



July 11, 2014

**LONG RANGE PLANNING
ISSUE PAPER NO. 2014-03**

North Bethany Development Restrictions within the Natural Features Buffer

Issue

The 2014 Work Program authorized Task 1.4 (a), reconsideration of the policy decision regarding restrictions on development of the North Bethany steep slopes within the Natural Features Buffer. This task was originally added to the Work Program in 2013 in response to a written request from K & R Holdings (K&R). The April 7, 2014 staff report for the 2014 Work Program stated that staff would research the topic and would develop an Issue Paper in 2014 to seek Board guidance on this issue.

Recommendation

Staff recommends maintaining the current development restrictions on North Bethany lands with slopes greater than 25 percent (> 25 percent) that are located within the Natural Features Buffer on the North Bethany Subarea Plan's Urban / Rural Edge Map, to ensure continued compliance with Metro Ordinance No. 02-987A, Condition 6 regarding urban/agricultural compatibility measures.

Should the Board wish to move forward with an ordinance to reduce the development restrictions and/or width of the Natural Features Buffer, staff recommends that the ordinance be filed late in 2014 with hearings to be held in early 2015. Staff resources are already fully committed to the ordinances currently on the 2014 ordinance schedule and other Board priorities, including Area 93 planning. If this topic moves forward as an ordinance, it is anticipated to generate significant conflicting stakeholder testimony and would likely require more staff resources than can be assigned to it during the 2014 ordinance season. If the Board does want to move forward, staff would return to the Board of Commissioners to get direction on what buffer should be included in the final ordinance.

Background

North Bethany was brought into the Urban Growth Boundary (UGB) in 2002 via Metro Ordinance 02-987A. Condition 6 of the Metro Ordinance required the county to adopt provisions that ensured compatibility between future urban uses in North Bethany and agricultural practices on adjacent land outside the UGB, before authorizing development to commence in North Bethany. Condition 6 of Metro Ordinance No. 02-987A reads,

“...the...county...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

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an included study area and agricultural practices on adjacent land outside the UGB zoned for farm or forest use.” *(emphasis added)*

In 2011, as part of Ordinance 739, the Board adopted urban/agricultural buffers to address Condition 6 of Metro Ordinance No. 02-987A (see Attachment A, North Bethany Subarea Plan Urban/Rural Edge Map). Buffers were based on background information that had been compiled about the lands surrounding North Bethany. This information included an inventory of agricultural land uses on the adjacent properties based on information from adjacent land owners, aerial photos, and site visits; identification of potential urban/rural conflicts likely to arise from the identified agricultural uses; and identification of buffer types that could address the potential urban/rural conflicts. This background information was summarized in a white paper titled Recommended Urban/Rural Buffer Elements in North Bethany: An Overview and dated 6/21/2011, which was provided to the Board as part of their August 23, 2011 hearing packet for Ordinance 739.

For the majority of North Bethany’s eastern edge, staff recommended a 20-foot vegetation buffer that would be combined with the 20-foot Tualatin Hills Park & Recreation District (THPRD) trail right-of-way for a total buffer width of 40 feet. This recommendation was based on information indicating that several of the adjacent properties had a history of wheat, hay, and/or grass seed cultivation – activities often associated with ground spraying and harvest activities that generate dust. The land is relatively level along the east edge, so there are no topographic differences to separate urban uses from the adjacent rural uses. The Board adopted a reduced Vegetation Buffer width (20-foot minimum), to include both the THPRD trail right-of-way and screening vegetation.

For North Bethany’s western edge and the west portion of the northern edge, the Board adopted a buffer consisting of a fence to prevent trespass. This buffer was based on background information indicating that the adjacent properties were in pasture and/or livestock (cattle) use. Pasture and livestock uses are not associated with chemical spray activities or significant dust generation, and the most likely conflict between urban uses and these agricultural uses appeared to be trespass. Another consideration in the buffer decision was the fact that topographic features (15 to 25 percent slopes) and other adopted plan elements (20-foot THPRD trail right-of-way) were present along this edge to provide some separation distance between the urban uses within North Bethany and the adjacent rural uses.

For a portion of North Bethany’s northern edge, the Board adopted a Natural Features Buffer. The Natural Features Buffer consists of the areas with existing >25 percent slopes (which are mapped as Density Restricted Lands and as lands with moderate to high susceptibility to shallow-seated and deep-seated landslides) and adjacent areas with slopes of between 20 – 25 percent. Together these areas form a buffer that provides separation distance between urban uses in North Bethany and adjacent agricultural uses. This buffer was based on information indicating that adjacent rural properties had a history of pasture, wheat/row crops and livestock uses. The property in livestock use is an equestrian facility that has technical riding trails in close proximity to the North Bethany boundary – within 10 feet in some areas. The equestrian facility’s property owner provided testimony that urban activity within view or earshot of the

riding trail could frighten horses and endanger riders. Utilization of the steeply sloped lands along North Bethany's northern edge resulted in a buffer that provides a substantial amount of separation distance (variable width ranging from 158 to 465 feet) between North Bethany urban development and the adjacent agricultural uses, including the equestrian facility.

Metro deemed the urban/agricultural compatibility measures adopted by A-Engrossed Ordinance No. 739 as meeting 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.*"

In 2013, K&R submitted a Work Program request for reconsideration of the development prohibitions on the steep slopes, and specifically within the Natural Features Buffer. The Board considered an Issue Paper about this request dated June 28, 2013. The issue paper recommended that the development prohibitions within the Natural Features Buffer be maintained as currently adopted, but that development restrictions on >25 percent slopes outside of the Natural Features Buffer be removed. At their work session, the Board directed staff to remove the development restrictions on >25 percent slopes that were located outside of the Natural Features Buffer only. Accordingly, this change was made in 2013 via Ordinance 771. The Board opted not to engross the ordinance to reduce the Natural Features Buffer. At that time, Chair Duyck indicated that modifications to the Natural Features Buffer may be considered in 2014.

On March 21, 2014, K&R submitted a letter thanking the Board for considering the North Bethany steep slopes/buffer issue as a Tier 1 task in the draft 2014 Annual Work Program. The letter included three attachments, one of which was a letter dated July 8, 2013, that described K&R's rationale for reconsideration of the Natural Features Buffer. The main points of that letter are summarized in the Analysis section below, followed by staff responses.

Analysis

A summary of K&R's arguments in their July 8, 2013 letter is presented below, followed by staff responses. In addition, this section identifies other issues for Board consideration in deciding whether to direct changes to the adopted Natural Features Buffer.

K&R's July 8, 2013 letter argued for removal of the development restrictions in the Natural Features Buffer for the following reasons:

- 1) Why should an area in North Bethany be made unbuildable, when areas with the same or similar circumstance can be built upon in other parts of the county?

Staff Response: The development restrictions within the Natural Features Buffer were imposed to comply with the urban/rural compatibility requirements of Condition 6, Metro Ordinance No. 02-987A. That condition is unique to North Bethany and does not apply in the rest of the county.

- 2) Why is there such a dramatic variation between the types of urban/rural buffers found around the perimeter of North Bethany? K&R contends that the circumstances along various sections of the North Bethany boundary are not any different, and that these areas should be treated more equitably.

Staff Response: As noted in the Background section, buffer treatments were based on an understanding of the adjacent agricultural activities, their urban impacts, and the buffer treatments that would address those impacts. Although there were some common agricultural uses (such as pasture) present along several portions of the perimeter, there were also some different uses in specific areas. For example, the portion of the northern edge that contains the Natural Features Buffer is the only North Bethany area adjacent to an equestrian facility. Another variable along the perimeter was the presence or absence of physical site conditions and/or adopted plan elements that could do double duty as buffers between urban development and agricultural activities, such as steeply sloped vegetated areas and future trail alignments.

- 3) If the Board chooses to allow development within the steep slope areas, it is critical that the Board also identifies an appropriate urban/rural buffer where the Natural Features Buffer is currently shown. To identify an appropriate urban/rural buffer, K&R suggests that the Board look to the other North Bethany urban/rural buffers as guidance, for several reasons:
- a. Existing topography paired with the Abbey Creek corridor and its associated floodplain (along the north edge of the plan area) already provide a substantial buffer between most agricultural activities and future urban development.

Staff Response: Along the north edge of the plan area, there are some locations where wetlands and/or Clean Water Services (CWS) estimated Vegetated Corridors associated with Abbey Creek are present. Development is restricted in these areas based on county and state requirements for protection of water quality, drainage and Goal 5 habitat.

However, there are several extensive portions of the Natural Features Buffer, particularly adjacent to the rural equestrian facility, that have >25 percent slopes but do not contain wetlands or CWS estimated Vegetated Corridors (see Attachment B, Comprehensive Framework Plan Policy 43 – North Bethany Subarea Concept Plan Design Elements, Map 4). If the Natural Features Buffer were reduced or removed in these areas, the result would be significant stretches along the north edge where no buffer would be present to maintain compatibility between future urban development and adjacent agricultural uses. Development is allowed on >25 percent slopes and on lands shown on adopted Landslide Study Area Maps within Washington County, if the development proposal complies with the

submittal requirements of Community Development Code (CDC) Section 410.

- b. The rural uses found along the north edge of the Natural Features Buffer are not substantially different from those found in other portions of the North Bethany perimeter that are subject to lesser buffer requirements

Staff Response: One of the uses adjacent to much of the Natural Features Buffer is an equestrian facility with a technical riding trail in close proximity to the north edge. When the buffers were being considered in 2011 via Ordinance No. 739, the equestrian facility's property owner provided testimony at the public hearings about the potential for urban activity within view or earshot of the adjacent riding to frighten horses and endanger riders.

- c. Metro has already approved buffer types for other portions of the North Bethany perimeter that are less imposing than the Natural Features Buffer along the north edge.

Staff Response: Staff reviewed the buffer recommendations with Metro staff at several points during their development. As noted previously, Metro deemed the adopted buffer measures (including the Natural Features Buffer) as meeting the intent of Metro Ordinance 02-987A, Condition 6. In a September 19, 2011 letter to the Board, Metro stated, "...we think the staff proposal has adequately tailored the compatibility program to the particular situation in the North Bethany area."

- 4) K&R believes that a fifty (50) foot buffer is a more than adequate setback to address potential conflicts at the present location of the Natural Features Buffer. In K&R's proposal, this 50-foot Natural Features Buffer would be considered a "no touch" area within a tract, and would have a minimum five (5) foot fence located along its southerly boundary. K&R argues that this treatment would be greater than that found in any other North Bethany urban/rural buffer location. (*Staff Note: On June 6, 2014, K&R submitted a request to the Board proposing a narrower Natural Features Buffer width of 30 feet.*)

Staff Response: Staff has concerns with a reduced buffer and whether or not such a reduced buffer would be adequate to meet the Metro condition and address the concerns of the adjacent neighbor. A setback of 50 feet or less would significantly reduce the distance between urban development and the adjacent equestrian uses and make it more difficult to maintain compatibility between the two, particularly since the equestrian facility is located downslope and below the elevation of the urban lands.

Other Issues to Consider with Modifying the Adopted Natural Features Buffer

Counsel notes that there is some question about the length of time that the Metro condition for urban/agricultural compatibility applies to North Bethany. Metro Ordinance 02-987A states that the conditions must be met before “urbanization”. One could argue that once urban designations are applied to the property, it has been urbanized. However, Counsel has indicated that the stronger argument would be that the actual development of a substantial portion of the property needs to be completed before it is considered “urbanized.” Here, the purpose of the condition would still remain, as there has been no development on the properties that contain portions of the Natural Features Buffer and thus the properties have not been urbanized.

Condition 6 of Metro Ordinance 02-987A required North Bethany community planning to achieve a specific outcome: “...*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). However, the condition was open-ended regarding the means to achieve this outcome: “...the...county...shall adopt provisions...*such as* setbacks, buffers and designated lanes for movement of slow-moving farm machinery...” (emphasis added).

There was no existing regional precedent for achieving the condition’s outcome that could be applied to North Bethany. The county therefore developed an approach to address the condition based on relevant information. The approach was based on information obtained by polling adjacent rural property owners along the North Bethany boundary, identifying agricultural practices and their potential impacts on urban lands to the extent practicable, reviewing the buffer requirements of other Oregon jurisdictions and reviewing national studies on the use of urban/agricultural buffers.

The end result – the specific buffers adopted by the Board - was likely not the only way that the Metro condition could have been addressed. The buffer was arrived at after numerous stakeholder workgroup meetings facilitated by a mediator, in addition to engrossment hearings before the Board. The buffers adopted by the Board were accepted by Metro as complying with Condition 6 of Metro Ordinance 02-987A and were not subject to legal challenge by any interested party.

A potential downside of re-opening this issue is the additional county resources that would be required to develop and analyze an alternative approach consistent with the condition’s requirement to “ensure compatibility”. A legislative change to the buffers would require staff to provide findings for compliance with Condition 6 of Metro Ordinance 02-987A, which could prove challenging to draft.

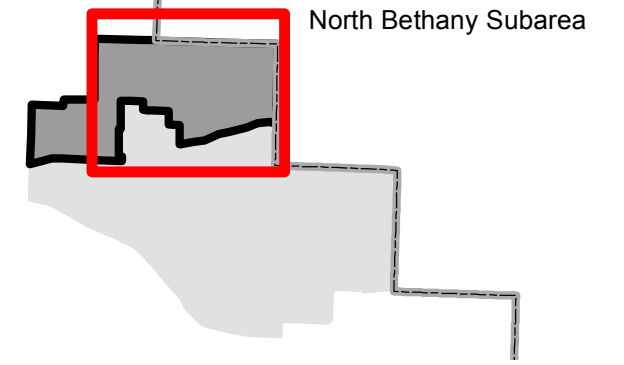
Should the Board direct a reduction in the adopted buffers, there could be some risk of an appeal to LUBA. As it stands, the county has an acknowledged plan relative to compliance with Metro’s buffer conditions.

Conclusion

Staff recommends maintaining 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 recommended in order to ensure North Bethany Subarea Plan's continued compliance with Metro Ordinance No. 02-987A, Condition 6 (requiring urban/agricultural compatibility).

As evidenced by previous discussions, staff believes that this will be a very time consuming issue for the Board and County. It is unclear if the resources that would go into this change are worth the benefit, given other Board of Commissioners priorities such as Area 93.

Should the Board wish to move forward with an ordinance to reduce the development restrictions and/or width of the Natural Features Buffer, staff recommends that the ordinance be filed late in 2014 with hearings to be held in early 2015, due to the substantial county resources that would be needed to address this task.



Urban/Rural Edge MAP

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



1 inch equals 650 feet

0 325 650 1,300

Feet

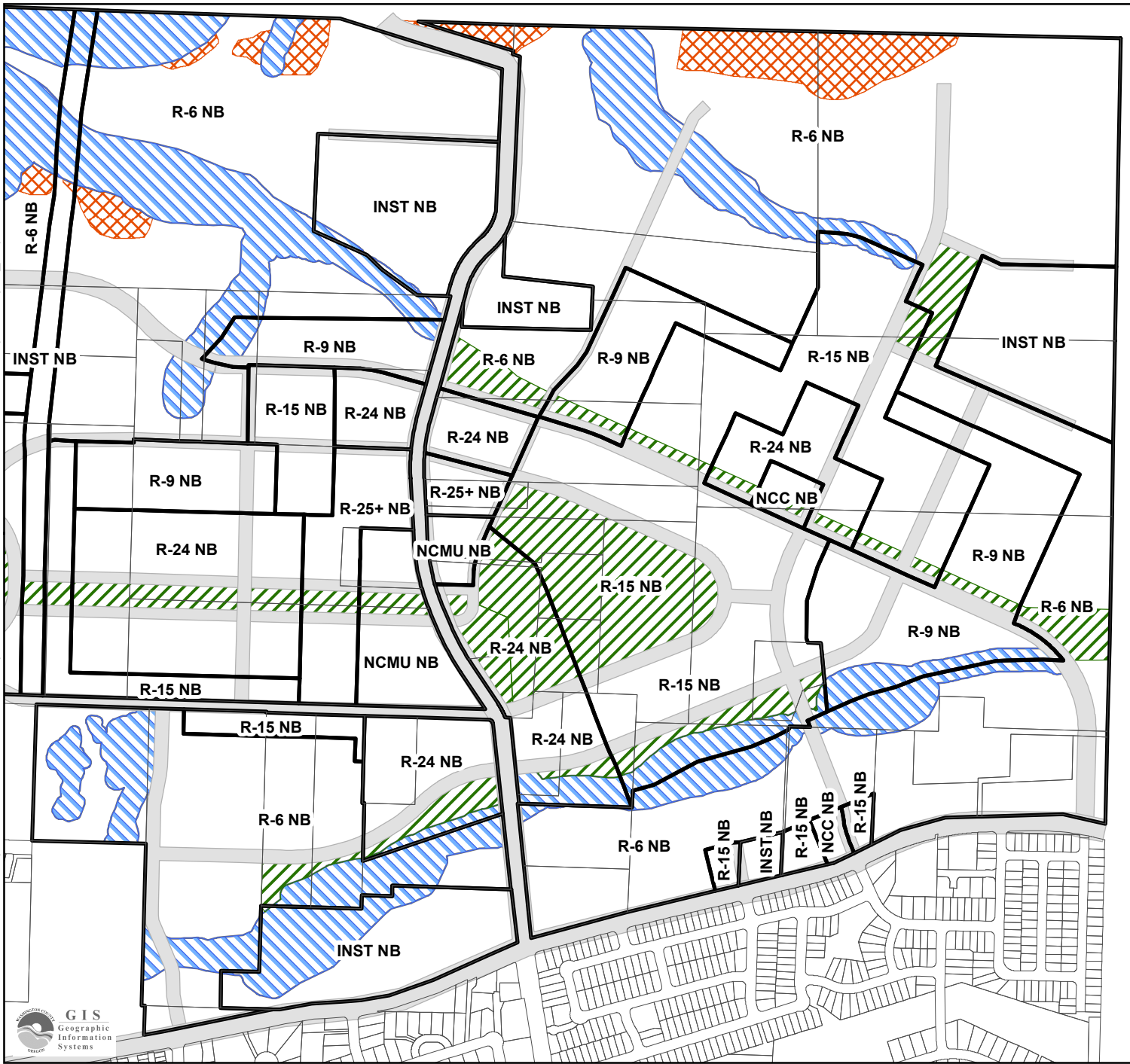
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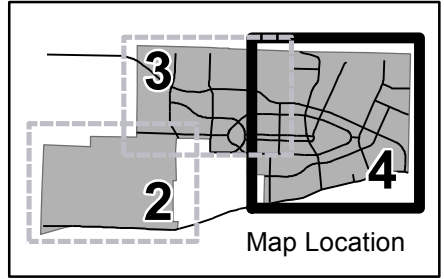
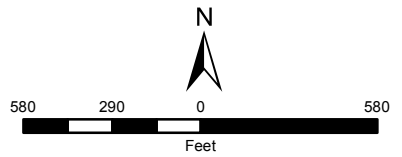
North Bethany Subarea Concept Plan Design Elements

MAP 4

Path: S:\PLNG\WPSHARE\Comprehensive Plan Elements\Comprehensive Framework Plan for the Urban Area\Maps\Policy43_Map4.mxd 11/5/2012



-  Fixed Parks
-  Wetland & Estimated CWS Vegetated Corridor*
-  +25% Slope
-  Primary Streets



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ATTACHMENT B