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## MEMORANDUM

**DATE:** April 18, 2019  
**TO:** Planning Commission  
**FROM:** Planning Department Staff  
**SUBJECT:** Response to Written Testimony on Oak Ridge Meadows

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A number of items of written testimony have been provided and entered into the public hearing record on the Oak Ridge Meadows land use applications (PDA 3-18, PDA 4-18, and S 3-18). There are some comments and repeated themes in the written testimony that the Planning Department would like to address and provide some clarification on for the Planning Commission's consideration.

- **Definition of floodplains and wetlands:**

There has been reference to floodplain areas and wetlands in most of the testimony provided, and staff would like to clarify that those areas and lands are not the same. They are different land designations with different regulations and protections.

Floodplain areas are determined by the Federal Emergency Management Agency (FEMA) through the Flood Insurance Study for Yamhill County, Oregon and Incorporated Areas and the accompanying Flood Insurance Rate Map (FIRM) panels. The Flood Insurance Study and FIRM panels for Yamhill County and the City of McMinnville were updated by FEMA in 2010 and became effective on March 2, 2010.

The FIRM panels identify "1% annual chance" and "0.2% annual chance" flood areas in the City of McMinnville. These floodplain areas are more commonly referred to as 100-year (1% annual chance) and 500-year (0.2% annual chance) floodplains. However, the terminology including "years" is based on the annual percentage chance of that level of flood event occurring. In other words, there is a 1 in 100 chance (1%) of a flood event impacting the area shown on the FIRM panel that is more commonly referred to as the 100-year floodplain, and there is a 1 in 500 chance (0.2%) of a flood impacting the area shown on the FIRM panel that is more commonly referred to as the 500-year floodplain.

The City of McMinnville regulates use and development in Special Flood Hazard Areas (1% annual chance floodplain) in detail in Chapter 17.48 of the McMinnville Municipal Code (MMC).

Wetlands are separate from the floodplain areas. Wetlands are defined in Section 17.06.015 of the MMC as "Areas that are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and other similar areas." This is

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consistent with a definition of wetlands in state statute (ORS 196.800(17)), which is ““Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

The City of McMinnville does not have specific code language or programs for wetlands and like many communities in Oregon relies on state laws and programs that are in place for the management of wetlands.

Wetlands are managed statewide by the Oregon Department of State Lands (DSL), whose authority is derived through numerous state statutes including, but not limited to, ORS 196.668, ORS 196.672, ORS 196.681, ORS 196.795-990. DSL’s website (<https://www.oregon.gov/dsl/WW/Pages/WetlandConservation.aspx>) includes the following information on the department’s regulation of waterways, wetlands, and other waters:

Managing water and wetland resources is an integral part of the state’s removal-fill permit program. The Oregon’s Removal-Fill Law (ORS 196.795-990) is the primary state law, enacted in 1967, that authorizes the regulation of activities within waters and wetlands. In general, the law covers activities such as removal, fill and other ground-altering activities within “waters of the state” and requires people who plan such activities to obtain a permit from DSL. The state’s goal is to maintain a stable resource base through avoidance and minimization of adverse impacts and by compensating for unavoidable impacts. Unavoidable impacts are required to be compensated for through compensatory mitigation.

In addition to the removal-fill law, wetland conservation oversight was established by statute in 1989 through a comprehensive bill (ORS 196.668 and 196.672) that stressed the importance of wetlands. Professional wetlands staff – including jurisdictional coordinators and resource specialists - are responsible for:

- Developing and maintaining the Statewide Wetland Inventory
- Providing wetland planning assistance
- Developing standards and tools for identifying and assessing wetlands and streams
- Providing public information and training
- Reviewing and approving wetland delineations for planning and regulatory permitting

- **Development in the floodplain or Baker Creek:**

Similar to the comment above, the terms floodplain and wetland are used somewhat interchangeably in some of the testimony, with some references to the proposed development occurring in the floodplain. The currently proposed subdivision plan (S 3-18) does not include development in any floodplain area, as identified on the FEMA FIRM panels (effective date March 2, 2010). The proposed subdivision plan also does not include any development or change to Baker Creek or its floodway. In much of the subdivision, the floodplain areas and other lands immediately adjacent to Baker Creek will be located in a future public park and in a privately owned open space tract. This will actually preserve the floodplain and the lands immediately adjacent to Baker Creek, including the existing vegetation and wildlife habitat that exists in those locations. To provide context, the proposal would be less impactful than other previously-approved subdivisions along Baker Creek (Crestbrook

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First Addition, Norwegian Wood Subdivision, Autumn Ridge Subdivision Phase 2, and the existing approval of Oak Ridge Meadows by Ordinance 4822) that include lots, and therefore private property, which are bounded by Baker Creek itself and include floodplain areas within the lots.

- **Size of the wetlands:**

Some testimony has referred to the wetland on the subject property as being 11.47 acres in size. The number of 11.47 acres is the total size of the un-platted 4<sup>th</sup> phase of Oak Ridge, which is proposed by the applicant to be removed from the Oak Ridge Planned Development (PDA 3-18). The area of the wetland that is located within this 11.47 acre parcel is 3.09 acres in size, according to the delineated wetland identified in the application materials.

- **Amount of wetlands being impacted/filled/mitigated:**

Some testimony has implied that 11.47 acres of wetland are proposed to be filled. Of the 3.09 acres of wetlands that are located on the subject property, 1.06 acres of wetlands are proposed to be impacted in the current subdivision proposal. A condition of approval (condition #22 in S 3-18 Decision Document) is being recommended by staff, that if the subdivision is approved, the subdivision design would be contingent on the applicant receiving approval of a wetland removal-fill permit from the Oregon Department of State Lands for any development proposed in the wetland. Further, conditions of approval (conditions #10 and #11 in PDA 4-18 Decision Document) are suggested by staff to require that a majority of the delineated wetland be preserved, and that the final wetland delineation and report be provided to the Oregon Department of State Lands for review and approval prior to issuance of construction permits.

- **Mitigation of impacted wetlands:**

As discussed in more detail above, development in wetlands is managed, reviewed, and approved by the Oregon Department of State Lands through their Removal-Fill Permit process. The proposed subdivision plan (S 3-18) does include impacts to 1.06 acres of wetlands. A condition of approval (condition #22 in S 3-18 Decision Document) is being recommended by staff, that if the subdivision is approved, the subdivision design would be contingent on the applicant receiving approval of a wetland removal-fill permit from the Oregon Department of State Lands for any development proposed in the wetland. The applicant will be required at that point to provide evidence for how they are satisfying any and all applicable state statute related to the Removal-Fill Permit process. The City of McMinnville will not sign a final plat for any subdivision or issue any construction permits without this permit approval from the Oregon Department of State Lands. At the same time though, the City of McMinnville does not have comprehensive plan policy or code criteria that does not allow a developer to pursue an approved wetland mitigation plan. Although there are comprehensive plan policies and zoning code criteria that discuss encouraging developers to preserve significant natural features, there is a precedent in McMinnville to allow mitigation on the fringe of a wetland for development, with an emphasis on protecting and preserving the majority and core of the wetland. Many other neighborhoods have mitigated wetlands for development. If the City of McMinnville would like to adopt a policy that does not allow development in any portion of a wetland, than that should be discussed as a legislative amendment to the Comprehensive Plan and wetlands should be removed from the city's buildable lands inventory.

- **Pinehurst as the “primary access street” and a future street:**

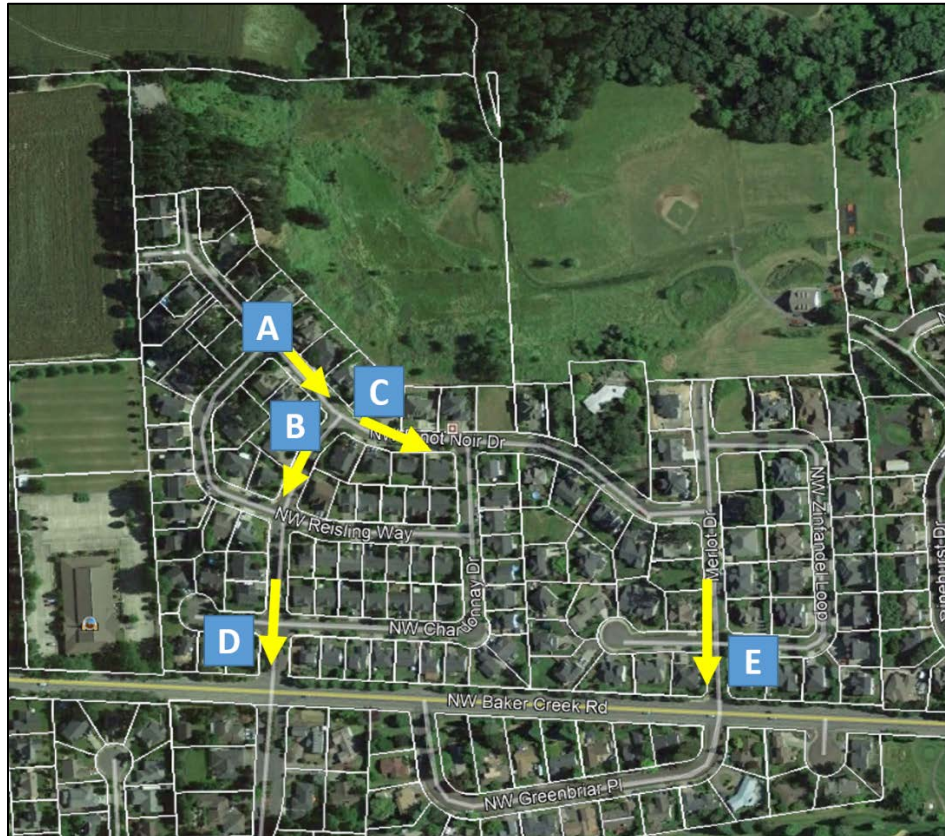
Pinehurst Drive is not shown as a primary access street in the proposed subdivision plan (S 3-18). The primary access streets are Pinot Noir that distributes onto Oak Ridge and Merlot Drive to access Baker Creek Road, and the future Shadden Drive extension.

Pinehurst Drive is identified as a local residential street that distributes trips onto Pinot Noir and eventually Shadden Drive. Pinehurst Drive also will eventually provide connectivity to the developments east of this development per the requirement of the McMinnville City Code, Section 17.53.101(E), which requires the applicant to show how local residential streets will connect with future developments.

The applicant has described in their narrative and provided findings for Policies 118.00, 132.41.30, that the proposed location of Pinehurst Drive is to provide street connectivity to the east, based on the existing and constructed network of streets in the surrounding area. There are two existing roads (Pinehurst Drive in Crestbrook First Addition and Merlot Drive in Compton Crest) that dead-end at the same property that the applicant is proposing to dead-end their portion of Pinehurst Drive.

In the future, an extension of Shadden Drive will serve as the primary access street to the Oak Ridge Meadows subdivision. More specifically, the TIA assumes that, once the Shadden Drive connection is built, 80% of the vehicle trips from the Oak Ridge Meadows subdivision will use Shadden Drive for access.

The findings from the TIA are summarized below, with pertinent information highlighted:



**Average Daily Weekday Traffic - Before Opening Shadden Connection**

Location	ADT (inbound and outbound)			PM Peak Estimate		
	Existing	New	Combined	Existing	New	Combined (in/out)
A (Existing + 100% of new)	180	1,020	1,200	18	107	125 (76/44)
B (70% of exist., and 70% of new)	126	714	840	13	75	88 (55/33)
C (30% exist., and 30% of new)	54	306	360	5	32	37 (23/14)
D	440	714	1,154	44	75	119 (75/44)
E	320	306	626	32	32	64 (40/24)
F (Shadden)	0	0	0	0	0	0

**Average Daily Weekday Traffic - After Opening Shadden Connection**

Location	ADT (inbound and outbound)			PM Peak Estimate		
	Existing	New	Combined	Existing	New	Combined (in/out)
A (existing, and 20% of new)	180	204	384	18	21	38 (24/14)
B (70% of exist., and 14% of new)	126	143	269	13	14	27 (17/10)
C (30% of exist., and 6% of new)	54	61	115	5	6	12 (8/4)
D	440	143	583	44	14	58 (37/21)
E	320	61	381	32	6	38 (24/14)
F (Shadden - 80% of new)	0	816	816	0	81	81 (51/30)

- **Suggested changes to lot sizes and density in some portions of the subdivision:**

Friends of Yamhill County state in their testimony that: “We recognize that if land inside the UGB is set aside for the wetlands steps need to be taken to achieve the desired number of homes. This should be addressed with adjustments to lot sizes and overall density in other higher sections of the project. We encourage the City of McMinnville to use all available tools to address the chronic housing shortage.”

However, the City of McMinnville has specific comprehensive plan policies that do not allow high density residential development adjacent to floodplains as a means of protecting the floodplain. The highest density development allowed is R2, the same density as the proposed development.

*McMinnville Comprehensive Plan:*

71.08 Slightly higher densities (R-2) should be permitted on lands that exhibit the above-listed characteristics (Policy 71.06), and following factors or areas:

1. The capacity of facilities and services;
2. Within one mile of existing or planned transit;

3. *Lower sloped areas within the West Hills;*
4. *Riverside South area (lands more than 500 feet from planned and existing heavy industrial lands);*
5. *Proximity to jobs, commercial areas, and public facilities and services, should be zoned for smaller lots; and*
6. *Proximity to and having potential impact upon identified floodplains and other environmentally sensitive areas (the higher the potential impact, the lower the allowed density). (Ord. 4796, October 14, 2003)*

Further, the R-2 (Single Family Residential) zone, which is the existing underlying zoning district has a minimum lot size of 7,000 square feet (per Section 17.15.030 of the MMC). The proposed Planned Development amendment (PDA 4-18) and subdivision plan (S 3-18) use lot size averaging to create an average lot size of 7,770 square feet, meeting the minimum lot size requirement of Section 17.15.030 of the MMC. The use of lot size averaging is allowing for increased density in areas of the subject site further away from environmentally sensitive areas (the higher elevations), and decreased density in areas of the subject site closer to environmentally sensitive areas.

All land-use applications need to be reviewed against the policies and regulations in place at the time of the application submittal. If the City of McMinnville would like to change its policies about housing density in proximity to floodplains that is a future legislative discussion and not part of this land-use decision.

- **Comments on larger floodplain further west on Baker Creek:**

The FEMA Flood Insurance Study included study, analysis, and identification of base flood elevations along Baker Creek, but only up to a certain extent. The limits of the detailed study area of Baker Creek end at the western boundary of the property subject to the proposed subdivision (S 3-18). The FEMA FIRM panels show 1% annual chance (or 100-year) floodplain areas with one symbol (a blue dotted area), but there are different zones within the 1% annual chance floodplain areas based on the detailed studies that were completed in the Flood Insurance Study. The floodplain areas on the subject site are identified as Zone AE, which is described on the FIRM panel as zones where “Base Flood Elevations determined”.

To the west, the floodplain areas along Baker Creek are identified as Zone A, which is described on the FIRM panel as zones where “No Base Flood Elevations determined”. Because these Zone A areas were not studied in detail, the floodplain areas are generally shown as larger areas than the Zone AE areas where more detailed study and analysis was completed.

A portion of the FIRM panel (panel number 41071C0401D) that shows the extent of the Baker Creek detailed study, and the identification of Zone AE and Zone A is provided below.





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use applications were submitted prior to this date, so the City cannot enforce these policies on this land-use application.