

Issues Raised At Hearing
FAQ Sheet
Premier Development, LLC

Question: Why is the City using FEMA data to decide whether the subject property is in the floodplain?

Answer: The City is required to use the officially adopted FEMA floodplain maps (adopted by the City and effective March 2, 2010). This is required not only by the McMinnville Zoning Ordinance (MZO 17.48.010 and 020), but also by state law in ORS 227.178(3), which locks in the standards that apply to the proposal to those in effect at the time the application was first submitted to the City. *See* Planning Department’s “Response to Written Testimony Oak Ridge Meadows,” dated April 18, 2019. The 2010 FEMA standards and the current local code requirements tied to them, are the floodplain standards that were in effect at the time the application was submitted.

Question: Will any part of the 100-year floodplain be developed or filled?

Answer: No. No development or fill is proposed within the 100-year floodplain.

Question: Where is the 100 year floodplain in relation to Existing Houses and the Proposed Street and Lots?

Answer: As shown on the Downstream Floodplain Exhibit Map (see attached), the proposed development does not touch or place any fill within any FEMA regulated floodplain. There are a few homes between Baker Creek and NW Baker Crest Court that are located very close to the 100 year flood plain. Based on this map one would expect to see flooding during large storm events adjacent to these homes because they are adjacent to the FEMA mapped floodplain. This has nothing to do with the proposal.

Question: Shouldn’t the City regulate the applicant’s impact to wetlands?

Answer: No. The City does not regulate wetlands. Moreover, as with floodplain rules, the City may only apply the standards that were in effect at the time that the application was submitted. At that time (and now) the City had no wetland standards. In fact, the City has never regulated any developer’s wetland delineation/impact program. Rather, like many other Oregon communities, the City successfully relies upon the specific expertise of and the comprehensive regulatory programs administered by, the State’s Department of State Lands (DSL) and the federal Army Corps of Engineers (ACOE). The subject property has 3.09 acres of wetlands. The proposal anticipates impacting 1.06 acres of those wetlands and then mitigating as required in the watershed. DSL and ACOE closely reviews all wetland proposals and will review this one too. Specifically, DSL and ACOE will review the applicant’s wetland delineation, the proposed impact and the proposed mitigation plan and, then, before the applicant can move forward, DSL and if ACOE takes jurisdiction ACOE, must approve the delineation, the impact and the mitigation plan, bringing to bear these agencies’ significant expertise and regulatory programs.

Question: Can't the City just deny the development proposal because it impacts wetlands, and never allow the DSL and Corps process to occur?

Answer. No. As explained above, the City has no approval standard that would allow it to deny this or any other development proposal because it impacts wetlands. Moreover, the City has never denied a development proposal because it impacts wetlands and as a result foreclosed the DSL and Corps from doing their respective jobs. Demonstrating the City's most recent support for wetland mitigation and its endorsement of the State's substantial wetland review and mitigation program is the City Council's 2017 approval of the Baker Creek development (ZC 1-16/ZC 2-16/S 3-16) where conditions of approval supportive of wetland mitigation were adopted. Starting a precedent of denying development otherwise consistent with the applicable zoning designation because of wetland impacts, would establish a precedent that would require the City to completely reevaluate its buildable lands analysis and take wetlands out of the category of buildable lands, resulting in large land needs and a corresponding need for a large UGB.

Question: What steps will DSL and the Corps take review the proposal and its impacts to wetlands?

Answer: Wetlands and other water resources (e.g. streams) in Oregon are regulated by the Oregon Department of State Lands (DSL) and by the US Army Corps of Engineers (Corps). Before a property owner or a developer can impact a wetland or a water resource, they must first obtain permits from the DSL and the Corps. An approved delineation is necessary to provide the applicant with an understanding of where the wetlands are located and of where DSL and the Corps will regulate the property. By law, both the Corps and DSL ask applicants to avoid impacting wetlands as much as reasonably possible given the property's zoning, location and other factors. When wetlands must be impacted for reasonable development consistent with a property's zoning, then these agencies will require that impacts be minimized. Finally, the agencies will require mitigation to compensate for wetland resources that are permanently lost from the proposed development site. Since the proposed project will require permits from DSL and the Corps, both agencies will evaluate the project's purpose and need; the amount of wetland to be impacted; the quantity and type of material to be placed in the wetland; an alternatives analysis describing why the property must be developed and how wetland impacts were minimized; the methods to control erosion during construction; a post-construction stormwater plan; and a compensatory mitigation plan. The proposal has avoided impacting wetlands as much as reasonably possible and minimizes impacts to wetlands. It is expected that DSL and the Corps will concur. The 2.03 wetland area to remain, it is the outcome of wetland avoidance and impact minimization.

The mitigation plan for Oak Ridge Meadows is to buy wetland credits from Mud Slough Mitigation Bank, which services the project area. Justification in using a mitigation bank, as opposed to on-site wetland mitigation, comes from the fact that the previously permitted mitigation plan for creating on-site wetland was unsuccessful despite several attempts.

Question: Isn't the applicant proposing to fill 11.4 acres of wetlands?

Answer: No. There are in total 3.09 acres of wetland on the subject property. The applicant proposes only to impact 1.06 acres, and to preserve and protect the remaining 2.03 acres of wetland.

Question: Will the proposal to fill 1.06 acres of wetlands "increase water pollution to the detriment of current surrounding homes"?

Answer: No. The City's storm water management standards and National Marine Fisheries Service (NMFS) SLOPES V stormwater standards govern this issue. In exchange for filling wetlands, the City and ACOE in consultation with NMFS requires the applicant to replace the drainage functionality that the wetland otherwise provides by detaining water in a detention pond and, then treating it, and then releasing it to Baker Creek at a particular rate of flow that is consistent with the City's Storm Water Management Plan and NMFS SLOPES V requirements. The applicant's plans establish compliance with this requirement. The City does not have any code standard that requires more than this of Premier or any other developer.

Question: Will the proposal to create a "roadbed that will act as a dike" in a wetland, cause water pollution and flooding?

Answer: No. As explained above, the fill for the roadbed is a part of the 1.06 acre wetland fill, the drainage and water quality effects of which are required to be and will be managed by the applicant's proposal to (1) create an appropriately sized detention pond, (2) treat the water, and (3) discharge the treated water into Baker Creek at a controlled rate of flow authorized by the City's Storm Water Management Standards (Exhibit E to City Storm Water Management Plan).

Question: Isn't it a problem to discharge storm water into Baker Creek?

Answer: No. Both the City comprehensive plan and Stormwater Management Plan *require* stormwater from this development to be discharged into natural drainage ways (Baker Creek), and to do so at a particular rate of flow authorized by the City's Stormwater Management Plan -- in particular its standards which are Exhibit E to the Stormwater Management Plan. The applicant's proposal establishes compliance with both requirements (storm discharges to natural drainage ways and at the rate of flow authorized). City requirements mandate that the development's storm management program discharge storm flow into Baker Creek consistent with a theoretical 10 year design storm event. The developer here has demonstrated compliance with this standard. This methodology for addressing storm water applies evenly to this developer and to all other developers.

Question: Shouldn't the City regulate the applicant's impact to wildlife habitat?

Answer: No. First, as with wetlands, the City does not have standards imposing obligations on developers of land zoned residential to identify and protect wildlife habitat. As is explained elsewhere, the City may only apply the standards that were in effect at the time that the application

was submitted. At that time (and now) the City had (and has) no wildlife habitat standards. Therefore, conditions or denial based upon perceived wildlife habitat impacts could not be justified. Second, the property is zoned R-2. This means it is supposed to deliver housing in the density contemplated. Setting aside land for wildlife habitat is inconsistent with the property's zoning and the City's obligation to allow land zoned for housing to deliver housing. Third, the property is not inventoried as wildlife habitat, and it is not quality wildlife habitat in any event. It is not situated in any migration corridor, has only isolated patches of low quality areas for wildlife forage and shelter and is bounded by significant residential development that already impacts wildlife that attempt to survive in this urban area.

Question: Does the City's comprehensive plan impose absolute preservation requirements on "distinctive or unique natural; features"?

Answer: No. The City's Comprehensive Plan Policy 80.00 requires distinctive or unique natural features such as wooded areas, isolated preferable trees and drainage swales to be "preserved wherever feasible." This is not written as an absolute standard. Policy 80.00 is written as a balance to require distinctive natural features be preserved when it is still feasible to do so, while also approving housing contemplated by the zoning district to enable the City to comply with its housing policies and Statewide Planning Goal 10 (Housing). *See* McMinnville Goal V2 and Policies 68.00-71.00. ORS 197.307(3) similarly requires that needed housing "shall be permitted."

Policy 74.00 requires distinctive natural, topographic and aesthetic features within planned developments to be retained in all development designs. Policy 74.00 means that a development design must retain such features, but it does not require that every natural, topographic and aesthetic feature be retained; if that were the case no housing development on vacant land could ever be approved. With regard to Policy 74.00, the proposed development design retains 2.03 of wetlands to be preserved with viewing areas for aesthetic enjoyment, pathway amenities throughout the development are provided as an aesthetic feature for residents to enjoy, a 5.60 acre passive park is provided, steep slopes are preserved and are not graded, and a 0.85 acre active neighborhood park is proposed to preserve steep slopes and native oak trees that exist on this park site. As staff has explained, the proposal meets these standards. A new restrictive interpretation of these policies in this case, would set an untenable precedent for the City that would be a new threshold for all future residential developments in the corporate City limits.

Question: Does Statewide Planning Goal 10 (Housing) only authorize Oregon communities to approve residential development, in a City, within a UGB, on land zoned for housing of the requested density, if the developer demonstrates that there is a need for such housing?

Answer: Absolutely not. Goal 10 (Housing), the City's comprehensive plan, the needed housing statute, and every single case interpreting any of the same, all encourage the development of housing on land zoned and planned for housing, as is the case here. The subject property is planned residential, is zoned R-2, the R-2 zone implements the City comprehensive plan and existing housing needs analysis and existing buildable lands analysis as a part of the City's existing acknowledged strategy to provide needed housing. The City's R-2 zone in general and as applied to the subject property, is acknowledged to comply with Goal 10. There is nothing about the proposal that undermines any housing policy or state rule; in fact precisely the opposite is true.

There is no need or purpose served in re-justifying the subject property as R-2 land. The demand to do so, and demands like it, is an example of an unfortunate type of opponent strategy that makes it difficult and expensive to provide needed housing of any type or density in Oregon.

Question: Why is the active private neighborhood park located where it is within the subdivision?

Answer: The active neighborhood park was carefully planned to be in its proposed location, to make efficient use of the land, to take advantage of the site's natural areas and topography, and to provide ready connections to the proposed public pathway system. As City staff explains: "The active neighborhood park is located in a generally central location within the unusually shaped subdivision so as to be readily accessible." (S 3-18 Decision Document, page 26). This active neighborhood park will be improved with a pedestrian pathway connecting NW Pinot Noir Drive with the lower elevation of NW Pinehurst Drive to the east and with the installation of permanent child-appropriate play equipment on the upland portion of the park.

Question: If the proposal is approved, won't there be more traffic than the existing streets in Oak Ridge Meadows can handle?

Answer: No. The proposal meets all City traffic standards. Even if NW Shadden Drive is never developed into a permanent public street, when the proposed Oak Ridge Meadows subdivision is built out the traffic will be no more than 1,200 ADT on NW Pinot Noir Drive, which is within that street's design capacity to maintain the City's required level of Service "C." The evidence establishes that all intersections will also continue to function in compliance with the City's level of service standards. The impact of traffic on NW Pinot Noir Dr. will be incremental over several years as construction begins, houses are built and new families move in. If Shadden Dr. never gets built, then the current neighborhoods will experience a greater traffic volume, but the increased volume will still meet the City's level of service standards for that street. It is very likely that Shadden Dr. will be built prior to the full build out of Oak Ridge Meadows.

A related practical consideration is that it is estimated that it will take up to five years for both phases of the proposed Oak Ridge Meadows subdivision to be built out. Stafford Land Development (an unrelated developer) controls the timing of the improvement and public dedication of NW Shadden Drive being constructed as a permanent street, because the NW Shadden Drive permanent street connection is on Stafford Land's property. It is likely that NW Shadden Drive will be constructed as a public street by Stafford Land before both phases of the proposed Oak Ridge Meadows subdivision is built out, in any event. This is known because Stafford Land (1) has already had its preapplication conference with the City, (2) has conducted its required neighborhood meeting, and (3) has recently submitted its subdivision application to the City. Moreover, the City has made clear that a condition of the initial development of the Stafford subdivision on its adjacent land will be the construction of the permanent NW Shadden Drive public street connection. Accordingly, it is likely that there will never be a point at which the proposed Oak Ridge Meadows subdivision is fully built out and Shadden Drive is not constructed as a permanent public street connection providing access to Oak Ridge Meadows. But in either event, the record demonstrates that there is sufficient design capacity on NW Pinot Noir

Drive to accommodate and serve the projected vehicle trips, with or without Shadden Drive's development.

Question: How can the applicant widen Pinot Noir Drive from Blake St. to the proposed subdivision, without taking private property?

Answer: No road widening will occur on private property. The existing NW Pinot Noir Dr. right of way is 50 feet. Thus, there is room within the existing right of way to widen the paved section of NW Pinot Noir Dr. from 21' to 28'.

Question: Does Ordinance 4845 restrict the development of Oak Ridge Meadows to 76 lots and, if so, can that restriction only be removed by repeal of Ordinance 4845?

Answer: Ordinance 4845 only adopts findings to supplement Ord 4822, nothing more. The staff recommendation repeals Ord 4822 and replaces it with the findings, conclusions and conditions that the City would approve in this proceeding. The repeal of Ord 4822 is in its entirety as recommended by City staff, including as it was amended by Ord 4845 and, as such, it repeals the 76 lot limitation that Ord 4822 as amended contained. The repeal of Ord 4822 and replacement with the new decision that the City would make in this proceeding, changes many things – it changes the absence of a public pathway system, converts lots to open space and so forth. It is not just the 76 lot limitation that will be removed. The 76 lot limitation no longer makes sense because circumstances have changed, the City is free to remove Ordinances 4822 and replace it with a new ordinance. Traffic analysis data and comments from the Fire Department indicate approval of this subdivision layout. The applicant has Stafford Land's written support (applicant's Exhibit 27) to obtain an easement allowing Premier Development the right to construct a secondary emergency access across Stafford Land's property to Baker Creek Road. The applicant proposes to construct this temporary emergency only accessway.

Question: If the City wants can it also now repeal Ord 4845?

Answer: Yes. If the City wishes, it may also repeal Ord 4845 which did nothing more than amend the findings supportive of one condition of approval for Ord 4822. Doing so would seem to alleviate a concern expressed by opponents. No new notice would be required to repeal Ord 4845, as well as Ord 4822.

Question: Can the proposal be approved when it shows a potential extension of Pinehurst St. stubbing at the Toth property, where Les Toth has stated he will not allow any road to be built on his land?

Answer: Yes. The proposal is required to show the potential Pinehurst Street extension to allow for the possibility of connectivity to land adjacent to the subject site. The City has asked that the stub street be shown in that location. The developer, however, has no obligation to show that the street extension of Pinehurst has a willing servient property owner to facilitate that extension at this time. Rather, the developer is required only to show a stub street in this location to enable connectivity in the future should the City desire it.

Question: Will there be any traffic improvements to Baker Creek Road?

Answer: Yes. Correspondence from City Engineer Mike Bisset dated May 1, 2019, states in part:

“We have included \$50,000 in next year’s budget (starting on July 1, 2019) to restripe Baker Creek Road (from Hill Road to approximately Elm Street). The work will add a center turn lane, and striped bike lanes. The goal is to have the work completed before school starts next fall.”