

June 13, 2023

Questions from Appellants for AP-23-02

1. Trees

- Site plans, such as 6F, 6H and 6I identified trees to be removed in Fields Bridge Park with an “X.” What criteria applied to identifying trees in that manner?
- Why aren’t any trees in Fields Bridge Park identified as “Significant” per criteria of **CDC Chapter 32.050. F. 9**. Locations of all significant trees as defined by the City Arborist. Please provide a full accounting of all Chapter 32.050 Application requirements.

2. On-Street Parallel Parking

- Why aren’t the widened areas on the south side of WFD identified as parking areas on plan sheets?
- Why isn’t proposed parking included along with other WFD roadway improvements listed in the IGA, City Charter Measure 3-572 and project plan documents?
- How long and wide would the proposed on-street parking areas be and for how many cars?
- Does the engineering plan include parking signs?
- Will RVs and trailers be allowed to park in the spaces on WFD and if so, for how long?

3. Retaining Walls

- The civil engineering plans were stamped “Complete” by the City Engineer on May 31, 2022. However, at the June 6, 2023 AP-23-02 hearing, City Engineer Lais said, “ The retaining wall in the east area, down toward the river, might be upwards of 15 to 20 feet tall,” and then said, “We’re still working on the design to balance the cut and fill and still trying to figure out the best type of wall.”
- Since the design is still a work in progress, is it possible to make changes to the design, such as removing the parking areas and pedestrian lane and to construct a less imposing, more natural, tapered retaining wall to preserve and enhance Fields Bridge Park nature trail and protect the water resource areas and HCAs to the greatest extent possible?

4. Tualatin River Greenway, Water Resource and HCA Protection

Applicant states criteria of **CDC Chapter 27.070. I. Balanced Cut and Fill** is met: “A total of 460 cubic yards of fill will be placed in the floodplain in order to construct roadway and storm water improvements. A total of 497 cubic yards of material is proposed to be removed. The project will result in net removal of 37 cubic yards. The standard is met.”

- Since the impact cannot be known and assessed without the final design, how can the City issue a Flood Management Area permit when the cut-and-fill design is not complete?

5. IGA

- Staff and City Councilors raised concerns about West Linn’s IGA with WLWV for WFD transportation improvement projects.

- Does the IGA require projects to be built according to all applicable City standards, local standards and state laws and also requires the District and City to obtain the necessary development approvals and permits for the City Improvements prior to construction of the City Improvements?
- What if construction activity began prior to approval of development permits?
- Why doesn't the [IGA Exhibit B. Cost Breakdown sheet](#) allocate funds for: Arborist, Wetland Consultant, Environmental and Land Use?
- Does the IGA authorize the City to provide direction to the District regarding a reduction of the City Improvements to reduce the City's obligations under the IGA agreement?
- Would the IGA allow the City to remove on-street parking and the pedestrian lane and redesign the retaining walls on the south side of WFD for the purpose of public and environmental safety and to meet CDC criteria?
- Should the application be denied if applicable criteria are not met?

Appellant's recommendations for decision

The application should be denied because it substantially fails to meet applicable criteria.

The people of West Linn and surrounding community deserve to have a well-designed plan that protects and enhances the Tualatin River Greenway, Fields Bridge Park and public safety to the greatest extent possible.

However, due to the potential hardship posed by restriction in Chapter 99.290 against re-applying in less than 12 months with a similar application, appellants hereby recommend extending the 120 day time to a date certain, but only if it seems reasonable to believe that the applicant could provide sufficient information in order to meet all criteria. Directions should be given at this time to revise the application to remove on-street parking and pedestrian lane and other proposals should be made at this time if so desired.

March 13, 2023

Appellants' Second Letter AP 23-02

We would like to begin by presenting evidence to help clear up misunderstandings about the approximately 41 trees that were removed from Fields Bridge Park before West Linn initiated the environmental review process for WAP/WRA/FMA permits.

Peter Watts, the attorney hired to defend West Linn Planning Manager Darren Wyss' decision to approve City Engineer Erich Lais' application for WAP-23-02/WRG-23-01/FMA-23-01 permits, made the following statement for the record of the appeal AP-23-02 at the [June 6, 2023 City Council Special Meeting](#), time stamp 2:40 in response to appellant's

Question 6: Were trees and environmentally sensitive areas protected to the greatest extent possible and properly permitted?

"There was mention of potentially trees being removed prior to this application being filed. There is some evidence of that. It is obviously alleged that that happened; exactly how or why needs to be investigated. You know there was a serious windstorm that knocked down a number of trees in Mary S. Young Park down by the river. I don't know if that impacted trees. I don't know exactly when they were cut, or how many were cut, or at what point. But that certainly needs to be investigated. As far as the conditions that were in place when the application was filed; so in Oregon we have what's called the "Fixed goal post rule," which means that when we submit an application, the applicant is entitled to rely upon the circumstances as they are. And it usually comes up as a matter of code, so that if you submit an application that the City doesn't like, then they can't change to a code that wouldn't allow that use. That's where we most often see it, but the City staff is able to rely upon what is on the ground at the time of the application. So again, there is, it seems like there is a code enforcement issue, potentially, that our arborist is, I believe, involved in already. And if people have evidence of the trees or photos, and I know that when trees were cut on the school site, there were people out there with cameras, because I know when I went on one of my walks there, I saw a lot of people recording what was happening. So, to the extent that those trees were taken down as part of this application process, there would probably be some evidence of that and we would ask the people to provide code enforcement with the data they have if they have it. And that's what I have, and you have my memo you can read, and other items, but I just wanted to respond to not just what the appellants wrote, but what they said today and try to clarify that record to the extent that we could."

The statements and information provided by Watts failed to account for the information provided by Angela Caffrey, West Linn Wilsonville School District (WLWV) Senior Construction Project Manager, in a letter to Erich Lais, dated March 9, 2023. (See pages 377-387)

Angela Caffrey's letter to Lais begins with; "The WLWV School District performed tree removal on the both the North and South sides of Willamette Falls Drive in the summer of 2022. Tree removal occurred based on the approval of tree removal documents submitted with the District's land use permit CUP-21-02." As proof, Caffrey provided the New Athey Creek Middle School Tree Protection Plan Sheets L1001 and L1002, dated May 17, 2021. But the plan sheets state in **General Note 3: TREES WEST OF WILLAMETTE FALLS DRIVE SHOWN FOR REFERENCE ONLY AND NOT PART OF THIS LAND USE SUBMITTAL.** ("TREES WEST" references trees South of WFD) The trees South of WFD are not numbered,

counted, or designated as to whether they are significant or hazardous, whereas the trees North of WFD are numbered and accessed for health and significance and the total number of significant trees noted. Additionally, no tree protection fencing is shown South of WFD like it is North of WFD.

As further proof, Caffrey submitted New Athey Creek Middle School Public Improvement Plans, Roadway Plan and Profile- Willamette Falls Drive Plan Sheets C3.21 through C3.25, dated May 10, 2022. The civil engineering drawings show trees on both sides of WFD are numbered and designated to remove, but the plan sheets are not stamped approved by the City Engineer as required, and therefore are not proof the WLWV School District was permitted to remove the trees. If C3.21 through C3.25 plan sheets were approved by City Engineer, Eric Lais, on May 31, 2022 as part of the Athey Creek Middle School Public Improvements project PI-21-01, it would not constitute approval to remove the trees South of WFD since they were not part of the school land use application.

In fact, all but 3 trees of the 41 trees South of WFD that were removed before this application was submitted, were governed by Community Development Code (CDC) Chapter 28 Willamette and Tualatin River Protection and or CDC Chapter 32 Water Resource Area Protection, as shown on the Site Plan Figures 6D, 6G, 6H, 6I. (pages 92, 98, 100, 102)

Caffrey continues, "in addition two more trees were removed closer to Fields Bridge. These two trees were removed to realign utility poles to allow for the future construction of Willamette Falls Drive. The removal of these two trees was permitted separately and approved by the City arborist on 05/25/2022." As proof, Caffrey submitted the Tree Removal Permit, however, the City Arborist did not have the authority to issue the permit because the trees on the South of WFD and within the park were under the protections of CDC Chapter 28 and 32 for the WAP and WRG permits and were not allowed to be removed pursuant to:

[West Linn Municipal Code 8.630](#)

B. The City shall deny a tree removal permit if any of the following criteria is met:

2. The tree is located within an open space drainageway, drainageway transition area, wetland, wetland transition area, Willamette River Greenway area, or Tualatin River protection zone as defined by the West Linn Community Development Code, unless one of the criteria in subsections (1)(a) through (d) of this section apply.

Those criteria are 8.630:

A. In making a determination whether to grant a permit, the City shall consider the criteria listed below. The decision shall include findings that cite each of these criteria. These criteria are meant to be guides, and the varying importance or weight of each in determining the appropriateness of tree removal shall be as expressed in the findings:

1. Any of the following criteria shall be considered as aspects likely to warrant approval of a tree removal permit:

(a) The tree is determined to be dead, or dying and not recoverable.

(b) The tree is determined to have a significantly damaged root structure that will adversely impact the health and stability of the tree. Such a determination shall be based upon a report provided by the applicant. The report shall be reviewed and verified by the City Arborist.

(c) The tree is determined to exhibit a hazardous growth habit.

(d) The tree is interfering with utility service in such a manner that full restoration or maintenance of service requires removal of the tree.

The Tree Removal Permit is for two Douglas Fir Trees, sizes 38” and 48” DBH, located by the roundabout on the East and West sides of the entrance to Fields Bridge Park, respectively. The trees are within the Tualatin River Protection Area (see Figure 6D Site Plan, page 92) and are therefore governed by Community Development Code Chapter 28 Willamette/Tualatin River Protection.

The Applicant submitted the March 13, 2023 letter with attachments from Caffrey to Lais to meet approval criterion CDC 28.110.U.3. (See Applicant Response page 66) but in fact, **the approval criterion is not met.**

[28.110.U](#) *Protect riparian and adjacent vegetation. Vegetative ground cover and trees upon the site shall be preserved, conserved, and maintained according to the following provisions:*

3. *Tree cutting shall be prohibited in the protection area except that:*
 - a. *Diseased trees or trees in danger of falling may be removed with the City Arborist’s approval; and*
 - b. *Tree cutting may be permitted in conjunction with those uses listed in CDC 28.030 with City Arborist approval; to the extent necessary to accommodate the listed uses;*

Furthermore, it is evident that the Applicant did not submit a complete application in accordance with CDC 32.050.F.9 because the Site Plan does not show the location of significant trees. (See Figures 6D, 6G, 6H, 6I)

[32.050 Application](#)

- F. *Site plan. The applicant shall submit a site plan which contains the following information, as applicable:*
9. *Locations of all significant trees as defined by the City Arborist.*

Question 6. Were the trees and environmentally sensitive areas protected to the greatest extent possible and properly permitted? NO, the WLWV School District removed trees without the required permits that are requested in this application.

Question 7. Will measures be taken per Municipal Code Chapter 8 Community Tree Ordinance regarding trees that were removed prior to this application?

Applicant Response: The City Arborist is reviewing any potential unauthorized tree removal and will work with code enforcement to apply any appropriate penalties or mitigation requirements as authorized by the West Linn Municipal Code. (Applicant Memo, dated June 6, 2023 to City Council)The City Manager is responsible to enforce MC Chapter 8 Community Tree Ordinance. Appellant Karie Oakes filed a complaint on October 10, 2022 alleging the trees in Fields

Bridge Park and the adjacent Willamette Falls Drive right of way were illicitly removed. The complaint is not resolved after eight months. The City Manager’s response is inadequate as indicated in the chain of emails “Update for PI-21-01 Athey Creek MS WFD Improvements” from Karie Oakes to John Williams, City Manager, dated September 29, 2022. (See attached)

Coupled with the fact that the trees were an existing condition before this application was filed, and the Applicant has not accounted for them, gives little confidence that the trees will be properly mitigated by the City without public oversight. The application must include the trees in the application as a pre-existing condition to provide that oversight.

Question 8. Will the mitigation plan and planting plan meet criteria?

The Applicant’s response is that they do, however, the pre-existing trees are not considered in the mitigation and revegetation. Close examination of the approved plans shows the areas in Fields Bridge Park where the trees were removed will not be replanted with trees and instead planted with “No Mow” grass and flowering mix. There will not even be any street trees along Fields Bridge Park, in stark contrast to the numerous street trees along the Athey Creek School. (see Figure 9, 9A, 9B, 9C, 9D Planting Plan and Schedule on pages 116-120)

Now, getting back to the other questions.

Question 4. Do the proposed transportation improvements protect the environment and public safety to the greatest extent possible?

The proposed transportation improvements, including the parking area, do not protect the environment and public safety to the greatest extent possible.

Applicant’s June 6, 2023 letter states, “The east on-street parking area does not cause any encroachment into the flood hazard area.” However, in response to CDC Chapter 27.070 GENERAL STANDARDS - In all special flood hazard areas, the following standards shall be adhered to. The maps and this statement in the application confirm that construction will occur in the flood plain: “All new construction within the floodway will be constructed on compacted fill and stabilized in accordance with accepted engineering practices for road construction.”

The applicant failed to acknowledge the fact that widening the roadway actually encroaches further into the flood plain. Furthermore, the applicant disclosed at the June 6, 2023 hearing that the cut and fill balance for flood management is still being worked on.

Question 5

Applicant claims that the refinement of the design of the “potential roundabout” identified in the WFD Concept Plan occurred as part of the WLWV school application (CUP-21-02) and that the design meets Clear Vision Chapter 42 criteria.

This is in error because a refined design could not have been approved at that time because the applicant had not yet applied for requisite environmental permits.

Appellant’s recommendations for decision

The application substantially fails to meet applicable criteria.

However, due to the potential hardship posed by restriction in Chapter 99.290 ACTION ON APPEAL OR REVIEW- TIME LIMIT AND AUTHORITY TO CHANGE DECISION against re-applying in less than 12 months with a similar application, appellants hereby recommend extending the 120 day time to a date certain, but only if it seems reasonable to believe that the applicant could provide sufficient information in order to meet all criteria. Directions should be given at this time to revise the application to remove on-street parking and pedestrian lane and other proposals should be made at this time if so desired.

Roundabout was not approved when school application was approved.

Applicant's argument that the "school application clearly identified the roundabout as the intersection improvement for the Brandon Place and Willamette Falls Drive intersection" is partially correct. A potential roundabout was in the drawings; however, an environmental assessment and permit process had not been conducted on the proposed roundabout and other proposed transportation improvements the City of West Linn is responsible for on the south side of Willamette Falls Drive (WFD). The City's WFD project was not part of the school application.

Applicant's argument that applicant was only required to demonstrate compliance with CDC Chapters 27, 28 and 32 is correct. Evidence presented in the appeal indicates that CDC criteria were not met.

Applicant's argument that the Department of Land Conservation and Development (DLCD) has no jurisdiction in the decision-making process failed to recognize the purpose of DLCD's Nov.4, 2022 letter, which was to confirm that a separate environmental review process was required for West Linn's WFD transportation improvement project, including the roundabout.

Applicant's argument that DLCD's letter did not state, "The roundabout design was not eligible to be approved without the environmental review, is incorrect. DLCD letter stated: "The impacts (of the roundabout) on natural resources were not addressed, which is why another land use review is required."

The roundabout was not approved when the Willamette Falls Concept Plan was approved.

Applicant's statement that "The WFD Concept Plan clearly identified a roundabout as a potential intersection design that would be refined at a future design stage" is correct. However, applicant's argument that the design stage occurred as part of the WLWV middle school application is incorrect.

Applicant's statement's statement that Type 1 Transportation Facilities are permitted uses fails to recognize the fact that when the site involves environmental constraints such this one do, the design is subject to refinement based on the outcome of the environmental assessment and permitting process.

Errors occurred in the WFD transportation improvement process.

Evidence that applicant's prior argument that the roundabout design was approved during the middle school application and that Type 1 Transportation Facilities are not subject to design review is in error has previously been presented.

Applicant's argument that "Any unauthorized tree removal is a West Linn Municipal Code violation and code enforcement issue" and that the application was limited to the proposed "removal of seven trees to accommodate the proposed roadway improvements" was in error.

Potential removal of all trees identified with an "X" on the site plans is subject to the environmental permit review process.

At the June 6, 2023 appeal hearing, applicant's attorney Peter Watts said, "There was a serious windstorm that knocked down a number of trees in Mary S. Young Park down by the river. I don't know if that impacted trees, I don't know if some of them were cut, or how many were cut, that certainly needs to be investigated." Then Watts explained that since the "Fixed goal post rule applies in Oregon, the applicant is allowed to rely on circumstances that are in place on the ground when the application is filed."

The applicant's denial of any knowledge of whom or how the trees were cut down prior to the permit application erroneously fails to acknowledge evidence presented in appellants May 26, 2023 letter, which is the March 3, 2023 letter from Angela Caffree, WLWV's Senior Construction Project Manager to Erich Lais regarding: WRG 23-01/WAP-23-01/FMA 23-01

It appears that the City might have been complicit in the "alleged tree cutting ". And the City's lack of enforcement might be due to a conflict of interest of some sort, possibly regarding the time/expense of mitigation and or cozy relationship with WLWV.

Re: Update for PI-21-01 Athey Creek MS WFD Improvements

From: Karie Oakes (karieokee@aol.com)

To: JWilliams@westlinnoregon.gov

Cc: citycouncil@westlinnoregon.gov

Date: Thursday, May 18, 2023 at 11:28 AM PDT

Mr. Williams,

To clarify, my complaint is that 41 trees were illicitly removed.

Please refer to the civil engineering plans for the "Willamette Falls DR Roadway Plan and Profile" approved by the interim City Engineer to develop. I highlighted some trees to document with photos, but as I said, my complaint concerns all of the trees removed along Fields Bridge Park and within the park.

Please refer to the "Tree Removal Plan," approved by City Council approval of the school on appeal, that clearly states, "TREES WEST OF WILLAMETTE FALLS DRIVE SHOWN FOR REFERENCE ONLY AND NOT PART OF THIS LAND USE SUBMITTAL."

These documents were attached to my February 2 email with further details and are attached here for your convenience.

Apparently, you and the City Arborist do not understand that removal of trees governed by the CDC are approved through the development review process. The code doesn't allow a developer to remove trees before their proposed development is approved. Nor does the code allow the City Arborist to usurp development review and approve tree removal, except if the tree is dead, damaged beyond recovery, hazardous or removal is necessary to restore or maintain utility service.

The school district removed the trees on both sides of WFD and within Fields Bridge Park when it began development of the transportation improvements last July without having all the required permits. The work was put on hold until the required Water Resource Area Permit (WAP), the Tualatin River Protection Permit (WRG) and the Flood Management Permit (FMA) were obtained. The trees on the south side of WFD and within the park were under the protections of CDC Chapter 32 and 28 for the permits and were not allowed to be removed pursuant to WLMC 8.630B(2):

- B. The City shall deny a tree removal permit if any of the following criteria is met:
2. The tree is located within an open space drainageway, drainageway transition area, wetland, wetland transition area, Willamette River Greenway area, or Tualatin River protection zone as defined by the West Linn Community Development Code, unless one of the criteria in subsections (1)(a) through (d) of this section apply.

Those criteria are:

1. Any of the following criteria shall be considered as aspects likely to warrant approval of a tree removal permit:
 - (a) The tree is determined to be dead, or dying and not recoverable.
 - (b) The tree is determined to have a significantly damaged root structure that will adversely impact the health and stability of the tree. Such a determination shall be based upon a report provided by the applicant. The report shall be reviewed and verified by the City Arborist.
 - (c) The tree is determined to exhibit a hazardous growth habit.
 - (d) The tree is interfering with utility service in such a manner that full restoration or maintenance of service requires removal of the tree.

Clearly, the City Arborist did not have the authority to issue the permit. It's deeply concerning that the City Arborist understood WLMC 8.630(d) to mean that the trees could be removed to relocate PGE utility poles for roadway improvements to WFD. Further concerning is that the school district did not provide a report documenting the hazardous condition of tree 6012, nor did the City Arborist require it as mandated, and approved the application to remove the trees.

I hope this is helpful to your understanding of my complaint and your continued investigation. I have not received an email from you since March 13 and trust that is not due to a technical glitch and that I will hear back from you very soon.

Sincerely,

Karie Oakes

-----Original Message-----

From: Williams, John <JWilliams@westlinnoregon.gov>

To: Karie Oakes <karieokee@aol.com>

Sent: Mon, Apr 10, 2023 9:13 am

Subject: FW: Update for PI-21-01 Athey Creek MS WFD Improvements

From: Williams, John

Sent: Monday, March 13, 2023 10:38 PM

To: Karie Oakes <karieokee@aol.com>

Subject: RE: Update for PI-21-01 Athey Creek MS WFD Improvements

Good evening,
(sent to Council by BC)

I am writing to provide an update on the review I promised last week. I'm attaching a complete copy of the May 2022 tree removal permit which authorized the removal of two trees (indicated as #6012 and #6136) near the driveway at Fields Bridge Park. It appears that approval was issued under WLMC 8.630(d) related to utility improvements, which does not require public notice. This section also provides an allowance (contained in 8.630 B(2)) for trees to be removed in protected areas. Incidentally, I understand that 6012 was a potentially hazardous tree due to the root structure and impacts of previous road projects.

I've not been provided an approved tree removal permit for the two smaller clusters of trees you sent photos of, nor is it clear to me that a permit would be required as those trees were small. As you know, only trees meeting the definition of "tree" under WLMC 8.510 require a permit for approval (over 6" for three specific species, and 12" for other species). I have asked for this determination to be checked.

I've also not been provided an approved tree removal permit for the 24" Fir that was removed towards the south end of the project area. It appears a permit was likely required for removal of this tree. I've asked for more information and an explanation of this situation.

Should I find that any trees were removed without a permit, the enforcement sections of WLMC 8.740 would apply. A key determination to be made would be whether the tree cutting was accidental or unintentional. If it was unintentional, there is an opportunity to mitigate the violation through the compliance process described in section 8.740(1), which would include a 1:1 diameter replanting process as well as other elements. If it was not accidental or unintentional, penalties could apply.

The correspondence I sent in October 2022 was focused on the floodplain issue and not on this tree removal permit issue. I appreciate your patience as I looked into this part of your February inquiry.

Bottom line: my review of this situation continues and I promise further follow-up in a timely manner. This review will also include a look at our process in similar situations with an eye towards any changes that may be needed to better protect trees in our community and ensure transparency.

Sincerely,
John

From: Karie Oakes <karieokee@aol.com>
Sent: Thursday, February 2, 2023 1:51 PM
To: Williams, John <JWilliams@westlinnoregon.gov>
Cc: City Council <citycouncil@westlinnoregon.gov>; Calvert, Lance <lcalvert@westlinnoregon.gov>; Lais, Erich <elais@westlinnoregon.gov>
Subject: Re: Update for PI-21-01 Athey Creek MS WFD Improvements

John,

I respectfully disagree with your determination, "I have not been able to identify any "illicit" work. Everything that has happened to date, to the best of my knowledge, has permits or did not require permits. Everything requiring additional permits has not happened yet. The Community Development Code is being upheld as far as I can tell." " (My) conclusion was reached by visiting the site with a current floodplain elevation map and observing that the trees that were cut are clearly above that line." See emails dated October 14 and 26, 2022 highlighted below.

Tree removal is governed by City ordinance, [Municipal Code Chapter 8](#). A Tree Removal Permit is required for the removal of any tree as defined in [Municipal Code 8.510](#) within the City on both public and private land with exceptions for fruit trees and orchards. A tree removal permit is authorized by the city manager or designee (city arborist). In this case, authorization for tree removal would be determined through the development review process, governed by the Community Development Code. Details and specifications for tree protection and removal can be found in the [West Linn Tree Technical Manual](#) pursuant to [CDC 8.570 Development Review and Building Permit Process](#).

A development review (land-use) application for permits to improve Willamette Falls DR along the park and reconstruct the park trail has not been approved, however, the trees that were removed are part of the proposed project. These trees were not part of permits for development of the new Athey Creek MS at Dollar Street.

For reference, I highlighted a few of the many trees that I observed were cut down on the tree removal plan in the Natural Resources Review of the Dollar Street School Project by Pacific Habitat Services (PHS), March 16, 2021, Figures 8A and 8B, pages 44-45 (attached). The tree removal plan was approved by the City Council final decision and order for development of the school and the required half street improvements adjacent to it.

- On page 44, the removed tree is on park property next to the parking lot and is within the Tualatin River Protection Area because it is within the floodplain [CDC Chapter 28](#). It is not in the ROW. See the approved civil engineering drawings sheets C3.21 through C3.25 with floodplain and ROW highlighted (attached). See my photos 1 and 2 of the tree sent in a separate email today titled Photos of trees re: PI-21-01 Athey Creek MS WFD Improvements (due to exceeding allowable email size).
- On page 45, removed are a cluster of trees and a tree at the southwest end of the trail in the ROW. The tree cluster is within the floodplain and the water resource area due to their close proximity to the wetlands. See photos 3, 4 and 5.

The highlighted trees are identified by the legend as significant trees, some to be preserved and some to be removed. The General Notes state, "TREES WEST OF WILLAMETTE FALLS DRIVE SHOWN FOR REFERENCE ONLY AND NOT PART OF THIS LAND USE SUBMITTAL." The Natural Resources Review was limited to the school site property and addressed approval criteria for development of the school and the required half-street improvements. It did not include review of a roundabout, half-street improvements along the park and reconstruction of the park trail. Removal of trees west of WFD were not approved in the land-use decision for the school.

Contractors for the school district removed trees, installed erosion control fencing and surveyed in the park soon after the Intergovernmental Agreement was signed July 11, 2022. According to Remo Douglas, senior project manager for the district, work was halted because the school district did not have the necessary permits from the City to be certain the improvements could be completed. Douglas said removing the trees in the ROW was the first step because they

were in the location of future sidewalks. ("Permits Pending?", *Tidings* 9/21/22.) The truth is the district could not have had valid permits from the City to remove trees in the ROW along the park or within the park because the first step in development is to get approval of the proposed development.

As you know, the school district hired Pacific Habitat Services to provide a review of the natural resources for the development review application for improvements to WFD and reconstruction of the park trail. At the [pre-application conference on June 6, 2022](#), the Assistant City Engineer, representing the city as the applicant, was informed by the City Planning Manager of the requirements and approval criteria of CDC Chapters 27, 28, 32 for a Floodplain Management Area Permit, Tualatin River Protection Permit and Water Resource Area Permit, and Chapter 99 Procedures for Decision-Making: Quasi-Judicial. The school district and PHS are familiar with the development review process and these particular chapters as they recently went through it to get permitted to develop the school.

The school district must have known tree removal is determined through the development review process and that they had not been permitted to cut down the trees and install the erosion control fencing. As you know, the Assistant City Engineer submitted the development review application January 5, 2023, and the Planning Manager is reviewing it for completeness. Once he determines it is complete, he has the authority to approve the application after providing opportunity for written public testimony. Removing the trees precluded the public process required for protection of the trees, water resource area, animal habitat and floodplain.

I believe you have not sufficiently addressed my complaint that the trees were illicitly cut down and erosion control fencing installed. Visiting the site to eyeball the trees against a floodplain map is herein proven inaccurate and insufficient to show compliance with the code. If indeed, everything was permitted and the community development code is being upheld as you say, then please substantiate it by providing copies of the complete applications for tree removal, the notice mailed to property owners and posted in the ROW and the final decisions that include findings citing each approval criteria.

Please also substantiate your claim "the silt fencing that was installed is in response to the previous flooding problem and does not require a permit that I could identify." I have waited patiently for any pertinent erosion and sediment control information that you promised you would provide in your email below dated October 26, 2022.

Thank you.

Sincerely,

Karie Oakes

-----Original Message-----

From: Williams, John <JWilliams@westlinnoregon.gov>

To: Karie Oakes <kariookee@aol.com>

Cc: City Council <citycouncil@westlinnoregon.gov>; Calvert, Lance <lcalvert@westlinnoregon.gov>; Lais, Erich <elais@westlinnoregon.gov>

Sent: Wed, Oct 26, 2022 5:13 pm

Subject: RE: Update for PI-21-01 Athey Creek MS WFD Improvements

Hello Karie,

That email account is the one we use internally to reach the Council. The conclusion was reached by visiting the site with a current floodplain elevation map and observing that the trees that were cut are clearly above that line. I have asked for any pertinent erosion control information and will provide when I have it.

Sincerely,

John

From: Karie Oakes <kariookee@aol.com>

Sent: Thursday, October 20, 2022 5:51 PM

To: Williams, John <JWilliams@westlinnoregon.gov>

Cc: City Council <citycouncil@westlinnoregon.gov>; Calvert, Lance <lcalvert@westlinnoregon.gov>; Lais, Erich <elais@westlinnoregon.gov>

Subject: Re: Update for PI-21-01 Athey Creek MS WFD Improvements

John,

Please reply to this email and not my previous one that was returned as undeliverable to "askthecc@westlinnoregon.gov" Apparently, you used the wrong address to copy Council and I've corrected it here.

Karie

-----Original Message-----

From: Karie Oakes <karieokee@aol.com>

To: JWilliams@westlinnoregon.gov <JWilliams@westlinnoregon.gov>

Cc: askthecc@westlinnoregon.gov <askthecc@westlinnoregon.gov>; lcalvert@westlinnoregon.gov <lcalvert@westlinnoregon.gov>; elais@westlinnoregon.gov <elais@westlinnoregon.gov>

Sent: Thu, Oct 20, 2022 5:39 pm

Subject: Re: Update for PI-21-01 Athey Creek MS WFD Improvements

John,

Please share your methodology and the applicable regulations used in your determination that there was no illicit work done. I want to understand your conclusion that the trees and shrubs that were removed were not within the protection areas and floodplains of the Tualatin River and were permitted to be removed or didn't require permits.

Please also provide the erosion and sediment control plan (ESC) in response to the illicit sediment discharges that occurred in February and April that shows the sediment fencing that was installed in the park.

Thank you.

Sincerely,

Karie

-----Original Message-----

From: Williams, John <JWilliams@westlinnoregon.gov>

To: Karie Oakes <karieokee@aol.com>

Cc: #Commission - City Council <askthecc@westlinnoregon.gov>; Calvert, Lance <lcalvert@westlinnoregon.gov>; Lais, Erich <elais@westlinnoregon.gov>

Sent: Fri, Oct 14, 2022 9:49 am

Subject: RE: Update for PI-21-01 Athey Creek MS WFD Improvements

Ms. Oakes,

I've had the opportunity this week to find the answers to your questions. They are below. First, I would like to state clearly that I have not been able to identify any "illicit" work. Everything that has happened to date, to the best of my knowledge, has permits or did not require permits. Everything requiring additional permits has not happened yet. The Community Development Code is being upheld as far as I can tell.

Your **questions** and the answers I have learned, in *italics*:

1. **Did you hire a consultant and if so, who?** *The School District has hired Pacific Habitat Services, Inc. to do the environmental analysis and application submittal. This is the same firm that previously prepared the Natural Resources Review in 2021 for the Middle School application, so they are very familiar with the site and surrounding areas.*
2. **Has a wetland determination been completed and received?** *A wetland delineation is being completed as part of the work for the application.*
3. **Has COE/DSL been consulted?** *The US Army Corps of Engineers and Oregon Department of State Lands are being consulted as required.*
4. **Where can I find the tree removal plan and ESC plan pertaining to the trees and shrubs removed in Fields Bridge Park?** *I visited the site just this morning and still cannot identify any areas where trees have been removed within environmentally sensitive lands. The trees and shrubs that have been cut are above the floodplain and immediately adjacent to Willamette Falls Drive. All tree and shrub removal to date has been conducted following city regulations. The silt fencing that was installed is in response to the previous flooding*

problem and does not require a permit that I could identify. I would be happy to meet with you next week and walk the project area along the trail so that you can show me areas within sensitive lands in which work has happened. Please let me know some dates and times that would work with your schedule.

5. **When do you estimate you will submit the application?** *The application is expected to be submitted, including the elements you have asked about above, by the District within approximately a month; although this is not a date certain. It won't be submitted until all required elements are completed. I've previously committed to letting you know directly when it is submitted and available for public review, which will be earlier than our code requires.*

Sincerely,
John

From: Karie Oakes <kariookee@aol.com>
Sent: Monday, October 10, 2022 12:00 PM
To: City Council <citycouncil@westlinnoregon.gov>
Subject: Fwd: Update for PI-21-01 Athey Creek MS WFD Improvements

Dear Mayor Walters and Councilors,

Engineering staff did not answer my questions below regarding the public improvements to Willamette Falls Dr. in Fields Bridge Park and the Tualatin wetlands located there.

Staff allowed the contractor for the school district to remove trees and scrubs within Fields Bridge Park and the protected wetlands before applying for the required land use permits to protect the wetland and habitat area and to manage the floodplain.

I believe Mr. Williams is avoiding answering my questions because this construction activity is illicit. It is your duty to uphold our Community Development Codes and to hold the City Manager accountable.

I will be interested in your reply.

Sincerely,

Karie Oakes

-----Original Message-----

From: Karie Oakes <kariookee@aol.com>
To: jwilliams@westlinnoregon.gov <jwilliams@westlinnoregon.gov>
Sent: Thu, Sep 29, 2022 1:52 pm
Subject: Fwd: Update for PI-21-01 Athey Creek MS WFD Improvements

Mr. Williams,

Luke Borland, Communications Specialist for Public Works, was not willing to answer my questions pertaining to the WFD public improvements and has not replied to my most recent email two days ago.

I would like to know who to pose my questions, that are specific to Public Works, if not to Mr. Borland. It seems that Mr. Borland is no more than a roadblock to transparency and has a low standard for timely communications.

Sincerely,

Karie Oakes

-----Original Message-----

From: Karie Oakes <kariookee@aol.com>
To: LBorland@westlinnoregon.gov <LBorland@westlinnoregon.gov>
Sent: Tue, Sep 27, 2022 11:23 am
Subject: Re: Update for PI-21-01 Athey Creek MS WFD Improvements

Welcome Luke Borland,

If you won't answer my questions, then who will?

Since you didn't include a copy of my email with questions in your email, I have cut and pasted it below for your convenience. Thank you for offering to let me know when you have a more detailed update. Hopefully, my question about when the application might be filed will be answered then.

Sincerely,

Karie

-----Original Message-----

From: Karie Oakes <kariookee@aol.com>

To: elais@westlinnoregon.gov <elais@westlinnoregon.gov>

Sent: Mon, Sep 26, 2022 1:51 pm

Subject: Update for PI-21-01 Athey Creek MS WFD improvements

Hello Erich,

I would like an update on your progress to submit an application for permits to improve Willamette Falls DR. It has been some time since the pre-application conference on June 16 when you learned the applicable chapters of the CDC that needed to be addressed. I have these questions:

1. Did you hire a consultant and if so, who?
2. Has a wetland determination been completed and received?
3. Has COE/DSL been consulted?
4. Where can I find the tree removal plan and ESC plan pertaining to the trees and shrubs removed in Fields Bridge Park?
5. When do you estimate you will submit the application?

Thanks for your service.

Sincerely,

Karie Oakes

-----Original Message-----

From: Borland, Luke <L.Borland@westlinnoregon.gov>

To: Karie Oakes <kariookee@aol.com>

Sent: Tue, Sep 27, 2022 8:31 am

Subject: Update for PI-21-01 Athey Creek MS WFD Improvements

Hello,

My name is Luke Borland and I am the new Community Relations Specialist for West Linn's Department of Public Works. Eric forwarded me your message and I wanted to follow up. While the process is continuing, we don't have a substantive update at this time. The City is working with the School District and the environmental consultants on final details. We will let you know when we have a more detailed update.

Best regards,

Luke Borland

Luke Borland

Community Relations Specialist

Public Works

customerservice-water

22500 Salamo Rd.
West Linn, Oregon 97068
LBorland@westlinnoregon.gov
westlinnoregon.gov
503-722-4736



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John Williams
City Manager
Administration
Pronouns: he, him, his

22500 Salamo Rd
West Linn, OR 97068
JWilliams@westlinnoregon.gov
westlinnoregon.gov
503-742-6063



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