



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

06/17/2009

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Happy Valley Plan Amendment
DLCD File Number 003-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Monday, June 29, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

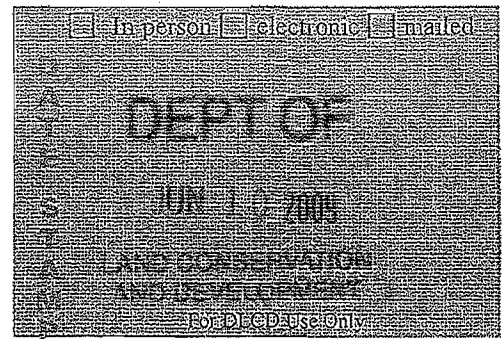
***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Sarah Mizejewski, City of Happy Valley
Gloria Gardiner, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative
Amanda Punton, DLCD Regional Representative

<paa> YA

DLCD

Notice of Adoption



**THIS FORM MUST BE MAILED TO DLCD
 WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18**

Jurisdiction: CITY OF HAPPY VALLEY

Local file number: CPA-02-09

Date of Adoption: JUNE 2, 2009

Date Mailed: JUNE 8, 2009

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one**Date:

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: ADOPTION OF ANCILLARY DOCUMENT
TO THE CITY'S COMPREHENSIVE PLZ

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".
 ADOPTION OF A LOCAL WETLAND INVENTORY AS AN ANCILLARY DOCUMENT TO THE CITY'S
 COMPREHENSIVE PLAN. ADOPTION TO OCCUR VIA ORDINANCE.

Does the Adoption differ from proposal? Please select one

Plan Map Changed from: N/A

to: N/A

Zone Map Changed from: N/A

to: N/A

Location: CITY WIDE

Acres Involved: 2500 +/-

Specify Density: Previous: N/A

New: N/A

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 003-09 (17412) [15551]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

METRO, CLACKAMAS COUNTY, CITY OF HAPPY VALLEY

Local Contact: SARAH MIZEJEWSKI

Phone: (503)783-3811 Extension:

Address: 16000 SE MISTY DRIVE

Fax Number: 503-6585174

City: HAPPY VALLEY

Zip: 97086

E-mail Address:

sarahm@ci.happy-valley.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.



June 8, 2009

File No. CPA-02-09 (Happy Valley Local Wetland Inventory):

NOTICE OF DECISION

On June 2, 2009, the City of Happy Valley City Council adopted CPA-02-09 which included the adoption of a Local Wetlands Inventory as an ancillary document to the City of Happy Valley's Comprehensive Plan. The City Council's decisions were based on a recommendation from the Happy Valley Planning Commission, and information and testimony submitted by the public to the City Council.

Copies of the decision, Staff Report and Exhibits for File No. CPA-02-09 are available upon request.

This action of the City Council is subject to appeal to the State of Oregon Land Use Board of Appeals under ORS 197.830. An appeal of this decision must be filed within 21 days of the mailing of this Notice of Decision. If no appeal is filed by **Monday June 29, 2009 at 5:00 p.m.**, this decision shall be deemed final.

A handwritten signature in cursive script that reads "Sarah Mizejewski".

Sarah Mizejewski
Associate Planner

cc: Catherin Daw, City Manager (via e-mail)
Jason Tuck, Economic & Community Development Director (via e-mail)
Michael Walter, Planning Director (via e-mail)
All Interested Persons (via post)

16000 SE Misty Drive
Happy Valley, Oregon 97086
Telephone: (503) 783-3800 Fax: (503) 658-5174
Website: www.ci.happy-valley.or.us

CITY OF HAPPY VALLEY
ORDINANCE NO. 391

AN ORDINANCE APPROVING LOCAL FILE NO. CPA-02-09, WHICH INCLUDES THE ADOPTION OF A LOCAL WETLAND INVENTORY (LWI) AS AN ANCILLARY DOCUMENT TO THE CITY OF HAPPY VALLEY COMPREHENSIVE PLAN

THE CITY OF HAPPY VALLEY ORDAINS AS FOLLOWS:

WHEREAS, application CPA-02-09 was initiated by the City of Happy Valley to adopt a LWI as an ancillary document to the City of Happy Valley Comprehensive Plan; and,

WHEREAS a public hearing was held before the City of Happy Valley Planning Commission on April 28, 2009; and,

WHEREAS, the Planning Commission unanimously recommended that said revisions be adopted based on the submitted materials as recommended in the Staff Report to the Planning Commission dated April 28, 2009; and,

WHEREAS, the City has timely forwarded a copy of the proposed products and amendments to the Department of Land Conservation and Development of the State of Oregon and Metro; and,

WHEREAS, the City Council of the City of Happy Valley, Oregon, has determined that it is reasonable, necessary and in the public interest to adopt the LWI, and upholds the Planning Commission's recommendation pursuant to the findings within the Staff Report to the Planning Commission dated April 28, 2009.

NOW, THEREFORE, based on the foregoing,

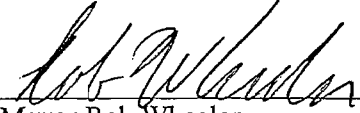
THE CITY OF HAPPY VALLEY ORDAINS AS FOLLOWS:

Section 1. The City of Happy Valley declares that the Local Wetland Inventory located within the Staff Report to the Planning Commission dated April 28, 2009 is hereby adopted as an ancillary document to the City's Comprehensive Plan in conjunction with this Ordinance; and,

Section 2. The City of Happy Valley declares that the Findings of Fact included within the Staff Report to the Planning Commission dated April 28, 2009 are hereby adopted in conjunction with this Ordinance.

CONSIDERED for the first time at the regular meeting of the City Council of the City of Happy Valley, Oregon, on May 19, 2009 and considered for the second time on June 2, 2009, and adopted by a unanimous vote of the members of the City Council of the City of Happy Valley, Oregon.

CITY OF HAPPY VALLEY



Mayor Rob Wheeler

ATTEST:



Marylee Walden, City Recorder

Mayor
Honorable Rob Wheeler



City Manager
Catherin L. Daw

**CITY OF HAPPY VALLEY
STAFF REPORT TO THE PLANNING COMMISSION**

APRIL 28, 2009

**ADOPTION OF A LOCAL WETLANDS INVENTORY (LWI) AS AN ANCILLARY
DOCUMENT TO THE CITY OF HAPPY VALLEY COMPREHENSIVE PLAN**

FILE NO. CPA-02-09

I. GENERAL INFORMATION:

APPLICABLE CRITERIA:

Applicable Statewide Planning Goals; Division 5 of the Oregon Administrative Rules; Title 3 of Metro Chapter 3.07 (Urban Growth Management Functional Plan); applicable Goals and Policies from the City of Happy Valley Comprehensive Plan; and, applicable Sections of Title 16 (Development Code) of the City of Happy Valley Municipal Code, including §16.40.020 (Initiation of a plan amendment), §16.40.040 (Public hearing and notice), and §16.40.041 (Review criteria).

EXHIBITS:

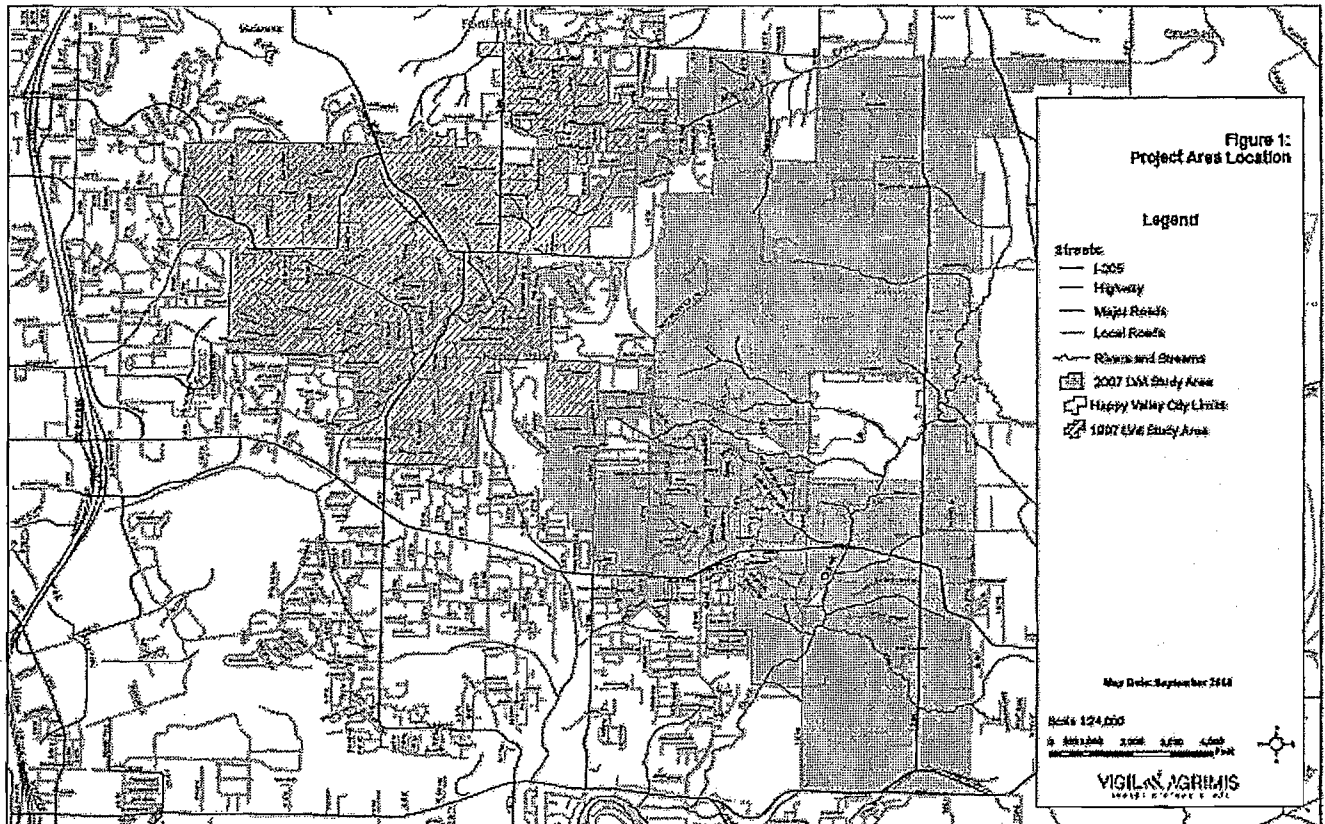
- A. Staff Report and Findings of Fact
- B. Local Wetland Inventory
- C. Oregon Department of State Lands Approval Letter (dated February 25, 2009)
- D. Measure 56 Notice
- E. Published Notice
- F. Public Comment

BACKGROUND:

In 1997, the City of Happy Valley completed a Local Wetlands Inventory (LWI) consisting of areas already located within the city limits. Since that plan was completed, the City has grown at a rapid rate. In fact, the City's population has doubled since 2001. As a result, a large portion of the current City was not included in the 1997 LWI.

The City of Happy Valley and Clackamas County Water Environment Services jointly contracted Vigil-Agrimis, Inc. to conduct an LWI for areas currently within the City's jurisdiction that were not included in the 1997 LWI. The following figure shows both the 1997

and 2007 LWI boundaries. It is important to note that approximately 533 acres of land within the jurisdiction of the City of Happy Valley is not covered by the two inventories. This is primarily due to the fact that the majority of this property was developed between the two study periods.



The study area for the 2007 LWI includes un-inventoried areas within the 1997 LWI study area, the Aldridge Road Comprehensive Plan Area, Rock Creek Comprehensive Plan Area, and the East Happy Valley Comprehensive Plan expansion area. The 1997 LWI un-inventoried areas are either on the flanks of Mt. Scott or along Mt. Scott Creek and its tributaries. The comprehensive plan areas extend from the 1997 LWI study area boundary south to Highway 212/224 and east to just beyond SE 172nd Avenue.

The 1997 LWI inventoried about 1,480 acres. The area inventoried for the 2007 LWI totals about 2,500 acres. There is very little overlap between the two documents. As a result, both documents will be used when reviewing environmental permitting requirements.

OBSERVATIONS:

FINDINGS

After necessary data was collected and condensed into document form, the 2007 LWI was sent to the Department of State Lands (DSL) for their review and approval. On February 25, 2009 the City of Happy Valley received formal approval of the LWI (see Exhibit C). The DSL approval means that the Happy Valley LWI becomes part of the Statewide Wetlands Inventory.

While considerable effort has been made to accurately identify most wetlands within the study area, the DSL approval and subsequent City adoption does not guarantee that all regulated wetlands have been mapped. The boundaries of the wetlands mapped for the LWI are only estimated, as no formal surveys or delineations were completed. The LWI is meant to be a planning tool for both the City and developers as land development occurs. Any land proposed for development that may have a wetland present (whether it is identified on the LWI or not) will be required to complete necessary surveys and delineations per existing City requirements.

PUBLIC INVOLVEMENT

The City provided multiple opportunities for public involvement. An initial mailing that included an explanation of the project, a "Frequently Asked Questions" flyer, and an access permission form was sent to property owners in February 2007. An open house was held on March 7, 2007 to respond to any questions of property owners after the initial mailing was distributed. After work in the field was completed and the City's consultant had preliminary mapping completed, an open house was again held on September 19, 2007 to present the preliminary findings and answer property owner questions.

Since receiving DSL approval of the LWI, the City has completed both a Measure 56 notification to property owners directly impacted by the LWI and a public notice to those property owners within 300 feet of an indentified wetland. Two public hearings have been scheduled where public comment will be taken.

II. RECOMMENDATION

As the City of Happy Valley continues to grow and expand through annexation (primarily to the south and east), it is of the utmost importance to develop and adopt planning documents such as the Local Wetland Inventory, so as to facilitate and continue orderly development of the area that is consistent with the City's Comprehensive Plan and Development Code along with other

applicable statewide goals and statues. Adoption of the LWI to the City's Comprehensive Plan will provide the City with a critical document to ensure responsible development within the City.

Therefore, staff recommends that the Planning Commission forward a recommendation of approval of CPA-02-09 (Local Wetland Inventory) on to the City Council.

III. FINDINGS OF FACT

1. The following Statewide Planning Goals are applicable to the subject request:

"Goal 1 (Citizen Involvement)

To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

Staff Response:

Statewide Planning Goal 1 requires governing bodies charged with preparing and adopting a comprehensive plan to adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land use planning process. The citizen involvement component of the LWI provided many opportunities for the public to participate in the process, provide comments, and obtain information about the process. Multiple public meetings, land owner mailings, and opportunities to comment on the proposed LWI were provided to the citizens of Happy Valley. Therefore, this criterion was satisfied by the LWI citizen involvement process.

Goal 2 (Land Use Planning)

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to ensure an adequate factual base for such decisions and actions.

Staff Response:

Statewide Planning Goal 2, Land Use Planning requires that local jurisdictions establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions. The LWI is being proposed for adoption as an ancillary document to the City's Comprehensive Plan. The adoption

of the LWI is subject to public notice, an initial evidentiary hearing before the Planning Commission and a final review by the City Council. Thus, a well established planning process and policy framework exists within the City. Therefore, this criterion is satisfied by the proposed amendments.

Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces)

To provide natural resources and conserve scenic and historic areas and open spaces."

Staff Response:

Statewide Planning Goal 5 requires jurisdictions to inventory lands which contain significant open spaces, scenic resources, historic and cultural resources, and natural areas. If a resource or site is found to be significant, a local government has three policy choices: preserve the resource, allow proposed uses that conflict with it, or strike some sort of balance between the resource and the uses that would conflict with it. Metro's Urban Growth Management Functional Plan (UGMFP) Title 13 was created to implement Oregon Statewide Planning Goal 5. Title 13 addresses requirements pertaining to wildlife habitat and riparian area protection and requires local jurisdictions to meet regional performance standards relating to these Goal 5 resources.

Because UGMFP Title 13 does not address wetland protection outside of riparian areas, Happy Valley is proposing adoption of the LWI to protect this Goal 5 resource as required by OAR 660-023-0100. The Department of State Lands (DSL) has reviewed the LWI and approved the document (see Exhibit B). The City has notified property owners with wetlands mapped on their property, in addition to those located within 300 feet of an identified wetland, within 120 days of the DSL approval. Therefore, this criterion is satisfied by the proposed adoption.

NOTE: The City finds that Goals 3-4 and Goals 6-19 are inapplicable to the subject application.

2. The following Oregon Administrative Rules (OAR) are applicable to the subject request:

"OAR 660-023-0100 - Wetlands

(1) For purposes of this rule, a "wetland" is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(2) Local governments shall amend acknowledged plans and land use regulations prior to or at periodic review to address the requirements of this division, as set out in OAR 660-023-0250(5) through (7). The standard inventory process requirements in OAR 660-023-0030 do not apply to wetlands. Instead, local governments shall follow the requirements of section (3) of this rule in order to inventory and determine significant wetlands.

(3) For areas inside urban growth boundaries (UGBs) and urban unincorporated communities (UUCs), local governments shall:

(a) Conduct a local wetlands inventory (LWI) using the standards and procedures of OAR 141-086-0110 through 141-086-0240 and adopt the LWI as part of the comprehensive plan or as a land use regulation; and

(b) Determine which wetlands on the LWI are "significant wetlands" using the criteria adopted by the Division of State Lands (DSL) pursuant to ORS 197.279(3)(b) and adopt the list of significant wetlands as part of the comprehensive plan or as a land use regulation.

(4) For significant wetlands inside UGBs and UUCs, a local government shall:

(a) Complete the Goal 5 process and adopt a program to achieve the goal following the requirements of OAR 660-023-0040 and 660-023-0050; or

(b) Adopt a safe harbor ordinance to protect significant wetlands consistent with this subsection, as follows:

(A) The protection ordinance shall place restrictions on grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and

(B) The ordinance shall include a variance procedure to consider hardship variances, claims of map error verified by DSL, and reduction or removal of the restrictions under paragraph (A) of this subsection for any lands demonstrated to have been rendered not buildable by application of the ordinance.

(5) For areas outside UGBs and UUCs, local governments shall either adopt the statewide wetland inventory (SWI; see ORS 196.674) as part of the local comprehensive plan or as a land use regulation, or shall use a current version for the purpose of section (7) of this rule.

(6) For areas outside UGBs and UUCs, local governments are not required to amend acknowledged plans and land use regulations in order to determine significant wetlands and complete the Goal 5 process. Local governments that choose to amend acknowledged plans for

areas outside UGBs and UUCs in order to inventory and protect significant wetlands shall follow the requirements of sections (3) and (4) of this rule.

(7) All local governments shall adopt land use regulations that require notification of DSL concerning applications for development permits or other land use decisions affecting wetlands on the inventory, as per ORS 227.350 and 215.418, or on the SWI as provided in section (5) of this rule.

(8) All jurisdictions may inventory and protect wetlands under the procedures and requirements for wetland conservation plans adopted pursuant to ORS 196.668 et seq. A wetlands conservation plan approved by the director of DSL shall be deemed to comply with Goal 5 (ORS 197.279(1)).”

Staff Response:

The City of Happy Valley has conducted a local wetlands inventory (LWI) using the standards and procedures of OAR 141-086-0110 through 141-086-0240 and is currently proposing adoption of the LWI as part of the comprehensive plan. In addition, the City has determined which wetlands on the LWI are "significant wetlands" using the criteria adopted by the Division of State Lands (DSL) pursuant to ORS 197.279(3)(b) and adopt the list of significant wetlands as part of the comprehensive plan or as a land use regulation. Therefore, these criteria have been satisfied by the proposed adoption.

3. The following Titles from METRO Chapter 3.07 (Urban Growth Management Functional Plan) are applicable to this request:

“Title 3 (Water Quality and Flood Management)

3.07.310 Intent

To protect the beneficial water uses and functions and values of resources within the Water Quality and Flood Management Areas by limiting or mitigating the impact on these areas from development activities and protecting life and property from dangers associated with flooding.

Staff Response:

Current standards required from both the City of Happy Valley and its service provider (Clackamas County Water Environment Services) provide protection of wetland and riparian resources and their buffer areas. Adoption of the LWI will provide the City necessary planning

documents to ensure compliance with Title 3 of the Metro Urban Growth Management Functional Plan. Therefore, this criterion is satisfied by the proposed amendments.

Title 13: Nature in Neighborhoods

3.07.1310 Intent

The purposes of this program are to (1) conserve, protect, and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape; and (2) to control and prevent water pollution for the protection of the public health and safety, and to maintain and improve water quality throughout the region.

[...]

3.07.1330 Implementation Alternatives for Cities and Counties

A. Under Oregon law, upon acknowledgment of this program by the Oregon Land Conservation and Development Commission (LCDC), cities and counties wholly or partly within the Metro boundary shall apply the requirements of this title with respect to areas identified as riparian habitat on the Inventory Map and areas identified as upland wildlife habitat on the Inventory Map, according to the compliance deadlines established in Metro Code Section 3.07.810, rather than applying the requirements of division 23 of chapter 660 of the Oregon Administrative Rules ("OAR"), promulgated by LCDC, [...]

B. Each city and county in the region shall either:

- 1. Amend its comprehensive plan and implementing ordinances to adopt the Title 13 Model Ordinance and the Metro Habitat Conservation Areas Map, and demonstrate compliance with the provisions of (a) Metro Code Section 3.07.1340(A)(5), related to enhanced fish and wildlife protection and management of publicly owned parks and open spaces that have been designated as natural areas and are not intended for future urban development, and (b) Metro Code Section 3.07.1340(A)(8), related to the restoration of Habitat Conservation Areas when developed property is undergoing significant redevelopment;*
- 2. Demonstrate that its existing or amended comprehensive plan and existing, amended, or new implementing ordinances substantially comply with the performance standards and best management practices described in Metro Code Section 3.07.1340, and that maps that it has adopted and uses substantially comply with the Metro Habitat Conservation Areas Map;*
- 3. Demonstrate that it has implemented a program based on alternative approaches that will achieve protection and enhancement of Class I and II riparian habitat areas, and of Class A and B upland wildlife habitat areas in territory added to the Metro UGB after December 28,*

2005, substantially comparable with the protection and restoration that would result from the application of a program that complied with Metro Code Sections 3.07.1330(B)(1) or (B)(2)."

Staff Response:

Title 13 was created to implement Oregon Statewide Planning Goal 5. Title 13 addresses requirements pertaining to wildlife habitat and riparian area protection and requires local jurisdictions to meet regional performance standards relating to these Goal 5 resources. Because UGMFP Title 13 does not address wetland protection outside of riparian areas, Happy Valley is proposing adoption of the LWI to protect this Goal 5 resource as required by OAR 660-023-0100. Adoption of the LWI will provide the City with a necessary inventory of potentially critical habitat to ensure compliance with Title 13 of the Metro Urban Growth Management Functional Plan. Therefore, these criteria are satisfied by the proposed adoption.

4. The following Goals and Policies from the City of Happy Valley Comprehensive Plan are applicable to this request:

"Goal #5: To conserve and protect natural and scenic resources.

[...]

Policy 17: Wetlands and streams located within the City of Happy Valley are governed by the City's Development Code, state and federal regulations. Approximate locations and classifications of wetlands and stream reaches are located within the City's Local Wetland Inventory.

[...]

Policy 28: Conserve the area's unique natural resources through their inclusion in the Comprehensive Plan, and development approvals, in a manner which considers surrounding uses and provides a continuity of open space character and natural features, throughout the City.

Staff Response:

The adoption of the LWI will not only identify wetlands within the current City boundary, but it will also provide a tool to be able to better identify and protect unique natural resources prior to development. Therefore, these criteria have been satisfied by the proposed adoption of the LWI.

[...]

Goal #6 – To maintain and improve the quality of the air, water and land resources in Happy Valley.

[...]

Policy 37: Comply with policies relevant to this goal outlined under LCDC Goals 5, 7, and 11.”

Staff Response:

With adoption of the LWI, the City will be in compliance with relevant policies within applicable LCDC Goals, including Goal 5. Therefore, this criterion is satisfied by the proposed amendments.

5. The following sections of Title 16 of the Happy Valley Municipal Code (DEVELOPMENT CODE) are applicable to this request:

“Chapter 16.40 AMENDMENTS TO THE COMPREHENSIVE PLAN, LAND USE MAP AND LAND DEVELOPMENT TITLE OF THIS CODE

[...]

16.40.020 Initiation of a plan amendment.

Any change in the text, map, or implementing ordinance of the adopted Happy Valley Comprehensive Plan may be initiated by the City, any resident of the City, property owners or authorized agent. [...]

Staff Response:

The proposed adoption of the LWI into the City’s Comprehensive Plan has been initiated by the City of Happy Valley. Therefore, this criterion has been satisfied by the proposed amendments.

[...]

16.40.040 Public hearing and notice.

A. Any proposed change to the adopted Happy Valley land use regulations shall follow the stated scheduling, notification and procedure.

1. Process. The first evidentiary hearing shall occur before the planning commission, who may make a recommendation to the city council to approve, approve with conditions, or deny subject requests. The city council shall be the final local review authority, and shall decide to approve, approve with conditions, or deny subject requests.

2. *Notice.*
 - a. *All affected governmental agencies shall be notified by mail. Failure to receive such notices shall not invalidate the application, public hearing or other proceedings.*
 - b. *Continued hearings may be held on any application without giving further notice as outlined above, provided that the date and time of additional or continued hearings are given during the first public hearing or subsequent hearing on the subject preceding the additional or continued hearing.*
 - c. *Notice of all non-site-specific proposed plan text, map or implementing ordinance amendments shall be provided pursuant to the city charter and applicable state statutes.*
 - B. *Any proposed annexation to the city via an expedited process shall follow the stated scheduling, notification and procedure.*
 1. *Process. Expedited annexations shall be processed as an ordinance per chapter eight of the city's Charter, effective January 1, 2001. The final decision shall occur before the city council. The city council shall be the only local review authority, and shall decide to approve, approve with conditions, or deny subject requests.*
 2. *Notice.*
 - a. *All interested and necessary parties, as defined by the Metro Code Section 3.09.020, shall be notified by mail. Failure to receive such notices shall not invalidate the application, final decision or other proceedings.*
 - b. *Continued hearings may be held on any application without giving further notice as outlined above, provided that the date and time of additional or continued hearings are given during the first public hearing or subsequent hearing on the subject preceding the additional or continued hearing.*

Staff Response:

The processes and notice described within this section have been followed by the City, including the provision of Measure 56-compliant notice. Therefore, these criteria are satisfied by the proposed amendments.

Section 16.40.041 Review criteria.

A. The proposed amendment is consistent with and promotes applicable Goals and Policies of the Comprehensive Plan of the city;

Staff Response:

See the staff response to the applicable Goals and Policies of the Comprehensive Plan, above. As addressed within the record, this criterion is satisfied by the proposed amendments.

B. There is a demonstrated public need for a change of the specific type proposed;

Staff Response:

As growth in Happy Valley extends to the east and south, it becomes necessary to have planning documents such as the LWI to ensure orderly and responsible development as required by the City's Comprehensive Plan, thereby demonstrating a public need for the change. Not adopting plans of this nature is clearly not promoting orderly and responsible development within the City, and therefore, not in the public's best interest. In addition, OAR 660-023-0100 requires local governments to conduct and adopt local wetland inventories. But adopting the subject LWI, the City is complying with requirements established by the State of Oregon. Therefore, this criterion is satisfied by the proposed amendments.

C. That need will be best served by the amendment as proposed as compared with other alternatives;

Staff Response:

Staff interprets the language "other alternatives" in this criterion to mean not completing and adopting an LWI. Per OAR 660-023-0100, local governments are required to conduct a local wetland inventory, identify "significant wetlands" within the study area, and adopt the inventory into the Comprehensive Plan. By electing to conduct the staff interpretation of "other alternatives," the City would be out of compliance with OAR 660-023-0100 and, staff will argue, several goals and policies within the City's Comprehensive Plan. Therefore, this criterion is satisfied by the proposed adoption of the LWI.

D. The proposed amendment is consistent with the use and implementation of growth management mechanisms and capital improvement programs of the city;

Staff Response:

The City of Happy Valley Comprehensive Plan establishes goals and policies to guide the quantity, type, costs, timing, and quality of development within the city. The applicable growth

management mechanism policies related to the proposed project include those addressed within this staff report.

Adoption of the LWI into the City's Comprehensive Plan will allow for the orderly and responsible development of property located within the City of Happy Valley consistent with applicable local, regional, and statewide rules and regulations. Therefore, this criterion has been satisfied by the adoption of the LWI.

E. The proposed amendment can be implemented by this land development title and all other appropriate codes, ordinances and regulations. The applicant bears the entire burden of proof of establishing to the planning commission that the proposed amendment meets the above requirements. This burden of proof shall also apply to the city if it initiates a proposed amendment.

Staff Response:

As observed, the proposed adoption of the LWI can be implemented by the City's land development code. The City has met the burden of proof of establishing to the Planning Commission that the proposed amendments meet all applicable criteria. Therefore, this criterion is satisfied by the proposed adoption of the LWI.

F. When an application includes a proposed comprehensive plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060. If a Master Plan that requires a full traffic impact analysis is required for a comprehensive plan map amendment/zone change area, a subsequent Master Plan may satisfy this provision, as determined by the City of Happy Valley community development director or designee."

Staff Response:

The Transportation Planning Rule (TPR) is not applicable to the proposed adoption of an LWI. Therefore, this criterion is not applicable.

Exhibit B Under Separate Cover or at
www.ci.happy-valley.or.us



Oregon

Theodore R. Kulongoski, Governor

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregonstatelands.us.

February 25, 2009

State Land Board

Theodore R. Kulongoski
Governor

The Honorable Rob Wheeler, Mayor
City of Happy Valley
16000 SE Misty Drive
Happy Valley, OR 97086

Kate Brown
Secretary of State

Ben Westlund
State Treasurer

Re: Approval of the City of Happy Valley Local Wetlands Inventory and Assessment

Dear Mayor Wheeler:

I am pleased to notify you that the Department of State Lands (DSL) has approved your Local Wetlands Inventory (LWI) and assessment. We appreciate your planning staff and the wetland consultant working with our staff to ensure that the inventory meets state LWI requirements (OAR 141-86-180 to 240) and the city's needs. The final inventory requirement is for the city to notify property owners with wetlands mapped on their property within 120 days of this approval. Please provide us with a copy of the landowner notification, once completed, indicating the date of notification.

Approval by DSL means that the LWI becomes part of the Statewide Wetlands Inventory. The LWI must now be used by the city instead of the National Wetlands Inventory for the Wetland Land Use Notification Process (ORS 227.350). The LWI and functional assessment also form the foundation for your wetland planning under Statewide Planning Goal 5, and the LWI must be adopted by the city per the Goal 5 requirements. Please note, when significant wetlands are designated by the city, "non-significant" wetlands may be coded to distinguish them from "significant wetlands," but must not be removed from the approved LWI maps. These wetlands are still subject to state and federal permit requirements.

While considerable effort has been made to accurately identify most wetlands within the study area, DSL's approval does not guarantee that all regulated wetlands have been mapped. The mapped wetland boundaries are estimated boundaries, they have not been surveyed, and there are inherent limitations in mapping accuracy. DSL advises persons proposing land alteration on parcels containing mapped wetlands to first contact DSL or obtain a wetland boundary delineation by a qualified consultant and submit it to DSL for approval prior to the land alteration.

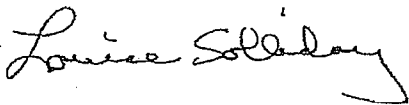
EXHIBIT # C

The Honorable Rob Wheeler
February 25, 2009
Page 2

It will be important to annotate your map (and associated database, if any) as new wetland delineations are completed and approved by DSL in order to keep your LWI updated. A few approved delineations have been completed since the LWI review draft(s). We will forward copies of the delineations to the city planning department and recommend the DSL file number be noted on the affected tax lots. Future wetland delineation approvals will be provided to the planning department.

We are pleased that the City of Happy Valley has conducted a thorough wetlands inventory and has made wetland planning a high priority. We look forward to working with you and your staff as you continue on the Goal 5 wetland planning effort. Please feel free to contact Peter Ryan at (503) 986-5232 with any questions you may have about the LWI or its use.

Sincerely,



Louise Solliday
Director

cc: Michael Walter, Planning Services Manager, City of Happy Valley
Amanda Punton & Meg Fernekees, DLCD
Maureen Raad, Vigil-Agrinis
Yvonne Vallette, EPA
Michael Turaski & James Holm, Corps of Engineers (enclosure)
Patty Snow, ODFW
Alex Cyril, DEQ
William Kirchner, FWS Regional Office
Mike McCabe, DSL
Kevin Moynahan, DSL

NOTICE OF PUBLIC HEARING

CITY OF HAPPY VALLEY

PLANNING COMMISSION & CITY COUNCIL

THIS IS TO NOTIFY YOU THAT THE CITY OF HAPPY VALLEY PROPOSES A PLAN AND/OR LAND USE REGULATION THAT MAY AFFECT THE PERMISSIBLE USES OF YOUR PROPERTY AND OTHER PROPERTIES.

This notice is provided in order to comply with Ballot Measure 56 - approved by Oregon voters on November 3, 1998. Ballot Measure 56 requires the City to print the following sentence: "The City has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property."

Notice is hereby given that the

HAPPY VALLEY PLANNING COMMISSION will hold a hearing on
TUESDAY, APRIL 28, 2009 at 7:00 p.m. AND

HAPPY VALLEY CITY COUNCIL will hold a hearing on
TUESDAY, MAY 19, 2009 at 7:00 p.m.

The hearings will be held at the Happy Valley City Hall
16000 SE Misty Drive,
Happy Valley, OR, 97086

The purpose of these hearings is to consider public testimony on:

THE ADOPTION OF A LOCAL WETLANDS INVENTORY (LWI) AS AN ANCILLARY DOCUMENT TO THE CITY'S COMPREHENSIVE PLAN.

On April 28, 2009 and May 19, 2009, the City of Happy Valley will hold public hearings regarding proposed adoption of a Local Wetlands Inventory (LWI) as an ancillary document to the City's Comprehensive Plan (File No. CPA-02-09). The LWI provides for an inventory of verified and potential wetlands throughout the City of Happy Valley. The LWI is used as a planning tool by the City of Happy Valley as development occurs throughout the City. The following language is required of Measure 56 notices: *The City of Happy Valley has determined that adoption of this plan may affect the permissible uses of your property, and other properties in the affected area, and may change the value of your property.* The land use file is available for inspection at the City of Happy Valley City Hall located at 16000 SE Misty Drive, Happy Valley, OR 97086 and are posted on our website at www.ci.happy-valley.or.us, see the section labeled East Happy Valley Comprehensive Plan/Development Code Amendments. **All written comments must be received by Friday, April 17, 2009 at the above address.** For additional information concerning the file, please contact Sarah Mizejewski, Associate Planner at 503-783-3811, or write to sarahm@ci.happy-valley.or.us. The City Council is the final local review authority and will consider the Amendments and an Ordinance at the public hearings. Applicable criteria for this review are generally set forth in:

- Happy Valley Comprehensive Plan Policies;
- Happy Valley Development Code
- Metro Urban Growth Management Functional Plan; and,
- Oregon Statewide Planning Goals and Statutes.

EXHIBIT # D

Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if requested at least 72 hours prior to the meeting. To obtain such services, please contact Marylee Walden, City Recorder, at 503.783.3800

NOTICE OF PUBLIC HEARING
City of Happy Valley Planning Commission & City Council

Notice is hereby given that the City of Happy Valley Planning Commission and City Council will hold public hearings on the following dates in regard to the proposed Happy Valley Local Wetlands Inventory:

- Date & Time:** Planning Commission - April 28, 2009 at 7:00 p.m.
City Council – May 19, 2009 at 7:00 p.m.
- Hearing Location:** City Hall, 16000 SE Misty Drive, Happy Valley, OR 97086;
- File & Subject:** File No. CPA-02-09; adoption of a Local Wetlands Inventory (LWI) as an ancillary document to the City's Comprehensive Plan.
- Proposal:** Adoption of a Local Wetlands Inventory (LWI) as an ancillary document to the City's Comprehensive Plan.
- Location:** City Wide
- Applicant:** City of Happy Valley
- Applicable Criteria:** Applicable Policies from the City of Happy Valley Comprehensive Plan; Title 16 (Development Code) of the City of Happy Valley Municipal Code, including Chapter 16.40 (Amendments to the Comprehensive Plan) the Metro Urban Growth Management Functional Plan; and, Oregon Statewide Planning Goals and Statutes.
- Staff Contact:** Sarah Mizejewski, Associate Planner
503-783-3811

Interested parties are invited to attend this hearing or to submit comments in writing prior to the meeting time. Written testimony may be submitted in advance or in person at the hearing. Those wishing to present verbal testimony, either pro, con, or to raise questions, will be asked to speak after presentation of the report.

Testimony should pertain to the applicable criteria. The recommendation of the Planning Commission to the City Council will be made in accordance with said criteria. Failure to raise an issue in writing prior to or before the close of the written comment period or failure to provide sufficient specificity at the public hearing to afford the Planning Commission an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based upon that issue. The applicant and any person who submits written comments shall receive notice of the decision.

The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Commission to respond to the issue precludes an action for damages in circuit court.

The decision-making criteria, application, and records concerning this matter are available at the City of Happy Valley City Hall at the above address during working hours (8:00 a.m. to 5:00 p.m. weekdays), please call for an appointment. For additional information, contact Sarah Mizejewski, Associate Planner, at the above address and phone number.

The meeting site is accessible to handicapped individuals. Assistance with communications (visual, hearing) must be requested 72 hours in advance by contacting Marylee Walden, City Recorder at the above phone number.

April 14, 2009

Michael Walter
City of Happy Valley Planning Commission
City of Happy Valley
16000 SE Misty Drive
Happy Valley, OR 97086

RE: The Adoption of a local wetlands inventory (LWI) as an Ancillary Document to The City's Comprehensive Plan and East Happy Valley Steep Slopes and Natural Resource Overlay Zone Map A6

Dear Mr. Walter and Members of the Commission:

I would like to thank the City Staff and Commissioners for the hard work in developing the City's Comprehensive Plan. My husband used to be an active member of the Pleasant Valley Steering Committee, prior to his stroke and I understand how many of the volunteering hours are dedicated to develop final document(s). Due to the un-planned business trip to CA, I was not able to testify on the February 10, 2009 Happy Valley Planning Commission public hearing.

The purpose of this letter is to request removal of the Wetlands Overlay and Steep Slopes Development Overlay, effecting my property at 8820 SE 162nd Avenue and adjacent properties. My existing house, barn and stables on 8.3 acre property would be significantly impacted by the proposed overlay zone restrictions, will harm any future gardening, farming, development and add additional burden and expenses.

The proposed City of Happy Valley, Development Code Amendments, Article 16 of January 2009, paragraph 16.34.040 prohibits following uses and activities within the Natural Resource Overlay Zone (NROZ):

- A. New structures, development and construction.
- B. Application of chemicals, uncontained areas of hazardous materials as defined by DEQ, domestic animal waste, dumping of materials of any kind, or other activities.
- C. Unauthorized land clearing or grading of a site to alter site conditions (including placement of new gardens and lawns) is not allowed, and may result in the maximum requirement of mitigation/enhancement regardless of pre-existing conditions.
- D. Prohibited maintenance and management activities:
 - 1. The removal of native vegetation shall not be permitted from a natural resource area unless:
 - a. A permit has been issued by the city in accordance with the land development title, or

Donata Tiley, 8820 SE 162nd Avenue, Happy Valley, OR 97086

EXHIBIT # F

- b. Species to be removed are identified as nuisance or prohibited plants on the Portland Plant List.
2. No stockpiling of fill materials, parking, or storage of equipment shall be allowed within a significant natural resources or its buffer;

The north side of my property, east of the existing barn, does not have any protected water features, as indicated on the Map A6, Attachment #1. The 200 feet protective setback, per new code will not only restrict any additions to my existing residence and existing barn, prohibits activities associated with the barn (incl. parking and storage of equipment), gardening of non – native plants, prohibits future developments on the property and be very costly to maintain. Environmental permits would be time consuming, expensive, and other proposed code amendments associated with the LWI will create additional financial burden for my family.

The existing depression at the SE corner of my property have been artificially created with out any permit for livestock usage and was never developed as a storm water detention or retention facility as a condition of a development approval. During my few conversations with DSL personnel, I was told that per ORS 196.687 *“Regulation of alteration or fill of artificially created wetlands. (1) Notwithstanding the provisions of ORS 196.600 to 196.905, state or local governments shall not prohibit or restrict the alteration or fill of wetland areas up to one acre in size that have been artificially created from upland for the purpose of controlling, storing or maintaining storm water”* this existing depression should not be treated as wetland.

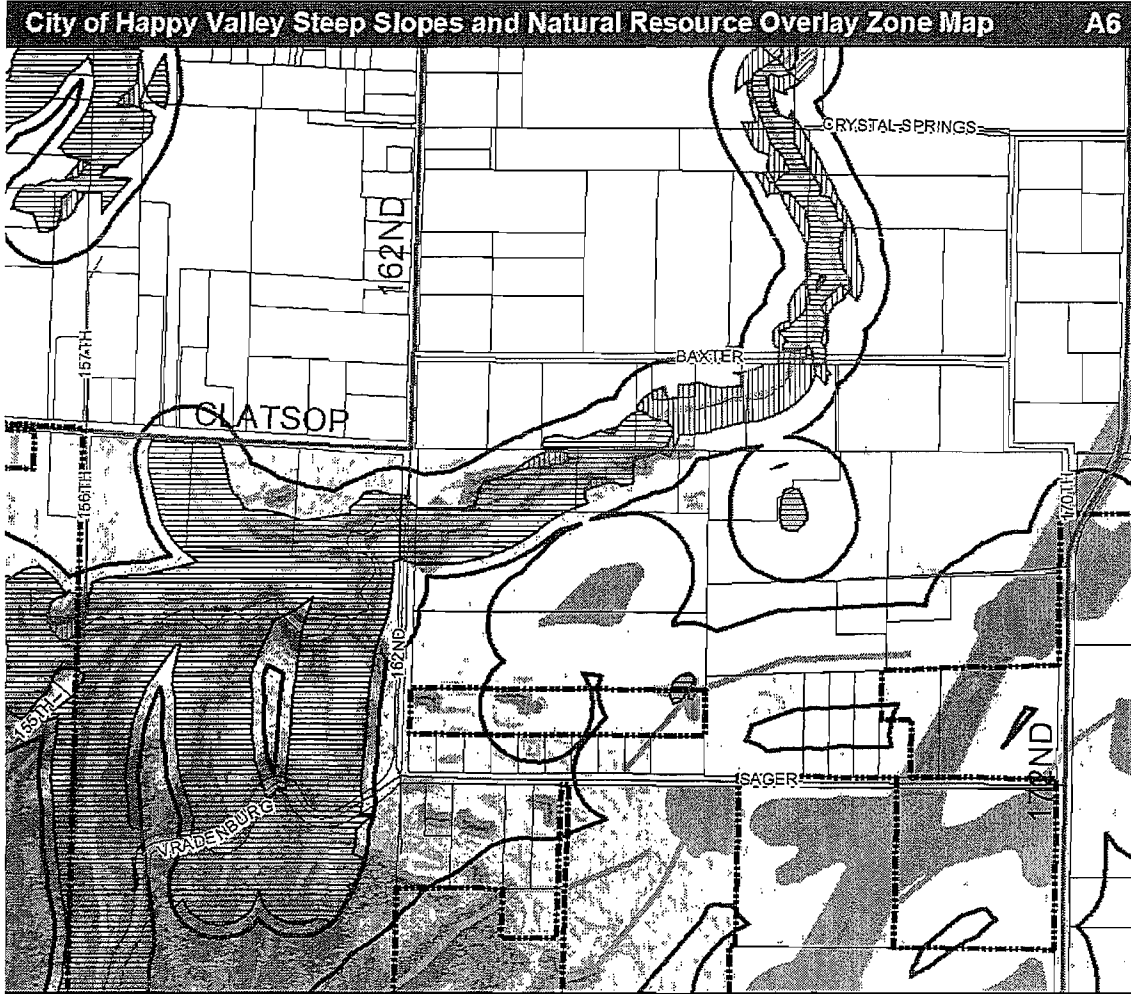
The adjacent duck pond, to the south of my property, was created few years ago for farming ducks and geese for personal use. Since then the duck/geese farming was abandoned due to the economy and duck pond drained. The proposed 200 feet protection setback will restrict any activities on my property including additions and/or remodel on my existing stables. Any natural horse raising activities will not be allowed due to the domestic animal waste restrictions or will be very costly.

The stream shown on property 16611 SE Sager Road, running diagonally thru the property, caring runoff from the Sager Road does not exist. As shown on the Attachment #2, the residential house, built in 1998, occupies the land. Please remove the stream and its 200 feet protection setback.

Thank you for opportunity to express my concerns, and please review and approve the removal of the Wetlands Overlay and Steep Slopes Development Overlay, effecting my property at 8820 SE 162nd Avenue and adjacent properties.

Sincerely,

Donata Tiley



Open House Review Draft: October 28, 2008

Water Quality Areas

- Protected Water Features
- Maximum Extent of Vegetated Corridors

Habitat Conservation Areas

- High Value
- Moderate Value
- Low Value

Steep Slopes

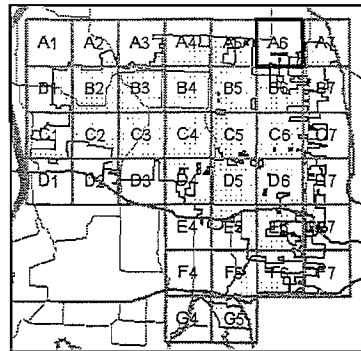
- Conservation Slope Area
- 25 Foot Buffer from Conservation Slope Area
- Transition Slope Area
- Major Utility Corridor

Boundaries

- Happy Valley City Limits
- Urban Growth Boundary
- Parcel Boundaries

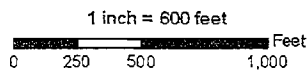
Roads

- Freeways
- Major Streets
- Local Roads

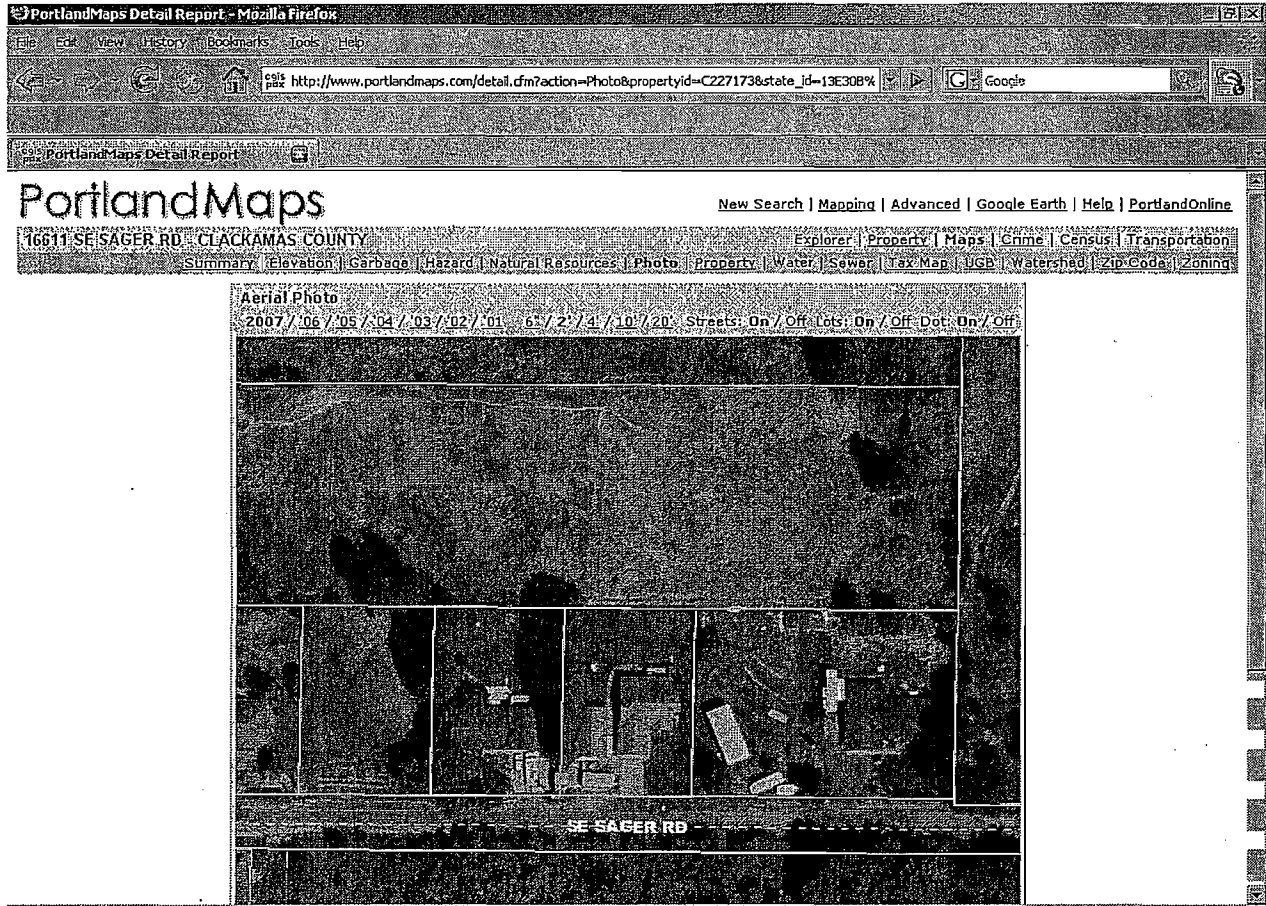


The information presented in this map is for advisory purposes only. Actual locations of natural features and legal boundary lines may differ from those shown on the map.

Plot Date: Nov 06, 2008



Attachment #2



Donata Tiley, 8820 SE 162nd Avenue, Happy Valley, OR 97086

Konstantin and Ludmila Kobylinsky, 8900 SE 162nd Ave, Happy Valley, OR 97086

April 15, 2009

Michael Walter
City of Happy Valley Planning Commission
City of Happy Valley
16000 SE Misty Drive
Happy Valley, OR 97086

RE: East Happy Valley Steep Slopes and Natural Resource Overlay Zone Map A6

Dear Mr. Walter and Members of the Commission:

We have received letter, stating that the City of Happy Valley Planning Commission and City Council will hold public hearings on April 28, 2009 at 7:00 p.m. in regard to the proposed Happy Valley Local Wetlands Inventory.

The purpose of this letter is to request specific changes to the Wetlands Overlay and Steep Slopes Development Overlay, effecting my property at 8900 SE 162nd Avenue and adjacent properties. The proposed City of Happy Valley, Development Code Amendments, Article 16 of January 2009, paragraph 16.34.040 prohibits following uses and activities within the Natural Resource Overlay Zone (NROZ):

- A. New structures, development and construction.
- B. Application of chemicals, uncontained areas of hazardous materials as defined by DEQ, domestic animal waste, dumping of materials of any kind, or other activities.
- C. Unauthorized land clearing or grading of a site to alter site conditions (including placement of new gardens and lawns) is not allowed, and may result in the maximum requirement of mitigation/enhancement regardless of pre-existing conditions.
- D. Prohibited maintenance and management activities:
 1. The removal of native vegetation shall not be permitted from a natural resource area unless:
 - a. A permit has been issued by the city in accordance with the land development title, or
 - b. Species to be removed are identified as nuisance or prohibited plants on the Portland Plant List.
 2. No stockpiling of fill materials, parking, or storage of equipment shall be allowed within a significant natural resources or its buffer;

My existing house, shop, parking, house, chicken house, horse arena, gardens, pasture and all 5 acres property would be significantly impacted by the proposed overlay zone restrictions will harm any gardening, farming, horse raising and be very costly.

See Attachment #1 and #2

REC'D

APR 16 2009

CITY OF HAPPY VALLEY

Page 1 of 7

EXHIBIT # F

1. Please remove the pond and its 200 feet protection setback (see Attachment #3)

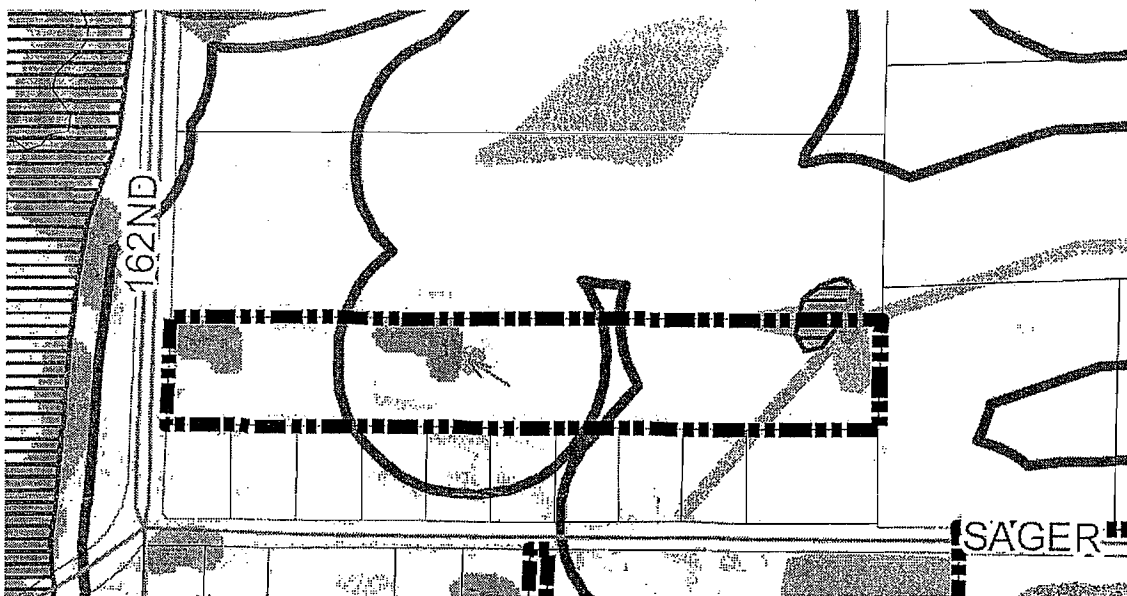
There is no pond, as shown on Attachment #3

The shallow duck pond in the middle of my property was created few years ago for farming ducks and geese for personal use. Since then the duck/geese farming activities were abandoned due to the economy and duck pond drained to prevent mosquito breeding.

It was used for ducks only and was never developed as a storm water detention or retention facility as a condition of a development approval.

The proposed 200 feet protection setback will restrict any activities on my property including additions and/or remodel on my existing home, chicken house and storage buildings.

Any natural horse raising activities will not be allowed due to the domestic animal waste restrictions; chicken raising will not be possible and will be very costly.



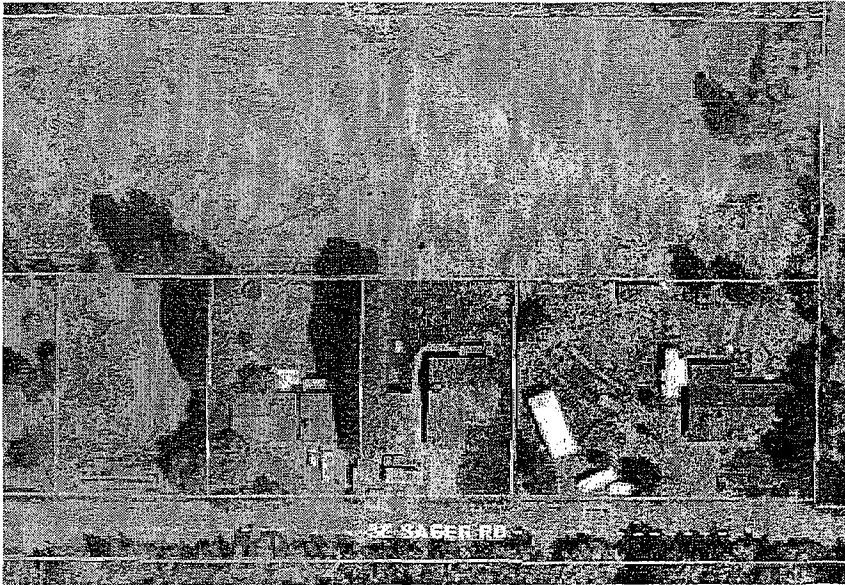
Attachment #3

3. Please remove the stream and its 200 feet protection setback.

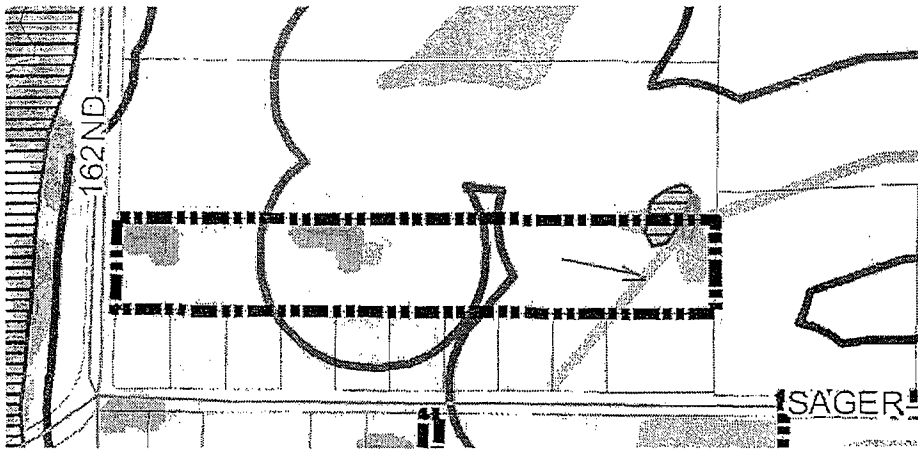
The stream shown on property 16611 SE Sager Road, running diagonally thru the property, carrying runoff from the Sager Road does not exist.

As shown on the Attachment #5, the residential house was built in 1998.

See Attachment #5 and #5a



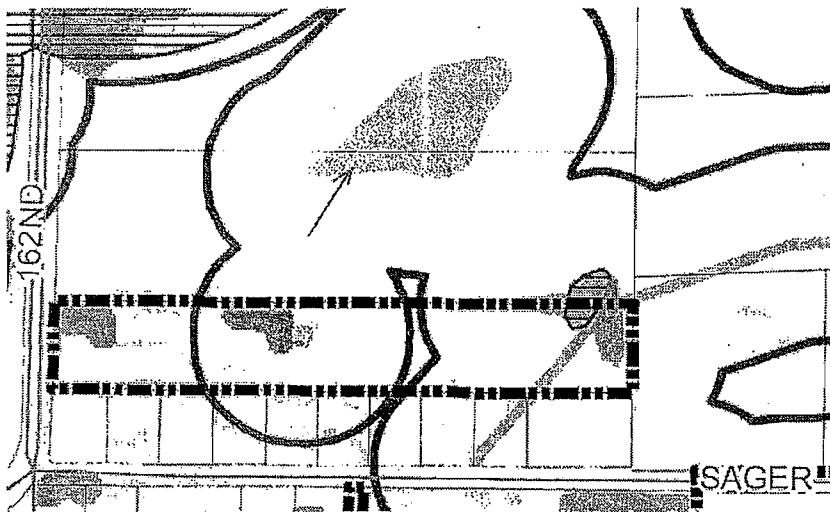
Attachment #5



Attachment #5a

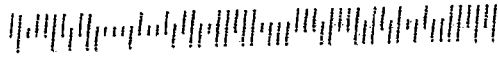
5. There is no protected water features on the north side of adjacent property as indicated on the Map A6, see Attachment #7.

The 200 feet protective setback, per new code prohibits activities associated with gardening of non – native plants on part of my property and prohibits future developments on the property.



Attachment #7

Sincerely,
Konstantin and Ludmila Kobylinsky
8900 SE 162nd Ave,
Happy Valley, OR 97086



CITY OF HAPPY VALLEY
12915 S.E. KING RD.
HAPPY VALLEY, OREGON 97086-6204



UNITED STATES POSTAGE
PITNEY BOWES
02 1P \$ 001.90⁰
0003944642 JUN 08 2009
MAILED FROM ZIP CODE 97086

Attn: Plan Amendment Specialist
Dept. of Land Conservation &
Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540