



CITY OF West Linn

Memorandum

Date: March 27, 2023
To: Mayor Bialostosky and City Council
From: Darren Wyss, Planning Manager
Subject: AP-23-01 Public Comments

Between the March 20, 2023 noon deadline to submit comments and the March 27, 2023 noon deadline to submit comments, staff received two public comments for the appeal of an approved Water Resource Area Permit at 19679 Wildwood Drive. Comments are attached.

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

Karie Oakes

March 27, 20223

RE: AP-23-01: Appealing WAP-22-02 19679 Wildwood DR Water Resource Area Protection Permit

Dear Council,

After reviewing the testimonies and new evidence submitted the past week, I stand by my original conclusion that the record supports reversal of the planning manager's decision.

The Planning Manager (designee) (PM) stated this is a "request for approval of a Water Resource Area (WRA) Alternate Review to reduce the existing WRA buffer and increase the buildable area for future construction at 19679 Wildwood Drive." The applicant stated, "this is not a development application" and did not submit a plan for the second unit of the detached duplex he plans to build later.

This is misuse of the "Alternative Review Process" because this process must include review of a development proposal to meet approval criteria and requirements of the application. The PM approved the application with condition that many approval criteria and requirements of the application will be reviewed and approved by staff later, instead of through this development review process required for the quasi-judicial decision. This is ridiculous misuse of the authority of the PM to approve an application with conditions. **Every condition is an approval criteria or requirement the applicant has not met.**

DECISION

The Planning Manager (designee) approves this application (WAP-22-02), based on: 1) the findings submitted by the applicant, which are incorporated by this reference, 2) supplementary staff findings included in the Addendum below, and 3) the addition of conditions of approval below. **With these findings, the applicable approval criteria are met. The conditions are as follows:**

1. Mitigation Plan. The applicant shall submit a detailed planting plan that conforms to the provisions of CDC Chapter 32 and contains at least a dimensioned site plan with references to the mitigation and re-vegetation plan requirements for review by staff before mitigation is completed on-site. The applicant shall submit a final report documenting the mitigation measures proposed within PD-1 upon completion of the measures.
2. Site Plan and Narrative. Planting and mitigation shall conform to site plan shown in Figure 2 of Applicant Submittal PD-1, the approved planting plan required in Condition 1, and all applicable standards within CDC Chapter 32.
3. Stormwater Plan. The applicant shall submit a stormwater management plan at time of permit submittal for future development that demonstrates its compliance with the applicable provisions of Chapters 32 and 92.
4. Construction Management Plan. The applicant shall provide a construction management plan at time of permit submittal for future development that demonstrates its compliance with the applicable provisions of Chapter 32.

The provisions of the Community Development Code Chapter 99 have been met.

Dated and signed Ben Gardner, Assistant Planner

Mr. Gardner claims to have met the provisions of the Community Development Code Chapter 99 PROCEDURES FOR QUASI-JUDICIAL DECISIONS. I argue that he did not meet his duty pursuant to 99.040.

99.040 DUTIES OF DIRECTOR

A. The Director shall:

2. Accept all development applications that comply with the provisions of CDC 99.030;
3. After accepting an application pursuant to this chapter:
 - a. Determine whether an application is complete, and comply with State statutes governing the completeness determination for applications. The determination of the Director is subject to review by the approval authority in its deliberation on the application;

99.030 APPLICATION PROCESS: WHO MAY APPLY, PRE-APPLICATION CONFERENCE, REQUIREMENTS, REFUSAL OF APPLICATION, FEES

C. The requirements for making an application.

2. The application shall be complete and shall contain the information requested on the form, shall address the appropriate submittal requirements and approval criteria in sufficient detail for review and action, and shall be accompanied by the deposit or fee required by CDC 99.033. ...

Council, reversal of this decision will uphold the CDC and affirm the process for Alternative Review.

Thank you for your time and consideration of my testimony.

Sincerely,

Karie Oakes

**March 27, 2023 Final Comments/Testimony of Michael B. Bonoff
Requesting Denial of WAP-22-02
West Linn City Council
For April 10, 2023 Continued Hearing**

Thank you. I'm Mike Bonoff, 5115 Linn Lane, West Linn. I testified requesting denial of WAP-22-02 at the initial public hearing on March 13th, 2023, and submitted Additional Comments on March 20 in accordance with protocols established by Council at the hearing. I am now submitting my Final Comments for the record in response to the Consultant submittal to the City on March 20th on behalf of the Applicant. I'm an aquatic scientist with over 30 years of experience as a consultant specializing in stream and river water quality and watershed management, also a former West Linn Planning Commissioner and later a member of the committee led by Peter Spir that reviewed and revised Chapter 32 of the CDC. I'm testifying again to urge you to deny WAP-22-02.

As previously stated, and for reasons made clear by former Mayor Axelrod, I don't believe the Alternate Review Process in CDC 32.070 was applicable in this case given Robin Creek is within a protected Riparian Corridor/Ravine with 100 ft setback. Removal of headwater pieces of our drainage networks through reduction in setbacks can only lead to loss of protection for the resource, and increased risk of landslide and wildfire, reasons of course for protection of Robin Creek in the first place.

The Applicants assessment of flow duration for Robin Creek relies on findings of the U.S. EPA Streamflow Duration Assessment Methodology (SDAM) (Nadeau, 2015a). However, per the SDAM web page, <https://www.epa.gov/streamflow-duration-assessment/streamflow-duration-assessment-method-pacific-northwest>, findings are not jurisdictional determinations, which are made by state agencies based on current regulatory guidance and policy.

In my previous testimony and comments, I noted several concerns with regard to completeness of the Applicant's September, 2022 SDAM Survey per the EPA Guidance document (Nadeau, 2015a). Following the March 13 hearing, the Applicant's consultant conducted a second site visit and submitted additional information per SDAM requirements. However, as discussed below, application of SDAM to this particular reach is problematic given City's storm drain system infrastructure at the downstream end, and the upstream flow alteration described by former Mayor Axelrod in his testimony and Additional Comments.

The SDAM method is a product of a regression model that tested capability of a wide range of physical and biological variables to predict flow duration (Nadeau, 2015b). Use of the method assumes consistency with assumptions inherent in the model development, in particular boundary conditions and as noted in the SDAM Guidance, **“any disturbances or modifications to the stream or its catchment that may affect the presence of the streamflow duration indicators should be noted.”**

As stated above, there are problems at both upstream and downstream ends of the surveyed reach of Robin Creek. As EPA described in the field research that led to the current method (Nadeau, 2015b), *“downstream reach boundaries were assigned at a location 10m upstream from any culvert or bridge feature, except in instances where a road crossing or culvert clearly impacted the stream physical characteristics; in such cases, the study reach was established further upstream to avoid those impacts.”*

Page 3 of the Applicant’s Report states that the downstream extent of the analysis ended at the storm drain near the northern boundary of the property. Given its recent construction, we’re not likely to find depositional features in the lower section of the reach where there has been recent excavation and backfilling, nor are we likely to see substrate texture in the channel that differs from the adjacent floodplain or evidence of sorting of stream substrate materials. This and other ancillary information provide context for assessment of flow duration (Nadeau 2015b). Construction has modified both soils and channel characteristics in the lower section of the reach, likely resulting in the Consultant’s finding on the SDAM data sheet of “rocky substrates prohibited excavation of a pit to observe any subsurface flow”.

Also critically important from a flow duration standpoint is Mr. Axelrod’s observation of flowing water just above the limited lower reach assessed by the Consultant, and the existence of an old rip-rap impoundment across the Ravine just upstream that has impeded surface flow in the short, disturbed lower segment of Robin Creek downstream. Per the SDAM Guidance (Nadeau, 2015a) this is the type of hydrologic alteration upstream of the assessment area that must be considered in any finding of flow duration.

Summary

In summary, boundary conditions at both ends of the limited reach surveyed, upstream flow alteration and downstream excavation, have affected important indicator variables underlying the SDAM model. Considering these effects and

proximity of the storm drain, the ~150-foot reach of Robin Creek evaluated should have been relocated per method guidance.

As I said in prior testimony, this Application is not just about flow duration. Approval of WAP 22-02 ignored applicable, protective, slope driven setback and mitigation requirements in the upper Robin Creek Significant Riparian Corridor/Ravine and skirted CDC 32.060(D) through misapplication of CDC 32.070. This was not the intent of the WRA Program and I urge the Council to deny this Application.

Thank you.

Michael B. Bonoff
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References

Nadeau, Tracie-Lynn. 2015a. Streamflow Duration Assessment Method for the Pacific Northwest. EPA 910-K-14-001, U.S. Environmental Protection Agency, Region 10, Seattle, WA.

Nadeau, Tracie-Lynn. 2015b. Validation of Rapid Assessment Methods to Determine Streamflow Duration Classes in the Pacific Northwest, USA. Environmental Management. ISSN 0364 152X (56)(1). DOI 10.1007/s00267-015-0466-4.