

August 10, 2015

Land Conservation and Development Commission
635 Capitol St. NE, Suite 150
Salem 97301-2540

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LAND CONSERVATION
AND DEVELOPMENT

Dear Sir or Madam:

This letter is a request of an enforcement order against the City of Happy Valley for compliance with Happy Valley Land Use code 16.32 Steep Slopes Development Overlay ("SSDO") and other related land use code.

On December 14, 2014, I sent a letter to the City of Happy notifying them of my intent to petition the Land Conservation and Development Commission for an enforcement order pursuant to ORS 197.319 to 197.335. A copy was sent to the city's attorney, Beery, Elsner and Hammond.

I received a letter dated February 12, 2015 (with a postage date of February 13, 2015), from the city attorney Beery, Elsner and Hammond, refuting my arguments, stating that no action would be taken, and revealing their reasoning behind that decision.

Since I have become very familiar with the Happy Valley land use code, I had to laugh when I read the letter. I didn't think that any experienced attorney would attempt to use arguments that would never stand up to scrutiny by the LCDC.

As it turns out, they put their least experienced attorney on this case, Ashley O. Boyle. A quick look on LinkedIn shows that she had only 4 months of experience as an Associate Attorney for Beery Elsner & Hammond at that time (was this her first land-use case?). The only other experience as an attorney was 2 years practicing in an entirely different area of law (as a Labor Attorney).

The letter from the attorney included the same tactics as those by the city planners, manufacturing meaning from code that does not exist to justify the actions, and ignoring pertinent land use code in their arguments. The arguments sound complete, but are not (nearly any argument may be won if facts are ignored). This letter and associated attachments will show that the city planners did not just ignore the text of the code, but that they ignored the intent of the code as well.

The letter failed to address the underlying problems resulting from misinterpretation of the code. As will be shown in the remainder of this letter and with the attachments, the reasons listed by the city are incorrect and inadequate to justify why no action will be taken by the city.

Arguments made by the city's attorney

The arguments made by the city are beyond belief. I expect that whoever reads the attorney's letter will experience several different emotions. Joy and laughter because the arguments made by the attorney are so bad; disbelief that anyone would even try to use such poor arguments; shock that the law firm would give this case to an attorney with no land use experience; or anger due to the dismissive tone of the letter, that states - literally, in writing - that the Oregon Statewide Planning Goals do not apply to Happy Valley land use code.

False claim #1 - State Planning Goals are Not Applicable

I find it hard to believe that any attorney, even one that has only 4 months experience with land use code, could even suggest that Statewide Planning Goals are not applicable to land use decisions.

It is my understanding that the LCDC purpose is to ensure that the land use codes are enforced, which includes making sure that they comply with the Statewide Planning Goals. As a city within the state of Oregon, these apply to all the land use decision in all cities. Happy Valley is within the state of Oregon. Therefore, Statewide Planning Goals are applicable to EVERY land use decision in Happy Valley.

The argument that the LCDC approved a comprehensive plan in 1980, 35 years ago, does not mean that review of the land use codes can never be done. If that were true, there would be no procedure for enforcement from the LCDC. The simple fact of the matter is that this entire procedure was created so that the LCDC can enforce the land use code when they are not being adhered to.

The city's stance that the Statewide Planning Goals are not applicable in this case supports my belief that the city has no intention of adhering to ANY of the Statewide Planning Goals. I suggest that the LCDC not limit their inquiries to the SSDO code, but expand their investigation and do a comprehensive review of EVERY land use decision made by the city of Happy Valley over the past 3 years. This would show the extent of the problems.

The changes made to the SSDO code in the most recent amendments of June 2, 2015 (underlined and in bold) are shown below. The fact that Goal 7 is listed in the text is proof that the city must comply with the Statewide Planning Goals.

16.32.010 Purpose.

Slope constrained lands are regulated by the steep slopes development overlay (SSDO). The purpose of the SSDO is to:

A. Contribute to compliance with Statewide Planning Goal 7 (Areas Subject to Natural Disasters and Hazards). For Goal 7, **with exceptions**, the SSDO specifically minimizes seismic and landslide hazards and soil erosion associated with development on steep or unstable slopes.

The second paragraph states that there are no Statewide Planning Goals listed under ORS 193.320 (6), and indicates that this regulation is for referencing patterns of behavior that violate acknowledged comprehensive plans or land use regulation. The implication is that violation of Statewide Planning Goals can only be done during the creation of the laws, and violating the existing code is what must be done to warrant an enforcement order.

Actually, by violating the land use code, the city is violating the Statewide Planning Goal, and in particular, Goal 7 - areas subject to natural hazards. The land use code adhered to the Statewide Planning Goals, and by violating the code, the city allowed the violation of the Statewide Planning Goals.

Which brings up another item - the city has violated Statewide Planning Goal #7 (areas subject to natural hazards) with the amendments to their land use code. The changes ignore the fact that man-made slopes - and in particular those created from the excavation from the Walgreens - actually increased the hazards to the public.

Before the grading, the maximum slope was nowhere near as steep or as extensive as the current slope of the land. Prior to the excavation, if someone fell where the steepest slope existed, they could be injured, but would most likely survive. With the man-made slopes introduced with the Walgreens excavation, this low probability of injury has been replaced with the high probability of death.

False claim #2 - The SSDO does not apply to man-made slopes

There were exactly 4 exclusions to the steep slopes at the time that the letter was written to me. Man-made slopes did not exist in any of the code at that time.

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;

On June 2, 2015 - 4 months *after* the attorney sent me the letter - the SSDO land use code was amended in response to my inquiries into steep slopes. Even with the amendments, the fact that there are man-made slopes on the lot does not automatically exclude the SSDO from applying to the lot, as shown in the highlighted text below:

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; or
- C. Development of employment, industrial or commercial uses on Employment, Industrial or Commercial designated lands that are not otherwise 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).
- D. Transition or conservation slope areas that are "man-made" or caused by past soil fill/removal and grading activities so long as required special studies and reports have been prepared in accordance with Section 16.32.080, evaluating the site conditions and determining that the slope area can be safely developed.**
- E. An activity that is determined by the planning official to be reasonably similar to the exceptions listed in this section. (Ord. 474 § 1, 2015; Ord. 389 § 1(Exh. A), 2009)

The argument that the city gave was that the slopes could have been made by dumping material on the lot, or caused by the construction nearby on a road. Because these man-made slopes were not the result of nature, they should be excluded. In those cases, they said, the SSDO would not apply because the changes to the land were not "natural".

The problem with this argument is that man-made slopes can actually be far more dangerous than the natural slopes. The perfect example of this is the excavation for the Walgreens. Prior to the excavation, the land had a natural slope that met the minimum requirements for steep sloped lands.

Now, after the excavation of this "man-made sloped land" - which was done without the Type II review and studies as required by the SSDO - there are now thousands of square feet of extremely and dangerously sloped land, with a 13-foot drop-off due to the retaining wall (which also exceeds the Happy Valley maximum height retaining wall).

The Walgreens development has changed the land to such an extent that it is now unlikely that even sure-footed animals would not be able to walk on the edges of the property, or even come close to the edge of the property, without risking life and limb. The development changed the land from a rolling hill to a deep excavation with extremely steep edges. The development actually increased the risks associated with the

property

I attended several meetings where they discussed the man-made slopes. In one of the meetings, I testified that someone could remove 3 feet on a section of the lot (the minimum movement of land allowed on lands with sloped land without applying the SSDO), and the exclusion would apply. They could then come back and say that the slopes were man-made, and as a result, could always avoid application of the SSDO due to that exception. As a result of my testimony, the amendments that were originally made excluding all man-made slopes were not sent to the City Council for approval.

In the case of the Walgreens excavation, no Type II review was made, even though it was required at the time. The so-called "man-made" slopes were actually leveling of the natural slopes in order "to build houses in the 50's or 60's", according to the testimony of Justin Popelik when asked why the SSDO did not apply to the lot. If the houses had not been built, the slope of the land would still have met the requirements for steep slopes.

A statement was included in the letter from the attorney - numbered, indented and italicized to appear that it actually exists in the code: "*1. The City Council announced in the purpose section that the SSDO should only apply to naturally occurring slope*".

The problem is, no such statement exists in the purpose section of the code. That statement lacks any trace of truth.

The entire SSDO code will be attached to this letter as well. Two versions will be included - the version that existed when the attorney first wrote their response to me, and the version that the City Council adopted on June 2, 2015.

Below is the complete text of 16.32.010 and 16.32.020, which states the purpose and applicability of the SSDO. This is the version that was in effect until June 2, 2015. The amendments made at that time don't significantly modify the meanings below. As you can see, the attorney focused the arguments on section D, and completely ignored sections A, B and C.

16.32.010 Purpose.

Slope constrained lands are regulated by the steep slopes development overlay (SSDO). The purpose of the SSDO is to:

A. Contribute to compliance with Statewide Planning Goal 7 (Areas Subject to Natural Disasters and Hazards). For Goal 7, the SSDO specifically minimizes seismic and landslide hazards and soil erosion associated with development on steep or unstable slopes.

B. Regulate development and provide special protection on lands within "conservation slope areas" and "transition slope areas" as follows:

1. Except as exempted pursuant to Section 16.32.045, development activities on conservation slope areas are prohibited. Except as allowed by Section 16.32.040(D)(1), conservation slope areas include:

a. Slopes twenty-five (25) percent and greater (for designation as conservation slope area, the minimum contiguous extent for slopes twenty-five (25) percent and greater shall be one thousand (1,000) square feet);

b. Potentially Hazardous Analysis Areas (lands within twenty-five (25) feet of the top or toe of slopes twenty-five (25) percent and greater);

- c. Areas containing potentially rapidly moving landslide hazard areas mapped by the Oregon Department of Geology and Mineral Industries (DOGAMI).
2. Within transition slope areas, conservation and development are balanced. Except as allowed by Section 16.32.040(D)(2), transition slope areas include: Slopes 15 to 24.99 percent (for designation as transition slope area, the minimum contiguous extent for slopes 15 to 24.99 percent shall be one thousand (1,000) square feet and the land must not be otherwise designated as a conservation slope area).
- C. Limit the potential residential density and facilitate transfer of development away from slope constrained lands. Within conservation slope areas and transition slope areas, a maximum density of two dwelling units per acre applies.
- D. Slope constrained lands in Happy Valley require special protection because they:
1. Are generally more difficult and expensive to serve with urban infrastructure as compared to less steep lands;
 2. Provide wildlife habitat, tree canopy, and other environmental benefits;
 3. Are located at the headwaters of watersheds that provide clean drinking water to downstream users, including Happy Valley residents;
 4. Contribute to the scenic landscape of Happy Valley which is a strong part of the City's identity and livability;
 5. Are often adjacent to regulated natural resource areas and/or public green spaces; and
 6. Can, if developed, cause harm to persons and/or structures via stormwater runoff, landslide, mudslide, tree windthrow and other natural actions that may pose a hazard to the public health, safety and welfare.
- (Ord. 389 § 1(Exh. A), 2009)

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)

In the case of the Walgreens excavation, the steep slopes that existed before the excavation may have been man-made. However, the slopes in the land due to the housing did not increase the slopes, it actually smoothed them out so that the houses could be built. The fact is that the grading to build the houses (that were tore down over 10 years ago) did not create the slopes; it actually reduced the slopes of the land.

Response to "3. The City is required to apply the code provisions effective at the time of the original application for development."

It is interesting that the attorney included this argument, because it actually goes against

them. The amendments to the land use code that list "man-made" slopes did not exist at the time the letter was written. Those amendments were added later because the man-made argument had been used to defend the grading of the Walgreens development.

The attorney states that any properties that were subdivided between April 21, 1999 and April 21, 2009 are exempt from the SSDO. However, the subdivisions were not created during that time; they were created in 2014 when the application was submitted to the city for the developments (i.e, a replat). Although properties subdivided at that time are exempt, that fact is not relevant to these properties because the actual subdivisions were not created at that time, they were created much more recently.

The attorney also attempts to bring in arguments relating to Measure 37, which states that land use code changes imposed after you own the property are exempt from the rules. This law applies only if the land use code was passed AFTER the current owner bought it. The attorney fails to show that the people that currently own the property also owned the properties prior to 2009. Without the most recent purchase dates listed for the properties, none of the arguments can be supported.

I do not know when each of the properties was sold to the current owners, but I do know that that the McDonalds property was sold in 2013, well after the SSDO was approved. The same goes for the Walgreens - it was sold in 2014. The argument that the grading was done before the McDonalds was built is nonsense.

The attorney then tries to say that the SSDO didn't apply to the McDonalds (and Walgreens) because the grading had already been done. That argument goes against the code, which states that the SSDO must be applied for any "activities and uses that require a building, grading, tree removal and/or land use permit...".

The excuse for not applying the SSDO to the McDonalds lot was because the land was already graded. That excuse actually supports the fact that they didn't apply the SSDO when required (prior to grading), and performed the grading without regard to the SSDO. If this were to be an allowed circumvention to the SSDO, the SSDO would never apply. The developer would always grade the lot prior to submitting any design review so they could avoid the extra costs associated with the studies required for sloped lands.

So, using a combination of these facts, we have the following: (1) the subdivision applications were submitted in 2014, (2) the SSDO existed during that time, (3) there is no proof that the SSDO was created while the current developers owned it, and (4) man-made slopes were not exempt from the SSDO until June 2, 2015. The only possible conclusion is that the SSDO applies to every one of the developments.

Response to: "4. Failure to Demonstrate Decision(s) Violate Acknowledged Land Use Regulations"

This section of the attorney's letter highlights the lack of experience and knowledge of land use laws. The attorney assumes that the LCDC can only review decisions that are

appealed to LUBA. Since no appeals have been made to LUBA that have reversed any of the land use decisions, the argument goes, there has been no errors by the city planners.

With this argument, the attorney attempts to show that citizens do not have any rights to ask the LCDC to intervene and that the Planning Commission and City Council have the right to ignore all the laws, not just the SSDO, because nobody can contact the LCDC unless they first appealed the decisions to LUBA, and that it is the citizen's responsibility to appeal to LUBA every single instance of an incorrect handling of land use code before the LCDC can even look at the behavior of the city.

As you know, there are no requirements that LUBA be involved in order to request a compliance order from the LCDC. Adding such a requirement would make it impossible for anyone to request enforcement from the LCDC.

The costs to request LCDC intervention would be prohibitive if a LUBA appeal was first required. In order to appeal to LUBA, the citizen must first exhaust all other appeals to the local government. This first requires an appeal of a decision by the Design Review to the City Council (\$3,500). Only after the appeal has been made, can an appeal to LUBA be made.

In the case of the Triplex, the appeal process is even more expensive. The first appeal would go to the Planning Commission (\$2,000), followed by an appeal to the City Council (\$3,500). In this case, even though the development is not nearly as large or complex as the other developments (McDonalds, Walgreens, etc.), the total cost of appeals is \$5,500.

In the case of the Walgreens grading, no public notice was given before the grading began, even though a Type II review is required for lands with steep slopes. Had I noticed this prior to the grading, the appeal process would have been first to the Planning Commission (\$2,000), then to the City Council (\$3,500). Even if the appeal had gone to LUBA after the grading, it would have lost. The grading was already finished, so LUBA would have considered the arguments moot and dismissed the case. \$5,500 spent for nothing.

The SSDO has been ignored repeatedly, and on a consistent basis. That is the only requirement for filing a petition for enforcement. The LCDC determines whether or not violations occurred. That is actually the entire purpose of this process.

Response to: "5. ORS 197.32 Applies to a Decision of the "Local Government"".

This is where the lack of experience really shines for the attorney. The argument is essentially that the LCDC does not have jurisdiction over the Planning Commission decisions, and cites an example from the Court of Appeals.

The letter cites a case from the Court of Appeals - Gage vs. City of Portland to support

the argument that the Planning Commission is not "local government", so the LCDC does not have the authority to review this case.

The attorney fails to mention that in *Gage v City of Portland*, it was a hearings officer that was not considered part of the local government definition because they were enforcing the land use code - not creating it - and therefore that portion of the decision has absolutely no bearing on this enforcement request.

The attorney also failed to reveal in their letter was that this case was appealed to the Supreme Court, and that the decision by the Court of Appeals was not entirely upheld by the Supreme Court, which affirmed in part and reversed in part the decision of the Court of Appeals.

Even without any formal legal education, I know that the Supreme Court decisions override those of the Court of Appeals. Referencing an overridden court decision is just another tactic used to try and convince me to drop this enforcement request to the LCDC.

What is interesting is that the city is also looking into what it would take to move the responsibility of land use decisions from the Planning Commission to a hearings officer.

This is just another blatant attempt to move land use decisions out of the oversight of the LCDC.

Response to: "6. Applicable Legal Standard"

This is the attorney's attempt to get me to quit by listing some of the legal requirements for appealing to LUBA, assuming that I do not know the difference between LUBA and the LCDC.

As shown above, I am well aware of the differences between LUBA and the LCDC. I know that attempting to appeal multiple incorrect decisions to LUBA is far too expensive for the average citizen to pursue, and that the Oregon Legislature provided the oversight of the LCDC to correct recurring problems. To do so for just the cases listed in this document would cost \$24,000 or more.

Other tactics used to discourage citizen involvement

In addition to the violations described earlier, the city has engaged in behavior intended to restrict or limit involvement from citizens, with much of the behavior directed at me in particular.

In one case, prior to the final appeal to the City Council for the Triplex, Michael Walter attempted to violate state law by refusing to satisfy an information request. After I contacted the City Council, he was forced to provide the information, but then tried to bill me for the information request without first providing an estimate for the expense. Since doing so would have been illegal, I was not required to pay.

After the Triplex case appeal ended, Mr. Walter also attempted to bill me for attorney time that was unrelated to the appeal. In fact, the attorney time billed was AFTER the appeal had completed. The money was eventually refunded.

For the last part of 2014 and first part of 2015, the city stopped posting notices to the Happy Valley website. This limited the information provided to the public who relied on the Happy Valley website to obtain the information. I had to request at least two Planning Commission packets via email because they were not posted to the Happy Valley website. While I can't prove that this was intentional, it didn't start happening until I began asking questions concerning the application of the SSDO.

At the Planning Commission meeting to discuss the land use code changes, the agenda listed two items. The order of the agenda listed the land use code amendments, followed by a presentation by a cell phone company describing cell phone tower improvements. The order of the agenda was changed, and I was forced to sit through an hour long presentation. Although there is no proof that this was done because I attended the meeting, it sure is suspicious.

I attended the design review for a food cart development, and testified against it because the parking was inadequate. Because I was involved in the meeting, I was legally bound to receive a notice of decision. The notice of decision stated that I had 21 days from the posted date of the letter to appeal the decision. The letter was dated March 3. The postmark on the envelope was March 19. I received the letter on Saturday, March 21. I can't prove that the letter was held intentionally, but it doesn't seem likely that they waited almost 3 weeks to send everyone notice of the decision.

In addition, requested recordings have been "lost" due to various reasons. ..

The bulk of the audio from the McDonalds design review was lost. The recording I requested does not begin until a recess was held at the end of the meeting, where the board members met with the developer to iron out details behind closed doors (is that even legal?).

The entire audio from my appeal to the Planning Commission was "lost". The meeting was held in a conference room designed for 12 people (more than twice that number attended), and the assistant planner recorded the meeting on her Apple phone. When I requested the audio, I was told it was not available because the assistant's child had "upgraded the phone" and lost the recording during the upgrade.

The portion of the audio from the Planning Commission meeting in which I asked about the applicability of the SSDO to the Walgreens lot was "lost". The recording begins after the question was answered by Justin Popelik. Fortunately, because of the prior losses to audio files, I recorded the discussion myself.

Other problems with the current enforcement of the SSDO

The problems with the city's application of the SSDO continue even when the SSDO is applied to the lots.

I attended the public meetings for several properties in which the city applied the SSDO. In every case, the staff report ignored at least one element of the SSDO code, allowing the developer to build additional buildings and exceed the density calculations. Despite my testimony showing these shortcomings, the design reviews were all approved by the design review board with no restrictions.

On February 10, 2015, I attended a meeting to discuss the design review for two properties - Grand View Meadows and pine View Meadows. Both properties had steep slopes, and the SSDO was applied to each.

The problem is all elements of the SSDO were not applied to either of the properties. The lot sizes were all less than 10,000 square feet, the density calculations were not done correctly, the density of the housing on the lots exceeded 2 houses per acre, and one development had a lot that consisted entirely of conservative slopes, which is specifically prohibited in the code.

This shows that even when the SSDO is applied, it is not applied correctly.

Consequences likely to occur without corrective action by the city

The consequences of Happy Valley ignoring the SSDO are numerous and widespread, and will likely affect most, if not all, new development within the city limits. The majority of the flat "easy" lots within the city limits have already been developed. What remains is the development on the land that consists of hills and steep slopes.

The SSDO isn't just intended to preserve the scenic beauty of the region; it is also intended to protect the environment and safety of those living in the region. Overdevelopment on slopes can result in loss of habitat, adversely affecting the surrounding wildlife. It can also affect the safety in the region. Removing all the vegetation on a muddy hill can cause mudslides.

Mother Nature is not forgiving when developing on steep slopes. A few years ago after some heavy rains in the Portland area, a mudslide was caught on video. The video showed the mudslide pushing a pickup truck sideways down a windy road at close to 20 miles an hour. In the video you can hear the tires of the truck being pushed sideways squealing against the asphalt. As the mudslide continued, you can then hear the person taking the video shouting to the driver to go faster because the mudslide was getting closer to the truck.

If the city wants to repeat the landslides to give the residents the opportunity to post on YouTube, ignoring the SSDO should do the trick. It may not happen right away. It could

take time for the water to find its way under the structures. When it does happen, you can thank the city planners for ignoring the SSDO and allowing over-development on the land.

There have already been several developments in which the SSDO was applied that are not mentioned in this letter. In all but one of these cases, the SSDO was not applied consistently, and was not applied correctly. In almost every case, sections of the SSDO code relating to lot size and building density were completely ignored.

So far, luck has held and rainfall has been low for the last year. However, with the number of developments currently taking place, luck is running out.

As soon as we get a major downpour (it hasn't happened since these properties were developed), there's no telling what will happen to the current lots that in which the SSDO was not applied.

What will happen to the compacted land under the McDonalds held up by a 13-foot retaining wall? Will the retaining wall hold? Will the McDonalds sink?

What will happen to the triplex sitting only 4 feet from an unsupported 5 foot drop-off (with no retaining wall)? Or the illegal retaining wall built using cinder blocks holding up the next door neighbor's garage port roof? Or the un-engineered retaining wall built on top of the sloped driveway? Will the damage be limited to the triplex, or will it affect the neighbor's property? Will the damage be limited to property, or will someone be injured or killed?

What will happen to the newly exposed slopes on the Walgreens development when the rainy season begins? Will the retaining wall be sufficient to hold back a small mountain of clay and mud? Or will it fail, burying cars and people under tons of mud?

There's no way to know what will happen in any of these cases, because the studies required by the SSDO were never made. No soil samples were taken, no estimates of erosion were made. No verification that the land was safe to build on.

I will tell everyone I know to avoid the Walgreens during the rainy season. There's simply no way to know whether or not the hill will stay in place. All of the vegetation that held the hill in place prior to the development was removed. Tens of thousands of cubic yards of soil was removed, leaving an extremely steep slope, far greater than before, and a deep pit.

The simple fact of the matter is that nobody - not the city, not the developers, not even the longtime local residents - knows if the hill is stable. There is no way to know what the impact of removing over an acre of dense vegetation - deep rooted trees, bushes and other vegetation - an digging down 30 feet will have on the stability of the hill above the new Walgreens.

Who knows if the soil above the retaining wall is stable enough without further stabilizing measures, or even if the retaining wall is sufficient to hold back the soil? Nobody knows for certain. There is simply no way to know how unstable the land could be because the SSDO studies of soil quality were never made.

Summary

The arguments included by the city attorney suggest that the SSDO's sole purpose is to protect the natural environment and scenic beauty of the region. That is simply not true. The SSDO was also setup to provide safe development of steep slopes to prevent property damage, injury, and even loss of life caused by unsafe overdevelopment on sloped land.

The SSDO was ignored for the triplex. As a result, an unsafe retaining wall was built on top of the existing sloped driveway with no studies to determine the impact of the wall. No engineered retaining walls were used on the site, despite a drop of more than 4 feet on the neighbor's property, and despite code requiring that any retaining wall over 4 feet be engineered. No property damage or injuries have resulted... yet.

There already has been shifting of soil associated with the grading for the Walgreens, even though there hasn't been any large continuous amount of rain since the grading was done. Because the newly exposed hill was eroding, it was necessary for the developer to lay black plastic on the slopes during the winter, held in place by sandbags. Recently a retaining wall was built to hold back a fraction of the bottom of the excavated hill. No property damage or injuries have resulted from this development... yet.

Earlier this year runoff from the McDonalds development was going over the sidewalk, forcing the developer to rip up one section of the sidewalk and provide drainage. The drainage problem was not discovered earlier during planning because the SSDO was not properly applied, so the studies that would have shown the problem were not done.

Today I walked past the McDonalds, and there is a large hose going from a hole in front of the McDonalds, across the sidewalk, and ending in a holding tank (about the size of a semi's trailer) placed in a no-parking zone on the nearby side street. A section of sidewalk on Sunnyside is blocked off, and there are two large pieces of plywood with handwritten text saying there is a hole under the plywood. Could whatever is forcing them to pump water have been avoided if the SSDO studies have been performed? No injuries have resulted from the blocked sidewalk or hose crossing the sidewalk... yet.

Conclusion

The city must be required to enforce the land use code. All properties that have steep slopes as defined by the SSDO code be checked to ensure they are safe to develop. This includes all the properties mentioned in this document as well as all others in which man-made steep slope applies but were not applied.

The city recognized that just because the slopes are man-made that development on them still requires special studies to ensure that the development is safe to proceed. In fact, when they modified the code to exclude man-made slopes, they included text that requires the studies to be performed to ensure the property is safe to develop.

With that in mind, it seems reasonable to expect that the city require the properties listed in this document to do the studies required by the SSDO.

Even when the city does apply the SSDO, it does so inconsistently, ignoring large sections of the code. I have attended several public meetings in which the density calculations are ignored (maximum 2 lots per acre), and in one meeting with two different developments, both had the SSDO applied, and both ignored sections of the code (minimum lot size and maximum density), and one had one lot completely enclosed in conservative slopes.

The LCDC has authority in periodic review process to require local government to add specific language or provisions to its land use legislation to assure compliance with statewide goals and LCDC rules. (*Oregonians in Action v. LCDC*, 121 Or App 497, 854 P2d 1010 (1993), Sup Ct review denied).

Despite Happy Valley's belief that they have final say on all land use decisions and can ignore established land use code, they must comply with the rulings of the LCDC. With the sheer number of SSDO violations, as well as other land use decisions such as variances, a review for the compliance of the laws is required as soon as possible.

Because Chapter 16.32 - Steep Slope Development Overlay is very short (about 8 pages), I encourage you to read the code in its entirety in order to have a full understanding of the code.

Thank you for taking the time to read this letter. I look forward to hearing from you.

Respectfully,



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

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

Attachments include:

- (1) Citizen's Request Letter - Original letter to city
- (2) Citizen's Request Letter attachments (5)
- (3) Proof of mailing
- (4) City's Response letter, including photocopy of envelope showing actual mail date
- (5) City's Response letter attachments (3)
- (6) Happy Valley Chapter 16.32 - SSDO land use code, prior to June 2, 2015 amendments
- (7) Happy Valley Chapter 16.32 - SSDO land use code, including amendments made June 2, 2015 (includes revision marks)
- (8) Example of violations when SSDO is applied - includes map showing conservative and transitional slopes
- (9) Example of violations when SSDO is applied - includes map showing size of lots
- (10) Urban Growth Management Agreement between Happy Valley and Clackamas County
- (11) Notice of Decision for Food Cart Development showing discrepancy between date on letter and actual mailing date

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 119th and 122nd. 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.

NARRATIVE DESCRIPTIONS	
EXISTING SITE CONDITIONS	
* EXISTING GRASS FIELDS	
DEVELOPED CONDITIONS	
* UTILITIES AND ROUGH SITE GRADING FOR FUTURE COMMERCIAL DEVELOPMENT	
NATURE OF CONSTRUCTION ACTIVITY AND ESTIMATED TIME TABLE	
* MASS GRADING (JULY 15TH -AUG 15TH)	
* UTILITY INSTALLATION (JULY 15TH -SEPT 15TH)	
* FINAL STABILIZATION (SEPT 15TH - OCT 15TH)	
TOTAL PHASE 2 SITE AREA = 2.8 ACRES	
TOTAL PHASE 2 DISTURBED AREA = 2.7 ACRES	
TOTAL PROJECT ACTIVE DISTURBED AREA = 4.0 ACRES	
SITE SOIL CLASSIFICATION:	
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	
RECEIVING WATER BODIES:	
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 120th).



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 LUTE OR COIR)		X	X	X	X																	
EARTH DIKES (STABILIZED)																						
DRAINAGE SWALES (GRASS-LINED CHANNELS)																						
ROCK OUTLET PROTECTION																						
SEDIMENT TRAP																						
STRAW WATTLES (LOOSE COMPACTION 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 119th and 122nd). 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 119th and 122nd, 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 119th and 122nd, 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
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

Work: 503-210-5590

Home: 503-698-4895

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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

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
Work: 503-210-5590
Home: 503-698-4895

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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 122nd and Sunnyside, pointing NW.

https://www.google.com/maps/@45.429131,-122.5383264,3a,75y,330.7h,83.34t/data=!3m4!1e1!3m2!1sG28wyyv-ETwMy_NNPmqFa4g!2e0!6m!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 122nd, 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 119th and 122nd.

<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

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City's Response Letter

Letter from Ashley O. Boyle,
representative from Beery Elsner &
Hammond, responding to the citizen's
request letter

Includes photocopy of envelope showing
actual date mailed, February 13, 2015

February 12, 2015

SENT VIA FIRST-CLASS MAIL and ELECTRONIC MAIL

Mr. James Phillips
11800 SE Timber Valley Drive
Clackamas, OR 97086

RE: Notice of Intent to File Petition for Enforcement Order Pursuant to ORS 197.319

Dear Mr. Phillips:

This firm represents the City of Happy Valley ("City"). We received your letter and accompanying materials dated December 14, 2014, regarding the City's alleged non-compliance with certain provisions of the Happy Valley Land Development Code ("LDC"); the Happy Valley Comprehensive Plan Objectives and Policies; State Planning Goals and Planning Objectives listed in the Urban Growth Management Agreement between Clackamas County and Happy Valley. Please accept this letter as the City's response.

In your letter, you allege the City engaged in a "pattern or practice" of making land use decisions that violate the City's acknowledged land use regulations when it failed to apply the Steep Slope Development Overlay ("SSDO"). Based on these alleged violations, you indicate you intend to initiate enforcement proceedings before the Land Conservation and Development Commission ("LCDC") unless the City undertakes corrective action.

For the reasons set forth below, the City does not agree that it has engaged in a "pattern or practice" of issuing land use decisions that violated the City's acknowledged land use regulations, that corrective action is either necessary or appropriate, or that "good cause" exists to "proceed on the petition." ORS 197.324. For these reasons, the City respectfully declines to undertake the corrective actions described in your letter.

Background

Your letter identifies six instances where the City did not apply the SSDO to a land use application. Generally, you have two types of objections: (1) you disagree that the lots were created within ten years of April 21, 2009. As per 16.32.020, the SSDO does not apply to lots created within that timeframe; and (2) you believe the SSDO should be applied to both naturally occurring slopes and manmade slopes. The City disagrees in both instances

Specifically you allege assert that these land use decisions have violated the following:

- Happy Valley Chapter 16.32 Steep Slopes Development Overlay due to lack of enforcement of Section 16.32.020
- LDC 16.63.020(F) Density Calculation on Properties with housing
- LDC 16.42.050 Tree Cutting and Preservation
- Happy Valley Comprehensive Plan Policies 9, 10, 13, 14, 15, 16, 20, 21, 22, 28, 30, 30A, 30B, 30B.1, 30B.2, 30B.3, 37, 49, 50
- State Planning Goals 1, 2, 5, 7, 9 and 14
- Urban Growth Management Agreement between Clackamas County and Happy Valley Planning Objectives¹

The City understands your petition as follows:

Case Number	Decision	Note
1	DR-09-14 Major Design Review of a 14,550 Square-Foot Walgreens With Drive-Through (“Walgreens”)	Manmade slopes
2	DR-08-14 Major Design Review of 157 Single-Family Attached Dwellings (“Happy Valley Village”)	Lot created within ten years of 2009
3	DR-05-14 Major Design Review of a Dental Office/Mixed-Use Building (“Dental Office”)	Lot created within ten years of 2009
4	Site Development Permit SDP No. 14-05, 11995 SE Sunnyside Rd. (“Sunnyside Road”)	Manmade slopes
5	DR-02-14 Major Design Review Application “Crest View Townhomes” (“Crest View”)	Lot created within ten years of 2009
6	DR-07-13 Major Design Review of a 4,386 Square-Foot Restaurant with Drive-Through (“McDonald’s”) ²	At the time of application – the site was graded.
7	DR-01-14 Minor Design Review of “SE Forest Creek Court Triplex” (“Triplex”)	Manmade slopes

For the reasons set forth below, these arguments lack merit and do not establish “good cause” to conclude that the City has failed to correctly apply its own code provisions.

¹ You did not state which cases you believe violated LDC 16.63020(F), 16.42.050, the Comprehensive Plan Policies and the UGMA. You seem to imply, however, that these code, plan and UGMA provisions were violated because the City did not apply the SSDO. Because the City rightfully did not apply the SSDO in these incidents, the City also did not violate these other policies and provisions.

Analysis

For the following reasons, your letter does not provide a basis for either corrective actions or enforcement proceedings: (1) the statewide planning goals you allege the City violated are not applicable; (2) the SSDO does not apply to manmade slopes; (3) you misunderstand the application and effect of ORS 16.32.020 and ORS 92.040, the statute and code provisions that provide the exemption for lots and parcels created within 10 years of April 21, 2009; (4) there is no evidence that the decisions violate the City's comprehensive plan and land use regulations; (5) LCDC only has authority to review the decision of a "local government" under ORS 197.320; and (6) a showing of "good cause" requires more than mere allegations.

1. State Planning Goals are Not Applicable

If the City's comprehensive plan is acknowledged by LCDC, the statewide planning goals do not apply. See ORS 197.175(2)(d). LCDC acknowledged the City of Happy Valley's comprehensive plan in 1980, and all amendments have similarly been acknowledged. Therefore, because the City's comprehensive plan is acknowledged, the Statewide Planning Goals do not apply to the City's quasi-judicial decisions.

Additionally, you brought your petition under ORS 197.320(6). That statute provides that a person can petition for an enforcement order on the grounds that the local government engaged in a "pattern or practice of decision making that violates an acknowledged comprehensive plan or land use regulation." ORS 197.320(6) does not include any alleged violations of the Statewide Planning Goals.

2. The SSDO does not apply to manmade slopes

In response to the Triplex, Sunnyside Rd and Walgreens applications, the City was correct in not applying the SSDO. The purpose of LCD 16.32 is to protect naturally occurring slopes. The code section does not apply to slopes resulting from construction, or "manmade" slopes. Although "manmade" slopes are not specifically exempted from the regulation, the City code grants the planning officials a wide range of discretion in determining if an exception applies. The planning officials have used their discretion, and the general purpose of the SSDO, to determine that manmade slopes are an exception from the SSDO.

(1) The City Council announced in the purpose section that the SSDO should only apply to naturally occurring slopes

Understanding whether the SSDO applies requires understanding the purpose of the SSDO. The City Council approved the SSDO specifically to protect naturally occurring features of the land. The purpose statement provides, in relevant part:

16.32.010D, "[s]lope constrained lands in Happy Valley require special protection because they:

1. Are generally more difficult and expensive to serve with urban infrastructure as compared to less steep lands;

2. Provide *wildlife habitat, tree canopy, and other environmental benefits*;
3. *Are located at the headwaters of watersheds* that provide clean drinking water to downstream users, including Happy Valley residents;
4. *Contribute to the scenic landscape* of Happy Valley which is a strong part of the City's identity and livability;
5. Are often adjacent to regulated natural resource areas and/or public green spaces; *and*
6. Can, *if developed*, cause harm to persons and/or structures via stormwater runoff, landslide, mudslide, tree windthrow and other natural actions that may pose a hazard to the public health, safety and welfare." (Emphasis added.)

This list of reasons why the City seeks to protect certain slopes is instructive – to provide wildlife habitat, tree canopy, scenic and other public benefits. Manmade slopes simply do not contribute to a scenic landscape and the development of such lands does not engender the same dangers.

Most significant, the code recognizes the public harm that may occur from these areas “*if developed*.” A manmade slope has *already* been developed, and for that reason is not within the ambit of public values the City Council intended to protect. For example, the slopes on the Sunnyside Road application resulted from home construction in the 1950s and 1960s, and do not present the type of environmental values or protection from public harm the City Council intended to address with the SSDDO.

Accordingly, under the plain language of the code, the SSDO is intended to apply only to undeveloped slopes, not man-made areas.

(2) *The City Council delegated substantial discretion to planning staff when applying the SSDO*

The municipal code delegates to City staff the authority to determine whether an exception not specifically listed in the code language applies in a particular situation. By including open language in the “exceptions” section and specifically granting City planning staff discretion when to apply the SSDO, the City Council acknowledged that there will be instances where the SSDO may not apply and directed staff to make that determination.

Under 16.32.045, the SSDO does not apply to:

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; or

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

The code clearly contemplates that there may be other circumstances in which the SSDO should not apply and gives the planning staff the authority to identify those circumstances. This authority could not be clearer. If an activity is not included on the list, it is fully within the staff's discretion ("determined by the planning official") to determine the activity is "reasonably similar" to other listed exceptions.

In the Triplex, Walgreens, and Sunnyside Rd cases, the City determined that construction on a manmade slope was an "activity that avoid[ed] conservation slope areas," or was "reasonably similar" to that exception.

For these reasons, the City's determination that manmade slopes are not subject to the SSDO is consistent with the purpose and text of the SSDO.

3. The City is required to apply the code provisions effective at the time of the original application for development.

LCD 16.32.020 provides that the SSDO "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. (Emphasis added).

As referenced in the code, ORS 92.040(2) provides: "After September 9, 1995, when a local government makes a decision on a *land use application for a subdivision* inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are *in effect at the time of application* shall *govern subsequent construction* on the property unless the applicant elects otherwise." (Emphasis added.) In addition, under state law, a subdivision is defined as a unit of land that is divided "into four or more lots within a single calendar year." ORS 92.010.

Taken together, these sections provide that for lots created between April 21, 1999 and April 21, 2009 as part of a subdivision, the City must apply the LDC language that was effective at the time of the land use subdivision application for the original subdivision to all subsequent construction land use decisions.

Athletic Club of Bend, Inc. v. City of Bend, 239 Or App 89 (2010) articulates this point further. In that case, the applicant submitted an application to create a subdivision in late 1999 and it was approved in 2000. The City amended its building code in 2006. In May 2009, the property

owner submitted a site plan review application to the City seeking to start construction. In its decision, the Court of Appeals makes abundantly clear that the City must apply the building code from 1999 to all subsequent applications for construction on the lots.

Although it is somewhat difficult to discern from your petition, it appears that you believe LDC 16.32.020 is at issue in Happy Valley Village, Dental Office, Crest View and McDonald's. Analysis of why this is incorrect follows:

Happy Valley Village

In Happy Valley Village, the applicant applied for a subdivision in 2007. Ex. Pg. 2-3. Therefore, under ORS 92.040 and LDC 16.32.020, the City was required to apply the land use regulations in effect in 2007 to an application for "subsequent construction" on the property. The design review application that was submitted in 2014 is an application for "subsequent construction" on the property. Accordingly, the City correctly applied the regulations in effect in 2007.

Furthermore, no new lots were "created" as a result of the design review application. Following the replat, the total number of approved lots *dropped* from 189 to 157. While some lots were reconfigured and others combined, no *new* lots were created. Again, under both state law and the LDC, a lot is created only by subdivision and the design review application did not seek, and the City did not approve, a subdivision. Accordingly, no new lots were created.

Dental Office

As for the Dental Office, the City approved the original application known as "Sunnyside Heights" in 2004. Ex. 2, pg. 3. In 2006, Sunnyside Heights was partitioned into three parcels, one of which is the Dental Office. Similar to a "lot," a parcel is created only through partition. LDC 16.12.030. Therefore, for the purposes of LDC 16.32.020, the parcel was created in 2006. The recent construction application merely involves a lot line adjustment, which as demonstrated above, does not "create" a new parcel. As such, the City cannot apply the SSDO to the application.

Crest View

The same is true for the Crest View development. The City approved the land use application in 2007 and reserved it for future urban development. Ex. 3, pg. 3. Therefore, under ORS 92.040 and LDC 16.32.020, the applicable City code for all future construction applications is the LDC in effect in 2007. The SSDO was not in place at that time. As such, the City cannot apply it now.

McDonald's

The McDonald's site differs slightly. The City annexed the property in 2009 and then in September 2013 the applicant finished "mass grading" the site. The Design Review clearly

states that “[a]s part of the previous site construction activity, the applicant has provided all Level I services to the subject site.”

In other words, by the time of the Design Review, the lot was already graded. There would be no reason to then apply the SSDO.

4. Failure to Demonstrate Decision(s) Violate Acknowledged Land Use Regulations

As we understand it, your letter expresses a subjective disagreement with the Planning Commission’s or City Council’s decision not to apply the SSDO. Unfortunately, a subjective disagreement with the City’s decisions is not the same as a determination by LUBA, or other review authority, that the decisions violate the City’s acknowledged land use regulations. LUBA has statutory authority to review this type of land use decision and has never found the City’s application of the SSDO to violate the City’s comprehensive plan or land use regulations, in these cases or any other.

Ultimately, a local decision is presumed correct unless and until reversed or remanded by LUBA or other review authority. Absent a determination by the City Council, LUBA, Circuit Court or other appropriate review authority that the Planning Commission’s decisions improperly applied the SSDO, there is no evidence to support the allegation that the City is engaged in a “pattern or practice” of making land use decisions in violation of the City’s comprehensive plan and land use regulations. Furthermore, the code sections at issue here unambiguously give the planning official discretion when applying exceptions to the code.

For this reason, there is no basis for enforcement proceedings under ORS 197.324.

5. ORS 197.324 Applies to a Decision of the “Local Government”

LCDC has authority to proceed on an enforcement petition when it has “good cause” to believe that a “local government” has engaged in an inappropriate pattern or practice of decision-making. ORS 197.320(6), 197.324. Significantly, a planning commission is not a “local government” for the purpose of this statute. As used in ORS 197.324, “local government” refers to the elected governing body, not an appointed committee.

As defined in ORS 197.015(13), a “local government” means a “city, county or metropolitan service district . . .”. Consistent with this definition, the Court of Appeals has held for purposes of Chapter 197 that the term “local government” does not necessarily refer to all levels of government within a city, county or special district. For example, in *Gage v. City of Portland*³ the court held that the term “local government” in ORS 197.829 means only the governing body. With respect to ORS 197.320, the text of the statute indicates that the Legislature intended it to address actions taken by the governing body, not a lower board, commission or committee. The twelve types of “local government” actions listed in the statute can only be taken by the governing body of the listed local governments, including the section at issue here: ORS 197.320(6). Therefore, for the purposes of ORS 197.320, we conclude that “local government” means the “governing body.”

³ 319 Or. 308, 877 P.2d 1187, 1188 (1994)

Because the Planning Commission is not the “local government,” in order to petition for an enforcement action under ORS 197.320, you first must appeal a Planning Commission decision to the City Council. Once the City Council makes a final decision, the decision falls within the auspices of “local government” action under ORS 197.320. However, until then, LCDC does not have authority under ORS 197.320 to pursue enforcement.

For this reason, LCDC does not have jurisdiction to review the Planning Commission decisions under ORS 197.320.

6. Applicable Legal Standard

ORS 197.324(2) allows LCDC to conduct a public hearing on an enforcement petition if the Commission determines there is “good cause” to believe that one or more of the circumstances described in ORS 197.320 exists – in this case, that the City has engaged in a “pattern or practice” of making land use decisions that violate the City comprehensive plan or land use regulations. ORS 197.320(6). “Good cause” is a delegative term that imparts on the LCDC “the authority, responsibility and discretion for refining and executing generally expressed legislative policy.”⁴ Here, the legislative policy is to give effect to the statewide planning goals by ensuring that local government decisions are made in compliance with the acknowledged comprehensive plan and land use regulations. ORS 197.010(1)(c), 197.175(2)(d).

For the reasons described above, there is not “good cause,” indeed any cause, for LCDC to conclude that the City is engaged in a pattern or practice of making land use decisions that violate the City’s acknowledged comprehensive plan or land use regulations. Generally, “good cause” is shown “where a petitioner demonstrates, through specific allegations, that there is reason to believe that he may be entitled to relief.”⁵ Here, you fail to show any “reason to believe” you should be entitled to relief. As noted, none of the decisions were appealed to LUBA (many were not even appealed to City Council), so there has been no determination by a body with review authority over these decisions that they were in any way improper.

Moreover, you simply disagree with the findings and the Planning Commission’s interpretation of the development code text, in which case you should have appealed the decisions to the City Council and then LUBA. Having failed to seek review of the decisions at the appropriate time and in the appropriate manner, you now seek to invoke LCDC’s enforcement authority as a means of collaterally attacking these final land use decisions. In short, you have not provided “reason to believe” the City has failed to comply with its acknowledged land use regulations sufficient to warrant enforcement proceedings under ORS 197.324.

Conclusion

For the reasons described above, we conclude that the City has not engaged in a “pattern or practice” of issuing land use decisions that violate the City’s acknowledged land use regulations, that “good cause” for enforcement proceedings exists, or that corrective action is either necessary

⁴ *Springfield Education Assoc. v. Springfield School Dist.*, 290 Or 217, 224–228, 621 P2d 547 (1980). “Whether certain facts are within the intended meaning depends upon the policy that inheres in the term by its use in a statute which is intended to accomplish certain legislative purposes.”

⁵ *Moen v. Czerniak*, No. CIV 02-10-JE, 2004 WL 1293920, at *1 (D. Or. June 10, 2004).

or appropriate. For these reasons, the City respectfully declines to undertake the corrective actions described in your letter.

Furthermore, the City considers this enforcement petition and your prior enforcement petition exceedingly frivolous. The City will not continue to expend resources responding to your enforcement petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley O. Boyle", with a long horizontal flourish extending to the right.

Ashley O. Boyle

AOB/kkb

cc: Jason Tuck, City Manager
Michael Walter, Community Development Director

PORTLAND, OR 970

13 FEB 2015

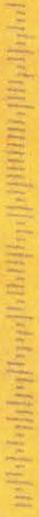


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Mr. James Phillips
11800 SE Timber Valley Dr.
Clackamas, OR 97086

97086937900



City's response letter Enclosure #1

Exhibit 1
Two pages from Staff Report Design
Review Board Meeting

DR-08-14

Happy Valley Village Townhomes

Note: This cover sheet was not included in the original mailing from the city.

APPLICANT'S REPRESENTATIVE:

Pacific Community Design, Inc.
13500 SW Pacific Highway, Suite 58
Tigard, OR 97223

PROPOSAL:

The applicant is requesting Major Design Review of 157 single-family attached dwellings, which are proposed to be grouped primarily in buildings of three or four units with two buildings of five units. The subject properties consist of the "Happy Valley Village" Planned Unit Development (PUD) (Plat No. 4125). The original plat contained 183 lots and four Tracts (A-D). The applicant has been approved for a property line adjustment to "replat" and consolidate the 183 lots and four Tracts into 157 lots and five Tracts (A-E), and has applied to rename the PUD "Happy Valley Morningside". These attached dwellings are proposed to be constructed on existing (reconfigured) platted lots that include provisions for all Level 1 services.

APPLICABLE CRITERIA:

Applicable Objectives and Policies from the City of Happy Valley Comprehensive Plan and Title 16 of the City's Municipal Code (LDC), including: Chapters 16.22 (Residential Land Use Districts); 16.41 (Access and Circulation); 16.42 (Landscaping, Street Trees, Fences and Walls); 16.43 (Parking and Loading); 16.44 (Special Standards for Certain Uses); 16.50 (Public Facilities); 16.61 (Types of Review Procedures); and 16.62 (Land Use Review and Design

EXHIBITS:

The applicant has submitted the following exhibits as part of the application package:

Exhibit 1 (no date)

Construction Plan Set

Exhibit 2 (no date)

Exterior Elevations

Exhibit 3 (dated December 6, 2013)

Applicant's Narrative

Exhibit 4 (no date)

Materials Board (to be displayed at the public hearing)

Exhibit 5 (no date)

Happy Valley Morningside Proposed Replat

Exhibit 6 (no date)

"Happy Valley Village" PUD-04-05 Approved Plan Set

Exhibit 7 (September 26, 2014)

Citizen comment

Staff has submitted the following exhibits as part of the Staff Report:

Staff Exhibit A - Service Provider Comments and Conditions

- 1) City of Happy Valley Engineering Division
- 2) Clackamas County Water Environment Services (WES)/Service District #1 (CCSD #1)
- 3) Clackamas Fire District #1 (CFD #1)
- 4) City of Happy Valley Traffic Engineer - DKS Associates
- 5) Landscape Architect – AKS Engineering & Forestry

OBSERVATIONS:

BACKGROUND:

- The subject site originally consisted of 183 previously platted lots and four Tracts (A-D), located with the “Happy Valley Village” PUD (Plat No. 4125), that received land use approval through the City of Happy Valley in 2004. In 2014, the applicant, D.R. Horton acquired the site and submitted an application to reconfigure the site by property line adjustment from 183 lots and four Tracts to 157 lots and five Tracts (A-E). These reconfigured lots are located within the Mixed Use Residential-Attached (MUR-A) zoning district as well as the City of Happy Valley Town Center Plan area and the Rock Creek Comprehensive Plan area.

EXISTING CONDITIONS/ADJACENT USES:

- The subject site is located west of 157th Avenue, between Sunnyside Road and Misty Drive. The subject site is 11.84 acres total and when reconfigured will ultimately consist of 157 lots and five Tracts within the “Happy Valley Morningside” (formerly “Happy Valley Village”) PUD. The original 183 lots were platted in 2007 and have remained vacant since. The site is extremely sloped and therefore during the applicant’s due diligence investigation to purchase the property, it was discovered that without this reconfiguration, many of the 183 lots were found to be buildable only with significant engineering or were simply deemed unbuildable. Furthermore, even after reducing the total number of buildable lots by 26, the extremely sloped topography leaves challenging site conditions relative to the remaining “buildable” lots. The subject site has been developed with all Level 1 services and, subject to finalization of the approved property line adjustment reconfiguring the existing 183 lots and four Tracts into 157 lots and five Tracts, is ready for home construction to occur. The proposed reconfiguration will not change the existing roadway system.
- The subject site is located within and surrounded by properties located within the “City of Happy Valley Town Center Plan” area. Properties to the north, across Misty Drive, are zoned low density residential (R-7) and are generally described as single-family detached lots within the “Burgundy Rose” subdivision. Properties to the south, across Sunnyside Road, are zoned medium density residential (MUR-S) and are generally described as single-family detached lots within the “Taralon” subdivision. Property to the east, across 157th Avenue, is zoned mixed use commercial (MUC) is generally described as the “Happy Valley Town Center” commercial development. Properties to the west are zoned mixed use residential

Exhibit No. 1
Page 2 of 2

City's response letter Enclosure #2

Exhibit 2

Two pages from Staff Report for
Design Review Board Meeting

DR-05-14

Dental Clinic

Note: This cover sheet was not included in the original mailing from the city.

Exhibit 3 (dated May 14, 2014)
Site Traffic Generation Analysis

Exhibit 4 (dated July 29, 2014)
Traffic Circulation Memorandum and Plan

Exhibit 5 (no date)
Architectural Elevations

Exhibit 6 (no date)
Materials Board (to be displayed at the public hearing)

Staff has submitted the following exhibits as part of the Staff Report:

Staff Exhibit A - Service Provider Comments and Conditions

- 1) City of Happy Valley Engineering Division
- 2) Clackamas County Water Environment Services (WES)/Service District #1 (CCSD #1)
- 3) Clackamas Fire District #1 (CFD #1)
- 4) City of Happy Valley Traffic Engineer - DKS Associates
- 5) Landscape Architect – AKS Engineering & Forestry

Staff Exhibit B - Public Comments

OBSERVATIONS:

EXISTING CONDITIONS/ADJACENT USES:

- The subject site is an undeveloped parcel located at the northwest corner of Misty Drive and Sunnyside Road, totaling approximately 40,000 square feet in size. The topography of the subject site slopes gradually from north to south, with a 25-foot decrease in elevation from the northern property line to the subject site's frontage with Sunnyside Road. Limited vegetation exists on the subject site, with mainly grass and brush being present.
- To the north and west of the subject site is a 4.55-acre undeveloped parcel, zoned MUC. Property to the east of the subject site, on the opposite side of Misty Drive, is undeveloped land zoned Mixed Use Employment, through the approval of the Sunrise Heights Master Plan (MP-01-03/PUD-06-03). South of the subject site, on the opposite side of Sunnyside Road, is a commercial/high density residential area known as "Sunnyside Village". Specifically, these properties consist of an apartment complex and a retail shopping complex.

BACKGROUND:

- The subject site was originally part of an 18.94-acre master plan known as "Sunnyside Heights" (MP-03-03/LDO-18-03), which was approved by the City Council in 2004. Subsequently, "Sunnyside Heights" was partitioned into three parcels (LP-03-05), one of which was developed as a 38-lot subdivision, known as "Southern Ridge 3" (later renamed "King Arthur Estates"). The two remaining parcels, encompassing 5.47 acres, existed "as is" until 2009, when the property owner applied for a lot line adjustment (LLA-02-09), which was approved. This lot line adjustment reconfigured the parcels in a manner that created one

City's response letter Enclosure #3

Exhibit 3

Two pages from Staff Report for
Design Review Board Meeting

DR-02-14

Crest View Townhomes

Note: This cover sheet was not included in the original mailing from the city.

PROPERTY LOCATION:

The subject property is generally located at the northwest corner of the intersection of Goosehollow Drive and Hwy. 224, and is further described as Clackamas County Assessor Map No. 22E12D: Tax Lot 1700.

SITE DESCRIPTION/ADJACENT LAND USE:

The subject site is an approximately 6.55-acre lot of record located at the northwest corner of the intersection of Hwy. 224 (Major Arterial) and Goosehollow Drive (Local Residential Street). The subject site is vacant with gradually sloping terrain and no trees being present. The subject site is bordered to the west and south by a previously approved Planned Unit Development, known as "Windswept Waters", which has been developed with both single-family detached and single-family attached residences built on lots of varying sizes. To the north of the subject site, is an approximately 3.75-acre Lot of Record, zoned FU-10, which is currently the location of a single-family detached residence. To the east of the subject site, across the Hwy. 224, is a subdivision located in the City of Damascus known as "Orchard Lake – Phase I". These lots are all zoned Clackamas County "Low Density Residential" (R-8.5) and contain single-family detached residences.

DEVELOPMENT DISTRICT:

Single-Family Attached Residential (SFA).

OBSERVATIONS:

ZONE CHANGE/PUD HEARING:

- In April of 2007, the subject site was annexed into the City from unincorporated Clackamas County with a plan designation/zone of County FU-10. It should be noted that the County applies its FU-10 designation/zone to properties as a "holding zone" for lands that are "slated" for future urban uses, but for which no specific development type has been identified within the Clackamas County Comprehensive Plan. Also in 2007, the subject site was incorporated into the plat of "Rim at Windswept Waters" as Lot 145. It was noted on this plat that the subject site was reserved for future development. The subject site remained primarily "as-is" until late summer of 2013, when the applicant began mass grading the property in preparation for development. This grading activity was allowed, as the applicant obtained an "early grading" permit through the City.
- On November 12, 2013, the City of Happy Valley Planning Commission approved an application by Jeffery Simpson for a Comprehensive Plan Map/Zoning Map Amendment (File No. CPA-14-13/LDC-16-13) to change the plan designation/zone on the subject property from "Future Urbanization – 10-Acre Minimum" (FU-10) to "Single-Family Attached Residential" (SFA).
- On July 22, 2014, the City of Happy Valley Planning Commission will conduct a public hearing for an application by Crest View Townhomes LLC for a 70-lot Planned Unit Development known as "Crest View Townhomes (File No. PUD-04-14). The proposed

Chapter 16.32 - Steep Slopes Development Overlay

Chapter 16.32 of the City of Happy
Valley Land Use code

Original Version
Effective until June 2, 2015

Chapter 16.32 STEEP SLOPES DEVELOPMENT OVERLAY ZONE

16.32.010 Purpose.

Slope constrained lands are regulated by the steep slopes development overlay (SSDO). The purpose of the SSDO is to:

- A. Contribute to compliance with Statewide Planning Goal 7 (Areas Subject to Natural Disasters and Hazards). For Goal 7, the SSDO specifically minimizes seismic and landslide hazards and soil erosion associated with development on steep or unstable slopes.
- B. Regulate development and provide special protection on lands within “conservation slope areas” and “transition slope areas” as follows:
 1. Except as exempted pursuant to Section 16.32.045, development activities on conservation slope areas are prohibited. Except as allowed by Section 16.32.040(D)(1), conservation slope areas include:
 - a. Slopes twenty-five (25) percent and greater (for designation as conservation slope area, the minimum contiguous extent for slopes twenty-five (25) percent and greater shall be one thousand (1,000) square feet);
 - b. Potentially Hazardous Analysis Areas (lands within twenty-five (25) feet of the top or toe of slopes twenty-five (25) percent and greater);
 - c. Areas containing potentially rapidly moving landslide hazard areas mapped by the Oregon Department of Geology and Mineral Industries (DOGAMI).
 2. Within transition slope areas, conservation and development are balanced. Except as allowed by Section 16.32.040(D)(2), transition slope areas include: Slopes 15 to 24.99 percent (for designation as transition slope area, the minimum contiguous extent for slopes 15 to 24.99 percent shall be one thousand (1,000) square feet and the land must not be otherwise designated as a conservation slope area).
- C. Limit the potential residential density and facilitate transfer of development away from slope constrained lands. Within conservation slope areas and transition slope areas, a maximum density of two dwelling units per acre applies.
- D. Slope constrained lands in Happy Valley require special protection because they:
 1. Are generally more difficult and expensive to serve with urban infrastructure as compared to less steep lands;
 2. Provide wildlife habitat, tree canopy, and other environmental benefits;
 3. Are located at the headwaters of watersheds that provide clean drinking water to downstream users, including Happy Valley residents;
 4. Contribute to the scenic landscape of Happy Valley which is a strong part of the City’s identity and livability;
 5. Are often adjacent to regulated natural resource areas and/or public green spaces; and
 6. Can, if developed, cause harm to persons and/or structures via stormwater runoff, landslide, mudslide, tree windthrow and other natural actions that may pose a hazard to the public health, safety and welfare.

(Ord. 389 § 1(Exh. A), 2009)

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 non-survey specific datum. (Ord. 427 § 1, 2012; Ord. 389 § 1(Exh. A), 2009)

16.32.030 General provisions.

No person shall develop property in areas within the steep slopes development overlay without first demonstrating compliance with this section.

- A. As a condition of permit issuance or land use approval, the applicant shall agree to implement the recommendations of approved studies and to allow all inspections to be conducted.
- B. Where a bond, letter of credit, or other guarantee is required, the permit shall not be issued until the bond or guarantee has been obtained and approved. (Ord. 389 § 1(Exh. A), 2009)

16.32.040 Designation of buildable lands.

- A. For the purposes of the SSDO, buildable lands include:
 1. Lands not designated conservation slope area or transition slope area; and
 2. Buildable portions of transition slope areas according to the sliding scale as described in Section 16.32.040(D), below.
- B. In addition to the Happy Valley Steep Slopes and Natural Resources Overlay Zone Map, the text provisions of this section shall be used to determine whether applications may be approved within the SSDO. The following maps and documents may also be used as references for identifying areas subject to the requirements of this section:
 1. Locally adopted studies or maps;
 2. City of Happy Valley slope analysis maps;
 3. Mapped DOGAMI potentially rapidly moving landslide hazard areas.
- C. Sliding Scale. Transition slope areas are intended to provide for limited development in balance with slope protection measures, therefore, the amount of development within transition slope areas shall be based on a sliding scale of impact intended to allow limited development within those parcels that are more encumbered with sloped lands. The sliding scale determines the amount of buildable and unbuildable transition slope area for a given site as follows:
 1. If a parcel has fifty (50) percent or more of its total site area in transition slope area and conservation slope area, a maximum of fifty (50) percent of the transition slope area is designated buildable and may be developed;

2. If a parcel has 20—49.99 percent of its total site area in transition slope area and conservation slope area, a maximum of forty (40) percent of the transition slope area is designated buildable and may be developed;
3. If a parcel has 0—19.99 percent of its total site area in transition slope area and conservation slope area, a maximum of thirty (30) percent of the transition slope area is designated buildable and may be developed.

D. Designation of Isolated Conservation Slope or Transition Slope Areas as Buildable. Through a Type II Environmental Review, an isolated pocket of conservation slope or transition slope Area on a property may be designated as buildable land. The applicant must demonstrate the following:

1. For Conservation Slope Areas or for areas with a combination of Conservation Slope Area and Transition Slope Area:
 - a. The contiguous extent of the area is three thousand (3,000) square feet or less;
 - b. There are no other conservation slope areas or transition slope areas within fifty (50) feet; and
 - c. The required special studies and reports have been prepared in accordance with Section 16.32.080, evaluating the site conditions and determining that the conservation slope area can be safely developed.
2. For transition slope areas:
 - a. The contiguous extent of the area is six thousand (6,000) square feet or less;
 - b. There are no other conservation slope areas or transition slope areas within fifty (50) feet; and
 - c. The required special studies and reports have been prepared in accordance with Section 16.32.080, evaluating the site conditions and determining that the transition slope area can be safely developed.

(Ord. 389 § 1(Exh. A), 2009)

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; or
- C. An activity that is determined by the planning official to be reasonably similar to the exceptions listed in this section. (Ord. 389 § 1(Exh. A), 2009)

16.32.050 Permitted uses.

A. Permitted uses within conservation slope areas and unbuildable transition slope areas are limited to the following:

1. Open space and trails constructed consistent with the provisions of Title 16 of the Engineering Design and Standard Details Manual;
2. Removal of refuse and permitted fill;
3. Planting of native vegetation and removal of non-native/invasive species, dead or dying trees or vegetation that is hazardous to the public;
4. Construction, re-construction or expansion of public utilities and infrastructure (including both public roads and private streets) that is necessary to support permitted development;
5. Construction, re-construction or expansion of a single-family residence on a legal lot of record under the following prescribed conditions:
 - a. The applicant must demonstrate that the lot has received prior planning approval from either the City of Happy Valley, or if annexed, from Clackamas County, and that there is insufficient buildable land on the same lot to allow the proposed construction or expansion;
 - b. The engineering, building permit, erosion control, water quality, and re-vegetation standards of this title have been fully satisfied;
 - c. The residence or addition has been sited so as to minimize excavation and disturbance to native vegetation within the steep slopes development overlay area;
 - d. The maximum impervious surface coverage from development shall be three thousand five hundred (3,500) square feet. This standard may be exceeded to allow a private driveway design and location that reduces adverse impacts to protected areas if the applicant demonstrates that a longer driveway will facilitate driveway construction that will either more closely follow hillside contours, and thereby reduce overall cut and fill area by at least twenty (20) percent; or avoid tree clusters and thereby reduce by at least twenty (20) percent the number of trees (six-inch caliper at breast height or greater) that must be removed; and
6. Development shall not result in cuts or fills in excess of three feet except for basement construction unless specifically approved by the Building Official and City Engineer, and
7. Repair or stabilization of unstable slopes.

B. Permitted uses within the buildable lands, as defined by this title are limited to the following:

1. All uses within conservation slope areas; and
2. Uses permitted in the base zone in approved buildable areas.

(Ord. 389 § 1(Exh. A), 2009)

16.32.060 Platting of new parcels or lots.

No new parcel or lot shall be platted or approved for development exclusively within conservation slope areas. (Ord. 389 § 1(Exh. A), 2009)

16.32.070 Minimum buildable site size.

The minimum buildable site size shall be equal to ten thousand (10,000) square feet. (Ord. 389 § 1(Exh. A), 2009)

16.32.080 Required maps, studies, and reports.

A. Maps. To determine the location of potentially slope constrained areas, the applicant shall submit a scaled topographic map at two-foot contour intervals for the subject property (site) for lands less than fifteen (15) percent in slope, and at five-foot contours for lands fifteen (15) percent and greater in slope and for land within one hundred fifty (150) feet of the site perimeter. This map shall be prepared by a licensed, professional engineer or land surveyor and shall show:

1. Slopes of twenty-five (25) percent and greater;
2. Potentially hazardous analysis areas, including the analysis area parallel to and within twenty-five (25) feet of the top of the twenty-five (25) percent slope break and the analysis area parallel to and within twenty-five (25) feet of the toe of the slope;
3. Mapped DOGAMI potentially rapidly moving landslide hazard areas;
4. Transition slope areas; and
5. The area (in square feet) for each category listed above for the subject property.

B. Studies and Special Reports. The City Engineer may require, when known or perceived site or area circumstances indicate such particular need, the submittal of one or more of the following studies and/or special reports for any permit or development located within the SSDO. The requirement for such studies will be in writing and will be tied to specific code standards, criteria and/or requirements:

1. Studies.
 - a. Geological Assessments. Geological assessments are prepared and stamped by a Certified Engineering Geologist and describe the surface and subsurface conditions of a site, delineate areas of a property that may be subject to specific geologic hazards, and assess the suitability of the site for development. Geological assessments shall be conducted and prepared according to the requirements and recommendations of the Oregon State Board of Geologist Examiners, and shall make recommendations as to whether further studies are required, and may be incorporated into or included as an appendix to the geotechnical report;
 - b. Engineering Geology Reports. Engineering geology reports are prepared and stamped by a Certified Engineering Geologist and provide detailed descriptions of the geology of the site, professional conclusions and recommendations regarding the effect of geological conditions on the proposed development, and opinions and recommendations covering the adequacy of the site to be developed. Engineering geology reports shall be

prepared in accordance with the requirements of the Guidelines for Preparing Engineering Geology Reports in Oregon adopted by the Oregon State Board of Geologist Examiners and may be incorporated into or included as an appendix to the geotechnical report; and

c. Geotechnical Reports. Geotechnical reports are prepared and stamped by a Geotechnical Engineer, evaluate site conditions, and recommend design measures necessary to reduce the development risks and facilitate safe and stable development. Geotechnical reports shall be conducted and prepared according to the requirements and recommendations of the Oregon State Board of Geologist Examiners, and may be incorporated into or included as an appendix to the Engineering Geology Report.

2. Special Reports.

a. Hydrology and Soils Report. This report shall include information on the hydrological conditions on the site, the effect of hydrologic conditions on the proposed development, the proposed development's impact on surface and groundwater flows to wetlands and streams, and any hydrological or erosion hazards. This report shall also include soils characteristics of the site, their suitability for development, carrying capacity, and erosion or slumping characteristics that might present a hazard to life and property, or adversely affect the use or stability of a public facility or utility. Finally, this report shall include information on the nature, distribution and strength of existing soils; the adequacy of the site for development purposes; and an assessment of grading procedures required to impose the minimum disturbance to the natural state. A licensed, professional engineer registered in Oregon shall prepare the hydrology and soils report;

b. Grading Plan. The grading plan shall be specific to a proposed physical structure or use and shall include information on terrain (two-foot intervals of property), drainage, direction of drainage flow, location of proposed structures and existing structures which may be affected by the proposed grading operations, water quality facilities, finished contours or elevations, including all cut and fill slopes and proposed drainage channels. Project designs, including but not limited to, locations of surface and subsurface devices, walls, dams, sediment basins, storage reservoirs, and other protective devices, shall form part of the submission. The grading plan shall also include: (i) construction phase erosion control plan consistent with the provisions of Title 15 of the City's Municipal Code; and (ii) schedule of operations. A licensed, professional engineer registered in Oregon shall prepare the grading and erosion control plan; and

c. Native Vegetation Report. This report shall consist of a survey of existing vegetative cover, whether it is native or introduced, and how it will be altered by the proposed development. Measures for re-vegetation with native plant species will be clearly stated, as well as methods for immediate and long-term stabilization of slopes and control of soil erosion. A landscape architect, landscape designer, botanist or arborist with specific knowledge of native plant species, planting and maintenance methods, survival rates, and their ability to control erosion and sedimentation shall prepare the vegetation report. The applicant shall be responsible for replacing any native plant species that do not survive the first two years after planting, and for ensuring the survival of any replacement plants for an additional two years after their replacement.

C. Compliance with Study Conclusions and Recommendations.

1. Professional Standards. The City Engineer shall determine whether Geological Assessments, Engineering Geology Reports, or Geotechnical Reports have been prepared in accordance with this title. The City Engineer may require additional information or analysis necessary to meet study requirements.
2. Peer Review. The City Engineer may require peer review of any required report, in which case regulated activities and uses shall be reviewed and accepted through the peer review process before any regulated activity will be allowed. The cost of such peer review shall be borne by the applicant. If peer review is required, the City Engineer shall provide the applicant, in writing, the reasons for the peer review.
 - a. A professional or professional firm of the City's choice that meets the qualifications listed in this chapter shall perform the review.
 - b. The review shall be at the applicant's expense.
 - c. Review of report submittals shall determine whether required elements are completed, geologic report procedures and assumptions are accepted, and all conclusions and recommendations are supported and reasonable.
3. Review Criteria. The approval authority shall rely on the conclusions and recommendations of the required reports, as modified by peer review, as well as any rebuttal material supplied by the applicant, to determine compliance with this section.
4. Conditions of Approval. After review of the peer review report(s) and any rebuttal materials submitted by the applicant, conclusions and recommendations stated in approved reports shall be directly incorporated as permit conditions or provide the basis for conditions of approval for the regulated activity or use.
5. Expiration. Where an approved assessment or report as defined by this chapter has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, that report may be utilized and a new report is not required. Should environmental conditions associated with the site or surrounding the site change, or if the proposed land use activity or development has materially changed, the applicant shall
 - submit an amendment to the required assessment or report, which may be reviewed and approved through the peer review process.

(Ord. 389 § 1(Exh. A), 2009)

16.32.090 Environmental review permit.

Development proposals that are subject to the provisions of Chapter 16.32 require an environmental review permit application. Environmental Review Permits will be reviewed through a Type II procedure, pursuant to Section 16.61.030. (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). 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). (Ord. 389 § 1(Exh. A), 2009)

16.32.110 Site design criteria.

Development within the SSDO shall comply with the following site design criteria:

- A. Development is sited on lands less than fifteen (15) percent slope lands within the same parcel or on other parcels which are a part of the application, to the greatest degree practicable;
- B. Significant trees and other resources are protected and/or incorporated into the site design;
- C. Lands that remain undeveloped are coordinated with open space in adjacent parcels and natural resource areas, so that such areas, in combination, form as continuous an open space system as is practicable;
- D. Opportunities for linking wildlife corridors and pedestrian trails are implemented;
- E. Provision of access and internal circulation routes are as short as possible and designed to work with the natural topography, maintain minimum grades and require minimum cut and fill;
- F. Creation of open space tracts between proposed developments and existing developed parcels or open space tracts shall be coordinated so that such areas, in combination, will form as continuous an open space system as is practicable; and
- G. Opportunities for shared access are utilized wherever practicable, and if possible may be required by the City Engineer pursuant to Section 16.41.030, Vehicular access and circulation. A variance to vehicular access and circulation standards may be granted pursuant to Section 16.71.040, Class B variances. (Ord. 389 § 1(Exh. A), 2009)

Chapter 16.32 - Steep Slopes Development Overlay

Chapter 16.32 of the City of Happy
Valley Land Use code

Amended Version
Effective as-of June 2, 2015

¹⁰ Medical marijuana distribution facilities are subject to the following conditions:

- a. Shall be registered as a business or have filed a pending application to register as a business with the Office of the Secretary of State;
- b. Shall not be located within one thousand (1,000) feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;
- c. Shall not be located within one thousand (1,000) feet of another medical marijuana facility; and
- d. Shall install a security system, including a video surveillance system, alarm system and safe; and
- e. Shall test for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.

¹¹ Subject to applicable FAA rules and regulations.

¹² Pursuant to Section 16.69.030.

Chapter 16.32 STEEP SLOPES DEVELOPMENT OVERLAY ZONE

16.32.010 Purpose.

Slope constrained lands are regulated by the steep slopes development overlay (SSDO). The purpose of the SSDO is to:

- A. Contribute to compliance with Statewide Planning Goal 7 (Areas Subject to Natural Disasters and Hazards). For Goal 7, **with exceptions**, the SSDO specifically minimizes seismic and landslide hazards and soil erosion associated with development on steep or unstable slopes.
- B. Regulate development and provide special protection on lands within "conservation slope areas" and "transition slope areas" as follows:
 1. Except as exempted pursuant to Section 16.32.045, development activities on conservation slope areas are prohibited. Except as allowed by Section 16.32.040(D)(1), conservation slope areas include:
 - a. Slopes twenty-five (25) percent and greater (for designation as conservation slope area, the minimum contiguous extent for slopes twenty-five (25) percent and greater shall be one thousand (1,000) square feet);
 - b. Potentially Hazardous Analysis Areas (lands within twenty-five (25) feet of the top or toe of slopes twenty-five (25) percent and greater);
 - c. Areas containing potentially rapidly moving landslide hazard areas mapped by the Oregon Department of Geology and Mineral Industries (DOGAMI).
 2. Within transition slope areas, conservation and development are balanced. Except as allowed by Section 16.32.040(D)(2), transition slope areas include:
 - a. Slopes 15 to 24.99 percent (for designation as transition slope area, the minimum contiguous extent for slopes 15 to 24.99 percent shall be one thousand (1,000) square feet and the land must not be otherwise designated as a conservation slope area);
- C. Limit the potential residential density and facilitate transfer of development away from slope constrained lands. Within conservation slope areas and transition slope areas, a maximum density of two dwelling units per acre applies.
- D. Slope constrained lands in Happy Valley require special protection because they:
 1. Are generally more difficult and expensive to serve with urban infrastructure as compared to less steep lands;
 2. Provide wildlife habitat, tree canopy, and other environmental benefits;

3. Are located at the headwaters of watersheds that provide clean drinking water to downstream users, including Happy Valley residents;
4. Contribute to the scenic landscape of Happy Valley which is a strong part of the City's identity and livability;
5. Are often adjacent to regulated natural resource areas and/or public green spaces; and
6. Can, if developed, cause harm to persons and/or structures via stormwater runoff, landslide, mudslide, tree windthrow and other natural actions that may pose a hazard to the public health, safety and welfare.

16.32.020 Applicability.

Unless excepted by the provisions of Section 16.32.045 of this title, 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 non-survey specific data.

16.32.030 General provisions.

No person shall develop property in areas within the steep slopes development overlay without first demonstrating compliance with this section.

- A. As a condition of permit issuance or land use approval, the applicant shall agree to implement the recommendations of approved studies and to allow all inspections to be conducted.
- B. Where a bond, letter of credit, or other guarantee is required, the permit shall not be issued until the bond or guarantee has been obtained and approved.

16.32.040 Designation of buildable lands.

- A. For the purposes of the SSDO, buildable lands include:
 1. Lands not designated conservation slope area or transition slope area; ~~and~~
 2. Buildable portions of transition slope areas according to the sliding scale as described in Section 16.32.040(D); ~~below.~~

3. Isolated Conservation Slope or Transition Slope Areas as described in Section 16.32.040(D), below.

- B. In addition to the Happy Valley Steep Slopes and Natural Resources Overlay Zone Map, the text provisions of this section shall be used to determine whether applications may be approved within the SSDO. The following maps and documents may also be used as references for identifying areas subject to the requirements of this section:
 1. Locally adopted studies or maps;
 2. City of Happy Valley slope analysis maps;
 3. Mapped DOGAMI potentially rapidly moving landslide hazard areas.

- C. Sliding Scale. Transition slope areas are intended to provide for limited development in balance with slope protection measures, therefore, the amount of development within transition slope areas shall be based on a sliding scale of impact intended to allow limited development within those parcels that are more encumbered with sloped lands. The sliding scale determines the amount of buildable and unbuildable transition slope area for a given site as follows:

1. If a parcel has fifty (50) percent or more of its total site area in transition slope area and conservation slope area, a maximum of fifty (50) percent of the transition slope area is designated buildable and may be developed;
2. If a parcel has 20—49.99 percent of its total site area in transition slope area and conservation slope area, a maximum of forty (40) percent of the transition slope area is designated buildable and may be developed;
3. If a parcel has 0—19.99 percent of its total site area in transition slope area and conservation slope area, a maximum of thirty (30) percent of the transition slope area is designated buildable and may be developed.

D. Designation of Isolated Conservation Slope or Transition Slope Areas as Buildable. Through a Type II Environmental Review, an isolated pocket of conservation slope or transition slope Area on a property may be designated as buildable land. The applicant must demonstrate the following:

1. For Conservation Slope Areas ~~or for areas with a combination of Conservation Slope Area and Transition Slope Area:~~
 - a. The contiguous extent of the area is three thousand (3,000) square feet or less;
 - b. There are no other conservation slope areas or transition slope areas within fifty (50) feet and
 - c. The required special studies and reports have been prepared in accordance with Section 16.32.080, evaluating the site conditions and determining that the conservation slope area can be safely developed.
2. For transition slope areas **or for areas with a combination of Conservation Slope Area and Transition Slope Area:**
 - a. The contiguous extent of the area is six thousand (6,000) square feet or less **and less than 50 percent of the area is within a conservation slope area;**
 - b. There are no other conservation slope areas or transition slope areas within fifty (50) feet; and
 - c. The required special studies and reports have been prepared in accordance with Section 16.32.080, evaluating the site conditions and determining that the transition slope area can be safely developed.

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; or
- C. **Development of employment, industrial or commercial uses on Employment, Industrial or Commercial designated lands that are not otherwise encumbered by the City's Natural Resource Overlay Zone (NROZ) and that about an existing or planned Collector or Arterial roadway as illustrated within the City's Transportation System Plan (TSP).**

D. Transition or conservation slope areas that are “man-made” or caused by past soil fill/removal and grading activities so long as required special studies and reports have been prepared in accordance with Section 16.32.080, evaluating the site conditions and determining that the slope area can be safely developed.

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

16.32.050 Permitted uses.

A. **Unless exempted or exempt, p**Permitted uses within ~~conservation slope areas and unbuildable transition~~ slope areas are limited to the following:

1. Open space and trails constructed consistent with the provisions of Title 16 of the Engineering Design and Standard Details Manual;
2. Removal of refuse and permitted fill;
3. Planting of native vegetation and removal of non-native/invasive species, dead or dying trees or vegetation that is hazardous to the public;
4. Construction, re-construction or expansion of public utilities and infrastructure (including both public roads and private streets) that is necessary to support permitted development;
5. Construction, re-construction or expansion of a single-family residence on a legal lot of record under the following prescribed conditions:
 - a. The applicant must demonstrate that the lot has received prior planning approval from either the City of Happy Valley, or if annexed, from Clackamas County, and that there is insufficient buildable land on the same lot to allow the proposed construction or expansion;
 - b. The engineering, building permit, erosion control, water quality, and re-vegetation standards of this title have been fully satisfied;
 - c. The residence or addition has been sited so as to minimize excavation and disturbance to native vegetation within the steep slopes development overlay area;
 - d. The maximum impervious surface coverage from development shall be three thousand five hundred (3,500) square feet. This standard may be exceeded to allow a private driveway design and location that reduces adverse impacts to protected areas if the applicant demonstrates that a longer driveway will facilitate driveway construction that will either more closely follow hillside contours, and thereby reduce overall cut and fill area by at least twenty (20) percent; or avoid tree clusters and thereby reduce by at least twenty (20) percent the number of trees (six-inch caliper at breast height or greater) that must be removed; and
6. Development shall not result in cuts or fills in excess of three feet except for basement construction unless specifically approved by the Building Official and City Engineer, and
7. Repair or stabilization of unstable slopes.

B. Permitted uses within the buildable lands, as defined by this title are limited to the following:

1. All uses **listed in subsection A** ~~above within conservation slope areas~~; and
2. Uses permitted in the base zone in approved buildable areas.

16.32.060 Platting of new parcels or lots.

Unless exempted in Section 16.32.045, no No new parcel or lot shall be platted or approved for development exclusively within conservation slope areas.

16.32.070 Minimum buildable site size.

The minimum buildable site size shall be equal to ten thousand (10,000) square feet.

16.32.080 Required maps, studies, and reports.

A. Maps. To determine the location of potentially slope constrained areas, the applicant shall submit a scaled topographic map at two-foot contour intervals for the subject property (site) for lands less than fifteen (15) percent in slope, and at five-foot contours for lands fifteen (15) percent and greater in slope and for land within one hundred fifty (150) feet of the site perimeter. This map shall be prepared by a licensed, professional engineer or land surveyor and shall show:

1. Slopes of twenty-five (25) percent and greater;
2. Potentially hazardous analysis areas, including the analysis area parallel to and within twenty-five (25) feet of the top of the twenty-five (25) percent slope break and the analysis area parallel to and within twenty-five (25) feet of the toe of the slope;
3. Mapped DOGAMI potentially rapidly moving landslide hazard areas;
4. Transition slope areas; and
5. The area (in square feet) for each category listed above for the subject property.

B. Studies and Special Reports. The City Engineer may require, when known or perceived site or area circumstances indicate such particular need, the submittal of one or more of the following studies and/or special reports for any permit or development located within the SSDO. The requirement for such studies will be in writing and will be tied to specific code standards, criteria and/or requirements:

1. Studies.

- a. Geological Assessments. Geological assessments are prepared and stamped by a Certified Engineering Geologist and describe the surface and subsurface conditions of a site, delineate areas of a property that may be subject to specific geologic hazards, and assess the suitability of the site for development. Geological assessments shall be conducted and prepared according to the requirements and recommendations of the Oregon State Board of Geologist Examiners, and shall make recommendations as to whether further studies are required, and may be incorporated into or included as an appendix to the geotechnical report;
- b. Engineering Geology Reports. Engineering geology reports are prepared and stamped by a Certified Engineering Geologist and provide detailed descriptions of the geology of the site, professional conclusions and recommendations regarding the effect of geological conditions on the proposed development, and opinions and recommendations covering the adequacy of the site to be developed. Engineering geology reports shall be prepared in accordance with the requirements of the Guidelines for Preparing Engineering Geology Reports in Oregon adopted by the Oregon State Board of Geologist Examiners and may be incorporated into or included as an appendix to the geotechnical report; and
- c. Geotechnical Reports. Geotechnical reports are prepared and stamped by a Geotechnical Engineer, evaluate site conditions, and recommend design measures necessary to reduce the development risks and facilitate safe and stable development. Geotechnical reports shall be conducted and prepared according to the requirements and recommendations of the Oregon State Board of Geologist Examiners, and may be incorporated into or included as an appendix to the Engineering Geology Report.

2. Special Reports.

- a. Hydrology and Soils Report. This report shall include information on the hydrological conditions on the site, the effect of hydrologic conditions on the proposed development, the proposed development's impact on surface and groundwater flows to wetlands and streams, and any hydrological or erosion hazards. This report shall also include soils characteristics of the site, their suitability for development, carrying capacity, and erosion or slumping characteristics that might present a hazard to life and property, or adversely affect the use or stability of a public facility or utility. Finally, this report shall include information on the nature, distribution and strength of existing soils; the adequacy of the site for development purposes; and an assessment of grading

procedures required to impose the minimum disturbance to the natural state. A licensed, professional engineer registered in Oregon shall prepare the hydrology and soils report;

b. Grading Plan. The grading plan shall be specific to a proposed physical structure or use and shall include information on terrain (two-foot intervals of property), drainage, direction of drainage flow, location of proposed structures and existing structures which may be affected by the proposed grading operations, water quality facilities, finished contours or elevations, including all cut and fill slopes and proposed drainage channels. Project designs, including but not limited to, locations of surface and subsurface devices, walls, dams, sediment basins, storage reservoirs, and other protective devices, shall form part of the submission. The grading plan shall also include: (i) construction phase erosion control plan consistent with the provisions of Title 15 of the City's Municipal Code; and (ii) schedule of operations. A licensed, professional engineer registered in Oregon shall prepare the grading and erosion control plan; and

c. Native Vegetation Report. This report shall consist of a survey of existing vegetative cover, whether it is native or introduced, and how it will be altered by the proposed development. Measures for re-vegetation with native plant species will be clearly stated, as well as methods for immediate and long-term stabilization of slopes and control of soil erosion. A landscape architect, landscape designer, botanist or arborist with specific knowledge of native plant species, planting and maintenance methods, survival rates, and their ability to control erosion and sedimentation shall prepare the vegetation report. The applicant shall be responsible for replacing any native plant species that do not survive the first two years after planting, and for ensuring the survival of any replacement plants for an additional two years after their replacement.

C. Compliance with Study Conclusions and Recommendations.

1. Professional Standards. The City Engineer shall determine whether Geological Assessments, Engineering Geology Reports, or Geotechnical Reports have been prepared in accordance with this title. The City Engineer may require additional information or analysis necessary to meet study requirements.
2. Peer Review. The City Engineer may require peer review of any required report, in which case regulated activities and uses shall be reviewed and accepted through the peer review process before any regulated activity will be allowed. The cost of such peer review shall be borne by the applicant. If peer review is required, the City Engineer shall provide the applicant, in writing, the reasons for the peer review.
 - a. A professional or professional firm of the City's choice that meets the qualifications listed in this chapter shall perform the review.
 - b. The review shall be at the applicant's expense.
 - c. Review of report submittals shall determine whether required elements are completed, geologic report procedures and assumptions are accepted, and all conclusions and recommendations are supported and reasonable.
3. Review Criteria. The approval authority shall rely on the conclusions and recommendations of the required reports, as modified by peer review, as well as any rebuttal material supplied by the applicant, to determine compliance with this section.
4. Conditions of Approval. After review of the peer review report(s) and any rebuttal materials submitted by the applicant, conclusions and recommendations stated in approved reports shall be directly incorporated as permit conditions or provide the basis for conditions of approval for the regulated activity or use.
5. Expiration. Where an approved assessment or report as defined by this chapter has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, that report may be utilized and a new report is not required. Should environmental conditions associated with the site or surrounding the site change, or if the proposed land use activity or development has materially changed, the applicant shall submit an amendment to the

required assessment or report, which may be reviewed and approved through the peer review process.

16.32.0890 Environmental review permit.

Development proposals that are subject to the provisions of Chapter 16.32 require an environmental review permit application. Environmental Review Permits will be reviewed through a Type II procedure, pursuant to Section 16.61.030.

16.32.090400 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). 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).

16.32.1400 Site design criteria.

Development within the SSDO shall comply with the following site design criteria:

- A. Development is sited on lands less than fifteen (15) percent slope lands within the same parcel or on other parcels which are a part of the application, to the greatest degree practicable;
- B. Significant trees and other resources are protected and/or incorporated into the site design;
- C. Lands that remain undeveloped are coordinated with open space in adjacent parcels and natural resource areas, so that such areas, in combination, form as continuous an open space system as is practicable;
- D. Opportunities for linking wildlife corridors and pedestrian trails are implemented;
- E. Provision of access and internal circulation routes are as short as possible and designed to work with the natural topography, maintain minimum grades and require minimum cut and fill;
- F. Creation of open space tracts between proposed developments and existing developed parcels or open space tracts shall be coordinated so that such areas, in combination, will form as continuous an open space system as is practicable; and
- G. Opportunities for shared access are utilized wherever practicable, and if possible may be required by the City Engineer pursuant to Section 16.41.030, Vehicular access and circulation. A variance to vehicular access and circulation standards may be granted pursuant to Section 16.71.040, Class B variances.

[...]

16.42.030 Landscaping standards.

A. General Requirements for Landscaping.

- 1. Where landscaping is required by this code, a detailed landscape design plan in accordance with Section 16.42.030(C) shall be submitted for review with development applications. No development may commence until the Planning Official or Planning Commission has determined the plans comply with the specific standards of this section. All required landscaping and related improvements shall be completed or financially guaranteed prior to the issuance of a certificate of occupancy.
- 2. Appropriate care and maintenance of landscaping on-site and landscaping in the adjacent public right-of-way is the joint and several right and responsibility of the property owner, tenant, and their agent, if any, unless otherwise provided by the lease agreement, or City ordinances specify otherwise for general public and safety reasons. If street trees or other plant materials do not survive or are removed, materials shall be replaced in kind within four months. Landscaping shall be maintained in a condition which presents a healthy, neat, and orderly appearance and shall be kept free of refuse and debris.

Example #1

Showing violations when SSDO is applied - includes map showing conservative and transitional slopes (page 177 of Planning Commission packet of 02/24/2015)

16.32.060 Platting of new parcels or lots.

No new parcel or lot shall be platted or approved for development exclusively within conservation slope areas.

Lot 41 is 100% within conservative slopes. Several other lots are very close to being 100% within the conservative slope area.

NOTE: The first page shows the entire lot. The other pages are a poster-sized printout of the same map to allow you to see the details from the map.

TAX LOT 601
TAX MAP 1 3E 30C

35

36

37

38

39

520

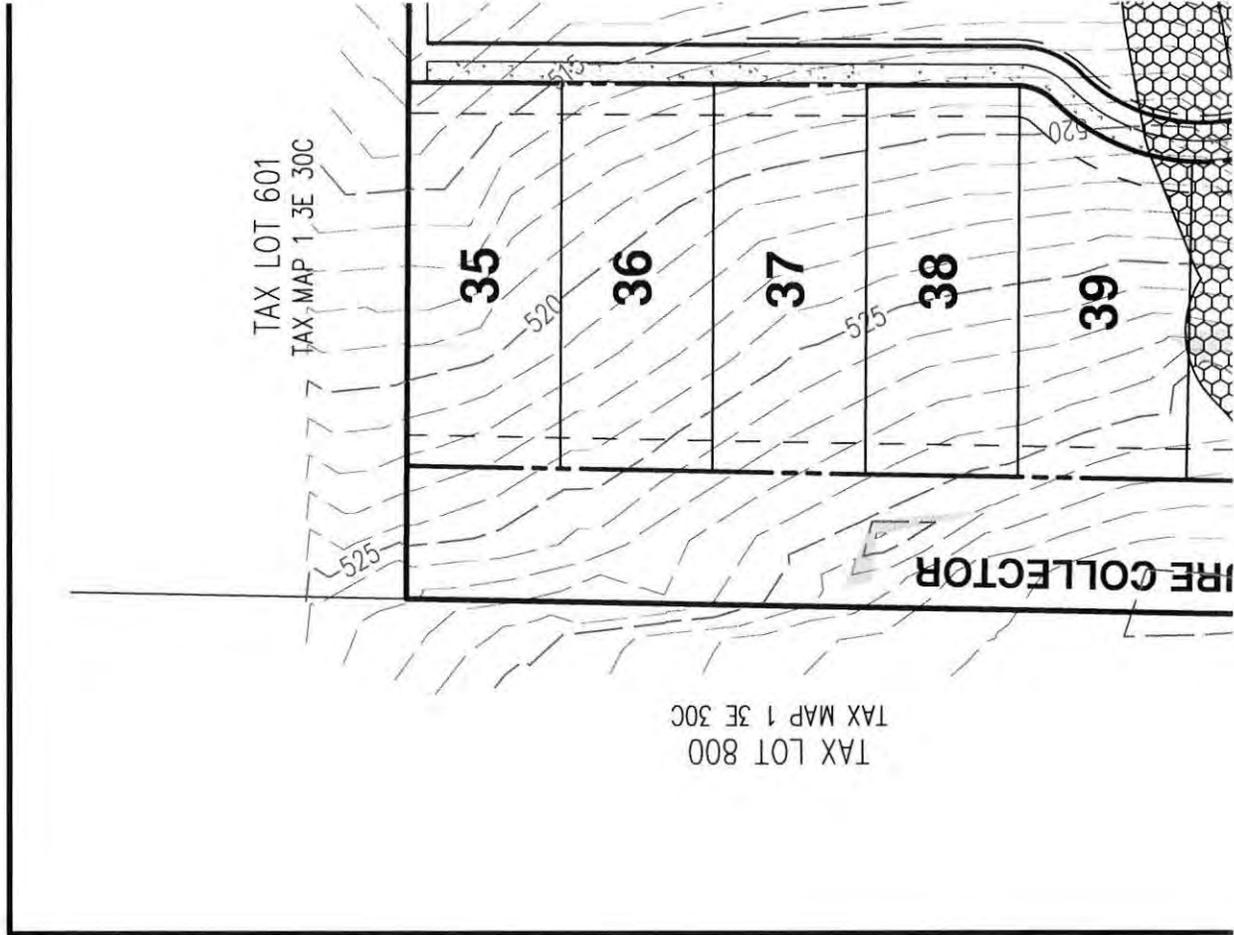
525

520

525

FIRE COLLECTOR

TAX LOT 800
TAX MAP 1 3E 30C



TAX LOT 602
TAX MAP 1 3E 30C

TAX LOT 604
TAX MAP 1 3E 30C

34

28

33

29

32

31

30

27

26

25

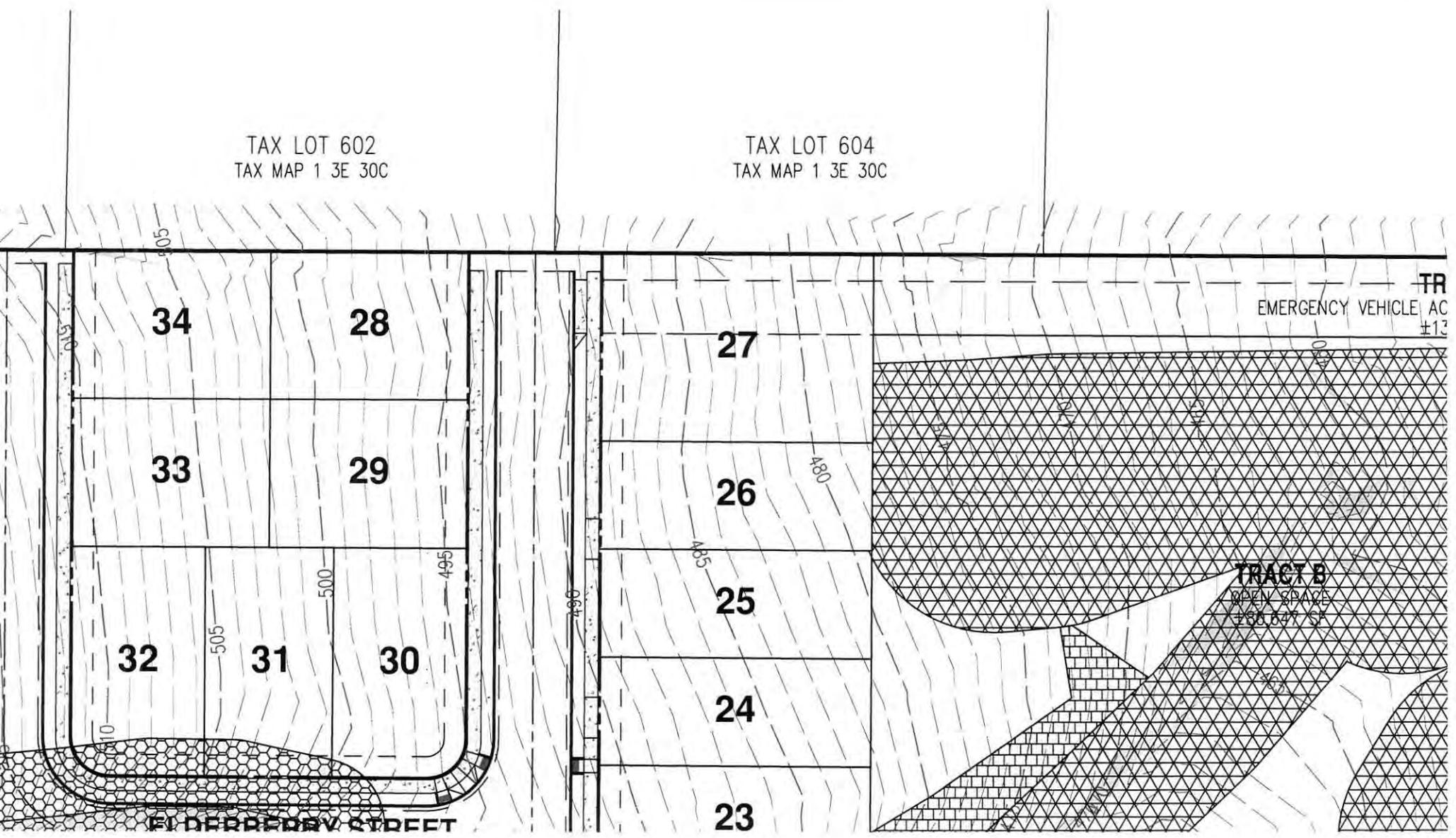
24

23

TR
EMERGENCY VEHICLE AC
±13

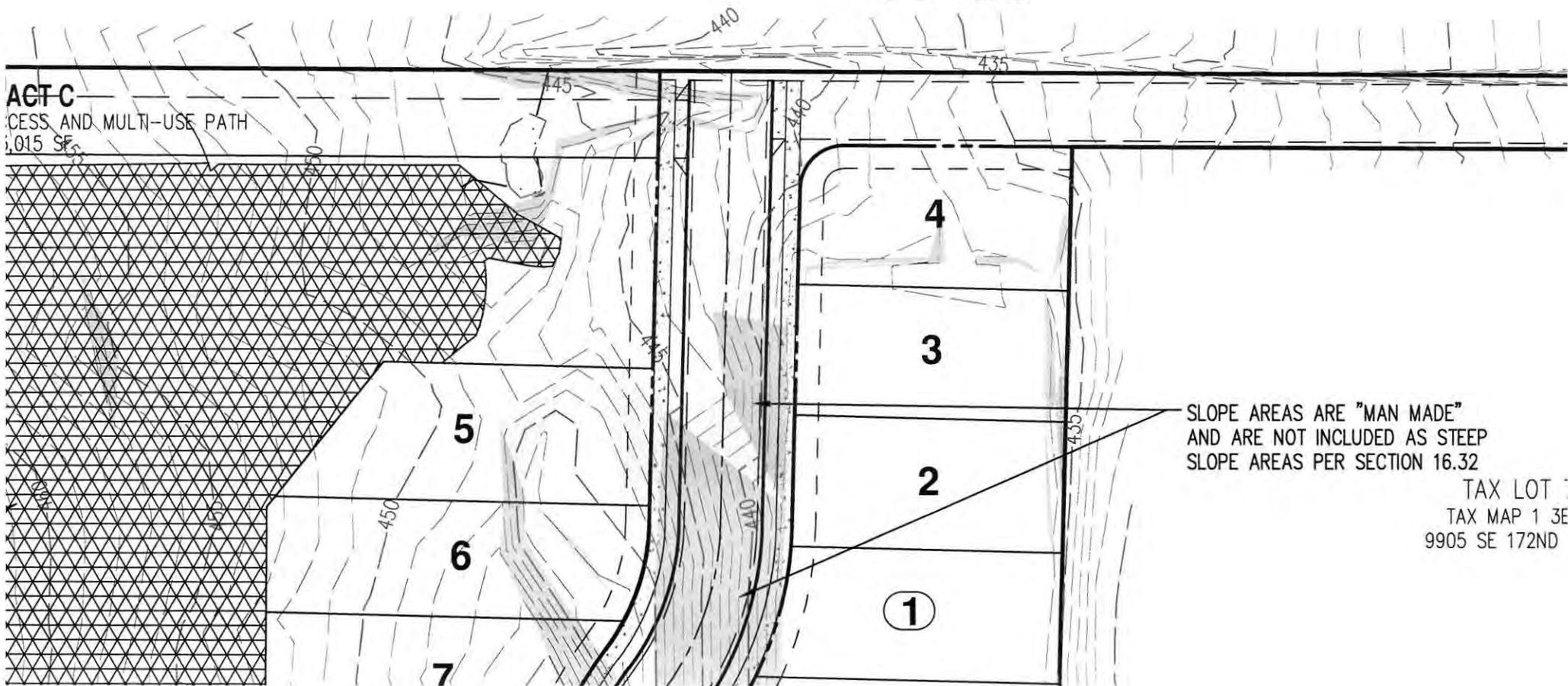
TRACT B
OPEN SPACE
±80,077 SF

EL DERRERY STREET



TAX LOT 600
TAX MAP 1 3E 30C

ACT-C
ACCESS AND MULTI-USE PATH
1,015 SF



SLOPE AREAS ARE "MAN MADE"
AND ARE NOT INCLUDED AS STEEP
SLOPE AREAS PER SECTION 16.32

TAX LOT :
TAX MAP 1 3E
9905 SE 172ND

CLACKAMAS COUNTY TAX MAP 1 3E 30C

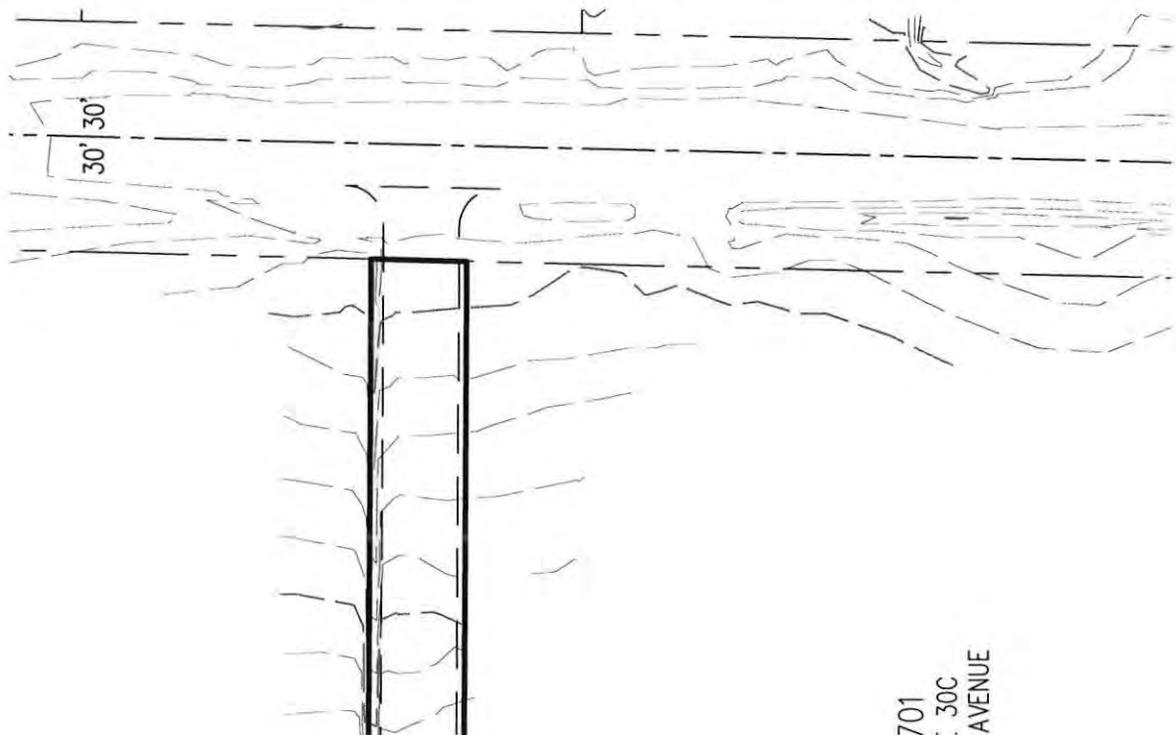
OREGON

MEADOWS

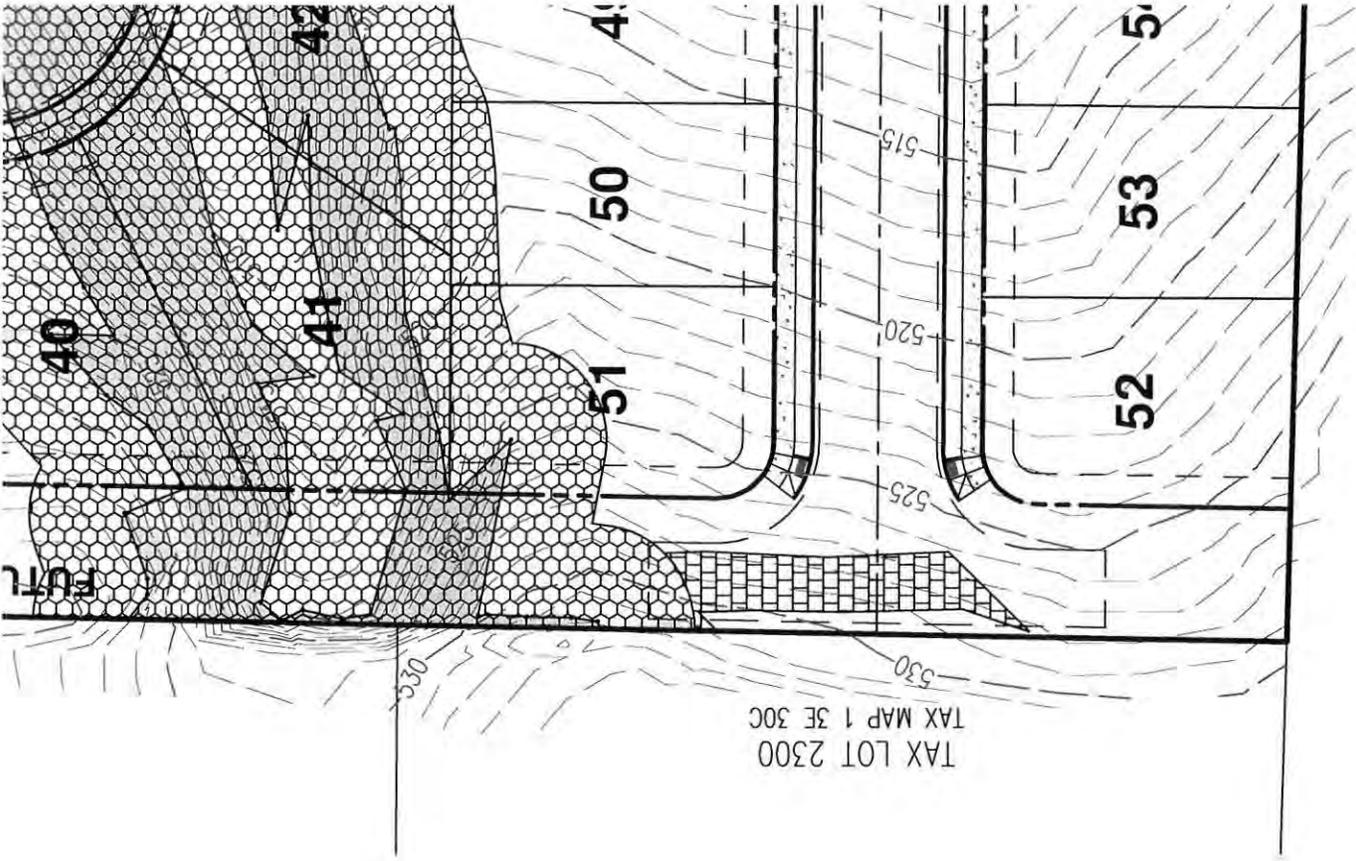
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701
: 30C
AVENUE



TAX LOT 2300
TAX MAP 1 3E 30C

FUTL

40

41

42

51

50

49

52

53

54

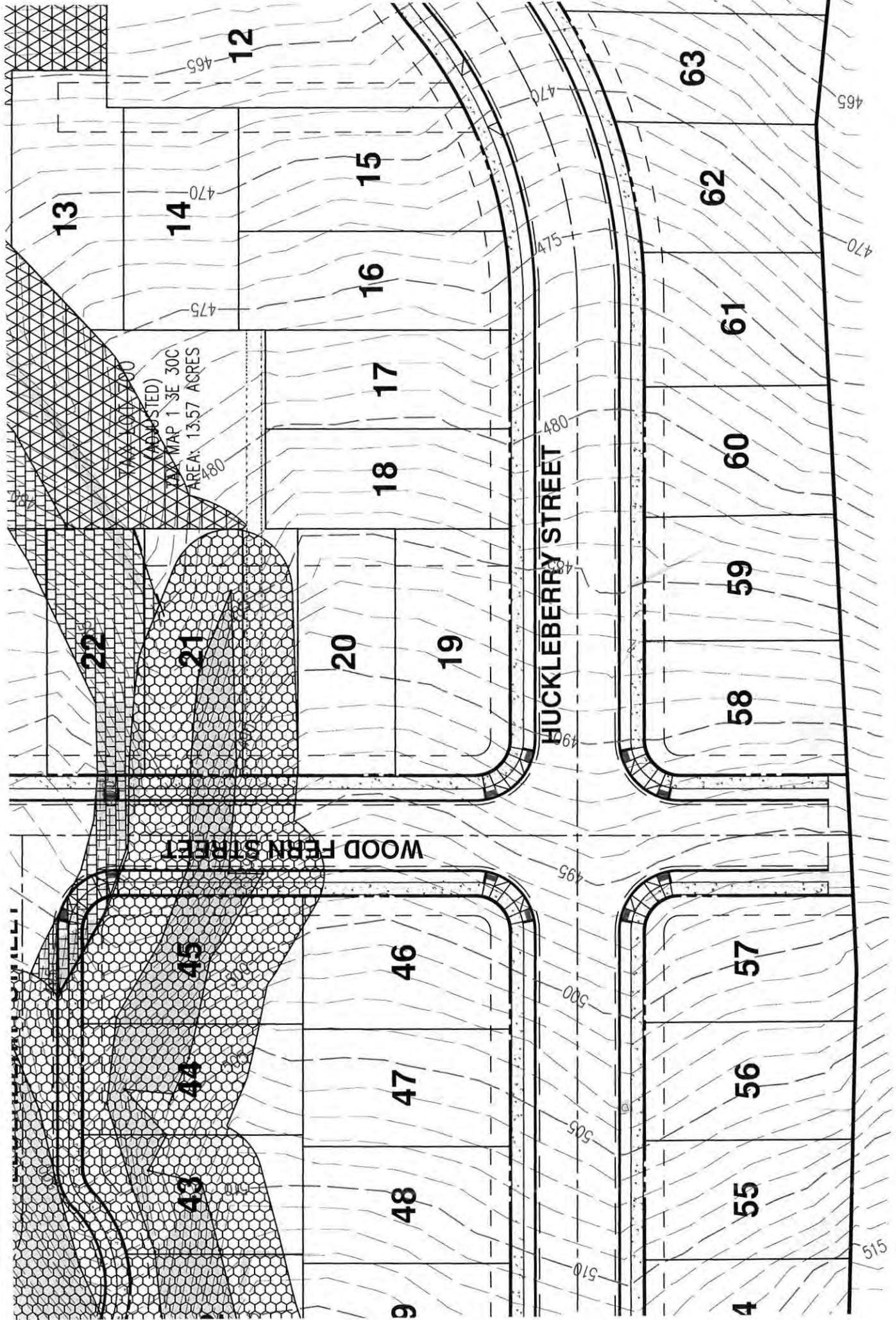
515

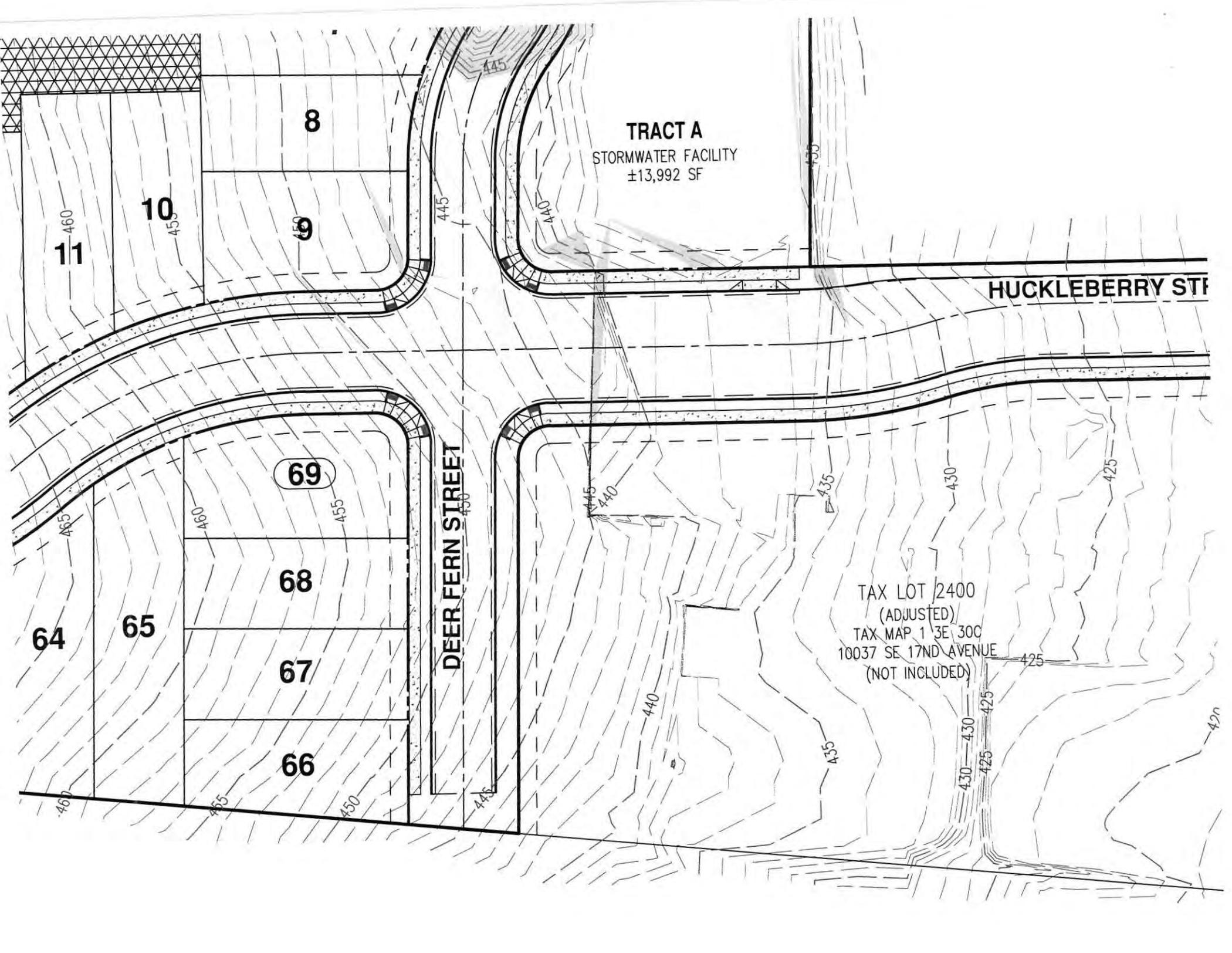
520

525

530

530





TRACT A
STORMWATER FACILITY
±13,992 SF

HUCKLEBERRY ST

DEER FERN STREET

TAX LOT 2400
(ADJUSTED)
TAX MAP 1 3E 30C
10037 SE 17ND AVENUE
(NOT INCLUDED)

8

9

10

11

69

68

67

66

64

65

460

453

445

444

445

465

464

455

445

440

435

430

425

467

455

450

445

440

435

430

425

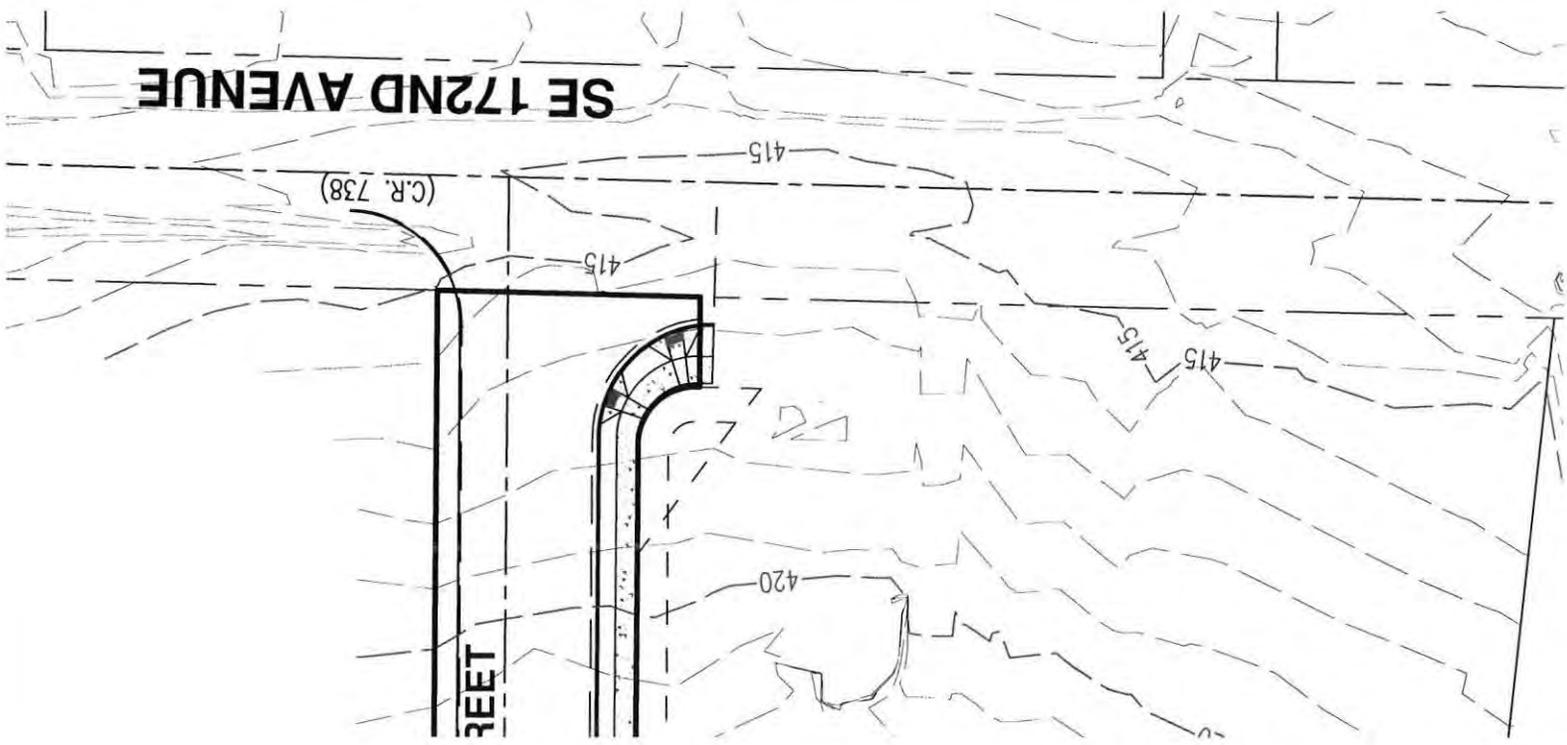
425

420

NSITY CALCULATION AREAS PLAN

HAPPY VALLEY
TAX LOT 700 (ADJUSTED)

GRAND VIEW N



AKS DRAWING FILE: 4004 SLOPE AREAS FOR DENSITY.DWG | LAYOUT: D1

TAX MAP 1 3E 30C
10157 SE 172ND AVENUE



Example #2

Showing violations when SSDO is applied - includes map showing size of lots.

(page 161 of Planning Commission packet of 02/24/2015)

16.32.070 Minimum buildable site size.

The minimum buildable site size shall be equal to ten thousand (10,000) square feet.

Every lot is well under 10,000 square feet..

NOTE: This section of the code was removed by the amendments made on June 2, 2015. However, it was in full effect when this development was approved on February 24, 2015.

As the attorney pointed out in their letter, the code that is in effect at the time of the land use decision must be used. This shows that the code was ignored.



LOT	ACRES	AREA	PERCENT
1	0.125	5,454.54	7.89
2	0.125	5,454.54	7.89
3	0.125	5,454.54	7.89
4	0.125	5,454.54	7.89
5	0.125	5,454.54	7.89
6	0.125	5,454.54	7.89
7	0.125	5,454.54	7.89
8	0.125	5,454.54	7.89
9	0.125	5,454.54	7.89
10	0.125	5,454.54	7.89
11	0.125	5,454.54	7.89
12	0.125	5,454.54	7.89
13	0.125	5,454.54	7.89
14	0.125	5,454.54	7.89
15	0.125	5,454.54	7.89
16	0.125	5,454.54	7.89
17	0.125	5,454.54	7.89
18	0.125	5,454.54	7.89
19	0.125	5,454.54	7.89
20	0.125	5,454.54	7.89
21	0.125	5,454.54	7.89
22	0.125	5,454.54	7.89
23	0.125	5,454.54	7.89
24	0.125	5,454.54	7.89
25	0.125	5,454.54	7.89
26	0.125	5,454.54	7.89
27	0.125	5,454.54	7.89
28	0.125	5,454.54	7.89
29	0.125	5,454.54	7.89
30	0.125	5,454.54	7.89
31	0.125	5,454.54	7.89
32	0.125	5,454.54	7.89
33	0.125	5,454.54	7.89
34	0.125	5,454.54	7.89
35	0.125	5,454.54	7.89
36	0.125	5,454.54	7.89
37	0.125	5,454.54	7.89
38	0.125	5,454.54	7.89
39	0.125	5,454.54	7.89
40	0.125	5,454.54	7.89
41	0.125	5,454.54	7.89
42	0.125	5,454.54	7.89
43	0.125	5,454.54	7.89
44	0.125	5,454.54	7.89
45	0.125	5,454.54	7.89
46	0.125	5,454.54	7.89
47	0.125	5,454.54	7.89
48	0.125	5,454.54	7.89
49	0.125	5,454.54	7.89
50	0.125	5,454.54	7.89
51	0.125	5,454.54	7.89
52	0.125	5,454.54	7.89
53	0.125	5,454.54	7.89
54	0.125	5,454.54	7.89
55	0.125	5,454.54	7.89
56	0.125	5,454.54	7.89
57	0.125	5,454.54	7.89
58	0.125	5,454.54	7.89
59	0.125	5,454.54	7.89
60	0.125	5,454.54	7.89
61	0.125	5,454.54	7.89
62	0.125	5,454.54	7.89
63	0.125	5,454.54	7.89
64	0.125	5,454.54	7.89
65	0.125	5,454.54	7.89
66	0.125	5,454.54	7.89
67	0.125	5,454.54	7.89
68	0.125	5,454.54	7.89
69	0.125	5,454.54	7.89

LOT	ACRES	AREA	PERCENT
70	0.125	5,454.54	7.89
71	0.125	5,454.54	7.89
72	0.125	5,454.54	7.89
73	0.125	5,454.54	7.89
74	0.125	5,454.54	7.89
75	0.125	5,454.54	7.89
76	0.125	5,454.54	7.89
77	0.125	5,454.54	7.89
78	0.125	5,454.54	7.89
79	0.125	5,454.54	7.89
80	0.125	5,454.54	7.89
81	0.125	5,454.54	7.89
82	0.125	5,454.54	7.89
83	0.125	5,454.54	7.89
84	0.125	5,454.54	7.89
85	0.125	5,454.54	7.89
86	0.125	5,454.54	7.89
87	0.125	5,454.54	7.89
88	0.125	5,454.54	7.89
89	0.125	5,454.54	7.89
90	0.125	5,454.54	7.89
91	0.125	5,454.54	7.89
92	0.125	5,454.54	7.89
93	0.125	5,454.54	7.89
94	0.125	5,454.54	7.89
95	0.125	5,454.54	7.89
96	0.125	5,454.54	7.89
97	0.125	5,454.54	7.89
98	0.125	5,454.54	7.89
99	0.125	5,454.54	7.89
100	0.125	5,454.54	7.89

174.07 ACRES
 7,527,311.50 SQ. FT.
 174.07 ACRES
 7,527,311.50 SQ. FT.

PRELIMINARY SUBDIVISION PLAT NOTE
 THE PURPOSE OF THIS PRELIMINARY PLAT IS TO SHOW THE
 LOTS AND BLOCKS FOR PLANNING PURPOSES AND TO SHOW THE
 PROPERTY LINES AND TO SHOW THE EXISTING
 RECORDS.



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 209 N. JUBA ST.
 SUITE 100
 PORTLAND, OREGON 97202
 PHONE: 503.253.6150
 FAX: 503.253.6152
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PRELIMINARY SUBDIVISION PLAT
 GRAND VIEW MEADOWS
 HAPPY VALLEY
 OREGON

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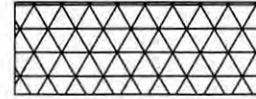
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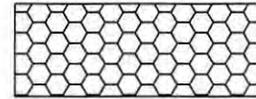
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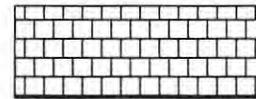
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- WATER QUALITY RESOURCE AREA (WQRA) = 59,085 SF



- CONSERVATION SLOPE AREA = 55,226 SF



- TRANSITION SLOPE AREA = 8,154 SF

NOTE: NO HCA EXISTS ONSITE.

SLOPE LEGEND

MIN SLOPE	MAX SLOPE	COLOR
0%	15%	
15%	25%	
25%	OVER 25%	

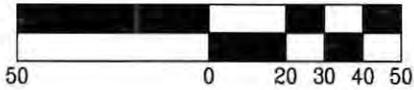
TOTAL GROSS SITE AREA (TGSA) = 591,109 SF

$(WQRA) \div (TSGA) = (59,085) \div (591,109) = 0.099 = 9.9\%$

$9.9\% < 10\% \therefore$ SITE CAN BE DEVELOPED AS A SUBDIVISION.



SCALE 1" = 50 FEET



DE

DESIGNED BY: JMM

DRAWN BY: AZV

CHECKED BY: MBH

SCALE: AS NOTED

DATE: 11-03-2014



RENEWAL DATE: 6/30/15

REVISIONS

JOB NUMBER

4004

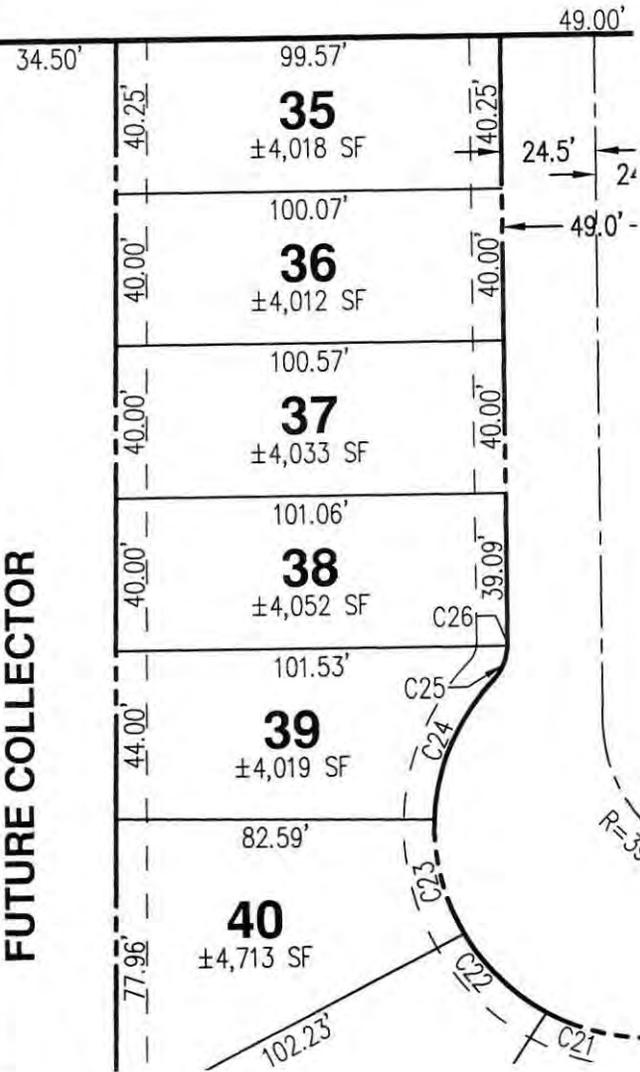
SHEET

D1

TAX LOT 800
TAX MAP 1 3E 30C

FUTURE COLLECTOR

TAX LOT 601
TAX MAP 1 3E 30C



TAX LOT 602
TAX MAP 1 3E 30C

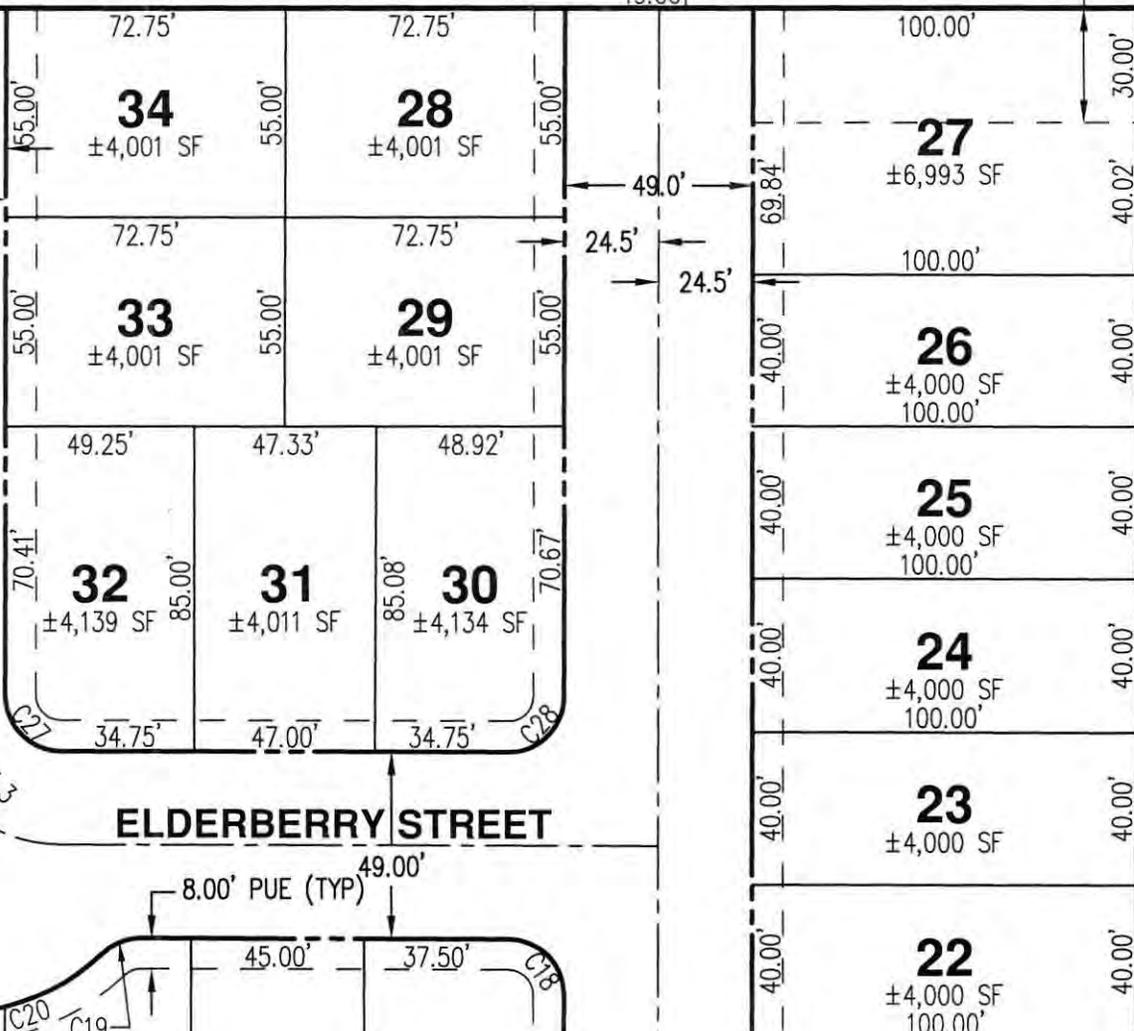
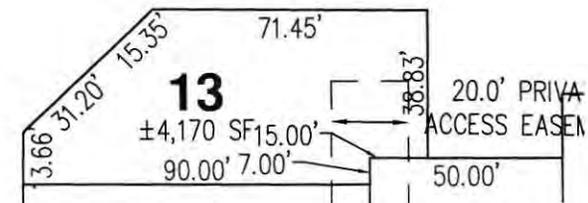
TAX LOT 604
TAX MAP 1 3E 30C

30' EASEMENT FOR EMERGENCY VEHICLE
ACCESS AND MULTI-USE PATH

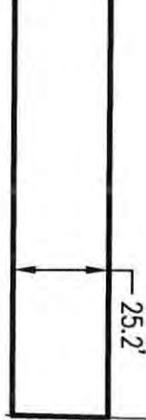
434.08' **TRACT A**
EMERGENCY VEHICLE ACCESS
433.56' ±13,015

TRACT B
OPEN SPACE
±80,647 SF

TAX LOT 700
(ADJUSTED)
TAX MAP 1 3E 30C



UE



25.22'

25.2'

UE

MEADOWS

OREGON

CLACKAMAS COUNTY TAX MAP 1 3E 30C

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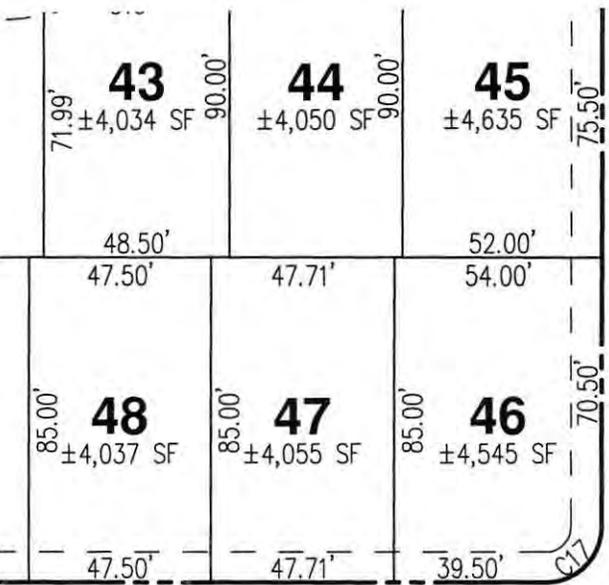


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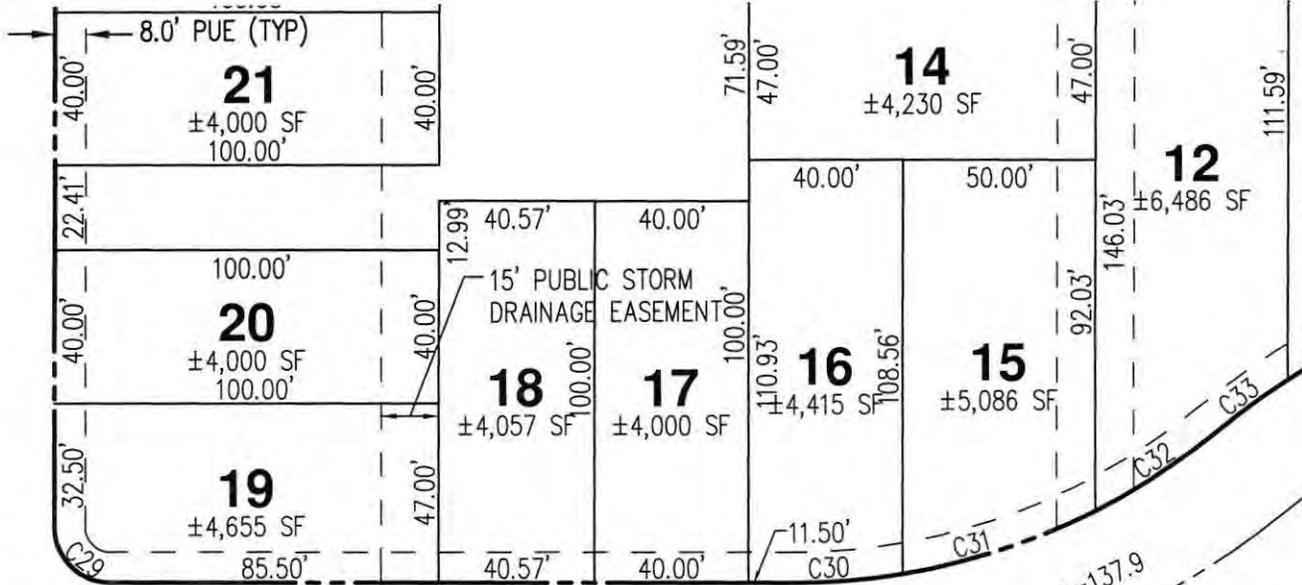


TAX LOT 2300
TAX MAP 1 3E 30C

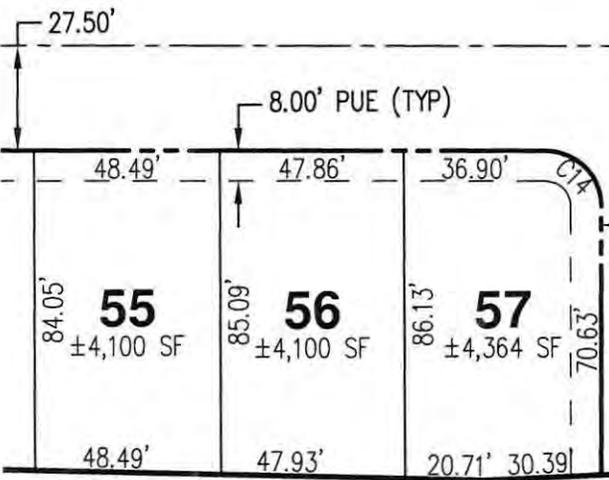
CURVE TABLE				
CURVE	RADIUS	DELTA	LENGTH	CHORD
C1	15.00'	90°59'13"	23.82'	N44°06'22"W 21.
C2	171.50'	16°19'43"	48.88'	S82°18'17"W 48.
C3	228.50'	16°15'37"	64.85'	N82°16'13"E 64.6
C4	14.50'	89°00'47"	22.53'	S45°53'38"W 20.



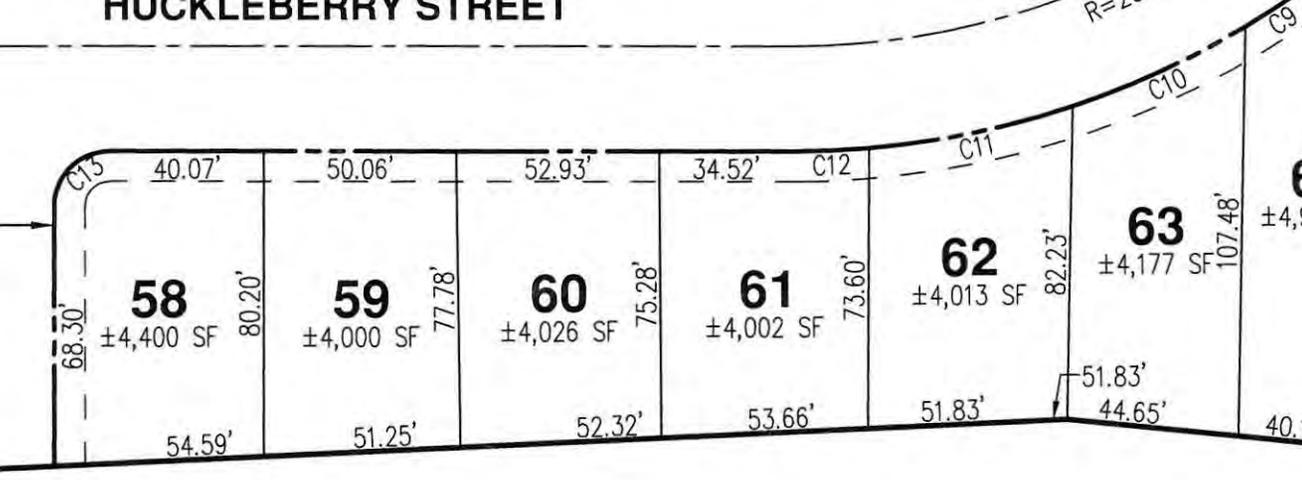
WOOD FERN STREET



HUCKLEBERRY STREET



WOOD FERN STREET



40'
71'
33'
33'

CURVE TABLE				
CURVE	RADIUS	DELTA	LENGTH	CHORD
C25	14.50'	40°18'39"	10.20'	N24°09'49"E 9.99'
C26	14.50'	3°36'28"	0.91'	N2°12'16"E 0.91'
C27	14.50'	90°00'00"	22.78'	S44°35'58"E 20.51'
C28	14.50'	90°00'00"	22.78'	N45°24'02"E 20.51'

TAX LOT 2200
TAX MAP 1 3E 30C
10157 SE 172ND AVENUE

HAPPY VALLEY

TAX LOT 700 (ADJUSTED)

GRAND VIEW

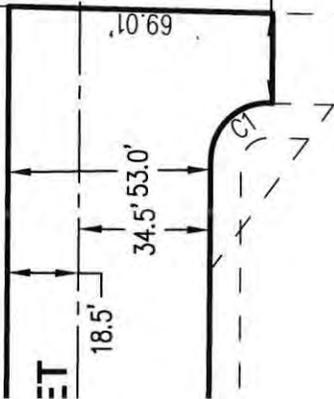
PRIMARY SUBDIVISION

PLAT

SE 172ND AVENUE

(C.R. 738)

23.5' ROW
DEDICATION



AKS DRAWING FILE: 4004 P1-09 PLAT.DWG | LAYOUT: 09

C5	14.50'	90°59'13"	23.03'	N44°06'22"W 20.
C6	172.50'	18°33'51"	55.89'	S80°43'05"W 55.
C7	172.50'	15°00'57"	45.21'	S63°55'41"W 45.
C8	172.50'	5°32'12"	16.67'	S53°39'07"W 16.
C9	227.50'	8°23'25"	33.31'	N55°04'43"E 33.
C10	227.50'	12°28'50"	49.56'	N65°30'50"E 49.
C11	227.50'	13°37'54"	54.13'	N78°34'12"E 54.
C12	227.50'	5°00'52"	19.91'	N87°53'35"E 19.
C13	14.50'	90°00'00"	22.78'	S45°24'03"W 20.
C14	14.50'	90°00'00"	22.78'	S44°35'58"E 20.
C15	14.50'	89°17'19"	22.60'	N45°45'22"E 20.
C16	14.50'	90°42'41"	22.96'	S44°14'38"E 20.
C17	14.50'	90°00'00"	22.78'	N45°24'02"E 20.
C18	14.50'	90°00'00"	22.78'	N44°35'58"W 20.
C19	14.50'	43°55'07"	11.11'	S68°26'28"W 10.
C20	55.50'	30°17'30"	29.34'	N61°37'39"E 29.
C21	55.50'	42°53'45"	41.55'	S81°46'43"E 40.
C22	55.50'	30°50'51"	29.88'	S44°54'25"E 29.
C23	55.50'	32°25'02"	31.40'	S13°16'29"E 30.
C24	55.50'	41°23'06"	40.09'	S23°37'36"W 39.

.68'	C29	14.50'	90°00'00"	22.78'	S44°35'58"E 20.51'
65'	C30	172.50'	9°30'32"	28.63'	N85°38'46"E 28.60'
08'	C31	172.50'	17°33'35"	52.87'	N72°06'42"E 52.66'
66'	C32	172.50'	12°26'55"	37.48'	N57°06'28"E 37.40'
28'	C33	227.50'	5°52'41"	23.34'	S53°49'21"W 23.33'
46'	C34	227.50'	11°25'15"	45.35'	S62°28'18"W 45.27'
00'	C35	227.50'	10°32'46"	41.87'	S73°27'19"W 41.82'
90'	C36	227.50'	12°02'51"	47.84'	S84°45'08"W 47.75'
51'	C37	14.50'	88°58'45"	22.52'	N45°52'37"E 20.32'
51'	C38	124.50'	17°56'03"	38.97'	S10°21'15"W 38.81'
38'	C39	124.50'	17°36'07"	38.25'	S28°07'21"W 38.10'
63'	C40	75.50'	8°51'01"	11.66'	N32°29'53"E 11.65'
51'	C41	75.50'	26°41'09"	35.16'	N14°43'48"E 34.85'
.51'	C42	15.00'	88°54'32"	23.28'	S45°50'30"W 21.01'
84'	C43	124.50'	3°04'38"	6.69'	N2°55'32"E 6.69'
00'	C44	124.50'	21°27'00"	46.61'	N15°11'21"E 46.34'
59'	C45	124.50'	11°00'33"	23.92'	N31°25'08"E 23.89'
52'	C46	75.50'	35°32'10"	46.83'	S19°09'19"W 46.08'
38'	C47	14.50'	90°59'08"	23.03'	S44°06'20"E 20.68'
22'					

PRELIMINARY SUBDIVISION PLAT NOTE:

THE PURPOSE OF THIS PRELIMINARY PLAT IS TO SHOW THE LOT DIMENSIONS FOR PLANNING PURPOSES. THIS IS NOT A FINAL PLAT AND IS NOT TO BE USED FOR SURVEYING PURPOSES.

PUE = PUBLIC UTILITY EASEMENT

PREI

DESIGNED BY: JMM

DRAWN BY: AZV

CHECKED BY: MBH

SCALE: AS NOTED

DATE: 11-03-2014



RENEWAL DATE: 6/30/15

REVISIONS

JOB NUMBER

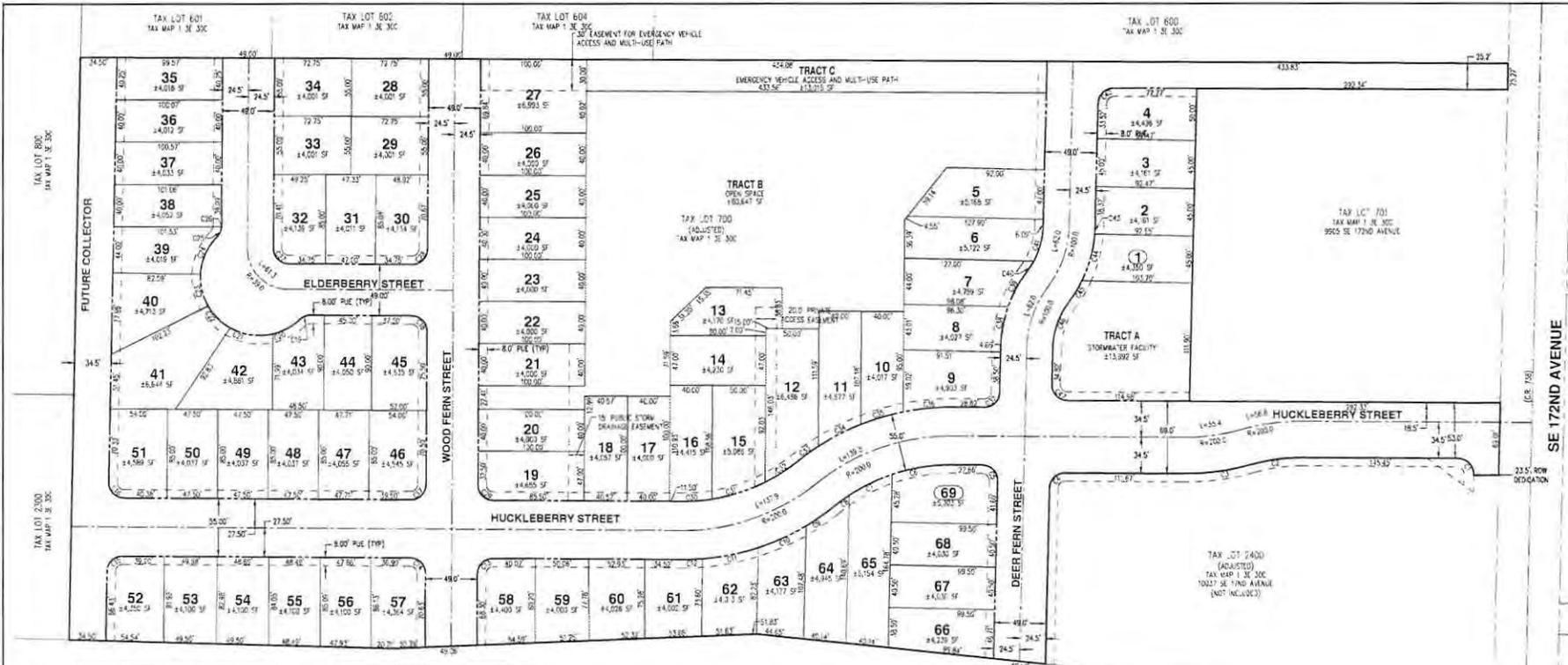
4004

SHEET

09

SCALE 1" = 50 FEET



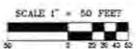


CURVE	RADIUS	DELTA	LENGTH	CHORD
C1	13.00'	90°54'33"	23.87'	14.476'±
C2	171.50'	167°44'33"	48.88'	180.617'±
C3	228.50'	161°52'31"	64.85'	202.161'±
C4	14.50'	89°02'47"	22.53'	14.033'±
C5	14.50'	92°56'13"	23.63'	14.022'±
C6	172.50'	163°33'51"	50.89'	185.435'±
C7	172.50'	157°03'57"	49.21'	183.954'±
C8	172.50'	172°13'10"	51.48'	187.397'±
C9	227.50'	162°32'25"	53.31'	203.944'±
C10	227.50'	172°26'50"	59.55'	205.353'±
C11	227.50'	157°27'54"	54.13'	197.347'±
C12	227.50'	150°53'21"	49.91'	187.535'±
C13	14.50'	90°02'00"	22.78'	14.024'±
C14	14.50'	90°02'00"	22.78'	14.024'±
C15	14.50'	89°17'09"	22.67'	13.957'±
C16	14.50'	92°47'41"	22.96'	14.027'±
C17	14.50'	90°02'00"	22.78'	14.024'±
C18	14.50'	90°02'00"	22.78'	14.024'±
C19	14.50'	87°56'07"	11.11'	10.876'±
C20	55.50'	30°17'20"	20.34'	10.813'±
C21	55.50'	42°51'45"	41.55'	20.868'±
C22	55.50'	30°16'31"	20.28'	10.812'±
C23	55.50'	37°25'51"	31.40'	15.716'±
C24	55.50'	47°23'26"	40.07'	20.337'±

CURVE	RADIUS	DELTA	LENGTH	CHORD
C25	14.50'	40°18'31"	6.20'	3.247'±
C26	14.50'	37°56'38"	6.91'	3.576'±
C27	14.50'	90°00'00"	22.78'	14.024'±
C28	14.50'	91°00'30"	22.78'	14.024'±
C29	14.50'	90°30'30"	22.78'	14.024'±
C30	172.50'	173°33'25"	52.87'	172.042'±
C31	172.50'	172°59'55"	51.48'	167.362'±
C32	227.50'	159°41'17"	53.34'	203.944'±
C33	227.50'	172°13'10"	51.48'	187.397'±
C34	227.50'	162°32'25"	53.31'	203.944'±
C35	227.50'	157°27'54"	41.87'	172.716'±
C36	227.50'	150°53'21"	47.64'	164.450'±
C37	14.50'	89°58'45"	22.52'	14.023'±
C38	124.50'	172°01'01"	38.57'	120.215'±
C39	124.50'	172°01'01"	38.25'	119.921'±
C40	75.50'	85°01'21"	15.36'	10.293'±
C41	75.50'	26°41'05"	35.18'	14.443'±
C42	15.00'	88°43'31"	23.28'	14.956'±
C43	124.50'	172°01'01"	6.69'	12.512'±
C44	124.50'	2°27'00"	48.81'	15.121'±
C45	124.50'	11°01'13"	23.50'	13.257'±
C46	75.50'	30°33'10"	45.83'	18.091'±
C47	14.50'	90°29'26"	23.03'	14.026'±

TAX LOT 2700
TAX MAP 1 SE 30C
10157 SE 172ND AVENUE

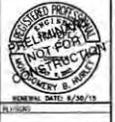
PRELIMINARY SUBDIVISION PLAT NOTE:
THE PURPOSE OF THIS PRELIMINARY PLAT IS TO SHOW THE LOT DIMENSIONS FOR PLANNING PURPOSES. THIS IS NOT A FINAL PLAT AND IS NOT TO BE USED FOR SURVEYING PURPOSES.



GRAND VIEW MEADOWS
HAPPY VALLEY OREGON
CLAYTONS CORNER 111.111.111.111
TAX LOT 2000 (EAST)

PRELIMINARY SUBDIVISION PLAT

DESIGNED BY: JMM
DRAWN BY: JMM
CHECKED BY: JMM
SCALE: AS NOTED
DATE: 11-03-2014



JOB NUMBER
4004
SHEET
09

UGMA

Urban Growth Management Agreement between Happy Valley and Clackamas County

This is the Urban Growth Management Agreement between the city of Happy Valley and Clackamas County.

Page two lists the objectives of the agreement. The city has failed on a number of these items, including the following:

- **Providing a smooth transition when lands are annexed.** The land from McDonalds was annexed in 2009, but was not properly zoned at that time, when residential was converted to commercial with no notice.
- **Providing consistent policies and standards for development.** The only consistency concerning the SSDO is that the policies are not enforced.
- **Protecting neighborhood character and livability through a coordinated City and County planning program.** No such program exists.
- **Ensuring high standards of urban design compatible with the character and desires of the surrounding community.** The city planners enforce building standards, but completely ignore the desires of the surrounding community.
- **Protecting and enhancing natural resources.** The city planners go out of their way to prevent the application of the SSDO. As a result, the Walgreen development destroyed acres of natural habitat
- **Promoting cooperation between all parties involved in land use planning and service delivery.** Attempting to block information requests, stopping postings on the Happy Valley website, changing the order of meetings, "losing" audio recordings of public meetings

2201-3308

URBAN GROWTH MANAGEMENT AGREEMENT
For the City of Happy Valley and Clackamas County

This Agreement is entered into this 19th day of June, 2001, between the City of Happy Valley ("City"), a municipal corporation of the State of Oregon, and Clackamas County (County), a political subdivision of the State of Oregon.

WHEREAS, ors 190.003 TO 190.030 allows units of local government to enter into agreement for performance of any or all functions and activities which such units have authority to perform; and

WHEREAS, it is a mutual goal of the City and the County to work together to plan and implement adequate urban services and facilities for existing and future residents; and

WHEREAS, the City and the County desire to accomplish this goal in the most effective and efficient manner; and

WHEREAS, the City and the County desire to provide excellent public service to their citizens; and

WHEREAS, Statewide Planning Goal 2, Land Use Planning, requires that City, County, State, Federal agency and special district plans and actions shall be consistent with the comprehensive plans of the cities and counties and regional plans adopted under ORS Chapter 197; and, and anticipated urban growth and development in the neighboring cities will affect jurisdictions within Metro's boundaries; and

WHEREAS, the Oregon Land Conservation and Development Commission (LCDC) requires each jurisdiction requesting acknowledgement of compliance to submit an agreement setting forth the means by which comprehensive planning coordination within the Portland Metropolitan Area Urban Growth Boundary will be implemented; and

WHEREAS, OAR 660-11-015 requires the responsibility for the preparation, adoption and amendment of the public facility plan to be specified within an urban growth management agreement; and

WHEREAS, the City and County have a mutual interest in coordinated land use planning, compatible comprehensive plans, and coordinated planning and provision of urban services and facilities; and

WHEREAS, the City and the County, to insure coordination and consistent comprehensive plans, consider it mutually advantageous to establish a Dual Interest Area within the Portland Metropolitan Area Urban Growth Boundary (UGB), within which both the City and County maintain an interest in comprehensive planning and development; and

WHEREAS, the City and the County, share common land use planning objectives within the Dual Interest Area. These objectives include:

- Providing a smooth transition when lands are annexed;
- Providing consistent policies and standards for development;
- Protecting neighborhood character and livability through a coordinated City and County planning program;
- Ensuring high standards of urban design compatible with the character and desires of the surrounding community;
- Protecting and enhancing natural resources;
- Ensuring the provision of public facilities and services is consistent with the City of Happy Valley's public facility plans;
- Delineating the responsibility for the City, County, special districts, and franchise holders in providing services and managing growth within the Dual Interest Area and Happy Valley Area of Interest;
- Promoting cooperation between all parties involved in land use planning and service delivery;
- Promoting timely decisions pertaining to land use and service delivery issues; and
- Achieving fair and equitable financing for public facilities and services.

Whereas, this agreement supercedes the 1992 UGMA between Happy Valley and Clackamas County.

NOW THEREFORE, the City and County agree as follows:

Definitions:

Concurrency The integrated management of growth and infrastructure to ensure that the two are compatible.

Happy Valley Area of Interest (As shown in Exhibit A)

Dual Interest Area of Happy Valley and Clackamas County (As shown in Exhibit A)

Eagle Landing Area (As shown in Exhibit A)

Happy Valley/Clackamas County Joint Transportation Capital Improvement Plan
(Exhibit B)

Job Producing Land Land that is planned and zoned for uses providing employment. Examples of such zones include (but are not limited to) the I-2 (Light Industrial), I-3 (General Industrial), Business Park and Office Commercial zones in the County. Plan designations and zones designed to allow primarily retail or service commercial uses, such as the County's C-2 (Community Commercial), C-3 (General Commercial) and RTL (Retail Commercial) zones, are not defined as "job-producing" for the purposes of this agreement.

Joint CIP The Happy Valley/ Clackamas County Joint Transportation Capital Improvement Plan

Land Use Policies The whole or any part of any comprehensive plan, subarea comprehensive plan, refinement plan, public facility plan developed under OAR Chapter 660, Division 11, land use regulation as defined by ORS 197.015(12), or any other generally applicable policy regulating the use or development of land. As applied to Metro, "Land Use Policies" include Planning Goals and Objectives, Regional Urban Growth Goals and Objectives, Functional Plans, and Regional Framework Plans.

Parties Refers to the City of Happy Valley and Clackamas County.

1. Eagle Landing Area

The City and the County agree that annexation of the property to the City is a desirable goal provided County approval and the conditions of that approval are implemented.

The following process will carry out this goal:

- a) Implementation of the development plan will occur under County jurisdiction. Clackamas County will issue all permits. The City and County role for property that is annexed to the City prior to development will be defined in an intergovernmental agreement. Should portions or all of the property be annexed into the City prior to development, permitting activities shall occur as prescribed in the IGA. The County, with the use of the proceeds to be defined in the intergovernmental agreement will collect all fees and charges.
- b) The City shall be responsible for satisfying the notification requirements as established by state and local laws relating to property owners, residents and other interested parties regarding the process to carry out the act of annexation. The County will have no role in that process.
- c) The City will determine the effective date(s) for the annexation(s).
- d) The City and County will enter into agreement(s) necessary to define the details of the process to be followed to carry out the goal herein stated.

2. Dual Interest Area including the Eagle Landing Area of Happy Valley and Clackamas County

In the Dual Interest Area, including the Eagle Landing Area, a site-specific area adjacent to the City where future development is expected, or future annexation to City may occur, the City and the County will insure coordination by requiring special notification requirements as follows:

- a) Notification: The County shall provide notification to the City at least thirty-five (35) days prior to the first scheduled public hearing on all quasi-judicial actions and proposed legislative changes to the County Comprehensive Plan or its implementing ordinances affecting land within the Dual Interest Area.
- b) The County shall provide notification to the City at least fifteen (15) days prior to staff decision on applications for administrative actions as provided for in the County's Zoning and Development Ordinance for applications within the Dual Interest Area.
- c) The County shall invite the City to participate in pre-application meetings on significant development proposals or Design Review Committee meetings on development proposals within unincorporated areas of the Dual Interest Area. The County shall set these meetings at a mutually agreeable meeting time. All meetings shall occur within thirty (30) days from the date that the City is contacted unless agreed otherwise.
- d) The City shall provide notification to the County and the County's local community planning organization (CPO) adjacent to the city, at least thirty five (35) days prior to the first public hearing on all legislative and quasi-judicial land use actions, proposed annexations, capital improvement plans, or extraterritorial service extensions into unincorporated areas for properties located within 500 feet of the affected CPO.
- e) The City shall provide notification to the County, and an opportunity to participate, review and comment, at least thirty five (35) days prior to the first public hearing on all land use actions, proposed legislative changes to the City Comprehensive Plan or quasi-judicial actions adjacent to, or in close proximity to, unincorporated areas.
- f) The County shall enter all written comments of the City into the public record and shall consider the same in the exercise of its planning and plan implementation responsibilities. The City shall enter all written comments of the County into the public record and shall consider the same in its exercise of its planning and plan implementation responsibilities.

3. Happy Valley Area of Interest

- a) Except as provided in Section 3. b., the County will not change its comprehensive plan or zone designations in a manner that will allow urban development.

- b) The County and the City agree that lands appropriate for job production should be zoned and developed for that purpose. The City and the County agree to work together to insure that lands appropriate for job production be identified through a planning process and zoned and developed for that use.

When land is brought into the Urban Growth Boundary, property identified as job producing land may be Comprehensive Plan designated and zoned by the County only if an annexation vote of the City fails. The City must conduct an annexation vote within nine months upon request by the County and the property owner.

If an annexation vote fails, the County may adopt Comprehensive Plan designations and zoning for job producing land within unincorporated Clackamas County provided that the property owner (s) enters into a delayed annexation agreement or executes a statement of non-remonstrance for annexation should the City initiate an annexation request in the future.

- c) The City may undertake annexations in the manner otherwise provided for by law. The City annexation proposals shall include adjacent road right-of-way to properties proposed for annexation. The County shall not oppose such annexations.
- d) County local access, collector and local County roads will be transferred to the jurisdiction of the City upon annexation to the City.
- e) County major arterials and minor arterials will be transferred to the City at the discretion of the County. When transferred, the County shall be required to upgrade the road to a Pavement Quality Index (PQI) standard of '8' or provide equivalent payment.

4. Happy Valley/Clackamas County Joint Transportation Capital Improvement Plan (Exhibit B)

- a) The City and the County agree to jointly plan and finance transportation infrastructure improvements in the Happy Valley/Clackamas County Joint Capital Transportation Improvement Plan.
- b) The City and the County agree to plan for "concurrency"; to insure that needed transportation infrastructure is planned and built at the time new development is approved. The Joint CIP will be the vehicle to jointly prioritize needed transportation projects to promote concurrency.

6. Amendments to the Urban Growth Management Agreement

The terms of this Agreement may be amended or supplemented by mutual agreement of the parties. Any amendments or supplements shall be in writing, shall refer specifically to this Agreement, and shall be executed by the parties. The parties shall review this Agreement at each periodic review of their comprehensive plans and make any necessary amendments.

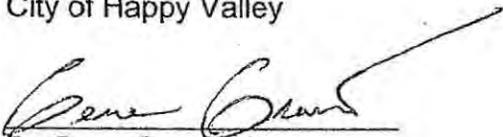
The parties agree to consider amendments to this agreement if a petition to incorporate a new city in the Damascus area is filed pursuant to ORS 221.031.

7. Time of Performance

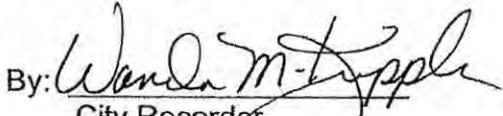
The services set forth herein shall commence upon execution of this contract and shall continue until June 30, 2004. If either party desires to terminate this agreement on June 30, 2004, the party must give ninety (90) days prior notice of intent to terminate.

IN WITNESS THEREOF, the respective parties have cause to be signed in their behalf to make and enter into this Agreement this 28 day of June 2001.

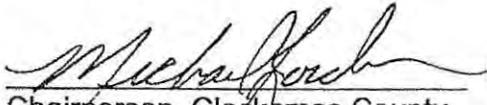
City of Happy Valley


By Gene Grant, Mayor

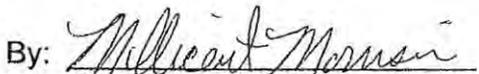
ATTEST:

By: 
City Recorder

CLACKAMAS COUNTY


Chairperson, Clackamas County
Board of Commissioners

ATTEST:

By: 
Recording Secretary

Notice of Decision for Food Cart Development

Envelope and first page of the Notice of Decision for a Food Cart development.

Note the dates.

- Letter dated March 3, 2015
- Envelope dated March 19, 2015



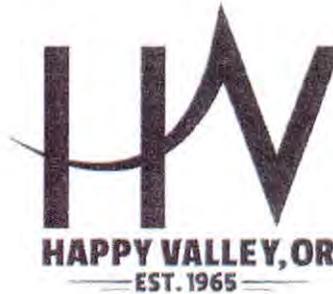
18000 SE MISTY DRIVE
TIMBER VALLEY, OREGON 97086



UNITED STATES POSTAGE
EAGLE
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02 1P \$ 000.90⁰⁰
0000017292 MAR 19 2015
MAILED FROM ZIP CODE 97086

James Phillips
11800 SE Timber Valley
Clackamas, OR 97086

Mayor
Honorable Lori DeRemer



City Manager
Jason A. Tuck

March 3, 2015

File No. CPA-15-14/LDC-15-14/SUB-02-14/ERP-09-14/ERP-14-14
("Pine View Meadows")

NOTICE OF DECISION

This is official notice of action taken by the City of Happy Planning Commission at a public hearing held on February 24, 2015, with regard to an application by the Holt Group, Inc, for a 42-lot Subdivision, Comprehensive Plan Map/Zoning Map Amendment and Environmental Review Permits (File No. CPA-15-14/LDC-15-14/SUB-02-14/ERP-09-14/ERP-14-14) on three legal lots of record. The subject properties are located west of 172nd Avenue and north of Hemrick Road, and are further described as Clackamas County Assessor Map Nos. 13E 30C: Tax Lots 2000, 2002 and 2003.

At the public hearing, the Planning Commission voted to approve "Pine View Meadows" based upon submitted information, public testimony, and deliberations of the Commission. Copies of the original Staff Report for File No. CPA-15-14/LDC-15-14/SUB-02-14/ERP-09-14/ERP-14-14 are available upon request.

Persons with standing may appeal this decision to the Oregon Land Use Board of Appeals ("LUBA") not later than 21 days after the city mails this Notice of Decision. The date appearing on the envelope of this notice establishes the date of mailing. All appeals must comply with ORS 197.830 and LUBA's rules at OAR Chapter 660, division 10. An appeal filed later than 21 days within the mailing of this Notice of Decision is subject to dismissal.

A handwritten signature in dark ink, appearing to read 'Steve Koper', is written over a horizontal line.

Steve Koper, AICP
Associate Planner

cc: The Holt Group, Inc.
Monty Hurley, AKS Engineering
Chris Goodell, AKS Engineering
Participants of Record

16000 SE Misty Drive, Happy Valley, Oregon 97086-4288
Telephone: (503) 783-3800 Fax: (503) 658-5174
happyvalleyor.gov