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I write to submit the following comments on items #6a and #6b on the Oregon City Commission agenda for Wednesday, November 6, 2019; namely PC19-119 and PC 116, respectively, "First Reading of Ordinance No. 19-1014, Adopting the Stormwater Master Plan as an Ancillary to the Comprehensive Plan (GLUA 19-00002: LEG 19-00001)," and "First Reading of Ordinance No. 19-1015, Adopting Public Works Stormwater and Grading Design Standards (GLUA 19-00002: LEG 19-00005)." I respectfully request that these comments be added to the respective hearing records of both agenda items.

My comments relate to statewide planning Goals 5 and 2.

I. STATEWIDE PLANNING GOAL 5

The staff report proposed findings at p. 22 state regarding Goal 5:

> *To protect natural resources and conserve scenic and historic areas and open spaces.*
>
> **Finding: Complies as Proposed.** This goal is implemented through the applicable Goals and Policies in Section 5 of the Oregon City Comprehensive Plan: Open Spaces, Scenic and Historic Areas, and Natural Resources. The Oregon City Municipal Code contains review criteria for uses within overlay districts to assure that designated Goal 5 resources are appropriately considered when development is proposed. In particular, the Natural Resource Overlay District designation: "provides a framework for protection of Metro Titles 3 and 13 lands, and Statewide Planning Goal 5 resources within Oregon City. The Natural Resource Overlay District (NROD) implements the Oregon City Comprehensive Plan Natural Resource Goals and Policies, as well as Federal Clean Water Act requirements for shading of streams and reduction of water temperatures, and the recommendations of the Metro ESEE Analysis.
>
> Regardless of the proposed amendments, the applicability of the Natural Resource Overlay District is the same. Addition of new impervious area within the NROD will be required to undergo review per Chapter 17.49 of the Oregon City Municipal code. Mitigation will be required for any new impervious surface added.

Response: The two agenda items, the amendments to the storm water master plan and the storm water and grading design standards, both constitute post-acknowledgement plan amendments (PAPAs) under the Goal 5 implementing rule at OAR 660-023-0010(5).

By the operation of OAR 660-023-0250(3), the collective PAPA must demonstrate direct compliance with Goal 5 if the PAPA affects a Goal 5 resource and therefore, contrary to the above-quoted section of the staff report, the City cannot rely on the Natural Resources Overlay District.

1. OAR 660-023-0250(3)(a)

Specifically, under OAR 660-023-0250(3)(a), the PAPAs amend a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5, including habitat protection.

They amend the storm water master plan, which is an ancillary plan to the Oregon City comprehensive plan, that is adopted to protect significant inventoried Goal 5 resources, including the Willamette River, the Clackamas River, Abernethy Creek, and Newell Creek, as well as the anadromous fish habitat that is by definition part of these Goal 5 resources.

They amend the storm water and grading design standards, which is a land use regulation adopted to protect significant inventoried Goal 5 resources, including the Willamette River, the Clackamas River, Abernethy Creek, and Newell Creek, as well as the anadromous fish habitat that is by definition part of these Goal 5 resources.

(OAR 660-023-0090(1)(c): "Riparian corridor" is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.")

The inventory description within Section 5 of the Oregon City Comprehensive Plan, at p. 35 states as follows:

> In Oregon City, the Clackamas River along the northern boundary of the city, as well as Abernethy, Newell, Holcomb, Potter, and other creeks provide both spawning and rearing habitat for steelhead trout, coho salmon, and cut-throat trout, which are not currently warranted for listing under the ESA. Riparian corridors, the areas on either side of a stream, are critical to protecting the stream ecosystem and quality of habitat for salmonids and other stream-dependent species.

[Note that this definition incorrectly states the Goal 5 definition of riparian corridor quoted above.]

Because of the foregoing, the PAPAs affect the Goal 5 resources.

2. OAR 660-023-0250(3)(b)

Furthermore, under *OAR 660-023-0250(3)(b)* The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource sites. Using a river or a stream as a storm water waste dump is a "use." The storm water master plan and its capital improvement plan are creating, authorizing, and funding new "uses," i.e., new storm sewer discharges in new undeveloped areas of land where currently such discharges do not exist, such as in the Park Place and Beavercreek concept plan areas. Such discharges would enter such inventoried Goal 5 resource sites like Abernethy Creek and Newell Creek.

These new discharges "could" be conflicting uses with the Goal 5 resources, by the deposition of storm water pollutants such as petroleum compounds, toxic metals, and increased water temperature that could harm the water, the fish habitat, and the fish themselves, including salmon, steelhead, and lamprey.

3. Addressing Goal 5

Because of OAR 660-023-0250(3)(a) and (b) the amendments must address Goal 5 directly. The staff report however contains no findings of compliance with the applicable provisions of the Goal 5 implementing rule, including but not limited to the following:

Goal 5 and its implementing rule at OAR 660-023-0040 require an analysis of the economic, social, environmental and energy (ESEE) consequences of the proposed amendments. The staff report contains no such ESEE analysis.

Goal 5 and its implementing rule at OAR 660-023-0090 requires protection of riparian corridors in the city. The staff report makes no findings of compliance with this provision. Indeed, if the City is operating under the assumption that a riparian corridor does not include the in-stream water and habitat of the rivers and creeks named above, then there needs to be detailed findings addressing protection of riparian corridors as the latter are properly defined.

Goal 5 and its implementing rule at OAR 660-023-0110 require identification and protection of wildlife habitat in the city. The staff report contains no findings of compliance with this provision.

II. STATEWIDE PLANNING GOAL 2

The staff report proposed findings at p. 22 state regarding Goal 2:

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Finding: Complies as Proposed. This goal is implemented through the applicable Goals and Policies in Section 2 of the Oregon City Comprehensive Plan: Land Use. Because the plan is an ancillary document to the City's Comprehensive Plan, the application was processed pursuant to the legislative hearing process outlined in Section 17.50.170 of the Oregon City Municipal Code.

Response: The staff report does not address a key provision of Goal 2, the coordination requirement. This provision states:

> Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.

Goal 2 defines "affected governmental unit" as "those local governments, state and federal agencies and special districts which have programs, land ownerships, or responsibilities within the area included in the plan."

In this sense, the Oregon Department of Fish and Wildlife is clearly a. This agency's state agency coordination program adopted pursuant to ORS 197.180 includes a program of technical assistance that is very relevant to the issues relating to storm water impacts on Newell Creek and its fish. OAR 635-405-0045.

The Goal 2 coordination requirement generally encompasses a two-step process wherein (1) information is exchanged between the planning jurisdiction and the affected local governments and (2) the planning jurisdiction uses the information to balance the needs of the affected governmental units as much as possible. The planning jurisdiction must adopt findings to address legitimate concerns raised by the affected governmental units. *Thompson v. Jackson County,* 53 Or LUBA 317, 320 (2007).

To show compliance with statewide planning Goal 2, the City needs to coordinate with ODF&W, as well as other affected governmental units.

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