



Eugene City Council

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EUGENE CITY COUNCIL AGENDA

May 10, 2023

12:00 p.m. CITY COUNCIL WORK SESSION

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Meeting of May 10, 2023; Her Honor Mayor Lucy Vinis Presiding

Councilors

Randy Groves, President

Alan Zelenka

Greg Evans

Emily Semple

Matt Keating, Vice President

Jennifer Yeh

Mike Clark

Lyndsie Leech

12:00 p.m. CITY COUNCIL WORK SESSION

1. WORK SESSION: Fossil Fuel Risk Bonds

2. WORK SESSION: Willamette River Greenway Code Amendments Overview

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EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Work Session: Fossil Fuel Risk Bonds

Meeting Date: May 10, 2023
Department: Public Works
www.eugene-or.gov

Agenda Item Number: 1
Staff Contact: Ian Penn
Contact Telephone Number: 541-682-5513

ISSUE STATEMENT

At this work session, City Council will be provided with an overview of Fossil Fuel Risk Bonds, highlights of local government work on risk bonding in both Washington and Oregon and seismic vulnerability rulemaking at the state level by the Oregon Department of Environmental Quality (DEQ). This Council initiated work session is intended to provide a broad overview of Fossil Fuel Risk Bonds and highlight local government experience in assessing fossil fuel infrastructure risk and cost. This is an informational item, and no Council action is requested.

BACKGROUND

Fossil fuels are a major component of modern-day energy systems and the infrastructure serving those systems is ubiquitous and found in many shapes, sizes and forms. Across the fossil fuel product life cycle, public agencies and the public at large face a wide range of health, safety, environmental and financial risks from fossil fuel infrastructure and operations that are costly to address. Potential risks include catastrophic events at storage or transfer facilities, pipeline ruptures, transportation related incidents (rail or road) and pollution of air, water and land (e.g., creation of new brownfields or abandonment of sites before they are cleaned up and reclaimed).

Types of risk associated with fossil fuel infrastructure and facilities can be categorized in two broad groups:

1. **point-source risk** - (e.g., location or facility-specific) tied to the operation of individual fossil fuel infrastructure elements with responsible parties that can be identified and potentially held liable to pay for response. This category can include risks and costs associated with accidents, spills, localized pollution and abandoned infrastructure.
2. **nonpoint-source risk** - difficult to tie to individual infrastructure components or a single responsible party but are instead linked to the cumulative effects of a range of fossil fuel infrastructure elements and operations. This category can include costs and risks associated with climate-related impacts, including adaptation and mitigation response, non-localized air and water pollution and infrastructure stress (e.g., roads and other community-based infrastructure).

Fossil Fuel Risk Bonds Overview

Fossil Fuel Risk Bonds are a market-based policy mechanism intended to address these two categories of risk using the “polluter pays” principal, shifting the burden for pollution and damage back to those who are responsible for it. Under a Fossil Fuel Risk Bond program, a governmental entity would require owners/operators of fossil fuel infrastructure to provide financial assurances up front to protect against and remediate future cost obligations and risk - from catastrophic events, infrastructure decommissioning, abandonment, even covering the costs of mitigation of or adaptation to climate change. The primary goal is to ensure the negative impacts of fossil-fuel infrastructure development or operation is borne by the owner or operator of infrastructure, and not passed on to public agencies or the public at large.

A Fossil Fuel Risk Bond mechanism embodies two basic approaches addressing the two primary risk categories: conventional financial assurance mechanisms to hold individual owners/operators of fossil fuel infrastructure accountable for the costs of incidents or abandonment costs and a surcharge-based trust fund designed to cover the expected financial costs of climate mitigation and/or disaster response.

Approach 1: Conventional Financial Assurance Instruments

Already in use at the federal, state and local government level, conventional financial assurance instruments exist in a range of forms such as surety bonds, letters of credit and insurance. Such instruments provide a framework that could support addressing individual risk by discrete entities in specific locations. With these conventional instruments, a government could require a type of insurance policy or other financial assurance to be in place to cover an entity’s potential cost of cleanup after accidental, natural or contamination-related disaster or abandonment.

Approach 2: Surcharge-based Trust Funds

The second approach recognizes that conventional financial assurance instruments may not be suitable for certain risk scenarios, for example addressing cumulative or widespread risk attributable to the impacts or operations of multiple entities. Consequently, a second, complementary financial assurance approach would be developing a risk trust fund which could be capitalized through a surcharge assessed on facility operations against widespread pollutant impacts. For example, a levy on carbon emissions or fossil fuel transactions in a jurisdiction assessed against the projected future cost of climate change mitigation and associated hazards.

Local Government Consideration of Risk Bonding

Local governments in the Pacific Northwest have taken initial steps to look at risk bonding for fossil fuel infrastructure in their jurisdictions, including an infrastructure risk assessment partnership with Portland and Multnomah County in Oregon and King County in Washington.

Multnomah County/City of Portland

In 2020, Multnomah County and the Portland Bureau of Emergency Management commissioned a risk and cost evaluation of the Critical Energy Infrastructure Hub (CEI Hub) to better understand the magnitude and extent of potential fossil fuel releases at the Hub in the event of a Cascadia Subduction Zone (CSZ) earthquake. This analysis also surveyed existing financial assurance and cost recovery mechanisms already in place at the state and federal level to determine their adequacy relative to the estimated risks and impact of a catastrophic seismic event.

In 2022, consulting firm EcoNorthwest completed its assessment of the CEI Hub and found that potential releases from the material stored in tanks at the CEI Hub could potentially cost taxpayers up to \$2.6 billion in economic damages in the event of a CSZ seismic event. The report also determined that all damages and costs of fuel releases from the CEI Hub under a CSZ seismic event would potentially be recoverable under the Oil Pollution Act except for potential personal injury/wrongful death damages.

This 2022 study evaluated only the impact and cost of a CSZ scale seismic event at the CEI Hub. It did not evaluate or consider short or long-term potential damages not caused by a CSZ earthquake, for example potential risk or damage posed by the ongoing operation of storage tanks, railroad cars, ships, trucks, and/or pipelines carrying products to and from the CEI Hub. The EcoNorthwest report contains recommendation for additional study and action beyond a CSZ earthquake scenario, but since the report was issued, Multnomah County and the City of Portland have focused on working with state and local partners to determine appropriate next steps, including consideration of state level rulemaking.

King County

King County has taken the risk bonding idea beyond the risk and cost analysis done for the CEI Hub, pursuing both evaluation and implementation of a Fossil Fuel Risk Bond program over three distinct phases:

- a) Phase 1: passed an initial ordinance passed in 2019 that began an assessment of risks and costs of fossil fuel facilities located in unincorporated King County under the County's permitting jurisdiction;
- b) Phase 2: undertook an assessment of risks and costs associated with potential catastrophic events for fossil fuel facilities under the County's permitting jurisdiction, such as an explosion or the creation of future brownfield site and an identification of potential financial coverage gaps in the current patchwork of existing policies and code;
- c) Phase 3: developed a draft ordinance requiring all owners of fossil fuel infrastructure not otherwise covered by existing regulations or code to provide financial assurances to cover the costs of worst-case accidents (fuel release, spill or vapor explosion) and the cost of decommissioning fossil fuel infrastructure in the County.

The risk and cost assessment conducted in Phase 2 evaluated the potential impacts of fossil fuel facilities in terms of explosions, air and water pollution, creation of new brownfields, abandoned infrastructure and oil spills. Potential impacts associated with fossil fuel pipelines, train derailments and fuel-tanker spills were not evaluated as these incidents and infrastructure types fall outside of King County's permitting jurisdiction or the County would not be a lead responder.

In Phase 2, King County also assessed the feasibility of developing a natural hazard risk fund that would collect a surcharge on large operations against wider pollution impacts, such as carbon emissions. Ultimately, developing a Fossil Fuel Risk Bond natural hazard risk fund was not recommended for further consideration in King County in part because Washington state's recently passed Climate Commitment Act was understood to pre-empt local implementation of a Fossil Fuel Risk Bond natural hazard risk fund for covered entities.

State-level Fossil Fuel Infrastructure Risk Rulemaking

States have also enacted laws focused on fossil fuel infrastructure risk. In Oregon, Senate Bill (SB) 1567 requires operators of some bulk oil and liquid fuel terminals to assess the integrity of their facilities in the event of a magnitude 8 or 9 Cascadia earthquake event and propose mitigation steps necessary to minimize risk of spills. SB 1567 also establishes a Seismic Risk Mitigation Fund with funds to be appropriated to DEQ to review seismic risk assessments and risk mitigation implementation plans, as well as providing grants, and other assistance, to owners or operators of bulk oils or liquid fuels terminals.

Oregon DEQ is currently engaged in rulemaking to implement SB1567's primary requirement for owners and operators of fossil fuel infrastructure engaged in the transport or bulk storage of oil or liquid fuel products to conduct and submit to the agency "comprehensive seismic vulnerability assessments". DEQ is developing vulnerability assessment and mitigation criteria and designing an implementation program with the support of a Rules Advisory Committee. The rules will apply to facilities that are in Lane, Multnomah and Columbia counties with a tank capacity of at least two million gallons of fuel. DEQ is aiming to have a draft rule available for public comment by the end of May 2023, hold at least one public hearing in June or July and have the Environmental Quality Commission review and adopt rules in fall of 2023. DEQ also intends to complete vulnerability assessments for covered facilities by the summer of 2024.

RELATED CITY POLICIES

[Eugene Toxics Right-to-Know Program](#). The Eugene Right-to-Know Program requires certain manufacturers within the City to provide information to the public concerning the use and disposition of federally listed hazardous substances.

[Eugene Springfield Multi-Jurisdictional Emergency Operations Plan](#). An all-hazards plan that outlines how the cities of Eugene and Springfield will prepare for and respond to emergencies. The Plan describes how the cities' emergency management systems are organized and provides a framework for collaboration and coordination during emergencies and major disasters.

[Multi-jurisdictional Natural Hazards Mitigation Plan](#). The long-term natural hazard mitigation strategy for the Cities of Eugene and Springfield as well as for Eugene Water & Electric Board, Rainbow Water District, and Springfield Utility Board.

[CAP 2.0](#). The CAP 2.0 was created through a data-driven process that engaged people and organizations in ways that reflect the urgency of climate change. The Plan captures the actions the Eugene community is prepared to implement to address climate risks, as well as community ideas for what else is needed to create an equitable and livable community for everyone.

PREVIOUS COUNCIL DIRECTION

[February 28, 2022 Meeting](#)

At the February 28, 2022 City Council meeting, Council passed a motion made by Councilor Syrett to schedule a work session on the concept of a public health overlay zone, including what the

benefits of creating an overlay zone might be, and how the city would develop criteria for deciding which areas might benefit from such a zone. (Motion passed 8:0)

May 23, 2022 Work Session

Council reviewed the City's role in the regulation of pollutants, the role of other regulatory authorities in addressing air, water, land and noise pollution, and then discussed potential opportunities for the City's role in regulation in the four previously mentioned pollution areas.

September 26, 2022 Work Session

Council reviewed the public health overlay zone concept, applicable criteria for public health regulation and other related tools to addressing community pollution concerns. Council also discussed additional tools and policy mechanisms potentially implementable at the local level, including the use of risk bonding for abandoned sites and future brownfields.

April 19, 2023 Work Session

Council was provided with an overview of the Planning and Development Department work plan, including ongoing core services, current projects and future projects and initiatives to address urgent community needs, including community pollution concerns.

COUNCIL OPTIONS

Informational only.

CITY MANAGER'S RECOMMENDATION

None.

SUGGESTED MOTION

None.

ATTACHMENTS

- A. Impacts of Fuel Releases from the CEI Hub Due to a Cascadia Subduction Zone Earthquake (Executive Summary)
- B. King County Comprehensive Plan Workplan Action 20: Fossil Fuel Risk Bonds Report (Executive Summary and Conclusion)

FOR MORE INFORMATION

Staff Contact: Ian Penn
Telephone: 541-682-5513
Staff E-Mail: ipenn@eugene-or.gov

Impacts of Fuel Releases from the CEI Hub

Due to a Cascadia Subduction Zone Earthquake

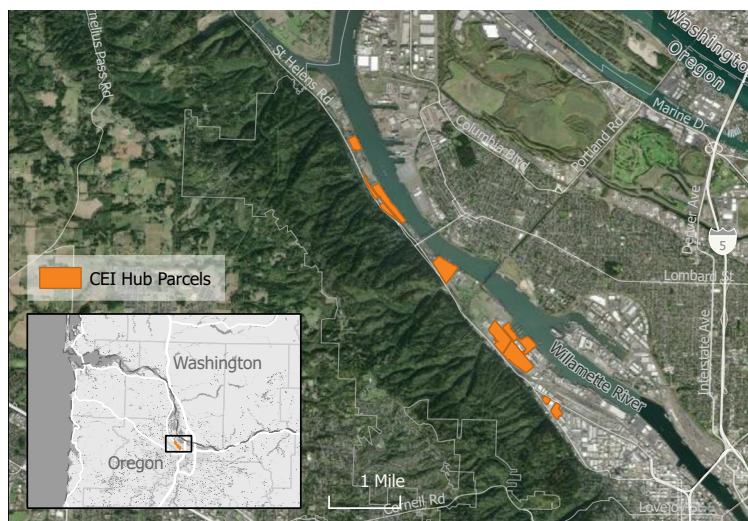
EXECUTIVE SUMMARY

The purpose of this study is to identify the magnitude and extent of potential fossil fuel releases at the CEI Hub from a CSZ earthquake and to evaluate the resulting damages. ECONorthwest, Salus Resilience, and Enduring Econometrics prepared this report for the City of Portland and Multnomah County. For more information about this report, contact: Laura Marshall, Project Manager at marshall@econw.com.

WHAT IS THE CEI HUB?

The Critical Energy Infrastructure Hub (CEI Hub) is a six-mile area in Northwest Portland along the Willamette River (Figure ES-1). There are 10 companies on 31 properties located at the CEI Hub that vary in size from 0.1 to 31.27 acres for a total of 219.85 acres. The CEI Hub facilities are critical to Oregon's fossil fuel infrastructure — over 90 percent of the state's liquid fuel supply is transported through CEI Hub facilities, including gasoline and diesel. The CEI Hub supplies all the jet fuel to Portland International Airport. There are over **150 different types of materials** stored at the CEI Hub, most of which are petroleum-based. There are **630 tanks** of varying sizes throughout the CEI Hub holding a combined active storage tank capacity of at least **350.6 million gallons**.

FIGURE ES-1. Location of CEI Hub Properties



Source: Created by ECONorthwest.



WHAT IS THE RISK?

The CEI hub is located on unstable soils that are subject to liquefaction and lateral spreading in an earthquake, and the tanks are vulnerable to seismic activity because many were built prior to modern knowledge about earthquake risk. The proximity of the CEI hub to natural assets, like the Willamette River and Columbia River, and the dense urban core in the City of Portland, make the risk of accident, spill, or major failures due to a seismic event particularly concerning.

A magnitude 8 or 9 Cascadia Subduction Zone (CSZ) earthquake would impact the CEI Hub with ground shaking, liquefaction (soil softening and movement), lateral spread (horizontal soil movement), and landslides. The earthquake would disturb tanks and their contents and tanks that were not built to modern seismic design standards pose risk of failure. Additional fuel releases could occur due to connection failures and other incidental damages. There are containment walls in place on many CEI Hub properties,

however, in many cases, these containment structures will be insufficient to contain the potential cumulative volume of releases from multiple tank failures that would occur in a CSZ earthquake.

In total, 397 tanks could release stored materials as a result of the CSZ earthquake.¹ **The total potential releases from the materials stored in tanks at the CEI Hub range from 94.6 million to 193.7 million gallons** (Table ES-1). Approximately 57 percent of the total potential releases would be released onto ground and 43 percent have the potential to flow into the Willamette River. The estimates of fuel releases from the CEI Hub are the same magnitude as what was released in the Deepwater Horizon spill of 2010 — the largest oil spill in U.S. waters to date.

WHAT WILL HAPPEN IF FUELS ARE RELEASED?

Releases of fuel from the CEI Hub into the air, ground, and water would pose threats to the resources near, downstream, and downwind of the facilities. The fuel releases are likely to cause explosions and fires which pose immediate threats to people on-site at CEI Hub facilities and on adjacent properties. A petrochemical fire poses significant risk to the surrounding areas because containment and suppression may not be possible in the aftermath of the earthquake. If the fire spreads to other properties there are very large threats to human life, safety, physical structures, and natural resources. The fumes from fires and chemical materials will also create health hazards for those who are exposed. People who are in the immediate area as well as emergency responders and clean-up personnel are most at risk from high exposure levels.

The fuel that is released into the Willamette River will behave differently depending on the type of material released. Light and medium oils, such as gasoline and diesel, float in water and will travel downstream until they are contained or evaporate. Heavier fuels will sink and travel as sediment in the river. The further the fuels travel in water, the more environmental resources they will degrade, and more properties will be impacted by oiling. The Lower Willamette River and Lower Columbia River provide habitat to an abundance of species that could be affected by fuel releases. The rivers are also transportation channels, and fuel releases would cause closures for clean-up, which would result



“The total potential releases from the materials stored in tanks at the CEI Hub range from 94.6 million to 193.7 million gallons.”

in economic losses for the navigation industry as well as cut off supply chains from the river when they are critically needed after the earthquake. Harms to natural resources would also result in a loss of cultural resources that are of particular importance to Tribal populations for subsistence, transportation, commerce, and ceremonial purposes.

WHAT WILL BE THE DAMAGES AND COSTS OF FUEL RELEASES?

The minimum costs to society of potential fuel releases at the CEI Hub range from **\$359 million to \$2.6 billion** (Table ES-2). Because not all costs were monetized, this range of costs represents only a portion of the total costs likely to be imposed on society from fuel releases from the CEI Hub.

These costs do not include any costs caused by an inability to perform earthquake recovery efforts due to fuel shortages. To the extent that fuel scarcity impedes emergency response activities, there will be financial and non-financial costs, including injury

TABLE ES-1. Summary of Total Potential Releases by Location

Spill Location	Number of Tanks with 50–100 percent failure	Number of Tanks with up to 10 percent failure	Volume Released Min (gal)	Volume Released Max (gal)
Ground	269	21	53,882,252	111,183,900
Water (Including potentially in water)	96	11	40,751,753	82,503,352
Total	365	32	94,634,005	193,687,251

Source: Created by Salus Resilience (see Appendix B).

¹ This value excludes empty tanks from the active tanks that could release materials.

Category of Costs	Summary of Costs	Range of Monetized Costs for the Modeled Scenario
Direct Impacts to People	Assuming an explosion occurs, between 0 to 7 people could be killed and 2 to 80 people could be injured. The range of costs for mortality and morbidity are between \$49,000 to \$74.1 million, with an average cost of \$37.1 million.	\$49,000 to \$74.1 million
Impacts to Property	Assuming fuels in the water travel downstream to the Longview Bridge, the potential impact on residential property values is up to \$35.4 million. There is \$2.5 billion in total riverfront property value in the downstream area.	\$11.8 million to \$35.4 million
Impacts to Navigation	A one-week closure of the shipping channel between the I-405 bridge and Longview Bridge would result in additional operating costs for commercial vessels of between \$11.8 million and \$17.8 million.	\$11.8 million and \$17.8 million
Impacts to Fisheries	To the extent that fuel releases reduce reproduction or cause direct mortality to aquatic species there will be a reduction in income to the fishing industry, impacting owners, employees, and suppliers who rely on these funds. Increases in hatchery production would likely be needed, which would result in additional costs.	Not Monetized — Potential for significant mortality to commercial fisheries species and loss to commercial fishing entities
Impacts to Recreation	Average per-trip values of recreation for participants (i.e., consumer surplus) are between \$68 to \$130 per person per day. Recreationalists contribute spending to local economies at an average value of between \$98 to \$478 per trip. Canceled recreational trips due to fuel releases would reduce both value for the participant and economic activity for the businesses that rely on the recreational spending. A one-month closure of the Lower Columbia River and Lower Willamette River for salmonid fishing would result in a loss of consumer surplus of \$3.4 million and a loss of \$3.2 million in direct trip spending.	Not Monetized — Damage to recreational resources that cannot be easily rebuilt, such as fire damage to Forest Park, will result in long-term losses to recreation.
Impacts to Human Health	The health costs of exposure to toxins for nearby people and response workers is \$121 million to \$249 million for both acute and chronic conditions. The primary health costs are increased risk of heart attack, decreases in productivity, and lost workdays. Additional costs would be borne from evacuations and strains on emergency response services.	\$121 million to \$249 million — with potential for additional costs to mental health and non-documented physical health costs.
Impacts to Habitats and Species	Habitats and species would be harmed from fuel releases. The costs of habitat restoration as compensation for habitat injury would require between 175 and 418 acres of wetland to be restored. An additional 39 to 1,219 acres of constructed wetland could be needed to compensate for injuries to bird populations. There is also the potential for compensation needed for aquatic and mammal species that are injured by the event. The expected total costs for habitat restoration are between \$39.7 million and \$304.3 million, depending on whether the spill occurs in the summer or in the winter. Total damages from injury to habitats and natural resources and required compensation are expected to range between \$87 million to \$669 million, depending on whether the spill occurs in the summer or in the winter.	\$87 million to \$669 million
Cleanup Costs	Cleanup costs are projected to be between \$109 million to \$1.4 billion.	\$109 million to \$1.4 billion
Impacts to Cultural Values	Fuel releases in the Willamette River and Columbia River would harm cultural resources that are of particular importance to Tribal populations for subsistence, transportation, commerce, and ceremonial purposes. Impacts to this area would perpetuate historical inequities to a water resource already contaminated as part of the Portland Harbor Superfund.	Not Monetized — Impacts to waterways and aquatic species like salmon would result in large cultural losses.
Impacts to Fuel Prices	Releases of fuel from the CEI Hub would reduce the supply of fuels needed for transportation and commercial activity in Oregon. The effects of the earthquake on transportation infrastructure will alter the demand for fuels. A lack of fuel could constrain emergency response activities. The total economic cost to consumers of the higher fuel prices and reduction is between \$18.8 million and \$120.8 million. The lost value of consumption from fuel scarcity would be \$11.7 million for a three-day period.	\$18.8 million to \$120.8 million — with additional costs from loss of consumption and delays in recovery efforts
Total Monetized Costs		\$359 million to \$2.6 billion

Source: Created by ECONorthwest.

and loss of life. The costs to society also do not include fines, penalties, lost revenue, or equipment replacement costs borne by the CEI Hub operators. Not all costs are able to be monetized due to lack of data, uncertainty, confounding variables caused by the earthquake, and/or difficulty valuing the resource. The costs are based upon a multitude of assumptions and scenarios about the type and magnitude of fuel releases, emergency response actions and timelines, and natural phenomenon like air, water, and fire dispersion — these assumptions are detailed in the full report.

WHO WILL BE LIABLE AND HOW WILL COSTS BE PAID FOR?

The Oil Pollution Act of 1990 (OPA), passed by Congress and signed into law in the wake of the Exxon Valdez oil spill, is the established liability structure to recover damages from oil spills. Under OPA, “Responsible Parties” are liable for removal costs and damages that are attributable to their release of oil. Fuel releases from the CEI Hub could exceed the statutory liability limits established under OPA or deemed an “Act of God” (making the responsible party not liable). For these situations, OPA established the Oil Spill Liability Trust Fund to pay for any excessive or unfunded liabilities.



Attachment A



“Under OPA, onshore facilities like the CEI Hub have liability limits of \$672,514,900 PER SPILL for each responsible party.”

All damages and costs of fuel releases from the CEI Hub report are potentially recoverable under OPA, with the exception of personal injury/wrongful death, which would be potentially recoverable under separate civil action. However, what will actually be paid out to people who are harmed by fuel releases could be less than the full amount that would be required to compensate them for the damage due to transaction costs and inefficiencies. Uncompensated damages may be distributed inequitably across injured parties due to existing structural inequities in the legal system. Uncompensated damages are most likely to occur for claimants with damages that are more difficult to prove.

Impacts of Fuel Releases from the CEI Hub

due to a Cascadia Subduction Zone Earthquake

FEBRUARY 2022

PREPARED FOR



PREPARED BY

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SALUS RESILIENCE
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Enduring Econometrics

May 10, 2023 Work Session - Item 1

Executive Summary and Conclusion

King County Comprehensive Plan Workplan Action 20: Fossil Fuel Risk Bonds Report

June 30, 2022



Workplan Text

This report responds to the 2020 update to the 2016 King County Comprehensive Plan, Ordinance 19146, Attachment A, Workplan Action 20: Fossil Fuel Risk Bonds.¹

Action 20: Fossil Fuel Facilities Risk Bonds. As part of the 2020 Comprehensive Plan update, policies and regulations related to fossil fuel facilities were adopted. More work is needed to address the potential impacts of fossil fuels and fossil fuel facilities and related uses on the environment and human health. To accomplish this, this Workplan Action item directs:

A. Preparation of a Fossil Fuel Risk Bond evaluation, that will include, at a minimum:

1. An economic risk assessment of fossil fuel facilities and related uses, and climate change. The assessment shall include recommended policy language or development regulations that directs an update to this evaluation on a periodic basis when significant new information is available, and shall quantify the expected annualized costs to County finances, the County's economy, and County households over the next fifty years associated with several categories of risks:
 - a. For fossil fuel facilities and related uses, the assessment shall address risks associated with catastrophic explosions of storage and transfer facilities, refineries, oil and gas train derailments, gas pipeline ruptures and explosions, fuel tanker spills and explosions, pollution of air and water, brownfields, and abandoned infrastructure.
 - b. For climate change, the assessment shall address economic risks associated with changes in the frequency and severity of wildfires, floods, storms, drought, infestations of exotic diseases and pests, and other natural hazards. The assessment shall also address costs associated with the implementation of climate action policies and plans, as well as investing in adaptation measures.
2. An evaluation of the adequacy of existing financial assurance mechanisms in reducing the County's economic and financial risks associated with fossil fuel facilities and related uses, and climate change. Title 27A of the King County Code, "Financial Guarantees" already contains mechanisms for obtaining financial assurances before attempting potentially dangerous development activity. However, there is currently no language in Title 27A that requires financial assurances specifically for fossil fuel facilities and related uses. Such measures could include surety and performance bonds, letters of credit, third party trust funds, insurance, corporate guarantees, and others. The evaluation shall compare risk exposure for the County, with the maximum likely coverage of that risk by these mechanisms, and shall include recommendations for additional financial assurances or other measures that need to be adopted to minimize risks.

B. Drafting and transmittal of any necessary legislation that establishes or modifies Comprehensive Plan policies and development regulations, that will implement the recommendations of the Fossil Fuel Risk Bond evaluation.

- *Timeline:* The Fossil Fuel Risk Bond evaluation and any necessary legislation making Comprehensive Plan and/or King County Code changes shall be transmitted to the Council for consideration by June 30, 2022.

¹ Ordinance 19146, Attachment A. [\[LINK\]](#). Page 12-25 .

- *Outcomes:* The Executive shall file with the Council the Fossil Fuel Risk Bond evaluation and, if warranted, a proposed ordinance(s) with recommended code and/or policy updates.
- *Leads:* Office of Performance, Strategy and Budget, Department of Natural Resources and Parks, and Department of Local Services - Permitting Division.

Executive Summary

This report broadly defines fossil fuel risk bonds and their intent; identifies what types of fossil fuel facilities can be developed in unincorporated King County under its permitting jurisdiction; conducts a high-level economic risk assessment of these fossil fuel facilities; discusses climate change costs; and concludes with recommendations for King County action.

FFRBs are financial assurance mechanisms that ensure the negative impacts of fossil-fuel facility development or operation is borne by the owner or operator of the facility and not transferred to public agencies or the public at large. They are not limited to bonds but include a broad range of mechanisms that can provide this fiscal protection, including surety and performance bonds, letters of credit, third party trust funds, insurance, and corporate guarantees. As the term “bond” in FFRBs has caused some confusion, the report limits the use of the term “FFRBs,” and focuses on the broader context of “financial assurance mechanisms” instead.

Although there are many fossil-fuel operations to which financial assurance mechanisms might apply, the facility types that can be constructed in unincorporated King County and fall under King County’s permitting jurisdiction – barring changes to the current state or federal regulatory structure – are relatively few. The following fossil fuel facilities meet these criteria and are viable to evaluate for financial assurance mechanisms applications in unincorporated King County, namely a(n):

- Thermal (gas) electric power plant
- Liquefied natural gas (LNG) plant
- Oil terminal

The report evaluates the potential impacts of these facilities in terms of explosions, air and water pollution, brownfields, and oil spills. Impacts associated with pipelines, train derailments, and fuel tanker spills are not evaluated extensively as these facilities or incidents fall outside King County’s permitting jurisdiction or incident control (see Appendix B).

Of the potential evaluated risks, the analysis found sufficient evidence of past high-cost incidents to propose requiring proof of adequate financial coverage for explosions from any of the three types of facilities that could be built in unincorporated King County and fall under its permitting jurisdiction. Since 2004, there have been at least four explosions worldwide with costs exceeding \$1 billion in damages and repair in facilities producing or storing LNG and oil.^{2,3,4,5} Similarly, while thermal energy plant explosions are rare, natural gas incidents overall are more common. One of these explosions, at an oil facility, was in the U.S. with listed costs of \$1.5 billion.⁶ Separately, a 2019 explosion at an oil refinery

² U.S. Chemical Safety and Hazard Investigation Board (CSB), “Final Investigation Report: Caribbean Petroleum Tank Terminal Explosion and Multiple Tank Fires,” Report No. 2010-02.I. PR, October, 2015. [\[LINK\]](#). Accessed 10/12/2021. Page 95.

³ Ghanmi, Lamine, “Algeria halts production at gas complex hit by blasts and fire,” the Arab Weekly, April 7, 2019. [\[LINK\]](#). Accessed 10/12/2021.

⁴ CSB, “Final Investigation Report: Refinery Explosion and Fire,” Report No. 2005-04-I-TX, March 2007. [\[LINK\]](#). Accessed 5/21/2022. Page 17.

⁵ Parraga, Marianna, “Chronology: Pump collapse, leak caused Venezuela refinery blast,” Reuters, September 9, 2013. [\[LINK\]](#). Accessed 10/6/2021.

⁶ CSB, Report No. 2005-04-I-TX, *ibid.* Page 17.

resulted in costs of \$750 million and both bankruptcy and closure of the refinery.^{7,8} Explosions can occur at both new and existing facilities, typically from operator error or aging assets.⁹ Also, although many of these facilities are developed or operated by businesses with significant financial assets, it is not guaranteed that every company that might develop such facilities will have the ability to pay the full costs that might be incurred from a potential explosion. Were such an explosion to occur locally, potential cost impacts range from \$34.6 million to \$2.18 billion; averaging these over 50 years, costs would range from \$690,000 to \$43.6 million annually (for more on costs related to explosions, see report section A.1.a and Appendix D).

Research on LNG plants and oil terminals found sufficient evidence of potential impacts associated with site contamination that could lead to the creation of new brownfield impacts, especially in cases of fossil fuel facility bankruptcy and subsequent closure and abandonment. LNG plants primarily handle materials that would evaporate as gases and not result in residual soil impacts. However, other substances that could be handled onsite could result in contamination impacts if spilled, including aqueous ammonia, hexane, isopentane, pentane, diesel, and oils. Oil terminals have the potential for contamination from spills; the largest potential contaminant of concern would be petroleum products. Although brownfield liability remains with the property owner, if a property owner enters bankruptcy and abandons the facility, either state or local assumption of remediation could result in public cost impacts. An average estimate of this potential cost based on industrial cleanup activities is roughly \$3 million for one site cleanup; over 50 years, it would average \$60,000 annually in costs.¹⁰

The assessed fossil fuel facilities can result in other negative community impacts surrounding a development site beyond explosions or brownfields, including nitrogen oxide (NOx) or mercaptan air pollution; NOx deposition in waterways or thermal wastewater impacts; or oil spills. Requiring proof of financial coverage to address these impacts is not recommended at this time for one or multiple reasons, described in the report and summarized below, including:

- Technology to mitigate the impacts may be available and could potentially be required through the State Environmental Policy Act;
- There may be multiple contributors to some types of pollutants beyond a fossil fuel facility, and accurately defining how to assess impacts and require cost-coverage would be logistically and potentially legally challenging at this time; or
- There may be other regulatory mechanisms in place already requiring adequate fiscal coverage.

While not applicable for long-term pollution issues, when mitigating for specific incidents or environmental releases, the costs of these impacts are unlikely to exceed the cost-coverage required for a facility explosion given the higher costs associated with explosions (reviewed on the previous page).

Local governments seeking to require financial assurances against the risk of fossil fuel explosion can build on the existing frameworks of federal and state regulations that require financial assurances

⁷ Marsh JLT Specialty, “100 Largest Losses in the Hydrocarbon Industry 1974-2019,” March 2020. [\[LINK\]](#). Accessed 11/24/2021. Page 26 (pdf 28).

⁸ Maykuth, Andrew, “Bankrupt Philadelphia Energy Solutions blames ‘mislabelled’ pipe for big blast that led to refinery’s closure,” Philadelphia Inquirer, March 3, 2021. [\[LINK\]](#). Accessed 12/29/2021.

⁹ Marsh JLT Specialty, “100 Largest Losses...,” *ibid.* [\[LINK\]](#). Accessed 12/2/2021.

¹⁰ Wilson, B.H. et al., “Remediation of Petroleum-Contaminated Sites,” Presented at NGWA Remediation Conference, New Orleans, LA, November 30, 2004. [\[LINK\]](#). Value conversions used BLS, “CPI Inflation Calculator.” [\[LINK\]](#). Accessed 2/1/2022.

against oil spills. Rather than requiring a specific type of financial mechanism, such as a bond or insurance coverage, oil spill regulations allow a variety of financial mechanisms to be used and combined – so long as the total coverage provided is adequate to cover a “worst-case” spill. Based on research conducted for this report, it is recommended that requiring financial assurance to cover a fossil fuel facility explosion be modeled on the oil spill financial assurance model established in federal and state regulation, allowing multiple financial assurance mechanisms. Research conducted for this report did identify past issues with self-bonding in the fossil fuel industry when facilities undergo bankruptcy filings. Accordingly, it is recommended that self-bonding not be accepted as a financial assurance mechanism to cover identified financial risks associated with potential explosion or site contamination.

Existing County code does not currently require financial assurances to address explosion costs from fossil fuel facilities. Research conducted for this report identified legislative models at the state and federal level for requiring financial assurances against fossil fuel facility impacts. These models are generally agnostic as to the form of financial mechanism provided. However, research conducted for this report found multiple types of financial coverage that could be provided by a fossil fuel facility to address facility impacts, including insurance, worker’s compensation, bonds, letters of credit, third-party trust funds, and corporate guarantees (for more information see Appendix F).

Another FFRB option would be to develop a natural hazard risk fund that receives an assessed surcharge on large industrial facility operations against wider pollutant impacts, such as on greenhouse gases (GHGs) against the projected costs of climate change and its associated hazards, for example. However, Washington recently passed legislation that would pre-empt pursuit of an FFRB-natural hazard risk fund for climate change for large emitters. Specifically, the Climate Commitment Act (CCA) contains two features that affect consideration of establishing a natural hazard risk fund, namely that the CCA:

- Creates a cap-and-trade system to regulate the largest GHG-emitting entities in the state starting in 2023, and that will regulate 75 percent of Washington state GHG emissions.^{11,12}
- Disallows local permitting agencies from requiring additional GHG mitigation from covered entities if they comply with the CCA.¹³

For these reasons, developing a FFRB natural hazard risk fund is not recommended.

Report development did not include a comprehensive climate change cost analysis over the next 50 years to King County and households within the County. Estimating this cost would be a formidable undertaking, requiring a range of skills and careful evaluation of many variables in both the natural and built environment; a defensible estimate would require an external consultant group. Attempting such an evaluation without appropriate time and consideration could also yield a figure that is inaccurate or extremely understated (i.e., too low), weakening a future pursuit to hold large emitters accountable for climate change impacts, should the County ever pursue such a course of action. Additionally,

¹¹ WA Legislature, “Final Bill Report E2SSB 5126,” Ibid. [\[LINK\]](#). Pages 1, 6. Also see, “Session Law. Certification of Enrollment: Engrossed Second Substitute Senate Bill 5126,” Filed May 18, 2021. [\[LINK\]](#). Accessed 6/15/2021. Page 24, Section 10 (a).

¹² Ecology, “Chapter 173-446 WAC – Climate Commitment Act Program Rulemaking,” Presentation, November 8, 2021. [\[LINK\]](#). Slide 11. Accessed 5/21/2022.

¹³ Washington State Legislature, “Session Law. Certification of Enrollment: Engrossed Second Substitute Senate Bill 5126,” Filed May 18, 2021. [\[LINK\]](#). Accessed 5/21/2022. Page 54 (pdf page 55). For additional review of recent Washington State regulations affecting this issue, see the report generated under Comprehensive Plan Workplan Action 21: Greenhouse Gas Mitigation, transmitted to the County Council in June 2022, concurrent with this report.

Washington state has recently passed a range of statewide legislation that would affect pursuit of an FFRB-natural hazard risk fund to apply to large GHG-emitters against the cost of climate change, such as within the Climate Commitment Act; see the report generated under Comprehensive Plan Workplan Action 21: Greenhouse Gas Mitigation for discussion on such regulations.^{14,15} However, this report does note that the City of Tacoma retained assistance to develop a high-level climate change cost assessment that included impacts to human life, infrastructure, and property. The assessment estimated that the cost of inaction would result in over \$3 billion in damages by 2050.¹⁶ Additionally, Appendix K provides a University of Washington Climate Impacts Group review of what factors should be considered in evaluating climate change cost impacts.

This report concludes with the recommendation that King County amend the King County Code to require that fossil fuel facility developments provide proof of adequate financial responsibility to cover the costs of a worst-case facility explosion and to cover costs from potential brownfield site contamination. This proof should be provided at application or prior to key permits for facility construction, reviewed every five years during operation, and be determined by a study of potential damages validated by a third party at the owner's expense. The costs should include potential damages that could result to structures, the natural environment and public infrastructure, as well as the potential loss of life and injury to persons onsite and to members of the public. In keeping with the model established by state and federal oil spill regulation, the report recommends allowing fossil fuel facility developers to submit multiple types of fiscal mechanisms to cover potential explosion and site contamination costs, with the exclusion of self-bonding due to its insufficient coverage in cases of insolvency. As directed by Workplan Action 20, a proposed ordinance reflecting these recommendations has been transmitted by the Executive to the Council concurrent with this report.

¹⁴ Washington State Legislature, "Session Law. Certification of Enrollment: Engrossed Second Substitute Senate Bill 5126," Filed May 18, 2021. [\[LINK\]](#). Accessed 5/21/2022. Page 54 (pdf page 55). For additional review of recent Washington State regulations affecting this issue, see the report generated under Comprehensive Plan Workplan Action 21: Greenhouse Gas Mitigation, transmitted to the County Council in June 2022, concurrent with this report.

¹⁵ Transmitted to the County Council in June 2022, concurrent with this report.

¹⁶ City of Tacoma, "2030 Climate Action Plan - City of Tacoma," [last updated December 2021](#). [\[LINK\]](#). Accessed 5/21/2020. Page 16

Conclusion

A primary objective of this report was to evaluate the adequacy of existing financial assurance mechanisms for reducing the financial risk from fossil fuel facility development in unincorporated King County and, if warranted, recommend additional measures to minimize risk. This report also provides guidance on how to assess climate change impacts and refers reviewers to the report generated under Comprehensive Plan Workplan Action 21: Greenhouse Gas Mitigation for discussion on recent related statewide regulations.³⁷⁷

After reviewing potential evaluated risks, analysis conducted for this report found there is sufficient evidence that a vapor cloud explosion (VCE) at a fossil fuel facility could yield a high-cost event for which an operating entity may not have adequate financial coverage. There is also sufficient evidence of potential site contamination that could lead to the creation of future brownfields; this risk, and the risk of VCE impacts, would be exacerbated in the event of fossil fuel facility bankruptcy and subsequent closure or abandonment. Review of existing King County code also found no specific financial guarantees required for developing or operating fossil fuel facilities beyond the completion of initial facility construction. Review of existing fossil fuel regulations identified existing state and federal regulations addressing financial responsibility for a “worst case” oil spill, which provide a useful model for requiring financial assurances against explosion incidents.

Given this, this report recommends that King County enact an amendment to the King County Code requiring fossil fuel facilities to provide proof of adequate financial responsibility to cover the costs of a worst-case facility VCE and remediation of potential site contamination during its decommissioning. As directed by Workplan Action 20, a proposed ordinance reflecting these recommendations has been transmitted by the Executive to the Council concurrent with this report.

This report supports multiple King County plans and policies, as the report recommendations increase:

- King County Strategic Plan objectives to enhance community safety, while exercising sound financial and risk management by ensuring new fossil fuel facility developments have adequate financial resources to address potential industry impacts
- Transparency and accountability for fossil fuel developers, in support of the 2020 King County Strategic Climate Action Plan (SCAP). SCAP Priority Action GHG 3.8.3 commits the County to partner with other interested parties on the countywide commitment to clean energy resources, striving to phase out fossil fuels.³⁷⁸
- Protection for Black, Indigenous, and Other People of Color (BIPOC) communities that are disproportionately likely to live close to industrially- zoned areas, in support of King County Equity and Social Justice Strategic Plan direction to prioritize public health and address where disproportionate health impacts may fall upon BIPOC communities.³⁷⁹
- Alignment with numerous comprehensive plan policies, including:³⁸⁰

³⁷⁷ Transmitted to the County Council in June 2022, concurrent with this report.

³⁷⁸ King County, “2020 Strategic Climate Action Plan,” May 2021. [\[LINK\]](#). Accessed 1/18/2022. Page 102.

³⁷⁹ King County, “Equity and Social Justice Strategic Plan, 2016-2022.” [\[LINK\]](#). Accessed 1/18/2022. Page 31 (pdf page 33)

³⁸⁰ King County, “2016 King County Comprehensive Plan,” Updated July 24, 2020. [\[LINK\]](#). Accessed 1/18/2022. Pages 9-54 through 9-57 (pdf pages 488 through 491)

- F-344b “King County should advocate for environmental reviews of proposed oil terminals and other related fossil fuel facilities in Washington State to assess and mitigate for area-wide, cumulative risks and impacts to public safety...”
- F-344d “King County land use policies, development regulations, and permitting and environmental review processes related to fossil fuel facilities shall be designed to: a. protect public health, safety, and welfare; b. mitigate and prepare for disasters; c. protect and preserve natural systems; d. manage impacts on public services and infrastructure...”
- F-344e “King County shall thoroughly review the full scope of potential impacts of proposals for new, modified, or expanded fossil fuel facilities...”
- F-344h “King County shall establish a periodic review process for fossil fuel facilities...”

This report acknowledges the contributions from community groups in making space in meeting calendars to discuss report research; the extensive research efforts this report could draw upon from various local governments, industry participants and academic institutions; and the multiple King County staff that assisted in report development.

Full King County Report Found at:

https://irp.cdn-website.com/0358d1eb/files/uploaded/2023-0092%20Fossil%20Fuel%20Risk%20Bonds%20Report_YlMiAypPRsKeB54YB7Wz.pdf

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Work Session: Willamette River Greenway Code Amendments

Meeting Date: May 10, 2023
Department: Planning & Development
www.eugene-or.gov

Agenda Item Number: 2
Staff Contact: Gabe Flock
Contact Telephone Number: 541-682-5697

ISSUE STATEMENT

This work session is an opportunity for City Council to receive a project overview in advance of the public hearing on the proposed Willamette River Greenway Code Amendments. Council's public hearing on these land use code amendments is currently scheduled for June 20, 2023.

BACKGROUND

The purpose of the Willamette River Greenway Code Amendments project is to update Eugene's Willamette River Greenway Permit approval process to provide a set of clear and objective approval criteria for the review of housing development within the Greenway. If the proposed amendments are adopted, an applicant seeking to develop housing as part of the Willamette River Greenway Permit process will be able to choose to proceed either under the new clear and objective standards or using the City's existing discretionary approval criteria.

The proposed clear and objective approval criteria are intended to ensure that housing development within the adopted Greenway boundary will continue to be reviewed for consistency with the requirements of [Statewide Planning Goal 15 \(Willamette River Greenway\)](#), and are intended to meet the "clear and objective" requirements for housing under [ORS 197.307](#). Overall, the proposed changes are intended to meet the City's obligations under State law, reduce potential barriers to housing development, and maintain a balanced approach to protecting the Greenway with effective development standards as part of the Willamette River Greenway Permit review process.

Several key components of the proposed new Greenway standards included in the draft ordinance will be addressed in more detail as part of the project overview at this work session, including the following:

- Greenway setbacks requiring new housing to be set back from the river
- Native landscape requirements to create additional vegetative buffering along the river
- Greenway-specific tree preservation and removal standards
- Limits on the maximum length of buildings near the river
- Limitations on the location and materials for walls and fencing near the river
- Pedestrian access requirements for multi-unit developments

A summary of the proposed code amendments is provided as Attachment A.

The proposed amendments will not change the existing adopted Willamette River Greenway Boundary (that is, the proposed amendments will not add or remove any lands within the formal boundary where Greenway regulations apply, as adopted and in place since the mid-1970's). The proposed regulations will only apply to the review of development applications for housing on lands that are located within the existing Willamette River Greenway Boundary and are already zoned and designated to allow for housing development. The proposed amendments will not change existing zoning or allowable uses, allowable housing density, or adopted land use designations.

At this work session, staff will provide the City Council with background on the Greenway itself, an overview of the proposed new Greenway standards, and a review of the way the Willamette River Greenway Permit process generally works. A Frequently Asked Questions handout that includes background information on the Willamette River Greenway is provided as Attachment B. Additional background and a variety of project information is also available on the project website at: <https://www.eugene-or.gov/764/Land-Use-Code-Amendments>.

Councilors and community members are also encouraged to view the City's online [Greenway Web Map](#), which provides a convenient and user-friendly way to view all the lands included in Eugene's Willamette River Greenway Boundary, along with aerial imagery, the location of proposed Greenway setbacks, tree preservation zones, and pedestrian access points, which can all be viewed in relation to individual properties. These maps and the proposed code changes will be made available in adoption-ready ordinance format in advance of the Council's public hearing.

Process Summary

The proposed land use code amendments are subject to the City's Type V application procedures ([EC 9.7500](#) through [EC 9.7560](#)), as well as the approval criteria in [EC 9.8065](#). These application procedures provide for a legislative review of changes to the land use code. The process includes public notice and hearing before the Planning Commission, which forwards a recommendation to the City Council for a final public hearing and action.

The need for the Willamette River Greenway Code Amendments project was originally identified as part of Council discussions in 2018 regarding the Clear & Objective Housing Approval Criteria Update. At the time, updates to the Willamette Greenway Permit approval criteria were identified as a substantial emerging issue that was too extensive and unclear to be included within the scope and timeline of the broader Clear & Objective update. As a result, the Willamette River Greenway Code Amendments were initiated as a separate project.

The formal public process for the Willamette River Greenway Code Amendments project began with initial public outreach in early 2022. The Eugene Planning Commission's first public hearing and deliberations on the initial draft code for these amendments occurred on [March 8, 2022](#) with subsequent deliberations on [June 14, 2022](#) and [August 2, 2022](#). Following these initial meetings, and in response to robust public input and Planning Commission direction, the draft code was updated with several significant changes including the addition of tree preservation standards, refinements to Greenway setback mapping and native landscape buffering requirements, and to

ensure that all Willamette Greenway Permits would continue to require public hearings as part of the City's review procedures.

Due to the substantive changes to the draft code and to gather more public input on those changes, the Planning Commission chose to hold a second public hearing on [January 10, 2023](#), with further deliberations occurring on [January 24](#) and [February 14, 2023](#). Upon final review of the revised draft code and related findings, on [March 14, 2023](#), the Planning Commission voted unanimously to recommend City Council's approval of the proposed Willamette River Greenway Code Amendments.

Notice of the Council's public hearing will be provided to according to the City's Type V application procedures in advance of the Council's public hearing scheduled for June 20, 2023. The full record of materials submitted to date regarding these Willamette River Greenway Code Amendments will be provided to Council electronically and hard copies will be placed in the Council offices. As new written testimony is received, it will be provided to the Council in batches. For ease of reference, and as a courtesy, written testimony received to date can also be found on the [project website](#).

The project team has set up an email address for public testimony on the Willamette River Greenway Code Amendments project. Interested parties can send their comments to greenwaytestimony@eugene-or.gov, and that testimony will be provided to the City Council.

RELATED CITY POLICIES

Findings of compliance with the City's relevant adopted land use policies, as well as Statewide Planning Goals and other approval criteria for these land use code amendments, will be provided in advance of the Council's public hearing.

PREVIOUS COUNCIL DIRECTION

None.

COUNCIL OPTIONS

No action proposed for this work session. This work session is an informational overview in advance of the public hearing scheduled for June 20, 2023.

CITY MANAGER'S RECOMMENDATION

No recommended action at this time. A public hearing is scheduled for June 20, 2023.

SUGGESTED MOTION

None.

ATTACHMENTS

- A. Willamette River Greenway Code Amendments - Summary
- B. Willamette River Greenway - Frequently Asked Questions

FOR MORE INFORMATION

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Staff Contact: Jeff Gepper, Senior Planner
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Willamette River Greenway Code Amendments | Summary

KEY FEATURE

This project's purpose is to provide clear and objective approval criteria for the review of housing development within Eugene's Willamette River Greenway. If adopted, an applicant seeking to develop housing through Willamette River Greenway Permit process will be able to choose to proceed either under the new clear and objective standards or using the City's existing discretionary approval criteria.

PRIMARY CHANGES:

The proposed draft amendments, which are scheduled for a Public Hearing on June 20, 2023, include:

- **Codified Greenway Setback***
 - For clear and objective applications, the changes add a mapped setback (Greenway Setback) that establishes a 100-foot setback from the river for new housing developments.
 - A smaller setback is sometimes applicable in areas where a special area zone or adopted refinement plan dictates a specific setback, such as the Downtown Riverfront Zone or Willakenzie Area Plan.
- **Native Landscape Buffer**
 - Requirements for 10-foot native landscape buffer along the Greenway Setback, comprised of native plants and trees. Plants in this area must be selected from the previously vetted and adopted approved plant list.
- **Tree Preservation & Removal Standards*:**
 - Greenway-specific tree preservation standards with higher preservation requirements based on proximity to the river.
 - Tree preservation requirements have also been added to the existing discretionary approval criteria to ensure balance between the new and existing approval processes.
- **Building Size Restrictions**
 - Limits the maximum length of buildings to 75 feet if within 100 feet of the Greenway Setback.
- **Wall & Fencing Standards**
 - Limitations on the location and materials for walls/fences near the river, which prohibits solid or masonry walls within the Greenway Setback or required Native Landscape Buffer.
 - Fences within 300 feet of the Greenway setback must be at least 50% open (unobstructed for light and air) and cannot be constructed of barbed wire, chain link, or cyclone fencing.
- **Pedestrian Access Requirements***
 - Provides a map of properties that are subject to providing a pedestrian access connection from a public way to the riverfront if they develop Multi-Unit Housing (5 or more dwelling units).

*Check out the [Greenway Web Map](#) to see these features property by property across Eugene. These maps will also be adopted as part of the Code Amendments and available for download.

IMPORTANT INFORMATION	
The proposed amendments: <ul style="list-style-type: none">• <u>Maintain</u> the requirement to have a public hearing for each application• <u>Maintain</u> all other environmental protections for Eugene's water resources• <u>Maintain</u> the existing Willamette River Greenway Boundary	The proposed amendments: <ul style="list-style-type: none">• <u>Do not</u> change the land use designation or zoning of any property• <u>Do not</u> increase allowed housing density or change allowed uses within the Greenway• <u>Do not</u> reduce or remove any public pedestrian/bike paths

For More Information: www.eugene-or.gov/764/Land-Use-Code-Amendments
Gabe Flock, Principal Planner – Gflock@eugene-or.gov | Jeff Gepper, Senior Planner – JGepper@eugene-or.gov



Willamette River Greenway Code Amendments

Frequently Asked Questions | May 2023

1. What is the Willamette River Greenway?

The [Willamette River Greenway](#), established through [Statewide Planning Goal 15](#), is a corridor land along the Willamette River, in which development is planned and built with recognition of the unique qualities of the Willamette River. To implement state law, cities and counties, including Eugene, were required to adopt a Greenway boundary, a Greenway section in their comprehensive plan, and standards for new development, changes of use, and intensification of uses within the Greenway boundary area.

At the local level, Eugene adopted a Greenway boundary, adopted a Willamette River Greenway element into the [Eugene-Springfield Metropolitan Area General Plan](#), and adopted Greenway development standards and land use processes in the Eugene Code, consistent with state law. Eugene's existing standards were intended to maintain physical and visual access to the river, to preserve landscaped area, open space or vegetation near the river, and to direct development away from the river. Directing development away from the river does not mean development is prohibited within the Greenway. It means that the site design generally should provide open space and access between the development and the river as appropriate on a case-by-case basis.

2. What is a Willamette River Greenway Permit and when is it required?

A Willamette River Greenway Permit is required prior to new development, changes in use, or intensification of uses within the Willamette River Greenway. Intensification of use includes any increase or expansion of the area or amount of an existing use or development. For example, a Willamette River Greenway Permit is required when remodeling the exterior of a building if it will substantially alter the appearance of the structure or if the use of the site will change because of development. However, not all changes to a property require a Willamette River Greenway Permit. General maintenance and repair, landscaping changes, and/or minor modification of existing structures typically does not require a permit.

Willamette River Greenway Permit applications are approved or denied by the City's Hearings Official following a public hearing. The Hearings Official is an objective and unbiased professional who analyzes whether a proposal meets the approval criteria set out by the City's code. The Hearings Official's decision on a Willamette River Greenway application may be appealed to the Planning Commission.

3. Why is the City initiating this project?

The City's current Willamette Greenway approval criteria comply with the requirements of Goal 15 but contain language that is subjective. Separately, a state statute, ORS 197.307(4),



Willamette River Greenway Code Amendments

Frequently Asked Questions | May 2023

requires cities to provide a set of clear and objective approval criteria applicable to housing. The proposed Willamette River Greenway Code Amendments will create a set of clear and objective approval criteria that are available for applicants proposing housing within the Greenway; therefore, complying with both ORS 197.307(4) and Goal 15. If the proposed code amendments are adopted by the City Council, an applicant proposing housing will be able to choose whether to utilize the new clear and objective Greenway approval criteria or the existing discretionary approval criteria. The existing discretionary Greenway approval criteria will continue to apply to applicants proposing development that is not housing.

4. What are the changes proposed as part of this project?

The proposed Willamette River Greenway Code Amendments include:

- The addition of a clear and objective set of approval criteria available for proposed housing within the Willamette River Greenway boundary. An applicant may choose to proceed under the clear and objective standards (Clear and Objective Track) or the discretionary standards (Discretionary Track). The clear and objective standards include the following:
 - Establishment of a 100-foot setback from the river for new housing (the Greenway Setback), except for instances in which a special area zone or refinement plan dictates a smaller setback distance (e.g. Downtown Riverfront Special Area Zone or the Willakenzie Area Plan)
 - A map of the Greenway Setback;
 - A map showing public access points;
 - Limitations on building façade length within 100 feet of the Greenway Setback;
 - Limitations on walls and fencing within and near the Greenway Setback;
 - Pedestrian access requirements for multi-unit developments on certain mapped properties;
 - Native landscape buffer requirements; and
 - Tree preservation and removal requirements.
- The proposed Willamette River Greenway Code Amendments add tree preservation and removal requirements to the existing discretionary approval criteria for Willamette River Greenway permits.

Up-to-date versions of these proposed Willamette River Greenway Code Amendments and related maps are available on the City's [Land Use Code Amendments webpage](#).

5. What do you mean by “clear and objective” standards?

State law requires that local governments adopt and apply clear and objective standards, conditions, and procedures regulating the development of housing. This is to ensure that communities do not only use discretionary or subjective criteria to deny housing projects.



Willamette River Greenway Code Amendments

Frequently Asked Questions | May 2023

Subjective standards include language such as “to the maximum extent possible” and “to the greatest degree.”

Cities that have clear and objective land use application approval criteria can also adopt alternative or “discretionary” approval criteria. Applicants may elect to use the alternative path to allow greater flexibility in housing development proposals. The proposed Willamette River Greenway Code Amendments will provide a clear and objective path and a housing applicant will also have the option of using the existing discretionary path.

6. Is the purpose of the Willamette River Greenway to prevent development from happening?

No, the purpose of Statewide Planning Goal 15 and the Willamette River Greenway is not to prohibit development within the Greenway. Goal 15 explicitly allows development within the Greenway boundary but requires that development within the Greenway be directed away from the river, provide landscaping, vegetation or open space between the activity and river, and requires that necessary public access to and along the river is maintained. Properties within the Greenway will still be able to develop according to their existing zoning, and proposed housing will have the option of applying for Willamette River Greenway Permit utilizing the new clear and objective approval standards, or utilizing the existing discretionary approval criteria.

7. What if a property already has an approved Willamette River Greenway Permit?

Properties that have already applied for and received a Willamette River Greenway Permit can develop in accordance with their approved permit, project, and site design. None of the new standards or approval criteria will apply to a previous Willamette River Greenway Permit approval unless an applicant re-applies for an entirely new Willamette River Greenway Permit.

8. What is the Greenway setback and why is it 100-feet?

The 100-foot Greenway Setback proposed as part of the clear and objective approval criteria clearly delineates where the development of new housing and other structures is prohibited and where uses are limited near the river, as a clear and objective means of ensuring protection of the land nearest to the river, consistent with Goal 15. The 100-foot setback distance is also generally consistent with the City’s existing [Goal 5](#) regulations that specify allowed uses and additional protections for riparian areas along the river.

9. Why is the setback not always 100 feet on the map?

In cases where the setback is not 100 feet, it is due adopted plans or special area zones where different setbacks have already been established. As shown on the [setback map](#),



Willamette River Greenway Code Amendments

Frequently Asked Questions | May 2023

there are three areas where the setback is already established by other plans or special area zones: the [Willakenzie Area Plan](#), [Downtown Riverfront Plan](#), and the [Riverfront Park Study](#).

10. Is any development allowed within the Willamette River Greenway setback?

If applicant proposing housing chooses to utilize the new set of clear and objective approval criteria for proposed housing, the only new structures that applicant may build within the Greenway setback are pedestrian paths and public accessways. Other structures may be allowed within the Greenway Setback area under certain circumstances, but those structures would be subject to the discretionary Willamette River Greenway Permit approval criteria. Structures within 100 feet of the river may also be required to comply with the City's adopted Goal 5 regulations.

11. Will the proposed land use code changes affect access to the riverbank park system for pedestrians and bicyclists?

The proposed Willamette River Greenway Code Amendments will not affect any of the existing pedestrian or bicycle access to or along the river. The proposed code amendments are likely to result in greater access to the riverbank park system because the proposed clear and objective standards require public access points and pathway connections for new multi-unit developments and continue to allow multi-use paths within the Greenway Setback.

12. Why did the Planning Commission holding a second public hearing on these code amendments, after several meetings already devoted to this project over the last year?

Several substantial changes have been made to the proposed Willamette River Greenway Code Amendments since the initial version of the proposed amendments was considered at the March 8, 2022, Planning Commission public hearing. Based on public input and Planning Commission direction at two additional meetings in June and August of last year, the proposed Willamette River Greenway Code Amendments were substantially updated. A second public hearing on the updated amendments was held on January 10, 2023. Links to past meeting materials and recordings can be viewed on the City's [project webpage](#).

13. What are some of the major changes that are included in the updated code amendments?

The following changes were made to proposed Willamette River Greenway Code Amendments since the March 8, 2022, Planning Commission public hearing. These changes were included in the Planning Commission's recommendation to approve the proposed amendments.

- The addition of tree preservation and removal standards to both the proposed clear and objective approval criteria (Clear and Objective Track) and the existing discretionary approval criteria (Discretionary Track) for Willamette River Greenway



Willamette River Greenway Code Amendments

Frequently Asked Questions | May 2023

Permits, to enhance the protections applied to new development within the Greenway.

- The proposed Willamette Greenway Code Amendments now provide that all Willamette Greenway Permit applications, whether subject to the approval criteria in the Clear and Objective Track or the Discretionary Track, will undergo a Type III process, which consists of a public hearing and initial decision by the Hearings Official and a local appeal to the Planning Commission.
- The maximum length of building facades was reduced to 75 feet when buildings are located within 100 feet from the proposed Greenway Setback to help facilitate views to and from the river.
- Clarification that pedestrian paths and public accessways are the only new structures permitted within the Greenway Setback under the Clear and Objective Track. Other structures may be allowed within the Greenway Setback area, but those structures would be subject to the discretionary Willamette Greenway Permit approval criteria.
- Allowance for parking areas between buildings and the Greenway Setback to eliminate conflicts with other standards that generally prohibit vehicle use areas between buildings and adjacent streets.

14. How can I provide comments on the proposed Willamette River Greenway Code Amendments? What are the next steps in the process for adopting the Willamette Greenway Code Amendments?

You can email comments to greenwaytestimony@eugene-or.gov, and mail comments to c/o Jeff Gepper, Senior Planner, 99 W. 10th Avenue, Eugene, OR 97401. You can also testify before the Eugene City Council at their scheduled public hearing on **Tuesday, June 20, 2023**. The City Council public hearing is scheduled to be held in a hybrid format, allowing attendance and participation both in-person and virtually. Meeting materials and links to watch and participate are available [here](#).

Following the June 20th public hearing, the City Council will meet later in June or July to deliberate and decide on the proposed amendments.

15. How can I learn more?

To learn more, visit the City's [Land Use Code Amendments](#) webpage or contact:

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