

**APPEAL APPLICATION**

FEE: _____

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): John P. Biestman Phone: 506 747.8798
Mailing Address: 61379 Lost Hollow Loop City/State/Zip: Bend, OR 97702
Email Address: john.biestman@gmail.com
Land Use Application BeingAppealed: 247.22.000415.MC.416.SP
Property Description: Township 18 Range 11 Section 12CC Tax Lot 03400
Appellant's Signature: J.P. Biestman

EXCEPT AS PROVIDED IN SECTION 22.32.024, APPELLANT SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A \$5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANT SHALL SUBMIT THE TRANSCRIPT TO THE PLANNING DIVISION NO LATER THAN THE CLOSE OF THE DAY FIVE (5) DAYS PRIOR TO THE DATE SET FOR THE *DE NOVO* HEARING OR, FOR ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.

(over)
NOTICE OF APPEAL

As a result of repetitive flooding over at least the past three years, causing significant exterior and interior damage to residents, I hereby appeal the Decision of Deschutes County to approve and subject the aforementioned application on the basis of an administrative hearing.

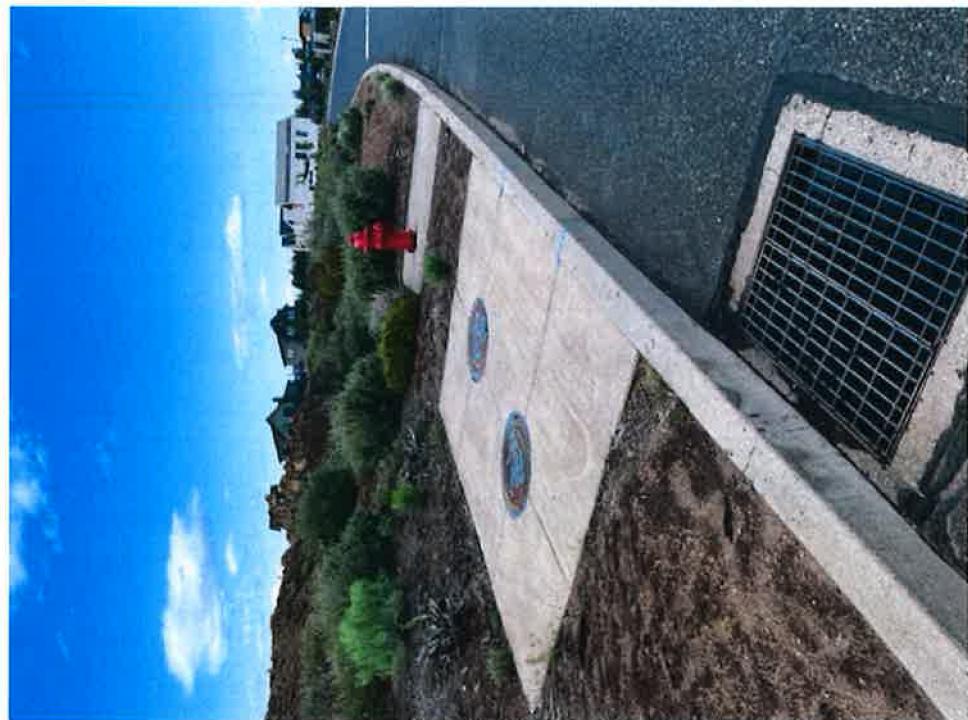
I have commissioned Munson Engineering to conduct a comprehensive upstream drainage analysis of Tetherow. Findings include: uncontrolled runoff, compromised channel flow, drain pools and catchment basins that have been eliminated and not replaced, unmaintained medians on Meeks Trail that have become channels for water flow into residences and other specifically-cited infrastructure deficiencies within the Tetherow development. To continue to allow further development without addressing mitigation is tantamount to the ~~737 MAX~~ ^{allowing to continue to fly.} I am attaching a document that includes engineering findings that establish a pattern of infrastructure negligence that serve as credible cause to doubt and question the proposed development of Fishlands Ridge. I look forward (This page may be photocopied if additional space is needed.)

to testifying at a future public hearing on the matter.

Exhibits to Appeal Application for Land Use Application
247-22-000415-MC-416-SP

1. Presentation on Drainage Conditions, Civil Engineer Findings and Response to Declarant/Applicant's Letter and Exhibits, dated August 1, 2022 (color version)
2. Presentation on Drainage Conditions, Civil Engineer Findings and Response to Declarant/Applicant's Letter and Exhibits, dated August 1, 2022 (black-and-white version)
3. Applicant's Letter and Exhibits, dated August 1, 2022

Land Use Action Comment 247-22-000415-MC-416-SP



Catchment basin adjacent
to Proposed Land Use

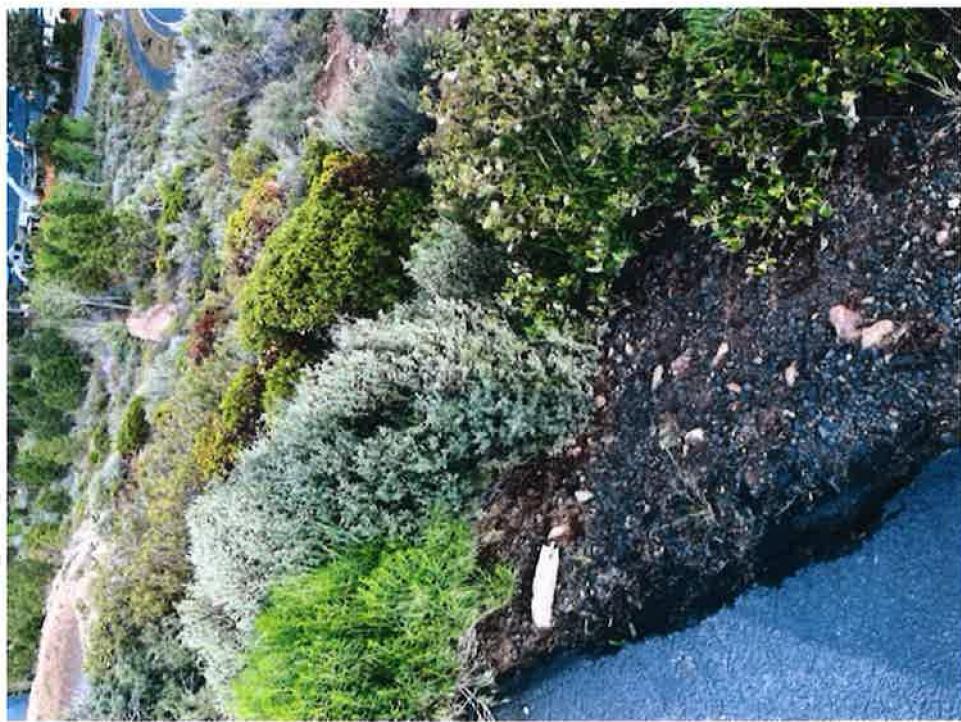


June 13, 2022, 10 days after rain event,
The catchment basin remained full.

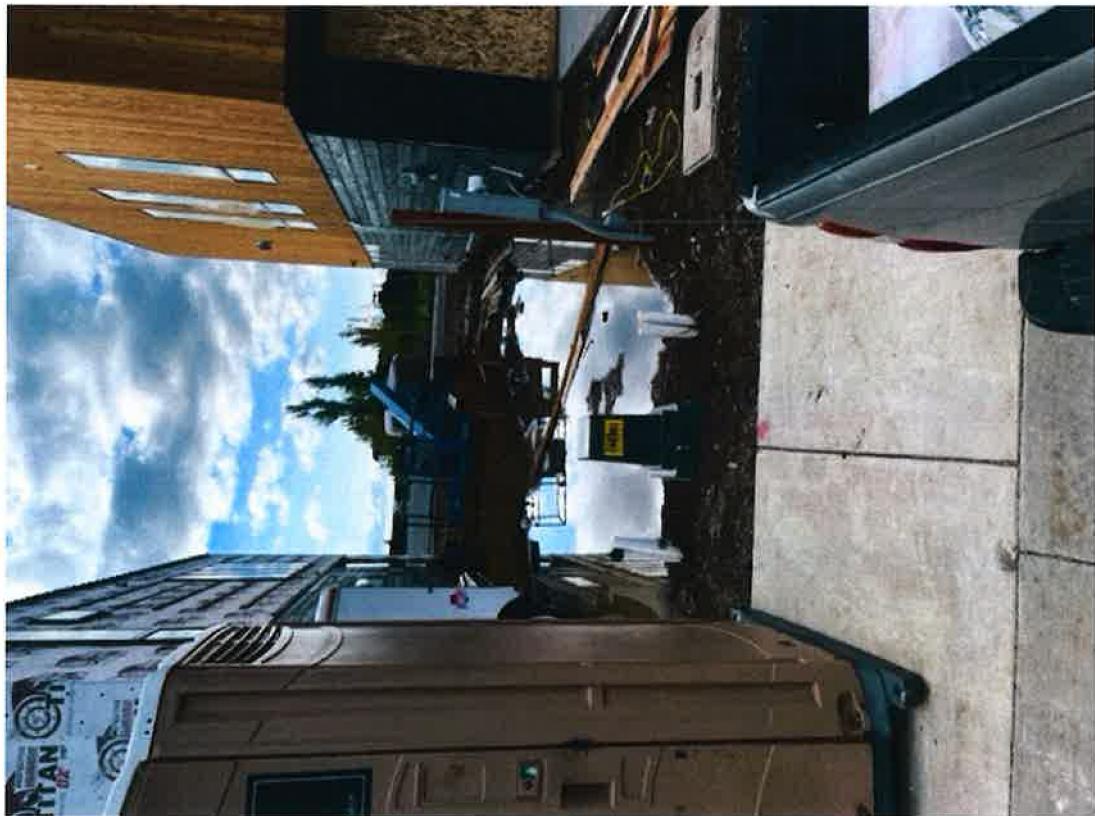
Three weeks after the rain event, drains were pumped around the neighborhood. How often are they maintained?



June 13, 2022. Evidence of erosion the south side of Meeks Trail, directly across the street from the proposed site of land use.



June 13, 2022. Evidence of remaining flooding on the south side of Meeks Trail, across the street from the proposed site of land use.



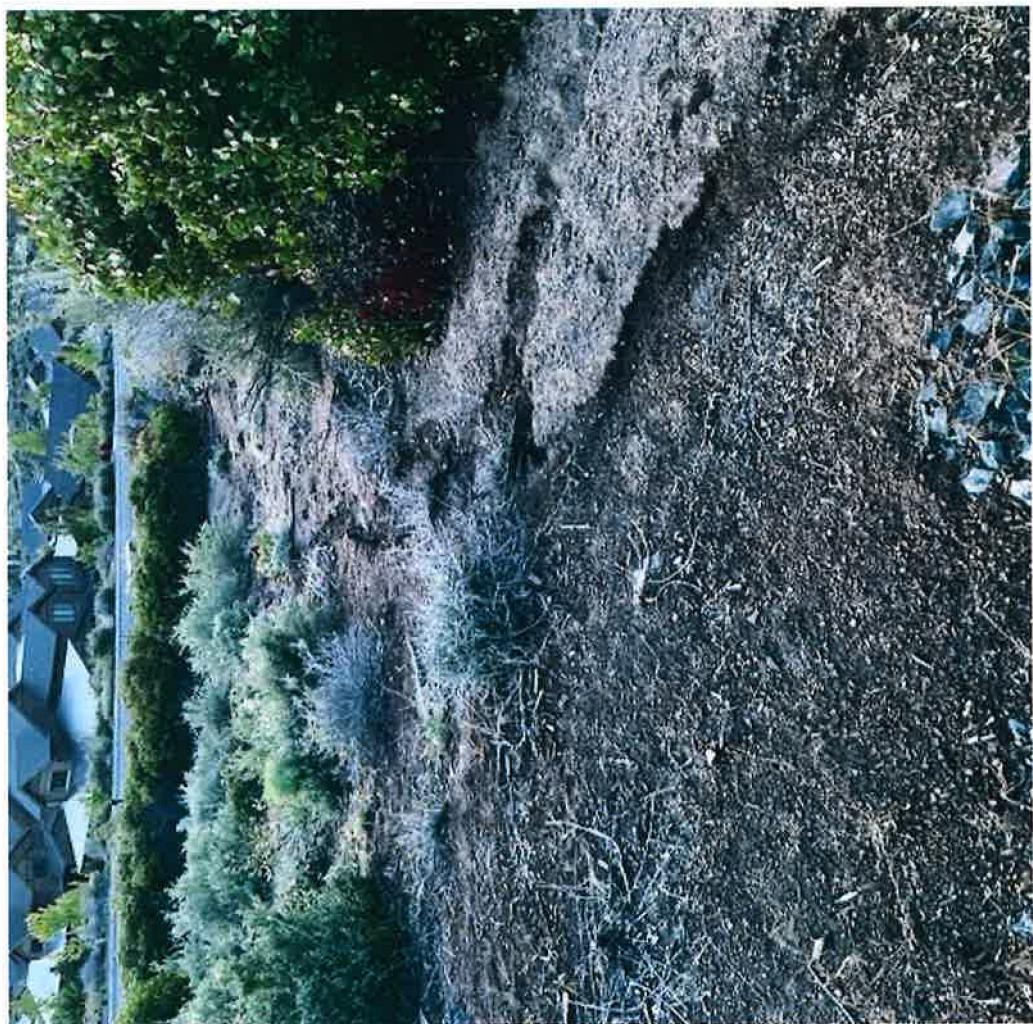
Evidence of erosion Lost Hollow Loop and Meeks Trail. A pattern?



Unmitigated and longstanding median runoff from Meeks Trail. A pattern?



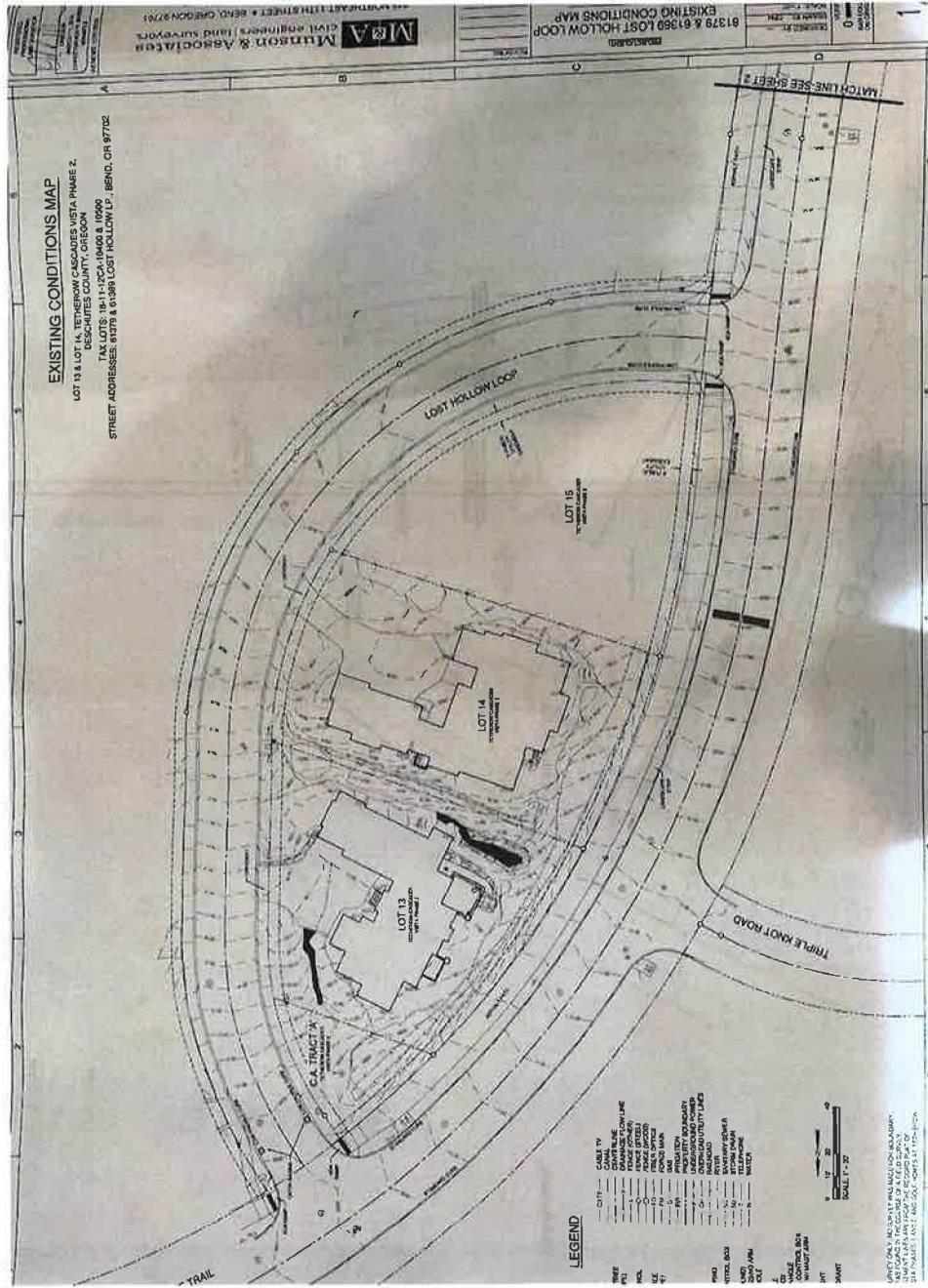
Evidence of erosion from Tetherow Vista. No catchment infrastructure. A pattern?



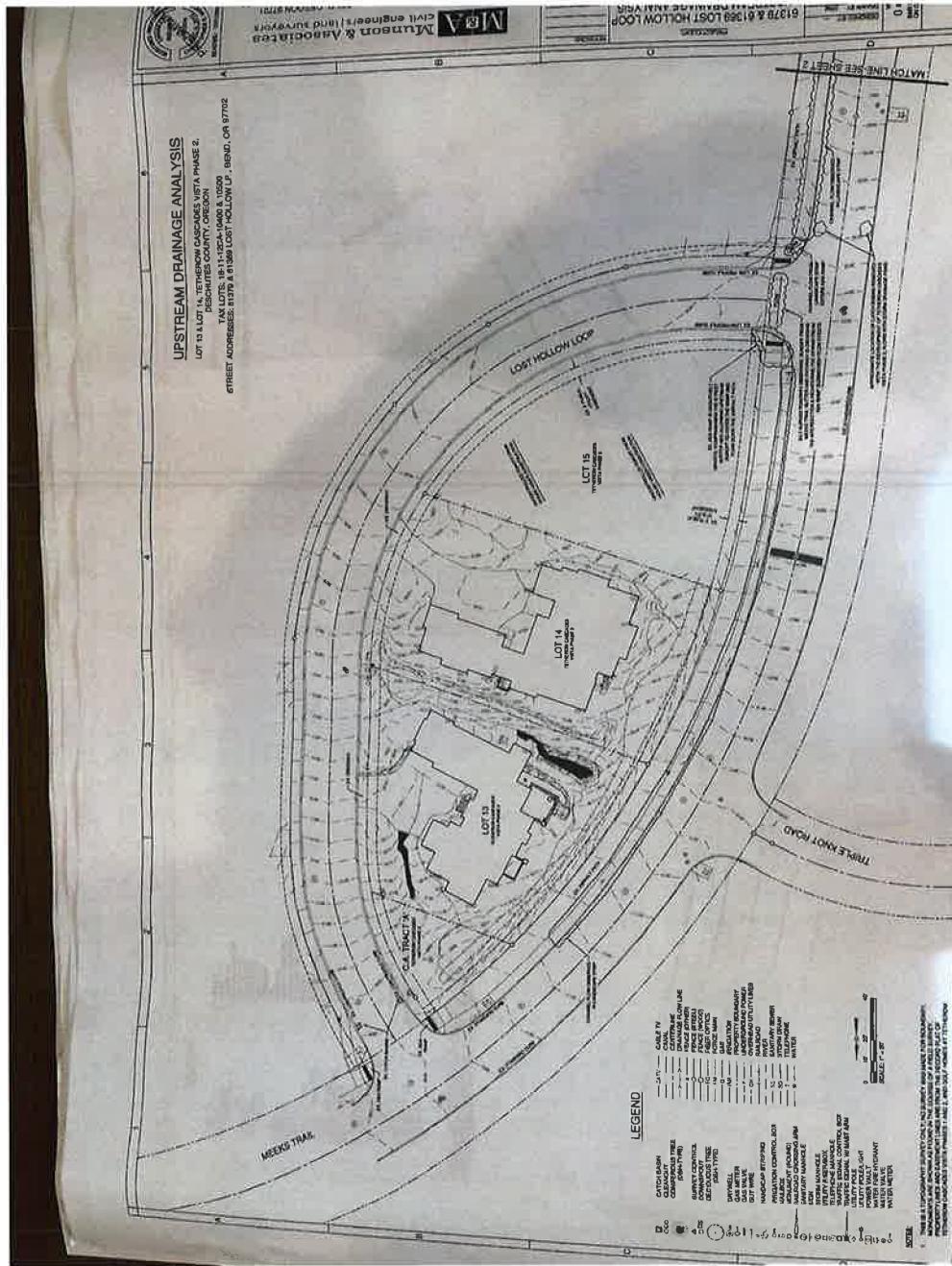
Before and After: Catchment Basins and Drainage Ponds Eliminated and Not Replaced. A pattern?



Existing Conditions Map



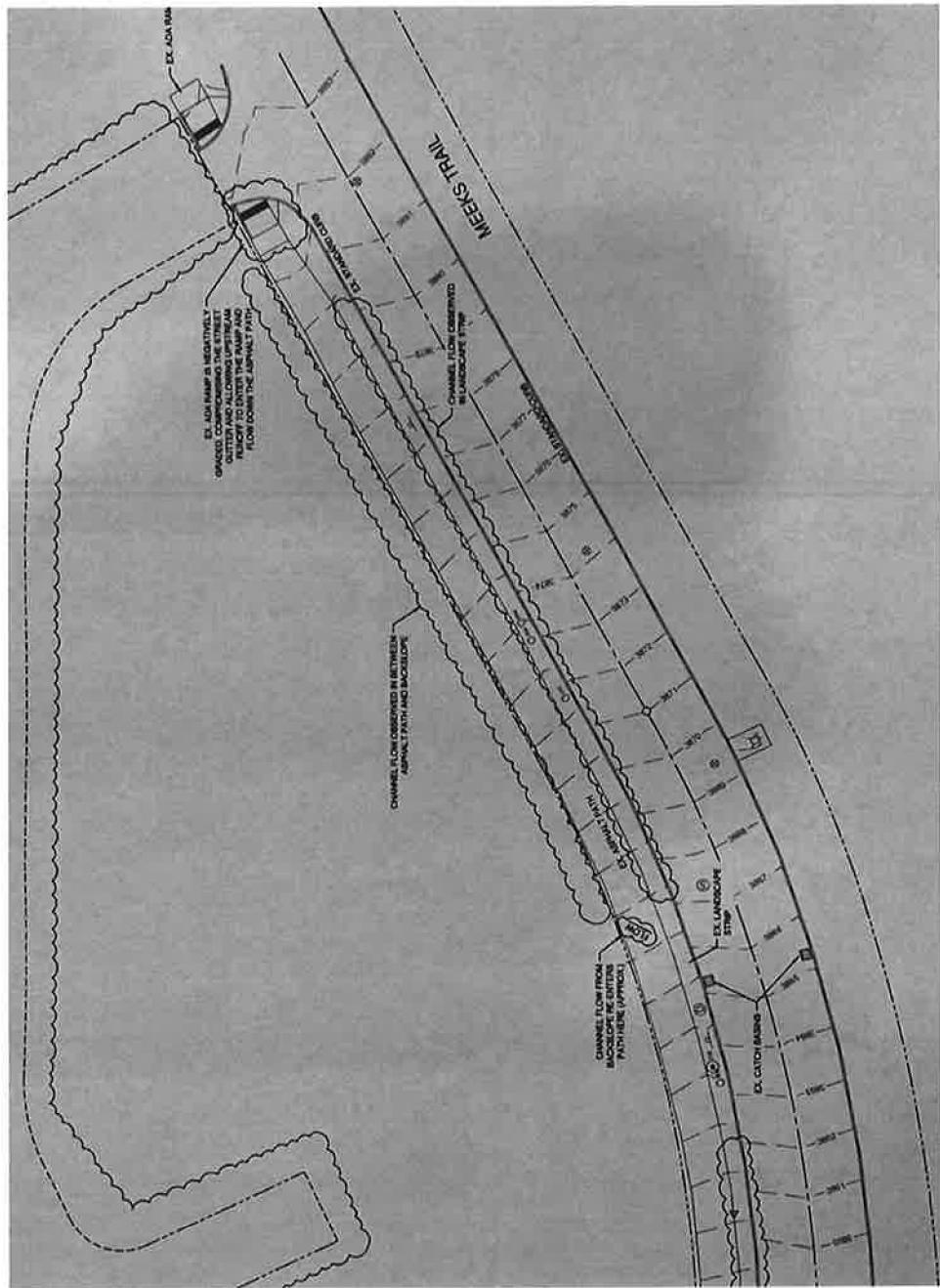
Upstream Drainage Analysis



Findings on Upstream Drainage Analysis

- ADA ramp is negatively graded compromising the street gutter and allowing the upstream runoff to enter the ramp and flow down the asphalt path and into residents' yards
- Catch basins were removed with the development of Tetherow Cascades Vista Phase 2, along with the storm Drainage pond, presently occupied by CV15
- Channel flow observed in eroded median strips

Upstream Drainage Analysis



Summary Findings on Neighborhood Infrastructure Issues:

- No catchment on Tetherow Vista Drive (a development above Lost Hollow Loop)
- Sidewalks channel in direction of Lost Hollow Loop
- ADA ramps above Lost Hollow Loop do not line up with water channels and direct water in the direction of our property (see aerial photo attached)
- Catchment basins no longer exist post-development, why are they gone and not replaced? *This is a major contributor.* (See photo)
- Lot 15 was once a drainage pool – The pool was never replaced after a home was placed under construction. *This is a major contributor.*
- No drainage control on Tetherow Vista, catchment basins are needed
- Medians adjacent to Meeks Trail are a channel for water flow.
- Storm drains may not have been cleaned in a timely manner.
- Water flow problems are almost entirely due to faulty infrastructure of the Tetherow development

Findings on Upstream Drainage Analysis

- Uncontrolled runoff (channel flow) observed from Tetherow Vista Drive
- ADA ramp is negatively graded, compromising the street gutter and allowing upstream runoff to enter the ramp and flow down the asphalt path
- Channel flow observed in between asphalt path and backslope

Specious Statements in the August 1, 2022 Letter to Deschutes County from Garrett Chrostek, Esq.

“More importantly, the Tetherow Cascades Vista Subdivision is generally uphill from Highlands Ridge and the Subject Property.”
Response: This statement is patently false. The subdivision is significantly downstream from Highlands Ridge.

“...they constitute nothing more than “vague allegations”, readily disproven by topography and the conclusions of third party reviewers.” **Response: These allegations are not vague. The allegations are fact-based and demonstrate a pattern of the Declarant supporting negligent infrastructure throughout the Tetherow Development**

“The third-party reviewers conclude that it was the failure of others to maintain adequate drainage facilities/mitigation measures that caused the flooding/erosion and note that the Subject Property employed appropriate measures (to the extent relevant given the Subject Property’s downslope location).” **Response: Are we assuming that the reference to “others” infers that Tetherow counsel is alleging lack of infrastructure maintenance on the part of homeowners? If so, I have records of spending thousands of dollars to mitigate the results of the negligence precipitated by the Declarant/Applicant. My retained civil engineer cites quite the opposite of Mr. Chrostek. There is tangible and culpable evidence of lack of adequate drainage facilities and mitigation measures that should have been undertaken by the Declarant/Applicant.**

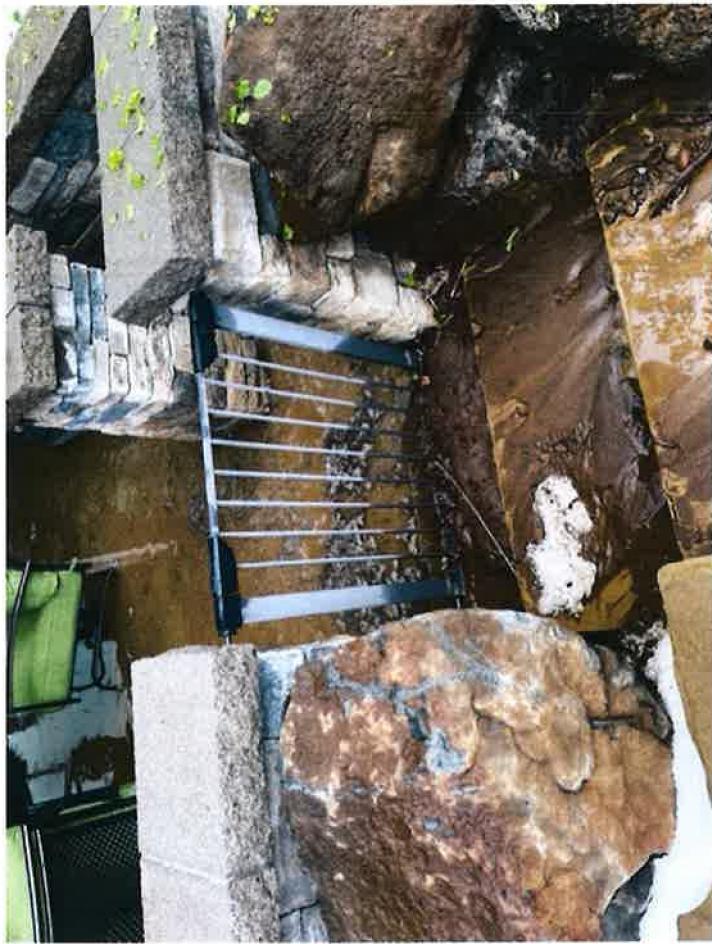
“To the extent it applies between properties within the Resort, there is nothing in the complaints substantiating that Applicant altered any existing drainage on the Subject Property or elsewhere. Rather, the third-party reviewers conclude that drainage facilities installed by Applicant pursuant to the Subdivision approval, and the on-site drainage mitigation measures for the Subject Property, are adequate and that any flooding/erosion issues were caused by others. **Response: Not true, as the upstream drainage analysis conducted by Munson Engineering, contained herein, describes. Also, there is tangible evidence that drainage catchments adjacent to Highlands Ridge were filled and not functioning many days after the precipitation event.**

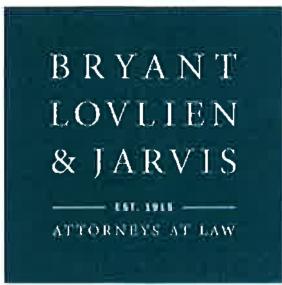
Specious Statements in the August 1, 2022 Submission to Deschutes County – Unnamed Landscape Architect.

“Through experiential observations (see photos), the most likely significant source for drainage problems at the sunken patio in the back yard at CV13, comes from precipitation falling on the land within its own boundary. The topography on CV13 slopes toward the residence from the south corner. Along Meeks Trail, the slope within CV13’s boundary runs back toward the sunken patio, also. The asphalt pathway runs downhill along with Meeks Trail and is cross sloped towards the road and does not appear to slope toward CV13’s property. Evidence of this slope away from CV13 is shown in rill erosion in the landscape space between the asphalt path and road. The notion that stormwater drainage is flowing from AB sites through the TripleKnot neighborhood and over the road cut of Meeks Trail (along with all their drainage systems) does not seem to be probable.”

Response: To claim that the source of CV13’s flooding issues are significantly ascribed to “precipitation falling on the land within its own boundary” is egregiously false. The unnamed landscape architect totally ignores the findings of Munson Engineering, as well as any additional consideration that there is additional moving water coming from Lost Hollow Loop in addition to Meeks Trail.

The Result of Negligent and Grossly Inadequate Infrastructure:
Community Erosion





August 1, 2022

ATTORNEYS

John D. Sorlie

Mark G. Reinecke

Melissa P. Lande

Paul J. Taylor

Jeremy M. Green

Heather J. Hansen

Garrett Chrostek

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Lindsay E. Gardner

Katie Clason

James A. Fraser

Brent N. Wilkins

Via Email Only

Rachel.Vickers@deschutes.org

Deschutes County
Community Development Department
Planning Division
Attn: Rachel Vickers
117 NW Lafayette Ave.
Bend, Oregon 97703

Re: 247-22-000415-MC, 416-SP

Dear Rachel:

This letter responds to your June 21, 2022, incomplete letter regarding the above-referenced land use application (the “Subject Application”) concerning Tax Lot 181112CC03400 (the “Subject Property”) filed by Tetherow AB, LLC (the “Applicant”). The County’s incomplete letter was apparently prompted by comments filed on the Subject Application that identify flooding/erosion issues at other locations within Tetherow. The incomplete letter asserts that the flooding/erosion issues may substantiate “code violations in terms of previous land use permit 247-19-000339-TP, 340-LL, 341-MC, 342-SP”, which is the tentative plan approval of the Highlands Ridge Subdivision and site plan approval for a communal parking lot (collectively, the “Subdivision Approval”). As set forth in this letter, the complaints are without merit with respect to either Applicant or the Subject Property, and there is no basis to find any code violations or otherwise apply DCC 22.20.015 to the Subject Application.

Enclosed are letters from the engineer for the Highlands Ridge Subdivision and from the architectural consultant to the Tetherow Architectural Review Committee setting out their findings on the flooding/erosion issues cited by the complainants. With respect to Tetherow Cascades Vista, there is no connection between Highlands Ridge and any flooding/erosion that may have occurred in the Tetherow Cascades Vista Subdivision, let alone a connection to the Subject Property. The Tetherow Cascades Vista Subdivision is more than 700 feet away from the Highlands Ridge Subdivision (and more than 900 feet from the Subject Property). More importantly, the Tetherow Cascades Vista Subdivision is generally uphill from Highlands Ridge and the Subject Property.

With respect to Tetherow Rim, the enclosed letters conclude that neither stormwater systems associated with Highlands Ridge nor anything about the Subject Property contributed to any flooding/erosion. The source of the flooding/erosion appears to be the

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result of stormwater systems (or lack thereof) outside of Highlands Ridge and the actions (or inactions) of parties other than the Applicant. Again, and most importantly, the Subject Property slopes away from the areas of flooding/erosion.

With respect to specific Code sections cited in the incomplete letter, Applicant provides the following responses:

DCC 22.20.015

DCC 22.20.015 and *Tumalo Irrigation District* (247-17-000775-ZC, 247-17-000776-PA) make clear that it is the property subject to the land use application at issue that is the subject of the code violation analysis. Most pertinent to the pending matter, the Board of County Commissioners stated as follows

“[] the Board interprets DCC 22.20.015 to require something more than a vague allegation (i.e., clear evidence of a violation) to compel the County hearings body to determine if a property is in violation and the pending land use application process is the appropriate forum in which to determine whether a violation exists.”

The complaints do not even suggest that the Subject Property is (i) the cause of any flooding/erosion, (ii) in violation of any conditions of approval to the Subdivision Approval, or (iii) in violation of any provision of County Code. To the extent they do, they constitute nothing more than “vague allegations”, readily disproven by topography and the conclusions of third-party reviewers. Per the guidance of the Board, the lack of evidence in the complaints should dissuade either staff or a hearings body from further considering these complaints as part of the Subject Application.

DCC 19.76.070

This is an approval criterion and not an ongoing condition of approval (no reference to DCC 19.76.070 or its subsections in the conditions of the Subdivision Approval). It therefore cannot be the basis of a code violation. To the extent it could, it must be noted that 416-SP was for a parking lot (on a property other than the Subject Property) and was thus not a “residential site plan” for purposes of subsection (A). To the extent relevant to these proceedings, the parking lot has drainage facilities, and is downslope from areas of flooding/erosion, and thus could not have contributed to any of the asserted flooding/erosion. There is nothing in the complaints substantiating that the Applicant failed to preserve landscaping and existing grading on the Subject Property to the extent required by subsection (C). Rather, the third-party reviewers conclude that the actions of others, on properties other than the Subject Property, are the source of any flooding/erosion. There is nothing in the complaints substantiating that Applicant failed to keep surface drainage on the Subject Property for purposes of subsection (D). The third-party reviewers conclude that it was the failure of others to maintain adequate drainage facilities/mitigation measures that caused the flooding/erosion and note that the Subject Property employed appropriate measures (to the extent relevant given the Subject Property’s downslope location).

Response to Incomplete Letter
August 1, 2022
Page 3

DCC 19.106.070

This criterion addresses drainage issues between the Tetherow Resort (the “Resort”) and properties adjacent to the Resort. It is thus not relevant to the complaints raised and, as an approval criterion, cannot be the basis of a code violation. To the extent it applies between properties within the Resort, there is nothing in the complaints substantiating that Applicant altered any existing drainage on the Subject Property or elsewhere. Rather, the third-party reviewers conclude that drainage facilities installed by Applicant pursuant to the Subdivision Approval, and the on-site drainage mitigation measures for the Subject Property, are adequate and that any flooding/erosion issues were caused by others.

In sum, Applicant is not responsible for any flooding/erosion and there are no violations on the Subject Property. The Subject Application thus cannot be held up on by DCC 22.20.015 and the Board of County Commissioners specifically “cautions that County hearings bodies should take up [code violation determinations as part of a land use application] in rare cases because of the obvious practical difficulties born from comingling the County’s land use application process with the separate and distinct code enforcement process.” Given the direction of the Board, there would be little to no value to a hearing on the Subject Property given the nature of the complaints. In any event, Applicant requests that staff process the Subject Application administratively and commits to provide the hearings officer’s deposit should an appeal be filed.

Please contact me if you have any questions.

Sincerely,

/s/ Garrett Chrostek

Garrett Chrostek
chrostek@bljlawyers.com

cc: Client
Anthony Raguine (Anthony.Raguine@deschutes.org)



TECHNICAL MEMORANDUM

DATE: July 27, 2022
TO: Chris van der Veldc
FROM: Adam Erlandson, PE
RE: Tetherow Development Tract AB North (Highlands Ridge) Infrastructure

This memorandum is intended to provide a brief narrative of the designed and constructed infrastructure system at Tetherow Development Tract AB North (Highland Ridge Subdivision).

In accordance with the conditions of approval within the original subdivision approval, the stormwater infrastructure system for Highlands Ridge was designed and has been constructed in accordance with the Central Oregon Stormwater Manual and Deschutes County Road Department requirements.

The stormwater management system for the project, based on the above requirements, includes a network of catch basins to collect stormwater runoff generated from the project, including the forthcoming Phases 3 and 4. These catch basins are piped to sedimentation manholes and then to stormwater infiltration galleries (drywells) for retention and ultimate disposal. The drywells were performance tested during construction and observed to function as intended with the infrastructure system design.

Given the design of the stormwater system constructed for Highlands Ridge, and other stormwater systems within Tetherow, it is extremely unlikely that Highlands Ridge, contributed to any flooding or erosion issues within the Tetherow Cascades Vista subdivision, which does not abut Highlands Ridge.

It is also unlikely that the common stormwater infrastructure system within Highlands Ridge caused any flooding or erosion within the Tetherow Rim subdivision. Based on my observations, stormwater/erosion issues experienced within the Tetherow Rim subdivision appear to be from a combination of factors. These include the private drainage facilities within the Tetherow Rim Subdivision either being insufficient or not working properly and a lack of temporary erosion and sediment control measures being implemented during the course of private home construction on some of the lots with Highlands Ridge, that are north of Awbrey Hall Lane (Highlands Ridge, Phases 1 & 2).

As can be shown on the enclosed photo exhibit, stormwater origination within Highlands Ridge appears to come directly from some of the northerly lots and not from roadways or common areas within Highlands Ridge. While the owners/contractors of those private lots need to improve course of construction mitigation efforts, it should be noted that final site stabilization and drainage control measures on those lots should be permanently addressed and implemented on each lot, upon final home construction completion.

In contrast, course of construction mitigation measures have been employed on Development Tract A within Highlands Ridge (Tax Lot 181112CC03400). Moreover, this parcel generally slopes to the south. It is thus unlikely that Development Tract A contributed to any adjacent flooding issues.

Respectfully,

A handwritten signature in blue ink that reads "Adam Erlandson".

Adam Erlandson, PE

901 NW Carlton Ave., Suite 3
Bend, OR 97703
(541) 728-6347

Photo Exhibit along the property line between Highlands Ridge, Lot 5 and Tetherow Rim, Lot 1 of the observed drainage pattern due to a channel that has developed



Review 07.13.22 – Landscape Response

A hydrologist, geologist, and/or civil engineer would have a more complete and professional knowledge regarding water and soil movement across Tetherow. Let it be known and considered.

As a landscape architect, I can give some practical notations, however, after reviewing photos from 6.3.22 (after a series of major storm events) and making an additional site visit on 7.13.22 to the slopes along AB-1 through AB-5, The Rim 1-3, and Cascade Vista 13-15.

The topography along AB-1 through AB-5 slopes down to the north and east. AB-5 has the most significant slope towards its neighbor - The Rim 1.

All properties must contain stormwater on site, *even during construction*. Grubbing and clearing appears to have added to runoff and erosion. Proposed, permanent drainage facilities do not appear to have been installed yet at AB-5. Per best management practices, erosion and sediment controls and facilities should be in place through construction. Owners and builders can refer to a resource such as the Central Oregon Stormwater Manual.

For CV13:

It is understood that there has been an assertion that stormwater drainage from the slope holding the AB properties is contributing to drainage problems at the property of CV13.

Through experiential observations (see photos), the most likely significant source for drainage problems at the sunken patio in the back yard at CV13, comes from precipitation falling on the land within its own boundary. The topography on CV13 slopes toward the residence from the south corner. Along Meeks Trail, the slope within CV13's boundary runs back toward the sunken patio, also.

The asphalt pathway runs downhill along with Meeks Trail and is cross sloped towards the road and does not appear to slope toward CV13's property. Evidence of this slope away from CV13 is shown in rill erosion in the landscape space between the asphalt path and road.

The notion that stormwater drainage is flowing from AB sites through the TripleKnot neighborhood and over the road cut of Meeks Trail (along with all their drainage systems) does not seem to be probable.

For The Rim 1-3:

It is understood that The Rim drainage system was designed for the neighborhood, as a whole. The engineered design included a sub grade system with catch basins at the back of Lots 1-10. However, runoff, in part, from these Lots appears to not be caught on site but instead run north toward the TripleKnot neighborhood, especially from Lots 1-3. Verification of system installation and, perhaps, adjustments to the system are required to keep stormwater controlled and, thereby, comply with guidelines. All runoff must be controlled and kept on site.

For AB-1, AB-2, AB-3, and AB-5:

This is a reminder that all properties must contain stormwater on site, *even during construction*. Grubbing and clearing adds to runoff and erosion. If proposed, permanent drainage facilities have not yet been installed, per best management practices, temporary erosion and sediment controls and facilities must be in place through construction. Owners and builders can refer to a resource such as the Central Oregon Stormwater Manual.

Add this for AB-5:

More substantial temporary controls need to be installed to keep stormwater on site. Runoff creating erosion is seen moving onto neighboring downhill properties.