

January 11, 2017

TO: Michael Robinson

FROM: David J. Delmar

RE: **West Hills / South Cooper Mountain - Significant Wetlands**

Questions

What did the city of Beaverton mean when it used, in the first natural resource policy of the South Cooper Mountain Community Plan (SCMCP), the term “locally significant wetlands?”

Brief Answer

The term “locally significant wetland” in the first natural resource policy of the SCMCP means a wetland that meets OAR 141-086-0350’s wetland criteria. There is conclusive evidence for this in Beaverton Planning Commission records, particularly: (1) in the Commission’s November 24, 2014 SCMCP Staff Report; (2) in SCMCP testimony from the Commission’s December 10, 2014 hearing; and (3) in Commission documents pertaining to the South Cooper Mountain Heights PUD and the new South Cooper Mountain High School, to both of which the Commission applied the first natural resource policy of the SCMCP. Sections (4) and (5) of this memorandum report the OAR’s “locally significant wetland” criteria.

Discussion

1. The Beaverton Planning Commission’s November 24, 2014 Staff Report

The Beaverton Planning Commission’s November 24, 2014 staff report indicates that “locally significant wetlands” are wetlands that meet OAR 141-086-0350’s criteria for local wetland significance. The report explains:¹

The City of Beaverton maintains a Local Wetlands Inventory (LWI) consistent with the criteria and procedures for identification of significant wetlands adopted by the state and as approved by the Oregon Department of State Lands (DSL) ... Of the twelve wetlands and probable wetlands identified [in the South Cooper Mountain annexation area] three wetlands were determined to be significant ... follow[ing] the Oregon Department of State Lands rules, specifically Oregon Administrative Rule (OAR) 141-086 for Goal 5 compliance. Wetland functions were evaluated for wetlands greater than one half acre using the Oregon Freshwater Wetland Assessment Method (OFWAM). OFWAM results

¹ Report available at <http://www.beavertonoregon.gov/DocumentCenter/View/8879>. Quoted material at page 5 of Attachment A.

were used to determine if any of the SCMAA wetlands qualify as “locally significant wetlands” in accordance with criteria set forth in OAR 141-086-0350.

Oregon Department of State Lands’ (OAR 141) Division 86 regulates “locally significant wetlands.” Division 86 requires cities create local wetlands inventories and “apply the criteria for identifying locally significant wetland.” Cities’ “planning and zoning responsibilities include the determination, designation, and protection of significant wetlands.”² “Locally significant wetlands” are “wetland sites that provide functions or exhibit characteristics that are pertinent to community planning decisions ... according to the criteria” in section OAR 141-086-0350.³

2. Testimony From The Beaverton Planning Commission’s December 10, 2014 Hearing.

Although no Planning Commission testimony explicitly addressed the SCMCP’s first natural resource policy, Associate Planner Leigh Crabtree’s testimony during the December 10, 2014 hearing supports the conclusion that the policy channels OAR 141-086-0350.⁴ Ms. Crabtree explained:

[There are two different kinds of] natural resources that we are looking at with adoption of the [SCMCP]. One is the upland and riparian habitat areas and those are [Metro] Title 13 resources. Those are what we see in the natural resources map ... Type 1, 2, and 3 [and] Type A, B, and C ... The Local Wetland Inventory is a separate inventory than [the Metro Title 13] natural resources inventory and it is at the Department of State Lands right now starting the review process ... We analyzed a number of different wetlands, checked them for their resource value, and it was determined that Wetland W-H ... is a *locally significant wetland. Locally significant wetlands are very important to the state* and they get a level of review and a level of protection that’s different than [Title 13 resources].

Ms. Crabtree’s testimony supports the conclusion that “locally significant wetlands” are those wetlands that the city determines satisfy the Department of State Lands’ OAR 141-086-0350 criteria.

3. South Cooper Mountain Heights PUD and South Cooper Mountain High School.

Planning Commission materials pertaining to the South Cooper Mountain Heights PUD and the new South Cooper Mountain High School further support that “locally significant wetlands” are those that meet OAR 141-086-0350’s criteria.

² OAR 141-086-0320 (2)-(3).

³ OAR 141-086-0330 (5).

⁴ The relevant testimony is between 1:36:00 and of the December 10, 2014 hearing, audio and video of which is available at the Beaverton Planning Commission website.

The Planning Commission's January 13, 2016 staff report for the South Cooper Mountain Heights PUD applies the SCMCP's first natural resources policy to the PUD application.⁵ The report's relevant section says:

The most current draft of the South Cooper Mountain Annexation Area (SCMAA) Local Wetland Inventory (LWI) (September 2015) **identifies a locally significant wetland on the project site** as Wetland W-H ... This Wetland covers approximately 10.79 acres, and has **diverse wildlife habitat, intact fish habitat, degraded water quality and degraded hydrologic control** as determined through the Oregon Freshwater Wetland Assessment Method (OFWAM). The SCMAA LWI is pending adoption into Volume III (Statewide Planning Goal 5 Resource Inventory Documents) of the Comprehensive Plan.

The above, in particular the bolded material, shows that "locally significant wetland" in the SCMCP's first natural resource policy refers to wetlands that satisfy OAR 141-086-0350's criteria. The bolded passages are the Planning Commission's explicit application of the OFWAM wetland assessment criteria, which are also the basis of OAR 141-086-0350's criteria (see (4) below).

Moreover, during the application process for the new South Cooper Mountain High School, the Planning Commission requested from the school district "additional information on a number of topics," one of which was the new high school's encroachment on "Wetland W-A," a "locally significant wetland."⁶ The Beaverton School District's June 10, 2015 "Response to Planning Commission Topics" discusses the South Cooper Mountain Local Wetlands Inventory and Wetland W-A. It explains:⁷

Wetland W-A was designated as *locally significant* in the LWI report, though the City of Beaverton has yet to adopt this wetland as a Goal 5 resource into their Comprehensive Plan. As such, there is no Goal 5 protection of this wetland.

The Planning Commission's May 27, 2015 staff report applies the SCMCP's first natural resource policy to the school district's application.⁸

⁵ The report is available at the Beaverton Planning Commission website.

⁶ See Footnote 5.

⁷ Document available at Beaverton Planning Commission website.

⁸ See page 29, document available at Beaverton Planning Commission website.

4. OAR 141-086-0350's "Locally Significant Wetland" Criteria

A city *must* identify a wetland as "locally significant" if⁹:

- (a) it meets the Oregon Freshwater Wetland Assessment Methodology's (OFWAM) standards for "Diverse" wildlife habitat, "Intact" fish habitat, "Intact" water quality function, or "Intact" hydrologic control function; or
- (b) it "occurs within a horizontal distance less than one-fourth mile from a water body listed by the Department of Environmental Quality as a water quality limited body (303 (d) list), and [OFWAM describes] the wetland's water quality function" as intact" or "impacted or degraded;" or
- (c) it contains one or more "rare plant communities," which are (per OAR 141-086-0330 (7)): "relictual, uncommon or unique in Oregon, determined by number of occurrences and threats following national heritage program criteria;" or
- (d) it's "inhabited by any species listed by the federal government as threatened or endangered, or listed by the state as sensitive, threatened or endangered, unless the appropriate state or federal agency indicates that the wetland is not important for the maintenance of the species;" or
- (e) it "has a direct surface water connection to" a stream segment ODFW has mapped as "habitat for indigenous anadromous salmonids" and its fish habitat function, using OFWAM, is "intact" or "impacted or degraded."

A city *can* identify a wetland as "locally significant" if¹⁰ it:

- (a) "represents a locally unique native plant community," meaning it "contains the only representative of a particular native wetland plant community in the UGB/UUC" after the latter is inventoried, and performs "at least one of the following functions at the levels indicated below using OFWAM:
 - (A) its wildlife habitat descriptor is either "provides diverse habitat," or "provides habitat for some wildlife species;" or
 - (B) its fish habitat descriptor is either "intact," or "impacted or degraded"; or
 - (C) its water quality function descriptor is either "intact", or "impacted or degraded"; or

⁹ OAR 141-086-0350 (2).

¹⁰ OAR 141-086-0350 (3).

(D) its hydrologic control function descriptor is either “intact”, or “impacted or degraded ...; or

(b) it’s publicly owned and the OWFAM says it has “educational uses,” and such a use by a school or organization is documented for the site.

A city *cannot* identify a wetland as “locally significant” if¹¹ it is:

(a) artificially created entirely from upland and is:

(A) created for the purposes of controlling, storing, or maintaining stormwater;

or

(B) is active surface mining or active log ponds; or

(C) is a ditch without a free and open connection natural waters of the state (as defined in OAR 141-085-0010 (9)) and which do not contain food or game fish (as defined in ORS 496.009); or

(D) is less than one acre in size and created unintentionally as the result of:

(i) Irrigation water overflow or leakage; or

(ii) Construction activity unrelated to compensatory mitigation for permitted wetland impacts; or

(E) is of any size and created for the purpose of wastewater treatment, cranberry production, farm or stock watering, settling of sediment, cooling industrial water, or as a golf course hazard;

(b) if they or portions of them are contaminated by hazardous substances, materials or wastes, meaning:

(A) The EPA’s National Priority List or the DEQ’s Inventory of Hazardous Substance sites documents the wetland as contaminated,

(B) under which circumstances only the portion of the affected wetland is excluded from the locally significant wetland analysis.

¹¹ OAR 141-086-0350 (1)

5. OFWAM Significant Wetland Criteria¹²

The OFWAM is a series of multiple choice questions. Tallying the answers determines the classification for each aspect of the resource.

1. Wildlife Habitat.

- There are nine multiple choice questions.
- A wetland provides “diverse wildlife habitat” if “a” is the answer to at least four of the multiple choice questions about it and “c” is the answer to no more than one.
- A wetland provides “lost or not present” wildlife habitat if “c” is the answer to all nine questions.
- A wetland provides “habitat for some wildlife species” if the answers to the multiple choice questions don’t satisfy either of the above criteria.

2. Fish Habitat.

- There are six multiple choice questions (one set of six for stream wetlands and another for lakes and ponds).
- A wetland provides “intact” fish habitat if “a” is the answer to any three questions and “c” is the answer to no more than one.
- A wetland provides “lost or not present” fish habitat if “c” is the answer to all questions.
- A wetland provides “impacted or degraded” fish habitat if the answers to the multiple choice questions don’t satisfy either of the above criteria.

3. Water Quality.

- There are six multiple choice questions.
- A wetland’s water-quality is “intact” if “a” or “b” is the answer to the first question, “a” is the answer to questions two and three, and “a” or “b” is the answer to any other question.
- A wetland’s water-quality is “lost or not present” if “c” is the answer to four of six questions.
- A wetland’s water quality is “impacted or degraded” if the answers to the multiple choice questions don’t satisfy either of the above criteria.

¹² The multiple choice questions and assessment methodology are available here: <https://www.oregon.gov/DSL/WETLAND/docs/OFWAM.pdf>. Pages 49 to 70 contain the relevant sections.

4. Hydrologic Control.

- There are seven multiple choice questions.
- A wetland's hydrologic control function is "intact" if "a" is the answer to four or more questions.
- A wetland's hydrologic control function is "lost or not present" if "c" is the answer to four or more questions.
- A wetland's hydrologic control function is "impacted or degraded" if the answers to the multiple choice questions don't satisfy either of the above criteria.

DJD:MCR; rsr