

MEMORANDUM
Proposed Veranda Master Plan and Subdivision

HEARING DATE: November 13, 2023

MEMO DATE: November 6, 2023

TO: Gresham Planning Commission

FROM: Ken C. Onyima, Senior City Planner

FILE NUMBER: SD/MIS 20-26000343 (MPLAN-21- 00652)

PROPOSAL: To establish an applicant-initiated Pleasant Valley Master Plan and 187-lot subdivision (revised to 175 lots) for an approximately 38.9-acre area. All existing improvements on the site will be removed and the current well and onsite septic system will be decommissioned.

APPLICANT: Jim Leeper

REPRESENTATIVES: Ray Moore, All County Surveys and Planners
Stacey Reed, AKS Engineering
Kenneth Katzaroff, Schwabe Williams and Wyatt

LEGAL DESCRIPTION: Section 1S3E20D Tax Lot 1200
Tax Lot 1100 (roadway only)

LOCATION: 7928 SE 190th Dr.

EXHIBITS: U. October 5, 2023 Staff Report
V. AKS Geotechnical Report October 6, 2023
W. GSI Veranda Opinion – AKS Report of October 6, 2023
X. PHS Memorandum – Veranda Wetland 1.
Y. Gresham City Attorney’s Office Memo

RECOMMENDATION: Staff recommends denial of the proposed applicant-initiated Pleasant Valley Veranda Master Plan and the 175-lot subdivision.

SECTION I

BACKGROUND INFORMATION

FINDINGS OF FACT

- A. LOCATION:** The subject property is located at 7928 SE 190th Drive, a 40.17 acre parcel, described as Tax Map 1S3E20D Lot 1200.
- B. ZONING:** At the time of application, the subject property is zoned primarily as Low Density Residential-Pleasant Valley (LDR-PV) and partially Medium Density Residential Pleasant Valley (MDR-PV) at the southwest corner, as well as Environmentally Sensitive Restoration Area—Pleasant Valley (ESRA-PV) along the north portion of the property and a smaller section of the southeast corner of the property.

The property is also partially mapped within the Neighborhood Transition Design Area Overlay Sub-district (NTDA) which buffers the ESRA-PV. The Floodplain Overlay is also mapped adjacent to portions of Kelley Creek corresponding with the FEMA Special Flood Hazard Areas.

Of note, a citywide project updated environmental overlay standards on this property effective January 15, 2021, approximately three weeks following the application date for the subject application. Those new standards are not applicable to this application, as they were not in effect at time of this application submittal. At the applicant's request, the review timeline for this application has been extended beyond the typical land use review timeline as discussed in Section H.

- C. PROPOSAL:** The applicant is engaging in an applicant-initiated master plan of an area that is within the Pleasant Valley area and subject to the Pleasant Valley Plan District standards of the Gresham Community Development Code. The Development Code requires the Planning Commission to approve a Master Plan showing plans on street and block layout, neighborhood design, interface with natural resources, housing variety and other issues. It can be seen as an intermediate step between the adopted Pleasant Valley Plan and subsequent land division and/or site design review development plans.

On October 23, 2023 the Planning Commission held a public hearing on the proposed Master Plan and Subdivision application. At the conclusion of the October 23, 2023 meeting, the Planning Commission continued the hearing to November 13, 2023 to provide opportunity to review additional input from the applicant and staff.

- D. COMMUNITY DEVELOPMENT CODE PROCEDURES: Section 11.0204 – Type III Procedure – Quasi-Judicial Hearing.** This section requires that the Planning Commission shall hold a public hearing and make a final decision on Type III Master Plan application and the concurrent land division and miscellaneous

(environmental impact) applications. Interested persons may present evidence and testimony relevant to the proposal. The Planning Commission will make findings for each of the applicable criteria. The section also provides for a hearing process consistent with Section 11.0300. The Planning Commission, at public hearings in conformance with provisions of this section, will consider this proposal. Findings are made for the applicable criteria in this report or as revised in the record.

- E. EXECUTIVE SUMMARY:** This is an update to the staff report of October 5, 2023 (Exhibit U). As staff understands the situation, the continuation of the hearing is to address whether or not Wetland 1 is locally significant. In an attempt to answer the question of whether Wetland 1 provides a water quality benefit to Kelley Creek, the applicant provided a geotechnical stability report, the AKS Geotechnical Report of October 6, 2023 (Exhibit V), and concluded that as there was no groundwater or seepage encountered in test pits TP-1 through TP-9, there is no direct connection between Wetland 1 and Kelley Creek and, therefore, no temperature benefit provided to Kelley Creek by Wetland 1.

However, the October 31, 2023 memos from PHS (Exhibit X) and GSI Water Solutions (Exhibit W) provide a different technical expertise testimony regarding both the regulatory requirements related to the locally significant designation of Wetland 1 and a review of the AKS Geotechnical Report of October 6, 2023 in which the conclusion is that the AKS Engineering Report does not provide evidence that Wetland 1 does not provide a water quality benefit to Kelley Creek.

The GSI memo lists 5 concerns with the AKS report: (1) testing was done in the dry season; (2) test pit log descriptions of moisture suggests groundwater connection; (3) analysis of flow was in the wrong direction; (4) the time lag between infiltration into Wetland 1 through the groundwater to Kelley Creek was not accounted for; and (5) if Wetland 1 is removed, less cool water will reach Kelley Creek in the summer. The GSI memo further explains “test pits, even if excavated to the groundwater table, are not suitable for assessing the groundwater flow direction and the hydrologic dynamics between Wetland 1 and Kelly Creek.”

It is the conclusion of PHS and GSI Solutions that Wetland 1 very likely provides temperature benefits to Kelley Creek, during the summer months in the form of cold groundwater.

The City Attorney’s Office has also provided a memo (Exhibit Y) that reiterates that it is the applicant’s responsibility (“burden of proof”) to show that the development application meets the standards for approval, and in particular that

Wetland 1 is not locally significant in that it is not providing a cooling benefit to Kelley Creek.

F. FINDINGS: Staff adopts the October 31, 2023 findings of GSI Water Solutions and PHS Memos that concluded that the wetlands on the site provide water cooling effect to Kelly Creek. Their conclusion are anchored on the following reasons:

1. Water in the wetland and shallow groundwater that it replenishes are in continuity in the wet season.
2. Wetland 1 provides a disproportionately large contribution of cool water to Kelley Creek in the dry season months than abutting non-wetland areas because it concentrates and holds water, which allows the water more time to infiltrate into the subsurface. The infiltrated water then flows downhill and emerges in the creek during the dry season. In contrast, precipitation falling on non-wetland areas is more susceptible to flowing overland, reaching the creek during the wet season.
3. This connection between Wetland 1 and Kelley Creek provides the water quality benefit when most needed because the flow of water in the subsurface is slow, so the cool water infiltrating from the wetland emerges in the creek during the dry season.

Additionally, the applicant referenced housing policy as ground for approving the Master Plan. The November 6, 2023 City Attorney's Office Memo (Exhibit Y) rebuts the applicant's arguments that Master Plan approval criteria that are not "clear and objective" are not permitted to be used, as the applicant elected to pursue the alternative discretionary path (blending of LDR-PV and MDR-PV densities).

G. CONCLUSION: Staff concludes that the "subjective" criteria of the Pleasant Valley Master Plan is applicable as the applicant elected to pursue an alternative discretionary path for Master Plan approval. Further, staff concludes that the applicant has not shown or proven that there is no temperature benefit (cooling) provided to Kelley Creek by Wetland 1 and, therefore, Wetland 1 is required to be designated as Locally Significant per OAR 141-086-0350(2)(b).

H. RECOMMENDATION: Staff's recommendation is that Planning Commission deny application number MPLAN 21-000652 based on the findings and conclusions in the October 5, 2023 Staff Report and the November 6, 2023 Staff Memorandum and attachments.

End of Staff Memorandum