

Kattie Riggs

From: Jonah Sandford <jonah@nedc.org>
Sent: Wednesday, November 6, 2019 4:39 PM
To: Denyse McGriff; Frank O'Donnell; Rocky Smith, Jr.; Rachel Lyles Smith; Dan Holladay; recorderteam
Subject: Public comment - tonight's City Commission Meeting - Agenda item 6a
Attachments: NEDC_Comments OC Stormwater Master Plan.pdf; OC Comp. Plan Goal 6 excerpt.pdf

Dear Mr. Mayor, Commissioners, and Ms. Riggs,

Attached, please find a comment from the Northwest Environmental Defense Center regarding an item on tonight's agenda: the first reading of Ordinance 19-1014, which would amend the Oregon City Comprehensive Plan by adopting a new Stormwater Master Plan.

In addition, attached for reference is Section 6 of the Oregon City Comprehensive Plan, titled "Quality of Air, Water, and Land Resources."

NEDC appreciates the opportunity to participate in this process. If I can answer any questions, please don't hesitate to contact me directly.

Sincerely,
Jonah Sandford

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November 6, 2019

SUBMITTED VIA EMAIL TO:

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Re: Ordinance 19-1014, amending the Oregon City Comprehensive Plan by adopting a new Stormwater Master Plan; and

Ordinance 19-1015, adopting public works stormwater and grading design standards

Mr. Mayor, Commissioners, and Ms. Riggs,

The Northwest Environmental Defense Center (NEDC) respectfully submits these comments regarding Ordinance 19-1014, which would amend the Oregon City Comprehensive Plan by adopting a new Stormwater Master Plan (SMP), and regarding Ordinance 19-1015, which would adopt public works stormwater and grading design standards. As an amendment to the Oregon City Comprehensive Plan, the new SMP must comply with Statewide Planning Goal 6 (Air, Water and Land Resources Quality). As currently proposed, it does not do so, as it does not ensure compliance with state water quality standards and other water quality requirements. NEDC requests that the Commission postpone tonight's hearing, and direct staff to address the proposed SMP's noncompliance with Goal 6. The same request is made regarding Ordinance 19-1015.

NEDC is an independent, nonprofit environmental organization established in 1969 by a group of professors, law students, and attorney alumni at Lewis & Clark Law School. The organization's members include citizens, attorneys, law students, and scientists. NEDC's mission is to protect the environment and natural resources of the Pacific Northwest by providing legal support to individuals and grassroots organizations with environmental concerns, and by engaging in education, advocacy, and litigation independently and in conjunction with other

environmental groups. NEDC's membership includes individuals who live in and visit Oregon City, and who recreate in waters impacted by the city's stormwater discharges.

DISCUSSION

A. The Proposed SMP and the Oregon City Comprehensive Plan do not ensure that stormwater discharges are compliant with state water quality standards.

ORS 197.175(2)(a) requires that comprehensive plans prepared by Oregon cities and counties must comply with statewide planning goals. This requirement applies not only to preparation of an initial comprehensive plan, but also to amendments and revisions of that plan.¹

Planning Goal 6, titled "Air, Water and Land Resources Quality," states in part:

All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, *or violate applicable state or federal environmental quality statutes, rules and standards*. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources. (Emphasis added)²

Because of the emphasized language above, Oregon City's comprehensive plan must ensure that waste and process discharges do not violate state water quality standards. The present proceeding, a post-acknowledgment comprehensive plan amendment, must comply with this goal.

The proposed SMP, and the existing comprehensive plan, do not comply with Goal 6. Page 23 of the October 7, 2019 Staff Report and Recommendation contains a finding that the proposed SMP complies with the goal, stating:

This goal is implemented through the applicable Goals and Policies in Section 6 of the Oregon City Comprehensive Plan: Quality of Air, Water and Land Resources. By planning system improvements based on projected demand and land use patterns, the plan will ensure that land suited for development will be served efficiently. All new development will be subject to the City's Natural Resource Overlay District standards and erosion control standards, which implement state and local water quality standards.

However, Section 6 of the Comprehensive Plan does not comply with Goal 6. It is silent on compliance with the state water quality standards set forth in OAR 340 division 41. Similarly, the Natural Resource Overlay District in Chapter 17.49 of the Oregon City Municipal Code and

¹ ORS 197.175(2)(a).

² Or. Admin. R. 660-015-0000(6).

the City's Erosion Control ordinance at OCMC chapter 13.12 and sections 15.48 and 17.47 are all silent on compliance with state water quality standards. Finally, the proposed SMP itself is also silent on compliance with these standards.

Because the City's Comprehensive Plan, and the proposed SMP, do not ensure that discharges from the city are compliant with state water quality standards, the proposed SMP and amended Comprehensive Plan are not compliant with State Planning Goal 6.

B. As proposed in the SMP and stormwater and grading standards, stormwater discharges will occur in violation of state statutes.

The proposed SMP and the grading design standards are further deficient because they do not require waste discharge permits in all situations required under Oregon statute. Under ORS 468B.050,

- (1) Except as provided in ORS 468B.053 or 468B.215, without holding a permit from the Director of the Department of Environmental Quality or the State Department of Agriculture, which permit shall specify applicable effluent limitations, a person may not:
 - (a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.
 - (b) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.
 - (c) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.
 - (...)
 - (d) Construct or use any new outlet for the discharge of any wastes into the waters of the state.

Per ORS 468B.005(9), "waste" means "sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state." LUBA has held that stormwater discharges constitute waste under Goal 6. *Eckis v. Linn County*, 22 Or LUBA 27, 59-61 (1991); *Salem Golf Club v. City of Salem*, 28 Or LUBA 561, 584 (1995). And, per ORS 468B.005(1), a storm drain of any size is a "disposal system" under ORS 468B.005(1).

Therefore, pursuant to ORS 468B.050, except for "de minimus" discharges under ORS 468B.053, every construction, operation, extension or discharge from a storm drain system must obtain a permit. But neither the proposed SMP, nor the stormwater grading design standards, require as a condition of approval that future development obtain waste discharge permits under ORS 468.050. The proposed SMP is thus noncompliant with Planning Goal 6, as it does not ensure compliance with "applicable state...environmental quality statutes."

C. The proposed stormwater and grading design standards must also comply with Goal 6.

The proposed stormwater and grading design standards, which would make changes to the Oregon City Municipal Code, would not comply with an SMP that satisfies Goal 6. That is, because the proposed SMP does not comply with Goal 6 (as outlined above), the implementing regulations contained in the proposed design standards are also inadequate under Goal 6. The adoption of Ordinance 19-1015 should therefore be postponed until the proposed SMP is amended to comply with Goal 6. The design standards should then be amended to comply with the revised proposed SMP before the regulations are adopted.

At a minimum, the stormwater grading and design standards (at p. 6-2 of the proposed standards) should be amended to modify the language in section 6.1.4. That section provides as follows:

□ **6.1.4 Other Applicable Codes or Regulations**

Some facilities may be required to obtain a National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater General Permit 1200-Z issued by ODEQ before discharging to the City's storm sewer system or to waters of the state. The 1200-Z permit includes discharge benchmarks for facilities with industrial activities that are exposed to rainfall and stormwater runoff. *The state also has water quality standards listed in Oregon Administrative Rules 340 Division 041 for discharges to surface waters.* (emphasis added)

The emphasized language in the last sentence above mentions that the state water quality standards in OAR chapter 340, division 41 exist, but the language does not make explicit that stormwater discharges shall not violate these specific state water quality standards. As a result, this language, and the stormwater grading and design standards themselves, are noncompliant with Goal 6.

CONCLUSION

As currently proposed, the SMP does not comply with Statewide Planning Goal 6, and is thus deficient. The proposed design standards and regulations are inadequate for the same reason. NEDC therefore respectfully requests that the City Commission direct staff to address these deficiencies to ensure full compliance with Goal 6.

Sincerely,



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Section 6

Quality of Air, Water, and Land Resources

Land Conservation and Development Commission (LCDC) Statewide Planning Goal 6 deals with maintaining and improving the quality of these resources. Waste discharges, defined as solid waste, thermal, noise, atmospheric and water contaminants and pollutants that cause harm to human health or the environment, must not “violate or threaten to violate” federal or state statutes. With respect to the air, water and land resources described or included in state environmental quality regulations, such discharges “shall not (1) exceed the carrying capacity of such resources, considering long-range needs; (2) degrade such resources; or (3) threaten the availability of such resources.”

All manner of land uses can be sources of waste. The City’s influence over potential impacts from waste can be through direct regulation, such as with stormwater treatment standards, through ensuring compliance with federal and state standards, and through actions, such as education and development incentives, to encourage the reduction of impacts.

Air Quality

The quality of air is increasingly recognized as a key factor in the health of individuals, the attractiveness and livability of communities, and the ability of the community to attract and accommodate growth and development. Oregon City has a relatively high quality of air during most of the year, but it also receives airflows from other parts of the urban region that can carry airborne pollutants. Air quality tends to be lower when prevailing winds are from the northwest.

Motor vehicles are the largest source of air pollution in Oregon, and there is growing concern about “personal pollution” from cars, woodstoves, gasoline-



powered lawn mowers, boat engines, paint, outdoor burning, and aerosol products such as hairspray and air fresheners. Other sources of air pollution are dust from agriculture and land development and particulates in smoke from agriculture, forestry, and industry. The Portland metropolitan area is currently designated an “Air Quality Maintenance Area,” which means that the area has a history of not meeting National Ambient Air Quality Standards. However, a variety of pollution reduction programs have enabled the region to meet federal air quality standards.

Air quality standards are set by the Oregon Department of Environmental Quality (DEQ). Oregon City should continue to work with DEQ to ensure that existing and new sources of industrial and commercial pollution comply with state and federal standards and to encourage citizens to reduce the amount of air pollution they generate. One of the most important ways Oregon City can help reduce air pollution is to promote land-use practices and transportation alternatives that reduce the use of single-occupancy vehicles. It is also important for the City to encourage the conservation and enhancement of tree cover as a means of filtering particulate pollution in the air.

Water Quality

The City’s ground- and surfacewater resource is significant and adequate for its residents. Water resources are:

- the Willamette and Clackamas rivers
- tributaries of Abernethy, Newell, and Beaver creeks and associated minor creeks
- bogs and wetlands
- groundwater under the city

Because land-use practices, development design, and city infrastructure can affect the quality and quantity of water resources, the City will protect and

restore these resources through a variety of means.

One way is through the Water Resources Overlay District, which is a zoning overlay with development standards to protect surface waters. The overlay district implements the requirements of Title 3 of Metro’s *Urban Growth Management Functional Plan* (1998). Another way is through civic projects to restore water features. Restoration and protection of these resources is covered primarily in Section 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources).





DEQ has mapped groundwater flows, also called aquifers, that are known to or have the potential to carry pollutants. Most of these sensitive aquifers are along Abernethy Creek in the floodplain along the Clackamas River. The aquifer in the Abernethy Creek area near the former Rossman's landfill has been contaminated during the past 100 years with a variety of pollutants from the landfill and other activities. Clearance from DEQ may be necessary for future development of properties in this area. DEQ does not allow the construction of drinking or irrigation wells because the contaminated groundwater in the aquifer could be released into the environment and adversely impact public health and safety. DEQ allows only groundwater wells that monitor contaminants associated with the landfill.

Erosion is defined as the movement of solids (earth, mud, and rock) by wind, water, or gravity. Erosion can be a natural process or caused by human activity. Erosion can cause a loss of productive soil, damage stormwater and the sanitary sewer infrastructure, and degrade water quality in streams and rivers, thus affecting habitat quality for aquatic species. Excessive sediment deposition behind dams can decrease reservoir storage capacity and increase the risk of flooding. Removing excess sediment from behind dams and areas of unwanted deposition, such as reservoirs and streams, can be costly. Soil runoff from construction sites is by far the largest source of excess sediment deposition in developing urban areas.

Complying with LCDC Statewide Planning Goal 6 requires adopting policies and standards that protect water quality. The erosion and sediment control requirements of Title 3 will significantly reduce sediment loading to receiving streams. LCDC Statewide Planning Goal 6 and Title 3 requirements are implemented in Oregon City through the Water Resources Overlay District, Erosion and Sediment Control standards, and other provisions of the *City of Oregon City Municipal Code* (1991).

Quality of Land Resources

Nighttime Light Pollution. Artificial light has extended many human activities well into evening and night and provides much-needed safety along roadways and at intersections. However, much of the nighttime light is wasted into space, as confirmed by satellite images of the earth at night from space. Nighttime light can interfere with viewing starry skies and other outdoor experiences, intrude through windows into homes, and lead to unsafe situations from glare and shadows. In Oregon City, the Haggart Astronomical Observatory at Clackamas Community College is an educational resource for the entire community that is diminished by nighttime light pollution.

New nighttime lighting technology makes nighttime light appropriate for the situation and prevents safety problems and pollution. The technology is readily available, and its benefits to the community are easy to understand. All that is required is a commitment to applying the technology in a flexible and appropriate way.

Noise Pollution. Noise is a part of city life. Noise is generated by, for example, vehicular traffic, emergency vehicles, industrial activities, railroads, aircraft, leaf blowers, sound systems, and construction. Loud, persistent noise is recognized as a serious environmental problem by both state and federal authorities. In 1971, the Oregon Legislature authorized the Environmental Quality Commission to adopt and enforce noise control standards, which are administered through DEQ. The standards cover noise from motor vehicles and industrial and commercial activities.

The most significant sources of noise in Oregon City are major vehicular corridors (for example, Interstate 205, McLoughlin Boulevard, Highway 213, Molalla Avenue, and South End Road), the railroad corridor through downtown and the Canemah neighborhood, the industrial operations of the Blue Heron Paper Mill, and the natural roar of Willamette Falls, especially during the winter. Nuisance noise can also originate from neighborhoods and homes. Local noise control is handled primarily through the Nuisance Code (Section 6 of the *City of Oregon City Municipal Code*) and through design review of development projects to ensure that industry and commercial activities do not negatively impact the immediate neighborhood environment.

Mineral and Aggregate Operations. The Oregon Department of Geology and Mineral Industries has inventoried four areas within Oregon City's Urban Growth Boundary that contain mineral and aggregate resources. These areas are listed in the Natural Resources Inventory of the 1982 *Oregon City Comprehensive Plan*. There are currently no commercial mineral or aggregate removal operations at any of the four sites. Although mineral and aggregate removal operations can be beneficial to a local economy, they are not compatible with urban land uses and quality of life in Oregon City because of noise, dust, traffic, water quality, and other issues.

Goal 6.1 Air Quality

Promote the conservation, protection and improvement of the quality of the air in Oregon City.

Policy 6.1.1

Promote land-use patterns that reduce the need for distance travel by single-occupancy vehicles and increase opportunities for walking, biking and/or transit to destinations such as places of employment, shopping and education.

Policy 6.1.2

Ensure that development practices comply with or exceed regional, state, and federal standards for air quality.

Policy 6.1.3

Set an example through City operations by using and demonstrating practices and technologies that reduce air pollution and protect air quality.

Policy 6.1.4

Encourage the maintenance and improvement of the city's tree canopy to improve air quality.

Goal 6.2 Water Quality

Control erosion and sedimentation associated with construction and development activities to protect water quality.

Policy 6.2.1

Prevent erosion and restrict the discharge of sediments into surface- and groundwater by requiring erosion prevention measures and sediment control practices.

Policy 6.2.2

Where feasible, use open, naturally vegetated drainage ways to reduce storm-water and improve water quality.

Goal 6.3 Nightlighting

Protect the night skies above Oregon City and facilities that utilize the night sky, such as the Haggart Astronomical Observatory, while providing for night-lighting at appropriate levels to ensure safety for residents, businesses, and users of transportation facilities, to reduce light trespass onto neighboring properties, to conserve energy, and to reduce light pollution via use of night-friendly lighting.

Policy 6.3.1

Minimize light pollution and reduce glare from reaching the sky and trespassing onto adjacent properties.

Policy 6.3.2

Encourage new developments to provide even and energy-efficient lighting that ensures safety and discourages vandalism. Encourage existing developments to retrofit when feasible.

Policy 6.3.3

Employ practices in City operations and facilities, including street lighting, which increases safety and reduces unnecessary glare, light trespass, and light pollution.

Goal 6.4 Noise

Prevent excessive noise that may jeopardize the health, welfare, and safety of the citizens or degrade the quality of life.

Policy 6.4.1

Provide for noise abatement features such as sound-walls, soil berms, vegetation, and setbacks, to buffer neighborhoods from vehicular noise and industrial uses.

Policy 6.4.2

Encourage land-use patterns along high-traffic corridors that minimize noise impacts from motorized traffic through building location, design, size and scale.

Goal 6.5 Mineral and Aggregate Operations

Protect the livability and environment of Oregon City by prohibiting commercial aggregate extraction operations within the city and Urban Growth Boundary.

Policy 6.5.1

Prohibit new commercial aggregate removal operations and encourage relocation of existing operations. Aggregate removal for habitat improvement or for public recreational needs is not considered a commercial operation.