

DAVID R. KOCH
ATTORNEY AT LAW, LLC

207 NE 19th Street, Suite 100
McMinnville, Oregon 97128
www.DavidKochLaw.com

Attorney@DavidKochLaw.com
Telephone: 503-857-0724
David R. Koch, OSB# 004630

June 17, 2021

City of McMinnville, Planning Commission
230 NE 2nd Street
McMinnville, Oregon 97128

Re: Opposition to MP 6-20

Dear Chair Hall and Commissioners:

I am writing to you on behalf of my clients Cheryl Lambright, Carol Hansen and Earl Anderson to express our concerns and present opposition to the Minor Partition application submitted by Steve and Mary Allen (MP 6-20). Pursuant to ORS 197.763(6), we request an opportunity to present additional evidence, arguments or testimony regarding the application and further request that the hearing be continued to a future date where the parties will have an opportunity to present and rebut new evidence, arguments or testimony.

My clients live within the notice area for this application and own property that will be negatively impacted by any decision by the City to grant the application as submitted.

- Earl Anderson lives at 1100 SW Tall Oaks Drive, McMinnville, OR 97128.
- Carole Hansen lives at 1110 SW Tall Oaks Drive, McMinnville, OR 97128.
- Cheryl Lambright lives at 1130 SW Tall Oaks Drive, McMinnville, OR 97128.



The rear yard of each of my client's property abuts either the easement or the undeveloped right of way that would be impacted by the creation and subsequent development of proposed Parcel 2.

As noted in the Staff Report, the subject property is bisected by Cozine Creek with its associated floodplain, steep terrain, and natural wooded areas. Although my clients have concerns about the application's overall failure to meet the standards and criteria for a minor partition set forth in the McMinnville Zoning Ordinance (MZO), we are particularly concerned about the creation of proposed Parcel 2, which would allow residential development on the western banks of the Cozine Creek floodway at the end of a narrow driveway easement that already serves 3 parcels.

REVIEW CRITERIA

A minor partition application must be reviewed for compliance with the standards and criteria set forth in MZO Chapter 17.53 – Land Division Standards as well as the goals, policies, and proposals set forth in Volume II of the McMinnville Comprehensive Plan. The burden of proof is on the applicant to submit sufficient evidence to demonstrate compliance with the review criteria. If the applicant fails to submit sufficient evidence to meet its burden of proof, then the application must be denied.

The purpose of MZO Chapter 17.53 is described in MZO Section 17.53.010, and includes the intention that land divisions will:

- Assure adequate width and arrangement of streets;
- Provide for the protection, conservation, and proper use of land;
- Secure safety from fire, flood, slides, pollution, drainage and other dangers;
- Protect in other ways the public health, safety and welfare; and,
- Promote the goals and policies of the McMinnville Comprehensive Plan.

For the reasons discussed below, the application fails to meet the purpose of MZO Chapter 17.53, fails to comply with the specific requirements for the submission of a Tentative Subdivision Plat set forth at MZO 17.53.060, fails to comply with other relevant review standards described in MZO Chapter 17.53, and fails to meet one or more goals, policies and/or proposals in the City's Comprehensive Plan. As a result, the application must be denied.

1. MZO 17.53.060 – Submission of Tentative Partition Plan

In order to ensure that a proposed partition meets the standards and criteria of the McMinnville Comprehensive Plan and Zoning Ordinance, and applicant is required to submit a tentative partition application, applicable fees, and a tentative partition plan. The tentative partition application and plan must contain sufficient information to demonstrate compliance with Section 17.53.060. At a minimum, the tentative partition map must include, among other things:

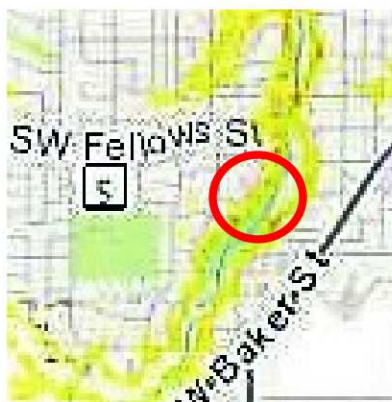
- Contour lines related to City datum and having minimum intervals of two (2) feet; MZO 17.53.060(A)(9)
- The location and direction of water courses; MZO 17.53.060(A)(10)
- The location of any natural features such as "rock outcroppings, designated wetlands, wooded areas, and natural hazards." MZO 17.53.060(A)(11)

In addition, the application packet must include a Title Report or Partition Guarantee prepared within sixty (60) days of the application date. MZO 17.53.060(A)(8)

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: The applicant submitted a tentative partition plan that fails to include contour lines, the direction of water courses, or the location of significant natural features including wetlands, wooded areas, and natural hazards. Without providing this required information, the Planning Commission does not have sufficient evidence to determine whether the proposed partition meets the purposes of the land division ordinance described in MZO 17.53.010.

For example, if the applicant had included the required topographic contour lines on its tentative partition map, the Planning Commission would be aware that proposed Parcel 2 is located on a steep slope that falls away to the east into the Cozine Creek floodplain. Although approximately half the parcel is located above the elevation of the 100-year floodplain, even that upland portion of the proposed parcel drops quickly from the western property line toward the creek. This would, at the very least, create a question regarding the suitability of future development on proposed Parcel 2 and its susceptibility to landslides.



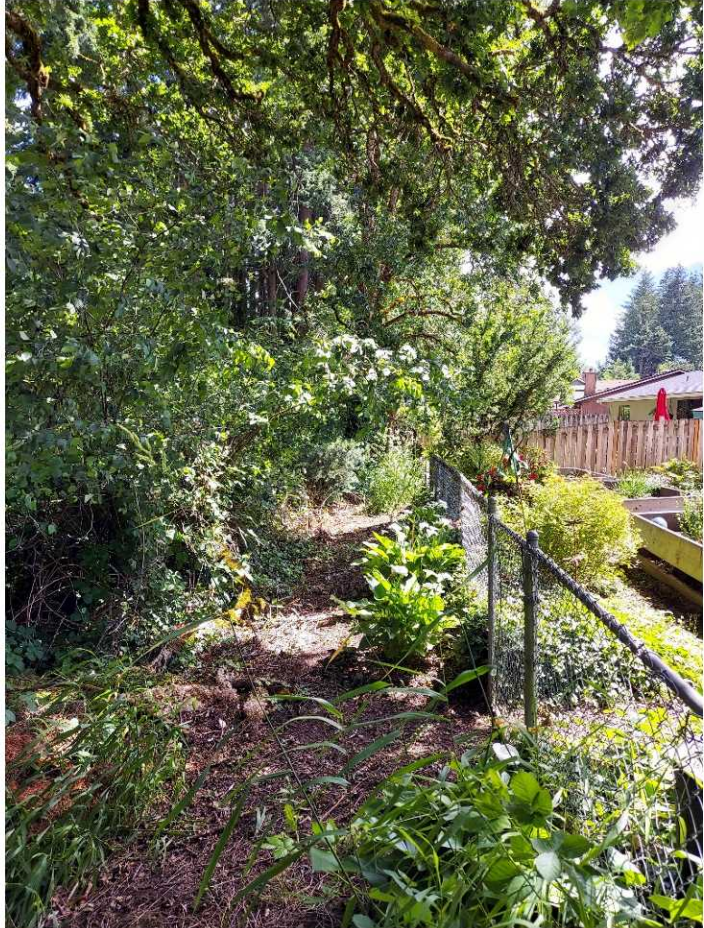
If the applicant had included the location of significant natural features, such as natural hazards, they might have included the attached map found in the City of McMinnville Addendum to the Yamhill County Multi-Jurisdictional Natural Hazards Mitigation Plan (Effective December 22, 2020 to December 21, 2025). This would have alerted the Planning Commission to the fact that most of Parcel 2 (and other steep sloped areas along the banks of Cozine Creek) appear to be areas designated by the City as Medium to High Risk for landslides.

Other required information that was omitted from the application and tentative partition map would have showed the location of wooded areas and, at the very least, the location of individual significant or historic trees (MZO 17.58.020(A)), all trees with trunks located completely or partially within the portion of the public right of way that would provide access to the proposed Parcels 1 and 2 (MZO 17.58.020(B)), and/or any trees with a DBH greater than 9

inches on the proposed Parcels 1 and 2 and the undeveloped public rights of way that would be used for access to the proposed parcels.

It is essential that the applicant provide this information in its application materials, so that the Planning Commission can meaningfully review the proposed partition and determine whether it would:

- Provide for the protection, conservation, and proper use of land;
- Secure safety from fire, flood, slides, pollution, drainage and other dangers;
- Protect in other ways the public health, safety and welfare; and otherwise,
- Promote the goals and policies of the McMinnville Comprehensive Plan.



Based on my client's direct knowledge of the site conditions in and around Parcel 2, we believe that the creation of that proposed parcel would not meet the purpose of the ordinance.

The Title Report that was included with the application was prepared September 17, 2020, which is more than 60 days prior to the application date of November 23, 2020.

2. MZO 17.53.080 – Submission of Future Development Plan

When it is evident that the property to be partitioned can be further divided, MZO 17.53.080 requires that the applicant submit a future development plan. The future development plan is required to be submitted at the same time that the tentative partition plan is submitted and must contain the following information:

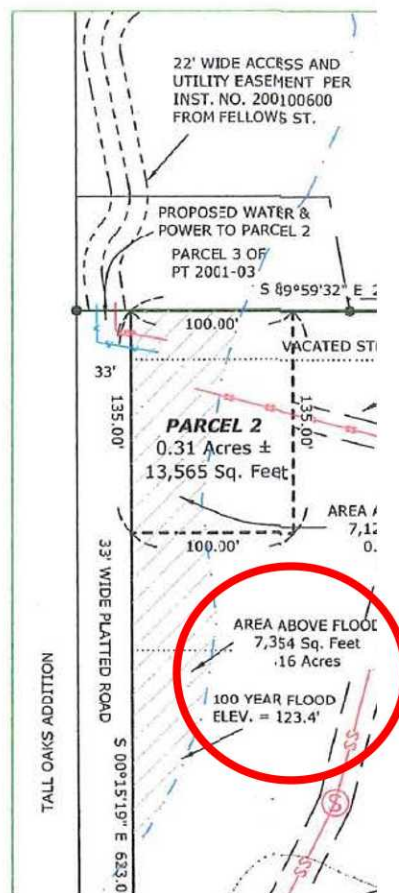
- Any potential future lots, including a depiction of the lot sizes;
- Existing and proposed utilities that will serve the potential future lots; and,
- Streets and access points for the potential future lots.

The City is then required to review the future development plan at the same time as the proposed tentative partition to ensure that it substantially conforms to the requirements of MZO Chapter 17.53 and that infrastructure to serve the potential future lots is consistent with current development requirements.

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: The proposed partition would result in the creation of two new parcels (Parcels 1 and 2), and the retention of a third parcel (Parcel 3) that would contain 6.43 acres. The tentative partition map submitted by the applicant appears to show that Parcel 3 will contain more than 7,300 square feet of land area above the 100-year floodplain on the west side of Cozine Creek and more than 50,000 square feet of such land on the east side of the creek. As a result, it is evident that the subject property could be further divided and that the proposed partition is subject to the provision of MZO 17.53.080 that require the submission of a Future Development Plan.

The applicant has failed to submit a Future Development Plan that would have allowed the Planning Commission to ensure that any potential future parcels, as well as the utilities, streets and access points for the potential future parcels substantially conform to the requirements of MZO Chapter 17.53 and are consistent with current development standards. Therefore, this criterion has not been met.



3. MZO 17.53.100 – Creation of Streets

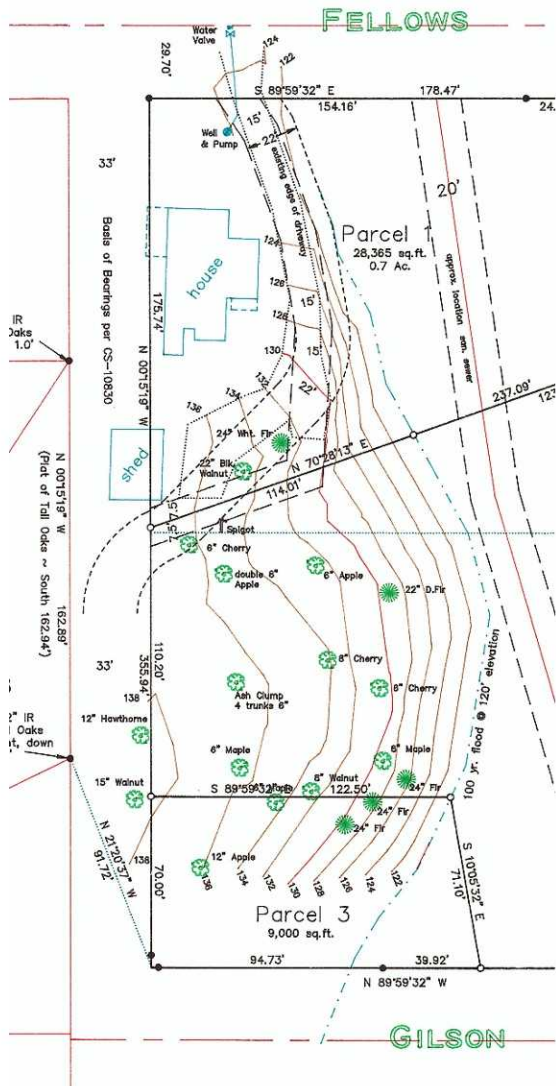
A private easement may be approved for access to a proposed new parcel in a partition only under limited circumstances, such as when it is the only reasonable method to access the rear portion of a lot that is unusually deep. However, a private easement may only be granted for access to “not more than three (3) parcels including the original parcel.”

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: As noted in the Staff Report, the applicant did not submit any response to address this approval criterion. However, staff has advocated the position that:

“Proposed parcel 2 is provided legal access via existing private easement, as indicated on approved Partition Plat 2001-03, and through an undeveloped public right-of-way. Although proposed Parcel 2 is the fourth lot accessed via the private easement, the City has acknowledged and approved this deviation from 17.53.100(C)(1) through prior land-use decision MP 7-00 and Ordinance No. 4741, and by approving Partition Plat 2001-03.”

However, a review of prior land-use decision MP 7-00, Partition Plat 2001-03, and Ordinance 4741 clearly show that they pertained to the partition of property located immediately north of



the subject property. The matter of whether to allow the partition of the subject property, which would lead to the creation of an additional new parcel on the subject property, was not before the Planning Commission or City Council at that time. Nevertheless, the staff report appears to urge the Planning Commission to find that a land use decision and ordinance adopted two decades ago somehow granted permission for unlimited number of future parcels on the subject property to utilize the private easement in variance to the three (3) parcel limitation set forth in MZO 17.53.100.

Staff's interpretation of the meaning and effect of the previous land use decisions is not supported by provisions of the City's zoning ordinance or the language in the decisions themselves. It is true that the prior land use decision and vacation ordinance acknowledged that the private easement would allow access to the subject parcel; however, allowing access to an existing parcel of land is very different from authorizing access to an unlimited number of future parcels to be created by future partition or subdivision proceedings. If the applicant desires to create the new proposed Parcel 2 utilizing the existing narrow driveway easement for access, they must establish that a variance to the three (3) parcel limitation set forth in MZO 17.53.100 is appropriate.

Since the applicant has withdrawn their request for a variance to 17.53.100, the Planning Commission must apply the ordinance as written and find that the creation of proposed Parcel 2 is not allowed as it would exceed the number of parcels allowed to be accessed off a single private easement.

4. COMP PLAN POLICY 80.00

In proposed residential developments, distinctive or unique natural features such as wooded areas, isolated preservable trees, and drainage swales shall be preserved wherever feasible.

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: As noted in the Staff Report, the applicant did not submit any response to address this approval criterion. In addition, as noted above, the applicant has failed to submit a tentative partition plat that contains the following required information:

- Contour lines related to City datum and having minimum intervals of two (2) feet; MZO 17.53.060(A)(9)
- The location and direction of water courses; MZO 17.53.060(A)(10)
- The location of any natural features such as “rock outcroppings, designated wetlands, wooded areas, and natural hazards.” MZO 17.53.060(A)(11)

Without this information, the Planning Commission is kept in the dark regarding the location of distinctive or unique natural features on the subject property, and lacks sufficient evidence to find that the proposed creation of Parcels 1 and 2 for residential development will ensure that those distinctive or unique natural features (such as wooded areas, isolated preservable trees, and drainage swales) would be preserved on the subject property. The proposed condition of approval is not sufficient to find compliance with Policy 80.00.

5. COMP PLAN POLICY 99.00

An adequate level of urban services shall be provided prior to or concurrent with all proposed residential development, as specified in the acknowledged Public Facilities Plan. Services shall include, but not be limited to:

3. *Streets within the development and providing access to the development, improved to city standards (as required).*

PROPOSED FINDING: NOT SATISFIED with respect to Streets providing access to the proposed development.

DISCUSSION: As noted in the Staff Report, the applicant did not submit any response to address this approval criterion, and the draft decision document prepared by staff completely omits any proposed findings related to the adequacy of streets providing access to future residential development within proposed Parcels 1 and 2, as required by Policy 99.00.



With respect to proposed Parcel 2, there is no public street providing direct access to the parcel. As discussed above, the existing private driveway easement may not be used to access the proposed additional parcel without a variance (which has not been applied for). In addition, without an additional dedication of right-of-way, the driveway is not capable of being improved to meet urban service level standards for an alleyway, let alone a local residential street, as described in MZO Section 17.53.101.

6. COMP PLAN POLICY 132.62.20

The City of McMinnville shall consider and apply the goals, policies, planning principles, recommended projects, implementation strategies, and maps contained in the McMinnville TSP in the review of land use actions and development applications.

PROPOSED FINDING: NOT SATISFIED with respect to proposed Parcel 2.

DISCUSSION: As noted in the Staff Report, the applicant did not submit any response to address this approval criterion. In addition, the draft decision document prepared by staff completely omits any proposed findings related to how proposed Parcel 2 complies with Policy 132.62.20. As a result, the burden of proof has not been met.

SUMMARY

The applicant has failed to meet their burden of proving that the proposed minor partition would satisfy all applicable provisions of the McMinnville Comprehensive Plan and Zoning Ordinance. It is our position that, at the very least, the western portion of the subject property is not suitable for the creation of one or more new parcels or the associated residential development that would follow. We request that the Planning Commission deny application MP 6-20.

Sincerely,

David R. Koch

McMinnville Codes Pertaining to Flooding

The following McMinnville codes, plans, and policies pertain to flooding:

1. McMinnville Comprehensive Plan (*under contract to update in 2020*). The updated plan includes a Natural Hazards Inventory and Management Program Recommendations including information on flood hazards impacting the city.
2. McMinnville Municipal Code [17.48 – Flood Area Zone](#). This portion of the Community Development Code implements the Goal 7 policies of the Comprehensive Plan and regulates development within the floodplain.

Please review Volume I, Section 2 for additional information on this hazard.

Landslide

The steering committee determined that the City's probability for landslide is **moderate** and that their vulnerability to landslide is **low** for the city as a whole, but that there were sections of the West Hills within the city limits that have high probability of landslides and the vulnerability to people and property in this section of the city is high.

Volume I, Section 2 describes the characteristics of landslide hazards, history, as well as the location, extent, and probability of a potential event within the region.

Landslide susceptibility exposure for McMinnville is shown in Figure MA-7. Approximately 8% of McMinnville has very high or high, and approximately 12% moderate, landslide susceptibility exposure.¹³ In general, the areas of greater risk are located adjacent to rivers and creeks (including the South Yamhill River and Cozine Creek). The area of the city that has the highest landslide susceptibility is in the west hills that has high and moderate landslide susceptibility (extending beyond the UGB and to the north and south along NW Fox Ridge Road in the north and SW Redmond Hill Road in the south). This area is sparsely developed currently which reduces the city's vulnerability, however, there is land within the city's UGB in this region. Development in these areas should consider strategies to reduce landslide hazard risk, including the prohibition of development in the highest risk areas. Please see the DLCD and DOGAMI publication [Preparing for Landslide Hazards, A Land Use Guide for Oregon Communities](#) (October 2019).

Potential landslide-related impacts are adequately described within Volume I, Section 2, and include infrastructure damages, economic impacts (due to isolation, and/or arterial road closures), property damages, and obstruction to evacuation routes. Rain-induced landslides, and debris flows can potentially occur during any winter, and thoroughfares beyond City limits are susceptible to obstruction as well. There are two mapped historic landslides in the city adjacent to the Cozine Creek: (1) south end of SE Evans St, damages included a broken 21-inch sanitary sewer trunk line that was replaced, and (2) northeast of Oak Grove Way east of SE Baker St, damages included a 1,000 gallon gasoline tank that was relocated.

The most common type of landslides are slides caused by erosion. Slides move in contact with the underlying surface, are generally slow moving, and can be deep. Rainfall-initiated

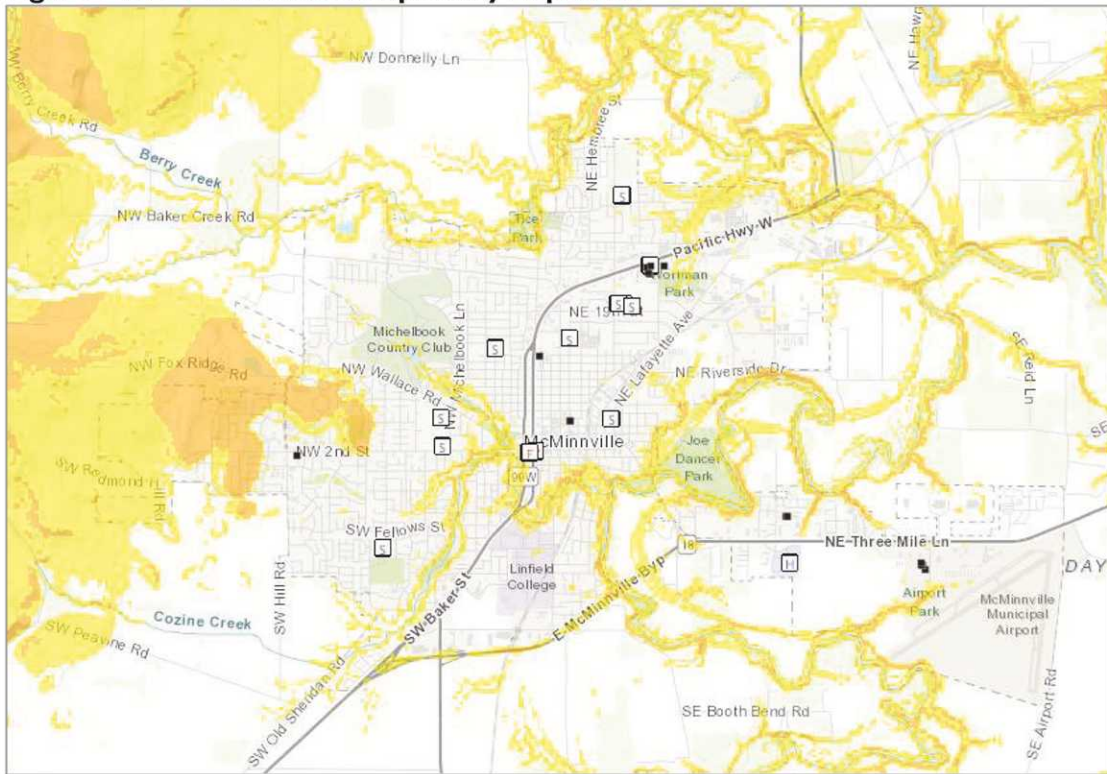
¹³ DOGAMI. [Open-File Report, O-16-02, Landslide Susceptibility Overview Map of Oregon](#) (2016)

landslides tend to be smaller; while earthquake induced landslides may be quite large. All soil types can be affected by natural landslide triggering conditions.

Vulnerability Assessment

Due to insufficient data and resources, McMinnville is currently unable to perform a quantitative risk assessment for this hazard. DOGAMI completed a statewide landslide susceptibility assessment in 2016 ([O-16-02](#)), general findings from that report are provided above and within Figure MA-7.

Figure MA-7 Landslide Susceptibility Exposure



Low	Landsliding unlikely. Areas classified as Landslide Density = Low (less than 7%) and areas classified as Slopes Prone to Landsliding = Low.
Moderate	Landsliding possible. Areas classified as Landslide Density = Low to Moderate (less than 17%) and areas classified as Slopes Prone to Landsliding = Moderate OR areas classified as Landslide Density = Moderate (7%-17%) and areas classified as Slopes Prone to Landsliding = Low.
High	Landsliding likely. Areas classified as Landslide Density = High (greater than 17%) and areas classified as Slopes Prone to Landsliding = Low and Moderate OR areas classified as Landslide Density = Low and Moderate (less than 17%) and areas classified as Slopes Prone to Landsliding = High.
Very High	Existing landslides Landslide Density and Slopes Prone to Landsliding data were not considered in this category. Note: the quality of landslide inventory (existing landslides) mapping varies across the state.

Source: [Oregon HazVu: Statewide Geohazards Viewer \(DOGAMI\)](#)

Note: To view detail click the link above to access Oregon HazVu

Response and recovery efforts will likely vary from minor cleanup to more extensive utility system rebuilding. Utility disruptions are usually local and terrain dependent. Damages may require reestablishing electrical, communication, and gas pipeline connections occurring from specific breakage points. Initial debris clearing from emergency routes and

high traffic areas may be required. Water and wastewater utilities may need treatment to quickly improve water quality by reducing excessive water turbidity and reestablishing waste disposal capability.

Mitigation Activities

Landslide mitigation activities listed here include current mitigation programs and activities that are being implemented by the City of McMinnville agencies or organizations.

City of McMinnville Codes Pertaining to Landslides

The following McMinnville codes, plans, and policies pertain to landslides:

1. McMinnville Comprehensive Plan (*under contract to update in 2020*). The updated plan includes a Natural Hazards Inventory and Management Program Recommendations including information on landslide and other geologic hazards impacting the city.
2. The City of McMinnville enforces the [Oregon Building Code](#) which includes provisions that address the potential for geologic hazards including landslides.

Please review Volume I, Section 2 for additional information on this hazard.

Severe Weather

Severe weather can account for a variety of intense, and potentially damaging hazard events. These events include windstorms and winter storms. The following section describes the unique probability, and vulnerability of each identified weather hazard.

Windstorm

The steering committee determined that the City's probability for windstorm is **high** and that their vulnerability to windstorm is **moderate**.

Volume I, Section 2 describes the characteristics of windstorm hazards, history, as well as the location, extent, and probability of a potential event within the region. Because windstorms typically occur during winter months, they are sometimes accompanied by flooding and winter storms (ice, freezing rain, and very rarely, snow). Other severe weather events that may accompany windstorms, including thunderstorms, hail, lightning strikes, and tornadoes are generally negligible for McMinnville.

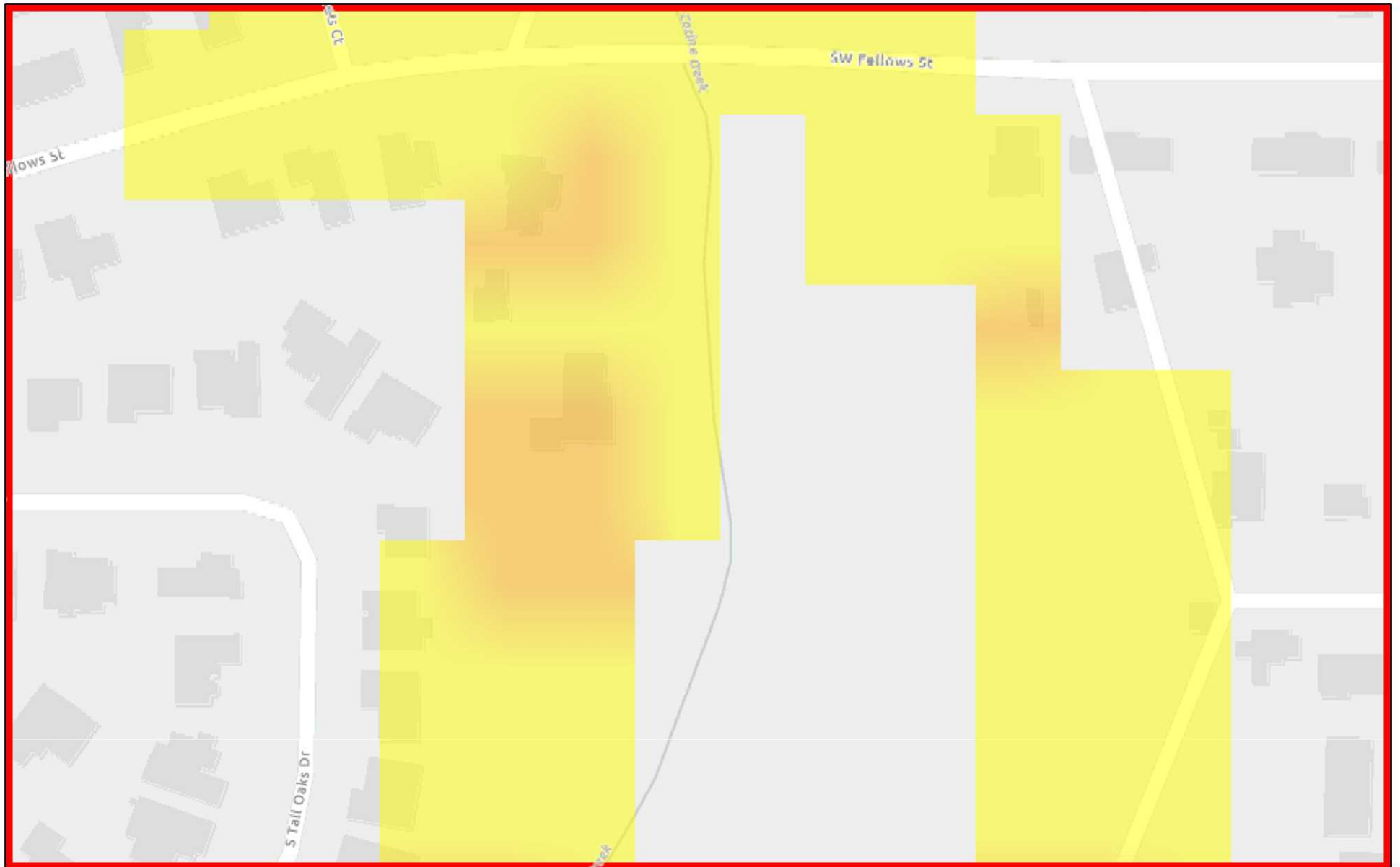
Volume I, Section 2 describes the impacts caused by windstorms, including power outages, downed trees, heavy precipitation, building damages, and storm-related debris. Additionally, transportation, and economic disruptions result as well.

Damage from high winds generally has resulted in downed utility lines, and trees usually limited to several localized areas. Electrical power can be out anywhere from a few hours to several days. Outdoor signs have also suffered damage. If the high winds are accompanied by rain (which they often are), blowing leaves, and debris clog drainage-ways, which in turn may cause localized urban flooding.

Please review Volume I, Section 2 for additional information on this hazard.

Winter Storm (Snow/Ice)

MP 6-20 Landslide Hazards



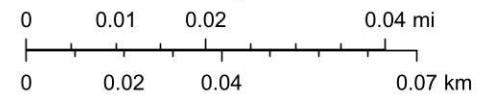
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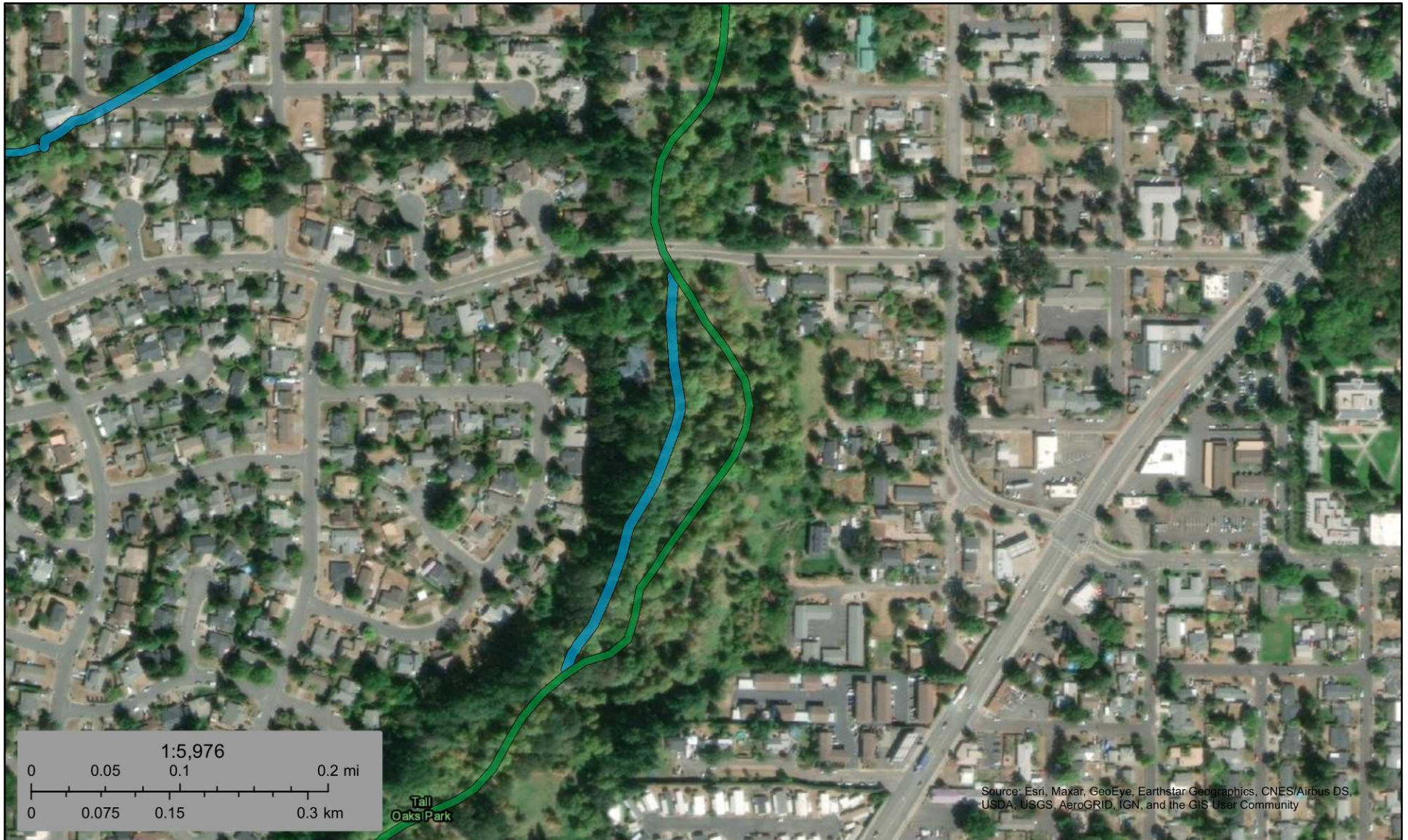
Landslide Hazard

- Low - Landsliding Unlikely
- Moderate - Landsliding Possible

- High - Landsliding Likely
- Very High - Existing Landslide

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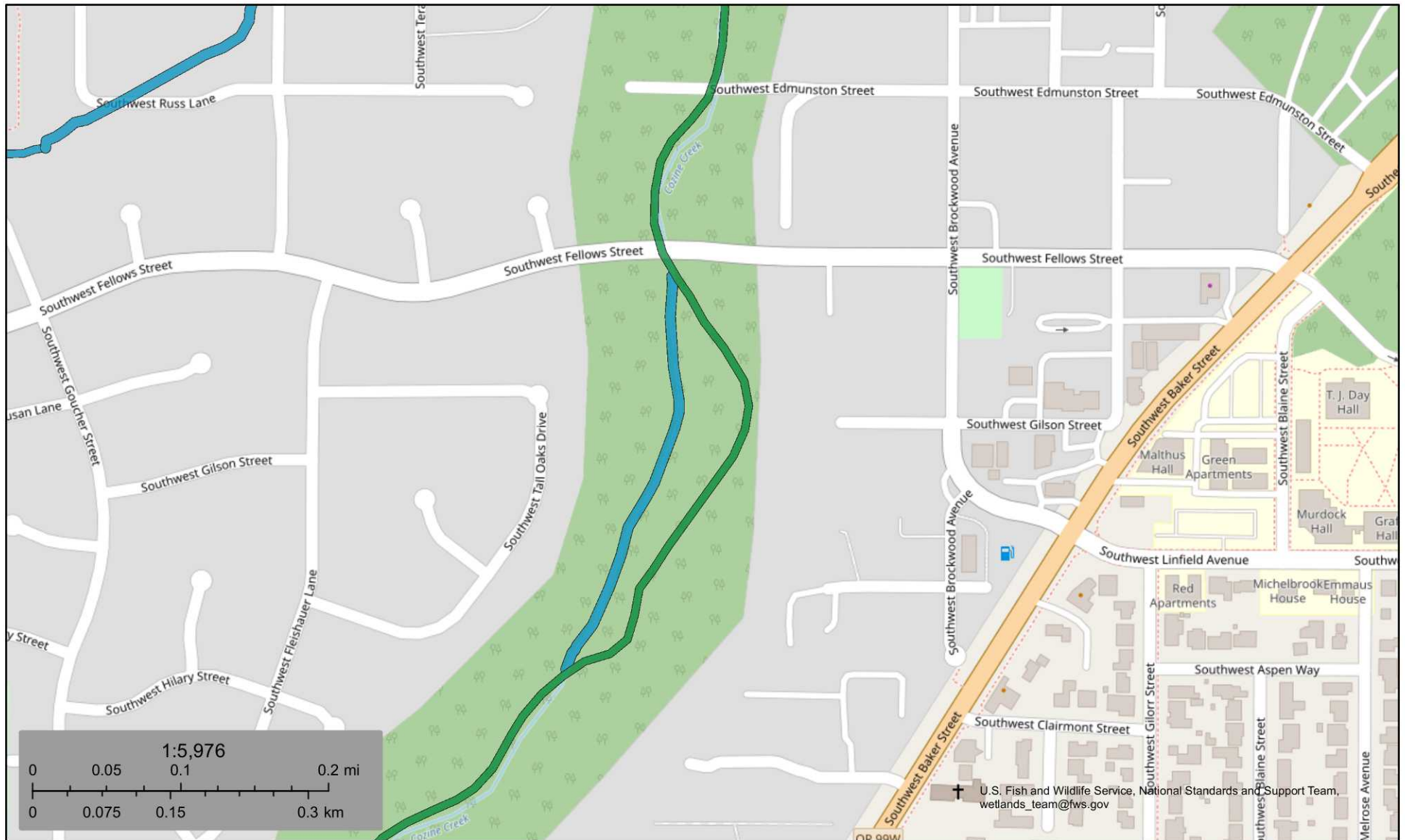


June 15, 2021

Wetlands

- | | | | | | |
|---|--------------------------------|---|-----------------------------------|---|----------|
|  | Estuarine and Marine Deepwater |  | Freshwater Emergent Wetland |  | Lake |
|  | Estuarine and Marine Wetland |  | Freshwater Forested/Shrub Wetland |  | Other |
| | |  | Freshwater Pond |  | Riverine |

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.



June 15, 2021

Wetlands

- | | | |
|--------------------------------|-----------------------------------|----------|
| Estuarine and Marine Deepwater | Freshwater Emergent Wetland | Lake |
| Estuarine and Marine Wetland | Freshwater Forested/Shrub Wetland | Other |
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