

**TO: Jim Wheeler, Planning Manager
Helen Toloza, City Attorney
Steve Fancher, Assistant City Manager**

FROM: Kathy Majidi, Natural Resources Program Manager

DATE: September 1, 2023

SUBJECT: Natural Resources Staff Review of May 24, 2023 Submittals for Veranda Subdivision

This memo is developed in response to materials received by Gresham Planning staff on May 24, 2023, from the Applicant team's consultants, AKS Engineering & Forestry (AKS), representing the Veranda Subdivision and Master Plan in Pleasant Valley. Some of the issues and evidence are technical in nature. This memo along with Pacific Habitat Services' August 24, 2023 memo respond to the technical issues raised, and are intended to help inform Planning Staff when it makes its recommendation to Planning Commission, and Planning Commission in its decision-making process as it weighs the technical evidence.

The Applicant's materials reviewed by the City Natural Resources Program staff and on-call consultants include:

- 1) A new preliminary site plan (dated May 19, 2023) by AKS
- 2) AKS's response to findings in the July 3, 2022 City staff report which recommended denial of the application for the Veranda subdivision
- 3) An AKS-prepared technical memo (dated May 23, 2023), submitted to demonstrate the proposal's compliance with ESRA-PV code.
- 4) A letter from the applicant's counsel at Schwabe, Williamson & Wyatt responding to City Natural Resources staff comments provided to the applicant on or about March 22, 2023.

Taken together, AKS's and Schwabe's documents endeavor to demonstrate that the wetlands on the Veranda property should not be considered locally significant, even though they meet the mandatory criteria in OAR 141-086-0350(2)(b), which then allows development to occur on the wetland area so that the Veranda subdivision meets the objectives of the City's codes and standards.

This memo of response focuses only on those technical issues related to natural resource areas, notably (1) **wetlands** present on the proposed Veranda subdivision site, (2) **Kelley Creek**, the salmonid-bearing stream at the north of the Veranda parcel, (3) **an unnamed stream** that's a tributary to Kelley Creek that meanders on to and adjacent to the eastern boundary of the proposed Veranda subdivision, and (4) the **Environmentally Sensitive Restoration Area-Pleasant Valley buffers** related to the stream and wetland resources under discussion. Given the topical overlap that exists within the above-listed 4 documents, this memo aggregates City Natural Resource response to the Applicant team's proposed impacts and proposed mitigation according to the resource types listed above.

It was noted in the May 23, 2023, memo from the Applicant’s counsel that the Applicant has not necessarily agreed to let the existing state-approved wetland delineation for the site (which received DSL concurrence in January 2020) stand as the final say on the location or extent of wetlands on the property. However, as the preliminary planset submitted by the Applicant includes what appears to be the 2020 delineation boundaries on the existing conditions sheet, City comments in this memo are based on (1) the January 2020 delineation, provided by DSL to the City in October 2021, as the site’s wetland delineation with DSL concurrence, (2) newly mapped off-site wetlands on the “Panza property” where stormwater management for the Veranda subdivision is proposed, and (3) newly included waterway resources on the eastern boundary of the Veranda parcel.

Wetlands

The new (May 19, 2023) preliminary site plan includes roads and single-family lots fully covering approximately 5 acres of wetland resources on the western portion of the Veranda property. This proposed layout assumes that the on-site wetland resources have been found “not locally significant,” which counters the previous determination made by the City’s on-call experts and Natural Resources staff that the Veranda wetland resources are locally significant. However, the Applicant team’s May 2023 submittal materials were reviewed in depth and found to not alter the opinion of any City reviewers; **all reviewing parties continue to find the onsite wetland resources meet the state’s mandatory criteria for locally significant wetlands, due to their proximity to Kelley Creek, a water quality impaired (303(d)-listed) stream.** Stated another way, reviewers¹ found no new information in the applicant’s May 2023 submittal materials that provides substantial evidence for the applicant’s claims that the on-site wetland resources provide no water cooling benefit to Kelley Creek.

Professional Wetland Scientists at Pacific Habitat Services (PHS) were asked to review AKS’s May 2023 statements about the Veranda wetlands, including their resubmittal of an Oregon Rapid Wetland Assessment Protocol (ORWAP) assessment. The resulting PHS assessment (dated August 24, 2023) is included in the City’s September 5, 2023, Planning Commission packet. For readers unfamiliar with ORWAP, it is a wetland assessment methodology intended to be rapid (taking less than a full day to complete an assessment) and require only a single site visit in any season. The output of ORWAP is intended to provide consistent and accurate numeric estimates of the relative ability of a wetland to support a wide variety of functions and values.²

ORWAP was not designed to refute local significance determinations, or to contradict professional experts with experience pertinent to a particular wetland or landscape setting. Per the developer of ORWAP: *“ORWAP outputs should always be screened by the user to see if they “make sense.” ORWAP outputs, like those of other rapid methods, are not necessarily more accurate than judgments of a subject expert, partly because ORWAP spreadsheet models lack the intuitiveness and integrative skills of an actual person knowledgeable of a particular function. Also, a model cannot anticipate every situation that may occur in nature. Nonetheless, ORWAP scoring models provide a degree of standardization, balance, and*

¹ Reviewers for this iteration included staff from City Natural Resources Program (Kathy Majidi, Mike Wallace, and Jeff Lesh) and Water Quality Program (Dr. Katie Holzer), and City on-call experts (John van Staveren—President of Pacific Habitat Services, Senior Professional Wetland Scientist, and member of the technical advisory team for development of the state local significance criteria; Craig Tumer, Professional Wetland Scientist at Pacific Habitat Services; Melanie Klym, Licensed Water Resources Engineer & Geologist at River Design Group, and long-time prior board member of the Johnson Creek Watershed Council; and Walt Burt, Licensed Geologist and Hydrogeologist, and Founding Principal of GSI Solutions, Inc.)

² Pg. 1, Adamus, P., K. Verble. 2020. Manual for the Oregon Rapid Wetland Assessment Protocol (ORWAP, revised): Version 3.2. Oregon Dept. of State Lands, Salem, OR.

comprehensiveness that seldom is obtainable from a single expert or limited set of measurements. The protocol may be used to augment the data or interpretations of a subject professional (e.g., a fisheries biologist, plant ecologist, ornithologist, hydrologist, biogeochemist) when such expertise or finer-resolution data are available.”³

Also, ORWAP is notably not intended as a surrogate for field data collection and analysis. Again, per the developer of ORWAP: *“ORWAP scores only indicate a wetland’s functions relative to other wetlands in Oregon. Intensive or long-term field measurements might subsequently determine that even the wetlands scored lowest by ORWAP are, in fact, performing a particular function at a very high absolute level, or some wetlands that score very high are found to barely provide the function... Thus, the numeric estimate that ORWAP provides of wetland functions are not actual measures of those attributes, nor does ORWAP combine the data using deterministic models of ecosystem processes.”⁴*

As the City’s Natural Resources (NR) staff relied on the Professional Wetland Scientists at PHS to respond to AKS’s assessment of Veranda wetland functions and values (as provided in the accompanying PHS memo from 8/23/23, “Review of AKS Locally Significant Wetland Report – Veranda Subdivision MPLAN 21-00652”), what follows are the City staff responses relevant to the other natural resource-related issues raised by the Applicant team’s May 2023 submittal.

Relevant to the AKS comments that the existing culvert at SE 190th Drive is a complete fish barrier, and the portion of Kelley Creek directly below (downslope of) the proposed subdivision is not mapped as Critical Habitat (by National Marine Fisheries Services, “NMFS”) or Essential Salmonid Habitat (by Oregon Department of Fish & Wildlife, “ODFW”).

City response:

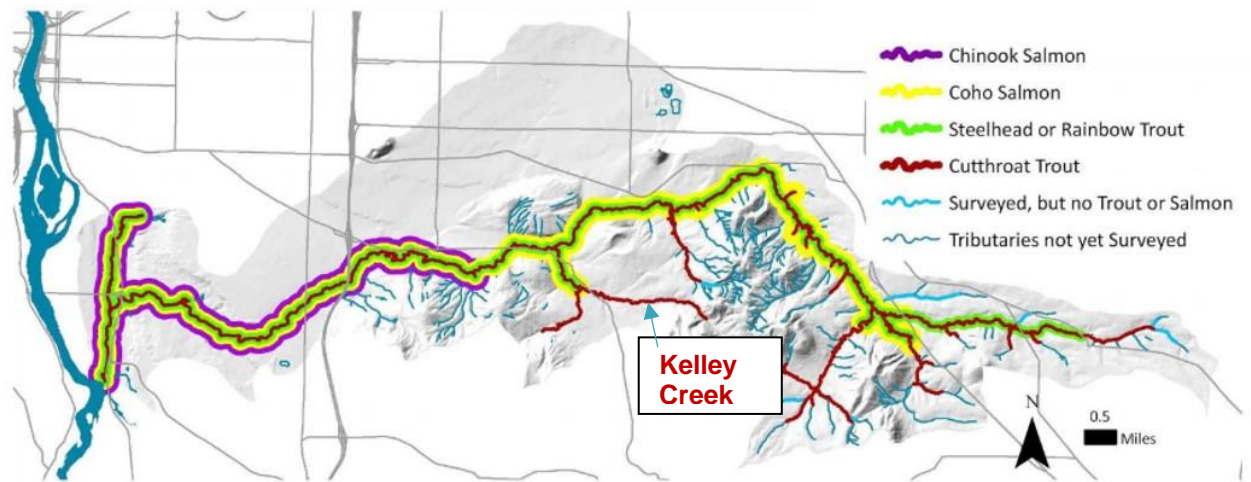
- A. The fact that the 190th Drive culvert presents a fish passage barrier, and that Kelley Creek shows neither federal critical habitat or State-mapped essential salmon habitat is **irrelevant to the City’s request for the Applicant team to provide field data that contradicts photographic evidence and expert opinion that the Veranda wetlands support cool water inputs to Kelley Creek through both a surface water and shallow groundwater connection.**
- B. The proposed Veranda subdivision includes significant alterations to current surface and subsurface hydrology both upstream of the SE 190th culvert (at the Veranda subdivision parcel) and downstream of the SE 190th culvert at the Panza parcel where regional stormwater management is proposed. **This downstream component of the project IS within mapped critical habitat.**
- C. Per state fish passage rules (OAR 635-412-0001) that require provision for upstream and downstream passage of native migratory fish at all artificial obstructions, and as reflected in Pleasant Valley community plan documents (1998-2004) and the updated Pleasant Valley Transportation System Plan (2018), **all** existing fish barriers associated with public rights of way will be remedied as development progresses through the valley. **The SE 190th fish barrier will be one of the first addressed in the Pleasant Valley Plan, opening up the remainder of Kelley Creek to migratory fish passage.**
- D. Though the SE 190th Drive culvert currently presents a fish migration barrier, field data verification has documented the presence of **sea-run and fluvial (non-migrating) salmonids below the 190th culvert, and fluvial cutthroat trout above the 190th culvert.** Both the migrating and non-migrating members of

³ Pg. 5, ibid

⁴ Pg.4, ibid

this cold-water salmonid species have identical water quality habitat requirements in freshwater systems. Evidence of their recent historic and current presence:

- From ODFW 2003 fish surveys of Kelley Creek⁵:
“**Within the Johnson Creek watershed, Kelley Creek appears to be a relative stronghold for cutthroat trout.** The largest cutthroat trout individuals were observed in Kelley Creek in winter 2002, winter 2003 and summer 2002. Fall and winter spawning and migratory behavior of relatively large adult cutthroat trout would be consistent with a fluvial or anadromous life history. We observed cutthroat trout redds in winter 2002. **Protection of Kelley Creek should be a high priority.**” They further note presence in Kelley Creek of cutthroat fry in Spring 2002, and Alevins in winter 2003.
- From results of **2011-2012 fish surveys by Multnomah County and Wild Fish Conservancy**, in partnership with Johnson Creek Watershed Council, **cutthroat trout were found throughout Kelley Creek**, both upstream and downstream of the 190th culvert.



- Picture of **juvenile cutthroat** or rainbow trout (per communication with ODFW) inadvertently **captured in Summer 2021** during the City’s annual macroinvertebrate survey, taken by City of Gresham Water Quality staff Dr. Katie Holzer **at the sampling point, “Kelley Creek at Rodlun” (above SE 190th Dr.)**



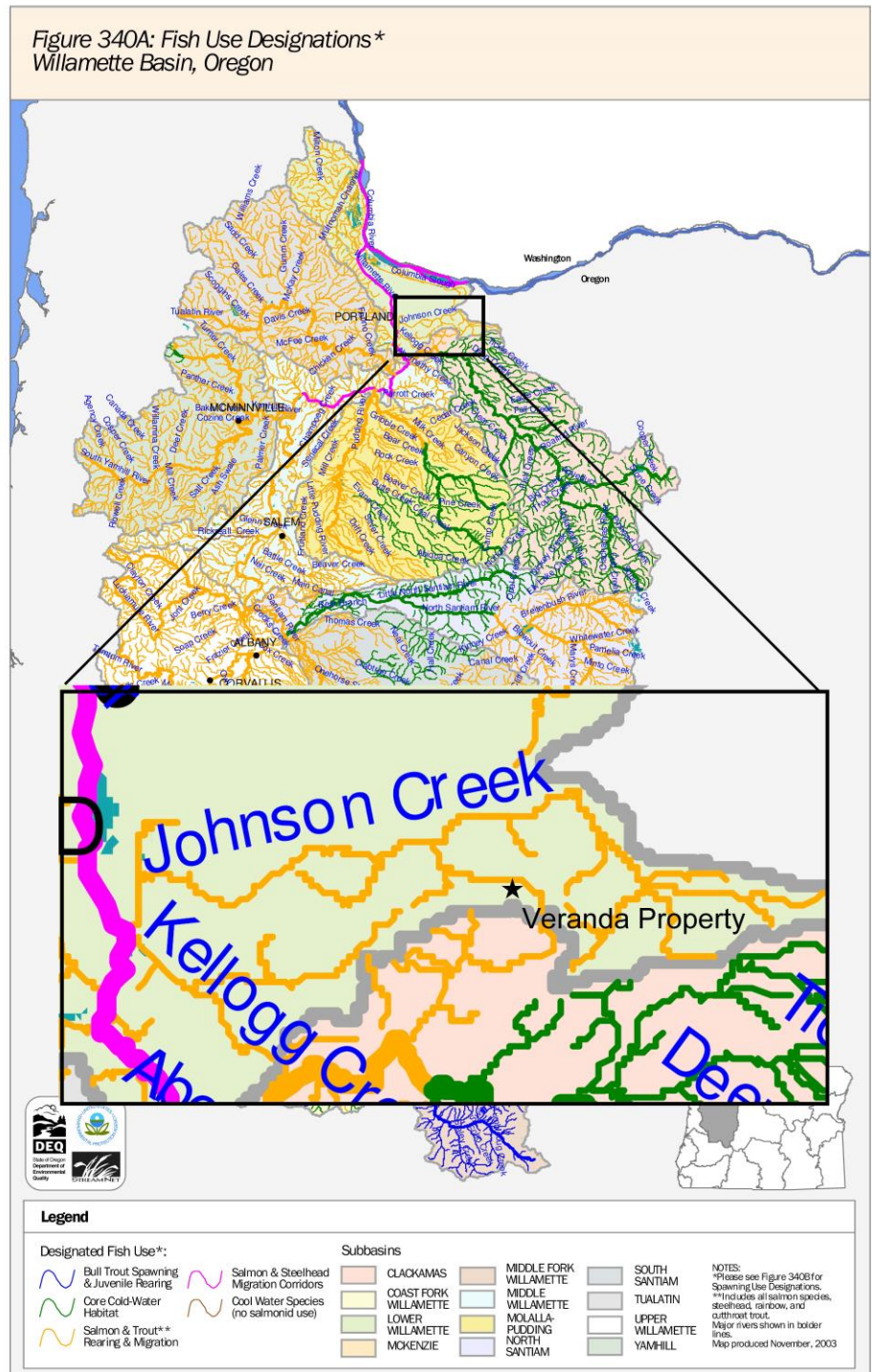
E. Impacts to water quality are not isolated to the site of the impacting action, therefore actions that adversely affect water quality may result in impacts to water quality downstream of the project site. For this reason, regulatory review agencies (including Oregon Dept. of State Lands, FEMA, US Army Corps of Engineers, and NMFS) consider potential impacts to water quality that may adversely affect ESA-listed fish downstream of a project site, regardless of the presence of a fish-passage barrier. These impacts can come from sources other than pollutants generated from new

⁵ Tinus, E., J. Koloszar, D. Ward. 2003. Abundance and Distribution of Fish in City of Portland Streams: Volume 1 – Final Report of Research. Oregon Dept. of Fish & Wildlife, Clackamas, OR.

impervious surfaces, such as cutting off groundwater inputs that provide cooling benefits, as well as infiltration and non-erosive dispersion of surface flows.

- F. The purpose of Oregon’s Temperature Water Quality Standards is to “protect designated temperature-sensitive, beneficial uses, including specific salmonid life cycle stages in waters of the State.”⁶

Establishment of these temperature criteria is dependent upon the spatial and temporal fish activities in receiving waters, and these designated fish activities are defined by maps that identify the timing and location of fish activities in each water body. OAR 340-041-0340 -- Figure 340A defines the relevant fish use for the Willamette basin (which contains the Johnson/Kelley Creek watershed). This map, “Fish Use Designations” shows the entirety of Kelley Creek is mapped by the state as a “Salmon & Trout Rearing & Migration” stream, meaning the state’s Temperature TMDL standards to ensure a waterway is thermally suitable for rearing of salmon and trout are applicable at, upstream of, and downstream of the Veranda site.



⁶ OAR 340-041-0028(3)

Relevant to the AKS comment that there are existing large in-channel ponds downstream of the project site (and downstream of the fish barrier dam) that have a significant negative effect on water temperature within the Johnson Creek watershed (per prior City of Gresham water quality reporting).

City response:

- A. The existence of heat sinks in the Kelley Creek system is **irrelevant to the City’s request for the Applicant team to provide field data that validates the Applicant team’s claim that the City errs in its understanding that the Veranda wetlands support cool water inputs to Kelley Creek through both a surface water and shallow groundwater connection.**

- B. The City does not deny the existence of heat sinks in the Johnson/Kelley Creek basin, nor is the City’s expectation for preservation of stream temperature benefits at the Veranda site hypocritical in the context of the existence of heat sinks in the watershed. The City has worked with watershed partners for decades on mapping and prioritizing areas contributing to heat loading throughout the Johnson and Kelley Creek sub-basins, and served as a technical and financial partner on addressing those outside the current city boundaries while implementing large-scale improvements to reduce heat loading within the current city boundaries. The heat sinks downstream of current city boundaries that AKS’s ODFW-derived map show either have been or are being addressed through the Johnson Creek Watershed Council with the support of the interjurisdictional partners (Multnomah County, Metro, City of Portland, Water Environment Services, and Oregon Department of Environmental Quality).

Dr. Katie Holzer is the City’s Water Quality Monitoring Coordinator and head of the Johnson Creek Inter-Jurisdictional Committee (IJC)--a group of scientists and land managers formed in 1995 who work together to coordinate monitoring and restoration projects in the watershed. The group has been conducting temperature monitoring in Johnson and Kelley Creeks since 1998. IJC-collected data has informed the efforts of the Johnson Creek Watershed Council which has been working with land owners in Pleasant Valley (and in the Springwater area) to retrofit inline ponds. Only two in-line ponds on Kelley Creek remain, both related to beaver activity, and progress is being made with land owners related to removal and retrofit. The Foster Pond and Centennial Pond were large heat sinks in the Kelley Creek watershed that were removed/retrofitted by the watershed council in the past few years, reducing or eliminating the temperature impact and allowing full fish passage.

Relevant to the AKS Statement that the Veranda wetlands meet only ONE of the state Mandatory Local Significance Criteria and are “impacted or degraded”.

City response:

- A. The City finds no relevance in this statement. Per John van Staveren, a Senior Professional Wetland Scientist and President of Pacific Habitat Services who served on the technical committee that developed the OAR for local significance, a wetland meeting a single local significance criterion listed within OAR 141-086-0350 (2) is to be regarded locally significant as much as a wetland meeting multiple criteria. It should be recognized that the establishment of the local significance criteria resulted in a multitude of wetlands not receiving local code protections (for instance, many wetlands more than ¼ mile from a water quality-listed stream receive no local protections). The local significance criteria are not meant to apply to the remaining subset of wetlands that do meet local

significance criteria in a hierarchical sense (somehow demonstrating one wetland is MORE significant than another because of which criteria are met) or in a quantitative sense (somehow demonstrating one wetland is more or less significant than another because of how many criteria are met). It was the intent of the technical team that a wetland is shown to either meet or not meet the listed criteria. Per City assessment and the Applicant team's assessment, the Veranda wetlands **DO** meet the local significance criteria.

- B. It was recognized during the planning stage for Pleasant Valley that unmapped wetlands would be found and should be included as protected resources within the ESRA-PV zone. It was also recognized that functions of Pleasant Valley resources were degraded. That was why the buffers applied around resources known at the time are "Environmentally Sensitive **Restoration** Areas"--the buffers were meant to protect the resource AND allow for setback from impacts to allow for restoration of resources. Of note, one of the guiding policies for Pleasant Valley, per multiple stakeholder planning efforts, and as adopted by City Council, and as documented as a current policy for Pleasant Valley in Volume 2 of the City's Comprehensive Plan: "*Floodplains and wetlands shall be fully protected and restored for improved hydrology and flood protection*". There is no relevance to the repeated mentions of the condition of Veranda wetlands as "impacted or degraded". Gresham staff is unaware of locally significant wetlands in our jurisdiction that wouldn't meet some wetland function assessment criteria for "impacted or degraded" status; that is, simply put, the status of wetland resources we have left. Their impacted or degraded status does not render these remaining resources less significant in their support of local aquatic habitat.

Relevant to AKS and Schwabe comments about lack of evidence for connection between Veranda wetlands and Kelley Creek via surface and subsurface flows:

City responses:

- A. The Applicant team has offered speculative statements that the wetlands on the Veranda site might be contributing water to Kelley Creek when the creek is already sufficiently cool. The Applicant team also forwards definitive statements that none of the wetlands are contributing to surface or shallow groundwater discharges during summer months so there is no benefit provided by the Veranda wetlands.

Neither the speculative nor definitive statements made by the Applicant team are backed by field collected data on surface flows, groundwater flows, or temperature data. There was no effort by the Applicant team to provide photographic logs that document growing season, shoulder season, and mid-summer conditions. On the occasions that City staff were asked to provide feedback to pre-application meeting preparation, or land use reviews or preparation for planning commission hearings, staff visits to the site associated with those requests resulted in a limited collection of videos and photos that contradict the applicant statements. It is noteworthy that these site visits were not scheduled in anticipation of this future debate between the City and Applicant team.

- B. The Applicant team is asking for the City to diverge from past practice in applying local significance to newly mapped wetlands within ¼ mile of a 303(d) listed stream, stating, "There is no objective evidence to support subsurface discharge from wetlands outside the wet season (i.e., during the warm

weather period).” The burden of proof to supply objective evidence to support a request to deviate from past practice in local significance determinations does not lie with the City; the applicant has the burden of proof. The City has indicated since 2017 that, because of the proximity of the wetland to a 303(d)-listed stream, these wetlands would be considered locally significant, as required by the mandatory standards in OAR 141-086-0350(2)(b). Since that time, the Applicant has had the opportunity to discuss this issue with City staff and develop a reliable method for collection of “objective evidence”. Without any effort to collect shallow subsurface information that can counter USGS reports, expert reviewers, staff observations from the Right of Way, and the science that the technical advisory team relied on when they developed the ¼ mile proximity criteria, the City has no scientific basis for stating that this large hillslope wetland, with demonstrated connection to groundwater per the 2019 Schott delineation, has zero subsurface connection to Kelley Creek when cool weather surface and subsurface connection conditions transition to largely subsurface connection during warmer/drier weather. Further, to address these new protests over the matter of local significance, the City has paid for an additional expert in the area of hydrogeology (Walt Burt of GSI Solutions, Inc.) to develop a protocol for collection of data in a scientific manner that would result in findings that the City would find to be reliable. This proposal was forwarded to the Applicant team in July 2023, and to date, the City has heard no response, but subsequently has seen evidence of significant disturbance within the Veranda wetland areas, site stemming from some type of excavation activity throughout the wetland portions of the site. The City would like to point out that observations collected from excavated pits in the midst of dry summer can not substitute for a robust data collection effort showing the degree of connection between the wetlands and shallow groundwater in the May to October warm winter months. As the City had paid for GSI’s time to review the Veranda subdivision and Master Plan application and related materials in order to develop a monitoring protocol to forward to the Applicant, when it appeared the Applicant would not pursue the implementation of a monitoring plan with GSI, the City asked GSI to provide an expert opinion on the wetland’s hydrology connection to Kelley Creek. That professional hydrogeology opinion is accompanies this memo.

Relevant to AKS’s new (5/19/23) Preliminary Site Plan for Veranda

A. Regional Stormwater Facility

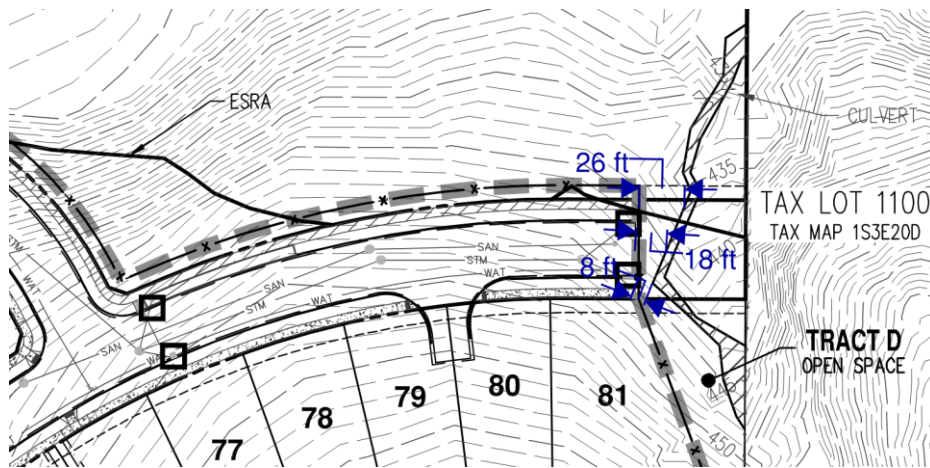
Based on prior geotechnical feedback, the steep north bank of Kelley Creek has numerous points of instability. The proposed Flow Control Manhole and Discharge Point should be reviewed by a geotechnical engineer to ensure placement of a discharge point that will be stable over time.

B. Under ESRA-PV, the new waterway would have a 200’ buffer

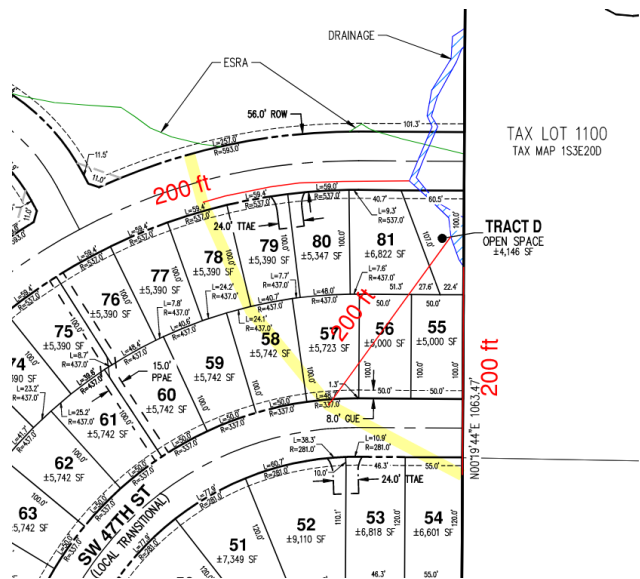
The May 19, 2023 preliminary site plan from AKS newly shows a waterway delineation completed for that portion of an unnamed tributary of Kelley Creek on the northeastern portion of the Veranda property. This stream exists near the edge of the Pleasant Valley Planning District and the stream was known during the 1998-2004 new community planning era, but was incorrectly mapped as not being present within the district, and as being entirely on the property immediately adjacent (to the West) to the Veranda parcel. City staff previously requested a waterway delineation be completed to address the conflict between the earlier Veranda subdivision preliminary plan sets (which showed no water resources in this area) and (1) City stream modeling (2018) which showed a portion of this unnamed tributary on the Veranda property, and (2) the Applicant’s survey-based contour lines on the earlier preliminary site plans that showed agreement with the City stream model contours, strongly suggesting the stream was present on the

Veranda property. The AKS narrative (AKS “Findings of Conditions of Approval for Veranda at Pleasant Valley Responses to City Staff Report Dated July 3, 2022”) speaks to the addition of this stream, “...delineation of a locally significant drainage along the eastern property boundary and the required 50-foot disturbance setback.” City staff identified two concerns:

- i. The ESRA-PV buffers established in the Pleasant Valley Concept Plan (2001) for streams were not a standard 50’. ESRA-PV buffers for streams on similar slopes were known to have been given much wider ESRA-PV buffers than 50’, generally up to 200’.
- ii. Visual assessment of the plans suggested the proposed setback from the east bank of the stream and development impacts is significantly shy of the 50’ buffer implied in the Applicant’s statement. Development Engineering staff provided setback measurements scaled off the Applicant’s plans and found that the setback from the stream to the proposed SW Eastwood Ave. ranges between 8’ and 26’ along the stream meander.



City staff from Natural Resources, Planning, and Development Engineering reviewed the ESRA-PV code language relevant to unmapped resources and as it only spoke to buffering of unmapped wetlands, staff reviewed the ESRA-PV buffer development records in the 2001 Pleasant Valley Concept Plan (2001) and the Pleasant Valley Implementation Plan (2004). Staff found the original ESRA-PV buffer for this unnamed stream was 200 feet. Application of an ESRA-PV buffer of 200 feet conflicts with the proposed road and lot layout for the northeast corner of the site. (Note that even a 50’ buffer would conflict with the road and lot layout as well.) Planning staff have added this to the Staff Report comments related to the new 5/19/23 preliminary site layout. The 200’ buffer from the original ESRA-PV model is consistent with the contemporary standards requiring a 200’ buffer for a 2nd order stream as adopted in 2020 and effective in January 2021.



Relevant to AKS's proposed mitigation strategies

Across three documents there are discussions related to mitigation of impacts to wetlands and to the existing ESRA-PV buffers onsite and offsite at the Panza parcel, where a regional stormwater management facility has been proposed within a portion of the ESRA-PV buffer on the north side of Kelley Creek. There is some conflation of discussion related to wetland mitigation and ESRA-PV buffer mitigation. Rather than address each statement, staff are compiling response into two topical areas: ESRA-PV buffers and the Veranda wetlands.

ESRA-PV buffer mitigation

- A. The AKS report refers frequently to the “water cooling benefit” of their proposed riparian enhancement (tree and shrub planting). The City recognizes the myriad of benefits related to riparian restoration in terms of habitat and water quality improvements. That said, it should be understood that tree shade, which would take 15-25 years to begin to realize, at a minimum, is important for stream temperature in that it *prevents* heat loading on sunny days. The closed canopy conditions spoken to by AKS will take decades to develop, based on the City's extensive experience with urban riparian planting projects the last 30 years. While valuable to reduce diurnal heat loading, even closed canopy shade cannot replace the input of cool water and support of cool water refugia pockets that is provided by shallow groundwater resources. ESRA-PV planting will be needed to offset impacts to the ESRA buffer and will improve that buffer area from current site conditions, but those functional gains should not be mistaken for functional replacement for the proposed wetland impacts and the disruption of the subsurface flow delivery to Kelley Creek.
- B. Several conflicts exist within the proposed buffer mitigation areas:
 - a. Proposed ESRA-PV mitigation on the Panza parcel includes 3.18 acres of Voluntary Enhancement areas where the Applicant has donated property to the City to conduct mitigation for the already existing regional water quality facility (Panza pond, access road/trail, rock stormwater channel), and provided the City with funds to implement planting in that location in conjunction with stream improvements to be completed in conjunction with the City's replacement of the SE 190th culvert. The portion of this area on the north side of Kelley Creek was previously identified to the applicant as an area where the City does not want tree planting due to future root intrusion, canopy, and shade conflicts with (1) the Kelley Creek wastewater trunk line at the top of bank, (2) the access road/pedestrian trail which needs canopy clearance for large vector trunks to access for maintenance, (3) the rock channel for stormwater conveyance that needs to be kept clear of woody vegetation for maintenance purposes. This reduces mitigation area considerably from the 3.18-acre calculation.
 - b. Proposed ESRA-PV mitigation on the Panza parcel includes 1.18 acres of Riparian Enhancement Mitigation on the north bank of Kelley Creek. Owing to the ongoing instability of the north bank, to protect public infrastructure above slope, future implementation of a stream bank improvement to flatten the slope will be needed before long-term planting investments can be made here. It is anticipated that slope alteration would be permitted and completed by the City in conjunction with the replacement of the SE 190th culvert.
 - c. Proposed ESRA-PV mitigation on the Veranda parcel includes Voluntary Enhancement area north of the applicant's Proposed ESRA-PV Riparian Buffer Mitigation Area. That area had a 2019 mitigation plan developed by a consultant, and money was provided to the City for

implementation. That site is in the third year of restoration already and cannot be used for mitigation for the newly proposed Veranda development.

Wetland mitigation

As the City finds the Veranda wetlands to be locally significant and Planning staff have stated that no impacts would be allowed to locally significant wetlands under the ESRA-PV code, the wetland mitigation discussion is moot under that scenario. In the event that field data is submitted to the City that contradicts existing evidence on the local significance of the wetland, and subsequently impacts are allowed, then all mitigation decisions are made by Oregon Department of State Lands, not the City of Gresham. Mitigation options for wetlands impacts with state jurisdiction but no local jurisdiction include: (1) use of a mitigation bank (the closest of which is the Foster Creek Mitigation Bank, south of the Clackamas River), (2) payment into Oregon's Payment-in-Lieu fund (used by Oregon Department of State Lands for wetland improvement projects across Oregon), or (3) offsite mitigation or onsite mitigation, assuming sufficient acreage in the appropriate landscape setting could be found and acquired, restored into wetland, and protected as such in perpetuity. DSL has no requirements for mitigation to be implemented within the Johnson/Kelley Creeks watershed.

Conclusion

City staff find no objective evidence in the Applicant's package to alter our existing determination that Veranda wetlands are locally significant.

Further, the importance of Veranda wetlands to the water quality of Kelley Creek is highlighted by the information above that demonstrated:

- A. Kelley Creek is a priority watershed for salmon recovery in this region, with improvements in Kelley Creek basin habitat supported by decades of interagency cooperation in planning, land acquisition, and restoration efforts to improve habitat conditions for salmonids. Fish barrier removals and in-line pond retrofits are typical of ongoing investment being made in this priority basin.
- B. Formal and informal survey efforts over the last two decades show salmonids are present upstream and downstream of the proposed subdivision, and both the sea-run and freshwater salmonid species share cold water habitat requirements.

It is our obligation under state wetland regulations, state Goal 5 and Metro Title 3 to protect locally significant wetlands from the 'death by 1000 cuts'. Within the entirety of the Johnson Creek basin, only a handful of wetlands larger than 3 acres are within ¼ mile of water quality streams with listed critical habitat. Veranda's Wetland 1 is one of those.

The City's determination of local significance of Veranda wetland resources should not be regarded as an anti-development stance. Rather, the request has been reviewed thoughtfully and contextually, with the benefit of external experts, in a manner that adheres to state and regional water quality and land use regulations, with respect for the regional investments made in improving the temperature and habitat of Kelley Creek, and the obligations the City has made to watershed partners and Pleasant Valley stakeholders over the years.