

**From:** E Easterly <[emeasterly@comcast.net](mailto:emeasterly@comcast.net)>

**Sent:** Tuesday, September 22, 2020 11:33 AM

**To:** Brad Nanke <[BNanke@cityofsalem.net](mailto:BNanke@cityofsalem.net)>; Cara Kaser <[CKASER@cityofsalem.net](mailto:CKASER@cityofsalem.net)>; Chuck Bennett <[CBennett@cityofsalem.net](mailto:CBennett@cityofsalem.net)>; Chris Hoy <[CHoy@cityofsalem.net](mailto:CHoy@cityofsalem.net)>; Jackie Leung <[JLeung@cityofsalem.net](mailto:JLeung@cityofsalem.net)>; Jim Lewis <[JLewis@cityofsalem.net](mailto:JLewis@cityofsalem.net)>; Matthew Ausec <[MAUSEC@cityofsalem.net](mailto:MAUSEC@cityofsalem.net)>; Tom Andersen <[TAndersen@cityofsalem.net](mailto:TAndersen@cityofsalem.net)>; Vanessa Nordyke <[VNordyke@cityofsalem.net](mailto:VNordyke@cityofsalem.net)>

**Cc:** Robert Chandler <[RChandler@cityofsalem.net](mailto:RChandler@cityofsalem.net)>

**Subject:** Two SWMP asks

Dear Councilor,

The attached document requests Council actions relating the the September 28th Stormwater Master Plan update. The documents include evidence and testimony in support of those actions.

E.M. Easterly  
503-363-6221

September 22, 2020

Salem City Council via: email

Dear Councilor,

I encourage you to modify the wording of the proposed 2020 Stormwater Master Plan Policy 8.1.

In my exploration of the proposed 2020 Salem Stormwater Master Plan (SWMP) update, I have elected to focus on the Battle Creek stormwater basin because it exemplifies the City's efforts to review and update each of the nine stormwater basins.

Based upon the chart below the Battle Creek Basin had \$15,798,000 allocated for the listed twenty-two 309 projects adopted in 2000. Of that amount 16.38% or \$2,588,239 was eligible for SDC funding.

**Table 3 Data** 2002 Stormwater SDC Calculation  
pg 15

	Projects from SWMP Table 6-10	Attributed to Growth	5-percent small conveyance	Projects sans 5%	Growth % of Projects
Battle Creek	15,798,000	2,588,239	123,249	2,464,990	16.38%
Croisan Creek	8,764,000	1,614,126	76,863	1,537,263	18.42%
East Bank	7,794,000	1,502,711	71,558	1,431,153	19.28%
Glenn Gibson	13,945,000	2,079,848	99,040	1,980,808	14.91%
Little Pudding	30,604,000	1,723,602	82,076	1,641,526	5.63%
Mill Creek	20,987,000	1,213,877	57,804	1,156,073	5.78%
Pringle Creek	61,413,000	14,278,013	679,905	13,598,108	23.25%
Upper Claggett Creek	40,045,000	1,709,129	81,387	1,627,742	4.27%
West Bank	4,212,000	717,828	34,182	683,545	17.04%
<b>Total</b>	<b>203,562,000</b>	<b>27,427,373</b>	<b>1,306,064</b>	<b>26,121,308</b>	<b>13.47%</b>

How much of the eligible Battle Creek basin Stormwater SDC funding has been expended between 2002 and 2020 is not known. Such information is significant because only 14 of the original 22 projects with an original estimated cost of \$7,592,149 appear to be completed. See attached spreadsheet. Percentage wise that estimated expenditure equals \$1,243,594 of the allotted Battle Creek basin Stormwater SDC dollars; leaving approximately \$1.4 million Battle Creek basin SDC dollars to complete the eight remaining 309 projects from the 2000 Stormwater Master Plan.

Based upon the above evidence it becomes extremely difficult to understand how staff intends to apply the draft 2020 Stormwater Master Plan Stormwater System Development Charge Policy 8.1(5).

"Provide for flexibility in expenditures, which will not be limited by watershed or basin, or the need for matching non-SDC funds." There are three problems with the draft Policy 8.1(5):

- (1) Stormwater SDC funds expenditures are restricted. Approximately 90% stormwater SDC revenue is allocated to 309 projects. Certainly, non-matching funded projects could be included in a 309 list, but none have yet been adopted. To do so would require an update to the 2002 Stormwater SDC calculations of the 2000 SDC 309 lists.
- (2) Any SDC revenue secured before a new 309 list is adopted must be expended on the existing listed 309 projects or used to fund the 5-percent small conveyance projects with the SDC moneys not expended during the 2002-2020 time-frame. The 2002 city-wide 5-percent 9 basin



total 2002 amount was \$1,306,064. How much of that amount has not been expended remains an open question? Until the funds-remaining information is available there can be no Stormwater SDC 5% small conveyance project SDC fund expenditure for a non-309 projects or a small stormwater conveyance project, or even a "small project"<sup>1</sup> that do not qualify as stormwater conveyance project under the current or revised Stormwater Master Plan.

- (3) The Policy 8.1(5) "flexibility of expenditures"<sup>2</sup> expresses an idea that fails to address the expenditure restrictions described and defined by ORS 223.309(1).

Based upon the above legal requirements and evidence I ask that you:

- (a) Modify Policy 8.1(5) to bring it in compliance with ORS Chapter 223; and
- (b) Schedule a hearing in conformance with ORS 223.304 to modify the project lists eligible for System Development Charge funding.

With regards,

E.M. Easterly

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1 The term "small projects" is not a phrase included in the draft 2020 Stormwater Master Plan. That term was first used by the Salem City Attorney in a memo to the Salem Budget Committee last Spring. His objective was to explain and justify the staff November 2019 recommendation to use Stormwater SDC funds to purchase a parcel of land alongside Wallace Marine Park. Subsequently Public Works staff used the "small projects" phrase and combined it with the false declaration that the 5-percent small stormwater SDC conveyance allocation was available city-wide to fund "small projects." That claim is refuted by the language of the current Stormwater Master Plan adopted by Council in 2000 which distributes the 5% small conveyance allocation to each of the nine Salem stormwater basins as an addendum to the 309 project-list for each individual basin. This false 5% city-wide allocation of small conveyance project funds claim was also improperly included in the July 27<sup>th</sup> findings adopted by Council.

Even if Council had adopted the proposed 2020 Stormwater Master Plan update prior to the November 2019 staff recommendation to use Stormwater SDC fund to purchase property alongside Wallace Marine park that recommendation would have been illegal. Why? Staff offered no evidence that the land purchase recommendation facilitated stormwater conveyance as required by the 2020 draft Stormwater Master Plan update. The 2020 Plan specifically states:

"Revenues generated through an SDCi must be used for constructing capital improvements that increase capacity or for repaying the debt on completed capacity increasing capital improvements."

Page 4-3 2020 SWMP

City staff failed to offer evidence in November 2019, or subsequently, how the recommended land purchase increased stormwater conveyance capacity. Absent such requisite evidence the November 2019 staff purchase recommendation, even under the proposed 2020 Stormwater Master Plan, was an illegal expenditure recommendation of Stormwater SDC revenue.

The beliefs of City Manager Powers, City Attorney Atchison, myself, or even you, a member of the Salem City Council, are irrelevant. Your focus must be upon whether a recommendation complies with City policies and the rule of law. Did the November 2019 staff recommendation conform to the adopted Stormwater Master Plan policies? No. Did the actions taken by Council comply with policies and legal obligations contained the Salem Codes and Oregon Statutes? No. The material you have received from me and the legal citations and the substantial documentation I have submitted has never been refuted by staff; just rejected as being contrary to staff opinions. eme

2 It was an assumed "flexibility of expenditures" that caused staff to recommend the illegal expenditure of storwater SDC funds on a stormwater non-conveyance land purchase in November 2019.

Project #	2000 SWMP Project 309 List	Cost Estimate
1	BCB1 Battle Creek from Commercial St to I-5	\$605,319
2	BCB2 Battle Creek east from Golf Course to Commercial St	\$2,176,850
3	BCB3 Battle Creek crossing Fairway Ave	\$297,500 Completed ?
4	BCB4 Battle Creek from Meriweather Ct to 200 ft east of Doral Dr	\$1,431,060 Completed ?
5	BCB5 Cinnamon Creek from Rees Hill Rd to Battle Creek	\$484,755
6	BCB6 Powell Creek from Meriweather Ct to 200 ft east of Doral Dr	\$600,236 Completed ?
7	BCB7 Powell Creek from Sunnyside Rd to 13 <sup>th</sup> Ave	\$973,828 Completed ?
8	BCB8 Powell Creek crossing Elkins Way	\$12,325 Completed ?
9	BCB9 Scotch Creek crossing Rees Hill Rd	\$424,320 Completed ?
10	BCB10 Scotch Creek crossing Rees Hill Rd	\$51,340 Completed ?
11	BCB11 Waln Creek from Madras St to Battle Creek	\$1,161,100 Completed ?
12	BCB12 Waln Creek crossing Madras St	\$297,500 Completed ?
13	BCB13 Waln Creek from Wiltsey Rd to Madras St	\$808,010 Completed ?
14	BCB14 Waln Creek from Woodside Ln to Wiltsey Rd	\$994,500 Completed ?
15	BCB15 Drainage system crossing Fabry Rd to Waln Creek	\$14,790
16	BCB16 Waln Creek from Shannon to Woodside Dr	\$1,306,110
17	BCB17 Waln Creek crossing Fabray Rd	\$297,500 Completed ?
18	BCB18 Waln Creek between 7 <sup>th</sup> Ave and Sunnyside Rd	\$191,250 Completed ?
19	BCB19 Waln Creek crossing path nor of Springwood Ave	\$51,680 Completed ?
20	BCB20 Intersection of Holder & Lone Oak Rd	\$296,276
21	BCB21 Jory Creek at Liberty Rd	\$993,650
22	BCB22 Battle Creek at Liberty Rd & Bates Rd	\$1,575,900
		Sub total \$15,045,799
Small Conveyance Allowance		\$752,290
		Total <b>\$15,798,089</b>



2020 Draft SWMP Project List (New, not on 2000 309 list)			Cost Estimate	percent change
1	BA-BC5	Battle Creek between Commercial and I-5 {BCB1 ?}	\$313,877	-48.15%
2	BA-BC5	Battle Creek upstream of Commercial to I-5 {BCB2 ?}	\$1,000,000	-54.06%
	BCB3	Completed ?		
	BCB4	Completed ?		
3	BCB5	Cinnamon Creek from Rees Hill Rd to Battle Creek	\$849,000	75.14%
	BCB6	Completed ?		
	BCB7	Completed ?		
	BCB8	Completed ?		
	BCB9	Completed ?		
	BCB10	Completed ?		
	BCB11	Completed ?		
	BCB12	Completed ?		
	BCB13	Completed ?		
	BCB14	Completed ?		
4	BCB15	Drainage system crossing Fabry Rd to Waln Creek	\$25,903	75.14%
5	BCB16	Waln Creek from Shannon to Woodside Dr	\$2,287,521	75.14%
	BCB17	Completed ?		
	BCB18	Completed ?		
	BCB19	Completed ?		
6	BCB20	Intersection of Holder & Lone Oak Rd	\$518,898	75.14%
7	BCB21	Jory Creek at Liberty Rd	\$1,740,279	75.14%
8	BCB22	Battle Creek at Liberty Rd & Bates Rd	\$2,760,031	75.14%
9	BA-BC1	Vicinity of Battle Creek Elementary School	\$245,790	New
10	BA-BC2	Battle Creek Waln Creek confluence	\$3,501,795	New
11	BA-BC3	Battle Creek south of elementary school	\$362,908	New
12	BA-BC4	Battle Creek from park to Sunnyside Rd	\$1,112,532	New
13	BA-BC4	Battle Creek from park to Sunnyside Rd	\$2,440,000	New
14	BA-WC1	Waln Creek between park & Mildred Ln	\$505,075	New
15	BA-WC1	Waln Creek between park & Mildred Ln	\$1,160,000	New
Total			<b>\$18,823,609</b>	19.15%

**Ruth Stellmacher**

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**From:** E Easterly <emeasterly@comcast.net>  
**Sent:** Wednesday, September 23, 2020 9:15 AM  
**To:** citycouncil  
**Subject:** Testimony regarding Salem Stormwater Master Plan update hearing  
**Attachments:** SWMP add (6).pdf; SDC policy from draft 2020 SWMP.pdf

Dear Council Members, et al.

Yesterday I submitted testimony proposing modifications to the Policy 8.1 of the draft 2020 Stormwater Master Plan. Attached please find the specific proposal I am recommending, reasons for the recommendation, and a reproduction of the SWMP System Development Charge language.

E.M. Easterly  
503-363-6221

To: Salem City Council

From: E.M. Easterly

Date: September 23, 2020

Re: Hearing Testimony: Update to Salem Stormwater Master Plan 9-28-2020

Dear Mayor Bennett and City Council Members:

I support and encourage the Council to adopt the proposed 2020 draft revision to the Salem Stormwater Master Plan. I have reached out and raised concerns with Dr. Chandler, Mr. Powers and Council Members. The issues I have raised have, for the most part, been addressed or will be addressed in the future with one exception. There needs to be citizen oversight of the City's System Development Charge to affirm expenditures are used to increase stormwater conveyance capacity.

I, therefore, recommend adding a sixth provision of Policy 8.1. reproduced below

(6) Establish an expenditure review committee to vet and advise Council on staff recommendations to expend "Stormwater - Unspecified" SDC funds.

**Supporting statement:**

The proposed committee would consist of three individuals appointed by Council. Membership would include one individual from a Watershed Council, one member from a neighborhood association or the Salem Audubon Society and a member of the Salem Budget Committee.

The members would be appointed to a two-year term that may be renewed.

Committee's responsibilities would include review staff recommendations to expend Stormwater SDC funds not specifically allocated to a budgeted 309-listed project. These would include SDC moneys for projects identified with cost exceeding budget estimate, unanticipated replacement projects, small mid-year projects and projects which provide opportunities to replace stormwater pipes with other utility projects within the expenditure guidelines of the Stormwater Master Plan.

This process would assure Stormwater SDC moneys being accumulated for future 309 allocated projects would be spent within the guidelines of the Salem Stormwater Master Plan. Furthermore:

- It would provide important connections with Watershed Councils.
- It would afford increased transparency.
- It would provide City Councilors increased insights to aid in their decision-making.

Again, please add a sixth item to SWMP Policy 8.1

(6) Establish an expenditure review committee to vet and advise Council on staff recommendations to expend "Stormwater - Unspecified" SDC funds.



### ***Policy 8.1 Stormwater System Development Charges***

The City shall implement a stormwater system development charge (SDC) methodology on new development to help pay for eligible stormwater infrastructure. To the maximum extent feasible, the SDC methodology shall:

- (1) Incorporate growth costs related to stormwater conveyance, flow control, and treatment;
- (2) Allow for adjustment of growth units based on the types and locations of stormwater facilities used;
- (3) Minimize complexity of administering and calculating costs per unit of growth;
- (4) Calculate costs per unit of growth commensurate with historic expenditures per unit of non-growth; and
- (5) Provide for flexibility in expenditures, which will not be limited by watershed or basin, or the need for matching non-SDC funds.

## **SYSTEM DEVELOPMENT CHARGES**

A system development charge (SDC) is a one-time fee imposed on new and increased development. There are two categories of SDCs:

- An improvement fee (SDCi) reflects the cost of capacity-increasing capital projects. The value of the improvement fee is calculated on a per-unit-of-growth. Revenues generated through an SDCi must be used for constructing capital improvements that increase capacity or for repaying the debt on completed capacity-increasing capital improvements.



**From:** Chris Hoy <[CHoy@cityofsalem.net](mailto:CHoy@cityofsalem.net)>  
**Sent:** Sunday, September 20, 2020 6:14 PM  
**To:** Dan Atchison <[DAtchison@cityofsalem.net](mailto:DAtchison@cityofsalem.net)>; Steve Powers <[SPowers@cityofsalem.net](mailto:SPowers@cityofsalem.net)>; Peter Fernandez <[PFERNANDEZ@cityofsalem.net](mailto:PFERNANDEZ@cityofsalem.net)>  
**Subject:** Fwd: Postpone Stormwater Master Plan hearing update

Sent from my iPhone

Begin forwarded message:

**From:** E Easterly <[emeasterly@comcast.net](mailto:emeasterly@comcast.net)>  
**Date:** September 20, 2020 at 6:01:21 PM PDT  
**To:** Brad Nanke <[BNanke@cityofsalem.net](mailto:BNanke@cityofsalem.net)>, Cara Kaser <[CKASER@cityofsalem.net](mailto:CKASER@cityofsalem.net)>, Chuck Bennett <[CBennett@cityofsalem.net](mailto:CBennett@cityofsalem.net)>, Chris Hoy <[CHoy@cityofsalem.net](mailto:CHoy@cityofsalem.net)>, Jackie Leung <[JLeung@cityofsalem.net](mailto:JLeung@cityofsalem.net)>, Jim Lewis <[JLewis@cityofsalem.net](mailto:JLewis@cityofsalem.net)>, Matthew Ausec <[MAUSEC@cityofsalem.net](mailto:MAUSEC@cityofsalem.net)>, Tom Andersen <[TAndersen@cityofsalem.net](mailto:TAndersen@cityofsalem.net)>, Vanessa Nordyke <[VNordyke@cityofsalem.net](mailto:VNordyke@cityofsalem.net)>  
**Subject:** Postpone Stormwater Master Plan hearing update

Dear Councilor,

I request that the pending August 28th draft Stormwater Master Plan update hearing be postponed for failing to comply with ORS 223.309(2)(a).

Materials subject to this hearing were published electronically on September 10th in conjunction with the September 14th Council agenda. September 10th to September 28th is less than the required 30 days.

I await confirmation that the City of Salem and the Salem City Council intends to conform to requirements of ORS 223.309(2)(a).

Sincerely,

E.M. Easterly  
503-363-6221