

I. Call to Order

A regular session of the Gresham Planning Commission was called to order by Chair Drechsler on the 14th of September 2020, at 6:35 PM online via Zoom. The meeting was digitally recorded and minutes prepared by Jennifer McGinnis.

COMMISSIONERS PRESENT: Paul Drechsler, Chair
Richard Anderson, Vice-Chair
Mike Bennett
Jef Kaiser
Sue Ruonala
Phil Wich

COMMISSIONERS ABSENT: Laura Pramuk

STAFF PRESENT: Katherine Kelly, Planning & Implementation Manager
David Berniker, Urban Design & Planning Director
Jennifer McGinnis, Planning Technician II
Amanda Lunsford, Administrative Analyst
Kevin McConnell, Senior City Attorney
Kathy Majidi, Environmental Program Coordinator
Sarale Hickson, Assistant Development Planner
Ken Koblitz, Development Engineering Manager
Jeff Lesh, Environmental Data Analyst

COUNCIL LIAISONS PRESENT: Councilor Hinton

COUNCIL LIAISONS ABSENT: Councilor Widmark

II. Environmental Overlay Project (EOP) Update

David Berniker provided a short overview of the EOP project, which was last presented to the Planning Commission in February. He stated that the goal of this presentation is to provide an update and more detailed look at the new Hillside overlay elements. Mr. Berniker described EOP as one of the most complicated projects on the work plan for a number of years and that Planning, Development Engineering and Natural Resources staff have worked with top technical experts to vet changes to the development code and overlay maps to implement changes that

staff, developers and landowners have long recognized to be necessary. Staff have also been working with Gresham's fire department and the Department of Forestry to implement wildfire risk reductions into the hazard mitigation and natural resource code. Mr. Berniker explained that the overall goal of the project is to balance development rights, natural resource protections, and community livability while integrating new data into technical sections of the code and natural resource buffers.

Sarale Hickson and Kathy Majidi went into the details of the project. Ms. Hickson started by describing the purpose of the project, which is to protect wetlands and streams, riparian areas, upland habitat, and forested hillsides and reduce landslide risk by updating multiple code sections including the Environmentally Sensitive Resource Areas (ESRAs) of Pleasant Valley and Springwater, Habitat Conservation Areas, and the Hillside Physical Constraint District. The project also included updates to the Floodplain Overlay District, which were completed in 2019.

Ms. Majidi described the challenges with the existing buffer, which include not accurately reflecting existing conditions, dissimilar outputs from neighbor to neighbor, and using outdated data. Ms. Majidi explained that the complexity and illogical nature of the buffer has reduced adherence from the public. The proposed changes to the buffers will not lead to a significant change in the level of protection but will use the best available data. In addition, it will change the ESRAs from land use districts to an overlay in order to address gaps and overlaps in protections and make it easier to do map corrections.

Ms. Hickson added that there will be a similar level of protection, but it will be simplified. In addition, the proposed amendments will create a single review process for new single-family homes on vacant lots, provide clear and objective standards, clearly identify areas near wetlands and waterways that have limits on development, and establish the requirement to look for wetlands in areas they are likely to be. Geotechnical issues will be taken into consideration during grading and building permit processes and it will be clearly defined when a geotechnical review is required. The goals also include providing greater predictability for developers wishing to divide land or build. Protections will be ensured for forested hillsides. In addition, the project will introduce fire safety considerations with hazard tree removal. Other changes include allowing more area to be temporarily disturbed but allowing less to be permanently disturbed. In non-residential areas, high-value resource areas will not be allowed to be disturbed, impacts to other resource areas must be mitigated, and a maximum of 25% of the resource area may be disturbed. Lastly, Ms. Hickson explained that more flexibility in mitigation design will be allowed.

Staff also explained the cash-in lieu and density transfer provisions. Cash-in-lieu will be allowed instead of mitigation in certain circumstances, for example on single-family residential properties so as to not require homeowners to look after a mitigation area. The cash-in-lieu will be used for natural resource projects. For non-residential projects, cash-in-lieu will only be allowed if there is not enough room to put all mitigation on site. Density Transfer will be allowed as an incentive to not disturb resource areas, by allowing extra density in portions of the site not in resource areas. There will be limitations on the density transfer, including limits on reductions to lot size, setbacks, and street frontages as well as a limit on the increase of density.

Ms. Hickson gave an overview of the project status, including that draft code and maps are ready for public review and public comments are due October 1. She stated that public work sessions and stakeholder meetings would be happening this week. Ms. Hickson explained that since there is a drive to finish the project by the end of the year prior to new Council members taking office, the Planning Commission hearing is scheduled for November 23 and the Council hearing is scheduled for December 15.

Commissioner Wich asked if square footage for in-lieu payments for mitigation will be calculated before or after surface water treatment protocols. Ms. Majidi responded that stormwater facilities would be considered an impact in buffer areas, so they would be calculated as part of the disturbance area.

Commissioner Wich asked for clarification on what defines disturbance as related to natural resource protection areas. Ms. Hickson responded that permanent disturbance would include grading, building, and flatwork, and areas where vegetation and trees will be permanently removed. This type of disturbance will require mitigation. Temporary disturbance includes the removal of small trees and areas for staging and stockpiling. The proposed changes to the code will allow the developer more room to work without being tied to that area.

Commissioner Wich asked how long the wetland or resource area needs to be changed before the changes are reflected in the boundary. Ms. Majidi responded that the state recognizes the boundary as valid for 5 years from the date of concurrence. At that point the City will update the buffer. This buffer will stay in place until there is a land use trigger or a desire from the property owner to have it redefined.

Commissioner Anderson asked for clarification on the different levels of tree protection. Ms. Majidi responded that trees over 6 inches in diameter are protected in the current buffer, which is the same as federal FEMA regulations. For additional levels, the team researched other jurisdictions and followed the most compelling data, which protected trees 24 inches in Diameter at Breast Height (DBH). Trees 6 inches-24 inches will be considered temporary disturbance and trees over 24 inches will be considered permanent disturbance. Commissioner Anderson asked if there are requirements to protect the dripline. Ms. Majidi responded that they are protecting the critical root zone, which extends further than the dripline for an older tree.

Commissioner Bennett asked if Staff had run into any situations where a landowner had already developed in zones that were not part of the original buffer and how will that be accounted for moving forward. Ms. Hickson responded that if the construction of a single-family home has disturbed much more than what is currently allowed to be disturbed, anything legally done up to this point will be allowed to continue. If the landowner created illegal disturbance, it would be treated as a violation of this code. Anything allowed at the time it was done can continue as an allowed use, will be documented, and transfer with the land.

Commissioner Bennett asked how public forums were noticed and how they will be conducted. Ms. Hickson responded that they will be held using Zoom and that mailers were sent to everyone with property affected with general information about the project as well as details about the opportunities for input. The information was also put on the City website and emails were sent to people identified as interested parties.

Commissioner Kaiser stated that he was one of the property owners that got the mailing. He went to the project website and read the two draft reports but could not find the overlay maps. Ms. Hickson explained where to find the maps under the Homeowner information tab on the webpage. Commissioner Kaiser asked if there was any input from the Neighborhood Coalition that stood out. Sarale responded that there was useful feedback that was incorporated into the slides for this meeting. In particular, the Neighborhood Coalition had questions about density transfers and cash-in-lieu. Ms. Hickson said that she believed the answers the project team gave were appropriate, however there were still some questions about density transfers and Staff will go into more detail on that topic at a future date.

Commissioner Kaiser then asked how mitigation sites have been addressed. Ms. Hickson responded that in the draft code, mitigated sites will be in a separate tract most of the time. When not in a separate tract, the mitigation site will be in an easement or deed restriction. Homeowners will not own the mitigation site as individuals. The language about who will be responsible to maintain the sites will be part of the deed or plat notes. Mr. Koblitz added that there will be an obligation to maintain the sites for five years but after that, they will be protected but are not required to be maintained. Mitigation areas are different than water treatment in that they are intended to remain natural and don't serve a specific water quality function. Ms. Majidi added that in the last three years, the City has used conservation easement language on several projects where they recognize it is an individual's land, but the City maintains the right to come onto the property and fix issues.

Commissioner Kaiser expressed concern about the penalty sections not being enforced. Ms. Hickson responded that the penalty sections are still under legal review. She explained that in the proposed Hillside & Geologic Risk Overlay, if a violation occurs where the slope may fall, the code enforcement track is much shorter. However, the difficulty is that they don't have enough staff to deal with every violation. Ms. Majidi added that new programmatic permit standards were written for large land managers in area, such as PGE, Metro, and the Gresham Natural Resources and Parks departments. All of these groups are cognizant of the issues and have agreed to the proposed standards. Commissioner Kaiser emphasized that there shouldn't be language in the code that the City can't follow through on, but there should be language that makes it clear the city will follow through on enforcing the code.

Commissioner Bennett asked if any proposed code changes would be in conflict with HB 2001. Ms. Hickson responded that the team did examine this and decided that some issues related to housing would be better dealt with during the code changes related to HB 2001. However, the team did write the code so that everything that applies to single-family housing also applies to

duplexes. They have addressed and written non-conflicting language where possible, but there will be areas that need to be updated.

Commissioner Ruonala asked how property owners in shallow landslide areas are going to be impacted. Ms. Majidi responded that some are deemed high risk, and anyone within that area would be notified. She added that an IMS57 publication from DOGAMI has an interactive map with a landslide inventory.

Commissioner Ruonala stated that the 500-acre reduction proposed in the Hillside overlay seemed substantial. Ms. Hickson responded that since the resolution was so poor when the current Hillside overlay was created, that a large 100-foot buffer was added to sloped areas. The proposed overlay uses a much smaller buffer. Mr. Lesh added that previously there was a greater level of uncertainty about the location of risk areas, but they are now able to target the risk more closely with more confidence. Moderate to high risk areas for deep landslides are included in this overlay. The areas deemed at risk for shallow landslides are near creeks or on slopes above 15%.

Commissioner Ruonala asked for clarification on the proposed changes to the geotechnical report. Ms. Hickson responded that currently a report is required for any commercial development or land division, but the scope does not usually go down to the building pad level. Often a geotechnical report is required for each individual lot prior to building on that lot, but this is based on what the Conditions of Approval were and what the report said at the time of land division. The report is not in itself a clear and objective standard. The team is proposing a modified route of still required a report for land division, but for construction of individual houses or other development such as retaining walls, only a statement signed by a geotechnical engineer that the slope will not be put at risk will be required.

Commissioner Ruonala expressed that the decision to require a geotechnical review has often been left to the manager's discretion. Many times it was not required and now there are landslide situations, particularly in the Powell Valley area. Mr. Koblitz responded that there will be definitive requirements that necessitate geotechnical involvement. Whereas previously the applicant submitted a report that just talked about the site, now the applicant will be required to assert the development will be appropriate for the site. This requires more accountability on behalf of the geotechnical professional. Ms. Hickson added that the grading will be done at subdivision level, with the developer responsible for grading of building pads and stabilization methods. This makes the process more simple for someone wanting to build a single-family home while making developers responsible for ensuring the development on the whole is safe.

Commissioner Ruonala stated that she would like to see mitigation be targeted toward the area it was removed from and that it should be retained in another area of that neighborhood if not possible on the direct site. Ms. Majidi responded that applicants will be required to complete as much mitigation on site except for on existing single-family home sites. If there is not enough room, cash in lieu will be required and directed toward areas on the City's high priority list. Currently, this mitigation is lost. Mr. Koblitz added that the team did struggle with the idea of

having cash-in-lieu and how close mitigation needed to be to the impact. In the end, they decided to focus efforts on making sure as much mitigation as possible was done on-site but didn't want to limit how cash-in-lieu could be used to such a localized area that it wasn't effective.

Ms. Hickson explained that in regard to density transfer, there can only be slight reductions to minimum lot size and density can only be transferred within the same planning area, so this will not allow extremely dense neighborhoods to be created. Commissioner Ruonala stated that she thinks of Rockwood, which has been hit hard with higher density and is very deficient in natural resources and tree canopy. She stated that she would like to see some protections for different areas in that regard. Ms. Hickson responded that most of the overlay areas are south of Powell Blvd. so this project will not impact Rockwood much. However, the team did some analysis on the impact to minorities, historically disenfranchised, and low-income people to see the net impact on those areas. Mr. Lesh added that they compared existing protected acreage to proposed protected acreage to see if the change in levels of protection was significantly different in marginalized areas and the analysis showed that it was not.

Commissioner Bennett asked whether the project team has coordinated resource capabilities with the building division as all permitted construction methodologies will need to be reviewed from a technical engineering perspective to make sure they meet the intent of the development code. Is the building division prepared with staff who have the skillsets to support that activity? Ms. Hickson responded that structural engineers and the building division were part of this project and have not rejected what the team is proposing.

Commissioner Anderson asked if the team has talked to the geotechnical industry to make sure they will write the kind of report described. Ms. Majidi responded that while the industry is resistant, there are samples of this approach that have been used in numerous cities in the area. The team is working with two on-call geotechnical firms on this project. Ms. Hickson added that the firm providing the report needs to be certified.

Commissioner Anderson stated that when setting fines, the team should consider that some developers will consider fines part of doing business. Enforcement will always be part of the challenge. Commissioner Kaiser stated that he agrees with Commissioner Anderson. He added that the penalties section seemed very vague and while the code was strong, the penalties section doesn't seem to have the same weight.

Chair Drechsler asked how mitigation options will be chosen. Ms. Majidi responded that the developer has some ability to choose but will need to work with the City. Chair Drechsler explained that his concern with allowing the developer to choose is that they will likely choose the cheapest option, not necessarily the best option so the City should not be too flexible. Ms. Majidi responded that it is the developer's choice to an extent, but they will not be allowed to put in something that doesn't make sense. The technical guidance manual will have a full description of how the mitigation process works. She added that Chair Drechsler's sentiment was echoed by the Neighborhood Coalition and is something that they will be looking at very

carefully. She explained that flexibility in mitigation will increase further away from the resource area but will be very strict in the inner resource area.

Chair Drechsler stated that he also has concerns about cash-in-lieu being the default for single-family lots. Mr. Koblitz explained that this only applies to existing single-family lots. The majority of development comes in as a subdivision and, in this situation, cash-in-lieu would only be allowed if the developer runs out of room on the site. Cash-in-lieu will only be required on an existing single-family lot that is virtually all resource area. Chair Drechsler added that he supports creating options and allowing for infill development but does not like that this is the default in that situation.

Chair Drechsler then asked if they can add a requirement to replace any tree removed in an environmentally sensitive area with the same size tree. Mr. Koblitz responded that he agrees with the general sentiment that the Commission wants adequate code enforcement provisions and the team is still trying to work through this with the legal department. Chair Drechsler emphasized that he would prefer this not just be done through fines and penalties, and rather through replacement in these situations. Ms. Hickson responded that they understand the Commission specifically wants the project team to address unanticipated large tree loss during development and they will see what they can do with legal to address these comments.

Commissioner Ruonala brought up issues in her neighborhood related to hillsides with a slope over 15%, a high water table, and poor drainage soils. She stated that a geotechnical review was required at the time of development on some properties along with other Conditions of Approval. However, in some instances, these requirements were not always implemented or enforced. Because of this, many property owners in that area have had problems. She asked if Staff felt confident when talking about inspections that the conditions will be enforced and that monitoring will be adequate. Mr. Koblitz responded that while he doesn't know that the code makes things any better or worse, processes are far better than twenty years ago when those issues happened in that particular neighborhood. Ms. Hickson added that Planning is now involved in the review of single-family homes where they weren't before. Since Planners now review building permits, the Conditions of Approval are much more likely to be caught by a practiced planning eye. In addition, communication is much improved across departments. Commissioner Bennett clarified that the approval process is not the problem, it's the implementation of construction activities and final inspections. He stated that he wants to make sure the building department has the resources to review the requirements from planning and verify they are met on site. Sarale responded that while Planning is doing more inspections, Planning is not likely to start doing single-family home inspections.

Commissioner Wich stated that he thinks they need to use the term "significant" along with the terms "mature" or "large," as there can be a tree that is relatively small that still provides a significant amount of habitat benefit. The City typically defaults back to code enforcement to enforce the tree code, but codifying replacing removed significant and large trees with another tree would keep us from having to do this. This would be a good place for a consulting arborist to give their input when defining those trees and the definition of significant tree relative to

development. Ms. Hickson responded that they are decoupling the tree code and natural area code because they would like to better regulate the trees in these significant areas and it is currently difficult for Code Enforcement and planners to understand what regulations apply. She added that the Urban Forestry Subcommittee was invited to a work session later this week.

Commissioner Anderson asked if building permit fees should be higher in these protected areas since the City has constraints with staff resources for inspections. Ms. Majidi replied that this may be a good option. Commissioner Bennett stated that this is not without precedent as this has been done before in Gresham. He stated that this may be a good option for the City to pursue and it may be a question for the City Attorneys.

Chair Drechsler stated that overall, Staff did great work on a difficult task.

IV. Other Business/Adjournment

Commissioner Kaiser reminded everyone that staff had said they would look at the Bella Vista project to see what happened with tree removal. He asked if the project went through a design review. David replied that it did go through a design review under the Innovative Housing Code. Chair Drechsler stated that the Commission is eager to hear what Staff finds out and asked if Staff could provide the information at the next meeting.

Chair Drechsler stated that he will be reaching out to each of the Commissioners to connect and talk about what is next for Planning Commission since there have been a lot of changes in the city.

Commissioner Ruonala asked if the subcommittees could come before the Planning Commission to provide updates. Amanda stated that Design Commission is scheduled to provide an update the first meeting in October and she is working with the other subcommittees to schedule dates.

The meeting adjourned at 8:33 p.m.

Chairperson

Recording Assistant

Date

Date