



## Memorandum

**TO:** West Linn Planning Commission

**FROM:** John Sonnen, Planning Director

**DATE:** March 9, 2011

**SUBJECT:** Update of the Water Resource Area regulations and the Highway 43/Willamette Drive corridor project

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**Water Resource Area regulations.** On November 17, 2010 the Planning Commission held its initial work session to begin discussing the updating and refining the Water Resource Areas (WRA) regulations (CDC Chapter 32) and the related chapters (CDC chapters 27, Flood Management Areas; 28, Willamette and Tualatin River Protection; and 2, Definitions). At that meeting, the Commission determined that they wanted to establish a task force to help them with the project. Task forces require City Council approval, so the Planning Commission directed staff to prepare a draft resolution for Council consideration that would authorize establishment of a task force. Consideration of the request was deferred until after Council goal setting at the end of January. Following goal setting, the Council rejected the request, based on the assumption that creation of another task force (in addition to the infill residential task force) would undermine capacity to work on the planning priority coming out of goal setting -visioning and planning for the Highway 43/Willamette Drive corridor.

At the work session of February 16, 2011 the Planning Commission decided to reevaluate the WRA project and decide whether to pursue specific amendments without a task force, ask the Council to reconsider their decision regarding the formation of the task force, or take another approach.

Attached for your review are the issues regarding the WRA regulations that have been raised to date (Attachment 1), an updated version of original draft work program presented in November (Attachment 2), and a list of stake holders and possible methods to involve them in the project (Attachment 3). These materials will be revised based on how you decide to approach the project and involve the public. At the work session of March 16, 2011, I suggest that we:

- Briefly discuss the preliminary scope and objectives of the WRA project;
- Discuss/brainstorm alternative approaches for conducting the project and get your direction; and
- Review and add to the initial list of issues.

**Highway 43 /Willamette Drive corridor project.** At the February 16, 2011 work session, the Commission decided to begin discussing the Highway 43 project at the March 16, 2011 work session. Attached are very preliminary materials pertaining to that project (Attachments 4 and 5). At the work session, I would like your ideas regarding the project, find out how you want to be involved, and your ideas for engaging the public.

## **WATER RESOURCE AREA (WRA) REGULATIONS**

Issues, concerns and opportunities identified to date

3/8/2011

### Administration

- Chapter 32 is confusing. Make it more straight-forward to understand and administer.
- Organize it more appropriately (group related items), coordinate with chapters 27 and 28, and cross reference.
- Eliminate redundancy.
- Clarify the applicability provisions.
- Define all technical terms and terms such as “disturbance area” and “adjacent”.
- In Table 32-1, consider changing the column “Slope adjacent to protected water feature” to “Slope within x feet of protected water feature”. Many times the size of the setback is greatly affected by what “adjacent” could be interpreted to mean. Does it mean the 25%+ slope comes all the way to the water? Do several feet count as adjacent? 10-20 feet? These questions are all arguable and often make the difference as to whether the setback is 50 feet from the edge of the water or well over 100 feet away based on the huge width of the 25% slope once you get to the slope. It’s always been ripe for arguments with property owners.
- Develop a better way to measure the setbacks – they are confusing and can ‘jump’ at right angles from the stream.
- Clarify how the allowance for roads, driveways and utilities to encroach, if necessary, into WRA is reconciled with the 5,000 square foot hardship limit.
- Clarify what can happen in a WRA. Currently fences, structures, gardens, lawns, etc. are not allowed but maybe certain type of fences with openings to permit wildlife or certain types of vegetation are ok.
- It isn’t stated whether non-native planting/usable lawn area can be part of the 5,000 square foot hardship encroachment into a WRA, leaving it open to interpretation that they can’t have any usable backyard (since non-native planting area only mentioned in prohibitions). It’s unclear whether existing development before law was in place can count towards the 5,000 square foot allowance (i.e., existing driveway by itself at the hotel site).
- Clarify exemption 10. “New single-family residences on existing lots of record established on or prior to the effective date of this ordinance, provided that all proposed structures and improvements comply with the setback criteria contained within Table 32.1.” If they meet the setbacks of Chapter 32 why bother exempting them (It’s likely that the City intended to exempt Chapter 32 from being applied to new homes on existing lots of record).
- The Metro model code allows for streamlined review, over the counter, if the applicant simply meets the clear and objective standards. Chapter 32 requires full review even if you aren’t going into the WRA.

- Consider explicitly stating that violations not involving new construction can be addressed by experts in Public Works, Engineering, and/or Parks, as long as 32 provisions are fulfilled, without planning having to get involved with permits, citations, or consent orders (i.e. how the violation of filling in the storm swale on Rosemont Ridge Court is being handled by Engineering).

Align the code with State and Metro regulations

- Chapter 32 morphed from Metro's model code for Title 13, but the City misapplied these in many ways, I think unintentionally, in Chapter 32.

Do chapters 32 and 28 group and regulate all resource types appropriately (e.g., rivers, associated wetlands and habitat conservation areas in Chapter 28; creeks, ditches and associated wetlands in Chapter 32)?

- Distinguish between salmon bearing streams, riparian corridors that sustain wildlife and other drainages/ditches where water quality /temperature may be the only concern. Tailor protections to what is necessary to protect the functions they provide.
- Do the regulations for the resource groups appropriately address the functions they provide and require protection necessary to maintain those functions (not all stream/riparian functions and wetland functions are the same)?
- Need a better definition for small streams. The surface stormwater management plan was used to identify WRA's, but that was not their purpose.
- Determine if all wetlands are appropriately addressed. (Wetlands under less than 5,000 square feet are not addressed, and it's not clear at this point if there are wetlands that are not associated with streams or habitat conservation areas that are not addressed).
- Proximity of trails to streams may impact habitat/water quality.

Some people think that Chapter 32 inappropriately limits development and is too inflexible.

- Chapter 32 allows a blanket 5,000 square feet of disturbance area in the WRA (hardship) regardless of the size of the parcel, zoning or development type. This size is based on providing for the minimum needs of a single family home with a driveway and yard. The Metro model code applies different minimum standards for non-single-family developments. They allow a % of the site to be disturbed depending on the quality of the habitat (for example, up to 50% of the low quality habitat can be disturbed for commercial development). This is similar to the recently approved Chapter 28 provisions, which are a much better starting point.
- Proving the 'no other economically viable use' in order to obtain the hardship allowance for a commercial site is very difficult. (A one-person 1,000 SF coffee stand with 5 parking spaces with only 60 feet of total driveway length equals about 5,000 SF disturbed area).
- Consider 'credit' given for areas already disturbed – For example, the proposed hotel site included a 10-foot high, 40-foot wide stockpile of broken debris, which is treated the same as a fully functioning wetland.
- Chapter 32 requires a set line on the ground, rather than addressing site conditions and allowing for flexibility to address the quality and sensitivity of the natural features of the site. Provide flexibility rather than one size fits all requirements. Identify what is really

needed to protect the affected resource, for example by determining specifically what functions are performed on site and what is needed to protect them. Allow alternatives, with clear criteria, that protect the resource while accommodating compatible development. The Metro model code includes the option of applying safe harbor (blanket setback) or a providing a more detailed report to allow the buffer to be adjusted however best to protect the resource. But tighten up allowances for variances.

- Consider an option to allow property owners who cannot mitigate effectively on site for needed encroachment into a WRA to pay a fee in lieu that would be pooled to fund mitigation efforts in designated locations by parks.
- Requiring buried drainage lines that are “day-lighted” to meet the standard transition area setbacks means neighbors get surprised with new restrictions on their property. Seems excessive and discourages people from day-lighting streams.
- Property rights are impinged upon by restricting use of WRA.
- Reevaluate the need for setbacks in addition to the transition area. The Metro Model code does not ‘include’ the building setback area.
- Permit exceptions. The code treats expansion of existing buildings different from replacement of an existing building when the impact to the resource would be the same.
- The code does not require that the 5,000 square foot allowance be located to minimize impact on the resource.
- Provide flexibility to exclude isolated areas from transition areas that do not contribute to resource function of the protection of those functions.

#### Conservation easements and tracts

- Don’t burden homeowner associations with maintenance of conservation tracts. The City should assume that responsibility.
- Conservation easements on lots (rather than separate tracts) may not adequately protect the resource as there are under pressure for conversion to typical residential uses. Currently Chapter 32 essentially allows nothing within WRA, but many privately owned WRA’s are in violation of this provision (e.g., fences, lawns, gardens, etc.). It creates an enforcement problem.
- Must address maintenance of areas to be preserved and ownership of those areas. The City should have the right of first refusal to take WRA. If subdivision is involved, it should be carved out as a separate tract – and not an easement. For partitions easement may be ok.
- Don’t require the City to accept WRA that are offered through the development process if they are contaminated or otherwise place an undue burden on the public.

#### Mitigation.

- Mitigation requirements for impacts to WRA other than wetlands can force mitigation away for the area of impact/where it would do the most good. (This has been a problem in park projects).

#### Other

- Lack of economic study regarding the original regulations.







## HIGHWAY 43/WILLAMETTE DRIVE PROJECT INITIAL SCOPING

3/8/2011

**Draft project objective:** Determine what the community would like to see in the study area in 20 years, at concept level, based on an understanding of some possibilities, physical opportunities and constraints, and the major State and Metro regulatory parameters. Refine and implement the vision if the Council decides to pursue it.

### POSSIBLE PROJECT APPROACH FOR DISCUSSION

**Phase I:** Conduct neighborhood meetings, open house/workshops, and surveys and produce an interactive web page to inform the community about the project and the realities and possibilities in the study area so they can make informed (but not unduly constrained) choices about the future of the study area. Capture their desires and preferences in principles and design parameters for the future of the study area. Present to Council for a go/no-go decision.

**Product:** Principles that will guide the future development of the area; maps showing areas people want preserved and changed/enhanced; lists of issues, needs and desires to be taken into account when planning for the area,; and background materials.

1. Compile key background information in a readily understandable format to enable informed input.
  - Existing State, Metro, local regulatory context not likely to change: (e.g., Imagine West Linn, not zoning subject to revision through this process).
  - Neighborhood Plan /Comp Plan guidance –consider, but not bound by them
  - Housing density/type targets (per State law); Metro population allocation
  - Vacant and redevelopable land
  - Existing land use map
  - Physical/environmental opportunities, amenities and constraints
  - Transportation factors- Transportation Planning Rule, Highway 43 Plan, Lake Oswego to Portland Transit Project and Portland to Milwaukie Light-rail
  - General infrastructure capacity/condition
  - Produce short issue papers on key topics- assumptions about density and mix of uses that enable viable commercial and transit
2. Coordinate with the Economic Taskforce and Mainstreet.
3. Inform community; document issues, needs, desires, preferences and opportunities; and solicit principles that area should reflect 20 years from now.

This could include: (what/how)

- Identifying places people want to preserve and areas where they want change/improvement.



- Identifying issues, needs, desires and opportunities that should be taken into account when planning for the area.
  - o Neighborhood meetings to explain the project, spur interest, identify issues and opportunities, and identify places to preserve and areas that would benefit from enhancement/change.
  - o Stakeholder interviews.
  - o Questionnaires/on-line surveys – city-wide with ability to break out by area and commercial/residential property owners.
  - o Web page: informative and maybe a virtual forum.
  
- Identifying key principles and design parameters (preferences for development type, style, density, etc) to guide the future development of the study area.
  - o Visual preference survey.
  - o Illustrations of how Imagine West Linn/Metro regs could be implemented. Explore some possibilities/alternative design concepts to inform the public and spark their thinking, not to limit them or take them down a path.
  - o Interactive Web page: maybe a virtual forum or online visual preference survey
  - o Build broad base of support for the project through television and web advertisements – get people to think critically and optimistically about how they can make West Linn a better place.
  - o Workshop process to get people to come up conceptually with what they want – principles to guide future development, design parameters.
    - Open house with stations to present key information (Metro 2040, Imagine West Linn, vacant land, major physical constraints (e.g., flooding, steep slopes, streams and wetlands)
    - People write down their vision of the study area or add comments to a map.
    - Presentation explaining purpose, key information, and a summary of issues and opportunities identified to date.
    - Facilitated workshops to formulate and refine, and come to agreement of the major principles that would shape the future development of the area. Map areas to preserve and areas to change/enhance.
  - o Forum to comment on alternatives and solicit other ideas.
    - Review draft vision principles.
    - Review photos/illustrations to identify preferred built form/ designs.
    - Comment on choices/topics, validate or propose alternative direction.
    - People write down their vision of the study area or add comments to a map.
  
- 4. Present results to Council for a go/no-go decision (see if there is support for principle/concept for the area that warrant proceeding).

**Phase II:** If Council authorizes going forward, apply the principles/design parameters derived from Phase I “to the ground,” test financial/market feasibility and refine the concept.

Product: Maps and illustrations graphically depicting the community's vision for the study area supported by explanatory text.

1. Either conduct a workshop process or a Charrette to map and illustrate the vision.

- Charette visioning process –Ideas/principles and priorities for future development derived from previous workshops are applied to the ground (tracing paper over an aerial and hand drawn illustrations), with consideration of physical constraints, regulatory parameters not likely to change, and design targets (e.g., housing density).

Participants are provided with background information on key issues so they are grounded but not unduly constrained or burdened (e.g., foundation issue bulletins, best practices related to key issues).

The process uses a representative group with facilitators with design/illustration skills over 4 -5 days (can be two weekends with mid course review—participants consult with constituents). Subgroups tackle specific issues and bring results back to the larger group.

- Provide information at a level that will allow reality based visioning/concept planning
  - o Transit factors -Trimet desired spacing of stops, minimum transit supportive density
  - o More detailed infrastructure capacity/limitations if warranted
- Integrate with Highway 43 Plan, bike/ped network
- Test market feasibility and refine -Analyze market opportunities and constraints (determine whether the vision is in the short and long term realm of possibilities).

2. Prepare final document in sufficient detail to provide a clear basis for comprehensive plan and code amendments.

**Phase III: Implement the vision.**

Product: Zoning map/code amendments; design guidelines; street standards; complementary actions; and ideas for catalytic investments and partnerships.

