28, 2005 : See Metro Functional Plan Title 13 (MC 3.07.1320(b)(1) and Table 3.07-13(a). See also MC 3.07.1330(b)(5) re: TBNRCC Goal 5 Program.

**201-2 Exclusions from Permit Requirement**  
The following activities are permitted in each district except as limited to particular districts below, but are excluded from the requirement of obtaining a development permit. Exclusion from the permit requirement does not exempt the activity from otherwise complying with all applicable standards, conditions and other provisions of this Code.  
\* \* \* \* \*  
201-2.6 Propagation or cutting of trees except as specified in Section 407-3 provided the trees are not designated as a significant natural resource area in an urban Community Plan, designated for preservation through the master planning process for a development, designated for preservation in a prior development action or when inside the UGB, located within a floodplain or drainage hazard area; (Emphasis added).

100 Year Floodplain (FEMA) 1974 USACE Flood Plain Maps

Drainage Hazard Areas (land vulnerable to a 25-year flood event). 1974 USACE Flood Plain Maps. CDC 421-1.1.B.1

Ponds

Development within a Riparian Corridor, Water Areas and Wetlands, and Water Areas and Wetlands and Fish and Wildlife Habitat:  
A. No new or expanded alteration of the vegetation or terrain of the Riparian Corridor (as defined in Section 106) or a significant water area or wetland (as identified in the applicable Community Plan or the Rural/Natural Resource Plan) shall be allowed except for the following:  
\* \* \* \* \*  
(9) In addition in the Rural/Natural Resource Area:  
(a) Propagation or harvesting of timber for personal consumption, provided that the use of a caterpillar tractor, yarder, backhoe, grader or similar heavy mechanized equipment is prohibited;  
(b) Commercial forestry activities when in compliance with the Oregon Forest Practices Act and Administrative Rules; and  
(c) Farming or raising of livestock not utilizing a structure.  
(d) Operations for the exploration for and production of geothermal resources, oil and gas.  
\* \* \* \* \*  
B. Where development or alteration of the riparian corridor is permitted under the above exceptions, the floodplain and drainage hazard area development criteria shall be followed.  
C. Fencing adjacent to stream buffers or other wildlife habitat areas shall be designed to allow the passage of wildlife. Designs must incorporate openings appropriately sized and spaced to accommodate passage of wildlife common to urban Washington County (common mammals needing access to streams in urban Washington County include but are not limited to: deer, beaver, coyote, muskrat, rabbit, raccoon and skunk).

**From:** Sean Harrasser  
**Sent:** Monday, April 25, 2022 11:58 AM  
**To:** Stephen Shane  
**Subject:** RE: [EXTERNAL] Another email from Tina McClendon re. Logging operation in her neighborhood

Hey there,

It looks like you and Scott Linfesty have already pointed out the obvious concern that I had about a stop work order. Does Current Planning have any authority to do a 'stop work' order for violations of the CDC?

Anyway, I will get an Accela casefile set up and a notice to send out. If you want, we can send that one certified given the particular exigencies.

Requiring a Type II development review for what has been/is being done seems our only action, and unfortunately that isn't going to save any trees or significant natural resources.

~Sean

**Sean Harrasser, CFM | Associate Planner** (*him, he, his*)  
 Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR 97124  
**Phone (503) 846-8131 | Fax (503) 846-2908**  
[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us) | [www.co.washington.or.us/lut](http://www.co.washington.or.us/lut)

---

**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Friday, April 22, 2022 12:00 PM  
**To:** Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** RE: [EXTERNAL] Another email from Tina McClendon re. Logging operation in her neighborhood

Yeah this thing is blowing up and no one wants to deal with it above me.

**Stephen Shane | Principal Planner**  
 Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
 (503) 846- 8127 direct

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Sent:** Friday, April 22, 2022 11:54 AM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>

**Subject:** RE: [EXTERNAL] Another email from Tina McClendon re. Logging operation in her neighborhood

Hey there. I received a code compliance inbox email last Wednesday from an Eric McClendon (I assume related to Tina) regarding what is almost assuredly this matter. Basically three different FD-20 properties with SNR & DHA owned by the same investment company. I sent him the code compliance submittal beta this morning.

I will respond as usual to the powers-that-be on Monday morning.

~Sean

**Sean Harrasser, CFM** | Associate Planner (*him, he, his*)

Washington County Department of Land Use & Transportation

Planning and Development Services | Current Planning

155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR 97124

**Phone (503) 846-8131 | Fax (503) 846-2908**

[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us) | [www.co.washington.or.us/lut](http://www.co.washington.or.us/lut)

[Washington County Roads](#) on [Twitter](#) on [Facebook](#)

**Plan** Responsibly. **Build** Safely. **Live** Well.

***The County's Planning and Building Departments are now open to the public. Front counter hours are 8am-4pm Monday- Thursday. The lobby is closed to the public on Friday.***

***NOTE: THE MAJORITY OF STAFF CONTINUES TO WORK REMOTELY AND ARE BEST REACHED BY EMAIL.***

*Please submit planning-related questions to [LUTDEV@co.washington.or.us](mailto:LUTDEV@co.washington.or.us).*

**[Current Planning updates](#)**

**[LUT Services available online](#)**

---

**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>

**Sent:** Friday, April 22, 2022 10:17 AM

**To:** Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>

**Subject:** FW: [EXTERNAL] Another email from Tina McClendon re. Logging operation in her neighborhood

**Importance:** High

Yo – welcome back – can you prioritize a response Monday (today)?

**Stephen Shane** | **Principal Planner**

Washington County Department of Land Use & Transportation

Planning and Development Services | Current Planning

155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124

(503) 846- 8127 direct

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)>

**Sent:** Friday, April 22, 2022 10:14 AM

**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>

**Subject:** FW: [EXTERNAL] Another email from Tina McClendon re. Logging operation in her neighborhood  
**Importance:** High

Hi Stephen,

Tina started her complaint out with Sean a couple of weeks ago – pls. see below, FYI. Can you please contact this person directly about this as she's had the run-around? I said I would leave it with LUT to follow up on this. She has sent about 6 messages, including photos, to the CAO mailbox now.

Many thanks,

Janet

---

**From:** Tina McClendon <[guidofericmom@gmail.com](mailto:guidofericmom@gmail.com)>  
**Sent:** Thursday, April 21, 2022 3:11 PM  
**To:** County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)>  
**Subject:** FW: Complaint Form - reply from Stephen Shane, Land Use Dept.

**Sean has already been contacted and did nothing. Who else can we contact? Our legislator? We can't even get through to our County Commissioner. Should be contact the press? It's a mess. And today, at rush hour, they had Day Road blocked to take out another huge tree.**

On Thu, Apr 21, 2022 at 1:32 PM County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)> wrote:

---

**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Thursday, April 21, 2022 1:01 PM  
**To:** County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)>  
**Subject:** RE: Complaint Form - forwarding from CAO mailbox by Janet

**Please let Tina know I forwarded the email and complaint form on to Sean Harrasser, Code Enforcement officer, and send his email [Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)**

***Stephen Shane | Principal Planner***

*Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning  
155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
(503) 846- 8127 direct*

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)>  
**Sent:** Wednesday, April 20, 2022 2:39 PM

**To:** HHS Code Enforcement <[enforcement@co.washington.or.us](mailto:enforcement@co.washington.or.us)>  
**Cc:** Tina McClendon <[guidofericmom@gmail.com](mailto:guidofericmom@gmail.com)>  
**Subject:** FW: [EXTERNAL] Complaint Form - forwarding from CAO mailbox by Janet

Hello,

Please see below and the attached form, and respond back to Tina McClendon directly. Pls. copy the CAO mailbox on your reply.

Thank you,

Janet

***Janet Wells-Berg***

Administrative Specialist II

Washington County Administrative Office and Board of Commissioners

155 N. First Avenue, Suite 300


Hillsboro, OR 97124

Main Phone: 503-846-8685

**Personal Line: 503-846-8300**

Fax: 503-846-4545

*Pronouns: She/Her/Hers*

 Save paper, toner, and energy. Avoid printing emails whenever possible!

---

**From:** Tina McClendon <[guidofericmom@gmail.com](mailto:guidofericmom@gmail.com)>  
**Sent:** Wednesday, April 20, 2022 11:06 AM  
**To:** County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)>  
**Subject:** [EXTERNAL] Complaint Form

Janet.

I filled out the complaint form. I hit "save and submit" but I don't see any indication that it went through. I have scanned and attached hereto. Could you either let me know the email address to send it to, or forward it for me?

I can't thank you enough for your help.

Tina

**CAUTION:** This email originated from outside the County. Exercise caution when opening attachments or clicking links from unknown senders. Always follow the guidelines defined in the KnowBe4 training when opening email received from external sources. Contact the ITS Service Desk if you have any questions.



**CAUTION:** This email originated from outside the County. Exercise caution when opening attachments or clicking links from unknown senders. Always follow the guidelines defined in the KnowBe4 training when opening email received from external sources. Contact the ITS Service Desk if you have any questions.

From: Eric McClendon <emcclend@gmail.com>  
Sent: Friday, April 22, 2022 1:11 PM  
To: LUT Code Compliance  
Cc: Tina McClendon; Lindsey Severson  
Subject: Re: [EXTERNAL] Possible illegal tree removal

Hi Sean,

9805 SW Day Road is one of the addresses. But my research indicates that Brown Contracting/Emrick Investments LLC now owns four adjacent properties on SW Day. 9975 SW Day is another one. 9675 SW Day is their existing headquarters.

We tried to communicate with Brown Contracting/Emrick Investments LLC, but first they denied owning the properties, then they ignored us when we informed them we were aware they were the owners.

Our neighborhood is freaking out about this. We've spoke to many of them over the past several days/weeks. Brown Contracting/Emrick Investments LLC has been falling tress for a couple of weeks now. They have recently been blocking traffic on SW Day in order to fall trees across the road. Drone footage confirms that the area is now barren and runoff is going into the wetland.

Someone needs to verify whether or not this was a permitted operation so that we, as a neighborhood, can weigh our options. Who can verify this for us? Do I need to submit a public records request, or is there someone I can speak with who can verify this information?

Thanks for your assistance. I know you all are working with limited resources, but we are trying to mitigate any further damage to the environment and disruptions to the peace of our neighborhood.

Eric

> On Apr 22, 2022, at 11:51 AM, LUT Code Compliance  
<PDSCoCodeCompliance@co.washington.or.us>  
wrote:

>

> Oh, and do you have a complete property address for the violation?  
Thank you.

> ~Sean

>

> Sean Harrasser, CFM | Associate Planner (him, he, his) Washington  
> County Department of Land Use & Transportation Planning and  
> Development Services | Current Planning  
> 155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR 97124 Phone  
> (503) 846-8131 | Fax (503) 846-2908

> Sean\_Harrasser@co.washington.or.us | www.co.washington.or.us/lut  
>  
> Washington County Roads on Twitter on Facebook Plan Responsibly.  
> Build Safely. Live Well.  
>  
> The County's Planning and Building Departments are now open to the public. Front counter hours are 8am-4pm Monday- Thursday. The lobby is closed to the public on Friday.  
> NOTE: THE MAJORITY OF STAFF CONTINUES TO WORK REMOTELY AND ARE BEST REACHED BY EMAIL.  
> Please submit planning-related questions to LUTDEV@co.washington.or.us.  
> Current Planning updates  
> LUT Services available online  
>  
> -----Original Message-----  
> From: Eric McClendon <emcclend@gmail.com>  
> Sent: Wednesday, April 20, 2022 6:50 PM  
> To: LUT Code Compliance <PDSCoCodeCompliance@co.washington.or.us>  
> Subject: [EXTERNAL] Possible illegal tree removal  
>  
> A property located at 9805 has cut down approximately 50 trees in the past two weeks. The property is in a designated drainage area that also happens to be located in an SNR area. It is also in a wetland full of wildlife.  
>  
> My understanding is that review and approval by the County is required in order to harvest that many trees in such a location.  
>  
> Could someone please check to see if such a permit was issued? If not, someone should probably come out here ASAP to put a stop to the cutting. It's been nonstop, even on the weekends.  
>  
> I would appreciate an email that acknowledges receipt and processing of this inquiry.  
>  
> Thanks!  
>  
> Eric  
> (503)689-4441  
>  
>  
> CAUTION: This email originated from outside the County. Exercise caution when opening attachments or clicking links from unknown senders. Always follow the guidelines defined in the KnowBe4 training when opening email received from external sources. Contact the ITS Service Desk if you have any questions.  
>



**WASHINGTON COUNTY**  
 Dept. of Land Use & Transportation Planning  
 Current Planning Section  
 155 N. 1<sup>st</sup> Avenue, #350-13  
 Hillsboro, OR 97124  
 Ph. (503) 846-8761 Fax (503) 846-2908  
 http://www.co.washington.or.us

**FOR OFFICE USE ONLY:**

received:

tax ID number:

\_\_\_\_\_

map                      section                      lot

**COMPLAINT FORM**

**For alleged violation of the Community Development Code and the Building Code**

Complaints are initially processed in the order that they are received. Due to limited funding, it is not possible to give immediate attention to all complaints. The accuracy and completeness of the information supplied also may affect the time it will take to investigate your complaint. Please be as specific and complete as possible. **Action on a complaint will only proceed if there is sufficient evidence of a violation.**

Items #1-#9 must be completed in order to process your complaint.

**Anonymous Complaints:** To submit an anonymous complaint, complete this form and only provide a phone number in section #9 where you can be reached if there are additional questions.

1. Describe the alleged violation: (more space on next page)  
Timber harvesting near/into wetland area. No permits?

---

2. What is the EXACT address of the violation?  
9805, 9775, 9805                      Day Road    Tualatin  
street address                                      street name    city

---

3. Nearest cross street or landmarks: Boones Ferry Road and Grahams Ferry Road

---

4. Who is the person causing the violation? (if known) unknown

---

5. Approximately when did this violation begin? 3 weks ago

---

6. If the activity is sporadic, list the weekdays and times that it is most frequently observed:  
All week and sometimes Saturdays

---

7. Is the alleged violation visible from the public road? YES If not, what is the best vantage point for inspection? \_\_\_\_\_

---

8. Do you give the Code Compliance Officer permission to use your property for viewing the alleged violation? YES If no, why not? \_\_\_\_\_

---

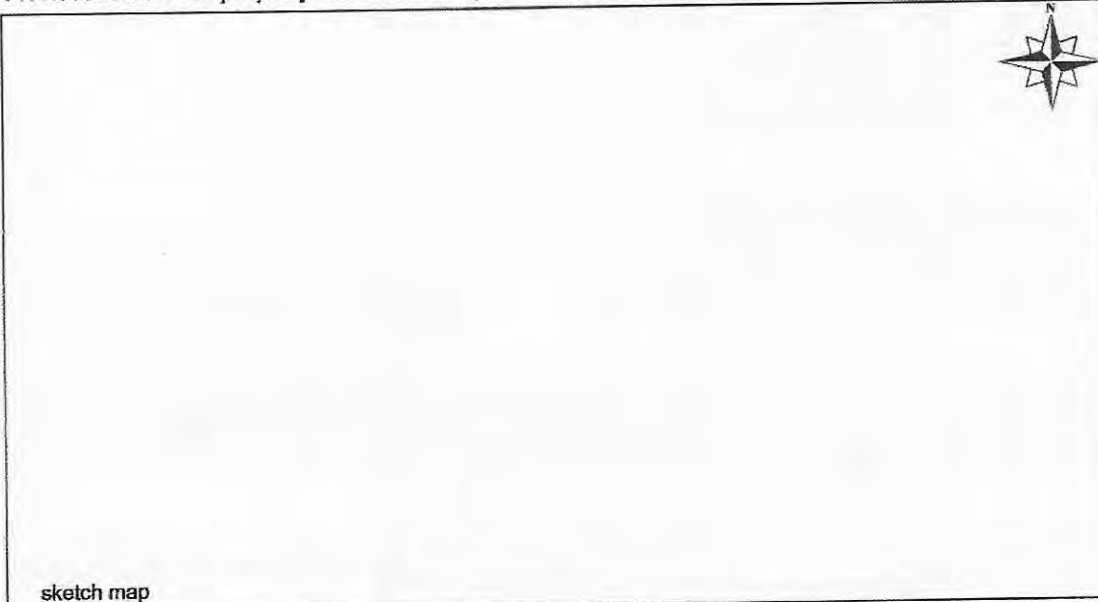
9. What is your name and address? Tina McClendon  
name  
24415 SW Boones Ferry Road                      Tualatin                      Oregon                      97062                      707-218-7554  
address number / street                                      city                                      state                                      zip                                      daytime phone


---

10. Names and addresses of people (non-relatives) who also have observed this activity, and who would be willing to serve as witnesses in a municipal court proceeding: (attach additional sheets if necessary)  

<small>name</small>	<small>address number street</small>	<small>city</small>	<small>state</small>	<small>zip</small>	<small>daytime phone</small>
---------------------	--------------------------------------	---------------------	----------------------	--------------------	------------------------------

11. Location on the property that the activity can be observed:





sketch map

12. The following lines are reserved for additional information:

I started calling 3 weeks ago and got no response. It took several emails to finally get this website. Dozens of trees have been and are being removed. The noise and mess is awful.

13. In addition to answering these questions, please attach with your complaint any advertisements, photographs, newspaper articles or other information which can be used as evidence of this alleged violation. The submitted documentation will not be returned and will become part of the complaint file.

14. I understand that in filing this complaint, my name becomes a matter of public record. I freely provide my name, mailing address, and phone number so that I may be contacted to provide further information, or to appear as a witness and provide testimony or other proof in any proceedings resulting from this complaint.

Signed: Tina McClendon

Date: April 20, 2022

**THIS INFORMATION IS AVAILABLE FOR PUBLIC INSPECTION PURSUANT TO ORS 192.420:**

ORS 192.420 Right to inspect public records. Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505.

**Anonymous Complaints:** To submit an anonymous complaint, complete this form and only provide a phone number in section #9 where you can be reached if there are additional questions.

As outlined in ORS 192-501(3), disclosure of public record information may be delayed only if the nature of the investigation is criminal (land use violations typically are not a criminal offense).

*Thank you for assisting in making Washington County a better place to live.*

**From:** Stephen Shane  
**Sent:** Friday, April 22, 2022 2:34 PM  
**To:** Scott Linfesty; Melissa De Lyser; Andy Back; Sean Harrasser  
**Subject:** RE: Constituent Inquiry - Kathryn Harrington (Chair)

Thanks for the confirmation.

*Stephen Shane | Principal Planner  
 Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
 (503) 846- 8127 direct*

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** Scott Linfesty <[Scott\\_Linfesty@co.washington.or.us](mailto:Scott_Linfesty@co.washington.or.us)>  
**Sent:** Friday, April 22, 2022 2:26 PM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>; Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>; Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** RE: Constituent Inquiry - Kathryn Harrington (Chair)

Good afternoon,

A building inspector has no authority to post a stop work order on tree cutting. There's no code requirement so they have nothing to cite. The OAR's requires an inspector to cite-it/write -it, in other words don't cite anything without a code reference to back it up. This may not sound like a big deal but when I was at Portland I had an inspector that was instructed to post a stop work at a commercial factory expansion. He did as instructed and a complaint was filed with BCD. He hadn't cited code because they had no direct code violation. They fined the inspector thru the state electrical board for \$5,000.00 This is what makes me really hesitate on getting an inspector involved.

Thank you,

Scott Linfesty | Building Official  
 503-846-6757 direct  
[scott\\_linfesty@co.washington.or.us](mailto:scott_linfesty@co.washington.or.us)

---

**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Friday, April 22, 2022 1:59 PM  
**To:** Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>; Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>; Scott Linfesty <[Scott\\_Linfesty@co.washington.or.us](mailto:Scott_Linfesty@co.washington.or.us)>  
**Subject:** RE: Constituent Inquiry - Kathryn Harrington (Chair)

Scott – pulling you in since you haven't been.

Address on Day road is at the bottom of the thread. What's happening is tree removal in a resource overlay. Had thought only possible remedy here is for an inspector to visit as we have no one in the field; Sean in fact is out of town through Monday. – however, didn't ask you directly as this isn't under the building code.

Cutting now and good chance operation will be done by Monday but that's speculation. This lady is calling everyone, multiple times apparently in the CAO office.

*Stephen Shane | Principal Planner  
Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning  
155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
(503) 846- 8127 direct*

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>  
**Sent:** Friday, April 22, 2022 1:53 PM  
**To:** Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>; Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** RE: Constituent Inquiry - Kathryn Harrington (Chair)

Greetings! Where are we on this? Will the Building inspectors be visiting the site?

**Melissa De Lyser | Public Affairs and Communications Manager**  
*Pronouns: She/Her/Hers*  
**503-846-4963**  
[melissa\\_de\\_lyser@co.washington.or.us](mailto:melissa_de_lyser@co.washington.or.us) | [www.co.washington.or.us/lut](http://www.co.washington.or.us/lut) | [wc-roads.com](http://wc-roads.com)




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**From:** Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>  
**Sent:** Thursday, 21 April, 2022 4:46 PM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>; Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** Re: Constituent Inquiry - Kathryn Harrington (Chair)

Do we have an owners address?

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---

**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Thursday, April 21, 2022 4:15:42 PM  
**To:** Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>; Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** RE: Constituent Inquiry - Kathryn Harrington (Chair)

We can open a violation on the property and require them to submit a Type II development application for the trees that they have and no doubt will cut down. More immediately, inspectors are the only ones with wheels; one of Scott's guys might be able to go down and place a stop work order (though don't know if they can for non-building code issues). I feel that's out of my purview to ask Scott to do that. Inspectors aren't even thrilled about counting street trees, which is a condition of approval requirement for development.

No code enforcement team in the county to get in a car and tell them to stop. That's the reality.

*Stephen Shane | Principal Planner  
Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning  
155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
(503) 846- 8127 direct*

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>  
**Sent:** Thursday, April 21, 2022 4:08 PM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>; Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** RE: Constituent Inquiry - Kathryn Harrington (Chair)

So ... where does this leave us in terms of a response?

**Melissa De Lyser | Public Affairs and Communications Manager**  
*Pronouns: She/Her/Hers*  
**503-846-4963**  
[melissa\\_de\\_lyser@co.washington.or.us](mailto:melissa_de_lyser@co.washington.or.us) | [www.co.washington.or.us/lut](http://www.co.washington.or.us/lut) | [wc-roads.com](http://wc-roads.com)




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**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Thursday, 21 April, 2022 3:48 PM  
**To:** Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>; Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** RE: Constituent Inquiry - Kathryn Harrington (Chair)

Yup afraid so.

*Stephen Shane | Principal Planner  
Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning  
155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
(503) 846- 8127 direct*



*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>  
**Sent:** Thursday, April 21, 2022 3:45 PM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>; Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** Re: Constituent Inquiry - Kathryn Harrington (Chair)

But, it does have a goal 5 designation of some sort?

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---

**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Thursday, April 21, 2022 3:37:34 PM  
**To:** Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>; Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** RE: Constituent Inquiry - Kathryn Harrington (Chair)

No it's FD-20 down in south county. Half the lot has no trees and the rest has some big ones. No development apps in Accela and no preapps held for the site as far as I can ascertain.

*Stephen Shane | Principal Planner  
 Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
 (503) 846- 8127 direct*

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>  
**Sent:** Thursday, April 21, 2022 3:35 PM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>; Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** RE: Constituent Inquiry - Kathryn Harrington (Chair)

I don't believe we have enforced this. Is it in the rural area?

Andy Back  
 Planning and Development Services Manager  
 Washington County Department of Land Use and Transportation  
 503 846 3519

Due to staffing shortages in both Current Planning, Code Compliance and Building Services, responses to emails and phone calls may take longer than anticipated. In the meantime, please visit our [Building](#)

Services and Current Planning/Code Compliance websites for more information. Your patience is appreciated.

---

**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Thursday, April 21, 2022 3:21 PM  
**To:** Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Cc:** Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>  
**Subject:** RE: Constituent Inquiry - Kathryn Harrington (Chair)

I just heard back from her, where she says no one has listened to her. This issue is a problem – namely, trees are going down and there is no one in enforcement to place a stop work order. I don't even think a CE officer has that authority. It's come up once or twice before. Inspectors don't do this kind of thing as a course of their work unless they're told to - that would need to come from Andy.

I don't know really know how to respond in this situation where an active logging operation is happening where it shouldn't.

*Stephen Shane | Principal Planner  
 Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
 (503) 846- 8127 direct*

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---

**From:** Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>  
**Sent:** Thursday, April 21, 2022 3:12 PM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>; Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Cc:** Andy Back <[Andy\\_Back@co.washington.or.us](mailto:Andy_Back@co.washington.or.us)>  
**Subject:** FW: Constituent Inquiry - Kathryn Harrington (Chair)

Greetings!

Have we heard anything about a logging operation at 9805 Day Road? InterMap shows looks like two separate parcels but one address? Not seeing anything in Accela...

**Melissa De Lyser | Public Affairs and Communications Manager**

*Pronouns: She/Her/Hers*

503-846-4963

[melissa\\_de\\_lyser@co.washington.or.us](mailto:melissa_de_lyser@co.washington.or.us) | [www.co.washington.or.us/lut](http://www.co.washington.or.us/lut) | [wc-roads.com](http://wc-roads.com)



**From:** Board of County Commissioners <[BCC@co.washington.or.us](mailto:BCC@co.washington.or.us)>  
**Sent:** Thursday, 21 April, 2022 2:49 PM  
**To:** Melissa De Lyser <[Melissa\\_De\\_Lyser@co.washington.or.us](mailto:Melissa_De_Lyser@co.washington.or.us)>  
**Cc:** Stephen Roberts <[Stephen\\_Roberts@co.washington.or.us](mailto:Stephen_Roberts@co.washington.or.us)>; Board of County Commissioners <[BCC@co.washington.or.us](mailto:BCC@co.washington.or.us)>  
**Subject:** FW: Constituent Inquiry - Kathryn Harrington (Chair)

Melissa,

The email below came in for the Chair and Commissioner Rogers, can you please respond on their behalf?

Thank you,

Mary Hartshorn  
Public Records and Constituent Response Coordinator  
Washington County Administrative Office

---

**From:** [noreply@co.washington.or.us](mailto:noreply@co.washington.or.us) <[noreply@co.washington.or.us](mailto:noreply@co.washington.or.us)>  
**Sent:** Thursday, April 21, 2022 2:05 PM  
**To:** Board of County Commissioners <[BCC@co.washington.or.us](mailto:BCC@co.washington.or.us)>  
**Subject:** Constituent Inquiry - Kathryn Harrington (Chair)

### **Email for: Kathryn Harrington (Chair)**

**Name:**  
Tina McClendon

**Email address:**  
[guidofericmom@gmail.com](mailto:guidofericmom@gmail.com)

**Is this inquiry in reference to a property within Washington County?**  
Yes

**Property address:**  
9805 Day Road, Tualatin

**Property ZIP code:**  
97062

**Message:**  
There is a huge logging operation going on. It is several acres next to protected overlay areas. Dozens of trees have already been removed. There is no evidence any permits were issued for thi project. We

have been trying for 3 weeks to get the County involved with no luck. It's a horrible mess.

**Attachment provided:** No

**The following response was emailed to constituent following their inquiry:**

Thank you for your email. If your inquiry requires a response, someone will be in contact with you soon. If your inquiry is a comment or information to be shared with Chair Harrington and staff, please be assured that it will be.

Again, thank you for taking the time to write us.

---

ADVISORY: Information contained in this email is "Level 3 – Restricted" per the Oregon Statewide Policy Information Asset Classification 107-004-050. Users are requested to maintain the privacy and security of this information. Forwarding or copying to unsecured recipients is strictly prohibited.

**From:** Sean Harrasser  
**Sent:** Monday, April 25, 2022 11:58 AM  
**To:** Stephen Shane  
**Subject:** RE: [EXTERNAL] Another email from Tina McClendon re. Logging operation in her neighborhood

Hey there,

It looks like you and Scott Linfesty have already pointed out the obvious concern that I had about a stop work order. Does Current Planning have any authority to do a 'stop work' order for violations of the CDC?

Anyway, I will get an Accela casefile set up and a notice to send out. If you want, we can send that one certified given the particular exigencies.

Requiring a Type II development review for what has been/is being done seems our only action, and unfortunately that isn't going to save any trees or significant natural resources.

~Sean

Sean Harrasser, CFM | Associate Planner (*him, he, his*)  
 Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR 97124  
**Phone (503) 846-8131 | Fax (503) 846-2908**  
[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us) | [www.co.washington.or.us/lut](http://www.co.washington.or.us/lut)

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**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Friday, April 22, 2022 12:00 PM  
**To:** Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** RE: [EXTERNAL] Another email from Tina McClendon re. Logging operation in her neighborhood

Yeah this thing is blowing up and no one wants to deal with it above me.

*Stephen Shane | Principal Planner  
 Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
 (503) 846- 8127 direct*

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Sent:** Friday, April 22, 2022 11:54 AM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>

**Subject:** RE: [EXTERNAL] Another email from Tina McClendon re. Logging operation in her neighborhood

Hey there. I received a code compliance inbox email last Wednesday from an Eric McClendon (I assume related to Tina) regarding what is almost assuredly this matter. Basically three different FD-20 properties with SNR & DHA owned by the same investment company. I sent him the code compliance submittal beta this morning.

I will respond as usual to the powers-that-be on Monday morning.

~Sean

Sean Harrasser, CFM | Associate Planner (*him, he, his*)  
 Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR 97124  
 Phone (503) 846-8131 | Fax (503) 846-2908  
[Sean.Harrasser@co.washington.or.us](mailto:Sean.Harrasser@co.washington.or.us) | [www.co.washington.or.us/lut](http://www.co.washington.or.us/lut)

[Washington County Roads](#) on [Twitter](#) on [Facebook](#)

Plan Responsibly. Build Safely. Live Well.

**The County's Planning and Building Departments are now open to the public. Front counter hours are 8am-4pm Monday- Thursday. The lobby is closed to the public on Friday.**

NOTE: THE MAJORITY OF STAFF CONTINUES TO WORK REMOTELY AND ARE BEST REACHED BY EMAIL.

Please submit planning-related questions to [LUTDEV@co.washington.or.us](mailto:LUTDEV@co.washington.or.us).

[Current Planning updates](#)

[LUT Services available online](#)

---

**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Friday, April 22, 2022 10:17 AM  
**To:** Sean Harrasser <[Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)>  
**Subject:** FW: [EXTERNAL] Another email from Tina McClendon re. Logging operation in her neighborhood  
**Importance:** High

Yo – welcome back – can you prioritize a response Monday (today)?

*Stephen Shane | Principal Planner  
 Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
 (503) 846- 8127 direct*

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

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**From:** County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)>  
**Sent:** Friday, April 22, 2022 10:14 AM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>

**Subject:** FW: [EXTERNAL] Another email from Tina McClendon re. Logging operation in her neighborhood  
**Importance:** High

Hi Stephen,

Tina started her complaint out with Sean a couple of weeks ago – pls. see below, FYI. Can you please contact this person directly about this as she's had the run-around? I said I would leave it with LUT to follow up on this. She has sent about 6 messages, including photos, to the CAO mailbox now.

Many thanks,

Janet

---

**From:** Tina McClendon <[guidofericmom@gmail.com](mailto:guidofericmom@gmail.com)>  
**Sent:** Thursday, April 21, 2022 3:11 PM  
**To:** County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)>  
**Subject:** FW: Complaint Form - reply from Stephen Shane, Land Use Dept.

**Sean has already been contacted and did nothing. Who else can we contact? Our legislator? We can't even get through to our County Commissioner. Should be contact the press? It's a mess. And today, at rush hour, they had Day Road blocked to take out another huge tree.**

On Thu, Apr 21, 2022 at 1:32 PM County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)> wrote:

---

**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Thursday, April 21, 2022 1:01 PM  
**To:** County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)>  
**Subject:** RE: Complaint Form - forwarding from CAO mailbox by Janet

**Please let Tina know I forwarded the email and complaint form on to Sean Harrasser, Code Enforcement officer, and send his email [Sean\\_Harrasser@co.washington.or.us](mailto:Sean_Harrasser@co.washington.or.us)**

*Stephen Shane | Principal Planner  
 Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
 (503) 846- 8127 direct*

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)>  
**Sent:** Wednesday, April 20, 2022 2:39 PM

**To:** HHS Code Enforcement <[enforcement@co.washington.or.us](mailto:enforcement@co.washington.or.us)>  
**Cc:** Tina McClendon <[guidofericmom@gmail.com](mailto:guidofericmom@gmail.com)>  
**Subject:** FW: [EXTERNAL] Complaint Form - forwarding from CAO mailbox by Janet

Hello,

Please see below and the attached form, and respond back to Tina McClendon directly. Pls. copy the CAO mailbox on your reply.

Thank you,

Janet

*Janet Wells-Berg*

Administrative Specialist II

Washington County Administrative Office and Board of Commissioners

155 N. First Avenue, Suite 300


Hillsboro, OR 97124

Main Phone: 503-846-8685

**Personal Line: 503-846-8300**

Fax: 503-846-4545

*Pronouns: She/Her/Hers*

 Save paper, toner, and energy. Avoid printing emails whenever possible!

---

**From:** Tina McClendon <[guidofericmom@gmail.com](mailto:guidofericmom@gmail.com)>  
**Sent:** Wednesday, April 20, 2022 11:06 AM  
**To:** County Administrative Office <[CAOink@co.washington.or.us](mailto:CAOink@co.washington.or.us)>  
**Subject:** [EXTERNAL] Complaint Form

Janet.

I filled out the complaint form. I hit "save and submit" but I don't see any indication that it went through. I have scanned and attached hereto. Could you either let me know the email address to send it to, or forward it for me?

I can't thank you enough for your help.

Tina

**CAUTION:** This email originated from outside the County. Exercise caution when opening attachments or clicking links from unknown senders. Always follow the guidelines defined in the KnowBe4 training when opening email received from external sources. Contact the ITS Service Desk if you have any questions.



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## NOTIFICATION OF OPERATIONS/PERMIT TO OPERATE POWER-DRIVEN MACHINERY (NOAP)

Notification Number: 2022-531-05598  
 Operation Name: Brown Timber



### This NOAP includes the following for the lands described in the NOAP:

- The Oregon Department of Forestry or local Forest Protective Association has issued a permit to use fire or operate power-driven machinery.
- The notifier has given notice to the State Forester and the Department of Revenue of the intent to harvest timber.

**Person Submitting the NOAP:** Wilbur Akins

**Date NOAP Submitted:** April 22, 2022

**Report Generated:** May 11, 2022

### Waiting Period

You must wait at least 15 days after successful submittal of this NOAP before starting the activities in the NOAP (see OAR 629-605-0150(1)). You may ask the Stewardship Forester to waive this 15-day waiting period, **but you must wait the full 15 days unless the Stewardship Forester notifies you that you may start sooner.**

### Oregon Department of Forestry Contact Info

Forest Grove  
 801 Gales Creek Rd  
 Forest Grove, Oregon 97116  
 Phone: (503) 357-2191  
 Stewardship Forester: Eric Jacobs  
 Email: eric.d.jacobs@odf.oregon.gov

### Operator's Fire Emergency Contact

Contact Name: Wilbur Akins  
 Phone: (503) 319-3993

### Landowner(s)

Sean Emrick  
 Emrick Investments LLC  
 P.O. BOX 26439  
 Eugene, Oregon 97402  
 (541) 338-9345

### Notice to Landowner(s)

Reforestation may be required after timber harvesting. The Oregon Department of Forestry may conduct on-site inspections for compliance with forest practice and fire protection laws. Land use conversion to non-forest use is subject to other state and local regulations, which may affect use or development of a site.

### Timber Owner

Wilbur Akins  
 Mr Tree, Inc  
 8560 SE 172nd Avenue  
 Happy Valley, Oregon 97086  
 503-665-3917

### Notice to Timber Owner

If timber is harvested, the party owning the timber at the point it is first measured is responsible for payment of Oregon timber taxes.

### Written Plans

A Written Plan (in addition to this NOAP) is required before operation activities can begin near the protected resources listed with the Unit information or Site Conditions below or otherwise described to you by the Stewardship Forester ([OAR 629-605-0170](#) (2), (3), and (5)). The Written Plan must describe in detail how the resource(s) will be protected during the operation. There is a waiting period for Written Plans that is separate from the notification waiting period. Contact your Stewardship Forester for more information.

### Notices

Submitting this Notification of operations on lands described in the NOAP constitutes consent for Department staff to access the property to ensure compliance with state law and rules governing forest practices through on-site inspections. The landowner must notify the stewardship forester to withdraw this consent.

**Permission from Landowner and Timber Owner Required for Operators, purchasers, contractors, general public:** Submitting this notification does *not* give permission for operators, purchasers, contractors, or the general public to enter someone else's land or remove forest products. Anyone doing so must first obtain permission from the landowner and timber owner.

**Pesticide Use:** Pesticide users must follow all pesticide product label requirements, including any that prohibit applications near or into streams or other water bodies! Pesticide users must be sure the label that comes with the pesticide product allows the planned use! Contact the Oregon Department of Agriculture [here](#) or at 503-986-4635 for information on allowed uses of pesticide products.

**Operations Near Utility Lines:** If you are conducting timber harvesting or road construction within 100 feet of overhead utility lines contact the local utility in accordance with ORS 757.805 - Oregon's Overhead Safety Act and OAR 437-007-0230 - Power Line Safeguards. Identification tags are located on each pole.

Call the Oregon Utility Notification Center at 811 at least 2 business days before starting timber harvesting, road construction, or any other activities involving excavation that may affect an underground utility line. The Center will coordinate with the appropriate utility companies to locate underground utility lines that may be affected by your activities.

**Using Water for Pesticides or Slash Burning:** If you plan to use on-site water (water from a stream, for example) to mix pesticides or for slash burning, you must provide a copy of this NOAP to the local offices of the Oregon Water Resources Department and the Oregon Department of Fish and Wildlife (see ORS 537.141).

**Registrants & Subscribers:** There may be registrants and/or subscribers who receive this Notification. See the Notification Summary page within the E-Notification system or contact ODF for more details.

**NOAP Changes:** The notifier must inform the Oregon Department of Forestry of any changes in a NOAP before the activity takes place. A new NOAP may be required.

**Unit 1 of 1: Brown Timber**

1.6 acres	Washington County(s)	T3S R1W Sec2	Regulated Use Area: WV-1
<b>Operator:</b> Wilbur Akins Mr Tree, Inc 8560 SE 172nd Avenue Happy Valley, Oregon 97086 503-665-3917		<b>Activity:</b> Changing Land Use to a non-forest use <b>Start:</b> 4/25/2022 <b>End:</b> 4/28/2022	
		<b>Method(s):</b> Mechanical <b>Quantity:</b> 30000.00 MBF	

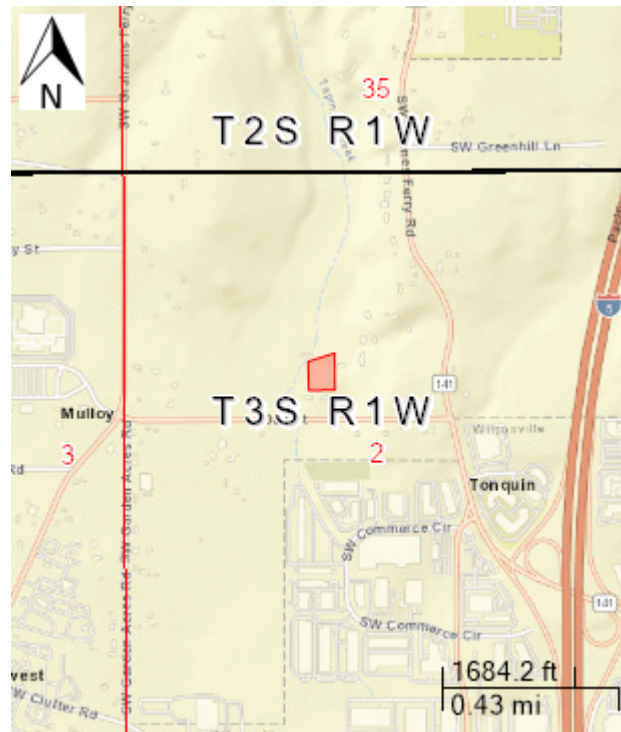
**Resources on or near this Unit**

Statutory Written Plan required within 100 feet of	Statutory Written Plan required within 300 feet of
Tapman Creek: Small - Type F Stream	

**Notes:**

1. A statutory written plan is required for operations within 300 feet of Estuarine or Marine Wetlands, not 100 feet as may be shown above.
2. Contact your Stewardship Forester about streams not shown on the map.

**Unit Map: Brown Timber**





# WASHINGTON COUNTY OREGON

May 6, 2022

Emrick Investments LLC  
P.O. Box 26439  
Eugene, OR 97402

**RE: ENFPDS 22-00004 Land Use and Building Code Violations:** *Unpermitted Tree Removal and Grading without a Permit in Significant Natural Resource & Drainage Hazard Areas on Property Located at 9805, 9779, and 9775 SW Day Road, Unincorporated Washington County (Tax Lots 3S102B000311, 3S102B000303, & 3S102B000310)*

Hello:

According to records of Washington County's Department of Assessment and Taxation, you, Emrick Investments LLC, are the registered owner of the above property. The land use designation is FD-20 District (Future Development, 20-Acre District) outlined in Section 308 of the Community Development Code (CDC).

This office has received complaints that unpermitted tree removal has occurred on the above-listed properties. Based on photos submitted with the complaint and review of Washington County maps, this development activity (tree removal) appears to be located within a mapped Drainage Hazard Area and a mapped Significant Natural Resource area. Development in these protected areas requires land use review and approval. These standards are outlined in Section 421 and Section 422 of the Community Development Code (CDC). You will need to submit a Type II application and applicable fees for the unlawful work that was done.

Additionally, county Grading staff were at the site Thursday, May 5 and determined that a grading permit was required for the level of grading and site alteration that has occurred. All work at the site must stop until such time as you have obtained a Grading permit. Contact Kim Allen in County Grading ([Kim.Allen@co.washington.or.us](mailto:Kim.Allen@co.washington.or.us)) for information on how to proceed.

This notice is to inform you that the county has opened a violation casefile for this unpermitted development activity. We realize you may not have been aware of land use requirements and are bringing this matter to your attention to ensure safety of present and future residents at this property via the permitting review process.

To address this violation, please contact me within fourteen (14) days of the date of this letter (**May 16, 2022**) to discuss specific requirements and the scope of work. Failure to address this issue in a timely manner will result in a public hearing before a land use hearings Officer and additional penalties.

I can be reached via email at [PDScodecompliance@co.washington.or.us](mailto:PDScodecompliance@co.washington.or.us) or at (503)-846-4875 should you have questions about our compliance process.

Thank you. Your cooperation resolving this matter promptly is appreciated.

Sean Harrasser, CFM  
Planning and Development Services Code Compliance

**Department of Land Use & Transportation · Planning and Development Services  
Code Compliance**  
155 N First Avenue, Ste. 350 MS 13 · Hillsboro, OR 97124-3072  
Phone: 503-846-4875  
Website: [www.co.washington.or.us](http://www.co.washington.or.us) · Email: [PDScodecompliance@co.washington.or.us](mailto:PDScodecompliance@co.washington.or.us)

**Natalie Brown**

---

**From:** Don Brown <don@browncontracting.net>  
**Sent:** Friday, May 20, 2022 11:46 AM  
**To:** kimallen@co.washington.or.us  
**Subject:** [EXTERNAL] 9825 SW Day Rd Stop Work Notice

Ms. Allen,

We discovered a stop work notice on our subject property today.

I called all the phone numbers on the notice. Spoke to Josh Pitman at Wa Co.

Josh indicated that the number on the sign off of the notice was yours. He also gave me another cell number for you (971-329-5667) that I left message on earlier today.

We removed a bunch of dead and dangerous trees. Conk and serious damage from most recent snow storms. That's all we did. No grading operations have occurred. We installed erosion control measures for the tree removal operation and we've hydro seeded the site as well. No other work has occurred.

Incidentally, we were previously informed by Wa Co that tree removal permits were not required for private property. We removed the diseased and dying trees. Then, after the removals we received a tree removal violation notice and direction to acquire a permit. That notice included grading related direction notice as well. Again, there was no grading. The tree removal permit was applied for by Mr Tree Co. In short, we applied for the the permit that we were previously informed we did not need.

We are a bit perplexed as to what the problem is so we'd appreciate an opportunity to speak with you to alleviate any concerns or potential violations.

I may be reached at this email and/or my cell/text is 541-912-8694.

Thank you,  
*Don Brown*

-----  
Regarding Kurt Res. 9825 sw day rd

I called Josh Pitner this day (Wa Co) at the number listed upon the stop work notice. He affirmed:

1-we don't need permits or permission to cut down trees on private property unless they are somehow some sort of protected species.

2-he has/had zero violations on record for this address.

3-he deduced from the inspector phone number on the bottom of the stop work notice. that the inspector that left the notice was Kim Allen. Josh gave me another cell number for her. I called it (971-329-5667) and left a message for her.

To date:

I've emailed and called the wa co folks we were directed to contact via the first tree cutting violation notice. Zero response.

I called the 503 846-3470 number on the stop work notice and got Josh Pitner whom told me the above info.

I also called the 503-846-6743 number on the sign off of the stop work notice and got voice mail. I left message with my name number and address.

Then i called the number Josh Pitner gave me for Kim Allen and left her another voice mail with my name number and associated address.

*Don*

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# WASHINGTON COUNTY OREGON

May 26, 2022

Emrick Investments LLC  
P.O. Box 26439  
Eugene, OR 97402

**RE: ENFPDS 22-00004 Land Use and Building Code Violations:** *Unpermitted Tree Removal and Grading without a Permit in Significant Natural Resource & Drainage Hazard Areas on Property Located at 9805, 9779, and 9775 SW Day Road, Unincorporated Washington County (Tax Lots 3S102B000311, 3S102B000303, & 3S102B000310)*

Hello:

According to records of Washington County's Department of Assessment and Taxation, you, Emrick Investments LLC, are the registered owner of the above property. The land use designation is FD-20 District (Future Development, 20-Acre District) outlined in Section 308 of the Community Development Code (CDC).

On May 6 of this year, this office notified you by mail that unpermitted tree removal was occurring on the above-listed properties. Based on photos submitted with the complaint and review of Washington County maps, this development activity (tree removal) appears to be located within a mapped Drainage Hazard Area and a mapped Significant Natural Resource area. Any development, including tree removal, in these protected areas requires land use review and approval. These standards are outlined in Section 421 and Section 422 of the Community Development Code (CDC). You will need to submit a Type II application and applicable fees for any unlawful work that was done.

Additionally, county Grading staff reposted a stop-work order at the site on Thursday, May 19 after determining that a grading permit was required for the level of grading and site alteration that has occurred. You may contact Kim Allen in County Grading at [Kim.Allen@co.washington.or.us](mailto:Kim.Allen@co.washington.or.us) for information on how to proceed with permitting.

To address this violation, please contact me within fourteen (14) days of the date of this letter (**June 8, 2022**) to discuss specific requirements and the scope of work. Failure to address this issue in a timely manner will result in the assessment of fines at a public hearing before a land use hearings Officer.

I can be reached via email at [PDScodecompliance@co.washington.or.us](mailto:PDScodecompliance@co.washington.or.us) or at (503)-846-4875 should you have questions about our compliance process.

Thank you. Your cooperation resolving this matter promptly is appreciated.

Sean Harrasser, CFM  
Planning and Development Services Code Compliance

**Department of Land Use & Transportation · Planning and Development Services  
Code Compliance**

155 N First Avenue, Ste. 350 MS 13 · Hillsboro, OR 97124-3072

Phone: 503-846-4875

Website: [www.co.washington.or.us](http://www.co.washington.or.us) · Email: [PDScodecompliance@co.washington.or.us](mailto:PDScodecompliance@co.washington.or.us)





# WASHINGTON COUNTY

## OREGON

June 28th, 2022

### FINAL NOTICE

Emrick Investments LLC  
P.O. Box 26439  
Eugene, OR 97402

**RE: ENFPDS 22-00004 Land Use and Building Code Violations:** *Unpermitted Tree Removal and Grading without a Permit in Significant Natural Resource & Drainage Hazard Areas on Property Located at 9805, 9779, and 9775 SW Day Road, Unincorporated Washington County (Tax Lots 3S102B000311, 3S102B000302, 3S102B000303, & 3S102B000310)*

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On May 6 of this year, this office notified you by mail that unpermitted tree removal was occurring on the above-listed properties. Based on photos submitted with the complaint and review of Washington County maps, this development activity (tree removal) appears to be located within a mapped Drainage Hazard Area and a mapped Significant Natural Resource area. Development in these protected areas requires land use review and approval. These standards are outlined in Section 421 and Section 422 of the Community Development Code (CDC). You will need to submit a Type II application and applicable fees for any unlawful work that was done.

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Subsequent notification from the county on this matter may result in a citation requesting your presence in court to hear staff's presentation before a land use hearing's officer. A minimum monetary penalty of \$2,500 will be requested by the county per infraction. You will have the opportunity to present any evidence or testimony to support your case to a Land Use Hearings Officer prior to the decision.

This is the final letter you will receive on this land use. To address the issues described in this letter, you will need to contact me within fourteen (14) days of the date of this letter (**July 15th, 2022**) to discuss this issue. I can be reached via email at [michelle\\_wilkins@co.washington.orr.us](mailto:michelle_wilkins@co.washington.orr.us) or by telephone at 503-846-3846.

Thank you. Your cooperation resolving this matter is appreciated.

Michelle Wilkins – Code Enforcement Officer  
Washington County Land Use & Transportation  
**Via Certified Mail, Return Receipt Requested & First Class US Mail**

**Department of Land Use & Transportation · Planning and Development Services**  
**Code Compliance**  
155 N First Avenue, Ste. 350 MS 13 · Hillsboro, OR 97124-3072  
Phone: 503-846-4875  
Website: [www.co.washington.or.us](http://www.co.washington.or.us) · Email: [pdscodcompliance@co.washington.or.us](mailto:pdscodcompliance@co.washington.or.us)

**From:** DEBLASI Michael \* DSL <[Michael.DEBLASI@dsl.oregon.gov](mailto:Michael.DEBLASI@dsl.oregon.gov)>  
**Sent:** Friday, July 29, 2022 1:46 PM  
**To:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>  
**Subject:** RE: 9805 SW Day Rd

Don.,  
Chris Stevenson and I visited the property on June 3. The majority of the property is not wetlands. However, the lower area of disturbance, on the north end of the clearing, is wetlands. We observed that a wattle was placed just north of the cleared area but that was approximately 20 feet beyond the wetland boundary.

While we didn't determine that more than 50 cubic yards of wetland soil was disturbed, we request that you smooth out the disturbed wetland soil and spread a wetland seed mix.

Thank you for your cooperation and contact DSL if you have any questions about this or any other site.

*Thank you,*  
Michael De Blasi  
***Aquatic Resources Coordinator***  
***Washington County***

Oregon Department of State Lands  
775 Summer St NE, Suite 100  
Salem, Ore 97303  
503.986.5226  
<http://www.oregon.gov/DSL/Pages/index.aspx>

*NOTE NEW EMAIL ADDRESS:* [michael.deblasi@DSL.Oregon.gov](mailto:michael.deblasi@DSL.Oregon.gov)

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**ONSITE WETLAND DETERMINATION REPORT**

**BATCH**

**OREGON DEPARTMENT OF STATE LANDS**

**WD#: 2022-0329**

775 Summer Street NE, Suite 100, Salem OR 97301-1279 Phone: (503) 986-5200

At your request, an onsite wetland determination has been conducted on the property described below.

County: Washington

City: Sherwood

Owner Name & Address: Don Brown, Brown Contracting, PO Box 26439, Eugene, OR 97402

Township: 3S

Range: 10W

Section: 2

Q/Q: B

Tax Lot(s): 302, 303, 310, 311

Project Name: Evaluate Tree Clearing with Wetland Disturbance

Date of Site Visit 06/03/2022

Site Address/Location: E of 9825 SW Day Rd., Sherwood, OR

- There are no jurisdictional wetlands or waterways on the property. Therefore, no state removal-fill permit is required. Notes: \_\_\_\_\_
- There are wetlands or waterways on the property that are subject to the state Removal-Fill Law.
  - A state permit is required for  $\geq 50$  cubic yards of fill, removal, or ground alteration in the wetlands or waterways.
  - A state permit may be required for any amount of fill, removal, or ground alteration in the Essential Salmonid Habitat and hydrologically associated wetlands.
  - A state permit may be required for any amount of fill, removal, or ground alteration in a compensatory wetland mitigation site.
- A wetland determination or delineation is needed. If site development is planned, the delineation report should be submitted to the Department for review and approval.
- A state permit will be/will not be required for \_\_\_\_\_ because/if \_\_\_\_\_
- A permit may be required by the Army Corps of Engineers: (503) 808-4373

**Note: This report is for the state Removal-Fill Law only. City or County permits may be required for the proposed activity.**

Comments: A large wetland area is located in the northern part of these tax lots and continues to the north. Erosion control was placed in the wetland which prevented impact to most of the wetland in the identified tax lots. However, a portion of the wetland was impacted by the tree clearing and stumping. Based on the information collected during the site visit, the impact was below the Department's 50 cyd threshold. This impact may be wrapped into any future removal/fill calculations for future projects impacting onsite wetlands. If any further work is planned below the base of slope, a wetland delineation is recommended.

Determination by:  Date 06/22/2022

This jurisdictional determination is valid for five years from the above date, unless new information necessitates a revision. Circumstances under which the Department may change a determination and procedures for renewal of an expired determination are found in OAR 141-090-0045 (available on our web site or upon request). The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months from the above date.

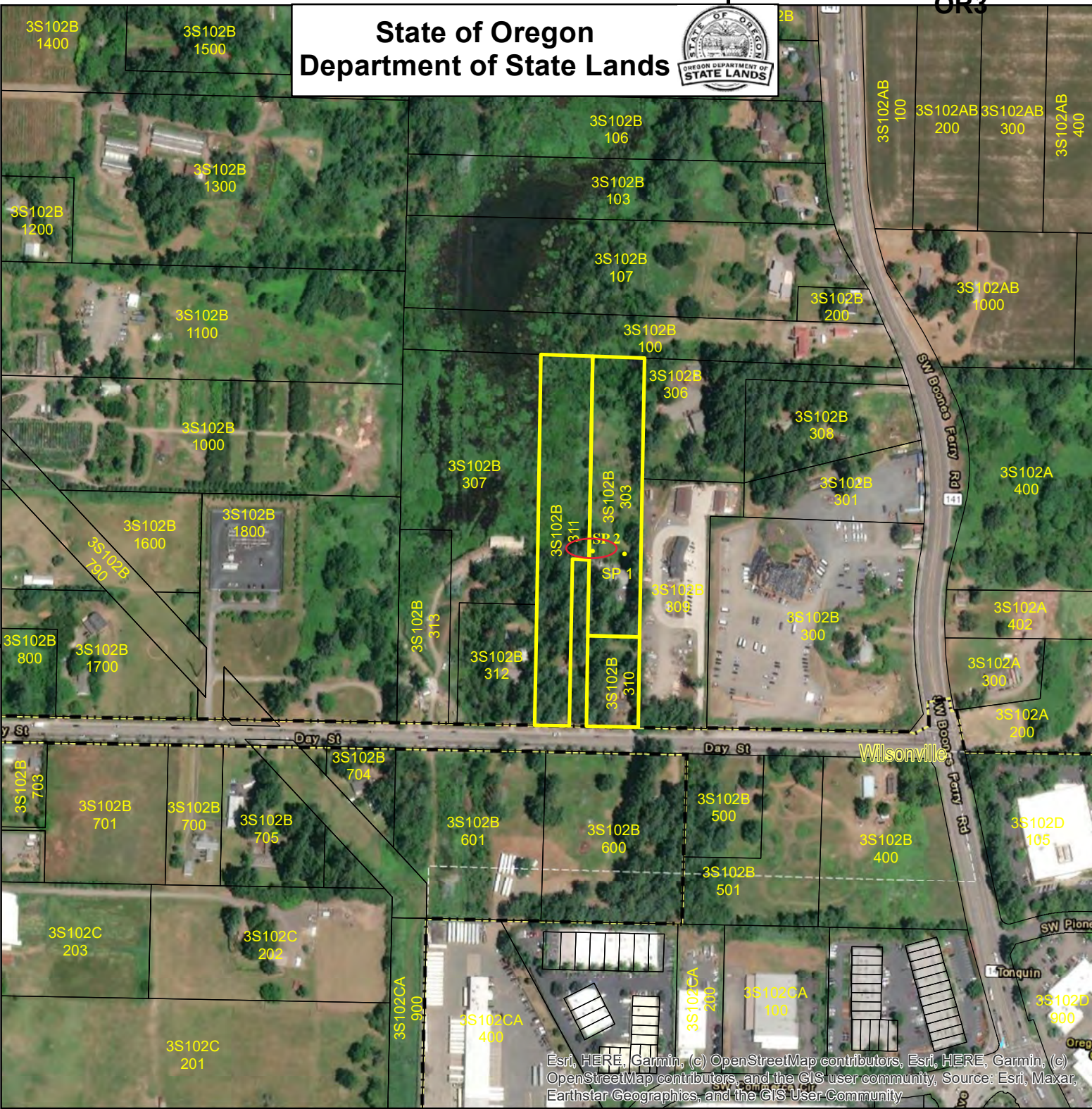
**This is a preliminary jurisdictional determination and is advisory only**

- Copy To:  Owner/Agent/Other Don Brown, [don@browncontracting.net](mailto:don@browncontracting.net)  Enclosures: Site Map  
 Washington County Planning Department  
 Michael De Blasi, DSL

**FOR OFFICE USE ONLY**

Entire Lot(s) Checked? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Waters Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe	Request Received: <u>5/12/2022</u>
LWI Area: <u>N/A</u> LWI Code: <u>N/A</u>	Latitude: <u>45.615206</u> Longitude: <u>-122.778002</u>	Related DSL File #: <u>N/A</u>
Has Wetlands? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Unk	ESH? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Wild & Scenic? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
State Scenic? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Coast Zone? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> Unk	
Adjacent Waterbody: <u>Tapman Creek</u>	NWI Quad: <u>Sherwood</u>	<input type="checkbox"/> Mailings Completed <input type="checkbox"/> Data Entry Completed

# State of Oregon Department of State Lands



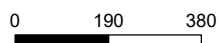
Esri, HERE, Garmin, (c) OpenStreetMap contributors, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

## EXHIBIT A: Location with Sample Plots

**3S 10W 2B 302, 303, 310, 311**  
**E of 9825 SW Day Rd., Sherwood, OR**  
**Washington County**

 **Approximate area of disturbance (Base of slope)**

This map depicts the approximate location and extent of a Department of State Lands Jurisdictional feature for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. This mapping does not replace a concurred wetland delineation for permitting purposes.



Map Projection:  
 Oregon Statewide Lambert  
 Datum NAD83  
 International Feet  
 State of Oregon  
 Department of State Lands  
 775 Summer St NE, Suite 100  
 Salem, OR 97301  
 503-986-5200  
 www.oregon.gov/DSL  
 Date: 6/22/2022



**From:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>  
**Sent:** Wednesday, August 17, 2022 12:10 PM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Cc:** Michelle Wilkins <[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)>; Kimberly Allen <[Kim\\_Allen@co.washington.or.us](mailto:Kim_Allen@co.washington.or.us)>  
**Subject:** [EXTERNAL] Re: Follow Up

Dear Mr. Shane, Ms. Wilkins and Ms. Allen,

1. We have removed diseased/dangerous Douglas fir trees. We applied for permit to do so even after Mr. Pitman at Wa Co informed us we did not need a permit to remove trees on private property. To our knowledge we have not received a WaCo response.
2. There exist gravel driveways upwards of 50 years old that were damaged via time and the heavy equipment that removed the trees. We repaired those gravel driveways like for like and it resulted in zero change to grade or surface area.
3. Nothing was widened or paved. We have not added any new driveways or roads. Only repaired existing. We have not increased impermeable area by a single square foot. We have not modified grades or drainage patterns.
4. Properly repairing a pre-existing and completely legal private property gravel access does not with all due respect require geotechnical engineering, civil engineering, grading plans, topographic analysis, permeability studies, or even a permit. We've built nothing. We've constructed nothing.
5. Your note states, Wa Co requires us to submit Type 2 Land Use Application. It's our understanding that a Type 2 Land Use Application would apply if/when we wish to change or alter use of the site. We are not requesting to change the use of this site at this time. Nor, have we changed the use of this site. If/when we desire to do so we'd certainly retain appropriate design professional services and submit for Wa Co permits as required.
6. It's perplexingly apparent that Wa Co does not believe that this is all that has occurred which is precisely why we have requested on numerous occasions an on site meeting. No response from Wa Co in this regard other than one previous refusal to meet from Ms. Allen via phone. Other written requests to meet on site have been ignored by WaCo to date.
7. **We here-by re-request an on site meeting with Mr. Shane** and whomever Mr. Shane feels necessary from Wa Co such that we may discuss and discern whatever it is Waco believes was done in non compliant fashion and/or whatever specific scope of work that Waco believes occurred that dictates we owe a permit application for.
8. WaCo appears to be demanding we retain a team of design professionals and apply for a permit for a road we ostensibly "constructed" when we never "constructed" a road in the first place.
9. It seems no matter how many times we re-assert the above facts WaCo representation either does not believe us or just doesn't understand. An on site review of specific WaCo concerns and our prospective clarifications could/would be the most efficient way for us to satisfy whatever it is that Wa Co needs and/or for WaCo to see/believe what we are stating to be true.
10. We do not wish to apply to permit a scope of work that per Co Code and extensive Co precedence does not require a permit application. Especially, when / while Wa Co is demanding we retain geotechnical and civil engineering services as well as professional land surveyor.
11. Finally, we respectfully request a complete copy of the County file pertaining to this matter. We are happy to pay for the copy expense and whatever ORS requires. We are happy to pick up the file at your office or you could bring a copy of it with you to our prospective on site meeting?

Respectfully,  
Don Brown

On Aug 16, 2022, at 12:32 PM, Michelle Wilkins  
<[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)> wrote:

Good afternoon Don,

I hope Kim was able to answer your grading questions.

My supervisor was reviewing this situation and wanted me to also remind you there are land use issues that need to be addressed as well. Land use review and approval must be granted. A type 2 land use application must be submitted. There was also mention of expanding the project into the adjacent lots which was not part of the plan. He said if you need more clarification on that process you can contact him directly. His email is [Stephen\\_shane@co.washington.or.us](mailto:Stephen_shane@co.washington.or.us)

I appreciate you working with us, but we really want to get everything resolved and on the right track.

Thanks again Don,

**Michelle Wilkins**

Code Enforcement Officer

Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning

155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR 97124

[PDScodecompliance@co.washington.or.us](mailto:PDScodecompliance@co.washington.or.us) | [www.co.washington.or.us/lut](http://www.co.washington.or.us/lut)

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**Natalie Brown**

---

**From:** Don Brown <don@browncontracting.net>  
**Sent:** Thursday, August 18, 2022 10:44 AM  
**To:** Wilbur Mr Tree; admin@mrtreeinc.com  
**Subject:** Fwd: [EXTERNAL] Re: Follow Up

Begin forwarded message:

**From:** Stephen Shane <Stephen\_Shane@co.washington.or.us>  
**Date:** August 17, 2022 at 4:49:28 PM PDT  
**To:** Don Brown <don@browncontracting.net>  
**Cc:** Michelle Wilkins <Michelle\_Wilkins@co.washington.or.us>, Kofi Nelson-Owusu <Kofi\_Nelson@co.washington.or.us>, Kimberly Allen <Kim\_Allen@co.washington.or.us>  
**Subject:** RE: [EXTERNAL] Re: Follow Up

Mr. Brown: At this time there are no less than two violation components for Tax lot 0311 (at least), a potential grading violation and a land use violation for unpermitted tree removal in a resource zone. The land use violation appears to extend to the adjacent lots owned by Emrick Investments. To that end, this email addresses #1, 5 and 7 below, in addition to #11. Grading concerns and subsequent address of the need for grading review and permitting is through Kofi Nelson-Owusu and Kim Allen, cc'd herein.

Attached are two maps that show the applicable land use overlays on the Emrick properties in the area. The green and blue layer shows mapped Significant Natural Resources on the site(s) that reflect the county's compliance with State Land Use Goal 5. Goal 5 is addressed at the county level through Development Code Section 422. The pink overlay is floodplain-related (see below).

Mr. Pittner does not recall discussing tree removal at this site but noted to me he directs people if they come to the counter to discuss pending tree removal with planning staff. The comment that planning does not regulate tree removal on private property is generally true for sites that do not have the Significant Natural Resource Overlay. These properties do and tree removal within these areas is not allowed. The exception is for trees subject to disease or danger, as you've alluded to below in #1. However, that's a determination both a certified biologist and a certified arborist has to make in a submitted staff report to planning, given the presence of the overlay. Moreover, photo evidence does not seem to support either contention, both in looking at the prior aerial canopy and the cross-cuts of numerous Douglas fir boles stacked on the property post-harvest. The site quite clearly appears to have been clear cut for pending future development. I don't need to be present for a site visit as the photo evidence is instructive in that regard.

Staff is not aware of any 'permit' for tree removal having been submitted for this site/area and again, an over-the-counter permit is not sufficient in any case to abate this violation. A Type II land use application needs to be submitted that (retroactively) discusses in detail the tree removal operation, what was there initially, what was removed, and what a professional biologist thinks is needed for mitigation for the unauthorized removal of the resource. Address of Code Section 422 will be necessary in the report that evaluates the impact to the resource area. My recommendation is to contact planning staff for a

pre-application conference to go over in detail what the requirements are. Contact information can be [Paul\\_schaefer@co.washington.or.us](mailto:Paul_schaefer@co.washington.or.us) or [Maitreyee\\_sinha@co.washington.or.us](mailto:Maitreyee_sinha@co.washington.or.us). Note county addresses have an underscore between first and last names.

The attached pink map shows what is known as a Drainage Hazard Area, which reflects a 25-year flood event area on the property. Here too, development, including driveway maintenance, requires county planning to review the proposal in accordance with Development Code Section 421, Floodplains and Drainage Hazard Areas. While not yet noted in county records as a violation, failure to obtain development review for any work in these areas is in fact a violation of code and will need to be addressed with the county flood plain manager. Contact information is [Sean\\_Harasser@co.washington.or.us](mailto:Sean_Harasser@co.washington.or.us).

For review and receiving county records, you may submit a public records request and staff will address your inquiry per statutory requirements. Public record request information can be found here: <https://www.co.washington.or.us/public-records-requests.cfm>.

I also note at this time that any physical and/or use expansion of the existing permitted Contractor's Establishment located on Taxlot 0309 to the east would need new land use review for any work not covered under the scope of Casefile 14-431(D)IND.

Ms. Wilkins can coordinate with you or other Emrick representative(s) a timeline for compliance and eventual abatement of these issues. Please continue to work with her toward this effort.

Thank you.

***Stephen Shane | Principal Planner***

*Washington County Department of Land Use & Transportation*

*Planning and Development Services | Current Planning*

*155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124*

*(503) 846- 8127 direct*

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** Kimberly Allen <Kim\_Allen@co.washington.or.us>

**Sent:** Wednesday, August 17, 2022 12:15 PM

**To:** Don Brown <don@browncontracting.net>; Stephen Shane <Stephen\_Shane@co.washington.or.us>

**Cc:** Michelle Wilkins <Michelle\_Wilkins@co.washington.or.us>; Kofi Nelson-Owusu <Kofi\_Nelson@co.washington.or.us>

**Subject:** RE: [EXTERNAL] Re: Follow Up

Thank you for the information. Is it possible to meet on site tomorrow afternoon to discuss the work done and any permit requirements?

[Kim Allen](#)

Engineering Associate I

Washington County Building Services, Engineering Section

155 N First Ave., Suite 350

Hillsboro, OR 97124

Office 503-846-6733 Cell 971-329-5667

[Kim\\_allen@co.washington.or.us](mailto:Kim_allen@co.washington.or.us)



---

**From:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>  
**Sent:** Wednesday, August 17, 2022 12:10 PM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Cc:** Michelle Wilkins <[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)>; Kimberly Allen <[Kim\\_Allen@co.washington.or.us](mailto:Kim_Allen@co.washington.or.us)>  
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Respectfully,  
Don Brown

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<[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)> wrote:

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I appreciate you working with us, but we really want to get everything resolved and on the right track.

Thanks again Don,

**Michelle Wilkins**

Code Enforcement Officer

Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning

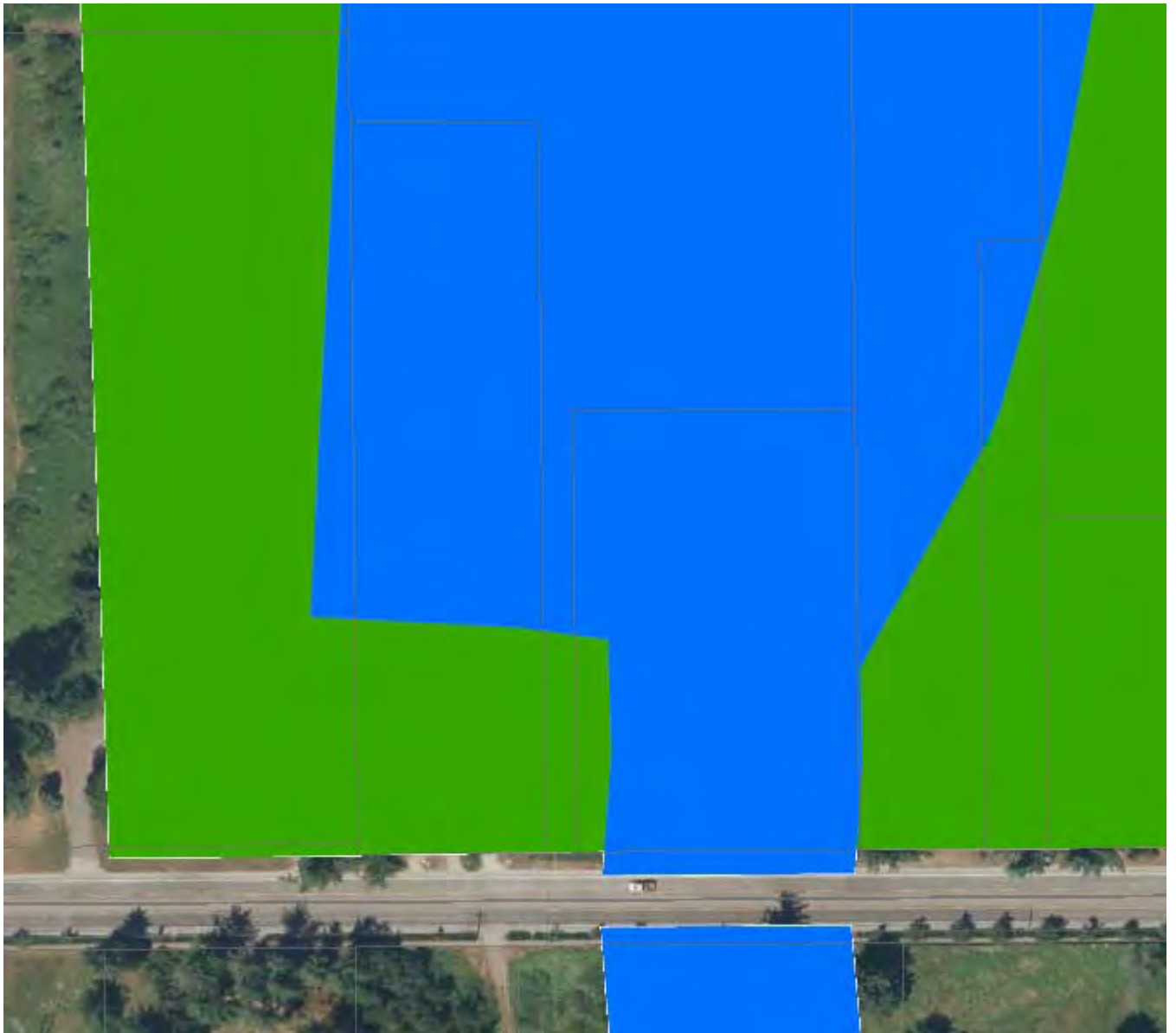
155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR 97124

[PDScodecompliance@co.washington.or.us](mailto:PDScodecompliance@co.washington.or.us) | [www.co.washington.or.us/lut](http://www.co.washington.or.us/lut)

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**From:** Don Brown  
**To:** [Wilbur Mr Tree](#)  
**Subject:** Fwd: [EXTERNAL] Re: Follow Up

---

Hi Wilbur,

Can we talk about this after you've had a moment to read? Thank you

Don

Begin forwarded message:

**From:** Stephen Shane <Stephen\_Shane@co.washington.or.us>  
**Date:** September 12, 2022 at 10:23:06 AM PDT  
**To:** Don Brown <don@browncontracting.net>  
**Cc:** Sean Emrick <sean@browncontracting.net>, Erin Wardell <Erin\_Wardell@co.washington.or.us>, Michelle Wilkins <Michelle\_Wilkins@co.washington.or.us>  
**Subject:** RE: [EXTERNAL] Re: Follow Up

Mr. Brown: I've discussed this issue with my supervisor, Erin Wardell, cc'd here and she has confirmed the necessity of addressing the tree removal on the property under county requirements. There are three options below to resolve this situation.

I first want to acknowledge your statement about tree-removal discussions with Mr. Pittner. As I noted earlier, he doesn't recall talking with you about tree removal on this taxlot but regardless, any discussion and authorization about tree removal on the site would need to come from the planning department, not the building department. It's unfortunate if you received incorrect information on this issue but that doesn't mean we can ignore the regulations in place - the requirements of the development code still need to be met. Ultimately it is the property owner's responsibility what state and local requirements apply to a particular development action. What is being asked of you now is what you would have had to do had you talked to a planning representative and, as imperfect as it may be, a retroactive address of the violation needs to occur to resolve the issue. I appreciate that you received a permit from ODF for tree removal but that does not capture county requirements or render them unnecessary. Any statement by Mr. Pittner about authorizing tree removal was not a 'green light' (as you state below) by the county to remove trees in a mapped Significant Natural Resource. The requirement is codified as follows

***Exclusions from Permit Requirement***

*CDC Section 201-2.6*



*Propagation or cutting of trees except as specified in Section 407-3 provided the trees are not designated as a significant natural resource area in an urban Community Plan, designated for preservation through the master planning process for a development, designated for preservation in a prior development action or when inside the UGB, located within a flood plain or drainage hazard area;*

This property is mapped as both a Significant Natural Resource Area and a Drainage Hazard Area.

The options then are, as noted previously, to either obtain an arborist report noting why the trees needed to be removed under a immediate health hazard, or submit a Type II land use application that addresses code requirements of Section 407 and 422 to the degree you can, in retrospect. An independent biologist report will be required and mitigation in the form of additional tree planting is a likely component. The link to the development code is:

<https://www.co.washington.or.us/LUT/Divisions/LongRangePlanning/Publications/cdc-community-development-code.cfm>

Conversely, we can schedule a land use hearing adjudicated by an independent county hearings officer, where you will have the opportunity to present evidence and to make your case. Staff will recommend a fine and present a staff report with recommendations to the HO.

Please let us know within two weeks of the date of this email how you intend to proceed. If we fail to hear back from you in this time, staff has no choice but to issue a citation and schedule a violation hearing with the HO.

***Stephen Shane | Principal Planner***

*Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning  
155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
(503) 846- 8127 direct*

*The counter lobby is open Monday, Tuesday and Thursday, 8AM to 4PM.*

*The lobby is closed Wednesday and Friday until further notice.*

*Staff are working in office and remotely throughout the week and are best reached by email.*

---

**From:** Don Brown <don@browncontracting.net>  
**Sent:** Monday, August 22, 2022 3:18 PM  
**To:** Stephen Shane <Stephen\_Shane@co.washington.or.us>  
**Cc:** Sean Emrick <sean@browncontracting.net>  
**Subject:** FW: [EXTERNAL] Re: Follow Up

Mr. Shane,

Our embedded and italicized responses below for ease of reference.

---

**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Monday, August 22, 2022 1:56 PM  
**To:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>; Kimberly Allen <[Kim\\_Allen@co.washington.or.us](mailto:Kim_Allen@co.washington.or.us)>  
**Cc:** Michelle Wilkins <[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)>; Kofi Nelson-Owusu <[Kofi\\_Nelson@co.washington.or.us](mailto:Kofi_Nelson@co.washington.or.us)>  
**Subject:** RE: [EXTERNAL] Re: Follow Up

Mr. Brown:

As noted below, the Grading section has determined that grading review and permitting were not required for the tree removal on the properties owned by Emrick. Staff has further determined that a floodplain alteration application for possible impacts to a Drainage Hazard Area located across the properties is also not required given the fact that an Or. Dept of Forestry permit was obtained and the work is therefore exempt from review per Development Code Section 421-16.6. **We are left then with the removal of the trees in a resource area without first clarifying with the county if this is allowed under county regulations.**

*DB-as we have asserted numerous occasions we DID consult directly with Mr. Pitman from Wa Co. How else might we have attained his name in reference? Via phone both occasions and via two separate folks from our Co. It was not over the counter. Mr. Pitman unequivocally stated after we had disclosed our address that removing trees on private property does not require a permit. We also consulted the Oregon Dept of forestry for confirmation and attained a permit that Wa Co literally assured us WE DID NOT NEED. My question to you Sir: if neither Wa Co nor Dept of forestry called out this "resource area" thing then presumably they either did not know and/or did not see it as a problem? How might we have known then? We adhered to all aspects of the permit. If you were to research our neighbor you'd find they removed hundreds of trees in clear cut fashion, without a permit because Wa Co deemed them diseased and dying and they did not need a permit.*

*We did not "clear cut" Mr. Shane. We saved numerous trees. Truth is numerous trees, were diseased, broken top and/or leaning/laying across property lines in dangerous fashion. We paid big money to remove the trees. Point being, it was the exact opposite of a profiteering logging venture. Since you are a biologist you may know that the recent storms damaged 10000's of trees and further that Conk transmits via root systems; ie, it had become quite pervasive. There are a few other diseases that permeated our trees as well according to the experienced entity that removed them.*

*These, trees became fire wood for our employees and for Mr. Tree to process dispose of.*

*Post fact, arborist analysis AFTER a green light from Wa Co and the Department of Forrestry? Are you really asking for this? if so, there still exist numerous trees that were not removed but are virtually dead or dying standing. This is in part why we asked that you attend the meeting and visit the site. This invitation still stands.*

*With regard to your request for the Dept of Forestry permit we already gave your Wa Co representatives upon their request an original hard copy. In person.*

You've asserted you've talked with Mr. Pittner, who you say **stated there were no regulations on private tree cutting.**

*DB-That's not what I stated. I stated that we consulted Mr. Pittner with the question, "we have diseased and dying trees at our property on SW Day road that we wish to remove. Do we need a permit?" His answer was NO, you do not need a permit to remove trees on private property". His response was not, let me check your address for a "resource area". It was not, "you need to do this over the counter". In fact, your recent pdf of the supposed resource area overlay isn't labelled via address, legend, or even what the color means.*

I've informed you that was incorrect and also informed you of Mr. Pittner's comment that he without fail sends people to planning when they have a question on tree cutting – this is a planning issue exclusively and it is standard operating procedure for Buildings staff (Mr. Pittner's dept) to do just that.

*DB-your statement is false in that Mr. Pittner did not send us to planning. Mr. Pittner did not mention over the counter or planning. Further as you state, if that's your standard operating procedure it did not occur. And, if it is your SOP then it'd make sense that Mr. Pittner told a Superior that it did. If we were trying to skirt a permit then why did we attain one?*

Do you have a copy of a tree permit – you noted in a separate email I believe that you did. Can you send that, or some other tangible confirmation that the county authorized you to remove the trees? I would also like to know if your conversation with Mr. Pittner was at the counter.

*DB-Wa Co told us we did not need a permit. The permit we did attain was from the Oregon Department of Forestry and your field representatives Ms. Allen and Mr. Kofi were provided the permit hardcopy per their on site request.*

Barring that, to abate the violation you will need to submit a land use application to address the unauthorized removal of trees in a resource zone. The standards are at code Section 407-3., Tree Preservation and Removal. The resource is not about only the presence of wetlands, which you referenced, but the habitat value of the trees that were removed. You've asserted as well that the trees were all diseased and needed removal for that reason. As a former wildlife and habitat biologist, I don't find that to be true, as I've indicated, at least not to the point of justifying full removal through a clear cut – however, if you submit to the county a certified arborist report



substantiating the need for removal of the trees for health reasons, Emrick would then be exempt from the need for a land use application under Section 407-3.2.

*DB-“To abate the violation”. Wa Co told us we did not need a permit. We got one anyway from the Dept. willing to issue one. It came with conditions which we adhered to. Then, the Oregon division of wetlands investigated, took soil samples and concluded that no trees were removed in wetlands. Douglas Fir and blackberry bushes are highland species. In short, how could a fully permitted operation be a violation?*

*We are a property owning tax paying entity that did everything right to operate above board Sir. In hindsight, your notes read like Wa Co failed to follow it’s own SOP. Doesn’t seem right we’d be cited with an “open violation” born of Wa Co retroactive unreasonable tactics. Dead, dying diseased doug fir trees are NOT resources. They were dangerous exposures. And we have written authorization from the State or Oregon to remove them.*

*Post removal arborist analysis? Are we supposed to go find the fire wood and disposed wood and analyze that? You’re requiring that we, “submit a land use change application”; we are not attempting to change the land use. There is still a house with a small outbuilding. With all due respect, we don’t even know how to comply with what you’re directing. Seems like you just want to keep the matter open for no legitimate reason. You know, Wa Co harassed us rather incessantly about “grading” that never occurred. Declined requests to meet on site initially. Then, when Wa Co finally visited all that nonsense vanished. Coincidentally, you have declined to visit the site as well. All the while testifying in writing like you knew the condition of the trees that were removed. Ironically, all this might reasonably go away if you will visit the site. The invitation stands. Reasons: you’ll see numerous dying trees still standing that we salvaged and you’ll see that we 100% complied with the Dept of Forestry permit requirements. Again, there was not a clear cut and not all the trees were removed.*

Please note the violation is still open until such time as a resolution is reached. All subsequent permits and land use requests cannot be accepted until a violation on a site is abated.

Thank you.

**Stephen Shane | Principal Planner**

Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning  
155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
(503) 846- 8127 direct

*The counter lobby is open M-Thurs, 8AM to 4PM. Staff are working in office and remotely and are best reached by email.*

---

**From:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>

**Sent:** Thursday, August 18, 2022 7:51 PM

**To:** Kimberly Allen <[Kim\\_Allen@co.washington.or.us](mailto:Kim_Allen@co.washington.or.us)>  
**Cc:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>; Michelle Wilkins <[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)>; Kofi Nelson-Owusu <[Kofi\\_Nelson@co.washington.or.us](mailto:Kofi_Nelson@co.washington.or.us)>  
**Subject:** Re: [EXTERNAL] Re: Follow Up

Kim and Kofi,

We appreciate your time today and this notice.

Respectfully,  
*Don Brown*

On Aug 18, 2022, at 7:25 PM, Kimberly Allen <[Kim\\_Allen@co.washington.or.us](mailto:Kim_Allen@co.washington.or.us)> wrote:

Don,

Thank you for meeting us on site to discuss the recent private road/driveway work and tree removal. We consider the road/driveway work to be maintenance of the existing driveway serving an existing dwelling and the tree removal was done under forestry notification number 2022-531-05598, therefore a grading permit is not required. Any additional grading work adding to the existing impervious area will require a grading permit, keep in mind compacted gravel is considered impervious. Please continue to work with Current Planning and Code Compliance to address any landuse review and approvals required.

Thank you

**Kim Allen**  
Engineering Associate I  
Washington County Building Services, Engineering Section  
155 N First Ave., Suite 350  
Hillsboro, OR 97124  
Office 503-846-6733 Cell 971-329-5667  
[Kim\\_allen@co.washington.or.us](mailto:Kim_allen@co.washington.or.us)

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**From:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Sent:** Wednesday, August 17, 2022 4:49 PM  
**To:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>  
**Cc:** Michelle Wilkins <[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)>; Kofi Nelson-Owusu <[Kofi\\_Nelson@co.washington.or.us](mailto:Kofi_Nelson@co.washington.or.us)>; Kimberly Allen <[Kim\\_Allen@co.washington.or.us](mailto:Kim_Allen@co.washington.or.us)>

**Subject:** RE: [EXTERNAL] Re: Follow Up

Mr. Brown: At this time there are no less than two violation components for Tax lot 0311 (at least), a potential grading violation and a land use violation for unpermitted tree removal in a resource zone. The land use violation appears to extend to the adjacent lots owned by Emrick Investments. To that end, this email addresses #1, 5 and 7 below, in addition to #11. Grading concerns and subsequent address of the need for grading review and permitting is through Kofi Nelson-Owusu and Kim Allen, cc'd herein.

Attached are two maps that show the applicable land use overlays on the Emrick properties in the area. The green and blue layer shows mapped Significant Natural Resources on the site(s) that reflect the county's compliance with State Land Use Goal 5. Goal 5 is addressed at the county level through Development Code Section 422. The pink overlay is floodplain-related (see below).

Mr. Pittner does not recall discussing tree removal at this site but noted to me he directs people if they come to the counter to discuss pending tree removal with planning staff. The comment that planning does not regulate tree removal on private property is generally true for sites that do not have the Significant Natural Resource Overlay. These properties do and tree removal within these areas is not allowed. The exception is for trees subject to disease or danger, as you've alluded to below in #1. However, that's a determination both a certified biologist and a certified arborist has to make in a submitted staff report to planning, given the presence of the overlay. Moreover, photo evidence does not seem to support either contention, both in looking at the prior aerial canopy and the cross-cuts of numerous Douglas fir boles stacked on the property post-harvest. The site quite clearly appears to have been clear cut for pending future development. I don't need to be present for a site visit as the photo evidence is instructive in that regard.

Staff is not aware of any 'permit' for tree removal having been submitted for this site/area and again, an over-the-counter permit is not sufficient in any case to abate this violation. A Type II land use application needs to be submitted that (retroactively) discusses in detail the tree removal operation, what was there initially, what was removed, and what a professional biologist thinks is needed for mitigation for the unauthorized removal of the resource. Address of Code Section 422 will be necessary in the report that evaluates the impact to the resource area. My recommendation is to contact planning staff for a pre-application conference to go over in detail what the requirements are. Contact information can be [Paul\\_schaefer@co.washington.or.us](mailto:Paul_schaefer@co.washington.or.us) or

[Maitreyee\\_sinha@co.washington.or.us](mailto:Maitreyee_sinha@co.washington.or.us). Note county addresses have an underscore between first and last names.

The attached pink map shows what is known as a Drainage Hazard Area, which reflects a 25-year flood event area on the property. Here too, development, including driveway maintenance, requires county planning to review the proposal in accordance with Development Code Section 421, Floodplains and Drainage Hazard Areas. While not yet noted in county records as a violation, failure to obtain development review for any work in these areas is in fact a violation of code and will need to be addressed with the county flood plain manager. Contact information is [Sean\\_Harasser@co.washington.or.us](mailto:Sean_Harasser@co.washington.or.us).

For review and receiving county records, you may submit a public records request and staff will address your inquiry per statutory requirements. Public record request information can be found here: <https://www.co.washington.or.us/public-records-requests.cfm>.

I also note at this time that any physical and/or use expansion of the existing permitted Contractor's Establishment located on Taxlot 0309 to the east would need new land use review for any work not covered under the scope of Casefile 14-431(D)IND.

Ms. Wilkins can coordinate with you or other Emrick representative(s) a timeline for compliance and eventual abatement of these issues. Please continue to work with her toward this effort.

Thank you.

**Stephen Shane | Principal Planner**

Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning  
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(503) 846- 8127 direct

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---

**From:** Kimberly Allen <[Kim\\_Allen@co.washington.or.us](mailto:Kim_Allen@co.washington.or.us)>

**Sent:** Wednesday, August 17, 2022 12:15 PM

**To:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>; Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>

**Cc:** Michelle Wilkins <[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)>; Kofi Nelson-Owusu <[Kofi\\_Nelson@co.washington.or.us](mailto:Kofi_Nelson@co.washington.or.us)>

**Subject:** RE: [EXTERNAL] Re: Follow Up

Thank you for the information. Is it possible to meet on site tomorrow

afternoon to discuss the work done and any permit requirements?

Kim Allen  
Engineering Associate I  
Washington County Building Services, Engineering Section  
155 N First Ave., Suite 350  
Hillsboro, OR 97124  
Office 503-846-6733 Cell 971-329-5667  
[Kim\\_allen@co.washington.or.us](mailto:Kim_allen@co.washington.or.us)

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**From:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>  
**Sent:** Wednesday, August 17, 2022 12:10 PM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Cc:** Michelle Wilkins <[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)>; Kimberly Allen <[Kim\\_Allen@co.washington.or.us](mailto:Kim_Allen@co.washington.or.us)>  
**Subject:** [EXTERNAL] Re: Follow Up

Dear Mr. Shane, Ms. Wilkins and Ms. Allen,

1. We have removed diseased/dangerous Douglas fir trees. We applied for permit to do so even after Mr. Pitman at Wa Co informed us we did not need a permit to remove trees on private property. To our knowledge we have not received a WaCo response.
2. There exist gravel driveways upwards of 50 years old that were damaged via time and the heavy equipment that removed the trees. We repaired those gravel driveways like for like and it resulted in zero change to grade or surface area.
3. Nothing was widened or paved. We have not added any new driveways or roads. Only repaired existing. We have not increased impermeable area by a single square foot. We have not modified grades or drainage patterns.
4. Properly repairing a pre-existing and completely legal private property gravel access does not with all due respect require geotechnical engineering, civil engineering, grading plans, topographic analysis, permeability studies, or even a permit. We've built nothing. We've constructed nothing.
5. Your note states, Wa Co requires us to submit Type 2 Land Use Application. It's our understanding that a Type 2 Land Use Application would apply if/when we wish to change or alter use of the site. We are not requesting to change the use of this site at this time. Nor, have we changed the use of this site. If/when we desire to do so we'd certainly retain

- appropriate design professional services and submit for Wa Co permits as required.
6. It's perplexingly apparent that Wa Co does not believe that this is all that has occurred which is precisely why we have requested on numerous occasions an on site meeting. No response from Wa Co in this regard other than one previous refusal to meet from Ms. Allen via phone. Other written requests to meet on site have been ignored by WaCo to date.
  7. **We here-by re-request an on site meeting with Mr. Shane** and whomever Mr. Shane feels necessary from Wa Co such that we may discuss and discern whatever it is Waco believes was done in non compliant fashion and/or whatever specific scope of work that Waco believes occurred that dictates we owe a permit application for.
  8. WaCo appears to be demanding we retain a team of design professionals and apply for a permit for a road we ostensibly "constructed" when we never "constructed" a road in the first place.
  9. It seems no matter how many times we re-assert the above facts WaCo representation either does not believe us or just doesn't understand. An on site review of specific WaCo concerns and our prospective clarifications could/would be the most efficient way for us to satisfy whatever it is that Wa Co needs and/or for WaCo to see/believe what we are stating to be true.
  10. We do not wish to apply to permit a scope of work that per Co Code and extensive Co precedence does not require a permit application. Especially, when / while Wa Co is demanding we retain geotechnical and civil engineering services as well as professional land surveyor.
  11. Finally, we respectfully request a complete copy of the County file pertaining to this matter. We are happy to pay for the copy expense and whatever ORS requires. We are happy to pick up the file at your office or you could bring a copy of it with you to our prospective on site meeting?

*Respectfully,  
Don Brown*

On Aug 16, 2022, at 12:32 PM, Michelle Wilkins  
<[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)> wrote:

Good afternoon Don,

I hope Kim was able to answer your grading questions.

My supervisor was reviewing this situation and wanted me to also remind you there are land use issues that need to be addressed as well. Land use review and approval must be granted. A type 2 land use application must be submitted.

There was also mention of expanding the project into the adjacent lots which was not part of the plan. He said if you need more clarification on that process you can contact him directly. His email is [Stephen\\_shane@co.washington.or.us](mailto:Stephen_shane@co.washington.or.us)

I appreciate you working with us, but we really want to get everything resolved and on the right track.

Thanks again Don,

**Michelle Wilkins**  
Code Enforcement Officer  
Washington County Department of Land Use &  
Transportation  
Planning and Development Services | Current Planning  
155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR  
97124  
[PDScodecompliance@co.washington.or.us](mailto:PDScodecompliance@co.washington.or.us) |  
[www.co.washington.or.us/lut](http://www.co.washington.or.us/lut)

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**Plan** Responsibly. **Build** Safely. **Live** Well.

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**INFO:** Washington County email addresses will change from @co.washington.or.us to @washingtoncountyor.gov on September 26, 2022. Please update my contact information at that time.

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## Natalie Brown

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**From:** Kimberly Allen <Kim\_Allen@co.washington.or.us>  
**Sent:** Thursday, August 18, 2022 7:25 PM  
**To:** Stephen Shane; Don Brown  
**Cc:** Michelle Wilkins; Kofi Nelson-Owusu  
**Subject:** RE: [EXTERNAL] Re: Follow Up

Don,

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Thank you

Kim Allen  
 Engineering Associate I  
 Washington County Building Services, Engineering Section  
 155 N First Ave., Suite 350  
 Hillsboro, OR 97124  
 Office 503-846-6733 Cell 971-329-5667  
[Kim\\_allen@co.washington.or.us](mailto:Kim_allen@co.washington.or.us)

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**From:** Stephen Shane <Stephen\_Shane@co.washington.or.us>  
**Sent:** Wednesday, August 17, 2022 4:49 PM  
**To:** Don Brown <don@browncontracting.net>  
**Cc:** Michelle Wilkins <Michelle\_Wilkins@co.washington.or.us>; Kofi Nelson-Owusu <Kofi\_Nelson@co.washington.or.us>; Kimberly Allen <Kim\_Allen@co.washington.or.us>  
**Subject:** RE: [EXTERNAL] Re: Follow Up

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to make in a submitted staff report to planning, given the presence of the overlay. Moreover, photo evidence does not seem to support either contention, both in looking at the prior aerial canopy and the cross-cuts of numerous Douglas fir boles stacked on the property post-harvest. The site quite clearly appears to have been clear cut for pending future development. I don't need to be present for a site visit as the photo evidence is instructive in that regard.

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The attached pink map shows what is known as a Drainage Hazard Area, which reflects a 25-year flood event area on the property. Here too, development, including driveway maintenance, requires county planning to review the proposal in accordance with Development Code Section 421, Floodplains and Drainage Hazard Areas. While not yet noted in county records as a violation, failure to obtain development review for any work in these areas is in fact a violation of code and will need to be addressed with the county flood plain manager. Contact information is [Sean\\_Harasser@co.washington.or.us](mailto:Sean_Harasser@co.washington.or.us).

For review and receiving county records, you may submit a public records request and staff will address your inquiry per statutory requirements. Public record request information can be found here: <https://www.co.washington.or.us/public-records-requests.cfm>.

I also note at this time that any physical and/or use expansion of the existing permitted Contractor's Establishment located on Taxlot 0309 to the east would need new land use review for any work not covered under the scope of Casefile 14-431(D)IND.

Ms. Wilkins can coordinate with you or other Emrick representative(s) a timeline for compliance and eventual abatement of these issues. Please continue to work with her toward this effort.

Thank you.

**Stephen Shane | Principal Planner**

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---

**From:** Kimberly Allen <[Kim\\_Allen@co.washington.or.us](mailto:Kim_Allen@co.washington.or.us)>

**Sent:** Wednesday, August 17, 2022 12:15 PM

**To:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>; Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>

**Cc:** Michelle Wilkins <[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)>; Kofi Nelson-Owusu <[Kofi\\_Nelson@co.washington.or.us](mailto:Kofi_Nelson@co.washington.or.us)>

**Subject:** RE: [EXTERNAL] Re: Follow Up

Thank you for the information. Is it possible to meet on site tomorrow afternoon to discuss the work done and any permit requirements?

Kim Allen  
 Engineering Associate I  
 Washington County Building Services, Engineering Section  
 155 N First Ave., Suite 350  
 Hillsboro, OR 97124  
 Office 503-846-6733 Cell 971-329-5667  
[Kim\\_allen@co.washington.or.us](mailto:Kim_allen@co.washington.or.us)

---

**From:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>  
**Sent:** Wednesday, August 17, 2022 12:10 PM  
**To:** Stephen Shane <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Cc:** Michelle Wilkins <[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)>; Kimberly Allen <[Kim\\_Allen@co.washington.or.us](mailto:Kim_Allen@co.washington.or.us)>  
**Subject:** [EXTERNAL] Re: Follow Up

Dear Mr. Shane, Ms. Wilkins and Ms. Allen,

1. We have removed diseased/dangerous Douglas fir trees. We applied for permit to do so even after Mr. Pitman at Wa Co informed us we did not need a permit to remove trees on private property. To our knowledge we have not received a WaCo response.
2. There exist gravel driveways upwards of 50 years old that were damaged via time and the heavy equipment that removed the trees. We repaired those gravel driveways like for like and it resulted in zero change to grade or surface area.
3. Nothing was widened or paved. We have not added any new driveways or roads. Only repaired existing. We have not increased impermeable area by a single square foot. We have not modified grades or drainage patterns.
4. Properly repairing a pre-existing and completely legal private property gravel access does not with all due respect require geotechnical engineering, civil engineering, grading plans, topographic analysis, permeability studies, or even a permit. We've built nothing. We've constructed nothing.
5. Your note states, Wa Co requires us to submit Type 2 Land Use Application. It's our understanding that a Type 2 Land Use Application would apply if/when we wish to change or alter use of the site. We are not requesting to change the use of this site at this time. Nor, have we changed the use of this site. If/when we desire to do so we'd certainly retain appropriate design professional services and submit for Wa Co permits as required.
6. It's perplexingly apparent that Wa Co does not believe that this is all that has occurred which is precisely why we have requested on numerous occasions an on site meeting. No response from Wa Co in this regard other than one previous refusal to meet from Ms. Allen via phone. Other written requests to meet on site have been ignored by WaCo to date.
7. **We here-by re-request an on site meeting with Mr. Shane** and whomever Mr. Shane feels necessary from Wa Co such that we may discuss and discern whatever it is Waco believes was done in non compliant fashion and/or whatever specific scope of work that Waco believes occurred that dictates we owe a permit application for.
8. WaCo appears to be demanding we retain a team of design professionals and apply for a permit for a road we ostensibly "constructed" when we never "constructed" a road in the first place.
9. It seems no matter how many times we re-assert the above facts WaCo representation either does not believe us or just doesn't understand. An on site review of specific WaCo concerns and our prospective clarifications could/would be the most efficient way for us to satisfy whatever it is that Wa Co needs and/or for WaCo to see/believe what we are stating to be true.
10. We do not wish to apply to permit a scope of work that per Co Code and extensive Co precedence does not require a permit application. Especially, when / while Wa Co is demanding we retain geotechnical and civil engineering services as well as professional land surveyor.

11. Finally, we respectfully request a complete copy of the County file pertaining to this matter. We are happy to pay for the copy expense and whatever ORS requires. We are happy to pick up the file at your office or you could bring a copy of it with you to our prospective on site meeting?

*Respectfully,  
Don Brown*

On Aug 16, 2022, at 12:32 PM, Michelle Wilkins <[Michelle\\_Wilkins@co.washington.or.us](mailto:Michelle_Wilkins@co.washington.or.us)> wrote:

Good afternoon Don,

I hope Kim was able to answer your grading questions.

My supervisor was reviewing this situation and wanted me to also remind you there are land use issues that need to be addressed as well. Land use review and approval must be granted. A type 2 land use application must be submitted. There was also mention of expanding the project into the adjacent lots which was not part of the plan. He said if you need more clarification on that process you can contact him directly. His email is [Stephen\\_shane@co.washington.or.us](mailto:Stephen_shane@co.washington.or.us)

I appreciate you working with us, but we really want to get everything resolved and on the right track.

Thanks again Don,

**Michelle Wilkins**

Code Enforcement Officer

Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning

155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR 97124

[PDScodecompliance@co.washington.or.us](mailto:PDScodecompliance@co.washington.or.us) | [www.co.washington.or.us/lut](http://www.co.washington.or.us/lut)

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**CAUTION:** This email originated from outside the County. Exercise caution when opening attachments or clicking links from unknown senders. Always follow the guidelines defined in the KnowBe4 training when opening email received from external sources. Contact the ITS Service Desk if you have any questions.

**From:** Michelle Wilkins <[Michelle\\_Wilkins@washingtoncountyor.gov](mailto:Michelle_Wilkins@washingtoncountyor.gov)>  
**Date:** January 24, 2023 at 1:25:07 PM PST  
**To:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>, Sean Emrick <[sean@browncontracting.net](mailto:sean@browncontracting.net)>, Megan Ferris <[mferris@msmlegal.com](mailto:mferris@msmlegal.com)>, [greinert@msmlegal.com](mailto:greinert@msmlegal.com)  
**Cc:** Kimberly Allen <[Kim\\_Allen@washingtoncountyor.gov](mailto:Kim_Allen@washingtoncountyor.gov)>  
**Subject:** WASHCO Complaint: Day Rd. Contractor's Establishment

Good afternoon all,

Please see the attached letter and templates.

Thank you,

**Michelle Wilkins**

Code Enforcement Officer

Washington County Department of Land Use & Transportation

Planning and Development Services | Current Planning

155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR 97124

Phone: 503-846-3846 Email: [Michelle\\_Wilkins@washingtoncountyor.gov](mailto:Michelle_Wilkins@washingtoncountyor.gov)

[PDScodecompliance@washingtoncountyor.gov](mailto:PDScodecompliance@washingtoncountyor.gov) | [www.washingtoncountyor.gov/lut](http://www.washingtoncountyor.gov/lut)

[Washington County Roads](#) on [Twitter](#) on [Facebook](#)

**Plan** Responsibly. **Build** Safely. **Live** Well.

**INFO:** Washington County email addresses has changed from @co.washington.or.us to @washingtoncountyor.gov.  
Please update my contact information.

**DAVID D. HUNTER, CONSULTING ARBORIST**

PO Box 324  
Forest Grove, OR 97116-0324  
CCB # 189453 Metro License # 10648

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Cell: (503) 319-0380  
[ddhunterarborist@aol.com](mailto:ddhunterarborist@aol.com)  
[www.davidhunterarborist.com](http://www.davidhunterarborist.com)

October 1, 2017

Mr. and Mrs. Schultz  
13195 NW Logie Trail Road  
Hillsboro, OR 97124

**RE: Visual tree assessments/ inspection and discussion about property line trees and potential development to the south of the property.**

Dear Mr. and Mrs. Schultz,

On September 30, 2017, I inspected the trees in your back yard for a visual tree assessment for health and discussion with you about tree health and the impacts of future development of the property to the south of your property. I was asked to look at your tree situation due to soil removal and roots of your trees being cut / damaged in the site development activity. This is my report of my findings.

I observed the root areas impacted on your pine trees, Leyland cypress, and Port Orford cedar trees. The Port Orford cedar appears to be a root disease issue and insects moved into trees and killed them, these bugs will spread to other cedars if the dead trees are not removed and debris chipped or burned. We discussed what could be planted other than Port Orford cedar. Western red cedar or incense cedar would be a more viable option.

The poplars/ cottonwoods are aggressive growers and once reach maturity decline rapidly. Poplars also like to send out roots and root suckers which could become a big problem to driveway or septic drain field.

The Leyland cypress and pine trees did have some 2-4" diameter roots cut due to excavation. The impact on these trees really won't be seen till next summer after the new growth has occurred. I would recommend the exposed roots be trimmed back cleanly to where they would not be exposed and into soil to lessen impacts from disease and or insects.

Root loss takes time to visually see changes in the trees from browning of tree limbs to insect activity of beetles attacking the trees due to new stress from the root cutting activity. Pictures were taken to document what was observed and as a baseline of tree condition at time of site visit. I recommend a site visit next summer or sooner if trees fail in the fall/ winter storms.

1

DDH 17/ 457 Visual Tree Assessments 13195 NW Logie Trail Road Hillsboro, OR 97124.

**DAVID D. HUNTER, CONSULTING ARBORIST**

PO Box 324  
Forest Grove, OR 97116-0324  
CCB # 189453 Metro License # 10648

I certify that all the statements in the foregoing arborist report are correct to the best of my knowledge and are made in good faith.

Questions, please give me a call.

Sincerely,



*David D. Hunter*  
*ASCA Registered Consulting Arborist # 408*  
*USFS Hazard Tree Inspector Trained*  
*ISA Certified Arborist # PN-1068A*  
*ISA Tree Risk Assessor Qualified*  
*Professional Forester/ Professional Plant Appraiser*





Date: November 18<sup>th</sup>, 2019

Client: Daryl Leu

Location: 7101 SW Beaverton Hillsdale Hwy Portland OR 97225

Species: Black Walnut, *Juglans Nigra*

RE: UV 19-0133 Violation, Removal of Black Walnut tree located at: 7101 S.W. Beaverton Hillsdale Hwy. on August 28 and 29, 2019

To whom it may concern:

On September 24, 2015 I visited the residence of Daryl Leu for the first time to assess his Black Walnut tree. During the assessment, I observed that portions of the lower canopy were alive, and that the upper canopy contained large sections of hazardous deadwood. Upon further investigation, it was clear that the tree was infected with Thousand Canker Disease. Following the original assessment, I have visited the site 6-7 more times in the last 4 years and noted the steady decline of the tree. In my experience and study, leaving a tree with Thousand Canker Disease can also contribute to the spread of the disease through airborne spores and insects, as well as through birds and rodents as they distribute infected twigs to neighboring Walnut trees.

Moreover, with each visit, I frequently witnessed pedestrian traffic around and under the tree - including clients from the nearby veterinary clinic. Due to its declining state, the tree also posed a hazard to those pedestrians who walked nearby. After conferring, the homeowner concluded that the best course of action to prevent spread of disease and to keep those on foot out of harm's way, was to remove the tree. With no cure or remedy, the tree was never going to recover, as an arborist I also believe that the proper decision was to remove the tree.

*Marvin Klopfenstein*

***Marvin Klopfenstein***

Member & ISA Certified Arborist, PN-7779A

Cell: [503-830-1468](tel:503-830-1468) - Office: [503-363-0991](tel:503-363-0991)

[marvin@mtvtreeoregon.com](mailto:marvin@mtvtreeoregon.com) / [www.mtvtreeoregon.com](http://www.mtvtreeoregon.com)



January 25th, 2023

## **FINAL NOTICE**

Emrick Investments LLC  
P.O. Box 26439  
Eugene, OR 97402

**RE: ENFPDS22-00004, ENFPDS22-00044 and other Land Use Code Violations:** *Unpermitted Tree Removal, Unpermitted Grading, Unpermitted Signage and Operating Outside the Scope of Conditions of Approval on Property Located at 9805, 9675, 9779, and 9775 SW Day Road, Unincorporated Washington County (Tax Lots 3S102B000311, 3S102B000302, 3S102B000303, 3S102B000309 & 3S102B000310)*

Hello:

As we continue to receive multiple complaints about your contractor's establishment operation on Day Rd., and have difficulty communicating with you, we are reaching out one last time in hopes to abate these complaints/violations with Washington County. Based off all the complaints, we would like to summarize and address these four major areas.

1. We would still like you to address the unpermitted tree removal under county regulations. The arborist report you submitted lacks detail and substance. I am attaching arborist report templates that outline the amount of information they should contain. If a report like this is submitted, we will then be able to close out violation ENFPDS22-00004.
2. We still need you to address the unpermitted grading violation, ENFPDS22-00044, with the grading department. Please contact Kim or Kofi to apply for that permit. Once it has been applied for and issued, we will be able to close out this violation.
3. We have also been made aware that you have multiple unpermitted signs on the property. Section 414 of the 2014 staff report states "if applicant proposes to erect or locate any signs, a sign permit is required." There is currently no sign permit on file. We would like you to apply for a sign permit or take all the signs down immediately.
4. Lastly, we need you to address that you have expanded beyond the operational limits of Condition III of the 2014 staff report. You are no longer operating within the 2014 perimeters. To abate this, we need you to come in for a land use approval to bring all existing components of the operation up to date.

The Day Rd. operation has changed in scope since 2014 and addressing the above complaints/violations will bring it into compliance. I am willing to meet you in person/on site to discuss these matters if you prefer. We would like to see significant progress of each of these issues within 30 days of the date of this letter. Please let me know if you have any questions.

This is the final letter you will receive on these land use violations. If compliance is not met, Washington County may issue citations and may request your presence in court. To address the issues described in this letter, you can contact me via email at [michelle\\_wilkins@washingtoncountyor.gov](mailto:michelle_wilkins@washingtoncountyor.gov) or by telephone at 503-846-3846.

Thank you. Your cooperation resolving this matter is appreciated.

Michelle Wilkins – Code Enforcement Officer  
Washington County Land Use & Transportation

**Natalie Brown**

---

**From:** Don Brown <don@browncontracting.net>  
**Sent:** Wednesday, January 25, 2023 4:15 PM  
**To:** Wilbur Mr Tree  
**Subject:** Day rd trees

Wilbur-

Waco is asking for you to provide a bit more elaborate narrative of how/why etc those trees were diseased and /or dying.

If you can muster up a little more detail they told me off the record this could go away.

I'd be happy to pay for your time.

Please advise.

Don

**MR. TREE, INC.**

8560 SE 172<sup>nd</sup> Avenue ~ Happy Valley, Oregon 97086  
Office 503-665-3917~Fax 503-665-2189  
CCB #157952

Date 1/30/2023

Client: Emrick Investments  
Address: SW Day Rd, Sherwood, OR 97140  
Subject: Tree Removal

To whom it may concern:

Upon visiting the Day Rd site, we observed several tree's exhibiting the following characteristics:

Blown out top's via the numerous previous seasons ice, snow and wind storms.  
Rampant Ganoderma Applanatum, (Conk).  
Coniophora Puteana, (heart rot).  
Pphellinus Noxius (root rot).

Several trees had lost huge branches, and had fallen upon damaged surrounding properties with a few falling across property line, access roadways and even a private service power line. Additionally, there were several unsafe leaners slated to fall in unpredictable fashion.

It was our Professional opinion that removing these trees was required to reduce potential hazard to property, people and structures.

Additionally, and arguably most important, reducing the spread of diseases noted above and potentially extending the life of trees that remain would be best achieved via the removals that we recommended.

Sincerely,

Dan Dunn  
(503) 665-3917  
ISA certified Arborist WE8139 AUT  
Certified tree care safety professional #252

**Sent:** Thursday, February 16, 2023 12:04 PM

**To:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>

**Cc:** Stephen Shane <[Stephen\\_Shane@washingtoncountyor.gov](mailto:Stephen_Shane@washingtoncountyor.gov)>; Erin Wardell <[Erin\\_Wardell@washingtoncountyor.gov](mailto:Erin_Wardell@washingtoncountyor.gov)>; Paul Schaefer <[Paul\\_Schaefer@washingtoncountyor.gov](mailto:Paul_Schaefer@washingtoncountyor.gov)>; Anne Elvers <[Anne\\_Elvers@washingtoncountyor.gov](mailto:Anne_Elvers@washingtoncountyor.gov)>

**Subject:** RE: [EXTERNAL] Request for Written Exoneration of Grading violation, Help Wanted Sign, Complaints filed to/for 24423 SW BOONES FERRY

**Importance:** High

Good afternoon Don,

I spoke with your associate, Austin, and told him to contact our Planners via phone (503-846-8761) and email ([lutdev@washingtoncountyor.gov](mailto:lutdev@washingtoncountyor.gov)) to discuss the permit process. He contacted me a few days later and said he hadn't heard anything. I had asked him to be patient as we are short staffed.

The property is not within Sherwood or Wilsonville jurisdictions so their advice is irrelevant. Per the 2014 Washington County staff report, it specifically states a sign permit is needed to post any signage. Please take down any signage until the Washington County permit is obtained. If it is not removed, a new violation will be opened.

Additionally, violation ENFPDS22-00004 (unpermitted tree removal) and ENFPDS22-00044 (unpermitted grading) have been closed. The last aspect of the final letter we sent out was the review of the current conditions of operations. I see a pre-app has been filed and I believe a meeting with Paul Schaefer has been set up. If you would like to file a complaint against the neighbors you can do so on the Washington County website.

I hope this helps clarify any questions you had.

Thanks,

### **Michelle Wilkins**

Code Enforcement Officer

Washington County Department of Land Use & Transportation

Planning and Development Services | Current Planning

155 N First Avenue, Suite 350, MS 13 | Hillsboro, OR 97124

Phone: 503-846-3846 Email: [Michelle\\_Wilkins@washingtoncountyor.gov](mailto:Michelle_Wilkins@washingtoncountyor.gov)

[PDScodecompliance@washingtoncountyor.gov](mailto:PDScodecompliance@washingtoncountyor.gov) | [www.washingtoncountyor.gov/lut](http://www.washingtoncountyor.gov/lut)

[Washington County Roads](#) on [Twitter](#) on [Facebook](#)

Plan Responsibly. Build Safely. Live Well.

**From:** Don Brown <[don@browncontracting.net](mailto:don@browncontracting.net)>

**Sent:** Thursday, February 16, 2023 9:51 AM

**To:** Michelle Wilkins <[Michelle\\_Wilkins@washingtoncountyor.gov](mailto:Michelle_Wilkins@washingtoncountyor.gov)>

**Subject:** [EXTERNAL] Request for Written Exoneration of Grading violation, Help Wanted Sign, Complaints filed to/for 24423 SW BOONES FERRY

Michelle,

### **Help Wanted sign**

On numerous occasions for the past few weeks we've contacted via emails and phone calls the Cities of Sherwood, Wilsonville and WACO.

Generally speaking, we've receive verbal go ahead or we don't really cares. We've also been told, "we don't have jurisdiction try such and such", and/or general runaround/non responsiveness.

It's quite perplexing how much time we've wasted just trying to comply with previous WACO direction.

We are at a loss at this point.

Accordingly, we have reposted the help wanted sign upon our property line fence on our property.

### **Grading violation**

I personally met with Kofi and Kim on site Feb 9, 2023. They both clearly asserted that the the ostensible grading violation did not occur and that it'd be removed from our record.

They stated that we'd be receiving and exoneration letter from you/WACO regarding this matter. Please send this ASAP.

### **Complaint**

With regard to our Neighbor to the north (McClendons 24423 SW BOONES FERRY) that has created this entire money wasting time consuming dance for both us and WACO. I informed Kofi and Kim of numerous county and code violations that had occurred and continue to occur upon their property. I specifically requested that these matters be investigated.

Thank you,  
*Don Brown*  
Brown Contracting, Inc.

**OFFICE OF COUNTY COUNSEL  
WASHINGTON COUNTY, OREGON**

THOMAS A. CARR  
County Counsel

BRAD ANDERSON  
CORTNEY DUKE\_DRIESSEN  
Deputy County Counsels

ROBERT BOVETT  
JASON BUSH  
ELMER M. DICKENS  
JOHN MANSFIELD  
EAMON MCMAHON  
ADRIANA ORTEGA  
JACQUILYN E. SAITO  
KIMBERLY STUART  
Assistant County Counsels

PUBLIC SERVICES BUILDING  
155 N FIRST AVENUE, SUITE 340, MS #24  
HILLSBORO, OREGON 97124  
Phone: (503) 846-8747  
Fax: (503) 846-8636

PATRICIA BUCK  
Management Analyst

DOUGLAS DAVIS  
DORIEN HAMILTON  
MARISSA JOSCELYN  
Paralegals

JAN JENSEN  
Administrative Specialist

June 1, 2023

Emrick Investments LLC  
P.O. Box 26439  
Eugene, OR 97402

Re: Land use code violation issues

Dear Emerick Investment, LLC,

As you know, on May 6, 2022, Washington County sent you a letter informing you of a land use code violation involving the unpermitted and therefore unlawful removal of the trees from a designated and mapped Significant Natural Resource (SNR) area, as well as possible unpermitted grading. A copy of that letter is attached.

On May 26, 2022, Washington County sent you a second letter regarding that matter. A copy of that letter is attached.

On June 28, 2022, Washington County sent you a final notice regarding that matter. A copy of that letter is attached.

In September of 2022, Washington County received an undated letter from "Mr Tree" in an effort to clear the code violation. A copy of that letter is attached.

That letter did not resolve the matter because it did not meet the standards in the land use code, so Washington County sent you another letter dated January 25, 2023, summarizing the four areas needing to be addressed.

In early February of 2023, Washington County received an arborist report from "Mr Tree" dated January 30, 2023. A copy of that report is attached. Washington County initially found that letter to be sufficient, and closed that code enforcement matter.



Emrick Investments  
June 1, 2023  
Page 2 of 2

However, as you know, that arborist report is fraudulent, in the sense that the arborist who purportedly signed it did not, has relocated to another state, and hasn't worked for "Mr Tree" for many years.

As a result, Washington County has reopened that code enforcement matter and is now requiring that you go through a retroactive Type II procedure as required by Section 308-3.7 of the Development Code. If you do not comply, Washington County will escalate this matter to a code enforcement public hearing, which might result in the imposition of a fine.

There is also the separate matter of the expansion of the contractor's establishment. As you know, there was a pre-application meeting on that matter on March 3, 2023. However, Washington County has still not received an actual application from you. As discussed during the pre-application meeting, this application will lead to a Type III procedure involving a public hearing. If Washington County does not receive your application, this matter will also be escalated to a code enforcement public hearing for unlawful expansion of the scope of permitted uses allowed through Casefile L14-00431 D(IND).

The purpose of this letter is to set a deadline for the submission for your filings as described above, after which Washington County will proceed to code enforcement. Please ensure that you have submitted your applications to the Washington County Department of Land Use and Transportation (LUT) no later than July 10, 2023.

Please don't hesitate to contact me if you have any questions or concerns.

Sincerely,



Rob Bovett  
Senior Assistant County Counsel  
Washington County, Oregon  
Rob\_Bovett@washingtoncountyor.gov

enc: Letter dated May 6, 2022  
Letter dated May 26, 2022  
Letter dated June 28, 2022  
Undated letter from Mr Tree  
Letter dated January 25, 2023  
Fraudulent letter from Mr Tree dated January 30, 2023  
Pre-Application Conference Summary dated March 10, 2023



# WASHINGTON COUNTY OREGON

May 6, 2022

Emrick Investments LLC  
P.O. Box 26439  
Eugene, OR 97402

**RE: ENFPDS 22-00004 Land Use and Building Code Violations:** *Unpermitted Tree Removal and Grading without a Permit in Significant Natural Resource & Drainage Hazard Areas on Property Located at 9805, 9779, and 9775 SW Day Road, Unincorporated Washington County (Tax Lots 3S102B000311, 3S102B000303, & 3S102B000310)*

Hello:

According to records of Washington County's Department of Assessment and Taxation, you, Emrick Investments LLC, are the registered owner of the above property. The land use designation is FD-20 District (Future Development, 20-Acre District) outlined in Section 308 of the Community Development Code (CDC).

This office has received complaints that unpermitted tree removal has occurred on the above-listed properties. Based on photos submitted with the complaint and review of Washington County maps, this development activity (tree removal) appears to be located within a mapped Drainage Hazard Area and a mapped Significant Natural Resource area. Development in these protected areas requires land use review and approval. These standards are outlined in Section 421 and Section 422 of the Community Development Code (CDC). You will need to submit a Type II application and applicable fees for the unlawful work that was done.

Additionally, county Grading staff were at the site Thursday, May 5 and determined that a grading permit was required for the level of grading and site alteration that has occurred. All work at the site must stop until such time as you have obtained a Grading permit. Contact Kim Allen in County Grading ([Kim.Allen@co.washington.or.us](mailto:Kim.Allen@co.washington.or.us)) for information on how to proceed.

This notice is to inform you that the county has opened a violation casefile for this unpermitted development activity. We realize you may not have been aware of land use requirements and are bringing this matter to your attention to ensure safety of present and future residents at this property via the permitting review process.

To address this violation, please contact me within fourteen (14) days of the date of this letter (**May 16, 2022**) to discuss specific requirements and the scope of work. Failure to address this issue in a timely manner will result in a public hearing before a land use hearings Officer and additional penalties.

I can be reached via email at [PDSCodecompliance@co.washington.or.us](mailto:PDSCodecompliance@co.washington.or.us) or at (503)-846-4875 should you have questions about our compliance process.

Thank you. Your cooperation resolving this matter promptly is appreciated.

Sean Harrasser, CFM  
Planning and Development Services Code Compliance

# WASHINGTON COUNTY OREGON

May 26, 2022

Emrick Investments LLC  
P.O. Box 26439  
Eugene, OR 97402

**RE: ENFPDS 22-00004 Land Use and Building Code Violations:** *Unpermitted Tree Removal and Grading without a Permit in Significant Natural Resource & Drainage Hazard Areas on Property Located at 9805, 9779, and 9775 SW Day Road, Unincorporated Washington County (Tax Lots 3S102B000311, 3S102B000303, & 3S102B000310)*

Hello:

According to records of Washington County's Department of Assessment and Taxation, you, Emrick Investments LLC, are the registered owner of the above property. The land use designation is FD-20 District (Future Development, 20-Acre District) outlined in Section 308 of the Community Development Code (CDC).

On May 6 of this year, this office notified you by mail that unpermitted tree removal was occurring on the above-listed properties. Based on photos submitted with the complaint and review of Washington County maps, this development activity (tree removal) appears to be located within a mapped Drainage Hazard Area and a mapped Significant Natural Resource area. Any development, including tree removal, in these protected areas requires land use review and approval. These standards are outlined in Section 421 and Section 422 of the Community Development Code (CDC). You will need to submit a Type II application and applicable fees for any unlawful work that was done.

Additionally, county Grading staff reposted a stop-work order at the site on Thursday, May 19 after determining that a grading permit was required for the level of grading and site alteration that has occurred. You may contact Kim Allen in County Grading at [Kim.Allen@co.washington.or.us](mailto:Kim.Allen@co.washington.or.us) for information on how to proceed with permitting.

To address this violation, please contact me within fourteen (14) days of the date of this letter (**June 8, 2022**) to discuss specific requirements and the scope of work. Failure to address this issue in a timely manner will result in the assessment of fines at a public hearing before a land use hearings Officer.

I can be reached via email at [PDSCodecompliance@co.washington.or.us](mailto:PDSCodecompliance@co.washington.or.us) or at (503)-846-4875 should you have questions about our compliance process.

Thank you. Your cooperation resolving this matter promptly is appreciated.

Sean Harrasser, CFM  
Planning and Development Services Code Compliance

June 28th, 2022

**FINAL NOTICE**

Emrick Investments LLC  
P.O. Box 26439  
Eugene, OR 97402

**RE: ENFPDS 22-00004 Land Use and Building Code Violations:** *Unpermitted Tree Removal and Grading without a Permit in Significant Natural Resource & Drainage Hazard Areas on Property Located at 9805, 9779, and 9775 SW Day Road, Unincorporated Washington County (Tax Lots 3S102B000311, 3S102B000302, 3S102B000303, & 3S102B000310)*

Hello:

According to records of Washington County's Department of Assessment and Taxation, you, Emrick Investments LLC, are the registered owner of the above property. The land use designation is FD-20 District (Future Development, 20-Acre District) outlined in Section 308 of the Community Development Code (CDC).

On May 6 of this year, this office notified you by mail that unpermitted tree removal was occurring on the above-listed properties. Based on photos submitted with the complaint and review of Washington County maps, this development activity (tree removal) appears to be located within a mapped Drainage Hazard Area and a mapped Significant Natural Resource area. Development in these protected areas requires land use review and approval. These standards are outlined in Section 421 and Section 422 of the Community Development Code (CDC). You will need to submit a Type II application and applicable fees for any unlawful work that was done.

Additionally, county Grading staff posted a stop-work order at the site Thursday, May 19 after determining that a grading permit was required for the level of grading and site alteration that has occurred. You may contact Kim Allen in County Grading at [Kim.Allen@co.washington.or.us](mailto:Kim.Allen@co.washington.or.us) for information on how to proceed with permitting.

Subsequent notification from the county on this matter may result in a citation requesting your presence in court to hear staff's presentation before a land use hearing's officer. A minimum monetary penalty of \$2,500 will be requested by the county per infraction. You will have the opportunity to present any evidence or testimony to support your case to a Land Use Hearings Officer prior to the decision.

This is the final letter you will receive on this land use. To address the issues described in this letter, you will need to contact me within fourteen (14) days of the date of this letter (**July 15th, 2022**) to discuss this issue. I can be reached via email at [michelle\\_wilkins@co.washington.orr.us](mailto:michelle_wilkins@co.washington.orr.us) or by telephone at 503-846-3846.

Thank you. Your cooperation resolving this matter is appreciated.

Michelle Wilkins – Code Enforcement Officer  
Washington County Land Use & Transportation  
**Via Certified Mail, Return Receipt Requested & First Class US Mail**



**MR. TREE, INC.**

8560 SE 172<sup>nd</sup> Avenue ~ Happy Valley, Oregon 97086  
Office 503-665-3917~Fax 503-665-2189  
CCB #157952

To whom it may concern;

The tree's that were removed at 9809 S.W. Day Rd Sherwood, Or were hazardous.

Blown out top's, leaning conditions, conk, blind conk, heart rot and Phellinus noxious.

Numerous tree's had fallen across property lines, roadways and a powerline.

Richard Harrison

Operations Manager

Mr Tree Inc

(503) 309-8106 cell

(503) 665-3917 Office

January 25th, 2023

## FINAL NOTICE

Emrick Investments LLC  
P.O. Box 26439  
Eugene, OR 97402

**RE: ENFPDS22-00004, ENFPDS22-00044 and other Land Use Code Violations:** *Unpermitted Tree Removal, Unpermitted Grading, Unpermitted Signage and Operating Outside the Scope of Conditions of Approval on Property Located at 9805, 9675, 9779, and 9775 SW Day Road, Unincorporated Washington County (Tax Lots 3S102B000311, 3S102B000302, 3S102B000303, 3S102B000309 & 3S102B000310)*

Hello:

As we continue to receive multiple complaints about your contractor's establishment operation on Day Rd., and have difficulty communicating with you, we are reaching out one last time in hopes to abate these complaints/violations with Washington County. Based off all the complaints, we would like to summarize and address these four major areas.

1. We would still like you to address the unpermitted tree removal under county regulations. The arborist report you submitted lacks detail and substance. I am attaching arborist report templates that outline the amount of information they should contain. If a report like this is submitted, we will then be able to close out violation ENFPDS22-00004.
2. We still need you to address the unpermitted grading violation, ENFPDS22-00044, with the grading department. Please contact Kim or Kofi to apply for that permit. Once it has been applied for and issued, we will be able to close out this violation.
3. We have also been made aware that you have multiple unpermitted signs on the property. Section 414 of the 2014 staff report states "if applicant proposes to erect or locate any signs, a sign permit is required." There is currently no sign permit on file. We would like you to apply for a sign permit or take all the signs down immediately.
4. Lastly, we need you to address that you have expanded beyond the operational limits of Condition III of the 2014 staff report. You are no longer operating within the 2014 perimeters. To abate this, we need you to come in for a land use approval to bring all existing components of the operation up to date.

The Day Rd. operation has changed in scope since 2014 and addressing the above complaints/violations will bring it into compliance. I am willing to meet you in person/on site to discuss these matters if you prefer. We would like to see significant progress of each of these issues within 30 days of the date of this letter. Please let me know if you have any questions.

This is the final letter you will receive on these land use violations. If compliance is not met, Washington County may issue citations and may request your presence in court. To address the issues described in this letter, you can contact me via email at [michelle\\_wilkins@washingtoncountyor.gov](mailto:michelle_wilkins@washingtoncountyor.gov) or by telephone at 503-846-3846.

Thank you. Your cooperation resolving this matter is appreciated.

Michelle Wilkins – Code Enforcement Officer  
Washington County Land Use & Transportation

**MR. TREE, INC.**

8560 SE 172<sup>nd</sup> Avenue ~ Happy Valley, Oregon 97086  
Office 503-665-3917~Fax 503-665-2189  
CCB #157952

Date 1/30/2023

Client: Emrick Investments  
Address: SW Day Rd, Sherwood, OR 97140  
Subject: Tree Removal

To whom it may concern:

Upon visiting the Day Rd site, we observed several tree's exhibiting the following characteristics:

Blown out top's via the numerous previous seasons ice, snow and wind storms.  
Rampant Ganoderma Applanatum, (Conk).  
Coniophora Puteana, (heart rot).  
Pphellinus Noxius (root rot).

Several trees had lost huge branches, and had fallen upon damaged surrounding properties with a few falling across property line, access roadways and even a private service power line. Additionally, there were several unsafe leaners slated to fall in unpredictable fashion.

It was our Professional opinion that removing these trees was required to reduce potential hazard to property, people and structures.

Additionally, and arguably most important, reducing the spread of diseases noted above and potentially extending the life of trees that remain would be best achieved via the removals that we recommended.

Sincerely,

Dan Dunn  
(503) 665-3917  
ISA certified Arborist WE8139 AUT  
Certified tree care safety professional #252



WASHINGTON COUNTY

Dept. of Land Use & Transportation
Current Planning Services
155 N. 1st Avenue, #350-13
Hillsboro, OR 97124
Ph. (503) 846-8761 Fax (503) 846-2908
http://www.co.washington.or.us

PRE-APPLICATION CONFERENCE SUMMARY (URBAN)

Date of Pre-app.
Staff Member
Map Notation (completed by staff)

ATTENDEE:

Name:

E-mail address:

PROPERTY DESCRIPTION

ASSESSOR MAP: TAX LOT NUMBER(S):

PROCEDURE/CATEGORY TYPE

CPO: CPO Handout Provided
Community Plan:
Land Use District(s):

Site Size:

Address:

Location:

Proposed Development Action:

PROCESSING INFORMATION (Processing time from date of acceptance.) +/- 30 day completeness review

- Type I - Administrative Review; estimated processing time days.
Type II - Administrative Review; with Public Notice; est. processing time days; County shall prepare Notice.
Type III - Quasi-Judicial Review (Public hearing before County hearings Officer). County shall prepare Notice. Application submittal deadline is approximately 11 weeks prior to the hearing.

APPLICABLE REGULATIONS

Submit evidence of compliance with the following, using the format indicated (written or plans).

COMMUNITY PLAN

- Written/Plans (prepared by a registered professional engineer)
General Design Elements
Sub-area Design Elements
Area of Special Concern No.
Significant Natural Resource

COMMUNITY DEVELOPMENT CODE

Land Use Districts (Article III)

- Written/Plans (prepared by a registered professional engineer)
Introduction (\$300)
Applicable District (\$302-381)

Development Standards (Article IV)

- Written/Plans (prepared by a registered professional engineer)
Master Planning (\$404)
Site Plan
Off-Site Circ./Dev. Plan
Open Space (\$405)
Building Siting (\$406)
Landscape Design (\$407)
Neighborhood Circ. (\$408)
Private Streets (\$409)
Slopes & Grading (\$410)
Screening & Buffering (\$411)
Parking & Loading (\$413)

Development Standards (Article IV) (con't.)

- Signs (\$414)
Lighting (\$415)
Utility Design (\$416)
Setbacks (\$418)
Height (\$419)
Solar Access (\$427)
Bicycle Parking (\$429)
Special Use Sections (\$430)
Transit Oriented Design (\$431)
Section
Section

Variance (\$435)

- Written/Plans (prepared by a registered professional engineer)
Type III Variance (\$435-4.1)
Type II Hardship Relief (\$435-5.3)

Flood Plain & Drainage Hazard Area (\$421)

- FP/DHA Handout provided to Applicant
Flood Plain Elevation Request Form
Written/Plans (prepared by a registered professional engineer)
Information described in FP/DHA Handout (\$421-1.2.A or 421-1.2.B) Delineation.
Section
Section
Description of Proposed alteration (if any)



**Significant Natural Resource (§422)**

**Director's Interpretation provided to Applicant.**

Written/Plans (prepared by a professional qualified to address the different characteristics of the resource area)  
\_\_\_\_\_/\_\_\_\_ Information described in (§422) Director's Interpretation  
\_\_\_\_\_/\_\_\_\_ Tree Survey (site plan showing location & species of all trees > 6" in caliper)  
\_\_\_\_\_/\_\_\_\_ (§422-3) Criteria for Development \_\_\_\_\_  
\_\_\_\_\_/\_\_\_\_ Section \_\_\_\_\_  
\_\_\_\_\_/\_\_\_\_ Description of Proposed alteration (if any)

**Public Facilities (§501)**

**Traffic Impact Statement provided to Applicant.**

\_\_\_\_\_/\_\_\_\_ Completed Traffic Impact Statement  
(Submmit the Traffic Impact Statement Request as soon as possible, to avoid delay, as there is at least a 6 week turnaround time.)

**NOTE:** The completed Traffic Impact Statement may require additional submittal materials.

Written/Plans (prepared by a registered professional engineer)  
\_\_\_\_\_/\_\_\_\_ Information required by completed TIS (§501)  
\_\_\_\_\_/\_\_\_\_ Access Management Plan (§501-8.5.C)  
\_\_\_\_\_/\_\_\_\_ Sidewalks (§502) \_\_\_\_\_  
\_\_\_\_\_/\_\_\_\_ \_\_\_\_\_  
\_\_\_\_\_/\_\_\_\_ \_\_\_\_\_  
\_\_\_\_\_/\_\_\_\_ \_\_\_\_\_

**Land Divisions & Property Line Adjustments (Article VI)**

Written/Plans (prepared by a registered professional engineer)  
\_\_\_\_\_/\_\_\_\_ Preliminary Plat (§605-2.3)  
\_\_\_\_\_/\_\_\_\_ Development Standards (§605-3)  
\_\_\_\_\_/\_\_\_\_ \_\_\_\_\_

**SERVICE PROVIDER LETTERS FROM:**

\* = Documentation shall be nor more than 90 days old.

- \_\_\_\_\_\* Water District
- \_\_\_\_\_\* Clean Water Services (Sewer)
- \_\_\_\_\_\* Clean Water Services Surface Water
- \_\_\_\_\_\* Fire District
- \_\_\_\_ Washington County Sheriff
- \_\_\_\_ Wash Co HHS Solid Waste/Recycling
- \_\_\_\_ School District
- \_\_\_\_ Tri-Met
- \_\_\_\_ Tualatin Hills Park & Recreation District

**OTHER REQUIRED INFORMATION:**

- \_\_\_\_ Development Application
- \_\_\_\_ Dev. Rev. Supplemental Application
- \_\_\_\_ Neighborhood Meeting Materials
- \_\_\_\_ Reduced Site Plan (8.5" x 11")
- \_\_\_\_ Pre-Application Conference Summary
- \_\_\_\_ Transportation Dev. Tax Estimate Form
- \_\_\_\_ Other \_\_\_\_\_

**PREVIOUS CASE FILES:**

The following case files were previously processed on the subject site: \_\_\_\_\_  
\_\_\_\_\_

**FEES:**

Land Development Fees	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
Surcharges	\$	_____
_____	\$	_____
Engineering Deposit.....	\$	_____
<b>TOTAL.....</b>	<b>\$</b>	<b>_____</b>

Note: Transportation Development Tax and Park Fee(s) (if required) are collected after preliminary approval.

**Required Washington County Tax Map(s)**

(Obtain from Dept. of Assessment & Taxation in Room 130, or the Survey Division in Room 350 of the Public Services Building; or the County website. Provide **ONE** copy of each map listed.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total number of copies of a **complete** Land Use application required: \_\_\_\_\_

**Note:** Three (3) copies of a land use application are sufficient for the initial completeness review (1<sup>st</sup> time submittal).

**Reduced Site Plan for the Public Notice:**

In addition to the full size site plans in the application packets, submit **one** reduced copy of the site plan (using an even scale 1"=100', 1"=200', 1"=400') on a piece of paper preferably 8½" x 11", but no larger than 11" x 17" for assistance in preparation of the Public Notice.

**Adjacent County (if applicable):**

Submit tax maps & ownership printouts for all properties within 500 feet of the site (and contiguous parcels), located within \_\_\_\_\_ County.

Other Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**All materials must be folded and collated. • Incomplete applications WILL NOT be accepted.**

These notes are general in nature and are not intended to cover all of the issues that may surface in the review of an application. Additional information may be required and it is the applicant's responsibility to provide the necessary information to process an application as required by Oregon State Law and Washington County ordinances and regulations.

**Andrew Stamp**

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**From:** Andrew Stamp  
**Sent:** Friday, June 23, 2023 8:59 PM  
**To:** 'Rob Bovett'; Stephen Shane  
**Subject:** Brown Contracting / Type II Tree Cutting Permit Application questions

Dear Rob and Stephen:

Thanks for your kind email. It was very helpful.

My client is in the process of hiring an independent arborist to review the work done by Mr. Tree as it relates to the tree cutting that occurred last year. We understand that the county has concerns about the adequacy of the arborist report provided by Mr. Tree, Inc. Our goal is to provide a more detailed report by an independent arborist.

I am also trying to get a sense as to what my client needs to do to respond to your June 1, 2023 letter. We understand that the County's expectation is that we file a Type II application. I have been reviewing the standards in CDC 422 so that I can understand what such an application would look like, and how we can address the criteria in a meaningful way despite the "after-the-fact" nature of the request. As you know, the fact that the trees and stumps in question are gone, and this fact makes submittal of a retroactive application a challenge.

Based on your email and my own research, I now understand that the Brown Contracting properties were brought into the City of Wilsonville's Urban Growth Boundary in 2004. The City of Wilsonville has placed a Comprehensive Plan designation of "Industrial." The County placed the properties in the "FD-20" zone, which I understand is a type of interim "holding zone" which applies until annexation / city zoning.

CDC 308-7.3 is one of the base zone regulations for the FD-20 zone. It states that "***[p]roperty in an Area of Special Concern on the Future Development Areas Map in the Comprehensive Framework Plan for the Urban Area is subject to the applicable Area of Special Concern provisions in Plan Policy 41.***" As you correctly note, we are in the ASC 5, so Comp Plan Policy 41 applies on some level, and it, in turn, includes a "Map B" showing Goal 5 resources. Map B is not enlargeable to a scale that allows me to understand what it requires, but for now I will accept that the Geonet map is an accurate rendition of Map B. Would it be possible to get a copy of the Geonet map of the Goal 5 resources located on the subject properties that shows property lines as well? The copy I have does not do so, so it is difficult to interpret the boundaries of the map in any precise manner.

Section 422 also adopts Metro's "current" Regionally Significant Fish & Wildlife Habitat Inventory Map. I have a copy of that map (as clipped below) and it is inconsistent with the Policy 41 map as to the location (as opposed to the existence) of Goal 5 resources. However, I'm inclined to think that it does not matter for our purposes, as both maps seem to show "wildlife habitat" in the areas that were logged. It has already been verified by the County and State that there is no riparian habitat on the portion of properties where tree cutting occurred.

Policy 41 states the following with regard to ASC 5:

***5. Area of Special Concern 5 is comprised of approximately 645 acres of land located generally between Tualatin and Wilsonville and between I-5 and the Burlington Northern railroad alignment. The boundary of ASC 5 is shown***

on Map C (Future Development Areas Detailed Areas) of Policy 41. The properties included in this Area of Special Concern are designated Future Development 20-Acre (FD-20) District on the Future Development Areas Map (Map A). These properties were added to the UGB by Metro Ordinance 04-1040B (adopted on June 24, 2004), and designated as Industrial land on Metro's 2040 Growth Concept Plan.

Title 11 planning and FD-20 development applications within this Area of Special Concern are subject to the following criteria:

a) Title 11 planning shall be completed for the area within two years following the selection of the right-of-way alignment for the I-5/99W Connector, or within seven years of the effective date of Metro Ordinance No. 04-1040B, whichever occurs earlier.

b) Until the effective date of new regulations adopted pursuant to Title 11, development applications within this Area of Special Concern shall be subject to Community Development Code Section 308, except as otherwise provided below:

1) Day care facilities, cemeteries, religious institutions and schools are prohibited due to the area's designation as an Industrial Area.

c) The Title 11 planning required by Metro shall:

1) Adopt provisions – such as setbacks, buffers and designated lanes for movement of slow-moving farm machinery – to enhance compatibility between urban uses in the UGB and agricultural practices on adjacent land outside the UGB zoned for farm or forest use.

2) Incorporate the general location of projected right-of-way location alignment for the I-5/99W Connector and the Tonquin Trail as shown on the 2004 Regional Transportation Plan.

3) Consider using the I-5/99W Connector as a boundary between the cities of Tualatin and Wilsonville.

Am I correct to assume that “Title 11 planning” is not yet completed for ASC 5? Apparently, that was the case when Brown Contracting obtained its Special Use Permit in 2015. If that is still the case, then the regulations set forth in CDC 308 apply, and these base zone regulations link to a requirement to comply with 422:

*In addition to the requirements of this District, the standards of Article IV - Development Standards, including Section 422 (Significant Natural Resources), are applicable as required by Subsection 403-3.*

CDC 422-2 states:

#### **422-2 Lands Subject to this Section**

*Those areas identified in the applicable community plan or the Rural/Natural Resource Plan Element as Significant Natural Resources and areas identified as Regionally Significant Fish & Wildlife Habitat on Metro's current Regionally Significant Fish & Wildlife Habitat Inventory Map.*

*Significant Natural Resources have been classified in the Community Plans or the Rural/Natural Resource Plan Element by the following categories:*

**422-2.1 Water Areas and Wetlands.** 100-year floodplain, drainage hazard areas and ponds, except those already developed.

**422-2.2 Water Areas and Wetlands and Fish and Wildlife Habitat.** Water areas and wetlands that are also fish and wildlife habitat.

**422-2.3 Wildlife Habitat.** Sensitive habitats identified by the Oregon Department of Fish and Wildlife, the Audubon Society Urban Wildlife Habitat Map, and forested areas coincidental with water areas and wetlands.

**422-2.4 Significant Natural Areas.** Sites of special importance, in their natural condition, for their ecological, scientific, and educational value.

I'm assuming as between the "Policy 41 Map B" map and the Metro map, that the Brown contracting land is "Class B Upland Habitat," and therefore the reference to ODFW maps and Audubon Society Map in CDC 422-2.3 does add anything to the mix or otherwise trigger additional regulations. Is that a fair assessment?

Turning to the criteria:

**422-3 Criteria for Development**

**422-3.1 The required master plan and site analysis for a site which includes an identified natural resource shall:**

**A. Identify the location of the natural resource(s), except in areas where a Goal 5 analysis has been completed and a program decision adopted pursuant to OAR 660, Division 23 (effective September 1, 1996);**

I'm assuming that no "Goal 5 analysis has been completed" for this property. I'm also assuming that no "program decision" has been "adopted pursuant to OAR 660, Division 23" for this property. Is that true? If I am correct, then the criterion requires me to "identify the location of the natural resource." I understand that this criterion requires the applicant to hire a natural resource professional for the purposes of preparing a detailed "Habitat Report" verifying the location, extent, and characteristics of the SNR. In this case, I believe the best we can do is to try to recreate what was there based on past aerials, photographs, etc. The condition / status of the trees that were removed can likely only be determined in a generalized manner, based on the condition on trees that remain the area. Any other suggestions that you might have would be appreciated.

Based on my site visit and County records concerning the Amazon site, I believe that it should not be controversial that the majority of the mature Douglas Fir trees in the area are diseased and dying. Even a casual observer can see that quite clearly. I think it is certain that a natural resource professional will find this habitat to be highly degraded and did not provide any significant habitat for wildlife. Putting aside the diseased trees, the proximity to Day Road and its high traffic volumes and associated noise, fumes, glare, etc. makes this area poor wildlife habitat in any event.

I understand that the Habitat Report should also cover the "seriously interfere" standard in CDC 422-3.6. I think it will be a foregone conclusion that tree cutting of the diseased and dying trees did not "seriously interfere with the preservation of fish and wildlife areas and habitat." Nonetheless, I will leave that for the natural resource professional to decide.

**B. Describe the treatment or proposed alteration, if any. Any alteration proposed pursuant to Section 422-3.1 B. shall be consistent with the program decision for the subject natural resource; and**

In this case, the "proposed alteration" was tree cutting pursuant to a permit issued by ODF. This criterion assumes that a Goal 5 program decision has been made for the resource, and seems to only have regulatory effect if such a program decision has been made. Assuming my earlier assumption is correct that no program decision has been made, then I'm not sure what, if any, regulatory effect CDC 422-3.1(B) has in our case. Your thoughts on this topic are appreciated.

**C. Apply the design elements of the applicable Community Plan; or the applicable implementing strategies of the Rural/Natural Resource Plan Element, Policy 10, Implementing Strategy E which states:**  
**"Implement the recommendations of the Oregon Department of Fish and Wildlife Habitat Protection Plan for Washington County and to mitigate the effects of development in the Big Game Range within the EFU, EFC and AF-20 land use designations."**

As far as I can tell, there is no “applicable Community Plan.” Is that correct? I tried to Google the “Oregon Department of Fish and Wildlife Habitat Protection Plan for Washington County” with no luck. Is that document relevant to this case, and if so, does the County have a copy we can obtain? Finally, we are not in Big Game range or in the EFU, EFC and AF-20 zones, so it seems clear that that sentence does not apply.

We understand that CDC 422-3.3 does not apply because we are not in a Riparian Corridor, SWA, or wetland. Agree?

We understand that CDC 422-3.5 does not apply to this case because we are not a Significant Natural Area. Agree?

Thank you for looking into these issues.


Andrew



**Andrew H. Stamp**  
*Of Counsel*

Vial Fotheringham, LLP  
17355 SW Boones Ferry Rd, Suite A  
Lake Oswego, OR 97035  
Main: 503-684-4111  
Direct: 503-594-8149  
Fax: 503-598-7758  
[www.vf-law.com](http://www.vf-law.com)

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**From:** Rob Bovett <Rob\_Bovett@washingtoncountyor.gov>  
**Sent:** Thursday, June 22, 2023 12:30 PM  
**To:** Andrew Stamp <Andrew.Stamp@vf-law.com>  
**Cc:** Stephen Shane <Stephen\_Shane@washingtoncountyor.gov>  
**Subject:** RE: [EXTERNAL] FW: Natural Resources Maps

Andrew,

I have consulted with Stephen Shane about this latest email inquiry that you forwarded on to me. As you know, I represent Washington County in this particular code enforcement matter, so please include me on any correspondence to my client. Here is my understanding after my consultation with Stephen Shane: The maps you included in your email are not the right ones. The two attached to this email show the lots with the ongoing violation in relation to the Goal 5

map. These are from GeoNet. These are FD-20 properties; Urban Plan Policy 41 of the County's Comprehensive Framework Plan denotes this area as included in Area of Special Concern # 5 and the text specifies that the properties within this area are to be designated FD-20 in the Future Development Areas Map. Map B in this Plan Policy shows the Goal 5 areas, which include your client's properties. So as to your question, this referenced text and map are your nexus. Geonet accurately reflects that they have Goal 5 resources on the property in question.

Please don't hesitate to contact me if I can be of any further assistance.

Best,

Rob Bovett  
Senior Assistant County Counsel  
Washington County

**From:** Andrew Stamp <[Andrew.Stamp@vf-law.com](mailto:Andrew.Stamp@vf-law.com)>  
**Sent:** Wednesday, June 21, 2023 9:07 PM  
**To:** Rob Bovett <[Rob\\_Bovett@washingtoncountyor.gov](mailto:Rob_Bovett@washingtoncountyor.gov)>  
**Subject:** [EXTERNAL] FW: Natural Resources Maps

Hi Rob: I meant to CC you on this communication to Stephen Shane. I'm just trying to figure out the mapping system for natural resources.

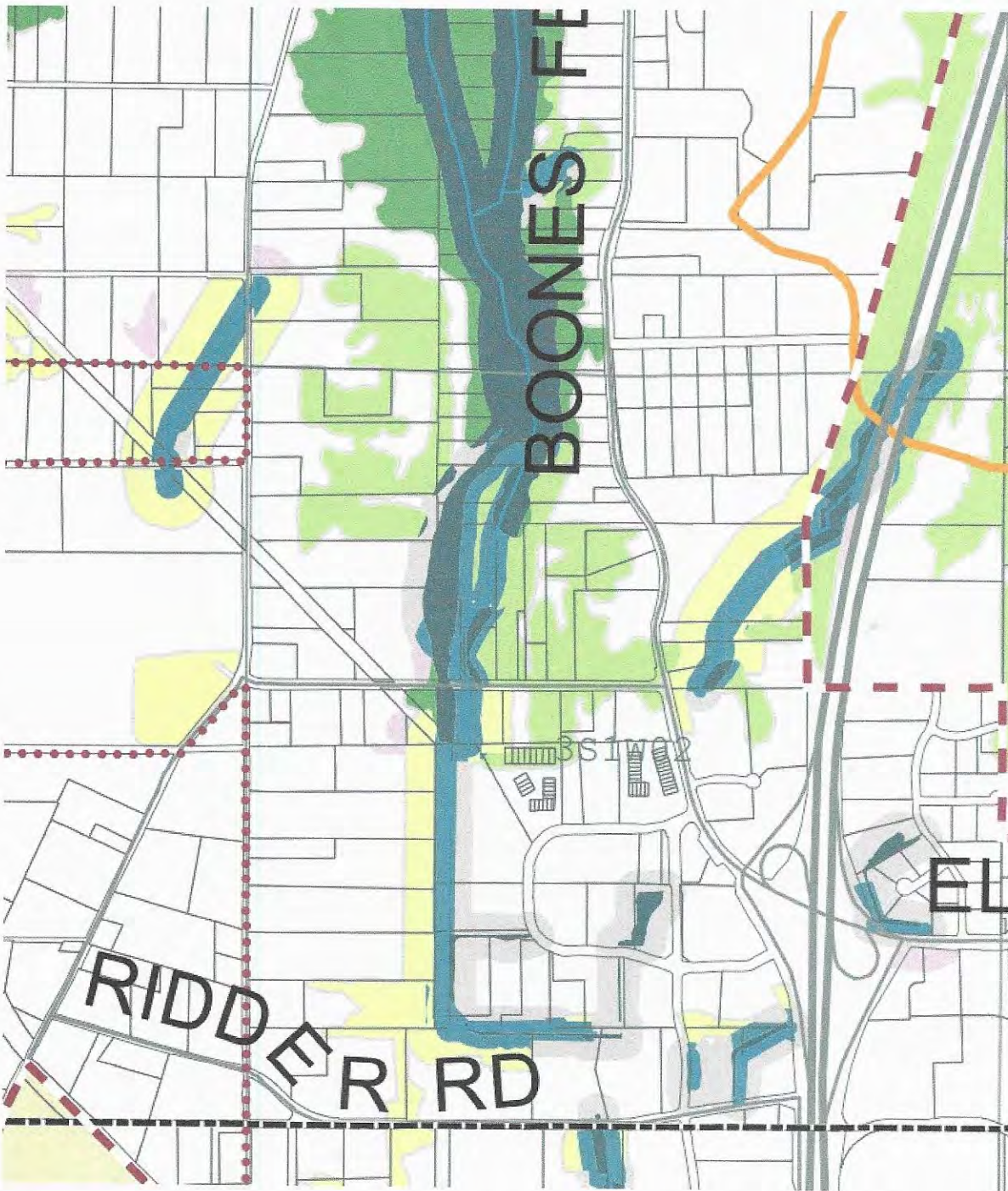
**From:** Andrew Stamp  
**Sent:** Wednesday, June 21, 2023 8:37 PM  
**To:** 'Stephen\_Shane@co.washington.or.us' <[Stephen\\_Shane@co.washington.or.us](mailto:Stephen_Shane@co.washington.or.us)>  
**Subject:** Natural Resources Maps

Hi Stephen:

With regard to the earlier Comp Plan maps I referenced in my email earlier today – It suddenly dawned on me that that mas only cover the "rural area," which is why nothing shows up on Map 2.11 related to the subject property. Despite considerable effort, I cannot locate generalized zoning maps for the urban areas. I do not believe that that the land in question is covered by a "Community Plan." Does the County have a generalized zoning map covering land inside the UGB?

The Comprehensive Plan seems to have some maps but I did not see anything that addresses the issue in question.

I did find the Metro map referenced by CDC 422-2, which show the property in question listed as "Class B" wildlife habitat. As far as I have been able to determine, this may be the only operative map relevant to my case.



I also tried to use the online GIS map, but I could not get it to show me natural resource areas inside the UGB. That may be an operator error in my part. I do not find these types of maps to be very intuitive.

Anyway, your thoughts on this topic and assistance is appreciated.




Andrew H. Stamp  
*Of Counsel*

Vial Fotheringham, LLP  
17355 SW Boones Ferry Rd, Suite A  
Lake Oswego, OR 97035  
Main: 503-684-4111  
Direct: 503-594-8149  
Fax: 503-598-7758  
[www.vf-law.com](http://www.vf-law.com)

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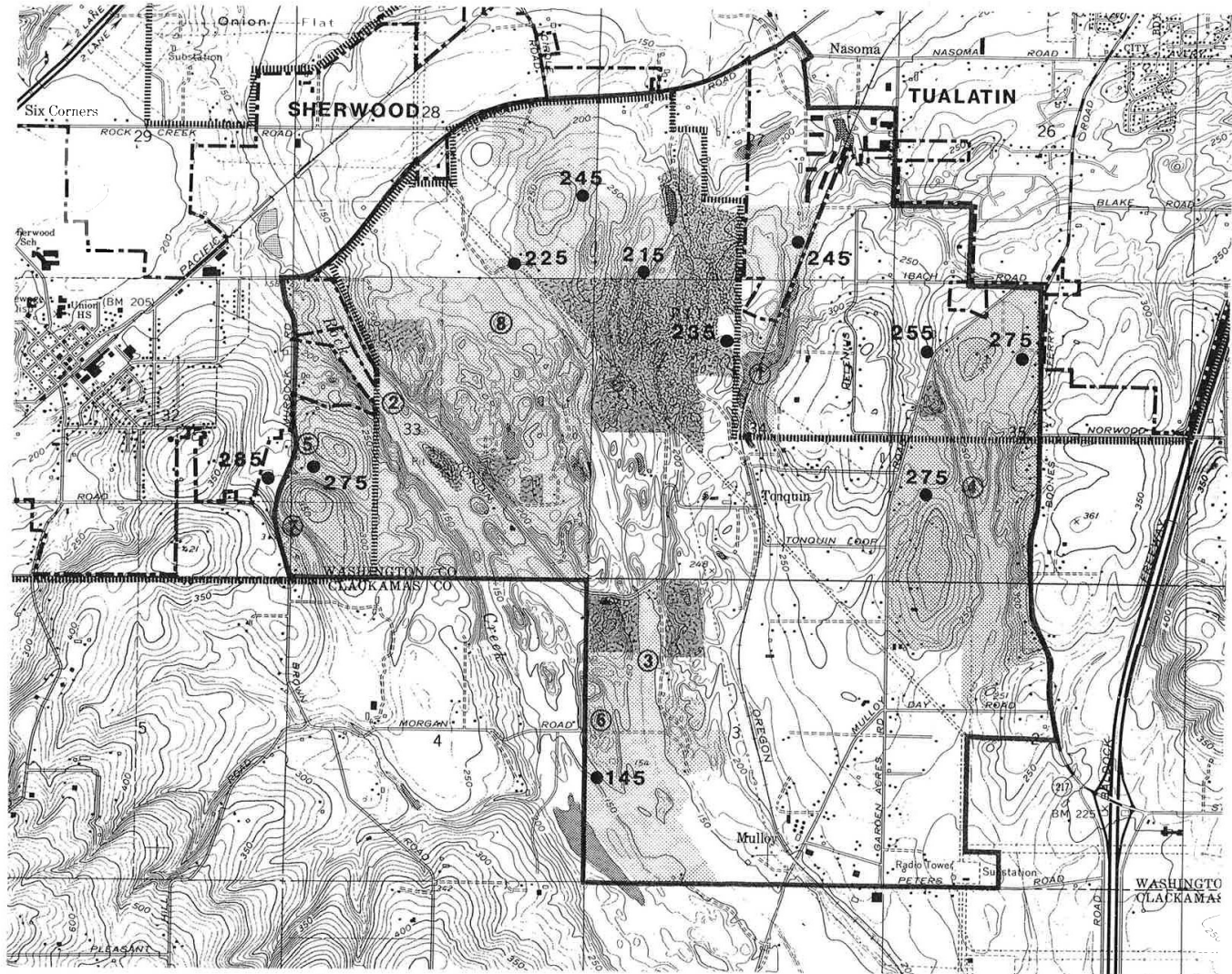
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-  GEOLOGIC AREA BOUNDARY
-  MAJOR GEOLOGIC FEATURES (entire tax lots shown)
-  QUARRY SITES (disturbed area)
-  SPILLWAY LOCATIONS AND ELEVATIONS
-  DEPRESSIONS
-  AREAS ABOVE 300' IN ELEVATION
-  CITY LIMIT
-  COUNTY BOUNDARY
-  URBAN GROWTH BOUNDARY



WASHINGTON COUNTY  
COMPREHENSIVE PLAN



**TONQUIN SCABLANS  
GEOLOGIC AREA**

SOURCE: JOHN E. ALLEN, PROFESSOR  
EMERITUS, PORTLAND STATE UNIVERSITY,  
JUNE, 1981, WASHINGTON COUNTY  
PLANNING DEPARTMENT, JUNE, 1981,  
JANUARY, 1983, USGS 1:24000  
SHERWOOD TOPOGRAPHIC MAP, 1975

THIS MAP IS COMPILED FROM ORIGINAL MATERIALS AT  
DIFFERENT SCALES. FOR MORE DETAILS PLEASE  
REFER TO THE SOURCE MATERIALS OR THE WASHINGTON  
COUNTY PLANNING DEPARTMENT.

FIGURE t-18

WASHINGTON COUNTY PLANNING DEPARTMENT  
APRIL, 1983

# WASHINGTON COUNTY

Inter-Department Correspondence

Date April 26, 1984

To : Brent Curtis, Planning Division Manager

From : Hal Bergsma, Senior Planner *HB*

Subject : SIGNIFICANT NATURAL AREAS IN THE RURAL/NATURAL RESOURCE AREA

Consistent with Goal 5 and OAR 660-16-000 Washington County has identified and evaluated natural areas in the Rural/Natural Resource Area in the following manner:

- (1) A standard form was filled in for each natural area that might be significant. The resource is described in terms of its location, quantity, quality, ownership, existing use, Plan designation, and surrounding Plan designation(s). Additional information on these natural areas is contained on pages I-E.24-28 and I.E.36-43 of the Resource Document.
- (2) Based on information in the work sheet, and using criteria described on page I-F.3 of Appendix I-F of the Resource Document, a decision was made as to the significance of the natural area.
- (3) Uses conflicting with those natural areas identified as significant were identified and the ESEE consequences of allowing the conflicting uses versus protecting the natural area were described specifically on the data sheet for each area and generically on page I-F.7 of Appendix I-F of the Resource Document.
- (4) The decision on protection of the natural areas, and the reasons for that decision are described on pages I-F.8 and 9 of Appendix I-F of the Resource Document.

There are nine natural areas in the R/NR area that are considered to be significant. These are listed and briefly described below. Pages from the Resource Document giving a more detailed description of these areas are attached.

Wolf Creek Falls: The highest known waterfall in the County. Wildlife and rare plants have been observed in the vicinity. The ODF owns the property. Land in the vicinity is scheduled for timber harvest, but this would not conflict with preservation of the waterfall and its base.

Timber Pigeon Springs: This is a rare habitat for band-tailed pigeons. Improved access to the site and cutting of perch trees near the springs are conflicts. Owned by ODF.

McKay Creek Falls, Canyon and Upper Drainage: This is the largest roadless natural area in the County. It contains a deep relatively narrow canyon through which the creek and its tributaries flow. Falls and plunge pools are reported to be prevalent along the entire creek. Vegetation includes mature stands of timber. The vegetation and streams in the area offer excellent fish and wildlife habitat.

Big Canyon: A scenic, steep and narrow canyon. Vegetation is dense and includes a wide variety of species. Old growth Douglas fir and other trees are found in the area. About half of the riparian vegetation, including old growth timber, is on BLM land.

Cedar Canyon Swamp and Marsh: This site is one of the few areas of swamp of any size existing in the County. Trees exist on higher ground. It offers important wildlife habitat. Ownership is private. (EFU District.)

Dooley Aspen/Ash Swale: This area contains quaking aspen, which is rare west of the Cascades, and rare, fragile vernal pool flora. The entire area is in the 100 year flood plain. It is privately owned and in the EFU District.

Upper Tualatin River: This stretch of river includes Haines Falls, Lee Falls and Little Lee Falls and rapids. This was a popular recreation area in the past. Much of the vegetation has been disturbed or removed by logging activity while quarrying activity has compromised some natural features.

Tonquin Scablands Geologic Area: Widely recognized as among the most important geologic features in Oregon, this area has scientific and educational value for its evidence of the impacts of the Missoula floods. Geologic features of the area include channels, depressions (often containing ponds or marshes), and scoured bedrock knolls and channel walls. The major conflicting use for this area is quarrying.

John Blodgett Arboretum: Owned and used by Pacific University as an open classroom because of the diversity of flora and fauna. Protection of these areas is provided by state and local regulations and Federal and institutional ownership. State regulations partially protecting these areas include the Forest Practices Act and State Lands Division regulation of wetland alterations. Local regulations include sections 421 and 422 of the Community Development Code addressing development in Flood Plains and Drainage Hazard Areas and development in Significant Natural Resource Areas. Section 422-3.4 specifically regulates the siting of structures in significant natural areas. Where conflicts occurred between quarrying and protection of a natural area, quarrying was not allowed (e.g., McKay Creek) except for a few properties in the Tonquin Scablands that were owned by quarries.

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An authority on wildlife habitats in the Portland metropolitan area, Mike Houck, has called this marsh "extremely valuable wildlife habitat." More than 85 species of birds, including Great Blue Herons, have been observed on the mosaic of open ponds, marshes and swamps at the site. The marsh is listed by the Portland Audubon Society on its Urban Wildlife Habitat map. Wildlife tours have been conducted there. The site is immediately adjacent to two schools. Local residents have expressed great concern that the marsh be preserved.

E.4.1.2 Ash Creek Marsh (1S1 35A tax lots 100, 102, 200, 300, 303, 500, 600, 2000, and 1S1 35AD tax lots 900, 1103, 1200, 1300)

An extensive marsh/wet meadow is located north of Highway 217 between Oak Street and Hall Blvd. Most of the site floods each winter. A beaver has recently been reported in residence. This wetland, like that on Upper Fanno Creek, is virtually surrounded by urban development. The Metzger-Progress Community Plan calls for maintenance of the flood plain in natural open space uses. The topography of the area precludes significant modification under the existing flood plain ordinance. The site is familiar to Planning Department staff.

Reevaluation of this site, during translation of the 1980 Metzger-Progress Community Plan to conform to the 1983 Community Development Code led staff to conclude that it does not qualify as a Significant Natural Area. The intrinsic qualities of the resource as wetland/water area and habitat for fish and wildlife were reaffirmed by more detailed investigation. However, other wetland habitat resources within the urban area of the County have been found to be of comparable or better quality and size. Therefore, the earlier recognition of this site as very rare was inaccurate.

E.4.1.3 Tualatin Wetlands (Hedges Creek) (2S1 22D tax lot 500)

Most of this wetland is within the City of Tualatin. The Oregon Department of Fish and Wildlife considers this one of the most important wetlands in the county. The Portland Audubon Society considers it the most significant wetland in the county, since it is the largest continuous wetland (two miles). Local schools and colleges have used the area as an outdoor biology laboratory for many years. The City of Tualatin has long been aware of the unique character of the area and is working with the private land owners, the Department of Fish and Wildlife, the U.S. Army Corps of Engineers and interested preservationists (e.g., The Wetlands Conservancy) to develop a workable method of protection. The portion in the unincorporated area is shown on a map submitted by Gene Herb of the Oregon Department of Fish and Wildlife. Only narrow portions along drainage hazard areas are covered by the flood plain ordinance.

E.4.1.4 Tonquin Scablands Geological Area (Nature Conservancy Site #6)

During the late Pleistocene Ice Age dozens of catastrophic glacial floods inundated all of the lowland Willamette Valley. The major conduit for the flood waters, other than the Willamette River gorge south of Oregon City, was the Lake Oswego gap and thence the Tonquin lowland in the extreme southeastern part of Washington County, extending into Clackamas County. The Tonquin Scablands left by those floods are widely recognized as among the most important geologic features in the State of Oregon. Preservation of the entire area for scientific and educational purposes will conflict, however, with expanded use of rock and gravel

quarries which have already destroyed major parts of the area, and encroaching urban uses. Management of this area to protect natural values is complicated further by the overlap of counties and the Urban Growth Boundary of two cities: Tualatin and Sherwood.

A overview of its geological history is essential to understand the significance of the Tonquin Scablands. The Missoula Floods--about 40 separate events have been identified--spanned 7,000 years between 18,000 and 11,000 years ago. Prehistoric Lake Missoula in northwestern Montana, hundreds of miles long and thousands of feet deep, periodically broke through the mountain glacier dam which created it. Vast amounts of water swept across the Idaho panhandle and scoured enormous channels, coulees and scablands across much of eastern Washington. The constriction of the Wallula Gap just north of the Oregon border near the Tri-Cities formed a lake 1,250 feet deep. A similar backup east of the Cascades at the Dalles caused the water to rise up 1,000 feet. Within the Columbia Gorge, the flooding was over 700 feet, almost to the top of Crown Point. The rush of floodwaters through the Lake Oswego gap dropped huge amounts of boulders and other large debris in the Durham area; some of these accumulations have been quarried. Finer sands, deposited then along both sides of the Tualatin River to the west and southwest of Durham, are now being mined.

The high velocity floods surged from the Tualatin Valley into the central Willamette Valley across the low-lying hills between Sherwood, Tualatin and Wilsonville. The effects of scouring to bedrock are noticeable up to at least 300 feet above sea level. The high water mark of the floods was over 400 feet; the entire Willamette Valley lowland formed a temporary lake. Icebergs carrying rocks from the Canadian Rockies left their deposits (glacial erratics) scattered all over the valley, including Washington County. One very large erratic can be seen near Highway 18 between Sheridan and McMinnville in Yamhill County.

John Eliot Allen, Professor Emeritus, Department of Earth Sciences at Portland State University, has written a book about the Missoula Floods in which the Tonquin Scablands play a prominent part. The book will be published in Spring 1984. Allen guided Washington County Planning Department Staff on a survey of the area as preparation for this inventory.

Typical geologic features of the area include channels, depressions (often continuing ponds or marshes), and scoured bedrock knolls and channel walls. Major identified features of the Tonquin Geologic Area are summarized below and depicted in Figure I-18.

E.4.1.4.1 A half-mile long depression in Section 34 north of the community of Tonquin is the route for the Burlington Northern Railroad. The southern half is now a swamp and the northern half is a shallow lake. Part of the adjacent west-facing cliffs are vegetated with relatively drought-tolerant plants because of the shallow soil; the dominance of Pacific madrone (Arbutus menziesii) is unusual for Washington County. This may be the premier site in the Scablands most deserving of preservation.

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This area is mapped on Figure I-18 as are other identified sites in the Scablands, by legal description rather than descriptions of the actual physical features. The legal descriptions of the properties include: 2S1 27D tax lots 300 and 301, and 2S1 34A tax lots 1500, 1501, 1502, 1503, 1600, 2000, 2001, 2002, and part of lot 8 of North Tonquin subdivision. Almost all of the site is within the Urban Growth Boundary.

Only the wetland portion of the site has any protection at this time and this would indirectly result from the flood plain ordinance. Uses which would significantly modify major portions of the site, such as large buildings and parking lots, would greatly diminish or destroy its geologic value. The steep slope along the channel presents a practical barrier to destructive uses, but there is now no zoning restriction on cutting of trees, for instance.

Rock quarrying west of this site has already destroyed a sizable portion of the scablands. This conflicting use is discussed further in the Aggregate Resources section of this document. Purchase of the wetland, channel slopes, and representative adjacent areas by a public or quasi-public agency would be the preferred solution to preservation of the area. The Oregon Parks and Recreation Division has responsibilities of this type.

E.4.1.4.2 The Rock Creek channel was the lowest elevation avenue for the flood-waters; its steep channel walls contrast markedly with the "underfit" or undersized stream which traverses the flat marsh. Dr. Allen suggests that preservation of the marsh would be valuable to permit pollen analysis showing climatic change since the last Ice Age. Existing topography and drainageways imply that erosion of the southern part of this channel caused it to "capture" smaller tributaries which previously flowed to the south. The Rock Creek channel is the most dramatic feature in the scablands, especially where it narrows to about 500' between 100' bluffs.

The legal descriptions of the properties involved are: tax map 2S1 33 tax lots 100, 300, 400, 401, 403, 500, 600, 700, 800, 900, 1000, 1100, 1200, 1400, 1500, 1600, and 1801. Portions of these lots have already had their geologic value destroyed through rock quarrying, which is still proceeding. Again, the physical features are not coterminous with the tax lot boundaries.

Clackamas County recently approved a new quarry within its part of the channel. The northern part of the channel is within the Sherwood Urban Growth Boundary. The Sherwood Planning Director has suggested protection of the channel and "associated rock cliffs" with a design review process to protect other features. Some protection of the bottomland is possible through the county's flood plain ordinance.

New or expanded quarry operations under conditional use standards would conflict with preservation. Continued urbanization on the western perimeter of the Tonquin area and further expansion of quarries will likely reproduce further conflicts.

E.4.1.4.3 The marshland with underfit stream south of Tonquin Road may be important for future research similar to Rock Creek. The properties in this area are: 3S1 3B tax lots 200, 202, 301, and 302 and 3S1 3C tax lots 100, 200, 400, 401, 403, and 500. A quarry operation on tax lot 301 will extend to only 350 feet north of the south property line. The site is surrounded on half of its perimeter by existing or approved quarries. Extensive industrial uses could be almost as destructive as quarries, but the flood plain ordinance will provide some protection of this site in its existing condition.

E.4.1.4.4 A smaller version of the Rock Creek channel--east of Tonquin Road and south of Ibach Road--also contains scoured 100 foot high bedrock walls and lies just downstream from a major flood spillway. Two other spillways, somewhat higher and much less eroded, are also found in this compact area. The "island" and eastern edge above 300 foot elevation would permit research into the question of the upper boundaires of the scouring. The parcels involved are: 3S1 2B tax lots 100, 200, 303, 304, 306, 308, 311, 1100, 1200, 1300, 1400, and 1500; all of tax map 2S1 35C except tax lot 1900; 2S1 35B tax lots 200, 300, 400, 401, 500, 501, 502, 503, 504, 701, 702, 704, 800, 801, 802, 803, 804, 805, 807, 808, 809, 900, 901, and 1201.

A small inactive quarry is located within this site. Areas along the drainage-way would be somewhat protected by the flood plain ordinance. The relatively large number of dwellings along the roads and absence of operating quarries in the immediate vicinity makes the location of a new active quarry here rather less likely. City of Tualatin plans for the northern portion inside the UGB are for low density residential (up to 5 units per acre). Such a density of residential uses and accompanying infrastructure would degrade the geologic value of the site.

E.4.1.4.5 East of Murdoch Road is a relatively high elevation spillway with lessened scouring. Two knolls on either side were above the level of scouring. Only one parcel is involved: 2S1 33 tax lot 1600. The Sherwood Planning Director has suggested the area is inappropriate for quarrying, since the Sherwood Plan for the area (inside the UGB) designates it for residential use. He also proposes that the design review process should provide adequate protection of natural features.

E.4.1.4.6 East of Morgan Road near the county line is a well-preserved low elevation knoll which was near the center of the large scale flow of water. It is therefore nearly devoid of soil and supports only a shrub vegetation. The lowest spillway in the entire Scablands is located at the southern end of this area next to the county line.

Legal description of the parcels involved are: 3S1 3B tax lots 301 and 400; 3S1 3C tax lots 100, 200, 401, 402, 403, and 500. Again, as with other identified scabland sites, these legal descriptions are used for convenience and are not co-extensive with the actual features of concern. Permission to quarry part of the knoll was recently granted, so only the southernmost part is temporarily protected.

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E.4.1.4.7 East of Murdock Road next to the county line is the downstream channel of the highest spillway in the Scablands. Both sides of the channel rise above the scouring level and there is a small depression within it. Parcels involved are: 2S1 32D tax lots 1300, 1400, 1401; 2S1 33 tax lots 1800 and 1802.

This feature also lies within the Sherwood Urban Growth Boundary and is planned by the city for residential use. The Sherwood Planning Director, however, has suggested preserving it as a significant natural feature or otherwise protecting it through the design review process. This site would also be impacted by expanding residential uses.

E.4.1.4.8 This scoured upland east of the Rock Creek channel is the only major "scabland" not already destroyed by quarrying (northeast of the site) or committed to it by recent decisions (southeast). The parcels involved are: 2S1 33 tax lots 100, 600, 700, and 800; 2S1 28D tax lots 100 and 900; and 2S1 27C tax lot 800. Again, the legal lots are not coterminous with the geologic feature, but do encompass it. The most prominent topographic features--depressions and knobs--are located in the central eastern part of the described area. Small portions of the area have been quarried or otherwise significantly altered.

The northern portion of this site has a 3 1/2 acre wetland, apparently seasonal, below one of the flood spillways. It is located between two knolls, the western one having a dwarf oak and madrone woodland on cliffs above the seasonal pond.

The major potential conflicting use is quarrying. Portions of the site are within one-half mile of planned residential areas along Murdock Rd. to the west. Further discussion of this conflicting use is contained in the Aggregate Resources section of this document.

#### E.4.1.5 Walker Road Ponderosa Pines (Nature Conservancy Site #1)

Stands of Ponderosa pine are relatively uncommon in Washington County, but are found in a few small areas inside the UGB, concentrated in the vicinity of Walker Road at 158th Avenue. One probable reason for their occurrence is that this is near the driest place in the county, with about 40" of precipitation in an average year. Past wildfires may also be partly responsible. These groves of pine may be the northernmost in the Willamette Valley, if not all of Western Oregon.

Preservation of any of these stands under natural conditions may be physically difficult, if not impossible, because of their location. Absence of fire or grazing would in the long run result in their replacement by other species. Human activity such as understory clearing, littering, or trampling would also have adverse effects. Such activities would be inevitable without stringent preservation and exclusion of human use.

These ponderosa pine are unique, however. Under some type of protection they might still be useful for education and scientific purposes for many years. There are four distinct stands, two of which were surveyed by the Natural Heritage Program:



Property with natural values and owned by federal agencies is not subject to county land use regulations. However, these agencies usually try to take into serious consideration the wishes of local government in the management of their land. Plan and zone designations applied to federal property therefore serve a very important advisory function.

Data were hard to come by for sites suggested as significant natural areas in Washington County. The Natural Heritage Program survey of the Nature Conservancy was a worthy first approximation. It includes typical natural areas as well as rare occurrences. However, even that survey often did not provide sufficient data to determine the significance of a site as a natural area.

Other major sources used to compile the list of significant natural areas included a letter from Robert Benson, a founder of Tualatin Valley Heritage, Inc. and a 1975 study of the Tualatin Valley's environmental quality prepared by the Federal Bureau of Reclamation. Consultations with informed personnel of the Oregon Department of Fish and Wildlife, Oregon Department of Forestry, Bureau of Land Management, and other knowledgeable persons were also of value. Site visits by Planning Department staff were conducted in most cases.

Judging the significance of the remaining natural areas of Washington County is still partly an art and not entirely a science. The comparative value of one natural area of a given type with another of the same type is not always easy or even possible to quantify in a meaningful way.

Based on criteria set forth by the Nature Conservancy, several priorities have been used in assessing natural areas in Washington County. The overall importance of the natural area--based in part on information available from professional and staff field work--was examined from the standpoint of 1) the qualities of the natural area as a whole, 2) the verified presence of any special species of plant or animal, and 3) the contribution which the proposed area will make to the representation of one or more natural heritage resources. When known, the representation of the questioned plant or animal and the degree of human caused disturbance was assessed to form a judgment on relative ecological quality.

Natural areas have several compatible uses--educational, scientific and recreational--where low levels of nonconsumptive or nondestructive activities are permitted. Educational day uses such as nature interpretation require quick, easy access. Scientific research in large areas may require alteration of some elements of the system for comparative studies against natural control. Recreational uses include only dispersed activities requiring only light weight equipment. Careful use restrictions are necessary in fragile or sensitive areas or features such as a bog, vernal pool, marsh, bald eagle nest habitat or a rich wildflower area.

The resulting list is as comprehensive as the available data will allow. Destruction of a natural area will in most cases be irreversible. The agreement of the various information sources suggests that only a few sites will, upon closer examination, prove unworthy of some form of protection. In many cases the methods of protection are limited to the legislative tools available at the present time. The adequacy of some of the available methods has been questioned

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by environmental groups and others. Later additions to the list may also be necessary if sites not known at this time are discovered. It should also be noted that the listed sites are located outside of incorporated cities, except where otherwise indicated.

#### E.4.4 Significant Natural Areas in Rural Washington County

Those sites for which sufficient data are available to make land use management decisions are listed as identified significant natural areas. Several sites have been dropped from significant consideration due to their size, updated or corrected information or as a result of ESEE analysis done on economic, social, environmental and energy consequences of development. In some cases the resources have been reclassified from natural areas to water areas and wetlands. These sites are discussed in Section E.4.5.

##### E.4.4.1 Wolf Creek Falls (3N5 6)

The coast range has far fewer waterfalls than the Cascades, but Washington County has more than most counties on the wet side of the Willamette Valley. At 50 feet, Wolf Creek Falls is the highest known waterfall in the county. A plunge pool and small cave are at its base. Beavers are reported as are some rare plants (valerian, angelica, boykinia). The falls and its access canyon appear to be in pristine condition, but litter has begun to accumulate near the entrance. In the past garbage was dumped down the canyon wall about 50 to 200 feet downstream of the fall. Regrowth has covered this material.

The property is owned by the Oregon Department of Forestry (ODF). The area in question includes a 250 foot radius from the base of the falls. A rough overgrown trail about 3/4 mile long was constructed by volunteers, but is difficult to follow, according to Planning Department staff. This is fortunate for the continued natural condition of the site, because of its small size and location just south of U.S. Highway 26. More public awareness or improved accessibility would very rapidly degrade the waterfall's natural quality.

The ODF is concerned about preservation of the canyon, since portions of it are intended for timber harvest. Future logging would probably be done from the top by cable, but there is no certainty at this time that a road would not be constructed in part of the canyon. Preservation of the waterfall and its base would not conflict with ODF plans for the area, but the boundary of the protected site needs to be specified.

##### E.4.4.2 Timber Pigeon Springs (3N5 17)

This important natural habitat of band-tailed pigeons is located on ODF land a few miles northwest of Timber, adjacent to Carlson Creek. This type of habitat is listed as significant by the Nature Conservancy. Although road access is now within 200 yards of the site, the area is still important as habitat. The Oregon Department of Fish and Wildlife district biologist, Gene Herb, maintains that perch trees near the springs should be preserved so that pigeons have a place to sit before going down to water. Pigeons use the area from May through December.

#### E.4.4.3 McKay Creek Falls, Canyon and Upper Drainage (3N3 31; 3N2 31; 2N3 1, 12; 2N2 6, 7)

McKay Creek Flows through a forested canyon 500 to 600 feet deep and only 1/4 to 1/2 mile wide. The canyon is a unique wilderness area in the county because there is no automobile access. The natural area boundary follows the crest of the ridge on the south from 2N3 1D, west to 2N2 6D, thereafter following the 1,100 foot contour line to 3N3 36 where the 1,200 foot contour is followed, back to the starting point. The boundary includes some, but not all, of the canyon and old growth timber. A more precise mapping is on file with the County Planning Department. A portion of the area has been field checked by Planning Department staff. Falls and plunge pools are reported to be prevalent along the entire creek. Two falls--12 feet and 15 feet--are known to exist. The upper drainage has several natural ponds. The natural area affords excellent habitat for deer and grouse in addition to many non-game species. The creek and ponds also provide seasonal fish habitat.

Bureau of Land Management (BLM) owns three large tracts of land throughout the system which are managed for timber production. Reynolds Aluminum has a placer claim within the area. However, the company owns or claims more than 1,100 acres of deposits elsewhere in the county. A private horse trail system is being developed into the area. The Nature Conservancy lists this site as #49.

#### E.4.4.4 Big Canyon (2N3 5 tax lot 700; 2N3 8 tax lot 100)

BLM has designated this scenic, steep, narrow canyon as a Natural Area/Educational Site and is currently formulating a management plan. Willamette Industries owns a part of the southern portion of the canyon. The geographical boundaries of this area include all of 2N3 5 tax lot 700 and, along the creek, 500 feet south, in 2N3 8 tax lot 100. The canyon is located along a tributary of East Fork Dairy Creek and is somewhat unique in vegetational variety and steepness and ruggedness of terrain. Extremely dense riparian vegetation includes a remnant stand of old growth Douglas fir (some of 400 years old), Western red cedar, Western hemlock, Bigleaf maple, Vine maple, devil's club, and abundant ferns and mosses. Access to this relatively undisturbed natural area is becoming increasingly difficult to obtain.

#### E.4.4.5 Cedar Canyon Swamp and Marsh (2N4 34, 35)

This site is one of the few areas of swamp of any size existing in the county. All of it is located in the 100 year flood plain; there is standing water in the winter. Major vegetation is mainly ash and willow. Cottonwood, alder and Bigleaf maple are present on the higher ground. Although the adjacent Wilson River Highway diminishes the waterfowl potential of the site, the Oregon Department of Fish and Wildlife considers it to have important wildlife values and be worthy of further study. Its geographical boundaries were defined by aerial photo interpretation.

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#### E.4.4.6 Dooley Aspen/Ash Swale (2N4 36 tax lots 700 and 701)

This island of unusual vegetation is surrounded by agricultural fields. Aspen areas are very rare west of the Cascades but have also been reported near Dilley. The Dilley site is not verified. The occurrence of quaking aspen in the Tualatin Valley is considered by the Chief Plant Ecologist of the Forest Sciences Laboratory to be botanically significant. The 10 acre site is within the 100 year flood plain. Remnant vernal wildflowers are also reported on the site. Vernal pool flora are very fragile and require protection from disturbance, particularly spraying and fertilizing. These pools and their characteristic vegetation have all but disappeared from the valley as a result of human activity. A Nature Conservancy Site Report for this site, also known as Banks Aspen/Ash Grove, is contained in Appendix I-C.

#### E.4.4.7 Upper Tualatin River Haines Falls, Lee Falls and Little Lee Falls (1S5 tax lots 5500, 5700, 5900, 5902 and 6102)

In the past, opportunities for swimming, fishing and picnicking have attracted members of the public to this scenic four mile stretch of the Tualatin River. This part of the river is forested and contains two large waterfalls, other small falls and rapids. Most views are toward the river which is surrounded by steep terrain. The City of Hillsboro has its water supply intake and holding reservoir at Haines Falls. Further down the river, privately owned Lee Falls contains fine examples of natural punch bowls. A large yew tree--once thought to be the largest in America--is located about 100 yards downstream from Little Lee Falls. The geographic boundary for this area is defined as 25 feet from the bank edge on both sides of the river from Haines Falls to Little Lee Falls.

Members of the public and county employees report recreation use of the area and easy access since the early 1940s. The question of public access has recently become a controversial one. County Counsel maintains that the issue is one that can probably only be solved through litigation. The access road, commonly known as Lee Falls Road, was declared to be a county road (A-47) by the County Surveyor in 1973. This decision was based on historic documents and official surveys made before the turn of the century. His successor removed the road from county road status in 1980 or 1981.

Frequent use of the Upper Tualatin resulted in litter, wood cutting and parking problems; the area has no parking, garbage disposal or sanitation facilities. Unauthorized camping and campfires further served to degrade portions of private property. One of the private property owners installed a chained, metal bar gate across the road approximately two miles south of Lee Falls, and issued keys to other property owners. The City of Hillsboro maintains access rights for maintenance of its water supply facilities and has installed a locked gate at Lee Falls to thwart vehicular access of private property owners to Haines Falls.

Since public access has been blocked, the Oregon Department of Fish and Wildlife has stopped stocking the Upper Tualatin with fish. At county request, the Parks and Recreation Division studied the Upper Tualatin for possible state acquisition. The Division concluded that while the site has enjoyable scenic qualities, it is not large enough nor does it provide the recreational resources at a scale

which warrants state park development; access was cited as a main problem. The Division maintains the area is appropriate for use at a local scale. Sources for acquisition funding were suggested.

Much of the vegetation has been disturbed or removed by logging activity. Quarrying activity (which is reportedly private) is conducted within 50 feet of the river and has compromised some of the natural features. Little Lee Falls and the lower portion of the river would be inundated if the Tualatin Phase II Project was activated.

#### E.4.4.8 Tonquin Scablands Geologic Area

See the discussion of this unique natural resource at E.4.1.4.

#### E.4.4.9 John Blodgett Arboretum (2N5 15 tax lots 500 and 600)

Pacific University owns this arboretum located 14 miles west of Forest Grove along Wilson River Highway. The north portion is being selectively logged and managed and is not considered part of the natural area. South of the highway are the trails, open clearing and picnic area. The arboretum is now open to the public, but no motorized vehicles are allowed inside. Pacific University biology classes utilize the area as an open classroom because of the diversity of flora and fauna. It contains some plants that are not rare, but need to be managed: trilliums, aerechroniums and some orchids such as Calypso Balbosa. The school maintains a listing of plants and animals frequenting the area.

#### E.4.5 Natural Areas Dropped From Consideration

See discussion at E.4.3

##### E.4.5.1 Beehives Area (3N3 3, 4, 9 and 10)

This four square mile area was mistakenly identified by Robert Benson to planning staff as a volcanic area. It is forested and designated EFC. The site has an interesting topography with numerous depressions. However, Dr. Leonard Palmer, Associate Professor of Geology, with the concurrence of Dr. John Elliot Allen, Emeritus Professor of Geology, Portland State University, state that the topography "appears to have the features of a landslide topography rather than of typical volcanic terrain." This is not a unique feature of special value for preservation. Even if it were of volcanic origin, many other volcanic features exist in the near region that are of more exceptional geologic interest and more readily accessible. Forestry practice or development in this region of steep terrain with large landslides is likely to reactivate potential serious sliding.

##### E.4.5.2 Pumpkin Ridge Cedar Grove (2N3 tax lot 400)

Western red cedar over 60 years old is the dominant tree species on this 40 acre site located off a tributary of East Fork Dairy Creek. The presence of this species is very rare in the Coast Range. BLM originally proposed the area be designated for botanical sight-seeing. A recent policy directive from the Department of Interior does not preclude timber harvest from this particular site.

NW1/4 SECTION 2 T3S RIW W.M.

WASHINGTON COUNTY OREGON

SCALE 1"=200'

3S 1 2B

RECEIVED  
OCT 17 1984

LAWYERS TITLE CO.

CANCELLED TAX LOTS  
101, 300,

SEE MAP  
2S 1 35CC

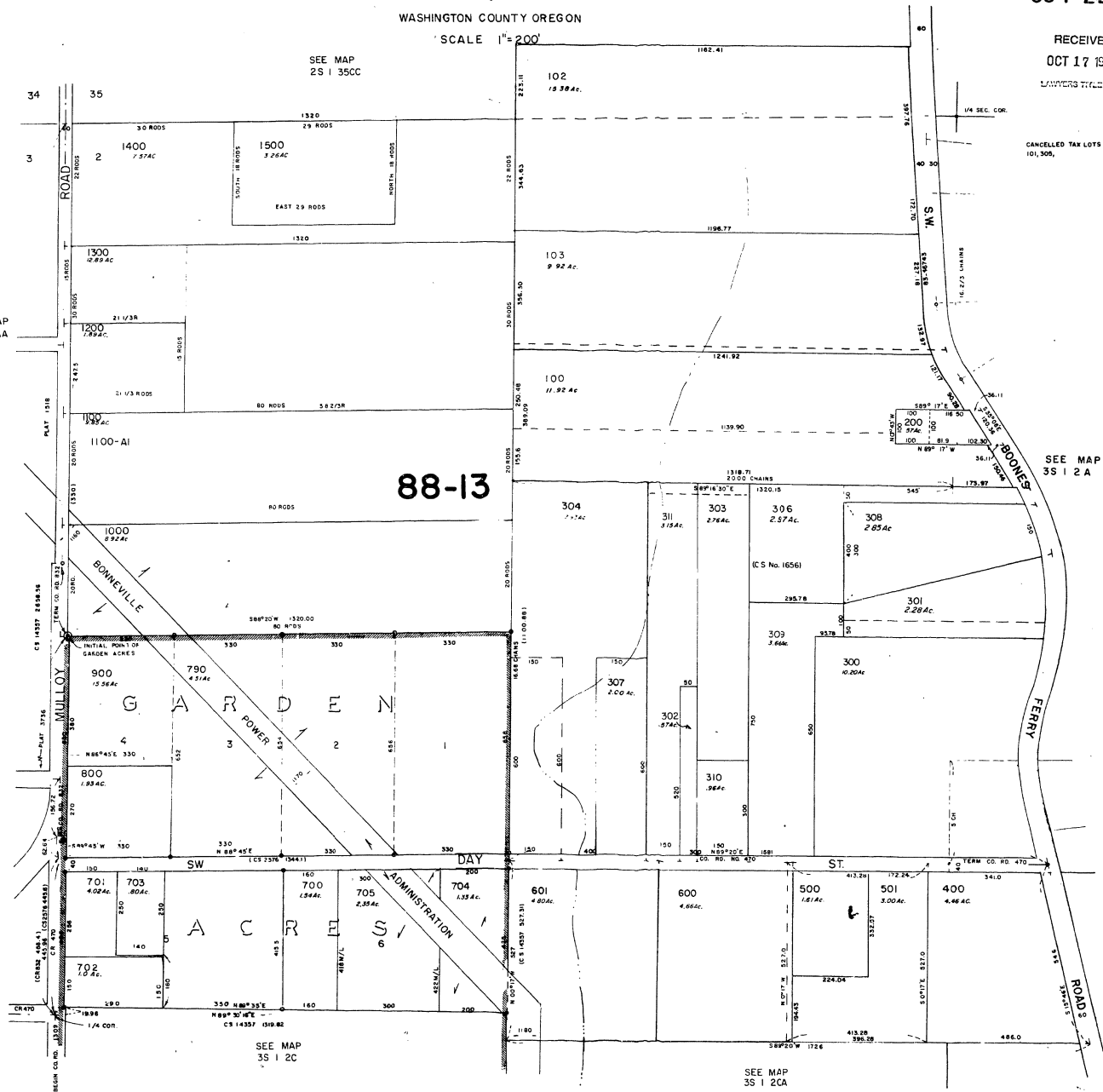
SEE MAP  
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3S 1 2B



**EXHIBIT A****FINDINGS FOR A-ENGROSSED ORDINANCE NO. 869****AN ORDINANCE AMENDING THE RURAL/NATURAL RESOURCE PLAN, CERTAIN COMMUNITY PLANS, AND THE COMMUNITY DEVELOPMENT CODE RELATING TO DEVELOPMENT IN AREAS DESIGNATED SIGNIFICANT NATURAL RESOURCES AND PLANNED DEVELOPMENTS****Oct. 27, 2020**

Part 1 – General Findings

Part 2 – Statewide Planning Goal Findings

Part 3 – Metro Urban Growth Management Functional Plan Findings

**Part 1:****GENERAL FINDINGS**

A-Engrossed Ordinance No. 869 amends the Rural/Natural Resource Plan (RNRP), community plans, and the Community Development Code (CDC) relating to significant natural resources (SNRs) in the development review process to ensure standards are clear and objective. Recent state law changes reflected in Oregon Revised Statutes (ORS) § 197.307 require standards that apply to urban residential development applications be clear and objective.

Other changes with this ordinance clarify current significant natural resource requirements, provide consistency and transparency in development project review, address the County's SNR verification process and encourage preservation of additional *Wildlife Habitat* through use of the planned development process. The proposed changes focus on the urban area and have limited impact for sites with SNRs in the rural area.

A-Engrossed Ordinance No. 869 addresses the determination by the Land Use Board of Appeals (LUBA) and affirmed by the Oregon Court of Appeals, that some of the standards in CDC § 422 (Significant Natural Resources) are not clear and objective. It also addresses the Land Conservation and Development Commission (LCDC) Enforcement Order,<sup>1</sup> which found the County out of compliance with Statewide Planning Goal 5 because three CDC natural resource provisions were not clear and objective, and therefore unenforceable as applied to new urban residential development.

A-Engrossed Ordinance No. 869 does not include a new or updated Goal 5 Inventory, new SNR policies or substantial changes to the Goal 5 Program decisions by adopting new standards or processes. The CDC amendments described below are intended to clarify current requirements

<sup>1</sup> Findings, Conclusions, and Enforcement Order 20-ENF-001916 (June 1, 2020)



and ensure they are clear and objective, within the existing policy framework established through the County's Goal 5 Program adopted in the 1980s and more recently updated in keeping with the Tualatin Basin Fish and Wildlife Habitat Program (Tualatin Basin Program) in 2005.

### **Key Ordinance Provisions**

- Clarify requirements for a Habitat Assessment and field verification to confirm boundaries and condition of SNR areas when development is proposed.
- Add references to Clean Water Services (CWS) *Design and Construction Standards* and federal and state agency requirements within the list of allowed uses in *Water-Related Fish and Wildlife Habitat*.
- Replace the section on enhancement of certain degraded water-related habitat with changes that allow such alteration as long as it meets the requirements of the regulatory agencies responsible for alteration and enhancement activities.
- Require a specified percentage of certain habitat area be preserved when development occurs (Preservation Area) with standards for enhancement and planting.
- Allow the entire preserved *Upland/Wildlife Habitat* area to count toward open space requirements for Planned Developments.
- Provide clarifications and add cross references within other sections of the CDC.

Due to the Enforcement Order, the ordinance must address compliance with Oregon's Statewide Planning Goal 5. The County Board of Commissioners (Board) finds that the Goals apply to amendments covered by these findings only to the extent noted in specific responses to other individual applicable Goals, and that each amendment complies with the Goals. Goals 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal Shorelands), 18 (Beaches and Dunes), and 19 (Ocean Resources) and related Oregon Administrative Rules (OARs) are not addressed because these resources are not located within Washington County.

The County is also required to make findings that the amendments are consistent with the requirements of Metro's Urban Growth Management Functional Plan (UGMFP). These findings are addressed in this document.

### **Part 2:**

#### **STATEWIDE PLANNING GOAL FINDINGS**

The purpose of the findings in this document is to demonstrate that A-Engrossed Ordinance No. 869 is consistent with Statewide Planning Goals (Goals), ORS, OAR requirements, Metro's UGMFP and Washington County's Comprehensive Plan (Plan). The County's Plan was adopted to implement the aforementioned planning documents and was acknowledged by the State of Oregon. The County follows the post-acknowledgement plan amendment (PAPA) process to

update the Plan with new state and regional regulations as necessary and relies in part upon these prior state review processes to demonstrate compliance with all necessary requirements.

Compliance questions were raised in the hearing proceedings described below with Goal 2, Goal 5 and Goal 10. The following precautionary findings are provided to demonstrate compliance.

### **Goal 1 – Citizen Involvement**

Goal 1 addresses Citizen Involvement by requiring the implementation of a comprehensive program to stimulate citizen participation in the planning process. Washington County has an acknowledged citizen involvement program that provides a range of opportunities for citizens and other interested parties to participate in all phases of the planning process. In addition, Chapter X of the County's Charter sets forth specific requirements for citizen involvement during review and adoption of land use ordinances. Washington County has followed these requirements for the adoption of A-Engrossed Ordinance No. 869.

Staff presented preliminary information about the ordinance at Community Participation Organization (CPO) meetings prior to hearings on the ordinance. Notice of hearings was provided as required. Three Planning Commission and two Board hearings were held on Ordinance No. 869 as filed. On A-Engrossed Ordinance No. 869, further notice of engrossment hearings was provided, the Planning Commission held one hearing, and two hearings were held by the Board.

### **Goal 2 – Land Use Planning**

Goal 2 addresses Land Use Planning by requiring an adequate factual base to support a decision as well as coordination with affected governmental entities. Washington County has an acknowledged land use planning process that provides for the review and update of the various elements of the Plan, which includes documents such as the RNRP, Comprehensive Framework Plan for the Urban Area (CFP), community plans, CDC and Transportation System Plan (TSP). Washington County utilized this process to adopt A-Engrossed Ordinance No. 869.

Notice was coordinated with affected governmental entities, including the Department of Land Conservation and Development (DLCD), Metro, CWS and the Oregon Department of Fish and Wildlife (ODFW). County staff met with each of these agencies in preparation and review of A-Engrossed Ordinance No. 869. No formal comments from these agencies were received regarding the ordinance.

During the hearings, public testimony expressed concern that ODFW should have been more involved with development of A-Engrossed Ordinance No. 869. Although the changes adopted through this ordinance are limited to clarifying existing SNR standards and not initiating changes to the County's Goal 5 Inventory or Program decision, as noted staff has met and coordinated with ODFW and other agencies to discuss and explain the changes to § 422.

ODFW staff asked clarifying questions about the changes and how they were consistent with current requirements and discussed possible strategies for additional habitat preservation. They acknowledged the County is unique in addressing *Upland/Wildlife Habitat* as an SNR. ODFW was interested in serving on a technical advisory committee if changes to the County inventory or overall program were to be contemplated and in providing guidance on developing the *Habitat Assessment Guidelines*.

The factual basis to support the decision on the ordinance is included in the staff reports, the responses to testimony found in attachments to the staff reports and these findings.

### **Goal 3 – Agricultural Lands**

Goal 3 seeks to preserve and maintain agricultural lands for farm use, consistent with existing and future needs for agricultural products, forest and open space, and with the state's agricultural land use policies. Policy 15, Implementing Strategies (a) and (f), of the RNRP include provisions for the preservation of agricultural lands.

The Exclusive Farm Use (EFU) and Agricultural and Forest (AF-20) land use districts are Washington County's acknowledged exclusive farm use districts. These land use districts incorporate the list of permitted uses in exclusive farm zones in ORS § 215.213 and provide standards for development.

A-Engrossed Ordinance No. 869 does not amend the applicable Plan policies or land use district standards as they relate to Goal 3 resources. The ordinance retains the limited land uses and exclusions that apply to agricultural land and the applicable Code standards in § 422 for farmland resources. Compliance with Goal 3 is maintained.

### **Goal 4 – Forest Lands**

Goal 4 addresses the conservation of forest lands by maintaining the forest land base and protecting the state's forest economy by making possible economically efficient forest practices. Policy 16, Implementing Strategies (a) and (c) of the RNRP include provisions for the conservation and maintenance of forest lands.

Similar to farmland resources, the County has a forest land use district, Exclusive Forest and Conservation (EFC), that lists permitted uses consistent with statutory allowance identified in OAR Chapter 660, Division 6. A-Engrossed Ordinance No. 869 does not amend the applicable Plan policies or land use district standards and retains the applicable CDC standards in § 422 consistent with Goal 4.

### **Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces**

Goal 5 addresses the protection of natural resources and the conservation of scenic, cultural, and historic areas and open spaces by requiring local programs to protect these resources in order to promote a healthy environment and natural landscape that contributes to Oregon's livability for present and future generations. In addition, OAR § 660-023-0250 requires application of current Goal 5 provisions to PAPAs when they 1) create or amend a resource list or a portion of an acknowledged plan or land use regulation that protects a significant Goal 5 resource, or 2) allow new uses that could be conflicting uses with a particular Goal 5 site. Policies 10, 11 and 12 of the CFP, Policies 7, 9, 10, 11, 12 and 13 of the RNRP, and various sections of the community plans and the CDC include provisions for the protection of Goal 5 resources.

The County's SNRs addressed by this ordinance are identified and mapped in community plans for areas within the regional Urban Growth Boundary (UGB) and the RNRP for areas outside of UGBs, subject to state, regional and local requirements.

In the development of A-Engrossed Ordinance No. 869, the County reviewed the comprehensive plan elements related to the County's Goal 5 Program, the Tualatin Basin Program and supporting documents, relevant legal cases and County development review casefiles, culminating in the preparation of the Significant Natural Resource Program Review and Assessment (May 2020). These materials are incorporated herein by reference.

In the early 1980s, the County completed initial inventories of Goal 5 natural resources, identifying significant fish and wildlife habitat in the County's urban and rural areas. Policies and standards for identified natural resources were incorporated into the County's comprehensive planning documents, allowing limited and safe development in areas with inventoried SNRs while identifying, protecting, enhancing and maintaining fish and wildlife habitat areas recognized as important. The County's Goal 5 Program followed the original Goal 5 process described in OAR Division 16 (660-016-0000 to 0020) and was acknowledged by DLCD in 1983.

CDC § 422 (Significant Natural Resources) outlines the SNR categories, requirements and development review process applicants must follow for development on sites with mapped SNRs. The section outlines specific development standards that will be applied if a development site contains an identified SNR. Currently, regulations for applications on sites with fish and wildlife habitat and/or riparian corridors require identification of the location and extent of the natural resource, and include submittal requirements, a process for enhancing degraded riparian corridors, and certain restrictions on development. One of the criteria, found in § 422-3.6, addresses development impacts by requiring "mitigation" if a development activity "seriously interferes" with the fish and wildlife habitat, a subjective standard.

Changes made to Goal 5 OARs in 1996 gave Metro the authority to plan for fish and wildlife habitat protection in the Portland metropolitan region. As Metro began to develop a regional fish and wildlife habitat protection plan, the County, other local governments and special districts in the Tualatin Basin approached Metro and proposed to develop a program tailored to the Tualatin Basin using Metro's Regionally Significant Fish and Wildlife Habitat Inventory (Metro Inventory), seeing the opportunity to comprehensively assess natural resource protections for the entire Tualatin Basin.

In 2005, the County coordinated with cities in the County, CWS, Tualatin Hills Park & Recreation District (THPRD) and Metro to adopt a regional comprehensive program for the protection of fish and wildlife habitat in the Tualatin Basin to comply with Metro's new Goal 5 mandate. This group, the Tualatin Basin Partners, conducted the Goal 5 ESEE<sup>2</sup> conflicting use analysis of the significant natural resources located near and within the regional UGB to include all waterways that feed the Tualatin River. The Tualatin Basin Partners determined the appropriate level of protection based on the natural resources identified on Metro's Regionally Significant Fish and Wildlife Habitat Inventory, categorized as Riparian Habitat and Upland Habitat.

The Tualatin Basin Partners worked together to prepare the Tualatin Basin Program, the Goal 5 program for the Tualatin Basin approved by all participating jurisdictions and agencies. It included a regulatory component for riparian habitat resources and a nonregulatory, incentive-based approach to encourage greater habitat protection for new development. This approach was approved by all participating jurisdictions and agencies. The County then adopted the regulatory components of the Tualatin Basin Program through updates to the CDC, the RNRP and policies described in Policy 6 (Water Resources) and 10 (Biological Resources and Natural Areas) of the CFP.

The Metro Council approved the Tualatin Basin Program and incorporated it into the UGMFP under Title 13, Nature in Neighborhoods, discussed further within this document. Metro Council concluded the Tualatin Basin Program had the potential to improve environmental health and habitat conditions, both at the regional and subbasin watershed level.

Since 2005, proposed development on sites with Class I and II Riparian Habitat identified on Metro's Regionally Significant Fish and Wildlife Habitat Inventory Map (Metro Inventory Map) have been required to adhere to the criteria of § 422. The section also requires projects to comply with other agencies' permitting processes; for instance, CWS for stormwater management within its service area, and Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Army Corps) for water and wetland permits.

<sup>2</sup> OAR § 660-023-0040: (1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.

Together, Goal 5 processes in 1983 for the entire urban unincorporated area and the Tualatin Basin Program in 2005 for fish and wildlife habitat within the Metro region comprise the County's Goal 5 Program. Both have been acknowledged by DLCD.

LCDC found the County to be out of compliance with Goal 5 because LUBA and the Oregon Court of Appeals determined that three of the provisions in § 422 failed to meet state law requirements mandating development standards be clear and objective. The decisions found that the invalidated portions of § 422 could not be applied to residential development. The changes within this ordinance are intended to modify subjective development standards so that they are clear and objective, consistent with the overall policy direction in the Tualatin Basin Program and the Comprehensive Plan, as well as current practice. The following is a description of the changes to § 422, and other CDC sections related to SNRs and how they maintain and/or ensure consistency and compliance with Goal 5.

***Lands Subject to this Section (§ 422-2)***

This section includes minor changes to the descriptions of the SNR categories for clarity and to better distinguish between categories. No modifications to the mapped resources are proposed with this ordinance and continue to be found in the Significant Natural and Cultural Resources maps of the community plans and the Goal 5 Resources map of the RNRP.

The ordinance clarifies reference to the Regionally Significant Fish and Wildlife Habitat found on Metro's Inventory Map is to the "Class I and II Riparian Habitat." This is in keeping with Metro Title 13 requirements and the Tualatin Basin Program decision. When Metro conducted the Regional Inventory of Significant Fish and Wildlife Habitat in the early 2000s, the natural resource categories were distinguished by habitat type: Riparian and Upland Habitat. Metro scientists also assessed the quality of the two habitat types through three quality classifications. Using this inventory, the Tualatin Basin Program decision agreed that Class I and II Riparian Habitat should be regulated, and development within those areas should be strictly or moderately limited. The clarification of the specific category of resources intended to be regulated per Metro Title 13 and previously adopted by the County through A-Engrossed Ordinance No. 662 does not add a new resource category subject to § 422.

The ordinance also refines two of the County's SNR categories and descriptions to better distinguish between two of the habitat categories. The SNR categories have sometimes caused confusion because the descriptions refer to maps that are no longer readily available or fail to indicate that they are references to original maps used in the early 1980s to identify potential SNRs. This change is consistent with Goal 5 and the County's SNR policies. Community plan and RNRP maps are also being updated to reflect the name changes.

***Submittal Requirements (§ 422-3)***

The ordinance clarifies and improves the development review process by standardizing the information necessary to review a development application when a site contains an SNR. This

process was outlined in the existing regulations and in a Director's Interpretation that staff and applicants relied on, and the ordinance codifies and simplifies this process.

Modifications to the SNR identification process provide a more certain and consistent approach for field verification and identification of the SNR boundaries. The general location of the resources is shown on County and Metro maps, and field verification more specifically locates these resources on individual sites. This concept is supported by Metro and is included in the Metro Title 13 Model Ordinance. The boundary of each resource type must be identified on site plans, based on specified criteria which, in part, rely on delineations already required by other regulatory agencies. The intent of these ordinance provisions is to rely on the expertise of the agencies regulating the resource type (e.g., wetlands, flood plain and drainage hazard areas, riparian corridors/Vegetated Corridor) and to avoid duplicate requirements.

CWS' Vegetated Corridor regulations help meet Federal and State Clean Water Act requirements, including the Tualatin Basin Total Maximum Daily Load (TMDL) allowances, water quality standards and National Pollutant Discharge Elimination System (NPDES) permit limits. Development applicants are required through CWS' process to ensure that the Vegetated Corridor meets the agency's standards. Since CWS' *Design and Construction Standards* are specifically applicable to Water Quality Sensitive Areas (Sensitive Areas) and their associated Vegetated Corridors, the County finds they are also particularly relevant for the protection of riparian fish and wildlife habitat and thus provide important Goal 5 protection, aligning with the outcome and requirements of the Tualatin Basin Program and compliance with Metro's Title 13. In order to comply with CWS regulations, potential wetlands, streams and other Sensitive Areas within the vicinity of any proposed development are required to be identified under the parameters defined in the CWS *Design and Construction Standards* on a site-specific basis.

A Habitat Assessment for certain SNR areas is required under existing regulations and the Director's Interpretation. CDC § 422 is further codified and standardized so that the condition of the habitat is assessed, and the Habitat Area can be delineated so that a specific percentage of that area can be determined and preserved. The Assessment must evaluate and rate the different habitat values using the methodology to be contained in Habitat Assessment *Guidelines*, which will form the basis for determining the proposed areas to be preserved. Habitat Assessment *Guidelines* will detail how the Habitat Assessments must be completed to ensure consistency in preparation and development review. The *Guidelines* will be managed in a manner comparable to other technical methodologies used for other disciplines such as traffic engineering and grading. They will provide supplemental guidance about the site conditions in a clear and objective manner and will be adopted by the Board via Resolution and Order (R&O).

For projects within the rural area, the proposed language allows submittal requirements to be waived by the Review Authority when proposed development is more than 100 feet from mapped water-related SNRs and the submittal addresses RNR Policy 10, Implementing

Strategy e. Since some rural development projects on larger sites may be able to avoid impacts to SNRs altogether, applicants may not need to provide all the submittal materials that are required for urban and more intensive development projects. This provides an affordable alternative for applicants to avoid unnecessary and costly submittal requirements while still addressing the SNR criteria. This is an existing practice proposed to be codified and is consistent with Goal 5 as it will carry out the Goal 5 program by identifying the SNRs subject to review and the SNR standards in place, providing more consistency in the application of the standards. No other substantive changes are made to the standards for rural land.

### ***Community Plan Design Elements (§ 422-3.3)***

The submittal requirements for development on sites with a mapped SNR under A-Engrossed Ordinance No. 869 include a description of how clear and objective design elements of the community plan apply to the urban development site. For rural sites the requirement is to describe how RNR Policy 10, Implementing Strategy e. applies to the site.

Previously, CDC § 422 required applicants to apply all of the design elements. In some cases, design elements are site specific, with an identified restriction, goal or policy direction and others are general and aspirational, describing a desired or preferred outcome for the SNR. Some design elements may also be contrary to other provisions of the Comprehensive Plan. Many of the site-specific design elements have already been considered in past development projects or are no longer applicable because they referred to areas that have since been annexed to cities.

Community plans do not contain regulatory requirements or restrictions, therefore there were limits on the enforceability and applicability of the design elements. Applying them to development applications was subject to inconsistent and subjective interpretation in comparison to the standards found in the CDC. The design elements were intended to be more policy considerations or factors when applying § 422, rather than general standards found in the CDC that apply uniformly to all development review projects.

The section is now clarified, with the requirement that as part of submittal applicants describe how any design elements that are clear and objective apply to the SNR on their site, and is therefore consistent with Goal 5.

### ***Allowable Uses and Activities within Significant Natural Resource Areas (§ 422-4)***

As in the existing regulations, the ordinance generally prohibits development in areas with *Water-Related Fish and Wildlife Habitat*, except for a limited list of uses and activities described in this section. The list of activities and uses does not expand the uses currently allowed in the unincorporated urban area, but some descriptions are clarified to reference the appropriate federal, state and local regulatory agency with concurrent responsibility for permitting the specified activities. This includes CWS within the urban unincorporated area and its boundary, DSL, and the Army Corps. No changes are proposed to the allowable uses within the rural area.



Some of the changes are made to ensure the standard is clear and objective, particularly the changes to § 422-4.1 F. regarding the alteration of the Riparian Corridor, Sensitive Area or Vegetated Corridor. This addresses areas both inside and outside CWS' service area and specifies such alterations are allowed if the requirements of CWS, DSL or the Army Corps are met.

CWS is responsible for stormwater management and acts as the principal designated management agency under the Tualatin Basin TMDL within its service boundary, primarily inside the regional UGB. The Board of Commissioners, acting as the CWS Board of Directors, has adopted *Design and Construction Standards* (CWS Standards) through R&Os, most recently R&O 19-5 as amended by R&O 19-22, in 2019. The CWS Standards include water quality standards for Sensitive Areas and require Vegetated Corridors, the buffered vegetated area to protect the Sensitive Area. CWS Standards require all development to obtain a Service Provider Letter identifying Sensitive Areas on or near the site and their associated Vegetated Corridors prior to any development.

CDC § 422-3.4 (Enhancement of a degraded riparian corridor, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat...) was one of the provisions determined by LUBA not to be clear and objective. The submittal process, enhancement criteria and follow-up review process were originally added in 1989 to allow limited enhancements to degraded Riparian Corridors when proposed by a natural resource professional, with review and comment by DSL, the Army Corps, and the Clackamas District biologist of ODFW. Prior to this, riparian zones (corridors) could not be enhanced under any circumstance (§ 422-3.3 A. (7) and 422-3.4).

This standard and its companion, § 422-3.3 A. (7), originated with a specific Riparian Corridor enhancement project proposed in 1989, after the County's Goal 5 Program and § 422 had been acknowledged by DLCD, but before CWS received its NPDES permit for the Municipal Separate Storm Sewer System (MS4) from Oregon Department of Environmental Quality (DEQ) and became responsible for stormwater management. Now, alterations to the Riparian Corridor and *Water-Related Fish and Wildlife Habitat* are reviewed as development activities by CWS as part of its implementation of water quality regulations and are required to obtain a CWS Service Provider Letter. The County finds that enhancement projects to improve the condition of riparian corridors and *Water-Related Fish and Wildlife Habitat* improve overall stream health and contribute to improving the surrounding Vegetated Corridor.

#### ***Tree Preservation in Habitat Area(s) (§ 422-5)***

This new section is intended to address the concerns raised about current § 422-3.6, which applied to *Water-Related Fish and Wildlife Habitat*<sup>3</sup> and *Upland/Wildlife Habitat*<sup>4</sup> based on the

<sup>3</sup> This SNR category was identified in § 422 as *Water Areas and Wetlands and Fish and Wildlife Habitat* before the adoption of A-Engrossed Ord. No. 869.

<sup>4</sup> This SNR category was identified in § 422 as *Wildlife Habitat* before the adoption of A-Engrossed Ord. No. 869.

Director's Interpretation. CDC § 422-3.6 required the County to determine either that a proposed development would not "seriously interfere" with the preservation of fish and wildlife habitat or how the interference can be mitigated. This was one of the standards found not to be clear and objective and therefore unenforceable.

Areas identified in community plan maps as *Water-Related Fish and Wildlife Habitat* and *Upland/Wildlife Habitat* were intended to be developed consistent with plan policies that weigh and balance various community values, including both the habitat and aesthetic value of forested areas and provision of housing within the regional UGB. These values are reflected in statewide planning goals related to natural resources, housing and urbanization. Goal 5 never intended that these areas be entirely off-limits to development, but rather provides for a process by which local governments can determine for themselves the level of protection to be given to specific resources and provides that different resources can receive different levels of protection. Local governments are to develop their own programs that weigh and balance the values of the statewide planning goals.

While public testimony has indicated a general interest in preserving as much *Upland/Wildlife Habitat* as possible and limiting development to areas that do not have SNRs, the determination made through the County's Goal 5 processes both in the 1980s and early 2000s adopted a more balanced approach.

CDC § 422-3.6 was part of the County's program before the Tualatin Basin program decision. That section required that "...there shall be a finding that the proposed use will not **seriously interfere** with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, **or how the interference can be mitigated.**" [Emphasis added] What it meant to seriously interfere or to mitigate<sup>5</sup> were not well defined and these have been interpreted differently over time. This was not a prohibition on development potentially affecting *Upland/Wildlife Habitat*, but rather a nuanced approach that resulted in mitigation that varied from one development to another and preserved anywhere from 9% to 44% of the habitat area.

The 2005 Tualatin Basin Program decision determined the focus of County Goal 5 regulatory protections was to strictly limit development near water-related resources, and that preservation of *Upland/Wildlife Habitat* was to be based on voluntary or incentive-based approaches. The County's regulatory SNR program, including the subjective § 422-3.6 language, predates OAR Division 23 (Procedures and Requirements for Complying with Goal 5) and the Title 13 Tualatin Basin Program decision. Since § 422-3.6 was adopted under earlier OARs,

<sup>5</sup> Mitigation is defined in CDC § 106-129 as: Reducing the impacts of a proposed development and/or offsetting the loss of habitat values resulting from development. In fish, wildlife, and big game range areas, mitigation may include, but is not necessarily limited to, requiring: 1) clustering of structures near each other and roads, controlling location of structures on a parcel to avoid habitat conflicts.... 2) replacing unavoidable loss of values by reestablishing resources for those lost... In other areas of significant wildlife value, such as wetlands, riparian vegetation, and special bird nesting sites, maintenance and enhancement of remaining habitat, setbacks and restoration of damage and avoiding damage would be appropriate.

rather than the Division 23 rules, it is not subject to provisions in Metro's UGMFP limiting repeal or amendments (Title 13, § 3.07.1330 (a) (2) (c)). Under Title 13, the County could rely only on the Tualatin Basin decision and delete the subjective standard without addressing any mitigation criteria for *Upland/Wildlife Habitat* and would be compliant with Title 13, based on Tualatin Basin Program decisions to lightly limit development in impact areas outside of Class I and II Riparian Habitat.

At the time the Tualatin Basin Program decision was adopted, however, the County did not change the subjective provisions of § 422-3.6. In developing a replacement for the subjective standards found in this section, for A-Engrossed Ordinance No. 869 the County considered deleting the standard altogether as it applied to *Upland/Wildlife Habitat* since the determination through the Tualatin Basin Program decision was that development in these areas be "lightly limited," which meant in this case that voluntary and incentive-based approaches were to be used to encourage preservation. However, since some limited protections in the form of mitigation for fish and wildlife habitat had been in place over time through the subjective provisions of § 422-3.6, changes have been made to require that a specified percentage of field-verified habitat be preserved in perpetuity. This goes beyond the incentive-based approach of the Tualatin Basin Program but provides a similar level of protection to these resources compared to the historical results from past residential development projects.

The County is not embarking on a new Goal 5 process but rather clarifying aspects of the Tualatin Basin Program and existing standards. Under the Tualatin Basin ESEE analysis no areas were expected to receive complete protection. Development in Class I and II Riparian Habitat was to be strictly to moderately limited. For all other resource areas inside the regional UGB prior to 2005, development was to be lightly limited, meaning establishing voluntary and incentive-based measures. Such measures were adopted through A-Engrossed Ordinance No. 662 in 2006, including habitat friendly development practices to incentivize rather than regulate protection for all other wildlife habitat areas. Through these changes, the County is expanding on the minimum requirements of UGMFP Title 13 by quantifying the County's mitigation standard for *Upland/Wildlife Habitat* with clear and objective standards based on the past practice and policies identified in the CFP.

### ***Significant Natural Areas (§ 422-6)***

Significant Natural Areas (SNAs) are sites of special importance in their natural condition, for their ecological, scientific and educational value. These are identified in community plans and the RNRP. Current CDC language requiring additional perimeter landscaping or avoidance of the building footprint in these areas is subjective. The amendments in A-Engrossed Ordinance No. 869 provide clear and objective standards for landscaping and setbacks from the resource for SNAs in the urban area. For the rural area, the current language is proposed to be retained. This does not change the Goal 5 Program decision for these sites and is consistent with Goal 5 and Comprehensive Plan policies to allow development with limited requirements.

**Goal 5 Mineral and Aggregate Resources (§ 422-11)**

Language has been added to § 422 to clarify the section is not intended to supplant conditions for other Goal 5 resources or add more regulations to a Significant Goal 5 Mineral and Aggregate site than permissible under the governing OARs for such sites, referencing the applicable OAR and Policy 7 of the RNR. This is consistent with Goal 5 and other OARs.

**Planned Development (§ 404-4)**

A-Engrossed Ordinance No. 869 allows *Upland/Wildlife Habitat* and Riparian Corridors outside CWS Vegetated Corridors to count toward up to 100% of the open space requirement for residential, institutional and commercial Planned Developments. These areas are not currently required to be fully preserved through other mechanisms. Therefore, allowing these areas to count toward up to 100% of the Planned Development open space requirement would provide an additional benefit to the County and the community, encouraging preservation and sensitive planning around these areas and offering further opportunity to provide additional habitat protection. This provision is consistent with and helps to implement Goal 5.

**County Comprehensive Plan Policies Related to Goal 5**

Policy 10 of the CFP, Biological Resources and Natural Areas, states: “It is the policy of Washington County to protect and enhance Significant Natural Areas.” Implementing strategies relevant to A-Engrossed Ordinance No. 869 include:

- a. *Identify Significant Natural Resources and directions for their protection or development in the community plans. Those directions shall assure the unique values of SNRs can be examined and **all reasonable methods** for their preservation **can be pursued** prior to development, without penalty for the possible loss of development density that may result. [Emphasis added]*
- b. *Outside of Significant Natural Resources, provide opportunity for the protection and enhancement of Regionally Significant Fish & Wildlife Habitat, as identified by Metro’s Regionally Significant Fish & Wildlife Habitat Map, without penalty for the potential loss of development density that may result.*

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- i. *Coordinate with CWS to adopt and amend local standards, which ensure that fish and wildlife habitats are adequately protected and enhanced in compliance with local, regional, state and federal requirements.*

The County has coordinated with CWS, clarified the references to Metro’s Regionally Significant Fish and Wildlife Inventory, provided consistency in the standards with Title 13 and the Tualatin Basin Program and identified reasonable methods for preservation of the County’s SNRs and therefore finds that A-Engrossed Ordinance No. 869 is consistent with Policy 10 and these strategies.

**Goal 6 – Air, Water and Land Resources Quality**

Goal 6 requires the maintenance and improvement of the quality of the air, water and land resources of the state through the implementation of local plans that address waste and process discharge. Policies 4, 5, 6 and 7 of the CFP and Policies 4, 5, 6 and 7 of the RNRP provide for the maintenance and improvement of the quality of air, water and land resources.

A-Engrossed Ordinance No. 869 does not amend the Plan policies or CDC standards related to air, water or land resources that impact the County's compliance with Goal 6. Plan compliance with Goal 6 is maintained with the amendments made by A-Engrossed Ordinance No. 869. The amendments are consistent with the County's acknowledged policies and standards for protection of Goal 6 resources.

**Goal 7 – Areas Subject to Natural Hazards**

Goal 7 requires the implementation of local land use programs that reduce the risk to people and property from natural hazards such as floods, landslides and earthquakes. Policy 8 of the CFP and Policy 8 of the RNRP set out the County's policy to protect life and property from natural disasters and hazards.

The CDC standards relating to natural disasters and hazards are contained in §§ 410 (Grading and Drainage) and 421 (Flood Plain and Drainage Hazard Area Development). A-Engrossed Ordinance No. 869 does not amend the Plan policies or CDC standards related to natural hazards that impact the County's compliance with Goal 7.

**Goal 8 – Recreational Needs**

Goal 8 requires local jurisdictions to satisfy the recreational needs of citizens and visitors by planning and providing for the siting of necessary recreational facilities. Policies 17, 33, 34, 35 and 39 of the CFP, Policy 24 of the RNRP and the individual community plans address the recreational needs of Washington County's residents and visitors.

A-Engrossed Ordinance No. 869 does not amend the applicable Plan policies or community plans regarding recreational needs. Amendments do not represent newly identified natural resources, but natural resource areas identified through prior adopted ordinances. A-Engrossed Ordinance No. 869 is consistent with the County's acknowledged policies and standards for satisfying recreational needs as required by Goal 8 and maintains compliance with Goal 8.

**Goal 10 – Housing**

Goal 10 requires the provision of housing, including adequate numbers of units within a range of prices, types and densities that provide realistic options to meet citizen needs. Policies 21, 22, 23 and 24 of the CFP, and Policies 19, 25 and 26 of the RNRP address the provision of housing in the urban and rural areas of the County. The CDC contributes to the provision of adequate housing by establishing standards that facilitate development in an orderly and efficient fashion.

LCDC rules implementing Statewide Land Use Planning Goal 10 (Housing), found in OAR Chapter 660, Divisions 7 and 8, describe a methodology for cities to maintain sufficient area zoned for residential development to accommodate projected housing demand for 20 years. The methodology includes calculating the amount of available “buildable land.” The rules exclude various categories of constrained lands from this calculation, including areas subject to codes that implement Goals 5, 6, 7, 15, 16 and 17. In the past, the requirement for clear and objective standards for housing applied only to “buildable lands,” as the majority of housing was to be developed in these areas. This structure aligned with the use of subjective standards in local codes, which are either prescribed by Goals 15-17 or serve well to implement Goal 5 and 7 objectives. Senate Bill 1051 has changed this structure by requiring a local government to apply only clear and objective standards in the context of housing development applications to protect resources or mitigate hazards on these lands.

The CDC modifications described in A-Engrossed Ordinance No. 869 were developed in response to state law changes to ORS § 215.416 requiring local jurisdictions to adopt standards that are clear and objective for urban residential land development. The County took corrective action with A-Engrossed Ordinance No. 869 to refine the SNR requirements so that they are clear and objective for urban residential development. The County did not change any other standards that would affect housing development or reduce density requirements as a result.

For changes to the Planned Development section, applicants may now apply all of the preserved *Upland/Wildlife Habitat* to the amount of open space required when using the Planned Development standards. The Planned Development standards require a certain amount of area be set aside for open space. A portion of the area needed to be “usable.” With this change, all of the preserved *Upland/Wildlife Habitat* can be used to meet this requirement, allowing for more flexibility, consistent with Goal 10.

### **Goal 11 – Public Facilities and Services**

Goal 11 requires a plan for the orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. Policies 15, 25, 26, 27, 28, 29, 30 and 31 of the CFP, and Policy 22 of the RNRP address the provision of public facilities and services in the urban and rural areas of unincorporated Washington County. The CDC requires that adequate public facilities and services be available for new development.

A-Engrossed Ordinance No. 869 does not change any of the requirements for orderly and efficient public facilities and services provided in the County and therefore is consistent with Goal 11.

### **Goal 12 – Transportation**

Goal 12 requires the provision and encouragement of a safe, convenient, multimodal and economic transportation system. Policy 32 of the CFP, Policy 23 of the RNRP, and the TSP describe the transportation system necessary to accommodate the transportation needs of

Washington County. Implementing measures are contained in the TSP, community plans and the CDC.

A-Engrossed Ordinance No. 869 addresses significant natural resource requirements that development must comply with and are consistent with the County's acknowledged policies and strategies for the provision of transportation facilities and services as required by Goal 12 (the Transportation Planning Rule or TPR, implemented via OAR Chapter 660, Division 12).

A-Engrossed Ordinance No. 869 does not amend the TSP, modify any road classification or standard, or allow new or different types of land development inconsistent with the TSP. A-Engrossed Ordinance No. 869 does not have a significant effect on any existing or planned transportation facility and is consistent with the Transportation Planning Rule as defined in OAR § 660-012-0060. Therefore, plan compliance with Goal 12 is maintained by A-Engrossed Ordinance No. 869.

### **Goal 13 – Energy Conservation**

Goal 13 requires developed land uses to be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles. Policies 35, 36, 37, 38, 39 and 40 of the CFP, and Policy 25 of the RNRP address energy conservation in the urban and rural areas of unincorporated Washington County. The CDC implements the energy conservation policies by establishing standards that promote energy efficient development, especially in Article IV (Development Standards).

A-Engrossed Ordinance No. 869 does not amend the applicable Plan policies or CDC standards relating to energy conservation. Amendments made by A-Engrossed Ordinance No. 869 do not impact compliance with the County's acknowledged policies and strategies for promoting energy conservation as required by Goal 13. Plan compliance with Goal 13 is maintained.

### **Goal 14 – Urbanization**

Goal 14 requires provisions for the orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. Policies 13, 14, 16, 17, 18, 19, 41 and 42 of the CFP address urbanization within the regional UGB. The CDC implements the urbanization policies by establishing standards to promote appropriate urban development. The community plans implement the urbanization policies by designating sufficient land for appropriate development.

A-Engrossed Ordinance No. 869 does not amend the applicable Plan policies or CDC standards relating to urbanization. Amendments made by A-Engrossed Ordinance No. 869 do not impact compliance with the County's acknowledged policies and strategies for promoting urban development as required by Goal 14. Plan compliance with Goal 14 is maintained.

**Part 3:****URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN FINDINGS**

Title 8, § 3.07.810 of Metro's UGMFP requires that county comprehensive plan changes be consistent with the UGMFP. The following A-Engrossed Ordinance No. 869 findings have been prepared to address Titles 3, 8 and 13 of the UGMFP.

**Title 3 – Water Quality and Flood Management**

Title 3 protects beneficial water uses and functions and values of resources within Water Quality and Flood Management Areas by limiting or mitigating impacts from development activities and protecting life and property from dangers associated with flooding.

**RESPONSE**

The changes to § 422 are related to natural resource protection and clarifying the limited allowed uses within water-related resources. CDC standards related to water quality and flood plain management are found in § 421 (Flood Plain and Drainage Hazard Area Development) and were not modified with this ordinance. The County finds the changes to § 422 align with the Tualatin Basin Decision for the protection of fish and wildlife habitat, and that its implementation is expected to improve the environmental health of the Tualatin River Basin by strictly limiting development in Class I Riparian Habitat, resulting in improved water quality. Therefore, A-Engrossed Ordinance No. 869 is consistent with Title 3.

**Title 8 – Compliance Procedures**

Title 8 sets forth Metro's procedures for determining compliance with the UGMFP. Included in this title are steps local jurisdictions must take to ensure that Metro has the opportunity to review amendments to comprehensive plans. Title 8 requires jurisdictions to submit notice to Metro at least 35 days prior to the first evidentiary hearing for a proposed amendment to a comprehensive plan.

**RESPONSE**

Consistent with Title 8, a copy of proposed Ordinance No. 869 was sent July 15 to Metro, 35 days prior to the first evidentiary hearing. A copy of A-Engrossed Ordinance No. 869 was sent to Metro on Oct. 9. Metro provided no comments on A-Engrossed Ordinance No. 869.



## Title 13 – Nature in Neighborhoods

Title 13 conserves, protects and restores a continuous ecologically viable streamside corridor system integrated with upland wildlife habitat and the urban landscape.

### RESPONSE

The County first complied with Title 13 through the Tualatin Basin Program with the adoption of A-Engrossed Ordinance No. 662 in 2006, which included CDC provisions to facilitate and encourage low-impact, habitat friendly development practices with flexible design standards. In addition, the ordinance amended CFP Policy 10, Biological Resources and Natural Areas, adding an implementing strategy relating to the protection and enhancement of Regionally Significant Fish and Wildlife Habitat and referencing the Tualatin Basin Fish and Wildlife Habitat Program document and related materials.

The changes proposed with this ordinance continue to be consistent with Title 13, specifically § 3.07.1330, *Implementation Alternatives for Cities and Counties*, which describes the requirements of the Tualatin Basin Program under subsection (b) (5).

The County implemented the Tualatin Basin Program through A-Engrossed Ordinance No. 662 in 2006. Development in Class I and II Riparian Habitat was to be strictly to moderately limited. For all other resource areas inside the regional UGB prior to 2005, development was to be lightly limited, meaning establishing voluntary and incentive-based measures, including habitat friendly development practices to incentivize rather than regulate protection for all other impacted habitat areas. The changes adopted with A-Engrossed Ordinance No. 662 fulfilled the County's obligation related to the regional Nature in Neighborhoods program under Title 13.

Through the changes adopted with A-Engrossed Ordinance No. 869, the County is expanding on the minimum requirements of Title 13 by quantifying the County's mitigation standard for *Upland/Wildlife Habitat* with clear and objective standards based on the past practice and policies identified in the CFP. Since the County is not changing any of these current protections for Class I and II Riparian Habitat, the areas on the Metro Regionally Significant Fish and Wildlife Habitat Inventory Map, the County finds A-Engrossed Ordinance No. 869 is consistent with Title 13.

April 06, 2023

TO: Land Conservation and Development Commission

FROM: Brenda Ortigoza Bateman, Ph.D., Director  
Gordon Howard, Community Services Division Manager  
Laura Kelly, Portland Metro Regional Representative



SUBJECT: **Agenda Item 6, April 20-21, 2023, LCDC Meeting**

## **WASHINGTON COUNTY ENFORCEMENT ORDER DECISION**

### **I. AGENDA ITEM SUMMARY**

The Land Conservation and Development Commission (LCDC or commission) will meet on April 20, 2023, to consider the Proposed Order and Recommendation of the commission-appointed hearings officer regarding a petition for enforcement filed against Washington County (county) by Jill Warren (requester).

The petition requests that the Land Conservation and Development Commission order Washington County to bring its comprehensive plan and land use regulations, decisions, and processes into compliance with state law and statewide planning goals related to environmental protection (Goal 5), particularly policies regarding significant natural resources. The county, the Land Use Board of Appeals (LUBA), and the Court of Appeals previously found that the county's code standards were not clear and objective standards for housing in compliance with ORS 197.307(4) and were therefore invalid. The hearings officer's Proposed Order and Recommendation recommends that the commission require the county to amend its code standards that apply to protection of Wildlife Habitat Goal 5 resources so that they comply with ORS 197.307(4) on or before June 30, 2024. It further recommends that the commission order the county to limit its approval of land division and development applications to those applications that do not propose residential development on lands designated in the county's comprehensive plan and Goal 5 protection program as significant Wildlife Habitat until the county has adopted amended code standards that comply with ORS 197.307(4).

For further information about this report, please contact Gordon Howard, Community Services Division Manager, at 503-856-6935 or [gordon.howard@dlcd.oregon.gov](mailto:gordon.howard@dlcd.oregon.gov).

## II. BACKGROUND

In December 2019, the requester filed a petition for enforcement against Washington County for lack of compliance with Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces). The county had determined in its review of a land use application that its provisions protecting significant natural resources in the county's unincorporated urban area were not clear and objective, as required by ORS 197.307, and thus not enforceable.<sup>1</sup> Both LUBA and the Oregon Court of Appeals affirmed the county's determination upon appeal by the requester. The requester petitioned the commission for an enforcement order that would 1) require the county to amend its code provisions protecting significant natural resources to make them clear and objective and also properly implement the county's Goal 5 protection program; and 2) require the county to "stay," or decline to accept, any applications for residential development on lands with significant natural resources until the county had amended its development code.

In January 2020, the commission found good cause to proceed with an enforcement order, appointing a hearings officer to hold a contested case hearing and return a recommendation and draft findings to the commission. The hearings officer held a contested case hearing and provided the commission with a recommendation and draft findings issuing an enforcement order against the county. The draft order directed the county to adopt clear and objective code standards protecting significant natural resources but did not recommend issuance of a stay on processing of development applications until the county had adopted those standards. However, the commission, in its proceedings, determined that a stay on processing applications was necessary, and included this provision in the enforcement order. The commission's decision also terminated the enforcement order upon adoption by the county of clear and objective standards as part of the county's development code protecting significant natural resources.

In October 2020, the county adopted an ordinance amending its community development code to comply with the commission's enforcement order. Accordingly, the enforcement order was terminated. However, the county's ordinance was appealed to LUBA, and in September 2021, LUBA remanded the county's ordinance on several grounds, finding that aspects of the county's code remained short of the clear and

<sup>1</sup> The Oregon Legislature amended ORS 197.307(4) in 2017. The prior version of the statute required clear and objective standards for development applications involving residential development for "needed housing" on "buildable lands." SB 1051, enacted by the 2017 Legislature, removed those terms from the statute, which had the effect of requiring clear and objective standards for any residential development on any property. While previous to 2017 Washington's County's standards regulating development in significant natural resources were not required to be clear and objective, because such lands were not considered "buildable," after the statutory change those standards became inconsistent with state law and could not be enforced in review of a development application for housing.

objective standard set forth in Oregon law.<sup>2</sup> In December 2021, LUBA remanded the county's adoption of habitat assessment guidelines intended to implement its community development code provisions regarding significant natural resources.<sup>3</sup> As a result, the county has reverted to its original community development code provisions (the provisions found not to be clear and objective by the county itself in 2018).

On July 28, 2022, the requester notified the county that she intended to petition the commission for an enforcement order under ORS 197.320(2) and ORS 197.320(10) unless the county promptly amended the rules implementing Goal 5 in its Community Development Code to contain clear and objective protections for designated significant natural resources, and also stayed any development applications affecting these designated significant natural resources until it enacted the clear and objective protections.

The county responded to the requester's notice in a timely manner on September 26, 2022. In its response, the county described its planned action in response to the requester's notification. The county's response describes a broader approach to the issue, which includes a comprehensive update of the county's program to protect natural resources under Goal 5. This includes an update of its 30+ year-old inventory of significant wildlife habitat and water resource sites, an environmental, social, economic, and energy (ESEE) analysis of inventoried wildlife habitat and water resource sites in relation to conflicting uses, and comprehensive plan and community development code amendments to protect these resources (a protection program). The county estimated that the Washington County Board of Commissioners would adopt an ordinance to implement this program in late 2023 or early 2024. The county also noted that it is requiring applicants for residential development projects to address Goal 5 directly and agree to make findings based on the existing version of the Community Development Code.

Not satisfied with the county's response to her notice, on October 14, 2022, the requester submitted to the department a letter and petition requesting the commission order Washington County to promptly amend the rules implementing Goal 5 in its Community Development Code to contain clear and objective protections for designated significant natural resources, and also stay any development applications affecting these designated significant natural resources until it enacted the clear and objective protections. After completing its review as required in OAR 660-045-0070, the department accepted the petition as complete. The department notified the requester of that determination. OAR 660-045-0070(7).

<sup>2</sup> *Community Participation Organization 4M et al v. Washington County*. LUBA 2020-110 (2021)

<sup>3</sup> *Community Participation Organization 4M et al v. Washington County*. LUBA 2021-002 (2021)

At its November 2022 meeting, after reviewing all relevant materials provided by the parties and the department, the commission: found good cause to proceed to a contested-case hearing regarding the requester's petition; directed the director to issue an order describing the reasons for this decision; directed the department to appoint a hearings officer to conduct a contested-case hearing; and directed the hearings officer to schedule a contested case hearing.

The director appointed Anne Davies, an Oregon attorney with experience as a LUBA referee and hearings officer, to conduct a contested case hearing for this matter. Ms. Davies conducted the hearing on February 15, 2023, considering both written and oral presentations from the requester and the county. On March 14, 2023, Ms. Davies filed her Proposed Order for commission consideration and action. The proposed order is included as Attachment A to this staff report.

Pursuant to OAR 660-045-0140(4), the commission may consider the following information in determining whether to adopt the hearings officer's proposed order, in whole or in part, with or without modifications:

- (a) The record of proceedings before the hearings officer (available upon request);
- (b) Timely exceptions to the proposed order (see Attachment B to this staff report);
- (c) Arguments concerning the proposed order and exceptions (oral testimony to be presented at April 20, 2023 commission meeting);
- (d) Recommendations and information from the department (see Section V of this staff report).

The commission may not consider any new evidence at this point in the proceedings.

### **III. PROPOSED ORDER**

First, Ms. Davies' draft order addresses the basis the commission would have for issuing an enforcement order against Washington County. The draft order finds that basis in ORS 197.320(10), regarding clear and objective standards, rather than ORS 197.320(1) or (2), as discussed at the commission's "good cause" hearing in November 2022. ORS 197.320(10) authorizes the commission to issue an enforcement order if "[a] local government's approval standards, special conditions on approval of specific development proposals or procedures for approval do not comply with ORS 197.307 (4) or (6)." The referenced statutes are the "clear and objective standards" requirements for housing contained in state law. The draft order finds the department's rationale for avoiding ORS 197.320(10) in an enforcement order proceeding unpersuasive, for the following reasons:

- The department's assertion that LUBA could resolve these issues is flawed because LUBA does not have the authority to provide the injunctive relief regarding new development applications sought by the requester.
- The statute, which provides that the commission "shall" issue an order if the commission finds lack of compliance with clear and objective standards requirements under ORS 197.320(10) does not give the commission or the department the discretion to deny such petitions for enforcement based upon fear of being "inundated" with similar enforcement petitions.

The proposed order prepared by Ms. Davies comes to the following conclusions:

1. The county has a Goal 5 program that relies on the provisions of CDC 422, including CDC 422-3.3, 422-3.4, and 422-3.6 to implement the Goal 5 program. The provisions that are currently in effect are the same provisions that were in effect during the 2020 enforcement proceedings. For the same reasons articulated in the 2020 enforcement order, the county's provisions are out of compliance with Goal 5. Specifically, CDC 422-3.6 is the only regulation that applies to protect the upland habitat. LUBA's and the Court of Appeal's decisions in *Warren v. Washington County* resulted in a determination that this regulation not clear and objective and thus invalidated as to housing applications by ORS 197.307(4).
2. The county has been relying on "interim" measures that require an applicant for residential development in the protected area to voluntarily agree to be bound by the Code standards that the Court of Appeals determined in *Warren* were not clear and objective and thus unenforceable. ORS 197.307(6) provides the applicant the option of proceeding under a clear and objective track or an alternative non-clear and objective process that must be formally "adopted" in the code. The CDC does not have a non-clear and objective alternative track for processing housing applications. Further, without an enforcement order in place, the county would be required to process an application even if the applicant refused to be bound by the non-clear and objective approval criteria. If the county denied the application on that basis, and the applicant appealed to LUBA, LUBA would be forced to follow the law and overturn the denial because the non-clear and objective approval criteria would be unenforceable as a matter of law and thus could not provide a basis for denial. Accordingly, the "interim" measures the county is relying on are not adequate, in part because they are not clear and objective, to ensure compliance with Goal 5.
3. The LUBA and Court of Appeals decisions in *Warren v. Washington County* require the county to amend the standards within its CDC that were invalidated because they were not clear and objective standards for housing. Because the county's standards are not expected to be amended until late 2023 or early 2024, and its "interim" measures are not adequate, the county's Goal 5 program is no longer being fully implemented. Therefore, the county is out of compliance with Goal 5.

4. The commission has broad discretion to determine the appropriate remedy once it is determined that there is good cause to believe that grounds for enforcement exist. Because the county asserts that it has secured funding and can complete its current proposed work program within 18 months, a compliance date of July 1, 2024, should afford the county sufficient time to complete its required work program. Despite the county's assurances that it intends to complete review of its Goal 5 protection measures during this time period anyway, an enforcement order requiring the county to make such amendments would be advisable to ensure the amendments actually occur.

5. CDC 422-3.6 is the only regulation protecting the county's upland habitat and it is unenforceable because it is not clear and objective. As a result, the county is not currently protecting upland habitat under Goal 5. Accordingly, the county's processing of housing applications in the area of the upland habitat with no protections is contrary to the public interest in the conservation and sound development of those lands. It follows that an order directing the county to cease processing housing applications for land use approvals on land designated Wildlife Habitat pending the county's adoption of a compliant Goal 5 program is warranted.

In summary, Ms. Davies' proposed order recommends that the commission issue an enforcement order pursuant to ORS 197.320(10) directing Washington County to amend its code standards that were invalidated because they were not clear and objective standards for housing in a manner that complies with ORS 197.307(4) on or before June 30, 2024. The proposed order further recommends that the commission order the county to limit its approval of land division and development applications to those applications that do not propose residential development on lands designated in the county's comprehensive plan and Goal 5 protection program as significant Wildlife Habitat until the county has adopted amended code standards that comply with ORS 197.307(4). However, the limitation should not prohibit the county from approving residential land division and development applications on lands that partially consist of Wildlife Habitat if the application proposes no development on that portion of the application site designated Wildlife Habitat. Further, this limitation on approving such residential land divisions and development applications should apply during the interim period starting from the date the commission issues its order until the effective date of the county's amended code standards, along with findings demonstrating compliance with ORS 197.307(4), regardless of whether any party petitions for review of the county's adoption to LUBA or other appellate body.

#### **IV. EXCEPTIONS TO PROPOSED ORDER**

On March 30, 2023, the department received one exception to the hearings officer's Proposed Order and Recommendation. Washington County, represented by Senior Assistant County Counsel Rob Bovett, filed an exception disagreeing with the Hearings Officer's conclusions regarding four points (see Attachment B):

1. The recommendation to issue an enforcement order;

2. DLCD staff's framing of the issues to be decided in this matter;
3. The county's compliance deadline in the recommended enforcement order; and
4. The scope of the recommended stay.

The department has reviewed the exceptions and finds two issues cause the department to reconsider its conclusion and recommendation. One is the county's request to complete its code amendments by October 1, 2024 instead of the recommended date of July 1, 2024, due to the complex nature of the work involved. The department has no objection to this modification.

The department also concurs with the county's concern with the scope of the recommended stay. Although the county does not articulate the reasons why a clarification or narrowing of the scope would be prudent, the department can provide several. First, because the recommended stay would apply not only to residential land division applications, but also to residential development applications, the county would be prevented from approving applications proposing modifications to an existing dwelling unit, including dwelling units that predate the county's acknowledged Goal 5 program. Modifications that do not expand the building footprint of the existing dwelling unit, such as internal conversions of existing dwelling units into middle housing and adding additional height (*e.g.*, adding an additional story) to a dwelling unit would not encroach into designated significant Wildlife Habitat. However, because the existing dwelling unit itself may be located within the mapped Wildlife Habitat, the recommended stay would prevent the county from approving such modifications.

Additionally, the recommended stay would prevent the county from approving building permits for new dwelling units or modifications to existing dwelling units on lots where such development has already been approved by the county under its acknowledged Goal 5 program. The county's protection program for Goal 5 resources, first acknowledged by the commission in 1984, includes a land use review process for sites with identified significant natural resources that includes requiring an applicant to describe alterations to Wildlife Habitat and provide findings regarding the preservation or mitigation of the resource. In other words, the county has, for nearly four decades, approved residential land divisions and developments in designated Wildlife Habitat conditioned on specific protection and/or mitigation measures. However, because these land divisions and developments may continue to be shown within the mapped Wildlife Habitat, the stay would prevent the county from approving the building permits needed to complete the expected development and associated protection/mitigation measures. Because such developments have already been assessed for their impacts to Wildlife Habitat, the invalidation of the county's review of future land use applications due to lack of compliance with clear and objective provisions has no bearing on the applicant's



requirement to comply with the protection/mitigation measures specified in the county's initial approval of the development.

## **V. DEPARTMENT RECOMMENDATION**

The department agrees with the contents and recommendations in Ms. Davies' proposed order, and recommends the commission adopt it, with modifications. The order, as modified, properly limits the matter to Washington County's invalidated development code provisions, provides a reasonable timeframe for the county to remedy the provisions, and adequately restricts land divisions and development only within designated Wildlife Habitat areas. The department believes that these measures to be necessary to protect the significant resources, as required by Goal 5.

The department recommends the following language clarifying the scope of the stay to allow for the above-described circumstances:

- (1) Commission direct the county to amend its Code standards that apply to protection of the Wildlife Habitat Goal 5 resource so that they comply with ORS 197.307(4) on or before ~~June 30, 2024~~ **October 1, 2024**; and
- (2) Commission order the county to limit its approval of land division and development applications to those applications that do not propose residential development on lands designated in the county's comprehensive plan and Goal 5 protection program as significant Wildlife Habitat until the county has adopted amended code standards that comply with ORS 197.307(4) and those standards are effective.
  - a. This limitation does not prohibit the county from approving residential land division and development applications on lands that partially consist of Wildlife Habitat if the application proposes no development on that portion of the application site designated Wildlife Habitat.
  - b. This limitation on approving such residential land divisions and development applications applies during the interim period starting from the date the commission issues its order until the **effective date of the county's adopts** amended code standards, along with findings demonstrating compliance with ORS 197.307(4), regardless of whether any party petitions for review of the county's adoption to LUBA or other appellate body.
- (3) **For the purpose of this order, "development applications" do not include:**
  - a. Applications that do not propose a modification of an existing dwelling unit beyond its existing or approved building footprint; or**
  - b. Applications that propose a new dwelling unit or dwelling units on an existing lot or parcel that was created through approval of a land division that complied with the county's previously effective development review criteria for protection of designated Wildlife Habitat and do not propose any modifications to those approval standards or related conditions of approval.**

**VI. RECOMMENDED ACTION/CONCLUSION**

Recommended motion: I move the commission adopt the order, as recommended by the department and explained in the staff report.

Optional motion 1: I move the commission adopt the proposed order, as recommended by the department and explained in the staff report with the following changes: [specify section number and language of deviations from staff recommendation].

Optional motion 2: I move the commission decline to adopt an enforcement order against Washington County for the following reasons: [specify reasons for decision].

**VII. ATTACHMENTS**

- A. **WASHINGTON COUNTY ENFORCEMENT PROCEEDING PROPOSED ORDER**
- B. **WASHINGTON COUNTY EXCEPTION TO HEARINGS OFFICER PROPOSED ORDER**

AGENDA ITEM 6  
APRIL 20-21, 2023-LCDC MEETING  
ATTACHMENT A

March 15, 2023

Kenneth P. Dobson  
324 S. Abernethy St.  
Portland, OR 97239



Rob Bovett  
Washington County Sr. Assistant County Counsel  
155 N. First Ave, Suite 340, MS #24  
Hillsboro, OR 97124

**SUBJECT: HEARINGS OFFICER RECOMMENDATION – WASHINGTON COUNTY  
ENFORCEMENT PETITION**

Enclosed is the hearings officer recommendation on the Washington County Enforcement Petition filed by Mr. Kenneth Dobson.

The Land Conservation and Development Commission (commission) will consider this proposed order at its meeting on Thursday, April 20. At this time, the matter is the first item scheduled on the agenda after the lunch break, with a tentative start time of 1:00pm. The commission will conduct a public hearing to determine whether or not to issue an enforcement order in this matter, and what the contents of such an enforcement order would include. The meeting will be held electronically and in in the Basement Hearing Room of the Oregon Department of Agriculture Building, 635 Capitol St. NE, Salem OR.

A party to this proceeding may file an exception to the Hearings Officer recommendation. The department must receive such exceptions by Thursday, March 30, 2023, at 5:00 PM. Parties must provide an electronic copy of an exception to the following individuals: Gordon H. Howard ([gordon.howard@dlcd.oregon.gov](mailto:gordon.howard@dlcd.oregon.gov)), Laura Kelly ([laura.kelly@dlcd.oregon.gov](mailto:laura.kelly@dlcd.oregon.gov)) and Casaria Taylor ([casaria.taylor@dlcd.oregon.gov](mailto:casaria.taylor@dlcd.oregon.gov)).

In reviewing the proposed order and adopting the final order, the commission shall not consider new evidence. The commission shall consider only the following:

- (a) The record of proceedings before the hearings officer;
- (b) Timely exceptions to the proposed order;
- (c) Arguments concerning the proposed order and exceptions;
- (d) Recommendations and information from the department.

If you have questions please contact Gordon Howard at [gordon.howard@dlcd.oregon.gov](mailto:gordon.howard@dlcd.oregon.gov) or Laura Kelly at [laura.kelly@dlcd.oregon.gov](mailto:laura.kelly@dlcd.oregon.gov).

Sincerely,

A handwritten signature in blue ink that reads "Gordon H. Howard". The signature is written in a cursive, flowing style.

Gordon H. Howard  
Community Services Division Director

cc: Theresa Cherniak (Washington County), Kirstin Greene, Brenda Bateman, Laura Kelly, Amanda Punton, Casaria Taylor (DLCD) Steve Shipsey (DOJ)



program as significant Wildlife Habitat areas until the County has adopted amended code standards that comply with ORS 197.307(4).”

In October of 2020, the County adopted an ordinance, Ordinance No. 869, amending its code in an attempt to comply with the Commission’s enforcement order, *i.e.*, by adopting standards for protecting Goal 5 natural resources that were clear and objective. The enforcement order was subsequently terminated. However, Ordinance No. 869 was appealed to LUBA. LUBA remanded Ordinance No. 869 on several grounds, finding that aspects of the County’s Code were still not clear and objective. *Community Participation Organization 4M et al v. Washington County* (LUBA No. 2020-110, September 29, 2021), *aff’d w/o opinion*, 316 Or App 577 (2021) (*Community Participation Organization*).<sup>1</sup> As a consequence of that remand, Ordinance No. 869 is no longer effective, and the previous code provisions (the ones found by the County, LUBA and the Court of Appeals to be not clear and objective and thus unenforceable) apply.

Concluding that the County was once again out of compliance with Goal 5, in the exact same respect it was found to be out of compliance in 2020, Warren again sought an enforcement order against the County. On July 28, 2022, she notified the County of her intent to file a petition for enforcement with the Commission. In its September 26, 2022 response, the County explained that it is taking a broader approach to remedying its noncompliance than it took through Ordinance No. 869. It is undertaking a comprehensive update of the County’s Goal 5 program to protect natural resources under Goal 5. This includes an update of its 30+ year-old inventory of significant wildlife habitat and water resource sites, an environmental, social, economic, and energy (ESEE) analysis of inventoried wildlife habitat and water resource sites in relation to conflicting uses, and comprehensive plan and development code amendments to protect these resources. The County estimated that the Washington County Board of Commissioners would adopt an ordinance to implement this program in late 2023 or early 2024. The County also noted that it is requiring applicants for residential development projects to

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<sup>1</sup> A companion case, decided December 8, 2021, remanded the County’s adoption of habitat assessment guidelines that were meant to implement the code provisions, because those guidelines were also not clear and objective. *Community Participation Organization 4M et al v. Washington County* (LUBA No. 2021-002, December 8, 2021).

address Statewide Planning Goal 5 directly and to agree to make findings based on the existing version of the development code, including those provisions that are not clear and objective.<sup>2</sup> These efforts by the County are referred to herein as the County's "interim" measures.

Not satisfied with the County's response, Warren filed her petition for enforcement. After a recommendation from the Department of Land Conservation and Development (DLCD), the Commission determined there was good cause to initiate enforcement proceedings against the County to determine whether the County is in compliance with Goal 5. The Commission appointed a Hearings Officer to conduct the contested case proceeding and prepare findings of fact, conclusions of law, and recommended actions.

As identified in the Notice of Contested Case Hearing, four issues were considered in this proceeding:

- (1) Are the "interim" measures Washington County has been using to regulate development in significant natural areas and riparian corridors, after its code provisions were found invalid as not being clear and objective in 2019, clear and objective pursuant to ORS 197.307(4) or (6)?
- (2) If Washington County's "interim" measures are not clear and objective pursuant to ORS 197.307(4) or (6), are its SNR provisions out of compliance with the goals, in particular Goal 5?
- (3) If the county is not adequately protecting significant natural areas and riparian corridors as required by the county's adopted Goal 5 protection program, then what measures should the commission take to provide a schedule for Washington County to adopt measures that return protection to these resources?
- (4) Should the Commission, as part of an enforcement order, issue a stay or temporary injunction on approvals of land use applications involving development within designated SNRs until the new ordinances are adopted pursuant to ORS 197.335(3)?

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<sup>2</sup> The County acknowledged that that approach was, as of September, 2022, on appeal at LUBA. LUBA has since ruled on that appeal; that ruling, *Delmonico*, is discussed below.

The County submitted a hearing memorandum, and both the County and Warren provided oral argument on these issues. Based on the record, the Hearings Officer makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

There are no disputed facts.

### **CONCLUSIONS OF LAW**

#### Introduction

At the outset, it will be helpful to understand the specific regulations at issue. In *Warren*, LUBA and the Court of Appeals held that three different Code provisions were invalid and unenforceable as not clear and objective—Community Development Code (CDC) 422-3.3, CDC 422-3.4, and CDC 422-3.6. Community Development Code Chapter 422 is entitled “Significant Natural Resources (SNR).” The SNRs are classified in the following categories: “Water Areas and Wetlands,” “Water Areas and Wetlands and Fish and Wildlife Habitat,” “Wildlife Habitat,” and “Significant Natural Areas.” Generally, CDC 422-3.3 restricts disturbance of soil and vegetation in riparian areas and provides various exceptions including enhancement of degraded areas. Section 3.4 sets forth a list of requirements for enhancements of riparian SNRs, including a wildlife survey, a biologist report, and review of the proposal by the Oregon Department of Fish and Wildlife. Finally, Section 3.6 applies to SNRs including Wildlife Habitat such as the upland Douglas fir area, and prohibits interference with SNRs unless the interference is mitigated.<sup>3</sup> Warren focuses most of her attention on CDC 422-3.6, which she alleges is the only provision that affords protection to the Wildlife Habitat and that, once that provision is rendered inapplicable because it is not clear and objective, the Wildlife Habitat is left essentially completely unprotected.<sup>4</sup>

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<sup>3</sup> CDC 422-3.6 provides:

“For any proposed use in a Significant Natural Resource Area, there shall be a finding that the proposed use will not seriously interfere with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, or how the interference can be mitigated. This section shall not apply in areas where a Goal 5 analysis has been completed and a program decision has been adopted that allows a ‘conflicting use’ to occur pursuant to OAR 660-023-0040(5)(c).”

<sup>4</sup> Ordinance No. 869 proposed to re-name the “Wildlife Habitat” designation as the “Upland/Wildlife Habitat” to distinguish it from the wildlife habitat found at lower elevations. Because, as discussed below, Ordinance No. 869 is no longer effective, this designation will be referred to herein as Wildlife Habitat.



### Questions Presented

The County takes issue with the “Questions” presented in the Notice of Contested Case Hearing and contends that those are not the issues that necessarily naturally flow from the facts and law in this case. To some degree, the Hearings Officer agrees. The foundational issue that the Hearings Officer must determine, pursuant to OAR 660-045-0130(9),<sup>5</sup> is whether there is good cause to believe that grounds for enforcement pursuant to ORS 197.320(1) to (10) or ORS 197.646(3) exist.<sup>6</sup> The first two questions listed in the Notice attempt to address that foundational issue.

1. *Are the “interim” measures Washington County has been using to regulate development in significant natural areas and riparian corridors, after its code provisions were found invalid as not being clear and objective in 2019, clear and objective pursuant to ORS 197.307(4) or (6)?*
2. *If Washington County’s “interim” measures are not clear and objective pursuant to ORS 197.307(4) or (6), are its SNR provisions out of compliance with the goals, in particular Goal 5?<sup>7</sup>*

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<sup>5</sup> Pursuant to OAR 660-045-0130(9), the Hearings Officer’s initial determination is “whether there is good cause to believe that grounds for enforcement pursuant to ORS 197.320(1) to 197.320(10) or 197.646(3) exist.”

<sup>6</sup> As relevant to this proceeding, ORS 197.320 provides:

“The Land Conservation and Development Commission shall issue an order requiring a local government, state agency or special district to take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions or actions into compliance with the goals, acknowledged comprehensive plan provisions, land use regulations or housing production strategy if the commission has good cause to believe:

- (1) A comprehensive plan or land use regulation adopted by a local government not on a compliance schedule is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;
- (2) A plan, program, rule or regulation affecting land use adopted by a state agency or special district is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;

\* \* \* \* \*

(10) A local government’s approval standards, special conditions on approval of specific development proposals or procedures for approval do not comply with ORS 197.307 (4) or (6).”

<sup>7</sup> The Hearings Official believes that the second question should logically be answered first. That is, only after it is determined that the applicable, adopted provisions are out of compliance with Goal 5 is it appropriate to address whether the County’s “interim” measures are adequate to comply with Goal 5.

With regard to the foundational issue identified above, Warren argues that an enforcement order is authorized under ORS 197.320(1) and (10). While the Commission found good cause to proceed to a contested case hearing in this matter, it did not clearly articulate the statutory basis for the finding of good cause. Staff had recommended that good cause to proceed existed pursuant to subsection (1), but not subsections (2) or (10).<sup>8</sup> In the Commission's previous order, the Commission concluded that subsection (1) did not apply. *See Exhibit 2 at 5-6.* For the same reasons articulated in that order, the Hearings Officer concludes that subsection (1) does not apply here.

With regard to ORS 197.320(10), the County asserts that it has an acknowledged Goal 5 plan and is in the process of amending that plan following an OAR Chapter 660, Division 23, Goal 5 process in accordance with the LUBA remand in *Community Participation Organization*. Accordingly, the Hearing Officer understands the County to assert that it is not out of compliance with Goal 5 and an enforcement order is thus not authorized.

The Hearings Officer disagrees. In its previous enforcement order, the Commission found grounds for an enforcement order under ORS 197.320(10) because local provisions that formed the basis for the Goal 5 plan were not clear and objective. In discussing the basis for an enforcement order under ORS 197.320(10) in the previous enforcement proceeding, the Commission explained as follows:

“The bottom line is that the County has a Goal 5 program that relies on the provisions of CDC 422, including CDC 422-3.3, 422-3.4, and 422-3.6 to implement the Goal 5 program. When those provisions are invalidated as to housing applications by ORS 197.307(4) and *Warren v. Washington County*, the County's Goal 5 program is no longer being fully implemented.” Exhibit 2 at 7.

In this case, the County argues that the Commission should not issue an enforcement order under ORS 197.320(10), at least in part based on the logic presented by staff in its staff report before the Commission's good cause hearing. The staff report provided:

“First, LUBA has shown itself able to review local government code provisions in the context of a specific development application, and able to reverse local government decisions using those provisions or affirm local government decisions

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<sup>8</sup> Staff also determined that subsection (2) applies only to state agencies. The Hearings Officer agrees and does not address subsection (2) further.

that decline to enforce such provisions. Commission enforcement proceedings for such provisions would duplicate LUBA's work. Second, if the commission were to be less selective and start entertaining petitions for enforcement for smaller individual violations of the clear and objective standards requirements of state law the commission would possibly be inundated with petitions for enforcement on such matters, to the detriment of the commission's other important work maintaining and improving the state's comprehensive land use planning system." See Exhibit 105, page 9.

The Hearings Officer disagrees with this rationale for several reasons. First, as asserted by Petitioner at the contested case hearing, where a hearings officer finds good cause to believe that grounds for enforcement exist, the hearings officer "*must* recommend, appropriate corrective action." OAR 660-045-0130(10) (emphasis added). In other words, once good cause is found, a hearings officer is required to recommend corrective action. The Hearings Officer agrees. Second, the Hearings Officer disagrees that issuing an enforcement order would duplicate the work of LUBA. LUBA does not have injunctive authority. LUBA's authority emanates from statute, and ORS 197.835 only authorizes LUBA to affirm, remand, or reverse a land use decision that is before it on appeal. Where LUBA determines an approval criterion is not clear and objective, that approval criterion cannot be applied to housing applications. Where that particular approval criterion was one of or the only standard protecting a Goal 5 resource, LUBA is ill equipped to manage the consequences of ruling that standard unenforceable. It is only the Commission, acting on an enforcement petition, that can order a local government to take specific actions to come into compliance with the Goals.

Finally, staff articulate a concern that finding an enforcement order justified under ORS 197.320(10) in instances where provisions are determined to be not clear and objective would open the floodgates and potentially inundate the Commission with petitions for enforcement in such matters. The Hearings Officer disagrees with staff on this point. First, an enforcement order is not justified in every instance where an approval criterion for a housing application is not clear and objective. An enforcement order would only be justified in a case such as this where the ruling that an approval criterion is not clear and objective leaves the local government out of compliance with Goal 5. That will not always be the case. Second, even if the Commission's workload were increased as a result of issuing an enforcement order in circumstances like this one, the Hearings Officer believes that the circumstances warrant action, and an enforcement order would likely be the only or best way to address the fact that the

unenforceability of certain provisions renders the local government out of compliance with the Goals. If the Commission is inundated with such cases, the legislature would be the appropriate venue for a fix.<sup>9</sup>

The provisions that are currently in effect are the same provisions that were in effect during the 2020 enforcement proceedings. For the same reasons articulated in the 2020 enforcement order, the County's provisions are out of compliance with Goal 5. *See* Exhibit 2, pages 5-7. Specifically, CDC 422-3.6 is the only regulation that applies to protect the upland habitat. Following LUBA's and the Court of Appeal's decision in *Warren*, that provision was determined to be not clear and objective and were thus unenforceable.

That said, the County asserts that it is enforcing "interim" measures to ensure the County is adequately protecting its inventoried significant natural resources in a manner that complies with Goal 5.<sup>10</sup> As the Hearings Officer understands the interim measures, they include a requirement to apply Goal 5 directly to housing applications and that an applicant for residential development in the protected area voluntarily agree to be bound by the Code standards that the Court of Appeals determined in *Warren* were not clear and objective and thus unenforceable.

The interim measures were employed in a recent housing application. Westwood Homes submitted an application for a subdivision creating 15 single-family residential lots on land designated as Wildlife Habitat. The County approved the application, and on a local appeal of that decision, the local hearings official<sup>11</sup> affirmed the approval, essentially agreeing that the County's interim measures were adequate to comply with Goal 5. The hearings official concluded, first, that the LUBA remand of Ordinance No. 869 rendered those regulations adopted by that ordinance no longer effective. The application was thus subject to the acknowledged provisions of former CDC Chapter 422 that were in effect prior to the adoption of Ordinance No. 869. The hearings official then concluded that "Goal 5 is not directly applicable to this application" but that, even if Goal 5 did apply directly, "the application complies [with Goal 5], based on the [applicant's] ESEE analysis." The hearings official noted that the

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<sup>9</sup> The Hearings Officer believes that staff's reasoning is more appropriately addressed to the third question presented—*i.e.*, assuming good cause is found, what is the appropriate remedy for a county's provisions that are not in compliance with the Goals?

<sup>10</sup> The question is not only whether the interim measures are clear and objective. It is also whether the interim measures are adequate to bring the County into compliance with Goal 5.

<sup>11</sup> To avoid confusion, this recommended order will refer to the DLCD Hearings Officer as "Hearings Officer" and to the local hearings official as the "hearings official."

applicant in that case agreed to comply with the acknowledged approval criteria that were not clear and objective rather than applying Goal 5 directly. *See Delmonico* decision, Exhibit 109. The hearings official indicated that “[t]his is allowed by ORS 197.307(6). \* \* \* [The *Warren* decisions] did not preclude applicants from agreeing to apply these provisions as a subjective alternative approval process allowed by ORS 197.307(6).” *See* Exhibit 109 at 24.

That decision was appealed to LUBA, and LUBA affirmed. Importantly, however, the petitioner in that case did NOT challenge the hearings official’s finding that Goal 5 did not apply directly. Because the petitioner did not make that argument, LUBA was left to assume, but did not decide, that the hearings official was correct that Goal 5 did not apply directly.<sup>12</sup> Because that issue was not on the table, the County’s decision was affirmed.<sup>13</sup>

First, the Hearings Officer disagrees with the hearings official’s determination that ORS 197.307(6) authorizes a local government to process a housing application and apply non-clear and objective approval criteria so long as the applicant agrees to be so bound. ORS 197.307(6) provides:

“In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government *may adopt and apply an alternative approval process* for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

- (a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

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<sup>12</sup> LUBA held:

“The hearings officer concluded that intervenor’s application ‘is subject to the acknowledged provisions of former CDC 422 that was in effect prior to the adoption of Ordinance 869. Therefore, Goal 5 is not directly applicable to this application.’ Petitioner does not challenge that finding or otherwise explain why Goal 5 applies directly to the application. Although petitioner asserts that, ‘[i]n the absence of a viable and acknowledged Goal 5 program for Wildlife Habitat, the County must apply statewide Goal 5 rules to the application,’ petitioner does not explain why, even if Ordinance 869 is not effective after our remand, the county lacks an acknowledged Goal 5 program. As explained above, prior to the adoption of Ordinance 869, the county’s Goal 5 program was acknowledged. We assume, based on petitioner’s lack of challenge to the hearings officer’s finding that Goal 5 does not apply, that the hearings officer was correct that Goal 5 does not apply.” *Delmonico v. Washington County*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2022-072, November 11, 2022), slip op. 9-10 (citations omitted).

<sup>13</sup> Further, because that issue was not actually decided by LUBA, the Hearings Officer believes it is an open question whether Goal 5 can be applied directly where the applicable approval criteria are out of compliance with Goal 5.

- (b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and
- (c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.” (Emphasis added).<sup>14</sup>

The Hearings Officer does not agree that ORS 197.307(6) authorizes an applicant to simply agree to be bound by approval criteria that have been determined to be not clear and objective. Subsection (6) authorizes a local government to “adopt” and “apply” an alternative, non-clear and objective approval process, so long as the applicant still has the option of proceeding under the clear and objective track. That alternative non-clear and objective process must be formally “adopted” in the code in order to satisfy subsection (6). The CDC does not have a non-clear and objective alternative track for processing housing applications.

Further, as Petitioner pointed out at the contested case hearing, without an enforcement order in place, the County would be required to process an application even if the applicant refused to be bound by the non-clear and objective approval criteria. If the County denied the application on that basis, and the applicant appealed to LUBA, LUBA would be forced to follow the law and overturn the denial because the non-clear and objective approval criteria would be unenforceable as a matter of law and thus could not provide a basis for denial.<sup>15</sup>

In summary, the County’s duly adopted regulations are not in compliance with Goal 5 for the same reasons articulated in the Commission’s 2020 enforcement order. Further, the “interim” measures the County is relying on are not adequate, in part because they are not clear

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<sup>14</sup> ORS 197.307(4) provides:

“Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”

<sup>15</sup> Further, under ORS 197.843, a local government could be liable for attorney fees if LUBA overturns a local decision denying an application for needed housing when that denial is based on non-clear and objective approval criteria.

and objective, to ensure compliance with Goal 5.<sup>16</sup> Accordingly, the Hearings Officer agrees with Petitioner that there is good cause to believe that grounds for enforcement exist pursuant to ORS 197.320(10).

*3. If the county is not adequately protecting significant natural areas and riparian corridors as required by the county's adopted Goal 5 protection program, then what measures should the commission take to provide a schedule for Washington County to adopt measures that return protection to these resources?*

The Hearings Officer, and thus the Commission, has broad discretion to determine the appropriate remedy once it is determined that there is good cause to believe that grounds for enforcement exist. Once the Hearings Officer determines good cause exists, they “must” recommend appropriate corrective action (OAR 660-045-0130(10)) and “may” recommend one or more interim measures, in accordance with ORS 197.335(3) and (4).<sup>17</sup> OAR 660-045-0130(11).

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<sup>16</sup> At the hearing, Petitioner explained that applying Goal 5 directly was not sufficient because that exercise is not “clear and objective.” The Hearings Officer agrees that there are few exercises less clear and objective than conducting an ESEE analysis, which is what would ultimately be required if Goal 5 were applied directly to a housing application. Accordingly, an order directing the County to apply Goal 5 directly to housing application would not be an adequate process for determining compliance with Goal 5.

<sup>17</sup> ORS 197.335(3) provides:

“(a) If the commission finds that in the interim period during which a local government, state agency or special district would be bringing itself into compliance with the commission’s order under ORS 197.320 or subsection (2) of this section it would be contrary to the public interest in the conservation or sound development of land to allow the continuation of some or all categories of land use decisions or limited land use decisions, *it shall, as part of its order, limit, prohibit or require the approval by the local government of applications for subdivisions, partitions, building permits, limited land use decisions or land use decisions until the plan, land use regulation or subsequent land use decisions and limited land use decisions are brought into compliance.* The commission may issue an order that requires review of local decisions by a hearings officer or the Department of Land Conservation and Development before the local decision becomes final.

(b) Any requirement under this subsection may be imposed only if the commission finds that the activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and that the requirement is necessary to correct the violation.

(c) The limitations on enforcement orders under subsection (1)(c)(B) of this section shall not be interpreted to affect the commission’s authority to limit, prohibit or require application of specified criteria to subsequent land use decisions involving land use approvals issued by a local government prior to the date of adoption of the enforcement order.” (Emphasis added).

ORS 197.335(4) authorizes the Commission to withhold grant funds and is not applicable here.

As the County has explained, it is currently in the process of revamping its Goal 5 program, which includes a new inventory of significant Goal 5 natural resources, revised comprehensive plan provisions, and adoption of clear and objective Code provisions. This endeavor is currently entirely voluntary on the part of the County, as LUBA does not have injunctive authority, and the Commission's 2020 enforcement order was terminated once Ordinance No. 869 was adopted. The County's choice to conduct a more comprehensive review of its Goal 5 program, however, should not be used against it in this proceeding. As the Commission found in its 2020 order, the County was not necessarily required to conduct such a comprehensive review in order to bring its Goal 5 program into compliance with Goal 5. That said, the County will, at the very least, be required to amend the non-clear and objective Code standards that were invalidated by the *Warren* decisions.

The County asserts that it has secured funding and can complete its current proposed work program within 18 months.<sup>18</sup> The Hearings Officer believes that a compliance date of July 1, 2024 should afford the County sufficient time to complete its required work program.<sup>19</sup>

*4. Should the Commission, as part of an enforcement order, issue a stay or temporary injunction on approvals of land use applications involving development within designated SNRs until the new ordinances are adopted pursuant to ORS 197.335(3)?*

Petitioner argues that a stay is necessary to ensure that development is not approved on protected lands in violation of Goal 5 pending the County's adoption of Goal 5-compliant regulations. The County, predictably, argues that, notwithstanding the fact that its applicable Code provisions might be out of compliance with Goal 5, an enforcement order should not issue because it is already doing everything that an enforcement order would require of it. The County also contends that a stay is not necessary, at least in part because its "interim" measures are sufficient to ensure compliance with Goal 5. As discussed above, the County's "interim" measures are not adequate to bring the County's Goal 5 program into compliance with Goal 5.

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<sup>18</sup> When clarification was sought at the contested case hearing, the County indicated that that timeline would begin January of 2023.

<sup>19</sup> To be clear, the "required" work program; *i.e.*, the work subject to the proposed enforcement order would only include the adoption of clear and objective approval criteria. The remainder of the County's current work program is entirely voluntary and not "necessary" to bring their Goal 5 program into compliance with Goal 5.



Pursuant to ORS 197.335(5), quoted in n. 17 above, where the Hearings Officer finds that it would be contrary to the public interest in the conservation or sound development of land to allow the continuation of processing applications, the Hearings Officer is required to “*limit, prohibit or require the approval by the local government of applications for subdivisions, partitions, building permits, limited land use decisions or land use decisions until the plan, land use regulation or subsequent land use decisions and limited land use decisions are brought into compliance.*” Petitioner seeks such a stay here. The County counters that a stay is not necessary and would interfere with the County’s efforts to provide much needed housing. Petitioner responded by pointing out the limited acreage of lands designated Wildlife Habitat, approximately 300 acres, and the limited duration of the stay—18 months. According to Petitioner, the amount of acreage impacted by a stay and the relatively short duration will not significantly interfere with the County’s efforts at providing needed housing. The Hearings Official agrees with Petitioner that, on balance, the need to protect the significant resource from development outweighs the minimal impact the stay would have on the County’s efforts to provide needed housing.

The Hearings Officer finds that, because CDC 422-3.6 is the only regulation protecting the upland habitat, and because it is unenforceable because it is not clear and objective, the upland habitat is currently not being protected, as required by Goal 5. Accordingly, the County’s processing of housing applications in the area of the upland habitat with no protections is contrary to the public interest in the conservation and sound development of those lands. The Hearings Officer therefore recommends that the Commission order the County to cease processing housing applications for land use approvals on land designated Wildlife Habitat pending the County’s adoption of a compliant Goal 5 program.

### **RECOMMENDATION**

Based on the preceding findings of fact and conclusions of law, the Hearings Officer recommends that the Commission issue an enforcement order pursuant to ORS 197.320(10) directing Washington County to amend its development code provisions, discussed above, which provide protections to the County’s Goal 5 designated significant natural resources.

Specifically, the Hearings Officer recommends the following:

- (1) Commission direct the County to amend its Code standards that apply to protection of the Wildlife Habitat Goal 5 resource so that they comply with ORS 197.307(4) on or before June 30, 2024; and
- (2) Commission order the County to limit its approval of land division and development applications to those applications that do not propose residential development on lands designated in the County's comprehensive plan and Goal 5 protection program as significant Wildlife Habitat until the County has adopted amended code standards that comply with ORS 197.307(4).
  - a. This limitation does not prohibit the County from approving residential land division and development applications on lands that partially consist of Wildlife Habitat if the application proposes no development on that portion of the application site designated Wildlife Habitat.
  - b. This limitation on approving such residential land divisions and development applications applies during the interim period starting from the date the Commission issues its order until the date the County adopts amended code standards, along with findings demonstrating compliance with ORS 197.307(4), regardless of whether any party petitions for review of the County's adoption to LUBA or other appellate body.



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Anne C. Davies  
Hearings Officer

March 14, 2023

**BEFORE THE**

**LAND CONSERVATION AND DEVELOPMENT COMMISSION**

**OF THE STATE OF OREGON**

In the Matter of the Petition of  
JILL WARREN  
under ORS 197.324 for an  
Enforcement Order Against  
WASHINGTON COUNTY

**WASHINGTON COUNTY'S  
EXCEPTIONS TO PROPOSED  
ENFORCEMENT ORDER,  
AND ARGUMENT**

**1. The Commission Should Not Issue Another Enforcement Order -**

**It is Unnecessary and Harmful**

It has been six years since the passage of 2017 Senate Bill 1051, effectively requiring Washington County to amend its planning code to provide “clear and objective” standards for housing development, including areas within mapped Significant Natural Resources (SNR).

In that time, Washington County’s efforts to amend its code have been repeatedly subject to multiple appeals and proceedings at LUBA, the Court of Appeals, and this Commission.

As ordered by LUBA, Washington County is currently proceeding with a full Goal 5 process in another attempt to enact “clear and objective” standards for development in the SNR. Washington County has no reason to believe those new standards won’t also be appealed.

In short, while 2017 Senate Bill 1051 may have intended to spur on the development of housing to address our ongoing housing shortage crisis as described in Oregon Governor’s Executive Order 23-04 - *see* Record, Exhibit 115 - the results in Washington County have been just the opposite.

At present, there is only a narrow pathway for the development of housing on sites with SNR as charted in the *Delmonico* case. *See* Record, Exhibits 108 and 109. That pathway is difficult and arduous. *See* Record, Exhibits 108, 109, and 114.

The full Goal 5 public process is a rigorous technical process to develop the inventory, prepare an Economic, Social, Environmental and Energy (ESEE) analysis, and develop the plan and regulatory standards to implement the program. This work will take approximately 18 months. Additional time is needed to ensure adequate community engagement, multiple hearings before the Washington County Planning Commission and Board of County Commissioners, and possible ordinance amendments to make any changes that might be needed to address issues that arise during the hearings. *Id.*

This is all being done without a Commission enforcement order. The Commission does not need to order Washington County to do that which it is already doing.

Further, entry of a stay would foreclose even the narrow *Delmonico* pathway. That flies in the face of the Governor's recent Executive Order referenced above and the ongoing housing shortage crisis in Oregon.

Washington County asks the Commission to not enter an enforcement order in this matter. It would be both unnecessary and harmful.

## **2. Additional General and Specific Exceptions**

In the Notice of Contested Case Hearing issued in this matter on December 27, 2022, DLCD staff identified four issues to be decided in this matter. Washington County preserves its prior objections to the framing of those issues. In addition, Washington County takes exception to the Hearings Officer's findings, and incorporates the arguments contained in its Hearing Memorandum in this matter, with additional notations below:

- (a) Washington County takes exception to the finding by the Hearings Officer that Washington County is out of compliance with Goal 5. It is not. Washington County has an acknowledged Goal 5 plan. Washington County is, instead, out of compliance with ORS

197.307 as amended by 2017 Senate Bill 1051, requiring “clear and objective” standards for housing development, including development in the SNR.

- (b) Washington County takes exception to the finding by the Hearings Officer that the Land Use Board of Appeals and the County Hearings Officer were in error in the *Delmonico* case. They weren’t. *Delmonico* is the current state of the law.
- (c) Washington County takes exception to the finding by the Hearings Officer that Commission staff were in error in recommending that the Commission not assert jurisdiction under ORS 197.320(10). Commission staff were correct then, and are still correct now. *See* Record, Exhibit 105, Pages 9 and 10.

**3. If the Commission Decides to Enter an Enforcement Order,  
Washington County Requests Completion by October 1, 2024**

The Hearings Officer in this matter recommended that the Commission order Washington County to amend its code standards that apply to the SNR in order to comply with ORS 197.307 by June 30, 2024. While that completion date is theoretically possible, the history of this matter, as well as the general nature of completing a full Goal 5 process, has demonstrated that numerous additional issues may come up during that process.

The full Goal 5 public process includes extensive community engagement, multiple hearings before the Washington County Planning Commission and Board of County Commissioners, and possible ordinance amendments to make any changes that might be needed to address issues that arise during the hearings.

Thus, an October 1, 2024, completion date should provide enough time for this process and avoid the necessity of requesting an extension.

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**4. If the Commission Decides to Enter an Enforcement Order,  
Washington County Requests the Order Clarify the Scope**

The order language proposed by the Hearings Officer is potentially overbroad. If the Commission chooses to impose a stay, Washington County respectfully requests that any limitations on new residential development applications be limited to land divisions within the UGB that propose development on the portion of the site with designated wildlife habitat.

**5. Conclusion**

For the reasons recited above, as well as in Washington County's Hearing Memorandum, the Commission should not enter an enforcement order or stay in this matter.

RESPECTFULLY SUBMITTED and DATED this 30<sup>th</sup> day of March, 2023.

*s/Rob Bovett*  
Rob Bovett, OSB No. 910267  
Senior Assistant County Counsel  
Rob\_Bovett@washingtoncountyor.gov  
Attorney for Respondent Washington County

**CERTIFICATE OF SERVICE**

---

I certify that on March 30, 2023, I served a true and correct copy of each of the foregoing Washington County's Exceptions to Proposed Enforcement Order, and Arguments on the following persons by electronic copy as indicated:

Ken Dobson, Attorney for Petitioner	<a href="mailto:landlaw.oregon@gmail.com">landlaw.oregon@gmail.com</a>
Gordon H. Howard, DCLD staff	<a href="mailto:gordon.howard@dlcd.oregon.gov">gordon.howard@dlcd.oregon.gov</a>
Laura Kelly, DLCD staff	<a href="mailto:laura.kelly@dlcd.oregon.gov">laura.kelly@dlcd.oregon.gov</a>
Casaria Taylor, DLCD staff	<a href="mailto:casaria.taylor@dlcd.oregon.gov">casaria.taylor@dlcd.oregon.gov</a>

Dated this 30<sup>th</sup> day of March, 2023.

s/Rob Bovett

Rob Bovett, OSB 910267  
Senior Assistant County Counsel  
Rob\_Bovett@washingtoncountyor.gov  
Attorney for Respondent Washington County

April 06, 2023

TO: Land Conservation and Development Commission

FROM: Brenda Ortigoza Bateman, Ph.D., Director  
Gordon Howard, Community Services Division Manager  
Laura Kelly, Portland Metro Regional Representative



SUBJECT: **Agenda Item 6, April 20-21, 2023, LCDC Meeting**

## **WASHINGTON COUNTY ENFORCEMENT ORDER DECISION**

### **I. AGENDA ITEM SUMMARY**

The Land Conservation and Development Commission (LCDC or commission) will meet on April 20, 2023, to consider the Proposed Order and Recommendation of the commission-appointed hearings officer regarding a petition for enforcement filed against Washington County (county) by Jill Warren (requester).

The petition requests that the Land Conservation and Development Commission order Washington County to bring its comprehensive plan and land use regulations, decisions, and processes into compliance with state law and statewide planning goals related to environmental protection (Goal 5), particularly policies regarding significant natural resources. The county, the Land Use Board of Appeals (LUBA), and the Court of Appeals previously found that the county's code standards were not clear and objective standards for housing in compliance with ORS 197.307(4) and were therefore invalid. The hearings officer's Proposed Order and Recommendation recommends that the commission require the county to amend its code standards that apply to protection of Wildlife Habitat Goal 5 resources so that they comply with ORS 197.307(4) on or before June 30, 2024. It further recommends that the commission order the county to limit its approval of land division and development applications to those applications that do not propose residential development on lands designated in the county's comprehensive plan and Goal 5 protection program as significant Wildlife Habitat until the county has adopted amended code standards that comply with ORS 197.307(4).

For further information about this report, please contact Gordon Howard, Community Services Division Manager, at 503-856-6935 or [gordon.howard@dlcd.oregon.gov](mailto:gordon.howard@dlcd.oregon.gov).



## II. BACKGROUND

In December 2019, the requester filed a petition for enforcement against Washington County for lack of compliance with Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces). The county had determined in its review of a land use application that its provisions protecting significant natural resources in the county's unincorporated urban area were not clear and objective, as required by ORS 197.307, and thus not enforceable.<sup>1</sup> Both LUBA and the Oregon Court of Appeals affirmed the county's determination upon appeal by the requester. The requester petitioned the commission for an enforcement order that would 1) require the county to amend its code provisions protecting significant natural resources to make them clear and objective and also properly implement the county's Goal 5 protection program; and 2) require the county to "stay," or decline to accept, any applications for residential development on lands with significant natural resources until the county had amended its development code.

In January 2020, the commission found good cause to proceed with an enforcement order, appointing a hearings officer to hold a contested case hearing and return a recommendation and draft findings to the commission. The hearings officer held a contested case hearing and provided the commission with a recommendation and draft findings issuing an enforcement order against the county. The draft order directed the county to adopt clear and objective code standards protecting significant natural resources but did not recommend issuance of a stay on processing of development applications until the county had adopted those standards. However, the commission, in its proceedings, determined that a stay on processing applications was necessary, and included this provision in the enforcement order. The commission's decision also terminated the enforcement order upon adoption by the county of clear and objective standards as part of the county's development code protecting significant natural resources.

In October 2020, the county adopted an ordinance amending its community development code to comply with the commission's enforcement order. Accordingly, the enforcement order was terminated. However, the county's ordinance was appealed to LUBA, and in September 2021, LUBA remanded the county's ordinance on several grounds, finding that aspects of the county's code remained short of the clear and

<sup>1</sup> The Oregon Legislature amended ORS 197.307(4) in 2017. The prior version of the statute required clear and objective standards for development applications involving residential development for "needed housing" on "buildable lands." SB 1051, enacted by the 2017 Legislature, removed those terms from the statute, which had the effect of requiring clear and objective standards for any residential development on any property. While previous to 2017 Washington's County's standards regulating development in significant natural resources were not required to be clear and objective, because such lands were not considered "buildable," after the statutory change those standards became inconsistent with state law and could not be enforced in review of a development application for housing.

objective standard set forth in Oregon law.<sup>2</sup> In December 2021, LUBA remanded the county's adoption of habitat assessment guidelines intended to implement its community development code provisions regarding significant natural resources.<sup>3</sup> As a result, the county has reverted to its original community development code provisions (the provisions found not to be clear and objective by the county itself in 2018).

On July 28, 2022, the requester notified the county that she intended to petition the commission for an enforcement order under ORS 197.320(2) and ORS 197.320(10) unless the county promptly amended the rules implementing Goal 5 in its Community Development Code to contain clear and objective protections for designated significant natural resources, and also stayed any development applications affecting these designated significant natural resources until it enacted the clear and objective protections.

The county responded to the requester's notice in a timely manner on September 26, 2022. In its response, the county described its planned action in response to the requester's notification. The county's response describes a broader approach to the issue, which includes a comprehensive update of the county's program to protect natural resources under Goal 5. This includes an update of its 30+ year-old inventory of significant wildlife habitat and water resource sites, an environmental, social, economic, and energy (ESEE) analysis of inventoried wildlife habitat and water resource sites in relation to conflicting uses, and comprehensive plan and community development code amendments to protect these resources (a protection program). The county estimated that the Washington County Board of Commissioners would adopt an ordinance to implement this program in late 2023 or early 2024. The county also noted that it is requiring applicants for residential development projects to address Goal 5 directly and agree to make findings based on the existing version of the Community Development Code.

Not satisfied with the county's response to her notice, on October 14, 2022, the requester submitted to the department a letter and petition requesting the commission order Washington County to promptly amend the rules implementing Goal 5 in its Community Development Code to contain clear and objective protections for designated significant natural resources, and also stay any development applications affecting these designated significant natural resources until it enacted the clear and objective protections. After completing its review as required in OAR 660-045-0070, the department accepted the petition as complete. The department notified the requester of that determination. OAR 660-045-0070(7).

<sup>2</sup> *Community Participation Organization 4M et al v. Washington County*. LUBA 2020-110 (2021)

<sup>3</sup> *Community Participation Organization 4M et al v. Washington County*. LUBA 2021-002 (2021)

At its November 2022 meeting, after reviewing all relevant materials provided by the parties and the department, the commission: found good cause to proceed to a contested-case hearing regarding the requester's petition; directed the director to issue an order describing the reasons for this decision; directed the department to appoint a hearings officer to conduct a contested-case hearing; and directed the hearings officer to schedule a contested case hearing.

The director appointed Anne Davies, an Oregon attorney with experience as a LUBA referee and hearings officer, to conduct a contested case hearing for this matter. Ms. Davies conducted the hearing on February 15, 2023, considering both written and oral presentations from the requester and the county. On March 14, 2023, Ms. Davies filed her Proposed Order for commission consideration and action. The proposed order is included as Attachment A to this staff report.

Pursuant to OAR 660-045-0140(4), the commission may consider the following information in determining whether to adopt the hearings officer's proposed order, in whole or in part, with or without modifications:

- (a) The record of proceedings before the hearings officer (available upon request);
- (b) Timely exceptions to the proposed order (see Attachment B to this staff report);
- (c) Arguments concerning the proposed order and exceptions (oral testimony to be presented at April 20, 2023 commission meeting);
- (d) Recommendations and information from the department (see Section V of this staff report).

The commission may not consider any new evidence at this point in the proceedings.

### **III. PROPOSED ORDER**

First, Ms. Davies' draft order addresses the basis the commission would have for issuing an enforcement order against Washington County. The draft order finds that basis in ORS 197.320(10), regarding clear and objective standards, rather than ORS 197.320(1) or (2), as discussed at the commission's "good cause" hearing in November 2022. ORS 197.320(10) authorizes the commission to issue an enforcement order if "[a] local government's approval standards, special conditions on approval of specific development proposals or procedures for approval do not comply with ORS 197.307 (4) or (6)." The referenced statutes are the "clear and objective standards" requirements for housing contained in state law. The draft order finds the department's rationale for avoiding ORS 197.320(10) in an enforcement order proceeding unpersuasive, for the following reasons:

- The department's assertion that LUBA could resolve these issues is flawed because LUBA does not have the authority to provide the injunctive relief regarding new development applications sought by the requester.
- The statute, which provides that the commission "shall" issue an order if the commission finds lack of compliance with clear and objective standards requirements under ORS 197.320(10) does not give the commission or the department the discretion to deny such petitions for enforcement based upon fear of being "inundated" with similar enforcement petitions.

The proposed order prepared by Ms. Davies comes to the following conclusions:

1. The county has a Goal 5 program that relies on the provisions of CDC 422, including CDC 422-3.3, 422-3.4, and 422-3.6 to implement the Goal 5 program. The provisions that are currently in effect are the same provisions that were in effect during the 2020 enforcement proceedings. For the same reasons articulated in the 2020 enforcement order, the county's provisions are out of compliance with Goal 5. Specifically, CDC 422-3.6 is the only regulation that applies to protect the upland habitat. LUBA's and the Court of Appeal's decisions in *Warren v. Washington County* resulted in a determination that this regulation not clear and objective and thus invalidated as to housing applications by ORS 197.307(4).
2. The county has been relying on "interim" measures that require an applicant for residential development in the protected area to voluntarily agree to be bound by the Code standards that the Court of Appeals determined in *Warren* were not clear and objective and thus unenforceable. ORS 197.307(6) provides the applicant the option of proceeding under a clear and objective track or an alternative non-clear and objective process that must be formally "adopted" in the code. The CDC does not have a non-clear and objective alternative track for processing housing applications. Further, without an enforcement order in place, the county would be required to process an application even if the applicant refused to be bound by the non-clear and objective approval criteria. If the county denied the application on that basis, and the applicant appealed to LUBA, LUBA would be forced to follow the law and overturn the denial because the non-clear and objective approval criteria would be unenforceable as a matter of law and thus could not provide a basis for denial. Accordingly, the "interim" measures the county is relying on are not adequate, in part because they are not clear and objective, to ensure compliance with Goal 5.
3. The LUBA and Court of Appeals decisions in *Warren v. Washington County* require the county to amend the standards within its CDC that were invalidated because they were not clear and objective standards for housing. Because the county's standards are not expected to be amended until late 2023 or early 2024, and its "interim" measures are not adequate, the county's Goal 5 program is no longer being fully implemented. Therefore, the county is out of compliance with Goal 5.

4. The commission has broad discretion to determine the appropriate remedy once it is determined that there is good cause to believe that grounds for enforcement exist. Because the county asserts that it has secured funding and can complete its current proposed work program within 18 months, a compliance date of July 1, 2024, should afford the county sufficient time to complete its required work program. Despite the county's assurances that it intends to complete review of its Goal 5 protection measures during this time period anyway, an enforcement order requiring the county to make such amendments would be advisable to ensure the amendments actually occur.

5. CDC 422-3.6 is the only regulation protecting the county's upland habitat and it is unenforceable because it is not clear and objective. As a result, the county is not currently protecting upland habitat under Goal 5. Accordingly, the county's processing of housing applications in the area of the upland habitat with no protections is contrary to the public interest in the conservation and sound development of those lands. It follows that an order directing the county to cease processing housing applications for land use approvals on land designated Wildlife Habitat pending the county's adoption of a compliant Goal 5 program is warranted.

In summary, Ms. Davies' proposed order recommends that the commission issue an enforcement order pursuant to ORS 197.320(10) directing Washington County to amend its code standards that were invalidated because they were not clear and objective standards for housing in a manner that complies with ORS 197.307(4) on or before June 30, 2024. The proposed order further recommends that the commission order the county to limit its approval of land division and development applications to those applications that do not propose residential development on lands designated in the county's comprehensive plan and Goal 5 protection program as significant Wildlife Habitat until the county has adopted amended code standards that comply with ORS 197.307(4). However, the limitation should not prohibit the county from approving residential land division and development applications on lands that partially consist of Wildlife Habitat if the application proposes no development on that portion of the application site designated Wildlife Habitat. Further, this limitation on approving such residential land divisions and development applications should apply during the interim period starting from the date the commission issues its order until the effective date of the county's amended code standards, along with findings demonstrating compliance with ORS 197.307(4), regardless of whether any party petitions for review of the county's adoption to LUBA or other appellate body.

#### **IV. EXCEPTIONS TO PROPOSED ORDER**

On March 30, 2023, the department received one exception to the hearings officer's Proposed Order and Recommendation. Washington County, represented by Senior Assistant County Counsel Rob Bovett, filed an exception disagreeing with the Hearings Officer's conclusions regarding four points (see Attachment B):

1. The recommendation to issue an enforcement order;

2. DLCD staff's framing of the issues to be decided in this matter;
3. The county's compliance deadline in the recommended enforcement order; and
4. The scope of the recommended stay.

The department has reviewed the exceptions and finds two issues cause the department to reconsider its conclusion and recommendation. One is the county's request to complete its code amendments by October 1, 2024 instead of the recommended date of July 1, 2024, due to the complex nature of the work involved. The department has no objection to this modification.

The department also concurs with the county's concern with the scope of the recommended stay. Although the county does not articulate the reasons why a clarification or narrowing of the scope would be prudent, the department can provide several. First, because the recommended stay would apply not only to residential land division applications, but also to residential development applications, the county would be prevented from approving applications proposing modifications to an existing dwelling unit, including dwelling units that predate the county's acknowledged Goal 5 program. Modifications that do not expand the building footprint of the existing dwelling unit, such as internal conversions of existing dwelling units into middle housing and adding additional height (*e.g.*, adding an additional story) to a dwelling unit would not encroach into designated significant Wildlife Habitat. However, because the existing dwelling unit itself may be located within the mapped Wildlife Habitat, the recommended stay would prevent the county from approving such modifications.

Additionally, the recommended stay would prevent the county from approving building permits for new dwelling units or modifications to existing dwelling units on lots where such development has already been approved by the county under its acknowledged Goal 5 program. The county's protection program for Goal 5 resources, first acknowledged by the commission in 1984, includes a land use review process for sites with identified significant natural resources that includes requiring an applicant to describe alterations to Wildlife Habitat and provide findings regarding the preservation or mitigation of the resource. In other words, the county has, for nearly four decades, approved residential land divisions and developments in designated Wildlife Habitat conditioned on specific protection and/or mitigation measures. However, because these land divisions and developments may continue to be shown within the mapped Wildlife Habitat, the stay would prevent the county from approving the building permits needed to complete the expected development and associated protection/mitigation measures. Because such developments have already been assessed for their impacts to Wildlife Habitat, the invalidation of the county's review of future land use applications due to lack of compliance with clear and objective provisions has no bearing on the applicant's

requirement to comply with the protection/mitigation measures specified in the county's initial approval of the development.

## **V. DEPARTMENT RECOMMENDATION**

The department agrees with the contents and recommendations in Ms. Davies' proposed order, and recommends the commission adopt it, with modifications. The order, as modified, properly limits the matter to Washington County's invalidated development code provisions, provides a reasonable timeframe for the county to remedy the provisions, and adequately restricts land divisions and development only within designated Wildlife Habitat areas. The department believes that these measures to be necessary to protect the significant resources, as required by Goal 5.

The department recommends the following language clarifying the scope of the stay to allow for the above-described circumstances:

- (1) Commission direct the county to amend its Code standards that apply to protection of the Wildlife Habitat Goal 5 resource so that they comply with ORS 197.307(4) on or before ~~June 30, 2024~~ **October 1, 2024**; and
- (2) Commission order the county to limit its approval of land division and development applications to those applications that do not propose residential development on lands designated in the county's comprehensive plan and Goal 5 protection program as significant Wildlife Habitat until the county has adopted amended code standards that comply with ORS 197.307(4) and those standards are effective.
  - a. This limitation does not prohibit the county from approving residential land division and development applications on lands that partially consist of Wildlife Habitat if the application proposes no development on that portion of the application site designated Wildlife Habitat.
  - b. This limitation on approving such residential land divisions and development applications applies during the interim period starting from the date the commission issues its order until the **effective date of the county's adopts** amended code standards, along with findings demonstrating compliance with ORS 197.307(4), regardless of whether any party petitions for review of the county's adoption to LUBA or other appellate body.
- (3) **For the purpose of this order, "development applications" do not include:**
  - a. Applications that do not propose a modification of an existing dwelling unit beyond its existing or approved building footprint; or**
  - b. Applications that propose a new dwelling unit or dwelling units on an existing lot or parcel that was created through approval of a land division that complied with the county's previously effective development review criteria for protection of designated Wildlife Habitat and do not propose any modifications to those approval standards or related conditions of approval.**

**VI. RECOMMENDED ACTION/CONCLUSION**

Recommended motion: I move the commission adopt the order, as recommended by the department and explained in the staff report.

Optional motion 1: I move the commission adopt the proposed order, as recommended by the department and explained in the staff report with the following changes: [specify section number and language of deviations from staff recommendation].

Optional motion 2: I move the commission decline to adopt an enforcement order against Washington County for the following reasons: [specify reasons for decision].

**VII. ATTACHMENTS**

- A. **WASHINGTON COUNTY ENFORCEMENT PROCEEDING PROPOSED ORDER**
- B. **WASHINGTON COUNTY EXCEPTION TO HEARINGS OFFICER PROPOSED ORDER**



AGENDA ITEM 6  
APRIL 20-21, 2023-LCDC MEETING  
ATTACHMENT A

March 15, 2023

Kenneth P. Dobson  
324 S. Abernethy St.  
Portland, OR 97239



Rob Bovett  
Washington County Sr. Assistant County Counsel  
155 N. First Ave, Suite 340, MS #24  
Hillsboro, OR 97124

**SUBJECT: HEARINGS OFFICER RECOMMENDATION – WASHINGTON COUNTY  
ENFORCEMENT PETITION**

Enclosed is the hearings officer recommendation on the Washington County Enforcement Petition filed by Mr. Kenneth Dobson.

The Land Conservation and Development Commission (commission) will consider this proposed order at its meeting on Thursday, April 20. At this time, the matter is the first item scheduled on the agenda after the lunch break, with a tentative start time of 1:00pm. The commission will conduct a public hearing to determine whether or not to issue an enforcement order in this matter, and what the contents of such an enforcement order would include. The meeting will be held electronically and in in the Basement Hearing Room of the Oregon Department of Agriculture Building, 635 Capitol St. NE, Salem OR.

A party to this proceeding may file an exception to the Hearings Officer recommendation. The department must receive such exceptions by Thursday, March 30, 2023, at 5:00 PM. Parties must provide an electronic copy of an exception to the following individuals: Gordon H. Howard ([gordon.howard@dlcd.oregon.gov](mailto:gordon.howard@dlcd.oregon.gov)), Laura Kelly ([laura.kelly@dlcd.oregon.gov](mailto:laura.kelly@dlcd.oregon.gov)) and Casaria Taylor ([casaria.taylor@dlcd.oregon.gov](mailto:casaria.taylor@dlcd.oregon.gov)).

In reviewing the proposed order and adopting the final order, the commission shall not consider new evidence. The commission shall consider only the following:

- (a) The record of proceedings before the hearings officer;
- (b) Timely exceptions to the proposed order;
- (c) Arguments concerning the proposed order and exceptions;
- (d) Recommendations and information from the department.

If you have questions please contact Gordon Howard at [gordon.howard@dlcd.oregon.gov](mailto:gordon.howard@dlcd.oregon.gov) or Laura Kelly at [laura.kelly@dlcd.oregon.gov](mailto:laura.kelly@dlcd.oregon.gov).

Sincerely,

A handwritten signature in blue ink that reads "Gordon H. Howard". The signature is written in a cursive style with a light blue shadow effect behind the text.

Gordon H. Howard  
Community Services Division Director

cc: Theresa Cherniak (Washington County), Kirstin Greene, Brenda Bateman, Laura Kelly, Amanda Punton, Casaria Taylor (DLCD) Steve Shipsey (DOJ)



program as significant Wildlife Habitat areas until the County has adopted amended code standards that comply with ORS 197.307(4).”

In October of 2020, the County adopted an ordinance, Ordinance No. 869, amending its code in an attempt to comply with the Commission’s enforcement order, *i.e.*, by adopting standards for protecting Goal 5 natural resources that were clear and objective. The enforcement order was subsequently terminated. However, Ordinance No. 869 was appealed to LUBA. LUBA remanded Ordinance No. 869 on several grounds, finding that aspects of the County’s Code were still not clear and objective. *Community Participation Organization 4M et al v. Washington County* (LUBA No. 2020-110, September 29, 2021), *aff’d w/o opinion*, 316 Or App 577 (2021) (*Community Participation Organization*).<sup>1</sup> As a consequence of that remand, Ordinance No. 869 is no longer effective, and the previous code provisions (the ones found by the County, LUBA and the Court of Appeals to be not clear and objective and thus unenforceable) apply.

Concluding that the County was once again out of compliance with Goal 5, in the exact same respect it was found to be out of compliance in 2020, Warren again sought an enforcement order against the County. On July 28, 2022, she notified the County of her intent to file a petition for enforcement with the Commission. In its September 26, 2022 response, the County explained that it is taking a broader approach to remedying its noncompliance than it took through Ordinance No. 869. It is undertaking a comprehensive update of the County’s Goal 5 program to protect natural resources under Goal 5. This includes an update of its 30+ year-old inventory of significant wildlife habitat and water resource sites, an environmental, social, economic, and energy (ESEE) analysis of inventoried wildlife habitat and water resource sites in relation to conflicting uses, and comprehensive plan and development code amendments to protect these resources. The County estimated that the Washington County Board of Commissioners would adopt an ordinance to implement this program in late 2023 or early 2024. The County also noted that it is requiring applicants for residential development projects to

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<sup>1</sup> A companion case, decided December 8, 2021, remanded the County’s adoption of habitat assessment guidelines that were meant to implement the code provisions, because those guidelines were also not clear and objective. *Community Participation Organization 4M et al v. Washington County* (LUBA No. 2021-002, December 8, 2021).

address Statewide Planning Goal 5 directly and to agree to make findings based on the existing version of the development code, including those provisions that are not clear and objective.<sup>2</sup> These efforts by the County are referred to herein as the County's "interim" measures.

Not satisfied with the County's response, Warren filed her petition for enforcement. After a recommendation from the Department of Land Conservation and Development (DLCD), the Commission determined there was good cause to initiate enforcement proceedings against the County to determine whether the County is in compliance with Goal 5. The Commission appointed a Hearings Officer to conduct the contested case proceeding and prepare findings of fact, conclusions of law, and recommended actions.

As identified in the Notice of Contested Case Hearing, four issues were considered in this proceeding:

- (1) Are the "interim" measures Washington County has been using to regulate development in significant natural areas and riparian corridors, after its code provisions were found invalid as not being clear and objective in 2019, clear and objective pursuant to ORS 197.307(4) or (6)?
- (2) If Washington County's "interim" measures are not clear and objective pursuant to ORS 197.307(4) or (6), are its SNR provisions out of compliance with the goals, in particular Goal 5?
- (3) If the county is not adequately protecting significant natural areas and riparian corridors as required by the county's adopted Goal 5 protection program, then what measures should the commission take to provide a schedule for Washington County to adopt measures that return protection to these resources?
- (4) Should the Commission, as part of an enforcement order, issue a stay or temporary injunction on approvals of land use applications involving development within designated SNRs until the new ordinances are adopted pursuant to ORS 197.335(3)?

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<sup>2</sup> The County acknowledged that that approach was, as of September, 2022, on appeal at LUBA. LUBA has since ruled on that appeal; that ruling, *Delmonico*, is discussed below.

The County submitted a hearing memorandum, and both the County and Warren provided oral argument on these issues. Based on the record, the Hearings Officer makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

There are no disputed facts.

### **CONCLUSIONS OF LAW**

#### Introduction

At the outset, it will be helpful to understand the specific regulations at issue. In *Warren*, LUBA and the Court of Appeals held that three different Code provisions were invalid and unenforceable as not clear and objective—Community Development Code (CDC) 422-3.3, CDC 422-3.4, and CDC 422-3.6. Community Development Code Chapter 422 is entitled “Significant Natural Resources (SNR).” The SNRs are classified in the following categories: “Water Areas and Wetlands,” “Water Areas and Wetlands and Fish and Wildlife Habitat,” “Wildlife Habitat,” and “Significant Natural Areas.” Generally, CDC 422-3.3 restricts disturbance of soil and vegetation in riparian areas and provides various exceptions including enhancement of degraded areas. Section 3.4 sets forth a list of requirements for enhancements of riparian SNRs, including a wildlife survey, a biologist report, and review of the proposal by the Oregon Department of Fish and Wildlife. Finally, Section 3.6 applies to SNRs including Wildlife Habitat such as the upland Douglas fir area, and prohibits interference with SNRs unless the interference is mitigated.<sup>3</sup> Warren focuses most of her attention on CDC 422-3.6, which she alleges is the only provision that affords protection to the Wildlife Habitat and that, once that provision is rendered inapplicable because it is not clear and objective, the Wildlife Habitat is left essentially completely unprotected.<sup>4</sup>

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<sup>3</sup> CDC 422-3.6 provides:

“For any proposed use in a Significant Natural Resource Area, there shall be a finding that the proposed use will not seriously interfere with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, or how the interference can be mitigated. This section shall not apply in areas where a Goal 5 analysis has been completed and a program decision has been adopted that allows a ‘conflicting use’ to occur pursuant to OAR 660-023-0040(5)(c).”

<sup>4</sup> Ordinance No. 869 proposed to re-name the “Wildlife Habitat” designation as the “Upland/Wildlife Habitat” to distinguish it from the wildlife habitat found at lower elevations. Because, as discussed below, Ordinance No. 869 is no longer effective, this designation will be referred to herein as Wildlife Habitat.

### Questions Presented

The County takes issue with the “Questions” presented in the Notice of Contested Case Hearing and contends that those are not the issues that necessarily naturally flow from the facts and law in this case. To some degree, the Hearings Officer agrees. The foundational issue that the Hearings Officer must determine, pursuant to OAR 660-045-0130(9),<sup>5</sup> is whether there is good cause to believe that grounds for enforcement pursuant to ORS 197.320(1) to (10) or ORS 197.646(3) exist.<sup>6</sup> The first two questions listed in the Notice attempt to address that foundational issue.

1. *Are the “interim” measures Washington County has been using to regulate development in significant natural areas and riparian corridors, after its code provisions were found invalid as not being clear and objective in 2019, clear and objective pursuant to ORS 197.307(4) or (6)?*
2. *If Washington County’s “interim” measures are not clear and objective pursuant to ORS 197.307(4) or (6), are its SNR provisions out of compliance with the goals, in particular Goal 5?<sup>7</sup>*

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<sup>5</sup> Pursuant to OAR 660-045-0130(9), the Hearings Officer’s initial determination is “whether there is good cause to believe that grounds for enforcement pursuant to ORS 197.320(1) to 197.320(10) or 197.646(3) exist.”

<sup>6</sup> As relevant to this proceeding, ORS 197.320 provides:

“The Land Conservation and Development Commission shall issue an order requiring a local government, state agency or special district to take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions or actions into compliance with the goals, acknowledged comprehensive plan provisions, land use regulations or housing production strategy if the commission has good cause to believe:

- (1) A comprehensive plan or land use regulation adopted by a local government not on a compliance schedule is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;
- (2) A plan, program, rule or regulation affecting land use adopted by a state agency or special district is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;

\* \* \* \* \*

(10) A local government’s approval standards, special conditions on approval of specific development proposals or procedures for approval do not comply with ORS 197.307 (4) or (6).”

<sup>7</sup> The Hearings Official believes that the second question should logically be answered first. That is, only after it is determined that the applicable, adopted provisions are out of compliance with Goal 5 is it appropriate to address whether the County’s “interim” measures are adequate to comply with Goal 5.

With regard to the foundational issue identified above, Warren argues that an enforcement order is authorized under ORS 197.320(1) and (10). While the Commission found good cause to proceed to a contested case hearing in this matter, it did not clearly articulate the statutory basis for the finding of good cause. Staff had recommended that good cause to proceed existed pursuant to subsection (1), but not subsections (2) or (10).<sup>8</sup> In the Commission's previous order, the Commission concluded that subsection (1) did not apply. *See Exhibit 2 at 5-6.* For the same reasons articulated in that order, the Hearings Officer concludes that subsection (1) does not apply here.

With regard to ORS 197.320(10), the County asserts that it has an acknowledged Goal 5 plan and is in the process of amending that plan following an OAR Chapter 660, Division 23, Goal 5 process in accordance with the LUBA remand in *Community Participation Organization*. Accordingly, the Hearing Officer understands the County to assert that it is not out of compliance with Goal 5 and an enforcement order is thus not authorized.

The Hearings Officer disagrees. In its previous enforcement order, the Commission found grounds for an enforcement order under ORS 197.320(10) because local provisions that formed the basis for the Goal 5 plan were not clear and objective. In discussing the basis for an enforcement order under ORS 197.320(10) in the previous enforcement proceeding, the Commission explained as follows:

“The bottom line is that the County has a Goal 5 program that relies on the provisions of CDC 422, including CDC 422-3.3, 422-3.4, and 422-3.6 to implement the Goal 5 program. When those provisions are invalidated as to housing applications by ORS 197.307(4) and *Warren v. Washington County*, the County's Goal 5 program is no longer being fully implemented.” Exhibit 2 at 7.

In this case, the County argues that the Commission should not issue an enforcement order under ORS 197.320(10), at least in part based on the logic presented by staff in its staff report before the Commission's good cause hearing. The staff report provided:

“First, LUBA has shown itself able to review local government code provisions in the context of a specific development application, and able to reverse local government decisions using those provisions or affirm local government decisions

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<sup>8</sup> Staff also determined that subsection (2) applies only to state agencies. The Hearings Officer agrees and does not address subsection (2) further.



that decline to enforce such provisions. Commission enforcement proceedings for such provisions would duplicate LUBA's work. Second, if the commission were to be less selective and start entertaining petitions for enforcement for smaller individual violations of the clear and objective standards requirements of state law the commission would possibly be inundated with petitions for enforcement on such matters, to the detriment of the commission's other important work maintaining and improving the state's comprehensive land use planning system." See Exhibit 105, page 9.

The Hearings Officer disagrees with this rationale for several reasons. First, as asserted by Petitioner at the contested case hearing, where a hearings officer finds good cause to believe that grounds for enforcement exist, the hearings officer "*must* recommend, appropriate corrective action." OAR 660-045-0130(10) (emphasis added). In other words, once good cause is found, a hearings officer is required to recommend corrective action. The Hearings Officer agrees. Second, the Hearings Officer disagrees that issuing an enforcement order would duplicate the work of LUBA. LUBA does not have injunctive authority. LUBA's authority emanates from statute, and ORS 197.835 only authorizes LUBA to affirm, remand, or reverse a land use decision that is before it on appeal. Where LUBA determines an approval criterion is not clear and objective, that approval criterion cannot be applied to housing applications. Where that particular approval criterion was one of or the only standard protecting a Goal 5 resource, LUBA is ill equipped to manage the consequences of ruling that standard unenforceable. It is only the Commission, acting on an enforcement petition, that can order a local government to take specific actions to come into compliance with the Goals.

Finally, staff articulate a concern that finding an enforcement order justified under ORS 197.320(10) in instances where provisions are determined to be not clear and objective would open the floodgates and potentially inundate the Commission with petitions for enforcement in such matters. The Hearings Officer disagrees with staff on this point. First, an enforcement order is not justified in every instance where an approval criterion for a housing application is not clear and objective. An enforcement order would only be justified in a case such as this where the ruling that an approval criterion is not clear and objective leaves the local government out of compliance with Goal 5. That will not always be the case. Second, even if the Commission's workload were increased as a result of issuing an enforcement order in circumstances like this one, the Hearings Officer believes that the circumstances warrant action, and an enforcement order would likely be the only or best way to address the fact that the

unenforceability of certain provisions renders the local government out of compliance with the Goals. If the Commission is inundated with such cases, the legislature would be the appropriate venue for a fix.<sup>9</sup>

The provisions that are currently in effect are the same provisions that were in effect during the 2020 enforcement proceedings. For the same reasons articulated in the 2020 enforcement order, the County's provisions are out of compliance with Goal 5. *See* Exhibit 2, pages 5-7. Specifically, CDC 422-3.6 is the only regulation that applies to protect the upland habitat. Following LUBA's and the Court of Appeal's decision in *Warren*, that provision was determined to be not clear and objective and were thus unenforceable.

That said, the County asserts that it is enforcing "interim" measures to ensure the County is adequately protecting its inventoried significant natural resources in a manner that complies with Goal 5.<sup>10</sup> As the Hearings Officer understands the interim measures, they include a requirement to apply Goal 5 directly to housing applications and that an applicant for residential development in the protected area voluntarily agree to be bound by the Code standards that the Court of Appeals determined in *Warren* were not clear and objective and thus unenforceable.

The interim measures were employed in a recent housing application. Westwood Homes submitted an application for a subdivision creating 15 single-family residential lots on land designated as Wildlife Habitat. The County approved the application, and on a local appeal of that decision, the local hearings official<sup>11</sup> affirmed the approval, essentially agreeing that the County's interim measures were adequate to comply with Goal 5. The hearings official concluded, first, that the LUBA remand of Ordinance No. 869 rendered those regulations adopted by that ordinance no longer effective. The application was thus subject to the acknowledged provisions of former CDC Chapter 422 that were in effect prior to the adoption of Ordinance No. 869. The hearings official then concluded that "Goal 5 is not directly applicable to this application" but that, even if Goal 5 did apply directly, "the application complies [with Goal 5], based on the [applicant's] ESEE analysis." The hearings official noted that the

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<sup>9</sup> The Hearings Officer believes that staff's reasoning is more appropriately addressed to the third question presented—*i.e.*, assuming good cause is found, what is the appropriate remedy for a county's provisions that are not in compliance with the Goals?

<sup>10</sup> The question is not only whether the interim measures are clear and objective. It is also whether the interim measures are adequate to bring the County into compliance with Goal 5.

<sup>11</sup> To avoid confusion, this recommended order will refer to the DLCD Hearings Officer as "Hearings Officer" and to the local hearings official as the "hearings official."

applicant in that case agreed to comply with the acknowledged approval criteria that were not clear and objective rather than applying Goal 5 directly. *See Delmonico* decision, Exhibit 109. The hearings official indicated that “[t]his is allowed by ORS 197.307(6). \* \* \* [The *Warren* decisions] did not preclude applicants from agreeing to apply these provisions as a subjective alternative approval process allowed by ORS 197.307(6).” *See* Exhibit 109 at 24.

That decision was appealed to LUBA, and LUBA affirmed. Importantly, however, the petitioner in that case did NOT challenge the hearings official’s finding that Goal 5 did not apply directly. Because the petitioner did not make that argument, LUBA was left to assume, but did not decide, that the hearings official was correct that Goal 5 did not apply directly.<sup>12</sup> Because that issue was not on the table, the County’s decision was affirmed.<sup>13</sup>

First, the Hearings Officer disagrees with the hearings official’s determination that ORS 197.307(6) authorizes a local government to process a housing application and apply non-clear and objective approval criteria so long as the applicant agrees to be so bound. ORS 197.307(6) provides:

“In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government *may adopt and apply an alternative approval process* for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

- (a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

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<sup>12</sup> LUBA held:

“The hearings officer concluded that intervenor’s application ‘is subject to the acknowledged provisions of former CDC 422 that was in effect prior to the adoption of Ordinance 869. Therefore, Goal 5 is not directly applicable to this application.’ Petitioner does not challenge that finding or otherwise explain why Goal 5 applies directly to the application. Although petitioner asserts that, ‘[i]n the absence of a viable and acknowledged Goal 5 program for Wildlife Habitat, the County must apply statewide Goal 5 rules to the application,’ petitioner does not explain why, even if Ordinance 869 is not effective after our remand, the county lacks an acknowledged Goal 5 program. As explained above, prior to the adoption of Ordinance 869, the county’s Goal 5 program was acknowledged. We assume, based on petitioner’s lack of challenge to the hearings officer’s finding that Goal 5 does not apply, that the hearings officer was correct that Goal 5 does not apply.” *Delmonico v. Washington County*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2022-072, November 11, 2022), slip op. 9-10 (citations omitted).

<sup>13</sup> Further, because that issue was not actually decided by LUBA, the Hearings Officer believes it is an open question whether Goal 5 can be applied directly where the applicable approval criteria are out of compliance with Goal 5.

- (b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and
- (c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.” (Emphasis added).<sup>14</sup>

The Hearings Officer does not agree that ORS 197.307(6) authorizes an applicant to simply agree to be bound by approval criteria that have been determined to be not clear and objective. Subsection (6) authorizes a local government to “adopt” and “apply” an alternative, non-clear and objective approval process, so long as the applicant still has the option of proceeding under the clear and objective track. That alternative non-clear and objective process must be formally “adopted” in the code in order to satisfy subsection (6). The CDC does not have a non-clear and objective alternative track for processing housing applications.

Further, as Petitioner pointed out at the contested case hearing, without an enforcement order in place, the County would be required to process an application even if the applicant refused to be bound by the non-clear and objective approval criteria. If the County denied the application on that basis, and the applicant appealed to LUBA, LUBA would be forced to follow the law and overturn the denial because the non-clear and objective approval criteria would be unenforceable as a matter of law and thus could not provide a basis for denial.<sup>15</sup>

In summary, the County’s duly adopted regulations are not in compliance with Goal 5 for the same reasons articulated in the Commission’s 2020 enforcement order. Further, the “interim” measures the County is relying on are not adequate, in part because they are not clear

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<sup>14</sup> ORS 197.307(4) provides:

“Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”

<sup>15</sup> Further, under ORS 197.843, a local government could be liable for attorney fees if LUBA overturns a local decision denying an application for needed housing when that denial is based on non-clear and objective approval criteria.

and objective, to ensure compliance with Goal 5.<sup>16</sup> Accordingly, the Hearings Officer agrees with Petitioner that there is good cause to believe that grounds for enforcement exist pursuant to ORS 197.320(10).

*3. If the county is not adequately protecting significant natural areas and riparian corridors as required by the county's adopted Goal 5 protection program, then what measures should the commission take to provide a schedule for Washington County to adopt measures that return protection to these resources?*

The Hearings Officer, and thus the Commission, has broad discretion to determine the appropriate remedy once it is determined that there is good cause to believe that grounds for enforcement exist. Once the Hearings Officer determines good cause exists, they “must” recommend appropriate corrective action (OAR 660-045-0130(10)) and “may” recommend one or more interim measures, in accordance with ORS 197.335(3) and (4).<sup>17</sup> OAR 660-045-0130(11).

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<sup>16</sup> At the hearing, Petitioner explained that applying Goal 5 directly was not sufficient because that exercise is not “clear and objective.” The Hearings Officer agrees that there are few exercises less clear and objective than conducting an ESEE analysis, which is what would ultimately be required if Goal 5 were applied directly to a housing application. Accordingly, an order directing the County to apply Goal 5 directly to housing application would not be an adequate process for determining compliance with Goal 5.

<sup>17</sup> ORS 197.335(3) provides:

“(a) If the commission finds that in the interim period during which a local government, state agency or special district would be bringing itself into compliance with the commission’s order under ORS 197.320 or subsection (2) of this section it would be contrary to the public interest in the conservation or sound development of land to allow the continuation of some or all categories of land use decisions or limited land use decisions, *it shall, as part of its order, limit, prohibit or require the approval by the local government of applications for subdivisions, partitions, building permits, limited land use decisions or land use decisions until the plan, land use regulation or subsequent land use decisions and limited land use decisions are brought into compliance.* The commission may issue an order that requires review of local decisions by a hearings officer or the Department of Land Conservation and Development before the local decision becomes final.

(b) Any requirement under this subsection may be imposed only if the commission finds that the activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and that the requirement is necessary to correct the violation.

(c) The limitations on enforcement orders under subsection (1)(c)(B) of this section shall not be interpreted to affect the commission’s authority to limit, prohibit or require application of specified criteria to subsequent land use decisions involving land use approvals issued by a local government prior to the date of adoption of the enforcement order.” (Emphasis added).

ORS 197.335(4) authorizes the Commission to withhold grant funds and is not applicable here.

As the County has explained, it is currently in the process of revamping its Goal 5 program, which includes a new inventory of significant Goal 5 natural resources, revised comprehensive plan provisions, and adoption of clear and objective Code provisions. This endeavor is currently entirely voluntary on the part of the County, as LUBA does not have injunctive authority, and the Commission's 2020 enforcement order was terminated once Ordinance No. 869 was adopted. The County's choice to conduct a more comprehensive review of its Goal 5 program, however, should not be used against it in this proceeding. As the Commission found in its 2020 order, the County was not necessarily required to conduct such a comprehensive review in order to bring its Goal 5 program into compliance with Goal 5. That said, the County will, at the very least, be required to amend the non-clear and objective Code standards that were invalidated by the *Warren* decisions.

The County asserts that it has secured funding and can complete its current proposed work program within 18 months.<sup>18</sup> The Hearings Officer believes that a compliance date of July 1, 2024 should afford the County sufficient time to complete its required work program.<sup>19</sup>

*4. Should the Commission, as part of an enforcement order, issue a stay or temporary injunction on approvals of land use applications involving development within designated SNRs until the new ordinances are adopted pursuant to ORS 197.335(3)?*

Petitioner argues that a stay is necessary to ensure that development is not approved on protected lands in violation of Goal 5 pending the County's adoption of Goal 5-compliant regulations. The County, predictably, argues that, notwithstanding the fact that its applicable Code provisions might be out of compliance with Goal 5, an enforcement order should not issue because it is already doing everything that an enforcement order would require of it. The County also contends that a stay is not necessary, at least in part because its "interim" measures are sufficient to ensure compliance with Goal 5. As discussed above, the County's "interim" measures are not adequate to bring the County's Goal 5 program into compliance with Goal 5.

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<sup>18</sup> When clarification was sought at the contested case hearing, the County indicated that that timeline would begin January of 2023.

<sup>19</sup> To be clear, the "required" work program; *i.e.*, the work subject to the proposed enforcement order would only include the adoption of clear and objective approval criteria. The remainder of the County's current work program is entirely voluntary and not "necessary" to bring their Goal 5 program into compliance with Goal 5.

Pursuant to ORS 197.335(5), quoted in n. 17 above, where the Hearings Officer finds that it would be contrary to the public interest in the conservation or sound development of land to allow the continuation of processing applications, the Hearings Officer is required to “*limit, prohibit or require the approval by the local government of applications for subdivisions, partitions, building permits, limited land use decisions or land use decisions until the plan, land use regulation or subsequent land use decisions and limited land use decisions are brought into compliance.*” Petitioner seeks such a stay here. The County counters that a stay is not necessary and would interfere with the County’s efforts to provide much needed housing. Petitioner responded by pointing out the limited acreage of lands designated Wildlife Habitat, approximately 300 acres, and the limited duration of the stay—18 months. According to Petitioner, the amount of acreage impacted by a stay and the relatively short duration will not significantly interfere with the County’s efforts at providing needed housing. The Hearings Official agrees with Petitioner that, on balance, the need to protect the significant resource from development outweighs the minimal impact the stay would have on the County’s efforts to provide needed housing.

The Hearings Officer finds that, because CDC 422-3.6 is the only regulation protecting the upland habitat, and because it is unenforceable because it is not clear and objective, the upland habitat is currently not being protected, as required by Goal 5. Accordingly, the County’s processing of housing applications in the area of the upland habitat with no protections is contrary to the public interest in the conservation and sound development of those lands. The Hearings Officer therefore recommends that the Commission order the County to cease processing housing applications for land use approvals on land designated Wildlife Habitat pending the County’s adoption of a compliant Goal 5 program.

### **RECOMMENDATION**

Based on the preceding findings of fact and conclusions of law, the Hearings Officer recommends that the Commission issue an enforcement order pursuant to ORS 197.320(10) directing Washington County to amend its development code provisions, discussed above, which provide protections to the County’s Goal 5 designated significant natural resources.

Specifically, the Hearings Officer recommends the following:

- (1) Commission direct the County to amend its Code standards that apply to protection of the Wildlife Habitat Goal 5 resource so that they comply with ORS 197.307(4) on or before June 30, 2024; and
- (2) Commission order the County to limit its approval of land division and development applications to those applications that do not propose residential development on lands designated in the County's comprehensive plan and Goal 5 protection program as significant Wildlife Habitat until the County has adopted amended code standards that comply with ORS 197.307(4).
  - a. This limitation does not prohibit the County from approving residential land division and development applications on lands that partially consist of Wildlife Habitat if the application proposes no development on that portion of the application site designated Wildlife Habitat.
  - b. This limitation on approving such residential land divisions and development applications applies during the interim period starting from the date the Commission issues its order until the date the County adopts amended code standards, along with findings demonstrating compliance with ORS 197.307(4), regardless of whether any party petitions for review of the County's adoption to LUBA or other appellate body.



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Anne C. Davies  
Hearings Officer

March 14, 2023



**BEFORE THE**

**LAND CONSERVATION AND DEVELOPMENT COMMISSION**

**OF THE STATE OF OREGON**

In the Matter of the Petition of  
JILL WARREN  
under ORS 197.324 for an  
Enforcement Order Against  
WASHINGTON COUNTY

**WASHINGTON COUNTY'S  
EXCEPTIONS TO PROPOSED  
ENFORCEMENT ORDER,  
AND ARGUMENT**

**1. The Commission Should Not Issue Another Enforcement Order -**

**It is Unnecessary and Harmful**

It has been six years since the passage of 2017 Senate Bill 1051, effectively requiring Washington County to amend its planning code to provide “clear and objective” standards for housing development, including areas within mapped Significant Natural Resources (SNR).

In that time, Washington County’s efforts to amend its code have been repeatedly subject to multiple appeals and proceedings at LUBA, the Court of Appeals, and this Commission.

As ordered by LUBA, Washington County is currently proceeding with a full Goal 5 process in another attempt to enact “clear and objective” standards for development in the SNR. Washington County has no reason to believe those new standards won’t also be appealed.

In short, while 2017 Senate Bill 1051 may have intended to spur on the development of housing to address our ongoing housing shortage crisis as described in Oregon Governor’s Executive Order 23-04 - *see* Record, Exhibit 115 - the results in Washington County have been just the opposite.

At present, there is only a narrow pathway for the development of housing on sites with SNR as charted in the *Delmonico* case. *See* Record, Exhibits 108 and 109. That pathway is difficult and arduous. *See* Record, Exhibits 108, 109, and 114.

The full Goal 5 public process is a rigorous technical process to develop the inventory, prepare an Economic, Social, Environmental and Energy (ESEE) analysis, and develop the plan and regulatory standards to implement the program. This work will take approximately 18 months. Additional time is needed to ensure adequate community engagement, multiple hearings before the Washington County Planning Commission and Board of County Commissioners, and possible ordinance amendments to make any changes that might be needed to address issues that arise during the hearings. *Id.*

This is all being done without a Commission enforcement order. The Commission does not need to order Washington County to do that which it is already doing.

Further, entry of a stay would foreclose even the narrow *Delmonico* pathway. That flies in the face of the Governor's recent Executive Order referenced above and the ongoing housing shortage crisis in Oregon.

Washington County asks the Commission to not enter an enforcement order in this matter. It would be both unnecessary and harmful.

## **2. Additional General and Specific Exceptions**

In the Notice of Contested Case Hearing issued in this matter on December 27, 2022, DLCD staff identified four issues to be decided in this matter. Washington County preserves its prior objections to the framing of those issues. In addition, Washington County takes exception to the Hearings Officer's findings, and incorporates the arguments contained in its Hearing Memorandum in this matter, with additional notations below:

- (a) Washington County takes exception to the finding by the Hearings Officer that Washington County is out of compliance with Goal 5. It is not. Washington County has an acknowledged Goal 5 plan. Washington County is, instead, out of compliance with ORS

197.307 as amended by 2017 Senate Bill 1051, requiring “clear and objective” standards for housing development, including development in the SNR.

- (b) Washington County takes exception to the finding by the Hearings Officer that the Land Use Board of Appeals and the County Hearings Officer were in error in the *Delmonico* case. They weren’t. *Delmonico* is the current state of the law.
- (c) Washington County takes exception to the finding by the Hearings Officer that Commission staff were in error in recommending that the Commission not assert jurisdiction under ORS 197.320(10). Commission staff were correct then, and are still correct now. *See* Record, Exhibit 105, Pages 9 and 10.

**3. If the Commission Decides to Enter an Enforcement Order,  
Washington County Requests Completion by October 1, 2024**

The Hearings Officer in this matter recommended that the Commission order Washington County to amend its code standards that apply to the SNR in order to comply with ORS 197.307 by June 30, 2024. While that completion date is theoretically possible, the history of this matter, as well as the general nature of completing a full Goal 5 process, has demonstrated that numerous additional issues may come up during that process.

The full Goal 5 public process includes extensive community engagement, multiple hearings before the Washington County Planning Commission and Board of County Commissioners, and possible ordinance amendments to make any changes that might be needed to address issues that arise during the hearings.

Thus, an October 1, 2024, completion date should provide enough time for this process and avoid the necessity of requesting an extension.

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**4. If the Commission Decides to Enter an Enforcement Order,  
Washington County Requests the Order Clarify the Scope**

The order language proposed by the Hearings Officer is potentially overbroad. If the Commission chooses to impose a stay, Washington County respectfully requests that any limitations on new residential development applications be limited to land divisions within the UGB that propose development on the portion of the site with designated wildlife habitat.

**5. Conclusion**

For the reasons recited above, as well as in Washington County's Hearing Memorandum, the Commission should not enter an enforcement order or stay in this matter.

RESPECTFULLY SUBMITTED and DATED this 30<sup>th</sup> day of March, 2023.

*s/Rob Bovett*  
Rob Bovett, OSB No. 910267  
Senior Assistant County Counsel  
Rob\_Bovett@washingtoncountyor.gov  
Attorney for Respondent Washington County

**CERTIFICATE OF SERVICE**

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I certify that on March 30, 2023, I served a true and correct copy of each of the foregoing Washington County's Exceptions to Proposed Enforcement Order, and Arguments on the following persons by electronic copy as indicated:

Ken Dobson, Attorney for Petitioner	<a href="mailto:landlaw.oregon@gmail.com">landlaw.oregon@gmail.com</a>
Gordon H. Howard, DCLD staff	<a href="mailto:gordon.howard@dlcd.oregon.gov">gordon.howard@dlcd.oregon.gov</a>
Laura Kelly, DLCD staff	<a href="mailto:laura.kelly@dlcd.oregon.gov">laura.kelly@dlcd.oregon.gov</a>
Casaria Taylor, DLCD staff	<a href="mailto:casaria.taylor@dlcd.oregon.gov">casaria.taylor@dlcd.oregon.gov</a>

Dated this 30<sup>th</sup> day of March, 2023.

s/Rob Bovett

Rob Bovett, OSB 910267  
Senior Assistant County Counsel  
Rob\_Bovett@washingtoncountyor.gov  
Attorney for Respondent Washington County

**Andrew Stamp**

**From:** Andrew Stamp  
**Sent:** Tuesday, March 5, 2024 5:09 PM  
**To:** 'bateschell@ci.wilsonville.or.us'; 'guile@ci.wilsonville.or.us'  
**Cc:** 'Marie Holladay'; Chris Goodell  
**Subject:** Brown Contracting Tree Cutting Permit  
**Attachments:** Wash Co CP Policy 41.pdf; 0658\_001 Grillo Memo.pdf; 1984 Memo Re Geologic Area.pdf; Exhibit 1.pdf; Exhibit 2.pdf; 869a\_findings\_102720.pdf; DLCD ENFORCEMENT 2023-04\_Item\_6\_Combined.pdf

Dear Ms. Bateschell,

I represent Brown Contracting with regard to the Tree Cutting Permit. Washington County Case File L2400019-TREE.

I received a copy of your letter to Stephen Shane dated March 4, 2024. Based on my research, I believe your letter does not analyze the law correctly, and, as a result, greatly overstates the amount of required mitigation. Having said that, the applicable law is extremely complicated, so I thought it would be worth comparing notes in case I am the one who has missed something.

As discussed below, I am reasonably certain that Washington County does not regulate upland habitat on private lands. We are proceeding on the assumption that the logging company, Mr. Tree, Inc., did cut some trees located within a very small area mapped as low-value riparian habitat. Although AKS could have done an on-site delineation to disprove the presence of riparian habitat, they chose instead to assume the map is correct given the de-minus area in question. In our application we have offered mitigation for that minor disturbance. However, we disagree with your letter inasmuch that we do not believe that we need to mitigate for the removal of trees on land mapped as upland habitat.

**Issue 1: Use of Incorrect and/or Unadopted Map(s).**

You state: *A substantial portion of the properties is identified as Significant Natural Resources by Washington County, as shown in Attachment 1 (see also applicant's Exhibit B), and Metro Title 13 lands, as shown in Attachment 2 (see also applicant's Exhibit C).*

Your "Attachment 1" is a different map than the one the applicant includes at its Exhibit B. Your map seems to be derived from a Metro map, which I do not think Washington County has formally adopted. Washington County's LDO, Section 422, does cross-reference Metro's "current" Regionally Significant Fish & Wildlife Habitat Inventory Map, but the County never formally adopted it as a Washington County Map, *as far as I can tell*. CDC 422-2. A mere cross-reference is not legally sufficient to constitute an "adoption." Moreover, a local government can never adopt future versions of a map, as that constitutes an unlawful delegation of legislative authority. I am curious where you obtained your "Attachment A" map from. If it from a GIS layer, it is likely not a formally-adopted and codified map in any event, and, as such, likely serves no regulatory purpose. Only formally adopted maps can be used for land use permitting. ORS 215.050; ORS 215.427(1).

Unlike the map you attached to your letter, the Applicant's map at Application Exhibit B is an adopted map. See Comprehensive Plan Policy 41 (attached). Plan Policy 41 tasks the County to continue to apply the "Significant Natural Resources designations on the Rural / Natural Resources Plan." That map shows the area as a

“Significant Natural Area.” However, as I will explain below, that “Significant Natural Area” relates to the need to protect the area’s geology from mining.

**Issue 2: The County’s Area of Special Concern (“ASC 5”) is not an upland habitat map.**

I believe you are wrong to assume that the County’s formally adopted maps regulate upland habitat. The Rural / Natural Resources Plan map is not an upland habitat map, which of course makes sense because the land was zoned for “Future Development,” not conservation. CDC 308-7.3 is one of the base zone regulations for the FD-20 zone. It states that “[p]roperty in an Area of Special Concern on the Future Development Areas Map in the Comprehensive Framework Plan for the Urban Area is subject to the applicable Area of Special Concern provisions in Plan Policy 41.” The subject property is in the Area of Special Concern (“ASC 5”), so Comprehensive Plan Policy 41 applies on some level, and it, in turn, includes a “Map B” showing Goal 5 resources. The operative map is entitled “Tonquin Scablands Geologic Area map, dated April 1983.” This map is “Figure 1-8” from some older version of the Washington County Comprehensive Plan. The map covers a broad area, and the subject property is located on the periphery of the Scablands, in an area designated partially on that map as “Fish and Wildlife habitat” and partially as “Natural Resources, Significant Natural Area.” An Interoffice Memo from Hal Bergsma, Senior Planner to Brett Curtiss, Planning Division Manager, dated April 26, 1984, provides the reason that this site was deemed to be significant:

Tonquin Scablands Geologic Area: Widely recognized as among the most important geologic features in Oregon, this area has scientific and educational value for its evidence of the impacts of the Missoula floods. Geologic features of the area include channels, depressions (often containing ponds or marshes), and scoured bedrock knolls and channel walls. The major conflicting use for this area is quarrying. (Exhibit 2).

The memo goes on to discuss the Missoula floods, which were a series of 40+ separate flooding events that occurred somewhere between 11,000 – 18,000 years ago. The Bergsma memo discusses various sub-areas within the Tonquin Scablands Geologic Area. With regard to unrelated lands located southeast of the Tigar Sand and Gravel site, the memo states:

E.4.1.4.1 A half-mile long depression in Section 34 north of the community of Tonquin is the route for the Burlington Northern Railroad. The southern half is now a swamp and the northern half is a shallow lake. Part of the adjacent west-facing cliffs are vegetated with relatively drought-tolerant plants because of the shallow soil; the dominance of Pacific madrone (*Arbutus menziesii*) is unusual for Washington County. This may be the premier site in the Scablands most deserving of preservation.

The memo also discusses the swampy area and associated cliffs located north and northwest of the subject property:

E.4.1.4.4 A smaller version of the Rock Creek channel--east of Tonquin Road and south of Ibach Road--also contains scoured 100-foot-high bedrock walls and lies just downstream from a major flood spillway. Two other spillways, somewhat higher and much less eroded, are also found in this compact area. The "island" and eastern edge above 300-foot elevation would permit research into the question of the upper boundaries of the scouring. The parcels involved are: 3SI 2B tax lots 100, 200, 303, 304, 306, 308, 311, 1100, 1200, 1300, 1400, and 1500; all of tax map 2SI 35C except tax lot 1900; 2SI 35B tax lots 200, 300, 400, 401, 500, 501, 502, 503, 504, 701, 702, 704, 800, 801, 802, 803, 804, 805, 807, 808, 809, 900, 901, and 1201. [*note: to make sense of the tax lot references, you have to refer to the 1982 version of the Tax Assessor’s Map*].

The “island” formed by the 300 msl contour is easily seen on a modern USGS Topo map. What is noteworthy as it relates to tree cutting is that the Bergsma memo makes clear that tree preservation is not the reason that the Tonquin Scablands Geologic Area was designed as a Significant Natural Area. Rather, the area was chosen so that it could be studied and protected from quarry operations, which are common in this area. The portion of the

tax lots that were logged by Mr. Tree do not offer anything useful to persons studying the geologic record: the key study areas are the cliffs and the areas above 300 msl. The “island” is shown via a yellow arrow in this aerial below, and the other key 300 msl hilltop study area is shown in orange.

### **Issue 3: Basalt Creek Concept Plan (BCCP).**

You cite to the “Basalt Creek Concept Plan” as if it is a regulatory document. Although I have not researched that document in any great detail, I am uncertain, but doubtful, that the BCCP is a mandatory approval standard for a tree cutting permit in Washington County. If I am wrong about that, please advise.

### **Issue 4: Applicability of Metro Title 13.**

You cite to provisions of the Metro Functional Plan that I do not believe apply to Washington County. Metro Code Title 13, §3.07.1340(b)(2)(B)(i) and §3.07.1340(b)(2)(C) apply to cities and counties “that chose to rely upon their comprehensive plans and implementing ordinances to comply, in whole or in part, with Metro Code §3.07.1330(b)(2). See Metro Code §3.07.1340, entitled “Performance Standards and Best Management Practices for Habitat Conservation Areas.” Although I am not 100% certain, I think that Washington County proceeded under a different path, which is discussed at MC 307.1330(b)(5). This led to a document known as the “Tualatin Basin Program decision.” This is discussed in the “Findings” document attached to Washington County Ord. 869.

Further understand that Metro Title 13 does not require jurisdictions to limit development in *all* mapped Class A or Class B upland habitat areas. It only requires development limitations in Class A and B upland habitat areas that were added to the Metro UGB after December 28, 2005. In other words, while an area may have been inventoried as significant upland habitat, and even classified as having greater value ecologically than for development, Metro does not necessarily mandate that particular upland habitat area be protected if it was already in the UGB by December of 2005. The subject property was added to the UGB in 2004.

The findings for the now vacated Washington County Ordinance 869, dated Oct 27, 2020 seem to confirm this understanding:

“The ordinance clarifies reference to the Regionally Significant Fish and Wildlife Habitat found on Metro’s Inventory Map is to the “Class I and II Riparian Habitat.” This is in keeping with Metro Title 13 requirements and the Tualatin Basin Program decision. When Metro conducted the Regional Inventory of Significant Fish and Wildlife Habitat in the early 2000s, the natural resource categories were distinguished by habitat type: Riparian and Upland Habitat. Metro scientists also assessed the quality of the two habitat types through three quality classifications. Using this inventory, the Tualatin Basin Program decision agreed that Class I and II Riparian Habitat should be regulated, and development within those areas should be strictly or moderately limited. The clarification of the specific category of resources intended to be regulated per Metro Title 13 and previously adopted by the County through A-Engrossed Ordinance No. 662 does not add a new resource category subject to § 422.”

The DLCDC Hearing’s Officer decision on the Enforcement Matter that you referenced also discussed this issue. DLCDC summarized the status of Washington County’s Goal 5 program, as follows:

The county has a Goal 5 program that relies on the provisions of CDC 422, including CDC 422-3.3, 422-3.4, and 422-3.6 to implement the Goal 5 program. The provisions that are currently in effect are the same provisions that were in effect during the 2020 enforcement proceedings. For the same reasons articulated in the 2020 enforcement order, the county’s provisions are out of compliance with Goal 5. Specifically, CDC 422-3.6 is the only regulation that applies to protect the upland habitat. LUBA’s and the Court of Appeal’s decisions in



Warren v. Washington County resulted in a determination that this regulation not clear and objective and thus invalidated as to housing applications by ORS 197.307(4). (Emphasis added)

See Attachment entitled “DLCD Enforcement 2023-04 Item 6 Combined pdf.

**Issue 5: The “codification requirement.”**

You state: *Due to recent litigation against the County for lack of compliance with Goal 5 particularly as it relates to upland habitat, the City respectfully stipulates the County’s mitigation standards cannot be relied upon and, therefore, request mitigation be required consistent with Clean Water Services and City of Wilsonville both of whom have been found to have standards in compliance with Goal 5.*

This suggestion violates Oregon law. Both ORS 215.416(8)(a) and its counterpart applicable to cities, ORS 227.173(1), set forth what is known to land use practitioners as the “codification requirement.” ORS 215.416(8)(a) requires that permits be decided based on text and maps adopted into zoning codes:

***Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.***

The primary purpose of the codification requirement is to assure that permit decisions will be based on pre-existing legislation. *BCT Partnership v. City of Portland*, 130 Or App 271, 276 n2, 881 P2d 176 (1994); *Zirker v. City of Bend*, 233 Or App 601, 227 P3d 1174 (2010). An example of how a zoning ordinance can run afoul of this requirement is provided by *State ex rel. West Main Townhomes v. City of Medford*, 233 Or App 41, 43, 225 P3d 56 (2009), *adhered to as modified on recons*, 234 Or App 343, 228 P 3d 607 (2010). See also *Oster v. City of Silverton*, 79 Or LUBA 447 (2019); *Waveseer of Oregon, LLC v. Deschutes County*, 81 Or LUBA 583 (2020), *aff’d*, 308 Or App 494, 482 P3d 212 (2021); *Hollander Hospitality v. City of Astoria*, \_\_\_ Or LUBA \_\_\_ (LUBA No, 2021-061, Sept. 30, 2021), *Landwatch Lane County v. Lane County (Fallon)*, 81 Or LUBA 656 (2020).

I trust you will find this information useful. This is obvious a complicated area of law, and therefore if you or the City Attorney believe I have not analyzed this case correctly, I would very much like to hear your thoughts on the matter. Conversely, if my analysis gives the City new insight into this case, I would appreciate a retraction of your March 4, 2024 letter.

Andrew

**WE HAVE MOVED. PLEASE TAKE NOTE OF OUR NEW ADDRESS BELOW.**

**Andrew H. Stamp** | Of Counsel

VF Law | [www.vf-law.com](http://www.vf-law.com)

6000 Meadows Road, Suite 500 | Lake Oswego, OR 97035

Telephone: 503-684-4111 || Facsimile: 503-598-7758

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# WASHINGTON COUNTY OREGON

## COMMUNITY DEVELOPMENT CODE INTERPRETATION

Subject: <u>Significant Natural Resources</u>	Article IV Section 422
Date of Issue: _____	Reference:
Revision Date: <u>2/17/98</u>	CDC 203-4.2G
Approved By: <u>Joe Grillo</u>	422-2.2 and 2.3
Joe Grillo, Manager	422-3.6
	Rural/Natural Resource Plan
	Policy 10

### INTERPRETATION

#### INTERPRETATION A - SUBMITTAL INFORMATION

Code Section 203-4.2G allows the Director to require additional information directly related to the applicable standards of this Code, including applicable standards and requirements of the Comprehensive Plan deemed essential by the Director to evaluate adequately a specific application for compliance with those criteria and standards. The attached informational handout lists additional information that the Director deems essential to address Section 422.

#### INTERPRETATION B - APPLICABILITY OF SECTION 422-3.6

Section 422-3.6 only applies to Sections 422-2.2 and 2.3.

### ISSUES

- 1) What information is needed to evaluate an application for compliance with Section 422: Significant Natural Resources?
- 2) Which Significant Natural Resource designations are subject to Section 422-3.6?

### BACKGROUND

In order to adequately address Section 422, in most cases it is necessary to have detailed material prepared by a professional qualified to address different characteristics of a natural resource. With the exception of Section 422-3.4, Section 422 does not list submittal requirements. This has created numerous problems with development applications because applicants and staff are not sure what information is necessary to address Section 422. Staff has reviewed various wetland, wildlife habitat and natural area reports and found that many reports contain basic information which has been found to be helpful in addressing Section 422. This interpretation will standardize the basic submittal information.

A related issue is that it is not clear which significant natural resource designations are subject to Section 422-3.6. Section 422-3.6 reads as follows:

For any proposed use in a Significant Natural Resource Area, there shall be a finding that the proposed use will not seriously interfere with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, or how the interference can be mitigated.

One way of reading Section 422-3.6 is that it applies to all significant natural resources listed in Section 422-2, even though two of the listed resources (422-2.1 and 2.4) by definition are not fish or wildlife habitat. Another way of reading Section 422-3.6 is that it applies only to areas designated as fish and wildlife habitat, which would only be Sections 422-2.2 and 2.3.

The correct interpretation is that Section 422-3.6 only applies to Sections 422-2.2 and 2.3. The basis for this interpretation is as follows. The Community Development Code (Code) was first adopted in 1983 and, at the time, it only applied in the urban area. While the 1983 Code contained Section 422, it did not contain Section 422-3.6. None of the resources listed in Section 422-2 was subject to an "interference" standard (422-3.6). The Code was subsequently amended in 1983 to include the rural area. That Code became effective in 1984. At that time, Section 422 still did not contain an "interference" standard. However, the three rural resource districts (EFU, EFC and AF-20) contained the following standard:

The proposed use will not seriously interfere with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, or how the interference can be mitigated.

This requirement stems from Policy 10 of the Rural Natural Resources Plan. Policy 10 requires implementation of the Oregon Department of Fish and Wildlife Habitat Protection Plan for Washington County and mitigation of the effects of development in the Big Game Range within the EFU, EFC and AF-20 land use designations.

Because this requirement was related to Section 422, it was added to Section 422 in 1985. However, this amendment also added "in a Significant Natural Resource Area" to the requirement. This phrase created an ambiguous situation since neither the Water Areas and Wetlands (100 year flood plain, drainage hazard areas and ponds, except those already developed) or the Significant Natural Areas (Sites of special importance, in their natural condition, for their ecological, scientific, and educational value) were designated as a significant Goal 5 resource because of their fish and/or wildlife values. For example, many areas designated as Water Areas and Wetlands are actively farmed and are not considered significant wildlife habitat whereas the Water Areas and Wetlands/Fish and Wildlife Habitat containing undisturbed riparian vegetation are considered significant wildlife habitat.

The only resource designations that were designated as a significant Goal 5 resource because of their fish and/or wildlife values are: Water Areas and Wetlands and Fish and Wildlife Habitat (Water areas and wetlands that are also fish and wildlife habitat) and Wildlife Habitat (Sensitive habitats identified by the Oregon Department of Fish and Wildlife, the Audubon Society Urban Wildlife Habitat Map, and forested areas coincidental with water areas and wetlands). Therefore, Section 422-3.6 should only apply to those designations.

## SUBMITTAL REQUIREMENTS FOR SECTION: 422 SIGNIFICANT NATURAL RESOURCES

At a minimum the following information is required to address Section 422:

- Prior to submitting a development application check with Land Development Services staff in order to determine the applicability of Section 422.
- When development is proposed within 250 feet of the location of areas identified on the Community Plan or Rural/Natural Resources Plan as Significant Natural Resources, the applicant shall:
  - Provide evidence that the resource is not on the subject property. Evidence may constitute photos showing the natural resource is not on the subject site or other material determined by the Director to be adequate.

**OR**

Address Section 422 as outlined below.

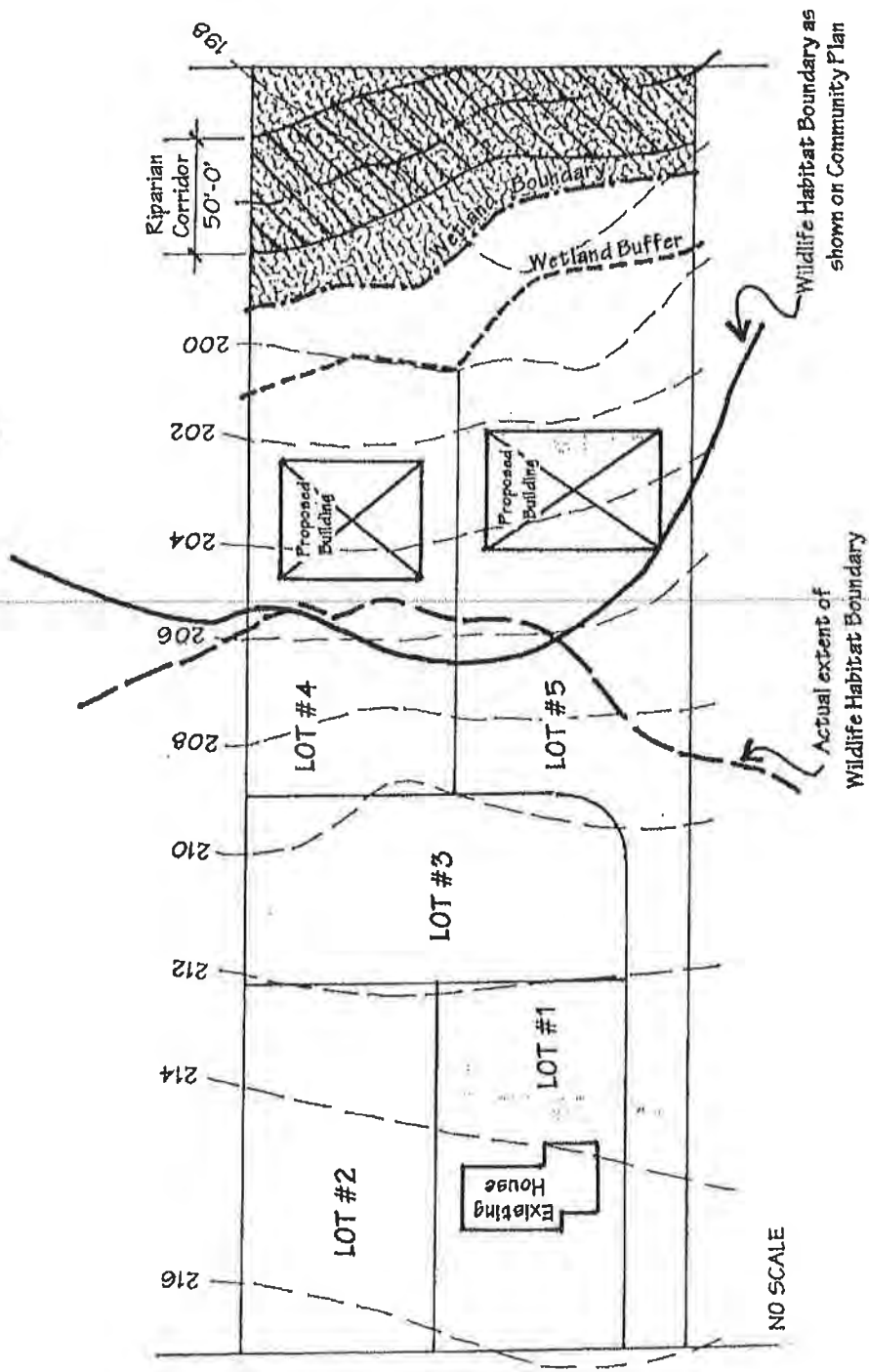
- Delineation of the boundary of the resource must be established by a professional or team of professionals qualified to address different characteristics of the natural resource.
- A wetland/wildlife habitat report shall be prepared which includes:
  1. A site plan of the subject parcel. The site plan shall include the actual boundary of the significant natural resource boundary as shown on the applicable community plan or the Rural/Natural Resource Plan and the actual boundary of the resource based on a field investigation.
  2. A general topographic map of the site.
  3. A soil map.
  4. When there is resource overlap, a separate wetland delineation shall be required for wetlands.
  5. When there is a Water Areas and Wetlands designation, the riparian area, if any, shall be delineated pursuant to Code Section 106-185 in addition to a wetland delineation. Note that the Riparian Zone, as defined by the Code, is adjacent to a channel. Wetlands that are not contiguous to channels designated as a resource are generally not subject to Section 422.
  6. Determine the extent and type of plant and wildlife species located in the natural resource area.
  7. Wildlife habitat shall be assessed using professionally recognized methodology which numerically rates different habitat values, such as that developed for the City of Portland's Goal 5 inventory or the Wildlife Habitat Assessment originally developed for the City of Beaverton.
  8. An assessment of the proposed development's impact to the identified habitats in the natural resource area, if any.
  9. Recommended measures to mitigate the proposed development's impact, if any, to the natural resource area. Mitigation measures are defined in Code Section 106-129.
  10. Findings and conclusions in the wetland/wildlife habitat report which address Code Section 422-3.1 and any other applicable requirement of Section 422.

As used in Code Section 422-3.6, **Mitigation** is defined as:

Reducing the impacts of a proposed development and/or offsetting the loss of habitat values resulting from development. In fish, wildlife, and big game range areas, mitigation may include, but is not necessarily limited to, requiring: 1) clustering of structures near each other and roads, controlling location of structures on a parcel to avoid habitat conflicts, minimizing extent of road construction to that required for the proposed use; and, 2) replacing unavoidable loss of values by reestablishing resources for those lost, such as: forage for food production, escape or thermal shelter. In other areas of significant wildlife value, such as wetlands, riparian vegetation and special bird nesting sites, maintenance and enhancement of remaining habitat, setbacks and restoration of damage and avoiding damage would be appropriate. (CDC 106-129).

As used in Code Section 422-3.3A, **Riparian Zone** is defined as:

The area, adjacent to a water area, which is characterized by moisture-dependent vegetation, compared with vegetation on the surrounding upland, as determined by a qualified botanist or plant ecologist, or in no case less than a ground distance of twenty-five (25) feet on either side of the channel. Where, in its existing condition, a wetland or watercourse has no discernible channel which conveys surface water runoff, the riparian zone shall be measured from the center of the topographic trough, depression or canyon in which it is located. (CDC 106-185)



NO SCALE

Actual extent of  
Wildlife Habitat Boundary

Wildlife Habitat Boundary as  
shown on Community Plan

### Metro's "Title 13: Nature in Neighborhoods"

- Created the Nature in Neighborhoods program, including these Metro activities:
    - restoration and enhancement grants (Mary Rose Navarro)
    - State of the Watersheds biennial monitoring report
    - Nature-friendly development practices program (Gail Shaloum, Lyn Bonyhadi)
  - Model ordinance contains language regarding trails in high-value areas.
  - Implements Statewide Planning Goal 5 (fish and wildlife habitat protection).
  - Council adopted in fall 2005 after about a 10-year process; jurisdictions compliance in 2009.
  - Regionally Significant Fish and Wildlife habitat inventory – 3 riparian classes (I, II, III) and 3 upland classes (A, B, C); ~80,000 acres, or 28% of the region.
  - Program includes voluntary and regulatory components.
  - Regulatory protection on Classes I and II only. New UGB additions will need to look at some protection for Classes A and B. Local implementation maps may differ from Metro maps.
- Environmental, Social, Economic and Energy (ESEE) analysis resulted in lowering regulatory protection in some riparian areas.
- Two sets of maps: inventory and Habitat Conservation Areas (HCAs are post-ESEE analysis).
  - Mapping tool available at <http://www.oregonmetro.gov/index.cfm/go/by.web/id=8385>; inventory maps, data available at <ftp://ftp.metro-region.org/dist/gm/fish+wildlife/>.
  - Seeks to conserve, protect and restore habitat through time, using a comprehensive approach including voluntary, incentive based, educational and regulatory elements.
  - Includes provisions to:
    - determine whether jurisdictions are in compliance (must meet baseline standard, but can do it in a variety of ways and may exceed baseline if desired)
    - monitor and evaluate program performance over time to determine whether the program is achieving its objectives and targets (State of the Watersheds on even years, local jurisdictions report on non-regulatory activities on odd years)
    - provide sufficient information to determine whether to amend the program in the future (formal Council check-in scheduled for 2015)
  - DEQ considers Title 13 a key tool for complying with Federal Clean Water Act (TMDLs).
  - Builds on Title 3 (water quality and floodplain regulations), but Title 13's regulatory area is more site-specific and in some areas, greater in extent compared to Title 3.

#### Key points:

- *natural area parks are held to the highest standard*
- *local jurisdictions set and enforce the requirements (in Tualatin Basin, usually CWS)*
- *only applies to properties within the UGB*
- *within current UGB, Class I and II are potentially subject to protection; some upland protection is likely to be required in future UGB expansion areas*

### Wildlife habitat criteria

Habitat characteristic	Criteria for scoring
Habitat patch size	<p>The size value for a patch is calculated by:</p> <ol style="list-style-type: none"> <li>Calculating the area in acres for all type 1 patches<sup>1</sup> using a GIS system.</li> </ol> <p>Assigning all type 1 patches a value of 1 to 3 based on their distribution within three classes derived by finding natural breaks using a GIS system<sup>2</sup>.</p>
Habitat interior (minimizes edge habitat)	<p>The interior value for a patch is calculated by:</p> <ol style="list-style-type: none"> <li>Defining an interior zone for all type 1 patches by using a GIS system to draw internal buffers of 200 feet for each.</li> <li>Calculating the interior zone area (if any) in acres for all type 1 patches using a GIS system.</li> </ol> <p>Assigning all type 1 patches an interior value of 1 to 3 based on their distribution within three classes derived by finding natural breaks using a GIS system.</p>
Connectivity and proximity to water resources	<p>The connectivity to water value for a patch is calculated by:</p> <ol style="list-style-type: none"> <li>Calculating the area of all type 1 and 2 patches that is less than 300 feet from of a source of water<sup>3</sup> using a GIS system.</li> <li>Deriving the "connectivity to water" ratio of each type 1 patch. This is done by dividing the patch area inside 300 feet by the patch area greater than 300 feet away from a stream. (Inside 300 / outside 300 = "connectivity to water" ratio)</li> <li>Deriving the "adjusted connectivity to water" ratio of each type 2 patch. The area inside 300 feet is divided by two to create an adjusted total. The adjusted amount is divided by the patch area greater than 300 feet away from a stream. ((Inside 300 / 2) / outside 300 = "adjusted connectivity to water" ratio)</li> </ol> <p>Assigning all type 1 and 2 patches a connectivity to water value of 1 to 3 based on the distribution of their ratios within three classes derived by finding natural breaks using a GIS system.</p>
Connectivity and proximity to other patches	<p>The Connectivity/Proximity value for a patch is calculated as follows:</p> <ol style="list-style-type: none"> <li>Perform a nearest neighbor operation GIS operation that measures the average distance from each type 1 and 2 patch to other patches within ¼ mile of their perimeters.*</li> <li>Assigning all type 1 and 2 patches a connectivity/proximity value of 1 to 3 based on their distribution within three classes derived by finding natural breaks using a GIS system.</li> </ol> <p>*General fragmentation also affects the overall score to a lesser degree. The more fragmented a patch the lower the score.</p>
Habitats of concern and habitats for unique and sensitive species	<p>A habitat of concern is a unique or unusually important wildlife habitat area. They are identified based on site-specific information provided by local wildlife or habitat experts. Habitats of concern can be smaller than 2 acres, and will be included in the inventory if falling into one or more of the following categories:</p> <p>Any patch specifically identified as a Priority Conservation Habitat by ODFW, USFWS, or other agencies or local wildlife experts. Priority conservation habitats are Oregon white oak savannas and woodlands, native prairie grasslands, wetlands, and bottomland hardwood forests.</p> <p>Any patch of natural land cover identified by ODFW, USFWS, or other agencies or local wildlife experts as a riverine island or delta important to wildlife.</p> <p>Specifically delineated habitat areas that provide life-history requirements of sensitive, threatened or endangered wildlife species or Great Blue Heron rookeries (for example, nesting habitat for an existing population of native turtles); habitats that support at-risk plants; or habitats that provide unusually important wildlife functions, such as major wildlife crossings/pathways or a key migratory pathway, such as an elk migratory corridor.</p>

<sup>1</sup> Type 1 patches are defined as any forest landcover, forested wetland, or nonforested wetland with a total combined size greater than 2 acres. Where different cover types are contiguous they are considered to be part of a single larger patch. Type 2 patches are defined as any shrubland/scrubland or grassland/open soils landcover in a tract greater than 2 acres, within 300 feet off a surface stream.

<sup>2</sup> The Jenkins method for finding natural breaks was used. This method creates classes based on natural groupings of data values. Features are divided into classes whose boundaries are set where there are relatively big jumps in the data values.

<sup>3</sup> A source of water is defined as any surface river or stream, wetland, or other water body.



### Riparian corridors ecological functions and criteria

Ecological function	Criteria for receiving a primary score	Criteria for receiving a secondary score
Microclimate and shade	Forest or woody vegetation within 100 feet of a stream; a wetland <sup>1</sup> ; or a flood area <sup>2</sup> .	Forest or woody vegetation that is contiguous to the primary area (which is 100 feet) and extends outward to 780 feet.
Streamflow moderation and water storage	A wetland or other water body <sup>3</sup> with a hydrologic connection to a stream; or a flood area.	Forest, woody vegetation, or low structure vegetation/undeveloped soils within 300 feet <sup>4</sup> of a stream; or forest that is contiguous to the riparian corridor (starts within 300 feet <sup>5</sup> but extends beyond); or developed floodplains.
Bank stabilization, sediment and pollution control	A 50-foot band is included within the riparian corridor as a default to maintain basic functions. All sites within 50 feet of a surface stream receive a primary score.  Forest, woody vegetation, or low structure vegetation/undeveloped soils within 100 feet <sup>6</sup> of a stream or a wetland; or forest, woody vegetation, or low structure vegetation/undeveloped soils <sup>6</sup> within a flood area.  Forest, woody vegetation, or low structure vegetation/undeveloped soils within 100-200 feet of a stream if the slope is greater than 25%.	Forest, woody vegetation, or low structure vegetation/undeveloped soils located on a slope greater than 25%, that starts within 175 feet <sup>7</sup> of a stream and runs to the first effective break in slope.
Large wood and channel dynamics	Forest within 150 feet of a stream or wetland; or within a flood area.  The channel migration zone is basically defined by the floodplain, but where there is no mapped floodplain a default of 50 feet was selected to allow for the channel migration zone <sup>9</sup> .	Forest within 150 to 262 feet of a stream; or developed floodplains.
Organic material sources	Forest or woody vegetation within 100 feet of a stream or wetland; or within a flood area.	Forest or woody vegetation within 100 to 170 feet of a stream.

Source: Metro 2001.

<sup>1</sup>Here we refer to "hydrologically-connected wetlands," which are located partially or wholly within ¼ mile of a surface stream or flood area.

Developed floodplains are not included as a regional resource since they do not receive a primary ecological function score.

"Other water body" could include lakes, ponds, reservoirs, or manmade water feature that is not a water quality facility or farm pond.

<sup>4</sup>All upland forests, vegetation, and undeveloped soils help to moderate streamflow and store water. Staff used 300 feet here because some data layers for landcover types do not extend past 300 feet from a stream.

<sup>5</sup>Forest landcover is the only type that extends beyond 300 feet in the Metro database and thus excludes other types.

<sup>6</sup>Metro's science paper indicates 100 feet as a suitable average distance for vegetation contributing to filtering.

<sup>7</sup>175 feet was chosen due to the method used for mapping riverine slopes.

<sup>8</sup>The woody vegetation and low structure vegetation/undeveloped soils are mapped to 300 feet, the forest is mapped to the edge of the floodplain.

<sup>9</sup>Application of the default to maintain basic functions will be limited to low and moderate gradient channel types.

### **Class I riparian/wildlife habitat**

- Largest classification – 32% of total habitat inside UGB, 31% outside
- Includes rivers, streams, wetlands, undeveloped floodplains, forest canopy within 100 feet of streams (200 if steep sloped)
- High value riparian corridors providing 3-5 primary functions (18-30 in the model)
  - Microclimate and shade
  - Streamflow moderation and water storage
  - Bank stabilization, sediment and pollution control
  - Large wood and channel dynamics
  - Organic material sources

### **Class II riparian/wildlife habitat**

- 14% inside UGB, 10% outside
- 1 to 2 primary functions (6-17 points) or one primary plus one or more secondary
- Includes wildlife habitat where it coincides with the medium value riparian habitat
- Includes rivers, streams, 50-ft area along developed streams, forest canopy or low structure within 200 ft of streams, and portions of undeveloped floodplain beyond 300 ft of streams
- Elevated to Class I when contain HOCs

### **Class III riparian/wildlife habitat**

- 8% of habitat inside UGB, 1% outside
- Riparian value only (outside wildlife areas)
- Developed floodplains, smaller forest canopies disassociated from streams (less than 20 acres)

### **Class A upland wildlife habitat**

- 24% of habitat inside UGB, 25% outside
- High value habitat areas scoring 7-9 points in model
- Includes upland portions of large forest patches
- May also contain areas providing secondary fxns for riparian, and HOCs outside riparian

### **Class B upland wildlife habitat**

- 13% inside, 22% outside UGB
- 4-6 points in model
- Primarily upland portions of medium sized forest patches

### **Class C upland wildlife habitat**

- 9% inside, 11% outside UGB
- 2-3 points in model
- Include forest patches and smaller connector patches along streams and rivers

Table 3.07-13a: Method for Identifying Habitat Conservation Areas ("HCA")

<i>Fish &amp; wildlife habitat classification</i>	<i>High Urban development value<sup>1</sup></i>	<i>Medium Urban development value<sup>2</sup></i>	<i>Low Urban development value<sup>3</sup></i>	<i>Other areas: Parks and Open Spaces, no design types outside UGB</i>
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA <sup>4</sup>
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA <sup>4</sup>
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA <sup>5</sup> / High HCA <sup>4</sup>
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA <sup>5</sup> / High HCA <sup>4</sup>

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an adjustment pursuant to Section 4(E)(5) of this title.

<sup>1</sup> Primary 2040 design types: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas

<sup>2</sup> Secondary 2040 design types: Main Streets, Station Communities, Other Industrial Areas, and Employment Centers

<sup>3</sup> Tertiary 2040 design types: Inner and Outer Neighborhoods, Corridors

<sup>4</sup> Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas, as provided in Section 4(A)(5) of this title.

<sup>5</sup> All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Table 3.07-13b: Method for Identifying Habitat Conservation Areas ("HCA") in Future Metro Urban Growth Boundary Expansion Areas

<i>Fish &amp; wildlife habitat classification</i>	<i>High Urban development value<sup>1</sup></i>	<i>Medium Urban development value<sup>2</sup></i>	<i>Low Urban development value<sup>3</sup></i>	<i>Other areas: Parks and Open Spaces, no design types outside UGB</i>
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA <sup>4</sup>
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA <sup>4</sup>
Class A Upland Wildlife	Low HCA	Moderate HCA	Moderate HCA	High HCA / High HCA <sup>5</sup> / High HCA <sup>4</sup>
Class B Upland Wildlife	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA <sup>5</sup> / High HCA <sup>4</sup>

(same footnotes apply as in first table)

**Project 100096 (15315) SW Boones Ferry Road - Trees outside Permanent Easements recommended for removal on County File # 3.**

**Boones Ferry Road**

NO	COMMON NAME	BOTANICAL NAME	DBH	HEIGHT	CONDITION	STRUCTURE	REMOVAL	COMMENTS	NOTES	
1	113782	Douglas Fir	<i>Pseudotsuga menziesii</i>	21	110	Poor	Fair	YES	2 conks on S side.	
2	113834	Douglas Fir	<i>Pseudotsuga menziesii</i>	26	130	Fair	Fair	YES		
3	114105	Douglas Fir	<i>Pseudotsuga menziesii</i>	15	110	Poor	Poor	YES	High thin crown. Suppressed, live crown ratio 15%.	
4	114106	Douglas Fir	<i>Pseudotsuga menziesii</i>	30	130	Fair	Poor	YES	High crown. broken top.	
5	114107	Douglas Fir	<i>Pseudotsuga menziesii</i>	30	130	Fair	Poor	YES	High crown. broken top.	
6	114109	Douglas Fir	<i>Pseudotsuga menziesii</i>	18		Fair	Fair	YES		
7	114117	Douglas Fir	<i>Pseudotsuga menziesii</i>	27	130	Poor	Poor	YES	High crown. Slow growth. Unusual butt swell.	
8	114119	Douglas Fir	<i>Pseudotsuga menziesii</i>	17	110	Poor	Poor	YES	High crown. Slow growth.	
9	114120	Douglas Fir	<i>Pseudotsuga menziesii</i>	20	110	Poor	Poor	YES	Several conks starting just above English Ivy up to about 50' above ground on S side.	
10	114125	Douglas Fir	<i>Pseudotsuga menziesii</i>	36	150	Very Poor	Poor	YES	Broken top. High crown. Thinning crown. Many <i>Phellinus pini</i> conks on S side.	
11	114126	Douglas Fir	<i>Pseudotsuga menziesii</i>	22	130	Poor	Poor	YES	High crown. broken top. Slow growth.	
12	114130	Big leaf Maple	<i>Acer macrophyllum</i>	10	20	Very Poor	Very Poor	YES	Dead broken top, epicormic sprouts make up most of the live tissue on tree.	
13	114134	Douglas Fir	<i>Pseudotsuga menziesii</i>	18	130	Poor	Poor	YES	High crown. broken top. Slow growth.	
14	114135	Douglas Fir	<i>Pseudotsuga menziesii</i>	26	130	Poor	Poor	YES	High crown. broken top. Slow growth.	
15	114139	Douglas Fir	<i>Pseudotsuga menziesii</i>	20	120	Very Poor	Poor	YES	Broken top. High crown. Thinning crown. Many <i>Phellinus pini</i> conks on E side.	

**Day Road 2/6/13**

NO	COMMON NAME	BOTANICAL NAME	DBH	CONDITION	STRUCTURE	COMMENTS	REMOVAL	REMOVAL RECOMMENDATION BY ARBORIST	NOTES	
16	8059	Douglas Fir	<i>Pseudotsuga menziesii</i>	37	Poor	Fair	113782.L. Conks on S side.	YES	REMOVE due to presence of conks, too close to grading.	
17	8065	Douglas Fir	<i>Pseudotsuga menziesii</i>	23	Very Poor	Fair	Conks on S side.	YES	REMOVE as it is in very poor condition, has fungal conks and it will be more exposed to damaging winds from the south with the removal of nearby trees.	
18	8066	Douglas Fir	<i>Pseudotsuga menziesii</i>	32	Poor	Fair	Broken top.	YES	REMOVE as it is too close to the grading line (13 feet) for the size of the tree plus it has a broken top indicating a history of failure.	
19	8096	Douglas Fir	<i>Pseudotsuga menziesii</i>	41	Good	Good	Grade cut is approximately 23 feet south of the tree. If the tree is located properly on the survey, the tree should be ok.	Potential		
20	8099	Douglas Fir	<i>Pseudotsuga menziesii</i>	24	Poor	Fair	Broken top. Wound seam from ground to 3.5' AGL.	YES	REMOVE as the tree is on the front exposure, has an old crack as shown by the seam at the base of the tree.	
21	8112	Douglas Fir	<i>Pseudotsuga menziesii</i>	22	Poor	Poor	Broken top. Die back in crown.	YES	REMOVE, while it is far enough away from the grading line if properly located on survey the tree will be more exposed to strong winds and it's condition of dieback in the crown of the tree indicates that it is in decline. Also it appears in the field that the tree is closer to the grading line than indicated on the survey.	
22	8124	Douglas Fir	<i>Pseudotsuga menziesii</i>	24	Very Poor	Poor	Thin crown. Conks. Broken top.	YES	REMOVE too close to grading line, tree infected with red ring rot as indicated by conks on the tree.	
23	8147	Douglas Fir	<i>Pseudotsuga menziesii</i>	26	Fair	Fair	Old broken top.	YES	REMOVE too close to grading line, tree has history of failure as indicated by broken tree top.	



**BEDSAUL/VINCENT CONSULTING, LLC**

416 Laurel Ave. #3

Tillamook, OR 97141

Office: (503) 842.5391

brucevincent@embarqmail.com

April 13, 2015

**REQUEST:** Development Review for a Contractor's Establishment in the FD-20 District on Tax Lot 300, Map 3S1-2B

**APPLICANT:** Bob Jonas

**OWNER:** Bob Jonas, c/o  
Walter C Sudul Life Estate  
PO Box 1130  
Wilsonville, OR 97070

**LEGAL DESCRIPTION:** Tax Lot 300, Map 3S1-2B

**SIZE:** 7.35 acres (as surveyed)

**LOCATION:** 24735 SW Boones Ferry Road

**ZONING:** FD-20 (Future Development-20 Acre)

**I. APPLICABLE REGULATIONS**

A. *Washington County Comprehensive Framework Plan  
Policy 41, Urban Growth Boundary Expansions  
Area of Special Concern #5*

B. *2012 Washington County Community Development Code*

**1. Article III, Procedures**

*Section 202-3 (Type III Procedures)*

*Section 207-5 (Conditions of Approval)*

**2. Article III, Land Use District**

*Section 308 (Future Development 20 Acre [FD-20])*

**3. Article IV, Development Standards**

*Section 403 (Applicability)*

*Section 404 (Master Planning)*

*Section 406 (Building Siting)*

*Section 407 (Landscape Design)*

*Section 408 (Neighborhood Circulation)*

*Section 410 (Grading and Drainage)*

*Section 411 (Screening & Buffering)*

- Section 413 (Parking & Loading)*
- Section 414 (Signs)*
- Section 415 (Lighting)*
- Section 416 (Utility Design)*
- Section 419 (Height)*
- Section 422 (Significant Natural Resources)*
- Section 423 (Environmental Performance Standards)*
- Section 426 (Erosion Control)*

**4. Article V, Public Facilities and Services**

- Section 501-1 (Public Facility and Service Requirements)*
- Section 501-6 (Exceptions for Critical and Essential Services)*
- Section 502 (Sidewalks)*

C. 2012 Washington County Transportation Plan

**II. AFFECTED JURISDICTIONS**

Washington County Sheriff  
 TV Fire & Rescue  
 City of Wilsonville, (streets only)

**III. GENERAL INFORMATION**

1. The applicant and owner request a Contractor's Establishment to construct four, 5,000 square foot buildings,(20,000 square foot total),with an associated parking/circulation area, all on the west side of the subject lot. The buildings will be for interior storage of contractor's equipment,materials,and supplies. The contractors equipment, materials, and supplies will consist of such things as trucks, trailers, heavy machinery, tools, and construction materials, (e.g., concrete blocks, lumber, steel pipe). Some contractor's equipment, such as trucks, trailers and company vehicles may occasionally stored outside and/or parked in the parking areas provided. The existing dwelling on the east side of the site will remain, and serve as a caretakers residence for the Contractor's Establishment. (See Exhibit "A")
2. Although the site is defined as "urban", not all urban services are readily available to the site and/or are within the jurisdiction of Wilsonville, thus, connection to Wilsonville urban services would require annexation to Wilsonville in order to have those services provided. Based on the above, the applicant is requesting an Exception to Critical Services as set forth in CDC 501-6.
3. A recent Contractor's Establishment was approved on the site directly to the west. (See Case File 14-431-D(IND) That case file provides evidence, (in the form of letters and e-mails), demonstrating that the City of Wilsonville objected to any connection to their urban services, and that the City was concerned about ROW dedications and road signage. It is likely that Wilsonville will enter similar comments in this request.
4. All of the land surrounding the subject site is zoned FD-20. As stated above, the single family development to the west was just recently approved for a Contractor's

Establishment. There are three other dwelling north of the site at 24415, 24545, and 24645 SW Boones Ferry Road. (TL 301, 306 and 308) The northern limit of the proposed Contractor's Establishment's circulation area will be approximately 300' to 375' south of those dwellings. Other single family dwellings occupy lots on the east side of SW Boones Ferry and the south side of SW Day Road, all of which are zoned FD-20.

5. A synopsis of the neighborhood meeting held on 3/20/2015 is included with an affidavit of posting and mailing notice. (See Attachment "A") Four residents of the neighborhood attended the meeting. The neighbors raised no major objections to the development as proposed.
6. There are no existing violations associated with Tax Lot 300, Map 3S1-2B.

B. Washington County Comprehensive Framework Plan:

**APPLICANT COMMENT:**

Goals and policies, which relate to the development of land, are implemented by the Code. This application is not required to address, consider, or implement any goals, policies or strategies of the plan except where required by Code.

**Policy 41, Urban Growth Boundary Expansions**

*Implementing Strategies*

*The County will:*

- a. *Consistent with Policy 18, apply the FD-10 or FD-20 designation to property added to a UGB provided the expansion has been acknowledged by the Land Conservation and Development Commission. The property shall be designated FD-10 or FD-20 through a quasi-judicial or legislative amendment to the applicable Community Plan and/or the Future Development Areas Map. The FD-20 designation shall be maintained until all appeals regarding the UGB expansion have been finalized and, when applicable, the planning requirements of Title 11 of Metro's UGMFP are complete and adopted by ordinance or by a quasi-judicial plan amendment. The FD-10 designation shall be maintained until the property is annexed to a city. Property added to the Regional UGB through a Locational or Minor Adjustment may be designated with any urban plan designation provided the proposed designation is consistent with the provisions of this Comprehensive Framework Plan.*

**APPLICANT COMMENT:**

The subject has been zoned FD-20, therefore it is compliance with this implementing strategy.

- b. *Require that land added to the Regional UGB be added to a Community Plan and/or the Future Development Areas Map when applying any urban land use designation through a quasi-judicial or legislative plan amendment.*



**APPLICANT COMMENT:**

The Comprehensive Framework Plan Future Development Areas Map indicates that the subject property and other FD-20 zoned lots adjacent to the site are included on the said Map, therefore this proposal complies with this implementing strategy.

- c. *Continue to apply the Significant Natural Resource designations on the Rural/Natural Resource Plan to properties designated FD-10 or FD-20.*

**APPLICANT COMMENT:**

In Case File 14-431-D(IND), the Staff Recommendation report states that TL 309, which is the lot directly west and adjacent to the subject site is in the Area of Special Concern, (ASC) #5. In their report, staff's review of the Rural Natural Resource Plan, associated maps, and tax lot descriptions demonstrate that, on TL 309, there was no natural resources, despite that fact that the County Rural Natural Resource Plan indicates the presence of significant natural resources, such as the Tonquin Scab Lands, aggregate resources, streams, and wetlands. Since the subject site is directly adjacent to TL 309, then, by inference, the subject site most likely contains such things as the Tonquin Scab Lands and aggregate resources. However, there are no streams, or wetlands on-site. Staff noted in the Pre-Application Conference that the subject site is also located in the ASC #5, and noted that there were a grove of trees on the subject site. The subject grove of trees were removed in 2013 on the advice of Washington County staff that cruised the on-site timber in preparation for the 2013 Washington County initiated ROW widening/improvements to SW Boones Ferry & Day Roads. Washington County staff informed the applicant that the on-site trees were unsafe and would be subject to blow down, which could cause those trees to fall onto adjacent tax lots and/or the existing dwelling on the subject site. Based on those facts, the trees were removed. The subject site was required to dedicate 10' of additional ROW for the said improvements.

B. 2012 Washington County Community Development Code:

1. **Article II, Procedures:**  
*Section 202-3 Type III Procedures*  
*Section 202-3.1*

**APPLICANT COMMENT:**

This application is submitted as a Type III development request. The application is submitted with the intent to comply with the standards and procedures outlined in the Code.

2. **Article III, Land Use District:**  
*Section 308 FD-20 District (Future Development-20 Acres)*  
*Section 308-4 Uses Permitted Through a Type III Procedure*

**APPLICANT COMMENT for 308-4:**

According to this criterion, a Contractor's Establishment is permitted as Type III procedures, provided that the applicant address the relevant and applicable criteria as set forth in CDC Section 308-4.6. The applicant will address the relevant and applicable criteria in the following paragraphs.

*308-4.6 Contractors Establishment***APPLICANT COMMENT for 308-4.6:**

The request is for establishment of a Contractor's Establishment on the subject site, which is a permitted use as set forth under the site's FD-20 plan designation. The request will involve construction of four, 5,000 square foot buildings (20,000 square foot total), with an associated parking/circulation area, all on the west side of the subject lot. The buildings will be for interior storage of contractor's equipment, materials, and supplies. The contractors equipment, materials, and supplies will consist of such things as trucks, trailers, heavy machinery, tools, and construction materials,(e.g., concrete blocks, lumber, steel pipe). Some contractor's equipment, such as trucks, trailers and company vehicles may occasionally stored outside and/or parked in the parking areas provided. The existing dwelling on the east side of the site will remain, and serve as a caretakers residence for the Contractor's Establishment. (See Exhibit "A")

The proposed use of the subject site will not be retail in nature; it will not be open to the public were customers would visit the site. This Contractor's Establishment will only be available to Contractor's Establishment employees. As shown on Exhibit "A", employees will enter and exit the site via the existing access intersect with SW Day Road, and park in the proposed parking area in front of the four proposed structures. As shown on Exhibits "A" the access, circulation and parking areas will be graveled.

*308-6 Dimensional Requirements**308-6.2 Yard Requirements***APPLICANT COMMENT for 308-6.2:**

According to this criterion, The minimum yard requirements shall be:

Thirty (30) foot front yard  
 Ten (10) foot side yard  
 Thirty (30) foot street side yard  
 Twenty-five (25) foot rear yard

As shown on the attached plans the proposed four Contractor's Establishment structures have the following setbacks:

61.34' front yard (Day Road)  
 25' westerly side yard

Based on the above-mentioned facts, the subject site complies with the minimum setback standards for a Contractor's Establishment.

*Section 308-6.3 Height:*

**APPLICANT COMMENT for 308-6.3:**

As shown on Sheet 5 of Exhibit "A", the proposed four Contractor Establishment structure will be 34.3' tall at the ridge line. The maximum FD-20 building height for all structures is 35', therefore the proposal complies with this criterion based on the facts presented above.

*Section 308-7 Additional Standards*

*Section 308-7.1 All new permitted uses shall be constructed in a manner which does not interfere with future conversion of the land to planned urban densities and/or uses.*

**APPLICANT COMMENT for 308-7.1:**

As shown on Exhibit "A", all of the proposed development is on the far western end of the property, occupies approximately two acres of the 7.35 acre site, and will use an existing driveway onto SW Day Road. Therefore, based on the above, the proposed use of the property will not interfere with future conversion of the land to any planned urban use. The existing dwelling will remain, and there is 5.35 acres east of the Contractors Establishment for future conversion of the land to urban level densities. The proposal complies with this criterion based on the facts presented above.

*308-7.2 Lawful nonconforming uses in the FD-20 District may be expanded or rebuilt to the limit of available services, through a Type II procedure when in conformance with the adopted Comprehensive Plan for the area. Expansion or replacement shall be subject to the provisions of development review and shall not include new uses.*

**APPLICANT COMMENT for 308-7.2:**

The request is for establishment of four new Contractor Establishment structures, and the existing dwelling is a legally established dwelling. There are no plans to expand or rebuild that dwelling. therefore, the proposal complies with this criterion.

*308-7.3 Property in an Area of Special Concern on the Future Development Areas Map in the Comprehensive Framework Plan for the Urban Area is subject to the applicable Area of Special Concern provisions in Plan Policy 41.*

**APPLICANT COMMENT for 308-7.3:**

As stated above, the site is located in the ASC #5, and staff noted that there was a grove of trees on the subject site. Those trees were removed in 2013 on the advice of Washington County staff that cruised the on-site timber in preparation for the 2013 Washington County initiated ROW widening/improvements to SW Boones

Ferry & Day Roads. Washington County staff informed the applicant that the on-site trees were unsafe and would be subject to blow down, which could cause those trees to fall onto adjacent tax lots and/or the existing dwelling on the subject site. Based on those facts, the trees were removed. The subject site was required to dedicate 10' of additional ROW for the said improvements.

*308-8 Access*

**APPLICANT COMMENT for 308-8:**

The subject site is a corner lot that abuts two public roads, (SW Day Road and SW Boones Ferry Road), both of which are arterials. The site has approximately 590' of frontage on SW Day Road, (City of Wilsonville maintained road), and there is an existing driveway access point onto Day Road. The site has 541' of frontage on SW Boones Ferry Road, (Washington County maintained road), and there are two existing driveway access points onto Boones Ferry Road. TVFR provides fire protection services in the area. Based on the above, the subject site abuts two, public roads, and has existing and proposed access and circulation that reasonably can meet TVFR standards.

**3. Article IV, Development Standards:**

*Section 404 Master Planning*

*Section 404-1 Type I, Site Analysis of a New Use or Expansion of an Existing Use  
Section 404-1.2 Off-site analysis is required for all development and expansion that exceed 50% of existing development.*

**APPLICANT COMMENT:**

The site plan and other documents submitted with this application provides an off-site analysis of topography, soils, vegetation, structures, utility locations and/or other significant items necessary for review of this application.

*Section 404-1.3 On-site analysis includes an area within 50' of proposed development.*

**APPLICANT COMMENT:**

The site plan and other documents submitted with this application provides an on-site analysis of topography, soils, vegetation, structures, utility locations and/or other significant items within 50' of the proposed development.

*Section 404-1.4 Off-site analysis*

**APPLICANT COMMENT:**

The site plan and other documents submitted with this application provides an on-site analysis of topography, soils, vegetation, structures, utility locations, off-site circulation and/or other significant items in an equal extension of the Master Plan area in all cardinal direction has been provided for review of this application.

*Section 406 (Building Siting)**406-1 Review Standards**406-2 Additional Requirements for Type II and Type III Development**406-3 Energy Conservation Guidelines**406-7 Submittal Requirements**406-1 Review Standards***APPLICANT COMMENT FOR SECTION 406-1:**

As discussed above and as shown on Exhibit "A", the proposed Contractor's Establishment is a permitted use in the FD-20 District, and all proposed structures comply or exceed minimum setback standards of CDC 308. The project meets the maximum height requirement of the FD-20 District. The proposal complies with these criteria based on the facts presented above.

*406-2 Additional Requirements for Type II and Type III Development***APPLICANT COMMENT FOR SECTION 406-2.1:**

As set forth under this criterion, all proposed structures are required to have a distance between primary structures on a single lot no less than the sum of the required setbacks. As shown on Exhibit "A", all proposed structures are located such that they provide setbacks that are no less than the sum of the required setbacks.

**APPLICANT COMMENT FOR SECTION 406-2.2:**

According to this criterion, when required by the Uniform Building Code, a facility must provide facilities for the disabled pursuant to the Uniform Building Code. The proposed site use is for employees only, and the site will not be "open to the public", as a retail and/or commercial use might be. Therefore, based on the above, no ADA compliant facilities are proposed or required.

**APPLICANT COMMENT FOR SECTION 406-2.3:**

As set forth here, the proposed structures should incorporate design features which reflect or complement the surrounding structural and architectural character through building style and materials. The adjacent site to the west was recently approved for a Contractor's Establishment, which proposes a similar arrangement of metal storage buildings and a caretakers residence surrounded by a landscaped area. As shown on Exhibit "A", the proposed site uses and arrangements of structures should compliment the adjacent Contractor's Establishment Use, by incorporating similar design features that mimic structural and architectural character of a permitted use in the FD-20 zone.

**APPLICANT COMMENT FOR SECTION 406-2.4:**

This criterion strives to renovate or revitalize existing structures identified within the Community Plan. The only existing on-site structure is a dwelling that will serve as a caretaker's residence. There are no current plans to renovate the structure, but the dwelling will be maintained on-site, therefore there is future potential to renovate or revitalize the existing dwelling.

**APPLICANT COMMENT FOR SECTION 406-2.5:**

The goal of these criteria is to arrange structures and use areas for compatibility with adjacent development and surrounding land uses, using the following design and siting techniques:

*406-2.5 (A) Locate and design structures and uses not to obscure or degrade identified scenic views or vistas from adjacent properties and public thoroughfares, considering setbacks, building height, bulk and landscaping;*

**APPLICANT COMMENT FOR SECTIONS 406-2.5(A):**

To the applicant's knowledge, there are no scenic views or vistas on or adjacent to the subject site. Therefore, based on the above-stated facts, this criterion does not apply to this specific request.

*406-2.5 (B) Orient major service activity areas (e.g., loading and delivery areas) of the proposed development away from existing dwellings;*

**APPLICANT COMMENT FOR SECTIONS 406-2.5(B):**

As evidenced by Exhibit "A", the proposed Contractor's Establishment's circulation area between the proposed structures will be located approximately 125' east of the existing dwelling on the adjacent TL 309, (9675 SW Day Road), which was subject to a recent Contractor's Establishment approval. (See Case File 14-431-D/(IND) Note that on page 1 of the staff report for Case File 14-431-D/(IND), staff states that the current existing dwelling on TL 309 will be converted to an office use for the Contractors' Establishment, therefore, the current TL 309 residential use will soon be converted to a non-residential, (i.e. office), use, thus eliminating the potential for the subject site's long term impact on that adjacent residential use. There are three other dwelling north of the site at 24415, 24545, and 24645 SW Boones Ferry Road, (TL 301, 306 and 308), but the northerly limit of the proposed Contractor's Establishment's circulation area will be located approximately 300' to 375' south of those dwellings. Mature trees on TL 301, 306 and 308 and a large grove of mature on-site trees will provide a spatial and buffered separation from the proposed use.

*406-3 Energy Conservation Guidelines**Type II and Type III Developments:*

*406-3.1 Where possible, lay out streets and building lots for multi-family, commercial, industrial and institutional developments to allow buildings*

*maximum solar access, using techniques such as:*

- A. East-west street direction so that principal building facades will face south;*
- B. Make configuration of lots to allow orientation of the front or rear of buildings with in twenty (20) degrees of true south in order to maximize potential solar access.*

**APPLICANT COMMENT FOR SECTIONS 406-3.1(A)(B):**

The subject proposal will be developed on a single lot of record and there are no new streets proposed, therefore 406-3.1(A)(B) are not applicable to this request.

*406-3.2 Where possible, design multi-family, commercial, industrial and institutional buildings conducive to energy efficiency and conservation.*

**APPLICANT COMMENT FOR SECTIONS 406-3.2:**

The proposed four structures, when permitted, are required to be constructed in substantial conformance with International Building Code, (IBC) with Oregon Amendments. Based on that fact, the new structures will be built to current energy efficient code standards and thus, will be energy efficient. The proposal complies with this criterion based on the facts presented above.

*406-6 Mixed Solid Waste and Recyclables Storage Facilities*

*The mixed solid waste and source-separated recyclables storage standards of this section shall apply to new multi-unit and single family attached residential buildings containing five or more units and to new commercial, industrial and institutional construction that is subject to a Type II or III review procedure and is located inside the Regional Urban Growth Boundary.*

**APPLICANT COMMENT FOR SECTIONS 406-6:**

Daily business activity will be limited based on the intended site's storage use. (i.e., the storage of equipment, materials and supplies) Employees will visit the site to deliver and pick up equipment, supplies and materials. Based on the above, it is unlikely that the intended site use will generate much waste. Whatever waste that is generated will most likely be hauled off-site to a recycling center and/or landfill, as appropriate.

*406-7 Submittal Requirements*

*In all development review applications which are required to conform to the standards of Building Siting and Architectural Design, or are required to demonstrate compliance with standards related to building facades, the following information must be submitted:*

*406-7.1 Site Plan showing the location of all proposed structures, including required storage facilities for mixed solid waste and recyclables;*

**APPLICANT COMMENT FOR SECTIONS 406-7.1-7.5:**

As shown on Exhibit "A" in this application filing, the applicant has included a site plan showing the location of all proposed structures. The attached documents also include building floor plans and elevations. Therefore, based on the above-stated facts, the proposal complies with these criteria.

*407-7.6 For new development required by Section 406-6 to provide mixed solid waste and recyclables storage facilities, a written statement from the Washington County Health and Human Services Solid Waste and Recycling Program concerning the adequacy of the proposed method, design, location and accessibility of the storage facilities as required by Sections 406-6.1, 406-6.2, 406-6.3, 406-6.4 A. (6), 406-6.4 B. (4), and 406-6.4 C.*

**APPLICANT COMMENT FOR SECTIONS 406-7.6:**

The application includes a Service Provider letter from Washington County Health and Human Services Solid Waste and Recycling Program indicating that the site can meet their standards.

*Section 407 Landscape Design  
Minimum Landscape Standards  
Section 407-1.1, Section 407-1.2, and 407-1.4*

*407-1.1 The minimum landscaping area requirements may include landscaping around buildings and in parking and loading areas, outdoor recreational use areas, screening and buffering as required under Section 411, and vegetated storm water facilities as defined by Section 106-198.1.*

*407-1.2 Areas determined unbuildable due to slopes, flood plains, water quality sensitive areas, vegetated corridors, or are required as open space under Sections 405 or landscaping within parking areas under Section 407-1.7, shall not be used to calculate or satisfy minimum landscape requirements.*

*407-1.7 Commercial, Industrial and Institutional Districts  
A. For new development, the minimum area required for landscaping shall be fifteen (15) percent of the land area.*

**APPLICANT COMMENT FOR SECTIONS 407-1.1, 407-1.2 and 407-1.4:**

As shown on Exhibit "A", approximately two acres of 7.35 acre site will be developed for the Contractor's Establishment, and of that two acres, approximately 23% will be landscaped. The proposed landscaping will provide screening for surrounding off-site properties, and will consist of native and/or drought tolerant species, which will eliminate the need for constant irrigation. All proposed landscaping exceeds the minimum fifteen (15) percent requirement within a commercial/industrial/institutional districts. Therefore, the proposed on-site landscaping will meet the Washington County Code landscaping requirements.



*407-2 Standards for Landscaping Materials*

*In order to reduce water usage, developments are encouraged to use native trees and plant materials. Developments are also encouraged to use pervious materials and compost amended soils to reduce storm water runoff. Where landscaping is required by Section 407-1, the materials, installation and maintenance are subject to the following provisions:*

*407-2.1 Allowable Materials:*

*Landscaping is to include a combination of any of the following materials: Trees, shrubs, ground cover, vines, flowers and lawns;  
Brick, bark, timber, decorative rock or other decorative materials, provided that materials other than planting materials are not to exceed twenty-five (25) percent of the total area of landscaping; and*

**APPLICANT COMMENT FOR SECTION 407-2:**

All allowable and appropriate materials consisting of trees, shrubs, ground cover, vines, flowers and lawns will be used to landscape the development. No prohibited materials as set forth under CDC 407-2.2. will be planted on-site.

*Section 408 Neighborhood Circulation*

*Section 408-2.1, Section 408-4, 408-5, 408-9*

*Section 408-2.1(B) Applicability*

*408-2.1 Notwithstanding the requirements of Section 408-10, Within an urban growth boundary the requirements of 408-4-408-9 shall apply as follows:*

*B. To all Type II and Type III development except for the uses listed below:*

**APPLICANT COMMENT for 408-2.1(B):**

The applicant requests a Type III Development Review for a Contractor's Establishment, therefore, this criterion applies to the proposed development application. However, the development does not propose a land division, and the site, (to the applicant's knowledge), is not in a Local Street Connectivity area. Based on those facts, the applicant asserts that the proposal should not have to strictly comply with the Neighborhood Circulation requirement of CDC 408-5.4, which is permitted by CDC 408-5.5. The applicant will address the applicable standards of in the following paragraphs.

*408-5 Review Standards for Development on Lands Not Designated on the Community Plan Local Street Connectivity Maps*

*408-5.5 The Review Authority may approve a modification to the review standards of Section 408-5 based on findings that strict compliance with the standards is not practicable due to topography, the standards of Sections 421 and 422, existing development patterns on abutting property which preclude the logical connection of streets or accessways, or the provisions of a Significant Natural Resource as identified in the Community Plan, and that the modification is the minimum necessary to address the constraint.*

**APPLICANT COMMENT for 408-5.5:**

As shown on Exhibit "A", the site is a corner lot located at the intersection of SW Day and Boones Ferry Road. In both instances, those arterials are signalized intersections with left turn/right turn lanes, decelerating lanes, sidewalks and curbs. The subject site has already dedicated 10' of additional ROW on both streets, and a fully improved sidewalk already exists along the Boones Ferry Road frontage. Therefore, the subject site contains existing and direct pedestrian and bicycle connections that are adjacent to the proposed development. Based on the above, this non-residential development already has on-site pedestrian and bicycle connections that connect to abutting streets in compliance with this criteria. The internal parking and circulation area intersect with a single access drive onto SW Day Road. Therefore, this non-residential development has an on-site access drives that connect to an existing street which abuts the site.

The existing development pattern in the area consists of a mix of single family and commercial uses, all of which have individual driveways accessing either SW Day or Boones Ferry Road. The subject site already has three, existing access driveways to SW Day or Boones Ferry Road, therefore, future development can utilize those access points. Additional access points will be restricted in both instances, due to the Arterial classification of SW Day and Boones Ferry Roads.

Based on the above, the applicant asserts that provision of through streets, pedestrian and bicycle accessways are neither required, justifiable, or feasible at this location.

*Section 408-10***APPLICANT COMMENT for 408-10:**

This criterion requires a direct pedestrian connection from a development to the street and main entrance if that development generates 14 or more average daily trips. The proposed use, (the storage of equipment, materials and supplies), is a low trip-generating use. As shown on Exhibit "A" there will be direct pedestrian connection from the proposed circulation area to the proposed SW Day Road sidewalk. The proposal complies with this criterion based on the evidence presented above.

*Section 410 Grading**Section 410-1.2 Grading Plan***APPLICANT COMMENT FOR SECTION 410-1.2 B (1, 2 and 4):**

The enclosed Exhibit "A" includes a preliminary grading and drainage plan at a scale of 1'=40'. The site slopes gently from east to west and one-foot contours are shown on the enclosed site plan. Installation of the proposed circulation area, utilities, storm water detention/water quality pond, and excavating for the "slab on grade" concrete pads for the four new buildings may result in cut and fills on the subject site. Finished contours around the new structures, storm water detention pond and circulation area will be provided when the owner applies for a building

permit to construct the above-mentioned improvements. Based on the above-mentioned facts the proposal complies with this criterion.

**APPLICANT COMMENT FOR SECTION 410-1.2 B (5):**

As previously stated, there is new work proposed that may result in cut and fills on the subject site. The location of those on-site improvements, which include the four, 5,000 square foot structures, circulation area, and storm water detention pond, are shown on the enclosed site plan. The exact dimensions of the storm water detention/water quality facility, areas with new impervious surfaces, and precise finished floor elevations are not known at this time. The proposal complies with this criterion, despite the fact that precise location of some of proposed development is not known at this time.

**APPLICANT COMMENT FOR SECTION 410-1.2 B (8):**

Flow lines have been shown on the enclosed site plan, indicating the flow of surface water onto and off the site. Upon final approval, Dan Symons, PE, project engineer will review the preliminary development plans and work with the County to finalize the design of the storm water detention/water quality facility. The water quality area will be sized to accommodate storm water runoff on the subject site. Based on the information shown on the site plan, the proposal complies with this criterion.

**APPLICANT COMMENT FOR SECTION 410-1.2 B (10):**

Exhibit "A" shows the location of proposed storm lines. There are no wetland ditches or berms on the site.

**APPLICANT COMMENT FOR SECTION 410-1.2 B (11):**

As previously stated, there is new work proposed that will result in an increase in runoff resulting from the proposed improvements. The applicant has hired Symons Engineering Consultants to prepare plans that include a storm water facility. During the building permit process the owner will provide estimates of existing and increased runoff resulting from the proposed improvements. Building plans will show how storm water runoff will be piped from the addition to the existing public storm water lines. A Storm Drainage Plan for the proposed addition will be provided when a building permit is requested.

**APPLICANT COMMENT FOR SECTION 410-1.2 C (1)-(8):**

The Preliminary Grading and Erosion Control Plan is contained within Exhibit "A". That plan shows the graveled circulation and parking areas for storage of trucks, trailers, heavy construction equipment, and materials utilized for the contractor's establishment.

The said plan also includes estimates of the surface area to be graded and total size of the site. The total parcel size is 7.35 acres. Approximately 2 acres of the site will be involved in the proposed Contractor's Establishment. Dan Symons,

PE, has provided preliminary estimates of cut/fill volume in cubic yards, which will be 7,400 cubic yards of cut and 5,100 cubic yards of fill. That cut/fill volume include all graveled circulation, parking areas, and storm water retention/water quality facility. Dan Symons, PE will also provide estimates of existing and increased runoff resulting from the proposed structures. A soils map has been included in the application materials. (See Attachment "D") The project engineer will indicate how topsoil will be saved for later re-vegetation and landscaping, including the locations of any temporary stockpile areas. The applicant is aware that any excavated material not used on-site must be transported to the nearest landfill site.

**APPLICANT COMMENT FOR SECTION 410-1.2 D:**

Exhibit "A" includes a Preliminary Grading and Erosion Control Plan, prepared by Dan Symons, PE which include all relevant and applicable erosion control measures in compliance with this criterion.

*Section 411 Screening and Buffering*

**APPLICANT COMMENT for 411:**

The subject site is within an FD-20 District as are all lots surrounding the subject site, therefore they are zoned the same as the subject site and CDC 411-5 does not require screening along any of the north, south east or western property lines.

Even though the code does not require screening, DLUT staff stated in their Staff Report and Recommendation for Case File 14-431-D/IND, (the adjacent Contractor's Establishment approval), that some type of screening was warranted within the UGB and for those existing adjacent residential uses adjacent to the site. There are three other dwelling north of the site at 24415, 24545, and 24645 SW Boones Ferry Road. (TL 301, 306 and 308) The northern limit of the proposed Contractor's Establishment's circulation area will be approximately 300' to 375' south of those dwellings. Other single family dwellings occupy lots on the east side of SW Boones Ferry and the south side of SW Day Road, but those dwellings do not abut the proposed use and the wide, arterial streets separate the subject site from those nearby residential uses. Based on the above, the applicant will consider installing a 6' tall fence along the northerly property line. The applicant asserts that no other screening is required or warranted at this location.

The applicant is aware that the City of Wilsonville, via there responses in Case File 14-431-D/IND, have assumed jurisdiction over the County screening standards, however, the applicant is not aware of any Intergovernmental Agreement that would give the City of Wilsonville jurisdiction over such matters.

*Section 413 Parking & Loading*

**APPLICANT COMMENT for 413:**

CDC Section 413 does not contain a separate category for Contractor's Establishment, with regard to the required number of parking spaces. However, as

indicated earlier in this narrative, the site will not be open to the public and/or customers; only the Contractor Establishment's employees will visit the site. Those employees will visit the site occasionally to deliver or pickup trailers, equipment, trucks, and other related materials and equipment.

Staff opined within Case File 14-431-D/IND that an "Industrial" use was the closest category from which to determine required parking. However, that category lists such things as industrial or research establishments, wholesale establishments, and industrial parks as typical uses, which are not similar in any way to the proposed use. The proposed use is more similar to a storage facility use, which unfortunately is not assigned a specific category within CDC 413. Nonetheless, Exhibit "A" shows 36 parking spaces in front of the proposed structures.

*Section 415 (Lighting)*  
*Section 415-1 (Applicability)*

**APPLICANT COMMENT for SECTION 415-1:**

According to this criterion, roadways, access drives, parking lots and sidewalks of all new developments shall be lighted in conformance to the standards CDC Section (415). Most of the site's activities will take place during daylight hours were no illumination will be required. The enclosed plans show that each building shall contain lighting on the front facade that will shine into the proposed access area. In addition, there are street lights along the site's Boones Ferry frontage and at the intersection of Boones Ferry and Day road that will help to illuminate the site.

*Section 415-5 (General Standards)*

**APPLICANT COMMENT for SECTION 415-5:**

The applicant will not establish lighting within the required setbacks unless a new sidewalk is constructed in that setback. If exterior accent and security lighting is installed, it will be low-powered and not generate excessive glare.

*Section 416 Utility Design*

**APPLICANT COMMENT for SECTION 416:**

The site is in an area where public services are not readily available, therefore the site will be served by well water, septic system and drain field and underground power. (See Exhibit "A") Electric, water, septic, communication or similar or associated services will have line extensions to extend those services to the proposed buildings. The applicant will provide the necessary easements for sewers, water mains, electric lines and other public utilities within the site, if required by Washington County.

*Section 419 (Height)*  
*Section 419-1 and Section 419-2*

**APPLICANT COMMENT for SECTION 419-1 & 419-2:**

According to CDC 308-6.4, the maximum height is 35'. As shown on Exhibit "A", the proposed Contractor's Establishment buildings will be 34.3' tall at the ridge line, therefore the proposal complies with this criteria. As set forth under CDC 419, the height restriction of the adjacent district shall apply, if the proposed development is within 20' of an adjacent district. As applied here, FD-20 zoning surrounds the subject, therefore there are no height restrictions beyond the FD-20 limits.

*Section 422 Significant Natural Resource  
Section 422-2 and Section 422-3.1 A to 422-3.1 C*

**APPLICANT COMMENT:**

In Case File 14-431-D(IND), (TL 309 directly west and adjacent to the subject site), the Staff Recommendation report states that the site was in the Area of Special Concern, (ASC) #5. In their report, staff's review of the Rural Natural Resource Plan Plan, associated maps, and tax lot descriptions demonstrate that there are no natural resources on TL 309, despite that fact that the County Rural Natural Resource Plan indicates the presence of significant natural resources on TL 309. (e.g. Tonquin Scab Lands, aggregate resources, streams, and wetlands) Since the subject site is directly adjacent to TL 309, then, by inference, the subject site most likely contain such things as the Tonquin Scab Lands, aggregate resources. However, there are no streams, or wetlands on-site. The presence of a Contractor's Established above the underground basalt/aggregate resource does not impact that natural resource in any way.

Staff noted in the Pre-Application Conference that the site is also located in the ASC #5 and that there was a grove of trees on the subject site. Those trees were removed in 2013 on the advice of Washington County staff that cruised the on-site timber in preparation for the 2013 Washington County initiated ROW widening/improvements to SW Boones Ferry & Day Roads. Washington County staff informed the applicant that the on-site trees were unsafe and would be subject to blow down, which could cause those trees to fall onto adjacent tax lots and/or the existing dwelling on the subject site. Based on those facts, the trees were removed.

*Section 423 (Environmental Performance Standards)*

**APPLICANT COMMENT:**

According to Section 423-2, the proposed Contractor's Establishment is a "new use" because it is defined as "development after the effective date of this Code". As such, the applicant is required to address the relevant and applicable criteria of CDC 423

*Section 423-5 (Odor)*

**APPLICANT COMMENT:**

Most activities related to the Contractor's Establishment will occur within proposed storage structures, but for an occasional employee visit to pick up and delivery of trucks, heavy equipment, materials and supplies. The above-mentioned outdoor activities will likely comply with the applicable DEQ standards concerning odor, because the exhaust from trucks and heavy equipment will be no different from the many trucks that pass through the immediate area on a daily basis. Since most activities will occur indoors, it is likely that the Contractor's Establishment will not generate odor beyond the DEQ standards pertaining to odor.

*Section 423-6 (Noise)*

**APPLICANT COMMENT:**

Occasionally, employees will visit the site for pick up and delivery of trucks, heavy equipment, materials and supplies. The above-mentioned activities will likely comply with the applicable Washington County and DEQ noise daytime standards, and more importantly, the above-mentioned noise generating activities will occur on busy arterial streets with substantial truck traffic. Since employees will only visit the site occasionally, it is likely that the Contractor's Establishment will not generate noise beyond the Washington County and/or DEQ standards pertaining to noise.

*Section 423-7 (Vibration)*

**APPLICANT COMMENT:**

The proposed Contractor's Establishment will primarily be for the storage of equipment and supplies. There will be movement of large trucks and trailers, but those truck movement activities already occur at a much greater scale at or near the intersection of SW Boones Ferry and Day Roads. Once the site is developed, there will be no on-site construction activities that could cause vibration perceptible by adjacent landowners. Based on the above, it is likely that on-site activities can comply with the applicable DEQ standards pertaining to vibrations.

*Section 423-8 (Heat & Glare)*

**APPLICANT COMMENT:**

Most activities related to the Contractor's Establishment will occur within proposed storage structures, but for the occasional employees visit to pick up and delivery of trucks, heavy equipment, materials and supplies. The above-mentioned indoor and outdoor site uses will not generate or produce heat or glare from those uses.

*Section 423-9.1, 9.2, 9.3, and 9.4(Storage)*

**APPLICANT COMMENT:**

*Section 423-9.1*

The Contractor's Establishments will primarily be for the storage of equipment and supplies. All equipment, supplies and materials will be stored on-site and much of that storage will occur within the proposed storage structures. The areas surrounding those structures will be kept in an orderly and neat manner, and all refuse will be

stored in an enclosed, on-site trash enclosure, therefore, the site uses will not attract insect and/or rodents, or create a health hazard.

*Section 423-9.2*

The owner plans to construct and install fencing and screening to screen the outdoor storage of materials and equipment in compliance with this criterion.

*Section 423-9.3*

There is no facet of the proposed activities that can be considered dangerous. By definition, the movement of vehicles and equipment and material storage are normal and expected activities for a Contractor's Establishment. However, as mentioned above, the owner plans to construct and install fencing and screening to screen the outdoor storage of materials and equipment in compliance with this criterion.

*Section 423-9.4*

There is no facet of the proposed activities that involves the storage, transport, or disposal of hazardous materials as defined under Section 423-9.4.

*Section 423-10 (Drainage and Waste Water)*

**APPLICANT COMMENT:**

The proposal will not result in new impervious surfaces for parking and circulation areas, because those areas will be graveled. As shown on Exhibit "A", the applicant proposed storm water detention and water quality pond to pick up run-off from the proposed structures and surface water flow across the site. If this request is approved, the applicant will comply with County standards for any Erosion Control and Grading permit that will be required for site improvements and/or any DEQ 1200-C permits for the same.

*Section 423-11 (Adequate Water Supply)*

**APPLICANT COMMENT:**

The attached well log report for the existing well indicates a tested yield of 25 gallons per minute. (See Attachment "B") At this time, the applicant does not propose to install a new well to serve the Contractor' Establishment, but if in the future a new well is deemed necessary, it is likely that another on-site well may have a similar yield.

The proposed Contractor's Establishment will have minimal water demand for on-site water, because each structure will have one, uni-sex bathroom/structure, a hand wash sink and maybe a hose bib/structure, which could be accommodated by the existing well. There is nothing inherent in the storage of equipment, supplies or materials that would require a large, daily water demand. Based on the above, it is likely that the site has an adequate water supply or can be upgraded to provide adequate water.



*Section 423-12 (Radioactive Materials)***APPLICANT COMMENT:**

There is no facet of the proposed Contractor's Establishment that involves the handling, discharge, storage, transport or disposal of radioactive materials

*Section 423-13 (Toxic or Noxious Matter)***APPLICANT COMMENT:**

There is no facet of the proposed Contractor's Establishment that involves the handling, discharge, storage, transport or disposal of toxic or noxious materials. The proposed Contractor's Establishment will comply with all DEQ standards.

*Section 426 Erosion Control***APPLICANT COMMENT for 426:**

As demonstrated by Exhibit "A", the applicant's engineer has submitted an Erosion Control Plan as part of this application filing that is substantial conformance with all relevant and applicable standards of CDC 426. If this request is approved, building permits will be applied for to construct all site improvements. Those building permits will contain erosion control measures in accordance with Washington County Building Standards.

**4. Article V, Public Facilities and Services:***Section 501-1 (Public Facility and Service Requirements)**Section 501-6 (Exceptions for Critical and Essential Services)**Section 502 (Sidewalks)***APPLICANT COMMENT for 501-1:**

This application includes service provider statements regarding fire protection, water availability, and solid waste disposal. Those service provider letters verify that adequate service is available to the site. (See Attachment "C"-Service Provider Letters)

*501-6 Exceptions for Critical and Essential Services*

*501-6.1 Development proposals that cannot ensure critical and essential services other than those required by Sections 501-8.1 B. (4) or 501-8.2 G. [Half-street improvements] within the required time frames shall be denied unless all of the following Endings can be made:*

*A. The particular inadequate facilities or service(s) is not necessary for the particular proposal within the time period identified by the service provider;*

**APPLICANT COMMENT for 501-6.1(A):**

This request is for a Contractor's Establishment, which, by its very nature, is an industrial land use, therefore, school service and park service are not considered necessary for the proposal. In accordance with CDC Section 501-8.1, the applicant will list and describe the following services and facilities that are, as defined here, considered critical;

**Critical Services:**

- **Water**-As stated previously, the attached well log report for the existing well indicates a tested yield of 25 gallons per minute. (See Attachment "B") At this time, the applicant does not propose to install a new well to serve the Contractor's Establishment, but if in the future a new well is deemed necessary, it is likely that another on-site well may have a similar yield. The proposed Contractor's Establishment will have minimal water demand for on-site water, because each structure will have one, uni-sex bathroom/structure, a hand wash sink and maybe a hose bib/structure, which could be accommodated by the existing well. There is nothing inherent in the delivery, storage, and pick-up of contractors materials using trucks, trailers, nor the storage of equipment, supplies or materials that would require a large, daily water demand. Based on the above, it is likely that the site has an adequate water supply or can be upgraded to provide adequate water. As stated previously, the proposed storage buildings will be occupied intermittently. Proposed landscape plantings, once established, will be relatively drought tolerant and are/or native species, therefore constant dry season watering will not be required. Based on the above stated facts, public water is not critical for the operation of the proposed contractor's establishment.
- **Sewer** - The subject site is not within Clean Water Services service area. The existing dwelling is currently served with a septic system and drain field, and it is likely that the site soils are suitable for any additional septic system and drain field to serve the low volume septic demand from the proposed intermittent use of the Contractor's Establishment. Upgrading the site to a sanitary sewer service from the nearest current provider, (Wilsonville), is not necessary, because the primary site use will be the delivery, storage, and pick-up of contractors materials.
- **Fire Protection** -Fire protection will be provided by Tualatin Valley Fire and Rescue. A Service Provider Letter from TVFR has been provided that indicates service is available.
- **Roadside Drainage** -The recent arterial street improvement at the intersection SW Day Road and Boones Ferry Roads provides adequate roadway drainage. Those improvements include storm drain curb inlets along the SW Day and SW Boones Ferry Road frontages.
- **Stormwater Management**-The subject site is not within Clean Water Services service area. Exhibit "A" within this application filing demonstrates that on-site sheet flow and storm drain runoff from proposed structures and circulation areas can be adequately detained in accordance with County standards.

- **Urban Road Maintenance District-** The County has the ability to place a condition of approval requiring the applicant to join the Washington County Urban Road Maintenance District. The applicant asserts that such a condition is unlikely, because the site has frontage on SW Day Road, a City of Wilsonville Street. Therefore, based on the above such a condition is not required or necessary.

**Essential Services:**

- **Police or Sheriff Protection** -Included in this application filing is a signed service provider letter from the Washington County Sheriff indicating that they can provide police protection services to the site.

- **Transit Agency Service** -Google Earth mapping indicates that there is a Tri-Met bus stop at the intersection of SW Boones Ferry and Day Roads located 265' from the subject site. Based on that fact, Tri-Met will most likely not require an additional bus stop.

- **Adequacy of Arterial and Collector Roads**-There have been recent upgrades to both Boones Ferry and Day Roads, which include signalized intersections, left/right turn lanes and decelerating lanes. Any other future improvements at this location can be satisfied via payment of the Transportation Development Tax.

- **Street Lighting**-The above-mentioned Boones Ferry and Day improvements also included street lights along the site's Boones Ferry and Day Road frontages. Based on that fact, it is unlikely that additional street lighting will be required and/or necessary.

- **Future Alignment of Collector and Arterial Roads** -SW Boones Ferry and Day Roads are designated as major arterials. The applicant has already dedicated additional right-of-way prior to the current intersection improvements. No additional ROW dedication is required or necessary.

- **Site Frontage Improvements and Sidewalks**-As stated above, there are no additional improvements that will be required along SW Boones Ferry and/or SW Day Road, but for the installation of a new sidewalk within the Day Road ROW that fronts the site. Currently, SW Day Road is an 77' wide a/c paved street. North of the Day Road center line, the road has approximately 37 feet of ROW, within which is a westbound travel lane, bike lane, and curb and gutter section. South of the Day Road center line, the street has approximately 40 feet of ROW, within which is an eastbound travel lane, bike lane, curb and gutter, landscape strip, street lighting and sidewalk. SW Boones Ferry Road consists of a similar pavement width, ROW width, travel lane arrangement, planter strips and curb and gutter sections.

*B. The approval of the development application will not substantially interfere with the ability to later provide the particular inadequate facility(ies) or service (s) to anticipated uses in the vicinity of the subject property;*

**APPLICANT COMMENT for 501-6.1(B):**

As stated above in other responses to 501-6.1, the current and planned County Critical and Essential Services are adequate for the proposed Contractor's Establishment. The applicant asserts that there is nothing in the approval of this development application would substantially interfere with the ability to later provide the particular inadequate facilities or services to anticipated uses in the vicinity of the subject property. The approval of this development application is for the westerly portion of the subject ownership, therefore there is future development potential on the subject site. The owner has no near term plans for development beyond what is proposed here, and future development will be predicated upon when, and if the subject site is annexed into the City of Wilsonville or Tualatin, whichever the case may be. Even if there was future development, the current state of the Critical and Essential Service is such that those approvals would not substantially interfere with the ability to later provide the particular inadequate facilities or services to anticipated uses in the vicinity of the subject property.

*C. The approval of the development application without the assurance of the particular inadequate facility(ies) and service(s) will not cause a danger to the public or residents in the vicinity of the subject property; and*

**APPLICANT COMMENT for 501-6.1(C):**

Evidence is provided in this file record demonstrating that the proposed Contractor's Establishment can provide water, septic system and drain field, storm water management and drainage. Based on those facts, the approval of the development application without the assurance of the particular inadequate facilities and services will not cause a danger to the public or residents in the vicinity of the subject property.

*D. It is shown that the applicant has exhausted all practical methods within the ability of the applicant to ensure the provisions of the unacceptable facility(ies) and service(s).*

**APPLICANT COMMENT for 501-6.1(D):**

It is clear from evidence and findings presented in the case file for the adjacent and recently approved Contractor's Establishment, (Case File 14-431-D/IND), that there is great uncertainty as to how and when urban services will ever be available to the subject site, or for that matter, which jurisdiction will provide those services. The site and surrounding lands were brought into the UGB ten years ago and although the process is nearing completion, there still is no clear idea as to how and when those services will be available. Therefore, there is no practicable way to determine provisions of the unacceptable facilities and services.

*501-6.2 Exceptions to the Public Facility and Service Standards as provided under Section 501-6.1 will be reviewed through a Type III process.*

**APPLICANT COMMENT for 501-6.2:**

This exception to the Public Facility and Services Standards is being reviewed as a Type III process in compliance with this criterion.

*Section 502 (Sidewalk Standards)*

*Section 502-1.4*

**APPLICANT COMMENT for 502-4:**

Currently, a sidewalk exist along the site's Boones Ferry Road frontage and across the street from the site's SW Day Road frontage. (See Exhibit "A") There is adequate ROW for a sidewalk along the site's SW Day Road frontage if the County requires such a sidewalk to be installed as a conditions of approval of this request. The Boones Ferry Road sidewalk connects the site to sidewalks surrounding the site. Based on the above-stated facts, the proposal complies with this criterion.

**SUMMARY**

The applicant and owner request a Contractor's Establishment to construct four, 5,000 square foot buildings (20,000 square foot total), with an associated parking/circulation area, all on the west side of the subject lot. The buildings will be for interior storage of contractor's equipment, materials, and supplies. Some contractor's equipment, such as trucks, trailers and company vehicles may occasionally stored outside and/or parked in the parking areas provided. The existing dwelling on the east side of the site will remain, and serve as a caretakers residence for the Contractor's Establishment. No violations exist on the site.

Although the site is within the UGB and "urban", not all urban services are readily available to the site and/or are within the jurisdiction of Wilsonville. Based on the above, the applicant has requested an Exception to Critical Services as set forth in CDC 501-6, which should be approved, based on the uncertainty as to when and if urban services will be provided to this site and to the adjacent and recently approved Contractors Establishment. [Case File 14-431-D(IND)] There are no identifiable significant natural resource areas, significant historical or cultural resources on the subject site.

The subject site will be developed as a permitted use within the Urban Growth Boundary and the FD-20 zone. A proposed access and circulation area is of adequate size to serve the proposed use. Based on the current and full-improved nature of SW Boones Ferry Road and SW Day Road, compliance with full development standards for pedestrian pathways, bicycle parking, noise reduction measures, shared access, buffering and screening, realignments, road extensions, non-auto measures, pedestrian/bicycle pathways, annexation or strip commercial areas are not relevant to this application. All elements of circulation, access, slopes, grading, drainage, and erosion control associated with the proposed development meets the code requirements specified by Washington County. It is therefore concluded that the proposed development complies with all Comprehensive Plan Policies, Special Areas of Concern, and Code Requirements.

V. CONCLUSION

This application is submitted in accordance with the requirements of the Washington County Community Development Code. Therefore, this application be approved, based on all of the evidence, attachments and exhibits presented in this application filing

EXHIBIT A

This report was prepared in accordance with the requirements of the Washington State Department of Ecology. The data and information presented in this report are based on an on-site inspection of the site and related information provided by the applicant.



**WASHINGTON COUNTY**  
Dept. of Land Use & Transportation  
Current Planning Services  
155 N. 1st Avenue, #350-13  
Hillsboro, OR 97124  
Ph. (503) 846-8761 Fax (503) 846-2908  
http://www.co.washington.or.us

CASE FILE: L2000079-SFAD

APPLICANT:  
Eric McClendon  
24415 SW Boones Ferry Road  
Tualatin, OR 97062

**NOTICE OF DECISION  
& STAFF REPORT**

APPLICANT'S REPRESENTATIVE:  
same as applicant

PROCEDURE TYPE: I

CPO: 5  
COMMUNITY PLAN: County

PROPERTY OWNER:  
McClendon, Eric E., Lindsay, and Tina A.  
24415 SW Boones Ferry Road  
Tualatin, OR 97062

PROPERTY DESCRIPTION:  
ASSESSOR MAP NO.: 3S102B  
TAX LOT NO: 306  
SITE SIZE: 2.92 acres  
ADDRESSES: 24415 SW Boones Ferry Road  
LAND USE DISTRICT(S):  
FD-20 (Future Development 20 Acre District)

LOCATION:  
The east side of SW Boones Ferry Road  
approximately 1,000 feet north of its  
intersection with SW Day Road

PROPOSED DEVELOPMENT ACTION: Review for a 799 Square Foot Single Family Accessory Dwelling Unit in the FD-20 District

DECISION:

Approval

Denial

Signature *Tom Harry*

Date 4-6-2020

Tom Harry, Principal Planner Current Planning

Staff: Sean Harrasser

Phone: (503) 846-8131

- Attachments:
- A. Summary of Code Requirements
  - B. Staff Report
  - C. Site Plan

Appeal Information: Approval or denial of this request or any conditions may be appealed if a written appeal is filed with the Washington County Department of Land Use and Transportation within twelve (12) days of the date this notice is provided. A motion for reconsideration may be filed within seven (7) days of the date this notice was provided. This decision will be final if no appeal is filed by the due date and a motion for reconsideration is not granted by the review authority. For further information about an appeal, contact the Appeal Secretary at 503-846-8134.

APPEAL PERIOD: Date mailed: 4-6-20 to 4:00 pm on 4-20-20 (Appeal Due Date).



## ATTACHMENT A: Summary of Code Requirements

- I. **PRIOR TO ISSUANCE OF A BUILDING PERMIT:**
- A. Pay the Transportation Development Tax and all applicable Systems Development Charges.
  - B. Submit a site plan and floor plan(s) demonstrating that the proposed accessory dwelling unit is consistent with the plan stamped "Final Approval" in the case file. (Section 430-2)
  - C. Obtain a grading permit, if required by Building Services [(503) 846-3840]. (Section 410)
  - D. Evidence of an issued right-of-way permit for the  EXISTING  PROPOSED driveway approach on SW Boones Ferry Road. The right-of-way permit shall confirm the access is constructed to current standards and that sight distance is  MET  MAXIMIZED at the point of access. Right-of-way permit requirements may include improvements to the existing driveway approach to bring it into compliance with current standards such as vegetation removal, culvert repair/replacement, and/or paving of the driveway approach as determined by the Operations Division (503-846-7623). (Section 501-9.6)
- II. **PRIOR TO FINAL INSPECTION /OCCUPANCY OF THE ACCESSORY DWELLING UNIT:**
- A. Provide evidence of final inspection approval for the right-of-way permit for driveway access from: SW Boones Ferry Road
- III. **ADDITIONAL REQUIREMENTS:**
- A. The accessory dwelling unit shall be constructed in accordance with the requirements of this decision, the approved final plans, and the standards of the Community Development Code.
  - B. Transferability of this Development Permit shall be in accordance with Section 201-8.
  - C. This approval shall automatically expire four years from the date of this approval, unless development has commenced, an application for an extension is filed or this approval is revoked or invalidated (Section 201-4).
  - D. Adequate sight distance shall be continuously maintained by the property owner. This may require the property owner to periodically remove obstructing vegetation from the road right-of-way and on the subject property.

ATTACHMENT B: – Staff Report

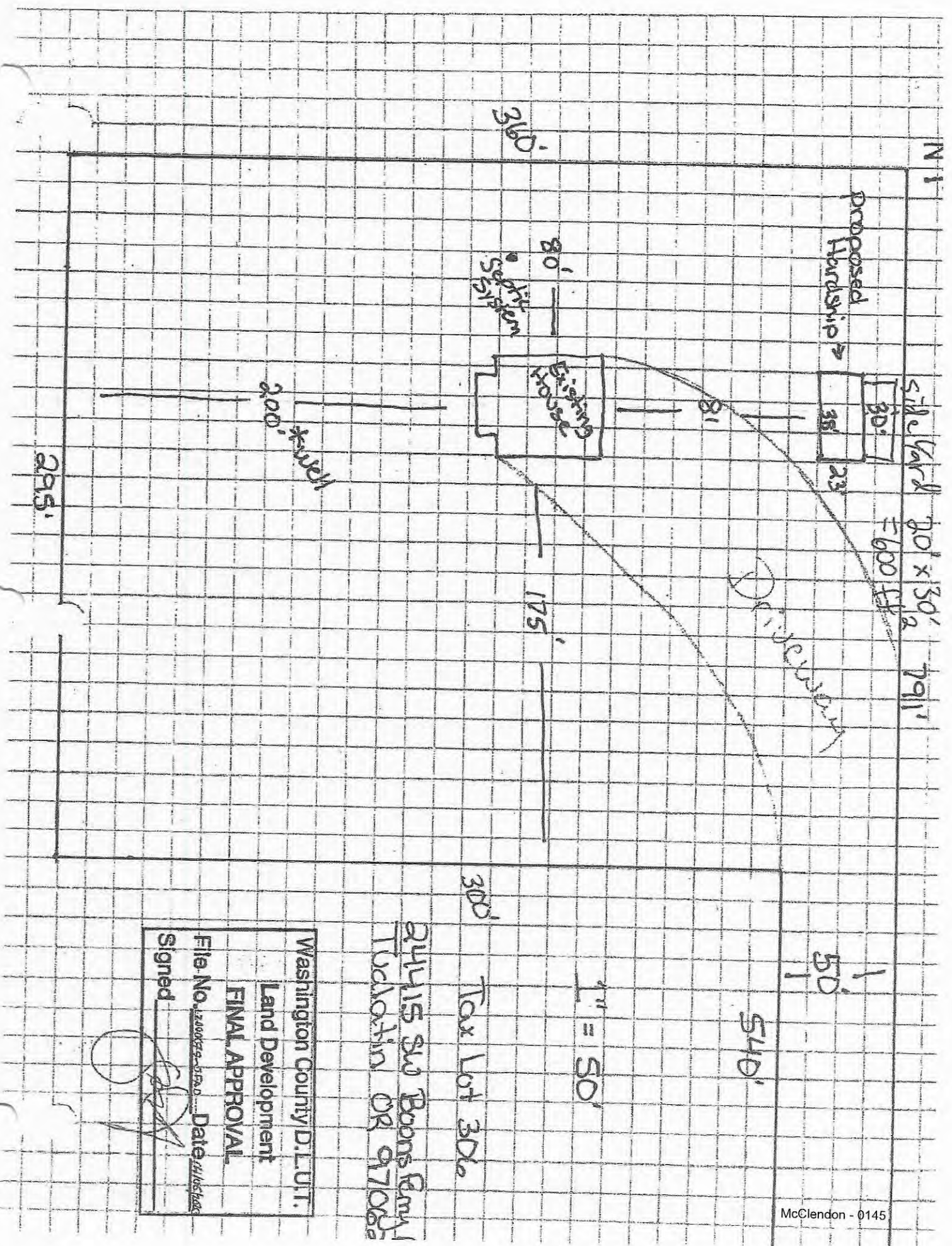
I. FINDINGS OF FACT: (Mark applicable findings)

- A. The applicant has submitted information addressing the Accessory Dwelling Unit (ADU) requirements of Community Development Code (CDC) Section 430-2.
- B. An ADU is an allowed use within the FD-20 Land Use District.
- C. The request complies with the standards of the Washington County Comprehensive Framework Plan and the Washington County Community Plan:  
County  
 The site located in an Area of Special Concern:  YES  NO  
 The site is located within Subarea: \_\_\_\_\_  
 The proposed development is not within a mapped Significant Natural Resource (SNR) area, flood plain, or drainage hazard area.  
 Please see Section P (Other) regarding SNR Area and DHA.
- D. The proposed ADU is located on the same lot as a detached single family dwelling unit and functions as a complete, independent living facility with provisions within the unit for a separate kitchen, bathroom and sleeping area. [CDC Section 106-6]
- E. The proposed ADU is  attached  detached per CDC Section 106-6.
- F. The total floor area for the proposed ADU is 799 square feet. [CDC Section 430-2.1(B)]
- G. The proposed ADU will be accessible per CDC Section 430-2.1(B)(3). Its total floor area does not exceed 920 square feet in size, and it will be constructed per the Uniform Federal Accessibility Standards (UFAS). A written statement confirming the ADU will meet UFAS has been provided by the applicant.
- I. The proposed detached ADU will be located at or behind at least one street-facing wall of the primary dwelling. [Section 430-2.1C (1)]
- J. The proposed ADU will be at least five (5) feet from the side yard property line and have a rear yard setback no less than 20 feet as required by the FD-20 District. If the subject property abuts a non-transit oriented residential district, the rear yard shall be no less than that required by the abutting underlying land use district. [Section 430-2.1C (2) & (3)]
- K. The height of the proposed ADU does not exceed that of the primary dwelling. If the ADU will be located above an existing accessory building, the combined height of the structure does not exceed the height of the primary dwelling. [Section 430-2.1 E]
- L. The request is in compliance with previous land use actions which have been approved on the subject property. CASEFILE(S): \_\_\_\_\_  
 Staff Note: Additional clarification information related to the casefile:  
 \_\_\_\_\_

- M. Access to the proposed ADU is shown as:
- A shared driveway access with the existing primary dwelling. No changes to the driveway approach are proposed. A right-of-way permit is required to evaluate sight distance, drainage and driveway approach construction.
  - A shared driveway access with the existing primary dwelling that will be altered or relocated. A right-of-way permit for the alteration or relocation of a driveway approach is required.
  - A new driveway approach serving only the ADU. A right-of-way permit for the creation of a driveway approach is required.
- N. The ADU is proposed concurrently with a primary dwelling. The first occupied dwelling shall be considered the primary dwelling for the purposes of determining System Development Charges and the Transportation Development Tax. [Section 430-21. D]
- O. The proposal is subject to Washington County Transportation Development Tax Ordinance No. 793-A. The Transportation Development Tax (TDT) is required of all new development and constitutes an assurance to satisfy a development's requirement to provide additional capacity to major collectors and arterial streets needed for development. The TDT superseded the Traffic Impact Fee Ordinance, effective July 1, 2009. Payment of the TDT is required prior to the issuance of a building permit for the ADU.
- P. Other: **The subject property contains mapped Significant Natural Resource (SNR) and Drainage Hazard Area (DHA). However, the proposed accessory dwelling unit is located in an area that is already developed and outside of the Drainage Hazard Area . No delineation of SNR or DHA is required for this development permit.**

II. **CONCLUSION:**

Information submitted by the applicant demonstrates that the request complies with the applicable regulations of the Community Development Code and the Community Plan. Based upon the findings, approval of this request is granted subject to the Summary of Code Requirements in Attachment A.



Site Area 30' x 50' = 600 sq ft  
7911'

Driveway

Existing Structure

80' width  
80' dimension

Proposed Hardship

30' x 38' x 23'

300'

200' hardship

295'

175'

300'


Tax Lot 306

540'

50'

1" = 50'

24415 SW Boons Ferry  
Tuckahoe OR 97065

Washington County D.L.U.T.
Land Development
<b>FINAL APPROVAL</b>
File No. 240029-0520 Date 7/1/05
Signed 

**From:** [Stephen Shane](#)  
**To:** [Marie Holladay](#); [Paul Schaefer](#)  
**Cc:** [Chris Goodell](#); [Andrew Stamp](#)  
**Subject:** RE: [EXTERNAL] Mitigation installed - L2400019-TREE  
**Date:** Wednesday, May 29, 2024 11:38:54 AM  
**Attachments:** [image001.png](#)  
[image002.jpg](#)

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Hi Marie – Paul and I chatted about a site visit; one of us can likely get to the site in the latter part of next week. We'll do the mitigation check at that time as well but regardless your letter indicating completion of the condition within the required timeline has been added to the TREE casefile.

I'm currently discussing with Erin W. what conditions to add into the staff report for the ROW improvements based on the city's pre-hearing submittal, which you have. They had five requests (a-e on p.6 of the submittal) and we'll look to accommodate those to the extent we can support them. I can tell you at this point the county is not prepared to defend a request for half street improvements pursuant to their ask at c. and feel the ask at a. isn't merited given the input as indicated on the FM SPL. I expect those requests to not be included. The other three we're deliberating on today and tomorrow I suspect but I'll follow up with those on this thread prior to Thursday's submittal to the record.

Does the applicant and/or Aks anticipate new evidence/material to be submitted under OR2, aside from the Condition submittal?

Thx.

***Stephen Shane | Principal Planner***

*Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning  
155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
(503) 846- 8127 direct*

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*Staff are working in office and remotely throughout the week and are best reached by email.*

*You can expect a response within three working days.*

*Please submit planning-related questions to [LUTDEV@washingtoncountyor.gov](mailto:LUTDEV@washingtoncountyor.gov)*

---

**From:** Marie Holladay <holladaym@aks-eng.com>  
**Sent:** Tuesday, May 28, 2024 10:16 AM  
**To:** Stephen Shane <Stephen\_Shane@washingtoncountyor.gov>; Paul Schaefer <Paul\_Schaefer@washingtoncountyor.gov>  
**Cc:** Chris Goodell <chrisg@aks-eng.com>; Andrew Stamp <Andrew.Stamp@vf-law.com>  
**Subject:** [EXTERNAL] Mitigation installed - L2400019-TREE

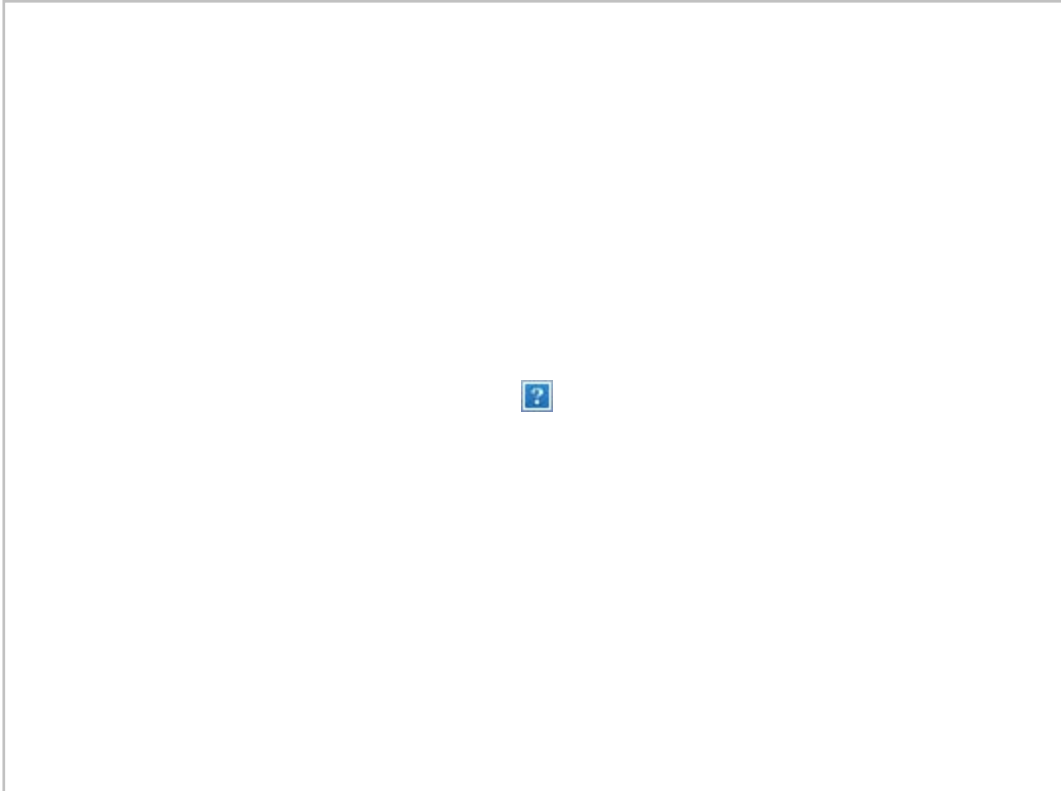
Good Morning Stephen and Paul,

I hope you both enjoyed the holiday weekend. I am letting you know that the mitigation has

been installed for L2400019-TREE, complying with condition of approval 1. It looks like an inspection is required to be requested by September 10, but if you're able to make a site visit during the open record period for the contractor's establishment that would be appreciated.

Please let us know if you have any questions.

Thanks – Marie



**Marie Holladay**



**AKS ENGINEERING & FORESTRY, LLC**

12965 SW Herman Road, Suite 100 | Tualatin, OR 97062

P: 503.563.6151 Ext. 270 | [www.aks-eng.com](http://www.aks-eng.com) | [holladaym@aks-eng.com](mailto:holladaym@aks-eng.com)

Offices in: Bend, OR | Keizer, OR | The Dalles, OR | Tualatin, OR | Kennewick, WA | Vancouver, WA | White Salmon, WA

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Please update my contact information.

IN THE JUSTICE COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF WASHINGTON

WASHINGTON COUNTY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. A202300001
	)	
AUSTIN K. OWINGS,	)	
	)	
Defendant.	)	

\*\*\*EXCERPT OF PROCEEDINGS\*\*\*

EXAMINATION OF  
DEPUTY TODD KIBBLE EXCERPT

June 28, 2023

Beaverton, Oregon

W

Reported by Jacqueline Lee Butler  
RPR, CSR, CCR



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APPEARANCES

For Petitioner: EAMON McMAHON  
Office of County Counsel  
155 North First Avenue  
Suite 340  
Hillsboro, OR 97124  
971.901.8504  
eamon\_mcmahon@washingtoncountyor.gov

For Defendant: RYAN D. HARRIS  
ANDREW H. STAMP  
Vial Fotheringham LLP  
17355 SW Boones Ferry Road  
Suite A  
Lake Oswego, OR 97035  
503.684.4111  
rdh@vf-law.com  
andrew.stamp@vf-law.com

\* \* \*

1 DEPUTY TODD KIBBLE  
2 was called as a witness and, being first duly  
3 sworn/affirmed, was examined and testified as follows:  
4

5 THE COURT: Go ahead and have a seat, sir.  
6 You may inquire of your witness.

7 MR. MCMAHON: Thank you, Your Honor.  
8

9 DIRECT EXAMINATION

10 BY MR. MCMAHON:

11 Q Good afternoon, Deputy. Would you please  
12 state and spell your name for the record?

13 A Todd Kibble; T-O-D-D, K-I-B-B-L-E.

14 Q And, Deputy, what is your current occupation?

15 A I'm a deputy sheriff with the Washington  
16 County Sheriff's Office.

17 Q How long have you been with the Washington  
18 County Sheriff's Office?

19 A Full-time? About four years now.

20 Q What sort of training did you go through to  
21 become a deputy for the Washington County Sheriff's  
22 Department -- Office? Excuse me.

23 A We do a nine-week in-house pre-academy, and  
24 then, from there, down to the State academy for 16  
25 weeks. And then I believe it's another 18 weeks of

1 **field training with different deputies.**

2 Q Before you were a Washington County sheriff's  
3 deputy, what did you do?

4 A **I worked for a company called United Rentals.**

5 Q And what does United Rentals do?

6 A **They rent construction equipment. It's**  
7 **actually the largest rental company in the United**  
8 **States.**

9 Q Fair to say you're fairly familiar with  
10 construction equipment?

11 A **Yes. I worked for them three weeks shy of 23**  
12 **years.**

13 Q And before that, did you go to college? Get a  
14 GED?

15 A **Nope.**

16 Q Okay. Now, during your duties as a Washington  
17 County sheriff's officer deputy, have you received any  
18 training or learned anything about noise violations or  
19 noise ordinances?

20 A **Yeah. Obviously noise is one of our**  
21 **ordinances, and I've gone on plenty of complaints.**

22 Q Okay. Can you walk us through the process of  
23 what you would normally do when you would respond to a  
24 noise complaint?

25 A **First of all, I look at what time of day it is**

1 because, obviously, there's allowed to be noise --  
2 whether it be construction or otherwise -- Monday  
3 through Friday, including Saturdays, 7:00 AM to  
4 10:00 PM. And, again, depending upon what it is -- has  
5 there been multiple complaints? -- I try to look -- try  
6 to get as much of a story as I can, or a picture; or I  
7 go to where the complaint is happening.

8 Q When you talk about figuring out if there have  
9 been prior complaints, how do you determine that?

10 A In our computer system, our CAD, you can  
11 actually click on a button that hits "prior," and it's  
12 specific to that address. So if that address is the one  
13 that continually gets called in or the address of the  
14 person complaining, it logs it under the address given,  
15 whether it's -- it's what we call the RP, or the  
16 reporting party, or the address of where they believe  
17 the noise is coming from. And then, from there, it  
18 gives a history of all the calls for that address.

19 Q Okay. Were you on duty on December 18th,  
20 2022?

21 A Yes, I was.

22 Q What day of the week was that?

23 A It was a Sunday.

24 Q What were you doing while you were on duty on  
25 Sunday afternoon?

1           **A     Doing my normal patrol.**

2           **Q     Sure.  And does that mean you were on foot?**  
3 **In a vehicle?**

4           **A     Sorry.  In a vehicle.**

5           **Q     Okay.  What sort of vehicle is that?**

6           **A     That day would have been one of our Ford**  
7 **Explorers, or PIUs, as we call them.**

8           **Q     Just curious.  What does PIU stand for?**

9           **A     I think they call -- for Police Interceptor**  
10 **Unit.  I honestly don't -- it's been a PIU since the day**  
11 **I've worked there.**

12          **Q     It's not a quiz.  Just curious.**

13                   **While you are on patrol on December 18th, did**  
14 **you receive a complaint about a noise violation?**

15          **A     Yes.**

16          **Q     How did you receive that complaint?**

17          **A     It came in as a -- just called -- what we call**  
18 **a call for service.  So we have -- we call it a queue,**  
19 **and it shows all the calls for the county.  We all have**  
20 **our districts, and that call came into my district.**

21          **Q     What did that call for service say?**

22          **A     If I remember correctly -- I'm sorry.  I left**  
23 **my report back there in the chair -- it was a complaint**  
24 **about semitrucks and loud heavy equipment running.**

25          **Q     Do you know who made that call?**

1           **A     Eric McClendon.**

2           **Q     And that call for service, did you ever speak**  
3 **to Mr. McClendon directly, or were you speaking to your**  
4 **dispatch?**

5           **A     On that call, I did speak with him. But it**  
6 **wasn't till after I was done with what I would call the**  
7 **"conclusion of my call."**

8           **Q     Okay. I'm sorry. That was me asking a vague**  
9 **question. Before you responded, did you speak with**  
10 **Mr. McClendon, or did you speak with dispatch?**

11          **A     Neither. So, depending on the priority of the**  
12 **call, depends on whether dispatch really gets involved.**  
13 **High priority calls, we're not allowed to just take them**  
14 **out of queue. They have to be dispatched to us. Lower**  
15 **priority calls, we can just take on our own. We don't**  
16 **respond to dispatch. We don't talk to dispatch.**  
17 **There's a button I click, and it just assigns the call**  
18 **to me.**

19          **Q     So, just to be clear, there's, like, a screen**  
20 **in your car where you see the call or dispatch pop up,**  
21 **you click on it, and then you respond to it?**

22          **A     Yes.**

23          **Q     Okay. After you saw this call, how long did**  
24 **it take you to get to the site?**

25          **A     Honestly, I don't remember. It took me a**

1 little while to get there once I took it. I want to  
2 say -- I'd say probably at least 30 minutes from where I  
3 was at; and being a low priority, obviously I'm not --  
4 and nothing against the reporting party, but a noise  
5 complaint is not what we consider a high propriety call.

6 Q Approximately what time did you arrive on  
7 scene?

8 A It was approximately 7:45 PM.

9 Q What did you see when got to the site?

10 A When I got there, I could see down in the  
11 southwest corner of the property. There was a -- I  
12 don't know its exact size -- 10- to 12-yard dump truck.  
13 Had its park lights on. And there was an excavator,  
14 from my experience, of approximately 28,000-pound  
15 excavator -- that's what we referred to them when I  
16 worked at United -- loading the dump truck with gravel.

17 Q Okay. Now, you got the big printout of the  
18 site behind you. If I can get you to -- and you're  
19 going to want to be showing Judge Cross there. Could  
20 you please indicate on the map where you were and which  
21 direction you were heading?

22 A So I was on Day Road, driving this direction.  
23 Right through here is where I could see the excavator.  
24 This corner of the yard is where they have the excavator  
25 and the dump truck.

1           Q     Okay.  And those excavators -- again, this is  
2 going to sound like a silly question -- is that one of  
3 those things with a big bucket on the end of it that  
4 looks like a claw?

5           A     **Yes.**

6           Q     Kind of similar to a steam shovel or whatever?

7           A     **Yes.  Just a big extension of the arm.**

8           Q     Okay.  About how many -- how much gravel can  
9 you hold in one of those buckets?

10          A     **It depends on the bucket they had on it.**  
11 **Generally, when you're doing that type of loading,**  
12 **it's -- what's used is called a cleanout or a muck**  
13 **bucket.  Those are usually 48 inches.  Sometimes smaller**  
14 **machines are on a 36-inch, but standard is anywhere from**  
15 **a 48- to 60-inch bucket.  And when we say that, that's,**  
16 **like, how far across the bucket is.**

17          Q     So when you observed this, were your windows  
18 up or down?

19          A     **They were down.**

20          Q     And could you hear the sound being made by the  
21 gravel being dumped?

22          A     **Yes.  When I go on noise complaints, that's --**  
23 **I want to have the most accurate picture as possible,**  
24 **not only for the reporting party but the person creating**  
25 **the sound.  Is it too loud or not?  So windows down,**



1 radio down, all that, so I can hear as best as I  
2 possibly can.

3 Q And was that noise audible to you in the car?

4 A Yes.

5 Q Would you say that was a loud noise?

6 A Yes.

7 Q Approximately how far away from it were you  
8 when you were able to hear it?

9 A Approximately 50 yards.

10 Q Okay. And this was while you were on Day Road  
11 in your car; correct?

12 A Correct.

13 Q Were there other cars on Day Road or just you?

14 A Just me.

15 Q Is Day Road a particularly busy street or  
16 quiet street?

17 A It's actually become more and more busy, but  
18 that's, like, during rush hour times. It's used as kind  
19 of, like, a main thoroughfare. There's some other  
20 construction south that's making it more of a  
21 thoroughfare. But during daytime's hours, it's a busy  
22 road. But night, not so much.

23 Q And when you were there, was it daytime or  
24 nighttime?

25 A It was nighttime.

1 Q Were there lights on in the parking lot or, I  
2 guess, the construction area?

3 A There was some not right where they were  
4 operating. I believe there one up towards the entrance  
5 of the property and I believe one further back towards  
6 the main building itself.

7 Q What did you do after you saw the gravel  
8 being -- saw and heard the gravel being dumped into the  
9 bed of the pickup truck?

10 A I went up the road a little ways. Pulled back  
11 the ORS. Called one of my sergeants just to make  
12 sure -- it had changed since the last time I had read  
13 through it; so I just wanted to make sure I was reading  
14 everything correctly and seeing what I was seeing. And  
15 he agreed with me, and then I went back down to the  
16 site.

17 Q Okay. When you say "ORS," do you mean the  
18 Washington County noise complaint? Noise code?

19 A Sorry. I'm used to saying the ORS. The  
20 ordinance, yes. The Washington County noise ordinance.

21 Q Okay. And what did you do after you consulted  
22 with your sergeant about the noise ordinance and what  
23 you had seen?

24 A Went back down to the site. At that time, it  
25 was closed and everyone was gone.

1 Q If someone had been there, would you have  
2 written the citation at that time?

3 A Yes.

4 Q Who would you have written the citation for?

5 A For me, it's -- it would have been Brown  
6 Contracting because that's their business, their yard.

7 Q And I guess -- again, sorry. Bad question on  
8 my part. Is there an individual that you would write  
9 the citation to or for at the site and why?

10 A Site foreman, if you will, because they're  
11 responsible for what's going on.

12 Q Okay. What did you do after you --

13 THE COURT: I have a question -- because  
14 I'm puzzled on -- Deputy. First you said you would  
15 write it to the company. Then you said you would write  
16 it to an individual; so --

17 THE WITNESS: So I put both on a citation.  
18 So I'll put the named individual I'm dealing with but  
19 also -- like, the citation I did -- do for Brown  
20 Contracting. Does that make sense?

21 THE COURT: It doesn't say "for Brown  
22 Contracting." It says "Employed to Brown Contracting."  
23 What does that mean -- "employed to"?

24 THE WITNESS: He was an employee of Brown  
25 Contracting.

1           **THE COURT:** Okay. It's not -- that's an  
2 odd -- dramatically. That's why I asked. I was just  
3 curious. I just wanted to make sure it didn't have any  
4 kind of special meaning.

5           **THE WITNESS:** No.

6 **BY MR. MCMAHON:** (Continuing)

7           **Q** But, essentially, that's who you would  
8 indicate, sort of the person in charge of the site when  
9 you go there?

10          **A** Yes. So, like, in this example, I asked for  
11 the site supervisor or superintendent when I arrived.

12          **Q** Okay. So we'll talk about the actual writing  
13 of the citation in just a second. But after you went  
14 there and no one was at the site that night, what did  
15 you do?

16          **A** I called Mr. McClendon. I was -- I always  
17 like to call my reporting party and explain my actions,  
18 or lack thereof, which I called and discussed what I saw  
19 and heard and what I planned on doing.

20          **Q** Okay. Had you had prior conversations with  
21 Mr. McClendon?

22          **A** I don't believe so.

23          **Q** Okay. Had you had prior instances or any  
24 indications that there were prior incidents at the site  
25 of noise complaints or noise violations?

1           A       Yes.  So, again --

2                       MR. HARRIS:  I'm going to object.  I'm  
3 objecting because of hearsay and relevance.

4                       MR. MCMAHON:  And, Your Honor, I'm not  
5 offering it for the truth of the matter, sir.  
6 Essentially, it's a fact on the listener, just to show  
7 that Brown Contracting was -- or having contact that he  
8 made aware of potential -- of the other noise  
9 violations, not that there actually were prior noise  
10 violations.  It's entirely for the effect on the  
11 listener.  That's the only purpose to which I'm offering  
12 it.

13                      THE COURT:  Okay.  What -- do you want to  
14 make any argument in regard to that?

15                      MR. HARRIS:  I don't think it's relevant  
16 then, I guess, I suppose.

17                      THE COURT:  Okay.

18                      MR. MCMAHON:  It's relevant to show that  
19 they were aware -- that there were prior complaints of a  
20 reasonable noise, and so they were essentially on  
21 notice, and that that notice affects whether or not they  
22 knew the noise being made was reasonable.

23                      THE COURT:  So you don't want to offer it  
24 for the truth of the matter but yet you want to offer it  
25 to establish that that defendant was on notice of it.

1 How is that not for the truth?

2 MR. MCMAHON: Because we're not offering it  
3 as substantive evidence that there were prior noise  
4 violations, just that the defendant was on notice that  
5 had been --

6 THE COURT: Once you say --

7 MR. MCMAHON: No. I see your point. I  
8 will withdraw my question.

9 THE COURT: All right.

10 MR. MCMAHON: And I'm sorry to cut you off.  
11 I was shifting my brain and wanted to -- okay.

12 BY MR. MCMAHON: (Continuing)

13 Q So after you spoke with Mr. McClendon, what  
14 did you do the next day?

15 A I went back to Brown Contracting and went  
16 inside, asked the receptionist for whoever their site  
17 supervisor was, or superintendent, and I was told it was  
18 Austin Owing {sic}, and he came out to meet me.

19 Q And did you issue him the citation for the  
20 prior night?

21 A I did. When he walked out, before I could  
22 even tell him why I was there, he actually said to me,  
23 "Is this for a noise complaint -- about a noise  
24 complaint?" And I said, "Yeah."

25 Q What else did he say to you?

1           **A**     **I can't recall. I just -- that -- that stuck**  
2 **out to me that he knew I was there before I even said**  
3 **why I was there.**

4           **Q**     **Did you tell anyone else on site about why you**  
5 **were there before you talked to Mr. Owing?**

6           **A**     **I don't recall.**

7           **Q**     **Is it possible you would have said something**  
8 **to a receptionist or that you were there for a noise**  
9 **complaint?**

10          **A**     **It's possible, yeah. I don't recall saying**  
11 **it.**

12          **Q**     **Based on your opinion and what you observed,**  
13 **did you believe that the construction site was making an**  
14 **unreasonable amount of noise that night, on Sunday, at**  
15 **7:45 PM?**

16          **A**     **Yes.**

17                   **MR. MCMAHON: I have no further questions**  
18 **at this time, Your Honor.**

19                   **THE COURT: You may inquire.**

20                   **MR. HARRIS: Thank you.**

21

22                                   **CROSS-EXAMINATION**

23 **BY MR. HARRIS:**

24           **Q**     **Officer Kibble, is that your name?**

25           **A**     **Deputy.**

1 Q Deputy Kibble. Thank you. Good afternoon.  
2 Nice to meet you. I'm Ryan Harris, one of the attorneys  
3 in this case.

4 A Hi.

5 Q Did you see Mr. Owings at the site of the  
6 night of December 18th?

7 A No.

8 Q Do you recognize Mr. Owings here today in  
9 court?

10 A Yes.

11 Q Do you have any reason to believe he was there  
12 that night?

13 A No.

14 Q Did -- is Mr. Owings the only named defendant  
15 in the citation?

16 A On the citation, that's where I put the Brown  
17 Contracting as part of -- again, he was the  
18 representative for Brown Contracting.

19 Q Okay. But did you issue the citation to Brown  
20 Contracting, or did you issue the citation to  
21 Mr. Owings?

22 A My intent was for Brown Contracting. He was  
23 the site foreman or supervisor representing Brown  
24 Contracting. That's how I see it -- as a site foreman.

25 MR. HARRIS: May I approach, Your Honor?



1 THE COURT: You surely may. You don't have  
2 to ask that, by the way.

3 MR. HARRIS: Okay.

4 BY MR. HARRIS: (Continuing)

5 Q You have there what's been marked Exhibit 101.  
6 Do you see that?

7 MR. MCMAHON: Your Honor, if it's all  
8 right, I would like to go up and just take a look at it  
9 and see what it is.

10 THE COURT: You certainly may.

11 MR. MCMAHON: Thank you, Your Honor.

12 THE COURT: You may do anything to help  
13 refresh your knowledge.

14 MR. MCMAHON: Okay.

15 BY MR. HARRIS: (Continuing)

16 Q And it's a hard citation to read, I admit it,  
17 but the judge has the original, so --

18 THE COURT: Would folks like -- would folks  
19 prefer the deputy to see the original?

20 MR. HARRIS: Yeah.

21 BY MR. HARRIS: (Continuing)

22 Q Would you disagree with me that that does not  
23 list Brown Contracting as a defendant in the citation?

24 A No.

25 Q And why is that?

1           **A**     Because this was issued to Austin Owings of  
2 Brown Contracting. That's who I was issuing this to.  
3 "Employed to Brown Contracting," which is why I checked  
4 that box, and I explained that day that this was for  
5 Brown Contracting. He was acting as their --

6           **Q**     But --

7           **A**     -- site supervisor. Again, I don't know how  
8 better to explain that.

9           **Q**     Okay. I mean, you have no reason to believe  
10 Mr. Owings had anything to do with this noise violation,  
11 do you?

12          **A**     Like, specifically, out there doing it? No.

13          **Q**     Or that -- you have no reason to believe he  
14 was on site when this alleged noise violation happened?

15          **A**     No.

16          **Q**     Okay. So, just by virtue of the fact of him  
17 coming to work the next day afterwards, while you're  
18 still on duty, he gets cited for this violation?

19          **A**     He was the acting foreman, who I asked to see  
20 as a representative of Brown Contracting. And,  
21 additionally, with him walking out and saying "You're  
22 here because of a noise complaint" also adds to my  
23 reasonable suspicion of probable cause that he clearly  
24 knows that there's issues with noise complaints.

25          **Q**     Could you have cited any employee of Brown

1 Contracting for this violation?

2           **A**     I would not have because someone that works  
3 off -- like a mechanic, that has nothing to do with any  
4 operations, no. I'm going for the operational, who has  
5 control, the management, if that makes sense.

6           **Q**     But you have no reason to believe  
7 Mr. Owings was in control when the violation happened?

8           **A**     He's the site supervisor, which would lead me  
9 to believe he does have control over what happens at the  
10 site.

11          **Q**     But when --

12          **A**     That's reasonable to me.

13          **Q**     But not -- when he's off duty, he has control  
14 over what happens at the site?

15          **A**     I know, as a manager, when I did it for many  
16 years, it was ultimately my responsibility for what my  
17 employees did, and that's why I put them in the  
18 positions I put them in. That's my train of thought.

19          **Q**     So Mr. Owings is basically responsible for  
20 everything that -- he can be cited for everything that  
21 goes on at the Brown Contracting site, whether he's  
22 there or not?

23          **A**     I would say it depends on what it is.

24          **Q**     Okay. Well, any noise violation?

25          **A**     He's in charge of that site. He's in charge

1 of his employees.

2 Q Have you ever received any special training on  
3 Washington County Code 8.24.030?

4 A I think we actually had a refresher just  
5 recently in briefing training that kind of went over the  
6 codes. But, like, is this something I spent a lot of  
7 time on? No.

8 Q Prior to issuing the citation, had you had any  
9 training on this code?

10 A I don't recall.

11 Q Prior to issuing the citation to Mr. Owings,  
12 had you ever issued a citation under Washington County  
13 Code 8.24.030?

14 A No.

15 Q This is your first one ever?

16 A Yep.

17 Q How many times had you read that section of  
18 the code before?

19 A Multiple times.

20 Q So you're pretty familiar with it?

21 A That was -- let me back up. As I stated  
22 earlier, I stopped and called my sergeant because it had  
23 been rewritten since the last time I read it, and it  
24 read differently. I went back over it with him.

25 Q You had some doubts about whether this was

1 really a violation of the code?

2           **A**     **I just wanted to reconfer with my sergeant.**

3           **Q**     Because you had some doubts about whether this  
4 was a violation?

5           **A**     **Yes. I wanted to make sure I'm correct. I**  
6 **never want to issue anyone a citation if it's not**  
7 **warranted and not right.**

8           **Q**     Okay. So the answer, though, is "Yes." You  
9 had some doubts about whether this was a violation?

10                   **MR. MCMAHON: Objection. Misconstrues the**  
11 **testimony. Asked and answered.**

12                   **THE COURT: Asked and answered, I'll give**  
13 **you. I don't think it misconstrued it. Mr. Harris has**  
14 **one summary of what the answer is, and Deputy Kibble has**  
15 **another summary of what the answer is. I think the**  
16 **Court's well aware of where the parties are at.**

17                   **MR. HARRIS: Okay. The point is made.**  
18 **Okay. Fair enough.**

19 **BY MR. HARRIS: (Continuing)**

20           **Q**     I think you testified earlier that you had  
21 read the report, the prior calls, beforehand.

22           **A**     **Yes.**

23           **Q**     And so you were aware of Officer Howell's  
24 visit to the Day property?

25           **A**     **Yes. The Sunday prior.**

1 Q And you were aware of what he had written in  
2 that?

3 A Uh-huh.

4 Q Okay. You had received a lot of calls from  
5 the McClendons. Is that right?

6 A As a -- for the address, yes. Me personally?  
7 No. I have responded to a few calls out there, but  
8 there have been many calls for noise complaints for that  
9 address.

10 Q Fair enough. And had previous violations been  
11 written on those calls?

12 A Not that I'm aware of, no.

13 Q Okay. I'm wondering if you could be so kind  
14 to help me with my exhibit over here and mark some  
15 things for me.

16 A Yeah.

17 Q So with this blue dot, would you mark -- so --  
18 let me back up.

19 So I think you initially testified that you  
20 initially pulled up and observed what was going on in  
21 your car. Did I get your testimony right?

22 A Uh-huh.

23 Q Can you show me where you were in your car  
24 when you were observing what was going on with the blue  
25 dot?

1           **A**     **(Complies.)**

2           **Q**     So you were in the middle of Day Road?

3           **A**     Well, I'm trying to get, as much as I can, to  
4 **the right lane, where I would have been on the side of**  
5 **the road, because I would have -- what I call "slow**  
6 **roll," if you will. So windows down, maybe five miles**  
7 **an hour.**

8           **Q**     Okay. So -- so just to clarify your  
9 testimony, then, you were on the south side of Day Road?

10          **A**     **Uh-huh.**

11          **Q**     There was a lane between you and the site?

12          **A**     **There's a center lane; then there's the**  
13 **opposite, opposing lane.**

14          **Q**     Okay. So there were two lanes between you and  
15 the Brown Contracting site?

16          **A**     **Uh-huh.**

17          **Q**     And it looks like there are quite a few trees  
18 there at the south of the property. Is that correct?

19          **A**     **Correct.**

20          **Q**     And did those obstruct your view of what was  
21 going on?

22          **A**     **A little bit, yeah.**

23          **Q**     It's hard to see exactly what was going on?

24          **A**     **No, I wouldn't say that. I wouldn't say that.**

25          **Q**     And, I mean, what time of day was that that

1 you were there again?

2 **A It was night. It was completely dark.**

3 **Q It was dark?**

4 **A Yep.**

5 **Q Okay. So you're across the road, at night,**  
6 **looking through trees in the dark at the -- what's going**  
7 **on?**

8 **A Yep.**

9 **Q Okay. Okay. So then, I think, if I recall**  
10 **correctly, your testimony was that you drove off and**  
11 **called your sergeant?**

12 **A Correct.**

13 **Q Is that right?**

14 **A Okay.**

15 **Q So, actually, before I get to that -- so how**  
16 **long were you at that blue dot before you drove off?**

17 **A As I said, I was so slow rolling; so my pass**  
18 **time is a few seconds. I mean, it's not a super long**  
19 **period of time.**

20 **Q So you only observed what was happening for a**  
21 **few seconds?**

22 **A Uh-huh.**

23 **Q And then you drove off?**

24 **A Yeah.**

25 **Q And where did you drive to?**



1           **A**     **Just up over -- here is Boones Ferry. It's**  
2 **not on this map. I was just over on Boones Ferry.**

3           **Q**     Okay. Well, let me just ask you this  
4 question: The place that you drove to, was that within  
5 site or sound of the Day Road property?

6           **A**     **No.**

7           **Q**     And so then you -- after you talked to your  
8 sergeant -- and how long did you talk to your sergeant  
9 for?

10          **A**     **I don't know. Five minutes. Maybe a little**  
11 **more. Maybe ten. Because he was looking up the**  
12 **ordinance himself.**

13          **Q**     Okay.

14          **A**     **Because, you know, we deal mainly in ORS, not**  
15 **so much in ordinance.**

16          **Q**     Gotcha. So you went and talked to your  
17 sergeant, and he looked up the code?

18          **A**     **Uh-huh.**

19          **Q**     And did you look up the code at that point?

20          **A**     **Yep.**

21          **Q**     What did you tell your -- when you called up  
22 your sergeant, what did you say to him?

23          **A**     **I explained to him exactly what I'd seen. The**  
24 **way I read the code -- that there shouldn't be any noise**  
25 **on a Sunday, and especially not at 8:00 o'clock at**

1 night, and he was just asking "Am I missing anything?"

2 Q So --

3 A He took the time to read through it, to make  
4 sure I wasn't missing anything. He was, like, "Nope."

5 Q So your testimony is there shouldn't have been  
6 any noise on Sunday?

7 A From that? Yeah. No, there shouldn't have  
8 been any noise.

9 Q Okay. So what exactly was the noise that  
10 caused a problem that you heard?

11 A The machine itself is a little loud.  
12 Excavators aren't quiet, by any means. Gravel dumping  
13 into a metal bucket, more or less -- that's what a dump  
14 truck is -- is not quiet.

15 Q Okay. Did you actually see gravel?

16 A Yeah.

17 Q You absolutely -- you saw gravel?

18 A Yes.

19 Q Okay.

20 A I don't know another way to put it.

21 Q Do you know -- are you familiar with the piece  
22 of machinery called the telehandler?

23 A Uh-huh.

24 Q Could you possibly have been seeing a  
25 telehandler rather than an excavator?

1           **A**     **No. My experience with telehandlers, or reach**  
2 **forklifts, besides operating them for years -- I was**  
3 **actually also -- I was a certified instructor and**  
4 **trainer on reach forklifts; so I operated them a lot.**

5           **Q**     **Okay. Did you see -- and I thought your**  
6 **testimony earlier was you saw a dump truck. Is that**  
7 **correct?**

8           **A**     **Yeah. It was approximately a 10- to 12-yard**  
9 **to a full-size dump truck --**

10          **Q**     **Did you see --**

11          **A**     **-- with its park lights on.**

12          **Q**     **Did you see more than one dump truck?**

13          **A**     **I saw the one.**

14          **Q**     **Okay. Now, you wrote up your testimony in a**  
15 **report? Is that -- you wrote up a report at the time.**  
16 **Is that right?**

17          **A**     **Uh-huh.**

18          **Q**     **I'd like to have you -- well, yeah, I'd like**  
19 **to have you look at that. So it's --**

20                   **THE COURT: Do you want the deputy to**  
21 **continue standing?**

22                   **MR. HARRIS: You can sit.**

23 **BY MR. HARRIS: (Continuing)**

24          **Q**     **Can I just have you put a yellow sticker where**  
25 **the activity was occurring?**

1           **A     Approximately there.**

2           Q     Okay. All right. Are you familiar with the  
3 term "noise sensitive unit"?

4           **A     Uh-huh.**

5           Q     What is a noise sensitive unit? You can sit  
6 down now, by the way.

7           **A     If memory serves me correct, noise sensitive**  
8 **unit has to do with, like, assisted living homes,**  
9 **medical stuff, things of that nature.**

10          Q     Okay.

11          **A     It's been a while since I've read it.**

12          Q     Is a noise sensitive unit relevant to a  
13 violation of the citation that you gave the WC -- the  
14 Washington County Code 8.24.030?

15          **A     Is it -- repeat the question. I'm sorry.**

16          Q     Is the location of a noise sensitive unit  
17 relevant to a violation of the code under which you  
18 cited Mr. Owings?

19          **A     The noise sensitive unit, I believe, would be**  
20 **relevant in any noise violation if it's within**  
21 **proximity.**

22          Q     Okay. Do you know where the closest noise  
23 sensitive unit is to what was going on that night?

24          **A     Nope.**

25          Q     Did you ever go into a noise sensitive unit in

1 order to hear the noise?

2 **A Nope.**

3 Q All right. So in that binder is a copy of  
4 your -- I'll just find this for you. It will be easier.

5 **A Okay.**

6 Q So is this a copy of the report that you  
7 wrote?

8 **A Yes, sir.**

9 Q You see there on the third paragraph, under  
10 "Narrative," where it says, "I arrived at the area at  
11 approximately 19:45 hours"?

12 **A Uh-huh.**

13 Q So that's your testimony still today, you  
14 arrived at -- and I'm not a military guy, but I think  
15 that's 7:45. Is that right?

16 **A Yes. They make us write everything in  
17 military time.**

18 Q Okay. Fair enough. And then it says, "And I  
19 observed multiple large 10- to 12-yard dump trucks." Do  
20 you see that?

21 **A Yep.**

22 Q So is it your testimony here today that you  
23 didn't actually see multiple large 10- to 12-yard dump  
24 trucks?

25 **A I wrote "multiple." I, a hundred percent, I**

1 **recall seeing the one that was being loaded.**

2 Q So did you see multiple, or did you just see  
3 one?

4 **A Honestly, I don't recall.**

5 Q Okay. After -- even after you spoke to your  
6 sergeant, did you still have some doubts about whether  
7 you'd actually seen a violation of the noise ordinance  
8 issued here?

9 **A No.**

10 Q You didn't have any doubts?

11 **A No.**

12 Q Okay. I want to show you -- back a little  
13 further -- I don't know what you guys call this. What  
14 do you call this?

15 **A CAD.**

16 Q A CAD?

17 **A Uh-huh.**

18 Q Okay. Thank you. All right. Does this CAD  
19 accurately reflect the note you put into the system?

20 **A Yep.**

21 Q Okay. So this says, "Will follow up with  
22 County tomorrow to see if Code Enforced" -- so -- "Code  
23 Enforcement can do anything about this issue." Do you  
24 see that?

25 **A Yes.**

1 Q So is it your intention to follow up with Code  
2 Enforcement?

3 A My understanding -- after this was done, I  
4 spoke with Mr. McClendon. Code Enforcement is not out  
5 during the late hours. He had had some discussions with  
6 them regarding Code Enforcement stuff, and they  
7 couldn't -- you know, deputies need to be able to see  
8 stuff. I believe he said he had recordings. And I  
9 said, "Well, it's a violation. I need to see and hear  
10 for it to be" -- you know, it's not a crime, if that  
11 makes sense.

12 So violations, I need to either see them or be  
13 told by another deputy officer -- I can go off of their  
14 testimony, their word, off a violation. Different from  
15 a crime. So, in this instance, I was originally going  
16 to be following up with Code Enforcement. I thought I  
17 put -- where is my report? Back here?

18 Q Yeah.

19 A Can I look through your stuff?

20 Q Yeah. The report --

21 A I got it right here. I thought I had  
22 forwarded a copy to Code Enforcement, but did not, so  
23 they had knowledge.

24 Q You, as an officer, had the power to issue  
25 this citation; right?

1           **A     Yes.**

2           **Q     You didn't need Code Enforcement's approval to**  
3 **issue the citation?**

4           **A     No.**

5           **Q     So you were going to check with Code**  
6 **Enforcement the next day because you had some doubts**  
7 **still about whether this was a violation; correct?**

8           **A     No.**

9           **Q     Okay. What was Code Enforcement going to do**  
10 **that you couldn't do?**

11           **A     Nothing. It was -- maybe I worded it**  
12 **improperly. We say, "We'll follow up." That's, like,**  
13 **talking with Code Enforcement and stuff like that. I**  
14 **didn't need Code Enforcement's approval to take the**  
15 **actions I took.**

16           **Q     Yeah. Okay. I wonder -- I want to read you a**  
17 **statement, see if you agree with it. "Vehicle loading**  
18 **or unloading, being moved or being washed is not a**  
19 **violation of ordinance and is considered normal noise**  
20 **for the vehicles."**

21                   **MR. MCMAHON: Objection. Relevance. Lack**  
22 **of foundation.**

23                   **THE COURT: Just -- respond.**

24                   **MR. HARRIS: I just want to know if he**  
25 **agrees that that's an accurate statement of the law. I**



1 mean, he's enforcing the law.

2 THE COURT: I'll let you answer that.

3 THE WITNESS: Okay. Repeat.

4 BY MR. HARRIS: (Continuing)

5 Q Yeah. "Vehicle loading or unloading, being  
6 moved or being washed is not a violation of ordinance  
7 and is considered normal noise for the vehicles."

8 THE COURT: Where are you reading that  
9 from?

10 MR. HARRIS: Well, there's an exhibit  
11 that -- we can -- I can have you look at it.

12 THE COURT: I'm just curious. You're  
13 reading something. I'm just curious where you're  
14 reading it from.

15 MR. MCMAHON: And that sort of gets to the  
16 foundation as to my objection. I don't know if that's a  
17 statute, if that's opinion, what that's coming from.

18 MR. HARRIS: It comes from Joseph Ramirez,  
19 Code Enforcement Officer for Washington County. And  
20 it's Exhibit 124, if you want to flip to it.

21 THE COURT: What did he write?

22 MR. HARRIS: He wrote --

23 THE COURT: What document?

24 MR. HARRIS: This is an email from him.

25 THE COURT: To whom?

1 MR. HARRIS: To Mr. Brown, who will  
2 authenticate it later.

3 MR. MCMAHON: Objection. Hearsay.  
4 Relevance. Foundation.

5 THE COURT: Well, I think he can ask if  
6 Deputy Kibble agrees with that proposition. Deputy may.  
7 Deputy may not. Deputy may not have an opinion. I  
8 don't know. But I think he can ask that question.  
9 Whether or not that statement is -- in any way means  
10 anything or has any weight, that's a different issue.

11 MR. HARRIS: Understood.

12 THE COURT: Okay.

13 MR. HARRIS: Understood.

14 BY MR. HARRIS: (Continuing)

15 Q So I'm going to ask it again because I know  
16 we've been talking a lot, and you probably don't  
17 remember what the question was.

18 Do you agree with this statement: "Vehicles  
19 loading or unloading, being moved or being washed is not  
20 a violation of ordinance and is considered normal noise  
21 for the vehicles"?

22 A And I would say "it depends."

23 Q Okay. Yeah. Depends on what?

24 A Depends on the vehicle, depends on what you're  
25 considering loading. There's many aspects to that.

1 Q Okay.

2 A I mean, are you taking something and putting  
3 it on a trailer? Are you hooking up a trailer?

4 Q Well, in the context of the construction site,  
5 would you agree that a construction vehicle loading,  
6 unloading, moving, is that normal noise, or is that a  
7 violation of the ordinance?

8 A Depends -- it still depends because -- and  
9 here's -- I'll put it in context because I know -- I  
10 believe I know where this question is coming from.

11 I responded to another noise complaint at this  
12 same address. Okay? They were hooking up a dump truck.  
13 They had loaded up a -- what's called a skid-steer or  
14 track loader, rubber track onto a piece of another  
15 trailer. They were getting ready to go out and do a  
16 job.

17 I contacted the individual who was actually  
18 operating the telehandler, reach forklift, moving the  
19 light tower at the time. "What was going on?" Because  
20 I got the call. He explained. "We're loading up.  
21 We're heading out to a job tonight."

22 Okay. Makes sense.

23 "When did you learn about this job?"

24 "Learned about this Thursday."

25 Okay. Today is Sunday, and you learned about

1 this Sunday. "Is there a reason why you didn't preload  
2 the equipment?" because that was something -- when I  
3 worked at United, especially as a dispatcher, we  
4 preloaded stuff so it was ready to go the next day for  
5 the job at hand.

6 He said the trailer was -- had been serviced  
7 and was unable to preload, otherwise he would have.  
8 They were there for minutes -- I don't know,  
9 approximately 15 -- doing some general loading, hooking  
10 up, and leaving. I didn't have a problem with that.

11 And as I explained to Mr. Stamp there, that's  
12 why I was not issuing a citation. They were loading up  
13 literally to leave for a job, and they were there pretty  
14 quickly. It was general hooking up of a trailer,  
15 loading a piece that couldn't have been loaded earlier.  
16 Made sense to me; so I used --

17 Q What about the --

18 THE COURT: Let him finish.

19 MR. HARRIS: Oh, I'm sorry. I thought you  
20 were finished. Go ahead.

21 THE WITNESS: To me, that's a normal,  
22 general operation -- to hook up a piece of equipment, to  
23 then leave.

24 BY MR. HARRIS: (Continuing)

25 Q Okay. Does that apply to a Sunday? Can you

1 hook up equipment on a Sunday and leave and not violate  
2 the noise ordinance?

3 **A I believe so.**

4 Q Okay. Then what exactly were they doing on  
5 December 18th that you cited them for, that was above  
6 that?

7 **A As I witnessed, what appeared to me, loading**  
8 **gravel into a dump truck at 8:00 o'clock at night.**  
9 **That's --**

10 Q If they had not been loading -- I'm sorry. Go  
11 ahead. Finish your -- I don't mean to cut you off.

12 **A That's -- sorry. That's very loud. And to**  
13 **me, you're -- it's more than just loading, hooking a**  
14 **trailer up, putting a piece of equipment on, hooking up**  
15 **a light tower, and leaving.**

16 Q If they had not been loading gravel that  
17 night, would you not have cited them?

18 **A If they had not been loading gravel, then I**  
19 **wouldn't have been hearing that noise.**

20 Q Okay. But -- I understand that. But I just  
21 want to be clear. If they had not been loading gravel,  
22 if they just had vehicles idling, and they were just  
23 getting ready to go out on the job site, and they were  
24 not loading up gravel, would you have cited them for a  
25 noise violation?

1           **A**     If they were just firing up equipment, loading  
2 and leaving? No. Now, if we're sitting there, idling  
3 for long periods of time, that's not needed. That's  
4 going above and beyond loading up quickly to leave for a  
5 job on off hours. Does that makes sense?

6           **Q**     I mean, I understand your answer. Yeah.

7                    Okay. I have a few other questions for you  
8 about the code. You said there was not a lot of traffic  
9 on Day Road that night. Is that correct?

10          **A**     **Correct. As I recall, yeah.**

11          **Q**     Is this -- do you have an understanding of  
12 what kind of area this is -- that the Brown Contracting  
13 facility is located in? Do you understand, like, the  
14 nature of the area?

15          **A**     **It's a mix. It's where -- depending on where**  
16 **you're coming from, I would say a little bit of a**  
17 **commercial comes in integrated with residential.**

18          **Q**     Do you know what the --

19          **A**     **Residential to the north side.**

20          **Q**     Okay. Do you know what the zoning is for the  
21 Brown Contracting site?

22          **A**     **No.**

23          **Q**     Do you know what the zoning is for  
24 Mr. McClendon's property to the north?

25          **A**     **Nope.**

1 Q Do you know what business is located just to  
2 the east of the Brown Contracting site?

3 A Yeah.

4 Q What's that?

5 A Amazon.

6 Q Okay. Do you know what business is located  
7 just to the south of Brown Contracting, across Day Road?

8 A No. I know there's a house. I don't know if  
9 it's directly -- it's not directly. Across from them is  
10 bushes and then a house. It's got a big shop on it.  
11 But there's a residence there.

12 Q Do you see those buildings that are just to  
13 the west? And I can point them out to you here. Do you  
14 see these buildings like here and here (indicating)?

15 A These houses?

16 Q Yeah. Do you know who owns them?

17 A I'm not a hundred percent sure. My guess is,  
18 at least one, Brown Contracting, because, one, there's  
19 Brown Contracting vehicles parked there a lot. And,  
20 two, when I was there the last time, the gentleman that  
21 I spoke with said he believed that that was being used  
22 for -- there were employees that were out of town to  
23 stay there.

24 Q Do you have an understanding of what intensity  
25 of -- the intensity of noise means? We have a blowup of

1 the statute.

2 Do you see there in 8.24.030 "the intensity of  
3 the noise" under subsection B?

4 **A Yes.**

5 Q Do you know what the intensity of the noise  
6 means?

7 **A How loud it is or vibrations it causes.**  
8 **That's -- to me, that's intensity.**

9 Q How is that different from the volume of the  
10 noise in subsection A?

11 **A I don't know if there is a huge difference. I**  
12 **didn't write it.**

13 Q Okay. So, as far as you know, there's no  
14 difference between those two?

15 **MR. MCMAHON: Objection. Relevance.**

16 **THE COURT: It's relevant. Potentially**  
17 **relevant.**

18 **BY MR. HARRIS: (Continuing)**

19 Q Do you have any way of measuring the  
20 background noise along Day Road?

21 **A (Witness shakes head.)**

22 Q You weren't on Day Road for very long; so you  
23 probability didn't hear very much background noise, did  
24 you?

25 **A No.**



1 Q Do you know what -- do you see there where it  
2 says, "Plainly audible" -- under subsection F, "Whether  
3 the noise is plainly audible within a noise sensitive  
4 unit"?

5 A Uh-huh.

6 Q Do you know what plainly audible means in the  
7 statute?

8 A That you can hear it.

9 Q Is that all it means -- that you can hear it?

10 A Well, I guess, depending on what the noise is,  
11 you know, if it's music, can you hear the words?

12 Q Okay.

13 A I think it depends on what the noise is.

14 Q But you wouldn't have knowledge about whether  
15 the noise that was being made was plainly audible in a  
16 noise sensitive unit; correct?

17 A No. I would add, from my experience, it's not  
18 quiet when you're dumping gravel into a metal bucket.

19 Q Okay.

20 A And it wasn't quiet when I heard it.

21 Q You see subsection J there? It says, "The  
22 duration of the noise is a factor."

23 A Uh-huh.

24 Q And you don't really know how long the noise  
25 was going on, do you?

1           **A     No.**

2           **Q     You only listened to it for a couple of**  
3           **seconds before you drove off?**

4           **A     Yes.**

5                   **MR. HARRIS: I think that's all my**  
6           **questions. Thank you.**

7                   **THE COURT: Redirect?**

8                   **MR. MCMAHON: Yes, Your Honor.**

9                           **REDIRECT EXAMINATION**

10           **BY MR. MCMAHON:**

11           **Q     So on cross-examination, Counsel asked you**  
12           **about Deputy Howell's visit and if you were familiar**  
13           **with where it happened.**

14           **A     Uh-huh.**

15           **Q     What, to your understanding, happened with**  
16           **Deputy Howell?**

17                   **MR. HARRIS: I'm going to object. That's**  
18           **hearsay. That's not relevant.**

19                   **MR. MCMAHON: He opened the door, Counsel.**

20                   **THE COURT: How did you not open the door?**

21                   **MR. HARRIS: Well, I think it was relevant**  
22           **only because it primes him for what he was going to see.**  
23           **I don't think that Deputy Howell's testimony comes in --**

24                   **THE COURT: You asked him about that after**  
25           **I said they couldn't even know that.**

1 MR. HARRIS: All right. That's fine.

2 THE COURT: I know. Go ahead.

3 BY MR. MCMAHON: (Continuing)

4 Q What is your understanding of what happened on  
5 Deputy Howell's visit?

6 A Two things. One, I talked to him. But also,  
7 I had his CAD from, like I said, our priors, to go on,  
8 and the notes that he typed into our permanent record.

9 Q And what happened?

10 A He had -- as I read, he had gone by there.  
11 They were operating machinery. He had spoken to someone  
12 at the site, warned them that they could not be making  
13 noise, and to shut it down. That's kind of --  
14 basically, I can read you what he wrote.

15 Q Okay. That's from the gist of it. Was  
16 Deputy Howell going to write a citation or issue a  
17 warning that night?

18 A That night he got another call to go back for  
19 service, and he told me again --

20 MR. HARRIS: I'm going to object here.  
21 This is hearsay.

22 MR. MCMAHON: He opened the door. He asked  
23 about Deputy Howell's visit.

24 THE COURT: He opened door to what happened  
25 on the previous visit. Now we're talking about a

1 conversation between Deputy A to Deputy B here, you  
2 know --

3 MR. MCMAHON: With respect to that visit.

4 THE COURT: I know it's with respect to the  
5 visit, but I don't think that was covered by -- I don't  
6 think the door opened that wide.

7 MR. MCMAHON: Okay.

8 BY MR. MCMAHON: (Continuing)

9 Q And I will go ahead -- and I just want to  
10 clarify: Did you at any times see any telehandlers  
11 lifting or loading buckets or machinery into pickup  
12 trucks?

13 A No.

14 Q And approximately how long were you at the  
15 site that night?

16 A Like I said, I passed by -- it was a few  
17 seconds. When I came back by, there was nothing going  
18 on. And the Link-Belt Excavator, or what appeared to be  
19 a Link-Belt Excavator -- again, somewhat dark, somewhat  
20 light. They're gray and red. They're pretty obvious.  
21 I've had years of experience with them -- that's where  
22 it had been sitting right where it had been running ten  
23 minutes prior.

24 Q And is it possible that, later that night,  
25 that, say, an hour later, at 9:00 PM, that they could

1 have been moving around or using a -- the extender  
2 forklift?

3 A Yes.

4 Q But you weren't there; so you couldn't see?

5 A Yes.

6 THE COURT: Okay. Deputy Kibble, you may  
7 step down.

8 (End of examination.)

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CERTIFICATE

I, JACQUELINE LEE BUTLER, a Professional Registered Reporter, an Oregon Certified Shorthand Reporter, and a Washington Certified Court Reporter, do hereby certify that all proceedings were taken down by me in stenotype and transcribed through computer-aided transcription; constitutes a full, true, and accurate record of said proceedings.

Witness my hand and seal at Lake Oswego, Oregon, on July 18th, 2023.

*Jacqueline Lee Butler*



JACQUELINE LEE BUTLER  
Oregon CSR No. 21-0015  
Expires 9/30/2024  
Washington CCR No. 3458  
Expires 9/8/2023