

# Citizen's request letter

Initial letter to Happy Valley notifying them of my intent to petition the Land Conservation Development Commission for an enforcement order

December 14, 2014

City of Happy Valley  
16000 SE Misty Drive  
Happy Valley, OR 97201-5106

Dear Sir or Madam:

As required by *ORS 197.319 Procedures prior to request of an enforcement order*, I am providing notification of my intent to petition the Land Conservation and Development Commission for an enforcement order pursuant to ORS 197.319 to 197.335.

Requestor:

James Phillips  
11800 SE Timber Valley Drive  
Clackamas, OR 97086  
503-698-4895

Affected Local Government:

City of Happy Valley  
16000 SE Misty Drive  
Happy Valley, OR 97086

This petition will be based on ORS 197.320 (6), which states:

*A local government has engaged in a pattern or practice of decision making that violates an acknowledged comprehensive plan or land use regulation. In making its determination under this subsection, the commission shall determine whether there is evidence in the record to support the decisions made. The commission shall not judge the issue solely upon adequacy of the findings in support of the decisions;*

**Statement of Facts**

The City of Happy Valley staff has routinely violated or circumvented the application of *Chapter 16.32 Steep Slopes Development Overlay Zone ("SSDO")* on a wide variety of properties in which the code clearly applies. Testing to determine whether or not the SSDO applies has been omitted from every major decision where SSDO potentially applies.

As a result, the Land Use Codes have been trampled by the city staff, planning commission, mayor and city council, and developers since February 2014. Ignoring the SSDO code has resulted in multiple violations of following items.

- Multiple violations of the entire chapter, Happy Valley Chapter 16.32 Steep Slopes Development Overlay due to the lack of enforcement of Section 16.32.020 Applicability.
- Multiple violations of Happy Valley Chapter 16.63.020(F), Density Calculations on properties with housing

- Multiple violations of Happy Valley Chapter 16.42.050 Tree cutting and preservation.
- Multiple violations of Happy Valley Comprehensive Plan Objectives number 1, 2 and 3 (i.e., every objective in the Happy Valley Comprehensive Plan).
- Multiple violations of Happy Valley Comprehensive Plan policies. This includes Policy numbers 9, 10, 13, 14, 15, 16, 20, 21, 22, 28, 30, 30A, 30B, 30B.1, 30B.2, 30B.3, 37, 49, 50.
- Multiple violations of State Planning Goals numbers 1, 2, 5, 7, 9 and 14.
- Multiple violations of Planning Objectives listed in the Urban Growth Management Agreement ("UGMA") between Clackamas County and Happy Valley

In the following cases, the SSDO was not applied. In fact, in none of the cases was the SSDO even considered. Evidence of the lack of consideration is clear in the staff report for each case, because there is absolutely no mention of the SSDO, despite comments in almost all cases in which the staff reports mention steep slopes that make development on the property a challenge.

In the following cases, either *Chapter 16.32 STEEP SLOPES DEVELOPMENT OVERLAY ZONE* applies, or a check should have been done to make sure that the SSDO does not apply. Due to these violations, the restrictions imposed by Chapter 16.32 were not applied to the lots. As a result, the allowed building density and building areas were also exceeded.

As shown in 16.32.020 Applicability, the SSDO is required to be applied under the following conditions (emphasis added to show the main items identifying the conditions in which the SSDO applies to a particular property):

**16.32.020 Applicability.**

The regulations of the steep slopes development overlay shall apply to any existing lot of record with **slopes greater than fifteen (15) percent (with a minimum contiguous extent greater than one thousand (1,000) square feet), potentially hazardous analysis areas**, and/or DOGAMI landslide hazard areas except as allowed by Section 16.32.040(D). This section shall apply only **to activities and uses that require a building, grading, tree removal and/or land use permit** and per ORS 92.040, shall not apply to parcels or lots created within ten (10) years of April 21, 2009 but shall apply to all existing lots of record and parcels or lots created more than ten (10) years prior to April 21, 2009.

The steep slopes development overlay will be overlaid on **any and all applicable parcels within the City limits at the time of development application** and, upon being overlaid, will take precedence in density calculations over the base zoning district illustrated on the City's Comprehensive Plan map/zoning map, and actual site specific conditions shall take precedence over any aerial topography mapping or other nonsurvey specific datum. (Ord. 427 § 1, 2012; Ord. 389 § 1(Exh. A), 2009)

The following cases are listed in chronological order, with the most recent violations of the SSDO shown first. By far, the most severe, serious and blatant violation of the SSDO is in *Case 4: 08/13/2014 - Permit approved for grading of several lots on Sunnyside.*

**Case 1: 10/27/2014: Approval of a design review for a Walgreens.**

On 10/27/2014, the Planning Commission approved a design review for a Walgreens. The SSDO was not mentioned in the staff report, or the Planning Commission, although it clearly existed prior to grading.

For more information on this item, see the most severe violation of all SSDO code violations - *Case 4: 08/13/2014 - Permit approved for grading of several lots on Sunnyside*, later in this document.

**Case 2: 08/20/2014: 156-unit development project at Happy Valley Village**

On 08/20/2014, the Planning Commission approved a design review for a 156-unit development project at Happy Valley Village. The SSDO was not mentioned in the staff report, or to the Planning Commission.

On 11/4/2014, I sent an email to the staff member that was responsible for the report (Steve Koper) asking why the SSDO was not applied. His response to my query was "*Per Section 16.32.020 of the LDC, the SSDO does not apply to lots created within 10 years of April 21, 2009. These lots were created in 2007*".

What Mr. Koper failed to consider is that in order to develop the property, a REPLAT of the parcel is required. As a result of the REPLAT, the lots being created are now new. Therefore, the SSDO must be applied to these lots.

**Case 3: 08/20/2014: Approval of a design review for a Dental Clinic.**

On 08/20/2014, the Planning Commission approved a design review for a Dental Clinic. The SSDO was not mentioned in the staff report, or the Planning Commission.

On 11/9/2014, I sent an email to the person that was responsible for the staff report (Steve Koper) asking why the SSDO was not applied. Michael Walter replied to this email and said I was taking too much time from the city, and that I needed to create a formal information request due to the number of requests I had made in the past (he also cc'd every other employee of Happy Valley that I have ever emailed, including those not responsible for any information requests I had sent in the past).

On 11/12/2014, I repeated my request (as a formal information request) asking the same question, and including an additional property in the request. The response that I eventually received was "*[Per Section 16.32.020 of the LDC, the SSDO does not apply to lots created within 10 years of April 21, 2009. This parcel was originally created in 2006]*".

Once again, there was no mention of even testing for the applicability of the SSDO for this property in the staff report or Design Review meeting. I was charged \$83 for the

information request, which included 20 minutes to look up the PLAT information for this lot. Had this research been done when required by the code (BEFORE the design review was approved) I would not have needed to pay anything to the city because the information would have already been in the staff report.

**Case 4: 08/13/2014 - Permit approved for grading of several lots on Sunnyside.**

This is by far the most severe, serious and blatant example of violation of the SSDO. The lot was destroyed, trees removed, and dangerous slopes introduced without even having any approved designs of buildings that would be made on the lots.

The following describes the timeline associated with this case.

On 06/03/2014, 4 lots were annexed into the City of Happy Valley through the expedited annexation process with Ordinance 449 – Annexation of 4 Lots at SE 122/Sunnyside.

On 08/13/2014, a grading permit was approved for several lots on north side of Sunnyside Road between 119<sup>th</sup> and 122<sup>nd</sup>. The approval of the grading plan was made despite the fact that there was no approved design for the lot. In fact, no design has yet to be even submitted to the easternmost portion of the lot. Looking at the lot, the plans submitted by the developer, and the current layout of the land, it is clear that the SSDO applied.

Not only did the SSDO apply before the grading permit was approved, but the final graded land actually *increased* the amount of land that the SSDO code attempts to avoid, including the following conditions.

- Increased the amount of slopes that are twenty-five (25) percent and greater
- Increased the amount of land that is within twenty-five (25) feet of the top or toe of slopes twenty-five (25) percent and greater
- May have created areas containing potentially rapidly moving landslide hazard areas, as defined by the Oregon Department of Geology and Mineral Industries (DOGAMI). There is no way to know unless geological studies are done. However, the pictures on the following page indicate that this area was increased. The added black plastic covering, added after a few rainy days, shows that the land is not stable.
- Made the land more susceptible to mudslides and landslides, two conditions that are specifically mentioned in the SSDO's purpose. Once again, the pictures indicate that mudslides and landslides are a new problem introduced with the grading.

The following is from the grading plan submitted by the developer, with the title "Erosion Control Cover Sheet EC00", showing the pre-existing slopes on the lot.

<b>NARRATIVE DESCRIPTIONS</b>	
<b>EXISTING SITE CONDITIONS</b>	
* EXISTING GRASS FIELDS	
<b>DEVELOPED CONDITIONS</b>	
* UTILITIES AND ROUGH SITE GRADING FOR FUTURE COMMERCIAL DEVELOPMENT	
<b>NATURE OF CONSTRUCTION ACTIVITY AND ESTIMATED TIME TABLE</b>	
* MASS GRADING (JULY 15TH -AUG 15TH)	
* UTILITY INSTALLATION (JULY 15TH -SEPT 15TH)	
* FINAL STABILIZATION (SEPT 15TH - OCT 15TH)	
<b>TOTAL PHASE 2 SITE AREA = 2.8 ACRES</b>	
<b>TOTAL PHASE 2 DISTURBED AREA = 2.7 ACRES</b>	
<b>TOTAL PROJECT ACTIVE DISTURBED AREA = 4.0 ACRES</b>	
<b>SITE SOIL CLASSIFICATION:</b>	
CASCADE SILT LOAM, 15 TO 30 PERCENT SLOPES, 26.7%	←
CASCADE SILT LOAM, 3 TO 15 PERCENT SLOPES, 38.1%	
POWELL SILT LOAM, 0 TO 8 PERCENT SLOPES, 36.1%	
ON-SITE SOILS HAVE SLIGHT TO MODERATE EROSION POTENTIAL	
<b>RECEIVING WATER BODIES:</b>	
MUNICIPAL STORM SYSTEM ULTIMATLY LEADING TO MT. SCOTT CREEK	

A more accurate description of the grading would be an excavation, similar to an open pit mine, as shown below.



The picture below is from the sidewalk on Sunnyside, south of the property. The photo is aimed to the north-east from a location on Sunnyside (approximately 120<sup>th</sup>).



The following picture shows a more recent picture of the same lot. Because no Type II environmental review was done, erosion was not considered in the development. As a result, unpredictable erosion affected a large section of the property. As can be seen below, unsightly black plastic had to be added to prevent this uncontrolled erosion. This would likely have been avoided if the city had applied the SSDO to this lot and done the required studies.



The following is from the grading plan submitted by the developer, with the title "Erosion Control Cover Sheet EC00". As can be seen in this chart, there was no plastic sheeting required by the city. The black plastic sheeting was added not due to planning, but due to the *lack of planning* on the site.

**BMPS MATRIX TABLE**

BMPs	YEAR:																			
	MONTHS*	2014	2014	2014																2014
		7	8	9	10															
PIPE SLOPE DRAINS																				
ENERGY DISSIPATORS																				
TEMPORARY DIVERSION DITCHES		X	X	X	X															
CHECK DAMS		X	X	X	X															
TEMPORARY SEEDING AND PLANTING				X	X															
PERMANENT SEEDING AND PLANTING				X	X															
MYCORRHIZAE/BIOFERTILIZERS																				
MULCHES (BARK MULCH)																				
CONSTRUCTION ENTRANCE		X	X	X	X															
COMPOST BLANKETS																				
COMPOST SOCKS																				
COMPOST BERM																				
SOIL TACKLERS																				
SODDING VEGETATIVE BUFFER STRIPS																				
PLASTIC SHEETING																				
SEDIMENT FENCING		X	X	X	X															
EROSION CONTROL BLANKETS AND MATS (CLOSE KNOT LITE OR COIR)		X	X	X	X															
EARTH DIKES (STABILIZED)																				
DRAINAGE SWALES (GRASS-LINED CHANNELS)																				
ROCK OUTLET PROTECTION																				
SEDIMENT TRAP																				
STRAW WATTLES (LOOSE COMPACTED RICE STRAW)		X	X	X	X															
STORM DRAIN INLET PROTECTION		X	X	X	X															
TEMPORARY OR PERMANENT SEDIMENTATION BASINS																				
UNPAVED ROADS GRAVELLED OR OTHER BMP ON THE ROAD																				
DEWATERING (TREATMENT LOCATION, SCHEMATIC, AND SAMPLING PLAN REQUIRED)																				
PAVING OPERATIONS CONTROLS																				
CONCRETE TRUCK WASHOUT																				

The lots now have a more severe and more dangerous slope than what existed before the grading. The vegetation that held the sloped land in place is gone, and the land is far more susceptible to rainfall and earthquake damage.

On 10/21/2014 I requested to view the grading plans, and requesting assistance while viewing the documents (in case I had any questions) via an email to Carol Earle. I received a response that I would need a formal information request, which I submitted on 10/27/2014. This request was to view the documents only, and that no help would be needed to view the documents.

On 10/31/2014, I viewed the grading plans. The plans showed that of the 2.8 acres of land to be graded, 25.7% of the lot was sloped 15-30% (this text was on the plans). That works out to approximately 0.72 acres, or 31,361 square feet of land that had a slope of at least 15%. This far exceeds the minimum requirement for 1,000 square feet required by the SSDO. The plans also showed that an estimate of over 40,000 cubic feet of dirt would be removed from the sites.

On 11/14/2014, during the public comment period of the Planning Commission (prior to the agenda for two variances for a Walgreens) I asked if the SSDO had been applied to the lots to the east of the Walgreens. There had been no submission for development plans on that portion of the lot.

Justin Popilek answered my questions as to why the SSDO was not applicable to that section of the property. I made the following transcript of the testimony given by Justin Popilek at this meeting from an audio recording of the meeting.

*So, the city did look at what Mr. Phillips has brought up the Steep Slopes Overlay Zone would apply to the subject site also properties to the east. And it was determined... we looked at the map, the overlay zone map that we use as a guide, and it was pretty clear that the area that does, is shown as having some steep slopes on the site, was manmade basically because of the existing, formerly existing, residences on the property, so basically creating from home construction back in the 50's or 60's, creating this pocket of concentration slope area, so, we looked at that and determined that that didn't meet the intent or applying that overlay zone, didn't really, wasn't really justified in that particular case.*

In other words, they didn't apply the SSDO because they felt it was not the intent of the SSDO to be applied to man-made slopes that were created 50-60 years ago to build houses (I believe that all existing houses on the lots were removed over 10 years ago during the Sunnyside widening project).

On 12/9/2014, a Planning Commission meeting was held to review the amendments to the land use code. As a result of my information requests, the staff proposed amending the SSDO to add several exceptions to the SSDO, 3 of which are clearly aimed at this lot in particular.

Rather than do corrective actions to comply with the SSDO, they decided to change the city code to retroactively prevent the application of the SSDO, and allow (and encourage) the developer to violate the State Planning goals and Happy Valley Comprehensive Plan Objectives and Happy Valley Comprehensive Plan Policies.

This single violation of section 16.32, Steep Slopes Development Overlay, has resulted in the violation of 6 Statewide Planning Goals:

Violation of Statewide Planning Goal #1 - Citizen Involvement

If the SSDO had been applied to this land as required, a Type II Environmental Review (along with other studies) would have been required before any grading permit could have been approved. Type II reviews require that notice be posted and sent to surrounding property owners before the grading permit could be approved. Because no such notice was given or posted on the site, the rights of the citizens to know about the conditions of the land prior to grading were violated.

Violation of Statewide Planning Goal #2 - Land Use Planning

The SSDO clearly describes the conditions of the land that require the SSDO code to be applied. The exceptions mentioned by the Planning Department are not allowed in the code. The text of the code is clear. It applies to "any and all applicable parcels within the City limits at the time of development application".

The exceptions to the code mentioned by the Planning Department are not allowed exceptions. There is no exception in the code for "man-made" slopes or slopes created by houses built 50-60 years ago that were removed over a decade ago. Any such exception would violate the intent of the SSDO code and other Statewide goals.

Violation of Statewide Planning Goal #5 - Natural Resources, Scenic and Historic Areas, and Open Spaces

The grading permit and tree removal permits allowed the removal of 3 city blocks of soil (about 60,000 tons of soil), and all vegetation from the lot, including trees, brush and grass. This was before any Design Review, Variance, or any other documents were officially submitted to the city of Happy Valley.

It is clear that the main purpose of this grading, excavation and tree removal was to avoid applying the SSDO to these lots and restricting the amount of building that could be put on the lot.

Statewide Planning Goal #7 - Areas Subject to Natural Hazards

The city approved the grading permit, allowing grading, tree removal and excavation without conducting the necessary studies to prove the land was safe to grade, and that the final grade would be safe.

Prior to the grading, there were areas of steep slopes on the lots as defined by the SSDO. The problems of erosion and other unsafe conditions of the lot prior to the grading were mitigated through the existing vegetation.

There were over 50 trees, plus bushes and other vegetation that kept erosion in check prior to the grading. The chance of erosion and landslides for the land prior to the tree removal, grading and excavation was relatively minor due to the site conditions.

Now, however, conditions of the site are far worse. The slopes are steeper, larger and unprotected by the roots of large trees and other vegetation. The likelihood of erosion, mudslides, landslides or large areas of movement in the earth has been increased dramatically. Erosion has already begun, as can be seen by black plastic put in place as a temporary desperate attempt to prevent further and more extreme erosion.

The land is much more unstable now than it was before the grading because the slopes on the edge of the property are so steep that they will likely require retaining walls, and will no longer support vegetation.

The net result is that the land is far more prone to damage from rain, storms, earthquakes, and other natural disasters due to the excavation.

#### Statewide Planning Goal #9 - Economic Development

The city is allowing this land to be developed at the expense of the surrounding neighborhood businesses. The proposed uses will take business away from existing businesses, rather than increasing it, and will provide low-wages instead of the intended original purpose of the land - offices, which would have provided decent living wages.

The city is not considering the existing businesses at all (or the employees of those businesses), likely because these businesses are not within the city limits, while allowing the rules to be circumvented to benefit businesses that will be within the Happy Valley city limits.

This gives a disadvantage to the existing business owners who have followed the law, while rewarding the developer's violation of the law with the ability to build on land that is not buildable according to the SSDO.

#### Statewide Planning Goal #14 - URBANIZATION

The transition of the land reduces the livability of the area. Land that is not buildable is being approved for building at the expense of the surrounding neighborhood. This land had at least 50 trees that provided a countryside feeling to the neighborhood.

Because the city has allowed the excavation of the lot, and removal of nearly every plant, the atmosphere surrounding the lots has been severely harmed. Instead of a scenic area covered with trees and other vegetation, gently sloping up into the hills, there is now a hole in the ground that looks like an open pit mine.

**Case 5: 07/21/2014 - Crestview Townhomes.**

On 08/20/2014, the Planning Commission approved a design review for a Crestview Townhomes, approval of a design review for a 70 unit development. The SSDO was not mentioned in the staff report, or the Planning Commission.

On 11/12/2014, I sent a formal information request, asking why the SSDO had not been applied to this lot (see Case 3 for more details on this information request). The response I got for this was "[Per Section 16.32.020 of the LDC, the SSDO does not apply to lots created within 10 years of April 21, 2009. This lot was created in 2007 ]".

As part of the staff report, a REPLAT of the property is required for development. In this case, there are no defined lots currently on the land, meaning that all lots will be new. There is no question that the SSDO applies.

There are currently 3 items being proposed to be added to the exception list of the SSDO that are directly focused at this lot (and the lots on Sunnyside between 119<sup>th</sup> and 122<sup>nd</sup>). Once again, rather than comply with the law, they attempt to legalize their actions by changing the code. Allowing the exceptions to be added will violate the intent of the Statewide Planning Goals, and the Happy Valley Comprehensive Plan.

**Case 6: 02/24/2014 - Approval of McDonalds Design review**

On 02/24/2014 the Design Review board approved the McDonalds development. There with no consideration of SSDO - no mention of the SSDO in the staff report. The SSDO clearly applied to this lot as well.

I have not looked at the plans for the fill, but the amount of fill required to provide a level lot to build the McDonalds indicates that a very large slope, in particular the area abutting Sunnyside, existed prior to development. At least 5-10 feet of fill was required near the Sunnyside property line to make the lot level enough to build the McDonalds.

It is very possible that no studies were done, as required to the SSDO for steep slopes, to prove that the end development is safe. It is my opinion that with the amount of fill added to the lot, along with the size of the retaining wall on the side street (about 15 feet), that this development was not done safely.

**Case 7: 02/04/2014 - approval of a minor design review for a triplex**

The following process, concerning the development of a triplex at 11851 SE Forest Creek Court, shows the extent of the lack of knowledge of the SSDO code and the applicability of the code. The code was not followed at any point in the process. Researching this triplex was my first introduction to the SSDO.

The following people ignored to the SSDO to such an extent that it was made completely ineffective.

- Happy Valley Planning Department staff member Steve Koper
- Happy Valley Economic Development head Michael Walter
- All members of Design Review staff

- All members of Planning Commission staff
- The Mayor and all members of city council

I first became aware of the SSDO in February 2014. At that time, I notified a new employee of the Happy Valley staff (Steve Koper) that the SSDO applied to a proposed triplex. From the moment I brought this to Mr. Koper's attention, he fought against the application of the SSDO, and did everything that he could to prevent the SSDO from being applied to the lot.

This behavior continued throughout the entire appeal process. I did not know the reasons for the resistance to apply the code. Whether it was embarrassment for missing the SSDO when he approved the minor design review, stubbornness to reverse his initial decision, or the actual belief that the SSDO did not apply, he did everything he could to prevent the application of the SSDO to the lot. However, with the proposed amendments, it appears that the entire Planning Staff is determined to get rid of the SSDO code because it is a nuisance to comply with the code.

In the case of the triplex, rather than require the developer to provide a survey of the land by a licensed surveyor as required by the law (one of many required pre-requisites ignored in the triplex application process prior to accepting the design review package from the developer), Mr. Koper decided to visit the site in person. Through visual observations only, without the aid of any measuring devices of any kind, Mr. Koper concluded that the SSDO did not apply, and approved the minor design review.

I appealed the minor design review to the planning commission. At the appeal meeting, the city attorney stated that the SSDO could not be considered by the design review board, and the appeal failed.

(NOTE: The fact that the attorney informed the council that they could not consider the SSDO in their decision making was omitted in the minutes of the meeting. When I requested a copy of the audio of the meeting, I was told that the audio of the meeting was not available. A portion of at least two other audio recordings of public meetings have been lost due to "technical difficulties" over the last year - coincidentally, both were sections of my testimony, or questionably legal testimony from the staff, planning commission, or the city attorney.)

I appealed the decision to the to the Happy Valley City Council. I proved beyond any doubt that the developer did not provide a complete design review package to the city, and did not include a survey created by a licensed surveyor. This survey would have determined conclusively whether or not the SSDO applied to this lot. The city council decided to ignore these items.

Instead, the city council accepted a map that was hand-drawn by the developer, (which was not verified by an independent licensed surveyor) that showed the slopes of the land. The map showed steep slopes at the NW portion of the property, which could have

proven applicability of the SSDO. However, the developer (and city staff) argued that the slopes were man-made, so the SSDO did not apply.

At any point in the process, if the staff, planning commission or city council had required a survey of the lot by a licensed surveyor (a document that the code *required* before the minor design review was legally allowed to be accepted by the staff, but was ignored by the staff) there would have been no doubt as to whether or not the SSDO applied to this lot.

### **Violations of Statewide Goals,**

In every one of the cases above, the SSDO was violated. Even in the cases in which the SSDO may not be required, the code was violated because the land was not tested to see if the SSDO applied. In all the cases above, the amount of slope was well beyond the minimum requirements for the SSDO. Ignoring the SSDO for the reasons given is not allowed by the SSDO code.

As a result of not even testing for the applicability of the SSDO, the SSDO was violated.

By ignoring the SSDO code, the following Statewide Planning Goals were also violated:

- Statewide Planning Goal #1 - Citizen Involvement. Applying the SSDO requires a Type II Environmental Review, which in turn requires public notices be sent and public input be accepted before any development is made on the property. In addition, I was charged for information requests in which I asked why the SSDO did not apply. If the staff had done their job and tested for the SSDO as required by law, the information would have been available. The decision of the planning department to charge me 30 minutes of labor would not have happened if they had included the SSDO test in the staff report.
- Statewide Planning Goal #2 - Land Use Planning - Violated Land Use Code. Chapter 16.32 requires all new development to have the SSDO applied - PRIOR to grading. Incorrect ordering of the application of rules circumvents the intent of the code.
- Statewide Planning Goal #5 - Natural Resources, Scenic and Historic Areas, and Open Spaces - Destroyed a large portion of land used by wildlife, and did not do required studies as required by SSDO.
- Statewide Planning Goal #7 - Areas Subject to Natural Hazards - Allowed grading and excavation with no studies, potentially creating unsafe conditions.
- Statewide Planning Goal #9 - Economic Development - The developer's wishes to develop his land is being done at the expense of all others in the area, generating low-wage jobs that could have been replaced by high-wage office jobs.
- Statewide Planning Goal #14 - URBANIZATION - The transition of the land reduces the livability of the area. Again, low wage jobs are being generated at the expense of the surrounding neighborhood.

### **Corrective action requested**

The underlying problem is that the Planning Staff and Engineering Staff are not enforcing the code related to the SSDO, and in some cases are avoiding the application of the

SSDO to support their personal beliefs or prior actions. In the case of the extreme grading, the Planning Department approved grading and tree removal permits before any building designs had even been submitted for review.

For all of the properties listed in this document, the following items should be done, whether or not development has completed for the properties. This is particularly important for the two properties that are now or will shortly be occupied - the triplex and the McDonalds lots.

1. A Type II Environmental study ordered to prove that the development can continue, or that the finished development is safe. This must be done for all properties listed, whether or not the development has been completed.
2. Any other required studies for the SSDO ordered for all lots in which the SSDO should have been applied and performed to ensure that the intent of the SSDO is carried out, and that the site is safe to develop or continue to be used. In particular, the area of land to the west of the triplex and the lot for the McDonalds.
3. For the land in which the SSDO was not applied and Designs have been approved but development of the lot has not started, that the Design Review be invalidated because the SSDO was not applied.
4. That the SSDO be applied to the current developments north of Sunnyside Road, between 119<sup>th</sup> and 122<sup>nd</sup>, and be applied to all current and future developments.
5. That the Planning Department void the current grading permit for the lots east of the proposed Walgreens on Sunnyside between 119<sup>th</sup> and 122<sup>nd</sup>, and that the developer be required to backfill the lot to its condition prior to grading and tree removal. This includes filling in and packing the soil, planting one tree for each tree removed, and landscape the lot to reflect its prior condition.
6. Training to inform all necessary people responsible for decision making of the SSDO law and the applicability of the law. This includes the following:
  - o All current and future Happy Valley Planning Department staff members
  - o All current and future Happy Valley engineers, in particular those that can approve grading plans.
  - o All current and future Happy Valley code enforcement members.
  - o Head of planning department, Michael Water
  - o All current and future members of Design Review Board
  - o All current and future members of Planning Commission
7. Grant authority to the Happy Valley Code Enforcement to prevent or stop grading if notified that the SSDO may apply to the lot, with the ability to allow continuation of grading if it can be proved via the above processes that grading can continue legally without violating the SSDO.
8. Stop implementation of the new exceptions to the SSDO. These exceptions violate the intent of the Happy Valley Comprehensive Plan and several Statewide goals.

In addition, the following procedural changes should be done to prevent the destruction of the conditions of any future lots when the application of the SSDO may be required.

Currently there are no checkpoints prior to grading or design approval that will prevent skipping the applicability of the SSDO.

1. Prior to approval of any grading on new development, a check for applicability of the SSDO must be included. As a part of this check, the developer and the Happy Valley staff must sign and date a sworn statement whether the SSDO applies, and give a detailed explanation for not applying the SSDO if the SSDO is not applicable.
2. In no case shall staff be allowed to dismiss the SSDO without concrete physical measurements of the lot or detailed documentation proving the stated exceptions in the code apply. Statements such as "I looked at the lot and can tell that it isn't 1,000 contiguous feet of sloped land" without physical measurements are not acceptable. The exact exception in the code must be referenced.
3. All slope measurements must be made by a licensed surveyor. In no case shall the developer be allowed to submit maps that were measured or drawn by the developer. In all cases, an independent licensed third party must be used.
4. Require that the Design Review for new development is complete, final approval of the Design Review finished, and all deadlines for appeals are passed before any grading permits can be approved. In no case shall grading be done prior to this approval, because without an approved design, unnecessary grading could be done. It is impossible to know what grading is required unless you know exactly what the design is to be built on the site.
5. In no case shall the Design Review Board be allowed to ignore the applicability of the SSDO to a design if there is any evidence that the SSDO should be applied to the lot. In fact, the Design Review board should immediately reject any design that does not mention whether or not the SSDO applies. The SSDO has a large direct impact to many of the items associated with the Design Review. Because SSDO has a direct impact on the size and location of the buildings, parking lots, retaining walls, landscaping and other features of the lot and design, the Design Review board cannot make any informed decisions without knowing if the SSDO applies.
6. That a new form and new procedures be put into place to verify that necessary code has been applied to any and all lots prior to grading, tree-removal, building permits, and any other items affecting the appearance or development of land.

Create a new checklist page that includes all possible exceptions to the SSDO applicability on the lot, along with a question asking if the SSDO applies to the lot. Require the completed checklist be submitted, along with a signature from the applicant stating that the SSDO does or does not apply to the lot.

Each checklist must have a place to sign for the developer, along with a space to be signed by the Happy Valley staff showing that the statements were verified.

This new checklist (see attached Exhibit E) must be included with the following:

- Tree Removal Applications
- Tree Removal Permits

- Grading Application
  - Grading Permits
  - Design Review Applications
  - Minor Design Review Applications
7. That the SSDO be tested for and applied to all future developments, before any grading permits are considered or approved. In no case shall any exceptions be made by the planning staff that are not allowed by the code.
  8. That the SSDO be incorporated into the Design Review process, and that the SSDO be applied by the Design Review.

### **Historical Pattern of Non-compliance**

As shown in the above cases, there is no doubt of the pattern of non-compliance of the code. In every case (7 cases over the last 10 months), the city did not even consider the SSDO prior to approving grading plans or design reviews. Without my information requests, the city would not have even considered that the SSDO even existed.

Lack of enforcement of the SSDO appears to be caused by both the lack of training and the specific desire not to enforce the SSDO due to Happy Valley's pro-development stance. Not only does that prevent the application of the code, it also cost me additional time and money waiting for the city staff to research why the SSDO should not have applied after the fact.

The city attorney, probably concerned about possible backlash from developers, has taken the stance that the SSDO is not applicable to Design Reviews. Evidence of the SSDO was given during an appeal to the Design Review Board on 04/28/2014. In that case, the Design Review Board was told specifically by the City Attorney that they *could not legally* even consider SSDO in their decision.

In most cases, the Design Review is the last chance the public can testify for or against a development. Not allowing the Design Review Board to even consider the SSDO eliminates one of the checks and balances for application of the SSDO. Removing that check makes no sense, especially since other sections of the land use code (such as density calculations and tree cutting permits) depending on the application of the SSDO.

### **Summary**

The current enforcement of the Land Use Code in Happy Valley is completely inadequate and unacceptable. The current practices allow grading and tree cutting to be done without required studies and maps.

The lack of enforcement of the SSDO, in conjunction with the attempt to circumvent the SSDO by changing the exception lists, shows that the lack of enforcement is intentional, and that the city is determined to change the land use codes rather than abide by them.

On the last Planning Commission meeting of 12/9/2014, a workshop was held prior to the discussion of the land use amendments. Although this was scheduled to be after the discussion of the land use amendments, the order of the agendas was changed so that the

workshop was held first. During that workshop, representatives for AT&T discussed land use codes related to equipment to provide wireless communications. As part of the discussions, someone on the Planning Commission made a comment that there were many steep slopes in the Happy Valley area, showing they are aware of the topography.

Although it isn't illegal for Happy Valley to have a pro-development attitude towards development, it is illegal to ignore or break land use laws, at the expense of complying with State Goals, the approved Happy Valley Comprehensive Plan and the surrounding neighborhood. The current pattern of behavior cannot be allowed to continue.

Respectfully,

James Phillips  
11800 SE Timber Valley Drive  
Clackamas OR, 97086  
(503) 698-4895

cc:

Beery Elsner & Hammond  
1750 SW Harbor Way, Suite 380  
Portland, OR 97201-5106

Attachments:

- Exhibit A: Email chain showing reasons staff did not apply SSDO.
  - Subject: *RE: File No. DR-08-14 HAPPY VALLEY VILLAGE - 156 SINGLE-FAMILY ATTACHED DWELLING UNITS / VAR-04-14 - CLASS "C" VARIANCE*
  - Date: Friday, November 7, 2014 @ 12:25 PM
  - Case 2: 156-unit development project at Happy Valley Village
- Exhibit B: Email chain showing reasons staff did not apply SSDO
  - Subject: *FW: Information Requests*
  - Date: Monday November 24, 2014 @ 1:42 PM
  - Case 3: 08/20/2014: Approval of a design review for a Dental Clinic.
  - Case 5: 07/21/2014 - Crestview Townhomes.
- Exhibit C: Proposed Happy Valley Land Use regulations - exception list to SSDO applicability (page 14 of staff report for Planning Commission of 12-09/2014)
- Exhibit D: Photos of lots affected by *Case 4 - grading w/o consideration of SSDO.*
- Exhibit E: Sample checklist that can be used to determine applicability of the SSDO. *NOTE: This document is incomplete and does not include all questions that must be asked related to the applicability of the steep slopes. Additional questions would need to be added to make the form complete.*

# Citizen's request letter Attachment

Attachment to Initial letter to Happy Valley notifying them of my intent to petition the Land Conservation Development Commission for an enforcement order.

## Exhibit A

- Email chain showing reasons staff did not apply SSDO.
  - Subject: *RE: File No. DR-08-14 HAPPY VALLEY VILLAGE - 156 SINGLE-FAMILY ATTACHED DWELLING UNITS / VAR-04-14 - CLASS "C" VARIANCE*
  - Date: Friday, November 7, 2014 @ 12:25 PM
  - Case 2: 156-unit development project at Happy Valley Village

## Jim Phillips

---

**From:** Steve Koper [stevek@happyvalleyor.gov]  
**Sent:** Friday, November 07, 2014 12:25 PM  
**To:** Jim Phillips  
**Cc:** Michael Walter, AICP; Jason Tuck  
**Subject:** RE: File No. DR-08-14 HAPPY VALLEY VILLAGE - 156 SINGLE-FAMILY ATTACHED DWELLING UNITS / VAR-04-14 - CLASS "C" VARIANCE  
**Attachments:** Notice of Decision - Final C of A's - Signed.pdf

Mr. Phillips,

Please see below.

Regards,

Steve Koper, AICP  
Associate Planner  
City of Happy Valley  
16000 SE Misty Dr.  
Happy Valley, OR 97086  
Phone: 503-783-3845



*Preserving and enhancing the safety, livability and character of our community.*

**From:** Jim Phillips [mailto:jim.phillips@pdxconsultant.com]  
**Sent:** Friday, November 07, 2014 11:05 AM  
**To:** Steve Koper  
**Cc:** Michael Walter, AICP; Jason Tuck  
**Subject:** RE: File No. DR-08-14 HAPPY VALLEY VILLAGE - 156 SINGLE-FAMILY ATTACHED DWELLING UNITS / VAR-04-14 - CLASS "C" VARIANCE

Mr. Koper -

Can you answer any of the questions below?

Thanks.

Jim

Jim Phillips  
[jim.phillips@pdxconsultant.com](mailto:jim.phillips@pdxconsultant.com)  
Work: 503-210-5590  
Home: 503-698-4895

**From:** Jim Phillips [mailto:jim.phillips@pdxconsultant.com]  
**Sent:** Tuesday, November 04, 2014 9:14 PM

**To:** 'Steve Koper'

**Cc:** 'Michael Walter, AICP'; 'Jason Tuck'

**Subject:** File No. DR-08-14 HAPPY VALLEY VILLAGE – 156 SINGLE-FAMILY ATTACHED DWELLING UNITS / VAR-04-14 – CLASS "C" VARIANCE

Mr. Koper,

I was unable to attend the meeting on October 20, 2014 for File No. DR-08-14 HAPPY VALLEY VILLAGE – 156 SINGLE-FAMILY ATTACHED DWELLING UNITS / VAR-04-14 – CLASS "C" VARIANCE.

Because I was not able to attend, I was not able to ask these questions in front of the design review board.

I have several questions on this development.

1. Why was the variance not a separate item to be heard in front of the Planning Commission? [Variance was withdrawn].
2. Why was the Steep Slopes Development Overlay ("SSDO") not applied to this development? [Per Section 16.32.020 of the LDC, the SSDO does not apply to lots created within 10 years of April 21, 2009. These lots were created in 2007].
3. Did this Design Review pass? [See below].
4. If the Design Review passed, was there additional conditions of approval added to what was posted online for the Design Review Packet? [See attached notice of decision and conditions].

If you cannot answer these, then please let me know or forward these questions to the proper person.

Thanks for your help.

Regards,

Jim

Jim Phillips

[jim.phillips@pdxconsultant.com](mailto:jim.phillips@pdxconsultant.com)

Work: 503-210-5590

Home: 503-698-4895

This e-mail is a public record of the City of Happy Valley and is subject to the State of Oregon Retention Schedule and may be subject to public disclosure under the Oregon Public Records Law. This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.

# Citizen's request letter Attachment

Attachment to Initial letter to Happy Valley notifying them of my intent to petition the Land Conservation Development Commission for an enforcement order.

## Exhibit B

- Email chain showing reasons staff did not apply SSDO
  - Subject: *FW: Information Requests*
  - Date: Monday November 24, 2014 @ 1:42 PM
  - Case 3: 08/20/2014: Approval of a design review for a Dental Clinic.
  - Case 5: 07/21/2014 - Crestview Townhomes.

## Jim Phillips

---

**From:** Cheryl Whitehead [cherylw@happyvalleyor.gov]  
**Sent:** Monday, November 24, 2014 1:42 PM  
**To:** Jim Phillips  
**Subject:** FW: Information Requests  
**Attachments:** Notice of Decision - Final C of A's - Signed.pdf; Notice of Decision - Signed.pdf

Mr. Phillips,

Please see below and attached for the information request. I will email you an invoice once it is complete.

Thanks Cheryl

**From:** Steve Koper  
**Sent:** Friday, November 21, 2014 3:27 PM  
**To:** Cheryl Whitehead  
**Cc:** Michael Walter, AICP  
**Subject:** RE: Information Requests

This ended up taking one (1) hour total of time.

Request #2:

For Design Review on 10/20/2014 - FILE NO. DR-05-14 (DENTAL CLINIC/MIXED-USE BUILDING):

- Why was the Steep Slopes Development Overlay ("SSDO") not applied to this development? [Per Section 16.32.020 of the LDC, the SSDO does not apply to lots created within 10 years of April 21, 2009. This parcel was originally created in 2006].
- Did this design review pass? [See below].
- If the Design Review passed, was there additional conditions of approval added to what was posted online for the Design Review Packet? [See attached Notice of Decision].

Request #3:

For Design Review on 07/21/2014 - FILE NO. DR-02-14 (CRESTVIEW TOWNHOMES):

- Why was the Steep Slopes Development Overlay ("SSDO") not applied to this development? [Per Section 16.32.020 of the LDC, the SSDO does not apply to lots created within 10 years of April 21, 2009. This lot was created in 2007 ].
- Did this design review pass? [See below].
- If the Design Review passed, was there additional conditions of approval added to what was posted online for the Design Review Packet? [See attached Notice of Decision].

**From:** Cheryl Whitehead  
**Sent:** Friday, November 21, 2014 10:15 AM  
**To:** Steve Koper  
**Subject:** FW: Information Requests

**From:** Jim Phillips [<mailto:jim.phillips@pdxconsultant.com>]  
**Sent:** Wednesday, November 12, 2014 11:48 AM  
**To:** Michael Walter, AICP  
**Cc:** Jason Tuck; Steve Koper; Justin Popilek; Cheryl Whitehead; Marylee Walden; Sally Curran; Carol Earle; Steve

Campbell; Ryan Kersey; 'Chris Crean'

**Subject:** RE: Information Requests

Mr. Walter -

As requested, I have created a formal information request (attached). I have summarized all of the information that I would like in this single information request. At this point, there are no other outstanding information requests that have not been fulfilled.

Because you did not state who to send the information requests to, I am including all those that you included in your reply. If information requests should be sent to a specific person or email address, please let me know.

Could someone please send me an acknowledgment that this information request was received and will be acted upon?

Thank you very much for your time.

Regards,

Jim

Jim Phillips

[jim.phillips@pdxconsultant.com](mailto:jim.phillips@pdxconsultant.com)

Work: 503-210-5590

Home: 503-698-4895

**From:** Michael Walter, AICP [<mailto:michaelw@happyvalleyor.gov>]

**Sent:** Monday, November 10, 2014 2:02 PM

**To:** Jim Phillips

**Cc:** Jason Tuck; Steve Koper; Justin Popilek; Cheryl Whitehead; Marylee Walden; Sally Curran; Carol Earle; Steve Campbell; Ryan Kersey; Chris Crean

**Subject:** RE: Information Requests

Mr. Phillips,

While the City of Happy Valley appreciates your concerns in regard to a very broad range of development related issues – the total volume of your various requests have become problematic in our capacity to serve the residents of Happy Valley and applicants that have paid application fees and deposits.

Please refrain from attempting to contact our staff with a variety of miscellaneous information requests/questions and consolidate your information requests/questions into a single Public Information Request Form found at this link: <http://www.happyvalleyor.gov/DocumentCenter/Home/View/305>. If the space provided is inadequate to explain your total requests, feel free to provide an attachment.

The cost for the staff time necessary to provide responses/information/audio tapes, etc. is determined by the hourly rate of the staff person involved (see attachment). Based on your submitted request, the staff persons involved will provide a time estimate for the work requested. This amount of time, multiplied by the number of minutes or hours involved equals the deposit one is required to submit in order to procure the desired information. As you have noted in the past, the ORS requires that submitted public information requests shall be responded to in a "reasonable" amount of time. However, based on your past e-mails, your estimation of what is "reasonable" is quite a bit different than staff's availability and oftentimes involves multiple staff persons. Please note that depending on the amount/depth of the requested information, and number of staff persons involved - a response will likely take up to 2-3 weeks.

Regards,

Michael D. Walter, AICP  
Economic & Community Development Director  
[City of Happy Valley](#)  
16000 SE Misty Dr.  
Happy Valley, OR 97086  
Phone: 503-783-3839



*Preserving and enhancing the safety, livability and character of our community.*

**From:** Jim Phillips [<mailto:jim.phillips@pdxconsultant.com>]  
**Sent:** Sunday, November 09, 2014 4:58 PM  
**To:** Steve Koper  
**Cc:** Michael Walter, AICP; Jason Tuck  
**Subject:** FILE NO. DR-05-14 (DENTAL CLINIC/MIXED-USE BUILDING)

Mr. Koper,

I was unable to attend the meeting on October 20, 2014 for FILE NO. DR-05-14 (DENTAL CLINIC/MIXED-USE BUILDING)

Because I was not able to attend, I was not able to ask these questions in front of the design review board.

I have several questions on this development.

1. Why was the Steep Slopes Development Overlay ("SSDO") not applied to this development?
2. Did this Design Review pass?
3. If the Design Review passed, was there additional conditions of approval added to what was posted online for the Design Review Packet?

Thank you for your time.

Jim

Jim Phillips  
[jim.phillips@pdxconsultant.com](mailto:jim.phillips@pdxconsultant.com)  
Work: 503-210-5590  
Home: 503-698-4895

This e-mail is a public record of the City of Happy Valley and is subject to the State of Oregon Retention Schedule and may be subject to public disclosure under the Oregon Public Records Law. This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.

This e-mail is a public record of the City of Happy Valley and is subject to the State of Oregon Retention Schedule and may be subject to public disclosure under the Oregon Public Records Law. This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged

information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.

# Citizen's request letter Attachment

Attachment to Initial letter to Happy Valley notifying them of my intent to petition the Land Conservation Development Commission for an enforcement order.

## Exhibit C

- Proposed Happy Valley Land Use regulations - exception list to SSDO applicability (page 14 of staff report for Planning Commission of 12-09/2014)

within ten (10) years of April 21, 2009 but shall apply to all existing lots of record and parcels or lots created more than ten (10) years prior to April 21, 2009.

The steep slopes development overlay will be overlaid on any and all applicable parcels within the City limits at the time of development application and, upon being overlaid, will take precedence in density calculations over the base zoning district illustrated on the City's Comprehensive Plan map/zoning map, and actual site specific conditions shall take precedence over any aerial topography mapping or other non-survey specific datum. (Ord. 427 § 1, 2012; Ord. 389 § 1(Exh. A), 2009)

[...]

#### **16.32.100 Density and density transfers.**

Within conservation slope areas and transition slope areas, a maximum density of two dwelling units per acre applies. Except as exempted pursuant to Section 16.32.045, development activities on conservation slope areas are prohibited. Density calculations shall be made pursuant to Section 16.63.020(F) **if not specifically exempted per Section 16.32.045**. Density may be transferred from conservation slope areas and unbuildable transition slope areas to buildable portions of the parcel in accordance with the requirements of Section 16.63.020(F).

[...]

#### **16.32.045 Exceptions.**

A. An activity that avoids conservation slope areas and transition slope areas.

B. The following activities, regardless of location:

1. An excavation that is less than three feet in depth, or which involves the removal of a total of less than fifty (50) cubic yards of volume;
2. A fill that does not exceed three feet in depth or a total of fifty (50) cubic yards of fill material;
3. New construction or expansion of a structure resulting in a net increase in ground floor area of less than one thousand (1,000) square feet that does not involve grading;
4. Emergency actions required to prevent an imminent threat to public health or safety, or prevent imminent danger to public or private property, as determined by the public works director;
5. Any land use or activity that does not require a building permit or grading permit, or land use approval;
6. **Development of portions of Employment, Industrial or Commercial designated lands for employment, industrial or commercial uses that are not encumbered by the City's Natural Resource Overlay Zone (NROZ) and that abut an existing or planned Collector or Arterial roadway as illustrated within the City's Transportation System Plan (TSP);**
7. **Un-natural or "man-made" slopes caused by historical soil fill/removal and grading activities;**
8. **Partitions of land over two acres in size that demonstrate:**
  - a. **Minimum density calculations based on Section 16.63.020(F) of this title will result in three of fewer dwelling units; and,**
  - b. **The site design criteria of Section 16.32.110(B-G) are incorporated into the partition plat and construction plans to the greatest extent practicable;**
9. **Partition or subdivision of lands within the Aldridge Road Comprehensive Plan area that will lead to the extension of existing local residential streets constructed prior to January 1, 2015 to be completed as single cul-de-sac bulbs that demonstrate:**
  - a. **Conformance with the City's TSP and Engineering Design Standards Manual;**
  - b. **Maximum local residential street section length leading up to the cul-de-sac bulb not exceeding 800 feet; and,**
  - c. **The site design criteria of Section 16.32.110(B-G) are incorporated into the partition or subdivision plat and construction plans to the greatest extent practicable**

C. An activity that is determined by the planning official to be reasonably similar to the exceptions listed in this section.

[...]

#### **16.34.070 Development standards.**

For nonexempt uses and activities proposed within verified natural resources, there are three types of development standards outlined in this chapter: nondiscretionary, special use, and discretionary. As summarized below, the special use

# Citizen's request letter Attachment

Attachment to Initial letter to Happy Valley notifying them of my intent to petition the Land Conservation Development Commission for an enforcement order.

## Exhibit D

- Photos of lots affected by *Case 4 - grading w/o consideration of SSDO.*

**Additional BEFORE/AFTER pictures.**

The "before" pictures were obtained via Google Street view, with the links to the picture shown and have a slight distortion due to them using a wide-angle lens on a moving car. The "after" pictures were taken from the sidewalk next to the property, so will not match the before view exactly. However, the light posts in the picture can provide a landmark to help orient the views.

**BEFORE #1: Intersection of 122<sup>nd</sup> and Sunnyside, pointing NW.**

[https://www.google.com/maps/@45.429131,-122.5383264,3a,75y,330.7h,83.34t/data=!3m4!1e1!3m2!1sG28wyy-ETwMy\\_NNPmqFa4g!2e0!6m1!1e1](https://www.google.com/maps/@45.429131,-122.5383264,3a,75y,330.7h,83.34t/data=!3m4!1e1!3m2!1sG28wyy-ETwMy_NNPmqFa4g!2e0!6m1!1e1)



After #1 - this was taken what would have been on the sidewalk on the other side of the truck in the picture above.



Before #2: Intersection of Sunnyside and 122<sup>nd</sup>, pointing north

<https://www.google.com/maps/@45.4288692,-122.5380154,3a,75y,337.17h,67.93t/data=!3m4!1e1!3m2!1sGpfAC8-Ft0Y085MnXSHrQ!2e0>



After #2 - this picture was taken from the small island, about 10 feet behind the white truck in the above picture.



Before #3: On Sunnyside, pointing NE, between 119<sup>th</sup> and 122<sup>nd</sup>.

<https://www.google.com/maps/@45.4297015,-122.5394849,3a,75y,70.45h,85.57t/data=!3m4!1e1!3m2!1sRq5XPuCYaAeb8YZ3UdJHPA!2e0>



After #3 - taken from the sidewalk - you can see the speed zone sign and light post in each picture.



# Citizen's request letter Attachment

Attachment to Initial letter to Happy Valley notifying them of my intent to petition the Land Conservation Development Commission for an enforcement order.

## Exhibit E

- Sample checklist that can be used to determine applicability of the SSDO. *NOTE: This document is incomplete and does not include all questions that must be asked related to the applicability of the steep slopes. Additional questions would need to be added to make the form complete.*

Based on questions below, does the Steep Slope Development Overlay Apply to this lot? If No, all relevant questions below must be answered.

Yes  
 No If no, enter question number(s) that shows SSDO does not apply: \_\_\_\_\_

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Staff Signature: \_\_\_\_\_ Date: \_\_\_\_\_

=====

**Instructions**

Answer the questions below. The following rules determine if the SSDO applies.

If question #1 is yes, the SSDO does not apply. Attach proof of the emergency condition. The remaining questions can be left unanswered.

If the answers to question #2 AND question #3 are both NO, then the SSDO does not apply. Attach proof of the lot conditions. Allowed proof may include the WES topographical overlay or a land survey provided by an independent licensed surveyor. The remaining questions can be left unanswered.

If the answer to question 4 is yes AND this is a grading application or grading permit, then the SSDO does not apply to the grading permit. However, the SSDO applies to all other applicable items (fills, tree removal, design reviews, etc.)

If the answer to question 5 is yes AND this is a fill application or fill permit, then the SSDO does not apply to the fill permit. However, the SSDO applies to all other applicable items (grading, tree removal, design reviews, etc.)

If the answer to question 6 is yes AND the answer to question 7 is no, then the SSDO does not apply.

=====

The following checklist applies to (check all that apply):

- Type 2 Tree Removal Application
- Grading Application
- Fill Application
- Design Review Application
- Minor Design Review Application
- Type 2 Tree Removal Permit
- Grading Permit
- Fill Permit
- Design Review
- Minor Design Review

1. Are emergency actions required to prevent an imminent threat to public health or safety, or prevent imminent danger to public or private property, as determined by the public works director?

- Yes  
 No

If the answer to #1 is yes, then SSDO does not apply. The remaining questions do not need to be answered. Attach proof as soon as reasonably possible proving emergency actions are required.

2. Does the lot have 1,000 contiguous square feet of 15% or greater slope? Attach proof.

- Yes  
 No

3. Does the lot have any potentially hazardous areas? Attach proof.

- Yes  
 No

If the answers to questions 2 and 3 are both no, then SSDO does not apply. The remaining questions below do not need to be answered.

#### **Exceptions to SSDO**

4. Is the excavation that is less than three feet in depth, or involves the removal of a total of less than fifty (50) cubic yards of volume? If no grading, answer N/A.

- Yes  
 No  
 N/A

5. Is the fill less than three feet in depth, or involves a fill of a total of less than fifty (50) cubic yards of volume? If no filling is being done, answer N/A.

- Yes  
 No  
 N/A

6. Is there new construction or expansion of a structure resulting in a net increase in ground floor area of less than one thousand (1,000) square feet that does not involve grading?

- Yes  
 No

7. Is there any land use or activity associated with the development that requires a building permit or grading permit, or land use approval?

- Yes  
 No

# Proof of mailing

Proof of mailing of the Citizen's  
Request letter to the City of Happy  
Valley and to the city's attorney.

Beery Elsner & Hammond

7014 0510 0001 1275 3904

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

For delivery information visit our website at [www.usps.com](http://www.usps.com)

HAPPY VALLEY OR 97086 **OFFICIAL USE**

Postage	\$ 2.03	0039 15 Postmark <b>DEC 14 2014</b> 12/14/2014
Certified Fee	\$3.30	
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
<b>Total Postage &amp; Fees</b>	<b>\$ 5.33</b>	

Ser City of Happy Valley  
 Str or F 16000 SE Misty Drive  
 City Happy Valley, OR 97086  
 PS Instructions

7014 0510 0001 1275 3898

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

For delivery information visit our website at [www.usps.com](http://www.usps.com)

PORTLAND OR 97201 **OFFICIAL USE**

Postage	\$ 2.03	0039 15 Postmark <b>DEC 14 2014</b> 12/14/2014
Certified Fee	\$3.30	
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
<b>Total Postage &amp; Fees</b>	<b>\$ 5.33</b>	

Ser Beery Elsner & Hammond  
 Str or F 1750 SW Harbor Way, Suite 380  
 City Portland, OR 97201-5106  
 PS Instructions

AIRPORT MAIL FACILITY si  
 PORTLAND, Oregon  
 972389099  
 4067870039-0094  
 12/14/2014 (800)275-8777 03:47:36 PM

Sales Receipt  
 Product Sale Unit Final  
 Description Qty Price Price

PORTLAND OR 97201-5106 \$2.03  
 Zone-1  
 First-Class Mail Large Env  
 5.30 oz.  
 Expected Delivery: Tue 12/16/14  
 @@ Certified \$3.30  
 USPS Certified Mail #:  
 70140510000112753898

Issue Postage: \$5.33  
 HAPPY VALLEY OR 97086-4288 \$2.03  
 Zone-1  
 First-Class Mail Large Env  
 5.30 oz.  
 Expected Delivery: Tue 12/16/14  
 @@ Certified \$3.30  
 USPS Certified Mail #:  
 70140510000112753904

Issue Postage: \$5.33  
 Total: \$10.66

Paid by: \$10.66  
 VISA  
 Account #: XXXXXXXXXXXXX5255  
 Approval #: 02008C  
 Transaction #: 148  
 23903400224

@@ For tracking or inquiries go to  
 USPS.com or call 1-800-222-1811.

In a hurry? Self-service kiosks  
 offer quick and easy check-out. Any  
 Retail Associate can show you how.

Order stamps at [usps.com/shop](http://usps.com/shop) or  
 call 1-800-Stamp24. Go to  
[usps.com/clicknship](http://usps.com/clicknship) to print  
 shipping labels with postage. For  
 other information call  
 1-800-ASK-USPS.

\*\*\*\*\*  
 \*\*\*\*\*