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Date: 1/12/2023
To: Jim Wheeler and Kathy Majidi, City of Gresham
From: Stacey Reed, PWS, Senior Wetland Scientist
Project Name: Veranda at Pleasant Valley Subdivision
AKS Job No.: 9804
Project Site: 7928 SE 190th Drive, Pleasant Valley Plan Area in Gresham, Clackamas County
Tax lot 1200 of Clackamas County Assessor Tax Map 1S 3 20D
Subject: [ESRA-PV Determination City File No SD/MIS 20-26000343 \(MPLAN 21-00652\)](#)

The purpose of this memorandum is to document that the City of Gresham 1) has the authority to determine Wetlands 1-5 delineated by Schott and Associates (Schott) on the Veranda at Pleasant Valley Subdivision project site should not be regulated as locally significant under the Pleasant Valley Environmentally Sensitive Resource Area (ESRA-PV), and 2) how unavoidable impacts can be permitted and successfully mitigated in accordance with federal and state requirements.

Background Information

A wetland delineation was completed on the site in 2019 by Schott which determined five palustrine emergent wetlands (referred to as Wetlands 1-5) totaling +/-5.52 acres were present on the site. Schott's delineation was concurred by Oregon Department of State Lands (DSL) under DSL File WD2019-0500. The proposed Veranda at Pleasant Valley site plan requires unavoidable encroachment within Wetlands 1-3 and 5 (avoids impact to Kelley Creek and Wetland 4) generally to accommodate a transportation network compatible with code requirements to support site development.

Locally Significance Criteria

Wetlands delineated by Schott on the project site were not mapped as locally significant on the City's Pleasant Valley Plan District ESRA map. The 2020 City ESRA-PV map only maps Kelley Creek and associated floodplain wetlands in the northern portion of the site as regulated under the ESRA-PV sub-district. According to Section 4.1432.B, wetlands identified on a site that are not mapped and meet the State of Oregon's definition of a locally significant wetland shall also be subject to the standards of the ESRA-PV sub-district. However, Oregon's mandatory locally significance criteria is outlined under Oregon Administrative Rule (OAR) 141-086-0350 (2). Under this criteria, Wetlands 1-3 and 5 do not meet any of the mandatory requirements *except* for criteria set forth under OAR 141-086-0350 (2)(b):

The wetland or a portion of the wetland occurs within a horizontal distance less than one-fourth mile from a water body listed by the Department of Environmental Quality as a water quality limited water body (303(d) list) and the wetland's water quality function is described as "intact" or "impacted or degraded" using OFWAM. The 303(d) list specifies which parameters (e.g. temperature, pH) do not meet state water quality standards for each water body. A local government may determine that a wetland is not significant under this subsection upon documentation that the wetland does not provide water quality improvement for the specified parameter(s).

Oregon Department of Environmental Quality (DEQ) 303(d) Mapping

Kelley (sometimes referred to as Kelly Creek) is located within the Lower Willamette (HUC8) of the Upper Johnson Creek (HUC12) watershed; Oregon DEQ Assessment Unit ID OR_WS_170900120101_202_104550. A DEQ water quality monitoring station is present within Kelley

Creek immediately downstream of the project site at the SE 190th Drive crossing (Monitoring Location ID 38681-ORDEQ).

During the time the Veranda at Pleasant Valley Master Plan and Subdivision application was submitted to the City (December 2020), Kelley Creek (waterbody) was not listed in Oregon's DEQ 2018/2020 Integrated Report Assessment (IR) as a Category 5 Water Quality Limited waterbody needing a TMDL 303(d) listing (see Attachment A). However, the HUC 12 Upper Johnson Creek watershed (which includes Kelley Creek) was 303(d) listed for year-round temperature. The Oregon DEQ 2018/2020 IR proposed listings were approved by EPA on November 12, 2020.

On-site Wetland Water Quality Improvement Opportunity

Per OAR 141-086-0350(2)(b), even if the wetland is located within one-fourth mile to a 303(d) listed *waterbody*, local government may determine that a wetland is not locally significant if the wetland does not provide water quality improvement for the specified parameter. According to the 2018/2020 DEQ IR, the Upper Johnson Creek *watershed* was listed as a Category 5 303(d) for having impaired year-round temperature.

According to the current DSL and USACE approved wetland function assessment methodology (ORWAP V3.2 April 2020), the Water Cooling (WC) ecosystem support function evaluates a wetlands effectiveness for maintaining or reducing water temperature. Some wetlands have groundwater discharge, having the potential to mediate seasonal water temperatures to the watershed during the warmer summer months. This function is sometimes referred to as thermoregulation. According to ORWAP V3.2, non-tidal wetlands provide high functional opportunity for temperature (water cooling) if there is strong evidence of groundwater input or discharge, if the wetland has surface water present for 4 weeks or less during the growing season, and if the surface water in the wetland is shaded by woody vegetation during the summer.

Wetlands 1-3 and 5 are not positioned on a landform with the direct surface or subsurface connection to Kelley Creek (i.e. they are not located on a toeslope or on a floodplain terrace directly connected to Kelley Creek). They are located on the hillside footslope located approximately 8-10 feet higher in elevation above Kelley Creek. Wetlands 1-3 and 5 are dominated by non-native pasture grasses, lacking woody vegetation. The surrounding upland buffer is also dominated by pasture grasses with invasive Himalayan blackberry, lacking shaded canopy cover. According to the April 2019 Schott jurisdictional wetland delineation report, Wetlands 1-3 and 5 lacked surface water during their April 2018 and March 2019 site visits (conducted during the early portion of the growing season). Their 2019 delineation report stated wetland hydrology input was sustained from direct precipitation, broken and plugged drain tile, and possibly hillslope seeps in the upper portion of Wetland 1. The Schott report did not document evidence of surface water directly discharging from wetlands to Kelley Creek. The grasses within the wetland are dominated by pasture grasses (do not have dense stem densities) that are mowed regularly and lack thatch, exposing bare ground during the summer months.

According to these site specific features, the ORWAP assessment criteria scoring determines the existing wetland conditions provides lower functional opportunity for water cooling (temperature; see Attachment B). The landform and proximity of Wetlands 1-3 and 5 to Kelley Creek prohibits opportunity for enhanced wetlands to provide direct thermoregulation (temperature cooling) to Kelley Creek.

This means that the City can and should determine that these wetlands are not locally significant.



Compensatory Wetland Mitigation

To the extent the Veranda project has unavoidable impacts to wetlands, the City may approve mitigation for such impacts. According to Section 4.1445.E Mitigation Standards for ESRA-PV, wetland mitigation shall be conducted per the functional and area replacement standards established by the USACE and DSL. Section 4.1445.C allows mitigation to occur within the Johnson Creek watershed if on-site wetland mitigation is not feasible due to lack of available or appropriate area. The state and federally approved Foster Creek Wetland Mitigation Bank is located within the Clackamas River basin, which consists of the Johnson Creek watershed. DSL and USACE have approved the Foster Creek Wetland Mitigation Bank service area to compensate for unavoidable wetland impacts at the project site (see Attachment C).

The proposed Veranda at Pleasant Valley site plan only propose uses allowed within the ESRA-PV (for a new public road, per Section 4.1437.E) and avoids impact to Kelley Creek and the associated 200 foot wide riparian buffer for non-allowed uses. Existing buildings and a gravel driveway are present within the riparian corridor. The existing condition of the riparian corridor is dominated by dense thickets of Himalayan blackberry, generally lacking canopy shade cover to Kelley Creek. Kelley Creek within the project area is incised, lacking floodplain connectivity. Adjacent floodplain wetlands lack structural diversity (woody vegetation to support water cooling). Therefore, in addition to wetland mitigation bank credits, on-site riparian and wetland enhancement opportunity exists which would provide a direct thermoregulation functional increase.

Summary

Kelley Creek was not listed by DEQ as a 303(d) *waterbody* at the time of the applicant's development application; however, the *watershed* in which Kelley Creek is located was listed water quality limited for temperature. Wetlands 1-3 and 5 delineated by Schott on the project do not provide high functional opportunity to assist with temperature control within Kelley Creek; therefore, according to OAR 141-086-0350(2)(b) the City has authority to determine these wetlands are not regulated by the ESRA-PV sub-district. The Veranda project applicant is requesting such a determination.

Wetlands 1-3 and 5 delineated on the project site were determined to be jurisdictional to DSL (per WD2019-0500) and to the USACE (Per NWP-2020-93). Therefore, any impact to these wetlands will require removal-fill authorization from DSL, Section 404 authorization from USACE, and compliance with DEQ's 401 Water Quality Certification regulations. These agencies have well-established permit approval requirements (including avoidance, minimization, and mitigation sequencing). Mitigation consisting of wetland mitigation bank credits and/or on-site riparian and wetland enhancement and creation directly adjacent to Kelley Creek would provide the most meaningful ecological benefit to the local watershed over preserving the lower functioning on-site wetlands.

As a condition of approval, the applicant is willing to provide mitigation under the USACE and DSL programs and to secure any additional state or federal permits as may be determined by those agencies as to be necessary, if any.

Qualifications

Stacey Reed is a certified Professional Wetland Scientist (PWS) with over 20 years of wetland delineation and natural resource permitting experience throughout Oregon. Stacey has a thorough understanding of wetland permitting requirements and regularly attends and participates in policy change meetings for federal and state rule change. She currently sits on DSL's Rulemaking Advisory Committee for Division 90



Wetland Delineation Report Requirements and Jurisdictional Determinations upcoming rule change. She has given presentations on USACE Clean Water Act Section 404 and DSL removal-fill permitting at the regional fall American Public Works Association (APWA) conference in Pendleton as well as at local chapter luncheons. Since 2016 Stacey has completed over a hundred ORWAP wetland function and value assessments. In 2009, she participated in DSL's repeatability testing team for the implementation of ORWAP. She also assisted with the development of the rapid wetland function assessment methodology for Southeast Alaska (WESPAK-SE).

Attachments:

Attachment A: 2018/2020 DEQ 303d Impaired Waters List

Attachment B: ORWAP Score Sheet

Attachment C: Foster Creek Wetland Mitigation Bank DSL Approved Service Area Map