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MULTNOMAH COUNTY
PLANNING SECTION

August 27, 2018

Kevin Cook, Senior Planner
Multnomah County
Land Use Planning Division
1600 SE 190th Avenue
Portland, OR 97233

RE: Metro's North Tualatin Mountains
Case #T4-2017-9166 – Comprehensive Plan Text Amendment
Case #T3-2017-9165 – Use Application
RESPONSE TO REQUEST FOR ADDITIONAL CLARIFICATIONS

Dear Mr. Cook:

This letter constitutes Metro's response to the County's request for additional information to assist in application review. If additional information is needed to aid review, Metro will promptly provide whatever information is necessary.

Item 1. Additional Traffic Study Information.

Applicant's traffic engineer is scheduled to finalize and deliver additional traffic analysis and results by the first week of September. That information will promptly be submitted to the County.

Item 2. Forest Park Conservancy Property.

Applicant seeks to clarify the use being made of the Forest Park Conservancy (FPC) property. Currently, an existing and active forest practices road serving Metro's property traverses a section of the FPC property. Metro has an easement to use and maintain this section of road and the road currently supports vehicular and pedestrian access. A copy of the recorded easement was previously submitted. The easement area is included in Metro's circulation system. Except for the forest practices road, the remainder of the FPC is not a part of Metro's land use application. Metro is not requesting permission to alter the FPC property.

To avoid any authorization issue that may arise with Metro's circulation system crossing FPC property, Metro submits the attached letter from FPC, consenting to Metro's use of the easement area and the easement area inclusion in the subject application. Exhibit 1.

Item 3. SEC-h - Mitigation/Revegetation Ratio.

Applicant approaches the response to § 33.4570 SEC-h permit criteria in two alternative ways. First, applicant demonstrates that recreational improvements, and at a minimum the trails, are exempt from the SEC permit and mitigation standards. Please see the application narrative submission.

If applicant's proposed use is not exempt from the SEC standards, alternatively, applicant demonstrates compliance with § 33.4570(C)(3), through the required Wildlife Conservation Plan worksheets and proposed revegetation of existing cleared areas on the property at a 2:1 ratio. Attached to Exhibit 23 of the narrative submission is a preliminary mitigation planting plan depicting over 2,803 square feet of planting to mitigate for the 0.05 acre parking area disturbance.

Please note, applicant's final plans submitted for review and approval will depict the precise square feet of disturbance and the resulting 2:1 revegetation area to mitigate for disturbances.

If applicant's proposed use is not exempt from the SEC standards, applicant requests a condition of approval to ensure compliance with the 2:1 revegetation standard.

Item 4. Protected Aggregate and Mineral Site (PAM).

The County's interpretative task is to place itself in the position it was in the early 1990s when it adopted the PAM regulations and determined the intended meaning of "parks" and the uses the County and quarry operators intended to restrict in the PAM impact area.

In June 2018, Metro provided the County with a memorandum addressing the County's PAM standards and how the standards apply to plans for short trail lengths within the PAM impact area. Metro confirmed, through an examination of the legislative history, context, and statutory construct, that the "parks" considered by the County in 1994 and which the Board of Commissioners intended to restrict were "land extensive uses" that, by code, required direct access to a least a collector street, for which the County concluded "were not likely to occur" in the subject impact area. No other definition or discussion of the meaning of "park" was included in the PAM code or made in the Goal 5 document.

Metro submits that the type of "park" and uses intended to be restricted in the PAM impact area would have been of the type located along a collector, such as a park with structures designated for educational and instructional use – as in a community center, a sports arena, a ball field complex, a swimming pool, and recreational uses of a similar nature. These types of use would also have been considered noise sensitive (under DEQ regulations) and the type of use that would conflict with or be adversely affected by mining operations. Trails through a forest are not a recreational use of a similar nature.

Recently, the Angel Brothers quarry owner submitted a letter into the record stating that Metro's proposed trail use is not a conflicting use, and thus not the type of "park" or use they sought to prohibit and restrict in the impact area. In other words, Goal 4 recreational uses, such as trails, were considered in the County's Goal 5 analysis as a "use allowed in the CFU district" which will not conflict with the aggregate resource.

Respectfully, the "parks" intended to be regulated through the County's PAM standards are not the Goal 4 nature parks and passive recreational uses, some of which are included in OAR 660-034 (state and local park planning). Of note, the state and local park planning regulations were first adopted by the state in 1998, four years after the County's PAM regulations. The County did not regulate "local parks" in its code as provided for in OAR 660-034 until recently – decades after it adopted the PAM standards. The state and local parks now regulated by County code are not the same "parks" regulated by the PAM standards.

Simply labeling a Goal 4 recreational trail use as a "park" and imputing that PAM limiting regulations apply to forest trails in the same restrictive manner as intensive "park" uses, such as sports fields and swimming pools, without examining the specific use proposed, is not the correct approach and would adversely harm Metro's ability to provide nature based recreational services to Multnomah County residents.

Item 5. OAR 660-034-0040(1).

County staff asked applicant to address the standard of OAR 660-034-0040(1)(a), more specifically.

Metro understands that the complexity of the administrative rule and lack of guidance from appellate decisions on the interrelated elements makes applying the rule difficult for all parties concerned. Through the pending applications, Metro seeks to obtain all use and comprehensive plan amendment approvals that are or may be required to permit development of visitor access improvements at its Burlington Creek Forest property.

OAR 660-034-0040(1) provides:

> "Local park providers may prepare local park master plans, and local governments may amend acknowledged comprehensive plans and zoning ordinances pursuant to the requirements and procedures of ORS 197.610 to 197.625 in order to implement such local park plans. Local governments are not required to adopt a local park master plan in order to approve a land use decision allowing parks or park uses on agricultural lands under provisions of ORS 215.213 or 215.283 or on forestlands under provisions of OAR 660-006-0025(4), as further addressed in sections (3) and (4) of this rule. If a local government decides to adopt a local park plan as part of the local comprehensive plan, the adoption shall include:

(a) A plan map designation, as necessary, to indicate the location and boundaries of the local park; and

(b) Appropriate zoning categories and map designations (a "local park" zone or overlay zone is recommended), including objective land use and siting review criteria, in order to authorize the existing and planned park uses described in the local park master plan." (Emphasis added).

The question I believe the County is asking out of caution is whether or not all local parks require a comprehensive plan map amendment. Respectfully, Metro would answer that question – not all "park" use requests are required to be master planned by the County. Additionally, based on the above standard, it appears a plan map designation is only necessary if the County were to proceed through a County master planning process and adopt a County park master plan. Since the County does not own and operate a park system, it is difficult to understand how the County would engage in a park master planning process.

Metro's answer is supported by the following.

As background, Metro is proposing visitor access improvements and a multi-use trail system on a portion of Metro's Burlington Creek Forest area. Those improvements have been labeled or referred to as a "park." However, only a small portion of Burlington Forest will be disturbed, with the remaining land managed for forest practices.

There are four paths to permit uses on Goal 4 resource land: Goal 4 outright permitted uses, discretionary/conditional use review, County Local Park Master Planning, and the exception process.

The starting point for determining permissible uses and facilities on forestry resource land is Goal 4. One primary objective of Goal 4 is "to provide for recreational opportunities" on forest lands. As such, Goal 4 provides that recreational opportunities, and necessarily their accessory/support elements (for example: parking area, shelter, restroom, informational signs/maps, etc.), that are appropriate in a forest environment, are allowed on forest lands. Most of what Metro is planning on the forestry resource land (restoration and land management activities, access roads, and recreational trails) are outright permitted uses under Goal 4 and MCC 33.2020.

If a use is not outright permitted by Goal 4, state law - OAR 660-034-0035/0040 - provides two (2) alternative avenues to permit recreational development on resource land under the category of a state or local park which do not require an exception to Goal 4. For less intensive facility development, such as a parking area and trails, the uses are allowed through a traditional development application (for example: conditional use/design review). For more intensive facility development, such as a tennis court, pool, or music venue, a local government can pursue a master planning process. *Linn County Farm Bureau v. Linn County*, 63 Or LUBA 347, 350 (2011); *Linn County Farm Bureau v. Linn County*, 61 Or

LUBA 232 (2010).[1] For more intensive facility development that does not go through a County park master planning process, the exception process is available.

As described above and confirmed by case law, a Multnomah County park master plan is not required for Metro's proposed forest recreational uses. I would submit that a County master plan would only be required for proposing uses that would otherwise require an exception to Goal 3 or 4 – those that are on the more intensive scale and not permissible under the second sentence in OAR 660-034-0040(1).

The reason that Metro submitted a comprehensive plan text amendment request in conjunction with its use application on Burlington Creek Forest is to avoid a potential legal argument that could be made concerning the definition of "local park" in OAR 660-034-0010(8), which is carried forward in Multnomah County Code § 33.2030(A)(9), regulating conditional uses.

The issue is framed as such: OAR 660-034-0010(8) defines "local park" as:

> "a public area intended for open space and outdoor recreation use that is owned and managed by a city, county, regional government, or park district and that is designated as a public park in the applicable comprehensive plan and zoning ordinance."

Multnomah County Code § 33.2030(A)(9) mirrors this language and cites the definition as a reference.

Based on that language, one could take the position that all local public parks must first be "designated" (which means assigning a status or name to) in a comprehensive plan before any conditional development approvals can be approved. To meet that potential requirement, Metro requested a comprehensive plan amendment to reference the proposed Burlington Creek Forest nature "park" (by including Metro's internal North Tualatin Mountains access master planning document as a comprehensive plan appendix). Doing so would satisfy the "designated" element.

Respectfully, this "designated" language does not seem to require any more than that. For example, the language does not require that all local parks be master planned by

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[1] The more urban, infrastructure intensive, and service intensive the proposed park use, the more likely it is to be inconsistent with Goal 3/4, and therefore not allowed without an exception or master planning. 63 Or LUBA at 351; 61 Or LUBA 232. In *Rural Thurston, Inc. v. Lane County*, 55 Or LUBA 382 (2007), LUBA held the public park uses that can be approved without an exception in the absence of a master park plan are "passive, low intensity uses similar to those allowed in campgrounds in resource zones." 55 Or LUBA at 399. In *Rural Thurston, Inc. v. Lane County*, 55 Or LUBA 382 (2007), LUBA affirmed approval of a park (without the need for an exception or plan amendment) which included "a magnolia arboretum, landscaping/planting beds, and ADA-compliant trail system and restroom, outdoor tables and benches, central gathering area with pergola, informational kiosk, memorial plaza, and a children's play area." In *Linn County Farm Bureau v. Linn County, supra*, LUBA affirmed campgrounds for RVs and tents, without individual sewage disposal facilities.

the County – which would then require a comprehensive plan map amendment. Again, OAR 660-034-0040(1) provides:

> "Local governments are not required to adopt a local park master plan in order to approve a land use decision allowing parks or park uses on agricultural lands under provisions of ORS 215.213 or 215.283 or on forestlands under provisions of OAR 660-006-0025(4), as further addressed in sections (3) and (4) of this rule."

For instance, Oxbow Regional Park is owned and operated by Metro in Multnomah County. Oxbow Regional Park is not and was not specifically approved by the County through a local park master plan process. Rather, Oxbow Park was approved through a conditional use and design review land use review process. To satisfy the potential requirement of the definition of "Local Park" in OAR 660-034-0010 (8) during review, the County looked to see if Oxbow was already designated in the County's Comprehensive Plan. Because the County's Comprehensive Plan referenced Oxbow Regional Park specifically, that potential "designated" requirement was deemed satisfied.

As discussed above, and as written and interpreted by LUBA, this rule allows local governments to issue conditional use approval for local parks and certain less intensive visitor improvements without the need to master plan, take an exception, or process a comprehensive plan amendment.

Here, Metro is requesting a comprehensive plan amendment to satisfy, if necessary, the "designated in a comprehensive plan" language to support the Burlington Creek Forest use application. The amendment request is currently framed as a text amendment request to include Metro's internal North Tualatin Mountain Access Master Plan as an appendix to the County's comprehensive plan. If the County determines a "plan map designation" is also required to satisfy OAR 660-034, Metro hereby requests a plan map amendment through the current pending comprehensive plan amendment process. That map could simply reflect the borders of the "park" are limited to those lots upon which use improvements are proposed. For example, attached as Exhibit 2 is a map representing the lots upon which access improvements and trails are proposed in the Burlington Creek Forest, as they relate to the Burlington Creek Forest Natural Area as a whole.

Procedurally, Metro desires to make every effort to address and satisfy potential standards and remove potential uncertainty surrounding this process and code standards.

If you have any questions or concerns with the information or response provided, please contact me directly at 503-797-1600 or gary.shepherd@oregonmetro.gov. Metro thanks you for your time and assistance with this application review.

Sincerely,

Gary Shepherd
Office of Metro Attorney

Enclosures

EXHIBIT 1

Forest Park Conservancy

August 23, 2018

Kevin Cook
Multnomah County Planning
1600 SE 190th Av.
Portland OR, 97233

RE: Metro Regional Government Application #T3-2017-9165

Dear Mr. Cook,

I am writing per your request in regards to Metro's land use application (the "Application") related to the Metro North Tualatin Mountain Master Access Plan (the "Access Plan") affecting the Burlington Creek Forest Natural Area ("Burlington Property"). FPC has previously expressed public support of Metro's proposed Access Plan for the Burlington Property.

A section of the Burlington Creek Property abuts the Forest Park Conservancy's (FPC) own property in the area and both properties are served by a common forest practices road. For purposes of securing access, both Metro and FPC are benefited by reciprocal access easements over the road on their respective sections of each property serviced by the road. Metro's easement rights were memorialized in a deed and recorded in Multnomah County deed records as Book 2719, Page 1631 (the "Access Easement").

Having reviewed the latest version of the Access Plan and its most recent preliminary development and trail plans, the Forest Park Conservancy explicitly acknowledges Metro's rights for pedestrian, equestrian and vehicle access across FPC property according to the Access Easements, and explicitly consents for the easement area encumbered with the Access Easement to be included in Metro's Application.

Best,

Renee Myers

Executive Director

The Forest Park Conservancy

Cc.: Karen Vitkay, Metro

Gary Shepherd, Metro

EXHIBIT 2



Area bounded by blue line represents the current Burlington Creek Forest Natural Area, which is managed for forestry, habitat and water quality.

Area cross-hatched represents the limits of what is proposed as the Burlington Creek Forest Nature Park, which in addition to being managed for forestry, habitat, and water quality, it will be managed for recreational access.