



**PUBLIC MEETING NOTICE
FOR THE
WASHINGTON COUNTY PLANNING COMMISSION**

ZOOM VIRTUAL MEETING

WEDNESDAY, Aug. 19, 2020

PUBLIC MEETING 6:30 PM

NOTE: Planning Commission meetings are being held virtually, until further notice, via Zoom.

Join online: <https://us02web.zoom.us/j/84149124986>

Online participants will be able to see and hear the proceedings. Online participants' microphones will be muted, unless they are called upon to speak/testify. Participant cameras will not be activated at any time.

Join by phone: +1-346-248-7799 or +1-669-900-6833; Webinar ID: 841 4912 4986

Participants on phones will be able to hear the proceedings. Phone participants' microphones will be muted, unless they are called upon to speak/testify.

Prior to scheduled public hearing items, the Planning Commission conducts a Work Session to receive briefings from County staff. No public testimony is taken on Work Session items.

Following the Work Session, the Planning Commission considers agenda items, including scheduled public hearing items and consideration of minutes. The public is welcome to speak during the public hearings and time is limited to 3 minutes. The public may also speak on any item **not** on the agenda during Oral Communications. Time is generally limited to 5 minutes for individuals and 10 minutes for an authorized representative of a Citizen Participation Organization (CPO). The Chair may adjust time limits.

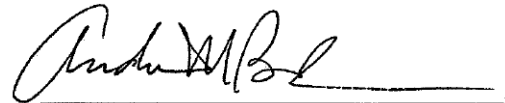
To provide testimony on agenda items or provide oral communication, please complete and submit the sign up form at www.co.washington.or.us/PlanningCommissionTestimony at least 24 hours before the start of a meeting.

To testify, either phone in or log in to Zoom. (See instructions above). When your name is called, your microphone or phone will be unmuted. You will have five seconds to begin speaking;

if you do not, the next topic/speaker will be called. Please follow these guidelines:

- When your name is called, state your name and home/business address for the record.
- Groups or organizations making a presentation must designate one spokesperson in the interest of time and to avoid repetition.
- When there is more than one speaker on any topic, please avoid repetition.

If you need a sign or spoken language interpreter, please call 503-846-3519 (or 7-1-1 for Telecommunications Relay Service) at least 48 hours prior to this event.



Andy Back

Planning and Development Services Division Manager

PUBLIC MEETING DATES	
BOARD OF COMMISSIONERS WORK SESSIONS	PLANNING COMMISSION MEETINGS
8:30 a.m. 1st and 3rd Tuesdays	1:30 p.m. 1st Wednesday
2 p.m. 4th Tuesday	6:30 p.m. 3rd Wednesday
BOARD OF COMMISSIONERS MEETINGS	<i>Note: Occasionally it may be necessary to cancel or add a meeting date.</i>
10 a.m. 1st and 3rd Tuesdays	
6:30 p.m. 4th Tuesday	



PUBLIC MEETINGS BEFORE THE PLANNING COMMISSION

WEDNESDAY Aug. 19, 2020 6:30 PM

ZOOM VIRTUAL MEETING

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AGENDA

CHAIR: JEFF PETRILLO
VICE-CHAIR: MATT WELLNER
COMMISSIONERS: IAN BEATY, MARK HAVENER, DEBORAH LOCKWOOD,
ANTHONY MILLS, SUSHMITA PODDAR, AND ERIC URSTADT

PUBLIC MEETING

- 1. CALL TO ORDER – 6:30 PM**
- 2. ROLL CALL**
- 3. DIRECTOR'S REPORT**
- 4. ORAL COMMUNICATIONS (Limited to items not on the agenda)**
- 5. PUBLIC HEARING**
 - a. Ordinance No. 865 – Urban Growth Boundary (UGB) Expansion Areas (continued from Aug. 5, 2020)**

An ordinance amending the Comprehensive Framework Plan for the Urban Area, the Rural/Natural Resource Plan and certain community plans to reflect urban growth boundary expansion areas
 - b. Ordinance No. 868 – Tektronix Development Agreement**

An Ordinance relating to the adoption of the amended and restated development agreement between Washington County, Oregon and Beaverton, LLC

Department of Land Use & Transportation • Planning and Development Services

Long Range Planning

155 N. First Ave., Suite 350, MS14 • Hillsboro, OR 97124

Phone: 503-846-3519 • Fax: 503-846-4412

www.co.washington.or.us • lutplan@co.washington.or.us

c. Ordinance No. 869 – Significant Natural Resources

An Ordinance amending the Community Development Code relating to the development in areas designated significant natural resources and planned developments

6. PLANNING COMMISSION COMMUNICATIONS

7. ADJOURN



Jenny Backstrand <backstrandjenny@gmail.com>

(no subject)

Jenny Backstrand <backstrandjenny@gmail.com>

Tue, Jun 2, 2020 at 4:28 PM

Draft

June 2, 2020

To: Commissioner Jeff Petrillo,

To: Washington County Planning Commissioners

From: The Backstrand Family (Lifelong Washington County Residents)

Hello, We have lived in Washington County all our lives. We have lived at our current address for 31 years. We live 7/10ths of a mile from the newly approved Marijuana/Hemp PROCESSING facility in Yamhill County, on top of Chehalem Mountain, on a remote narrow gravel road with only one escape route out of the area, with steep cliffs on each side of the gravel road, on a protected aquifer, miles from the fire department and rescue.
WE NEED YOUR HELP.

In February/March 2020, I dropped off binders at Washington County Courthouse detailing what was going on at 18505 NE Jaquith Road and in Yamhill County Management. I left one binder for the Washington County D.A., & one for each Commissioner but the only two who kept them were Kathryn Harrington and Roy Rogers. The other 3 were returned to me by mail. I would be willing to drop them off for any 3 of you, if you need them. I believe a couple of you were mentioning these binders on your phone call with Ms. Cochran, Mr. Brandstetter and Mr. Thompson a couple weeks ago.

I was listening intently on the phone when you heard testimony from Laura Cochran, Erich Brandstetter and Richard Thompson (all 3 are my neighbors) a couple weeks ago. I was very happy to hear that you all seemed to have sympathy and concerns and were actually looking for ways to help and wanting to make sure this couldn't happen in Washington County. Well, this extremely dangerous facility is VERY CLOSE to many Washington County residents and threatens a lot of us, some right across the street on Jaquith Rd and on Mountain Top Road.

We fought long and hard to get Yamhill County to apply their existing "rules" and "regulations" to the Application of this Marijuana/Hemp Processing & grow site at 18505 NE Jaquith Road to no avail. We originally heard about it in late September 2019 and we gathered huge community support AGAINST this facility. But our concerns fell on deaf ears in Yamhill County. Except for one member of the Planning Committee (Mr. Sherwood) who voted NO. I doubt that most of the Planning Committee had time to read all 820+ pages in the time the County allotted them and some compared processing filberts and hay to processing marijuana and hemp.

In case you don't know, they use flammable Ethanol (in machines designed for use with Alcohol?) and combine equal amounts of plant material with Ethanol to extract the CBD oil from the hemp and the THC from the marijuana plants. They will be using massive amounts of Ethanol up there to process the hemp and marijuana in buildings that were built illegally with no permits or site design review through Yamhill County on property that lost its ag/farm deferral on July 10, 2019. Supposedly this should have disqualified Yamhill County from designating 18505 NE Jaquith as "EFU" land but they pushed it through anyhow. The Planning Director deemed these 3 illegally built structures as "ag barns" - which kept the State Fire Marshall from inspecting them. Even though they were built ILLEGALLY and without any inspections. We have no idea WHO actually built them and if they were built safely. We doubt they were built to any kind of code....

Please read the email exchange attached between us and Mary Starrett (BOC in Yamhill County) regarding adopting some Time/Place/Manner rules/regulations NOW in Yamhill County. She keeps referring to AOC (Association of Oregon Counties) but they don't control what Yamhill County does. Please HELP US convince

them to pass some sensible rules regarding PROCESSING of Marijuana, like you all did years ago. There are some real inconsistencies with the way these 3 structures at 18505 NE Jaquith were illegally built, were approved (without an actual completed, signed or notarized ag application- which the applicant swears that some or all of the property is in ag/farm deferral) and that property lost its ag/farm deferral on July 10, 2019 for letting the ground go fallow. It should not be considered EFU land.

We need your help convincing these 3 Commissioners to protect the rest of us who live up here. The Planning Director in Yamhill County issued three phony permits on 9/11/19 saying these illegally built (and illegally operated 2015-2018 until they lost their water source (burned up the neighbor ladies well). The Planning Director went ahead and gave them the wrong occupancy code. If you see the photos of these 3 buildings, they ARE NOT AG BARNS. One is a former detached garage turned into chemical laboratory. Two are located too close together, hidden in the trees, next to many dead trees, no windows for escape, a ladder between the 2nd and 3rd floors, etc. These are NOT AG BARNS as the Planning Director deemed them.

Yamhill County Planning Committee and the Board of Commissioners approved this anyway, even though there are a lot of discrepancies, missing application, etc. For some reason, Yamhill County Board of Commissioners failed to pass ANY Time/Place/Manner regulations regarding HB3400 and now this case is in LUBA for appeal. They continue to approve more of these processors and as far as we know, there are already 4 of them on the Yamhill County side of Chehalem Mountain.

Please read the attached email exchange between our family and Mary Starrett (Yamhill County BOC member). Please try to get them to pass some type of regulations that are affecting Washington County residents also. Washington County is right across the street and I have not met ONE person who approves of this fire/explosion threat up the road from our home.

We appreciate ANY help/advice you can give us. We don't want beautiful Chehalem Mountain to end up burned to the ground.

Sincerely,

Jenny & Jim Backstrand
21780 SW Wildflower Dr Newberg, OR 97132

Chehalem Mountain Lives Matter Too!

HUGE FIRE FROM ANOTHER HASH OIL PROCESSOR.....What are you going to do?

Jenny Backstrand <backstrandjenny@gmail.com>
To: Mary Starrett <starrettm@co.yamhill.or.us>
Cc: kullac@co.yamhill.or.us, olsonr@co.yamhill.or.us

Tue, Jun 2, 2020 at 3:14 PM

Dear Commissioners Mary Starrett, Rick Olson and Casey Kulla,

Ms. Starrett, We are glad that you share our concerns, but we do not feel that our concerns have been addressed as you indicate. We are alarmed that the Yamhill County Commissioners are **avoiding** putting in Time, Place, and Manner marijuana regulations when you have the authority under HB3400, to do so, and as citizens we have requested that Yamhill County consider implementing these types of marijuana regulations.

WHY do you keep implying this dangerous problem is only fixed at the State level? We know that **ALL** other Oregon Counties prepared for marijuana & hemp Growing / **PROCESSING** restrictions and rules **EXCEPT for YAMHILL COUNTY**. WHY is that? **WHAT does Yamhill County gain by NOT passing some regulations?** (I suggest the following 3 regulations/rules should be your first 3 to start with):

1. **NO Marijuana / Hemp PROCESSING on EFU land in YAMHILL COUNTY.**
2. **At least 1000-2000 foot setbacks to residences for hemp/MJ growing & processing (just like setbacks for schools, etc. in YAMHILL COUNTY.**
3. **NO hemp/marijuana growing or processing on land that is located on a protected aquifer IN YAMHILL COUNTY. (i.e. Chehalem Mountain)**

There are 3 sensible suggestions right there....I wrote those in 5 minutes, **you can do it too.**

Please tell me what's "in it" for YAMHILL COUNTY to NOT do this simple action? What's "in it" for your Planning Director, Planning Department, Code Enforcement Department, The Planning Committee Members and The Yamhill County Board of Commissioners? WHY aren't you protecting the rest of us who live here? Please tell me... I'd love to know what you will be losing to pass some common sense rules to protect the rest of us? **WHY IS THIS ONE PROPERTY (18505 NE Jaquith) SO VALUABLE TO YAMHILL COUNTY?** Why are you willing to endanger every other person who lives up here in order to help this one address regardless of the extreme fire/explosion threat to ALL the rest of us?

Meanwhile, you are allowing more and more of these fire & explosion risk operations to be approved in YAMHILL COUNTY - **BECAUSE of your FAILURE to act!** Not to mention the extreme risks to Tualatin Valley Fire & Rescue Employees and First Responders who will arrive to battle a chemical fire/explosion and the fire danger to our wildlife, the environment, our homes, our livestock, our pets and the residents in the event of a chemical explosion from the Ethanol Processing and a resulting fire that is located 14 MILES FROM THE TILLAMOOK STATE FOREST, which are connected by Forests direct from 18505 NE Jaquith Road. Do you remember hearing about The Tillamook Burn of 1934? WE DID! We don't want Chehalem Mountain to end up like The Tillamook Burn. (aka The Tillamook Forest.....)

Why is the Yamhill County Board of Commissioners and your Planning Department so intent on wrecking Chehalem Mountain for ALL of us? **PLEASE PASS SOME Time/Place/Manner rules IMMEDIATELY!** WHY ARE YOU ALLOWING THIS TO CONTINUE? Please stop trying to blame it all on the State level laws. **YAMHILL COUNTY** is responsible for their lack of action **by not passing ANY rules in regards to Marijuana/Hemp Processing and Growing**. AOC (Association of Oregon Counties) does not have the power

to pass any rules for individual counties. **YOU 3 ARE RESPONSIBLE FOR THAT!** So please stop trying to blame the problems on "the State". The problems originate in YOUR COUNTY under YOUR WATCH.

Under the current lack of marijuana regulations in Yamhill County, the 18505 Jaquith Rd property can basically go unregulated in the middle of our rural residential community and this case should be a lesson for us all, that these are not the type of businesses that we want in the middle of our rural homes. And with the extreme threat of fire and explosions - our concerns are valid. Especially with the location of neighboring homes. **Why is this one business able to threaten all of the rest of us and the BOC doesn't think it needs to intervene and shut down these loopholes down BY PASSING SENSIBLE TIME/PLACE/MANNER REGULATIONS & RULES?**

And there are SERIOUS problems with the way your planning staff operates. Your suggestion/directive of putting your Planning Director in charge of complaints/issues regarding 18505, is that you effectively **put the fox in the hen house**. He won't do anything to protect the rest of us, he has already demonstrated to ALL of us that **we don't matter**. He has effectively bent over backwards in every way to accommodate this ONE address/business entity..... He omitted your supposed application/permitting "**requirements**" in 100% favor of the Applicants at 18505 NE Jaquith Road. **WHY?** Can you look into WHY this would be happening? **Is there some incentive that we (or you) don't know about?** Can you see how this looks to ordinary, law-abiding tax payers?

The Planning Department cost the taxpayers more money in legal fees fighting to include my husbands legitimately submitted letter in the record that the planning Department claimed was "not received" in its entirety. Luckily, the LUBA (Land Use Board of Appeals) agreed with us that my husbands letter had to be submitted in its entirety (not just one page like they tried to do) but it shouldn't have to cost the residents legal fees to get him and his staff to "do the right thing". The County should have to reimburse Ms. Cochran for her legal fees getting these documents submitted into the LUBA record. Why are taxpayers effectively paying these employees salaries **AND** having to hire attorneys to get them to do their jobs honestly? We think that possibly my husbands questions about the lack of Engineered snow load codes and engineered wind side load codes on those 3 illegally built structures (called ag barns by Yamhill County) were something they might not want submitted into evidence to LUBA. But we aren't sure.....I guess maybe you should ask the Planning Department what happened????

1. Is this just "business as usual" in Yamhill County Planning Department, Code Enforcement and Management? Is this how your Planning Director/Staff always operate and were discovered this time because the community is actually paying attention to what they are doing in Yamhill County regarding 18505 NE Jaquith? (SDR-28-19)?
2. Is there a way for the public to file objections within the State (since Yamhill County Planning doesn't seem to follow their own permitting rules) that those 3 permits were phony on the "ag barns" that are really an **unpermitted** remodeled garage turned Chemical Refinery Laboratory, An **unpermitted** Factory? An **unpermitted** Grow House (with unpermitted wiring, unpermitted structural permits, unpermitted anything! , using hot grow lights so they can get extra profit from the "flowers" they grow). Isn't there a standard that those structures have to be inspected and built a certain way, requiring actual **un-corrupted inspectors** to INSPECT and APPROVE them along the way..??

Can we build 3 structures in Yamhill County with no permits and come in years later and get 3 phony permits like your planning director approved at least 3 times for the owners of 18505 on September 11, 2019? Those phony permits state that these were remodels were starting on 9/11/19...Those unpermitted structures were **completed illegally** by the previous owner and he **operated GROWING/PROCESSING MARIJUANA illegally** between 2015-2018. Your planning director had to have known that no new "remodel" was going to take place, if he inspected them? ...They were already completed. He should have ordered that they be dismantled and torn down to the ground. **Also, that land was supposed to be in ag/farm deferral also at that time to qualify for AG BUILDINGS and it wasn't as of July 10, 2019,** yet he still approved those buildings as "ag buildings" apparently **to keep a TVFR fire marshall from inspecting them or ? WHY?** Those 3 buildings (and the residence) are missing over 35+ permits, they will be using flammable Ethanol in Processing the Hemp/Marijuana in the former garage. Doesn't that concern you? It should.... **YOU ARE ALL AWARE OF IT NOW...DO SOMETHING.**

3. Your Planning Director (who **YOU** put in charge of regulating 18505.....) failed to get the REQUIRED 3 page Ag

Application completed by the Applicant. They didn't sign it or get it notarized (which is supposedly REQUIRED?????). And the Planning Director only submitted 1 page of the required 3 pages into the record. Can we do that too? If not....WHY?

Also Ms. Starrett, you previously stated in an email to me that you looked for any reason to deny SDR-28-19. Why didn't you do one or more of the following?

1). You could have demanded/instructed the Planning Director and his Supervisor at Yamhill County Planning to CORRECT the occupancy codes on the 3 illegally built/remodeled structures (missing 35+ permits and site design reviews) instructing them to correct the phony "ag barn" occupancy codes which effectively keep TVFR from inspecting these buildings for safety. One is a chemical laboratory, the others were also built illegally, too close to each other, no windows, no escape from the three story structure in a fire, etc. That would have triggered the TVFR to inspect them and disqualify them from being EFU land.

2). You could have demanded that WAG, llc actually **complete, sign and have notarized the 3 page REQUIRED Ag Application** which the Applicant has to swear, in writing and notarized, that some part of the property is on Ag/Farm Deferral....This property lost it's Ag/Farm Deferral on 7/10/19 and the 3 phony permits issued by Ken Friday on 9/11/19 were void. Which would make them invalid to process marijuana/hemp because they aren't EFU land anymore. But you didn't do that either.

3) You could have required the whole process to start over on 11/23/19 when the actual "APPLICANT" (Christopher Bryan) **finally signed the Application**. But the Planning Department kept plowing full steam ahead, hurrying this whole process through their flawed system. The phony photos that were submitted in August 2019 trying to hide the illegal and unpermitted structures, you could have made them resubmit and start over at that time. But you didn't.....

Please see the email below that I sent to all 3 on the Board of Commissioners in March, 2020. Please re-read it and PLEASE ADOPT SOME RULES regarding Marijuana and Hemp PROCESSING and GROWING in Yamhill County. I suggest you ask Washington County Planning Commissioners for help with this, they could send you copies of what they adopted **years ago** to protect Washington County residents from this extreme fire/explosion threat.

Sincerely,

The Backstrand Family

CONCERNED RESIDENTS

PRIOR LETTER THAT WE SENT TO COMMISSIONER STARRETT

Dear Commissioner Starrett,

RE: SDR-28-19 18505 NE Jaquith Rd-Newberg

Thank you for your reply.

I appreciate that you found this application approval was a difficult decision and glad that there are some conditions of use that will be implemented but it would have been more acceptable if the Commissioners would simply have abstained from voting on such a project, noting that it brought too many public health and safety risks to the community. As an example, you noted that the State allows processing of marijuana and hemp is a farm crop and only the State can do something about this, yet the Commissioners have done nothing to assure us that they see this project as a public health and safety problem for our community and using this project as an example, Commissioners need to now do something about this.

Understanding citizen concerns regarding this property would indicate that all of our County Commissioners would heed the Oath that they have taken when they were voted into office which notes:

I will faithfully and impartially discharge the duties of my said office; that I will support the Constitution of the United States and the Constitution of the State of Oregon and all laws passed in pursuance of either; that I will

endeavor to secure economical expenditure of public funds sufficient in amount to afford efficient and economical administration of government in the county for which I have been appointed, and in each city, town, port, school district, union high school district, road district, irrigation district, water district, dock commission and all other municipal corporations within the territorial limits of my county; and that I will perform said duty without fear, favor or compulsion, and without hope of reward. **2017 ORS 294.615' Oath of commissioner** <https://www.oregonlaws.org/ors/294.615>

Commissioners who take an oath to uphold all County, State, and Federal Laws should do just that and Yamhill County Commissioners have ignored the will of the Yamhill County voters who opposed marijuana legalization.

- HB3400 was put into place by the Oregon legislature because marijuana is still a federally illegal drug and brings with it a lot of risks to our community. HB3400 gave all jurisdictions the right to put a referendum out to the voters to oppose marijuana production, processing, wholesaling and retailing. Yamhill County residents voted no on allowing commercial marijuana in their community when they voted for Measure 91, yet Yamhill County Commissioners ignored their rights by not pushing it back to the voters and by not implementing any Time, Place, and Manner marijuana regulations, therefore leaving all authority up to the State Laws. (HB3400 Section 133 Local Option) So there is something that you can do about this mess.

While other County's that surround us took the time to implement Time, Place, and Manner regulations Yamhill County did not and it has opened the door for out-of-state and local marijuana/hemp growers and processors to begin to take over our beautiful rural farm lands and has created some significant federal lawsuits. This is wrong.

As a citizen no matter what the outcome of the LUBA is with the Jaquith property I am requesting that Yamhill County Commissioners use their authority and put on their agenda to:

1. approve an referendum to send back to the voters of Yamhill County on whether they want recreational marijuana in their County understanding that those growers that are currently licensed in the County will be grandfathered in and or
2. an ordinance that would be approved by the County Commissioners to implement marijuana Time, Place, and Manner regulations, putting together a TPM citizen committee that would help define those regulations using other Counties as examples. I have attached a copy of Clackamas County and Deschutes County as examples- neither of these County's allow butane/ethanol marijuana or hemp processing in EFU and other zones, only in industrial zones. Please note that even with marijuana regulations in place Clackamas County has had to implement new regulations just to control the number of OLCC licenses per site address ZDO271 and Deschutes County has found this issue so problematic that they are referring it back to the voters in November of 2020. Washington County: <https://www.co.washington.or.us/LUT/Divisions/CurrentPlanning/medical-marijuana.cfm>
3. I would also ask that Yamhill County Commissioners through your own voices as well as through AOC Association of Oregon Counties who represents you begin immediately conveying to the legislature that there needs to be a moratorium put in place for Hemp grows and processing plants until regulations can be put into place to protect public health and safety.

Thank you for your considerations, as we have invested our life savings into our properties and we expect that those who represent us will protect those rights.

Jenny Backstrand

On Wed, May 20, 2020, 12:18 PM Mary Starrett <starrettm@co.yamhill.or.us> wrote:

Dear Ms. Backstrand,

This is a challenging issue and I understand your concerns.

I share them as well.

I feel that the concerns have been addressed to the extent the County was able.

While for the most part compliance is complaint- driven this application generated sufficient concern to warrant compliance checks and I have every confidence the County will be vigilant in that regard.

This is an issue that is now becoming more prevalent and more attention is needed at the State level.

I and other commissioners will be encouraging the Association of Oregon Counties to take this up for Legislative action.

I hope that gives you some measure of comfort going forward.

As far as your concern about application insufficiencies, I don't see us being able to address those at this point.

I hope we're able to make some progress at the State level.

Sincerely,

Mary Starrett

Yamhill County Commissioner

Phone: 503.434.7501

From: Jenny Backstrand <backstrandjenny@gmail.com>

Sent: Tuesday, May 19, 2020 1:31 PM

To: Casey Kulla <kullac@co.yamhill.or.us>; Mary Starrett <starrettm@co.yamhill.or.us>; Rick Olson <olsonr@co.yamhill.or.us>

Cc: jill.anderson977@gmail.com; lauracochran@juno.com; Erich Brandstetter <artofscience@gmail.com>; Lindsey Noss <interiorsbyinspiration@hotmail.com>

Subject: HUGE FIRE FROM ANOTHER HASH OIL PROCESSOR.....What are you going to do?

[This email originated outside of Yamhill County]

<https://www.dailymail.co.uk/news/article-8327389/Ten-firefighters-injured-multiple-buildings-ablaze-massive-explosion-downtown-LA.html>

To Yamhill County Commissioners Casey Kulla, Mary Starrett and Rick Olson,

IS THIS OUR FUTURE?

Have you added ANY Time, Manner & Place Rules yet?

Have you planned for a discussion on Time, Manner & Place rules yet?

I sent registered letters to each of you in March 2020, asking you to please do this, with no word from any of you, to date.

When are you going to add some restrictions like **EVERY OTHER OREGON COUNTY** has already done..... **years ago**? WHY haven't you done this?

Does the concerned community need to prepare some restrictions for you to adopt? If so, we will. Do we FORM A Citizen Committee? This is a ridiculous explosion and fire threat to Chehalem Mountain and if you can't even acknowledge that, then you shouldn't be in office.

There should be rules that these chemical refineries **NEED** to be inspected by TVFR (Tualatin Valley Fire & Rescue) **BEFORE** they are approved by YAMHILL COUNTY BOC. Since your planning director used a loophole and classified the illegally built and remodeled buildings as "ag barns" on September 11, 2019 which they clearly **ARE NOT** (see photos) and did it on a property that had already lost its ag/farm deferral in July 2019. Also, he failed to get the 3 page "AG application" that is supposedly **REQUIRED** by Yamhill County signed and notarized by WAG, llc.....You should be closing that loophole before he does it again.

HELP US before there is a tragedy on Chehalem Mountain. There are 4 of these already approved by you on Chehalem Mountain alone. Why aren't they located in an actual "farming" area with plentiful water? They shouldn't be allowed on top of a wooded mountain, with no fire hydrants, fire & rescue so far away and also on a protected aquifer.

Yamhill County should **IMMEDIATELY** adopt new restrictions. WHY aren't you listening to the voters in this community? This new crop should be reclassified to not be on a protected aquifer since it requires extreme amounts of water to grow. That's why you don't see corn or soybeans growing on top of mountains..... **FIX THESE LOOPHOLES NOW!**

Maybe you should start putting these explosion/fire risk in your own neighborhoods, if you think they are safe. Let's see some on Parrett Mountain and Grand Island. You are playing with fire, **LITERALLY**.

PLEASE CHANGE THESE LOOPHOLES NOW!

Sincerely,


The Backstrand Family

backstrandjenny@gmail.com



Aug. 12, 2020

To: Washington County Planning Commission

From: Andy Back, Manager 
Planning and Development Services

Subject: **PROPOSED LAND USE ORDINANCE NO. 865 – An Ordinance to Amend the Comprehensive Framework Plan for the Urban Area, Rural/Natural Resource Plan, and Community Plans for Aloha–Reedville–Cooper Mountain, Bull Mountain, East Hillsboro and West Union to Address Recent Urban Growth Boundary Expansions**

STAFF REPORT

For the Aug. 19, 2020 Planning Commission Hearing
(The public hearing will begin no sooner than 6:30 p.m.)

I. STAFF RECOMMENDATION

Conduct the public hearing; recommend approval of Ordinance No. 865 to the Board of Commissioners (Board) contingent on the resolution of all appeals of the Land Conservation and Development Commission (LCDC) UGB expansion decision.

II. OVERVIEW

Ordinance No. 865 proposes to amend the Comprehensive Framework Plan for the Urban Area (CFP), Rural/Natural Resource Plan (RNRP) and Community Plans for Aloha–Reedville–Cooper Mountain, Bull Mountain, East Hillsboro and West Union to address recent urban growth boundary (UGB) expansions in Washington County. The changes will transition new UGB areas from the rural to the urban area. This ordinance addresses UGB expansions for Cooper Mountain, Beef Bend South, Witch Hazel Village South and West Union Village Square.

After the first hearing on this ordinance on Aug. 5 the Planning Commission (PC) continued the hearing to Aug. 19 to assure adequate public notice and opportunity for involvement.

Department of Land Use & Transportation
Planning and Development Services • Long Range Planning

155 N First Avenue, Suite 350, MS 14, Hillsboro, OR 97124-3072

phone: 503-846-3519 • fax: 503-846-4412

www.co.washington.or.us/lut • lutplan@co.washington.or.us

III. BACKGROUND

This supplement to the Aug. 5 PC meeting staff report addresses concerns raised at the hearing and an additional comment received after that date.

Public Notice

Since Ordinance No. 865 proposes land use district changes, state law requires a Measure 56 (M56) notice of the public hearings be sent to each potentially affected property owner. The notice was sent July 29 and the first public hearing at the PC was held on Aug. 5. State law requires this notice to be sent at least 20 days before the first hearing, and in the past staff has interpreted this to mean the first Board of Commissioners (Board) hearing.

Shortly before the start of the Aug. 5 PC meeting staff received an email from Matthew Martin, an attorney representing MPR Development Co., a property owner in the Cooper Mountain Urban Reserve Area. The email contained objections to the proposed land use designation change to the Future Development 20-Acre District, including concern as to whether existing uses could continue as nonconforming uses. The email also highlighted the 20-day notice requirement for the M56 notice was not met for this first hearing. This email is included in Attachment A to this report. On the advice of County Counsel and staff, the Planning Commission voted to continue the hearing to Aug. 19 and continue to accept public testimony to meet the letter of the M56 notice requirement.

Property Tax Implications

At the Aug. 5 hearing, the PC received testimony and had questions about the tax implications of the change in land use districts for properties in the UGB expansion area from their current rural designations to the urban holding district, FD-20.

Testimony at the meeting by Alice Kinzer, a property owner in the Cooper Mountain expansion area, expressed opposition to immediate actions proposed by the County to bring the properties within the UGB expansions into the urban area. Ms. Kinzer questioned why the ordinance was needed at this time and raised concerns about property tax implications of the land use district change, specifically that it would affect existing farm deferrals. Ms. Kinzer specifically wondered why this action could not wait until the city of Beaverton is ready to annex the areas, which she understood to be anticipated in late 2023 to early 2024.

The PC deliberated on how and whether they could consider financial impacts on property owners before making a recommendation to the Board. Questions were raised as to the timing of tax reassessment and whether it occurs when the land use change is initiated by the jurisdiction versus when it is privately initiated. PC members had questions regarding tax assessment impacts from prior UGB expansions and wondered whether there was the possibility to delay the tax changes. At least one PC member indicated interest in inviting a

representative from the County Department of Assessment & Taxation (A&T) to the Aug. 19 meeting to better respond to questions on tax issues.

Timing of Ordinance

Subsequent to the PC meeting, a representative of the Department of Land Conservation and Development (DLCD) contacted staff to request that the County delay action on the ordinance until all appeals have been exhausted on LCDC approval of the UGB expansion. The approval has been appealed to the Oregon Court of Appeals, and uncertainty regarding the outcome presents a risk for the County if land use designations are changed prior to finalization of the expansion. Further appeals of the eventual Court of Appeals decision may also be possible. The formal letter recommending County delay of the ordinance is included as Attachment B.

IV. ANALYSIS

The Planning Commission acknowledged the policy requirements for bringing land approved for UGB expansion into the urban area, and that actions proposed by Ordinance No. 865 reflect those the County has approved in earlier UGB expansions. The next step toward urban development for these UGB expansion areas is Community Planning by the appropriate city, not by the County. This section highlights staff's analysis and proposed actions.

Public Notice

An additional courtesy notice was mailed Aug. 10 to all of the M56 notice recipients notifying them of the date of the continued hearing.

Property Tax Implications

Department of Land Use & Transportation (LUT) staff have discussed implications on farm and forest land deferrals when rural land use designations are changed to an urban designation with A&T staff. Given the complicated nature of the tax rules and that they may differ depending on the particular circumstances of a property, A&T staff requested that Ms. Kinzer and others with similar inquiries be directed to their office, where a rural appraiser is available to answer tax and assessment-related questions during regular business hours.

Staff is discussing with A&T the PC's request for a representative to be available for questions at the Aug. 19 meeting and has inquired whether an informational handout can be developed to provide an overview of potential tax impacts of changing a property's rural land use designation to FD-20. Staff will report the outcome of these discussions at the Aug. 19 meeting.

Changes to the timing of A&T processes, however, are not within the purview of the Planning Commission. Should the PC wish to address these concerns, it could potentially make a recommendation to the Board to consider measures to help mitigate financial burdens on impacted property owners from the land use designation change.

County policies envision that the FD-20 urban holding district be placed on properties when they come into the UGB. Possible impacts associated with delays to adding UGB expansion areas to the urban area include limits on tree protection due to more lenient standards of the Oregon Forest Practices Act outside the urban area. Staff will review other policy implications associated with delaying the move of approved UGB expansions to the urban area prior to the Aug. 19 PC meeting.

Nonconforming Uses

Mr. Martin's email raised the question of whether existing uses would be allowed to continue. Currently existing legal uses may continue indefinitely in these areas. These would include certain types of farming that are not allowed as *new* uses in FD-20 (e.g., the keeping of fowl for sale, keeping of swine, or a feedlot). The FD-20 regulations in CDC Section 308 note that lawful nonconforming uses may also be expanded or rebuilt in certain circumstances. Nonconforming uses are regulated under CDC Section 440.

Timing of Ordinance

As noted in the staff report for the Aug. 5 hearing, LCDC approved the Metro Council UGB expansion decision in July 2019 and DLCD issued its approval order in January 2020. County staff understood this to be acknowledgement by the state, and therefore moved forward with this ordinance based on policy direction in the Comprehensive Framework Plan for the Urban Area (CFP). After receiving DLCD's correspondence and further discussions with County Counsel, staff believes there may be risk in moving forward with the ordinance and changing the land use districts of properties in the UGB expansion areas prior to final resolution of the appeals.

Under the County's procedures, since the initial hearing at the Board of Commissioners has been advertised, the ordinance must move forward to the Board for its consideration. Therefore, staff recommends the PC recommend approval of the ordinance to the Board contingent on resolution of the appeals. If the appeals are not resolved by the time the Board action is scheduled, staff will recommend the Board continue the ordinance to a date certain in the 2021 ordinance season. If the appeals remain unresolved at that time, the Board may elect to continue the ordinance again.

List of Attachments

The following attachments identified in this staff report are provided:

Attachment A: Public testimony dated Aug. 5 with staff response

Attachment B: Letter from DLCD dated Aug. 10

Attachment A

From: Matthew Martin <Matt.Martin@vf-law.com>
Sent: Wednesday, August 5, 2020 1:10 PM
To: LUT Planning <lutplan@co.washington.or.us>
Cc: David Phillips <David.Phillips@vf-law.com>; Katherine Knoll <Katherine.Knoll@vf-law.com>
Subject: [EXTERNAL] Hearing on Ordinance No. 865 - Failure to provide proper notice

Dear Mr. Back:

My office represents MPR Development Co., the owner of property within the Cooper Mountain Urban Reserve Area. My client received notice of a hearing on Proposed Ordinance No. 865, which proposes to change the zoning classification of its property from EFU to FD-20. The notice is dated July 29, 2020, and was not received by my client until last night (August 4, 2020). With a hearing currently scheduled for today at 1:30 PM on the proposed ordinance, we have significant concerns about the propriety of the notice. Under ORS 215.503, notice must be provided at least “20 days . . . before the date of the *first hearing* on an ordinance that proposes to amend an existing comprehensive plan or any element thereof[.]” ORS § 215.503(3). Moreover, such truncated period of time in which to prepare for such a hearing raises due process concerns.

My client has a substantial interest in maintain the current zoning classification as its land is currently in use as agricultural land consistent with an approved Farm Plan lodged with Washington County. It is questionable whether my client could continue to adhere to the terms of that farm plan with the proposed change in zoning classification—and the tax penalties for failing to do so would be significant. Approval of continuation of what would become non-conforming uses or an appropriate overlay zone might resolve our concerns. These issues must be investigated and, likely, substantive objections drafted and presented to the Planning Commission; however, the County’s failure to provide adequate notice has effectively eliminated our ability to do so.

Accordingly, we respectfully request that the hearing currently scheduled for today (August 5, 2020) at 1:30 PM be rescheduled and sufficient notice be provided to affected landowners. I would also ask that this email be included in the hearing record in the event that we must appeal the defective notice and other issues to the Board of County Commissioners or LUBA.

Thank you for your attention to this matter.

Sincerely,

Matthew Martin | Attorney at Law
Vial Fotheringham LLP | www.vf-law.com
17355 SW Boones Ferry Rd, Suite A | Lake Oswego, OR 97035
Telephone: 503-684-4111 ext. 322 | Cell: 503-708-4083 | Facsimile: 503-598-7758

Confidentiality Notice: This e-mail message may contain confidential or privileged information. If you have received this message by mistake, please do not review, disclose, copy, or distribute the e-mail. Instead, please notify us immediately by replying to this message or telephoning us. If you have received the message in error, please advise the sender by reply at Matt.Martin@vf-law.com and delete the message.

Attachment A

From: Todd Borkowitz

Sent: Thursday, August 6, 2020 4:41 PM

To: Matt.Martin@vf-law.com

Cc: LUT Planning <lutplan@co.washington.or.us>; David.Phillips@vf-law.com; Katherine.Knoll@vf-law.com; Theresa Cherniak <Theresa_Cherniak@co.washington.or.us>; Andy Back <Andy_Back@co.washington.or.us>

Subject: RE: Hearing on Ordinance No. 865 - Failure to provide proper notice

Dear Mr. Martin,

Thank you for your email regarding Ordinance No. 865. Per your request, we have recorded this email as testimony to the Planning Commission, which will be continuing the public hearing for this ordinance at its next meeting, scheduled for **Wednesday, August 19, 2020 at 6:30 pm.**

We want to clarify that the application of the FD-20 land use district proposed by this ordinance would allow lawful existing land uses, including agriculture, to continue. Such uses would be considered nonconforming and must meet additional requirements if rebuilt or expanded. Per CDC [Section 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.

The County's [Assessment & Taxation](#) office can provide information on farm and forest land deferral. Please see the County's [Farm & Forest land Deferrals](#) page and call 503-846-8826 (Monday thru Friday, 8:30am to 5pm) for information and assistance – ask to speak with a rural appraiser. LUT staff has made a request to have a representative from this office on-hand at the **August 19, 2020** Planning Commission meeting to respond to any concerns related to assessment and taxation for proposed changes from a rural land use designation to FD-20.

Please let me know if you have any additional questions or concerns regarding Ordinance No. 865. Thank you.

Best,

Todd Borkowitz (he/him) RLA, LEED AP | Associate Planner

Washington County Department of Land Use & Transportation

Planning & Development Services | Long Range Planning

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todd_borkowitz@co.washington.or.us | www.co.washington.or.us/lut

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

In an effort to mitigate the spread of COVID-19, I am working from home in accordance with County policy.



Attachment B

Oregon

Kate Brown, Governor

Department of Land Conservation and Development

Community Services Division

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD

August 10, 2020



Todd Borkowitz RLA, LEED AP
Washington County Department of Land Use & Transportation
155 N First Avenue, Suite 350 MS14
Hillsboro, OR 97124

SENT VIA Email

Re: Washington County Ordinance No. 865 (DLCD File No. 004-20) Notice to amend the Comprehensive Framework Plan to address the urban growth boundary expansion in four locations in Washington County

Mr. Todd Borkowitz,

Thank you for your post acknowledgement plan amendment notice to update the county's Comprehensive Framework Plan based on Metro's 2018 urban growth boundary expansion.

We understand the county's desire to move ahead and to finalize these amendments associated with Metro's 2018 Urban Growth Management decision, which was subsequently approved upon referral to the Land Conservation and Development Commission (LCDC) on January 22, 2020. However, we recommend that the county wait to adopt these proposed amendments as the acknowledged urban growth boundary expansion is subject to an ongoing judicial review.

Please feel free to contact me if you have further questions or concerns.

Best Regards,


Anne Debbaut | Metro Regional Representative

cc: Theresa Cherniak, Principal Planner, Washington County (*email*)
Gordon Howard, Kevin Young, DLCD (*email*)



Aug. 12, 2020

To: Washington County Planning Commission

From: Andy Back, Manager 
Planning and Development Services

Subject: **PROPOSED LAND USE ORDINANCE NO. 868 – An Ordinance Amending and Restating the Development Agreement between Washington County and Beaverton, LLC (Tektronix, Inc.)**

STAFF REPORT

For the Aug. 19, 2020 Planning Commission Hearing
(The public hearing will begin no sooner than 6:30 p.m.)

I. STAFF RECOMMENDATION

Conduct the public hearing; recommend approval of Ordinance No. 868 to the Board of Commissioners (Board).

II. OVERVIEW

Ordinance No. 868 proposes to update and extend the Development Agreement between Washington County and Tektronix, Inc., a wholly owned subsidiary of Beaverton, LLC, which was originally adopted by the County via ordinance in October 1998. The Agreement was amended and extended in 2005 (“First Amendment”) and subsequently amended and extended in 2012 (“Second Amendment”) and 2019 (“Third Amendment”).

Ordinance No. 868 would update the Development Agreement to reflect current conditions on the site and update the requirements to reflect changed conditions (such as transportation improvements) since the last update.

III. BACKGROUND

On Oct. 27, 1998, the Board adopted Ordinance No. 530, establishing a Development Agreement (Agreement) between Washington County and Tektronix, Inc. The Agreement had a 7-year term, and its purpose was to:

- Facilitate the subdivision and master plan/planned development of the Tektronix campus.
- Establish the permitted uses, allowed densities and building heights for the future build-out of the campus.
- Provide certainty that specific transportation improvements supportive of the master plan development would be made in a timely fashion. Related fees, such as the Traffic Impact Fee (now known as the Transportation Development Tax), and exactions, such as road right-of-way, were also identified.
- Establish responsibilities for providing infrastructure improvements and services in connection with development of the campus during the 7-year term of the Agreement.

The Agreement became effective on March 22, 1999, the effective date of approval of the subsequent development application, Case File 98-596-D(IND)/S/PD/DHA/DFR. This case file approved the request for a 14-lot subdivision, “Tektronix Business Park” and Master Plan approval to designate the subdivision as an “Industrial Business Park;” Planned Development approval to allow increased building heights on Lots 1 – 3; Development Review for a 180,000-square-foot office building; Drainage Hazard Area Alteration; and a deferral of Public Facility and Service Standards.

The Agreement continued to be in effect for a period of 7 years after its effective date. On Oct. 4, 2005, the Board adopted Ordinance No. 647, which extended the Agreement for 7 years and updated the Agreement to identify which of the required transportation improvements remained to be completed. On Oct. 2, 2012, the Board adopted Ordinance No. 752, which extended the Agreement for an additional 7 years and updated the Agreement to amend requirements for specific transportation improvements and amend the total building square footage to reflect additions or reductions that occurred since the Agreement’s original effective date. The last action on the Development Agreement was on Oct. 1, 2019, when the Board adopted Ordinance No. 860 extending the Agreement until Nov. 30, 2020 and directed staff to coordinate an update of the Agreement. The Agreement is therefore currently set to expire on Nov. 30, 2020.

On Feb. 24, 2020, Tektronix provided the Board with a written request to extend the Agreement for an additional 7 years. The approved FY 2020-2021 Long Range Planning Work Program included Task S1.8, directing staff to amend the existing Agreement to reflect current conditions on the site and update the requirements to reflect changed conditions (such as transportation improvements) since the last update.

Ordinance Notification

Notice 2020-05 regarding proposed Ordinance No. 868 was mailed July 24, 2020, to parties on the General and Individual Notification Lists (community participation organizations, cities, special service districts and interested parties). A copy of the notice and ordinance was provided to the Planning Commission at that time. A display advertisement regarding the ordinance was published July 31, 2020, in *The Oregonian* newspaper.

IV. ANALYSIS

The original adopted Agreement began with several recitals that described the Agreement's intent and the properties subject to the Agreement. The three subsequently adopted extensions contained their own recitals that described the ordinance history of the Agreement and identified the specific properties subject to each proposed extension. All four sets of recitals have been consolidated into the Recitals section of the proposed restated Agreement.

The Agreement is divided into several sections, with attached exhibits that include the campus legal description, site plan and required street improvement projects. Sections 1 through 7 of the Agreement, listed below, contain its substantive terms and provisions:

1. Effective Date and Term of Agreement.
2. Conditions to Parties' Obligations.
3. Permitted Uses and Vested Code.
4. Density or Intensity of Uses; Height of Structures.
5. Master Plan.
6. Infrastructure Improvements and Dedications.
7. Fees and Charges.

Most of the sections and exhibits in the Agreement are not proposed to be changed or are proposed to have only minor changes. However, as described further below, the proposed restated Agreement makes substantive amendments to the following two sections and two exhibits:

- Section 3, Permitted Uses and Vested Code.
- Section 6, Infrastructure Improvements and Dedications.
- Exhibit C, Street Improvement Projects.
- Exhibit D, Inventory of Existing Buildings and Building Square Footage.

Proposed Updates to the Agreement

The substantive changes made by the proposed restated Agreement are summarized below.

1. Changes to the Agreement to reflect updated Transportation System Plan (TSP) and right-of-way (ROW) requirements.

Section 6 and Exhibit C have been revised and restated. The changes are intended to accommodate the transportation infrastructure identified as needed in the TSP and allow

for complete streets consistent with the Road Design and Construction Standards. The proposed update of the Agreement addresses revisions to the TSP adopted since the 2012 amendments to the original Agreement. These TSP adjustments reflect the long-term needs of the community and result in the need for additional ROW to implement the identified transportation infrastructure. Exhibit C also continues to identify the public transportation infrastructure improvements related to this Agreement that have been completed and notes that some of these have been annexed to the city of Beaverton.

Changes to Section 6 and Exhibit C include:

- Section 6.1 clarifies that the ROW listed is the maximum amount. The final ROW up to the maximum identified in the Agreement shall be determined at the time of development.
 - Subsection 6.1.1 (Exhibit C, item 7) Shannon Place. The ROW needed was increased to facilitate completion of the eastern side of the roadway to the current collector standard.
 - Subsection 6.1.2 (Exhibit C, item 8.b.) Terman Road from Shannon Place to Hocken Avenue. The southern side of Terman Road was improved to the current collector standards several years ago. The ROW needed was increased to facilitate completion of the northern side of the roadway to the current collector standard.
 - Subsection 6.1.3 (Exhibit C, Item 9.b.) Terman Road from Murray Boulevard to Shannon Place. Much of this section of Terman Road is constrained by Beaverton Creek on the southern side of the roadway. The ROW needed was increased to accommodate improvement to the current collector standard with more of the additional ROW coming from the northern side of the road.
 - Subsection 6.1.4 (Exhibit C, Item 10.a) Jenkins Road eastbound right turn lane to southbound Hocken Avenue. The prior agreements identified the need for a right turn lane. It is unknown whether a turn lane would continue to be necessary with a five-lane cross section of Jenkins Road. A future traffic study at the time of development will determine if the improvement is necessary and it will stay in the agreement until that time.
 - Subsection 6.1.5 (Exhibit C, Item 10.b.) Jenkins Road frontage improvements. Jenkins Road is constrained by development on the properties to the north. The ROW needed was increased to facilitate completion of a five-lane arterial roadway to the current standard by shifting the additional ROW onto the Tektronix frontage.
 - The Agreement provides for a traffic analysis at the time of development to assess the traffic conditions and signal operations in more detail and assess the design and specific impacts of the improvement. This analysis could consider the expected traffic associated with the development as well as then current and forecasted traffic conditions.

- Section 6.2 provides the additional square feet of development that will be served by the improvements listed in Exhibit C. This Section stipulates that other than safety requirements, no additional transportation-related improvements would be required.
- Section 6.3 allows for the reallocation of the square footage within the confines of the Tektronix campus, even if the campus is further divided.
- Section 6.4 identifies the Beaverton Creek Regional Trail (Exhibit C, Item 11). It provides that both parties are supportive of the trail and will work together with Tualatin Hills Park & Recreation District (THPRD) in good faith to reach mutually agreeable terms for its location.
 - This trail is intended to connect the Beaverton Regional Center and the Westside Trail.
 - The location of the Beaverton Creek Regional Trail is currently being studied by THPRD in this vicinity.
 - THPRD is studying a range of alignment alternatives. Some of these alternatives may be at least partially in conjunction with, crossing, and/or adjacent to Terman Road.

2. Updates to Exhibit D of the Agreement, *Inventory of Existing Buildings and Building Square Footage*, for consistency with the measured square footages of the campus buildings.

Section 7, *Fees and Charges*, notes that when the County assesses the Transportation Development Tax (TDT) for the campus, it shall recognize the building square footages in existence on the campus as inventoried in Exhibit D. Exhibit D was part of the original Agreement adopted in 1998. This Exhibit was amended in 2012 as part of Ordinance No. 752 to add the square footage of two new buildings constructed on the campus after 1998.

In 2018, Tektronix conducted a detailed assessment of the building square footage of all 13 existing campus buildings. As a result, the building square footage totals of most buildings were determined to be somewhat larger or smaller than shown in prior versions of Exhibit D. Overall, Tektronix's detailed assessment indicated that the total building square footage on the campus was approximately 6,400 square feet less than shown in the current Exhibit.

Exhibit D has been revised to be consistent with the measured inventory of building square footage as identified by Tektronix's detailed 2018 assessment. The inventory is needed in order to determine when Jenkins Road improvements (Exhibit C, Item 10.a. and 10.b.) are required to be completed.

3. Clarification that the development provisions in effect in 1998 remain applicable to the Tektronix campus.

Section 3, *Permitted Uses and Vested Code*, vests the right for the campus to be developed in accordance with the land use regulations in effect at the time the original Agreement was adopted in 1998.

The campus is designated Industrial (IND), subject to the provisions of Community Development Code (CDC) Section 320, and is also subject to CDC Section 381, Interim Light Rail Station Area Overlay District. The Agreement permits Tektronix and its successors to use the campus for the land uses allowed under CDC Sections 320 and 381, subject to any prohibited uses contained in the respective subsections of these sections. The Agreement also permits the land uses allowed in the Transit Oriented Employment District (TO:EMP) under CDC Section 375, subject to the Prohibited Uses contained in Section 375-5.

The proposed restated Agreement adds language to Section 3.1 to make explicit that for the purpose of the vesting protection granted by the Agreement, the applicable law shall be specific sections of the CDC that were in effect on Sept. 1, 1998 (the “Vested CDC”).

4. Extension of the term of the Agreement for an additional 7 years.

Development agreements with land use authority entered by a county in the State of Oregon have a maximum duration of 7 years (ORS 94.504(8)(b)). It should be noted that the Individual and General Notice for Ordinance No. 868 erroneously stated that approval of the ordinance would extend the term of the Agreement to Nov. 30, 2027. If Ordinance No. 868 is adopted, the term of the updated Agreement would be extended for a period of 7 years from its effective date.

Summary of Proposed Changes


Ordinance No. 868 proposes to update the Development Agreement between Washington County and Beaverton, LLC (a subsidiary of Tektronix, Inc.) to:

- Amend the right-of-way requirements associated with the Development Agreement to be consistent with the current road standards.
- Add the Beaverton Creek Trail to the list of street improvement projects associated with the Development Agreement.
- Adjust the campus buildings’ square footage inventory to match the measured square footage of the buildings.
- Clarify that the development provisions in effect in 1998 remain applicable to the Tektronix campus.
- Extend the term of the updated Development Agreement for a period of 7 years from its effective date.



Aug. 12, 2020

To: Washington County Planning Commission

From: Andy Back, Manager 
Planning and Development Services

Subject: **PROPOSED LAND USE ORDINANCE NO. 869 – An Ordinance Amending the Community Development Code Relating to Development in Areas Designated Significant Natural Resources and Planned Developments**

STAFF REPORT

For the Aug. 19, 2020 Planning Commission Hearing
(The public hearing will begin no sooner than 6:30 p.m.)

I. STAFF RECOMMENDATION

Conduct the public hearing; continue the hearing to Sept. 2 for further consideration.

II. OVERVIEW

Ordinance No. 869 amends Community Development Code (CDC) sections relating to Significant Natural Resources (SNRs) to address the determination by the Land Use Board of Appeals (LUBA) and affirmed by others that some of these standards are not clear and objective. State law requires standards applied to residential development applications in urban areas to be clear and objective.

Other changes are intended to clarify current requirements, provide consistency and transparency in development project review, and address Metro's request several years ago for changes to the County's SNR verification process and planned development standards to better meet the intent of Metro's requirements. The proposed changes focus on the urban area and have limited impact for sites with SNRs in the rural area.

Department of Land Use & Transportation
Planning and Development Services • Long Range Planning

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III. BACKGROUND

Over time, the County has heard concerns from the public and developers about the content and application of its Significant Natural Resource regulations contained in the CDC. In the last few years, appeals of several development approvals and most recently an Enforcement Order issued by the Land Conservation and Development Commission (LCDC) have highlighted some of the issues and led to the need for immediate changes to the County's regulations.

The primary intent of Ordinance No. 869 is to address the recent Enforcement Order, which found the County out of compliance with Statewide Planning Goal 5 because three CDC natural resource provisions are not clear and objective, and therefore unenforceable as applied to new residential development. The Order included an injunction on new applications that may impact mapped *Wildlife Habitat*. As a result, the County cannot accept such applications until changes are made to the CDC to address, at the least, those three standards found not to be clear and objective. The Enforcement Order is discussed in detail below.

The Board of Commissioners (Board) has indicated its interest in considering this ordinance within the current ordinance season. Should the provisions of the Enforcement Order not be addressed through changes to the CDC by Oct. 31, County Charter provisions require the hearings be continued to the following ordinance season, no sooner than March 2021. This would maintain the injunction on new development that may potentially impact *Wildlife Habitat* until such changes were adopted early next year.

Prior to the Enforcement Order, staff completed a multiyear report on the history and status of the County's SNR regulatory program implemented through the development review process. The *Significant Natural Resource Program Review and Assessment*, issued as a draft report in October 2019 and finalized in May 2020, identified a variety of recommendations for addressing aspects of the current regulations and program implementation. Development of Ordinance No. 869 is generally based on the recommendations found in the SNR Report.

The following background information provides context for consideration of the ordinance. It lays out the legal and policy framework for the County's SNR regulations, provides historical context, and details the County's application of state and Metro natural resource protection requirements in the development review process. This section provides a complete background on this 40+ year program and is therefore longer than a typical staff report. Further detail can be found in the *Assessment*. Analysis starts on page 8.

Statewide Planning Goal 5

The County's authority to plan for SNRs derives from Statewide Land Use Planning Goal 5, *Natural Resources, Scenic and Historic Areas, and Open Spaces*. Enacted in 1973, Goal 5 was one of the statewide planning goals adopted under Senate Bill (SB) 100, requiring cities and counties to adopt comprehensive plans that address the statewide planning goals. Goal 5

covers more than a dozen types of resources ranging from wildlife habitat and open space to historic, cultural, and mineral and aggregate resources. Local governments were asked to create inventories to preserve, protect and plan for natural resources.

Under state rules implementing Goal 5, a local jurisdiction must first develop its Goal 5 program by identifying and assessing local natural resources considered important to the community. It then reviews land uses allowed on or near each resource site that could negatively impact natural resources and decides on an appropriate level of protection. Finally, the jurisdiction adopts regulations that reflect the policy decisions made for the resource.

County Inventory and Planning Process to Comply with Goal 5

In the early 1980s, the County completed its initial inventory of Goal 5 natural resources, identifying locally significant fish and wildlife habitat in the unincorporated 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.

SNRs are identified and mapped in the various community plans for areas within the Urban Growth Boundary (UGB) and in the Rural/Natural Resource Plan (RNRP) for areas outside the UGB.

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 current SNR categories are:

- *Water Areas and Wetlands.* 100-year flood plain, drainage hazard areas and ponds, except those already developed. (§ 422-2.1)
- *Water Areas and Wetlands and Fish and Wildlife Habitat.* Water areas and wetlands that are also fish and wildlife habitat. (§ 422-2.2)
- *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. (§ 422-2.3)
- *Significant Natural Areas.* Sites of special importance, in their natural condition, for their ecological, scientific, and educational value. (§ 422-2.4)

The section outlines specific requirements applicants must follow if a development site includes an identified SNR, including development standards. Requirements for applications on sites with riparian corridors and water-related fish and wildlife habitat areas include identifying the natural resource location and extent, certain restrictions on development, submittal requirements and measures for enhancing degraded riparian corridors. One of the other

criteria, found in § 422-3.6, addresses development impacts by requiring “mitigation” if a development “seriously interferes” with an SNR (the “seriously interferes” standard).

Since 2005, proposed development on sites with certain resources identified on Metro’s Regionally Significant Fish and Wildlife Habitat Inventory Map (Metro Inventory Map) must adhere to the criteria of § 422. The section also requires projects to comply with other agencies’ permitting processes; for instance, Clean Water Services (CWS) for stormwater management along streams, and Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Army Corps or USACE) for water and wetlands permit requirements.

1998 Director’s Interpretation

When reviewing development applications, staff relies in part on a 1998 Director’s Interpretation of § 422 (Attachment A). This CDC interpretation provides guidance on two aspects of § 422 implementation: submittal requirements and CDC criteria that apply to development sites that have SNRs as identified on community plan or RNRP maps. The CDC grants the Planning Director the ability to make interpretations so that the application process can be uniformly and consistently administered, however, as such the 1998 DI has not been publicly vetted through formal codification in the CDC.

Regarding submittal requirements, except for one limited activity, § 422 did not otherwise list submittal requirements. To adequately address the provisions of § 422, specific materials addressing the characteristics and condition of the SNR were needed. Since the detailed requirements were not included in § 422, a Directors Interpretation (DI) was developed. The DI includes detail on the required Habitat Assessment identifying and delineating the resource, determining the extent and type of plant and wildlife species, assessing the current condition of the mapped habitat and impacts from proposed development, and recommending mitigation measures if impacts to the SNR are expected. Staff reviews the proposal, and conditions of approval are determined based on information received from the applicant and comments received from other agencies.

The DI also addresses which resource types are subject to the requirements in § 422-3.6, the “seriously interferes” standard. It appears prior to the DI there was some question as to which SNR categories should be subject to the provisions. Since the language in § 422-3.6 included the phrase “fish and wildlife areas and habitat,” the DI concluded this requirement was intended only for the habitat related SNRs: *Water Areas and Wetlands and Fish and Wildlife Habitat* (§ 422-2.2) and *Wildlife Habitat* (§ 422-2.3). Since 1998, staff has relied on the DI to guide applicants on the necessary submittal requirements as well as identify the specific § 422 standards that apply to development projects.

Tualatin Basin Program

Changes made to Goal 5 Oregon Administrative Rules (OARs) in 1996 gave Metro, the Portland area regional government, the authority to plan for fish and wildlife habitat protection in the

Metro region. This recognized Metro's unique regional planning role and in 1996 Metro Council voted to acknowledge the regional significance of fish and wildlife habitat and include their protection in Metro's Urban Growth Management Functional Plan (UGMFP). As Metro began to develop a regional fish and wildlife protection plan, the County and other local governments and special districts in the Tualatin Basin,¹ approached Metro with a proposal to develop a regional comprehensive habitat protection program tailored to the Tualatin Basin using the recently completed Metro Regionally Significant Fish and Wildlife Habitat Inventory (Metro Inventory).

In 2005, the County coordinated with cities in the County, Clean Water Services, the Tualatin Hills Park & Recreation District (THPRD) and Metro, to adopt a 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 a Goal 5 analysis of the portion of Metro's Inventory for Washington County located near and within the UGB, including all waterways that feed the Tualatin River. The resulting Tualatin Basin Program was approved by Metro Council and incorporated into the UGMFP under Title 13, Nature in Neighborhoods. DLCD acknowledged Title 13, serving as compliance with Goal 5 for all jurisdictions in the Metro region.

The adopted Tualatin Basin Program recommendation to Metro concluded the greatest resource protection should generally apply to areas immediately adjacent to streambanks, where the highest-value resources are located. Metro agreed that CWS' *Design & Construction Standards* and local governments' existing natural resource requirements provided adequate protection. As a result, the County and most other jurisdictions did not need to make substantial changes to their land use regulations, but instead focused on continued coordination with CWS to assure its *Design & Construction Standards* were followed to strictly limit development immediately adjacent to streambanks and other water areas.

During development of the Tualatin Basin Program, Oregon voters approved Ballot Measure 37 (2004), allowing property owners to claim compensation from state or local governments if their property values were reduced by environmental or land use regulations. The Tualatin Basin partners agreed that in order to avoid Measure 37 claims, they would use an incentive-based approach to encourage, but not require, *Wildlife Habitat* protection and nonregulatory programs for restoring and adding new wildlife habitat. As a result, the Tualatin Basin Program required resource protection of riparian areas within and immediately adjacent to streams (the County's *Water Areas and Wetlands and Fish and Wildlife Habitat*), but did not mandate any *Wildlife Habitat* protection, relying on an incentive-based strategy to encourage development to protect more habitat areas, along with other nonregulatory tools.

¹ The Tualatin Basin is the land area over which the streams and tributaries flow into the Tualatin River. The Tualatin River is a tributary of the Willamette River. The river is about 83 miles long and drains the Tualatin Valley southwest and west of Portland in Washington and Clackamas counties.

CDC Amendments to Implement the Tualatin Basin Program

To comply with the Tualatin Basin Program and Metro Title 13, the County adopted 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. These flexible design standards included: a reduction in the minimum residential density requirement for SNR sites (§ 300-5), landscaping with native plants (§ 407-1 and 407-2), wildlife habitat safe passage fencing (§ 407-5.3) and street tree canopy (§ 407-7). A general reference to the Metro Inventory Map was also added. In addition, the ordinance amended the Comprehensive Framework Plan for the Urban Area (CFP), adding an implementing strategy relating to the protection and enhancement of Regionally Significant Fish and Wildlife Habitat and referencing the Tualatin Basin Fish & Wildlife Habitat Program document and related materials (CFP Policy 10, Biological Resources and Natural Areas).

No changes to § 422 were enacted to clarify that CWS' *Design & Construction Standards* were applied to sites with Metro Class I or II Riparian Habitat or County *Water Areas and Wetlands and Fish and Wildlife Habitat* as applicants were already required to follow these standards in other sections of the code, primarily CDC § 501-8 (Standards for Development). Nor were changes made to clarify the existing *Wildlife Habitat* mitigation standard of § 422-3.6 or add additional habitat protections to lightly limit development.

In a comment letter following the adoption of A-Engrossed Ordinance No. 662, Metro requested the County adopt provisions for a Habitat Protection Planned Development (HPPD) and a process to field verify the boundaries of the mapped SNRs. Although the HPPD was considered in Ordinance No. 662 as originally proposed, it was not included in the adopted ordinance since further study and analysis was needed. Other projects such as North Bethany became the priority in the following years, and further work on the HPPD was not pursued.

Crestline Case: Land Use Board of Appeals and Court of Appeals Decisions (2018-2019)

In 2018,² the County's Hearings Officer (HO) approved a six-lot subdivision with identified SNRs located in the Metzger – Progress Community Plan area, known as *Crestline*. Surrounding neighbors expressed numerous concerns about the proposed development's impacts to the *Wildlife Habitat* located on part of the site. While preserving much of the SNR area on the site, many of the mature trees on a portion of the *Wildlife Habitat* were to be removed for development. The HO determined that recent changes in state law required that the County only apply clear and objective standards to any residential land use development application within the UGB, not just to land considered buildable. He determined that three criteria in CDC § 422 were not "clear and objective" and therefore could not be applied to the *Crestline* development.

² In 2017, the County approved a substantially similar subdivision application for the same property. That decision was appealed to the Land Use Board of Appeals (LUBA). LUBA remanded the decision back to the County to determine whether some or all the property was buildable. State law changed in the interim and the applicant filed a new land use application applying the most recent state law changes discussed above.

This approval³ was appealed to LUBA, and in November 2018 LUBA affirmed the Hearings Officer's decision in *Warren v. Washington County and Venture Properties (Warren)*.⁴ Upon appeal, the Oregon Court of Appeals affirmed the LUBA decision.

Significant Natural Resources Program Review and Assessment

As issues and community concerns continued and the *Warren* case was appealed, the Board of Commissioners (Board) directed staff as a Fiscal Year (FY) 2018-19 Work Program Task to evaluate the County's SNR Goal 5 program and provide recommendations to improve the development review process and advise on the federal, state and local Goal 5 requirements. Staff initiated research on the issue culminating in the *Draft Significant Natural Resources Program Review and Assessment (Report)* in Fall 2019. The Report described the history of the County's Goal 5 planning program as it relates to natural resources, the land use review process for sites with identified SNRs, concerns and issues about SNR protections, common themes and key findings. The final Report, issued in May 2020, included a public engagement report, options, staff recommendations and Board direction on the recommendations.

Most of the community comments on the draft Report supported adding clear and objective criteria to strengthen natural resource requirements and provide greater habitat protection in the County's remaining mapped SNRs, especially for *Wildlife Habitat*. Some believed that preservation of *Wildlife Habitat* was of the utmost importance considering the loss of this habitat over time in the urban areas, citing a heightened awareness of climate change and other environmental benefits of habitat preservation.

Tree Protection in Significant Natural Resource Areas

Over time, the County has received requests from the community to develop more stringent tree protections or require new development to retain more trees on-site than currently required or mitigate for tree loss by planting new trees on the newly developed sites. CDC § 407-3 (Tree Preservation and Removal) contains the County's tree regulations. Trees subject to § 407-3 are limited to those located in identified Significant Natural Resource areas, flood plains and/or drainage hazard areas and trees previously identified for protection through a development action. CDC § 422 does not contain specific standards for tree preservation or replacement that apply during the land use review process, but a tree inventory is required as part of the submittal and tree preservation may be required as mitigation for habitat areas as a condition of approval.

Enforcement Order

In December 2019, a petition for an enforcement order was filed with the Land Conservation and Development Commission (LCDC), asserting the County was not in compliance with Goal 5 since three criteria in § 422 were invalidated by the *Warren* decision. The petition requested

³ Case File No. 18-074-S

⁴ *Warren v. Washington County and Venture Properties*, LUBA No. 2018-089, WL 6433348 at *10 (Nov. 14, 2018), aff'd, 296 Or App 595, 439 P3d 581, (2019).

the County take corrective action to amend the unenforceable SNR provisions and set a timetable for compliance. It also argued an injunction on approvals of residential development applications on lands with SNRs was needed until clear and objective standards were adopted.

LCDC determined there was good cause to consider the petition further and appointed a Hearings Officer to provide recommendations. Based on the Hearings Officer's recommendation, LCDC determined the County was out of compliance with Goal 5 and established a deadline of May 1, 2021, to address the standards determined not to be clear and objective. The Commission also agreed with the petitioner that an injunction on new residential development applications affecting lands with *Wildlife Habitat* was warranted. The Enforcement Order was issued by DLCD June 1 and is in effect until the CDC is amended to address the SNR standards deemed subjective.⁵

Ordinance Notification

Notice 2020-06 regarding proposed Ordinance No. 869 was mailed July 24, 2020, to parties on the General and Individual Notification Lists (community participation organizations, cities, special service districts and interested parties). A copy of the notice and ordinance was provided to the Planning Commission (PC) at that time. A display advertisement regarding the ordinance was published July 31, 2020, in *The Oregonian* newspaper.

IV. ANALYSIS

The primary objective of Ordinance No. 869 is to address the Enforcement Order, which focused on the three SNR standards in CDC § 422 found not to be clear and objective and therefore unenforceable for residential development inside the UGB. Other changes are intended to clarify current requirements, address requests made by Metro when A-Engrossed Ordinance No. 662 was adopted some years ago to better meet the intent of Metro's Title 13, improve incentives for greater habitat protection and provide a mechanism for field verifying the on-site location of identified SNRs.

The intent of Ordinance No. 869 is to fill in details of the County's existing Goal 5 program by:

- Clarifying SNR categories.
- Requiring field verification of the extent of the resources.
- Ensuring consistent reporting on and assessment of the resources.
- Clarifying the limited uses allowed in water-related resource areas.
- Quantifying and establishing standards for the required preservation of *Upland/Wildlife Habitat* areas.
- Encouraging preservation of *Upland/Wildlife Habitat* by allowing 100% of the area preserved to count toward open space requirements in Planned Developments.

⁵ Findings, Conclusions, and Enforcement Order 20-ENF-001916

Proposed Changes to CDC § 422 (Significant Natural Resources)

The specific proposed changes are addressed in detail below.

§ 422-1: Intent and Purpose

Within this section, only minor clarifying changes to the wording are proposed.

§ 422-2: Lands Subject to this Section

Some minor changes to the wording of this section and descriptions of the SNR categories are proposed for clarity and to better distinguish between categories. No modifications to the mapped resources are proposed with this ordinance. Mapped locations remain the same 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 first change is to clarify that the 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 SNR categories were separated 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 decided that Class I and II Riparian Habitat should be regulated.

The second change is to refine two of the SNR categories and descriptions, shown below in track changes (underline shows proposed additions, ~~strikethrough~~ shows proposed deletions):

~~*Water-Related Areas and Wetlands and Fish and Wildlife Habitat.*~~ Water areas and wetlands related areas that are also fish and wildlife habitat, including the Riparian Corridor.⁶

~~*Upland/Wildlife Habitat. Identified sensitive habitats identified by the Oregon Department of Fish and Wildlife, the Audubon Society Urban Wildlife Habitat Map,*~~ including forested areas coincidental with water areas and wetlands.

The changes are intended to clarify and better distinguish between the categories. The categories have sometimes caused confusion because the descriptions refer to maps that are no longer readily available or do not indicate that they are referring to the original maps used in the early 1980s to identify potential SNRs. This change also addresses overlap in the category names.

⁶ The Riparian Corridor is defined in CDC § 106 (Definitions). It includes, in part, “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....”

§ 422-3: Submittal Requirements

Several changes are proposed to clarify and improve the process by standardizing the information necessary to review a development application when a site contains an SNR. In the past, applicants relied on the 1998 Director's Interpretation (DI), but often may have submitted inconsistent or incomplete information about the on-site SNRs, resulting in different mitigation outcomes for *Wildlife Habitat* over time.

While the current CDC requires an applicant to "Identify the location of the natural resource(s)..." it does not explain the process or information needed to satisfy this requirement. The changes proposed to the SNR identification process provide a more certain and consistent field-verified approach to identify the SNR boundaries. Field verification is required when a mapped SNR is located within 150 feet of the proposed development. The current DI specifies 250 feet; however, this is proposed to be reduced and codified based on staff experience identifying the mapped SNRs and to account for mapping inaccuracies that may have occurred over time without overburdening applicants.

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 is to rely on the expertise of those agencies regulating the resource type (e.g., wetlands, flood plain and drainage hazard areas, riparian corridors/Vegetated Corridor) and to not duplicate requirements.

The requirement for a Habitat Assessment is codified and standardized so that the condition of the habitat is assessed, and appropriate Preservation Areas can be determined. The Assessment must evaluate and rate the different habitat values using the recognized methodology that will be outlined in the Habitat Assessment guidelines. This will form the basis for determining the proposed areas to be preserved.

The submittal requirements include:

1. Field verification of the boundaries of all SNRs located on-site.
2. Description of the extent of disturbance proposed to the SNR and identification of the proposed preservation area.
3. Application of the Design Elements found in community plans.
4. A tree inventory.
5. A Habitat Assessment.

In summary, the proposed required submittal materials clarify what was already required through the CDC or the DI, in order to provide consistency and a thorough review. This will allow for a comprehensive assessment of the location and condition of the resources and proposed disturbance, so that the proposed clear and objective criteria can be applied consistently and uniformly. By codifying the submittal materials and clarifying the "seriously interfere" standard, formerly § 422-3.6, the 1998 DI will no longer be needed.

For projects within the rural area, the proposed language allows any of the submittal requirements to be waived by the Review Authority. Since some rural development projects on larger sites may be able to avoid SNRs altogether or reduce/eliminate SNR impacts, applicants may not need to provide all the submittal materials as required for urban and more intensive development projects. The Review Authority's ability to waive some submittal materials in the rural area provides an affordable alternative for applicants to avoid unnecessary and costly submittal requirements while still addressing the SNR criteria. This is an existing practice that is proposed to be codified.

§ 422-4: Allowable Uses and Activities within Significant Natural Resource Areas

As in the existing regulations, development is generally prohibited 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 is not an expansion of the currently allowed uses, but some descriptions are clarified to reference the appropriate federal, state and local regulatory agency (including CWS within the urban unincorporated area) responsible for permitting the specified activities. No changes are proposed to the allowable uses within the rural areas.

Some of the changes are made to provide for clear and objective standards, particularly the changes to § 422-4.1 F. regarding enhancement or alteration of the Riparian Corridor, Water Quality Sensitive Area (Sensitive Area⁷) or Vegetated Corridor.⁸ This addresses areas both inside and outside CWS' service area and specifies such enhancement or alteration is allowed if the requirements of CWS, DSL or the Army Corps are met.

The Army Corps regulates work in wetlands and waters of the U.S., with standards to ensure there is no net loss of wetlands. DSL implements the state's removal-fill and wetlands conservation laws and manages mitigation banking and in-lieu fee programs.

CWS administers environmental regulations for Sensitive Areas and the Vegetated Corridor (buffered vegetation area around the Sensitive Area), requiring development to obtain a Service Provider Letter prior to performing development activities on sites that have these features.

Staff proposes to delete current § 422-3.4 (Enhancement of a degraded riparian corridor, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat), 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

⁷ CWS defines Sensitive Area (*Design & Construction Standards*, Chapter 1, § 103.65): a. Includes: 1. Existing and created wetlands; 2. Rivers, streams, and springs, whether flow is perennial or intermittent; or 3. Natural lakes, ponds, and in-stream impoundments

⁸ CWS defines Vegetated Corridor (*Design & Construction Standards*, Chapter 1, § 103.75) as a corridor adjacent to a Sensitive Area that is preserved and maintained to protect the water quality functions of the Sensitive Area.

professional, with review and comment by DSL, the Army Corps and the Clackamas District biologist of the Oregon Department of Fish and Wildlife (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 and before CWS expanded its role as the Tualatin Basin's water resources management agency. Now, enhancements and alterations to the Riparian Corridor and *Water-Related Fish and Wildlife Habitat* are reviewed and monitored by CWS as part of an applicant's development review proposal and requirements for obtaining a Service Provider Letter. Applicants are required through CWS' process to ensure that the Vegetated Corridor meets the agency's standards.

On occasion, enhancement projects are proposed by environmental agencies and groups to improve the condition of riparian corridors and *Water-Related Fish and Wildlife Habitat*. CWS may conduct installation work or invasive removal themselves or may review the planting plans for other agencies. These types of projects improve overall stream health and contribute to improving the surrounding vegetated corridor.

Staff believes this provision is no longer necessary because, for projects within the UGB, CWS reviews these projects and is responsible for ensuring the new vegetation is established and successfully maintained. Within the rural area, proposed changes continue to allow enhancements and alterations to a Riparian Corridor and *Water-Related Fish and Wildlife Habitat* if the appropriate agency has reviewed the activity and the appropriate documentation is submitted to the County. In the very limited circumstances where a voluntary enhancement project is proposed, DSL and the Army Corps continue to have oversight.

§ 422-5: Tree Preservation in Habitat Area(s)

This new section is intended to address the concerns raised about current § 422-3.6, which applied to *Water-Related Fish and Wildlife Habitat*⁹ and *Upland/Wildlife Habitat* areas and requires 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 section was found not to be clear and objective and therefore not enforceable for residential development inside the UGB.

Areas identified in community plan maps as fish and wildlife habitat were intended to be developed consistent with plan policies that weigh and balance various values including both habitat and aesthetic value of forested areas and provision of housing within the UGB. These values are reflected in statewide planning goals related to natural resources, housing and

⁹ In the **Analysis** section of this report, references to SNR categories use the terms as proposed rather than the current terms in the CDC.

urbanization. As such, these areas were never intended to be entirely off-limits to development. While public input related to the SNR Report indicated general interest in preserving as much *Upland/Wildlife Habitat* as possible and limiting development to the areas that do not have SNRs, the determination made through the Goal 5 processes both in the 1980s and early 2000s adopted a more balanced approach.

Most recently, the 2005 Tualatin Basin Program decision determined the focus of County Goal 5 regulatory protections was to be on 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 policy providing for "mitigation" if a development "seriously interferes" with preservation of the habitat, predates OAR Division 23 (Procedures and Requirements for Complying with Goal 5) and the Tualatin Basin decision. Since that requirement was adopted under earlier Rules, it is not subject to provisions in Metro's UGMFP limiting repeal or amendments (Title 13, § 3.07.1330 (a) (2) (c)). Under Metro Title 13, the County *could* rely on the Tualatin Basin decision and delete the subjective standard without addressing any mitigation standard for *Upland/Wildlife Habitat*.

Recognizing existing standards outline some level of protection, staff instead recommends a two-pronged approach that requires a quantified amount and quality of habitat to be preserved and provides an incentive for applicants to voluntarily preserve *Upland/Wildlife Habitat* through the Planned Development process (discussed below). The idea is to require an amount of preservation area that reflects a light limit on development.

Consistent with CFP Policy 10 and the applicable community plans, these new requirements are intended to:

- Preserve trees and other vegetation that provide habitat value along riparian corridors, consistent with the Goal 5 Tualatin Basin Program decision.
- Protect groupings of existing large trees that provide shade and other desired amenities.
- Enhance habitat quality through the retention and planting of native species in preservation areas.
- Ensure preservation occurs prior to development, while allowing development as envisioned in community plans.

Criteria in new § 422-5.3 require a minimum percentage of the habitat area to be preserved, based on the applicant's field-verified boundaries of the resources on-site. The requirements are to preserve a minimum of:

- (1) 25% of the *Upland/Wildlife Habitat* and the Riparian Corridor outside the CWS Vegetated Corridor (Habitat Area) (Option 1); OR
- (2) 15% of the Habitat Area, when located adjacent to an on- or off-site Riparian Corridor or CWS Vegetated Corridor (Option 2) in order to incentivize the preservation of this more valuable, connected habitat area.

The preservation area must be enhanced to good condition and preserved in a nonbuildable tract or conservation easement. Only limited uses such as installation of utilities or fences, waterway enhancements or repairs, or wildlife viewing areas are allowed in preservation areas. Encroachments and unauthorized tree removal are subject to restoration planting requirements (§ 422-5.4).

The Case File Review prepared for the SNR Report showed the amount of habitat preserved through the application of the “significantly interfere” standard of § 422-3.6 varied across time, type of project, and type of resources present. The proportion of identified SNR area preserved on the five sites that contained only *Wildlife Habitat* ranged from 9% to 45% and averaged approximately 25%. In three of the five casefiles the amount of preservation would have been greater under the proposed standard than under the current regulations as applied. The proposed minimum preservation area of 25% of the field-verified *Upland/Wildlife Habitat* and Riparian Corridor outside of CWS’ service area is in the middle of the range of outcomes seen in the Case File Review for sites that contained only *Wildlife Habitat*.

The alternative minimum and a voluntary option, discussed in the *Habitat Quality* section below, are intended to provide additional flexibility to accommodate development while also preserving higher quality habitat.

Habitat Quality

Input from the public indicated an interest in preserving higher quality habitat. Urban habitat typically consists of highly fragmented patches of successional forested areas and areas of connectivity along waterways. Most of the sites in the Case File Review contained fragmented resource patches disconnected from other habitat areas.

Several of the proposed provisions are intended to address habitat quality:

- Configuration, enhancement and maintenance requirements apply to all preservation areas.
- As an incentive to retain connected habitat that is thriving, the alternative minimum of 15% is allowed when preserving habitat areas adjacent to waterways and riparian corridors containing a minimum amount of vegetation of substantial size.
- A voluntary and discretionary approach is provided to vary the minimum standards when an applicant can demonstrate outcomes would meet or exceed those otherwise expected. Such approaches could include but are not limited to plans that adopt other strategies for enhancing habitat connectivity, support links to wildlife corridors, and/or preserve certain native species or existing trees of significant size.

Clear and Objective Standards Assessment

The following table describes the standards determined by LUBA to be unenforceable because they were not clear and objective and the proposed changes to address them:

Original CDC Reference	Original Language	Proposed Language	Rationale
422-3.3 A. (7)	Allowed “enhancement” or alteration of the Riparian Corridor or the water-related habitat areas if the area had been degraded and enhancement conformed to the subjective definition and criteria in § 422-3.4.	New § 422-4.1 F. allows enhancement or alteration of the Riparian Corridor or the water-related habitat areas only as approved by CWS (in the urban area) or as permitted by DSL or the Army Corps (in the rural area).	<p>Clarification was needed to show that the County only allows applicants to enhance or alter the water-related habitat areas as long as they follow the particular agencies’ requirements for enhancements or alterations.</p> <p>CWS applies <i>Design & Construction Standards</i> that address quality and approve landscape plans that enhance the Vegetated Corridor. County makes sure applicant has required documentation to conduct activity within Vegetated Corridor, which is a clear and objective requirement.</p>
422-3.4	Required the County to determine whether a proposed modification to a degraded Riparian Corridor or the water-related habitat areas would result in an enhancement where the habitat is “measurably improved.”	Deletes this section. New § 422-4.1 F., described above, shows enhancements to be an allowed use as required by CWS or permitted by DSL or the Army Corps. Requirements for enhancements are stipulated and plans are reviewed by these agencies.	Since enhancements along water-related habitat areas (Vegetated Corridors) are evaluated by CWS through the <i>Design & Construction Standards</i> , this section is no longer needed. CWS standards supersede the provision.
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.	<p>New § 422-5 (Tree Preservation in Habitat Areas) requires a certain percentage of <i>Upland/Wildlife Habitat</i> area to be preserved as mitigation for development impacts to the area.</p> <p>New § 422-6 retains the existing mitigation standard for the rural area.</p>	<p>Clear and objective standards were needed to address <i>Upland/Wildlife Habitat</i> in the urban areas and the new provision provides a quantified amount of <i>Upland/Wildlife Habitat</i> to be preserved.</p> <p>ORS 215.416 (SB 1051) does not apply to the rural area, and the wide variability of conditions in the rural area warrant further consideration before changes can be proposed that address SNR mitigation in the rural area.</p>

This ordinance prioritizes the direction in the Enforcement Order to address the three criteria that were found not to be clear and objective. Potentially subjective language in several other subsections within § 422 could not be adequately addressed within the timeframe for this ordinance. These include § 422-6 related to Significant Natural Areas and other criteria that apply only to the rural areas. Many of the design elements in community plans also contain subjective language. Further study and analysis are needed to determine how to best address these provisions. Such changes can be considered as part of the FY 2021-22 Work Program.

Other CDC Changes

Amendments to CDC § 404-4 (Planned Development)

This ordinance also proposes to amend CDC § 404-4 (Planned Development). A Planned Development is a voluntary application process in which a developer receives flexibility in the development standards and permitted use location(s) on a site, in exchange for providing innovative site design and common or private open space.

The amount of required Planned Development open space depends upon the size of the development site.

- For development sites up to 50 acres in size, the minimum Planned Development open space requirement is 15% of the site's gross acreage.
 - As an example, a development site of two acres (87,120 square feet) in size would be required to provide a minimum open space of 0.3 acres (13,068 square feet).
- For development sites larger than 50 acres, the minimum Planned Development open space requirement is 10% of the site's gross acreage.

For many years, the Planned Development standards allowed specific types of resources (flood plains, drainage hazard areas and riparian open space) to count toward up to 50% of the required Planned Development open space for commercial or institutional Planned Development proposals. However, residential Planned Developments were not allowed to count these types of resources toward their required Planned Development open space.

In 2019 as part of A-Engrossed Ordinance No. 853, changes were made to expand the resource categories that could count toward up to 50% of the required Planned Development open space for commercial and institutional Planned Developments. Specifically, the allowed categories were expanded to include resources that are now within the proposed § 422 categories of *Water Areas and Wetlands*, *Water-Related Fish and Wildlife Habitat* and *Upland/Wildlife Habitat*.

In addition, A-Engrossed Ordinance No. 853 added an allowance for residential Planned Developments to count resources that are now within the proposed § 422 categories of *Water Areas and Wetlands*, *Water-Related Fish and Wildlife Habitat* and/or *Upland/Wildlife Habitat* toward up to 20% of their required open space. At that time, the PC and some members of the public recommended that 100% of these resources be allowed to count toward the open space

requirement. Staff recommended against this allowance at that time for the reasons detailed below.

First, since much of the *Water Areas and Wetlands* and *Water-Related Fish and Wildlife Habitat* area is already required to be preserved through other regulations, allowing it to count for up to 100% of Planned Development open space would not result in any additional benefit. Second, staff had also intended to develop a new Habitat Protection Planned Development process with specific requirements for preservation and enhancement of resource areas.

Given the limited timeframe for the development of this ordinance and a desire to increase incentives for habitat protection, the ordinance proposes to allow *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 community and encourage preservation and sensitive planning around these areas.

CDC §§ 201 and 407 changes

Minor changes in CDC §§ 201 and 407 are proposed to ensure consistency with changes in § 422. Changes add an allowance in § 407 to reduce minimum landscaping when attached dwellings are proposed, to facilitate development of sites with significant space constraints in moderate density residential districts more likely to require encroachments into the preserved area.

Public Involvement on Ordinance No. 869

Staff has presented the contents of the proposed ordinance to the Committee for Community Involvement, Community Participation Organizations (CPOs) 1, 3 and 6, and the Home Builders Association of Metropolitan Portland (HBA). Other presentations will be made as requested. While there were questions at each meeting, no positions were taken.

As of August 12, 2020, five comment letters had been received regarding Ordinance No. 869 and these are included in Attachment B. Two comment letters expressed general support for the ordinance and for overall habitat protection. Two others made specific comments and are addressed below. A letter from Matt Sprague, Pioneer Design Group Inc., was received too late for staff to provide a specific response but in time to be included in the attachment to the staff report.

Specific Comments

Jim Long, CPO 4M Chair, represented that CPO 4M supported 100% protection of the County's remaining *Upland/Wildlife Habitat* and wanted the County to restrict all new development on

sites that contain sensitive habitats. Mr. Long also wanted state agency review of the Habitat Assessments instead of the current practice of staff review.

Staff Response

As noted earlier in the staff report, the proposed percentage of Upland/Wildlife Habitat to be preserved is based on a variety of factors (see page 14). This percentage is more than what has been preserved in many of the former casefiles reviewed and is consistent with policy decisions identified in the CFP and made through the Tualatin Basin decision. The Tualatin Basin decision reflects the desire to lightly limit development on sites with Upland/Wildlife Habitat and provide incentives through the development process to encourage greater habitat protection.

Fran Warren requested the Board delay its decision until all of the subjective language in § 422 could be addressed. Ms. Warren detailed several concerns with the proposed regulations that staff is still reviewing. A response will be provided in the staff report for the continued hearing. Ms. Warren also identified several minor changes to the proposed language that clarifies and corrects typographical errors.

Staff Response

Staff agrees with Ms. Warren's assessment that some of the provisions in § 422 may still contain subjective language. The top priority for this ordinance is to address the provisions identified in the Enforcement Order and by LUBA. Staff is still reviewing the implications of changing the provisions related to Significant Natural Areas (a small subset of SNRs) and certain provisions affecting the rural area and has not recommended making changes to these provisions at this time. Such changes can be considered as part of the FY 2021-22 Work Program. Minor changes identified by Ms. Warren will be included in potential engrossment of the ordinance discussed below.

Potential Engrossment of Ordinance No. 869

Since filing the ordinance, staff has identified several minor errors and potential changes to offer as part of an engrossment of the ordinance. Other possible changes have been identified through further discussions with CWS and DLCD and from correspondence with the public. Staff proposes to return at the Sept. 2 Planning Commission meeting with these proposed amendments, along with any further analysis or proposed changes resulting from the first hearing.

Summary of Proposed Changes

Ordinance No. 869 proposes to amend the following to address the recent Enforcement Order and are intended to clarify current requirements, provide consistency and transparency in project review, and to better meet the intent of Metro Title 13.

- Require a Habitat Assessment and field verification to confirm boundaries and condition of SNR areas when development is proposed.

- Allow waiver of submittal requirements for projects outside the UGB.
- Add references to CWS *Design & 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 requirements to meet CWS standards.
- Require a specified percentage of certain wildlife habitat area to be preserved when development occurs (Preservation Area) with standards for enhancement and planting.
- Provide a voluntary discretionary path if preservation requirements cannot be met.
- 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.

List of Attachments

The following attachments identified in this staff report are provided:

Attachment A: 1998 Director's Interpretation

Attachment B: Public testimony received as of Aug. 12


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.

Attachment A

Community Development Code Interpretation

CDC Section 422

Page 2

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.

Attachment A

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.

Attachment A

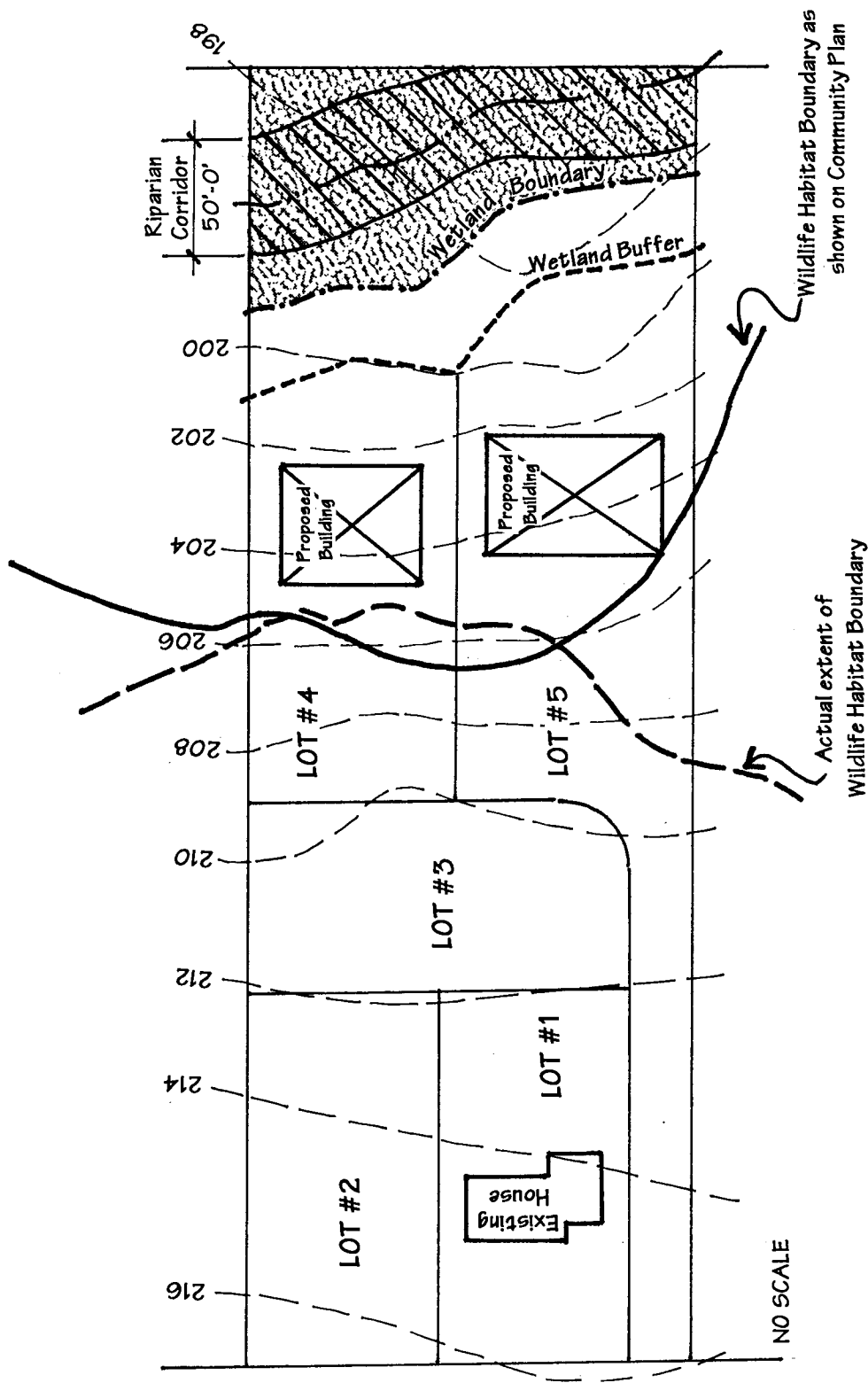
As used in Code Section 422-3.6, **Mitigation** is defined as:

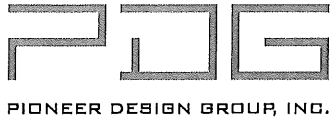
Reducing the impacts of a proposed development and/or offsetting the loss of habitat values resulting from development. In fish, wildlife, and big game range areas, mitigation may include, but is not necessarily limited to, requiring: 1) clustering of structures near each other and roads, controlling 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).

Attachment A





CIVIL LAND USE PLANNING SURVEY
 P 503.643.8286 F 844.715.4743 www.pd-grp.com
 9020 SW Washington Square Rd Suite 170
 Portland, Oregon 97223

August 11, 2020

Michelle Miller
 Washington County
 Client Address
 City, State, Zip

RE: PROPOSED LAND USE ORDINANCE NO. 869, Individual and General Notice
 2020-06, July 24, 2010

Dear Michelle:

Thank you for the opportunity to review the draft amendments to sections of the Community Development plan being amended to address the need for clear and objective standards for natural resource areas. In addition to my comments in the meeting, below please find additional comments and questions for staff consideration and let me know if you have any questions.

SECTION 422-2: The county has a goal 5 analysis in place already however in this section you are also adding Class I and II Riparian Habitat from Metro. My concern is that you may be adding resource not within the County’s original analysis and secondly that Metro’s mapping is notoriously inaccurate and does not represent a detailed evaluation of resource areas. We have seen areas noted on Metro mapping as habitat because from the air, they look green. This includes blackberry fields, vineyards, etc. I do not recommend the County add this questionable mapping as a part of the amendment.

422-3.1.B.2: This standard calls out for the identification of habitat inclusive of the Riparian Corridor as defined in Section 106. It would be good to understand how often or not so often a Riparian Corridor is found to exceed the limits of a CWS Vegetated Corridor width. If this doesn’t occur, I would recommend removing the Riparian Corridor as an identification tool for redundancy purposes. The response the County would always receive and maybe already know is that the Riparian Corridor is located within the CWS Vegetated Corridor. This is a question you may want to ask the biologist consultant you are working with.

422-4.1 J.: Staff may want to have a discussion with CWS regarding fencing types a CWS may be more restrictive than what the County is calling out for passage of wildlife. If a project is conditioned for this type of fencing however CWS requires something that does not meet this standard, there will be conflicting requirements. This standard comes up again in 422-5.4.A.1.

422-5 Tree Preservation in Habitat Areas.: The first sentence within this section states: *“These standards are intended to preserve trees and other vegetation providing habitat value in **OR NEAR** existing habitat, protect groupings of existing large trees, encourage*

native species and ensure preservation occurs prior to development while allowing development as envisioned in the community plans.” (emphasis added). The problem with adding “or near” to this section is it now becomes subjective to trees outside of the habitat area although this section is specific in its heading for “in” Habitat Areas. What is near? What is a grouping of existing large trees? This pushes the possible requirements for preservation to areas outside of the Habitat Areas.

422-5.4.B.1: As noted in the meeting, replacement trees sizes are not clarified. In addition, the tree planting and shrub planting numbers are extremely high. Why would you plant 10 trees within an area which previously supported one 30-inch tree? Trees do best when spaced 12-18 feet apart if you want maximum growth. Otherwise they shade each other out and their growth is stunted. Additionally, shrubs will likely be shaded out by the tree plantings being so dense. I recommend cutting these numbers by half to a third if you want a healthy and viable result.

422-6 Significant Natural Areas: Using the term “to the maximum extent feasible” seems like a very subjective statement. Staff will have one opinion, the applicant another and opposition something completely different. Not sure how best to fix this but it deserves some thought at least.

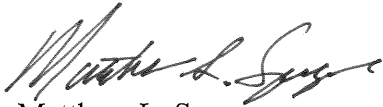
422-8.B: The park provider is notified through the service provider letter process as well as through the County’s review process. This item seems unnecessary and creates a duplicative process.

404-4.5.E.2.a: In this section, Water Areas and Wetlands or Water Related Fish and Wildlife Habitat per Section 422 can only county up toward 20% of Planned Development Open Space. It’s my belief that this percentage should be increased to no less than 50% for the following reasons:

- Although the thinking is that these areas generally are areas that are required through other regulations to be preserved anyway, this may not always be the case when Water Related Wildlife Habitat is also included in the language, there may be cases where there is resource preservation outside of areas that are typically required to be preserved by other regulation and there should be some benefit as a result greater than 20%
- Protecting these resources through development and creating tracts and easements for their protection is a substantial public benefit provided through the development process. Even if they are required to normally be protected, this does not mean that it is less valuable than other habitats or that the contribution to their protection by development is of less value to the public. This should be recognized appropriately.

404-4.5.F.3: This item excludes pedestrian and bicycle facilities required by Section 408 from counting as a Planned Development recreation facility. All of these facilities, although required by Section 408 provide a direct recreational benefit to the public and cost money to install. An exception would be if the facility were 100% creditable. In that case it should not count.

Sincerely,
Pioneer Design Group, Inc.

A handwritten signature in black ink, appearing to read "Matthew L. Sprague". The signature is fluid and cursive, written over the printed name.

Matthew L. Sprague
Principal

Cc: Ezra Hammer (via email)

From: fran.warren@frontier.com
To: [Michelle Miller](#); [Theresa Cherniak](#)
Subject: [EXTERNAL] Fran's Testimony on Submitted Policy 869
Date: Wednesday, August 5, 2020 9:29:38 AM
Attachments: [Fran Warren 869 testimony for Commissioners - 05 Aug 2020.pdf](#)

Hi Michelle and Theresa,

Well, here's my 2-cents' worth. No one else has reviewed it – but I feel I need to give you the heads up. And I hope it does make it to the Staff packet.

Note: if I am looking at the correct version of your Policy document, there are a couple of possible typo's you might want to fix at your discretion:

- Page 8 Suggestion: 422-5.3 “...*Preservation of a portion of the total **field verified** Habitat Area..*” typically, you've put a hyphen between field and verified, helps the reader.
 - Typo?correction needed : *B. (2) If using 422-**3.5.A.2**, must contain a minimum number of trees ...*
 - I think you meant to type **422-5.3.A.2** (the 5 and 3 are transposed?)
- Page 9 Suggestion: C. 4: ... *at least 36” DPH ... and 24” DPH* (to ensure clarity)

I certainly didn't go through the whole document with such a fine tooth comb, but I picked out these little things. You have these already covered, great. Just thought I'd try to help.

Hope this works for you. Thanks for all your help, Fran
Any questions, please feel free to ask.

Note: I will be sending a copy of this to my Councilperson, Pam Treese, and ask for a quick virtual meet. I have never met her and I would like to give her a heads up. I might also send to Dick Schouten as he and I go back a long way – he was my old Councilman.

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“Nature is My Medicine”



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Washington County
Planning Commission and Board of Commissioners
155 N. First Avenue
Hillsboro 97124

05 August 2020

Dear Commissioners:

From: Fran Warren (835 SW Touchmark Way – Portland, Unincorporated Washington County)

Re: PROPOSED LAND USE ORDINANCE NO. 869

I request that the Commissions postpone approval of the Policy, as submitted, to allow the Washington County LUT Planners more time to make the following necessary adjustments:

- there is more work needed to make this document meet the “clear and objective” requirements of the Oregon Land Conservation and Development Commission (LCDC) Commission
- there are still major issues (per LUT Significant Natural Resources Assessment & Review, May 2020) which will need to be addressed in yet, a new revision to Policy 869

Washington County was an early adopter of Oregon’s Goal 5, but as you can see in the attached table, Appendix R, Model Code Jurisdictional Comparison, Washington County has truly fallen behind the nearby cities and other counties in applying Title 13 and in providing Incentives and standards for preserving Significant Natural Resources. My thanks to the LUT Planning staff for including this succinct table compiled in 2018-2019 in their Significant Natural Resources Assessment & Review document.

The County’s acknowledged Goal 5 program for SNRs is not contained in one document, but is located throughout multiple elements of the Comprehensive Plan, including the Resource Document, CFP, RNRP, CDC and each community plan. This makes it difficult for applicants and residents to research processes and relevant policies.

I have been researching and volunteering for the Preservation of Wildlife Corridors and Connectivity. I participate on a regional Strategic Action Planning activity as well as work with State and Federal representatives to determine where we might best leverage funding on behalf of Washington County. We may not be able to save everything – but let’s determine the most essential wildlife habitat and ecosystems and preserve what we can. I work to establish the stewardship and community advocacy to support these vital programs. We need these essential policies to be very clear to support us as well.

Examples where “Clear and Objective” statements are lacking in the submitted Policy:

- **4.22-5 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.**
 - How is this feasibility quantified? Who determines criteria? What is feasible to one applicant may not be to another and may or may not be deemed feasible to Washington County, etc.
- **422-3.7 For any proposed use in a Water-Related Wildlife Habitat or an Upland/Wildlife Habitat outside a UGB and as identified in the Rural/Natural Resource Plan, 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**
 - What is the definitive criteria for *serious interference*? Again, who determines, what is process?

Some of the Major Issues Still Unaddressed:➤ **OAKS: There are no specific provisions for protection of oaks (Oregon White Oaks) in this Policy.**

Note: This is not about a Tree Code – this is specifically directed at Oaks as a “diminishing” resource. Humans and Oaks compete for the same locations: elevation, water, soil components.

As the available buildable lands become compressed, there is no extra incentive for builders to protect these environmentally crucial trees. Oaks can live to be 500 years old, they are one of the most fire-resistant and disease-resistant trees in Oregon and their numbers are diminishing.

According to the Oregon Conservation Strategy Organization, the Willamette Valley have less than 5 percent of its original oak trees. Oak habitats which are necessary for a number of ODFW strategy species are being converted to agriculture, residential, and other uses in the Willamette Valley. The same rolling hills and scenic landscapes that indicate healthy pine-oak habitat also attract new residents and developers. Because much of the remaining oak woodlands are in private ownership and maintenance of these habitats requires active management, cooperative incentive-based approaches are crucial to conservation. See <https://www.oregonconservationstrategy.org/strategy-habitat/oak-woodlands/>.

➤ **Policy applies to riparian or upland/wildlife habitat areas that are specifically at or near designated “water/watershed” only.**

- Some wildlife habitat exists in wetlands which could be designated as “distressed.” But research shows that wetlands are, by definition, always a source of water at some time or another even if they do not appear to have surface water all year long. Many of these distressed wetlands show up as sink holes or potholes in later years after builders have paved them over. Then they become a problem of the County or City management for years to come.
- There is no provision for “headwaters.” Headwaters are key to providing the source for creeks and streams below. In this version of the policy, builders are not required to inventory any of these water sources found on their building sites. Headwaters may start underground on the top of mountains/hillsides – filling these in can be devastating.

➤ **422-5.3 Required Preservation Area – Item 3) below virtually negates items 1) and 2) – thus leaving the applicant with a fundamentally minimal requirement statement “... the area required for preservation shall be calculated at a minimum of 100 square feet.” I believe this should read: “(1) or (2), and (3)”****See Page 8:**

Preservation of a portion of the total field verified Habitat Area is required, subject to the following:

A. The area required for preservation (Preservation Area) shall be calculated as either:

- (1) A minimum of 25% of the Habitat Area (Option 1); or*
- (2) A minimum of 15% of the Habitat Area, when located adjacent to an on or off-site Riparian Corridor or CWS Vegetated Corridor (Option 2).*
- (3) A minimum of 100 square feet must be retained as a Preservation Area.*

➤ **Policy has set no specifics for Climate Adaptation nor allowance for Climate Mitigation**

- Washington County currently has no Climate Action Plan and this policy has a specified 15%/25% habitat protection incentive provision with no allowance for modifications to this habitat protection guideline in line with climate change.

- **The submitted policy statements are critically dependent upon what are antiquated and inconsistent tracking data**
- The LUT SNR Assessment and Review and other reliable documents state the following: “... dated Goal 5 Inventories”, “Tracking of field-verified SNR is limited and Monitoring of Mitigation is Inconsistent but not addressed in Policy”
 - The Washington County LUT Assessment and Review (May 2020) notes that the Washington County Wildlife Inventory is out-of-date. Yet many of the Community Plans within urban Washington County are dependent upon these incomplete or obsolete Washington County wildlife habitat inventories (Washington County Mappings were done 1983-4, some updates 2004). The Community Plans do utilize Metro’s Wildlife Inventory Plans, but these too, are incomplete. This is a critical point, since the qualification for independent field verification is dependent upon whether the subject land was designated as Wildlife Habitat in the first place.
 - For example, on Cooper Mountain, the area designated as “Outlook Woods,” is 96% mixed tree canopy and provides habitat for 4 ODFW strategy species of wildlife, plus populations of red-legged frogs, rough-sided salamanders, white breasted nuthatches and olive-sided flycatchers not to mention many different species of birds and mammals. These woods provide “edge habitat” protection for Cooper Mountain Nature Park wildlife for breeding – but these 25 acres of contiguous habitat are not even classified as any form of Wildlife Habitat on any of the Washington County Wildlife Inventories.
 - A study by the U.S. Forest Service found that just one mature tree in the Portland region can capture 449 gallons of stormwater per year. The City of Beaverton estimated that if at least 60% of the Cooper Mountain planning area is covered with tree canopy, the area’s stormwater issues will be largely solved with trees capturing over 34 million gallons of stormwater per year. Yet, very little of Cooper Mountain was designated as Riparian Habitat and subject to field-verification. Neighborhoods in Durham and Lake Oswego currently exceed 60% tree canopy and have some of the more desirable housing in the region.
 - I concur with Ted Labbe, Executive Director – Urban Greenspaces Institute: Dec. 2, 2019 on his comments on the SNR Assessment as it carries over to this Policy. “Revise the SNR review process to include technical reviewers with expertise in natural resources, including outside agency reviewers.” ... “Require mitigation sequencing based on a site-specific habitat assessment.”
 - Policy should require a report of the Mitigation Inventory:
 - within Washington County (with consistent habitat biological descriptors)
 - off-site locations
 - and/or funding bank.
- **Washington County needs to Standardize Habitat Report requirements and add them to the Code**
- If the field documentation of habitat and wildlife/biology were documented according to new the ODFW/PSU database standards, these reports could be utilized in the regional (Metro) wildlife inventory – at no additional expense to Washington County – or possibly receive reciprocal funding. Policy should reflect some form of consistency in biological notations reporting.

Thank You for consideration of this testimony,

Fran Warren, “Nature is My Medicine”

CPO 4M Metzger, Durham, East Tigard
Washington County, Oregon
10655 SW Hall Boulevard, Tigard, OR 97223

August 4, 2020

Testimony to Planning Commission

Governor Tom McCall was a champion of our statewide land use laws, and he was one of my heroes. I distinctly remember from the early 1970s, Governor Tom McCall saying in speeches "we have to protect this thing called "Oregon".

And now we've got to protect wildlife habitat.

Wildlife in view! Oh the joy!

I cherish seeing birds and other wildlife.

Birds and other wildlife have appreciated the societal slowdown of the pandemic, with cleaner air, quieter, less traffic, less noise, etc.

For years CPO-4M has been stating that Washington County is out of compliance with Goal 5 environmental protections. Last July, 2019 CPO-4M requested before the Board of Commissioners that the county put a moratorium on DLUT approval of applications involving SNRs. The County response was continued denials of violating Goal 5 environmental protections.

Process:

There are reasons why 'conservation' comes before 'development' in Oregon's LCDC name. The Department of Land Conservation and Development because of the pandemic gave Washington County until May 1st to have 'clear and objective' standards. Even though the LCDC unanimously approved the Enforcement Order in May, the first Pamplin newspaper to cover the story did not arrive until the second week of July due to the pandemic, and The Oregonian has not yet covered it due its understandable coverage of the protest, riots, pandemic numbers, and re-opening of the economy. These are good reasons to continue hearings about this ordinance, so that more citizens can learn about the issues and provide input.

There are many outstanding Questions:

It's been over two weeks since I requested to receive copies of the final SNR Assessment Report, but still haven't received it. It's difficult to provide input when we don't have the proper documents.

Why doesn't the code language provide total protections for habitat?

Did planning Commission members receive and read both the "good case" recommendation by LCDC staff and the Enforcement Order?

Why did the county approve the SNR report before the LCDC ruling on the Enforcement Order?

Why is WC continuing to assume development in wildlife habitats?

CO-4M and CCI have both asked the County Auditor's office for an audit to provide objective

information. See attachments.

Suggestions for specific language:

422-1 Intent and Purpose

The intent and purpose of this Section is to ~~permit~~**restrict** limited and safe development . . .

Add: **quality of life** in that paragraph

422-3.1 A Significant Natural Resources Field Verification (Field verification) prepared by a— **an independent** natural resource professional **from Oregon Department of Fish & Wildlife** that identifies . . .

Due to time limitations of volunteerism, further comments will be submitted prior to Planning Commission meeting and via public testimony.

Yours truly,

Jim Long, Chair

Attachments: CCI letter to Auditor
CPO-4M letter to Auditor



July 27, 2020

John Hutzler
Auditor of Washington County
221 S. First Avenue
Hillsboro, Oregon 97123-3901

RE: Significant Natural Resource Wildlife Habitat Audit

Dear Auditor Hutzler,

The Committee for Citizen Involvement (CCI) is an advisory body of representatives from each of the Washington County Community Participation Organizations (CPOs). Washington County looks to both the CCI and the CPOs to gather input, assess public interest or concern, and provide feedback and ideas about emerging and ongoing issues.

The CCI requires factual information from Washington County to educate our communities to provide appropriate interactive discussions. This factual information is necessary to engage with our community members, our elected officials, and county staff.

We are requesting the Washington County Auditor add tasks to the 2020-2021 Annual Work Plan to provide a Significant Natural Resources (SNR) Wildlife Habitat Audit. Our request includes providing the following:

- ✓ An inventory of the SNR Wildlife Habitat in the 1978 County-wildlife habitat document (as well as check-points at the 1981, 1982, 1984 per LUT SNR Issue Paper)
- ✓ An inventory of what SNR Wildlife Habitat remains available today for development or redevelopment
- ✓ An inventory of what SNR Wildlife Habitat has been preserved via development applications
- ✓ An inventory what SNR Wildlife Habitat has been developed
- ✓ Details on what, where and why mitigation took place in lieu of preservation

A key justification for the County audit is that there is no confirmed documentation available from either Metro or Washington County to verify the actual loss of SNR Wildlife Habitat starting since 1980.

In May, 2020, there was a litigation decision made by the State of Oregon Department of Land Use and Conservation's Commission, LCDC, concluding that Washington County is in violation of Goal 5. During that hearing, both sides of the argument were speculating on what the current County's SNR numbers are –thus the 15% reported in the official hearing notes may be based only on what Washington County's policy states as their resultant goal in determining development projects and not the actual on-the-ground final results. No one seems to know what percentage of SNR Wildlife Habitat has been lost

and how much is actually remaining. We also do not know the justifications and mitigations approved during land development application approvals.

The status of SNR Wildlife Habitat appears to be conjecture at this point. Metro, Washington County, and LCDC all need a common, agreed upon baseline number from which to make legislative as well as clear and objective decisions henceforth.

As Washington County moves forward in defining clear and objective SNR standards, we believe it is necessary to know the actual state of current SNR inventory. With an accurate assessment of SNR inventory, Washington County will be able to make more informed and better decisions about the future of county resources. Please help us partner with you and the other agencies of Washington County in protecting natural resources along with economic growth and affordable housing.

Thank you,



Kathy Stallkamp
CCI Chairperson

Letter authorized by CCI Steering Committee on 7/27/2020

CC

- Kathryn Harrington, Chair Board of Commissioners
- Dick Schouten, Vice Chair Board of Commissioners
- Roy Rogers, Commissioner
- Pam Treece, Commissioner
- Jerry Willey, Commissioner

CPO 4M Metzger, Durham, East Tigard
Washington County, Oregon
10655 SW Hall Boulevard, Tigard, OR 97223



July 22, 2020

John Hutzler
Auditor of Washington County
221 S. First Avenue
Hillsboro, Oregon 97123-3901

Dear Auditor John Hutzler:

The CPO-4M was saddened to learn from the County's 264-page Significant Natural Resource (SNR) Assessment Report (Oct. 2019) that only a small portion of SNR Wildlife Habitat within the UGB remains undeveloped. Today, CPO-4M membership unanimously approved this letter.

In response to many CPO concerns countywide, Washington County issued a 2004 SNR Issue Paper, but its recommendations were mostly ignored. For years, County staff and elected officials have denied violating their own Community Development Code and Statewide Planning Goal 5 protections, without providing examples of any protected resources. Citizens have perceived a pattern of DLUT governing that doesn't protect the SNR areas but allows developers to destroy them, especially Wildlife Habitat SNRs, which lack CWS or other agency protections.

As mandated by Goal 5 ("To protect natural resources...."), our county inventoried resources that included Wildlife Habitat, and Goal 5 guidelines stated, "Fish and Wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans." As specified by Goal 2, of course, local governments didn't have to use Goal guidelines as long as they used "an alternative means that will achieve the Goal." With only 15 % of Goal 5 Wildlife Habitat SNRs "with development potential" remaining, Washington County has not been achieving the Goal.

Various appeals of county-approved developments have been filed over the years. Finally, given the pattern of repeated violations, a petition for enforcement was filed with Oregon's Land Conservation and Development Commission (LCDC). On May 22nd LCDC unanimously issued both an Enforcement Order for the county to comply with Goal 5 environmental protections and an Injunction to prevent approval of development applications in Wildlife Habitat SNRs until clear and objective protective standards are approved.

Historically, how and why did this loss of Wildlife Habitat happen? CPO-4M requests that County Auditor perform an audit on the loss of Wildlife habitat and the processes that the County Dept. of Land Use and Transportation (DLUT) uses/d to approve development applications that put it in violation of Goal 5, including its *use/misuse* of Community Development Codes 422-3.4, 422-3.2, and especially 422-3.6 to approve SNR Wildlife Habitat destruction for development with paltry "mitigation" for many years. We seek accountability because existing DLUT processes have been costing us all time, money and natural resources.

Thank you,

Jim Long, Chair
bluepgs@yahoo.com 503-647-0021

From: [i>;Susan](#)
To: [Michelle Miller](#)
Subject: [EXTERNAL] SNR code
Date: Friday, July 31, 2020 12:17:04 PM

Dear Ms Miller:

I am trying to understand the language of the proposed modifications to the county's SNR protection as it relates to development. I observe parts of Washington County where small areas are preserved but installation of infrastructure impedes wildlife movement within and around these natural areas. Witness the massive concrete "bridge" structures in place on Springville Rd (west of Joss), on Joss itself (north of Springville) and 170th (between PCC property and the wetland to the southeast). These structures have only culverts that impede wildlife passage. I observed a deer hit and killed on Springville because it's only option was to cross the road as the "bridge" is effectively a large wall and substantial SNR lies to the south and north of the road. Another example of development impacting SNR is the proposal to site a gas station on a sliver of land at the northeast side of the intersection of 185th and West Union Rd. Proximity to the Rock Creek drainage is alarming and it appears that Clean Water Services has given their stamp of approval even though there are not even the minimum vegetative buffers in place. These observations lead me to believe that SNR's in Washington county need considerably more protection before it is too late.

Susan Nolte, DVM
Volunteer, Audubon Backyard habitat Program

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From: julie.ketchum@gmail.com
To: [Michelle Miller](#)
Subject: [EXTERNAL] Ordinance 869
Date: Friday, July 31, 2020 8:34:49 AM

I support Ordinance 869. I only wish it would have been adopted before the rape of Bull Mountain by Polygon NW. Almost 2 years ago the California based developer cleared the tract of land on 150th south of Hawk Ridge Rd. Where there was once a small forest of fir trees there is now a pile of dirt, rubble, and weeds. I have heard, but not confirmed that Polygon has since sold the land and that development is years in the future. I would be happy if the land were never developed into the grid of cookie cutter houses that Polygon typically builds, such as the development underway on Roy Rogers Rd.

It is also imperative to consider the Tualatin National Wildlife Refuge that lies a few miles downstream from proposed developments off of 150th. This is an important wildlife corridor and watershed that is being disrupted by such widespread and dense development. We live on the original part of Hawk Ridge Rd East of 150th. We used to see deer in our yard on a daily basis. It has been several months since we have seen even one deer. There has been a disruption to their habitat.

All this development also creates heat islands. You can feel the change in temperature as you walk west across 150th from the older, established neighborhoods. The beautiful old fir trees Polygon cut down cannot and will not be replaced in my lifetime. We need more thoughtful development that respects the land and all its inhabitants.

Thank you for your time.

Julie ketchum
14830 SW Hawk Ridge Rd

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