

May 26, 2023

Letter for the record: AP 23-02- Appeal of Planning Manager decision on [WAP-23-01/WRG-23-01/FMA-23-01](#)

From: Appellants Karie Oakes and Teri Cummings

To: Mayor Rory Bialostosky, Council President Mary Baumgartner, City Councilors Leo Groner and Scott Erwin

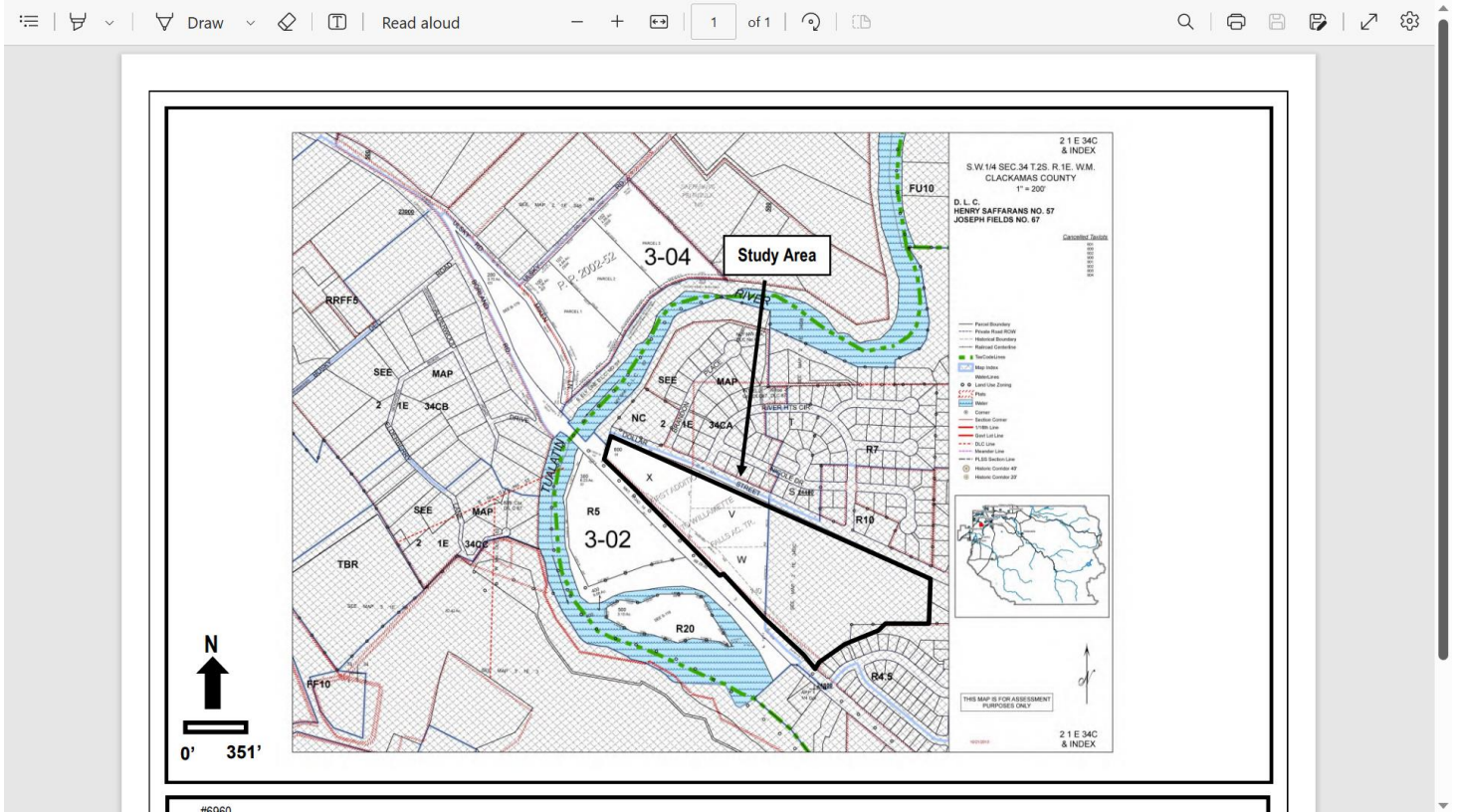
The purpose of this appeal is to ensure that the proposed plans for the Willamette Falls Drive (WFD) road improvements, including the roundabout, will cause the least adverse impacts possible to the Tualatin River, wetlands, flood zone and habitat conservation areas, and will mitigate the adverse impacts to the greatest extent possible and that the proposed improvements will not present safety hazards. Furthermore, this is an opportunity to correct some errors, pose questions and make recommendations on how to improve the plan.

Note: page numbers reference Planning Manager's WAP-23-01/WRG-23-01/FMA-23-01 decision

Question 1. Was the roundabout approved when the West Linn Wilsonville (WLWV) school application was approved?

No, the potential roundabout and proposed south side WFD improvements were not approved when the school application was approved according to the facts below.

- a. Drawings of the potential roundabout were presented in the record of WLWV's application for the new Athey Creek Middle School and adoption of Conditions of Approval regarding safety aspects of the potential intersection did not constitute an approval of the potential roundabout because the environmental review was limited to the school property site and half-street right of way on the north side of WFD. See Pacific Habitat Services Figure 2A below.



- b. DLCD Representative for Multnomah and Clackamas County, Kelly Reid’s November 4, 2022 email below, states that Darren Wyss was informed that the roundabout was not eligible to be approved without an environmental review as follows: “Since the roundabout project affects areas south of Willamette Falls Drive that were not accounted for in the previous land use review, additional land use review will be required...The nuance there is that the roundabout itself was included in the land use application for the new school – it was included on the site plans - but the impacts on natural resources were not addressed, which is why another land use review is required.”

From: REID Kelly • DLCD <Kelly.REID@dlcd.oregon.gov>

Sent: Friday, November 4, 2022 11:43 AM

To:

Subject: RE: Concerns re: Fields Bridge Roundabout, Willamette Falls Drive Construction Project, Tualatin River

Hello Ms. Reynolds,

Thank you for your patience on our response. I was able to speak with Darren Wyss at the City of West Linn about this project, and I would certainly encourage you to reach out to him with questions. Darren would be able to tell you which permits have been issued for this project already.

dwyss@westlinnoregon.gov

I was able to confirm that the land use review for the new middle school included review of overlay zones that address Goals 5, 6 and 7 for steep slopes, floodplain, and water resources/habitat conversation areas – these included areas on the north side of Willamette Falls Drive and on the project site itself. Since the roundabout project affects areas south of Willamette Falls Drive that were not accounted for in the previous land use review, additional land use review will be required. Darren informed me that an application for that review has not yet come before the City. When it does, public notice will be provided.

The nuance there is that the roundabout itself was included in the land use application for the new school – it was included on the site plans - but the impacts on natural resources were not addressed, which is why another land use review is required.

I will also note that an Intergovernmental Agreement is not a land use action, and therefore the statewide planning goals do not apply, meaning Intergovernmental Agreements would not require the same kind of public notice or outreach that land use actions require.

Please let me know if DLCD can be of further assistance.



Kelly Reid

Regional Representative for Multnomah and Clackamas Counties

Portland Metro Regional Solutions

Pronouns: She/her

Oregon Department of Land Conservation and Development

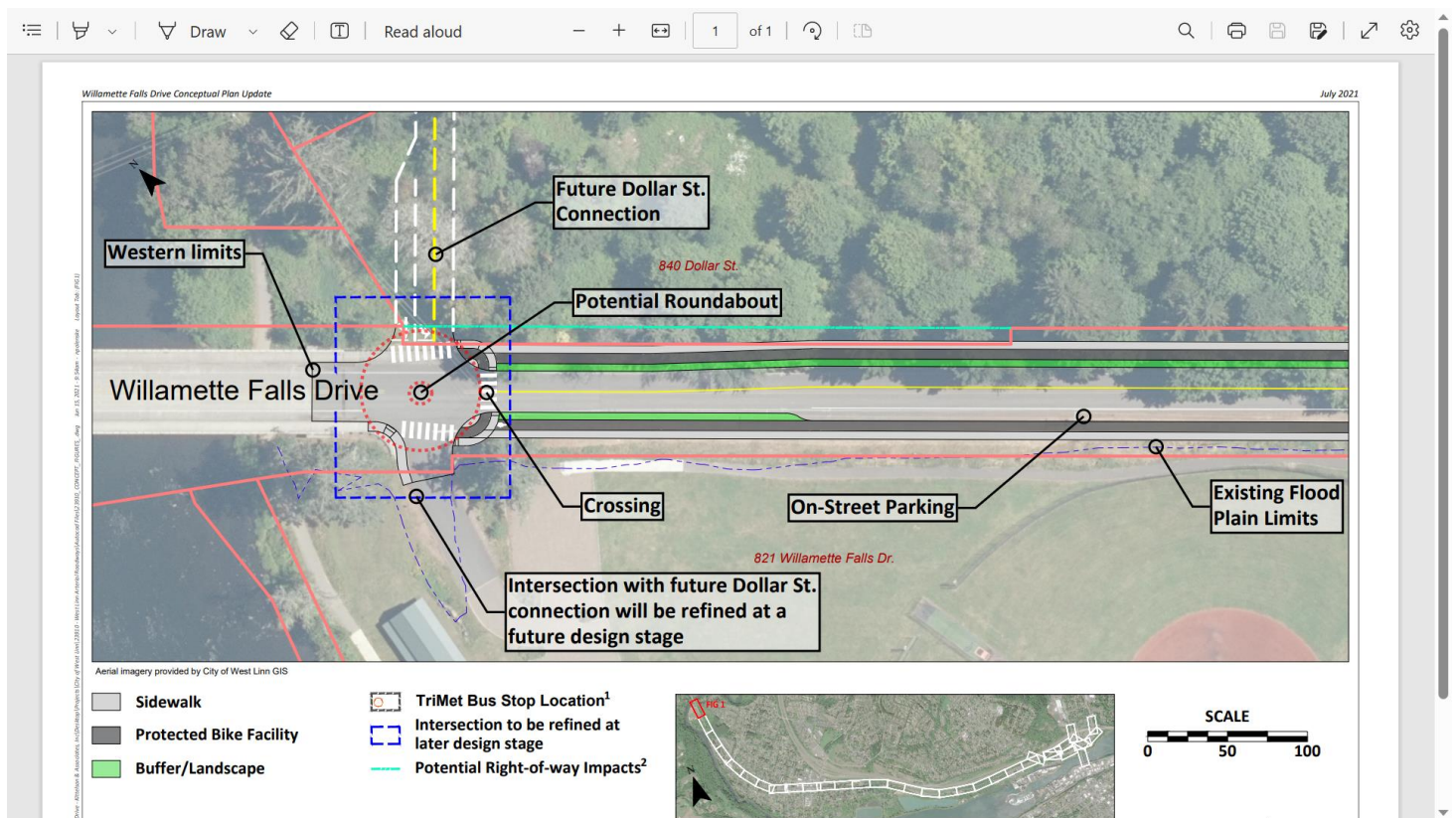
1600 SW Fourth Avenue, Suite 109 | Portland, OR 97201

Cell: 971-345-1987 | Main: 503-373-0050

kelly.reid@dlcd.oregon.gov | www.oregon.gov/LCD

Question 2. Was the roundabout approved when the WFD Concept Plan was approved?

- a. No, the WFD Concept Plan was adopted as an amendment to the 2016 Transportation System Plan by a legislative action, not a quasi-judicial land use decision. The 30% complete preliminary designs provide guidance for public involvement for transportation planning, whereupon the designs may be altered and refined in response to existing conditions and to meet the needs of the community.
- b. The roundabout next to Fields Bridge was identified as a “potential roundabout” in the WFD Concept Plan because it was still yet-to-be-determined whether the intersection near Fields Bridge would be better as a roundabout or a conventional crosswise intersection. The City Engineer also said the proposed parking spaces were optional, depending on available space. See WFD Concept Plan, Figure 1 below.

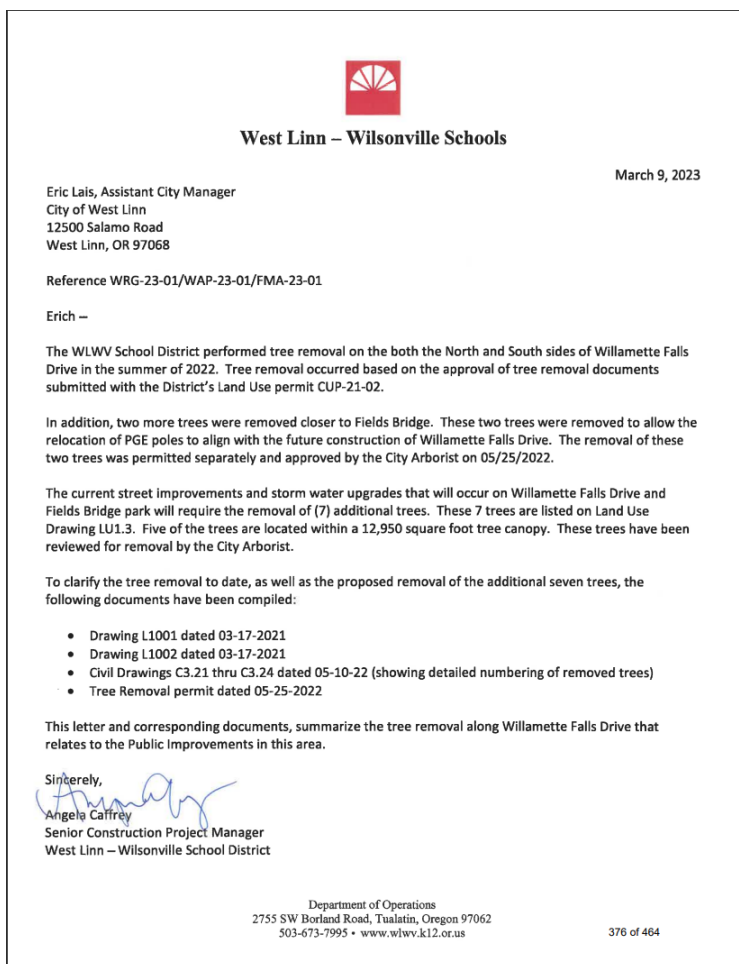


Question 3. Were there errors in the WFD transportation improvement process?

- a. Yes, staff made multiple promises at City Council, Planning Commission and Neighborhood Association meetings that there would be opportunities for public involvement to refine the 30% conceptual design for WFD. Those promises didn't materialize. Instead, a 100% engineered design was stamped as approved by the City Engineer on May 31, 2022, even though the required environmental review

process for WAP, WRA, FMA permits, per **CDC Chapters 27, 28** and **32** was not done and as stated before, no public involvement meetings to discuss the aspects of the design took place.

- b. Contractors hired by WLWV proceeded to remove at least 41 trees in Fields Bridge Park and disturbed Habitat Conservation Areas (HCA) and Tualatin River Greenway areas last summer, shortly after the City Council signed an IGA with WLWV School District on July 11, 2023. That never should have happened because West Linn had not started the WAP, WRA and FMA permit process for environmental protections yet. Thus, members of the public were deprived of the right to participate in any meaningful way, regarding tree removal, environmental protection and mitigation before anything was removed or disturbed in Fields Bridge Park. The School District claimed the trees were permitted by approval of the school application. (See March 9, 2023 WLWV School District letter below or Pages 376-387.)



- c. The Planning Manager's staff response questions and concerns raised by members of the community failed to answer or acknowledge most of the issues raised.

For example, the questions and concerns Ms. Cummings raised about trees that were cut in the Water Resource Areas and Natural Resource Areas prior to this WAP/WRA/FMA application were not answered. Nor

did the response cite which CDC criteria permitted the tree cutting that occurred prior to this application, or why a Type II Design Review process should not be undertaken per [Chapter 56 Parks and Natural Area Design Review](#) criteria, to protect trees in environmentally sensitive areas pursuant to Chapter 55.100 (B) (2) criteria. (Page 446)

Staff Response: The only tree removal proposed with this application are for seven trees associated with the proposed stormwater treatment facility in the park. The removed trees will be mitigated as part of the 19,000 square feet of mitigation that includes 195 trees. The West Linn CDC permits this without performing an alternatives analysis. (Page 6)

Another example is when Karie Oakes asked if approval of the Athey Creek School application permitted the trees in the park and adjacent right of way to be removed. Instead of answering the question, Planning Manager Wyss responded, “Information about the Athey Creek School approval can be obtained through a public records request. You can submit a public records request online [here](#).” (Page 442)

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

- a. No, two proposed on-street parallel parking areas would cause WFD improvements to encroach into the Habitat Conservation Area (HCA) and flood plain. This avoidable option would fail to protect the environment to the greatest extent possible.
- b. The WFD improvement plan mirrors the WFD Concept Plan which proposes to widen WFD by approximately 8 ft. to accommodate on-street parallel parking in two areas; one near the proposed roundabout and one near the east entrance of Fields Bridge Park. No specific need or purpose for the proposed on-street parking is identified, nor is there any information about the number of parking spaces proposed or what criteria that might meet.
- c. The widened area pushes the adjacent pedestrian/bike pathway into moderate and high Habitat Conservation Areas (HCA) and pushes the existing park trail further into the flood plain area. A detailed environmental study for the proposed WFD improvements was not done when WFD Concept Plan was designed. However, PHS recent environmental report indicates where widened areas for optional parking spaces encroach into HCA areas and the flood plain. (See Figures 6F, 6H and 6I below)
- d. *Staff Finding 33 states: “The project was designed to have the least possible impact on HCAs by avoiding and minimizing development activities in HCAs to the extent possible. Given the proximity of HCAs to the existing Willamette Falls Drive right-of-way, some impacts from the proposed project were unavoidable if the purpose and need of the project is to be met. The purpose of the project is to improve safety for all modes of transportation, including installing grade-separated bicycle and pedestrian infrastructure, and constructing a roundabout at the new intersection created by the Brandon Place extension”.*

Staff finding 33 does not mention the two significantly widened areas designed to accommodate proposed on-street parking encroach into medium and high HCAs and flood plain areas, nor does the finding state how many parking spaces are proposed, or for what purpose or CDC criteria.

- e. On-street parking is not an essential, unavoidable component of transportation in this area. It is not normally allowed on WFD outside of the Willamette Main Street commercial zone from 10th street to 16th street. And it is not justified for the multiple active uses of Fields Bridge Park. CDC Chapter 46 Off-Street Parking criteria require active use parks, such as Fields Bridge Park, to provide off-street parking.

On-street parking areas should be removed from the design to meet [CDC 28.110 A.2](#) criterion, below, which calls for a design that avoids and minimizes development activities in HCAs to the greatest extent possible.

[CDC Chapter 28.110 A.2](#). HCAs (Habitat Conservation Areas) shall be avoided to the greatest extent possible and development activities shall be instead directed to the areas not designated "Habitat Impact Areas not designated as HCAs, consistent with subsection (A) (3) of this section.

[CDC Chapter 28.110 L](#). Roads, driveways, utilities, or passive use recreation facilities. Roads, driveways, utilities, public paths, or passive use recreation facilities may be built in those portions of HCAs that include wetlands, riparian areas, and water resource areas **when no other practical alternative exists but shall use water-permeable materials unless City engineering standards do not allow that. **Construction to the minimum dimensional standards for roads is required.** Full mitigation and revegetation are required, with the applicant to submit a mitigation plan pursuant to CDC 32.070 and a revegetation plan pursuant to CDC 32.080.**

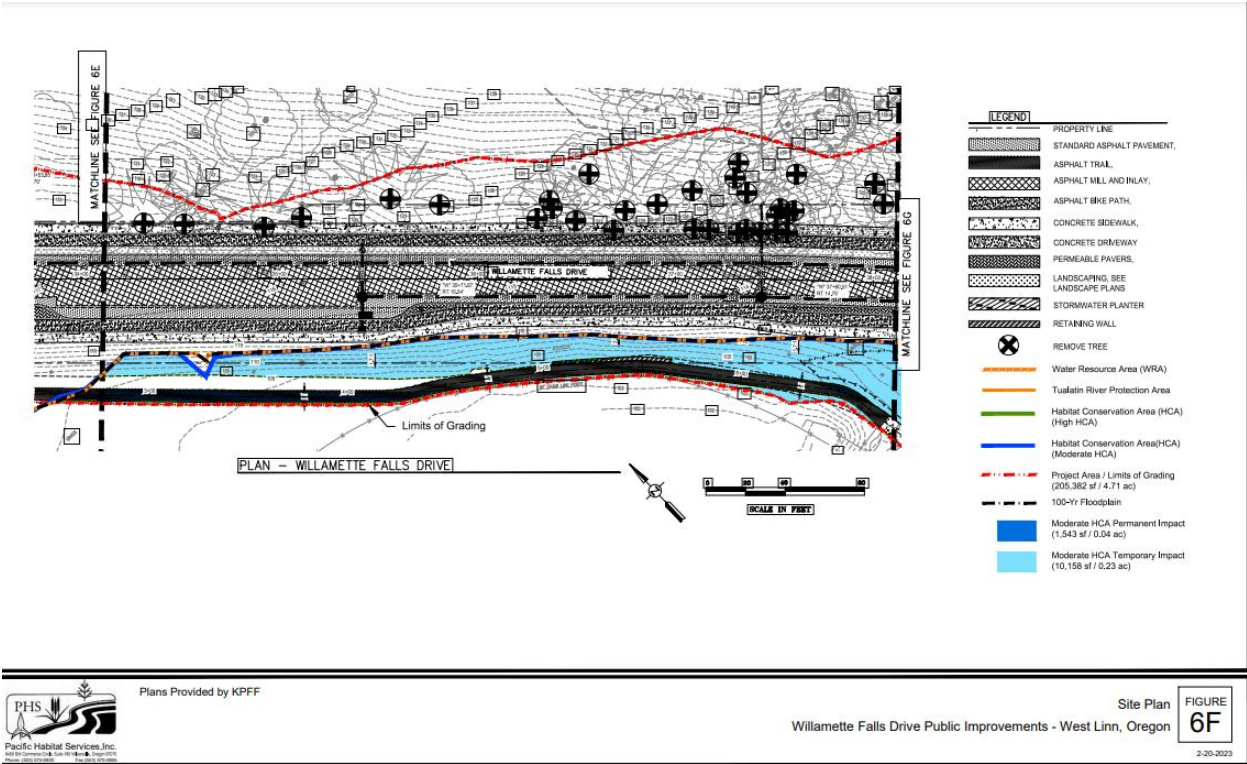
[CDC Chapter 46.090.B](#) Off Street Parking (Parks)

11. Active parks

Playgrounds: 2 to 5 spaces for each acre of active use area other than athletic fields.

Athletic field, (baseball, soccer, etc.): 40 spaces per field.

The widened area for proposed parking on the left side in drawing below pushes ped/bike path into blue HCA area.



f. Figure 6 H below, shows on the right how the widened area for proposed parking near the proposed roundabout, pushes WFD improvements into the dark green High HCA area and four trees in the Tualatin River Protection Area marked with an **X** for removal.

Figure 6I below, shows on the left how the widened area pushes the WFD improvements into the dark green High HCA area and five trees in the Tualatin River Protection Area marked with an **X** for removal.

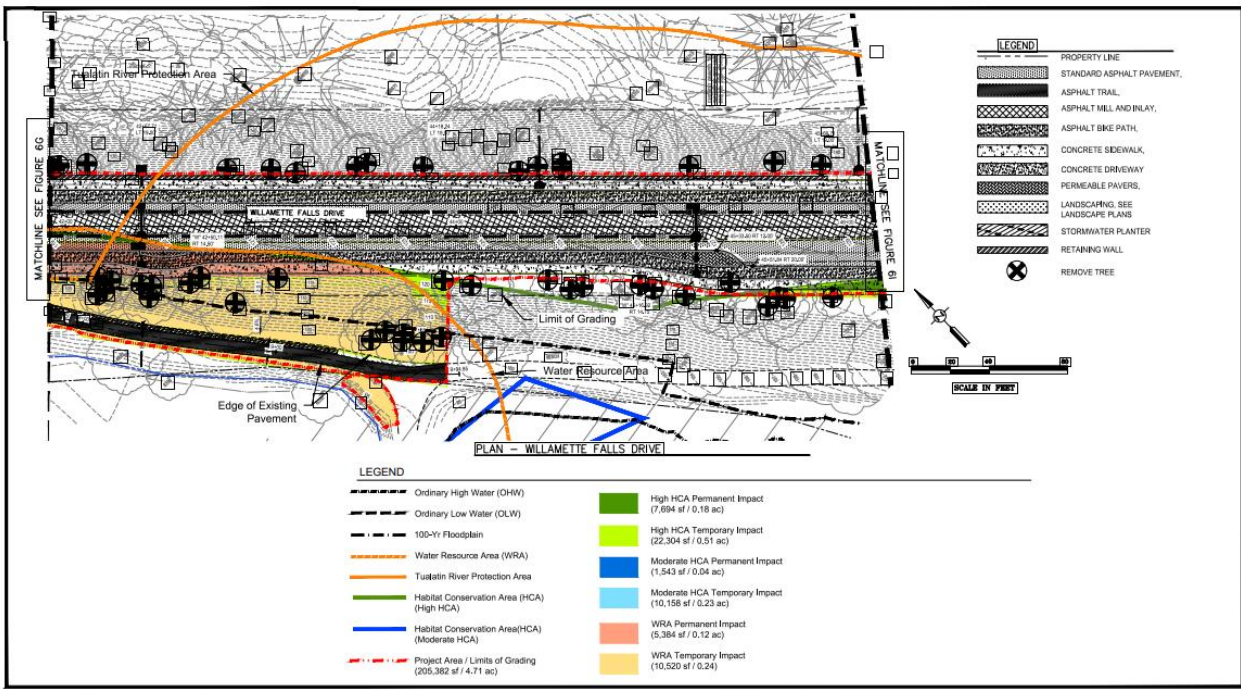


Plans Provided by KPFF

Site Plan
Willamette Falls Drive Public Improvements - West Linn, Oregon

FIGURE
6F

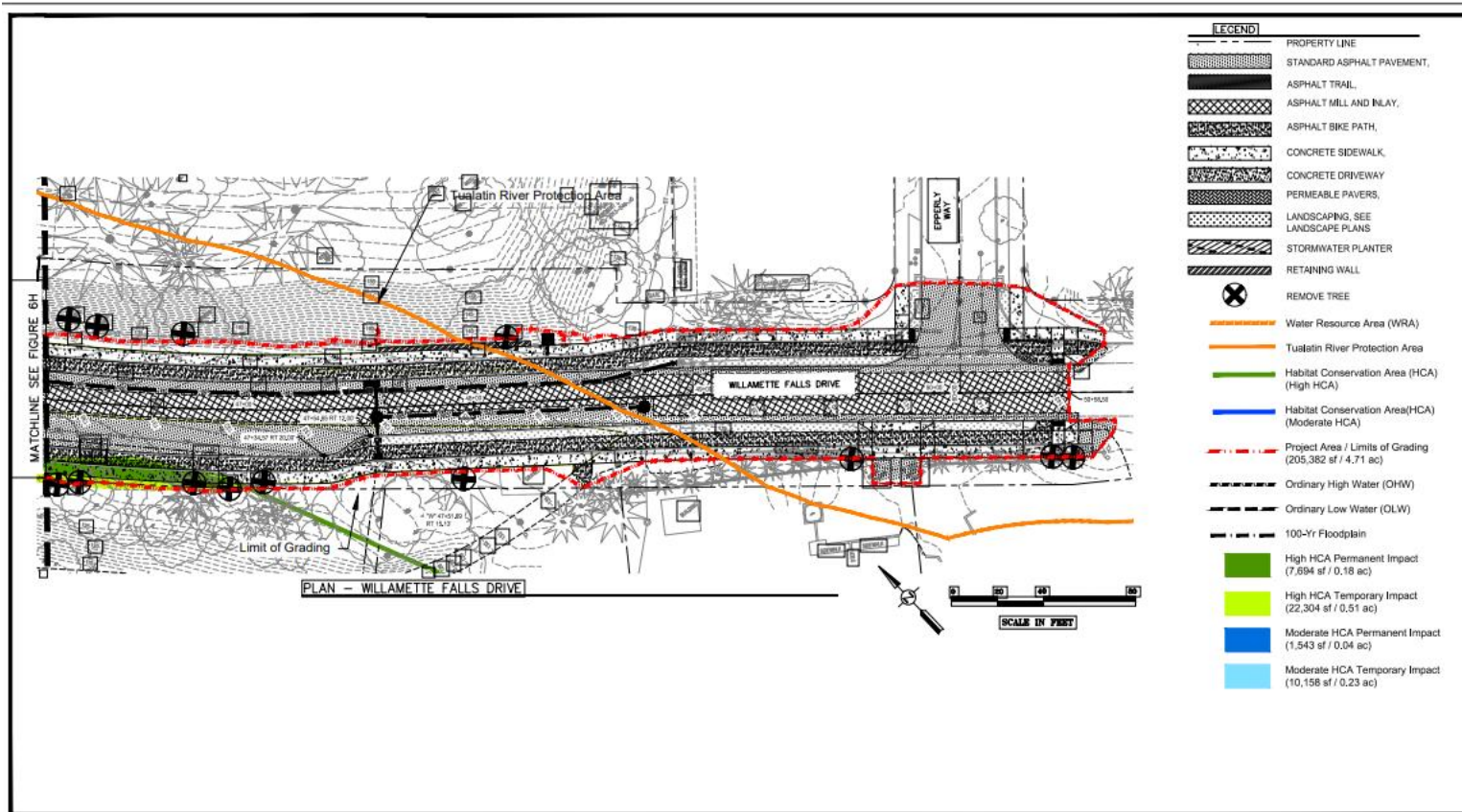
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Plans Provided by KPFF

Willamette Falls Drive Public Improvements - West Linn, Oregon

Site Plan
FIGURE 6H
 2-18-2023



Plans Provided by KPFF

Willamette Falls Drive Public Improvements - West Linn, Oregon

Site Plan

FIGURE 61

Removing the parking areas would avoid encroachment into the HCA, the flood plain and trees to the greatest extent possible.

Question 5. Does the proposed roundabout design provide adequate public safety?

- That is yet to be determined. No alternatives to placing an intersection right next to Fields Bridge were offered or explored before Brandon Pl. was designated as an access road to Athey Creek Middle School. It is too late to discuss whether this configuration might be safer than other options.
- The solid concrete and iron guardrails and on Fields Bridge are at least five feet tall. This exceeds [CDC 42.020](#) Clear Vision Area height limit of three feet tall, measured from the top of the curb.
- The distance from the southeastern guardrail to the corner of Fields Bridge Park driveway is approximately 27 feet. This falls short of the [CDC 42.020](#) Clear Vision Area criteria (see below) for at least 30 feet of clear vision area from the corner of an intersection to a fence, wall or structure that may obstruct visibility. The steep downward slope of the driveway could also impair line-of-sight approaching the intersection. The other side of

Fields Bridge appears to pose a similar situation except the Brandon Pl. driveway to the north might not be as steep as the southern driveway. See photos of measurements below.







Inadequate clear vision areas put school children, bicyclers and others at risk of not seeing or being seen by oncoming traffic while crossing the intersection. Safety measures must be explored.

[CDC 42.020](#) CLEAR VISION AREAS REQUIRED, USES PROHIBITED

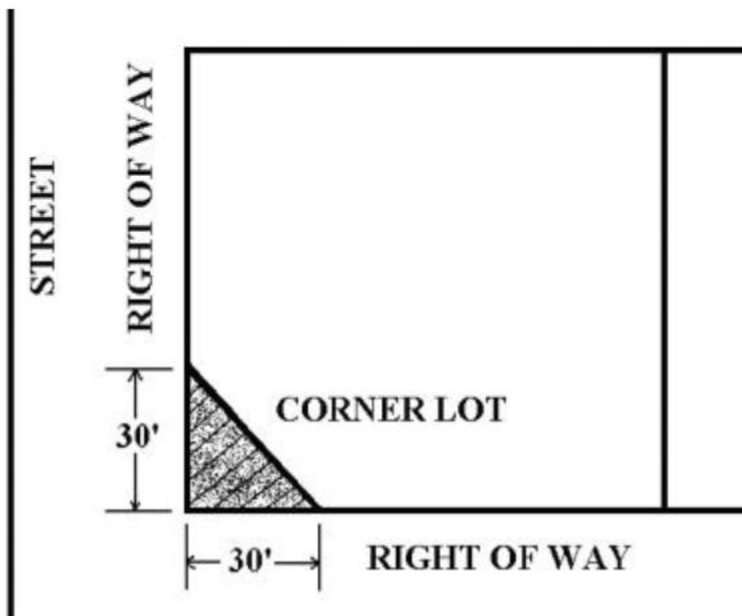
- A. A clear vision area shall be maintained on the corners of all property adjacent to an intersection as provided by CDC 42.040 and 42.050.***
- B. A clear vision area shall contain no planting, fence, wall, structure or temporary or permanent obstruction (except for an occasional utility pole or tree) exceeding three feet in height, measured from the top of the curb, or, where no curb exists, from the street centerline grade, except that trees exceeding this height may be located in this area, provided all branches below eight feet are removed. (Ord. 1192, 1987)***

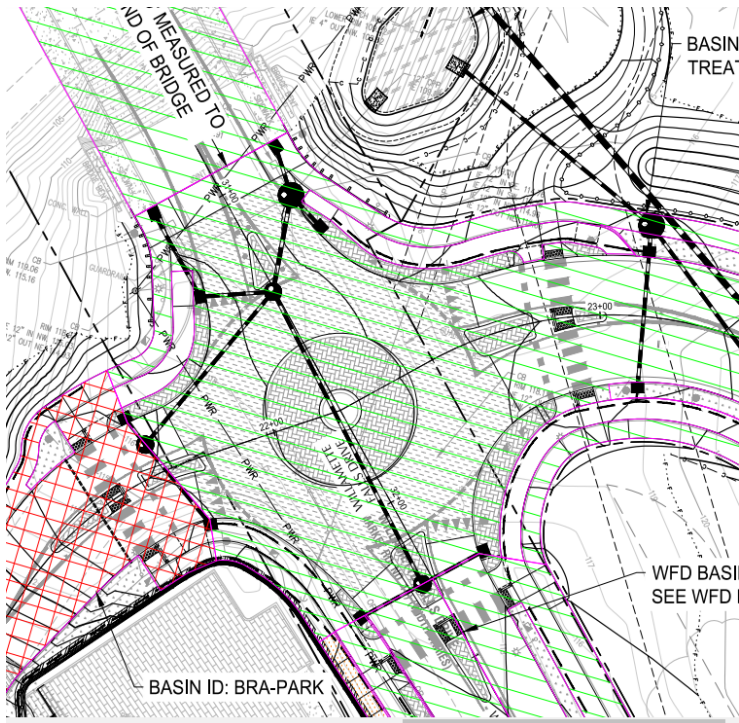
[42.040](#) COMPUTATION; STREET AND ACCESSWAY 24 FEET OR MORE IN WIDTH

The clear vision area for all street intersections and street and accessway intersections (accessways having 24 feet or more in width) shall be that triangular area formed by the right-of-way or property lines along such lots and a straight

line joining the right-of-way or property line at points which are 30 feet distant from the intersection of the right-of-way line and measured along such lines.

Clear vision area for corner lots and driveways 24 feet or more in width:





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

- a. Apparently not. At least 41 trees were cut down in Fields Bridge Park in 2022 before the required WAP 23-01/WRG-23-01/FMA-23-01 permit process commenced. It is not clear why that occurred because WLWV’s new Athey Creek Middle School and West Linn’s Fields Bridge Park belong to two separate property owners. The proposed transportation improvements on the south side of WFD, including the roundabout, were not eligible for approval until after West Linn qualified for WAP, WRA and FMA permits, which would then help determine where WFD improvements could be made and how and where the loss of trees and natural resource area would be mitigated.
- b. A disclaimer in the General note on the New Athey Creek Middle School Tree Protection Plan project sheets L1001 and L1002, dated May 17, 2021, states in **General Note 3: TREES WEST OF WILLAMETTE FALLS DRIVE SHOWN FOR REFERENCE ONLY AND NOT PART OF THIS LAND USE SUBMITTAL**. Thus, there was no removal/protection plan in place before the City allowed at least 41 trees to be cut down in Fields Bridge Park. (See Tree Protection Plan Sheets L1001 and L1002 below or pages 377-378)

- c. The applicant submitted the March 9, 2023 letter with attachments from the WLWV School District that claims the trees were permitted to be removed to meet the approval criterion of CDC Chapter 28 prohibiting tree removal in the Tualatin River Protection area.

CDC 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;**

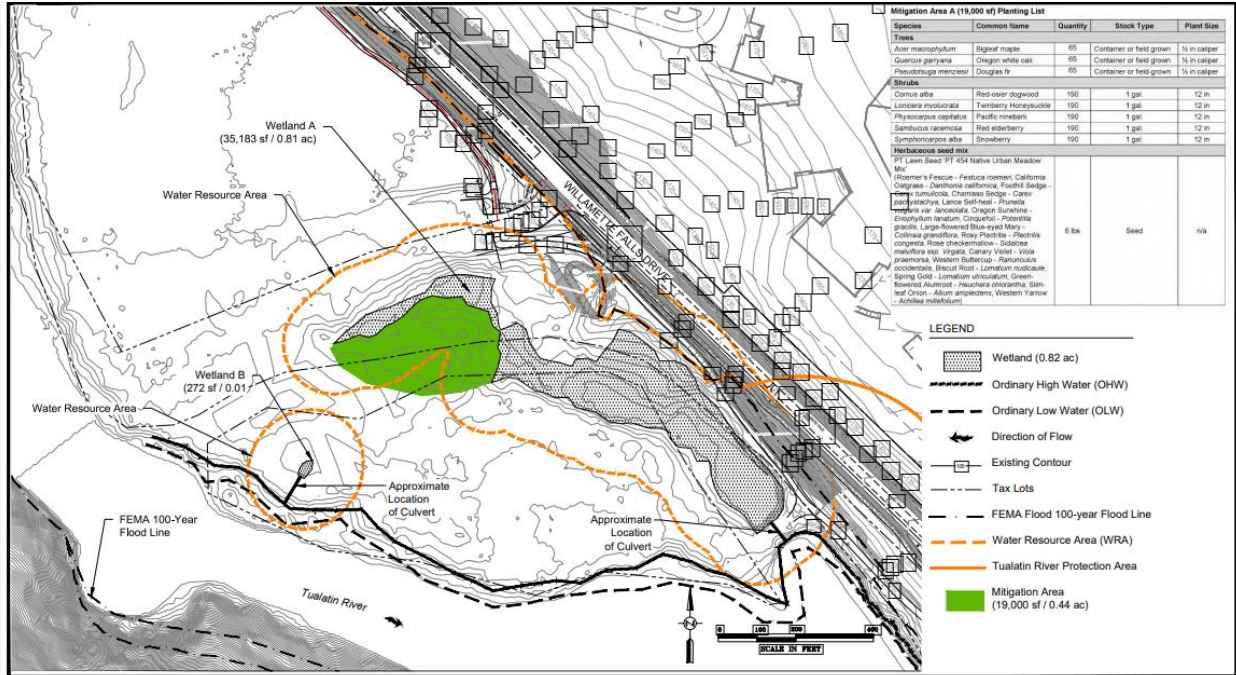
Clearly, the previously removed trees in Fields Bridge Park were not permitted to be removed without the WAP, WRG and FMA permits this application requests. **This criterion is not met.**

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

No, the application does not even acknowledge that approximately 41 trees in Fields Bridge Park were removed prior to this application!

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

- a. The inconsistencies between the mitigation plan and planting plan make it too difficult to determine.
- b. The Mitigation Plan for Willamette Falls Drive Improvements, Figure 10, dated 2/20/2023 (pg. 121), indicates that 65 Maple trees, 65 White Oak trees, 65 Douglas Fir trees, 950 shrubs and 6# of seed will be planted on 19,000 sq. Ft (.44 acres) in "Wetland A" (shown in green) but does not indicate where these things will be planted or the name of the person who created it.



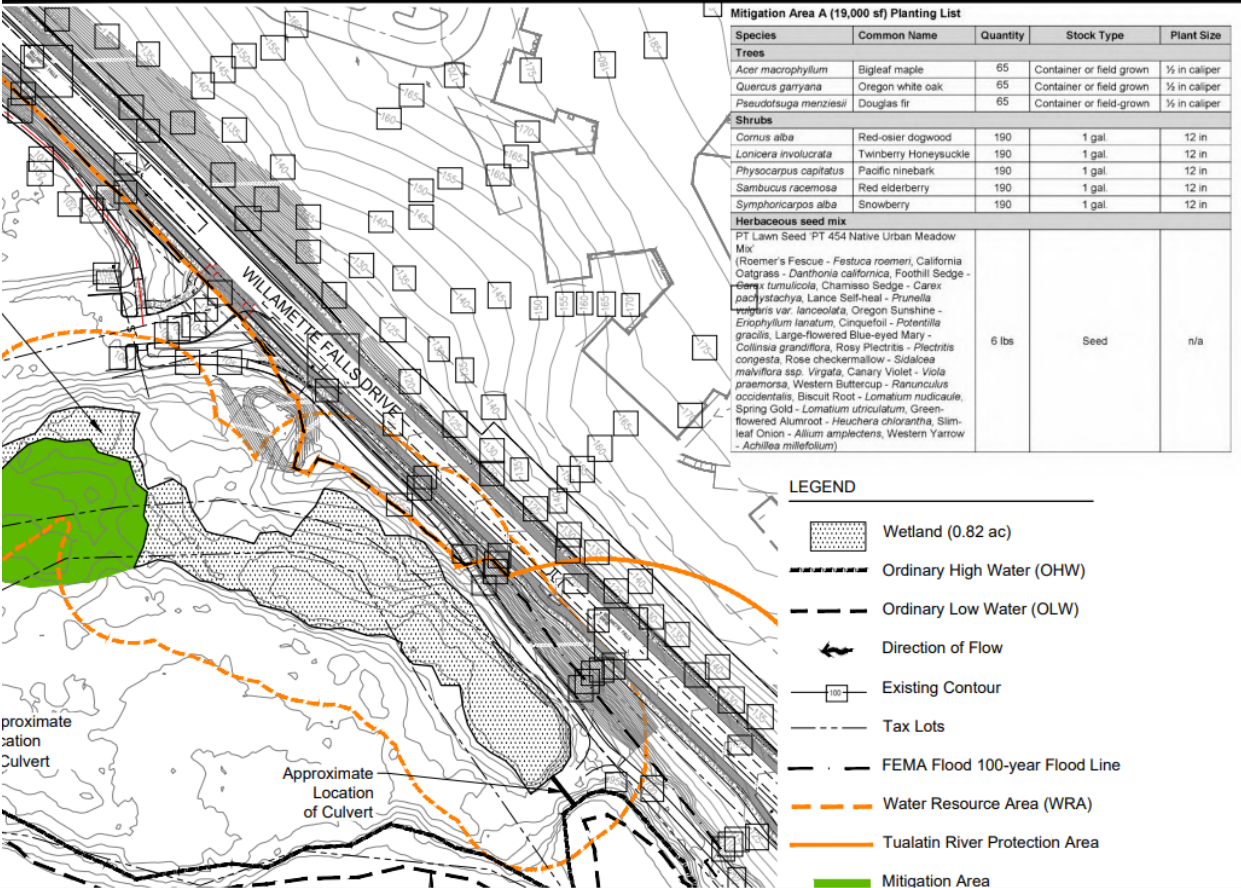
Mitigation Area A (19,000 sf) Planting List

Species	Common Name	Quantity	Stock Type	Plant Size
Trees				
<i>Acer macrophyllum</i>	Bigleaf maple	65	Container or field grown	½ in caliper
<i>Quercus garryana</i>	Oregon white oak	65	Container or field grown	½ in caliper
<i>Pseudotsuga menziesii</i>	Douglas fir	65	Container or field grown	½ in caliper
Shrubs				
<i>Cornus alba</i>	Red-osier dogwood	190	1 gal.	12 in
<i>Lonicera involucrata</i>	Twinberry Honeysuckle	190	1 gal.	12 in
<i>Physocarpus capitatus</i>	Pacific ninebark	190	1 gal.	12 in
<i>Sambucus racemosa</i>	Red elderberry	190	1 gal.	12 in
<i>Symphoricarpos alba</i>	Snowberry	190	1 gal.	12 in
Herbaceous seed mix				
PT Lawn Seed PT 454 Native Urban Meadow Mix	(Roemer's Fescue - <i>Festuca roemerii</i> , California Oatgrass - <i>Danthonia californica</i> , Foothill Sedge - <i>Carex tumulicola</i> , Chamisso Sedge - <i>Carex pacificostachya</i> , Lance Self-heal - <i>Prunella vulgaris</i> var. <i>lanceolata</i> , Oregon Sunshine - <i>Eriophyllum lanatum</i> , Cinquefoil - <i>Potentilla gracilis</i> , Large-flowered Blue-eyed Mary - <i>Collinsia grandiflora</i> , Rosy Plectritis - <i>Plectritis congesta</i> , Rose checkermallow - <i>Sidalcea malviflora</i> ssp. <i>virgata</i> , Canary Violet - <i>Viola praemorsosa</i> , Western Buttercup - <i>Ranunculus occidentalis</i> , Biscuit Root - <i>Lomatium nudicaule</i> , Spring Gold - <i>Lomatium utriculatum</i> , Green-flowered Alumroot - <i>Heuchera chlorantha</i> , Slim-leaf Onion - <i>Allium amplexans</i> , Western Yarrow - <i>Achillea millefolium</i>)	6 lbs	Seed	n/a

- LEGEND**
- Wetland (0.82 ac)
 - Ordinary High Water (OHW)
 - Ordinary Low Water (OLW)
 - Direction of Flow
 - Existing Contour
 - Tax Lots
 - FEMA Flood 100-year Flood Line
 - Water Resource Area (WRA)
 - Tualatin River Protection Area
 - Mitigation Area (19,000 sf / 0.44 ac)

PHS
Pacific Habitat Services, Inc.
Survey includes study area boundary, wetland boundary, contours and utilities provided by Compass Land Surveying. Survey and Sample point accuracy is sub-centimeter. Culverts were placed graphically and have an accuracy of sub-meter

Mitigation Plan **FIGURE 10**
Willamette Falls Drive Public Improvement - West Linn, Oregon
2-20-2023



Mitigation Area A (19,000 sf) Planting List

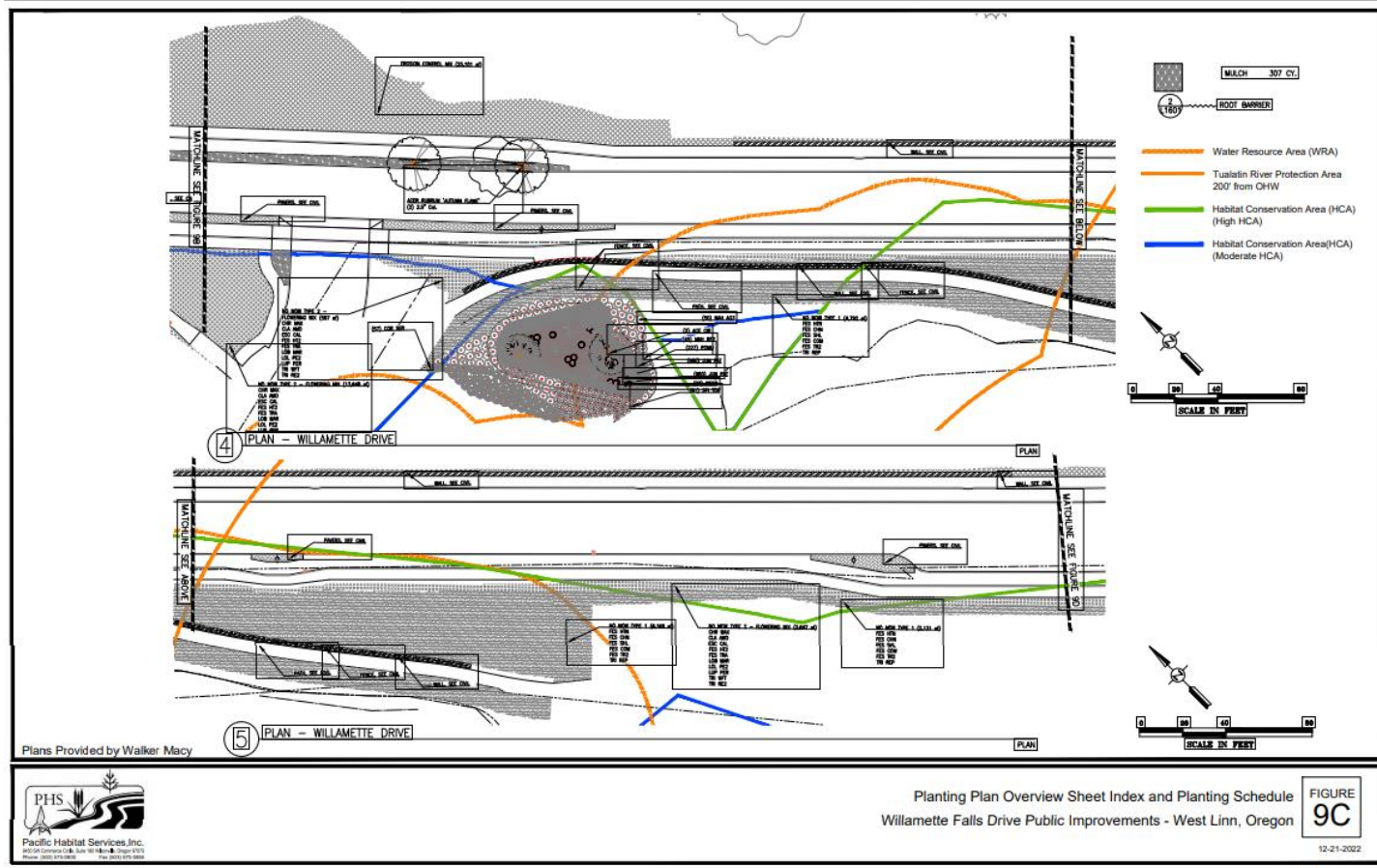
Species	Common Name	Quantity	Stock Type	Plant Size
Trees				
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- LEGEND**
- Wetland (0.82 ac)
 - Ordinary High Water (OHW)
 - Ordinary Low Water (OLW)
 - Direction of Flow
 - Existing Contour
 - Tax Lots
 - FEMA Flood 100-year Flood Line
 - Water Resource Area (WRA)
 - Tualatin River Protection Area
 - Mitigation Area

The planting list on Figure 10 above for Mitigation Area A (Pg. 121) does not appear to be a feasible plan for a .44-acre site, due to the potential mature size of the 195 trees plus 950 shrubs and 6# of seed scheduled to be planted.

- c. Figure 9C, Planting Plan Overview sheet index, dated 12/21/22 (Page 119) below, clearly indicates where two maple trees and other vegetation will be planted but this is not located in the mitigation area shown in Figure 10 above.

There is a huge difference between the details in these two plans. We would like an explanation as to why they do not seem to coincide.



In conclusion, the evidence is clear that the proposed roundabout and road improvement design has not been approved and this fact was acknowledged by DLCD. Therefore, this is our opportunity to have a full discussion about the design to refine the plan as necessary to protect public safety and the environment to the greatest extent possible.

Recommended Conditions of Approval:

1. Parking shall be removed and roadway realigned as far away as possible from the HCA and flood plain areas.
2. Adequate Clear Vision Area from bridge railings to the intersection shall be established per CDC Chapter 42.
3. City of West Linn Municipal Code Chapter 8, Community Tree Ordinance shall be enforced for the alleged illicit tree removal.
4. City Council shall authorize the City Manager to work with the Committee for Community Involvement to develop a program to foster positive attitudes and skills for meaningful community engagement.
5. City Council shall form an ad hoc Fields Bridge Park Stewardship Committee to review and oversee tree removal, mitigation and ongoing health of trees and vegetation planted for at least four years. And evaluate the potential to replace non-native vegetation with native plants and trees in both the natural and active areas of Fields Bridge Park.
6. City Council shall authorize the Planning Commission to recommend an amendment to the CDC Chapter 99 that provides decision making authority to the Planning Commission for land-use applications submitted by the City of West Linn.
7. City Council shall authorize the Planning Commission to recommend an amendment to CDC Chapter 99 that provides decision making authority to the Planning Commission for WAP, WRG and FMA applications.