

To: City of Lake Oswego Planning Department

380 A Avenue

Lake Oswego, OR 97034

503-635-0290

From: Lake Forest Neighborhood Association (NA) Board

Lake Forest NA takes the following positions for LU 23-0002 "Request for an RP delineation, Unavoidable RP Crossing, and Serial Lot Line Adjustments.":

Position 1: Lake Forest NA finds that extending a public sewer through Waluga Park-West violates the City Charter, specifically Chapter X Park Development Limitation.

Neither the applicant nor the staff have addressed **Chapter X Park Development Limitation** of the Lake Oswego City Charter. **Section 41 Purpose** states:

"The purpose of this Chapter is to preserve all designated Nature Preserves that are owned by the City of Lake Oswego, inclusive of the fifteen natural parks specified in this Chapter, as natural areas for the enjoyment of all residents of and visitors to Lake Oswego. This chapter shall be interpreted liberally to achieve this purpose."

Section 42 Definitions states:

"Nature Preserve means natural area parks or open spaces owned by the City of Lake Oswego that are managed or maintained to retain their natural condition and prevent habitat deterioration. Nature Preserves that are subject to limitations of this Chapter, which upon ratification will initially include,...Waluga Park-West..."

"Waluga Park – West means the park land owned by the City of Lake Oswego which is commonly referred to as "Waluga Park-West" (22.8 acres, more or less, to the East of Inverurie Drive, to the North of SW Oakridge Road, to the West of Waluga Drive)"

Section 43 Limitations on Development states:

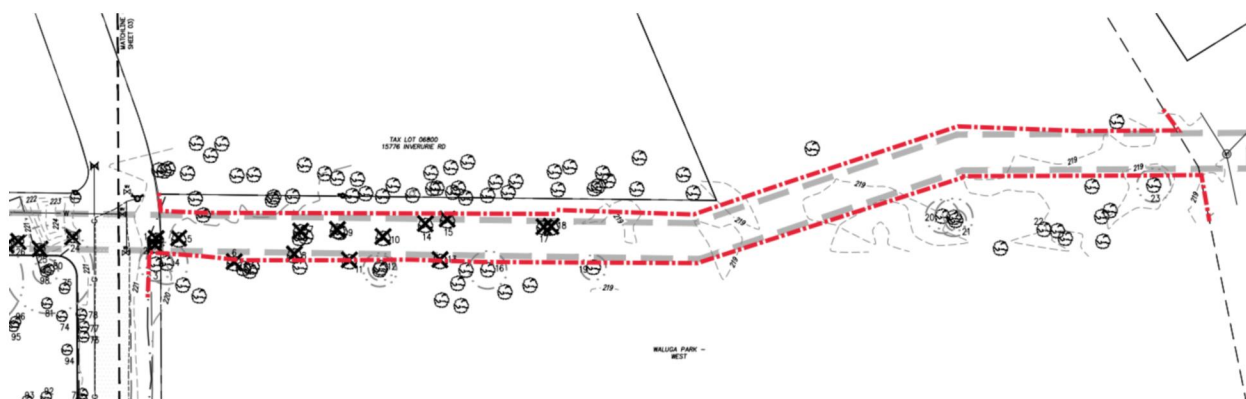
"The City of Lake Oswego shall insure that all development within a Nature Preserve is consistent with the preservation of a Nature Preserve as a natural area available for public enjoyment."

Removing trees and trenching to run a sewer line is inconsistent with the preservation of the Nature Preserve. "Shall insure" requires the City to protect against loss, damage or injury to the Nature Preserve. Trenching to extend a public utility is inconsistent with protecting the Nature Preserve against loss, damage or injury. The City Charter is clear that this development is not allowed in Waluga Park-West.

Additionally, Section 43 states (bold for emphasis):

“The City of Lake Oswego **shall not construct or develop (or allow any person to construct or develop)** any Athletic Facility, any Telecommunications Facility, or **any** parking lot, **road**, or trail **for motorized vehicles within a Nature Preserve**. The City of Lake Oswego **shall not cut (or allow any person to cut)** **any tree in a Nature Preserve for the purpose of facilitating the construction or development of** any Athletic Facility, any Telecommunications Facility, or **any** parking lot, **road**, or trail **for motorized vehicles.**”

The Lake Forest NA understands that to trench for the sewer **requires** the removal of trees, specifically 14 Oregon Ash trees of various sizes along the route within Waluga Park-West as shown in Appendix C (including the table) of the applicant’s Exhibit 12 Tree Protection Plan revised (the figure and table below are provided for reference). To create the construction zone would require a **temporary “road”** for construction motorized vehicles. Per Chapter X, Section 43, as stated above, this activity is not allowed by the City’s Charter.



Tag #	Species	Scientific Name	DBH	Health	Canopy Spread	Remove/Protect	Note
1	Oregon Ash	<i>Fraxinus latifolia</i>	10"	60% - Fair	10ft	Remove	
2	Oregon Ash	<i>Fraxinus latifolia</i>	9"	60% - Fair	10ft	Remove	
5	Oregon Ash	<i>Fraxinus latifolia</i>	15"	60% - Fair	15ft	Remove	
6	Oregon Ash	<i>Fraxinus latifolia</i>	6"	60% - Fair	10ft	Remove	
7	Oregon Ash	<i>Fraxinus latifolia</i>	6"	40% - Poor	5ft	Remove	Lean
8	Oregon Ash	<i>Fraxinus latifolia</i>	6"	40% - Poor	5ft	Remove	
9	Oregon Ash	<i>Fraxinus latifolia</i>	6"	0% - Dead	No top	Remove	Bark Falling off
10	Oregon Ash	<i>Fraxinus latifolia</i>	8"	60% - Fair	15ft	Remove	Co-dominate
11	Oregon Ash	<i>Fraxinus latifolia</i>	11"	40% - Poor	10ft	Remove	Co-dominate
13	Oregon Ash	<i>Fraxinus latifolia</i>	10"	60% - Fair	20ft	Remove	
14	Oregon Ash	<i>Fraxinus latifolia</i>	6"	40% - Poor	5ft	Remove	
15	Oregon Ash	<i>Fraxinus latifolia</i>	6"	40% - Poor	5ft	Remove	
17	Oregon Ash	<i>Fraxinus latifolia</i>	6"	60% - Fair	10ft	Remove	
18	Oregon Ash	<i>Fraxinus latifolia</i>	7"	80% - Good	10ft	Remove	

Position 2: Lake Forest NA finds that practicable alternatives exist for providing wastewater management utilities to the proposed property that avoid Resource Protection (RP) crossing.

Per City staff (page 4 of Follow-Up, Pre-Application Conference Notes for PA 21-0120, 6/27/2022, Ellen Davis), the applicable standards for RP crossing are (bolding and underlining are for emphasis):

“Standards Applicable to RP Districts (LOC 50.05.010.6): Per LOC 50.05.010.6.c, **public or private utilities shall not be placed within an RP district unless** tunneling under a resource will not cause any adverse effect upon the resource and the functions and values of a resource will be maintained, or **there is no other practicable alternative**. Per LOC 50.10.003 Definitions - **Practicable** is defined as capable of being done after considering and balancing cost, existing technology, and logistics in light of overall project purposes.

Step #1 Avoidance. Sanitary sewer, water, power, gas, cable, telecommunications, and storm drain lines shall be maintained in public rights-of-way **and are routed around significant resources rather than through a resource whenever possible,** except that tunneling under a resource shall be permitted where tunneling will not cause any adverse effect upon the resource or tree roots, and the functions and values of a resource will be maintained. **This must be evaluated by a resource professional. If development within the RP district cannot be avoided, impacts must be minimized, and mitigation is required pursuant to LOC 50.05.010.4 g."**

The City of Lake Oswego's, Wastewater Master Plan, Update or WWMPU (March 2013, Carollo) states in 6.5.2 Future Areas of Service Maps (page 6-29):

Figure 6.14 applies to the subject development:

This figure shows the sewer extension proposed by the applicant. Lake Forest NA takes issue with the application of this Wastewater Master Plan Update as a requirement for the applicant's development. This sewer extension for the applicant's development (i.e., pipe alignment) is not logical, not cost-effective and is inconsistent with LOC 50.05.010.6 by requiring an RP crossing. It is Lake Forest NA position that a practicable alternative exists that would be cost-effective and would avoid the RP crossing.

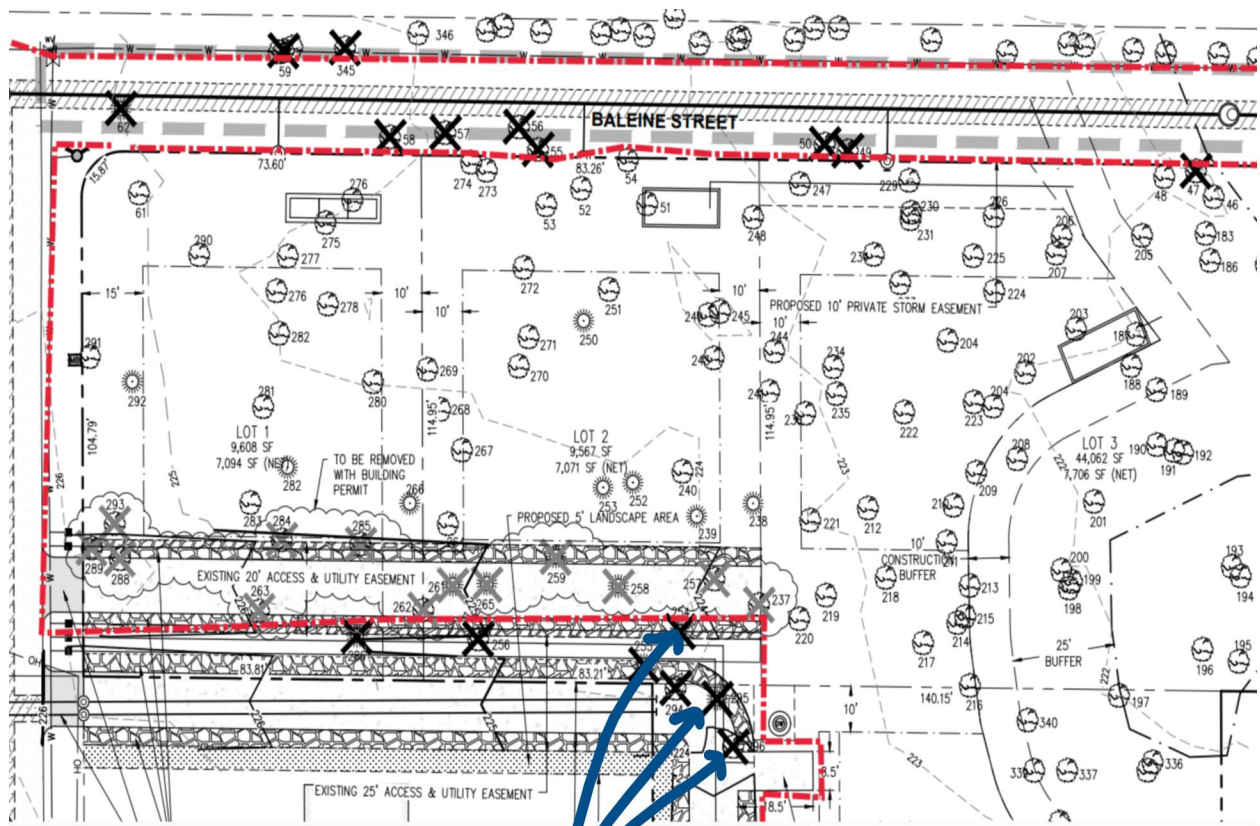
In Section 4.4 of WWMPU, Septic Tank Effluent Pumps (STEPS) are described. STEPS "are defined as septic tanks that include an effluent pump to convey wastewater to the City's collection system." The plan continues: "For the last few decades, the City has permitted STEPs to be constructed particularly because of **environmental constraints**, steep terrain, shallow bedrock, and numerous arms of Oswego Lake that make service by conventional gravity sewers very difficult." (bold for emphasis) The WWMPU says that the City owns and maintains six STEP systems and maintains eight individual STEP services (the latter being exempt from DEQ requirements of City ownership). The City chose to maintain these services.

The WWMPU evaluated options for reducing the number of STEP systems and services maintained by the City in order to reduce their maintenance costs. In one example, two STEP systems were analyzed (Summit Drive 1 and Summit Drive 2) for gravity line and pump station options (4.4.2 Ridgewood/Summit Drive STEPs pg 4-32 through 4-33). The STEP alternative option 1 (Gravity Pipe Alternative 1) discussed that "additional gravity pipes would **need to extend through the Beth Ryan Nature Reserve. Construction in the nature reserve is anticipated to require extensive permitting and possibly environmental mitigation, in addition to establishing permanent easements.**" (bold for emphasis) The Lake Forest NA contends that no development should occur in the delineated wetland (both inside and outside of Waluga Park-West) without receiving approval of the required state and federal permits.

The WWMPU drew conclusions about the analyzed alternatives for STEPs. Specifically, that the alternatives have significant costs compared to maintenance of STEPs, "especially considering crossing through environmentally sensitive areas (requiring additional permitting)" (pg 4-33). It was estimated that maintenance of eleven STEP Systems costs \$83,000 every 10 years (or approximately \$750 per year per system). Though the cost was not considered insignificant, it was determined to be significantly less than replacement. In summary, WWMPU states: "feasible alternatives for replacement are anticipated to be too costly, and it is recommended that the City continue maintenance of the existing STEP Systems in this area."

Lake Forest NA contends that the City can permit and possibly also maintain, and the applicant can install, (a) STEP system(s) or service(s) as described in the WWMPU as a practicable alternative, expected to be less expensive than the proposed sewer extension and would not require the RP crossing, thereby balancing cost, existing technology and logistics, per LOC 50.10.003.

Position 3: Lake Forest NA finds that LOC Chapter 55 Tree Code (55-02-010-55.02.084) conditions have not been satisfied for Trees designated 254, 294 and 296 permitting their removal.



Trees 254, 294 and 296

Per the applicant's exhibit 12, Tree Protection Plan revised, **Tree 254 is a 13in (DBH) Douglas Fir (Health 80% good); Tree 294 is a 27in (DBH) Oregon White Oak (Health 80% good); and Tree 296 is a 33in (DBH) Oregon White Oak (60%, Fair).**

Per LOC 55.02.080 3. Removal of the tree will not have a significant negative impact on the character or aesthetics of the neighborhood. **This standard is met when removal of the tree(s) does not involve: a) a significant tree.**

On pg. 34 of the applicant's Exhibit 2 Narrative, the applicant acknowledges that the trees are "significant": "Nine of the trees to be removed are significant (healthy) trees (trees of 15" dbh or greater)." The Lake Forest NA disagrees with the applicant's argument, specifically that: "The proposed trees for removal are not the last trees on the property." is relevant to meeting the code. Lake Forest NA knows that additional trees will be removed within the new lots due to the placement of residential homes within building footprints. The relevant criteria here is whether the applicant has considered the applicable exceptions to subsection 3. Specifically, has the applicant considered alternatives to the tree removal to allow the property to be used as permitted in the zone? Lake Forest NA agrees that these trees are significant and should be preserved through an alternative design for the property access and gravel shoulders.

Position 4: Lake Forest NA finds that since the applicant is creating additional lots through serial partitioning, street improvements replacing the gravel road on Baleine Street from Kimball Street to the west boundary of 5787 Baliene Street with pavement and stormwater management are required. In addition, the Lake Forest NA Plan (included in the City's Comprehensive Plan) shows a proposed off-street pathway along Baleine Street, from Inverurie Road to Kimball Street, which we propose would be a boardwalk through the wetland, consistent with engineering staff support for a pedestrian connection.

Per City staff engineering notes, from Todd Knepper to Ellen Davis, 12/23/2021, pg 6: **LOC Chapter 42- Streets and Sidewalks:**

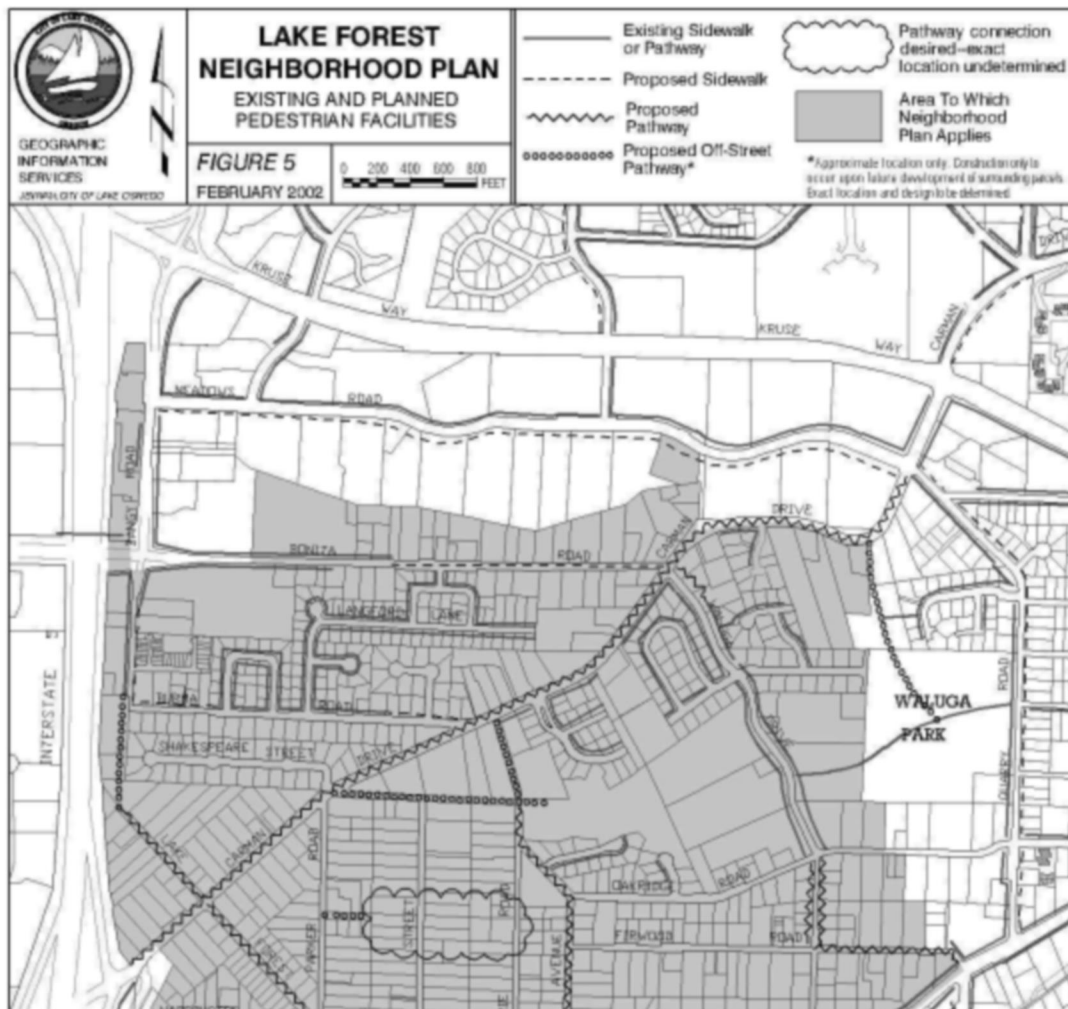
"This chapter authorizes the City Engineer to make specific street and sidewalk improvement recommendations after taking a variety of policy and site-specific factors into consideration. The City Engineer's comments are included for the review of the overall understanding of the project.

Baleine Street

... access to Baleine Street will not be allowed unless the street frontage is paved and constructed per the City's public street standards. In this case, the public street would not be allowed to be gravel. If any street improvements are constructed along Baleine Street, the existing gravel road from the west boundary of 5787 Baleine Street would need to be replaced with pavement, and stormwater management would need to be provided for the replaced impervious area. **If no additional lots are created as a result of this development, then no right- of-way dedication or street improvements to Baleine Street would be required as a condition of approval. In addition, staff would not recommend the street be connected from Kimball Street to Inverurie Road at this time; however, staff would support a pedestrian connection if proposed."** (bold for emphasis)

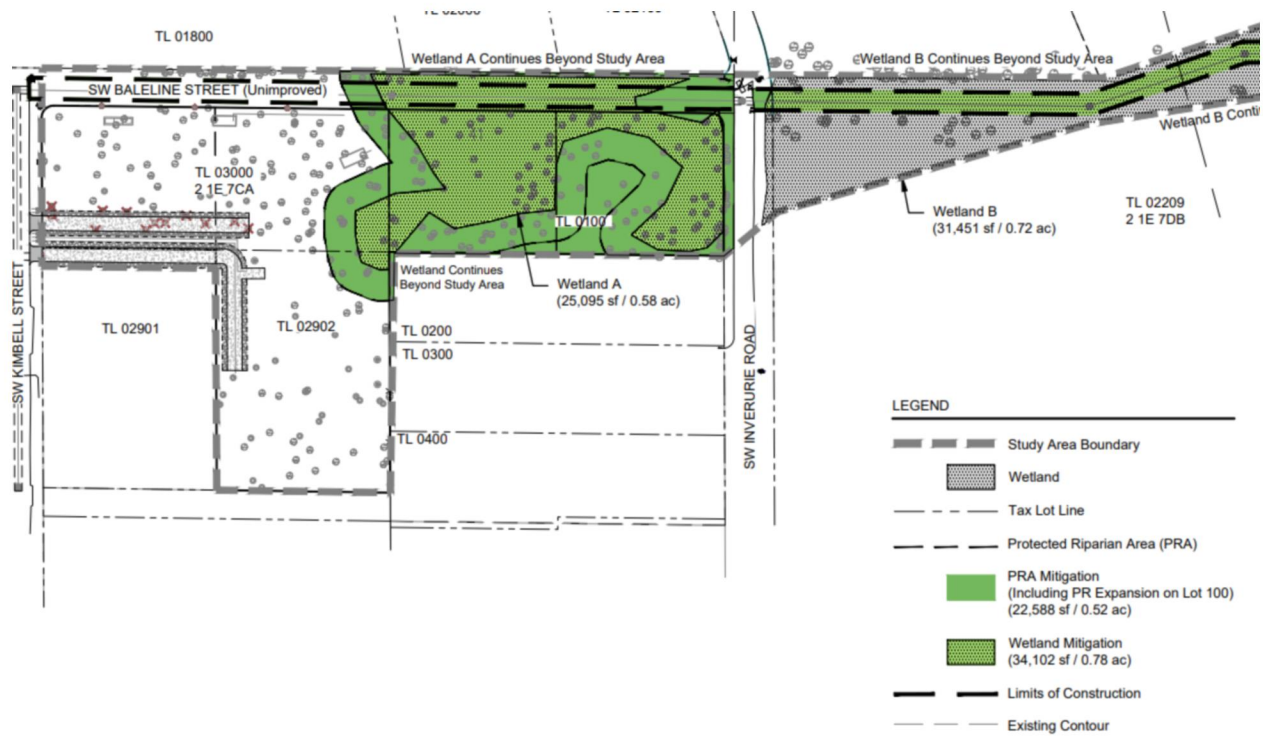
Although written in the double negative, Lake Forest NA reads the bolded excerpt of the preceding paragraph ***to require right-of-way dedication or street improvements to Baleine Street because additional lots are being created with the serial partitioning.***

The existing Baleine Street pedestrian connection between Inverurie Road and Kimball Street through the wetland is well used today, and the proposed development will lead to additional use, as an important east-west pedestrian connection within the neighborhood allowing residents (especially children) a safer route to Waluga Park. This pathway is very important to residents and is included in the Lake Forest Neighborhood Plan. Figure 5 (provided here) of the plan shows a "proposed off street pathway" in this location.



Position 5: Lake Forest NA finds that the PRA and Wetland mitigation on TL 03000 and TL 02902 will substantially impact the placement of future housing on lots 3 and 4, especially lot 3. Prior to approval of the serial lot partitions, the applicant needs to be clear how code obligations will be met with respect to mitigation and building setback requirements without creating conflicts with typical backyard and/or side yard uses by future residents.

The following figure was clipped from the “Baleine Street Sewerline Installation Resource Impacts and Mitigation” report (Figure 3A, Shawn Eisner, Pacific Habitat Services, Inc.) submitted with the application materials (Exhibit 14). This figure shows the PRA and Wetland Mitigation requirements on TL03000 and TL 02902.



The following figure (provided earlier but expanded here) shows the impacts of mitigation on proposed future lots 3 and 4.

