



GUIDANCE FOR APPLICANTS WITH MAPPED SIGNIFICANT NATURAL RESOURCES

February 8, 2023

Overview

This document provides information on the County's land development process to those considering development on sites with mapped natural resources while the County works on changes to its natural resource standards to comply with current legal orders. The County recognizes legal challenges to its Significant Natural Resource (SNR) standards have resulted in uncertainty for people considering development on sites with mapped natural resources (Metro Regionally Significant Fish and Wildlife Habitat (Title 13) and County Significant Natural Resources, or Goal 5 natural resources).

The County advises those considering development on sites with mapped natural resources to seek legal counsel to assess the risk in proceeding with an application based on your unique site and the status of the County's SNR standards.

Legal Summary

In 2020, the County adopted changes to Community Development Code (CDC) Section 422, SNR standards, through A-Engrossed Ordinance No. 869. That ordinance was appealed to the Land Use Board of Appeals (LUBA), which sent it back to the County to make further changesⁱ. While further revisions to the SNR standards are being developed, the 2020 changes are not in effect and the prior version of Section 422 applies to development projects that contain mapped SNRs.

This position derives from a July 14, 2022, land use decision from the County Hearings Officer for *The Estates at Leahy Park*ⁱⁱ, a proposed subdivision in the Cedar Mill area with mapped SNRs on the site. In that decision, the County Hearings Officer approved the development, agreeing with the applicant's findings that addressed applicable standards found under the prior version of CDC Section 422 implementing Goal 5. On appeal, LUBA affirmed the Hearings Officer's approach and findingsⁱⁱⁱ.

Separate from these LUBA decisions, a new petition for an Enforcement Order against the County has been filed with the Land Conservation and Development Commission (LCDC)^{iv}. In April 2023, LCDC will decide whether an Enforcement Order should be issued, requiring the County to make changes to its SNR standards. In addition, LCDC could decide to prevent the County from accepting development applications on sites that contain SNRs until the new SNR standards are adopted. The County is notifying all potential applicants of the pending Enforcement Order and the potential consequences of moving forward with a land use application at this time:

LEGAL NOTICE: THE OREGON LAND CONSERVATION AND DEVELOPMENT COMMISSION HAS FOUND GOOD CAUSE FOR AN ENFORCEMENT PROCEEDING AGAINST WASHINGTON COUNTY, OREGON. AN ENFORCEMENT ORDER MAY BE EVENTUALLY ADOPTED THAT COULD LIMIT, PROHIBIT OR REQUIRE APPLICATION OF SPECIFIED CRITERIA TO ANY ACTION AUTHORIZED BY THIS DECISION BUT NOT APPLIED FOR UNTIL AFTER ADOPTION OF THE ENFORCEMENT ORDER. FUTURE APPLICATIONS FOR BUILDING PERMITS OR ANY TIME EXTENSIONS MAY BE AFFECTED.

Department of Land Use & Transportation

Planning and Development Services • Current Planning

155 N First Ave, Suite 350, MS14, Hillsboro, OR 97124-3072

phone: 503-846-8761 • www.washingtoncountyor.gov/lut • lutdev@washingtoncountyor.us

Applicant Guidance

The following guidance is provided to applicants electing to move forward prior to resolution of the Enforcement Order proceedings and necessary revisions to CDC Section 422 to address the remand of A-Engrossed Ordinance No. 869. The County process for adopting new SNR standards is tentatively scheduled to be completed by Fall 2024.

The following information may change. Please check with Development Review/Current Planning staff prior to initiating a development proposal.

➤ **How do I find out if my property has natural resources that are affected by these legal challenges?**

Response:

- *For the urban unincorporated area, the County's maps showing the areas with Significant Natural Resources are found in the various community plans.*

Link: <https://www.washingtoncountyor.gov/lut/planning/community-plans>

- *For lands outside the Urban Growth Boundary (UGB), the Rural/Natural Resource Plan (RNRP) contains maps that show the properties that may have Significant Natural Resources.*

Link: <https://www.washingtoncountyor.gov/lut/planning/planning-documents>

Please contact Development Review/Current Planning to confirm the location and type of mapped SNR on your site, including those listed above and potential Metro mapped resources.

Email: lutdev@washingtoncountyor.gov

Phone: (503) 846-8761

➤ **What should I consider before I submit an application on a site with SNRs?**

Response:

The County recommends that you discuss options for moving forward and the materials necessary for your submittal with your legal counsel. These materials are in addition to the standard application materials required by the CDC. For your reference, on the next page is a generalized list of materials submitted in the application for the Estates at Leahy Park, a subdivision with mapped significant natural resources recently approved by the County Hearings Officer and affirmed by LUBA.

Once a site has been verified by staff to contain mapped SNRs, applicants are strongly encouraged to request a pre-application meeting to review the specific submittal materials for your project. Due to the complexities of development on sites with SNRs and community interest in this issue, it is possible County Planning Staff will refer SNR-related land use applications to a Hearings Officer for public hearing and development review.

NOTE: CDC Section 422, referenced in this document, is included as an attachment. All other CDC references can be found online at:

<https://www.washingtoncountyor.gov/lut/planning/community-development-code>

Materials submitted with the Estates at Leahy Park development application:

Following is a general list of materials that were submitted with the Estates at Leahy Park application. They may be desirable and informative for the reviewer, depending on the SNR category and proposed impacts to the SNR.

1. *Field Verification Site Plan. A site plan showing the field-verified boundaries of all SNRs on the development site including:*
 - (a) *Water Areas and Wetlands (CDC Section 422-2.1)*
 - (b) *Water Areas and Wetlands and Fish and Wildlife Habitat (CDC Section 422-2.2)*
 - (c) *Wildlife Habitat (CDC Section 422-2.3)*

All figures must comply with site plan criteria in CDC Section 203-4.2 E.

2. *Natural Resources Report. Materials used to identify, evaluate and consider the condition of onsite SNRs, including:*
 - (a) *Narrative prepared by a licensed environmental professional for a habitat assessment, including a description of the landscape setting, site topography, notable alterations or conditions, actual and anecdotal wildlife observations, and plant community boundaries and types.*
 - (b) *General topographic and soil map of the site.*
 - (c) *Assessment of the proposed development's impact to the identified habitats in the natural resource area, if any.*
 - (d) *Recommended measures to mitigate the proposed development's impact, if any, to the natural resource areas. Mitigation is defined in CDC Section 106-129.*
3. *A narrative with findings addressing provisions of CDC Section 422 and specific design elements referenced in the applicable community plans.*
4. *A narrative with findings addressing Goal 5 ESEE analysis that describes the Economic, Social, Environmental, and Energy consequences of the proposed land use.*

In addition, prior to submitting a development application, check with Development Review/Current Planning staff to determine other applicable CDC standards and submittal materials that may support your application.

County Limited Goal 5 Program Update and Enforcement Order proceedings

➤ **What is the status of County work on new SNR standards?**

Response: *The County has hired a consultant team with expertise in Goal 5 significant natural resource processes and code development to help with the changes to the SNR standards. There will be opportunities for the public to weigh in on the standards before they are adopted. Sign up to get updates and learn about future community engagement opportunities and how you can share your thoughts on the revisions to the SNR standards:*

<https://www.washingtoncountyor.gov/lut/planning/significant-natural-resources>

Updates will also be posted to the County's website. The entire process may take 18 months, with code changes expected to be adopted by the Board of County Commissioners by Fall of 2024.

➤ **What is the LCDC process on the Enforcement Order petition and when will they make their decision?**

Response: *In February 2023, a Hearings Officer appointed by LCDC will hold a contested case hearing. The Hearings Officer will make a recommendation to LCDC on whether an enforcement order to compel the County to make changes to its natural resource standards is needed and whether there should be a stay or moratorium on development affecting natural resources until the code amendments are adopted. The Hearings Officer's recommendation will be considered by the LCDC at their April 2023 meeting, to be held April 19-21. The County will update its website and this document when that decision is available.*

Attachment

- CDC Section 422, Significant Natural Resources (prior to Ordinance 869A)

Endnotes

- ⁱ *CPO 4M and Jill Warren v. Washington County*, (LUBA No. 2020-110), remand of A-Engrossed Ordinance No. 869
- ⁱⁱ *The Estates at Leahy Park*, Washington County Casefile No. L20100311-S/PLA/DHA/APPEAL
- ⁱⁱⁱ *Delmonico v. Washington County*, (LUBA No. 2022-72), affirmed Washington County Hearings Officer's decision in *Estates at Leahy Park*
- ^{iv} LCDC Notice of Contested Court Hearing in the Matter of an Enforcement Order against Washington County dated, Dec. 27, 2022