



Rithy KHUT <rithy.khut@multco.us>

Fwd: Proposed Comprehensive Plan

1 message

Rich FAITH <rich.faith@multco.us>
To: Rithy Khut <rithy.khut@multco.us>

Mon, Aug 22, 2016 at 8:08 AM

From: Mark J. Greenfield**Sent:** Sunday, August 21, 2016 10:47 AM
To: Commissioner Jules Bailey ; Kafoury Deborah ; district2@multco.us ; district3@multco.us
Cc: Multnomah County Planning Planning County ; Multnomah County Planning Planning County ; andy.shaw@oregonmetro.gov ; Tomkins Jed
Subject: Proposed Comprehensive Plan

Dear Chair Kafoury and Commissioners:

I read through the draft Comprehensive Plan again this morning and have several comments to make about it.

1. Overall, this plan is terrific and exemplary. There is such a strong emphasis on resource protection. I believe this is fully consistent with the intent of statewide land use planning, and I greatly appreciate it. The Natural Resources and Agricultural Lands sections are excellent. I am so pleased that the County has taken the work we did to protect Sauvie Island farmland and pretty much applied it countywide. And I am tremendously impressed with the job that was done and the direction this plan takes regarding Natural Resource protection. It is a model for the state. Staff, the CAC and the Planning Commission deserve great credit for this.

2. While this plan repeals the 2015 SIMC Rural Area Plan at page 1-22, which makes me somewhat uncomfortable, it does incorporate the policies of that plan into the whole of the new plan. Some of those policies are incorporated to apply countywide, while others remain specific to the island. In several instances, I discovered wording changes to the SIMC policies that were adopted. Sometimes additions are made to the policies, as with the policy on roadway maintenance in the TSP. The addition is a positive one and I do not object to it. Similarly, the additions and changes made where the policies are written to apply countywide do not change the direction or meaning of the policy and are fine.

a. The one place where I do have problems with word changes is in Parks and Recreation Policies 8.9 and 8.10. For the reasons stated in my letter to the Board dated August 19, 2016, the wording of those policies should be changed to revert to the wording the Board adopted for SIMC Policies 4.2 and 4.3. This is the only circumstance I found where the proposed change weakened the language in the adopted 2015 SIMC Plan.

b. I have also identified an inadvertent omission. In policy 3.20(3), a word or two is missing. I think the fix is to change the word "to" to "shall" following "(EFU)", or begin the sentence with "Require" to make it consistent with the adopted SIMC policy.

c. One other omission, which I assume was inadvertent. The plan contains a policy requiring that noise levels associated with gatherings comply with state and local noise ordinances to maintain the rural character", but it does not contain similar language for events at farm stands. SIMC Policy 1.10 addressed both. I recommend that the language in Comp Plan Strategy 3.5-2 be added to the plan to address events at farm stands. If you wish, this can be limited to Sauvie Island.

3. Especially since this plan purports to repeal the 2015 SIMC Plan, and also because it provides at 1-22 that "with respect to all questions of interpretation of this Plan, the provisions of this Plan control over the provisions of the now-repealed SIMC appended to this Plan" (something that also makes me uncomfortable), I think it becomes especially important to add the new proposed policy stating "Where policies specific to individual subareas are more stringent or conflict with policies applicable countywide, the subarea policies control."

4. I had a long talk (nearly 45 minutes) with Andy Shaw of Metro after he received my letter to the Board. He was upset that I accused Metro of "intentionally" trying to mislead the Board in Metro's August 4 letter to the Board. I cannot say with absolute certainty that this was intentional, but I can say that having practiced land use law for 38 years prior to retirement, I've seen the technique of omitting relevant definitions (or relevant caselaw) used on a number of occasions by attorneys and, generally, appellate bodies (LUBA, the courts) do not appreciate it. Also, the test for interpreting the meaning of a word or phrase in a local comprehensive plan is to give the term its "plain, natural and ordinary meaning" within the text and context of the plan. *Jaqua v. City of Springfield*, 193 Or App 573 (2004). I still fail to understand how Metro could offer definitions for "complementary" and "undue" that are not plain, natural or ordinary and do not fit the context of the policy, omit the definitions that are plain, natural and ordinary and do fit the context, and now claim this was accidental or unintentional. Be that as it may, Andy is not an attorney and he did not write the letter (apparently one of Metro's attorneys wrote it, although it is signed by someone else).

Andy also claimed that I failed to provide all definitions for the words I address, but I provide in the attachments all definitions for the words at issue. The definitions I highlighted are those I believe are the most plain, natural and ordinance for the words at issue, within the context of the policies given. Further, they are consistent with what Sauvie Island and channel residents intended when they recommended these words for inclusion in the SIMC Plan. I urge the Board to accept the definitions I've offered and to add them to the Comprehensive Plan glossary.

Thank you for your consideration of these matters. Again, this is an overall excellent plan, and you should be quite proud of it.

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