



June 28, 2013

**LONG RANGE PLANNING
ISSUE PAPER NO. 1**

North Bethany Development Restrictions on Slopes Greater than 25 Percent

Issue

On January 29, 2013, K & R Holdings (K & R) submitted a 2013 Work Program request for re-examination of the decision to restrict development in North Bethany on lands with slopes greater than 25 percent. K & R requested that North Bethany slopes greater than (>) 25 percent be subject to the same development allowances as in the rest of urban unincorporated Washington County.

Recommendation

Maintain the current development restrictions on North Bethany lands with slopes > 25 percent that are located *within* the Natural Features Buffer on the North Bethany Subarea Plan's Urban / Rural Edge Map, in order to maintain the North Bethany Subarea Plan's compliance with Metro Ordinance No. 02-987A, Condition 6 which requires urban/agricultural compatibility measures.

Direct staff to file an ordinance to make text and map amendments for removal the current development restrictions on North Bethany lands with slopes > 25 percent that are located *outside of* the Natural Features Buffer.

Background

K & R submitted a 2013 Work Program request for re-examination of the decision to restrict development in North Bethany areas with slopes > 25 percent. That development restriction was instituted via the adoption of A-Engrossed Ordinance No. 739 in 2011. K & R requested that North Bethany lands with slopes > 25 percent be treated the same as in the rest of urban unincorporated Washington County, with development being allowed when an on-site geotechnical/geologic assessment has determined the site's development suitability.

K & R's letter made the following points in support of their request:

1. The development restriction on slopes > 25 percent is specific to North Bethany, and is inconsistent with how sloped areas are treated in the rest of unincorporated Washington County.
2. The development restriction on slopes > 25 percent was not informed by an on-site technical assessment performed by a registered geotechnical or geologic engineer.

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3. The development restriction on slopes > 25 percent has had a significant negative impact on some of K & R's properties, with one of their sites having lost as many as five acres of developable land due to the restriction.

Staff responses to these points are provided below in the Analysis section.

Analysis

Proposed restrictions on development of North Bethany slopes > 25 percent were addressed in detail in the staff reports for A-Engrossed Ordinance No. 739. The proposed restrictions were also the subject of significant testimony at Board hearings for that ordinance. After considering the testimony, the Board voted three in favor / one opposed to Plan and CDC amendments that restricted development on North Bethany slopes > 25 percent.

Below are staff responses to the points raised in K & R's 2013 Work Program request. The responses are based largely on information previously provided in staff reports for A-Engrossed Ordinance No. 739.

- 1. The development restriction on slopes > 25 percent is specific to North Bethany, and is inconsistent with how sloped areas are treated in the rest of unincorporated Washington County.**
- 2. The development restriction on slopes > 25 percent was not informed by an on-site technical assessment performed by a registered geotechnical or geologic engineer.**

Staff Response:

Regarding point #1 above, K & R's letter is correct that the development on slopes > 25 percent is specific to North Bethany, and that it was not informed by on-site geotechnical assessment. However, staff disagrees that the development restriction on North Bethany slopes > 25 percent is inconsistent with how sloped areas are treated in the rest of the county. The term *inconsistent* implies that the same underlying situation is being treated differently in different areas of the county. However, in this case, the underlying situation within North Bethany is different from the rest of the county. The North Bethany Subarea is subject to a Metro requirement for urban/rural compatibility that does not apply elsewhere in the county, and the North Bethany restriction on development of slopes > 25 percent was adopted to comply with this North Bethany-specific urban/rural compatibility requirement.

In the rest of unincorporated Washington County, development on slopes > 25 percent is allowed under certain conditions, subject to standards that are intended to document the safety and stability of the proposed development on steeper slopes. The primary applicable standard, Community Development Code 410-4 (Landslide Study Area Requirements), includes a requirement for development applications for lands within 250 feet of a lot or parcel with existing slopes of 25 percent or more to include a geotechnical engineering report documenting that the proposed development of the site will be safe and stable.

In contrast, North Bethany development on slopes > 25 percent is restricted, except for an allowance for development at the top of existing 25 percent slopes. The intent of this development restriction is to comply with Condition 6 of Metro Ordinance No. 02-987A, which is specific to North Bethany and requires the adoption of measures to ensure compatibility between future urban uses in North Bethany and agricultural practices on land outside the UGB that is adjacent to North Bethany. Because this restriction on development of slopes > 25 percent is related to urban / rural compatibility and not related to safety and stability issues, staff believes that geotechnical and geologic on-site assessment is not germane to the intent of the restriction.

Condition 6 of Metro Ordinance No. 02-987A reads, "...the city or county with land use planning responsibility for Study Areas 84, 85, 86 and 87 (partial) shall adopt provisions in its comprehensive plan and zoning regulations – such as setbacks, buffers and designated lanes for movement of slow-moving farm machinery – to ensure compatibility between urban uses in an included study area and agricultural practices on adjacent land outside the UGB zoned for farm or forest use." (*emphasis added*) The county was required to adopt provisions to address Metro's Condition 6 requirements before authorizing development to commence in North Bethany.

In 2011, when amendments were being drafted to address Metro's Condition 6, the following factors indicated a need for compatibility measures along a portion of North Bethany's northern edge:

- The parcels outside the UGB and adjacent to North Bethany's northern edge are designated Exclusive Farm Use (EFU), and are within Rural Reserve Area 9D.
- Agricultural activity is occurring on some of these parcels, per aerial photo information and testimony in the record for Ordinance No. 739.
- The Rural Reserve designations that were applied through the Urban/Rural Reserves process limit the allowed land uses on these adjacent parcels to rural and agricultural uses for at least a 50-year period, so agricultural activity on these lands is likely to continue, and may increase.
- Joe Rayhawk, owner of an EFU parcel adjacent to North Bethany's north edge, testified that he operates a horse boarding facility on his property, which is an agricultural use per ORS 215.203 and 215.213. Mr. Rayhawk's horse boarding facility includes an on-site riding trail located in close proximity to North Bethany's northern edge.
- Mr. Rayhawk testified that future urban development within North Bethany could jeopardize continued operation of his horse boarding facility and riding trail. Of particular concern was the potential for visual and noise impacts from future North Bethany urban development to spook horses and lead them to throw their riders, especially along the portion of the riding trail adjacent to the northern edge of North Bethany.

Given the above factors, staff evaluated setback and buffer opportunities for North Bethany's northern edge. North Bethany's northern edge contains several categories of Density Restricted Lands, which include a majority of the slopes > 25 percent, as well as riparian areas associated with Abbey Creek tributaries. Together, these forested steep slopes and riparian areas provide an existing visual screen and setback buffer between North Bethany's urban lands and the adjacent

EFU lands to the north. Therefore, as part of Ordinance No. 739, staff proposed the preservation of riparian areas and a majority of the steep slopes within a Natural Features Buffer with Fencing, to comply with the Metro urban/agricultural compatibility condition. The location of Natural Features Buffer with Fencing (Natural Features Buffer) was mapped on the North Bethany Subarea Plan's Urban / Rural Edge Map, which is attached as Exhibit A.

A-Engrossed Ordinance No. 739 also adopted standards for the Natural Features Buffer in order to preserve its visual screening and physical separation functions over time. The standards require that the Natural Features Buffer be set aside within a tract. No development, grading, or vegetation removal is allowed within the tract except for removal of non-native vegetation with hand implements, planting of native trees and shrubs for habitat restoration, and development of trail segments that are identified on the North Bethany Parks, Trails, and Pedestrian Connections Map. Installation of a minimum 5-foot high fence (cyclone, wire mesh "no climb" or wood) is required along the southern edge of the Natural Features Buffer tract.

The urban/agricultural compatibility measures adopted by A-Engrossed Ordinance No. 739, including the Natural Features Buffer and its development restrictions, were deemed by Metro to meet the intent of Condition 6 of Metro Ordinance 02-987A. In a September 19, 2011 letter to the Board, Metro stated, "*We recognize that for some parties the proposed program does not go far enough in 'protecting' the activities on the rural side of the UGB, and for other parties it goes too far and is not needed for the existing situation. In this instance, we think that the staff proposal has adequately tailored the compatibility program to the particular situation in the North Bethany area.*"

Removal of the development restriction on North Bethany's >25 percent slopes located within the Natural Features Buffer would undo a significant portion of the urban/agricultural compatibility measures that were put in place to comply with Metro's condition. In addition, removal of the development restriction on North Bethany's >25 percent slopes within the Natural Features Buffer would require re-opening the issue of North Bethany urban/rural compatibility and compliance with Metro's condition, which was one of the most substantive issues addressed by A-Engrossed Ordinance No. 739. For these reasons, staff recommends against removal of the development restriction on any and all lands within the Natural Features Buffer, including lands with slopes > 25 percent.

- 3. The development restriction on slopes > 25 percent has had a significant negative impact on some of K & R's properties, with one of their sites having lost as many as five acres of developable land due to the restriction.**

Staff Response:

North Bethany's Density Restricted Lands mapping identified lands with slopes > 25 percent on four contiguous parcels within the Subarea, which all lie adjacent to the Subarea's northern edge. These four parcels are listed below, and are shown in the map close-up that is attached as Exhibit B:

Table A: Density-Restricted Parcels in North Bethany

Lot 1	Map 1N1 18A, Tax Lot #101
Lot 2	Map 1N1 17B, Tax Lot #100
Lot 3	Map 1N1 17A, Tax Lot #200
Lot 4	Map 1N1 17A, Tax Lot #100

The majority of the slopes > 25 percent on these parcels is located *within* the Natural Features Buffer, which is located along the northern portion of these parcels. The remainder of the slopes > 25 percent is located *outside* of the Natural Features Buffer on these parcels. These two areas of steep slopes will be discussed separately below, and are illustrated in Exhibit B.

Slopes greater than 25 percent located *within* the Natural Features Buffer:

Approximately 47 percent of the area of the Natural Features Buffer is comprised of Density Restricted Land types such as Water Area & Wetlands, Water Area and Wetland & Fish and Wildlife Habitat, Federal Emergency Management Act (FEMA) floodplain, Clean Water Services Estimated Vegetated Corridors, and Powerline Corridor area. These types of Density Restricted Lands are recognized as undevelopable land use categories throughout the entire unincorporated county.

The remainder of the Natural Features Buffer area is comprised of slopes > 25 percent, and non-Density Restricted Lands that were included to create a continuous buffer area to maintain compatibility with rural agricultural activities occurring on EFU lands to the north. Residential density that would otherwise be allowed for the non-Density Restricted Land within the Natural Features buffer may be transferred to the remainder of the affected parcels.

For Lot 2 (in which K & R has an ownership interest), the area of slopes > 25 percent and non-Density Restricted Lands located within the Natural Features Buffer total approximately 4.08 acres, which is a small proportion of that lot's 59.09 acre total area. Thus, the majority of Lot 2 remains available for development. Similarly, for the other three parcels, the area of slopes > 25 percent and non-Density Restricted Lands that are within the Natural Features Buffer constitute a small proportion of each parcel's total area, as shown in the table below. In all cases, the majority of each parcel's land area remains available for development.

Table B: Density Restricted Acreage by Parcel

Lot #	Total Area of Parcel	Area of Slopes > 25 percent and non-Density Restricted Lands within Natural Features Buffer
Lot 1	7.42 acres	0.10 acres
Lot 2	59.09 acres	4.08 acres
Lot 3	28.6 acres	6.46 acres
Lot 4	40 acres	2.54 acres

As summarized earlier, the Natural Features Buffer was adopted to comply with Metro Ordinance 02-987A, Condition 6 regarding urban/rural compatibility in North Bethany. Compliance with this Metro condition was required before the FD-20 District could be lifted from North Bethany, and before urban development could commence. Metro's Condition 6 has been applicable to North Bethany since 2002. While the requirements for meeting the condition were unclear when the condition was initially applied to North Bethany, it has been clear for more than 10 years that requirements different from those applicable to the rest of the county would likely be needed to fulfill the condition.

To comply with Metro's Condition 6 and address urban/rural compatibility factors present along North Bethany's northern edge, a Natural Features Buffer was adopted that restricts development within that buffer area. Staff recommends against removal of the development restriction on any and all lands *within* the Natural Features Buffer, including lands with slopes > 25 percent.

Slopes greater than 25 percent located *outside* the Natural Features Buffer:

Some of the mapped North Bethany land on with slopes > 25 percent is located *outside* of the Natural Features Buffer. This land is located on Lots 1 and 2. Lot 1 contains approximately 1.86 acres of such land, while Lot 2 contains approximately 1.62 acres of such land. This land was not included within the Natural Features Buffer because of its significant separation distance from the northern edge and adjacent EFU lands, and because the lands chosen to comprise the Natural Features Buffer were considered sufficient to buffer the adjacent EFU lands.

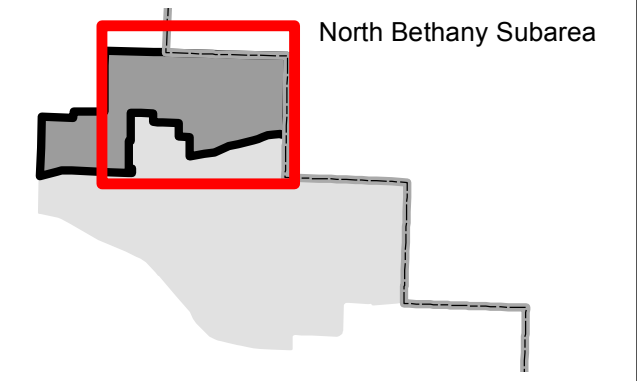
Because this land was not included within the Natural Features Buffer for purposes of urban/rural compatibility, staff believes it is reasonable to lift the development restriction on this land. The current provisions for Density Restricted Lands in the North Bethany Subarea Plan and in the Community Development Code (CDC Section 390-18) restrict development on lands with slopes greater than 25 percent across the board, without differentiating between the lands within the Natural Features Buffer and lands outside of it. Staff believes it is reasonable to amend the Plan and CDC language to allow development to occur on lands with slopes > 25 percent that are located *outside* of the Natural Features Buffer, subject to the requirements for such lands in the rest of the unincorporated county.

Conclusion

Staff recommends maintenance of the current development restrictions on North Bethany lands with slopes > 25 percent that are located *within* the Natural Features Buffer on the North Bethany Subarea Plan's Urban / Rural Edge Map. Maintenance of these restrictions is necessary in order to maintain the North Bethany Subarea Plan's compliance with Metro Ordinance No. 02-987A, Condition 6 (requiring urban/agricultural compatibility).

On the other hand, staff believes that development restrictions are not warranted for North Bethany lands with slopes > 25 percent that are located *outside of* the Natural Features Buffer. For that reason, staff recommends that the Board direct staff to file an ordinance to make the necessary text and map amendments to remove those restrictions.

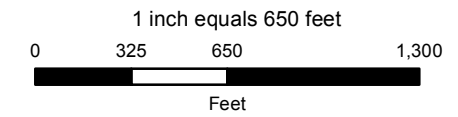
Bethany Community Plan
Chapter 2
NORTH BETHANY SUBAREA



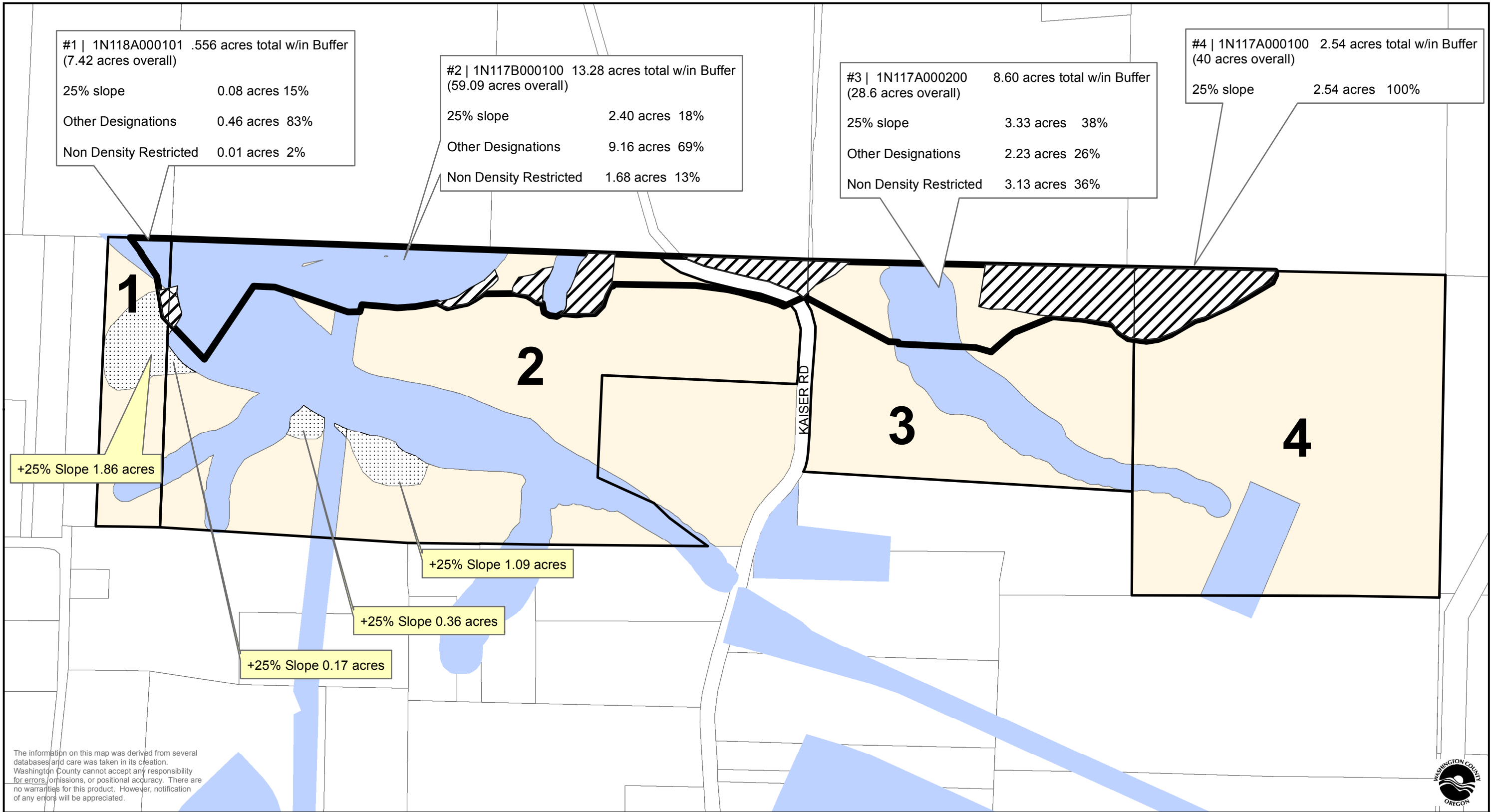
Portions of the trail corridor are shown to illustrate how they define the edge of sections of the Natural Features Buffer area.

Urban/Rural Edge
MAP

- Fence Only Buffer
- Trail Corridor
- Vegetation Buffer with Fencing
- Natural Features Buffer with Fencing
- Density Restricted Lands



The information on this map was derived from several databases and care was taken in its creation. Washington County cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties for this product. However, notification of any errors will be appreciated.

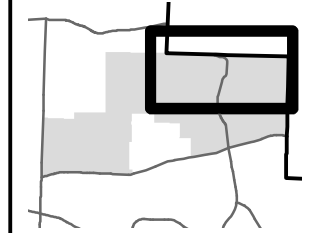
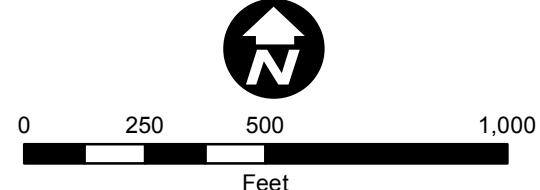


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Washington County - Long Range Planning Division
 North Bethany Planning Area - Density Restricted Lands 6/19/2013

- Non-Density Restricted Land
- Other Density Restricted Lands*
- +25% Slope (Within Natural Features Buffer)
- +25% Slope (Outside of the Natural Features Buffer)
- Natural Features Buffer
- Taxlots of Interest



*Other Density Restricted Lands include: Powerline Corridor, Water Area & Wetland, Wetland Protected and FEMA.