



# PLANNING COMMISSION MEETING AGENDA

Santiam Travel Station – 750 S 3<sup>rd</sup> Street, Lebanon, OR 97355  
February 19, 2025

Chair:  
Don Robertson

Vice Chair:  
Lory Gerig-Knurowski

Commissioners:  
Kristina Breshears  
Karisten Baxter  
Don Fountain  
Marcellus Angellford  
Shyla Malloy  
Mike Miller  
Regina Thompson

Community  
Development Director  
Kelly Hart

Regular Meeting:  
6:00 p.m.

## 6:00 PM - REGULAR SESSION

### CALL TO ORDER / FLAG SALUTE

### ROLL CALL

### MINUTES

December 18, 2024

### COMMISSION REVIEW

1. Public Hearing – Planning File CI-24-01  
A Code Interpretation to determine whether recreational trails are permitted in the Low-Density Residential (Z-RL) zone.

### CITIZEN COMMENTS – restricted to items not on the agenda

### COMMISSION BUSINESS AND COMMENTS

### ADJOURNMENT

*Planning Commission meetings are recorded and available on the City's YouTube page at <https://www.youtube.com/user/CityofLebanonOR>. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to the Community Development Center at 541.258.4906*



# LEBANON PLANNING COMMISSION MEETING MINUTES

December 18, 2024 at 6:00 PM

Santiam Travel Station – 750 3rd Street, Lebanon, Oregon

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## 6:00 PM – REGULAR SESSION

### CALL TO ORDER / FLAG SALUTE

### ROLL CALL

#### PRESENT

Chair Don Robertson

Vice-Chair Lory Gerig-Knurowski

Karisten Baxter

Kristina Breshears

Don Fountain

Alternate Michael Miller

Alternate Regina Thompson

#### ABSENT

Alternate W. Marcellus Angellford

Alternate Shyla Malloy

#### STAFF

Community Development Director Kelly Hart

City Attorney Tre Kennedy

### MINUTES

1. May 15, 2024 and October 16, 2024 Planning Commission Meetings

The minutes were approved as submitted.

### COMMISSION REVIEW

2. **Public Hearing – Planning File CPMA-24-01, ZMA-24-01**

A proposed Comprehensive Plan Map and Zoning Map Amendment to change the comprehensive plan designation from Residential Low Density to Residential Mixed Density and to change the zoning designation from Residential Low Density to Residential High Density for the block bounded by Oak Street to the north, E. A Street to the south, an alley to the west, and Hiatt Street to the east, with property addresses 1008, 1030, 1050 and 1070 Hiatt Street, including a city-owned parcel dedicated for right-of-way. (12S02W11CD, tax lots 5600, 5601, 5700, 5800, and 5900)

City Attorney Kennedy reviewed the public hearing process. The public hearing was opened. There was no ex parte, conflict of interest, or bias declared by the Commissioners.

Community Development Director Hart presented the staff report, noting that no development proposal is part of this application review. The public comment submitted before the packet was published was included. She also read out loud the public comment received today.

Chair Robertson inquired about the purpose of the application. Hart responded that the applicant's representative would be best suited to provide an answer.

In response to a Commissioner's question about who is requesting this change, Hart explained that the request originally came from a single property owner. The comprehensive plan specifies that zones should be defined by clear block areas, so the city asked the property owner to obtain the neighbors' agreement to change the entire block to align with the plan's intent.

Applicant's Testimony: Laura LaRoque, Udell Engineering and Land Surveying, the applicant's representative, summarized the proposal. Property owners Kresta and Harry Wallace explained that the main reason for their request is to make their existing accessory dwelling unit, currently a studio apartment, into two units.

Ms. LaRoque confirmed for Commissioner Fountain that the application is consistent with the statewide planning goals and the comprehensive plan.

Testimony in Favor: None

Testimony in Opposition: None

The public hearing was closed.

A brief discussion took place regarding the surrounding property uses. Hart said that, aside from the property to the west (which is zoned for high-density residential), none exceed 9,000 square feet, making them ineligible for apartment development. However, they could potentially be expanded to duplexes or an additional dwelling unit.

Hart confirmed for Kennedy that each of those lots could be made smaller and grouped together to make a larger lot out of each of their backyards. This could change what that lot could create.

Hart also confirmed to Chair Robertson that the city right-of-way is part of this application to maintain zoning consistency, although it will remain as right-of-way. She added that the city-owned alley is a dedicated right-of-way rather than a tax lot, so it is not assigned any zoning.

Motion to approve by Commissioner Breshears, seconded by Commissioner Baxter.

Voting Yea: Chair Robertson, Vice-Chair Gerig-Knurowski, Commissioners Baxter, Breshears, Fountain, Miller and Thompson. The motion passed unanimously.

**CITIZEN COMMENTS** – None

### **COMMISSION BUSINESS AND COMMENTS**

The Commissioners welcomed Regina Thompson.

Chair Robertson raised the topic of development code updates for the Housing Production Strategy. The discussion covered general policy direction and housing goals.

There is no meeting scheduled for January.

Hart said that information on HB1537 will be brought back in February.

**ADJOURNMENT** – The meeting adjourned at 6:54 PM.



925 S. Main Street  
Lebanon, Oregon 97355

TEL: 541.258.4906  
cdc@ci.lebanon.or.us  
www.ci.lebanon.or.us

# MEMORANDUM

## *Community Development*

To: Charmain Robertson and Planning Commissioners  
From: Kelly Hart, Community Development Director  
Subject: Code Interpretation CI-24-01

Date: February 11, 2025

### I. BACKGROUND

An application for a code interpretation was submitted to clarify whether recreational trails were permitted in the Low-Density Residential (Z-RL) zone. Staff reviewed the Lebanon Municipal Code, the Lebanon Development Code, the adopted Parks and Trails Master Plans, and relevant Land Use Board of Appeals cases to interpret the code. Based on the review of the pertinent materials, staff developed an interpretation and published it for public notice. During the public notice period, the applicant presented written testimony and requested that the Planning Commission consider the interpretation. Section 16.25.030 of the Lebanon Development Code identifies the applicant may make that request. Still, it does not provide guidance on when the request should be made (e.g., at the time of application submittal, etc.). As such, out of deference, staff republished the public notice for a public hearing before the planning commission to consider the interpretation. The sections below provide the staff's interpretation of whether recreational trails are permitted in the RL zone.

### II. CURRENT REPORT

Section 16.02.010.E – Consistency with Plan and Laws. Each development and use application and other procedure initiated under this code shall be consistent with the city's adopted comprehensive plan as implemented by this code, adopted master plans, and with applicable local, state, and federal laws and regulations. All provisions of this code shall be construed in conformity with the adopted comprehensive plan.

*The Trails Master Plan, adopted by the City Council, establishes trails within the Residential Low Density (Z-RL) zone, including Trail 4, Trail 6, Oak Street Pedway, Trail 22, Trail 9, and portions of the Burkhart Creek Trail. The Trails Master Plan, an addendum to the Parks Master Plan, is consistent with the Comprehensive Plan and meets the goals of the Comprehensive Plan with planning for trails in the Z-RL with the following goals and policies:*

*Natural Environment:*

*G-12: Securing and maintaining public access to rivers and streams when possible.*

*P-6: Use designated greenways along select watercourses to protect natural vegetation*

*and water resource values and provide public pedestrian/bicycle access where physically practical.*

#### *Community Friendly Development*

*G-5: Developing streets whose purpose is not solely to move automobiles safely and efficiently, but also create a pedestrian and bicycle friendly environment.*

#### *Transportation*

*P-42: Acquisition of land and/or easements for bikeways and trails shall be evaluated along with the need for land for parks and open space.*

*P-50: The City shall work to maintain and preserve the scenic aspects of current and future separated multi-use paths.*

#### *Public Facilities and Services*

*P-36: Identify sites for a variety of park uses, including both passive and active recreational uses.*

*P-37: Seek to achieve a variety a park land, secure adequate city-wide neighborhood, and local parks, acquire unique natural areas, achieve a system of linear greenways, and create school/park and recreational areas where possible.*

No comprehensive plan goals or policies expressly prohibit parks or recreational facilities from being in low-density residential zones. The Trails Master Plan is an adopted master plan that has been determined to be consistent with the comprehensive plan and approved by the City Council. As the plan has been adopted and many trails have been developed, it is clear trails in the low-density residential (Z-RL) zone are consistent with the comprehensive plan.

- The City’s most specific definition of parks and recreation areas is found in Section 12.12.020 of the Lebanon Municipal Code:
  - “City Park” means all City of Lebanon-owned or maintained parks, playgrounds, and public recreation areas. The park boundaries include all sidewalks, vanity strips, and curbs in the designated area and extend through any adjacent streets to include all city rights-of-way in the designated zone.
    - “Recreation areas” means any area within a public park dedicated to recreational purposes, including but not limited to playgrounds, sports fields, gardens, walking trails, bike paths, gazebos, and other similar amenities, as well as public trails maintained by the city for public use.

Based on these definitions, a recreational trail is considered a recreation area in a city park. Although the development code may have separate definitions for recreational trails

and parks, the definition above is the most specific and includes public trails in the definition of a city park.

- Terra Hydr Inc., Tonquin Industrial LLC, Bob Albertson, Donna Albertson, Albertson Trucking Inc., Mark Brown, McCammant Properties Inc., Eric Johnson, Brown Transfer Inc., McGuire Brothers LLC, Steve McGuire (petitioners) v. City of Tualatin (respondent), and METRO (intervenor-respondent) LUBA Case No. 2013-016 was a case that dealt with the placement of a trail, and whether a trail is defined as a park. As part of the LUBA decision, the conclusion identified that a trail as a whole constitutes a park. The case is included as an attachment for reference.
- Table 16.05.070—Public Uses allowed in the residential zones identify “Other public uses such as parks and recreational facilities, open space, and pedestrian amenities” as permitted in the Z-RL zone, subject to a Conditional Use Permit or an Administrative Review if projects implement the city’s adopted facilities plans.
- Although the land use table also identifies recreational trails as a use, trails that implement the trails master plan and are maintained as part of the City of Lebanon park system are to be interpreted as categorized as “parks and recreational facilities, open space and pedestrian amenities” in conformance with the most precisely defined definition of the code.

### III. PUBLIC NOTIFICATION AND COMMENTS

A public notification for this project was issued on January 27, 2025. Two written comments were received prior to the publication of the agenda packet and have been included in the packet for review. Any additional written public comments received before the public hearing date will be provided to the Planning Commission prior to the meeting for review and discussed during the public hearing.

### IV. RECOMMENDED ACTIONS

1. Evaluate the public testimony and the record established before the Planning Commission
2. Commission options:
  1. Approve staff’s written Code Interpretation (CI-24-01); or
  2. Approve staff’s written Code Interpretation (CI-24-01), with modified findings and justifications; or
  3. Deny staff’s written Code Interpretation (CI-24-01), specifying how the development code should be interpreted for permitted recreational trails in the RL zone; and
  4. Direct staff to prepare an Order of Decision incorporating the decision as approved by the Planning Commission for the Chair or Vice Chair's signature.

P.O. Box 2604  
Lebanon, OR 97355  
February 6, 2025

City of Lebanon Planning Commission  
925 Main Street  
Lebanon, OR 97355



Planning Case No. CI-24-0 Applicant: Laura LaRoque  
Request: Administrative Review

History: The question of trails being allowed in Z-RL residential low-density zones was recently addressed by the Linn County Planning Department. The Planning Department awarded BLT's request for a conditional use permit to build a public trail on BLT-owned property. The trail project is named the Georgia Pacific Mill Race Trail (GPMRT).

The Linn County Planning Departments decision was appealed by NIMBY LLC (aka, Laura LaRoque). The Linn County Planning Commission addressed the appeal and after review approved BLT's Conditional Use Permit.

During Linn County's review process the Lebanon Planning Department was asked for clarification on the question of building a recreational Trail in the Residential Low-Density Zone.

Build Lebanon Trails (BLT) agrees with Linn County and the City of Lebanon that building trails in the Residential Low-Density Zone is an approved use on the properties.

The guiding document Build Lebanon Trails uses in the planning and development of trails in Lebanon is the City Council Adopted, Lebanon Trails Master Plan.

BLT agrees with the following decision as stated by City Planning Staff in the December 27, 2024, Code Interpretation on file #CI-24-01:

"Trails that implement the trails master plan and are maintained as part of the City of Lebanon park system are to be interpreted as categorized as "parks and recreational facilities, open space and pedestrian amenities" as listed in Table 16.05-5 in Section 16.05.070 of the Lebanon Development Code. As such, trails are not strictly prohibited in the residential low-density zone."

Build Lebanon Trails wishes to address the Commission at the 2/19/2025 meeting and reserve the right to future comment and appeal.

Sincerely,

Rodney W. Sell, Board President  
Build Lebanon Trails (BLT)



# NOTICE OF PUBLIC HEARING

## LEBANON PLANNING COMMISSION

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Lebanon Planning Commission on **February 19, 2025 at 6:00 p.m.** in the Santiam Travel Station located at 750 S 3<sup>rd</sup> Street, to afford interested persons and the general public an opportunity to be heard and give testimony concerning the following matter:

<b>Planning Case No.:</b>	CI-24-01
<b>Applicant:</b>	Laura LaRoque
<b>Request:</b>	Administrative Review
<b>Decision Criteria:</b>	Lebanon Development Code Chapters: 16.02, 16.05, 16.20 & 16.25

**Request:** The applicant is requesting a determination of whether Public Recreational Trails are prohibited in the Low-Density Residential (Z-RL) zone.

**Providing Comments:** The city will be accepting public comment on this item in a number of ways to afford interested persons and the general public an opportunity to give testimony on the subject matter. Written and verbal testimony will be accepted upon issuance of this notice, **until 5:00pm on Tuesday, February 18, 2025.** Written testimony may be emailed to [kelly.hart@lebanonoregon.gov](mailto:kelly.hart@lebanonoregon.gov) or mailed to the City of Lebanon at 925 S. Main Street, Lebanon, OR 97355, or delivered and dropped in the white mailbox in front of City Hall.

The public is invited to either participate in person at the Santiam Travel Station or watch the meeting virtually on **February 19, 2025.**

If you wish to address the Commission under Public Comments or for a Public Hearing, click: <https://zoom.us/meeting/register/IScEG3jdQmKkF8OHrS39og> to register in advance for the meeting. You will receive a confirmation email containing information about joining the meeting. Attendees will need to register to receive the link to the meeting.

Please register ONLY if you wish to address the Commission. If you want to watch or listen to the meeting, please click this link to do so on YouTube: <https://youtube.com/live/sycPp6bv0PA?>

The agenda and application materials will be available for review on the City's website at <https://www.lebanonoregon.gov/meetings> seven days prior to the hearing.

*CITIZENS ARE INVITED TO PARTICIPATE* in the public hearing and give written or oral testimony as described above that address applicable decision criteria during that part of the hearing process designated for testimony in favor of, or opposition to, the proposal. If additional documents or evidence are provided in support of the application subsequent to notice being sent, a party may, prior to the close of the hearing, request that the record remain open for at least seven days so such material may be reviewed.

**Appeals:** Failure to raise an issue in the hearings, in person or by letter, or failure to provide sufficient specificity to afford the decision makers an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue. Decisions of the Planning Commission may be appealed to the Lebanon City Council within 15 days following the date the Commission's final written decision is mailed. Only the applicant, a party providing testimony, and/or a person who requests a copy of the decision has rights to appeal a land use decision. The appeal must be submitted on the appeals form as prescribed by City Council with appropriate fee paid and must set forth the criteria issues that were raised which the applicant or party deems itself aggrieved. Please contact our office should you have any questions about our appeals process.



**Obtain Information:** A copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost and will be provided at the cost of 25 cents per single-sided page. If you have questions or would like additional information, please contact City of Lebanon Community Development Department, 925 Main Street; phone 541-258-4906; email [cdc@lebanonoregon.gov](mailto:cdc@lebanonoregon.gov).

**The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to 541-258-4906.**

**City of Lebanon**

Attn: Kelly Hart, Community Development Director

924 S. Main Street

Lebanon, OR 97355

Phone: (541) 258-4906

Email: Khart@ci.lebanon.or.us

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**To Whom it May Concern:**

This letter is to serve as testimony for City of Lebanon, Administrative Review Planning File No. CI-24-01; a Code Interpretation of Chapter 16.05, Section 16.05.070, Table 16.05-05 of the Lebanon Development Code, which lists Recreational Trails as not permitted in the Residential Low-Density Zone (Z-RL).

The purpose of this code interpretation is to provide clarity on this code provision and the City's implementation of it.

**Summary of Lebanon Development Code (LDC) and Recreational Trails in the Residential Low-Density Zone (Z-RL)**

**1) LDC Provisions on Recreational Trails in Z-RL:**

Section 16.05.070, Table 16.05-05 of the Lebanon Development Code (LDC) classifies "Recreational Trails" as "N" (Not Permitted) in the Residential Low-Density Zone (Z-RL). This indicates that Recreational Trails are not typically allowed in this zone without special review or exceptions.

The purpose of this section is to implement the goals and policies of the Lebanon Comprehensive Plan and other key planning documents, such as the Lebanon Parks Master Plan, Lebanon Trails Strategic Plan, and Lebanon Transportation System Plan.

**2) City Staff's Assertion:**

City staff argues that certain trail sections identified in planning documents, including Trail 4, Trail 6, Oak Street Pedway, Trail 22, and Trail 9, as well as portions of the Burkhart Creek Trail, are part of the city's recreational trail system and are located within the Z-RL zone.

**3) Contested Issues:**

It is contested that the trail sections identified by City staff such as Trail 4, Trail 6, Oak Street Pedway, Trail 22, and Trail 9 are not accurately categorized as part of the city's recreational trail system. The following distinctions and explanations highlight the issues:

- a. **Sidewalks as Public Infrastructure:** Most of the referenced trail sections are public sidewalks located within public rights-of-way (ROW), which are primarily designed to support pedestrian movement and safety, not for recreational use.

This distinction is crucial because public sidewalks, by their nature, are part of the city's infrastructure network, serving functional purposes like access to buildings, safety from traffic, and connectivity within the urban environment. They are not typically constructed or designated for recreational activities.

This distinction undermines the City staff's assertion that these sections should be considered "trail sections" in the context of a recreational trail network. Sidewalks, by their design and function, do not meet the criteria typically used for recreational trails, which are usually intended for leisure, exercise, and multi-use purposes beyond just transportation.

- b. **Existing Sidewalks Do Not Require Additional Approval:** These sidewalks are already legally established and in use as part of the city's infrastructure network. As such, they meet zoning and land use requirements for public infrastructure and do not require review under different standards for new trail construction.

The sidewalks should not be categorized as recreational trails unless they meet the specific standards for such trails. These include design features such as shared pathway standards, trail amenities, and possibly increased street separation to make them "off-street" recreational pathways.

- c. **Trail Sections in Designated City Parks:** The only established trail sections in the Residential Low-Density (Z-RL) Zone that are fully aligned with the city's recreational trail system are in River Park and Gills Landing, which are designated City Parks. Since these sections are within a public park they are permitted under the "Park" land use category.

- d. **Conceptual Trail Alignments in the Low-Density Zone:** Some of the trail sections identified within the Z-RL Zone are conceptual and not yet finalized. The final alignment of these trails is still subject to change based on future planning processes and development.

- i. **Burkhart Creek Trail:** Sections 12 and 13 of the Burkhart Creek Trail are shown in the Z-RL Zone, but these sections are proposed, and their actual location is still uncertain.

These trail sections may be re-aligned based on future planning processes or could fall under a different land use category, such as "Open Space, Public," since they are near a riverine area. Therefore, they cannot yet be considered as officially established trail sections within the Z-RL Zone.

- ii. **Trail 4, Section 2:** Section 2 of Trail 4 is shown in the Z-RL Zone, but it is also designated as Mixed Use in the Comprehensive Plan.

For trails that are planned but not yet built, it is essential to consider their future zoning designations. As Trail 4, Section 2 is shown as Mixed Use in the Comprehensive Plan, its zoning may be amendment, and the final location of the trail could change based on future development.

### Alternative Code Interpretations

It is also contested that there are three alternative interpretations of the term "Recreational Trail" within the context of the LDC. Each interpretation has its own implications, and they reflect different approaches to resolving the potential ambiguity in the code. Below is an expanded summary of the three interpretations and their respective impacts:

#### 1) **Scrivener's Error in 2008 Development Code Amendment:**

This interpretation suggests that during the 2008 code amendment, there was a clerical error in how the term "Recreational Trail" was categorized. The term was likely placed in the wrong use category and should have been classified under broader public uses like "Parks, Recreational Facilities, Open Space, and Pedestrian Amenities."

If this interpretation holds, a code amendment would be required to correct the error. This would place "Recreational Trails" in the appropriate category of public amenities, ensuring alignment with parks and recreational facilities.

A corrected code would clarify the original intent, facilitating the development of recreational trails alongside other public infrastructure like parks and open spaces.

If amended, trail development would be subject to the same rules that govern parks and other public recreational uses, potentially easing the approval process for trail projects in the future.

## 2) Ignoring the Defined Term "Recreational Trail" and Interpreting as a "Recreational Area in a City Park":

This approach suggests that City staff may choose to disregard the specific definition of "Recreational Trail" and instead interpret the term as part of a "Recreational Area in a City Park." This interpretation considers the trail as a component of a larger public park, which is often permitted as an Administrative Review or Conditional Use, as outlined in Section 16.05.070, Table 16.05-05.

This interpretation avoids the need for a formal amendment to the code, as it reinterprets the term "Recreational Trail" within the existing framework of park development.

While this approach offers practical benefits, it might introduce inconsistencies with the established code. Overriding the defined term could create confusion and lead to conflicts with other regulations. The term "Recreational Trail" would no longer align with its formal definition in the code, potentially undermining clarity.

## 3) Intentional Prohibition of Recreational Trails in the Residential Low-Density Zone (Z-RL):

This interpretation suggests that the prohibition of "Recreational Trails" in the Z-RL zone is intentional and reflects the city's decision to restrict such uses in low-density residential areas. The Trails Strategic Plan, while advocating for more trails, does not override the specific prohibition in the LDC unless formally amended.

This interpretation adheres to the current code, emphasizing that the prohibition of recreational trails in the Z-RL zone is by design. The Trails Strategic Plan, while a policy document, cannot bypass or override the zoning regulations unless they are officially amended.

To allow recreational trails in the Z-RL zone, the zoning regulations would need to be amended, or exceptions would need to be introduced. This could require public hearings and further legislative action to adjust the zoning or add specific exceptions for trail development.

### Recommendation for Resolution:

Given the ambiguity and potential conflicts in how the term "Recreational Trail" is understood, resolving this discrepancy will require a clear, consistent interpretation of the code. Below are the recommended actions based on the interpretations:

- **If the Scrivener's Error is Valid:** A code amendment should be pursued to correct the error and place "Recreational Trails" in the proper use category. This would clarify the city's intent and allow for smoother development of recreational trails in the future.
- **If the Parks Interpretation is More Appropriate:** If City staff deems it more suitable to treat recreational trails as part of park areas, the code should be updated to reflect this broader understanding. This would help align policy goals with regulatory practices and streamline approval processes for trails.
- **If the Prohibition in Z-RL Zone is Intentional:** If the intent behind the prohibition is maintained, and the Z-RL zone remains off-limits to recreational trails, the city might need to consider zoning changes or exceptions for trail

development in this area. Alternatively, future trail projects might be directed to zones where they are allowed by right.

A clear, consistent interpretation of how "Recreational Trail" is applied within the LDC is necessary to resolve confusion and avoid inefficiencies in trail development. Addressing the ambiguity through one of these interpretations—or through an amendment to the code—will help ensure the city's trail policies align with its broader land use goals, facilitating better planning and development of recreational trails.

### **The Need for a Code Amendment**

City staff's efforts to clarify this issue have likely consumed more time than would be required to simply carry out a code amendment. A code amendment would provide a more efficient, timely, and permanent solution to the situation. Given that the current code has been in existence for at least 16 years, delaying this amendment further risks continued confusion and inconsistency.

### **Why a Code Amendment is Important**

A code amendment is essential for several key reasons, including clarity, public engagement, and legal consistency. Specifically, in the context of permitting public trails, an amendment ensures the regulatory framework is up-to-date and transparent for all stakeholders.

- 1) Lack of Public Awareness:** Code interpretations, while useful internally, are not easily accessible to the general public. The Development Code, which is publicly available, is the primary resource for residents and developers to understand what is permissible in their areas. If the code is not amended to reflect the current approach to trail development, the public might misinterpret or be unaware of the ability to develop trails in specific zones (like the Residential Low-Density Zone).

A code amendment would ensure the Development Code accurately reflects current practices, like permitting trails in certain zones. This change would provide the public with a clearer understanding of the city's regulations, helping them recognize that trails may be permitted with proper planning processes, not as exceptions.

The public would have better clarity regarding trail development regulations, leading to fewer misunderstandings and increased trust in the city's processes.

- 2) Risk of Inconsistent or Changing Code Interpretations:** Code interpretations can be subjective and flexible, varying between different staff members, especially as staff turnover occurs. A new staff member may interpret the code differently, leading to inconsistent enforcement and application of the rules.

A code amendment would formalize the language and regulations in the code itself, ensuring consistency. This would minimize the reliance on subjective interpretations and establish a clear, fixed set of rules for all stakeholders—staff, developers, and the public—to follow.

With a stable, unambiguous code in place, all parties involved would have a clear understanding of how recreational trails are treated, ensuring uniform application across future projects.

- 3) Public Involvement and Transparency:** Based on a recent public records request, it appears that trails constructed after the 2008 Development Code and 2009 Trails Strategic Plan were permitted without going through the formal land use review process. This may have been done under the assumption that these types of trails were automatically allowed, but this bypassed public notification and feedback opportunities.

A code amendment could formalize the process, ensuring that future trail developments go through the appropriate review process, with public involvement at key stages. This would include notifying nearby property owners and other interested individuals, allowing them to submit written comments before a final decision is made.

Public involvement is vital to Oregon’s Statewide Planning Goal 1, which emphasizes Citizen Involvement. A formal amendment would ensure that public trails are developed in a transparent manner, engaging the community and allowing stakeholders to voice their opinions.

## **Analysis of Code Interpretation and Potential Conflicts**

The interpretation of the Lebanon Development Code (LDC) regarding the categorization and treatment of "Recreational Trails" in the Residential Low-Density (Z-RL) zone presents several significant challenges and conflicts with other sections of the Code, as well as with established city plans. Below is an analysis of these potential conflicts, particularly considering LDC Sections 16.25.010 and 16.25.020, which guide the process of code interpretation.

### **1) Conflicts with the Lebanon Comprehensive Plan and Development Code**

The City staff’s interpretation of the code, if adopted by the Planning Commission, may contradict key provisions in the Lebanon Comprehensive Plan (LCP), Development Code (LDC), and Lebanon Municipal Code (LMC). These conflicts are outlined below:

#### **a. The Most Restrictive Rule Governs**

LDC Section 16.02.010(C) states that when the Code imposes greater restrictions than other regulations, the stricter rule shall apply. The City staff interpretation appears to disregard this, particularly regarding the "Not Permitted" (N) designation for recreational trails in the Z-RL zone. This designation was purposefully included in Table 16.05-05, Section 16.05.070, to limit potentially incompatible land uses in residential zones. The interpretation could potentially weaken these restrictions, undermining the regulatory intent.

#### **b. Specific Definitions and Use Categories of Recreational Trails**

The term “Recreational Trail” is specifically defined in Section 16.32.020 and referenced in multiple places throughout the LDC:

- a. Section 16.03.020 includes Recreational Trails as “[P]” representative of a Public Use
- b. Section 16.03.060(B) list Recreational Trails as public use with Class II Impacts.
- c. Section 16.06.080, Table 16.06-5 lists Recreational Trails as “CU” (Conditional Use) in the Mixed-Use zone (Z-MU) zoning district.
- d. Section 16.07.080, Table 16.07-5 lists Recreational Trails as “CU” (Conditional Use) in the Neighborhood Mixed-Used (Z-NMU) zoning district.
- e. Section 16.08.080, Table 16.08-5 lists Recreational Trails as “N” (Not Permitted) in the Neighborhood Commercial (Z-NCM) zoning district and as a “CU” (Conditional Use) and in the Community Commercial (Z-CCM) and Highway Commercial (Z-HCM) zoning districts.
- f. Section 16.08.080, Table 16.09-5 lists Recreational Trails as “N” (Not Permitted) in the Industrial (Z-IND) zoning district.
- g. Section 16.10.080, Table 16.10-5 lists Recreational Trails as “AR” (Administrative Review) in the Public Use (Z-PU) zoning district.

- h. Section 16.12.040, Table 16.12.040-1 states that Recreational Trails are not regulated by the standards of this Chapter (nor Chapter 16.14), and as noted in the State’s Transportation Planning Rule (TPR) do not have to be paved. See Parks Master Plan and related documents.
- i. Section 16.12.050(A)(3) Recreational Trails -- See Parks Master Plan and related documents for standards.

The City’s code interpretation, if accepted by the Planning Commission, has potential broad implications. When a code interpretation is made- especially one that could apply to multiple sections of the development code – it is crucial that the notice of limited land use action fully reflects the scope of the change. If these other sections are not explicitly considered in the interpretation, it could lead to unintended consequences in future projects.

## 2) The Parks Master Plan and the Role of Trails

The Lebanon Parks Master Plan clearly distinguishes between trails and recreational areas:

- Trails are designed for non-motorized recreation, often integrated into natural environments, and are typically more passive in their recreational use. These are part of the broader city trail network, not necessarily tied to active recreational areas.
- Recreational areas, on the other hand, are active spaces with built infrastructure such as sports courts, picnic areas, and other facilities.

This distinction is key because trails—even those within the public right-of-way—are not equivalent to recreational areas. If trails in the public right-of-way are classified as "parks" or "recreational areas", this could trigger unintended regulatory consequences, such as:

- Inconsistent application of park rules (e.g., restrictions on bikes, scooters, or pets) that are meant for specific park spaces, not sidewalks or trails in the public ROW.
- Increased enforcement complexity for activities like cycling, pet walking, or smoking, which might conflict with park restrictions.

The Lebanon Trails Strategic Plan also highlights that trails provide connections to recreational areas, rather than being part of the recreational areas themselves. This supports the argument that public sidewalks or trails are not inherently meant to be treated as parks or recreational areas.

## 3) The Legal and Practical Implications of Code Interpretation

If the City staff’s interpretation is accepted, the implications could extend beyond just the Z-RL zone:

Code Interpretations are supposed to be consistent with the Lebanon Comprehensive Plan and Development Code. If the interpretation conflicts with these provisions, the City risks undermining the planning framework and creating confusion in future projects.

A formal Land Use Review and code amendment process should be used to clarify these issues, especially when the term "Recreational Trails" have implications across multiple sections of the LDC and other adopted plans, such as the Parks Master Plan and Statewide Planning Goals.

## Conclusion and Recommendation for Code Amendment

Given the conflicts identified between the LDC, the Lebanon Comprehensive Plan, the Parks Master Plan, and the Lebanon Municipal Code, the current interpretation of Recreational Trails as “permitted” in certain zones like Z-RL could lead to regulatory confusion, misapplication, and unintended consequences.

A code amendment is necessary to:

- Clarify the intent of the Z-RL zone and other relevant zones in the Development Code, ensuring that Recreational Trails are either explicitly permitted or restricted according to the City's goals for land use and infrastructure.
- Address the public involvement process to ensure future trail developments go through proper channels and are clearly communicated to the public.
- Correct any inconsistencies between different sections of the Development Code and clarify how recreational trails are treated across various zones and uses, particularly as they relate to park and public space rules.

This amendment would bring much-needed clarity and consistency to the city's development and planning efforts while aligning with the broader goals of community involvement and efficient governance.

### **Analysis of Lebanon Development Code (LDC) 16.25.030: Procedure for Code Interpretation**

Section 16.25.030 outlines the procedures for handling Code Interpretations in the Lebanon Development Code (LDC), particularly focusing on the process by which an applicant can request that an interpretation be referred to the Planning Commission. Based on the specifics provided, here is an analysis of the relevant procedural aspects of Section 16.25.030, as it relates to the issue of Recreational Trails in the Z-RL zone:

#### **1) Referral of Code Interpretation to the Planning Commission**

Section 16.25.030(A)(3) allows the applicant to request that their application be heard by the Planning Commission. This provides the applicant with the opportunity to have their case reviewed in a more formal and public manner, ensuring broader participation and input from various stakeholders in the decision-making process.

As of the date of this report, a request has been made to have the Planning Commission review the application.

The LDC does not provide a clear, fixed deadline for when the referral to the Planning Commission must occur. Therefore, the Planning Commission referral could be initiated at any point in the review process, if the applicant's request is made before the Planning Director's decision is finalized. This flexible timeline means that the referral to the Planning Commission can happen at a point when it is most appropriate in the overall review process, potentially after initial staff reviews but before the Planning Director makes a final decision.

#### **2) Planning Official's Discretion to Refer to the Planning Commission**

Section 16.25.030(B)(2) gives the Planning Official the discretion to refer a Code Interpretation request to the Planning Commission for interpretation in a public hearing. This highlights that the Planning Official does not have to make the final determination alone; they have the authority to involve the Planning Commission, especially when the interpretation at hand requires a level of discretion or may benefit from broader input.

In this case, the submitted Code Interpretation involves a matter requiring significant discretion. The interpretation touches on whether Recreational Trails can be permitted in Z-RL zones, a decision that could have implications for the community and urban planning principles. Given the potential for wide-reaching effects on zoning regulations, public spaces, and community development, it is likely that the issue is more appropriately handled by the Planning Commission in a public hearing.

#### **3) Implications of Code Interpretation by the Planning Commission**

The decision to refer the Code Interpretation to the Planning Commission is a critical procedural step. Given that the Planning Commission will have the opportunity to review the interpretation in a public hearing, this allows for



public involvement and ensures that the interpretation aligns with broader community goals and planning principles.

### **Advantages of a Planning Commission Hearing**

The public hearing process will enable the broader community to understand and provide input on how Recreational Trails should be treated in the Z-RL zone. This could mitigate concerns about the impact of such trails on the residential areas and neighborhood character.

By having the issue reviewed by the Planning Commission, any potential ambiguity or inconsistencies in how the LDC has been applied or interpreted can be clarified. The Planning Commission can ensure that the interpretation aligns with other city plans and legal frameworks, such as the Lebanon Comprehensive Plan, Parks Master Plan, Trails Strategic Plan, and Transportation System Plan.

A public hearing offers an opportunity for affected property owners, residents, and stakeholders to provide written comments, participate in discussions, and help shape the decision-making process. This aligns with the principles of Oregon's Statewide Planning Goal 1, which emphasizes citizen involvement.

### **Potential for Future Precedent**

The Planning Commission's decision could set a precedent for how Recreational Trails are treated across various zones and developments in Lebanon. If the Planning Commission approves the proposed interpretation, future projects may follow this precedent, potentially making it easier to develop Recreational Trails in areas where they were previously restricted.

### **Conclusion and Next Steps**

- The lack of a clear deadline for the Planning Commission referral means the applicant has some flexibility in timing. As the request for referral has been made, the Planning Official can exercise discretion to refer the matter to the Planning Commission at a point in the process where it makes sense.
- The discretionary power of the Planning Official under Section 16.25.030(B)(2) means that if the Planning Official deems the issue to require the exercise of judgment and public input, the Planning Commission will hold a public hearing to discuss the interpretation. This would ensure that the decision regarding the permissibility of Recreational Trails in the Z-RL zone is made transparently and with community input.
- The involvement of the Planning Commission ensures that the issue is addressed with the required public review and that the resulting interpretation is legally sound and consistent with the City's plans and goals. This will ultimately help to ensure clarity, consistency, and transparency in the enforcement of the LDC provisions.



# NOTICE OF LIMITED LAND USE ACTION

Notice Date: December 27, 2024

Comments Due: 5:00 pm, Friday, January 10, 2025

<b>Planning Case No.:</b>	CI-24-01
<b>Applicant:</b>	Laura LaRoque
<b>Request:</b>	Administrative Review
<b>Decision Criteria:</b>	Lebanon Development Code Chapters: 16.02, 16.05, 16.20 & 16.25

**Request:** The applicant is requesting a determination of whether Public Recreational Trails are prohibited in the Low-Density Residential (Z-RL) zone.

**Providing Comments:** We invite your comments on this application prior to the end of the *Comment Due Date*. They should be submitted to the Community Development Department at 925 Main Street, Lebanon, OR 93755 or at [cdc@lebanonoregon.gov](mailto:cdc@lebanonoregon.gov). While your comments should relate to the criteria identified above, all comments submitted will be considered any *may* be incorporated into conditions of approval. After the comment period closes, the Planning Official shall issue a decision. The decision will be mailed to the applicant and to anyone else who submitted comments or who requested a copy of the decision.

**Appeals:** Under the provisions of the Lebanon Development Code, an Administrative Review Decision may be appealed to the Lebanon Planning Commission. Only the applicant, a party providing testimony, and/or a person who requests a copy of the decision has rights to appeal a land use decision. The appeal must be submitted with the appropriate fee paid and must set forth the criteria issues that were raised which the applicant or party deems itself aggrieved. Please contact our office should you have any questions about our appeals process.

**Obtain Information:** A copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost and will be provided at the cost of 25 cents per single-sided page. If you have questions or would like additional information, please contact City of Lebanon Community Development Department, 925 Main Street; phone 541-258-4906; email [cdc@lebanonoregon.gov](mailto:cdc@lebanonoregon.gov).



Community Development  
925 S. Main Street  
Lebanon, Oregon 97355

TEL: 541.258.4906  
cdc@lebanonoregon.gov  
www.lebanonoregon.gov

## CODE INTERPRETATION Planning File No. CI-24-01

December 27, 2024

### I. BACKGROUND

APPLICANT: Laura LaRoque

INTERPRETATION REQUEST: Determination of whether Public Recreational Trails are prohibited in the Low-Density Residential (Z-RL) zone.

ZONING: Residential Low Density (Z-RL)

INTERPRETATION:

- Section 16.02.010.E – Consistency with Plan and Laws. Each development and use application and other procedure initiated under this code shall be consistent with the city's adopted comprehensive plan as implemented by this code, adopted master plans, and with applicable local, state, and federal laws and regulations. All provisions of this code shall be construed in conformity with the adopted comprehensive plan.

*The Trails Master Plan, adopted by the City Council, establishes trails within the Residential Low Density (Z-RL) zone, including Trail 4, Trail 6, Oak Street Pedway, Trail 22, Trail 9, and portions of the Burkhart Creek Trail. The Trails Master Plan, an addendum to the Parks Master Plan, is consistent with the Comprehensive Plan and meets the goals of the Comprehensive Plan with planning for trails in the Z-RL with the following goals and policies:*

*Natural Environment:*

*G-12: Securing and maintaining public access to rivers and streams when possible.*

*P-6: Use designated greenways along select watercourses to protect natural vegetation and water resource values and provide public pedestrian/bicycle access where physically practical.*

*Community Friendly Development*

*G-5: Developing streets whose purpose is not solely to move automobiles safely and*

*efficiently, but also create a pedestrian and bicycle friendly environment.*

### *Transportation*

*P-42: Acquisition of land and/or easements for bikeways and trails shall be evaluated along with the need for land for parks and open space.*

*P-50: The City shall work to maintain and preserve the scenic aspects of current and future separated multi-use paths.*

### *Public Facilities and Services*

*P-36: Identify sites for a variety of park uses, including both passive and active recreational uses.*

*P-37: Seek to achieve a variety a park land, secure adequate city-wide neighborhood, and local parks, acquire unique natural areas, achieve a system of linear greenways, and create school/park and recreational areas where possible.*

No comprehensive plan goals or policies expressly prohibit parks or recreational facilities from being in low-density residential zones. The Trails Master Plan is an adopted master plan that has been determined to be consistent with the comprehensive plan and approved by the City Council. As the plan has been adopted and many trails have been developed, it is clear trails in the low-density residential (Z-RL) zone are consistent with the comprehensive plan.

- The City's most specific definition of parks and recreation areas is found in Section 12.12.020 of the Lebanon Municipal Code:
  - "City Park" means all City of Lebanon-owned or maintained parks, playgrounds, and public recreation areas. The park boundaries include all sidewalks, vanity strips, and curbs in the designated area and extend through any adjacent streets to include all city rights-of-way in the designated zone.
    - "Recreation areas" means any area within a public park dedicated to recreational purposes, including but not limited to playgrounds, sports fields, gardens, walking trails, bike paths, gazebos, and other similar amenities, as well as public trails maintained by the city for public use.

Based on these definitions, a recreational trail is considered a recreation area in a city park. Although the development code may have separate definitions for recreational trails and parks, the definition above is the most specific and includes public trails in the definition of a city park.

- Terra Hydr Inc., Tonquin Industrial LLC, Bob Albertson, Donna Albertson, Albertson Trucking Inc., Mark Brown, McCammant Properties Inc., Eric Johnson, Brown Transfer

Inc., McGuire Brothers LLC, Steve McGuire (petitioners) v. City of Tualatin (respondent), and METRO (intervenor-respondent) LUBA Case No. 2013-016 was a case that dealt with the placement of a trail, and whether a trail is defined as a park. As part of the LUBA decision, the conclusion identified that a trail as a whole constitutes a park. The case is included as an attachment for reference.

- Table 16.05.070—Public Uses allowed in the residential zones identify “Other public uses such as parks and recreational facilities, open space, and pedestrian amenities” as permitted in the Z-RL zone, subject to a Conditional Use Permit or an Administrative Review if projects implement the city’s adopted facilities plans.
- Although the land use table also identifies recreational trails as a use, trails that implement the trails master plan and are maintained as part of the City of Lebanon park system are to be interpreted as categorized as “parks and recreational facilities, open space and pedestrian amenities” in conformance with the most precisely defined definition of the code.

## II. DECISION AND INTERPRETATION

Based on the definitions of City Parks and Recreational Areas, the LUBA case identifying trails as parks, the adoption of the Trail Master Plan, which included several trail segments within the Z-RL zone and a land use category available that implements the definitions most directly, it is city staff’s interpretation that:

- Trails that implement the trails master plan and are maintained as part of the City of Lebanon park system are to be interpreted as categorized as “parks and recreational facilities, open space and pedestrian amenities” as listed in Table 16.05-5 in Section 16.05.070 of the Lebanon Development Code.

As such, trails are not strictly prohibited in the residential low-density zone.

## III. RECORD

The City’s case file and record can be viewed in the Community Development Department at Lebanon City Hall, 925 S. Main Street, Lebanon, OR 97355, during regular business hours.

Respectfully,



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Kelly Hart  
Community Development Director



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Date

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**Fastcase Research Document**

1 message

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**Fastcase** <response@fastcase.com>  
Reply-To: response@fastcase.com  
To: jkennedy@jekiii.com

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Please find the full text of the document below:

**TERRA HYDR INC, TONQUIN INDUSTRIAL LLC,  
BOB ALBERTSON, DONNA ALBERTSON,  
ALBERTSON TRUCKING INC, MARK BROWN,  
MCCAMMANT PROPERTIES INC, ERIC JOHNSON,  
BROWN TRANSFER INC, MCGUIRE BROTHERS LLC, STEVE MCGUIRE,  
Petitioners,**

**v.**

**CITY OF TUALATIN, Respondent,  
and METRO, Intervenor-Respondent.**

**LUBA No. 2013-016**

**LAND USE BOARD OF APPEALS OF THE STATE OF OREGON**

**REMANDED: November 1, 2013**

**FINAL OPINION  
AND ORDER**

Appeal from City of Tualatin.

Wendie L. Kellington, Lake Oswego, filed the petition for review and argued on behalf of petitioners.

Sean T. Brady, Tualatin, filed the response brief and argued on behalf of respondent.

Roger A. Alfred, Metro Senior Attorney, Portland, filed a response brief and argued on behalf of intervenor-respondent.

BASSHAM, Board Member; HOLSTUN, Board Chair; RYAN, Board Member, participated in the decision.

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

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Opinion by Bassham.

## **NATURE OF THE DECISION**

Petitioners appeal a city ordinance adopting a new city transportation system plan (TSP), which in relevant part adopts a map and financing provisions reflecting the proposed construction of a regional trail within the city.

## **FACTS**

This appeal is one of several related appeals concerning the Ice Age Tonquin Trail (hereafter, the Trail), a proposed 22-mile trail connecting the Tualatin River to the Willamette River, which will run through the cities of Tualatin, Sherwood, Wilsonville and unincorporated areas of Washington and Clackamas Counties.<sup>1</sup>

For a number of years, Metro staff in partnership with affected cities and counties has studied and planned for the new trail, resulting in Metro's development of the Ice Age Tonquin Trail Master Plan (TTMP), which the Metro Council approved by resolution on February 28, 2013. A few days earlier, on February 25, 2013, the city council considered a resolution that approves the draft TTMP, and that directs staff to prepare amendments to the city's parks master plan, development code and TSP to implement relevant portions of the TTMP. As it happened, the city was almost finished with a separate legislative proceeding to adopt a new TSP. The proposed new TSP included a map that reflects the Trail alignment proposed in the TTMP, as well as cost estimates and other text concerning the Trail. At that February 25, 2013 meeting, the city council adopted the resolution approving the TTMP, and also adopted by ordinance the new TSP. The new TSP is the subject of the present appeal.

Petitioners' challenges to the new TSP are focused exclusively on the elements that concern the Trail and the TTMP. Petitioners are a group of businesses located on roughly

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fifty acres of land in unincorporated Washington County, but within the City of Tualatin's planning area, in an area designated by Metro as a Regionally Significant Industrial Area (RSIA). RSIA's are special industrial areas that are located near the region's most significant transportation facilities and most suitable for movement of goods. The particular RSIA in which petitioners' property is located is known as the

Tonquin Industrial Group RSIA, or TIG RSIA, which is located near Interstate 5. As explained below, Metro's legislation generally requires that local governments protect RSIA's from incompatible uses and specifically prohibits allowing several types of non-industrial uses in RSIA, including "parks."

The TTMP adopted by Metro and approved by the city on February 25, 2013, includes detailed plans that propose approximately 147,000 square feet of trail on petitioners' property, to be acquired by Metro, not including acreage for associated Trail facilities. In addition to the Trail itself, the TTMP proposes within the TIG RSIA a trailhead for public access, an art, educational or interpretative facility of some kind, and two directional signs.

The new TSP includes a new bicycle and pedestrian policy, Policy 2, providing that the city will "[w]ork with partner agencies to support and build the Ice Age Tonquin Trail." Record 1058. The TSP also includes Figure 7, a map depicting existing and proposed bicycle and pedestrian facilities. Figure 7 is a small scale map, and does not depict property boundaries or other detailed information. A notation at the bottom states that "All locations are approximate." Figure 7 includes a dark blue line representing the portions of the Trail proposed in the city. The location of the dark blue line is consistent with the more detailed Trail alignments proposed in the TTMP, and appears to show the Trail alignment crossing through the TIG RSIA that includes petitioners' property. A map annotation identifies "Regional Bicycle & Pedestrian Projects" and lists one project as: "Build the Tonquin Trail." The map also depicts three short connecting trails north of petitioners' property, with an

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annotation proposing to "Connect Tonquin Trail with neighborhoods." TSP Table 13 includes a 7 million dollar cost estimate for these trail connections.

TSP Table 15 lists regional multi-use path project costs estimates and prioritization. Project BP18 is to "Build the segments of the Ice Age Tonquin Trail in the City," for an estimated cost of \$37 million dollars. Priority is listed as "Medium/Long term." A footnote attached to Project BP18 states in relevant part that:

"The exact alignment through or near the property held by the Tonquin Industrial Group land owners in the SW Concept Plan area has not been determined. The final trail alignment and design and construction details will all be developed in the undetermined future and the processes will be conducted with the participation of land owners, adjacent property owners, the general public and other stakeholders at such time that the area annexes." Record 1063.

Finally, the findings supporting the TSP include findings concluding that construction of the Tonquin Trail will help establish that the TSP is consistent with (1) a city policy requiring the city to link its park and recreation system with a system of greenways and bicycle-pedestrian facilities, and (2) Statewide Planning Goal 8 (Recreation). The findings also conclude that the TSP is consistent with Metro's Urban Growth Management Functional Plan (UGMFP) and Metro's Regional Transportation Functional Plan (RTFP).

## **SECOND ASSIGNMENT OF ERROR**

Petitioners argue that the TSP, by proposing construction of the Trail across petitioners' property located within a RSIA, is inconsistent with Metro policies protecting RSIA's.



Statewide Planning Goal 2 (Land Use Planning) requires that the city's TSP comply with "regional plans adopted under ORS [chapter] 268." Pursuant to authority granted under ORS chapter 268, Metro has adopted several regional plans, including the Regional Framework Plan (RFP) and its components, including two functional plans, the UGMFP and the RTFP.

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RFP Policy 1.4.4 requires local governments to protect regionally significant industrial areas from "incompatible uses." RFP Policy 1.4.4 is implemented in part by Title 4 of the UGMFP, which is codified at Metro Code (MC) 3.07.410 *et seq.* MC 3.07.410 is the purpose statement for Title 4, and states in relevant part that "Title 4 seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas (RSIAs), Industrial and Employment Areas."

Title 4 and other UGMFP titles include a number of provisions intended to protect RSIAs by limiting the types and scale of non-industrial uses. The TIG RSIA was brought into the UGB in 2002. Until the city adopted planning and zoning that complied with the UGMFP, MC 3.07.1130(D)(2) prohibited the city from approving within the RSIA "a park or any other institutional or community service use intended to serve people who do not work or reside in the area." As discussed below, the city subsequently adopted planning and zoning designations intended to comply with Title 4.

MC 3.07.420 addresses the "Protection of Regionally Significant Industrial Areas." MC 3.07.420(D) provides:

Cities and counties shall review their land use regulations and revise them, if necessary, to prohibit the siting of schools, places of assembly larger than 20,000 square feet or parks intended to serve people other than those working or residing in the RSIA."

As explained below, the city has adopted zoning that prohibits "parks and recreational facilities" in the TIG RSIA.

Under the second assignment of error, petitioners argue the proposed Trail constitutes a "park" within the meaning of MC 3.07.420(D), because it is a linear recreational facility that is clearly intended to serve people other than those working or residing within the RSIA.<sup>2</sup>

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Because the TSP approves a "park" within the TIG RSIA, petitioners argue that the TSP is inconsistent with MC 3.07.420(D). Before turning to the merits of that argument, we first address two preliminary issues raised by the city.

#### **A. Specific Alignment**

As an initial matter, the city argues that most of the alleged conflicts between the Trail and petitioners' industrial uses claimed by petitioners throughout the petition for review stem from the specific alignment proposed in the TTMP's detailed maps.<sup>3</sup> However, the city argues that the challenged decision is the city's TSP, not Metro's TTMP, and the TSP expressly states that the exact alignment for the Trail through the RSIA has not yet been determined. We understand the city to argue that petitioners cannot obtain reversal or remand of the challenged TSP based on conflicts associated with a particular alignment, because the TSP does not choose a particular alignment across the TIG RSIA.

We generally agree with the city that petitioners' challenges in this appeal are limited to the determinations made in the TSP, which do not include the exact alignment of the Trail through the TIG RSIA. Figure 7 in the TSP adopts a general alignment that no party disputes crosses through the TIG RSIA, but the TSP expressly does not choose a particular alignment within the TIG RSIA.

That said, the question presented in the second assignment of error is not dependent on a particular alignment, nor does it turn on the existence of specific conflicts or incompatibilities. That question is a legal one: whether the Trail that the TSP proposes for construction across the TIG RSIA constitutes a "park" within the meaning of MC 3.07.420(D). In answering that question, we see no error in evaluating the Trail as proposed

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in the TTMP, including the associated facilities that the TTMP proposes within the TIG RSIA, and elsewhere within the city. The city has formally approved the TTMP by resolution, and in the challenged TSP the city has adopted a general alignment and financing provisions to construct the Trail segments as proposed in TTMP. Even if the specific alignment has not yet been determined, there is little room for doubt that the TSP reflects the city's intent to construct the Trail as proposed in the TTMP, including the trailhead, interpretative and other facilities proposed in the TIG RSIA and elsewhere in the city. In short, in determining whether the Trail constitutes a "park" within the meaning of the applicable legislation, we think it appropriate to consider the character of the entire Trail.

As proposed in the TTMP, the 22-mile long Trail will consist not only of the 14-foot wide constructed multi-use bicycle and pedestrian path, which petitioners allege will occupy approximately 147,000 square feet within the TIG RSIA, but a number of other features, most notably trailheads, including a trailhead proposed within the TIG RSIA. As described in the TTMP, "minor" trailheads can include parking, drinking fountains, benches, bicycle racks, trash receptacles, pet waste bag dispensers, and an information kiosk. Petition for Review App 3, 89. A "major" trailhead (which is apparently what is contemplated for the TIG RSIA) can include, in addition, restrooms, shelters, picnic areas, wayfinding stations, interpretative signs, a secure bike parking area, a bike maintenance station, a fitness course, and a larger parking area. *Id.* In addition, the TTMP proposes a number of art, educational and interpretative facilities, including one within the TIG RSIA. These facilities will provide "trail users with information about the trail, native flora and fauna, history and culture, and the significance of elements along the trail." *Id.* at 92. Signage themes are tied to the Ice Age Floods National Geologic Trail, and could include information on geology and natural history, wildlife and habitat, native plants and ecology, cultural history, and the Glacial Lake Missoula Ice Age floods. *Id.* Indeed, the general alignment of the Trail was chosen to provide users an opportunity to observe and learn about distinctive geologic landforms left

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over from the ice age floods, including glacial erratics, scablands, kolk ponds, flood channels and ripple marks. As proposed in the TTMP, and as partially implemented in the TSP, the Trail viewed as a whole appears to be a multi-featured recreational and educational facility. As explained below, we agree with petitioners that the Trail is a "park" within the meaning of MC 3.07.420(D).

## **B. Applicability of UGMFP.**

The city also argues that nothing in the UGMFP, including MC 3.07.420(D), applies to the challenged TSP. According to the city, the only Metro criteria that

apply to adoption of the TSP are those found in Metro's RTFP, the Regional Transportation Functional Plan. The city cites MC 3.07.010 and 3.07.020, part of the UGMFP, to support that assertion. However, neither provision supports the city's argument.<sup>4</sup> The closest language is the last sentence of MC 3.07.020, which states only that the RTFP serves as the "primary

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transportation policy implementation of the 2040 Growth Concept." However, that statement does not get anywhere near suggesting that a city's TSP is exempt from complying with otherwise applicable UGMFP policies. Further, we note that the city council's adopted findings conclude that the TSP is consistent with the UGMFP, which does not suggest that the city council believed that the UGMFP is inapplicable.

### **C. The Trail is a "Park" within the meaning of MC 3.07.420(D).**

On the merits of the second assignment of error, the city and Metro both argue that under Metro's legislation and as implemented in the city's code, a "trail" does not constitute a "park" within the meaning of MC 3.07.420(D). In fact, respondents argue, both Metro and the city's code allow "trails" as outright permitted uses in RSIA's.

Petitioners' argument that the Trail constitutes a "park" within the meaning of MC 3.07.420(D) begins with the definition of "park" at MC 10.01.020(d). MC 10.01.020(d) defines "park" to mean "a forest, reservation, playground, beach, natural area, recreation center, cemetery, or any other similar area owned, operated or managed by Metro, through its Regional Parks and Greenspaces Department, and devoted to active or passive recreation." Petitioners argue that the Trail falls within the broad definition at MC 10.01.020(d), because it will be a linear recreation area, similar to a beach, parts of which will be owned and perhaps managed by Metro, and clearly devoted to active and passive recreation.

MC 10.01.020(d) is part of a section of Metro Code that provides regulations for the use of Metro owned or operated regional parks and greenspaces facilities. Initially, it is doubtful that MC 10.01.020(d) is intended to provide a definition for the term "park" as that term is used in MC 3.07.420(D). The definition at MC 10.01.020(d) is directed solely at Metro owned or operated facilities, while MC 3.07.420(D) is directed at parks authorized by cities and counties. Those two categories may overlap but are not identical. The term "park" as used in MC 3.07.420(D) clearly encompasses parks authorized under city or county plans and regulations, including parks owned or operated by cities, counties and special districts.

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In other words, the term "park" used in MC 3.07.420(D) is broader than the term as defined in MC 10.01.020(d), because it includes city or county parks not owned or operated by Metro. Metro parks as defined at MC 10.01.020(d) presumably also require authorization under city and county plans and regulations, and are therefore also included in the scope of the term "park" as used in MC 3.07.420(D). One uncertainty in the present case is that it is not clear to us which entities will own and operate the Trail. As we understand it, Metro will acquire and own much of the 22-mile long Trail, but the TTMP contemplates that the three cities involved will manage and maintain the portions of the Trail within their jurisdictions, presumably through their parks and recreation departments.

However, we do not see that uncertainty over ownership or management matters for purposes of resolving whether the Trail is a "park" within the meaning of MC 3.07.420(D). If Metro does not own or manage the Trail, and the definition at MC 10.01.020(d) does not apply for that reason, then we must decide the meaning of "park" as used in MC 3.07.420(D) without the assistance of that definition. If Metro's legislation does not supply a definition or answer, then it seems appropriate to consider applicable city or county code definitions and general dictionary definitions. As discussed below, the proposed Trail seems to fall plainly within the city's code definition of "park." In addition, the Trail also appears to fall within the broad dictionary definition. See *Webster's Third New Int'l Dict.* (2002), 1642 (defining park in relevant part as a "tract of land maintained by a city or town as a place of beauty or of public recreation").

Turning to the city's code, Tualatin Municipal Code (TMC) 5-02-030 defines "park" in relevant part to include "public bike paths and pedestrian ways (but not sidewalks along city streets), [and] recreation facilities \* \* \*." Petitioners argue that the Trail falls within the city's broad definition, either as public bike path and pedestrian way or as a recreation facility.

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Further, petitioners argue that it is consistent with the purpose of MC 3.07.420(D) to treat the proposed regional trail as a "park," because the trail is clearly "intended to serve people other than those working or residing in the RSIA" and will effectively remove a certain amount of acreage within RSIA's from potential industrial use and development. Petitioners contend the purpose of MC 3.07.420(D) is to preserve scarce regionally significant industrial areas for industrial uses, by prohibiting certain communal facilities that are intended to serve the broader community rather than the workers or residents of a RSIA. That purpose is also reflected in MC 3.07.410, the general purpose statement for Title 4, which as noted provides that Title 4 is intended to "protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas."

Metro's response does not address petitioners' arguments based on the definitions at MC 10.01.020(d) and TMC 5-02-030, or dispute petitioners' view of the purpose of the Metro provisions protecting RSIA's. Instead, Metro argues that (1) nothing in Metro's legislation specifically states that a regional trail constitutes a "park" for purposes of MC 3.07.420(D) and (2) context provided by one Metro Code provision suggests that a "trail" may be a feature of a Metro park, and therefore, Metro argues, a trail cannot constitute a "park" by itself. Metro cites to MC 10.01.0120, which is part of the regulations governing use of Metro parks and greenspaces, and which states that within the boundary of a Metro "park" a bicyclist shall be permitted to ride a bicycle over "any grassy area or wooded trail[.]" Metro argues that "[i]f petitioners are correct that all trails are also always a 'park,' then this code section is nonsensical." Metro Response Brief 5.

However, petitioners are not arguing that all trails are necessarily parks. They are arguing, and we do not understand Metro to dispute, that the proposed regional trail facility falls within the broad definitions of "park" at MC 10.01.020(d) and TDC 5-02-030. Under any definition, a "park" can certainly consist of a recreational area that includes within it

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multiple recreational features, such as playgrounds and trails. However, there is no logical or textual reason why a "park" cannot also consist of a linear recreational area dominated by a single recreational element, such as multi-use shared path.

That view is consistent with MC 10.01.020(d), which defines "park" to mean, among other things, a "playground" or a "beach." That is, a recreational area that consists solely of a playground or a beach may be a "park" as defined at MC 10.01.020(d). Similarly, under TDC 5-02-030, a recreational area consisting solely of public bike paths and pedestrian ways can clearly constitute a "park."

It is true that nothing cited to us in Metro's legislation expressly states that a regional trail can be a "park" for purposes of MC 3.07.420(D). But it is equally true that nothing cited to us in Metro's legislation states that a regional trail is not a "park" for purposes of MC 3.07.420(D). As to the context provided by the bicycle regulations at MC 10.01.120, at most that context suggests that "wooded trails" are a possible feature of Metro parks, not that a regional trail such as the proposed Trail cannot be a "park" for purposes of MC 3.07.420(D). As explained above, MC 10.01 is the set of regulations governing the use of Metro-owned or operated parks. The term "park" in MC 3.07.420(D) is broader than the category of Metro-owned or operated parks, and obviously includes city and county parks. To the extent the bicycle regulations at MC 10.01.120 can be understood to impliedly limit what constitutes a Metro park, it cannot be understood to limit the broader meaning of "park" as that term is used in MC 3.07.420(D).

Perhaps most importantly, Metro does not dispute petitioners' argument that it is consistent with the purpose of Title 4 in general and MC 3.07.420(D) in particular to treat the proposed Trail as a "park." The Trail is clearly intended to serve people other than workers or residents of an RSIA, and it will remove land within at least the TIG RSIA from potential industrial use. Petitioners argue, and no party disputes, that within the TIG RSIA alone the proposed Trail will occupy over three acres of industrial land, not counting the acreage necessary for the proposed art, educational or interpretative facility or trailhead amenities

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such as parking, restrooms, etc. We agree with petitioners that it is consistent with the purpose of MC 3.07.420(D) and the Title 4 scheme to protect RSIA's to treat the proposed Trail as a "park."

#### **D. The Trail is a "Park" within the meaning of the city's legislation.**

Metro and the city next argue that the most convincing support for their view that the Trail should not be treated as a "park" for purposes of MC 3.7.420(D) is that the city's development code allows "trails" as outright permitted uses in the TIG RSIA.

However, respondents have not established that the city's code allows the proposed Trail in the TIG RSIA. The city assumed planning responsibility for the TIG RSIA when the area was brought into the UGB. As noted, until the city adopted planning and zoning that complied with the UGMFP, MC 3.07.1130(D)(2) prohibited the city from approving within the RSIA "a park or any other institutional or community service use intended to serve people who do not work or reside in the area." After the city adopted a concept plan and comprehensive planning for the area, the city zoned the TIG RSIA "Manufacturing Business Park" or MBP, and applied an overlay zone, the Tonquin Light Manufacturing Overlay zone. The overlay zone allows all uses permitted in the MBP base zone, with some additional uses and restrictions. However, neither zone expressly allows "trails," much less "regional trails," in the TIG RSIA.

The closest the MBP regulations come is to allow "Greenways and Natural Areas, including but not limited to bike and pedestrian paths and interpretive stations." Tualatin Development Code (TDC) 64.020(11). Metro and the city

apparently understand TDC 64.020(11) to allow bike and pedestrian paths and interpretative stations, and by extension a regional trail, as an outright permitted use in the MBP zone. However, what that provision instead allows is "greenways" and "natural areas," which can *include* bike and pedestrian paths. It does not purport to authorize bike and pedestrian paths in places other than in greenways and natural areas. As discussed below, the TDC provisions governing wetlands

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and natural areas allow trails and bicycle and pedestrian paths, subject to restrictions. However, according to the city, there are no greenways, natural areas or other similarly protected resources within the TIG RSIA.

Given the purpose of the MBP zone and Title 4 of the UGMFP to protect industrial sites from non-industrial uses, it makes regulatory sense to allow bike and pedestrian paths in greenways and natural areas that may be located within an RSIA, but not a regional trail such as the proposed Trail. That is because greenways and natural areas are typically protected and not developable with industrial uses in any event. Allowing bike and pedestrian paths in greenways and natural areas, even within an RSIA, seems consistent with MC 3.07.420(D), because greenways or natural areas do not compete with industrial uses for scarce land, which is a chief regulatory concern of UGMFP 3.07.420(D) and of Title 4 in general. Conversely, allowing in RSIA a regional trail and associated facilities that are intended to serve nonresidents and non-workers, and that remove potentially significant amounts of otherwise developable land from industrial use, seems inconsistent with the purpose of UGMFP 3.07.420(D) and Title 4.

As noted, the city specifically implemented MC 3.07.420(D) by providing in the Tonquin Light Manufacturing Overlay zone that "parks and recreation facilities" are prohibited in the TIG RSIA. TDC 64.040(8). In this respect, the TDC appears to be more protective of the RSIA than Metro would require, since *all* parks are prohibited, as well as all "recreational facilities," not just those intended to serve persons who do not reside or work in the industrial area. As noted, the city's municipal code broadly defines "park" to include "public bike paths and pedestrians ways" excluding sidewalks, as well as "recreational facilities." TMC 5-02-030. The city's code includes no definition of "recreational facility" that we can find. However, the proposed Trail plainly falls within the definition at TMC 5-02-30, and appears to fall squarely within the prohibition on "parks and recreational facilities." Again, given the purpose of UGMFP 3.07.420(D) and Title 4, and the MBP and

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Tonquin Light Manufacturing Overlay zone, to protect industrial sites from competition with non-industrial uses that serve the broader community, it seems entirely appropriate to understand the scope of "parks and recreation facilities" as those terms are used in TDC 64.040(8) to include the proposed regional trail facility.

### **E. Public Facilities and Services**

Finally, the city argues that the proposed regional trail is allowed outright in the TIG RSIA as a type of "public facilities and services." Title 4 limits land divisions within RSIA, in order to preserve larger parcels of land for industrial uses. However, MC 3.07.420(F)(4), part of the Title 4 UGMFP provisions protecting RSIA, provides for an exception, to allow a local government to subdivide property or to subject property to rights-of-way within an RSIA in order to "[t]o provide public facilities and services," or to "provide a public amenity."<sup>5</sup> The city argues that the Trail is a "public facility" or a "public amenity," and therefore the Trail is allowed outright in the TIG RSIA.

The city does not cite to any definition of "public facilities and services," "public amenity," or any Metro legislation that purports to include the Trail or any regional trail within the scope of "public facilities and services" or "public amenity."

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Although the city does not cite it, we note that MC 3.07.1010(vv) defines the term "public facilities and services" to mean "sewers, water service, stormwater services and transportation." Notably, that definition does not mention trails or regional trails. Although the city does not make this argument, it is certainly possible to argue that the Trail will function, at least in part, as a facility for "transportation." The city has adopted a general Trail alignment and financing provisions into its TSP, and as noted Metro contemplates that the specific Trail alignment, once that is determined, will be adopted into Metro's Regional Transportation Plan. As we understand it, the Trail alignment must be adopted into local transportation plans in order to qualify for federal transportation funding. Thus, the Trail could be viewed, at least for some purposes, as a transportation facility, and be characterized as a "public facility" within the meaning of MC 3.07.420(F)(4).

However, absent a more developed argument from respondents, we decline to conclude that the Trail must be characterized as a "public facility" for purposes of MC 3.07.420(F)(4), and therefore is not a "park" for purposes of MC 3.07.420(D). No party has cited, and we cannot find, any Metro legislation that suggests that the Trail or any regional trail must be exclusively characterized as a transportation facility or public facility for purposes of Title 4. As far as we can tell, Metro's plans and legislation appear to treat the Trail and regional trails in general as recreational facilities or, at most, a hybrid of recreational and transportation facilities.

Metro first identified the Tonquin Trail and other regional trails as regional assets to be planned and developed in the 1992 Greenspaces Master Plan. Portions of the 1992 Greenspaces Master Plan were later incorporated into Chapter 3 of the RFP, entitled "Nature in Neighborhoods," and RFP Appendix H, entitled "Parks, Open Space and Recreation," which sets out a number of policies governing parks, opens spaces, natural areas and regional trails. Notably, there is nothing in RFP Chapter 2, the RFP transportation element, that mentions regional trails. The RTFP is the functional plan that imposes transportation

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requirements on local governments. The RTFP mentions regional trails only once, in requiring local governments to allow connections between a number of uses, including regional trails. The Regional Transportation Plan (RTP), a component of the RFP, is Metro's over-arching transportation plan for the entire region, intended to satisfy federal planning and financing requirements. The RTP includes a map of the regional trail network. However, as far as we can tell the RTP includes few if any substantive policies regarding regional trails. As noted, the bulk of Metro's substantive policy planning for regional trails appears to be located in RFP Chapter 3 and RFP Appendix H. We can find nothing in Metro's legislation that purports to require that regional trails be treated exclusively as transportation facilities.

If the Trail consisted simply of a pedestrian and bicycling facility, it might be easier to characterize it exclusively as a facility for "transportation" and hence a "public facility" within the meaning of MC 3.07.420(F). But, as explained above, the Trail as proposed in the TTMP is a many-featured recreational and educational facility. The TTMP proposes a number of trailheads, including one within the TIG RSIA. Trailheads can include a large parking area, drinking fountains, benches, bicycle racks, trash receptacles, pet waste bag dispensers, information kiosks, restrooms, shelters, picnic areas, wayfinding stations, interpretative signs, a secure

bike parking area, a bike maintenance station, and a fitness course. In addition, the TTMP proposes a number of art, educational and interpretative facilities, including one within the TIG RSIA, providing users with information about ice age floods and the significance of flora, fauna, history and culture along the trail. The Trail alignment terminates at the Tualatin River and the Willamette River, and was chosen to connect remnants of the ice age floods landscape and existing parks and natural areas. However the Trail is characterized, it is not exclusively or even primarily a transportation facility. The most accurate characterization seems to be that the Trail is primarily a recreational facility that also has a limited role as a transportation facility.

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However, as a matter of law, the Trail cannot be both a "park" within the meaning of MC 3.07.420(D) and a "public facility" with the meaning of MC 3.07.420(F)(4). One use category is prohibited in RSIA's and the other is allowed. If the Trail must be characterized as one or the other, in our view the characterization that is most consistent with the text and purpose of the Title 4 scheme for protecting RSIA's is to characterize the Trail as a park. As noted, the Trail is not intended to serve industrial uses in an RSIA and will necessarily remove some acreage from potential industrial development. The Trail is fundamentally a recreational facility serving the larger regional community. Public facilities like water, sewer, stormwater and transportation typically serve the area in which they are located or may represent essential infrastructure for the broader community. However, the proposed regional Trail is not intended to serve the TIG RSIA and is more a desired community amenity than essential infrastructure.

MC 3.07.420(F)(4) also allows, as an exception to the general prohibition on certain land divisions within RSIA's, that land may be divided or separated to "provide a public amenity." In addition to arguing that the Trail is a "public facility," the city argues that the Trail is allowed within an RSIA as a "public amenity." The Metro Code does not include a definition of "public amenity." However, the scope of a "public amenity" clearly cannot include a "park" or any other use prohibited in RSIA's under Title 4, so the same interpretative issue is presented: should the Trail be characterized as a "park" or "public amenity" for purposes of MC 3.07.420(D) and Title 4? The answer, it seems to us, is the same. Because the Trail is most accurately characterized as a "park," we conclude that it is not a "public amenity" within the meaning of MC 3.07.420(F)(4).

## **F. Conclusion**

In sum, we agree with petitioner that the Trail as a whole constitutes a "park" within the meaning of MC 3.07.420(D) and TDC 64.040(8), and therefore the city erred in locating the Trail alignment within the TIG RSIA. Remand is necessary for the city to modify TSP

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Figure 7 to reflect a different Trail alignment outside the TIG RSIA, or to adopt other measures consistent with this opinion.

The second assignment of error is sustained.

## **FIRST ASSIGNMENT OF ERROR**

The first assignment of error alleges that the city's decision to locate the Trail alignment within the TIG RSIA violates the consistency requirement of Statewide Planning Goal 2 (Land Use Planning), which requires that local government



decisions be consistent with regional plans adopted under ORS chapter 268. Petitioners argue that, for the same reasons set out in the second assignment of error, the Trail alignment adopted by the city is inconsistent with MC 3.07.420(D). Also for the same reasons, petitioners argue that the city violated the coordination obligation of Goal 2, and its decision is not supported by an adequate factual base.

As far as we can tell, petitioners' arguments under Goal 2 are entirely derivative of petitioners' arguments based on MC 3.07.420(D), and do not provide an independent basis for reversal or remand. Accordingly, we do not resolve the first assignment of error.

### **THIRD ASSIGNMENT OF ERROR**

The third assignment of error argues that the city's decision is contrary to Statewide Planning Goal 9 (Economic Development), because locating the Trail alignment within the city's industrial areas, including the TIG RSIA, will reduce the supply of land available for industrial uses, and fails to protect industrial development from incompatible uses. Goal 9 and related administrative rules require that local governments maintain an "adequate supply" of industrial land.

Our conclusion under the second assignment of error that the city is prohibited from locating the Trail alignment within the TIG RSIA obviates many of the arguments under this assignment of error. Petitioners also appear to make a broader Goal 9 challenge not limited to the TIG RSIA, arguing that locating the Trail alignment within any non-RSIA industrial

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area in the city requires analysis under Goal 9 with respect to the adequacy of the city's supply of industrial land. That might be, but petitioners do not identify other industrial areas through which the city's decision locates the Trail alignment, other than the TIG RSIA.<sup>6</sup> Absent a more focused argument, petitioners' arguments under the third assignment of error do not provide a basis to reverse or remand the city's decision.

The third assignment of error is denied.

### **FOURTH AND FIFTH ASSIGNMENTS OF ERROR**

OAR 660-012-0060 is part of the Transportation Planning Rule (TPR), which implements Statewide Planning Goal 12 (Transportation). OAR 660-012-0060 requires in relevant part that plan amendments that have a significant effect on a transportation facility comply with the further requirements of the rule. Petitioners argue that the city failed to consider whether allowing a new non-industrial use in industrial areas, including the TIG RSIA, will significantly affect transportation facilities needed for freight mobility, and the city's ability to comply with the TPR requirement at OAR 660-012-0030(1)(c) to identify "[n]eeds for movement of goods and services to support industrial and commercial development," and RTP provisions governing freight mobility.

Again, our conclusion under the second assignment of error that the Trail alignment is prohibited in the TIG RSIA, and by extension any other RSIA, would appear to obviate much of this assignment of error.

Petitioners' arguments can be read more broadly, however, to argue that the city failed to consider the impact of constructing the Trail on industrial freight mobility in the larger

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area surrounding the TIG RSIA, even if the Trail alignment and nearby trailheads are located outside the TIG RSIA. We understand petitioners to argue that any Trail alignment will necessarily cross streets that connect the TIG RSIA and nearby industrial areas to the regional transportation system, causing conflicts and delays that might affect freight mobility, and that locating a trailhead in the area would necessarily attract users and create additional traffic in the larger industrial area. Petitioners argue that nothing in the record indicates that the city considered how approval of the Trail alignment through this area of the city might affect freight mobility and the city's compliance with TPR and RTP standards.

The city responds that petitioners have not established that OAR 660-012-0060 applies to the challenged decision adopting a new TSP. We agree with the city that OAR 660-012-0060 does not apply to a decision that adopts a new TSP. OAR 660-012-0060 applies to an "amendment to a \* \* \* comprehensive plan \* \* \*" that "significantly effects" a transportation facility in one of the particular ways specified in the rule.<sup>7</sup> The TPR

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provisions that govern the adoption of a TSP and its required contents are set out in OAR 660-012-0015, 660-012-0020, and elsewhere in the TPR. It is the TSP that determines the functional classification of transportation facilities, adopts standards for implementing that functional classification system, and adopts the performance standards for transportation facilities, among other things. It is the TSP that establishes the baseline against which subsequent plan and land use regulation amendments must be measured to determine if they "significantly affect" a transportation facility within the meaning of OAR 660-012-0060(1). While adoption of a new TSP could be viewed as an "amendment" to an acknowledged comprehensive plan, it is difficult to imagine how OAR 660-012-0060 could be meaningfully applied to a decision that adopts a new TSP. For example, it makes no sense to (1) say that a TSP that determines the functional classification of transportation facilities has "changed" the functional classification of a transportation facility for purposes of OAR 660-012-0060(1)(a), (2) conclude that the TSP therefore is an "amendment" that has "significantly affected" that transportation facility, and (3) the TSP decision thus must apply the mitigation and other requirements of OAR 660-012-0060(2) to offset those significant effects. In our view, an "amendment" for purposes of OAR 660-012-0060(1) is just that: an amendment to a functional plan, acknowledged comprehensive plan or land use regulation that changes the baseline established in the acknowledged TSP in one of the ways specified in OAR 660-012-0060(1)(a) through (c). The TSP adopted in the present decision is not an "amendment" within the meaning of OAR 660-012-0060(1).

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As to the standards elsewhere in the TPR that clearly *do* apply to adoption of a TSP, petitioners have not demonstrated that the city's TSP fails to satisfy those standards. The city cites to portions of the TSP that address freight mobility in the area that includes the TIG RSIA, concluding that with planned road and rail projects that the transportation infrastructure will serve the area's mobility needs throughout the planning period. According to the city, the TSP also discusses multi-modal opportunities to transport workers to industrial lands in the area, including bicycle and pedestrian facilities, and concludes that the Tonquin Trail would help fill gaps in the city's network of multi-use paths. Petitioners have not demonstrated that more is required to satisfy the TPR or other standards that govern the content or adoption of a TSP.

The fourth and fifth assignments of error are denied.

## **SIXTH ASSIGNMENT OF ERROR**

The Trail alignment adopted in the TSP appears to pass through several areas that are included in the city's inventory of significant Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) resources. Specifically, petitioners note that the Trail alignment passes through a protected glacial pond area and a wetland area located north of the TIG RSIA. Petitioners argue that the TSP introduces a new conflicting use, the Trail, to these inventoried resource areas, and thus must address the requirements of Goal 5 and the Goal 5 rule at OAR chapter 660, division 023. See OAR 660-023-250(3)(b) (local governments must apply Goal 5 to plan amendments that "allows new uses that could be conflicting uses" with inventoried Goal 5 resources).

The city responds that it conducted a general Goal 5 analysis in adopting the TSP, and concluded that the TSP is consistent with Goal 5. The city argues that the Trail is not a "conflicting use" within the meaning of OAR 660-023-0250(3)(b) with respect to the two identified resource areas. According to the city, both areas are protected under the city's Wetland Protection and Natural Resource Protection Overlay districts, at TDC chapters 71

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and 72. The city argues that, in both districts, "trails" and "public bicycle or pedestrian ways" are permitted uses, subject to provisions intended to minimize intrusion into riparian areas.

The Wetland Protection and Natural Resources Protection Overlay districts are apparently part of the city's Goal 5 program to protect these two inventoried resources. We agree with the city that because the city's program to protect these inventoried resources expressly allows trails or public bicycle and pedestrian ways within the resources areas, that the TSP does not authorize a new "conflicting use" for purposes of OAR 660-023-00250(3)(b). Petitioners have not demonstrated that adoption of the TSP requires additional analysis under Goal 5 or the Goal 5 rule.

The sixth assignment of error is denied.

## **SEVENTH ASSIGNMENT OF ERROR**

Statewide Planning Goal 8 (Parks and Recreation) requires local governments to "satisfy the recreational needs" of citizens and visitors. Goal 8 further states that the "requirements for meeting such [recreational] needs \* \* \* shall be planned for by governmental agencies \* \* \* in coordination with private enterprise[.]" The city's findings cite the adoption of the Trail alignment and other Trail provisions as part of its conclusion that the TSP complies with Goal 8.

Petitioners argue that the city failed to comply with Goal 8, because it made no attempt to plan for the Trail "in coordination with private enterprise," specifically petitioners, before adopting a Trail alignment through the TIG RSIA.

Our conclusion under the second assignment of error that the Trail is a "park" that is prohibited in the TIG RSIA appears to moot this assignment of error. To the extent it is necessary to reach the merits, the city cites hundreds of pages in the record indicating an extensive public outreach with industrial groups and others leading to adoption of the TSP. Petitioners do not explain why they could not have participated in such efforts. We do not

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believe that the requirement for "coordination with private enterprise" in planning how to meet recreational needs means local governments must, prior to planning for a park or recreational facility, engage in specific negotiations with business owners whose property may ultimately be affected by the facility.<sup>8</sup>

The seventh assignment of error is denied.

## **EIGHTH ASSIGNMENT OF ERROR**

Petitioners argue that the TSP violates seven city policies that are codified in the TDC.<sup>9</sup> For six of the seven cited policies, petitioners contend that locating the Trail alignment within the TIG RSIA is inconsistent with those six policies. Our conclusion under the second assignment of error that the Trail is prohibited within the TIG RSIA appears to moot those arguments. We therefore address only the one policy that petitioners argue is violated based on concerns other than the proposal to locate the Trail within the TIG RSIA.

TDC 15.020(9) requires the city to link the city's park and recreation system with a system of greenways and bicycle/pedestrian facilities. The city's findings state that the Trail is the "major project" proposed in the TSP to help provide the kind of connected system required by TDC 15.020(9). Record 771. However, the findings go on to note that the "proposed alignment is under review at this time and the Ice Age Tonquin Trail Master Plan is not yet adopted." *Id.*

We understand petitioners to argue that the above findings are inconsistent and not supported by an adequate factual base, and that the city cannot rely on the Trail to satisfy the connectivity required by TDC 15.020(9), without also fully and expressly adopting and implementing the TTMP.

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The above findings were undoubtedly accurate when written at some point prior to adoption of the TSP on February 25, 2013. But they were no longer entirely accurate as of the date the city adopted the TSP. The TSP itself adopts a general Trail alignment, although the specific alignment has not yet been selected, at least in the TIG RSIA area. Further, on the same date the city council adopted the TSP it "approved" the TTMP by resolution, which initiated or furthered a series of legislative processes to implement relevant portions of the TTMP into the city's legislation. Regardless, petitioners have not demonstrated that any inaccuracy in the above findings warrants reversal or remand. Petitioners have not identified any legal requirement for the city to fully adopt the TTMP or to identify a specific alignment, as a condition precedent to adopting the TSP provisions that partially implement the TTMP. The TSP is not inconsistent with TDC 15.029(9).

The eighth assignment of error is denied.

The city's decision is remanded.

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Notes:

<sup>1</sup>. For further background, see *Terra Hydr v Washington County*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2013-017/018/019/025, July 26, 2013), Order on Motions to Dismiss; and *Terra Hydr v Metro*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2013-025, November 1, 2013).

<sup>2</sup>. Petitioners also argue that the Trail and associated facilities may constitute "places of assembly larger than 20,000 square feet." We do not address this alternative argument, because our conclusion below that the Trail constitutes a "park" within the meaning of MC 3.7.420(D) is

dispositive. However, we tend to agree with respondents that the Trail and associated facilities likely do not constitute "places of assembly" within the meaning of MC 3.7.420(D).

3. For example, petitioners argue that the TTMP maps depict the trail alignment in a portion of the TIG RSIA within the narrow right of way of McCament Drive, which petitioners contend will make it impossible for petitioners to use McCament Drive for freight mobility needs. However, that particular alleged incompatibility will exist only if Metro and the city in fact decide to locate the trail alignment within McCament Drive right-of-way, as opposed to elsewhere in the TIG RSIA.

4. MC 3.07.010 and 3.07.020 provide:

**"3.07.010 Purpose**

"The regional policies which are adopted by this Urban Growth Management Functional Plan recommend and require changes to city and county comprehensive plans and implementing ordinances. The purpose of this functional plan is to implement regional goals and objectives adopted by the Metro Council as the Regional Urban Growth Goals and Objectives (RUGGO), including the Metro 2040 Growth Concept and the Regional Framework Plan. The comprehensive plan changes and related actions, including implementing regulations, required by this functional plan as a component of the Regional Framework Plan, shall be complied with by cities and counties as required by Section 5(e)(2) of the Metro Charter.

"Any city or county determination not to incorporate all required functional plan policies into comprehensive plans shall be subject to the conflict resolution and mediation processes included within the RUGGO, Goal I provisions, prior to the final adoption of inconsistent policies or actions.

**"3.07.020 Regional Policy Basis**

"The regional policies adopted in this Urban Growth Management Functional Plan are formulated from, and are consistent with, the RUGGOs, including the Metro 2040 Growth Concept. The overall principles of the Greenspaces Master Plan are also incorporated within this functional plan. In addition, the Regional Transportation Functional Plan (RTFP), adopted on June 10, 2010, as Metro Code 3.08, serves as the primary transportation policy implementation of the 2040 Growth Concept."

5. MC 3.07.420(F) provides, in relevant part:

"Cities and counties may allow division of lots or parcels into smaller lots or parcels as follows:

"\* \* \* \* \*

"4. Notwithstanding paragraphs 2 and 3 of this subsection [limiting land divisions in RSIA's], any lot or parcel may be divided into smaller lots or parcels or made subject to rights-of-way for the following purposes:

"a. To provide public facilities and services;

"b. To separate a portion of a lot or parcel in order to protect a natural resource, to provide a public amenity, or to implement a remediation plan for a site identified by the Oregon Department of Environmental Quality pursuant to ORS 465.225[.]".

6. The city's response includes a citation to the city's industrial lands inventory, updated in 2011, which appears to show that the city has an ample amount of vacant land zoned for industrial use, in excess of the city's planned needs. Given this oversupply, the city argues that the minimal acreage occupied by the Trail would likely not result in the city's failure to provide an "adequate supply" of industrial lands for purposes of Goal 9. The record of this decision does not conduct such an analysis, and we cannot confirm the city's argument. But we tend to agree with the city that it is unlikely that the relatively small amount of acreage occupied by the Trail in non-RSIA industrial areas, if any, would cause the city to violate the Goal 9 requirement to maintain an "adequate supply" of industrial lands.

7. OAR 660-012-0060(1) provides:

"If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or

planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

"(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

"(b) Change standards implementing a functional classification system; or

"(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

"(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

"(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

"(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan."

<sup>8</sup>. Indeed, the Goal 8 requirement to coordinate with "private enterprise" is probably intended to refer to private enterprises that provide recreational services or facilities, not general business or industrial enterprises.

<sup>9</sup>. The city has a unified comprehensive plan and development code, so the TDC policies are, in effect, comprehensive plan policies.

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# LAND USE APPLICATION

## PROPERTY INFORMATION

Site Address(es):
Assessor's Map & Tax Lot No.(s):
Comprehensive Plan Designation / Zoning Designation:
Current Property Use:
Project Description:

## APPLICANT / PRIMARY CONTACT INFORMATION

Applicant:	Phone:
Address:	Email:
City/State/Zip:	

*I hereby certify that the statements, attachments, exhibits, plot plan and other information submitted as a part of this application are true; that the proposed land use activity does not violate State and/or Federal Law, or any covenants, conditions and restrictions associated with the subject property; and, any approval granted based on this information may be revoked if it is found that such statements are false.*

APPLICANT SIGNATURE <i>Laura LaRogue</i>	Date: 12/11/2024
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## PROPERTY OWNER INFORMATION (IF DIFFERENT THAN ABOVE)

Owner:	Phone:
Address:	Email:
City/State/Zip:	

OWNER SIGNATURE	Date:
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## ADDITIONAL CONTACT INFORMATION

Engineer / Surveyor:	Phone:
Address:	Email:
City/State/Zip:	

Architect:	Phone:
Address:	Email:
City/State/Zip:	

Other:	Phone:
Address:	Email:
City/State/Zip:	

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## REQUIRED SUBMITTALS

- Application and Filing Fee
- N/A  Narrative Describing the Proposed Development and addressing the Decision Criteria
  - LDC Article Two Land Uses and Land Use Zones
  - LDC Article Three Development Standards
  - LDC Article Four Review & Decision Requirements
  - LDC Article Five Exceptions to Standards (eg Variance, Non-Conforming Uses)
- N/A  Site Plan(s) drawn to scale with dimensions, Include other drawings if applicable
- N/A  Copy of current Property Deed showing Ownership, Easements, Property Restrictions

## APPLICATIONS

**\*If more than one review process is required, applicant pays highest priced fee, then subsequent applications charged at half-price.**

Land Use Review Process	Fee	Land Use Review Process	Fee
Administrative Review	\$750	Planned Development – Preliminary	\$2,500
Administrative Review (Planning Commission)	\$1,500	Planned Development – Final (Ministerial)	\$250
Annexation	\$2,500	Planned Development – Final (Administrative)	\$750
Code Interpretation	\$250	Planned Development – Final (Quasi-Judicial)	\$1,500
Comprehensive Plan Map/Text Amendment	\$2,500	Subdivision Tentative	\$1,500
Conditional Use	\$1,500	Subdivision Final	\$750
Fire District Plan Review	\$100	Tree Felling Permit (Steep Slopes only)	\$150 + \$5/tree
Historic Preservation Review or Register	Varies	UGB Amendment	Actual Cost
Land Partition	\$750	Variance (Class 1 – Minor Adjustment)	\$250
Ministerial Review	\$250	Variance (Class 2 – Adjustment)	\$750
Non-Conforming Use/Development	\$750	Variance (Class 3)	\$1,500
Property (Lot) Line Adjustment	\$250	Zoning Map Amendment	\$2,500

## APPLICATION RECEIPT & PAYMENT

Date Received:	Date Complete:	Receipt No.:
Received By:	Total Fee:	File No.:

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## 16.05.070 PUBLIC USES ALLOWED IN THE RESIDENTIAL ZONES

**Table 16.05-5: Public Uses (Civic or Institutional) Allowed in Residential Zones**

(See page 18 of Chapter 16.03 for further details and listings regarding Public Uses)

<i>Use Categories</i>	<b>Z-RL</b>	<b>Z-RM</b>	<b>Z-RH</b>
Public Uses with <b>Class I</b> Impacts: City offices and Facilities; Community Development Center; and Utility Offices.	<b>CU</b>	<b>OP</b>	<b>OP</b>
<b>Public Uses with Class II Impacts:</b>			
Public Uses such as Community Centers, Colleges, Universities, Community Colleges, and Adult Education Facilities; Municipal Courts; Museums, Nursery Schools, Preschools; Public Safety Facilities, Including Fire/Emergency Medical Services and Police Stations, and Emergency Communication Broadcast Facilities; Public Squares, Plazas, Senior Centers, Social Service Facilities, Soup Kitchens, Vocational Training for the Physically or Mentally Challenged, Utility Substations, Youth Club facilities.	<b>CU</b> if adjacent to collector, arterial, or highway	<b>CU</b> if adjacent to collector, arterial, or highway	<b>CU</b> if adjacent to collector, arterial, or highway
Public Uses (above); a maximum of 10% expansion of existing structures or improvements.	<b>AR</b>	<b>AR</b>	<b>AR</b>
Other Public Uses such as Boat Launching Areas, Botanical Gardens, City Maintenance Shops; Hospitals and Large Medical Complexes Publicly Owned Swimming Pools, Recreational Trails, Surplus Food Distribution Centers; Transit Centers, Water Towers and Reservoirs.	<b>N</b>	<b>CU</b> if adjacent to collector, arterial, or highway	<b>CU</b> if adjacent to collector, arterial, or highway
Other Public Uses such as Parks and, Recreation Facilities, Open Space, Pedestrian Amenities.	<b>CU</b>	<b>CU</b>	<b>CU</b>
	<b>AR</b> if Projects Implement the City's Adopted Facilities Plans		
Other Public Uses such as Meeting Facilities or Related Facilities	<b>CU</b>	<b>CU</b>	<b>CU</b>
Other Public Uses such as Meeting Facilities or Related Facilities; a maximum 10% expansion of existing structures or improvements.	<b>AR</b>	<b>AR</b>	<b>AR</b>
Other Public Uses such as Daycare, adult or child day care (12 or fewer children); does not include Family Daycare under applicable ORS provisions.	<b>OP</b>	<b>OP</b>	<b>OP</b>
<b>Public Uses with Class III Impacts:</b>			
Public Uses such as Shelters for Short Term or Emergency Housing (e.g., Homeless Shelters) when operated by a Public or Non-profit Agency.	<b>N</b>	<b>CU</b>	<b>CU</b>
Other Public Uses such as Cemeteries	<b>CU</b>	<b>CU</b>	<b>CU</b>
Other Public such as Bus Barns (public), Treatment Plants and Facilities (Water and Sewage).	<b>N</b>	<b>CU</b>	<b>N</b>
	<b>AR</b> if Projects Implement the City's Adopted Facilities Plans		
<b>Key:</b> OP = Outright Permitted (Building Permit issued after a site review); MR = Ministerial Review; AR = Permitted with Administrative Review; CU = Conditional Use approval required (Chapter 16.22); N =Not permitted; * = Number of Units following an AR or CU designation. Also see Table 16.05-1: Characteristics of Major Land Use Actions Matrix -- Projects in a Residential Zone Requiring a Planned Development Review (Chapter 16.23).			

**From:** Kelly Hart <[khart@ci.lebanon.or.us](mailto:khart@ci.lebanon.or.us)>  
**Sent:** Thursday, October 24, 2024 3:20 PM  
**To:** Laura LaRoque <[laurallaroque@gmail.com](mailto:laurallaroque@gmail.com)>  
**Cc:** Ron Whitlatch <[rwhitlatch@ci.lebanon.or.us](mailto:rwhitlatch@ci.lebanon.or.us)>  
**Subject:** RE: PD24-0237 - BLT Trail Project

Hi Laura,

As indicated in my previous email, the trail master plan was initiated under the prior zoning code, so it is understandable that the new zoning code may not reflect the exact zoning as the trail master plan. The trail master plan is an adopted master plan by the city council. The trail master plan includes other trails that exist in the RL zone and have already been constructed, such as the one along River Park, Oak Street, and Trail 9 as identified in the trail plan, which were, again, approved by the city council, so it is clear the city council intended to allow for trails to occur in the RL zone. At this point, I would identify the zoning code as a clerical oversight, so if we were to take any action, it would be to amend the zoning code as language clean-up to be consistent with the trail master plan and previous council actions.

Respectfully,

**Kelly Hart**

Community Development Director

925 S. Main Street, Lebanon, OR 97355

Tel: 541.258.4252

[Kelly.Hart@LebanonOregon.gov](mailto:Kelly.Hart@LebanonOregon.gov)

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