



Community Development Department / Planning Division
12725 SW Millikan Way / PO Box 4755
Beaverton, OR 97076
General Information: 503-526-2222 V/TDD
www.BeavertonOregon.gov

MEMORANDUM

TO: Planning Commission
FROM: Rob Zoeller, Senior Planner
DATE: October 16, 2024
SUBJECT: Additional Public Testimony Received for the Cooper Mountain Community Plan

Staff has received the following additional public testimony regarding the Cooper Mountain Community Plan hearing (CPMA42024-00679, ZMA42024-00681 and TA42024-00680) after the staff report dated October 2, 2024, was published.

Public Testimony (Exhibit 34)

- Exhibit 34.1 Letter from Keenan Ordon-Bakalian of Schwabe, Williamson & Wyatt, P.C., representing Dave Ohlsen and Casey Sayre, Cooper Mountain property owners
- Exhibit 34.2 Email from Sig and Sandi Lillevik, Cooper Mountain property owners
- Exhibit 34.3 Email from Eric Squires, Cooper Mountain property owner
- Exhibit 34.4 Email from Austin Pederson, Cooper Mountain property owner

October 16, 2024

VIA E-MAIL

Keenan Ordon-Bakalian
Admitted in Oregon and Washington
D: 503-796-2470
kordon-bakalian@schwabe.com

City of Beaverton Planning Commission
12725 SW Millikan Way
Beaverton, OR 97005

RE: Cooper Mountain Resource Overlay (Case File Nos. LU42024-00682, CPMA42024-00679, TA42024-00680, ZMA42024-00681)
Our File No.: 142402-284321

Dear Chair McCann and Planning Commissioners:

This firm represents Dave Ohlsen and Casey Sayre (collectively, “our clients”). David and Candice Ohlsen are the owners of property located at 18485 SW Horse Tale Drive and Casey and Carol Sayre are the owners of property located at 18395 SW Horse Tale Drive (collectively, the “**Properties**”). The Properties are depicted in Figure 1, below. Both properties are within the area covered by the proposed Cooper Mountain Community Plan and are substantially encumbered by the proposed Cooper Mountain Resource Overlay. This letter is respectfully submitted to summarize our client’s objections to the proposed extent of the overlay over their properties.

This being said, we recognize the significant amount of work that has gone into the Cooper Mountain Community Plan and the thoughtful changes to the Resource Overlay provisions proposed to be added as Section 60.37 of the City of Beaverton Development Code (“**BDC**”). We have been involved in the development process for the Cooper Mountain Community Plan for the past year and have submitted several rounds of testimony detailing our concerns with the impacts that the Resource Overlay will have on our clients’ properties. *See* April 25, 2024 Comment Letter (attached hereto as **Exhibit A**); June 17, 2024 Comment Letter (attached hereto as **Exhibit B**). Long range planning is an iterative process, we appreciate that City planning staff have recognized and addressed several of our concerns throughout the planning process. However, we remain concerned regarding several aspects of the Resource Overlay, and therefore respectfully request that the Planning Commission reject the current draft of the Resource Overlay and instruct planning staff to conduct further work to adopt the necessary revisions detailed below.

October 16, 2024

I. Background

The Cooper Mountain Community Plan will add Section 60.37 to the BDC, which will implement the Resource Overlay within the Community Plan. The Resource Overlay indicates where the rules within BDC Section 60.37 will apply. As shown in Figure 1 below, the Resource Overlay (shaded green lines) encumbers the majority of the Properties, which are depicted in the red rectangle.



Figure 1.

The Cooper Mountain Community Plan also shows two proposed collector roads that would run through the Properties within the area encumbered by the Resource Overlay, as depicted by the dotted green line.

For land divisions on properties encumbered with the Resource Overlay, BDC 60.37.30 requires that 80% of the Resource Overlay on a property be placed in a protected tract during the land division. The remaining 20% can be identified as disturbance area to allow for construction of roads, housing, and other development features. Mitigation is required for disturbance areas. BDC 60.37.45. Although mitigation may occur either inside or outside of the Resource Overlay, if the mitigation area is located outside the Resource Overlay, the applicant must preserve the mitigation area by placing it in a separate protected tract or easement, or executing a deed restriction further encumbering the property. BDC 60.37.45(1)(B).

As a result of these proposed regulations, the Resource Overlay—if adopted in its current form—will effectively preclude the development of the Properties. Instead, almost the entire area

October 16, 2024

of the Properties within the resource overlay will be taken away from the property owner and set aside for the benefit of the City and the public.

II. Description of Concerns

We continue to object to the extent of the proposed Resource Overlay on the Properties for two reasons. First, none of the riparian and upland habitat areas which City staff believes to be located on the properties actually exist. Second, what little developable area that the Resource Overlay might allow is largely consumed by the City's planned collector streets. Our prior comment letters provide detailed explanations of these concerns, however, we also summarize these concerns briefly, below.

1. The City's assumptions regarding habitat values on the properties are inconsistent with the actual condition of the properties.

The draft Resource Overlay continues to make two key assumptions regarding the Properties, one of which is plainly inaccurate and the other of which is not supported by evidence. First, the City's assignment of upland habitat functions for the Properties remains inaccurate because the Properties were logged in 2019 and there is no more forested upland habitat on the Properties. The City continues to rely on outdated aerial photographs taken no later than December 13, 2018 as the basis for assuming that the Properties have a tree canopy between 60-100 feet in height. *See below* Figure 2.

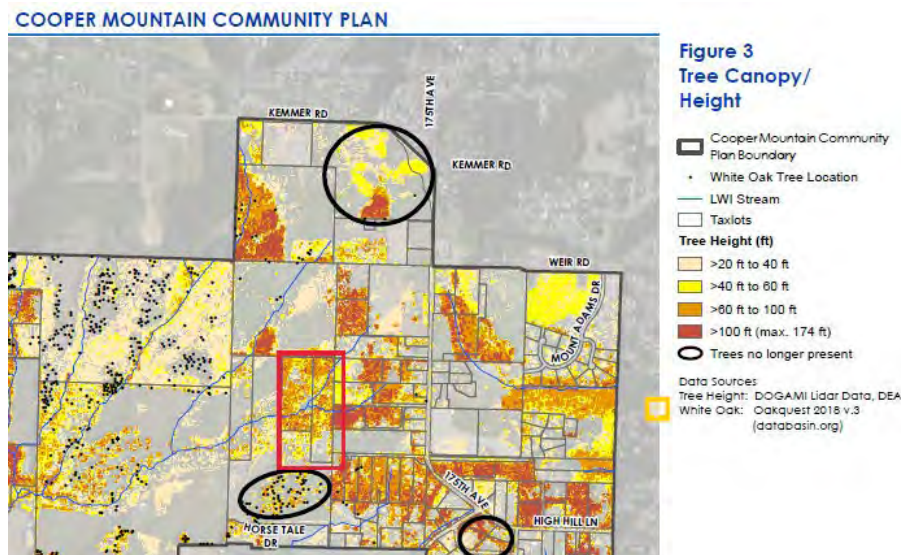


Figure 2.

October 16, 2024

However, as is evident in Figure 3, below, there is no longer any tree canopy on the properties, and there has not been since 2019. The Planning Commission should direct planning staff to revise the assignment of upland habitat functions to accurately reflect the existing condition of the Properties, rather than rely on outdated aerial photographs taken in 2018—before the Properties were logged.



Figure 3.

Second, the Resource Overlay assumes that all streams within the area covered by the Cooper Mountain Community Plan are “perennial” streams. *See Nat. Res. Report at 5.* Although we recognize the difficulty in performing an accurate determination of all streams within the area of the Community Plan, adopting a generalized assumption that all Community Plan area streams are perennial now puts the onus on property owners to hire experts and apply for a Resource Overlay map adjustment under BDC 60.37.15(2). That the Community Plan provides for a process to adjust the Resource Overlay map is positive, but this alone does not obviate the fact that the City is passing on the cost, time, and labor of accurate land use planning onto property owners, rather than take the steps necessary to ensure that the Resource Overlay is accurate *before* adopting the Community Plan. The Planning Commission should direct staff to take the additional steps necessary to ensure an accurate characterization of riparian resources within the Community Plan area.

For the foregoing reasons, the City should either (1) confirm that the streams are perennial before limiting development or (2) revise the extent of Resource Overlay over these

October 16, 2024

properties to go no further than the Clean Water Services vegetated corridors (attached hereto as **Exhibit C**), which will apply to any future development on the properties once they are in the City. Regardless, the City must significantly reduce the upland habitat area to reflect the fact that there is no longer any forested area on the properties.

2. The City's planned extension of two collector roads will deprive our clients of most of their allowed Resource Overlay disturbance area.

Our clients' second objection to the Community Plan centers on a significant concern regarding the interplay between the proposed maximum 20% disturbance area allowed in the Resource Overlay and the City's proposal to extend two collector roads through the Properties. According to our discussions with City staff, the two proposed collector roads will count against our clients' allowed disturbance area, even though they are public facilities required by the City. These collector roads will likely require a 66-foot right-of-way when combined with trails and, in both cases, they are planned through the very Resource Overlay that the City will require our clients to protect.

According to an analysis by Pioneer Design Group (**Exhibit D**), the proposed collector roads would use most of the permitted impact area on Tax Lot 1800, and a substantial amount of the permitted impact area on Tax Lot 1700. Exhibit D, at 3. After accounting for the development restrictions imposed by the Resource Overlay, and the impact area used by City planned facilities, the majority of the Properties development potential will be lost. *Id.* Moreover, it appears that the City is proposing the two collector roads to run through the existing homes on the Properties. Planning Staff has long been aware of the issues regarding locating the two collector roads on the Properties but has taken no action to relocate these proposed roads.

Stated plainly, the City proposes to lock up the majority of our clients' properties from future development and then use for itself what little residual development area remains by requiring these new public roads to count against the allowed disturbance area in the Resource Overlay. When confronted with this fact, Staff explained that it would be the responsibility of our clients to go through a "Type III" review process to justify a further disturbance area, even though the combined bulk of the disturbance area for the two properties is required to be dedicated as public rights-of-way. This is neither sensible, fair, nor constitutional.

The Planning Commission should instruct planning staff to revise the standards implementing the Resource Overlay so as to not count toward the maximum disturbance area the public facilities that the City itself is requiring be located on the Properties. If it does not do so, it should at least provide a second pathway for disturbance area that allows a lower level review when the City itself proposes to capture that disturbance area for a public purpose.

October 16, 2024

III. Conclusion

We once again reiterate our appreciation for the progress that the City has made to address our concerns regarding the Cooper Mountain Community Plan, and in particular, the Resource Overlay. This being said, there is still more work to do to ensure that the Resource Overlay is implemented in a straightforward, sensible, and legal manner.

For the foregoing reasons, we respectfully request that the Planning Commission adopt our suggestions detailed above, or otherwise reject the current draft of the Resource Overlay and instruct staff to do the additional work to determine which resources are actually on these properties and revise the Resource Overlay to not count against developable area public improvements which the City itself proposes to require.

Thank you for your consideration of these comments, and we look forward to testifying at tonight's meeting.

Sincerely,

SCHWABE, WILLIAMSON & WYATT, P.C.



Keenan Ordon-Bakalian

KOB:jmhi

Enclosures

cc: David Ohlsen (*via email w/enclosures*)
Casey Sayre (*via email w/enclosures*)
Rob Zoeller (*via email w/enclosures*)
Brian Martin (*via email w/enclosures*)
Anna Slatinsky (*via email w/enclosures*)
Robin McIntyre (*vai email w/enclosures*)

April 25, 2024

Garrett H. Stephenson
Admitted in Oregon
D: 503-796-2893
C: 503-320-3715
gstephenson@schwabe.com

VIA E-MAIL

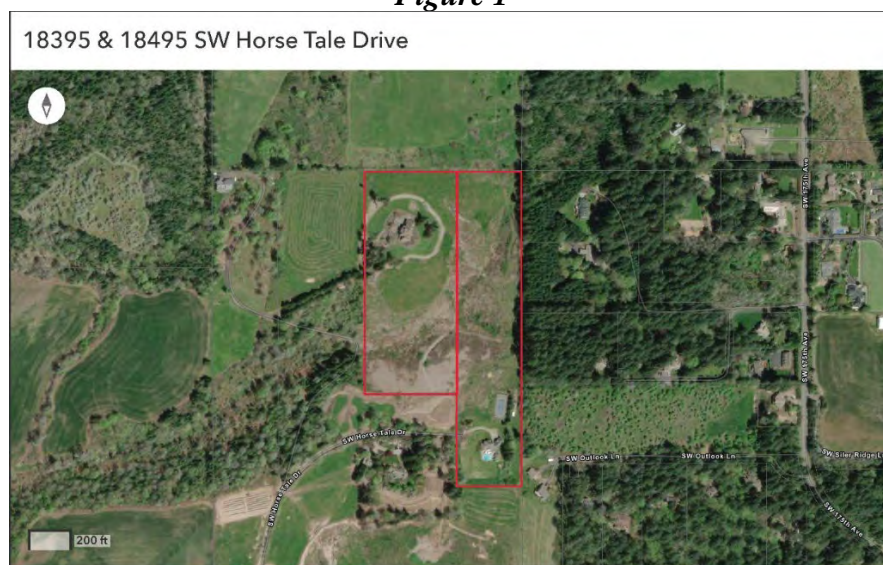
Brian Martin
Long Range Planning Manager
City of Beaverton
PO Box 4755
Beaverton, OR 97076-4755

RE: Cooper Mountain Resource Overlay
Our File No.: 142402-284321

Dear Brian:

This firm represents Dave Ohlsen and Casey Sayre (collectively, “our clients”). David and Candice Ohlsen are the owners of the property located at 18485 SW Horse Tale Drive in Beaverton, tax lot: 1S1310001800. Casey and Carol Sayre are the owners of the property located at 18395 SW Horse Tale Drive in Beaverton, tax lot: 1S1310001700 (collectively, the “Properties”), as shown in Figure 1 below.

Figure 1



Brian Martin
April 25, 2024

This letter explains why the proposed Cooper Mountain Resource Overlay Zone, if enacted, would be in violation of state and federal law, and would conflict with the City’s 2023 Housing Needs Analysis Report. Specifically, the imposition of the Resource Overlay on the Properties would constitute a regulatory taking under state and federal law, and would violate several provisions of Oregon law, including ORS 197A.400 and Statewide Planning Goals (“Goal”) 1 and 2. Moreover, including the Properties within the Resource Overlay is based on inaccurate assumptions, and does not further the stated purposes of the Resource Overlay.

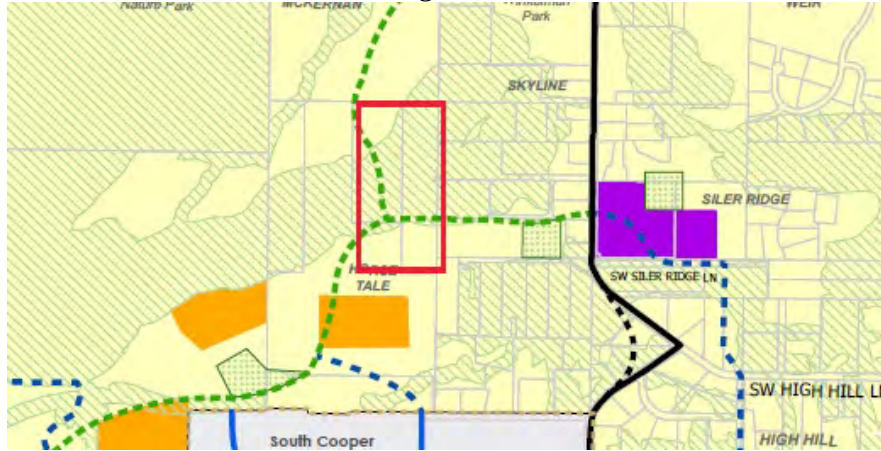
We request that the City significantly reduce the scope of the Resource Overlay on our client’s properties so that it no longer unreasonably restricts their use in violation of state and federal law. In particular, the Resource Overlay on the Properties should extend no further than the extent of CWS¹ vegetated corridors, as shown in Exhibit A to this letter, because the Properties have been logged and because the habitat functions the City’s Cooper Mountain Plan assumes exist are simply not present.

I. Cooper Mountain Community Plan – Proposed Resource Overlay Zone

The Cooper Mountain Community Plan proposes to add Section 60.37, “Resource Overlay,” to Chapter 60 of the Development Code of the City of Beaverton (“BDC”). As shown in figure 2 below, the Resource Overlay (shaded green lines) encumbers the majority of the Properties, which are depicted in the red rectangle.

¹ CWS refers to “Clean Water Services,” a water resources management utility in Washington County. One policy of the Cooper Mountain Community Plan is that the City “[c]oordinate with Clean Water Services to implement a regional stormwater strategy for the McKernan Creek subbasin...” City of Beaverton, *Cooper Mounting Community Plan 47* (June 14, 2023).

Figure 2



The Resource Overlay prohibits development on 80 percent of the area of a property located within the Resource Overlay, and requires this area to be preserved in a separate tract. *See* BDC 60.37.35(B)². It further requires substantial mitigation for any development of the remaining portion of the Resource Overlay. *See* BDC 60.37.35(G). These regulations “require the mitigation area to be at least as large as the disturbance area.” City of Beaverton Community Development Department. *Cooper Mountain Proposed Code Overview 4* (January 2024). As a result, the entire area of a property that is within the Overlay Zone will effectively be taken from the property owner and set aside for the benefit of the City and the public.

The Cooper Mountain Community Plan Proposed Zoning Map also shows two proposed collector roads that would run through the Properties within the area encumbered by the Resource Overlay, as depicted in Figure 2 by the dotted green line. The proposed Resource Overlay zoning code requires mitigation for “disturbance within the Resource Overlay.” BDC 60.37.55(1). Unless otherwise specified, the mitigation area must be at a 1:1 ratio to the disturbance area, and must adhere to the extensive requirements set forth under BCD 60.37.55.

² *See also* City of Beaverton Community Development Department. *Cooper Mountain Proposed Code Overview 2* (January 2024) (“During land division, 80 percent of the Resource Overlay on the property will be required to be protected from disturbance and separated into its own lot (also called a tract) where future development will be not allowed...The remaining 20 percent of the overlay on the property can be disturbed if the property owner/developer mitigates the disturbance, such as by planting native plants to make up for the disturbance.”).

Brian Martin
April 25, 2024

If these collector roads are deemed “disturbances,” our clients will be required to undergo additional mitigation for the area taken up by these roads, despite the fact that it is the City, not our clients, who seek to construct such roads within the Overlay area. In doing to, the City is further reducing the availability of developable land on the Properties, and is forcing our clients to undergo costly mitigation measures for actions taken wholly by the City.

Furthermore, the City should refrain from acting in contradiction to its own proposed development restrictions — if the City proposes to construct roads through a particular area, it should not place extensive development restrictions on this same area which prevent property owners from making beneficial use of their own properties. By proposing to construct collector roads over the Properties in areas encompassed by the Resource Overlay, this is precisely what the City is doing.

II. Imposing the Resource Overlay on the Properties Violates State and Federal Law

According to the draft concept plan, the Resource Overlay is intended to “[b]alance conservation and economic use by allowing reasonable economic use of property where adverse impacts to the resources can be mitigated.” Effectively, this provides the City with the sole discretion to determine whether a property owner may make reasonable economic use of their property. This is a violation of ORS 197A.400(1) as well as the takings clause of both the state and federal constitutions. In addition, the City’s process used to develop the Resource Overlay code represents several further violations of Oregon law.

a. Restricting development opportunities on the properties for the benefit of the City is a violation of the Fifth and Fourteen Amendments of the United States Constitution.

The Takings clause of the Fifth Amendment of the U.S. Constitution prohibits “private property [from being] taken for public use, without just compensation.” U.S. Const. amend. V. The Fourteenth Amendment makes that Fifth Amendment applicable to the states, including local governments. U.S. Const. amend. XIV. The Supreme Court of the United States has confirmed that “[a] property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 185 (2019). At issue in *Knick v. Twp. of Scott* was a local ordinance passed by a township, thus confirming that the City’s imposition of the Resource Overlay through legislative action is subject to a takings claim. *Id.* at 186.

Brian Martin
April 25, 2024

As in *Knick*, the stated purposes of the Resource Overlay is to protect natural areas “for their ecological function and as an *amenity for the community*.” BDC 60.37.05 (emphasis added). As shown in Figure 1, the majority of both Properties are located within Resource Overlay. Prohibiting development on 80 percent of the area within the Overlay in order to preserve this area for the public constitutes a clear taking of private property for public use without just compensation.

Further, in *Penn Cent. Transp. Co. v. City of New York*, the Supreme Court of the United States set out several factors to determine whether a regulatory taking has occurred. These include “the economic impact of the regulation on the claimant” as well as “the extent to which the regulation has interfered with distinct investment-backed expectations.” *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

As in *Penn Central*, the proposed Resource Overlay would restrict development on the majority of both Properties and would directly interfere with our clients’ reasonable expectations about their properties’ future uses. First, our clients reasonably expected that they would be able to develop housing on their Properties when the Cooper Mountain area was included within the Urban Growth Boundary (“UGB”) in 2018. The principal “desired outcome” of expanding the UGB to include Cooper Mountain was to address the fact that “[t]he region needs more housing.” Metro, *2018 Growth Management Decision – Chief Operating Officer Recommendation 3* (Sept. 4, 2018). Metro reasoned that the “UGB expansions would provide additional growth capacity for single-family housing (both attached and detached).” *Id.* at 4. Metro recommended that the Metro Council “place several conditions on any UGB expansion” to “[s]et an *expectation* that cities will allow and encourage the integration of different housing types throughout the expansion area.” *Id.* at 7 (emphasis added). Metro stated further that “[t]he City of Beaverton’s strong track record for getting housing built in the South Cooper Mountain area is a major reason why [Metro] recommend[s] that the Council expand the UGB in the Cooper Mountain urban reserve.” *Id.* at 8.

The Metro Council subsequently issued Ordinance No. 18-1427, which expanded the UGB to include the South Cooper Mountain area for the purpose of “provid[ing] housing.” Metro Council Ordinance No. 18-1427, *For The Purpose Of Expanding The Urban Growth Boundary To Provide Capacity For Housing To The Year 2038 And Amending The Metro Code To Conform* (Dec. 13, 2018). The Ordinance placed several “conditions of approval on land added to UGB,” including that the City “shall allow, at a minimum, single family attached housing, including townhomes, duplexes, triplexes, and fourplexes, in all zones that permit single family housing in the expansion areas.” *Id.* These statements explain why our clients reasonably expected that they would be able to develop housing on the Properties.

Brian Martin
April 25, 2024

Second, based on their observations of the natural conditions of their Properties, our clients expected to be able to develop housing on the Properties at the density allowed in the Cooper Mountain Residential Mixed (“CM-RM”) zone, the zone that would apply to the Properties pursuant to the Cooper Mountain Community Plan.³ The CM-RM zone permits “[r]esidential – [s]ingle-detached homes; middle housing; and small scale commercial uses.” See City of Beaverton Community Development Department, *Cooper Mountain Proposed Code Overview 5* (Dec. 2023). The minimum development density is this zone in 10 units per acre. *Id.* The imposition of the Resource Overlay as it is currently proposed would directly interfere with our client’s development expectations. This constitutes a taking under *Penn Central*.

A taking also occurs when the government places a restriction on development if the degree of the restriction lacks “rough proportionality” to the impacts of the proposed development. See *Dolan v. City of Tigard*, 512 U.S. 374 (1994). If the City is unable to make an “individualized determination that the required dedication is related both in nature and extent to the impact of the [Landowner’s] proposed development,” the development restrictions imposed by the Resource Overlay, as applied to the Properties, constitutes a taking in violation of the Fifth Amendment of the U.S. Constitution.

The City has not demonstrated that the extensive development restrictions imposed by the Resource Overlay are in any way proportional to the impacts of development on the Properties if they were to be developed to even their minimum densities, particularly considering that the Properties do not contain the ecological features the Overlay is intended to protect. Moreover, there is no indication that the City will provide any “just compensation” to our clients that might prevent the imposition of the development restrictions from rising to the level of an impermissible taking.

b. Oregon Constitution.

Section 18 of Article I of the Constitution of Oregon provides that:

“Private property shall not be taken for public use... without just compensation; nor except in the case of the state, without such compensation.” Or. Const. art. I, § 18.

³ The Cooper Mountain Community Plan Proposed Zoning Map, shown in Figure 2, confirms that the Properties are located in the CM-RM zone.

Brian Martin
April 25, 2024

When a “government regulation—rather than a physical occupation or invasion—restricts a property owner’s right of possession, enjoyment, and use, a taking can occur if, as a consequence, the property retains no economically viable or substantial beneficial use.” *Hall v. State ex rel Oregon Dep’t of Transp.*, 355 Or 503, 511 (2014). Also, a taking under Section 18 of Article I can occur when a “governmental action creates an expectation that the private land in question *eventually* will be taken for a public use.” *Boise Cascade Corp. v. Bd. of Forestry*, 325 Or. 185, 197 (1997).

As noted above, the proposed Resource Overlay would prevent our clients from making economically-viable use of the undeveloped portions of their properties. It has also led our clients to reasonably believe that the majority of the Properties will soon be taken for a public use, namely to be preserved for the benefit of the City as both open space and roadways.

c. The proposed Resource Overlay Code violates Oregon’s Needed Housing statute.

Our clients intend to utilize the Properties to develop needed housing. Oregon’s Needed Housing statute requires that a “local government...adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing.” ORS 197A.400(1). Such standards, conditions and procedures “[m]ay not have the effect, either in themselves or cumulatively, of discouraging needed housing⁴ through unreasonable cost or delay.” *Id.* As stated in the City’s own 2023 Housing Needs Analysis Report, described above, housing is needed in Beaverton, particularly affordable housing. *See City of Beaverton Housing Needs Analysis Report 5* (May 2023). The Resource Overlay discourages the development of such housing through unreasonable cost and delay, in violation of ORS 197A.400.

As explained above, the proposed Resource Overlay zoning code prohibits development on 80 percent of the Overlay area, and permits disturbances on the other 20 percent only if significant mitigation actions are taken. City of Beaverton Community Development Department. *Cooper Mountain Proposed Code Overview 2* (January 2024). The severe magnitude of these restrictions violates the City’s mandate under ORS 197A.400(1) to refrain from “discouraging needed housing.” The City has itself stated that additional housing is needed

⁴ “Needed Housing” is defined as “housing by affordability level, as described in section 2 (4) chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), type, characteristics and location that is necessary to accommodate the city’s allocated housing need over the 20-year planning period in effect when the city’s housing capacity is determined.” ORS 197A.018(1).

Brian Martin
April 25, 2024

in the region, so it should not impose unnecessarily stringent development restrictions that act in opposition to this objective. This level of restriction is particularly unreasonable considering that, at least in reference to the Properties, it does not act to further preservation goals.

Moreover, the proposed Resource Overlay zoning code requires property owners to undertake numerous costly and time-consuming actions should they wish to develop within the Resource Overlay, in further violation of ORS 197A.400(1). For example, if a landowner with property in the Resource Overlay wishes to develop Needed Housing, he or she must submit to the City a “Resource Overlay – Boundary Correction Type 1” application. BDC 60.37.15(5). This requires the applicant to take numerous actions, including to: “provide documentation demonstrating the misalignment between the Resource Overlay map and the property’s tax lot boundary lines;” “provide documentation of the correct location of the water feature” if the applicant believes that the upland habitat boundary is inaccurate; and to “provide evidence demonstrating that the resources described in the applicable Natural Resources Report were no longer in existence on the effective date of the ordinance adopted by the Metro Council to bring the subject property within the Metro UGB.” BDC 60.37.15.1.

If an applicant believes that the Resource Overlay map is inaccurate for a reason other than those specified in BDC 60.37.15.1, it must submit a “Resource Overlay – Boundary Amendment Type 3.” BDC 60.37.15(6). This is an even more extensive process than a Type 1 application, and requires the applicant to submit a report prepared and signed by either (1) a qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon. *Id.* This report must include:

1. “A description of the qualifications and experience of all persons that contributed to the report, and, for each person that contributed, a description of the elements of the analysis to which the person contributed;
2. The information described in Table 60.37.15.1 if the applicant believes such information is relevant to the verification of habitat location on the subject property;
3. Additional aerial photographs if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert’s interpretation of the additional information they provide;
4. A map showing the topography of the property shown by two-foot vertical contours in areas of slopes less than fifteen (15) percent, and at five-foot vertical contours of slopes fifteen (15) percent or greater; and
5. Any additional information to demonstrate that the location and/or attributes of the inventoried natural resources on the site as described in the applicable Natural Resources

Brian Martin
April 25, 2024

Report is inaccurate and that natural resources meeting the criteria for inclusion in the Natural Resources Inventory were not present on the effective date of the ordinance adopted by the Metro Council to bring the subject property within the Metro UGB.” BDC 60.37.15(6).

Complying with these standards will take considerable time, and will represent a significant expense for landowners within the Resource Overlay. The direct effect of imposing the Resource Overlay on the Properties is to “discourage needed housing,” all in violation of ORS 197A.400. This is particularly true considering that the Overlay map does not include detailed surveys of natural resources.

d. The City’s failure to consult our clients prior to publishing the proposed Resource Overlay Zoning Code is a Violation of Statewide Planning Goal 1.

Goal 1, “Citizen Involvement,” requires local governments adopting comprehensive plans to “develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.” Oregon Department of Land Conservation and Development, SWP 1; OAR 660-015-0000(1). Citizens are required to have the opportunity to be involved in all phases of the planning process, “including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.” *Id.* This program must include an “officially recognized committee for citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land use decisions.” *Id.* Notably, “citizens should receive notice they can understand of the opportunity to serve on the CCI.” *Id.*

The City’s failure to involve our clients in a meaningful way when developing the proposed Resource Overlay zoning code constitutes a violation of Goal 1. There is no indication that City staff, in drafting the proposed Resource Overlay zoning code, made any effort to personally consult with our clients prior to significantly restricting their ability to develop on their own Properties, or to even visit the property to check staff’s assumptions about its functional value. The City’s failure to solicit views from our clients and other citizens affected by the proposed Resource Overlay in a meaningful way is a violation of Goal 1.

Brian Martin
April 25, 2024

e. The Proposed Resource Overlay Zoning Code does not have an “adequate factual base” as required by Statewide Planning Goal 2.

Goal 2 is “[t]o establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.” Oregon Department of Land Conservation and Development, SWP 2; OAR 660-015-0000(2). Under Goal 2, “legislative land use decisions...must be supported by an ‘adequate factual base,’ which is functionally equivalent to the substantial evidence standard⁵.” *Forest Park Neighborhood Ass’n v. Washington County*, 73 Or LUBA 193 (2016); *see also Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992) (adequate findings must identify the relevant approval standards, set out the facts relied upon, and explain how those facts lead to the decision on compliance with the approval standards). In *Forest Park Neighborhood Ass’n*, the Oregon Land Use Board of Appeals (“LUBA”) held that a county “adopted inadequate findings, not supported by substantial evidence,” when determining the size of buffer under a county ordinance setting out land use regulations for a UGB expansion area. *Id.* This was partly because the findings and evidence in the record supporting the land use regulation did not address testimony in the record suggesting that the proposed buffer size was insufficient, and because the county failed to “cite...to any evidence to the contrary.” *Id.*

The City has failed to provide any evidence conclusively establishing that the Properties contain a stream, wetland, riparian habitat, or upland habitat — features warranting inclusion in the Resource Overlay — beyond the scope of the CWS-designated vegetated corridor identified on the Properties. A map of the Properties prepared by Environmental Science & Assessment, LLC depicting the vegetated corridor is included as Exhibit A to this letter.

Beyond this marked lack of factual support pertaining specifically to the Properties, it is apparent that the City has also failed to consider the potential to develop Needed Housing on the Properties. This is despite its statutory mandate to do so under ORS 197A.400(1), and its directive under City Ordinance No. 18-1427 to allow housing in “all zones that permit single family housing.” Beyond this, the City has seemingly failed to consider the conclusion of its own 2023 Housing Needs Analysis Report that 9,900 housing units are needed in the City to meet projected population growth.

⁵ Substantial evidence is evidence a reasonable decision maker would rely upon to make a decision. *1000 Friends of Oregon*, 27 Or LUBA, at 378 (“the question is whether a reasonable person could reach the conclusion the decision-maker did, considering the evidence in the record.”).

Brian Martin
April 25, 2024

Considering Goal 1 in conjunction with ORS 197A.400(1) — prohibiting local governments from adopting “standards, conditions and procedures regulating the development of housing...on land within an urban growth boundary” from having “the effect...of discouraging needed housing” — the City must present a compelling explanation for why it intends to severely restrict development in much of the Cooper Mountain area through restriction imposed by the Resource Overlay. However, as described herein, the City has not done so.

III. The Purposes of the Resource Overlay Do Not Align With the Current Condition of the Properties

The *Cooper Mountain Proposed Code Overview* summarizes the stated purposes of the Resource Overlay, stating that the Overlay is intended to protect “streams and associated riparian areas” as well as “wetlands” and “upland habitat (generally areas near streams/wetlands or important tree groves).” City of Beaverton Community Development Department. *Cooper Mountain Proposed Code Overview* 1 (January 2024). In October 2022, the Cooper Mountain Community Plan Project Team issued the *Cooper Mountain: Approach to Natural Resource Protection* memorandum to “describ[e] the approach to preserving natural resources in the Cooper Mountain Community Plan.” Cooper Mountain Community Plan Project Team, *Cooper Mountain: Approach to Natural Resource Protection* 1 (Oct. 21, 2022). This memorandum explains that the “requirements for natural resource protection in Cooper Mountain” are based on “Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces),” and that “Beaverton’s existing Goal 5 program relies primarily on programs established by the Tualatin Basin Partners, including *Clean Water Services* (CWS), to protect and enhance natural resources.” *Id.* at 2, 15 (emphasis added). CWS regulates development activity “within ‘Sensitive Areas,’ which include wetlands and water features, and ‘Vegetated Corridors,’ a buffer adjacent to sensitive areas.” *Id.* at 15.

The Resource Overlay should only include areas with the capacity to further the purposes of the Overlay, and thus should not extend beyond the CWS vegetated corridor boundary depicted in Exhibit A. The Resource Overlay boundary is based on findings contained in the “Cooper Mountain Community Plan Natural Resources Report.” *Id.* at 1. A comparison of the conclusions of this report and the actual conditions of the Properties illustrates that including the Properties within the Overlay neither furthers its intended purposes nor reflects the current features existing on the Properties.

Brian Martin
April 25, 2024

a. Riparian area.

According to the Cooper Mountain Community Plan Natural Resources Report, a “riparian area” comprises the “land surrounding wetlands, streams, and other water bodies.” City of Beaverton Cooper Mountain Community Plan, *Natural Resources Report 4* (June 2020). The report provides that a “buffer area of a certain distance from the water body is regulated and protected for water quality and/or habitat protection purposes.” *Id.* Notably, the “typical buffer width defined by these regulations is 50 feet, and this buffer width can extend to a maximum of 200 feet in areas of steep slopes (i.e., slopes of 25 percent or greater).” *Id.*

Metro classifies riparian habitats into Classes I, II, or III, where Class I habitats are the highest quality habitats. *Id.* at 5. These classifications are based on the “riparian habitat to provide...ecological functions” including “[m]icroclimate and shade” and “[s]treamflow moderation and flood storage.” *Id.* at 5.

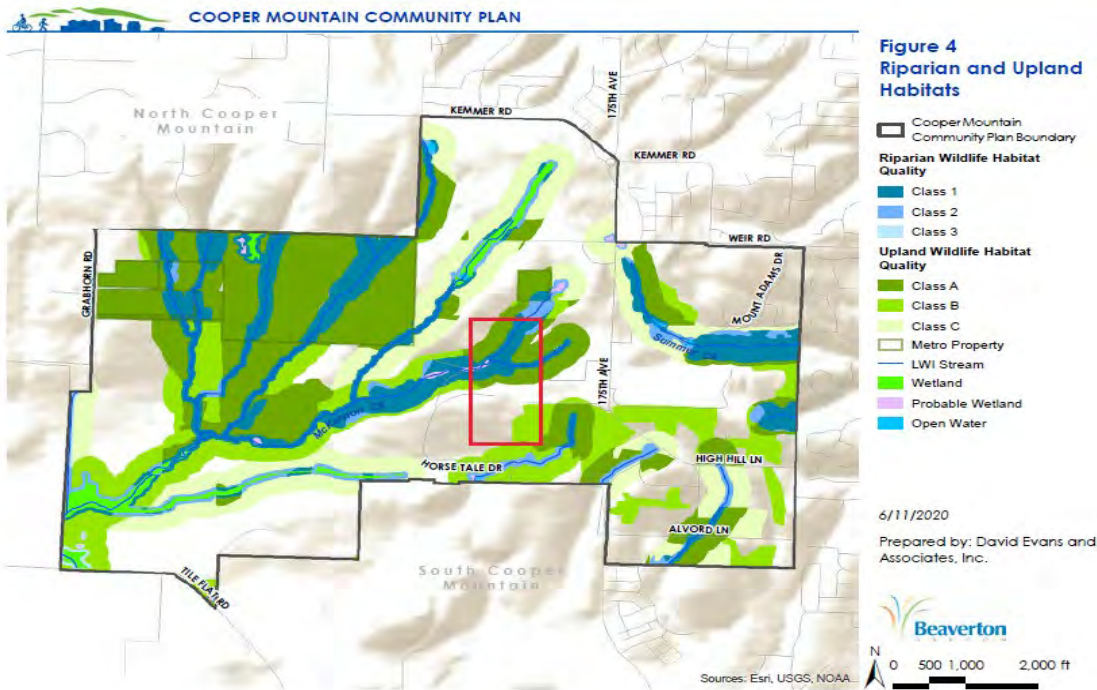
The ability of a riparian habitat to provide such ecological functions is based in part on whether the associated stream or water body is perennial or intermittent, and “CWS guidance requires that the determination of whether streams are perennial or intermittent occur.” *Id.* at 5. However, the Natural Resources Report concedes that “a determination of perennial or intermittent for streams in the CMCP area could not be accurately performed,” and “[a]s a result, all CMCP area streams were assumed to be perennial for the purposes of determining the vegetated corridor.” *Id.*

The proposed scope of the Resource Overlay area on the Properties is not supported by the City’s findings or by the current condition of the Properties. First, the area of the Overlay on the Properties as currently proposed extends significantly further than 50 feet from the McKernan Creek,” which the City asserts runs through the Properties. This is far more than what the Natural Resources Report requires.

Second, the City’s designation of much of the Properties as Class I riparian habitat quality, as shown in Figure 3 below, is misguided. The City merely assumes that the creek is perennial. This is a factor affecting the scope of the vegetated corridor, and illustrates that the City is unable to prove that the creek is able to provide “streamflow moderation and flood storage.” Additionally, the area surrounding the designated location of the McKernan Creek is surrounded by unforested land, and is thus unable to provide “ecological functions” such as “microclimate and shade.” The Properties should not be classified as Class I riparian habitat quality, and accordingly should not be included within the Resource Overlay on these grounds.

Brian Martin
April 25, 2024

Figure 3



b. Upland habitat.

The Cooper Mountain Community Plan Natural Resources Report designates areas as upland habitat based on “forest vegetation.” *Id.* at 5. The Report divides upland habitats into Classes A, B, and C, where Class A habitats are the highest quality habitat. *Id.* at 6. Class A habitats are those that best meet several stated “assumptions,” including:

- “Large habitat patches are more valuable than small patches;”
- “Connectivity and proximity to other habitat patches are important;” and
- “Connectivity and proximity to water are important.” *Id.*

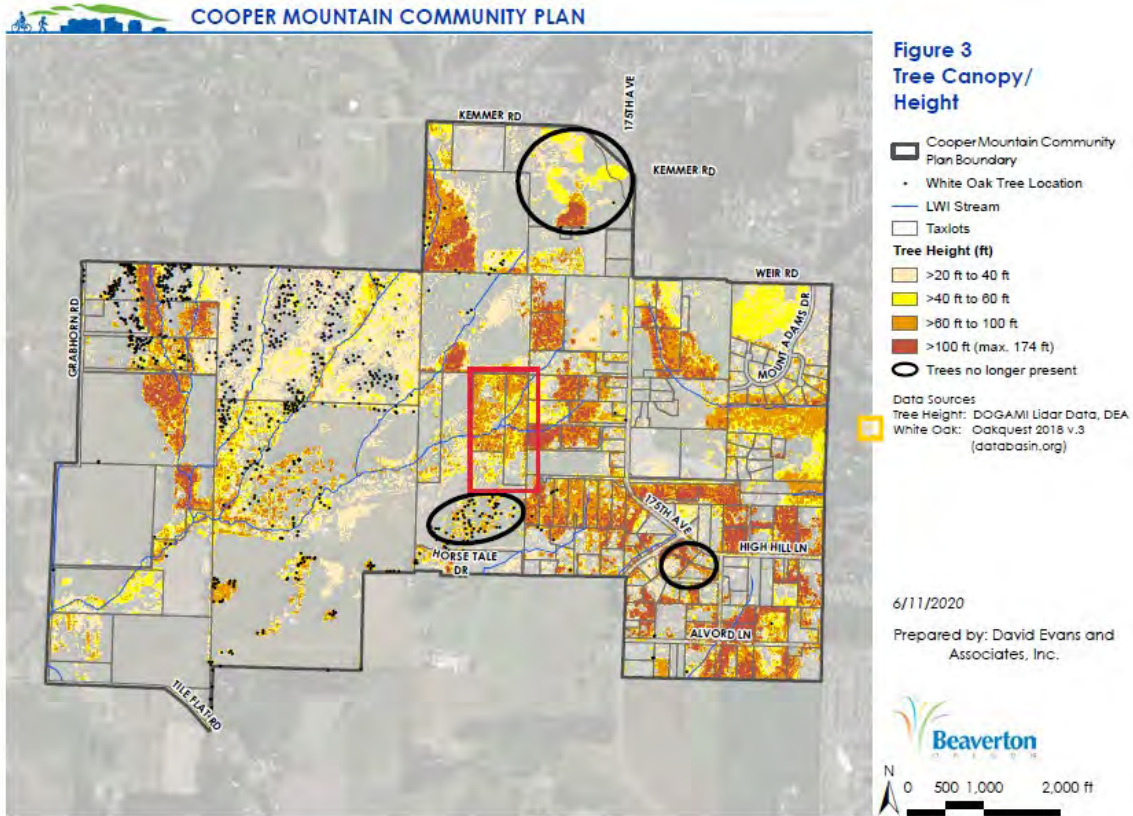
As show in Figure 3 above, the Report designates areas of the Properties as Class A upland wildlife quality.

Figure 4 shows the Properties densely covered with trees, which might support the classification of this area as Class A upland wildlife quality due to the existence of “large habitat patches.” However, as shown in Figure 1 above, there are no trees located on the Properties and

Brian Martin
April 25, 2024

no mature forest vegetation in close “proximity to water.” The trees on the Properties were legally harvested in 2019. Accordingly, the Properties should not be classified as Class A habitat and be included within the Resource Overlay on these grounds.

Figure 4



IV. Imposing the Resource Overlay on the Properties is Contrary to the City’s Own Housing Objectives

Currently, the Properties provide an ideal opportunity to develop housing in alignment with the City of Beaverton 2023 “Housing Needs Analysis Report.”

This report concludes that “Beaverton’s housing growth has [not] kept pace with...job growth and overall demand,” and that “there is a mismatch between demand and the housing which is currently available.” City of Beaverton *Housing Needs Analysis Report* (May 2023).

Brian Martin
April 25, 2024

Moreover, “Beaverton’s population is projected to grow by over 19,000 people by 2042” and “Beaverton needs nearly 9,900 new housing units to accommodate the projected growth.” *Id.* Specifically, “[m]ore middle housing and a smaller share of single-detached homes are anticipated to be needed.” *Id.*

Restricting development on the Properties is in direct contradiction to the City’s own Housing Needs Analysis — the City should revise the scope of the Resource Overlay so that the Properties may be used to support the City’s housing needs.

V. Conclusion

As stated by the City, and previously in this letter, one primary purpose of the Resource Overlay is to “[b]alance conservation and economic use” by allowing “reasonable economic use of property,” only when the City determines, in its sole discretion, that “adverse impacts to the resources can be mitigated.” BCD 60.37.05. The restrictions imposed by the Resources Overlay will prevent our clients from achieving their intentions to develop housing.

In addition to the forgoing, the imposition of the Resource Overlay on the Properties is based on inaccurate assumptions regarding the riparian and upland habitats that are currently present on the Properties (or, more accurately, are *not* present on the Properties), and thus does not further the stated purposes of the Overlay.

We hope to work with the City to amend the proposed Resource Overlay zoning code and draft Cooper Mountain zoning map so that they are consistent with the purpose of the Cooper Mountain Community Plan, support the City’s housing needs, and adhere to state and federal law. As an initial step, we request a meeting with City staff to discuss these concerns and would like to arrange a site visit to allow staff to better understand the current condition of the property.

Sincerely,

SCHWABE, WILLIAMSON & WYATT, P.C.

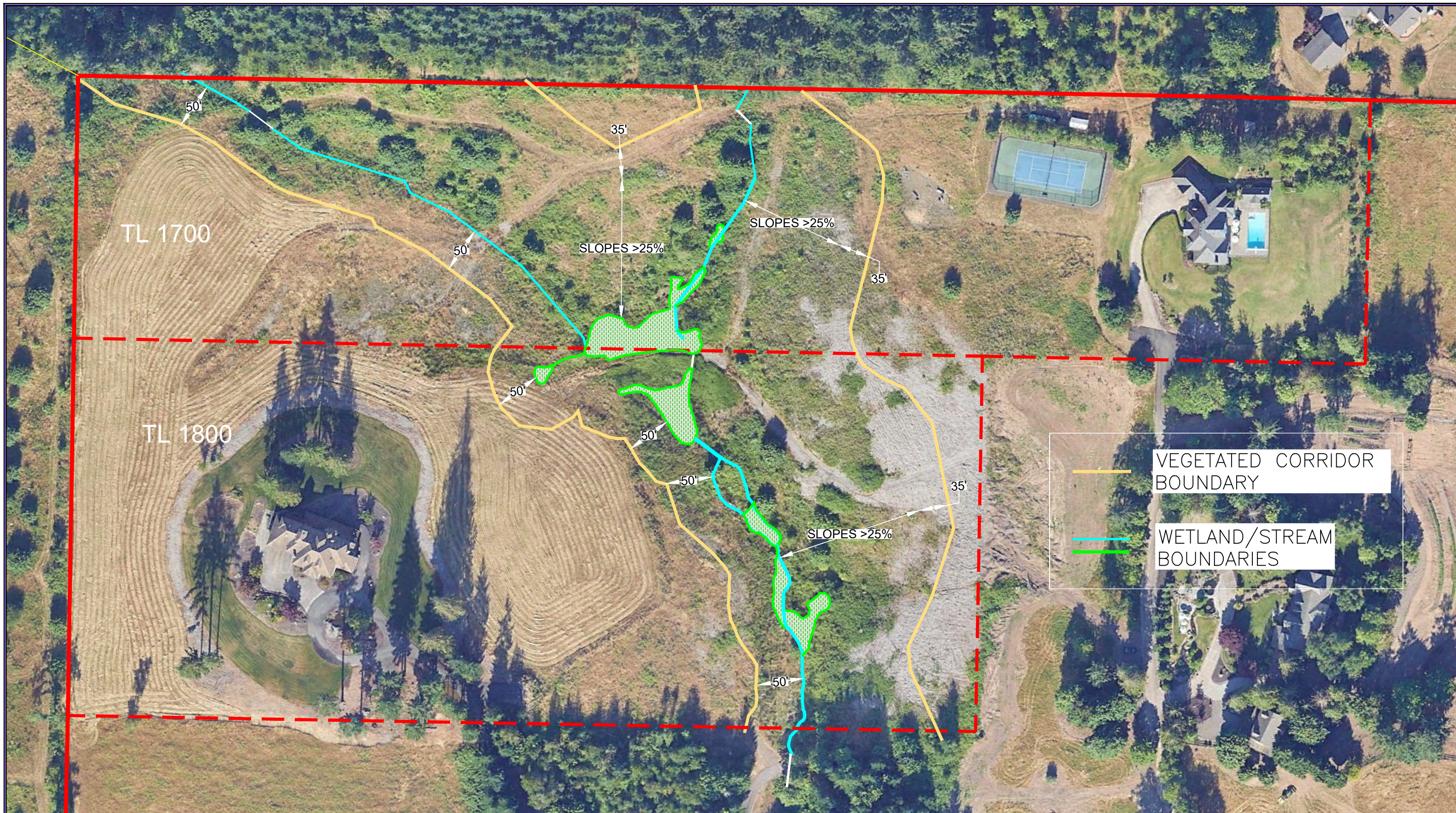


Garrett H. Stephenson


GST/DYS:jmhi
Enclosure

Brian Martin
April 25, 2024

cc: Mr. David Ohlsen (*via email w/enclosure*)
Mr. Casey Sayre (*via email w/enclosure*)
Mr. Dylan Sollfrank (*via email w/enclosure*)
Ms. Robyn McIntyre (*via email w/enclosure*)



Environmental Science & Assessment, LLC



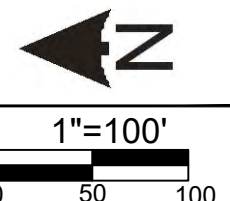
107 SE Washington St., # 249
 Portland, OR 97214
 Phone: 503.478.0424
 www.esapdx.com

Preliminary Resource Map - 2024 Update
 HorseTale Drive - Cooper Mountain
 Washington County, Oregon
 Exhibit A

Base Map Source:	Google Earth 7/2020
Modified By:	KR/PD
Date:	2/14/2024
Rev:	00/00
Proj. #	19041

Resource Boundaries have not been formerly delineated and should be considered approximate.

Figure B



1"=100'



June 17, 2024

Garrett H. Stephenson
Admitted in Oregon
D: 503-796-2893
C: 503-320-3715
gstephenson@schwabe.com

VIA E-MAIL

Hon. Lacey Beaty, Mayor
City of Beaverton
12725 SW Millikan Way
Beaverton, OR 97005

RE: Cooper Mountain Resource Overlay

Dear Mayor Beaty and Councilors

This firm represents Dave Ohlsen and Casey Sayre (collectively, “our clients”). David and Candice Ohlsen are the owners of the property located at 18485 SW Horse Tale Drive. Casey and Carol Sayre are the owners of the property located at 18395 SW Horse Tale Drive, which are shown in Figure 3, below. Both are within the proposed Cooper Mountain Concept Plan, and both are substantially encumbered by the proposed Cooper Mountain Resource Overlay. This letter is respectfully submitted to summarize our client’s objections to the proposed extent of the overlay over their properties.

The Cooper Mountain Community Plan proposes to add Section 60.37, “Resource Overlay,” to Chapter 60 of the Development Code of the City of Beaverton (“BDC”). As shown in Figure 2 below, the Resource Overlay (shaded green lines) encumbers the majority of the Properties, which are depicted in the red rectangle.

Figure 1



The Cooper Mountain Community Plan also shows two proposed collector roads that would run through the Properties within the area encumbered by the Resource Overlay, as depicted by the dotted green line.

Within a given lot or parcel, the maximum disturbance area within the Resource Area is proposed to be 20%, and requires the remaining area to be preserved in a separate tract. *See* BDC 60.37.35(B)¹. It further requires a Type III review and substantial mitigation for any development of the remaining portion of the Resource Overlay. *See* BDC 60.37.35(G). These regulations “require the mitigation area to be at least as large as the disturbance area.” City of Beaverton Community Development Department. *Cooper Mountain Proposed Code Overview 4* (January 2024). As a result, the entire area of a property that is within the Overlay Zone will effectively be taken from the property owner and set aside for the benefit of the City and the public.

¹ *See also* City of Beaverton Community Development Department. *Cooper Mountain Proposed Code Overview 2* (January 2024) (“During land division, 80 percent of the Resource Overlay on the property will be required to be protected from disturbance and separated into its own lot (also called a tract) where future development will be not allowed...The remaining 20 percent of the overlay on the property can be disturbed if the property owner/developer mitigates the disturbance, such as by planting native plants to make up for the disturbance.”).

Hon. Lacey Beaty
June 17, 2024

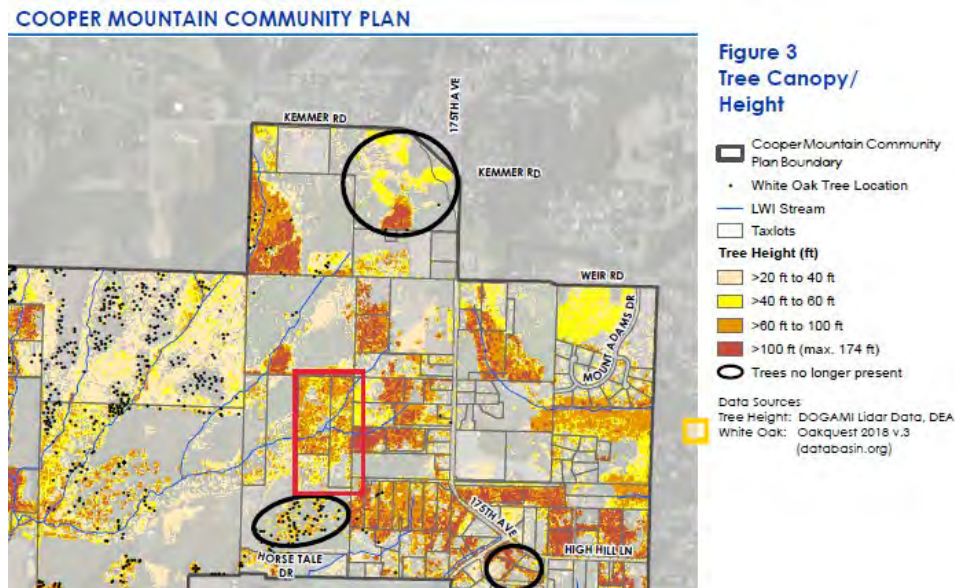
Our clients object to the extent of the proposed Resource Overlay on their properties. This is for two reasons. First, none of the riparian and upland habitat areas which City staff believes to be located on the properties actually exist. Second, what little developable area that the Resource Overlay might allow is largely consumed by the City's planned collector streets.

1. The City's assumptions regarding habitat values on the properties are inconsistent with the actual condition of the properties.

The proposed Resource Overlay makes two key assumptions about these properties; one of which is plainly inaccurate and the other of which is not supported by evidence. The City's assignment of upland habitat function for the properties is not accurate because the properties were logged in 2019; there is no more forested upland habitat on the properties. The City's resource overlay is based on outdated aerial photographs which, for purposes of including upland habitat (i.e. forested areas), rely on aerial photographs taken no later than December 13, 2018, more than five years ago.

The City's erroneous evaluation of habitat values is reflected in Figure 3, below, which assumes tree canopy between 60-100 feet in height.

Figure 3



Hon. Lacey Beaty
June 17, 2024

However as is evident in Figure 3, below, there is no longer any tree canopy on the properties, and there has not been since 2019.

City staff have asserted that, in effect, their hands are tied when it comes to establishing a baseline habitat condition, and believed that it was restricted to a 2018 aerial photograph when determining upland habitat. In so doing, staff pointed to Sec. 3.07.1340 of Metro Code Title 13. However, that section plainly does not *bind* the City to relying on outdated information. Rather, it concerns “performance standards and best management practices.” The City has the option described in Metro Code 3.07.1330(b)(3) to create a plan that “substantially complies” with the performance standards and best management practices, but it is not bound to rigidly rely on outdated habitat data so long as the program as a whole provides equivalent protections to Metro’s “performance standards and best management practices.”

Figure 3



Second, the City assumes that the streams on the properties require riparian protection based on an assumption that they are “perennial” streams. However, the City made no effort to determine if this was the case and simply assumes it is so.²

² “A determination of perennial or intermittent for streams in the Community Plan area could not be accurately performed. As a result, all Community Plan area streams were assumed to be perennial for the purposes of determining the vegetated corridor.” Nat. Res. Report at 5.

Hon. Lacey Beaty
June 17, 2024

For these reasons, the City should either (1) confirm that the streams are perennial before limiting development or (2) revise the extent of Resource Overlay over these properties to go no further than the Clean Water Services vegetated corridors (**Exhibit 1**), which will apply to any future development on the properties once they are in the City. Regardless, the City must significantly reduce the upland habitat area to reflect the fact that there is no longer any forested area on the properties.

2. The City’s planned extension of two collector roads will deprive our clients of most of their allowed Resource Overlay disturbance area.

Our clients’ second objection concerns an interplay between the proposed maximum 20% disturbance area allowed in the Resource Overlay and the City’s proposal to extend two collector roads through the properties. According to our discussions with City staff, the two proposed collector roads will count against our clients’ allowed disturbance area, even though they are public facilities required by the City. These collector roads will likely require a 66-foot right-of-way when combined with trails and, in both cases, they are planned through the very Resource Overlay that the City will require our clients to protect.

According to an analysis by Pioneer Design Group (**Exhibit 2**), the proposed collector roads would use most of the permitted impact area on Tax Lot 1800, and a substantial amount of the permitted impact area on Tax Lot 1700. “City planned facilities impact a minimum of 1.18 acres of Tax Lot 1800 and 0.45 acres of Tax Lot 1700. Tax Lot 1800 can therefore only impact 0.27 acres (3.73 percent) of resource lands and Tax Lot [1]700 can only impact 0.97 acres (13.6 percent) of resource lands.” “After utilizing what impact areas may be left after city planned facilities are accounted for, Tax Lot 1800 will only have 2.16 acres available for development. (Only 21.6 percent of the entire 10 acres.) After city planned facilities, Tax Lot 1700 will only have 3.55 acres available for development. (Only 35.4% of the entire 10.02 acres).”

Stated plainly, the City proposes to lock up the majority of our clients’ properties from future development and then use for itself what little residual development area remains by requiring these new public roads to count against the allowed disturbance area in the Resource Overlay.

When confronted with this fact, Staff explained that it would be the responsibility of our clients to go through a “Type III” review process to justify a further disturbance area, even though the combined bulk of the disturbance area for the two properties is required to be dedicated as public rights-of-way. This is neither sensible, fair, nor constitutional.

Hon. Lacey Beaty
June 17, 2024

Rather, staff should be instructed to revise the proposed Natural Resource Overlay to not count towards maximum disturbance area public facilities that the City itself requires. If it does not do so, it should at least provide a second pathway for disturbance area that allows a lower-level review when the City itself proposes to capture that disturbance area for a public purpose.

3. Conclusion.

For these reasons and as stated previously in our prior correspondence (**Exhibit 3**), the Council should reject the current draft of the Resource Overlay and instruct staff to do the additional work to determine which resources are actually on these properties and revise the Resource Overlay to not count against developable area public improvements which the City itself proposes to require.

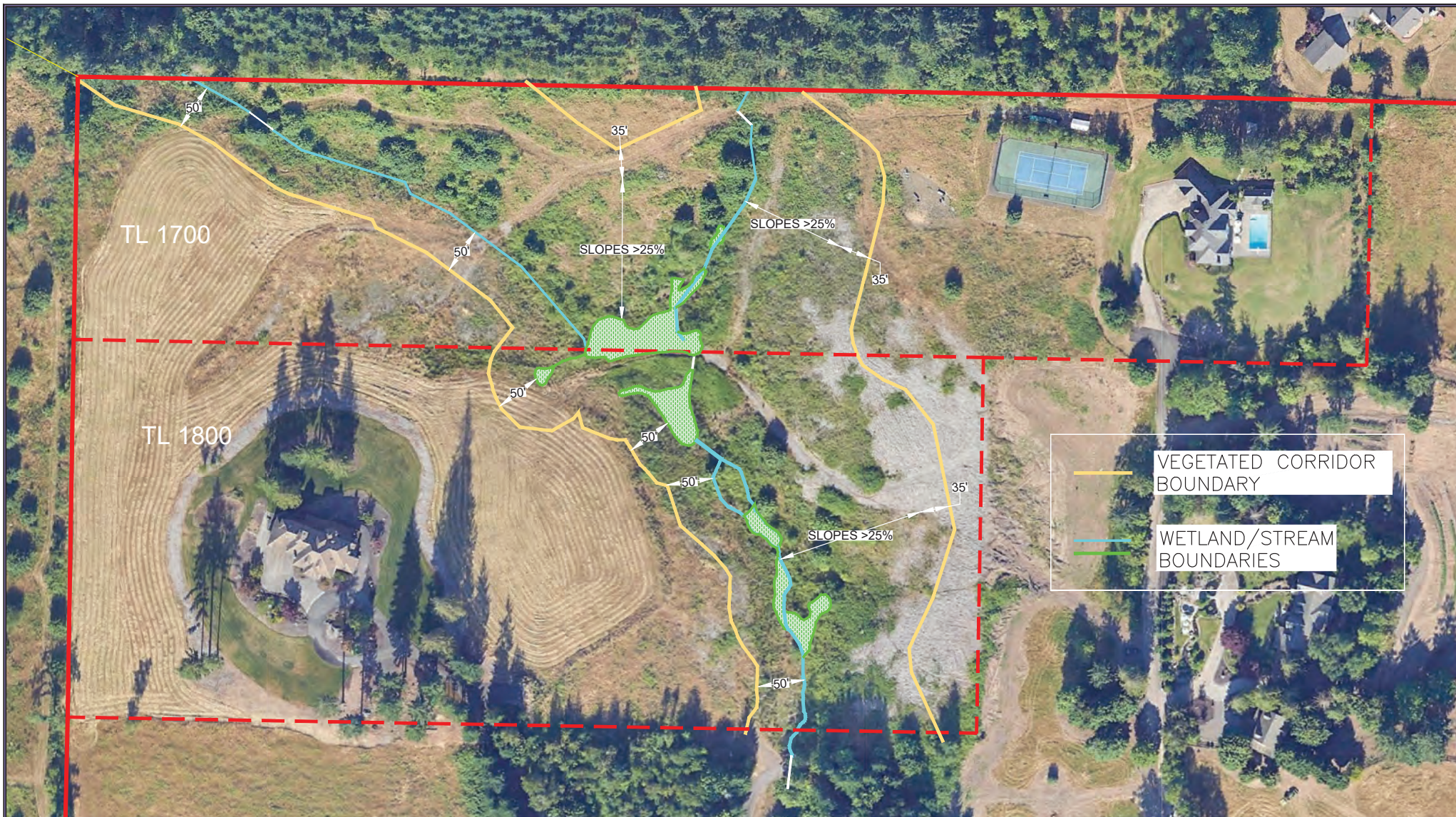
Sincerely,



Garrett H. Stephenson

GST/DYS:jmhi
Enclosures

cc: Mr. David Ohlsen (*via email w/enclosures*)
Mr. Casey Sayre (*via email w/enclosures*)
Mr. Dylan Sollfrank (*via email w/enclosures*)
Ms. Robyn McIntyre (*via email w/enclosures*)



Environmental
Science &
Assessment, LLC



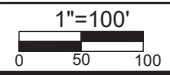
107 SE Washington St., # 249
Portland, OR 97214
Phone: 503.478.0424
www.esapdx.com

Preliminary Resource Map - 2024 Update
HorseTale Drive - Cooper Mountain
Washington County, Oregon

Base Map Source:	Google Earth 7/2020
Modified By:	KR/PD
Date:	2/14/2024
Rev:	00/00
Proj. #	19041

Resource Boundaries have not been formerly delineated and should be considered approximate.

Figure B



MEMORANDUM

To: Mr. Dave Ohlsen and Mr. Casey Sayre
Jurisdiction or Company Name

From: Matthew L. Sprague, Principal
Pioneer Design Group, Inc.

Project: **Cooper Mountain**
PDG No. 999-266

Date: June 17, 2024

RE: **City of Beaverton's Resource Overlay and Collector/Trail Alignment**
Impacts to Tax Lots 1700 and 1800, Map 1S1 31.

The City of Beaverton is in the process of planning for the Cooper Mountain Planning Area which will affect your properties (Figure 1) with its adoption. Pioneer Design Group has completed an analysis of the potential impacts to your properties based upon the City of Beaverton's mapping shown in the Cooper Mountain Community Plan.

Figure 1



These features, individually and combined, have a direct impact on the development area of your properties and each of these facilities is going to impact the properties in a different way. The various facilities planned on your properties as shown in the attached exhibit include:

1. Route 1 - A north/south Collector roadway.
2. Route 3 - An east/west Collector roadway.
3. Proposed Regional Trail on the west side of Route 1 and north side of Route 3 west of their intersection.
4. Proposed Community Multi-Use Trail along the north side of Route 3 east of its intersection with Route 1.
5. LWI features (Local Wetland Inventory Features)
6. Riparian Class I Overlay.
7. Upland Class B Overlay.

TRANSPORTATION FACILITIES

The transportation facilities for example, where they cross areas outside of resource areas will take up lands that could otherwise be used for local streets and lots. The Collectors will have limited access and thus no lots will be able to take direct access from them. Only limited public street connections will be permitted. Route 1 is particularly concerning with it curving through Tax Lot 1800 thus dividing the property, creating limited areas for development and resulting in a developable land area of an unusual shape which is difficult to develop efficiently.

The trails will be collocated with the streets as appears to be shown in the community plan maps. Trails along roadways typically need additional widths to accommodate wider pathways as compared to a standard sidewalk. If not collocated with the streets, the trails may need an additional 15 or more feet of width through your properties to accommodate the paved width and necessary easements or tracts within which they are constructed. In this case, one can assume the trails being collocated with the streets will require additional sidewalk width and therefore right of way width. We are estimating 6 feet of additional width required to enlarge the sidewalk to a 12-foot width when accommodating a trail.

RESOURCE OVERLAY

The Resource Overlays on your properties consist of the LWI features, Riparian Class I Overlay and Upland Class B Overlays. In general, the City of Beaverton's Code will require 80% of resource lands be preserved and be located within a separate tract. This allows development to impact up to 20% of the mapped Resource Overlay. Any impacts however must be mitigated. Mitigation can be done by designating developable land as mitigation or planting an equal area within the remaining resource with native materials such as an enhancement. Mitigation within development area would reduce developable lands however mitigation within the remaining resource lands will require an expensive monitoring procedure for a 3-year period.

NOTE: The transportation facilities that are planned on your properties that cross through Resource Lands will count towards your allowed impact area and must be mitigated. They therefore further reduce your developable area because they are using up some of the allowed impact development would otherwise be allowed.

PROPERTY CALCULATIONS

Tax Lot 1800

Gross Area = 10 AC
Resource Overlay = 7.24 AC
Trail Outside Resource = 0.04AC
Collector Outside Resource = 0.59 AC
Area for Existing Home = 0.24 AC
Developable Area = 1.89 AC

Tax Lot 1700

Gross Acres = 10.02 AC
Resource Overlay = 7.11 AC
Trail Outside Resource – 0.00 AC
Collector Outside Resource = 0.02 AC
Area for Existing Home = 0.31 AC
Developable Area = 2.58 AC

79% of Tax Lot 1800 and 71.1% of Tax Lot 1700 are impacted by proposed city facilities and Resource Overlays.

For Tax Lot 1800, the code would allow an impact of Resource Overlay totaling 1.45 acres and Tax Lot 1700 could impact 1.42 acres. However, city planned facilities including collector roadways and trails will impact resource lands as a part of the plan therefore removing flexibility and opportunity for these tax lots to develop utilizing the impact area as part of their plan. Planned public roads will impact a minimum of 1.18 acres of Tax Lot 1800 and 0.45 acres of Tax Lot 1700. Development on Tax Lot 1800 can therefore only impact 0.27 acres (3.73 percent) of resource lands and Development on Tax Lot 700 can only impact 0.97 acres (13.6 percent) of resource lands. Both properties will not have the fully allowed impact area available for development. Additionally, these numbers may end up less favorable if additional right-of way or tracts are needed for the Regional Trail and Community Multi-Use Trail.

After utilizing what impact areas may be left after city planned facilities are accounted for, Tax Lot 1800 will only have 2.16 acres available for development. (Only 21.6 percent of the entire 10 acres).

After city planned facilities, Tax Lot 1700 will only have 3.55 acres available for development. (Only 35.4% of the entire 10.02 acres).

ZONING AND REMAINING DEVELOPMENT POTENTIAL

The properties are both zoned CM-RM. For simplification purposes we are providing calculations for potential unit counts based on minimum lot size (3,000 square feet) for single detached housing as it is likely to be the most common unit type within the affected area. It should again also be noted that the alignments of the public facilities and Overlay

areas create very unfriendly shapes for efficient development. See the calculations below for a maximum detached unit estimate:

Tax Lot 1800

Max Development Area = 2.16 AC
Streets, Storm Fac. = 0.76 AC
Net Developable Area = 1.40 AC
 $1.40\text{AC} \times 43,560 = 60,984$ Square Feet
 $60,984/3,000 = 20.31$
Total Units Permitted = 20

Tax Lot 1700

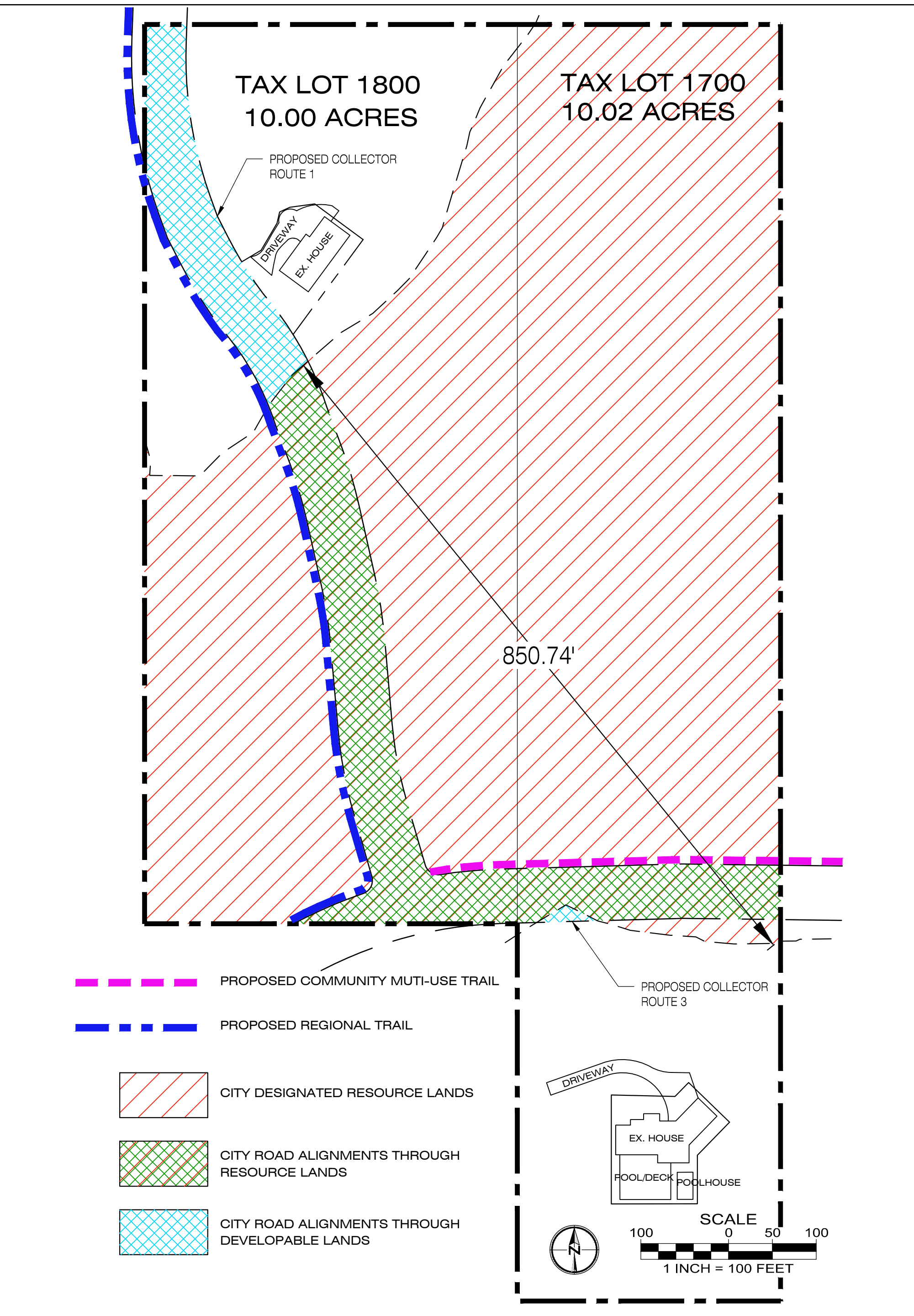
Max Development Area = 3.55 AC
Streets Storm Fac. = 1.24 AC
Net Developable Area = 2.31 AC
 $2.31 \times 43,560 = 100,623$ Square Feet
 $100,623/3000 = 33.54$
Total Units Permitted = 33



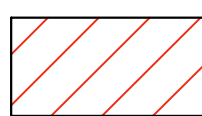
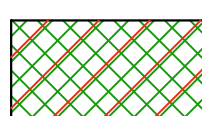
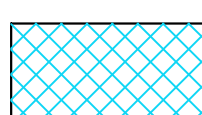
CONCLUSION

Both tax lot 1700 and 1800 are heavily impacted by proposed city overlays including roadways, trails and resource lands. In burdening the properties in this way, the city is requiring the properties contribute more than their fair share as a benefit to the city and the public without any compensatory mitigation for the contribution.

Additionally, although we've estimated a maximum single detached yield for the remaining developable areas on the properties, it is unlikely that those numbers can actually be achieved. The resource overlays combined with the street and trail network create inefficient areas for design of a land division to maximize the number of lots shown in the calculations above. The homes on the site likewise need to be considered as affecting the developable lands and further reducing design efficiency. The home values are too high to warrant removal. As a result, it is highly unlikely that a development plan for the site can achieve maximum units and we estimate the number of units that can be viably designed on the site to be 20 percent less than the calculations show could be accommodated. This would result in only 26 units on 10.02 acres for tax lot 1700 and only 16 units on 10 acres for tax lot 1800. A gross density of 2.59 units per acre and 1.6 units per acre respectively.

Attachments: Developable Lands Exhibit



-  PROPOSED COMMUNITY MULTI-USE TRAIL
-  PROPOSED REGIONAL TRAIL
-  CITY DESIGNATED RESOURCE LANDS
-  CITY ROAD ALIGNMENTS THROUGH RESOURCE LANDS
-  CITY ROAD ALIGNMENTS THROUGH DEVELOPABLE LANDS

DRIVEWAY

EX. HOUSE

POOL/DECK POOLHOUSE

SCALE

100 0 50 100

1 INCH = 100 FEET

Project No. XXX	No.	Date	Revision	By	Designed by WJD Date 06/2024	XXX
					Drawn by WJD Date 06/2024	
Type PLANNING Sheet					Reviewed by MLS Date 06/2024	
					Project No. 999-266 REF.	
					Horiz. Scale:	
					Vert. Scale:	

PIONEER DESIGN GROUP

CIVIL ENGINEERING • LAND USE PLANNING • LAND SURVEYING • LANDSCAPE ARCHITECTURE

PORTLAND, OREGON | HONOLULU, HAWAII

PH: 503.643.8286 | PH: 808.400.5959

WWW.PD-GRP.COM

April 25, 2024

Garrett H. Stephenson
Admitted in Oregon
D: 503-796-2893
C: 503-320-3715
gstephenson@schwabe.com

VIA E-MAIL

Brian Martin
Long Range Planning Manager
City of Beaverton
PO Box 4755
Beaverton, OR 97076-4755

RE: Cooper Mountain Resource Overlay
Our File No.: 142402-284321

Dear Brian:

This firm represents Dave Ohlsen and Casey Sayre (collectively, “our clients”). David and Candice Ohlsen are the owners of the property located at 18485 SW Horse Tale Drive in Beaverton, tax lot: 1S1310001800. Casey and Carol Sayre are the owners of the property located at 18395 SW Horse Tale Drive in Beaverton, tax lot: 1S1310001700 (collectively, the “Properties”), as shown in Figure 1 below.

Figure 1



This letter explains why the proposed Cooper Mountain Resource Overlay Zone, if enacted, would be in violation of state and federal law, and would conflict with the City’s 2023 Housing Needs Analysis Report. Specifically, the imposition of the Resource Overlay on the Properties would constitute a regulatory taking under state and federal law, and would violate several provisions of Oregon law, including ORS 197A.400 and Statewide Planning Goals (“Goal”) 1 and 2. Moreover, including the Properties within the Resource Overlay is based on inaccurate assumptions, and does not further the stated purposes of the Resource Overlay.

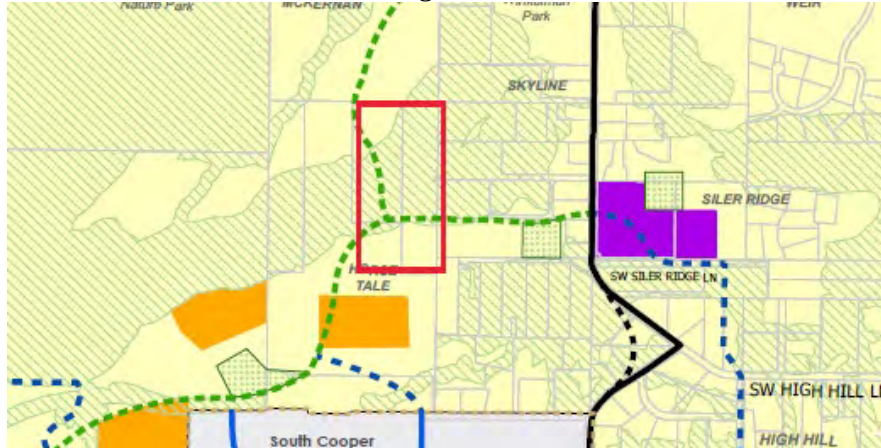
We request that the City significantly reduce the scope of the Resource Overlay on our client’s properties so that it no longer unreasonably restricts their use in violation of state and federal law. In particular, the Resource Overlay on the Properties should extend no further than the extent of CWS¹ vegetated corridors, as shown in Exhibit A to this letter, because the Properties have been logged and because the habitat functions the City’s Cooper Mountain Plan assumes exist are simply not present.

I. Cooper Mountain Community Plan – Proposed Resource Overlay Zone

The Cooper Mountain Community Plan proposes to add Section 60.37, “Resource Overlay,” to Chapter 60 of the Development Code of the City of Beaverton (“BDC”). As shown in figure 2 below, the Resource Overlay (shaded green lines) encumbers the majority of the Properties, which are depicted in the red rectangle.

¹ CWS refers to “Clean Water Services,” a water resources management utility in Washington County. One policy of the Cooper Mountain Community Plan is that the City “[c]oordinate with Clean Water Services to implement a regional stormwater strategy for the McKernan Creek subbasin...” City of Beaverton, *Cooper Mounting Community Plan* 47 (June 14, 2023).

Figure 2



The Resource Overlay prohibits development on 80 percent of the area of a property located within the Resource Overlay, and requires this area to be preserved in a separate tract. *See* BDC 60.37.35(B)². It further requires substantial mitigation for any development of the remaining portion of the Resource Overlay. *See* BDC 60.37.35(G). These regulations “require the mitigation area to be at least as large as the disturbance area.” City of Beaverton Community Development Department. *Cooper Mountain Proposed Code Overview 4* (January 2024). As a result, the entire area of a property that is within the Overlay Zone will effectively be taken from the property owner and set aside for the benefit of the City and the public.

The Cooper Mountain Community Plan Proposed Zoning Map also shows two proposed collector roads that would run through the Properties within the area encumbered by the Resource Overlay, as depicted in Figure 2 by the dotted green line. The proposed Resource Overlay zoning code requires mitigation for “disturbance within the Resource Overlay.” BDC 60.37.55(1). Unless otherwise specified, the mitigation area must be at a 1:1 ratio to the disturbance area, and must adhere to the extensive requirements set forth under BCD 60.37.55.

² *See also* City of Beaverton Community Development Department. *Cooper Mountain Proposed Code Overview 2* (January 2024) (“During land division, 80 percent of the Resource Overlay on the property will be required to be protected from disturbance and separated into its own lot (also called a tract) where future development will be not allowed...The remaining 20 percent of the overlay on the property can be disturbed if the property owner/developer mitigates the disturbance, such as by planting native plants to make up for the disturbance.”).

If these collector roads are deemed “disturbances,” our clients will be required to undergo additional mitigation for the area taken up by these roads, despite the fact that it is the City, not our clients, who seek to construct such roads within the Overlay area. In doing to, the City is further reducing the availability of developable land on the Properties, and is forcing our clients to undergo costly mitigation measures for actions taken wholly by the City.

Furthermore, the City should refrain from acting in contradiction to its own proposed development restrictions — if the City proposes to construct roads through a particular area, it should not place extensive development restrictions on this same area which prevent property owners from making beneficial use of their own properties. By proposing to construct collector roads over the Properties in areas encompassed by the Resource Overlay, this is precisely what the City is doing.

II. Imposing the Resource Overlay on the Properties Violates State and Federal Law

According to the draft concept plan, the Resource Overlay is intended to “[b]alance conservation and economic use by allowing reasonable economic use of property where adverse impacts to the resources can be mitigated.” Effectively, this provides the City with the sole discretion to determine whether a property owner may make reasonable economic use of their property. This is a violation of ORS 197A.400(1) as well as the takings clause of both the state and federal constitutions. In addition, the City’s process used to develop the Resource Overlay code represents several further violations of Oregon law.

a. Restricting development opportunities on the properties for the benefit of the City is a violation of the Fifth and Fourteen Amendments of the United States Constitution.

The Takings clause of the Fifth Amendment of the U.S. Constitution prohibits “private property [from being] taken for public use, without just compensation.” U.S. Const. amend. V. The Fourteenth Amendment makes that Fifth Amendment applicable to the states, including local governments. U.S. Const. amend. XIV. The Supreme Court of the United States has confirmed that “[a] property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 185 (2019). At issue in *Knick v. Twp. of Scott* was a local ordinance passed by a township, thus confirming that the City’s imposition of the Resource Overlay through legislative action is subject to a takings claim. *Id.* at 186.

As in *Knick*, the stated purposes of the Resource Overlay is to protect natural areas “for their ecological function and as an *amenity for the community*.” BDC 60.37.05 (emphasis added). As shown in Figure 1, the majority of both Properties are located within Resource Overlay. Prohibiting development on 80 percent of the area within the Overlay in order to preserve this area for the public constitutes a clear taking of private property for public use without just compensation.

Further, in *Penn Cent. Transp. Co. v. City of New York*, the Supreme Court of the United States set out several factors to determine whether a regulatory taking has occurred. These include “the economic impact of the regulation on the claimant” as well as “the extent to which the regulation has interfered with distinct investment-backed expectations.” *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

As in *Penn Central*, the proposed Resource Overlay would restrict development on the majority of both Properties and would directly interfere with our clients’ reasonable expectations about their properties’ future uses. First, our clients reasonably expected that they would be able to develop housing on their Properties when the Cooper Mountain area was included within the Urban Growth Boundary (“UGB”) in 2018. The principal “desired outcome” of expanding the UGB to include Cooper Mountain was to address the fact that “[t]he region needs more housing.” Metro, *2018 Growth Management Decision – Chief Operating Officer Recommendation 3* (Sept. 4, 2018). Metro reasoned that the “UGB expansions would provide additional growth capacity for single-family housing (both attached and detached).” *Id.* at 4. Metro recommended that the Metro Council “place several conditions on any UGB expansion” to “[s]et an *expectation* that cities will allow and encourage the integration of different housing types throughout the expansion area.” *Id.* at 7 (emphasis added). Metro stated further that “[t]he City of Beaverton’s strong track record for getting housing built in the South Cooper Mountain area is a major reason why [Metro] recommend[s] that the Council expand the UGB in the Cooper Mountain urban reserve.” *Id.* at 8.

The Metro Council subsequently issued Ordinance No. 18-1427, which expanded the UGB to include the South Cooper Mountain area for the purpose of “provid[ing] housing.” Metro Council Ordinance No. 18-1427, *For The Purpose Of Expanding The Urban Growth Boundary To Provide Capacity For Housing To The Year 2038 And Amending The Metro Code To Conform* (Dec. 13, 2018). The Ordinance placed several “conditions of approval on land added to UGB,” including that the City “shall allow, at a minimum, single family attached housing, including townhomes, duplexes, triplexes, and fourplexes, in all zones that permit single family housing in the expansion areas.” *Id.* These statements explain why our clients reasonably expected that they would be able to develop housing on the Properties.

Second, based on their observations of the natural conditions of their Properties, our clients expected to be able to develop housing on the Properties at the density allowed in the Cooper Mountain Residential Mixed (“CM-RM”) zone, the zone that would apply to the Properties pursuant to the Cooper Mountain Community Plan.³ The CM-RM zone permits “[r]esidential – [s]ingle-detached homes; middle housing; and small scale commercial uses.” See City of Beaverton Community Development Department, *Cooper Mountain Proposed Code Overview 5* (Dec. 2023). The minimum development density is this zone in 10 units per acre. *Id.* The imposition of the Resource Overlay as it is currently proposed would directly interfere with our client’s development expectations. This constitutes a taking under *Penn Central*.

A taking also occurs when the government places a restriction on development if the degree of the restriction lacks “rough proportionality” to the impacts of the proposed development. See *Dolan v. City of Tigard*, 512 U.S. 374 (1994). If the City is unable to make an “individualized determination that the required dedication is related both in nature and extent to the impact of the [Landowner’s] proposed development,” the development restrictions imposed by the Resource Overlay, as applied to the Properties, constitutes a taking in violation of the Fifth Amendment of the U.S. Constitution.

The City has not demonstrated that the extensive development restrictions imposed by the Resource Overlay are in any way proportional to the impacts of development on the Properties if they were to be developed to even their minimum densities, particularly considering that the Properties do not contain the ecological features the Overlay is intended to protect. Moreover, there is no indication that the City will provide any “just compensation” to our clients that might prevent the imposition of the development restrictions from rising to the level of an impermissible taking.

b. Oregon Constitution.

Section 18 of Article I of the Constitution of Oregon provides that:

“Private property shall not be taken for public use... without just compensation; nor except in the case of the state, without such compensation.” Or. Const. art. I, § 18.

³ The Cooper Mountain Community Plan Proposed Zoning Map, shown in Figure 2, confirms that the Properties are located in the CM-RM zone.

When a “government regulation—rather than a physical occupation or invasion—restricts a property owner’s right of possession, enjoyment, and use, a taking can occur if, as a consequence, the property retains no economically viable or substantial beneficial use.” *Hall v. State ex rel Oregon Dep’t of Transp.*, 355 Or 503, 511 (2014). Also, a taking under Section 18 of Article I can occur when a “governmental action creates an expectation that the private land in question *eventually* will be taken for a public use.” *Boise Cascade Corp. v. Bd. of Forestry*, 325 Or. 185, 197 (1997).

As noted above, the proposed Resource Overlay would prevent our clients from making economically-viable use of the undeveloped portions of their properties. It has also led our clients to reasonably believe that the majority of the Properties will soon be taken for a public use, namely to be preserved for the benefit of the City as both open space and roadways.

c. The proposed Resource Overlay Code violates Oregon’s Needed Housing statute.

Our clients intend to utilize the Properties to develop needed housing. Oregon’s Needed Housing statute requires that a “local government...adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing.” ORS 197A.400(1). Such standards, conditions and procedures “[m]ay not have the effect, either in themselves or cumulatively, of discouraging needed housing⁴ through unreasonable cost or delay.” *Id.* As stated in the City’s own 2023 Housing Needs Analysis Report, described above, housing is needed in Beaverton, particularly affordable housing. *See City of Beaverton Housing Needs Analysis Report 5* (May 2023). The Resource Overlay discourages the development of such housing through unreasonable cost and delay, in violation of ORS 197A.400.

As explained above, the proposed Resource Overlay zoning code prohibits development on 80 percent of the Overlay area, and permits disturbances on the other 20 percent only if significant mitigation actions are taken. City of Beaverton Community Development Department. *Cooper Mountain Proposed Code Overview 2* (January 2024). The severe magnitude of these restrictions violates the City’s mandate under ORS 197A.400(1) to refrain from “discouraging needed housing.” The City has itself stated that additional housing is needed

⁴ “Needed Housing” is defined as “housing by affordability level, as described in section 2 (4) chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), type, characteristics and location that is necessary to accommodate the city’s allocated housing need over the 20-year planning period in effect when the city’s housing capacity is determined.” ORS 197A.018(1).

in the region, so it should not impose unnecessarily stringent development restrictions that act in opposition to this objective. This level of restriction is particularly unreasonable considering that, at least in reference to the Properties, it does not act to further preservation goals.

Moreover, the proposed Resource Overlay zoning code requires property owners to undertake numerous costly and time-consuming actions should they wish to develop within the Resource Overlay, in further violation of ORS 197A.400(1). For example, if a landowner with property in the Resource Overlay wishes to develop Needed Housing, he or she must submit to the City a “Resource Overlay – Boundary Correction Type 1” application. BDC 60.37.15(5). This requires the applicant to take numerous actions, including to: “provide documentation demonstrating the misalignment between the Resource Overlay map and the property’s tax lot boundary lines;” “provide documentation of the correct location of the water feature” if the applicant believes that the upland habitat boundary is inaccurate; and to “provide evidence demonstrating that the resources described in the applicable Natural Resources Report were no longer in existence on the effective date of the ordinance adopted by the Metro Council to bring the subject property within the Metro UGB.” BDC 60.37.15.1.

If an applicant believes that the Resource Overlay map is inaccurate for a reason other than those specified in BDC 60.37.15.1, it must submit a “Resource Overlay – Boundary Amendment Type 3.” BDC 60.37.15(6). This is an even more extensive process than a Type 1 application, and requires the applicant to submit a report prepared and signed by either (1) a qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon. *Id.* This report must include:

1. “A description of the qualifications and experience of all persons that contributed to the report, and, for each person that contributed, a description of the elements of the analysis to which the person contributed;
2. The information described in Table 60.37.15.1 if the applicant believes such information is relevant to the verification of habitat location on the subject property;
3. Additional aerial photographs if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert’s interpretation of the additional information they provide;
4. A map showing the topography of the property shown by two-foot vertical contours in areas of slopes less than fifteen (15) percent, and at five-foot vertical contours of slopes fifteen (15) percent or greater; and
5. Any additional information to demonstrate that the location and/or attributes of the inventoried natural resources on the site as described in the applicable Natural Resources

Report is inaccurate and that natural resources meeting the criteria for inclusion in the Natural Resources Inventory were not present on the effective date of the ordinance adopted by the Metro Council to bring the subject property within the Metro UGB.” BDC 60.37.15(6).

Complying with these standards will take considerable time, and will represent a significant expense for landowners within the Resource Overlay. The direct effect of imposing the Resource Overlay on the Properties is to “discourage needed housing,” all in violation of ORS 197A.400. This is particularly true considering that the Overlay map does not include detailed surveys of natural resources.

d. The City’s failure to consult our clients prior to publishing the proposed Resource Overlay Zoning Code is a Violation of Statewide Planning Goal 1.

Goal 1, “Citizen Involvement,” requires local governments adopting comprehensive plans to “develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.” Oregon Department of Land Conservation and Development, SWP 1; OAR 660-015-0000(1). Citizens are required to have the opportunity to be involved in all phases of the planning process, “including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.” *Id.* This program must include an “officially recognized committee for citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land use decisions.” *Id.* Notably, “citizens should receive notice they can understand of the opportunity to serve on the CCI.” *Id.*

The City’s failure to involve our clients in a meaningful way when developing the proposed Resource Overlay zoning code constitutes a violation of Goal 1. There is no indication that City staff, in drafting the proposed Resource Overlay zoning code, made any effort to personally consult with our clients prior to significantly restricting their ability to develop on their own Properties, or to even visit the property to check staff’s assumptions about its functional value. The City’s failure to solicit views from our clients and other citizens affected by the proposed Resource Overlay in a meaningful way is a violation of Goal 1.

e. The Proposed Resource Overlay Zoning Code does not have an “adequate factual base” as required by Statewide Planning Goal 2.

Goal 2 is “[t]o establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.” Oregon Department of Land Conservation and Development, SWP 2; OAR 660-015-0000(2). Under Goal 2, “legislative land use decisions...must be supported by an ‘adequate factual base,’ which is functionally equivalent to the substantial evidence standard⁵.” *Forest Park Neighborhood Ass’n v. Washington County*, 73 Or LUBA 193 (2016); *see also Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992) (adequate findings must identify the relevant approval standards, set out the facts relied upon, and explain how those facts lead to the decision on compliance with the approval standards). In *Forest Park Neighborhood Ass’n*, the Oregon Land Use Board of Appeals (“LUBA”) held that a county “adopted inadequate findings, not supported by substantial evidence,” when determining the size of buffer under a county ordinance setting out land use regulations for a UGB expansion area. *Id.* This was partly because the findings and evidence in the record supporting the land use regulation did not address testimony in the record suggesting that the proposed buffer size was insufficient, and because the county failed to “cite...to any evidence to the contrary.” *Id.*

The City has failed to provide any evidence conclusively establishing that the Properties contain a stream, wetland, riparian habitat, or upland habitat — features warranting inclusion in the Resource Overlay — beyond the scope of the CWS-designated vegetated corridor identified on the Properties. A map of the Properties prepared by Environmental Science & Assessment, LLC depicting the vegetated corridor is included as Exhibit A to this letter.

Beyond this marked lack of factual support pertaining specifically to the Properties, it is apparent that the City has also failed to consider the potential to develop Needed Housing on the Properties. This is despite its statutory mandate to do so under ORS 197A.400(1), and its directive under City Ordinance No. 18-1427 to allow housing in “all zones that permit single family housing.” Beyond this, the City has seemingly failed to consider the conclusion of its own 2023 Housing Needs Analysis Report that 9,900 housing units are needed in the City to meet projected population growth.

⁵ Substantial evidence is evidence a reasonable decision maker would rely upon to make a decision. *1000 Friends of Oregon*, 27 Or LUBA, at 378 (“the question is whether a reasonable person could reach the conclusion the decision-maker did, considering the evidence in the record.”).

Considering Goal 1 in conjunction with ORS 197A.400(1) — prohibiting local governments from adopting “standards, conditions and procedures regulating the development of housing...on land within an urban growth boundary” from having “the effect...of discouraging needed housing” — the City must present a compelling explanation for why it intends to severely restrict development in much of the Cooper Mountain area through restriction imposed by the Resource Overlay. However, as described herein, the City has not done so.

III. The Purposes of the Resource Overlay Do Not Align With the Current Condition of the Properties

The *Cooper Mountain Proposed Code Overview* summarizes the stated purposes of the Resource Overlay, stating that the Overlay is intended to protect “streams and associated riparian areas” as well as “wetlands” and “upland habitat (generally areas near streams/wetlands or important tree groves).” City of Beaverton Community Development Department. *Cooper Mountain Proposed Code Overview* 1 (January 2024). In October 2022, the Cooper Mountain Community Plan Project Team issued the *Cooper Mountain: Approach to Natural Resource Protection* memorandum to “describ[e] the approach to preserving natural resources in the Cooper Mountain Community Plan.” Cooper Mountain Community Plan Project Team, *Cooper Mountain: Approach to Natural Resource Protection* 1 (Oct. 21, 2022). This memorandum explains that the “requirements for natural resource protection in Cooper Mountain” are based on “Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces),” and that “Beaverton’s existing Goal 5 program relies primarily on programs established by the Tualatin Basin Partners, including *Clean Water Services* (CWS), to protect and enhance natural resources.” *Id.* at 2, 15 (emphasis added). CWS regulates development activity “within ‘Sensitive Areas,’ which include wetlands and water features, and ‘Vegetated Corridors,’ a buffer adjacent to sensitive areas.” *Id.* at 15.

The Resource Overlay should only include areas with the capacity to further the purposes of the Overlay, and thus should not extend beyond the CWS vegetated corridor boundary depicted in Exhibit A. The Resource Overlay boundary is based on findings contained in the “Cooper Mountain Community Plan Natural Resources Report.” *Id.* at 1. A comparison of the conclusions of this report and the actual conditions of the Properties illustrates that including the Properties within the Overlay neither furthers its intended purposes nor reflects the current features existing on the Properties.

a. Riparian area.

According to the Cooper Mountain Community Plan Natural Resources Report, a “riparian area” comprises the “land surrounding wetlands, streams, and other water bodies.” City of Beaverton Cooper Mountain Community Plan, *Natural Resources Report 4* (June 2020). The report provides that a “buffer area of a certain distance from the water body is regulated and protected for water quality and/or habitat protection purposes.” *Id.* Notably, the “typical buffer width defined by these regulations is 50 feet, and this buffer width can extend to a maximum of 200 feet in areas of steep slopes (i.e., slopes of 25 percent or greater).” *Id.*

Metro classifies riparian habitats into Classes I, II, or III, where Class I habitats are the highest quality habitats. *Id.* at 5. These classifications are based on the “riparian habitat to provide...ecological functions” including “[m]icroclimate and shade” and “[s]treamflow moderation and flood storage.” *Id.* at 5.

The ability of a riparian habitat to provide such ecological functions is based in part on whether the associated stream or water body is perennial or intermittent, and “CWS guidance requires that the determination of whether streams are perennial or intermittent occur.” *Id.* at 5. However, the Natural Resources Report concedes that “a determination of perennial or intermittent for streams in the CMCP area could not be accurately performed,” and “[a]s a result, all CMCP area streams were assumed to be perennial for the purposes of determining the vegetated corridor.” *Id.*

The proposed scope of the Resource Overlay area on the Properties is not supported by the City’s findings or by the current condition of the Properties. First, the area of the Overlay on the Properties as currently proposed extends significantly further than 50 feet from the McKernan Creek,” which the City asserts runs through the Properties. This is far more than what the Natural Resources Report requires.

Second, the City’s designation of much of the Properties as Class I riparian habitat quality, as shown in Figure 3 below, is misguided. The City merely assumes that the creek is perennial. This is a factor affecting the scope of the vegetated corridor, and illustrates that the City is unable to prove that the creek is able to provide “streamflow moderation and flood storage.” Additionally, the area surrounding the designated location of the McKernan Creek is surrounded by unforested land, and is thus unable to provide “ecological functions” such as “microclimate and shade.” The Properties should not be classified as Class I riparian habitat quality, and accordingly should not be included within the Resource Overlay on these grounds.

Figure 3

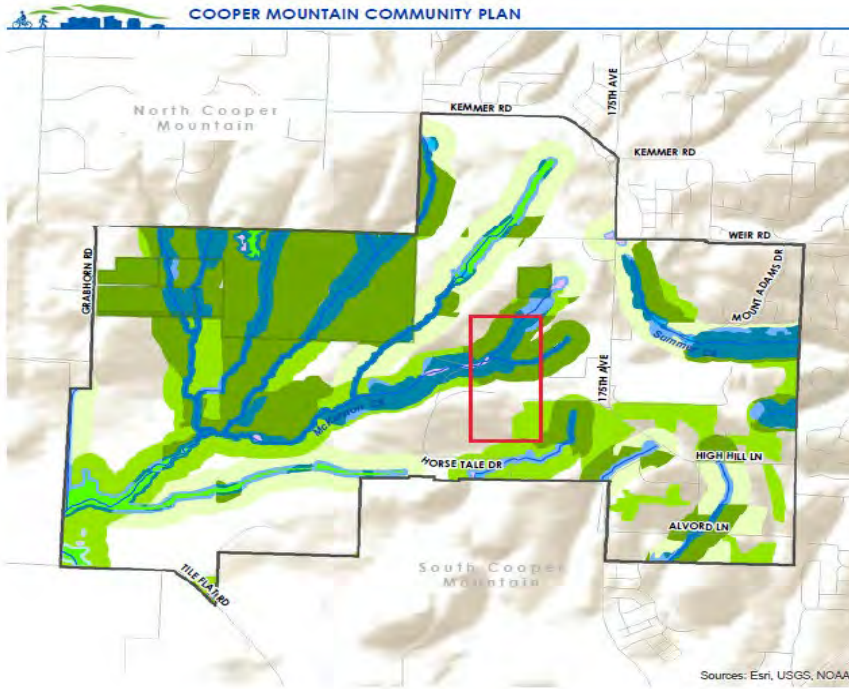


Figure 4
Riparian and Upland Habitats



6/11/2020

Prepared by: David Evans and Associates, Inc.



b. Upland habitat.

The Cooper Mountain Community Plan Natural Resources Report designates areas as upland habitat based on “forest vegetation.” *Id.* at 5. The Report divides upland habitats into Classes A, B, and C, where Class A habitats are the highest quality habitat. *Id.* at 6. Class A habitats are those that best meet several stated “assumptions,” including:

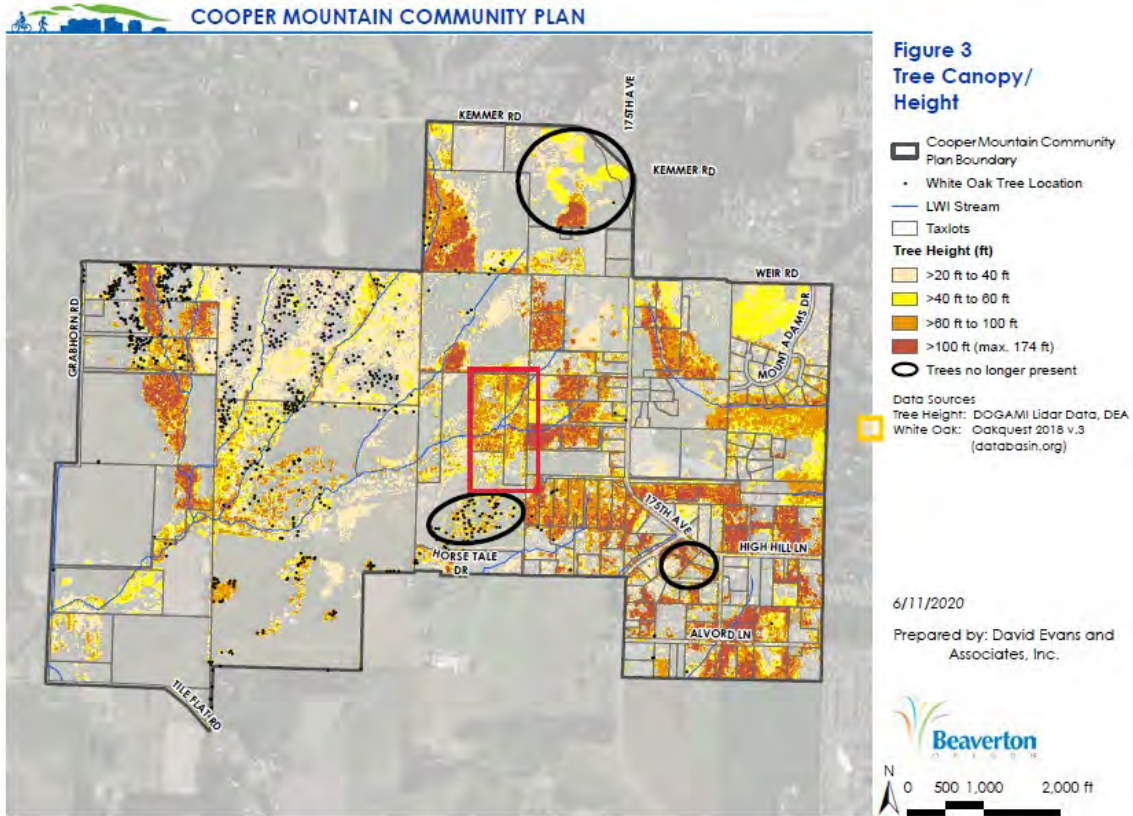
- “Large habitat patches are more valuable than small patches;”
- “Connectivity and proximity to other habitat patches are important;” and
- “Connectivity and proximity to water are important.” *Id.*

As show in Figure 3 above, the Report designates areas of the Properties as Class A upland wildlife quality.

Figure 4 shows the Properties densely covered with trees, which might support the classification of this area as Class A upland wildlife quality due to the existence of “large habitat patches.” However, as shown in Figure 1 above, there are no trees located on the Properties and

no mature forest vegetation in close “proximity to water.” The trees on the Properties were legally harvested in 2019. Accordingly, the Properties should not be classified as Class A habitat and be included within the Resource Overlay on these grounds.

Figure 4



IV. Imposing the Resource Overlay on the Properties is Contrary to the City’s Own Housing Objectives

Currently, the Properties provide an ideal opportunity to develop housing in alignment with the City of Beaverton 2023 “Housing Needs Analysis Report.”

This report concludes that “Beaverton’s housing growth has [not] kept pace with...job growth and overall demand,” and that “there is a mismatch between demand and the housing which is currently available.” City of Beaverton *Housing Needs Analysis Report* (May 2023).

Moreover, “Beaverton’s population is projected to grow by over 19,000 people by 2042” and “Beaverton needs nearly 9,900 new housing units to accommodate the projected growth.” *Id.* Specifically, “[m]ore middle housing and a smaller share of single-detached homes are anticipated to be needed.” *Id.*

Restricting development on the Properties is in direct contradiction to the City’s own Housing Needs Analysis — the City should revise the scope of the Resource Overlay so that the Properties may be used to support the City’s housing needs.

V. Conclusion

As stated by the City, and previously in this letter, one primary purpose of the Resource Overlay is to “[b]alance conservation and economic use” by allowing “reasonable economic use of property,” only when the City determines, in its sole discretion, that “adverse impacts to the resources can be mitigated.” BCD 60.37.05. The restrictions imposed by the Resources Overlay will prevent our clients from achieving their intentions to develop housing.

In addition to the forgoing, the imposition of the Resource Overlay on the Properties is based on inaccurate assumptions regarding the riparian and upland habitats that are currently present on the Properties (or, more accurately, are *not* present on the Properties), and thus does not further the stated purposes of the Overlay.

We hope to work with the City to amend the proposed Resource Overlay zoning code and draft Cooper Mountain zoning map so that they are consistent with the purpose of the Cooper Mountain Community Plan, support the City’s housing needs, and adhere to state and federal law. As an initial step, we request a meeting with City staff to discuss these concerns and would like to arrange a site visit to allow staff to better understand the current condition of the property.

Sincerely,

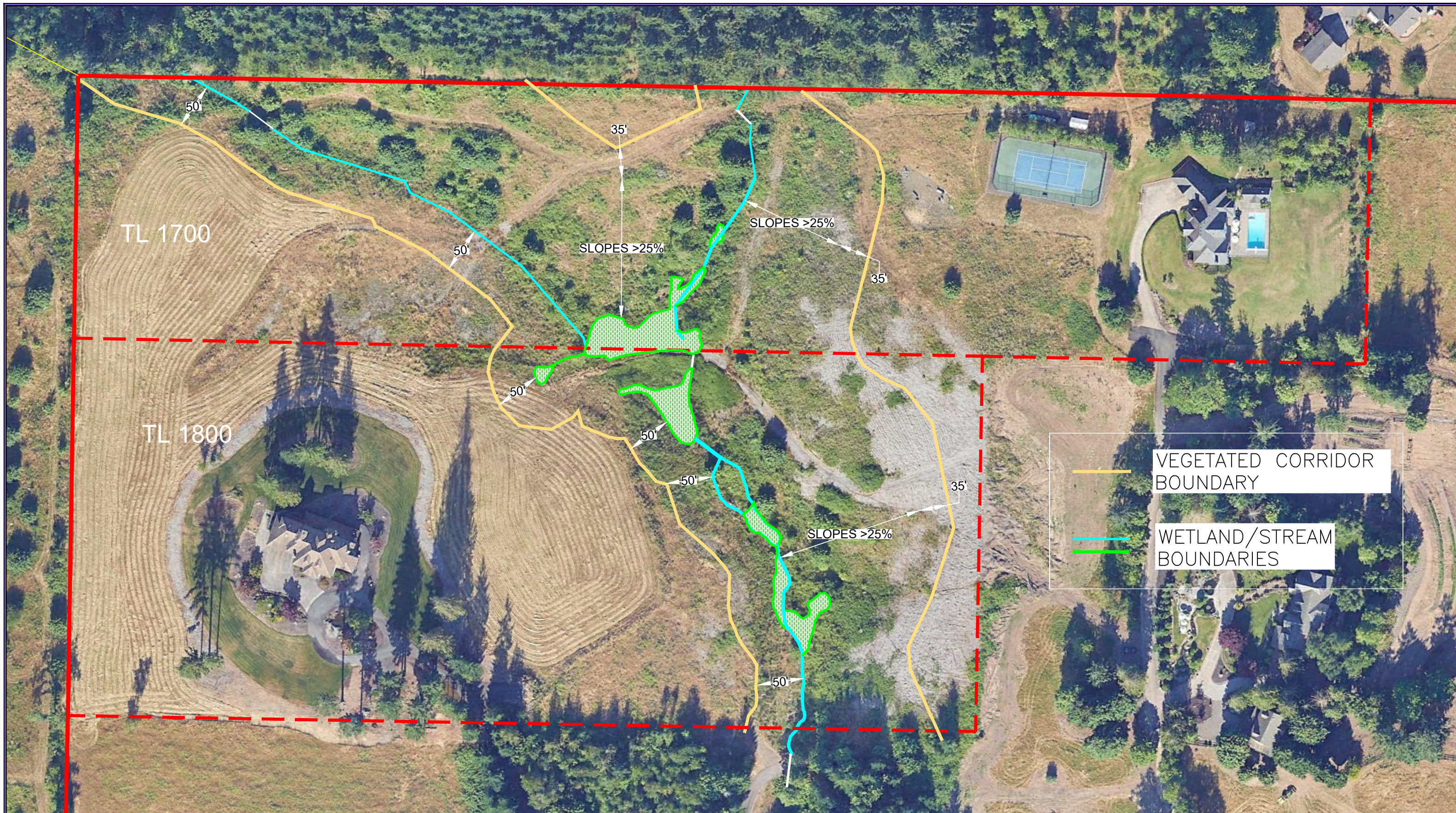
SCHWABE, WILLIAMSON & WYATT, P.C.



Garrett H. Stephenson

GST/DYS:jmhi
Enclosure

cc: Mr. David Ohlsen (*via email w/enclosure*)
Mr. Casey Sayre (*via email w/enclosure*)
Mr. Dylan Sollfrank (*via email w/enclosure*)
Ms. Robyn McIntyre (*via email w/enclosure*)



	VEGETATED CORRIDOR BOUNDARY
	WETLAND/STREAM BOUNDARIES


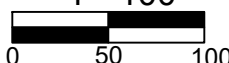
Environmental Science & Assessment, LLC		107 SE Washington St., # 249 Portland, OR 97214 Phone: 503.478.0424 www.esapdx.com
		Environmental Science & Assessment, LLC

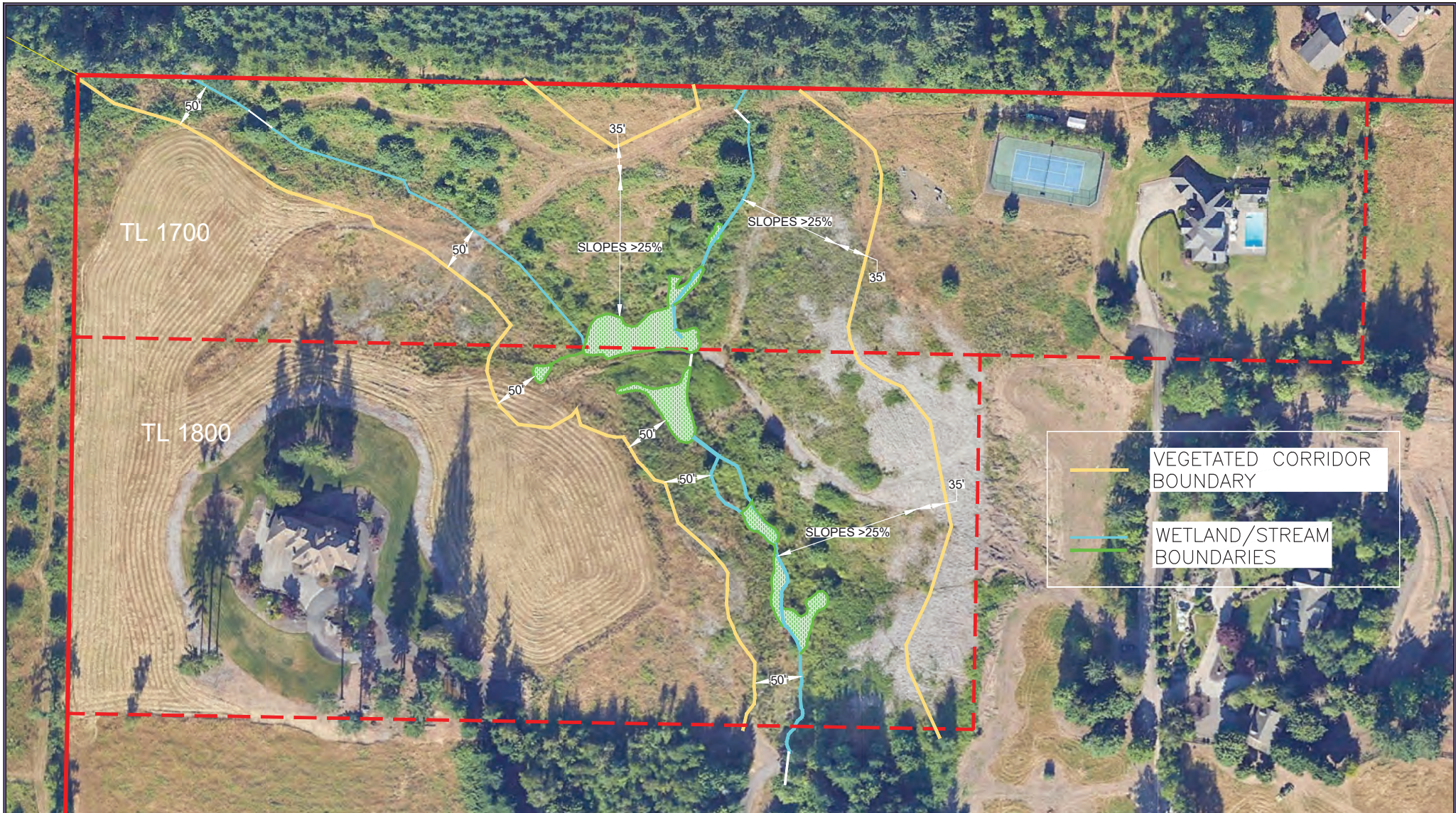
Preliminary Resource Map - 2024 Update
HorseTale Drive - Cooper Mountain
Washington County, Oregon
 Exhibit B

Base Map Source:	Google Earth 7/2020
Modified By:	KR/PD
Date:	2/14/2024
Rev:	00/00
Proj. #	19041

Resource Boundaries have not been formerly delineated and should be considered approximate.

Figure B


 1"=100'




Environmental
Science &
Assessment, LLC



107 SE Washington St., # 249
Portland, OR 97214
Phone: 503.478.0424
www.esapdx.com

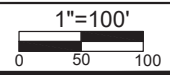
Preliminary Resource Map - 2024 Update
HorseTale Drive - Cooper Mountain
Washington County, Oregon

Exhibit C, Page 1 of 1

Base Map Source:	Google Earth 7/2020
Modified By:	KR/PD
Date:	2/14/2024
Rev:	00/00
Proj. #	19041

Resource Boundaries
have not been formerly
delineated and should
be considered
approximate.

Figure B



MEMORANDUM

To: Mr. Dave Ohlsen and Mr. Casey Sayre
Jurisdiction or Company Name

From: Matthew L. Sprague, Principal
Pioneer Design Group, Inc.

Project: **Cooper Mountain**
PDG No. 999-266

Date: June 17, 2024

RE: **City of Beaverton's Resource Overlay and Collector/Trail Alignment**
Impacts to Tax Lots 1700 and 1800, Map 1S1 31.

The City of Beaverton is in the process of planning for the Cooper Mountain Planning Area which will affect your properties (Figure 1) with its adoption. Pioneer Design Group has completed an analysis of the potential impacts to your properties based upon the City of Beaverton's mapping shown in the Cooper Mountain Community Plan.

Figure 1



These features, individually and combined, have a direct impact on the development area of your properties and each of these facilities is going to impact the properties in a different way. The various facilities planned on your properties as shown in the attached exhibit include:

1. Route 1 - A north/south Collector roadway.
2. Route 3 - An east/west Collector roadway.
3. Proposed Regional Trail on the west side of Route 1 and north side of Route 3 west of their intersection.
4. Proposed Community Multi-Use Trail along the north side of Route 3 east of its intersection with Route 1.
5. LWI features (Local Wetland Inventory Features)
6. Riparian Class I Overlay.
7. Upland Class B Overlay.

TRANSPORTATION FACILITIES

The transportation facilities for example, where they cross areas outside of resource areas will take up lands that could otherwise be used for local streets and lots. The Collectors will have limited access and thus no lots will be able to take direct access from them. Only limited public street connections will be permitted. Route 1 is particularly concerning with it curving through Tax Lot 1800 thus dividing the property, creating limited areas for development and resulting in a developable land area of an unusual shape which is difficult to develop efficiently.

The trails will be collocated with the streets as appears to be shown in the community plan maps. Trails along roadways typically need additional widths to accommodate wider pathways as compared to a standard sidewalk. If not collocated with the streets, the trails may need an additional 15 or more feet of width through your properties to accommodate the paved width and necessary easements or tracts within which they are constructed. In this case, one can assume the trails being collocated with the streets will require additional sidewalk width and therefore right of way width. We are estimating 6 feet of additional width required to enlarge the sidewalk to a 12-foot width when accommodating a trail.

RESOURCE OVERLAY

The Resource Overlays on your properties consist of the LWI features, Riparian Class I Overlay and Upland Class B Overlays. In general, the City of Beaverton's Code will require 80% of resource lands be preserved and be located within a separate tract. This allows development to impact up to 20% of the mapped Resource Overlay. Any impacts however must be mitigated. Mitigation can be done by designating developable land as mitigation or planting an equal area within the remaining resource with native materials such as an enhancement. Mitigation within development area would reduce developable lands however mitigation within the remaining resource lands will require an expensive monitoring procedure for a 3-year period.

NOTE: The transportation facilities that are planned on your properties that cross through Resource Lands will count towards your allowed impact area and must be mitigated. They therefore further reduce your developable area because they are using up some of the allowed impact development would otherwise be allowed.

PROPERTY CALCULATIONS

Tax Lot 1800

Gross Area = 10 AC
Resource Overlay = 7.24 AC
Trail Outside Resource = 0.04AC
Collector Outside Resource = 0.59 AC
Area for Existing Home = 0.24 AC
Developable Area = 1.89 AC

Tax Lot 1700

Gross Acres = 10.02 AC
Resource Overlay = 7.11 AC
Trail Outside Resource – 0.00 AC
Collector Outside Resource = 0.02 AC
Area for Existing Home = 0.31 AC
Developable Area = 2.58 AC

79% of Tax Lot 1800 and 71.1% of Tax Lot 1700 are impacted by proposed city facilities and Resource Overlays.

For Tax Lot 1800, the code would allow an impact of Resource Overlay totaling 1.45 acres and Tax Lot 1700 could impact 1.42 acres. However, city planned facilities including collector roadways and trails will impact resource lands as a part of the plan therefore removing flexibility and opportunity for these tax lots to develop utilizing the impact area as part of their plan. Planned public roads will impact a minimum of 1.18 acres of Tax Lot 1800 and 0.45 acres of Tax Lot 1700. Development on Tax Lot 1800 can therefore only impact 0.27 acres (3.73 percent) of resource lands and Development on Tax Lot 700 can only impact 0.97 acres (13.6 percent) of resource lands. Both properties will not have the fully allowed impact area available for development. Additionally, these numbers may end up less favorable if additional right-of way or tracts are needed for the Regional Trail and Community Multi-Use Trail.

After utilizing what impact areas may be left after city planned facilities are accounted for, Tax Lot 1800 will only have 2.16 acres available for development. (Only 21.6 percent of the entire 10 acres).

After city planned facilities, Tax Lot 1700 will only have 3.55 acres available for development. (Only 35.4% of the entire 10.02 acres).

ZONING AND REMAINING DEVELOPMENT POTENTIAL

The properties are both zoned CM-RM. For simplification purposes we are providing calculations for potential unit counts based on minimum lot size (3,000 square feet) for single detached housing as it is likely to be the most common unit type within the affected area. It should again also be noted that the alignments of the public facilities and Overlay

areas create very unfriendly shapes for efficient development. See the calculations below for a maximum detached unit estimate:

Tax Lot 1800

Max Development Area = 2.16 AC
Streets, Storm Fac. = 0.76 AC
Net Developable Area = 1.40 AC
 $1.40\text{AC} \times 43,560 = 60,984$ Square Feet
 $60,984/3,000 = 20.31$
Total Units Permitted = 20

Tax Lot 1700

Max Development Area = 3.55 AC
Streets Storm Fac. = 1.24 AC
Net Developable Area = 2.31 AC
 $2.31 \times 43,560 = 100,623$ Square Feet
 $100,623/3000 = 33.54$
Total Units Permitted = 33

CONCLUSION

Both tax lot 1700 and 1800 are heavily impacted by proposed city overlays including roadways, trails and resource lands. In burdening the properties in this way, the city is requiring the properties contribute more than their fair share as a benefit to the city and the public without any compensatory mitigation for the contribution.

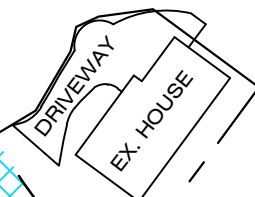
Additionally, although we've estimated a maximum single detached yield for the remaining developable areas on the properties, it is unlikely that those numbers can actually be achieved. The resource overlays combined with the street and trail network create inefficient areas for design of a land division to maximize the number of lots shown in the calculations above. The homes on the site likewise need to be considered as affecting the developable lands and further reducing design efficiency. The home values are too high to warrant removal. As a result, it is highly unlikely that a development plan for the site can achieve maximum units and we estimate the number of units that can be viably designed on the site to be 20 percent less than the calculations show could be accommodated. This would result in only 26 units on 10.02 acres for tax lot 1700 and only 16 units on 10 acres for tax lot 1800. A gross density of 2.59 units per acre and 1.6 units per acre respectively.

Attachments: Developable Lands Exhibit

TAX LOT 1800
10.00 ACRES

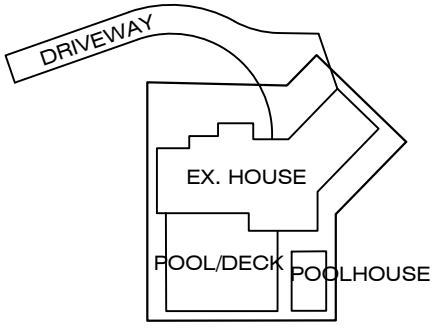
TAX LOT 1700
10.02 ACRES

PROPOSED COLLECTOR
ROUTE 1



850.74'

PROPOSED COLLECTOR
ROUTE 3



PROPOSED COMMUNITY MULTI-USE TRAIL

PROPOSED REGIONAL TRAIL

CITY DESIGNATED RESOURCE LANDS

CITY ROAD ALIGNMENTS THROUGH
RESOURCE LANDS

CITY ROAD ALIGNMENTS THROUGH
DEVELOPABLE LANDS



SCALE
100 0 50 100
1 INCH = 100 FEET

Project No. 999-266 Type: PLANNING Sheet	No.	Date	Revision	By	Designed by	WJD	Date	06/2024
					Drawn by	WJD	Date	06/2024
					Reviewed by	MLS	Date	06/2024
					Project No.	999-266	REF.	
					Horiz. Scale:		XXX	
					Vert. Scale:		XXX	

PIONEER DESIGN GROUP
 CIVIL ENGINEERING • LAND USE PLANNING • LAND SURVEYING • LANDSCAPE ARCHITECTURE
 PORTLAND, OREGON | HONOLULU, HAWAII
 PH: 503.643.8286 | PH: 808.400.5959
 WWW.PD-GRP.COM

EXHIBIT 34.2 TESTIMONY

From: [Rob Zoeller](mailto:Rob.Zoeller)
To: [Rob Zoeller](mailto:Rob.Zoeller)
Subject: FW: [EXTERNAL] Cooper Mountain Community Plan
Date: Wednesday, October 16, 2024 2:30:30 PM

From: Sig Lillevik <sig.lillevik@gmail.com>
Sent: Wednesday, October 16, 2024 2:22 PM
To: Mailbox CDD Planning <MailboxCDDPlanning@beavertonoregon.gov>
Subject: [EXTERNAL] Cooper Mountain Community Plan

CAUTION: This email originated from outside the City of Beaverton. Exercise caution when opening attachments or clicking links from unknown senders.

Project name: Cooper Mountain Community Plan
Case File Numbers: LU42024-00682, CPMA42024-00679, ZMA42024-00681, TA42024-00680

The purpose of this public testimony is to offer support for the *Cooper Mountain Community Plan*. Sig and Sandi Lillevik own the residence at 17960 SW Outlook Lane, Beaverton, OR 97007. We remember when Weir Rd. was gravel and Murray Blvd. only two lanes.

We have observed and occasionally participated in the planning process for at least the last six years. We fully approve of the plan as it appears the Planning Commission has done due diligence with regard to covering all the disciplines which comprise such a plan. Furthermore, we feel the Planning Commission has solicited feedback from, and listen to, all concerned stakeholders. Although no plan is perfect, we feel it represents a best case scenario with compromises as necessary.

We hope that the Planning Commission and City Council take the next steps to beginning the **Implementation Phase** as it is time to do so.

Regards,

SIG and Sandi Lillevik
503-351-8452

EXHIBIT 34.3 TESTIMONY

From: [Rob Zoeller](#)
To: [Rob Zoeller](#)
Subject: FW: [EXTERNAL] LU42024-00682 COOPER MOUNTAIN COMMUNITY PLAN (CPMA42024-00679, TA42024-00680, ZMA42024-00681)
Date: Wednesday, October 16, 2024 2:22:03 PM

From: Eric Squires <eric@ericsquires.com>
Sent: Wednesday, October 16, 2024 10:57 AM
To: Mailbox CDD Planning <MailboxCDDPlanning@beavertonoregon.gov>
Subject: [EXTERNAL] LU42024-00682 COOPER MOUNTAIN COMMUNITY PLAN (CPMA42024-00679, TA42024-00680, ZMA42024-00681)

CAUTION: This email originated from outside the City of Beaverton. Exercise caution when opening attachments or clicking links from unknown senders.

SQUIRES, ERIC D	
-----------------	--

Site Address:
17172 SW RIDER LN, BEAVERTON, OR 97007-8581

APN:	1S131DB-02100	Lot Number:	21	Page / Grid:	654-F3
Legal Description:	Lot Code:	21			
	Subdivision:	SKY HIGH ACRES			
	Sec / Township / Range:	SEC 31 TWN 01S RNG 01W			
	Legal Brief Description:	LOT:21 SEC/TWN/RNG/MER:SEC 31 TWN 01S RNG 01W SKY HIGH ACRES, LOT 21, ACRES 1.60			

Kindly hold the record open for the maximum duration allowed.

EXHIBIT 34.4 TESTIMONY

From: [Rob Zoeller](#)
To: [Rob Zoeller](#)
Subject: FW: [EXTERNAL] Cooper Mountain Community Plan Hearing 10/16
Date: Wednesday, October 16, 2024 2:13:12 PM

From: Austin <austin.pederson@gmail.com>
Sent: Wednesday, October 16, 2024 1:41 PM
To: Mailbox CDD Planning <MailboxCDDPlanning@beavertonoregon.gov>
Subject: [EXTERNAL] Cooper Mountain Community Plan Hearing 10/16

CAUTION: This email originated from outside the City of Beaverton. Exercise caution when opening attachments or clicking links from unknown senders.

- Project name: COOPER MOUNTAIN COMMUNITY PLAN
- Case File Numbers: LU42024-00682, CPMA42024-00679, TA42024-00680, ZMA42024-00681
- Austin Pederson
- 17765 SW Cooper Mountain Ln, Beaverton, OR 97007

How many total homes are to be added, and what is the specific plan relative to Beaverton School District? Is there logic applied to how many classrooms, or investment in elementary schools needs to be made? All prior inquiries on this matter have resulted in responses that effectively state that planning for schools is not in scope, and that I would need to inquire with Beaverton School District. Why would a capital investment this large not have a consideration for schools? Please specify your logic. Include any and all documentation or discussion on the matter. Lest we are to presume that the city of Beaverton is planning to add thousands of homes with infrastructure costs in the hundreds of millions... without having any joint operable plan with the school district. Is your plan to simply force the school district to figure this out later? If this isn't the plan, why is there no reference to school investment? Are you planning for these homes to not have children that require education? If you haven't yet comprehended the walkability to schools, when specifically will you? Or, is public education not a priority for Beaverton? Do you have the necessary funding secured to build out an appropriate and in kind increase in schools? If not, why not? Has this been calculated yet? If not, we are left to assume Beaverton city is simply planning to force a tax levy retroactively. Is this accurate?

What will be the specific impact to Beaverton school boundaries, and what work has been done to date to incorporate joint Beaverton city and Beaverton School district planning on this matter? When will school district boundaries be updated to reflect the massive increase in homes. Keep in mind the current school district boundary requires many of the affected homeowners to attend the 6th closest elementary school. Which is a direct by-product and failure by Beaverton city and Beaverton School district to plan jointly. Aside from pointing the finger at Beaverton School District, what responsibility will Beaverton city officials have in this matter? If you haven't conducted joint planning on the annexation of this area in concert with Beaverton School District, why? And who made this decision? What is the transportation plan for these schools and the to be built homes? How many homes can be

added to Beaverton School District before Beaverton city would consider the requirement to create a joint and aligned school and home plan? Is there no threshold, why not? Does Beaverton city feel it is reasonable to add thousands of homes with no plan for public education?

Please consider:

- Hazeldale Elementary - 3.7 Miles (we are zoned into this school)
- Cooper Mountain Elementary - 2.6 Miles
- Scholls Heights Elementary - 1.8 Miles
- Nancy Ryles - 2.6 Miles
- Sexton Mountain - 3.5 Miles
- Errol Hassell - 3.3 Miles

The public hearing notice states "*The Planning Commission shall conduct a hearing in accordance with adopted rules of procedure...*" What specifically are these rules? Please state specific statute numbers.

Can you confirm the city of Beaverton has the available funds, or means to raise the available funds in partnership with development firms on any and all work required to build (infrastructure or otherwise) for this project? And specifically, the city of Beaverton will not need to introduce any type of additional tax levy (or similar) to pay for this development? It is indicated in '*Exhibit 1 CM Community Plan (Funding Plan Only)*' that there is a budget shortfall upwards of \$100M on this project? Is the city of Beaverton planning to approve this annexation, and then later worry about how to pay for it? Is the Beaverton city plan to simply burden tax payers after making the decision? If the funding has not yet been secured, what is the threshold the city of Beaverton would consider before requiring a vote on the matter from its city electors? Does Beaverton city feel it is prudent to proceed with a massive effort without having funding secured for infrastructure?

Given the significant capital expenditure for this project, why has the city of Beaverton determined to not have this action voted upon by city electors? I recognize this is not a requirement in the city charter. I am specifically asking for the determination, and logic that was applied to not let your constituents vote on the matter. Further, when was this decision discussed, and made? And by whom? What was the vote? Who was in favor and against?

There have been multiple revisions to the map, and keeping up on the latest is difficult. This is made much more difficult when different revisions are posted throughout the documents in the *Agenda* for the hearing today. What was mailed out shows significant differences in land use designation, relative to what is available in '*Exhibit 3 Cooper Mountain Land Use Map*'. How are we as homeowners expected to thoughtfully prepare for a hearing of this magnitude when documentation is exceptionally incongruent across various official documents? As an impacted homeowner I cannot be expected to prepare for a hearing wherein multiple revisions are currently posted. Please reschedule the hearing until all documentation is congruent, a minimum of 90 days after confirmation that all relevant documents are in congruence + required notice period.

What is the specific Oregon statute that is being leveraged for annexation? Please be specific.

What is the city's ad valorem tax levied for the current fiscal year, expressed as the rate per thousand dollars of assessed valuation? Please include the current fiscal year assessed valuation of all taxable property, in total and by lot of the subject area.

Please provide a description of the services the city generally provides its residents and homeowners. Please include any other info the city considers relevant to the impact of annexation.

How is it that the SNRA overlay neatly conforms to property boundaries? What consideration has been made for riparian habitat boundaries relative to root structure? On one side of a property line is a resource overlay... including mature Douglas Fir, White Oak, etc... and on another is no resource overlay. With City rear yard set back (15 feet) and side yard set back (5 feet) won't construction destroy nearby root structures of mature trees, thereby reducing tree canopy; while simultaneously increasing risk of tree fall? Is Beaverton City liable for this? I recognize your answer is going to be that Beaverton has no liability here... so is it safe to presume you are going to do nothing with this issue, and have homeowners bear the brunt of poor planning? To include the liability of death or injury by tree-fall, an inevitable outcome by way of applying and editing resource overlays to conform to property boundaries to maximize builder profit. Wouldn't it be more prudent to have the resource overlay consider a boundary relative to riparian habitat tree ***radius***? It currently does not, as the SNRA overlay unnaturally aligns snaps to property boundaries. In simple terms, when adjacent development takes place; it will destroy dozens of Doug Fir, White Oak, and other Significant Natural Resources, as small city sized setbacks will dig into established root structures.

Beaverton Police is currently funded at less than half of the national average, and certainly well under the average even when accounting for relative crime rates. What consideration has been made if any relative to the area proposed to be annexed, and the in-kind increase in police force and presence? Given the significant geographic separation from Beaverton center, and the proposed area; what has been discussed to date, and when? What has been decided relative to Beaverton police funding? What will it be if this proposal goes through? And what will it be if it does not? If this hasn't been considered to date, why hasn't it? And, who has made the determination that annexation action can take place without consideration of impact to the relevant police force?

Please provide a copy of all written consent for annexation that has been provided by impacted homeowners of the subject area. Including but not limited to; copy of the original consent correspondence, date of receipt and recording, address, acreage, and current fiscal assessed value.

Oregon statute provides for stepped increase in taxation for city purposes relative to a newly annexed area. Inclusive of year over year increases to reach no greater than 100% of the total city specific taxation in a 20 year period. Has this been discussed by the city? If not, why not? Is the plan to increase current homeowner city specific taxation to the full rate on the date annexation is recorded, despite city services not yet being available? If this has been discussed, why has it not been included? What were the considerations of not pursuing this given the benefit to affected homeowners, and that no material benefit from being within the city will be immediately enjoyed?

There is no language regarding current homeowners and their septic systems. For current homeowners on septic systems that have approved backup locations that have been approved with the county, should the primary septic system fail; what policy governs the fall back to the already approved secondary location? In this scenario, will the city force a homeowner to connect to sewer despite having an approved secondary location? If so, why would the approved secondary location not be considered as grandfathered in? Has this been discussed previously relative to this annexation proposal? If so, when? What was the outcome? If this wasn't previously discussed, why not?

Is the city pursuing annexation because there is a belief there is a danger to public health?

The public hearing notice for today's 10/16 hearing makes no mention of annexation. Given this is intending to be an annexation of an affected area, why is it not described as such? Is this not intentional (or unintentional) misleading of homeowners of the affected area? Were there prior drafts of the public hearing notice that included the word or any derivative of the word annexation? If so, why was it removed? Who made this determination and why? Please list all document contributors to the public hearing notice. Can you provide all earlier draft forms of the public hearing notice. Who determined the final language for the public hearing notice? When was it determined? Why was the public hearing notice framed as such, and not a *proposal for annexation* as specified by Oregon statute?

Language used in online records indicate the public hearing notice includes draft development rules, and corresponding summary. How are we as homeowners to prepare for a hearing, if the development rules are still in draft? When will the development rules be considered a final revision for which to review? Will there be a similar hearing to hear testimony of affected parties when final revisions are complete? Given inconsistencies across exhibits supplied for this hearing, how are we to know what information is final, or draft, or accurate?

What is the estimated investment by the city of Beaverton on this effort to date? Expressed in approximate dollars and person hours. At what monetary investment threshold would the city of Beaverton consider it prudent to have this issue voted upon by it's electors? Is it the point of view of Beaverton officials that there is no dollar threshold where its constituents should weigh in? If so, please demonstrate how this is operating in good faith with your electors.

Online it is stated that a public hearing notice has been sent to all residents. Is this all residents of the affected area? Or does this include all residents of Beaverton? If this notice does not include all residents of Beaverton, how may residents of Beaverton know there is a hearing on this matter? Given the significant investment, shouldn't all city residents have an opportunity to provide testimony? Not just the affected homeowners?