

Joel Haugen Verbal Testimony, 9/30/2024

1. Hello, My name is Joel Haugen. I am a citizen in the City of Scappoose. I live at 52363 SW Jobin Ln and have lived in the City for 46 years. I have committed a lot of time to improving the City and served as chair of the planning commission and a volunteer City Councilor for 7 years between the years of 2015-2022.
2. I strongly object to this development and have been joined by many members in the community. The development is located in what has been clearly identified as wetlands and floodplain and is not suitable for development.

If the project is constructed, it will have poor outcomes for the regions stormwater drainage, flooding, and to the City's stormwater systems.

The project will cause poor outcomes to the surrounding neighbors whose drainage systems will be impacted.

The project will also cause poor outcomes to the people who eventually purchase the housing, because their properties will flood more often and be subject to poor drainage and higher maintenance and insurance costs, if they can obtain flood insurance at all.

3. I have proposed to the City that they swap land that they own on the 80-acre Vista Property and offer it to the developer to develop more housing for the community. That will create a win-win – providing additional housing, profit for the developer, and saving the floodplain and wetlands area for future generations and the natural world.
4. I along with many members of the community have hired land use attorneys to help make the case that this development should not be allowed to proceed in the floodplain and wetland and should be denied. It has been expensive. But our community and our region are worth it. We have been successful to date, as the courts have found error after error with the City's review and approval of the ill-conceived development.

5. Here we are today. Today, I will present additional information demonstrating why the application should be denied.

PRESENTATION

1. Lack of Proper Authorization for Hearing Officer

- With no disrespect to Mr. Kearns, who I hear is a reputable and experienced municipal law attorney, Mr. Kearns, is not an authorized "approval authority" under Scappoose City Code (Section 17.162.090). The city code specifies that only the planner, planning commission, or city council are approval authorities for quasi-judicial land use hearings, making Mr. Kearns' role unauthorized and making this hearing invalid.
- **Request:** I request that the hearings officer deny the application based on procedural error, or remand it for reconsideration by a valid approval authority.

2. Second and Third Assignment of Error

- I am addressing my comments to the second assignment of error.
- As background, the Court of Appeals and LUBA remanded review of this application and required the City to allow parties to provide evidence related to the developer's statement and also the City's condition of approval related to that statement.
- At the City Council's public hearing for this matter, the Court of Appeals opined that the City Council indicated that they did not believe the development complied with the comprehensive plan and applicable land use regulations. As a result, they asked the developer to consider ways in which it could reduce the number of lots and increase the lot sizes to see if that caused the development to so comply.

- The developer responded by saying “44 was the number of lots the applicant could make ‘pencil’ while protecting the creek and providing a minimum lot size of 4,000 square feet”.
- The City issued a condition of approval based on that statement and never explained how the condition of approval to reduce the number of lots to 44 and increase the lot size to 4,000 sf, complied with comprehensive plan and land use regulations.
- The Court of Appeals remanded the approval to LUBA and the City, requiring closer consideration of this process.
- As identified in the third assignment of error, there was never evidence presented into the record as to why if 48 lots does not meet the applicable regulations, 44 lots does. Simply reducing the number of lots to 44 is not sufficient to meet the city's development standards, particularly concerning land use impacts, environmental preservation, and neighborhood principles.
- The reason there is no evidence in the record is because 44 lots at 4,000 sf does not make the application comply with the comprehensive plan and applicable regulations.
- I will present some of the reasons for this lack of compliance. If I had more resources, I would present more.

A. Stormwater Master Plan and Stormwater Drainage Plan. As shown in the Stormwater Master Plan, Figure 2-4, the subject development is sited in the flood plain and wetlands and not on developable land.

- The city indicated that the underlying development did not adequately protect the natural resources and sought ways to condition the development to make it comply with underlying land use regulations.
- The adjustment from 48 lots to 44 lots and increase in lot size to 4,000 sf does not mitigate the environmental or infrastructural impacts adequately.

This is what is required by ORS 197.522(3) to approve a nonconforming development.

- Siting a project in wetland and floodplain and not on developable land does not comply with applicable regulations.
- The application should be denied.

B. Hydrology and Outdated Data

- **Key Argument:** To the extent the City is going to use the applicant's hydraulic calculations to justify that the development complies with the comprehensive plan and applicable regulations, those calculations are based on outdated FEMA flood insurance data from 1987 and rainfall data from 1973, failing to account for modern climate conditions and flood risks. Therefore, it must base its hydraulic calculations on current FEMA calculations and maps.
- Additionally, FEMA's current suspension of new CLOMR-F and LOMR-F applications raises further concerns about the flood safety and accuracy of the development's hydrology assessments.
- The evidence being used to support the application is outdated and stale. The City cannot reasonably base an approval on outdated information three and four and five decades old. The City must delay or deny approval until such time that it or a third-party commissions a hydrology study on updated information, or require the development to provide an updated hydrology study, and delay any review until that information is presented.

C. Hydrology Letter –

Today, I received a letter from a hydrologist who has evaluated the area and he concludes as follows:

September 30, 2024

City of Scappoose
Community Development Director
33568 E. City of Scappoose
Scappoose, OR 97056

Subject: Buxton Ranch Planned Development and Subdivision Remand (LUBA Case No. 2023-01) (Local File #SB1-22, ZC1-22, CU1-22, SLDP (1-22, 2-22, 3-22, 4-22))

Dear City of Scappoose Development Director:

My name is Roger C. Sutherland, P.E., and I'm a consulting water resources engineer with 52 years of experience in watershed/stormwater management planning, water quality planning and BMP design, urban hydrology, stormwater pollutant load estimation and BMP modeling, riverine hydraulics, and floodplain mapping. I'm a registered professional engineer (P.E.) in Oregon and have lived and practiced here since 1978. I live in Seaside, Oregon, where I consult part-time through Cascade Water Resources, LLC. I was a principal owner of Pacific Water Resources, Inc. out of Beaverton, Oregon, from 1998 to 2011, when we sold the company to AMEC, a national firm.

I'm a recognized expert in hydraulics and urban hydrology. My knowledge of FEMA criteria and processes contributes greatly to my ability to solve serious flooding problems that plague communities. I have conducted flood insurance studies (FISs) and re-studies throughout Oregon. In addition, I have reviewed, conducted, or directed the hydrologic and hydraulic analyses associated with over thirty FEMA-approved floodplain and floodway modifications referred to as No-Rise Certifications, CLOMR, and LOMRs that dealt primarily with both public or private improvements, usually involving roadway or pathway crossings or encroachments along FEMA regulated waterways. I have made numerous presentations to City Councils, County Commissioners, Planning Committees, and the public, often discussing controversial flood-related topics. In some cases, the audiences could have been characterized as hostile, yet I've always managed to communicate the results of various flood study studies effectively and understandably. In February 1996, during the historic Oregon floods, I was contacted by CBS News out of New York and spent two days with a film crew and was featured throughout a 6-minute documentary that aired nationwide on the CBS' Sunday Morning show.

I've known Joel Haugen, a resident of Scappoose, for over a decade, and I have followed the proceedings associated with the above-referenced development proposal. I share similar concerns with Mr. Haugen that the development as it is currently proposed is a bad idea that could end up doing so much reversible harm. I testified at previous hearings several years ago. I wanted you to know that I have received no monetary compensation for my previous or current efforts. I do this as my way to give back to Oregon communities in hopes that they can learn from the mistakes we have made in the past and decide to do the right thing as it relates to the complicated business of development and its hydraulic, hydraulic, and water quality impacts to the fragile waterways that drain them.

I'm going to focus my remarks on the foolishness of allowing massive filling in the floodplain adjacent to a flood-prone waterway based on peak flows and water surface that don't even reflect the significant increases due to the development that has been allowed and will continue to be allowed in the future. The Scappoose Stormwater Master Plan (SSMP), published in May 2023 and developed by Brown and Caldwell, didn't even develop a model of the entire Scappoose watershed, so the SSMP has no idea of the current and future flood risk associated with continued development in that watershed. The most significant flood risk to Scappoose, including the downtown area, is this waterway and how it will respond to the increase in impervious surfaces associated with urbanization and the potential impacts of climate change, which suggest Oregon rainfall intensities and depths will increase. A comprehensive model is needed before a decision should be reached on this proposal for a development that could potentially do so much reversible harm!

This proposed development would not be allowed anywhere in the Portland Metropolitan area since they have had a regulation in place since 1990 that any fill allowed within the designated 100-year floodplain must be offset by the same amount of floodplain storage lost in the allowed fill. One can't simply dig a hole since the floodplain storage needs to be connected to the waterway, and it needs to be hydraulically effective across the range of flood elevations which is usually associated with the 2-year to the 100-year floods. We now know that filling in floodplains immediately adjacent to waterways is not a good idea since it leads to increased flooding when the peak flows of that waterway increase due to urbanization.

Many people are unaware that early in the National Flood Insurance Program (NFIP), FEMA was sued for trying to include future watershed development conditions in the development of the flood peak flows to use in the mapping of floodplains nationwide. FEMA lost, so the Flood Insurance Rate Maps (FIRMs) are based on the levels of urbanization that existed when the flood insurance study (FIS) was developed, which, in many cases, like that for the City of Scappoose the FIS is decades old. The fact is that FEMA spends very little money on developing the peak flows used in a study. If they exist from some previous creditable modeling efforts, they will be used, but generally, the peak flows are based on a gauge data analysis. When a gage does not exist on the waterway of interest, a peak flow transfer equation is used based on some other watershed and the drainage area comparison between the two. This technique has exhibited considerable error when checked with detailed modeling, especially for urbanized watersheds. That is the case for Scappoose Creek, so no hydrologic model of the entire watershed has been developed. So, we don't know how accurate the peak flows used in the FIS for Scappoose Creek are in establishing the Base Flood Elevations (BFEs) or the 100-year return interval flood elevations.

Another issue that should be addressed is that FEMA recently suspended reviewing and processing any Conditional Letter of Map Revisions based on fill (CLOMR-F) applications. A CLOMR-F developed for Buxton Ranch Development led to the issuance of a Letter of Map Revision (LOMR) for this development. The reason for the suspension is that FEMA has been sued over the concept of CLOMR-Fs that allow massive filling in the floodplain without considering the potential impacts on endangered species like Salmon in the waterway. FEMA was sued decades ago for the concept of a regular CLOMR without these issues being addressed, and it has been standard practice for well over a decade to essentially obtain a biological opinion as part of the CLOMR submittal that certifies there will not be a "taking of Salmon" before the CLOMR can even be processed.

Somehow, the plaintiffs thought the CLOMR issue was resolved with the previous lawsuit, not realizing that CLOMR-Fs are separate from regular CLOMRs in FEMA's world and must be litigated separately. So, it is almost sure that any CLOMR-Fs in the region moving forward will have the same biological opinion requirement for CLOMRs that has been in place for over a decade. Technically, the LOMR for this development was issued before the lawsuit was litigated and does not apply. So, it will likely be one of the region's last CLOMR-F to LOMR ever issued. Is that what you are planning on telling the residents of Scappoose who are flooded out in the future by Scappoose Creek that you approved this bad idea development based on a technicality?

Don't be complacent in believing that the extreme flooding in the Southeast won't ever happen here. Creditable studies on climate change's impact on storms here in the Northwest suggest that storms are becoming more intense and will deliver much higher rainfall depths. And since our currently estimated 24-hour 100-year return interval rainfall that engineers like me would use in Scappoose to model the one percent annual flooding (i.e., 100-year return interval flood) and resulting base flood elevations (BFEs) is only 4.7 inches. So, even a tiny percentage increase in rainfall depths would have a huge impact on peak flood flows, especially in urbanizing watersheds like Scappoose Creek.

So, for all these reasons I have listed in this pro bono letter, it would not be in the best interest of the residents of the City of Scappoose to approve this development at this time. Let us not make the same old mistakes made by those in the past who came before us. We now know the right thing to do: develop a comprehensive hydrologic model of the entire Scappoose Creek watershed and address these worrisome issues I have raised. Establish future flood return flood elevations based on these model results. Then, with these results in hand, decide whether to allow this development to move forward and, if it does, how many lots it should be limited to.

I understand that a proposal to do exactly that has been recently developed and submitted by arguably the state's best full-time water resources engineering consulting firm. That granting

organization is the Columbia River Restoration Fund (CRRF), and a decision on a potential grant award is expected in the next few months.

Finally, for the record, the Buxton Ranch properties proposed for this development are listed in the SSMP as Flood Plains and Wetlands, NOT developable lands.

Thanks for your consideration, and feel free to email me with any questions you may have.

Sincerely,

Cascade Water Resources, LLC



Roger Sutherland, PE
Principal Water Resources Engineer &
President

I also want to raise these additional concerns:

Bias in the Decision Process

- The city staff report appears biased in favor of the developer, as it concurs with all applicant assertions without adequately considering opposing views or alternative design solutions. The staff's waiver of block length and connectivity standards for the developer further reinforces this bias.
- I would like to request that the City hire an independent land use expert, such as someone with the credentials of Mr. Kearns, to provide the City with an independent evaluation of whether the application complies with the comprehensive plan and applicable regulations, including all relevant federal flood plain assessments. That independent evaluation could then be the subject of a remand hearing, using an "approval authority" authorized in city code.

6. Environmental and Public Safety Concerns

- The dense floodplain development poses significant environmental risks, particularly to flood safety and local ecosystems. A comprehensive independent study of the Scappoose watershed is necessary to assess the full impact of the project, including its potential effects on local habitats, flood risks, and public safety.
- **Request:** The application should be delayed or denied until an independent study is completed and presented for review.

open Rec

8. Call for Reopening the Record

- **Key Argument:** Per SMC 17.162.160, I am requesting the record remain open for an additional seven days to allow further evidence and written testimony to be submitted.
- Please keep the record open to ensure all relevant information is considered before a final decision is made.

Conclusion:

- The Second Assignment of Error invites parties to rebut the developer's statement that 44 lots at 4,000 sf is what is financially feasible.
- The Third Assignment of Error requires that the City to demonstrate how the 44 lot modification to the development makes the development comply with the comprehensive plan and applicable land use regulations, when a development with 48 lots does not.
- The City cannot do that because neither a 48 lot development, nor a 44 lot development may be built in the flood plain and wetland, on land designated as "not developable."
- Reducing the number of lots and increasing the lot size does not satisfy the required comprehensive plan requirements and applicable regulations.
- I request that the application be denied for the following reasons:
 - The hearings officer is not authorized to preside over the hearing. Only City Council is so authorized.
 - The development is sited in floodplain and wetlands and does not comply with the comprehensive plan and applicable regulations and

Denial

the conditions of approval do not cause the development to come into compliance as required in ORS 197.522(3).

- If hydrology data is being used to provide evidence about the development's compliance with the comprehensive plan and applicable regulations, that evidence is outdated by 30 – 50 years and cannot be relied on.
- There are other stormwater management issues.
- The staff report is biased and should be reconsidered with an independent reviewer.

Final Remark. Thank you for your time. Again, I request that the per SMC 17.162.160, the record should remain open for an additional seven days to allow further evidence and written testimony to be submitted.