



October 17, 2023

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City of Gresham Planning Staff

RE: City of Gresham File No. SD/MIS 20-260000343 (MPLAN21-00652)  
Locally Significant Wetland Rule Legislative History  
Our File No.: 137484-266113

Dear City of Gresham Planning Staff:

Our office represents Leeper Development Group, Inc.

This letter encloses excerpts of the rulemaking history for the Oregon Department of State Lands' ("DSL") locally significant wetlands rule, that is, OAR 141-086-0350(2)(b), which the City's code incorporates by reference.

Please place this letter and its attachment into the record.

Very truly yours,

Elizabeth E. Howard

Kenneth Katzaroff

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**Excerpts from Department of State Lands<sup>1</sup> Public Hearings on the Adoption of the Locally Significant Wetland Rules**

OAR 141-086-0350 Locally Significant Wetland Criteria

(2) Mandatory LSW Criteria. A local government shall identify a wetland as locally significant if it meets one or more of the following criteria:

(b) The wetland or a portion of the wetland occurs within a horizontal distance less than one-fourth mile from a water body listed by the Department of Environmental Quality as a water quality limited water body (303(d) list), and the wetland's water quality function is described as "intact" or "impacted or degraded" using OFWAM. The 303(d) list specifies which parameters (e.g., temperature, pH) do not meet state water quality standards for each water body. *A local government may determine that a wetland is not significant under this subsection upon documentation that the wetland does not provide water quality improvements for the specified parameter(s).*

Note: The City Of Gresham, City Attorney's Office issued a Memo, dated October 13, 2023, that completely drops out the last sentence of the operable rule and explains that a local government has discretion to determine a wetland is not significant with documentation that the wetland does not provide water quality improvements. OAR 141-086-0350(2)(b).

Schwabe reviewed approximately 7 hours of audio recordings of the public hearings on the (at the time) proposed locally significant wetland rules. Below are excerpts of statements made by Betsy Parry, who at the time of these hearings held the position of "Wetlands Planner" for the Oregon Department of State Lands (DSL). Quotes may not be an exact perfect representation of what was said, as audio was unclear at times. These excerpts pertain to the locally significant wetland criteria OAR 141-086-0350(2)(b) and specifically to whether a wetland is locally significant due to its impact on a 303(d) listed stream.

Consistent with Schwabe's analysis of the OAR 141-086-0350, the agency's contemporaneous comments explaining the intent of the proposed rule make it clear that DSL anticipated that a wetland would be deemed locally significant only if it would function to provide water quality *improvements* and was "right next" to a 303(d) listed stream. As explained in the May 23, 2023 and October 6, 2023 submissions to the City by AKS Engineering & Forestry on behalf of Leeper Development, the wetlands on the Veranda property (City of Gresham File Number SD/MIS 20-26000343 (MPLAN 21-00652)) do not meet these criteria.

Public Hearing Excerpts

Burns Pt 2 Aug 1, 1996

- In response to a question from member of the public: "The 303(d) list, yea, that's the list that DEQ has put out on the water quality...of streams...that have water quality problems...we're not going to be directly linked to the clean streams initiative...the only link we have with that list is for those urban areas that are listed as a water quality (inaudible)...*if there's a wetland that ranks as very functional to water quality improvements that would be listed as a significant wetland if its right next to* (one of these?) streams." (Minute: 15:40-16:30).

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<sup>1</sup> Formerly the Division of State Lands.

Lincoln City Part 1 July 29, 1996

- “Here’s an example of the data sheet form the Oregon Freshwater Assessment Methodology....ranked wetlands on a number functions and conditions...in our significant wetlands criteria we do not use the results for all of these categories in our advisory committee, we thought long and hard about the purpose of the significance criteria and what that would mean and we put the most emphasis in our criteria on these first four functions: wildlife habitat, fish habitat, habitat, water quality functions, and hydrologic (inaudible). We felt that those were functions that wetlands play in a community that everyone has a stake in.” (Minute 16:20-17:20).
- “When we developed the criteria” (referring to locally significant wetlands criteria) “we came up with a couple of cases where we thought the highest score in any of these four functions may not tell the whole story of what is significant in that community. For example, if you’re in an area that’s got water bodies that are on the list of being quote ‘water quality impaired’ perhaps the wetlands that borders that stream that has water quality problems, even if it’s not the highest ranked for its water quality goal, as long as its serving some function, the community already has a water quality problem, so perhaps that would sort of pump up the significance of that wetland along that creek that has already been identified as having trouble with water quality, so that’s why we wrote that one in.” (Minute 20:25-21:20).

Roseburg Pt 1 Aug 6, 1996

- “In those areas that have no water quality problems in the urbanizing area, we took a closer look at those wetlands that did serve water quality roles but maybe didn’t come out as the highest ranking...(inaudible)...that come out in the highest functional ranking in those categories, so we added in the wetlands that were in the second highest functional ranking for water quality goals also, if they were adjacent to a water quality related stream, as listed by DEQ.” (Minute: 15:35-16:06).