



CITY OF  
**West Linn**

## Memorandum

Date: March 13, 2023  
To: Mayor Bialostosky and City Council  
From: Darren Wyss, Planning Manager  
Subject: AP 23 01 Public Comments

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Between the publishing of the Council Packet on March 2, 2023 and the March 13, 2023 noon deadline to submit comments, staff received six public comments for the appeal of an approved Water Resource Area Permit at 19679 Wildwood Drive. All comments are attached.

Please feel free to contact me at [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov) or 503-742-6064 with any questions regarding the materials or process.

**Testimony of Michael B. Bonoff  
Requesting Denial of WAP-22-02  
West Linn City Council  
March 13, 2023**

Thank you. I'm Mike Bonoff, 5115 Linn Lane, West Linn. I'm an aquatic scientist with over 30 years of experience as a consultant specializing in stream and river water quality and watershed management. I was also a West Linn Planning Commissioner from 2005-2007 and later a member of the committee led by Peter Spir that reviewed and revised Chapter 32 of the CDC. I'm proud of that work, and of the City as it put in place strong, but reasonable protections for our stream and riparian corridors that recognize the critical functions and value they provide. I'm testifying tonight to urge you to deny WAP-22-02.

Approval of WAP-22-02 would reduce the buffer width for a protected Water Resource Area feature within a steep ravine, common throughout West Linn. Robin Creek is in a Ravine, a mapped Significant Riparian Corridor with setback requirements based on slope, not stream type. So while there are serious issues with reducing buffer widths in general, which I'll get to in a second, in this case it is slope, not flow, that dictates the needed protection for Robin Creek for both public safety and resource protection. Approval of ephemeral status and any development that would follow would therefore be a misapplication of our CDC, and a disregard of setbacks clearly stated in Chapter 32.060(D).

Upper extensions of Riparian Corridors, be they ephemeral or intermittent, are critical to their function and make up a large fraction of the drainage, as shown in Figure 1 of my testimony. Approval would lead to future infilling of our upper drainages and decreased capacity and function of our stream networks and watersheds, with damaging downstream effects such as increased flood hazards and degraded water quality.

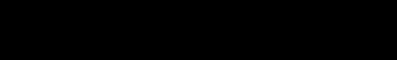
Cumulatively, loss of headwater habitat, which would occur if this is approved, reduces decomposition of organic material, and would reduce connectivity that allows species to move between headwater and downstream reaches. The amount of water or biomass contributed by these upper segments in a given year might be small, but the aggregate contribution by all of the uppermost streams draining that watershed in a given year or over multiple years, can have substantial consequences to the integrity of downstream waters (Kielstra et al., 2019).

The City's response #1 to former Mayor Axelrod's comment in the Staff Report, regarding impacts and setback requirements of building on steep slopes, is at the heart of this matter from a Code standpoint. The City responded that the Applicant was not requesting approval under the Standard Process, and was instead using the Alternate Review, implying that reclassifying the stream to ephemeral addressed these concerns. The Alternate Review (CDC 32.070) is a process applicants may use when there is reason to believe that the width of the WRA prescribed under the standard process is larger than necessary to protect the functions of the water resource(s) at a particular site. I can tell you having worked with Russ and Peter on the Chapter 32 revision, the Alternate Review process was designed to address uncertainty around development near year-round water features in the lower Willamette area and near Bolton and Robinwood. And while the WRA Map was not intended to delineate exact WRA boundaries, there was no intent to use 32.070 to reclassify streams in otherwise protected, steep Riparian Corridors/Ravines.

Again, this is precedent setting. Approval of this Application ignores applicable slope driven setback requirements in upper Robin Creek; it would allow any Applicant, with a cursory survey conducted in drought conditions, to reclassify a stream to ephemeral, drastically cutting the buffer width in a protected Riparian Corridor/Ravine, and degrading the function of the watershed in the process. With climate change, capacity and protection of these upper reaches has never been more critical. I urge the Council to deny this Application.

Thank you.

Michael B. Bonoff  
5115 Linn Lane  
West Linn, OR 97068  
503-888-7264



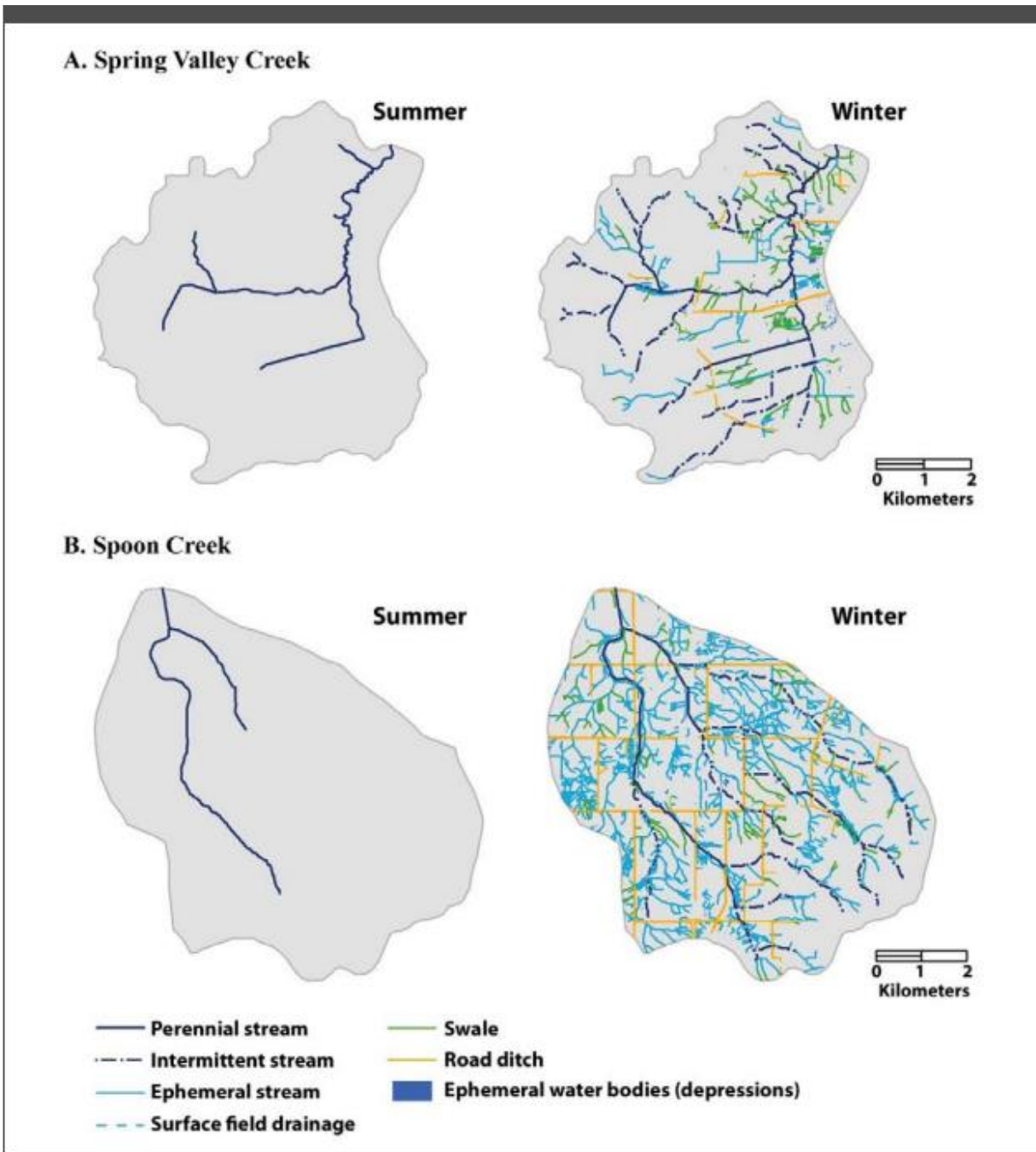


Figure 1. Stream and drainage networks in summer and winter in (A) Spring Valley Creek, OR and (B) Spoon Creek, OR. Source: U.S. EPA (2015).

## References

City of West Linn Community Development Code, Chapter 32.  
<https://www.codepublishing.com/OR/WestLinn/#!/WestLinnCDC/WestLinnCDC32.html#32.060>

Kielstra, Brian W., Joyce Chau, and John S. Richardson. 2019. Measuring function and structure of urban headwater streams with citizen scientists.  
<https://doi.org/10.1002/ecs2.2720>

U.S. EPA. 2015. Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence. Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC.

1810 Wildwood Place  
West Linn, OR 97068  
March 11, 2023

Re: Testimony To Deny WAP-22-02 and Protect Our WRA Program and Significant Riparian Corridor

To: West Linn City Council

Cc: Kathy Mollusky

We are writing to urge you to deny the above noted WAP-22-02. We live directly across Wildwood Drive from the subject property proposed for further development. The drainage creek next to the subject property flows under Wildwood Drive, through our property, and into the creek at the edge of our property. Development too close to this drainage creek could affect the water flow under Wildwood Drive and, thus, under our property.

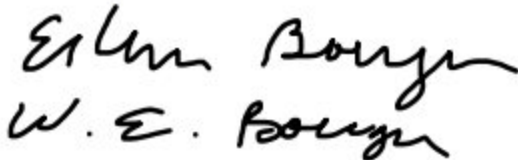
We have had the benefit of learning extensively about the issues with the proposed development from our neighbor, Russ Axelrod, who we have known since we both moved to West Linn about 32 years ago. Russ' professional career as a hydrologist and his extensive civic engagement in the affairs of the City of West Linn (including stints on the Planning Commission and as Mayor), provide him with the expertise and experience to effectively challenge the analysis of the Planning Staff.

We, along with many of our neighbors, have taken the time to learn about the City's permit requirements, our WRA Program and protections required for our riparian corridors, and the many risks that allowing the proposed building site to be developed represents. **We concur with Russ' analysis and urge you to deny the application.**

Approving the building as proposed opens up the potential for approving additional buildings on similar lots throughout West Linn significantly changing the nature of the community and failing to protect gulleys and ravines from wildfire and other pollutants. We understand the city's desire to continue development in West Linn. Such developments must be balanced with environmental protections in our current codes.

**We urge you to deny WAP-22-02 and Protect Our WRA Program and Significant Riparian Corridors.**

Sincerely,



The image shows a handwritten signature in black ink. The signature is written in a cursive style and consists of two lines. The first line reads "Eileen Boerger" and the second line reads "W. E. Boerger".

Eileen and Walter Boerger  
1810 Wildwood Place  
West Linn, OR 97068

To: West Linn City Council

From: Sue Hennessy & Marcus Wood

Re: Testimony To Deny WAP 22 02 and Protect Our WRA Program and Significant Riparian Corridors

Date: 3/9/2023

We are writing to urge you to deny the above noted WAP 22 02. We live within 250 ft of the property proposed for further development and have had the benefit of learning extensively about the issues with the proposed development from our next door neighbor, Russ Axelrod, who we have known for the past 20 years when we moved to West Linn.

Russ' professional career as a hydrologist and his extensive civic engagement in the affairs of the City of West Linn (including stints on the Planning Commission and as Mayor), provide him with the expertise and experience to effectively challenge the analysis of the Planning Staff.

We are amongst the neighbors who have taken the time to learn about the City's permit requirements, our WRA Program and protections required for our riparian corridors, and the many risks that allowing the proposed building site to be developed represents. We concur with Russ' analysis and urge you to deny the application. Approving the building as proposed opens up the potential for approving additional buildings on similar lots throughout West Linn significantly changing the nature of the community and failing to protect gulleys and ravines from wildfire and other pollutants.

We do support development of ADUs in West Linn and other efforts to increase affordable housing in our City. Such developments must be balanced with environmental protections in our current codes and with access to businesses and transportation options that exist along the Hiway 43 corridor.

We urge you to deny WAP 22 02 and Protect Our WRA Program and Significant Riparian Corridors.

Sincerely,  
Sue Hennessy & Marcus Wood  
19656 Wildwood Drive  
West Linn, OR. 97068



**From:** [Mollusky, Kathy](#)  
**To:** [Wyss, Darren](#)  
**Subject:** Fwd: Testimony WRA Appeal  
**Date:** Monday, March 13, 2023 7:31:16 AM

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**From:** A Sight for Sport Eyes [REDACTED]  
**Sent:** Sunday, March 12, 2023 8:19:04 PM  
**To:** City Council <citycouncil@westlinnoregon.gov>  
**Subject:** Testimony WRA Appeal

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Dear City Council:

I'm testifying in regard to application WAP-22-02 as it was brought to my attention that there could be some precedent setting with this decision. It should be noted that I do not live in this neighborhood, and am not familiar with this property. However, I took the time to read the application and the staff decision carefully, and I have concerns on what this decision could mean for the future.

First, it is very confusing what this application does. I don't usually get involved in these type of decisions that don't go to a public hearing. Thus, my first question is it typical for an application like this be approved before there is an actual building being proposed? This looks to me like it is just a request to use an alternative review process based on whether or not there is an ephemeral stream or not. The WRA code from what I remember when it was passed several years ago had to do with building within a WRA zone. This application without any actual proposed structure seems premature in the first place, and why I had a hard time digesting staff's decision.

Secondly, what does this decision actually do? Does it give the applicant the go ahead to use the alternative review process allowing them to skip parts of the standard review process? That is what it seems to do, and why I have concerns about it setting a precedence. The staff decision implies that when it states in the executive summary that

“instead warrants a 15ft buffer as required by Chapter 32. The applicant proposes this reduction along with mitigation measures along the course of the buffer in order to facilitate improved ecological function from its current condition and increase the buildable area on the lot for future development.”

This tells me that by approving this application, that staff is giving the applicant the right to build within a 15 foot buffer of the WRA due to his agreement that this is not an ephemeral stream.



However, the decision does not take into consideration the other aspects of the WRA Standard Process which includes the fact that this property is also not just a stream but a ravine. Staff in their dismissal of public testimony states

“Axelrod is referencing Table 32-1 within CDC 32.030, . . . In this case, the applicant is not requesting approval under the standard process, and is instead requesting approval under the alternate review process outlined in CDC 32.070. . . . With a buffer of 15ft, the applicant has adequate space for future development to occur outside of the resource area and in compliance with applicable provisions.”

This suggests that indeed the staff is overriding all other aspects of the site by only focusing on the ephemeral stream only. In the applicant's application, they state (pg 4)

“The remainder of the property was a steep (gradient +/-25%) northeast-facing hillside”

The applicant's photo on page 28 assumes that the water continues in a ravine. This application does not address the alternative review mitigation issues for a ravine. They only address the stream. Why doesn't the applicant have to also show in their Alternative Review how the ravine part of the WRA doesn't also apply? CDC 32.060 table 32-2 states that the building area is 50 feet from the top of the ravine. The applicant states that the rest of the property is +/-25% slope which to me tells me it is a ravine whether or not it is covered in blackberries or not and whether or not it is a stream or not. There is no code definition for a ravine so we go to Webster's which states that a ravine is:

“a small narrow steep-sided valley that is larger than a gully and smaller than a canyon and that is usually worn by running water”

“Usually” means that it doesn't have currently have to have running water.

Thus, even if the applicant is correct in assuming that it is an ephemeral stream, it is a moot point because it is also still a ravine and is subject to the 50 foot setback.

However, the way this decision is written, it issues the WRA permit to build within 15 feet no matter what essentially. While staff may say that that the conditions of approval require meeting the rest of Chapter 32, by allowing for this “Alternate Review”, I feel this is creating a loophole, when the time comes, that this approval assures the applicant that the set back from the WRA is 15 feet as that is what staff is approving. This is why it is important not to set this precedence where you use one aspect of the application (ephemeral stream) to override all the other parts of the WRA code which is what I think this decision does.

When the time comes for the applicant to submit an application for an actual build, since this is a single family home build, it will again be a planning manager decision, and the public will be limited again to only directing comments to staff and not to full



body who can better determine if this is a ravine or an ephemeral stream.

Now moving on to the stream. Per the EPA , an ephemeral stream

“has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.”

From my understanding, it sounds like this assessment was done only at the end of summer, when the creek may have been at its driest point. I would at least recommend before making this decision that the stream be looked at this time of year where it can be clear if the flow is from rainfall or not.

Also, our maps have the location of what have been deemed to be ephemeral streams. This is not one of them. From what I understand, when the code was created, the 15' was created based on those known ephemeral streams. It was determined in those areas, like Oppenlander for instance, that 15' was sufficient as fence lines were already erected at that distance. This location, if it is going to be determined to be ephemeral should be further assessed to see if that 15' setback is sufficient as it was not considered when the WRA was created.

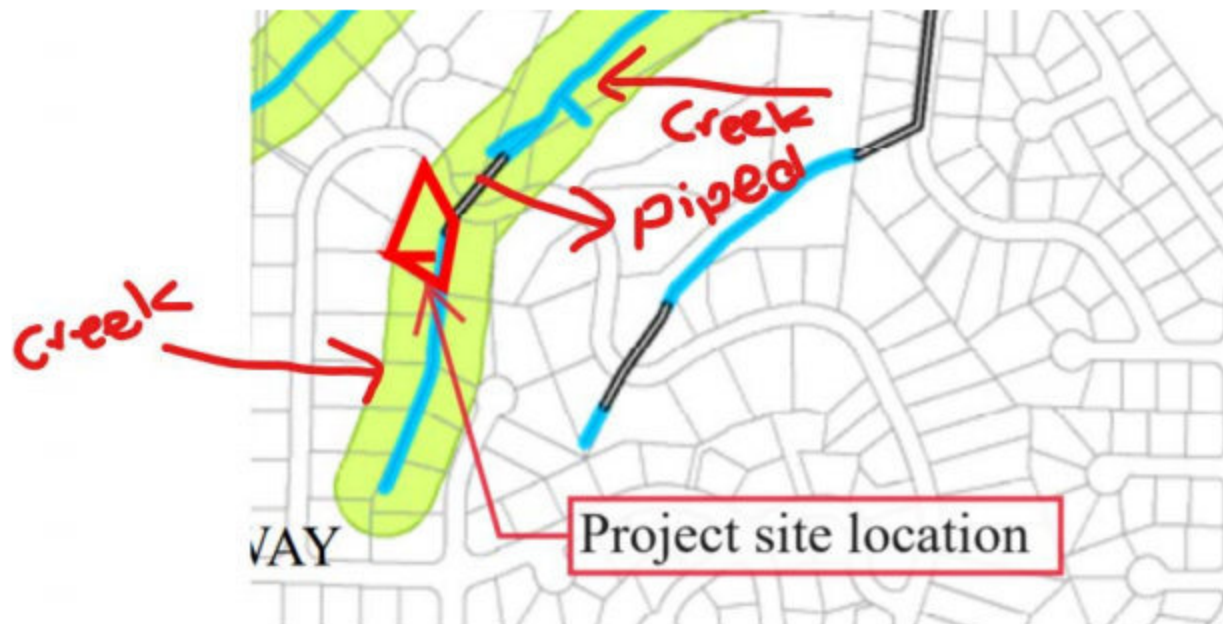
Per the application (pg 6), the applicant admits that Robin Creek is a perennial stream.

"Robin Creek drained north along the eastern property boundary and into a grated storm drain at the northeastern property corner that was recently improved by the City."

Was public works was consulted on this application? I feel like their insight into whether this is indeed a perennial stream or more of a storm drain would be important to know.

If I look at the WRA map, it shows the stream running through the property, a section (in black) denoted in the legend as “piped segments” and then the blue water stream again.





I know I'm not a geologist. However, it seems very odd that a perennial stream runs year round on either side of the property, but it becomes an ephemeral stream only on the applicant's property. We know we have underground streams in other parts of the city. I recall talks about daylighting one of these streams I think in Savannah Oak's Park. Is it possible that the stream is just underground at this part of the property (combined with it being a dry time of year) and why it was a dry bed when the applicant's geologist looked at it? Perhaps a question for the applicant to answer.

But regardless of it being an ephemeral stream, I still believe it should be subject to the 50' ravine standard as well. Again, my concern is that this sets a bad precedence for the city where a developer can come in and use loopholes like alternative review process to go around other parts of the code. I don't believe the alternative review process was not meant create a setback review without an actual development project as it is being used here. By approving this 15' setback, when the development application actually comes through, I feel like it will override the other parts of the code like the ravine. Perhaps I'm wrong and staff can address this concern. But it does seem odd that this application is being done without an actual application to build anything. I feel like the whole purpose of chapter 32 is set the building standards within an WRA zone, not to give "preapproval" to applicants to build on the site which is what I feel like this is doing.

If you remember back to the ConAm debacle, after the ConAm project was denied, the owners of that property came back to the city asking for a definition of the code first, without an actual development application, so that would in turn set a precedence allowing them to build what they wanted and skipping the public process of code interpretation. This just seems similar to me in asking the city to approve their setbacks for the land use without having an actual development application in. It just doesn't sit right with me.

As a side note, I also feel like this is a complicated issue that should be vetted by the

planning commission who has more expertise on the subject. I heard council ask for this at the last meeting, but it doesn't seem like it is an option. When the planning commission reviews projects, I get a better understanding on my issues and concerns. In the future, I would like to see a code change where council could at very least send an application like this to the planning commission first to be vetted by them. It may not be necessary in every circumstance, but having the flexibility for council to ask PC to hear something makes sense in instances like this where I feel some expertise is needed to better understand both sides of the issue.

Thanks as always for hearing me out.

Shannen Knight

West Linn

A Sight for Sport Eyes 1553 11th St. West Linn, OR 97068 [www.sporteyes.com](http://www.sporteyes.com) 888-223-2669

**Kathy Mollusky**

*City Recorder*  
Administration

[#6013](#)



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March 12, 2023

To: West Linn City Council

From: Randy and Karen Misustin

Subject: Testimony to Deny WAP 22 02

We would like to submit our written testimony to the West Linn City Council in opposition to WAP 22 02.

Our house lies within 250 feet of Robin Creek and WAP 22 02's subject property, 19679 Wildwood Dr. We have lived at our current address in West Linn for 32 years. During this time, we have had firsthand experience with the challenges and delicate balances involved in residential living on the steep slopes that characterize this area of the city.

West Linn's everchanging rainfall patterns can at times deposit tremendous amounts of moisture onto our slopes, with the inevitable result of large masses of water rushing down through the many ravines in this area on their way to the Willamette River. Being avid walkers, we have many times witnessed large, loud flows of water cascading down these ravines, including Robin Creek, during the rainy season. This has always reminded us of the awesome power of nature and the responsibilities of our city and citizen's to be mindful of that power.

The city maintains a Water Resource Area Map on its website that identifies many of these ravines as Significant Riparian Corridors, including Robin Creek. This map pretty clearly cautions the limitations of the map with respect to individual lot planning, but its inclusion of Robin Creek is evidence of the significant nature of this corridor as interpreted by the city. This certainly corroborates our personal observations as to the significance of this area.

Where we understand some of the methodology involved in the claimant's desire to designate this area an ephemeral stream with a reduction in the protections afforded to this Water Resource Area, we feel that the significance of the ravine with respect to city's overall water flow should hold a stronger position and that the city should take an active interest in protecting the quality of this corridor.

We also feel that utilizing a sample plot so close to where heavy equipment was recently employed to maintain a storm drain and also done during the dry season may have corrupted the results of that study. We wonder if utilizing a sample plot a little further upstream and in the Spring would have had a different result.

For these reasons, we ask that the City Council deny WAP 22 02. We also urge the City Council to vigorously protect West Linn's Significant Riparian Corridors.

With respect,

Randy and Karen Misustin  
19723 Wildwood Dr  
West Linn, OR 97068



**From:** [Mollusky, Kathy](#)  
**To:** [Wyss, Darren](#); [Schroder, Lynn](#)  
**Subject:** FW: Request to Deny WAP-22-02  
**Date:** Monday, March 13, 2023 12:05:33 PM

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**From:** Andy Beltz [REDACTED]  
**Sent:** Monday, March 13, 2023 11:58 AM  
**To:** citycouncil@westlinnoregon.com; Mollusky, Kathy <kmollusky@westlinnoregon.gov>  
**Subject:** Request to Deny WAP-22-02

To: West Linn City Council  
From: Andy and Anne Beltz  
Re: Request to Deny WAP-22-02 and Protect Our WRA Program and Significant Riparian Corridors  
Date: 3/13/2023

We are writing to ask that the City Council deny WAP-22-02 and protect the significant riparian corridor located less than 250 feet from our home. We live at 19671 Wildwood Dr, and share a property line with the applicant. When I learned the applicant was applying to subdivide and build a large home on the back half of the current lot located in the ravine I was not concerned because I was fully confident the application would be denied due to proximity of the waterway and the slope of the lot. I was shocked when I learned the application had been granted preliminary approval and could only assume no one physically inspected the lot or the drainage the lot is located in.

Many years ago my wife and I applied for approval of an addition to our then home located in unincorporated Washington county in between Portland and Beaverton, which was denied due to proximity to a seasonal creek. While we were disappointed with the decision, we did understand the need to protect our waterways and environment. Our then home was not located in a forested ravine but in a decades established neighborhood, yet Washington county put the priority on protecting the creek and the integrity of the laws in place to ensure responsible development in the future.

The ravine in question is a refuge for wildlife as evidenced by our Ring camera at our front door. Deer and many other animals call the ravine home and come through our yard via a game trail that runs right through the back half of the applicant's lot. This fall we saw the largest four point Blacktail buck I have ever seen walk through our front yard multiple times, not to mention the nightly visits from the numerous does and fawns we get.

If this build is approved, that game trail and the habitat will be negatively impacted, and if similar lots are allowed to be divided and developed in other areas of West Linn due to a precedent set by this ruling, we can expect our drainages, water quality, wildlife and their habitat to be degraded.

We ask you to protect our green spaces, creeks, wildlife, and wild areas in West Linn by denying WAP-22-02. Approval could open the door for countless applications for lot division and development of our sensitive environmental gems in West Linn

Thank You,

Andy and Anne Beltz