

November 22, 2020

To: Gresham Planning Commission

From: Carol Rulla

RE: Public Comments for 11/23/20 Hearing - Environmental Overlays Code Change

I am writing thank staff for all the changes made to the original draft code and generally support the current draft code with a few requests for modifications.

- **Section 5.0709 (B) Methods for Avoiding Resource Areas** [draft NRO code p.17-18]
Staff has made good changes to this section to clarify that the residential density transfer is based on dwelling units in the sending area and to mitigate unintended consequences for the receiving area by specifying that units may be transferred to no more than one non-contiguous property. I believe that two more modifications are warranted to avoid unintended consequences from the allowance of reduced setbacks:
 - **Subsection (1)** – The allowance for a setback reduction to any distance between the base district minimum and three feet is meant to allow buildings to avoid or be placed further from the RA or to minimize necessary intrusion into the RA and therefore should only apply to lots containing RA. There needs to be clarification for lot divisions that the setback reduction applies only to lots which will still contain RA. Even though the Subsection (B) introduction indicates that the subsection applies “when development is proposed in the RA” and the intent is “to minimize impact on the RA,” the proposed language in Subsection (1) could be interpreted to apply to the setbacks of all new lots created by a land division, even new lots that contain no RA and are far from the RA. This is of particularly concern for large subdivisions. To avoid any future arguments with applicants or challenges to this code section, **I ask that the setback reduction allowance specify that it only applies to final plat lots containing RA.**
 - **Subsection (3)(e)** – Similarly, the allowance for up to 20% reduction in the setbacks for non-RA portions of the site (including non-contiguous property) doesn’t make sense for residential lot divisions. The allowance for a 20% reduction in lot dimensional standards and lot sizes is what’s important for residential lot divisions to accommodate the additional density. The reduction in setbacks does nothing for the non-RA receiving portion of residential lot divisions except allow a larger building footprint on the smaller lots. This is of particular concern for large subdivisions. The reduction in setbacks is most important for development on a single lot – such as multi-family on a single lot, multi-use, commercial or industrial – where there is no opportunity to reduce lot dimensions or lot size (except in rare cases where a lot division is also involved). **I ask that the 20% reduction only be allowed for the lot dimensional standards and lot sizes for residential lot divisions.**

The following items are of minor concern, and I make them to introduce them into the record for consideration for correction before the City Council hearing:

- **Section 3.0100 Definitions**
 - **Dangerous Tree** [p.58] – I believe that fire/life safety needs to be added to medical hardship in the 3rd reason a tree preventing access should be considered dangerous.
 - **Private Public Property Interface** [p.60] and **Woody Debris** [p.63] need definitions.
 - **Utility Facilities** [p.62] are struck from the code, yet the term remains in the table of contents. Should they still be in the definitions with subdefinitions of Linear Utility Facilities and Non-Linear Utility Facilities, or are those facilities adequately described in the NRO code?
 - **Water-Dependent** and **Water Dependent** [p.62] are too similar being different only because of a hyphen. Based on their definitions, I would suggest that the terms be changed to **Water-Dependent Use** and **Water-Dependent Structure**.

- **Section 5.0700 Natural Resources Overlay (NRO)**
 - **5.0708(B)(3)(d)** [p.14] – The last bullet is missing words. I believe it should say, “... review by a Certified... of CWD demonstrates that removal or deposition will not cause...”
 - **5.0711(D)(1)** [p.27] – The note in the 2nd table about subtracting existing canopy coverage and existing continuous shrub coverage from the mitigation area should include a note to exclude existing invasives in the existing canopy or shrub coverage.
 - **5.0712(A)(2)(b)(v)** [p.31] was skipped (and the subsequent reference in **5.0712(B)(3)(b)** [p.33] probably needs to be revised when (v) is added).
 - **5.0716(A)** [p.40] – This subsection specifies that the “property owner violator” shall submit an application, whereas subsection (B) refers to just the “property owner” submitting a remediation plan. I would suggest that “violator” be removed since it is possible that the violator is not the property owner. If the intent is to require the violator to take action, then use the term “responsible party” as is done in the draft HGRO code.

- **Section 5.0200 Hillside and Geologic Risk Overlay (HGRO)**
 - Many of the code references in this section are incorrect and need to be corrected. I believe a draft code section must have been deleted then subsequent references were never corrected (e.g., many references to 5.0209 should be references to 5.0208, 5.0210 should be 5.0209, etc.).
 - **5.0209(D)(2)** [p.13] refers to “proposed infiltration of stormwater on site per Section **5.0207(C)**” but 5.0207(C) is about certification and I wasn’t sure it was the correct reference. There is no 5.0206(C) and 5.0208(C) is about replacing trees and vegetation, so I’m not sure what the correct reference should be.
 - **5.0212(A)(2)** [p.18] is missing and may just be a skipped number.
 - **5.0212(B)(2)** [p.18] refers to public utility standards in 5.0211(D), but 5.0211(D) is a simple prohibition on public facilities in HSS and I wasn’t sure that section was really the “standards” being referenced. (There is no 5.0210(D) so this is not just a mislabeling).

It was difficult to follow the references in the HGRO code, so I would suggest double-checking all of them.

Thank you for your consideration.

Jennifer McGinnis

From: Ray Moore <raym@allcountysurveyors.com>
Sent: Monday, November 23, 2020 6:30 PM
To: Jennifer McGinnis
Cc: Ken Koblitz; Ricardo Banuelos; Sarale Hickson; Katherine Kelly
Subject: Fw: Hillside and Geologic Risk Overlay Code Update

CAUTION: External Email

Hi Jennifer, I am sorry but I am unable to attend the meeting tonight. I would like to submit this email chain into the record. FYI I did not get a response back from Ken on the email below.

I would also like to ask the hearing to be continued. If it can not be continued I would request the opportunity to speak at the City Council.

Thanks,

Ray Moore, PE, PLS
All County Surveyors & Planners, Inc.
PO Box 955, Sandy, OR 97055
Phone: 503-668-3151
email: raym@allcountysurveyors.com

From: Ray Moore
Sent: Friday, October 23, 2020 7:41 AM
To: Ken Koblitz
Subject: Re: Hillside and Geologic Risk Overlay Code Update

Hi Ken. I have not seen the flyer that went out to the homeowners in the new HGRO overlay. Can you please send it over ASAP.

Do you have an ETA on the new updated text?

Ray Moore, PE, PLS
All County Surveyors & Planners, Inc.
PO Box 955, Sandy, OR 97055
Phone: 503-668-3151
email: raym@allcountysurveyors.com

From: Ray Moore
Sent: Tuesday, October 20, 2020 11:19 AM
To: Ken Koblitz
Cc: Steve Fancher ; Dale Hult ; Jim Leeper ; David Berniker ; Scott Hardman ; Jason Smith
Subject: Hillside and Geologic Risk Overlay Code Update

Hi Ken, the most disturbing thing I heard today was that land from 0 to 15% with the HGRO overlay will be restricted. This is contrary to what you said at the last meeting. You may be surprised by the amount of property within the overly that is less than 15%. As you can see below there is over 1,700 acres in the traced area only. Let's just assume that 10% is less than 15%, (probably more than that) So that is around 170 acres. Some of this land is already developed. I would guess there is still over 40 to 80 acres of undeveloped land that is less than 15% slope. I am sure your GIS guys could come up with a more accurate number.

You really need to think about what will happen with this restriction. Example...

If you have a property, with an HGRO overlay that is 10,000 sf and is zoned for 5,000 sf lots. Let's assume it is all less than 15%. The new code will require that 45% be placed in a no build easement or tract. This will cut the density in

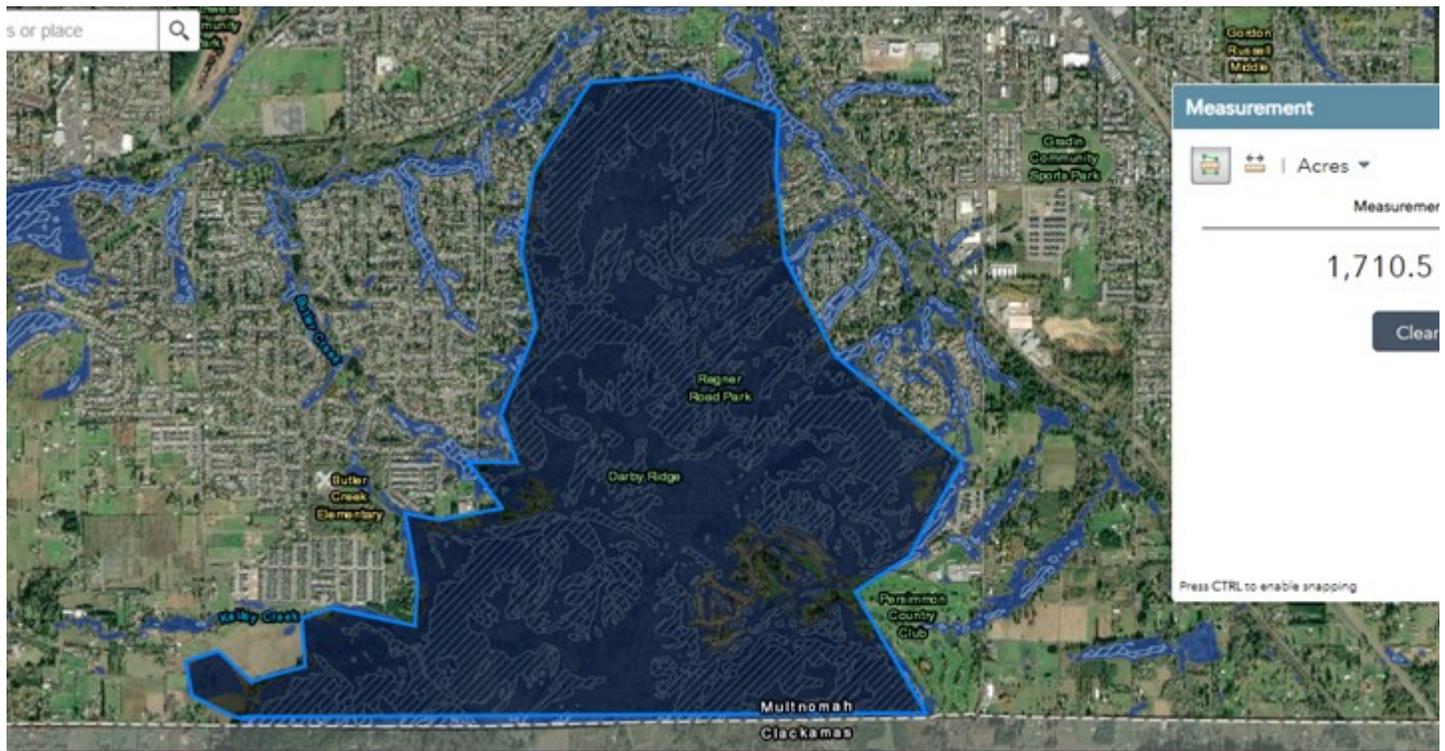
half. Even though you said you can have 100% density on all lands less than 25% slope. I am not sure how you can ever use it.

As you may or may not know, the current Hillside Physical Constraint Overlay allows homes to be constructed on all lands with slopes 0 to 15%. Have there been any problems with the homes on lands less than 15% that have been platted in the last 40 years? This new code will take away density from the City and will take away the rights of current land owners that may be thinking of partitioning their property someday. Do you really think they have read and understand this code and how it will affect them? I doubt it. I do this for a living and have read this thing many times and am just know wrapping my head around it. It is very confusing, no offence, but it is poorly written.

I know you are on a short time frame to get this code adopted, but I recommend that you push pause and really read and understand this code and explain to the public, in plain language, what rights they are losing. As I have said in the past, please look at some real world sites and try to do a layout. This will bring to light code issues that may not be apparent by just reading the code.

If you find a site, All County Surveyors will donate a detailed Topographic Survey, with a value of up to \$6,000. The site must have lands with some 0 to 15% slopes and be within the HGRO overlay. The other option is we can provide a detailed CAD file for the recently approved "Regner Heights" PD. This site is within the HGRO overlay and had around 6 acres of land 0 – 15% slope. I would be interested in seeing how many lots the City could layout on this site using the new code.

Thanks for your time and consideration.



Ray Moore, PE, PLS
All County Surveyors & Planners, Inc.
PO Box 955, Sandy, OR 97055
Phone: 503-668-3151
email: raym@allcountysurveyors.com

From: Ken Koblitz
Sent: Wednesday, October 7, 2020 10:38 PM
To: Ray Moore
Cc: Steve Fancher ; Dale Hult ; Jim Leeper ; David Berniker
Subject: RE: Environmental Overlay Code Updates

Thanks Ray. I will forward your comments to the EOP group and will follow up with you later with responses to your questions.

Ken Koblitz, Development Engineering Manager | City of Gresham

503-618-2628 | Ken.Koblitz@GreshamOregon.gov | GreshamOregon.gov

1333 N.W. Eastman Parkway | Gresham, OR 97030-3813



From: Ray Moore <raym@allcountysurveyors.com>

Sent: Wednesday, October 07, 2020 3:39 PM

To: Ken Koblitz <ken.koblitz@greshamoregon.gov>; Jim Leeper <jim@leeperdev.com>; David Berniker <david.berniker@greshamoregon.gov>

Cc: Steve Fancher <steve.fancher@greshamoregon.gov>; Dale Hult <daleh@allcountysurveyors.com>

Subject: Re: Environmental Overlay Code Updates

CAUTION: External Email

Hi Ken, thanks again for the good meeting today. Please send me the flyer you mailed out to all of the people in the Hillside overlay district.

Please consider rewording your headings. It would be simpler to understand if you would change....

5.0206 Exempt Uses and Activities

An exemption from obtaining a permit under this section does not exempt development from obtaining permits required by other sections of the code.

A. Exemptions for HGRO Areas including HSS.

B. Additional Exemptions for HGRO Areas other than HSS.

CHANGE TO:

5.0206 Allowed Uses and Activities

A. Allowed Uses in HGRO

B. Allowed Uses in HSS

To follow-up on the tree protection requirements in the new draft code 5.0200 Hillside... The new Hillside code protects 6" dia. trees. You will have an automatic code conflict if you adopt the new Hillside code as is. The image below is from Section 9.1000. ... As you can see "regulated trees" are 8" dia...**including trees located in the special purpose overlay districts."**

I understand that Section 5.0203, tries to trump 9.1000 for the trees that are located in the "Permanent Disturbance Areas". As I stated before, please remove tree protection requirements from the Hillside code, and update 9.1000 if you want to have more tree protections. If you adapt the Hillside code as is, you will need to update 9.1000 anyway to avoid conflicts.

Key

Regulated Tree – A tree that has a Diameter at Breast Height (DBH) of 8 inches or greater, including trees located in the Special Purpose Overlay Districts. Regulated Trees are not Required or Significant Trees.

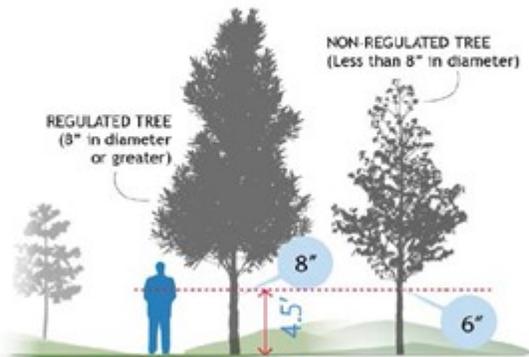


Illustration of Regulated Tree size, which is an 8-inch diameter tree measured at breast height (DBH) (4.5 feet); and what is considered a Non-Regulated Tree (less than 8 inches in diameter).

This brings me to my next point... Let's say I get hired in the future to survey a property that has an HGRO overlay, it has a home, yard, landscaping and big trees with brush in the backyard. They want to install a water feature and a pond bigger than 1.5 cy in their back yard and cut some trees down to make room. The way I understand the code is, I will have to survey the trees 6" and larger on the areas that are "Permanent Disturbance Areas" then survey the 8" and larger trees on the remaining areas. So the first task will be to delineate the "Permanent Disturbance Areas" Here is the definition out of the new code...

"Permanent Disturbance Area. The permanent disturbance area includes all areas occupied by existing or proposed structures or exterior improvements (including landscaping). The permanent disturbance area also includes areas where vegetation must be managed to accommodate overhead utilities, existing or proposed landscaped areas, and roadside areas subject to regular vegetation management to maintain safe visual or vehicle clearance."

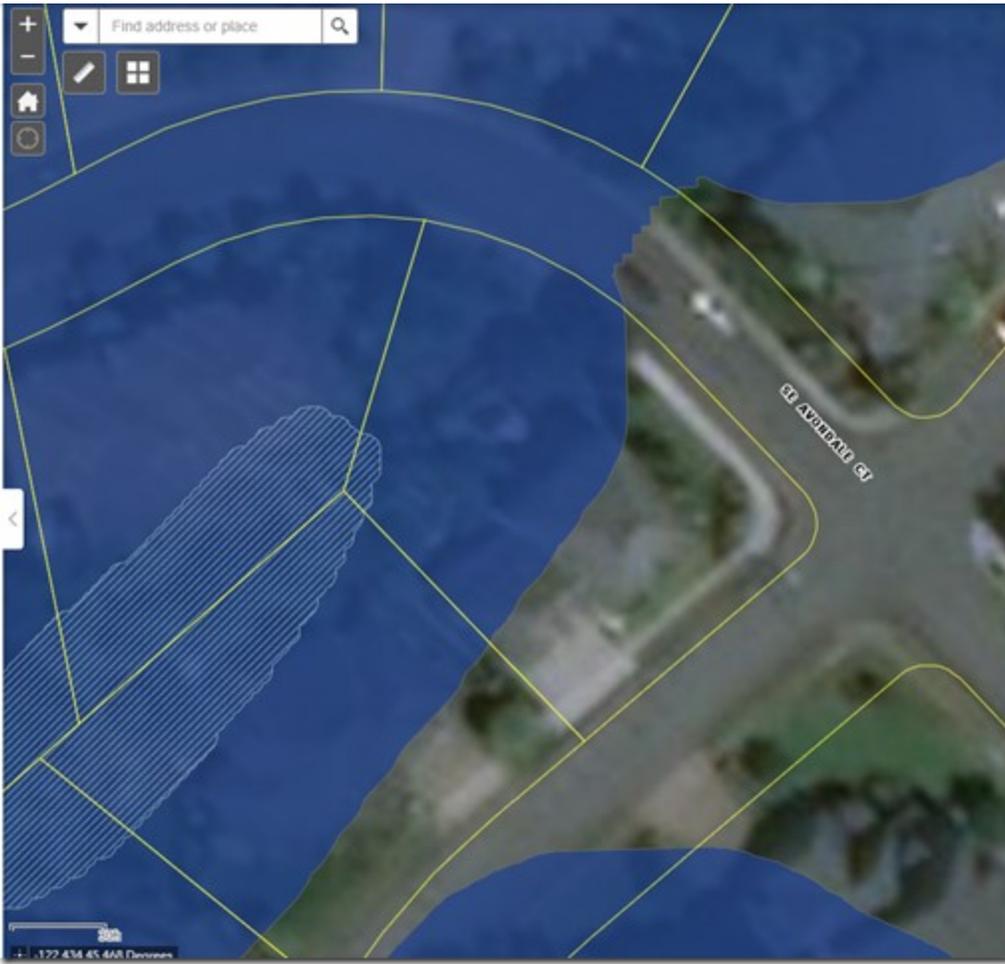
What is a proposed structure? and how would that be a "Permanent Disturbance Area"

The new code also states that ...***Disturbance Area Boundary Verification. Owners of individual legal lots created and developed with a single family dwelling or duplex prior to [insert effective date of ordinance] who wish to establish an approved permanent disturbance area boundary on that lot may submit a Disturbance Area Boundary Verification request form (provided by the City). The form shall be accompanied by aerial photography or other evidence that predates [insert effective date of ordinance] which identifies the location of all areas meeting the definition of permanent disturbance area. The date of the evidence must be verifiable by the City.***

So the City decides on where the "Permanent Disturbance Areas" are? So just for fun. Can you show me where the "Permanent Disturbance Areas" on the 3 lots below?

The site is located at the corner of SE Augusta Way and SE Avondale Ct.





Here is the back yard looking from SE Avondale Ct.



Thanks!

Ray Moore, PE, PLS
All County Surveyors & Planners, Inc.
PO Box 955, Sandy, OR 97055
Phone: 503-668-3151
email: raym@allcountysurveyors.com

From: Ray Moore
Sent: Friday, October 2, 2020 3:42 PM
To: Ken Koblitz ; Jim Leeper ; David Berniker
Cc: Steve Fancher ; DE Zoom Meetings ; Dale Hult
Subject: Re: Environmental Overlay Code Updates

October 7th at 10:30 am works for Jim and I.

Thanks,

Ray Moore, PE, PLS
All County Surveyors & Planners, Inc.
PO Box 955, Sandy, OR 97055
Phone: 503-668-3151
email: raym@allcountysurveyors.com

From: Ken Koblitz
Sent: Friday, October 2, 2020 3:26 PM
To: Jim Leeper ; 'Ray Moore' ; David Berniker
Cc: Steve Fancher ; DE Zoom Meetings
Subject: Environmental Overlay Code Updates

Heather.Byers@greshamoregon.gov is inviting you to a scheduled Zoom meeting.

Topic: EOP Code Updates
Time: Oct 7, 2020 10:30 AM Pacific Time (US and Canada)

Join Zoom Meeting
<https://greshamoregon.zoom.us/j/93226861146?pwd=VWRhKzNUMGpHQjlySitaQXVLQTFYz09>

Meeting ID: 932 2686 1146
Passcode: VqAb6c

Dial by your location

- +1 408 638 0968 US (San Jose)
- +1 669 900 6833 US (San Jose)
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- +1 301 715 8592 US (Germantown)
- +1 312 626 6799 US (Chicago)
- +1 646 876 9923 US (New York)

Meeting ID: 932 2686 1146
Passcode: 564934
Find your local number: <https://greshamoregon.zoom.us/u/acINXyeSBy>

Jim & Ray,

This meeting is intended to respond to the EOP comments Ray submitted and to get your feedback.

I picked a time that worked for David and Steve. If this doesn't work for you, please suggest some other times. Once you confirm, this invitation will be updated with a Zoom link.

Thanks,

Ken Koblitz, Development Engineering Manager | City of Gresham

503-618-2628 | Ken.Koblitz@GreshamOregon.gov | GreshamOregon.gov

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