



# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

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[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



## NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: December 29, 2015  
Jurisdiction: City of Lake Oswego  
Local file no.: LU 15-0019  
DLCD file no.: 003-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 12/23/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 51 days prior to the first evidentiary hearing.

### Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

### DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us)



## NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE

File No.: 003-15 {23731}

Received: 12/23/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Lake Oswego

Local file no.: **LU 15-0019**

Date of adoption: 12/16/2015 Date sent: 12/23/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

 Yes: Date (use the date of last revision if a revised Form 1 was submitted): 04/06/2015 NoIs the adopted change different from what was described in the Notice of Proposed Change?  Yes  No

If yes, describe how the adoption differs from the proposal:

Proposed plan, map, and code revised in response to public and agency comments, including input from Metro, DLCD, ODFW, and DEQ.

Local contact (name and title): Scot Siegel, Director, Planning and Building Services

Phone: 503/699-7474 E-mail: [ssiegel@lakeoswego.city](mailto:ssiegel@lakeoswego.city)

Street address: PO Box 369 City: Lake Oswego Zip: 97034-

### PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

#### **For a change to comprehensive plan text:**

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

Former chapters Goal 5, Goal 6, and Goal 15 are updated and consolidated in a new Healthy Ecosystems chapter.

#### **For a change to a comprehensive plan map:**

Identify the former and new map designations and the area affected:

Change from RC to RP or HBA. See supplemental info. for acres.  A goal exception was required for this change.

Change from no Sensitive Lands overlay to RP. See supplemental info. for acres.  A goal exception was required for this change.

Change from RP to reduced or no RP. See supplemental info. for acres.  A goal exception was required for this change.

Change from RP to increased RP. See supplemental info. for acres.  A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): Citywide.

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

**If the comprehensive plan map change is a UGB amendment** including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**If the comprehensive plan map change is an urban reserve** amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**For a change to the text of an ordinance or code:**

Identify the sections of the ordinance or code that were added or amended by title and number:

LOC 50.05.010 and LOC 50.07.004.8 (Sensitive Lands); and LOC 42 (Streets and Sidewalks), LOC 47 (Signs), and LOC 55 (Trees), for consistency with changes to Sensitive Lands amendments.

**For a change to a zoning map:**

Identify the former and new base zone designations and the area affected:

- Change from RC to RP or HBA. Acres: See supplemental info.
- Change from no Sensitive Lands overlay to RP. Acres: See supplemental info.
- Change from RP to reduced or no RP. Acres: See supplemental info.
- Change from RP to increased RP. Acres: See supplemental info.

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: RC and RP. Acres added: See supplemental info. Acres removed: See supplemental information.

Location of affected property (T, R, Sec., TL and address):

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List affected state or federal agencies, local governments and special districts: Metro, DEQ, DLCD, and ODFW

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

The November 17 City Council public hearing staff report provides a more detailed description of the amendments and a breakdown of changes to the RC and RP overlay zones. See page 5 of the report for a breakdown of the number of properties and acres affected.

# NOTICE OF ADOPTED CHANGE – SUBMITTAL INSTRUCTIONS

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1. A Notice of Adopted Change must be received by DLCD no later than 20 days after the ordinance(s) implementing the change has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) as provided in [ORS 197.615](#) and [OAR 660-018-0040](#).

2. A Notice of Adopted Change must be submitted by a local government (city, county, or metropolitan service district). DLCD will not accept a Notice of Adopted Change submitted by an individual or private firm or organization.

3. **Hard-copy submittal:** When submitting a Notice of Adopted Change on paper, via the US Postal Service or hand-delivery, print a completed copy of this Form 2 on light green paper if available. Submit **one copy** of the proposed change, including this form and other required materials to:

Attention: Plan Amendment Specialist  
Dept. of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540

This form is available here:

<http://www.oregon.gov/LCD/forms.shtml>

4. **Electronic submittals** of up to 20MB may be sent via e-mail. Address e-mails to [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us) with the subject line “Notice of Adopted Amendment.”

Submittals may also be uploaded to DLCD’s FTP site at [http://www.oregon.gov/LCD/Pages/papa\\_submittal.aspx](http://www.oregon.gov/LCD/Pages/papa_submittal.aspx).

E-mails with attachments that exceed 20MB will not be received, and therefore FTP must be used for these electronic submittals. **The FTP site must be used for all .zip files** regardless of size. The maximum file size for uploading via FTP is 150MB.

Include this Form 2 as the first pages of a combined file or as a separate file.

5. **File format:** When submitting a Notice of Adopted Change via e-mail or FTP, or on a digital disc, attach all materials in one of the following formats: Adobe .pdf (preferred); Microsoft Office (for example, Word .doc or docx or Excel .xls or .xlsx); or ESRI .mxd, .gdb, or .mpk. For other file formats, please contact the plan amendment specialist at 503-934-0017 or [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us).

6. **Content:** An administrative rule lists required content of a submittal of an adopted change ([OAR 660-018-0040\(3\)](#)). By completing this form and including the materials listed in the checklist below, the notice will include the required contents.

Where the amendments or new land use regulations, including supplementary materials, exceed 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

7. Remember to notify persons who participated in the local proceedings and requested notice of the final decision. ([ORS 197.615](#))

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**If you have any questions** or would like assistance, please contact your DLCD regional representative or the DLCD Salem office at 503-934-0017 or e-mail [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us).

## **Notice checklist. Include all that apply:**

- Completed Form 2
- A copy of the final decision (including the signed ordinance(s)). This must include city *and* county decisions for UGB and urban reserve adoptions
- The findings and the text of the change to the comprehensive plan or land use regulation
- If a comprehensive plan map or zoning map is created or altered by the proposed change:
  - A map showing the area changed and applicable designations, and
  - Electronic files containing geospatial data showing the area changed, as specified in [OAR 660-018-0040\(5\)](#), if applicable
- Any supplemental information that may be useful to inform DLCD or members of the public of the effect of the actual change

**ORDINANCE NO. 2687**

**AN ORDINANCE OF THE LAKE OSWEGO CITY COUNCIL AMENDING THE COMPREHENSIVE PLAN AND ZONING MAPS, THE COMPREHENSIVE PLAN TEXT, THE COMMUNITY DEVELOPMENT CODE, AND RELATED CODE CROSS-REFERENCES, TO CREATE CHANGES TO THE NATURAL RESOURCES PROGRAM AND SENSITIVE LANDS IMPLEMENTING REGULATIONS, AND ADOPTING FINDINGS (LU 15-0019).**

Whereas, during the Comprehensive Plan update of 2013 the City chose to defer updating the Natural Resources (Goal 5) Chapter and associated chapters and sections, to coordinate Natural Resource policy changes with revisions to Sensitive Lands regulations;

Whereas the City has prepared a new Natural Resources chapter titled 'Healthy Ecosystems,' which updates and consolidates Comprehensive Plan provisions for Natural Resources, Urban Forest and Vegetation, Open Spaces, Oswego Lake, Air Quality, and Willamette River Greenway;

Whereas the proposed Sensitive Lands Map contains corrected and updated Resource Protection (RP) and Resource Conservation (RC) Districts using 2014 Lidar (Light Detection and Ranging) aerial photography;

Whereas the proposal simplifies the regulatory requirements for properties in riparian areas by consolidating two overlay districts (RC and RP) into one RP overlay;

Whereas the proposal provides greater certainty for property owners, by providing clear and objective standards;

Whereas the proposed code amendments provide for an increased level of protection for RC Districts on public and private open spaces;

Whereas the proposed code amendments maintain compliance with Metro Titles 3 and 13, Statewide Planning Goals, and State Total Maximum Daily Load (water quality) standards;

Whereas the proposed code amendments are consistent with the Comprehensive Plan, including the proposed Healthy Ecosystems Chapter; and

Whereas the City invited and responded to public input on the proposed amendments through an open and continuous public engagement process that included two public discussion drafts of the proposal, eight Planning Commission public work sessions, and public hearings before the Planning Commission and City Council;

The City of Lake Oswego ordains as follows:

**Section 1.** The Lake Oswego Comprehensive Plan is amended to include a new Healthy Ecosystems Chapter with goals, policies, and recommended action measures for Natural

Resources, Urban Forest and Vegetation, Open Spaces, Oswego Lake, Air Quality, and Willamette River Greenway, as shown in Attachment B.

**Section 2.** The Comprehensive Plan chapters titled “Goal 5: Open Spaces & Natural Areas,” “Goal 6: Air Resources Quality,” and “Goal 15: Willamette River Greenway,” each of which had previously been carried forward from the 1994 Comprehensive Plan, are repealed.

**Section 3.** The Comprehensive Plan Map and Zoning Map are amended to update the locations and boundaries of existing Resource Conservation (RC) and Resource Protection (RP) Overlay District designations, and to add Habitat Benefit Areas (HBA) Overlay District designations, as depicted in Attachment C.

**Section 4.** Lake Oswego Code Chapter 50 (Community Development Code), Chapter 42 (Streets and Sidewalks), Chapter 47 (Signs), and Chapter 55 (Tree Code) are amended as shown in Attachment D.

**Section 5.** The City Council adopts the Findings and Conclusions (LU 15-0019) attached as Attachment A.

**Section 6.** Pursuant to Section 35.C of the Lake Oswego Charter, this ordinance shall take effect on the thirtieth (30<sup>th</sup>) day following enactment.

Enacted at the meeting of the Lake Oswego City Council of the City of Lake Oswego held on the 15<sup>th</sup> day of December, 2015.


AYES: Mayor Studebaker, Buck, Gudman, Collins, O’Neill, Gustafson.

NOES: None.

ABSENT: None.

ABSTAIN: None.

EXCUSED: Manz.

  
\_\_\_\_\_  
Kent Studebaker, Mayor

Dated: December 16, 2015

ATTEST:

Anne-Marie Simpson  
Anne-Marie Simpson, City Recorder

APPROVED AS TO FORM:

David Powell  
David Powell  
City Attorney

BEFORE THE CITY COUNCIL  
OF THE CITY OF LAKE OSWEGO

A REQUEST FOR AMENDMENTS TO THE COMPREHENSIVE PLAN TEXT; COMPREHENSIVE PLAN MAP AND ZONING MAP; AND LOC 50, LOC 42, LOC 47, AND LOC 55 AS RELATED TO SENSITIVE LANDS	LU 15-0019 CITY OF LAKE OSWEGO  FINDINGS & CONCLUSIONS
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**NATURE OF PROCEEDINGS**

This matter came before the Lake Oswego City Council on the recommendation of the Planning Commission. Ordinance 2687 amends the Comprehensive Plan to create a new Healthy Ecosystems Chapter with goals, policies, and recommended action measures for Natural Resources, Urban Forest and Vegetation, Open Spaces, Oswego Lake, Air Quality, and Willamette River Greenway, and includes amendments to the Comprehensive Plan Map; Zoning Map; Sensitive Lands regulations (LOC 50.05.010 and 50.07.004); and LOC Chapters 42, 47, and 55; consistent with the Plan.

**HEARINGS**

The Planning Commission held a public hearing and considered this application at its meetings of September 14, 2015 and September 28, 2015. The Commission adopted its Findings, Conclusion and Order on October 12, 2015. The City Council held a public hearing to consider the Planning Commission's recommendation on November 17, 2015.

**CRITERIA AND STANDARDS**

- A. City of Lake Oswego Comprehensive Plan (2013)
  - Land Use Planning Chapter
  - Community Culture Chapter, Citizen Engagement Section
  - Community Health and Public Safety Chapter, Public Facilities and Services: Surface Water Management Section



- 1 Healthy Ecosystems Chapter (*Proposed*)
- 2 Open Spaces, Scenic and Natural Resources Chapter (Goal 5) – *Proposed to be replaced*
- 3 *with new Healthy Ecosystems chapter*
- 4 Air Resources Quality Section (Goal 6) – *Proposed to be replaced with new Healthy*
- 5 *Ecosystems chapter*
- 6 Willamette River Greenway (Goal 15) – *Proposed to be replaced with new Healthy*
- 7 *Ecosystems chapter*
- 8 B. Metro Urban Growth Management Functional Plan
- 9 Title 3: Water Quality and Flood Management, Metro Code Sections 3.07.330 and
- 10 3.07.340
- 11 Title 13: Nature in the Neighborhoods, Metro Code Section 3.07.1330
- 12 C. Statewide Planning Goals
- 13 Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces
- 14 Goal 6: Air, Water, and Land Resources Quality
- 15 Goal 15: Willamette River Greenway
- 16 D. City of Lake Oswego Community Development Code – Legislative Decision
- 17 LOC 50.07.003.a Legislative Decisions
- 18 LOC 50.07.003.b Criteria for Legislative Decisions
- 19 LOC 50.07.003.c Required Notice to DLCD
- 20 LOC 50.07.003.d Planning Commission Recommendation Required
- 21 LOC 50.07.003.e City Council Review and Decision

22 **FINDINGS AND REASONS**

23 The City Council incorporates the Planning Commission staff report dated September 4,

24 2015, and supplemental staff reports dated September 10, 2015, and September 23, 2015, with

25 all exhibits; the November 4, 2014 staff Council Report with all exhibits; and the Findings and

26 Conclusions of the Planning Commission as support for its decision, supplemented by the

1 further findings and conclusions below. If there is any inconsistency between the  
2 supplementary matter and the incorporated material, the supplementary matter controls.

3 Following are the supplemental findings and conclusions of this Council:

4 1. The City Council received testimony from the Audubon Society of Portland,  
5 Tualatin Riverkeepers, and several property owners (collectively referred to as “Audubon”)  
6 (Exhibit G-19) asserting:

7 a. *Where RC districts are removed from non-dividable lots, Goal 5 and Metro Title*  
8 *13, specifically MC 3.07.1330(A)(2)(Anti-Rollback provision)<sup>1</sup>, would not be met*  
9 *because those lots may redevelop by a change in building footprint or if future*  
10 *code changes occur relating to the permitted uses.*

11 Applicability of LCDC Goal 5 or Metro Title 13 to Tree Groves

12 LCDC Goal 5 is to “protect natural resources and conserve scenic, historic, and open space  
13 resources.” OAR 660-015-0000(5). The procedures for local government compliance with Goal  
14 5 are set forth in OAR 660, Division 23. There is a special provision regarding Goal 5 resources  
15 that are mapped as part of a Metro regional resource functional plan:

16 “Upon acknowledgment of Metro's regional resource functional plan, local governments  
17 within Metro's jurisdiction shall apply the requirements of the functional plan for  
18 regional resources rather than the requirements of this division.” OAR 660-023-0080(3).

19 Lake Oswego is within Metro’s jurisdiction.

20 Metro adopted regional resource policies within its Urban Growth Management Functional  
21 Plan (MC Article 3.07). One of Metro’s regional resource policies is “Nature in Neighborhoods,  
22

23 <sup>1</sup>“A city or county that, prior to December 28, 2005, adopted any comprehensive plan amendments or land use  
24 regulations that (a) apply to areas identified as upland wildlife habitat on the Inventory Map but not identified as  
25 riparian habitat on the Inventory Map, (b) limit development in order to protect fish or wildlife habitat, and (c) were  
26 adopted in compliance with division 23 of OAR chapter 660, shall not repeal such amendments or regulations, nor  
shall it amend such provisions in a manner that would allow any more than a *de minimis* increase in the amount of  
development that could occur in areas identified as upland wildlife habitat.” MC 3.07.1330(A)(2)(Anti-Rollback  
provision).

1 referred to as Title 13 (MC 3.07.1310 et seq.) The intent of Title 13 is to:

2 (1) conserve, protect, and restore a continuous ecologically viable streamside corridor  
3 system, from the streams' headwaters to their confluence with other streams and  
4 rivers, and with their floodplains in a manner that is integrated with upland wildlife  
5 habitat and with the surrounding urban landscape; and (2) to control and prevent water  
6 pollution for the protection of the public health and safety, and to maintain and  
7 improve water quality throughout the region. MC 3.07.1310.

8 Title 13 requirements apply to lands that are mapped on the Metro Habitat Conservation Areas  
9 Map (Title 13 Map). MC 30.07.1320(B).

10 The Council finds that for tree groves that are designated as Habitat Conservation Areas on  
11 the Title 13 Map, including those that Audubon cites – TGs 1, 6, 8, and 34, and portions of TGs-  
12 19, 22, and 28 (“Title 13 Tree Groves”) -- amendments to land use regulations affecting those  
13 areas are deemed to comply with Goal 5 if the amendments comply with acknowledged Title  
14 13. OAR 660-023-0080(3)(quoted above, page 3). The Council’s findings regarding compliance  
15 of the amendments affecting Title 13 Tree Groves with Title 13 are set forth below, following  
16 findings regarding tree groves that are not Title 13 Tree Groves, i.e., Goal 5 Tree Groves. (The  
17 Planning Commission adopted “backup” Goal 5 ESEE findings for the Title 13 Tree Groves, by  
18 incorporation of the Staff Report dated Sept. 4, 2015, and Exhibit E-3, and the Council also  
19 adopts by incorporation the Goal 5 ESEE findings, in the event it is later determined that direct  
20 compliance with Goal 5 is necessary for the Title 13 Tree Groves.)

21 The Council finds that for tree groves that are not Title 13 Tree Groves – TGs 26, 27, and 31  
22 (Goal 5 Tree Groves) -- amendments to land use regulations affecting those areas must comply  
23 with Goal 5 through compliance with OAR 660, Division 23 (Procedures and Requirements For  
24 Complying With Goal 5).

25 TGs 26, 27, and 31 (Goal 5 Tree Groves):

26 The Council finds that TGs 26, 27, and 31 are subject to Goal 5 review rather than Title 13  
because they are not designated as Habitat Conservation Areas on the Metro Title 13 Map. The

1 Goal 5 review process requires an inventory of significant Goal 5 resources (OAR 660-23-0030),  
2 and then an ESEE Decision Process (OAR 660-023-0040) for each resource.

3 *Inventory*

4 The Goal 5 Tree Groves are not removed from the City's Goal 5 inventory of significant  
5 resources.

6 *ESEE Decision Process*

7 The Council adopts and incorporates the ESEE analysis (Exhibit E-3), and  
8 supplements the ESEE analysis as follows.

9 *TG-26:* A portion of TG-26 will have the RC overlay zone removed, and within  
10 that area portions will be subject to the RP overlay zone or HBA overlay zone. TG-26 was  
11 originally found to be significant for its wildlife habitat and scenic values (Exhibit E-3). As  
12 described in the ESEE analysis, the resource values no longer exist in the area where the RC  
13 overlay zone is to be removed but not replaced with RP or HBA designations, because that  
14 area consists of twenty fully-developed townhome lots (Exhibit E-3). Amending the Sensitive  
15 Lands Map to exclude these developed lots has no effect on the environment, because the  
16 subject lots contain no significant resource.

17 *TGs 27 and 31:* TG-27 and TG-31 were originally found to be significant for  
18 wildlife habitat values. Both groves are open space tracts with natural resource values that will  
19 retain the RC district overlay. Amending the RC district standards and increasing the level of  
20 protection to 85% on TG-27 and TG-31 as proposed does not conflict with the current or  
21 planned open space use of these tracts. The Council adopts and incorporates the ESEE analysis  
22 (Exhibit E-3).

23 TGs 1, 6, 8, and 34, and portions of TGs 19, 22, and 28 (Title 13 Tree Groves):

24 Title 13's Anti-Rollback provision (quoted in footnote 1), as applied to upland wildlife  
25 habitat on the Metro Title 13 Map, allows amendments to land use regulations if the  
26 amendments allow no more than a *de minimis* increase in the amount of development that

1 could occur. Audubon speculates on the possibility of future redevelopment on a site or that  
2 future changes in the permitted uses in the zone will be enacted, and that, as applied to Title 13  
3 Tree Groves, those speculative actions, if occurring on non-dividable lots where Sensitive Lands  
4 regulatory protections are removed, could result in more than *de minimis* development. The  
5 question under MC 3.07.1320(B) is whether the amendments allow more than *de minimis*  
6 increase in the development that is allowed under the current RC District regulations. The  
7 current RC District regulations allow a dwelling on a lot, as it exists now or if reconstructed. For  
8 non-dividable lots, no further development would be allowed under the amendments than one  
9 house on a lot. Accordingly, the amendments do not allow more than *de minimis* increase in  
10 development that could occur on the lot presently.

11 Metro is the governmental agency that adopted and enforces the Anti-Rollback provision of  
12 Title 13. Metro has previously interpreted the Anti-Rollback provision when applied to removal  
13 of Sensitive Lands regulations from upland wildlife area tree groves that contain non-dividable  
14 lots, finding that the removal would allow only *de minimis* development. This interpretation  
15 was upheld by the Oregon Land Use Board of Appeals in Metro v. City of Lake Oswego, \_\_\_\_ OR  
16 LUBA \_\_\_\_ (2013)(LUBA #2012-062; 2013 WL 4724993).

17 Further, in the current proceeding, Metro did not object to the City's proposed  
18 amendments applied to non-dividable lots within the cited tree groves as violating the Anti-  
19 Rollback provision.

20 For the reasons stated above, the Council finds that Goal 5 is not applicable to the  
21 amendments as applied to the Title 13 Tree Groves, and that the Anti-Rollback provision of Title  
22 13 for non-dividable lots within the cited tree groves is met because the amendments do not  
23 allow more than *de minimis* development.

24 *b. (i) The addition of a new HBA designation on dividable lots, where Hillside*  
25 *Protection Standards provide: (1) partial but not equivalent level of protection as*  
26 *RC District, or (2) no or less than half the level of protection as the RC District,*  
*would allow more than de minimis development within wildlife habitat areas*

1                    *under Title 13; and*

2                    *(ii) The amendments do not substantially comply with the Title 13 Map and are*  
3                    *not “alternative approaches that will achieve protection and enhancement of*  
4                    *Class I and II riparian habitat areas... substantially comparable with the*  
5                    *protection and restoration that would result from the application of a program*  
6                    *that complied with Metro Code Sections 3.07.1330(B)(1) or (B)(2).”*

7                    The Council finds that these amendments do not rely upon the Hillside Protection Standards  
8                    in isolation to protect the resource on dividable lots within Title 13 Tree Groves. The HBA  
9                    designation, a replacement of the RC District, is one element of a multifaceted approach that  
10                    maintains substantial compliance with Title 13. This approach combines Sensitive Lands  
11                    regulations and incentives in the Community Development Code with other regulatory and non-  
12                    regulatory tools. These include an increased protection area requirement (from 50% to 85%) in  
13                    the RC districts that remain; habitat restoration funding; maintenance of non-Sensitive Lands  
14                    regulations, including Hillside Protections and Open Space requirements (in subdivisions); and  
15                    maintenance of non-land use requirements, including Tree Code, and Surface Water and  
16                    Erosion Control standards. As detailed in the Planning Commission and City Council staff reports  
17                    dated September 4 and November 4, respectively, the proposed Sensitive Lands code  
18                    provisions increase the overall protection area within RC districts (regulated tree groves),  
19                    maintaining a comparable level of habitat protection and the certainty of protection required  
20                    by Title 13. In its testimony of November 17, 2015, Metro finds this approach to be in  
21                    substantial compliance with Title 13. The Council similarly so finds.

22                    *c. The amendments do not comply with the intent statement of Title 13 (MC*  
23                    *3.07.1310).*

24                    The Council finds that the intent statement of Title 13 (MC 3.07.1310) is not a standard or  
25                    criteria. It is implemented through the standards discussed in subsections (a) and (b) above.

26                    2.            The City Council received testimony from owners of 7 and 8-10 Centerpointe  
                  Drive (collectively “Centerpointe”)(see Exhibit G-23), requesting further revision to the Sensitive  
                  Lands Map and removal of an existing RP district from areas on these properties that are

1 “existing and approved development.” Centerpointe stated that adjacent property had been so  
2 mapped. Centerpointe’s written exhibit summarized the history of permitted development  
3 within the mapped area. The Council finds the proposed RP district is mapped correctly based  
4 on current (2014) Lidar data and code standards specifying a 25-foot wide protected riparian  
5 area for Class II streams. The RP district does not extend onto a property located to the north of  
6 the subject property because the threshold for designating a lot RP (must have at least 100 sq ft  
7 of RP area) is not met there. This *de minimis* threshold was applied citywide to avoid adding  
8 properties to the Sensitive Lands program that the Sensitive Lands code provisions would  
9 automatically exempt, as the Sensitive Lands code section allows encroachments into an RP  
10 district of up to 200 sq. ft.

11 Centerpointe also requested the subject property be exempt under Sensitive Lands code  
12 provision LOC 50.05.010(2)(b)(i), which exempts resources identified and protected pursuant to  
13 regulations predating Sensitive Lands code, provided the development remains in compliance  
14 with the conditions protecting the resource. The Council finds that the question of whether the  
15 current code provisions exempt any particular property with a mapped Sensitive Lands district  
16 is not before the Council. A determination of whether a property is exempt would be made  
17 through a separate administrative or quasi-judicial land use decision for the individual property,  
18 not part of a legislative map amendment.

19 3. The City Council received testimony from LO Stewards PAC (Exhibit G-21), raising  
20 many issues it similarly raised before the Planning Commission (Exhibit G-16). The Council’s  
21 incorporation of the staff memoranda and the Planning Commission’s Findings, Conclusion and  
22 Order respond to those issues.

23 As to the question of whether the Sensitive Lands amendments conform to new  
24 Comprehensive Plan Healthy Ecosystems Chapter, Policy 1:

25 “Develop a systems-wide approach to urban forestry, watershed protection, and other  
26 environmental management issues, to protect, restore, and enhance the City’s natural  
resources”,

1 the Council finds that the Sensitive Lands amendments comply with Goal 5 and Title 13 on a  
2 resource-specific basis, and that the City has not applied a system (city) – wide compliance  
3 analysis. See Metro v. City of Lake Oswego, \_\_\_\_\_ OR LUBA \_\_\_\_\_ (2013)(LUBA #2012-062; 2013  
4 WL 4724993).

5 On the ORS 227.186 (Measure 56) notice issue, the Council notes that, as stated in the  
6 Planning Commission findings, a Measure 56 notice was given to affected property owners as  
7 required, and each property owner of property with a mapped RP or RC Overlay District was  
8 mailed a legislative notice of the Planning Commission’s initial public hearing. Further, the  
9 Council notes that Measure 56 is not an applicable substantive standard or criteria.

10 Finally, LO Stewards asserts that these amendments authorize “trades,” which they argue  
11 generally violate LCDC Goal 5 and the federal Clean Water Act. LO Stewards fails to provide  
12 sufficient specificity to allow the Council to determine the nature of the asserted violation or to  
13 respond to the assertion. It is not clear to the Council how LO Stewards believes the  
14 amendments authorize “trades.” In any event, it is not specified how these amendments would  
15 generally violate Goal 5 or the Clean Water Act.

16 **CONCLUSION**

17 The City Council concludes that LU 15-0019 complies with all applicable criteria and  
18 should be approved. The Council also concludes that LU 15-0019 should be implemented by  
19 enacting proposed Ordinance 2687.

20 The City Council further directs the City Manager to evaluate annexed properties  
21 consistent with the provisions of the Sensitive Lands provisions of the Community Development  
22 Code.

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25  
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## Healthy Ecosystems

### Natural Resources Program – Urban Forest and Vegetation – Open Spaces – Oswego Lake - Air Quality – Willamette River Greenway

#### Vision

*We are good stewards of our environment. Our urban forest, natural areas and watersheds are valued and cared for as essential environmental, economic, and cultural assets. We effectively balance today's community needs with the need to preserve clean air, water, and land resources for future generations. The built environment is designed to protect, enhance, and be integrated with natural systems.*

#### Statewide Land Use Planning Goals

Healthy Ecosystems implements Statewide Planning Goal 5 (Natural Resources, Scenic Areas, and Open Spaces provisions); Goal 6 (Air, Water and Land Resources Quality); and, Goal 15 (Willamette River Greenway).

#### Updates to 2013 Comprehensive Plan

The Healthy Ecosystems chapter replaces and consolidates Goal 5, Sections 1 through 7 (Fish and Wildlife Habitat, Vegetation, Wetlands, Stream Corridors, Sensitive Lands, Open Spaces, and Oswego Lake); Goal 6 (Air Resources Quality); and Goal 15: Willamette River Greenway. This chapter complements the Community Health and Public Safety Chapter, particularly the Public Facilities & Services – Surface Water Management Section.

#### Natural Resources Program and Sensitive Lands

#### Background

Lake Oswego residents respect and value the environment and take pride in caring for their natural resources. The City has a long history of natural resource stewardship, as demonstrated by its extensive tree canopy (approximately 50% of the City), protection of streams and wetlands, and maintenance of more than 600 acres of park and natural areas. The City is also actively involved in restoring natural areas, for example, by partnering with area watershed councils on riparian area enhancement projects, and it offers education and incentives for wildlife habitat conservation (e.g., Backyard Habitat Certification Program).

Since 1979, the City has maintained a Natural Resources Advisory Board. The Board reviews trends in air, water and land quality within the Urban Services Boundary, and advises the City Council in the development and implementation of the Comprehensive Plan and other plans and policies to protect, restore, and enhance environmental quality. The Board also designates Heritage Trees as provided by the Tree Code (LOC 55), and recommends actions to the City Council to preserve open spaces. More recently, the City established a Sustainability Advisory

Board, which promotes the sustainability of the community as a whole, considering public and private actors and their effects on ecological, economic, and community systems.

Lake Oswego maintains an active urban and community forestry program, which includes education and outreach to residents and contractors, and enforcement of the Tree Code. Since 1989, the City has had the distinction of being designated a “Tree City USA” by the National Arbor Day Foundation.

The City also works in partnership with local organizations such as friends groups and watershed councils to leverage their expertise to carry out natural resource enhancement projects. Watershed councils have been created for the Oswego Lake, Tualatin River, and Tryon Creek watersheds, and friends groups contribute thousands of hours of volunteer labor in various City parks and natural areas. The City works in partnership with these organizations, and in FY 2014-15 the City Council began budgeting approximately \$250,000 annually for upland and riparian habitat enhancement projects.

In 2011, the City began working with Friends of Tryon Creek, in partnership with the Audubon Society of Portland and the Columbia Land Trust, to provide the Backyard Habitat Certification Program (BHCP) to Lake Oswego residents. The program provides assistance and incentives to residents who seek to restore native wildlife habitat to their backyards. During the first four years of the program (through FY 2014-15), the BHCP has completed 274 site assessments and certified 101 properties, totaling 80 acres enrolled. The BHCP has also established 12 community (native garden) demonstration sites throughout Lake Oswego, and conducted native plant sales twice yearly, with over 58,000 native plants sold to area residents.

## **Goal 5 Resources**

The purpose of Statewide Planning Goal 5 is “to protect natural resources and conserve scenic and historic areas and open spaces for present and future generations.” Goal 5 requires communities to provide programs that will: 1) ensure the provision of open spaces; 2) protect scenic and historic areas and natural resources for future generations; and 3) promote healthy and visually attractive environments in harmony with the natural landscape character. Local governments must inventory Goal 5 resources, including riparian corridors, wetlands, and wildlife habitat, and determine which resource sites are environmentally significant. The inventory is required to include a description of the location, quality, and quantity of these resources, and an identification of conflicting uses. Where no conflicting uses have been identified, resources must be managed so as to preserve their original character. Where conflicting uses have been identified, the economic, social, environmental and energy (ESEE) consequences are determined and programs developed to achieve compliance with Goal 5.

A variety of natural resources and fish and wildlife habitat exist in Lake Oswego. These areas include remnants of native woodlands, open fields, wetlands, and water bodies such as Oswego Lake, the Willamette River, and numerous year-round and intermittent streams. Mature

landscapes and trees within developed areas are also valuable to several wildlife species and serve as an extension of the City's network of natural resources. Furthermore, even where property is not regulated specifically for natural resource protection, properly managed private property, including residential lots, can provide valuable nesting habitat, food, and cover for wildlife, including songbirds, raptors, small mammals, insects and other organisms that are important to the local ecology.

Two natural resource inventories for the Lake Oswego planning area have been completed over the past forty years. The 1975 Lake Oswego Physical Resources Inventory (LOPRI) was conducted by community volunteers; it identified and characterized water resources, vegetation, "Distinctive Natural Areas," and wildlife present in Lake Oswego. The LOPRI provided much of the information needed to develop the natural resource element of the 1978 and 1994 Comprehensive Plans. It also formed the basis of the stream and wetland protection standards adopted in the early 1980s. As the community developed during the 1970s through the 1990s, these inventories and standards were used in setting aside public and private open space areas for protection.

Between 1991 and 1995, a new natural resources inventory was conducted by two consulting firms. The new inventory consisted of more location-specific data than the 1975 inventory, and rated the quality of streams, wetlands, and tree groves according to their wildlife habitat values. The consultants also inventoried the educational, scenic, and recreational values associated with each resource site and prepared site location maps of all of the inventoried resources. The "significance" of each resource site was determined, and a Goal 5 ESEE analysis was performed to evaluate the consequences of protecting significant resource sites.

The natural resources inventory and ESEE analysis formed the basis of Lake Oswego's Sensitive Lands regulations, one component of the City's natural resources program. These regulations limit the amount of development that can occur within significant natural resource areas. The regulations apply to land within two types of overlay zoning districts. Significant stream corridors and wetlands were designated as Resource Protection (RP) Districts, and significant tree groves were designated as Resource Conservation (RC) Districts. The RP and RC Districts are shown on the Sensitive Lands Map, which is adopted as part of the City's Comprehensive Plan Map and Zoning Map.

The Sensitive Lands Map and Code are being revised. Please refer to Ordinance Attachments C and D.

The Sensitive Lands regulations were adopted in 1997 to comply with Goal 5, but the City also uses them to maintain compliance with Metro Titles 3 and 13. Metro adopted Titles 3 and 13, in 1998 and 2005, respectively, establishing new requirements for local jurisdictions in the Portland area to protect water resource areas, floodplains, and wildlife habitat. (The City achieved compliance with Metro Titles 3 and 13 in 2011.)

In 2007 and 2008, the City began the process of updating the natural resources inventory and Sensitive Lands Map. During that process, it received significant public comment with concerns

about the geographic scope and requirements of the Sensitive Lands regulations. These concerns addressed both new development and regulation of established, non-dividable residential properties. (The Sensitive Lands program regulated approximately 950 acres or 15% of the land in the City, of which approximately 200 acres or over 1,000 lots were single family residential properties. This represented approximately 10% of single family property owners in the City limits, at the time, and approximately 650 or 62% of those lots were non-dividable.)

The City began a comprehensive review of the Sensitive Lands program in 2009, resulting in a series of code revisions in 2010. This effort culminated in 2013 with a City Council goal to replace the program with one that reduces the regulatory burden on private property owners. In 2014, the City Council adopted the following policy as a guide for the City's approach to natural resource protections:

*The City Council affirms its responsibility to protect the rights of property owners while recognizing the need to comply with State and regional land use and environmental standards. These standards will be applied locally in a fair and equitable manner that respects citizens' use and enjoyment of their property while meeting the intent of State and regional standards and goals.*

The City Council amended the Sensitive Lands regulations in 2014 as an interim measure to clarify the code and address some of the concerns with it. In 2015, the City updated its natural resources program and amended the Sensitive Lands regulations, as described herein.

### **Summary of Major Issues**

The following are some of the key issues that were considered in the creation of the Healthy Ecosystems chapter of the Comprehensive Plan.

- Clean water is critical to the survival of all species and should be the basis of establishing a comprehensive network of open spaces to host wildlife. Water quality must be maintained, and the habitat immediately adjacent to water resources protected to provide food, cover, and shelter for wildlife.
- Natural resource protection and conservation are integral to the City's overall water quality compliance program. Through implementation of the City's Clean Streams Plan (Surface Water Management Plan) and water quality standards for new development and redevelopment, the amount of pollution conveyed by storm water runoff is reduced, protecting water quality in streams and wetlands.
- The spread of invasive plants, which can lead to the use of herbicides, has contributed to the decline of native plant species and wildlife habitat. The City and community volunteers have begun to address this problem by removing invasive species from protected open space areas.

- Historically, new development and construction of utilities, especially sanitary sewers, led to removal of vegetation, erosion and degradation of streams. Stormwater-borne chemicals used in landscape maintenance and agriculture, and petroleum residues from streets and parking lots, also have negative impacts on Lake Oswego’s stream corridors. The City is working to repair its infrastructure and restore its natural resources.
- The City has improved utility and surface water management practices, and must comply with more stringent surface water requirements than it did 20 years ago, affording greater protection to water quality. For new development and redevelopment the City requires on-site disposal of storm water with bioswales, rain gardens, and/or subsurface stormwater infiltration systems, where feasible. Therefore, even as the City is nearly built-out, the amount of untreated stormwater flowing into natural waterways is progressively reduced. (See also, CHPS-Surface Water Management, Policy 1, use of natural systems to treat, convey, and dispose of storm water runoff; and, Policy 8, regarding Low Impact Development and water quality.)
- As a nearly built-out City, Lake Oswego faces a different set of challenges than it did thirty years ago. The circumstances that drove land use planning then are not the same as today. Where there was once a focus on protecting large open space areas in new developments (as new neighborhoods came into being), and through land acquisitions, there is now a greater need to invest in infrastructure maintenance and repair, and natural resource enhancement both on public and private lands.
- Lake Oswego is extraordinarily green. A recent analysis of forest canopy cover using 2014 Lidar found that citywide canopy coverage has increased from 44.6% in 2007 (Lake Oswego State of the Urban Forest Report, 2009) to approximately 50% in 2014 (Shannon and Wilson, 2015). This compares to less than 30% for the City of Portland. The “urban forest” contributes to the livability of Lake Oswego and provides more valuable wildlife habitat than would occur with smaller, fragmented areas.
- The City’s Community Development Code (CDC – Chapter 50) historically has facilitated environmentally friendly development by allowing flexible lot sizes, building setbacks, and street widths in developments that protect natural areas. The 2015 update to the Comprehensive Plan and CDC create additional incentives for habitat-friendly development and natural resource protection and restoration\*
- The City Council had received public feedback that the Sensitive Lands regulations were applied inconsistently and unfairly (i.e., some significant natural resources were protected, while others were not). Concern was also expressed that areas that were not significant resources were being over-regulated. The City Council decided to create a new natural resource program that ensures a balanced, equitable, and environmentally sound approach to natural resource protection that combines appropriate regulation with incentives for resource protection and enhancement, while engaging the community in a positive manner.

## Goal

Protect, enhance and restore natural resources, including significant stream corridors, wetlands, and riparian and upland wildlife habitat.

## Policies

1. Develop a systems-wide approach to urban forestry, watershed protection, and other environmental management issues, to protect, restore, and enhance the City's natural resources.
2. Maintain Resource Protection (RP) district regulations for the protection of significant streams and wetlands, and their adjacent vegetated corridors, consistent with Goal 5, Metro Title 3, and Clean Water Act requirements.
3. Prohibit diversion or impoundment of significant streams from their natural channels, except where:
  - a. Diversion would return a stream to its original location; or,
  - b. A stream channel occupies all or most of a legally created lot; or,
  - c. An impoundment is designed to reduce flooding and will maintain or improve water quality.
4. Protect threatened and endangered fish and wildlife species and their associated habitats consistent with state and federal requirements.
5. Adopt and maintain code incentives for the protection, restoration, and enhancement of significant streams, wetlands, and tree groves, consistent with Goal 5 and Metro Title 3 and 13 requirements. Incentives may include:
  - a. A more streamlined development review process for projects with resource protections;
  - b. Transfer of allowable density and floor area within a development site and between a development and adjacent lands under the same ownership;
  - c. Additional flexibility in lot dimensional standards and building height.

Incentives shall include safeguards for neighborhood compatibility and provide certainty for adjacent property owners with respect to density and mitigation of development impacts. Properties eligible for the incentives shall be designated Habitat Benefit Area (HBA) on the Sensitive Lands Map or authorized through specific text-based Community Development Code criteria.

6. Maintain Resource Conservation (RC) district regulations that protect wildlife habitat on public and private open spaces, consistent with Goal 5 and Metro Title 13 requirements; such areas shall receive the highest level of regulatory protection.



7. Provide development standards that require the following habitat-friendly development practices where RP districts, or RC or HBA protection areas, are established:
  - a. Retention of existing native vegetation;
  - b. Removal of invasive plant species and replanting with native plants, where habitat restoration\* is proposed;
  - c. Use of native plants in new landscaping;
  - e. Coordinating with natural resource regulatory agencies where review of development proposals involves state or federal agencies with jurisdiction;
  - f. Development restrictions that protect the designated resource in perpetuity, as a condition of development approval.
8. Maintain development standards that prioritize impact avoidance over minimization and mitigation of adverse impacts to natural resource functions and values.
9. Prohibit the placement of contaminants or discharge of pollutants in streams, wetlands, wildlife habitat areas, and ground water.
10. Require the dedication of open space, or the recording of covenants, conservation easements or other legal instruments running with the land, in new developments where the CDC requires the provision of open space.
11. Ensure natural resources are protected in park and open space master plans.

### **Recommended Action Measures**

- A. Explore the availability of opportunities with the State to develop and implement a tax incentive program to encourage habitat protection and habitat-friendly development. .
- B. Continue to fund the Habitat Enhancement Fund, for the restoration\* and enhancement of riparian and upland wildlife habitat on public and private lands.
- C. Establish a natural resource education program for property owners, including home owners associations, that promotes water quality protection and the preservation, restoration\*, and enhancement of fish and wildlife habitat, and to engage all property owners in natural resources stewardship.
- D. Encourage the development of forest management plans pursuant to the Tree Code, to preserve the wooded character of the City.
- E. Consider providing a more streamlined development review process for public facilities that are part of an approved master plan.

- F. Coordinate plans for public and private open space areas to maximize the return on investment in natural resource protection and enhancement.
- G. Provide property owners with educational materials and training on natural gardening techniques, use of native plants, identification of plant and tree species, and avoiding use of chemicals that can impair water quality, harm fish or wildlife, or negatively impact native plants and pollinator species.
- H. Continue to offer the Backyard Habitat Certification program.
- I. Continue to establish and support “Friends” groups to provide community volunteer stewardship of parks and natural areas, including assistance in removing invasive plants.
- J. Maintain and update the Community Development Code, Tree Code, and other City regulations to be consistent with the City’s systems-based approach to natural resources management.
- K. Explore options for creating a resource mitigation bank to facilitate off-site restoration\* projects on a larger scale than could be accomplished through individual on-site mitigation (i.e., where development impacts are unavoidable).
- L. Monitor the health of the City's water resource areas through the surface water management program and the Oregon Department of Environmental Quality (DEQ) water quality reporting requirements.
- M. Encourage schools and local organizations to provide public education opportunities regarding preservation and improvement of wildlife habitat.
- N. Coordinate with conservation groups, land trusts, and other jurisdictions and state and federal agencies in implementing the City’s natural resources program and protecting threatened and endangered species identified within the Urban Services Boundary.

**Figure HE-1 Sensitive Lands Map**

## Urban Forest and Vegetation

### Background

Many factors contribute to a high quality of life in Lake Oswego. Few things contribute more to Lake Oswego's livability than its natural beauty. The abundant tree groves, flourishing street trees, densely wooded parks and open spaces attest greatly to the City's charm and character. Trees contribute generously to private landscapes, and provide privacy and noise buffers between land uses. The mere presence of trees puts people at ease, as evident in multiple studies that show people maintain more vigorous health and mental faculties when trees are present in their neighborhoods or visible from their windows.

"Urban Forest" refers to the trees and vegetation in urban and suburban areas—street trees, landscape trees and plants, and the remnants of the wild forest. The urban forest functions as an ecological unit and provides important benefits to urban residents. Community Forestry is a collaborative approach to managing the urban forest. It brings together City government, residents, and other local stakeholders to shape the policies and practices that affect our forest resources. Community Forestry promotes education, dialogue, and voluntary stewardship to protect the health and integrity of the urban forest.

Lake Oswego's Community Forestry Program began in 2006 as a grant-funded project through Northwest Service Academy, which has provided AmeriCorps members to manage the program. The City, with the AmeriCorps member organized a series of public events to create public dialogue on forestry issues and identify priorities for the program. This feedback, along with interdepartmental efforts among City staff resulted in the Urban and Community Forestry Plan adopted by City Council in February, 2008. The plan synthesizes existing tree-related policies and procedures, best management practices, expert knowledge and citizen input to create a vision for the future of Urban and Community Forestry in Lake Oswego.

In 2009, as recommended by the Urban and Community Forestry Plan, the City prepared its first State of the Urban Forest Report, which analyzed the structure, function and value of the City's street tree population and provided basic information about City-wide tree canopy cover. This report identifies the benefits of maintaining a healthy urban forest, as summarized below.

### Economic Vitality

The aesthetic value of the City's urban forest extends to the community's economic vitality. Research by the organization American Forests shows that investment in green infrastructure is cost effective for communities. Communities that invest in urban forests alongside traditional infrastructure are more livable in the long term. Studies have also correlated tree canopy cover to real estate values; trees along streets and on private property can increase property values up to 20%. Other studies show that consumers spend more and shop longer in retail areas where trees are present. Yet even these methods of quantification cannot account for benefits

such as crime reduction, business district success, public health improvement, and wildlife habitat.

### **Reduce Energy Costs**

Shade from trees can reduce the need for air conditioning in summer by up to 30%. By breaking the force of winds in the winter, trees can reduce heat loss from residences by up to 50%; effectively lowering energy bills. The cooling shade from trees can also help extend the life of outdoor infrastructure; keeping pavement shaded can reduce urban temperatures by up to 9 degrees Fahrenheit and lengthen pavement life.

### **Clean the Air**

Trees reduce the impact of greenhouse gases by removing carbon dioxide and releasing oxygen. They improve air quality by reducing the formation of smog and capturing airborne dust particles on their leaves. By reducing the heating and cooling needs of homes and buildings, they also effectively reduce emissions that contribute to the greenhouse effect.

### **Slow Runoff and Prevent Erosion**

Leaves break the force of rain, allowing water to percolate into soils (where soils allow) or slowing the rate of surface water runoff, reducing flooding. Trees play a crucial role in holding the soil in place on steeper hillsides, preventing erosion and improving water quality.

### **Attract Wildlife**

Trees provide habitat for many types of desirable wildlife in urban settings. Along with shrubs and other plants, they create protection from the elements and predators, a place to rest and sleep, and nesting sites for rearing their young. Many animals, including birds, mammals, bees and other pollinators, use tree foliage, flowers, nuts, and fruit as a source of sustenance.

### **Water Quality**

In addition to controlling erosion and reducing the potential for flooding, trees help protect water quality by reducing heat pollution. Tree canopy over impervious surfaces reduces pavement temperature. During a rainfall event, thermal energy is transferred from impervious surfaces to storm water runoff, causing the runoff to become warmer. This high temperature runoff can be harmful to cold water habitat in receiving waters. Second, canopy cover over streams reduces direct heat gain by streams from solar radiation. In 2009, the average canopy cover in the City's stream corridors using a 100-foot buffer was 70.2% and 77.2% using a 50-foot buffer. According to Metro studies, the City's streamside canopy cover within 50 feet of streams is about 15% above the regional average. (Source: Lake Oswego State of the Urban Forest Report, 2009).

## Summary of Issues

The following are some of the issues, changed circumstances, and conditions which were considered in the update of the Urban Forest and Vegetation section of the Comprehensive Plan.

### The State of the Urban Forest

There is a need to update the State of the Urban Forest Report (2009). This Report documents the condition of the urban forest and provides baseline data for which further monitoring and management. The report should be periodically updated so that the City can continue to make informed decisions and ensure the greatest return on the public's investment in urban forestry.

As Lake Oswego approaches build-out and its trees mature, there should be a greater emphasis on maintenance and management of the urban forest as a natural system. This would include removal of invasive plants, and other practices that promote forest health and diversity. Forest practices should help the City and property owners avoid or reduce the risk of catastrophic events, such as tree blow-down from wind storms, wildfires, landslides, pest infestations, and other plant diseases. This is also a public safety concern.

As identified in the 2009 Report, the City has a disproportionate number of small diameter street trees and half of the recommended large diameter trees in the public right-of-way. (The opposite is true for properties outside the right-of-way.) Due to their large sizes at maturity Douglas-fir and big-leaf maple are planted less often in the public rights of way. Unless these species are replaced (through increased stocking levels of young trees), the roadside canopy of mature trees will eventually decline.

Invasive plant species are another threat to the urban forest. The most pressing threat locally is English Ivy (*Hedera helix*). The City, Tryon Creek State Natural Area, and local Friends groups, among others, are actively engaged in the removal of invasive species.

### Tree Code (LOC 55)

In 2015, the City Council amended the Tree Code (LOC 55) to provide a more flexible permit process for large forested parcels that is focused on urban forestry principles rather than individual tree regulations while still maintaining the wooded character of the City. The primary objective of amendment was to encourage and assist owners of large forested tracts in managing their property, while providing safeguards for neighborhood character, protection of water quality, and erosion control. The amendment created separate permitting processes for forested properties of one acre or larger.

In spring 2015, the City held a Community Forestry Summit, in part, to engage the community in a dialogue about the Tree Code. The City processes over one thousand tree removal permits annually, as well as over one hundred permits for tree protection during construction. In the City's 2013 Community Attitudes Survey, 51% of respondents said the Tree Code is overly restrictive. While this is only a slim majority, there is agreement that the permit process can be improved, and that the City should seek to reduce administrative costs while protecting the

wooded character of the community. The 2015 Community Attitudes Survey asked different questions, but feedback regarding the Tree Code was generally consistent with the 2013 survey.

### **Water Quality**

The Willamette River and many of its tributaries, including Tryon Creek, exceed the maximum water temperature standard for the State of Oregon. Temperature standards were designed to protect certain fish species during critical periods when they use rivers for spawning, rearing, migration, or other life stages. The Federal Clean Water Act, as administered by the DEQ, requires that impaired water quality be addressed, for example, through DEQ's Total Maximum Daily Load (TMDL) provisions. One of the ways that the City does this is by maintaining streamside shading with tree canopy cover. Under the 2015 Sensitive Lands revisions, stream buffers are maintained in compliance with the Clean Water Act. The corrections the City made to the Sensitive Lands Map in 2015 (e.g., consistent application of buffers to both sides of RP district streams) are also helping to meet the City's TMDL targets for temperature by protecting riparian area shade.

### **Goal**

Protect and enhance the functions and values of Lake Oswego's urban forest and beneficial vegetation.

### **Policies**

1. Encourage the protection and enhancement of existing vegetation that has both natural resource value and aesthetic qualities, including mature trees and native plant communities.
2. Maintain development standards that preserve trees and other vegetation through innovative site and building design, including the clustering of buildings.
3. Maintain a voluntary Heritage Tree program to protect significant trees and tree groves.
4. Provide and maintain landscaping standards for new development to:
  - a. Visually enhance development projects;
  - b. Provide buffering and screening between differing land uses;
  - c. Reduce surface water runoff, maintain water quality, and maintain soil stability;
  - d. Reduce energy use by using vegetation for shade and windbreaks;
  - e. Encourage the use of native plants; and
  - f. Ensure the establishment and continued maintenance of landscape areas.

5. Require the establishment and maintenance of landscaped areas in parking lots to:
  - a. Provide shade and mitigate the negative visual, sound, and environmental impacts of parking lots; and,
  - b. Provide buffering and screening between parking lots and adjacent land uses.
6. Require street tree planting with new development.
7. Prohibit the use of invasive species in any new landscaping or street tree planting.
8. Preserve and enhance trees and vegetation within rights-of-way and public lands.
9. Maintain standards and permit procedures that protect trees during construction.
10. Update and maintain code standards and permit procedures for tree removal that protect the wooded character of the community and which are based on sound urban forestry principles. Maintain clear and objective standards for:
  - a. Forest management on large tracts of land, both public and private;
  - b. Tree protection during construction; and
  - c. Forest/tree management on developed lots.
11. Encourage the protection of tree groves and other significant vegetation within the unincorporated portion of the Urban Services Boundary (USB) through annexation policies, intergovernmental agreements, public education, and other methods.

### **Recommended Action Measures**

- A. Permanently protect significant trees and tree groves through public acquisition, conservation easements, land donations, and other voluntary methods.
- B. Update and maintain the Tree Code to emphasize retention of overall tree canopy and to maintain the health and diversity of the urban forest, while balancing private property rights with community aesthetics and livability. (Note: The Tree Code is not a land use regulation but contains standards that are applied to development.)
- C. Develop programs and educational outreach materials that emphasize the contribution of trees and vegetation towards improved water quality, erosion control, slope stability, microclimate moderation, and community aesthetics.
- D. Develop an ongoing planting and maintenance program for trees and other vegetation that uses native plants where appropriate within rights-of-way and public lands.



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- E. Ensure adequate right-of-way width to allow for sufficient space for tree planting.
- F. Evaluate tree canopy cover and update the State of the Urban Forest Report on a regular basis, at least every five years.
- G. Protect tree groves and other significant vegetation on City owned properties within the unincorporated portion of the USB.

## Open Spaces

### Background

Lake Oswego's character and identity are closely tied to its open spaces, which includes natural areas, parks, ball fields and golf courses. These natural and manmade assets provide habitat resources for wildlife, aesthetic and scenic resources. They also provide flood and water quality protection, as well as enhanced property values derived from the presence of trees, views (e.g., water bodies, wooded skyline, and mountains), or proximity to recreation facilities.

Lake Oswego's open spaces includes land in public and private ownership and consists of both natural areas and parks. These areas are important to Lake Oswego residents. In 1975, numerous community volunteers participated in the first natural resources inventory, called the Lake Oswego Physical Resources Inventory (LOPRI). The inventory data was used to create policies and development standards to protect open spaces and natural resources. Since the original Comprehensive Plan was approved in 1978, the City has acquired much open space. Lake Oswego voters approved a \$12 million open space bond issued in 1990 to fund the purchase of open space lands and to develop pathways.

In 2008, the City adopted Parks 2025, a long range plan for the City's parks and open space resources. As Lake Oswego approaches a fully developed state, there will be a need to place greater emphasis on managing, maintaining and enhancing the open spaces it now owns. In addition, the larger City open space lands that abut the City limits to the south of Lake Oswego represent an opportunity for the City, neighboring jurisdictions, and responsible agencies to preserve open spaces and to provide open space buffers as a transition between neighborhoods and communities far in advance of development pressure, consistent with the Urbanization chapter of the Comprehensive Plan.

### Summary of Issues

The following are some of the issues, changed circumstances, and conditions which were considered in the update of the Open Spaces section of the Comprehensive Plan:

- There is a need to coordinate the City's plans for managing open spaces with efforts to enhance natural resources and implement sustainable urban forestry practices.
- As the community reaches build-out, there will need to be a greater emphasis on maintaining and enhancing existing open spaces as compared to acquiring more open space lands.

- Managers of private open space areas, such as homeowners associations, face many of the same maintenance and management issues that the City faces, and some are better equipped than others to carry out these responsibilities. The City should provide education and technical support where appropriate.
- Protection and proper management of open spaces is critical to maintaining water quality and watershed health.

(See also, the Community Culture Chapter – Recreation, for issues, goals, policies, and recommended action measures pertaining to recreation.)

## **Goal**

Protect, enhance, maintain, and expand a network of designated open space areas and scenic resources within and adjacent to the Urban Services Boundary.

## **Policies**

1. Establish and maintain an open space network of public land which:
  - a. Provides outdoor recreation activities and preserves natural areas in an intact or relatively undisturbed state;
  - b. Provides access to scenic resources and distinctive aesthetic qualities such as views of Mount Hood, Oswego Lake, the Willamette River, the Stafford Basin, the Tualatin Valley, and forested ridge lines;
  - c. Preserves areas valued for community identity benefits such as urban forest and rock outcroppings;
  - d. Protects the public from natural hazards, such as areas subject to flooding, geological instability, or high erosion potential;
  - e. Provides buffers between dissimilar uses;
  - f. Preserves fish and wildlife habitat; and,
  - g. Provides opportunities for pedestrian and bicycle linkages.
2. Where open space is required in new subdivisions, use dedications, deed restrictions, covenants, or other conditions of development approval, as appropriate.
3. Provide and maintain development standards that prioritize protection rather than mitigation of open space functions and values.
4. Require a higher level of regulatory protection for natural resources located on public open spaces and on private open space tracts created through the development process.
5. Establish and maintain open space buffers and protected view corridors between Lake Oswego and adjacent communities.

## Recommended Action Measures

- A. Promote the voluntary dedication of open spaces through methods such as life estates, land donation, and conservation easements.
- B. Develop and implement management plans for public open spaces to control access and maintain a balance of protected natural areas and areas open to the public.
- C. Manage the public open space network to protect and enhance its existing tree canopy, water quality benefits, and wildlife habitat.
- D. Coordinate with homeowners associations and periodically review and update City code requirements to promote efficient and effective management of open space areas; provide education and technical support where appropriate.
- E. Identify opportunities for restoration\* and planting of native trees and plants.
- F. Provide adequate funding and seek grants to enhance and restore natural resources on public lands.
- G. Utilize a volunteer coordinator to work with citizen “Friends” groups and other community volunteer organizations to assist with restoration\*, maintenance and enhancement of public lands.
- H. Utilize the Lake Oswego Parks, Recreation and Natural Areas System Plan (Parks Plan 2025) to guide future open space acquisition and development. See also, the Community Culture Chapter, Recreation Section.
- I. Coordinate open space conservation efforts with area Friends groups.

## Oswego Lake

### Background

Oswego Lake is the City's largest water feature and its geographic center. The main portion of the Lake covers 385 acres (USGS), with an additional 7 acres in West Bay and 28 acres in Lakewood Bay. The Lake is 3.5 miles long. The Lake, a reservoir, is managed by Lake Oswego Corporation, commonly known as "The Lake Corporation." The Corporation has maintained the Lake since 1942.

Rolling hills, steep hillsides and rocky bluffs surround Oswego Lake, with elevations ranging from 98 feet on the Lake to 970 feet on Mt. Sylvania to the north. The surrounding hills are bisected by many streams, which serve as the major source of water for Oswego Lake, the most notable of which is Springbrook Creek. The Tualatin River via Oswego Canal is another source of water for Oswego Lake.

A dam at the outlet to Oswego Creek regulates the lake level. The first dam on Oswego Lake was built in 1850. Before the pioneer settlement period, Oswego Lake was a natural, smaller body of water, fed by streams and springs. It was called Waluga Lake by the Clackamas Indians, meaning "wild swan." Early settlers called it "Sucker Lake" for a type of whitefish that may have dwelled in its warm waters. The Lake was renamed "Oswego Lake," after the turn of the century, by the owner of the Oregon Iron & Steel Company, to promote surrounding residential real estate development as a supplement to the Lake's primary use as a reservoir.

The Lake had commercial and industrial functions important to the culture of the community. The Lake was used for a short time on a trial basis to transport people and goods between the Willamette and Tualatin Rivers, via ferry boat across the Lake and horse drawn railroad cars along the canal's bank. Lake waters that flow into Oswego Creek were used to operate the Durham sawmill when Oswego was first settled. The Lake or reservoir is used for irrigation.

Much more significantly, the increased flow was used to operate first iron and then steel foundries operated by Oregon Iron & Steel Company. A hydroelectric power generating plant was built on Oswego Creek in 1909, and the Corporation continues to operate this plant today, selling surplus power to PGE. A spillover dam was completed in 1921 that raised the Lake and greatly increased its size, creating Blue Heron Bay and West Bay on the west end. Lakewood Bay on the east end was completed in 1928, seven years after a final dam was built.

The Oswego Lake Dam Spillway Modification Project was completed in 2011 in conjunction with the Lake Oswego Sewer Interceptor project, in response to the 1996 flood. The Lake Oswego Corporation modified the dam resulting in the lowering of the floodplain by 3.7 feet and removing more than 200 homes from the 100 year flood plain.

Oswego Lake was initially described in the 1975 LOPRI, and was also included in the 1992 Natural Resources Inventory. Its natural features have been highly modified, first by logging in the late

1800s and later by residential development, which cleared much of the original forest that surrounded the Lake. Today, homes with formal lawns stretching to the Lake's edge and waterfront seawalls and docks are interspersed among second growth and ornamental trees. Shoreline development, including seawalls, docks and boathouses, is strictly controlled by the Lake Corporation.

There are a few remaining undeveloped natural areas surrounding the Lake at the mouths of streams, and forested areas on steep slopes. A few natural riparian areas and small pockets of wetlands remain along the streams which enter the Lake. These natural edges are important for wildlife nesting, food and shelter. The remaining forest is typically Douglas fir on the north-facing slopes and oak/madrone and fir on the south-facing rocky bluffs. These remaining forested areas provide perch sites for birds of prey such as osprey and hawks. The Lake is also an important habitat for resident and migratory waterfowl, including dabblers, diving ducks, Canadian geese and great blue heron. Fish species in the Lake include bass, catfish, sturgeon, bluegill, carp, crappie, and yellow ring tail perch, and there exists a resident population of cutthroat trout which reside in Springbrook Creek and may use the creek for spawning.

In addition to its natural resource values, Oswego Lake is a multiple-use facility that serves the community in a variety of roles. It is a hydroelectric reservoir at the center of a 7,400 acre drainage basin. The Lake receives the majority of its water from tributary streams, storm drain outfalls and surface runoff. Also, there are several City sanitary sewer interceptors below the Lake's normal surface water elevation that have been constructed at an engineered grade to convey sewage to the Tryon Creek Sewage Treatment Plant.

The Lake offers shoreline recreation opportunities to residents at the Lake Grove Swim Park (operated by Lake Oswego School District for residents with a swim park easement) and the Lake Oswego Swim Park. A City Park at Lakewood Bay offers visual access, but not physical access, to the Lake. Oswego Lake is heavily used for water-related recreation by lakeside residents and others with Lake easements\* recognized by the Corporation. The Lake is also valued by residents for its open space and aesthetic aspects and for its historical and cultural importance. Residents consider the Lake to be a vital part of Lake Oswego's identity, and a water resource valuable to the community.

The multiple roles of the Lake can cause conflict. Silt caused by erosion and nutrients from lawn fertilizers can diminish water quality, and construction by private owners on lakeside lots has eliminated most public view points. Improperly functioning septic systems immediately adjacent to the Lake or tributary streams can also adversely impact water quality in some locations. The reservoir's level is lowered from time to time by the Corporation to maintain its hydroelectric facilities. During these periods, the Corporation may dredge sediments, private landowners may maintain seawalls, boathouses and docks and the City has scheduled maintenance of public sanitary sewer interceptors. Periodically, a lowering of the Lake to greater depths is requested by the City for major maintenance of public sanitary sewer interceptors. The lowering of the Lake temporarily affects small areas of fish and wildlife habitat.

Water quality in the City is primarily monitored by two entities: the City and the Oswego Lake Corporation. The City monitors tributary streams, while the Lake Corporation alone monitors water quality within Oswego Lake to support their management of the lake. The Corporation has ongoing programs to maintain and improve the Lake's water quality. It has an aquatic vegetation inspection and control program, a water quality management program and monitors activities on the Lake on a regular basis. Since 1994, when the last Comprehensive Plan was adopted, the Lake Corporation replaced the dam at the outlet to Oswego Creek, and the City replaced the sewer interceptor line that traverses the lake.

The Corporation has commissioned studies of the Lake to address problems caused by high phosphate levels, macrophytes and sediments. It prepares a Water Quality Management Plan each year to preserve the beneficial uses of the Lake. The plan includes preventive actions, water treatments, sediment removal and continuous sampling. The Corporation is very attentive to the potential of invasion by non-native vegetation and animals. In the opinion of the Corporation, the sedimentation of the Lake over time creates the greatest hazard to its use as a hydroelectric reservoir, its recreational uses and its fish and wildlife habitat. Removal of these sediments is required from time to time.

The City's development standards and procedures recognize the importance of the Corporation's efforts to maintain the Lake and establish measures to control erosion hazards, preserve natural features, protect water quality and regulate adjacent land uses. Relevant City Standards include former Sensitive Lands "RP" Districts (where streams enter the lake), Erosion Control, Flood Plain, Drainage, Parks and Open Spaces, Hillside Protection, and the Tree Code. In addition, there are zoning regulations related to Oswego Lake, including the Cabana Zone (WR) and Supplementary Standards. The Cabana Zone is limited to the north side of Lakewood Bay. It permits single family residential or cluster developments on pilings. The Supplementary Standards of the Development Code require a 25-foot building setback from the Lake property line, except for seawalls, boathouses, docks and other improvements as approved by the Corporation.

In addition to City development regulations, Oswego Lake is subject to State and Federal regulations. The perimeter of the Lake is in the 100-year flood plain regulated by Federal Emergency Management Agency (FEMA). The State considers the waters of Oswego Lake to be "waters of the State," and subject to certain water quality regulations under the Federal Clean Water Act (CWA), administered by the DEQ) In 1990, the DEQ found that the Tualatin River basin and Oswego Lake Basin did not meet Federal and State quality standards and determined them to be "water quality limited"\* because of higher than allowable levels of phosphorus and other pollutants. More recently, the Willamette River has been added to this list of streams/rivers that are subject to Total Maximum Daily Load (TMDL) requirements. The Lake's characterization arises from the condition of its tributaries and other sources of inflow. (See also Community Health & Public Safety Chapter, Surface Water Management Section.) As a result, the City adopted the Lake Oswego Surface Water Management Plan (SWMP) and new Erosion Control Standards in 1992 to guide water quality improvements, including rehabilitation

of streams that drain into the Lake, and public education programs. The SWMP was updated by the Clean Streams Plan adopted in 2009.

The following are some of the issues, changed circumstances and conditions which were considered in the update of this element of the Comprehensive Plan:

- Oswego Lake has multiple uses and values, including electrical power generation, surface water storage, water recreation, aesthetic values and scenic views, habitat for fish and wildlife and social values.
- The City updated its Surface Water Management Plan (Clean Streams Plan) in 2009; the Plan is consistent with The Lake Corporation's efforts in managing water quality.
- The Lake's condition follows from the condition of its tributaries and other sources of inflows. Oswego Lake has been designated as "water quality limited" by the DEQ. Therefore the streams that feed the Lake, including the tributaries to those streams, are subject to Total Maximum Daily Load (TMDL) standards.

The following are some of the issues, changed circumstances and conditions which were considered in the update of this chapter of the Comprehensive Plan:

### **Goal**

Protect the natural resource, aesthetic, and recreation values of Oswego Lake.

### **Policies**

1. Coordinate with the Lake Oswego Corporation to protect the natural resource, aesthetic, and recreation values of Oswego Lake.
2. Require all development proposed within or adjacent to Oswego Lake to:
  - a. Minimize negative impacts on vegetation, slopes, fish and wildlife habitat, wetlands, stream corridors, and scenic views, while allowing reasonable recreational use by landowners;
  - b. Incorporate and maintain natural features, functions, and values in the project design;
  - c. Prevent damage caused by erosion and siltation; and,
  - d. Prevent the placement of pollutants or contaminants into the Lake and its tributaries.
3. Allow development density on parcels containing natural resources associated with Oswego Lake to be transferred to other portions of the development site when steep slopes, tree groves, stream corridors, or wetlands are permanently protected as open space through recorded legal instruments.



4. Allow innovative site and building design, including the clustering of buildings to preserve natural features associated with Oswego Lake.

### **Recommended Action Measures**

- A. Design, construct, and operate public works projects to preserve natural features and protect the water quality of the Lake.
- B. Coordinate with the Oswego Lake Watershed Council on surface water management and related improvements.
- C. Establish and maintain significant public viewpoints of Oswego Lake and surrounding areas.
- D. Provide and maintain projects, programs, and development standards that improve the water quality of Oswego Lake.
- E. Coordinate with DEQ and other State and Federal Agencies, and cooperate with the Lake Corporation to enhance the water quality of the Lake through the City's Surface Water Management Program.
- F. Cooperate with DEQ and the Tualatin Basin Designated Management Agencies to enhance the water quality of the Tualatin River and other tributaries of Oswego Lake.
- G. Provide information to the general public and developers regarding the location and importance of resources associated with the Lake, and ways in which they can be protected and restored.
- H. Support efforts to prevent and remove sedimentation from Oswego Lake.
- I. Continue to provide swimming access on Oswego Lake through the City's Swim Park and through coordination with the Lake Oswego School District to preserve the Lake Grove Swim Park. (See also, Community Culture Chapter, Recreation Section, RAM 'P')

## Air Quality

### Background

There are many different pollutants in the Portland Metropolitan area's air and what people breathe depends in part on how close they are to pollution sources such as woodstoves, busy roadways and industrial facilities. Overall, according to the DEQ) which is responsible for enforcement of air quality standards, air pollution in the Portland area has decreased dramatically over the last 30 years. Important success stories include reducing lead, carbon dioxide and ozone (smog) to meet federal clean air standards.

Despite this progress, DEQ is concerned about levels of other pollutants called air toxics, which are known or suspected to cause serious health problems including cancer, nerve damage and respiratory irritation. Much of our scientific knowledge about air toxics is still emerging. However for many pollutants and sources, there is currently enough information to understand problems and prioritize emission reductions.

Air toxics include diesel soot, benzene, polycyclic aromatic hydrocarbons (tar-like by-products from auto exhaust and other sources commonly called PAHs), and metals including manganese, nickel, and lead. Air toxics come from a variety of sources including cars and trucks, all types of burning including burning wood in fireplaces and woodstoves, businesses and industries of all sizes, and consumer products such as solvents and pesticides.

### Federal Air Quality Requirements

The Federal Clean Air Act is the primary regulatory framework for national, state and local efforts to protect air quality (see <http://www.epa.gov/air/caa/> for more information). Under the Clean Air Act, the EPA is responsible for setting standards, known as national ambient air quality standards (NAAQS), for pollutants considered harmful to people and the environment. These standards are set at levels that are meant to protect the health of the most sensitive population groups, including the elderly, children and people with respiratory illnesses. Air quality planning is focused on meeting the deadlines set by the Federal Environmental Protection Agency (EPA) and DEQ for meeting the NAAQS standards. In partnership with federal partners, USDOT requires areas to demonstrate on-road transportation sources are making progress towards attaining the NAAQS standards or not further violating the NAAQS. This is known as the conformity determination. Failing to conform restricts an area's ability to receive federal transportation funds during any period for which the air quality approval has lapsed.

More specifically, federal air quality conformity requirements come from the integration of requirements in the *Clean Air Act Amendments of 1990* and the *Intermodal Surface Transportation Efficiency Act (ISTEA)* of 1991 and are codified at chapter 40 Code of Federal Regulations (CFR) Part 93. These requirements are also included in federal transportation policies and regulations, which are compiled by EPA, Office of Transportation and Air Quality, in a document entitled: "*Transportation Conformity Regulations Updated April 2012*."

### **State Air Quality Requirements**

Oregon's air quality regulations, adopted by the Oregon Environmental Quality Commission under OAR 340-200-0040 and approved by EPA, establish rules and standards for determining air quality conformity of transportation plans, programs and projects in Oregon (specifically, OAR 340 Division 252). These regulations contain all federal requirements plus a few additional state standards. The Oregon DEQ is responsible for writing the air quality plan for the Metro region. By meeting the Oregon standards for purposes of demonstrating air quality conformity, the federal standards are also met.

### **Metro's Role**

Metro is the designated Metropolitan Planning Organization (MPO) for the Portland region. As the MPO, Metro is the lead agency for developing regional transportation plans and scheduling the spending of federal transportation funds in the Portland area. The Metro Council, after receiving recommendations from the Joint Policy Advisory Committee on Transportation (JPACT) approves regional transportation plans and air quality conformity determinations, and implements related programs. The JPACT is a 17-member committee of elected officials and representatives from regional agencies and local jurisdictions.

### **Summary of Issues**

The National Ambient Air Quality Standards (NAAQS) adopted by both the EPA and DEQ identify six air pollutants for which seven standards are established and regulations in place to address areas that exceed or have exceeded the standards in the past. (Other air pollutants, such as benzene, have been identified, but standards and procedures for addressing them have not been approved.) These air pollutants are:

- carbon monoxide;
- lead;
- nitrogen dioxide;
- ozone;
- particulate matter, 2.5 micrometers and smaller diameter (PM2.5);
- particulate matter, 10 micrometers and smaller diameter (PM10); and,
- sulfur dioxide.

The Metro region has not exceeded the standards for five air pollutants: lead, nitrogen dioxide, PM10, PM2.5 and sulfur dioxide. However, in the past, the region has exceeded carbon monoxide and ozone standards. The region is no longer subject to the 1-hour ozone standard and no longer has a requirement to complete air quality conformity for ozone. The region, however, is still considered in a maintenance status with regard to ozone. The EPA maintains data on the region's ozone status.

In the past several years, EPA is considering lowering ozone standards (reducing allowed levels of ozone) based on updated air quality data. Lowering of the ozone standard could result in

additional requirements the region would need to comply or the need to take additional actions, but until notification of new standards, the region is not subject to ozone conformity.

As of 1997, the Metro area is a maintenance area for carbon monoxide (CO). While the region meets federal CO standards, it must continue to monitor CO levels through an air quality conformity determination. The determination analysis must compare forecast levels of air quality assuming proposed transportation investments with motor vehicle emission budgets or maximum allowed levels of the pollutant from the on-road and transit elements of the region's transportation system. In 2006, the EPA approved a new CO State Implementation Plan (SIP) finding new CO motor vehicle emission budgets adequate for transportation conformity purposes in the second Portland Area Carbon Monoxide Maintenance Plan. This second CO maintenance plan is effective through 2017, after which time conformity demonstration will no longer be necessary if the area does not violate the CO standard.

### **Goal**

Reduce air pollution and improve air quality in Lake Oswego and the Portland Metropolitan Area.

### **Policies**

1. Cooperate with federal, state and regional agencies to meet the air quality standards of the Federal Clean Air Act.
2. Ensure commercial and industrial developments comply with all required state and federal air quality regulations and mitigate the impacts of air pollution through design and abatement measures.
3. Preserve and enhance the City's open spaces and natural resources to sustain their positive contribution to air quality.
4. Increase the opportunity to use alternative transportation as a means to reduce air pollution by implementing multi-modal transportation policies of the Connected Community Chapter.
5. Encourage land use patterns which, while reducing dependency on the automobile, are also compatible with existing neighborhoods.

### **Recommended Action Measures**

- A. Reduce congestion and delay on major streets to lessen localized pollution impacts of automobile travel through methods such as signal timing, access management, intersection improvements, etc.
- B. Reduce the local effects of air pollution by requiring commercial and industrial development to undertake measures such as locating discharge sources where

impacts are minimized; utilizing state of the art abatement equipment and processing technology; and, planting trees and other plant materials on the development site.

- C. Ensure that industrial and commercial development with the potential for air pollution is reviewed by the DEQ to determine impacts on local and regional air quality.
- D. Implement measures to reduce air pollution associated with City operations, consistent with the Sustainability Plan for City Operations.
- E. Work with Metro and DEQ to provide information on regional air shed characteristics and air quality regulations to new and expanding industry.
- F. Promote public education to communicate ways that individual action can reduce air pollution, such as limiting use of automobiles, wood burning stoves and fireplaces, outboard motors and gasoline powered lawn and garden equipment.
- G. Encourage the preservation and planting of trees to improve air quality.
- H. Encourage the use of electrical vehicles by providing for the siting vehicle charging stations.

## **Willamette River Greenway**

### **Background**

The Willamette River Greenway is a valuable natural asset of the City of Lake Oswego and the State of Oregon. The first suggestion that the Willamette River be somehow protected from becoming a heavily developed urban corridor was broached in the late 1960s. Several bills relating to the protection of the River were enacted by the State Legislature. The Willamette River Greenway was finally created in 1973 with the enactment of House Bill 2497 (ORS 390.310-368). Statewide Planning Goal 15, Willamette River Greenway, sets forth the overall framework within which state and local governments carry out protection and enhancement of the Greenway, including its natural, scenic, historical, agricultural, economic, and recreational qualities. The Greenway boundary includes all lands within 150 feet of ordinary low water line.

The City received Land Conservation and Development Commission approval of its Greenway goals and policies and Greenway Management Overlay District in 1984. Goal 15 requires localities to adopt Greenway boundaries, specify uses permitted within those boundaries, indicate areas of potential acquisition along the Greenway, and adopt provisions, by ordinance, requiring a compatibility review permit for any intensification, change of use, or development within the Greenway boundaries. The City's Greenway Management Overlay District provides design review procedures for any of these activities in the Greenway.

On the Lake Oswego Comprehensive Plan Map, Greenway boundaries are 150 feet from ordinary low water line (see Comprehensive Plan Map), except where they widen to include Roehr Park, George Rogers Park, and Foothills Park, which are City-owned properties. In Lake Oswego, the largest portion of the Greenway is developed with residential uses. Commercial, recreation, and public uses, such as the above City parks, Tryon Cove State Park, and the Tryon Creek Wastewater Treatment Plant, are also present.

The Greenway Management Overlay District addresses many of the same concerns as Sensitive Lands (e.g., water quality and wildlife habitat), consistent with State Goal 5, but is specifically designed to balance multiple uses of the shoreline (e.g., views, river recreation, public access), consistent with State Goal 15.

### **Goal**

Protect, restore, enhance, and maintain the natural, scenic, historic, economic, and recreational qualities of the Willamette River Greenway.

### **Policies**

1. Designate and maintain the Willamette River Greenway on the City's Comprehensive Plan Map, consistent with the location established by the state.

2. Require non-water related\* and non-water dependent\* structures to be set back from the Willamette River. Utilize larger set-backs on public land.
3. Establish and maintain development standards to protect, restore, and enhance native vegetation and fish and wildlife habitat within the Willamette River Greenway.
4. Minimize the visual impact of development within the Willamette River Greenway through measures such as setbacks, height restrictions, building materials and color choices, and landscape screening.
5. Protect the water quality of the Willamette River by:
  - a. Regulating development to prevent pollutants and soil erosion from entering the River;
  - b. Ensuring discharge practices conform to state and federal standards; and
  - c. Protecting and enhancing the natural functions and values of the ground and surface water systems which drain into the River.
6. Continue to protect the Willamette Greenway open spaces, preserving significant view corridors to the Willamette River.
7. When appropriate, require dedication of public access easements within the Greenway and to the Willamette River as part of the development review and approval process.

### **Recommended Action Measures**

- A. Develop and implement a management plan to protect and enhance native vegetation and fish and wildlife habitat on public land along the Willamette River.
- B. Coordinate with the Willamette Riverkeepers to identify opportunities for project partnerships.
- C. Coordinate Greenway planning activities with Clackamas County, the Oregon State Parks and Recreation Department, other responsible jurisdictions and governmental agencies, and users of the Willamette River to promote stewardship of the River and Willamette Greenway.
- D. Promote safe public use of the River and Willamette Greenway in compliance with local and state goals, policies and regulations; maintain public safety and protect public and private property from vandalism and trespass along the Greenway.
- E. Acquire land and easements to protect the Greenway's natural resources and provide for continuous public access along, and to, the River.

- F. Identify significant view corridors to the Willamette River Greenway, and develop standards to protect them.



## Healthy Ecosystems Definitions

**Forest Management/Urban Forestry** means the systematic approach to sustaining forest cover and health while minimizing the risk of catastrophic events such as wildfire, drought, pest infestations and disease, storms (tree blow-down), and landslides. Effective urban forestry can also provide thermal comfort and energy conservation (where stands of trees provide summer shade and windbreaks); water quality protection (through reduced storm water runoff and erosion); air quality (filtration of pollutants); noise reduction (e.g., in areas of dense trees and shrubs); wildlife and biodiversity; income for property owners; and aesthetics, which can contribute positively to community identity, real estate values, commerce, recreation, and individual health and well-being.

**Habitat Benefit Area (HBA)** means a Comprehensive Plan designation and Zoning Overlays identifying private properties where incentives, rather than regulations, are applied to protect significant natural resources. These incentives may include but are not limited to: financial incentives, such as tax reduction, fee reduction, and/or grants; development standard exceptions (code flexibility), development review/permit expediting, and technical assistance to property owners. See Figure HE-1.

**Restoration** means the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which existed prior to impacts caused by human activity.

**Stocking** means the number of trees on a given area, as in the case of trees per acre required to be retained or planted after removal under a forest management permit. Re-stocking means trees planted under a Forest Management Permit for reforestation. Stocking counts trees of all sizes and ages, including seedlings and young trees.

**Tree canopy** means the total ground area covered by a tree or a stand of trees, as measured at the outer limit of tree branches or crown, projected to the ground. This is also referred to as the tree dripline.

-END-

**Water Features**

- Class I Stream
- Class II Stream
- Unclassified Stream
- Wetland

**Option 2 Protection**

- <sup>1</sup>RP
- <sup>2</sup>Adjacent RC added to RP
- <sup>3</sup>RC
- <sup>4</sup>HBA

**Existing Delineations**

- Stream Corridor Delineated
- Wetland Delineated
- Tree Grove Delineated

**Additional Protection**

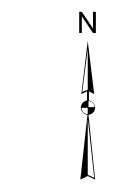
- Tryon Creek State Natural Area
- City of Portland Conservation Overlay
- City of Portland Protection Overlay
- West Linn WRA
- Surface Water Management Agency of Clackamas County
- Clackamas County

**Resource Designation Removed**

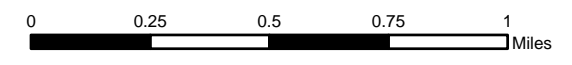
- RP
- RC

**Other Symbols**

- USB/City Outer Limit
- Tax Lot



**ATTACHMENT C**  
**LU 15-0019**



<sup>1</sup>The RP designation consists of areas that the City currently designates RP, based on existing stream classifications, with corrected stream centerlines and steep ravines mapped. The map uses the most current and accurate data available (2014 Lidar); however, field verification is required.

<sup>2</sup>Where an RC district currently abuts an RP district, up to 50% of the RC district (portion closest to the stream or wetland) is consolidated with the RP district to create a standard stream/wetland buffer of 50 feet, consistent with Metro Title 3. The area of consolidation is represented by the dark blue edging at the perimeter of some RP districts.

<sup>3</sup>The RC designation includes all currently designated RC districts on public land and private open spaces. The required level of protection (Resource Conservation Protection Area) is proposed to increase from 50% to 85% under the proposed code revision.

<sup>4</sup>Habitat Benefit Areas are previously designated RC districts on dividable residential properties and non-dividable properties that Metro designates Title 13 Riparian areas. The HBA designation indicates properties eligible for habitat protection incentives. Other properties meeting the HBA code criteria may opt-in to this incentives program as well.

<sup>5</sup>Removed designations consist of areas that the City currently designates RP or RC (on the Comprehensive Plan Map or Zoning Map) that are not proposed as RP, RC, or HBA. In those areas, as well as for City as a whole, the following existing code requirements support habitat conservation: Planned Developments, Tree Code, Hillside Protections, Clean Streams/Surface Water Management Standards, Erosion Control, etc.

<sup>6</sup>Additional protection from other jurisdictions are shown for reference.

<sup>7</sup>Wetlands on City owned property outside USB are included.

10/5/2015

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## INTRODUCTION

The following sections of Lake Oswego Code apply or contain references to Sensitive Lands, which are stream corridors, wetlands, and some tree groves. Strikeout text (~~strikeout~~) indicates text to be deleted, and bold underline text (**underline**) indicates text to be added. Within the draft, three consecutive asterisks (\*\*\*) or ellipses (...) indicate where text is omitted because it does not pertain to Sensitive Lands.

### Primary Amendments – Community Development Code (CDC)

LOC 50.05.010 Sensitive Lands Overlay Districts  
LOC 50.07.004.8 Additional Submittal Requirements – Sensitive Lands Overlay Districts

### New Section – Community Development Code (CDC)

LOC 50.05.010.7 Sensitive Lands Overlay Districts – Habitat Benefit Areas (HBA) Incentives

### Secondary Amendments (Internal Consistency and Cross-References)

LOC 50.01.001 Title and Purpose  
LOC 50.01.003 Authority  
LOC 50.01.004 Zoning Designations, Boundaries, Maps, and Annexation  
LOC 50.01.006.4 Damage and Reconstruction of Nonconforming Structures  
LOC 50.03.003 Use-Specific Standards  
LOC 50.03.004 Accessory Structures and Uses  
LOC 50.04.001 Dimensional Table  
LOC 50.04.003 Exceptions, Projections, and Encroachments  
LOC 50.06.003 Circulation and Connectivity  
LOC 50.06.005 Park and Open Space Contributions  
LOC 50.06.006 Geologic Hazards and Drainage  
LOC 50.07.003 Review Procedures  
LOC 50.07.004.7 Additional Submittal Requirements; Park and Open Space Contribution  
LOC 50.07.007.2 Land Divisions; Flag Lots  
LOC 50.07.007.4 Land Divisions; Planned Development Overlay  
LOC 50.08.001 Adjustments  
LOC 50.08.002 Minor Variance  
LOC 50.08.003 Hardship Variance  
LOC 50.08.006 LGVC Adjustments  
LOC 50.10.003 Definitions  
LOC 42.03.025 Streets and Sidewalks; Standards Generally; Criteria  
LOC 42.03.085 Cul-de-Sacs and Dead End Streets  
LOC 42.03.095 Modification to Street Design Standards  
LOC 47.06.205 Signs; Permanent Signs Exempt from Permit and Fee

**LOC 50.05.010 SENSITIVE LANDS OVERLAY DISTRICTS**

**1. OVERVIEW**

**a. Purpose**

LOC 50.05.010 creates the Resource Protection (RP), ~~and Resource Conservation (RC), and Habitat Benefit Areas (HBA)~~ district-overlay districts to:

- i. Protect and conserve wildlife habitat;
- ii. Protect and improve water quality;
- iii. Control and prevent water pollution for the protection of public health and safety;
- iv. Comply with federal laws including the Clean Water Act and the Endangered Species Act;
- v. Comply with State Land Use Goal 5; and
- vi. Comply with Metro’s Urban Growth Management Functional Plan.

**b. Comprehensive Plan Map and Zoning Map**

The overlay districts shall be designated on the Comprehensive Plan Map and Zoning Map. **The use of aerial photography or field inspection may be necessary to confirm the presence or location of the overlay districts on individual properties.** ~~The purpose of these maps is to give a general overview as to the location of the districts and is not intended to show the precise location of the district boundaries.~~

~~**c. Sensitive Land Atlas**~~

~~The boundaries of the districts shall be shown on individual property maps at a scale of 1:300 in the Sensitive Lands (SL) Atlas. The SL Atlas is intended to govern the applicability of this section pursuant to LOC 50.05.010.2. The SL Atlas shall be adopted as part of the City’s Comprehensive Plan and Zoning Maps.~~

**2. APPLICABILITY**

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This section applies to all lands designated as RP or RC on the Sensitive Lands Map, **and lands designated HBA where an HBA protection area is established pursuant to LOC 50.05.010.7** ~~and Atlas.~~

**a. Sensitive Lands Development Review Required**

- i. **Except as provided by LOC 50.05.010.2.b-d,** ~~D~~development within:

- (1)** The RP district, as defined in LOC 50.05.010.6.b;

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~~(2) The RC district; or within five ft. of the RC district boundary; or~~

**(3) The HBA protection area; or**

~~(3) The construction setbacks established in LOC 50.05.010.6.c.ii(1)(e) (as shown on maps in the Sensitive Lands Atlas);~~

shall be subject to the standards and criteria identified in LOC 50.07.004.8.c, Environmental Review.

ii. ~~Development permits, land divisions, lot line adjustments,~~ mitigation proposals, and adjustments of a district boundary shall be subject to the standards and criteria identified in LOC 50.07.004.8.c, Environmental Review.

iii. To the degree that any requirement of this section conflicts with a requirement of the underlying zone, this section shall prevail.

**b. Exceptions – General**

The provisions in this section shall not apply to:

i. A resource located within the boundaries of a ~~development permit partition, subdivision, planned development, or lot line adjustment,~~ approved prior to August 21, 1997, if:

(1) The resource was identified and protected pursuant to regulations in effect at the time of approval; and

(2) The proposed development is in compliance with the conditions protecting the resource imposed at the time of approval. Any modification of the prior approved ~~partition, subdivision, or planned development~~ **permit** that would impact or modify any protection measures imposed at the time of original approval shall be subject to the standards and criteria of this section.

ii. Resource restoration required as a result of violation of this section or pursuant to settlement of a potential enforcement action by the City Manager, subject to City Manager approval of the restoration plan and procedures.

iii. Routine maintenance and repair of existing legal development, including nonconforming structures and landscaping. (See also specific exception for normal or emergency replacement of utility, below.)

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### c. Exceptions – Specific

The provisions of this section, except for the construction standards in subsection 4.d of this section, shall not apply to:

- i. Replacement or vertical expansion of an existing structure within the footprint of that structure.
- ii. Normal or emergency replacement of a utility that is not closer to a protected water feature than the pre-existing utility. Normal replacement of a utility for purposes of this subsection means the replacement is within the same general location or alignment as the pre-existing utility. Replacement of utilities that are within the stream channel or wetland must consider alternative locations; where no practicable alternative location exists, replacement shall occur as described above, subject to the mitigation requirements of subsections 4.e through 4.g of this section. Temporarily disturbed areas must be restored to their original grades and soil permeability, and revegetated with plants identified on the Plant List, pursuant to subsection 4.g of this section.
- iii. Alteration, expansion, or replacement of an existing primary dwelling unit where the **cumulative total increase in** footprint of the new intrusion **since August 21, 1997**, is not more than 700 sq. ft. ~~in the RP or RC district and is not closer to a protected water feature than the pre-existing structure.~~
- iv. Development that meets all of the following criteria:
  - (1) Is not located within a wetland or below the top of the bank or stream;
  - (2) Does not require a grading permit; and
  - (3) The cumulative total of all development **since August 21, 1997** ~~under this subsection 2.c.iii~~ does not exceed 200 sq. ft.
- v. Fences that are not located within a wetland **or flood hazard area**, or **below top of bank of** a stream ~~channel~~.
- vi. Other development that does not remove any native vegetation or create new permanent structures ~~within the RP or RC district~~.

### d. Exceptions for Wetlands, Stream Corridors and Tree Groves Outside of RP or RC District

Wetlands, stream corridors, and tree groves that are not contained within an RP or RC district, **or an HBA protection area established pursuant to LOC 50.05.010.7** shall not be subject to the regulations of this section. However, an application for development that impacts a stream corridor or wetland may still be subject to state or federal wetland or stream regulations. Notice of such applications will be sent to the **Department** ~~Division~~ of State Lands (DSL) or the Army Corps of Engineers.



**e. Notification to ~~Department~~ Division of State Lands and Army Corps of Engineers**

In addition to the notification required for the particular development by LOC Article 50.07, Review and Approval Procedures, the City shall notify the Oregon ~~Department~~ Division of State Lands and the Army Corps of Engineers upon receipt of a complete application for development, change or intensification of use within an RP district that impacts a wetland or stream corridor.

**f. Mitigation Required for Violation**

If development occurs in violation of this section, the violator shall not only be subject to any and all enforcement and penalties that can be brought or imposed for violation of this Code, he or she shall be responsible for mitigating any damage caused by the violation to a protected resource pursuant to LOC 50.05.010.4.e through g.

~~[Cross-References: See LODS 3 (streams) and 4 (wetlands) if property is not designated under LOC 50.07.004.8, but was inventoried on City Hydrology Map or may meet criteria under LODS 3, Section 5, or LODS 4, Section 4.015 (2). See also Transition Rule, Ord. 2148, Sec. 5, and Ord. 2293 amending Sec. 5. Obtain copy of LODS 3 and 4 from Planning Division.]~~

**3. DEVELOPMENT REVIEW**

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The development review procedures for Sensitive Lands overlay districts are found in LOC 50.07.004.8.

**4. GENERALLY APPLICABLE STANDARDS FOR LANDS WITH RP DISTRICTS, RC DISTRICTS, AND HBA PROTECTION AREAS**

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**a. Rebuilding Nonconforming Single-Family or Duplex Dwelling Located in RP ~~or RC~~ District or RP Construction Setback**

Excluding single-family or duplex dwellings subject to the flood management area, if a portion of a nonconforming single-family or duplex dwelling is damaged or destroyed by causes not under the control of the owner (including but not limited to fire, earthquake, flood, landslide, and wind or tree damage, but not including destruction due to lack of structural maintenance by the owner, remodeling, or new construction), and the dwelling was nonconforming due to its location within a resource district or construction setback, the rebuilding or reconstruction of the nonconforming dwelling shall be exempt from **the development standards of this section** ~~LOC 50.05.010.5.b.ii, RC District Protection Area, LOC 50.05.010.5.c.iii(1) through (4), Development Standards, LOC 50.05.010.6.c.ii(1).d, and LOC 50.01.006, Nonconforming Structures and Uses; and to the other requirements of the Code not within this section,~~ to the extent that the damaged or destroyed portions of the dwelling failed to conform to the referenced sections, above, and to other requirements of this Code not within this section. In order to utilize the rights granted by this subsection **a building permit for** the reconstruction must be **submitted**~~commenced~~ within one year of the date of the damage and **construction** completed within two years of such date.

**b. Modifications to Dimensional Standards, ~~and~~ Setbacks, and Floor Area of the Underlying Zone**

i. Except as provided in subsections 4.b.iii and ~~iii~~ **iv** of this section, an application for development subject to environmental review may vary from the lot dimensional standards (building setbacks, lot size, lot width, and lot depth) otherwise applicable without a ~~formal~~ variance pursuant to LOC Article 50.08, Variances, if the applicant demonstrates that:

(1) ~~Compliance with~~ **Varying from** the applicable dimensional standard or standards ~~would~~ **does not increase** ~~cause the proposed development to disrupt lands within an RP or RC district or would preclude or reduce the transfer of allowable density from~~ **an RP district, or HBA protection area, RC zoned areas of the property to non RP or HBA protection RC zoned areas;**

(2) The proposed development **with the dimensional modification does not have a greater negative impact** ~~will result in greater protection of the~~ **on natural resources identified on the site** than would occur without the dimensional modification; and

(3) In the case of a planned development, the criteria of LOC 50.07.007.4.d, Authorization, have been met.

**ii. Except as provided in subsections 4.b.iii and iv of this section, an application for development subject to environmental review may transfer floor area from an RP district or HBA protection area (sending area) to adjacent nonresource zoned lands in the same ownership (receiving area), provided the transfer shall not exceed 25% of the floor area otherwise permitted in the receiving area, the sending area shall no longer be eligible for future development, and the applicant shall execute and record a covenant running with the land that effects this transfer and restriction in a form approved by the City Manager.**

iii. An application to vary from standards other than the dimensional **or floor area** standards above, or that does not comply with the criteria contained in subsection 4.b.i of this section, may qualify for a variance under LOC Article 50.08, Variances, or other applicable article or section for modification or exception.

~~iii.~~ **iv.** Where the **development** request is not **otherwise** part of an application subject to the notice requirements of a minor or major development **review, the request for modification to standards shall be reviewed as a minor development** and the proposed development ~~would be located within 20 ft. of an existing primary structure on abutting property, written approval from the abutting property owner shall be required.~~

**c. Density Transfer**

Lot density transfer shall be permitted **for land divisions** on residentially zoned lands subject to an ~~RC or~~ RP district pursuant to this section, **and on lands with an HBA protection area pursuant to this section and LOC 50.05.010.7.**

**i. Density Transfer Ratios**

(1) Lot density (the number of lots otherwise allowable pursuant to the underlying zoning designation but for the RP district) may be transferred from RP district lands to **adjacent** ~~contiguous~~-nonresource zoned lands in the same ownership at a 1:1 ratio.

(2) Lot density (the number of lots otherwise allowable pursuant to the underlying zoning designation ~~but for the RC protection area~~) may be transferred from **HBA protection area lands** ~~RC district lands~~ to **adjacent** ~~contiguous~~-non-**protected** ~~RC~~ lands ~~in~~ ~~on~~ the same ownership at a 1:1 ratio for the portion of the ~~land~~ ~~RC district~~ that is to remain undeveloped (the **HBA** protection area).

**ii. No Future Subdivision or Partition**

When an applicant chooses to transfer lot density **or floor area** from one area ~~or parcel~~ to another ~~contiguous area or parcel~~, the area ~~or parcel~~ that is protected shall no longer be eligible for future **land division** ~~partition or subdivision~~ **or additional floor area**. In order to put future property owners on notice, the applicant shall execute and record a covenant running with the land that effects this restriction in a form approved by the City Manager.

**d. Construction Standards**

An owner shall submit a construction plan and narrative to the City Manager prior to any grading, clearing, or construction on a development site that contains an RP or RC district, **or where the owner received development review approval under LOC 50.05.010.7 Habitat Benefit Areas**. The construction plan and narrative shall demonstrate that the following standards will be met:

**i.** RC protection areas or RC districts where no protection areas have been approved, ~~and~~ RP districts, **and protection areas within an approved HBA development** shall be protected during construction with either:

(1) A minimum six-ft. tall chain link fencing secured with a minimum of six-ft. tall steel posts. The fencing shall be in place and maintained for the duration of construction. In addition, temporary signage shall be placed on the fencing which shall clearly identify the resource district and shall state the penalty for violations of this section: or

(2) Such alternative method to subsection 4.d.i(1) of this section that is approved by the City Manager to demarcate and protect the RCPA or RC/RP district from the adverse effects of construction activity upon the resources.

\*\*\*

[Cross-Reference: Mitigation and Avoidance Review Requirements of LOC 50.05.010.4.e through 50.05.010.4.g.]

**e. Mitigation; Purpose**

Mitigation is a way of repairing or compensating for adverse impacts to the functions and values of a natural resource caused by a development. Mitigation may consist of resource area creation, restoration, or enhancement. Some examples of mitigation actions are construction of new wetlands to replace an existing wetland that has been filled, replanting trees, and restoring stream side vegetation where it is disturbed.

This subsection 4.e through LOC 50.05.010.4.g recognize that true replacement of mature or complex natural resource systems is difficult and can take many years. Mitigation is discouraged by first requiring that avoidance of development siting within the resource be explored. Then, if that is not possible, actions should be taken to minimize damage to the resource. Mitigation ratios are established according to the type of mitigation proposed and the value of the resource. Maintenance and monitoring of the mitigation measures are also required.

**f. Progressive Mitigation Steps Required**

The approving authority shall permit development allowable within an RC protection area or RP district only if it finds that the following progressive steps have been met:

**i. Step #1 Avoidance**

The applicant shall endeavor to avoid detrimental impacts on the resource altogether by providing alternative site plans along with the development proposal demonstrating that alternative designs have been explored. If disturbance of a resource is proposed, the applicant shall first demonstrate that intrusion into the resource district cannot be avoided by a reduction in the size or configuration of the proposed development or by changes in the design that would avoid adverse effects on the resource while still allowing development of the property.

**ii. Step #2 Minimization**

If the applicant has endeavored to avoid detrimental impacts on the resource according to subsection 4.f.i of this section, and the reviewing authority finds that detrimental impacts cannot be avoided, then the applicant shall minimize impacts by demonstrating that:

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- (1) Alternative and significantly different site plans and development locations on the subject site have been considered, and that the alternative chosen is the least environmentally damaging; and
- (2) When mitigation is proposed, there will be no net loss of resource area, functions, or values as a result of development actions pursuant to LOC 50.05.010.4.g.v, Stream Corridors and Tree Groves, or LOC 50.05.010.4.g.vi, Wetlands, whichever is applicable.

### g. Mitigation Requirements

#### i. Mitigation Plan

When mitigation is proposed or required as part of a development application, or when required or imposed as a result of a violation of this Code, the applicant shall provide a mitigation plan prepared by a qualified professional that:

- (1) For proposed development, demonstrates compliance with LOC 50.05.010.4.f and this subsection 4.g. For mitigation of violations of this Code, demonstrates compliance with LOC 50.05.010.4.f.ii(2).
- (2) Includes a maintenance and monitoring plan. The maintenance and monitoring plan shall include task timelines and quantitative goals to ensure the viability of the mitigation over time. As part of the monitoring plan, the applicant or other legally responsible agent shall provide an annual report to the City Manager ~~on October 31 of each year~~ for a one- to three-year period, as determined by the reviewing authority. The report shall be prepared by a qualified professional and shall document site conditions with narrative and pictures.
- (3) Provisions for regular maintenance and periodic monitoring of the mitigation site, which shall be subject to review and approval by the City Manager.

Failure to comply with an approved mitigation plan shall be deemed a violation of this Code and a public nuisance and may be enforced pursuant to LOC Articles 34.04, Civil Violations, and 34.08, Nuisances.

#### ii. Required Permits

If a ~~Department~~ Division of State Lands (DSL) wetland permit, Army Corps of Engineers, or other state or federal permit is also required, the City shall not issue a building permit until all applicable state and federal wetland permit approvals have been granted.

**iii. Mitigation Complete Prior to Further Action**

Mitigation shall be completed prior to a final inspection, issuance of a final occupancy permit, or acceptance of a public improvement.

**iv. ~~On-Site~~ Location of Mitigation**

On-site mitigation is required, where possible, taking into consideration the existing natural and human-made features of a site. If the reviewing authority finds that on-site mitigation is not possible, then off-site mitigation shall be permitted according to the following priorities, **provided the applicant has the right to plant the area, and the planted area shall be preserved by a conservation easement, a deed restriction, such as a restrictive covenant, or other legal instrument acceptable to the City Manager:**

- (1) Within the same drainage system (as defined by the Lake Oswego Surface Water Management Plan or the Winterowd Natural Resources Inventory) and within the City limits; or
- (2) Outside of the drainage system, but inside the City limits; or
- (3) Outside the drainage system and City limits, but within the Lake Oswego Urban Services Boundary.

**v. Stream Corridors and Tree Groves**

When mitigation is proposed, the reviewing authority shall require a minimum mitigation ratio (area of resource district created or enhanced to area of resource district lost) of 1:1 for stream corridor and tree grove resources.

**vi. Wetlands**

When wetland mitigation is proposed within an RP ~~Class I or Class II~~ district, the reviewing authority shall require minimum mitigation ratios (area of wetland created or enhanced to area of wetland lost) as follows:

- (1) Wetlands Creation or Restoration – 2:1 ratio;
- (2) Wetlands Enhancement – 3:1 ratio;
- (3) Wetlands Creation, Restoration or Enhancement – 5:1 ratio where the wetland is a Class I RP district and is forested or contains a sensitive, threatened or endangered species as identified in an adopted ESEE inventory.

**vii. Vegetation Restoration**

Vegetation restoration shall be required to mitigate the loss of plant communities disturbed by development activities. ~~In-kind vegetation~~ **Vegetation** shall be required for all mitigation projects, including trees, shrubs, and ground cover plants, as identified on the ~~Lake Oswego Master~~ Plant List. The restoration plants ~~community chosen~~ shall **be selected to** recreate a diverse and healthy **plant community** environment which is compatible with the resource.

**viii. Planting Standards**

**(1) Required Plants and Plant Densities**

**(a) All trees, shrubs and ground cover planted for mitigation shall be native plants as defined by the Plant List.**

**(b) Native trees and shrubs are required to be planted at a rate of five trees and 25 shrubs per every 500 sq. ft. of disturbance area (calculated by dividing the number of sq. ft. of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, respectively. Fractional results shall be rounded to the nearest whole number; for example, if there will be 330 sq. ft. of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted).**

**(c) Bare ground must be planted or seeded with native grasses or herbs.**

**(2) Plant Size**

**Trees shall be at least one-half inch in caliper, measured at six inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs shall be in at least a one-gallon container or the equivalent in ball and burlap and shall be at least 12 in. in height.**

**(3) Plant Spacing**

**Trees shall be planted between eight and 12 ft. on-center and shrubs shall be planted between four and five ft. on center, or clustered in single species groups of no more than four plants, with each cluster planted between eight and 10 ft. on center. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.**

**(4) Plant Diversity**

**Shrubs shall consist of at least two different species. If 10 or more trees are planted, no more than 50% of the trees may be of the same genus.**

**(5) Timing of Plantings**

Except as approved by the City Manager, bare root trees shall be planted between December 1 and February 28, and potted plants between October 15 and April 30. The City Manager may approve a different planting schedule where the applicant has demonstrated that it will provide for the same or greater survival rate of tree and vegetation plantings.

**(6) Invasive Vegetation**

Invasive non-native or noxious vegetation shall be removed within the mitigation area prior to planting.

**(7) Tree and Shrub Survival**

Plantings shall be inspected and subject to review and approval by the City Manager according to the schedule approved with the mitigation plan. Plants that die during the monitoring period must be replaced in-kind to the extent necessary to meet the required survival rate specified by the mitigation plan.

**(8) Maintenance**

To enhance survival of the mitigation plantings, the following practices are required:

- (a) Mulch new plantings a minimum of three inches in depth and 18 in. in diameter to retain moisture and discourage weed growth.
- (b) Water new plantings one inch per week, between June 15th and October 15th, through the duration of the monitoring period.
- (c) Remove or control invasive or noxious vegetation throughout the maintenance period.

**ix.viii. ~~Initial Three-Year~~ Bonding Period**

**(1)** Except as provided in subsection 4.g.viii(4) of this section, the applicant or property owner of a development subject to an approved mitigation plan, **or a person who has a mitigation obligation as a result of a code violation, as applicable,** shall post a performance bond or a letter of credit to the City that is equal to 120% of the value of the improvements installed pursuant to the plan for **the duration of the required monitoring and maintenance period** ~~a three-year period~~. The bond shall be posted prior to the issuance of a building permit to ensure the success of mitigation improvements and the survival of plant materials.

**(2)** The performance bond or the letter of credit will be released by the City after three years upon receiving proof that the mitigation measures have been successfully implemented according to approved plans. Following release of the financial guarantee, the property owner(s) or other designated party (such as a homeowners association) shall remain responsible for maintenance of the resource.



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(3) If mitigation improvements fail during the bonding period and the responsible party does not replace said improvements after notification by the City, the bond shall be forfeited and shall be used by the City to correct the problem pursuant to the mitigation plan and the conditions of approval.

(4) Property owners of individual tax lots that are lots of record that are zoned for single-family residential use, are not large enough to be further divided, and were in existence prior to the date this section becomes effective shall be exempt from these bonding requirements.

**5. STANDARDS APPLICABLE TO RESOURCE CONSERVATION (RC) DISTRICTS AND HABITAT BENEFIT AREA (HBA) OVERLAY DISTRICTS**

---

**a. Resource Conservation (RC) ~~District~~ and Habitat Benefit Area (HBA) Environmental Review Standards; Applicability and Purpose**

In addition to compliance with LOC 50.05.010.4.b, Modifications to Dimensional Standards and Setbacks of the Underlying Zone, and LOC 50.05.010.4.c, Density Transfer, applicants for development that is subject to environmental review pursuant to LOC 50.05.010.2 on property containing an RC district, **and applicants for development on property containing Habitat Benefit Area (HBA) where development incentives apply pursuant to LOC 50.05.010.7** shall comply with the standards contained in LOC 50.05.010.5.b and 50.05.010.5.c in order to:

- i. Ensure that new development and alterations are compatible with and maintain the functions and values of resources within the RC district **or HBA, as applicable**; and
- ii. Limit the amount of disturbance allowed within the RC district **or HBA, as applicable**, while permitting reasonable development of property.

**b. RC and HBA District Protection Areas**

i. The applicant for a major or minor development permit on a property containing an RC district shall designate a minimum of ~~50%~~ **85%** of the RC district after delineation as the "RC protection area (**RCPA**)."

- (1) **The reviewing authority may approve a transfer of RC protection area from one RC district to another RC district under common ownership where the two RC districts are located within the same Resource Area as identified by the City of Lake Oswego 1994/95 Natural Resource Inventory and ESEE Analysis;**
- (2) **The reviewing authority may approve an RC protection area that expands the boundary of a delineated RC district where tree planting is proposed as part of a tree grove restoration project.**

The applicant for a development that does not otherwise require a major or minor development permit may designate a protection area as part of the application, but such application shall be processed as a minor development.

**II. The applicant for a development utilizing Habitat Benefit Areas (HBA) Incentives shall establish a protection area pursuant to the standards in LOC 50.05.010.7.**

**iii.** Except as otherwise provided in LOC 50.05.010.5.c, no development shall be permitted within the **RC protection area or HBA protection area** protection area. The **land area** outside of these **se areas** protection area may be fully developed pursuant to applicable regulations.

**iiiv.** Except as provided in subsection 5.b.iv of this section, the location of the **RC/HBA** protection area shall be based upon the following criteria:

- (1)** The protection area shall link to **abutting** ~~other RP districts, or~~ **abutting RC or RC/HBA protection area** lands ~~on the development site and on abutting properties,~~ if such lands are present;
- (2)** The trees having diameter at breast height (DBH) width greater than the median DBH within an RC district **or HBA** shall be included in the protection area;
- (3)** The location of the protection area shall be designed to protect development from blow-down hazards;
- (4)** The protection area shall protect steep slopes and resources close to water areas from potential erosion and water quality impacts;
- (5)** The protection area shall protect wildlife habitat and travel corridors;
- (6)** The protection area shall be designed to protect a contiguous canopy and a clustered configuration that does not fragment lands within an **RP or RC district, or an HBA protection area;**
- (7)** The protection area shall consist of viable plant and wildlife communities;
- (8)** The protection area shall maintain the scenic qualities of the site.

**iv.** It is recognized that all of the criteria listed in ~~subsection~~ **LOC 50.05.010.5.b.iii** of this ~~section~~ may not be applicable to every site. In some cases, the criteria may conflict on a given site. In such cases, the reviewing authority shall **prioritize criteria that protect health and safety (e.g., blow-down hazards, erosion prevention, water quality protection, etc.), and then** balance the **remaining** applicable criteria in order to protect the most environmentally significant portion of ~~the~~ **conservation lands**.~~RC district.~~

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**vi.** Once a protection area has been identified and protected pursuant to this section and approval becomes final, no future reduction in the RC/**HBA** protection area shall be permitted, unless the property owner files for a modification to the original permit and establishes a new protection area in compliance with subsection 5.b. **iv** of this section that is at least as large as the previously designated protection area or demonstrates that the protection area as originally designated has degraded through natural causes pursuant to LOC 50.07.004.8.a, RP/RC district overlay procedures.

**vii.** The City Manager shall note the establishment of a protection area **on the Sensitive Lands Map**, ~~in the SL Atlas~~, along with a reference to the application in which the protection area was created.

**viii.** In order to put future property owners and occupants on notice, the applicant shall execute **and record a notice of development restriction** ~~covenant~~ running with the land that references the protection area and the Planning Department application file in which the protection area was established.

### **c. RC District and HBA Protection Area Development Standards**

**i.** Except as provided in subsection 5.c.iii(8), Landscaping, of this section, a criterion applicable to the RC protection area shall apply to the entire RC district if no **RC** protection area has been established. **Within an HBA the criterion applies where an HBA protection area is established pursuant to LOC 50.05.010.7.**

**ii.** In addition to compliance with any other applicable regulations, the following development uses and activities on properties containing an RC district **or HBA protection area** are permitted within the RC district **or HBA protection area**, subject to the standards set forth in subsection 5.c.iii of this section:

- (1)** Streets, driveways, lake trams, and public transportation facilities;
- (2)** New structures, accessory structures, decks, parking areas, active use recreational facilities;
- (3)** Additions to existing structures and to nonconforming structures;
- (4)** Temporary construction activities;
- (5)** Passive use recreational facilities;
- (6)** Utilities;
- (7)** Resource enhancement projects;
- (8)** Landscaping, new and existing;

- (9) Tree removal; and
- (10) Limited hazardous materials storage.

**iii. Development Standards**

If the proposed types of development are permitted within the RC district or HBA protection area, the development activity, use or activity shall comply with the following standards, and the construction standards set forth in LOC 50.05.010.4.d:

**(1) Streets, Driveways, Lake Trams, and Public Transportation Facilities**

(a) Driveways shall be set back at least five ft. from, and shall not be placed through, an RC or HBA protection area unless there is no other practicable method of access to the buildable areas of property served by the driveway.

(b) Public or private streets, trams to access Oswego Lake, and public transportation facilities shall be set back at least five ft. from, and shall not be placed in or through, the protection area ~~an RCPA~~ unless:

(i) For public or private streets, there is no other practicable ~~practical~~ method of providing for access to buildable parcels.

(ii) For public transportation facilities, there is no other suitable location nearby for siting the public transportation facilities which would provide equal or greater public use of the public transportation facilities.

(iii) For trams to access Oswego Lake, there is no other practicable ~~practical~~ method of providing for access to Oswego Lake.

(iv) For regional, community connector, or local access trails (such as those designated in the City's or another agency's Transportation System Plan ~~on the City's Trails and Pathway Master Plan~~), the trail width is no greater than 12 ft. ~~(as determined by the standards in the City's Trails and Pathway Master Plan)~~. Dimensions for other trails shall be determined using the progressive mitigation steps in LOC 50.05.010.4.f. See also, LOC 50.05.010.5.c.iii.5 Passive Use Recreational Facilities.

(c) If allowed within the protection area and five-ft. setback pursuant to this criterion, the applicant shall comply with the following requirements:

(i) Streets, private streets, driveways and bridges shall be the minimum width necessary while also allowing for safe passage of vehicles and/or pedestrians;

(ii) The amount of disturbance for driveways shall be minimized through use of shared access for abutting lots and access through easements for adjacent lots;

(iii) If applicable, the applicant shall plan for future extension of shared access, access easements, or private streets to access potential new building sites in order to avoid subsequent encroachments into the protection area and five-ft. setback area;

(iv) The applicant shall mitigate for loss of protection area by increasing the size of the protection area, where feasible, to compensate for the area of the RC or HBA protection area used for the public or private street, driveway, or public transportation facility, or by complying with the mitigation requirements in LOC 50.05.010.4.e through 50.05.010.4.g.

**(2) New Structures, Accessory Structures, Decks, Parking Areas, Active Use Recreational Facilities**

New structures, parking areas, and active use recreational facilities shall be set back at least five ft. from the protection area boundary in order to protect tree roots. Accessory structures, decks, and similar structures meeting the criteria of LOC 50.03.004.2.b.i(1) through (3), Setback Reduction for Accessory Structures, and LOC 50.04.003.8.b, Patios and Decks, are permitted within the five-ft. setback area so long as they are placed no closer than three ft. from the protection area boundary.

**(3) Additions to Existing Structures and to Nonconforming Structures**

Additions to existing structures or to nonconforming structures **that are not otherwise exempt under LOC 50.05.010.2** are permitted provided the addition does not expand the lot coverage in the resource area.

**(4) Temporary Construction Activities**

A temporary construction zone, not greater than ten ft. wide, is allowed around the footprint of any structure when necessary for tools, scaffolds, etc. related to the construction, maintenance, or repair of the structure. No storage of materials or supplies may occur within this zone.

**(5) Passive Use Recreational Facilities in Protection Area**

Passive use recreational facilities, including soft surface trails and pedestrian bridges, may be located within the RC or HBA protection area. If construction of such facilities disturbs any adjacent land within an RC or HBA protection area, the

disturbed area shall be restored and revegetated with plants identified on the Plant List as appropriate for resource landscaping.

**(6) Utilities**

Unless exempted by subsection 2.c.ii of this section (normal or emergency replacement of a utility), public or private utilities shall not be placed in or through the RC or HBA protection area unless tunneling under a resource where tree roots can be avoided and the functions and values of a resource will be maintained or there is no other practicable alternative. If allowed to be located within an RC or HBA protection area, the applicant shall restore and revegetate the disturbed area with plants identified on the Plant List and mitigation shall be required pursuant to subsections 4.e through 4.g of this section. When applying Step 1 (avoidance) of the mitigation process:

- (a)** Sanitary sewer, water, power, gas, telecommunications, cable and storm drain lines shall be maintained in public rights-of-way and routed around significant resources rather than through a resource wherever possible;
- (b)** Drainage patterns shall not be altered in the resource area, or if altered, shall be designed and maintained so as not to adversely impact the functions and values of the resource.

**(7) Resource Enhancement Projects**

Resource enhancement projects shall remove only invasive vegetation, and shall plant only vegetation within the RC district or HBA protection area, if one has been established, listed on the Plant List. Any pathways or structures proposed as part of a resource enhancement project shall retain existing trees.

**(8) Landscaping**

- (a)** Plants. Plants used for landscaping within a protection area shall:
  - (i)** Be well-suited to local soils and growing conditions; and
  - (ii)** Not be dependent on long-term irrigation, which can increase erosion and sedimentation (irrigation necessary for initial establishment of the plants is not considered long-term irrigation).
- (b)** The City shall maintain a Plant List on file in the Planning Division listing species that comply with this subsection. If a plant is listed in the applicable section of the Plant List for resource landscaping, it shall be presumed to comply with subsection 5.c.iii(7) of this section, Resource Enhancement

Projects. The Plant List is not intended to be an exclusive listing of allowable landscaping materials, but shall be used as a guideline and may be updated by the City Manager from time to time as new plants in compliance with this section are discovered or become available. An applicant may utilize a plant not on the Plant List as long as it complies with the criteria in this section.

(c) Removal of vegetation identified on the Plant List as appropriate for resource landscaping is not permitted from a protection area, except as otherwise allowed by this section.

(d) New landscaping shall not include any invasive plants on the City's Plant List.

(e) Existing Landscaping: Nonconforming formal landscaped area including ornamental gardens and lawns located within a protection area and in existence at the time of the adoption of these standards may be maintained, altered or modified pursuant to LOC 50.01.006.1, Nonconforming Use, Structure Defined; Rights Granted. However, a nonconforming landscaped area may not be expanded pursuant to LOC 50.01.006.5, Expansion of Nonconforming Industrial or Commercial Uses or Structures.

**[Cross-Reference: LOC 50.05.010.3.g.viii. Mitigation Planting Standards.]**

**(9) Tree Removal**

Tree removal on property within the RC district **or HBA protection area** shall be subject to the following criteria:

(a) Tree removal in an RC district that has ~~no~~ ~~not~~ established RC protection area shall be subject to a Dead Tree Removal Permit (LOC 55.02.042.3) or Hazard Tree Removal Permit (LOC 55.02.042.4). Tree removal pursuant to LOC 55.02.080 (Type II) is prohibited in an RC district prior to designation of the protection area.

(b) Tree removal within a designated RC **or HBA** protection area shall be subject to a Dead Tree Removal Permit (LOC 55.02.042(3)) or Hazard Tree Removal Permit (LOC 55.02.042(4)). Tree removal for development permitted pursuant to this section, excepting subsection 5.c.iii(8), and this subsection, within a protection area is permitted pursuant to LOC 55.02.080 (Type II).

(c) Tree removal outside of the protection area shall comply with LOC Chapter 55.

(d) These limitations are not intended to prohibit removal of trees in an emergency pursuant to LOC 55.02.042(5), Emergency Permit.

[**Cross-Reference:** Invasive Trees may be removed from RC districts under the exemption in LOC 50.05.010.2.c.v ("other development that does not remove any native vegetation ... within the RP or RC district" is exempt from the ~~sensitive lands~~ **Sensitive Lands** section). Accordingly, there is no need to add "Invasive Trees" to the listed types of permits that allow removal of trees in RC districts.]

**(10) Limited Hazardous Materials Storage**

Uncontained hazardous material, as defined by the Department of Environment Quality, or development providing for the storage or processing of materials that are flammable, explosive, toxic, or that could be injurious to human, animal, or plant life are prohibited in the **RC district and HBA protection area.** ~~Resource Conservation district.~~

Exceptions:

- (a) Materials that are typically used for household purposes and in quantities which are normal for household use.
- (b) Materials that are stored in a boathouse and are typically used for recreational boat operation and maintenance.

**6. STANDARDS APPLICABLE TO RP DISTRICTS**

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**a. Resource Protection (RP) District Environmental Review Standards; Applicability and Purpose**

In addition to compliance with LOC 50.07.004.8.c and 50.07.004.8.d and LOC 50.05.010.4.b and 50.05.010.4.c, applicants for development that is subject to environmental review on property containing an RP district shall comply with the standards contained in LOC 50.05.010.6.b through 50.05.010.6.d, in order to:

- i. Prohibit new development within an RP district following delineation of the resource or resources, except as provided in this section. In the event that development is allowed within an RP district, the applicant shall mitigate for the loss of or damage to the RP resource pursuant to LOC 50.05.010.4.e through 50.05.010.4.g;
- ii. Ensure that new development and alterations are compatible with and maintain the total land area and the functions and values of resources designated as RP;
- iii. Allow for development opportunities for one single-family home, pursuant to **LOC 50.05.010.6.d and** the applicable mitigation criteria of LOC 50.05.010.4.e through 50.05.010.4.g.



**b. RP District and Construction Setback Requirements**

i. The RP district shall include the delineated stream or wetland and a protected riparian area.

(1) The protected riparian area contributes to the functions and values of the stream or wetland, including: shelter, food, travel, and nesting needs of wildlife; aesthetics; surface water quality; slope stability; and flood storage.

(2) The entire RP district including the stream or wetland and its protected riparian area shall be shown on the delineation map.

**(3) The City Manager may use existing aerial photography, remote sensing, and topographic data, subject to field verification, to approve an RP district delineation without requiring a separate survey of the resource.**

ii. The following areas **established pursuant to LOC 50.07.004.8.d and detailed in Table 50.07.004-7** are protected riparian areas. They are measured outward from the edge of a delineated stream corridor or wetland and included in the RP district. **The minimum dimension below (25 or 30 feet) is the RP district standard, except where the Sensitive Lands Map identifies a wider protection area the 50-foot standards applies:**

(1) Class I Wetlands and Class II Wetlands abutting Class I Stream Corridors – 30 ft. or 50 ft.

(2) Other Class II Wetlands – 25 ft. or 50 ft.

(3) Class I Stream Corridors – 30 ft. or 50 ft.

(4) Class II Stream Corridors – 25 ft. or 50 ft.

**iii. Reduction of RP District**

The reviewing authority may allow the protected riparian area to be reduced when the applicant shows that:

(1) The proposed development complies with LOC 50.05.010.4.f, Progressive Mitigation Required; and

(2) The reduction in protected riparian area is not solely for the purpose of maximizing development of the site; and

**(3)** Development abuts a Class I or II Resource:

**(a)** The reviewing authority may allow portions of the protected riparian area abutting a Class I resource to be reduced to a minimum of 15 ft. if:

**(i)** A qualified professional demonstrates that such an adjustment will not reduce the functions and values of the resource as a whole; and

**(ii)** The width is increased in other areas to maintain a 30 ft. average width.

**(b)** The reviewing authority may allow portions of the protected riparian area abutting a Class II resource to be reduced to a minimum of ten ft. if:

**(i)** A qualified professional demonstrates that such an adjustment will not reduce the functions and values of the resource as a whole; and

**(ii)** The width is increased in other areas to maintain a 25 ft. average width;

**(4)** The reviewing authority may permit a protected riparian area that is less than the average minimums required in the subsections above, when a qualified professional shows that such an adjustment will not damage the system as a whole, and one of the following conditions exists:

**(a)** The presence of an existing topographic feature or human-made development physically precludes establishment of the minimum protected riparian area required; or

**(b)** The size or configuration of the subject parcel is insufficient to provide the minimum protected riparian area required.

**iv. Construction Setbacks**

A construction setback is required from the RP district by LOC 50.05.010.6.c, only for the following:

**(1)** New structures, parking areas, active use recreation facilities, streets and driveways – ten ft.

**(2)** Accessory structures, decks, and similar outdoor facilities meeting the criteria of LOC 50.03.004.2.b.i(1) through (3), Setback Reduction for Accessory Structures, and LOC 50.04.003.8.b, Patios and Decks – three ft.

**c. RP District Development Standards**

i. In addition to compliance with any other applicable regulations, and subject to the requirement for compliance with subsection 6.c.iii of this section, the following development, use or activity on properties containing an RP district are permitted within the RP district, subject to the standards set forth in subsection 6.c.ii of this section:

- (1) Landscaping;
- (2) Tree removal;
- (3) Utilities;
- (4) Streets, driveways, lake trams and public transportation facilities;
- (5) Resource enhancement projects;
- (6) Structures;
- (7) Parking areas;
- (8) Active use recreation facilities;
- (9) Hard surfaced pathways; and
- (10) Limited hazardous materials storage.

ii. Except as provided in subsection 6.d of this section, Exceptions Where the RP District Prohibits All Reasonable Development Opportunities, all development listed in subsection 6.c.i of this section is subject to environmental review and shall comply with the following standards:

**(1) Specific Development Standards**

**(a) Landscaping**

The delineated RP district shall maintain the natural function and character of the resource area, which provides food and shelter for native wildlife. Landscaping within these areas shall therefore comply with the following criteria:

- (i) Plants: Plants used for landscaping within the RP district shall:
  - (A) Be well-suited to local soils and growing conditions; and

**(B)** Not be dependent on long-term irrigation, which can increase erosion and sedimentation (irrigation necessary for initial establishment of the plants is not considered long-term irrigation).

**(ii)** The City shall maintain a Plant List listing species that comply with the criteria in this section. If a plant is listed on the Plant List as appropriate for resource landscaping, it shall be presumed to comply with this section. The Plant List is not intended to be an exclusive listing of allowable landscaping materials, but shall be used as a guideline and may be updated by the City Manager from time to time as new plants in compliance with this section are discovered or become available. An applicant may utilize a plant not on the Plant List as long as it complies with the criteria in this section.

**(iii)** Removal of vegetation identified on the Plant List as appropriate for resource landscaping is not permitted from an RP district except as otherwise allowed in this section.

**(iv)** New landscaping within the RP district shall not include any invasive plants on the City's Plant List.

**(v)** Existing Landscaping: Nonconforming formal landscaped areas including ornamental gardens and lawns located within an RP district and in existence at the time of the adoption of these standards may be maintained, altered or modified pursuant to LOC 50.01.006.1, Nonconforming Use, Structure Defined; Rights Granted. However, a nonconforming landscaped area may not be expanded pursuant to LOC 50.01.006.5, Expansion of Nonconforming Industrial or Commercial Uses or Structures.

**(b) Tree Removal**

Tree removal within an RP district shall be subject to the following criteria:

**(i)** Type I and Type II tree removal permits, in accordance with LOC 55.02.042, Permit Classifications and Review Procedures, for development purposes, for those limited development activities allowed and approved by this section.

**(ii)** Type II tree removal permit, in accordance with LOC 55.02.042 for landscaping purposes, in conjunction and consistent with a resource enhancement project.

(iii) Hazard tree removal permit, in accordance with LOC 55.02.042.4, except any portion of the tree that is not likely to be hazardous to persons or property shall be retained for wildlife habitat and natural resources.

(iv) Emergency tree removal permit, in accordance with LOC 55.02.042.5, Emergency Permit.

(v) Verification permit, in accordance with LOC 55.02.042.6.

[**Cross-Reference:** Invasive Trees may be removed from RP districts under the exemption in LOC 50.05.010.2.c.v ("other development that does not remove any native vegetation ... within the RP or RC district" is exempt from the ~~sensitive lands~~ **Sensitive Lands** section). Accordingly, there is no need to add "Invasive Trees" to the listed types of permits that allow removal of trees in RP districts.]

**(c) Utilities**

Placement/New Construction: Public or private utilities shall not be placed within an RP district unless tunneling under a resource will not cause any adverse effect upon the resource and the functions and values of a resource will be maintained, or there is no other practicable alternative. If a public or private utility is allowed within an RP district, mitigation shall be required pursuant to LOC 50.05.010.4.e through 50.05.010.4.g. When applying the mitigation process to this section:

(i) Step #1 Avoidance. Sanitary sewer, water, power, gas, cable, telecommunications and storm drain lines shall be maintained in public rights-of-way and routed around significant resources rather than through a resource wherever possible, except that tunneling under a resource shall be permitted where tunneling will not cause any adverse effect upon the resource or tree roots, and the functions and values of a resource will be maintained.

(ii) Step #2 Minimization. Sanitary sewer, water, storm drain line and other subsurface crossings shall be made within 30° of perpendicular to the stream where practicable~~practical~~ or feasible.

**(d) Streets, Driveways, Lake Trams and Public Transportation Facilities**

(i) Private streets shall not be placed through an RP district unless there is no other practicable method of access to buildable parcels.

(ii) Driveways shall not be placed through an RP district unless there is no other practicable method of access to the buildable areas of property served by the driveway. The amount of disturbance for driveways in the

protection area shall be minimized through use of shared access for abutting lots and access through easements for adjacent lots.

**(iii)** Trams to access Oswego Lake shall not be placed through an RP district unless there is no other practicable method of access to Oswego Lake.

**(iv)** Public streets and public transportation facilities shall not be placed in or through an RP district unless:

**(A)** For public streets, there is no other practicable ~~practical~~ method of providing for access to buildable parcels.

**(B)** For public transportation facilities (other than regional trails), there is no other suitable location nearby for siting the public transportation facilities which would provide equal or greater public use of the public transportation facilities.

**(C)** For regional, community connector, or local access trails (such as those designated in the City's or another agency's Transportation System Plan ~~(designated on the City's Trails and Pathway Plan)~~, they may be located within an RP district provided the trail width shall be no greater than 12 ft. wide (as determined by the standards in the City's Trails and Pathway Plan). Dimensions for other trails shall be determined using the progressive mitigation steps in LOC 50.05.010.4.f. See also, LOC 50.05.010.5.c.iii.5 Passive Use Recreational Facilities.

**(v)** If allowed pursuant to subsection 6.c.ii(1)(d) of this section, the applicant shall comply with the following criteria:

**(A)** Streets, driveways and bridges shall be the minimum width necessary to protect resources within the RP district while also allowing for safe passage of vehicles and/or pedestrians;

**(B)** Stream and/or wetlands crossings shall be avoided. Where unavoidable, the applicant shall use bridges or arched culverts that are wildlife friendly and do not disturb the natural stream bed. The number of stream or wetland crossings for driveways shall be minimized through use of shared access for abutting lots and access through easements for adjacent lots;

**(C)** If applicable, the applicant shall plan for future extension of shared access, access easement, or private streets to access

potential new building sites in order to avoid subsequent encroachments into the RP district;

**(D)** The applicant shall mitigate for loss of any portion of an RP district pursuant to LOC 50.05.010.4.e through 50.05.010.4.g.

**(e) Structures, Parking Areas, Pathways, and Driveways**

**(i) Construction Setbacks**

**(A)** Except as provided in subsection 6.c.ii(1)(d) of this section, structures, parking areas, active use recreation facilities, hard surfaced pathways, streets and driveways shall be set back at least ten ft. from an RP district to prevent construction impacts to the RP district.

**(B)** In addition to complying with other applicable standards, accessory structures, patios, decks, and similar outdoor facilities shall be set back three ft. from an RP district.

**(C)** Passive use recreation facilities, such as soft surface trails and pedestrian bridges, may be located within the RP district. Any disturbed land area shall be restored with plants as described on the Plant List.

**(f) Resource Enhancement Projects**

Resource enhancement projects such as bank stabilization, restoration plantings, in-channel habitat improvements, and similar projects which propose to improve or maintain the quality of a natural resource within RP districts shall be approved if the applicant demonstrates that all of the following criteria are met:

**(i)** The project will cause no permanent degradation, or loss of natural features in the RP district; and

**(ii)** There will be improvement in the quality of at least one function or value of the resource; and

**(iii)** Only vegetation described in the Plant List as appropriate for resource landscaping shall be planted. For the purpose of this subsection, "resource enhancement project" does not include required mitigation pursuant to LOC 50.05.010.4.e through 50.05.010.4.g.

**(g) Limited Hazardous Materials Storage**

Hazardous material, as defined by the Department of Environment Quality, or development providing for the storage or processing of materials that are buoyant, flammable, explosive, toxic, or that could be injurious to human, animal, or plant life are prohibited in the RP district.

Exceptions:

- (i)** Materials that are typically used for household purposes and in quantities which are normal for household use.
- (ii)** Materials that are stored in a boathouse and are typically used for recreational boat operation and maintenance.

**(2) General Development Standards**

In carrying out the permitted development activity, the applicant shall also comply with the following general development standards, if applicable to the proposed development, and the construction standards set forth in LOC 50.05.010.4.d:

**(a) Resource Alterations**

**(i)** Streams shall not be impounded or diverted from their natural channels unless the applicant demonstrates:

**(A)** The diversion or impoundment will cause minimum degradation or loss of natural features in the stream corridor, and

**(B)** The diversion will not cause erosion or otherwise cause damage downstream of the development site, and at least one of the following criteria are met:

**(1)** A diversion would return a previously altered stream to its original location,

**(2)** A stream channel occupies all or most of a legally created lot, or

**(3)** An impoundment is designed to reduce flooding or improve water quality.

**(ii)** A wetland shall not be impounded or the hydrology of the wetland modified through such activities as draining the resource or enlargement of the resource to create a pond, unless it can be demonstrated that the



criteria for allowing resource enhancement in subsection 6.c.ii(1)(f) of this section have been met.

**iii. Land Divisions and Lot Line Adjustments**

The following standards apply to properties containing an RP district for applications for land divisions including partitions, and subdivisions, ~~and planned developments (PDs)~~, and to lot line adjustments:

**(1) Except where the creation of a lot is permitted under LOC 50.05.010.6.d, ~~A~~** all new lots ~~or reconfigured lots~~ proposed on lands that include an RP district shall have designated sites for buildings that are located outside of the RP district. A ~~land lot~~ division or lot line adjustment shall not create a lot that would necessitate, ~~due to the presence of RP or RC resources on the created lot,~~ an exception ~~to under~~ LOC 50.05.010.6.d in order to site a dwelling upon the proposed lot.

**(2) Exception:** This standard shall not apply to lots established as open space tracts, for transfer to a public agency or private trustee to manage as a natural area, or ~~or~~ where the entire lot is included in a conservation easement that prohibits development on the site, ~~or where an RP district prohibits all reasonable development on a lot pursuant to LOC 50.05.010.6.d.~~

**(3)** Permanent signage is required in planned developments and subdivisions to identify the RP district where any common open space protects an inventoried natural resource through conditions of approval. The signage shall be installed before any occupancy permit is issued. Such signage shall be reviewed as part of the development review process, and shall meet the standards of LOC Chapter 47.

**d. Exceptions Where the RP District Prohibits All Reasonable Development Opportunities**

i. When a delineated RP district occupies a lot in any residential district, the property owner shall be permitted development on the parcel of a single-family ~~dwelling home or the equivalent; “equivalent” shall be one or more dwellings which in total do not exceed the maximum lot coverage and floor area allowed for one dwelling based on the minimum lot area of the underlying zone. In approving more than one dwelling the reviewing body shall find that the avoid, minimize, mitigate requirements of this section are met, and the development will have no greater impact to water quality, slope stability, erosion, or wildlife habitat than would occur with one dwelling constructed with the maximum allowed floor area based on the minimum lot area of the underlying zone.~~ All other applicable City codes and development standards shall be complied with, and the mitigation criteria of LOC 50.05.010.4.e through 50.05.010.4.g shall also be applicable.

- ii. A lot from which density has been or may be transferred to another area in contiguous ownership shall not be eligible for this exception.

[Cross-Reference: Lot created by land division: LOC 50.05.010.6.c.iii.]

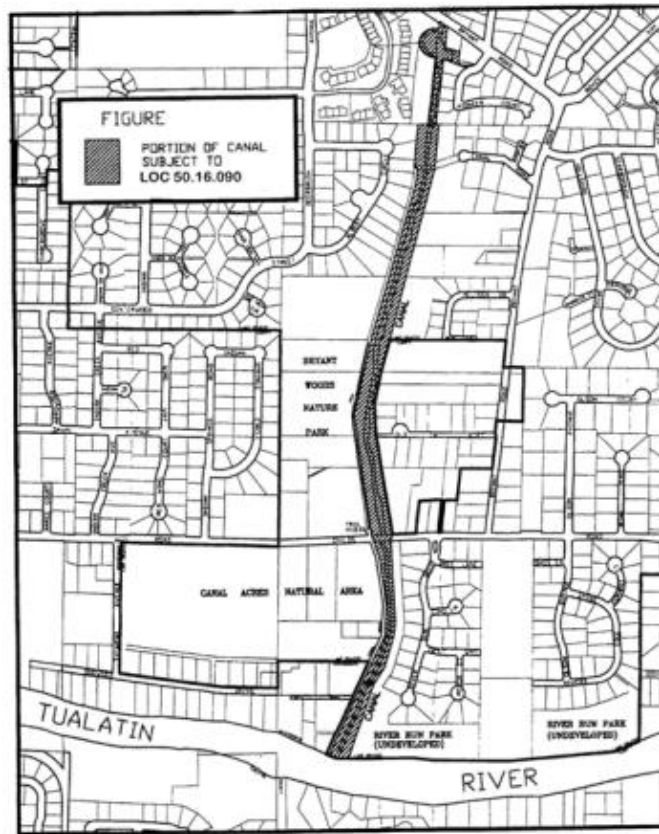
**e. Special Standards for the Oswego Canal**

**i. Purpose**

The Oswego Canal was originally constructed and continues to be used for conveying water from the Tualatin River to Oswego Lake for the purpose of enhancing and maintaining the lake. Although originally artificial, certain portions of the Oswego Canal have acquired the characteristics of an RP Class I and Class II stream corridor. The canal provides a source of water to Oswego Lake for the purposes of recreation, navigation, scenic value, irrigation, maintenance and enhancement of water quality and to produce hydroelectric power. It is also an important element of flood and stormwater control for Oswego Lake and surrounding areas and it serves as the route for a sanitary sewer interceptor which is necessary to provide sewer service to several areas of Lake Oswego. This section is applicable to the portions of Oswego Canal described as beginning immediately south of the Bryant Road bridge and extending to the Tualatin River as illustrated by Figure 50.05.010-A: Oswego Canal. These regulations are intended to preserve the community-wide benefits of the natural resource functions and values of the canal, but are not intended:

- (1) To prevent the Lake Oswego Corporation from exercising its water rights to ensure an unimpeded supply of water to Oswego Lake;
- (2) To prevent the Lake Corporation from undertaking necessary management and maintenance activities to ensure water quality of the canal or Oswego Lake; or

**Figure 50.05.010-A: Oswego Canal (See Official Zoning Map for Boundary)**



**(3)** To prevent the City of Lake Oswego or the Lake Corporation from repairing, maintaining or making necessary improvements to essential public facilities and flood management measures within the canal per LOC 50.05.011, Flood Management Area, applicable Federal Emergency Management Association (FEMA) regulations, and any other City codes or standards that are applicable.

**ii. Exempt Activities**

The following activities within the Oswego Canal Stream Corridor are exempt from the requirements of this section when undertaken by the City of Lake Oswego or the Lake Corporation:

- (1)** Operation of the Oswego Canal headgate, including variation of water flow rates and emergency or routine maintenance and repairs of the headgate, approaches to the headgate, associated banks and channel including riprapped areas, reinforcement areas, gabions and other features;
- (2)** Emergency and routine removal of fallen trees, siltation, slides and other debris from the channel and banks of the canal and protected riparian areas as needed to ensure a continuous flow of water to Oswego Lake and to prevent flood damage;

- (3) Treatment of waters or flows of water for water quality purposes, and the control or eradication of aquatic weeds and similar threats to the aquatic environment of Oswego Lake;
- (4) Emergency and routine repair and maintenance of failing or collapsed sections of the canal bank or protected riparian areas, including removal of contributing vegetation; and
- (5) Maintenance, major repair of the Oswego Canal sanitary sewer interceptor and any service laterals connecting to the sewer.

**iii. Activities Approved Pursuant to a Maintenance and Management Plan**

Activities other than those described as exempt above, or incidental thereto, shall be reviewed as a minor development when proposed by the City of Lake Oswego or the Lake Corporation and when as part of an approved maintenance and management plan. Activities approved pursuant to a maintenance and management plan are subject to the minor development review criteria of LOC 50.07.003.14.d.ii and any other City codes or standards that are applicable. These projects are exempt from the RP district requirements.

**iv. Environmental Mitigation Required**

Any effects of the above activities in subsection 6.e.iii of this section which impact the canal's stream corridor functions and values as determined by the adopted ESEE analysis, when conducted as part of an approved maintenance and management plan, shall be mitigated pursuant to a plan approved by the reviewing authority. The mitigation plan shall be appropriate to the scale of disturbance, conform to the Oregon ~~Department~~ <sup>Division</sup> of State Lands and the U.S. Army Corps of Engineers requirements and shall also, to the extent ~~practicable~~ <sup>practical</sup>, replace plant communities and wildlife habitat disturbed by the above activities.

**v. Boathouses and Docks**

~~New~~ Boathouses and docks shall not be placed within the portions of the Oswego Canal RP district as described above and illustrated by Figure 50.05.010-A: Oswego Canal.

**Replacement of an existing lawfully constructed boathouse or dock within the current footprint of the structure is allowed pursuant to this section and other applicable code requirements.**

## 7. HABITAT BENEFIT AREAS (HBA) INCENTIVES

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### a. Purpose

- i. This section provides incentives for property owners to use Habitat-Friendly Development practices.
- ii. The purpose of this section is to allow and encourage Habitat-Friendly Development, which is a method of site design and development that protects, enhances, or restores significant riparian or upland wildlife habitat.

### b. Applicability

Only properties meeting the following criteria may apply for land division approval using Habitat-Friendly Development Incentives:

- i. Habitat Benefit Areas. Properties designated Habitat Benefit Area (HBA) and proposed for development.
- ii. Other Properties. Properties that are not designated HBA may be approved for development under LOC 50.05.010.7 where the property contains more than 50% tree canopy cover, is proposed to be subdivided, and is identified as Riparian Corridor/Wildlife Habitat (Class I or II) or Upland Wildlife Habitat (Class A or B) on Metro's Title 13 Regionally Significant Fish and Wildlife Habitat Inventory Map (adopted by Metro on September 29, 2005 and amended on December 8, 2005; referenced in LOC 50.06.005).

### c. Habitat Benefit Areas (HBA) Delineation and HBA Protection Area

Applications for land division approval using Habitat Benefit Area Incentives shall:

- i. Delineate the HBA using the procedure under LOC 50.07.004.8.d; and
- ii. Establish an HBA protection area using the procedure under LOC 50.07.004.8, except that the HBA protection area shall be a minimum of 50% of the HBA area; or
- iii. The reviewing authority may approve an HBA protection area that is 25% or more of the HBA, where
  - (1) Invasive species cover more than 50% of the designated protection area (during the growing season);
  - (2) A Habitat Restoration Plan prepared by a biologist or other qualified professional provides for removal of all invasive species within the designated protection area and replanting with native plants on the Plant List; and
  - (3) The mitigation planting standards under LOC 50.05.010.4.g.viii are used for the design of the restoration projects.

**e. Habitat Preservation Incentives**

**The following incentives reviewed through the minor development process are intended to promote Habitat-Friendly Development of new land divisions by providing flexibility from underlying code requirements.**

- i. Allow lot density and floor area transfer (based on minimum lot area of underlying zone) from an HBA protection areas to a nonresource areas of a property, or to an adjacent property under common ownership, as allowed for development within an RP districts.**
- ii. Lot Area, Dimensional Standards, and Setbacks. Allow reductions to the minimum lot area, lot dimensions, and setbacks of the zone on nonresource portions of a site, without limitation, as allowed for RP districts. Where an abutting property is within a residential zone, the minimum setback along the common property line shall be that of the abutting property's zone.**
- iii. Lot Coverage and Floor Area. Allow lot coverage and floor area standards to be applied with reference to the total site area (based on the minimum lot area standard of zone) as allowed for RP districts.**
- iv. Minimum Density. Allow reductions to the minimum density standard.**
- v. Building Design.**
  - a. The front setback plane standard of LOC 50.06.001.2 does not apply, except where the subject lot is adjacent to and directly across the street from a lot that is not part of the HBA development.**
  - b. The side setback plane and side yard appearance and screening standards of LOC 50.06.001.2 do not apply where a required setback yard abuts an HBA protection area for the length of the shared property line.**
- vi. Off-Site Parking. For land divisions in commercial, industrial, and campus institutional zones, allow an increase in the distance a remote parking facility may be located from the property line of the use to be served, pursuant to LOC 50.06.002, if the proposed parking facility is shown to be viable.**
- vii. Street Connectivity. The reviewing authority may grant an exception to the local street connectivity standard of LOC 50.06.003.4, as allowed for RP and RC districts.**

**f. Development Review**

**Applications for development review approval under LOC 50.05.010.7 (Habitat Benefit Areas) are reviewed in conjunction with an application for land division through the minor development process (LOC 50.03.007.14). The reviewing body shall find the following standards are met:**

- a. Habitat protection. The required HBA protection area is identified and protected, or restored and protected, as applicable, pursuant to LOC 50.05.010.5.b.**

- b. **Shared driveways. The proposed development utilizes shared driveways, as applicable, to minimize resource area disturbance.**
- c. **Use of pervious materials. The proposed development uses pervious building materials for hard surfaces, where practicable, to maintain the natural hydrology of the site and to minimize resource area disturbance.**
- d. **Landscaping. Only native plants listed on the Plant List are used in new landscaping.**
- e. **Habitat-friendly fencing. Habitat-friendly fencing is used within and abutting any RP district and where passive open space areas abut a collector or arterial streets, and shall meet the following criteria:**
  - i. **The fence is not located within a wetland or a stream channel; and**
  - ii. **If the fence is below the top of the bank of a stream, at least a two-foot section of every 100-foot segment or portion thereof is:**
    - A. **Not less than 12 inches above the ground; and**
    - B. **Not more than four feet tall, measured from the ground.**

**A Notice of Development Restriction shall be recorded with or included within any conservation easement or other conveyance that is required to comply with the provisions of this section and other applicable code sections.**

**LOC 50.07.004.8          ADDITIONAL SUBMITTAL REQUIREMENTS – SENSITIVE LANDS**

**8. SENSITIVE LANDS DESIGNATIONS, MAP CORRECTIONS AND DELINEATIONS – OVERLAY DISTRICTS**

**a. Criteria for Designating Property within an Overlay District**

**i. Goal 5 Analysis Required**

In order to **add a resource (RP or RC district, or HBA) overlay to the Comprehensive Plan Map and Zoning Map, designating a new property or a new group of properties RP, RC, or HBA,** ~~include an individual property, a portion of a property, or a group of properties within an RP~~ the reviewing body shall find that the resource on the site or sites has been ranked and evaluated through an Economic, Social, Environmental, and Energy (ESEE) Process Analysis in compliance with Statewide Land Use Planning Goal 5 and merits a Resource Protection (RP), and/or Resource Conservation (RC), **or qualifies for Habitat Benefit Areas (HBA) designation.**

**ii. Procedure**

An RP, ~~or RC,~~ **or HBA** designation may be **applied** ~~imposed~~, modified or removed pursuant to either a City or area-wide Goal 5 analysis or a Goal 5 analysis of a single property or small number of individual properties. A City-wide or area-wide analysis shall be

processed as a legislative Comprehensive Plan Map and Zoning Map amendment pursuant to LOC 50.07.003.16.a.i, and an analysis affecting a single property or small number of individual properties shall be processed as a quasi-judicial Comprehensive Plan Map and Zoning Map amendment pursuant to LOC 50.07.003.16.a.ii.

**iii. Designation ~~Addition~~ of Resources**

**(1) Submission of Application**

Within 90 days of receiving evidence that a previously unmapped resource is likely to meet the criteria for resource designation, the City Manager shall submit an application for designation of resource to the reviewing authority pursuant to subsection 8.a.ii of this section.

**(2) Criteria**

The reviewing authority shall adopt a Comprehensive Plan Map and Zoning Map amendment to add the resource to the Sensitive Lands ~~Map~~**Atlas**, and designate the RP district, ~~or RC, or HBA overlay~~ district, as applicable, if the reviewing authority finds that the proposed resources are "significant resources," by meeting the requirements of either subsection 8.a.v of this section (stream or wetland) or subsection 8.a.vi of this section (tree grove), and if an ESEE analysis shows that the resources are required to be protected.

**iv. Methodologies**

The methodologies for determining whether or not the criteria for designation of a resource has been met shall be the following:

**(1) Lake Oswego ESEE Analysis Methodology to Be Utilized**

The City shall use the following methods to determine:

**(a)** Tree grove: The Wildlife Habitat Assessment Score (HAS); or

**(b)** Stream corridors and wetlands: The Oregon Freshwater Wetland Assessment Methodology developed in the City of Lake Oswego Resource Areas Report and ESEE Process Analysis for evaluation and comparison of inventoried sites pursuant to Statewide Land Use Planning Goal 5. The HAS is a numerical ranking applied in an ESEE inventory which represents the relative wildlife values of a given natural resource site. Six features are evaluated to determine the total Wildlife Habitat Assessment Score: Water; Food; Cover; Disturbance; Linkage; Unique Features. In addition, the City shall consider the scenic value of the resource pursuant to the methodology established in the ESEE analysis. See Lake Oswego Resource Areas Report and ESEE analysis dated



April 1, 1997, as revised on July 15, 1997, on file with the Lake Oswego Community Planning and Building Services Department.

**(2) Oregon Freshwater Wetland Assessment Methodology**

The City shall utilize the then current Oregon Freshwater Wetland Assessment Methodology, as adopted by the Oregon ~~Department~~ Division of State Lands, to evaluate wetland sites with respect to water quality and hydrologic control functions.

**v. Applicability of RP Overlay District**

The Resource Protection (RP) overlay district shall protect environmentally significant stream corridors and wetlands. Nonjurisdictional irrigation ditches and nonjurisdictional roadside and railway ditches, as defined by the Oregon Department of State Lands, shall not be placed within the RP district. The following resources may be placed within the RP district:

- (1)** Stream corridors and wetlands that have a HAS ranking of 50 or more (defined as "Class I" stream corridors and wetlands).
- (2)** Stream corridors and wetlands that have a HAS ranking of 35 to 49 or have a "high" ranking for scenic values (defined as "Class II" stream corridors and wetlands).
- (3)** Wetlands that are significant under Oregon Freshwater Wetland Assessment Methodology (OFWAM) guidelines, including:
  - (a)** Wetlands fed by surface flows, sheet flows or precipitation, that have evidence of flooding during the growing season, and have 60% or greater vegetated cover, and are over one-half acre in size; or other wetlands that qualify as having "intact water quality function" under the OFWAM guidelines ~~Oregon Freshwater Wetland Assessment Methodology~~; or
  - (b)** Wetlands in the Flood Management Area, that have evidence of flooding during the growing season, and are five acres or more in size, and have a restricted outlet or no outlet; or other wetlands that qualify as having "intact hydrologic control function" under the OFWAM guidelines ~~Oregon Freshwater Wetland Assessment Methodology~~; or
  - (c)** Wetlands where at least a portion of the resource is within a horizontal distance of less than one-fourth mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR Chapter 340, Division 41.

- (4) All perennial streams.

vi. **Applicability of RC and HBA Overlay Districts**

(1) The Resource Conservation (RC) overlay district shall protect significant tree groves **on public open spaces, private designated open space tracts, or on properties brought into the Urban Growth Boundary after December 28, 2005.** ~~A tree grove may be placed within an RC district if it:~~

~~(1) Type of tree grove:~~

~~(a) Is an associated tree grove; or~~

~~(b) Is an isolated tree grove located on public open space, on a private designated open space tract, or on property brought into the Urban Growth Boundary after December 28, 2005; and~~

(2) **The Habitat Benefit Area (HBA) overlay district is an incentive program for tree grove conservation on private properties located within the Urban Growth Boundary as of December 28, 2005.**

~~(2)~~(3) Quality of tree grove:

(a) Has a HAS ranking of at least 35; or

(b) Has a "high" ranking for scenic values in the study; or

(c) Is associated with a stream corridor or wetland that has an RP ranking.

**b. Map Corrections**

A map correction may be initiated by the City Manager or the owner of any lot containing an RC or RP district.

- i. Within 45 days of receiving a property owner request regarding a possible error in the existence or location of an RC or RP district, the City Manager shall advise the affected property owner(s) in writing of the applicable procedure to process the request.
- ii. Where the map correction is initiated by the City Manager, the City Manager shall notify the property owner(s) in writing of the proposed corrective action.
- iii. Based on information provided by the property owner, as applicable, and such maps, aerial photographs, prior resource delineations, and studies or reports prepared by

## SENSITIVE LANDS CODE REVISIONS

qualified professionals, etc., the City Manager shall select the applicable review procedure, which shall be:

- (a) Ministerial Development Decision, for corrections to scrivener's errors. The Sensitive Lands Map shall be updated with each correction and the updates shall be reported to the Planning Commission and City Council not less than annually;
- (b) Minor Development Decision, for map corrections other than scrivener's errors; or
- (c) Legislative Decision, for map corrections affecting more than a small number of identified properties.

iv. The reviewing authority shall approve a map correction, including the removal or re-delineation of a resource, as applicable, where the applicant demonstrates one of the following is met:

- (a) That the inventoried resource no longer exists because it was lawfully filled, culverted, logged, or developed;
- (b) The boundaries of the resource have changed since adoption of the resource inventory;
- (c) There was a mistake in the analysis used in the designation of the resource and it does not meet the criteria for designation under subsection 8.a of this section, and a re-application of the ESEE analysis demonstrates that the designation is no longer justified;
- (d) There was a mistake in the location, size, or configuration of the designation, including instances where no portion of the resource is on the subject lot; or
- (e) The tree grove is an isolated tree grove not located on public open space, on a private designated open space tract, or on property brought into the Urban Growth Boundary after July 10, 2012, and removing the RC district complies with Metro Code Section 3.07.1330(A)(2).

v. A map correction shall not be approved as a result of damage caused by the property owner, another party, or other than natural causes.

[**Cross-Reference:** See Ord. 2658, Finding #3 (map correction procedure not to be used by City to designate new RC/RP districts or to add properties to existing RC/RP districts.)]

**c. Environmental Review**

An applicant for a development subject to LOC 50.05.010.2 shall comply with:

i. For exempt development under LOC 50.07.003.12 occurring within an RC or RP district or its associated construction setback, **or within an HBA protection area**, the applicant shall:

(1) Comply with the applicable **development standards for** RP and RC districts ~~development standards, and HBA protection areas or RC district development standards~~ (LOC 50.05.010.5.c or LOC 50.05.010.6.c), **as applicable**;

(2) Comply with the Construction Standards (LOC 50.05.010.4.d) to the satisfaction of the City Manager;

(3) Meet the steps of avoidance and minimization as stated in LOC 50.05.010.4.f; and

(4) File a mitigation plan that complies with the standards of LOC 50.05.010.4.g for the review and approval of the City Manager.

ii. For development other than subsection 8.c.i of this section, the environmental review requirements in LOC 50.07.004.8.d, LOC 50.05.010.4.b and 50.05.010.4.c, LOC 50.05.010.5.b and 50.05.010.5.c (for RC **districts and HBA protection areas** ~~zones~~), LOC 50.05.010.6.b through 50.05.010.6.d (for RP zones) or LOC 50.05.010.6.e (Special Standards for the Oswego Canal), whichever sections are applicable.

**d. Delineation of Streams, Wetlands, and Tree Groves**

**i. Preparation/Criteria**

Except as provided in subsection 8.d.iv of this section, an applicant for a development subject to environmental review shall first delineate the stream, wetland, or tree grove. A delineation is a more precise, site specific determination of the location of the tree grove or water resource prepared by a qualified professional. The delineation shall include a map showing the delineated boundary to plus or minus two ft. The delineation map shall also show the protected riparian area if required for the particular resource. Resource boundaries shall be delineated as follows:

**(1) Tree Groves**

The RC district **or HBA district, as applicable**, shall be delineated as follows:

The boundary of a tree grove shall be measured at the outer edge of a contiguous tree canopy based on aerial photos and/or visual field observations, but shall not

include any tree canopy that is within a wetland or below the top bank of a stream. Tree canopy from invasive tree species and non-native tree species, per the City’s Plant List, shall not be included in the measurement of contiguous tree canopy, and the delineated boundary shall not increase the size of the RC district by more than 15% from what is designated on the Sensitive Lands MapAtlas.

**(2) Wetlands**

A wetland boundary shall be delineated in accordance with the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, except that:

- (a) The methodology must include soils testing, and
- (b) When a delineated wetland boundary is abutting a steep slope, the protected riparian area shall be applied from the top of the slope rather than from the delineated boundary. The top of the slope shall be determined according to the same criteria as the top of the bank, pursuant to **Table 50.07.004-A and** Figure 50.07.004-A: Wetland and Stream Corridor Measurement.

**(3) Stream Corridors**

A stream corridor boundary shall be measured or delineated based on topographic maps, hydrology maps, and/or field observations, pursuant to **Table 50.07.004-A and** Figure 50.07.004-A: Wetland and Stream Corridor Measurement; provided, that the protected riparian area shall not extend more than 200 feet from the edge of the ordinary high water line of the stream corridor. The ordinary high water line is defined according to Oregon Administrative Rule (OAR) 141-085-0510.

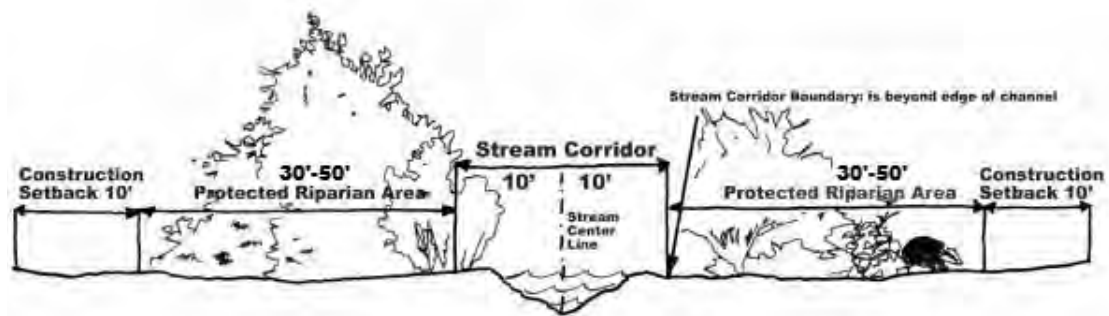
**(4) Stream and Wetland Riparian Areas Measurement**

**The following areas are protected riparian areas. They are measured outward from the edge of a delineated stream corridor or wetland boundary and are included in the RP district:**

<b>Table 50.07.004-A: Stream and Wetland Riparian Area Measurement</b>		
<b>Stream/Wetland Classification</b>	<b>Slope Adjacent to Resource</b>	<b>Width of Vegetated Corridor and Method of Measurement</b>
<b>Class I</b>	<25%	30- <u>50</u> feet, measured from the outer edge of the stream corridor or delineated wetland as shown on the Sensitive Lands Map and as detailed in Figure 50.07.004-A.
	>=25%	30-200 feet, measured from the outer edge of the stream corridor or delineated wetland to the natural break in the 25% slope, <b>as shown on the Sensitive Lands Map and</b> as detailed in Figure 50.07.004-A. <b><u>Slope is measured</u></b>

Table 50.07.004-A: Stream and Wetland Riparian Area Measurement		
Stream/Wetland Classification	Slope Adjacent to Resource	Width of Vegetated Corridor and Method of Measurement
		<b><u>perpendicular to and at intervals of not more than 25 feet along the outer edge of the stream or wetland. Where a stream or wetland is confined by a ravine or gully, the top of ravine is where there is a consistent break in the 25% slope that is more than 30 feet from the stream/wetland edge; the width of the vegetated corridor may vary.</u></b>
Class II	<25%	25-50 feet, measured from the <b>outer</b> edge of the stream corridor or delineated wetland as shown on the Sensitive Lands Map and as detailed in Figure 50.07.004-A.
	>=25%	25-50 feet, measured from the outer edge of the stream corridor or delineated wetland to the natural break in the 25% slope, <b>as shown on the Sensitive Lands Map and</b> as detailed in Figure 50.07.004-A. <b>Slope is measured perpendicular to and at intervals of not more than 25 feet along the outer edge of the stream or wetland. Where a stream or wetland is confined by a ravine or gully, the top of ravine is where there is a consistent break in the 25% slope that is more than 25 feet from the stream/wetland edge; the width of the vegetated corridor may vary.</b>

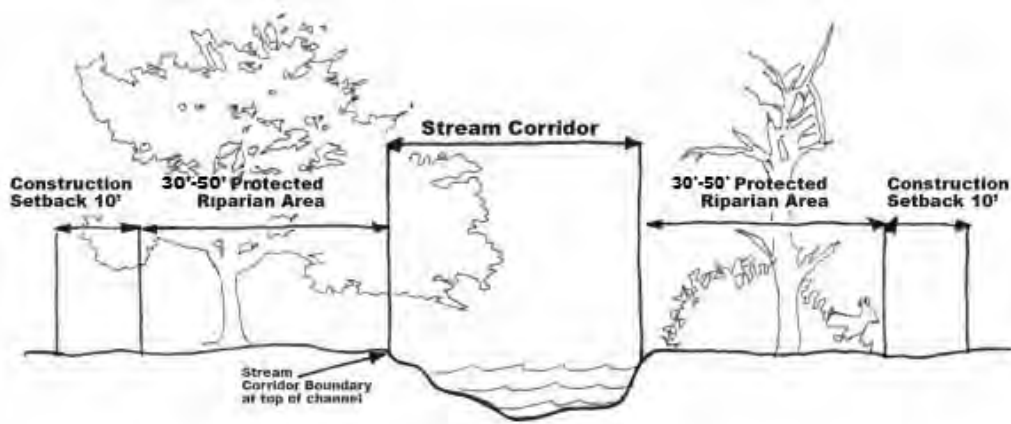
Figure 50.07.004-A: Wetland and Stream Corridor Measurement\*



### 20' Wide Stream Corridor

No wetlands, culverts, or slopes greater than 25%.  
 Class I RP district illustrated here; Class II receives 25'-50' protected area. See LOC 50.05.010.6.biii for allowed reductions.

\*Figure 50.07.004-A is for illustration purposes. The standards in Table 50.07.004-A govern.

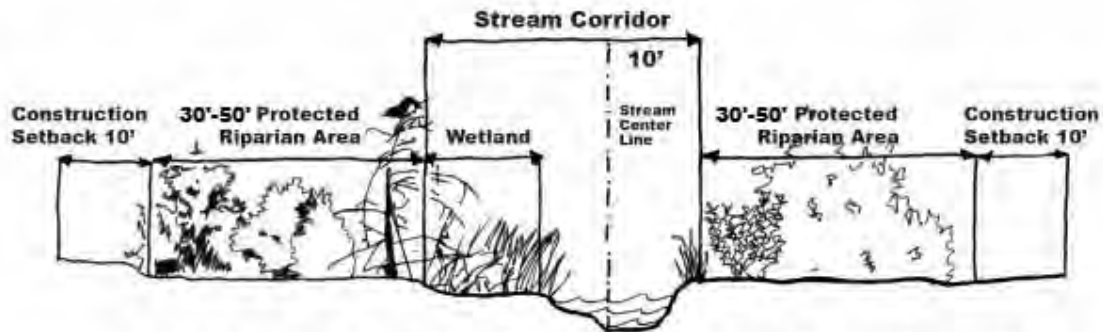


### Stream Corridor > 20' Wide

No wetlands, culverts, or slopes greater than 25%.

Class I RP district illustrated here; Class II receives 25'-50' protected area. See LOC 50.05.010.6.biii for allowed reductions.

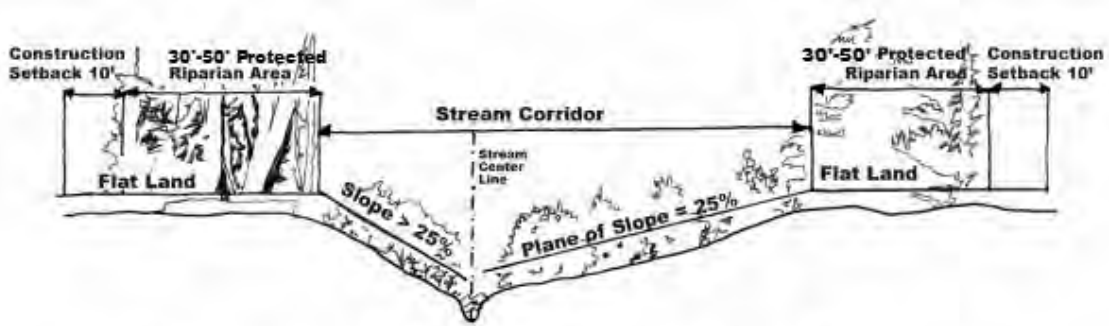
\*Figure 50.07.004-A is for illustration purposes. The standards in Table 50.07.004-A govern.



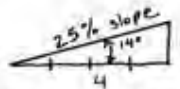
### Streams with Associated Wetlands

Stream corridor boundary remains at least 10' from the stream centerline on both sides. Wetland boundaries are delineated according to the 1987 Corps of Engineers Manual.

Class I RP district illustrated here; Class II receives 25'-50' protected area. See LOC 50.05.010.6.biii for allowed reductions.

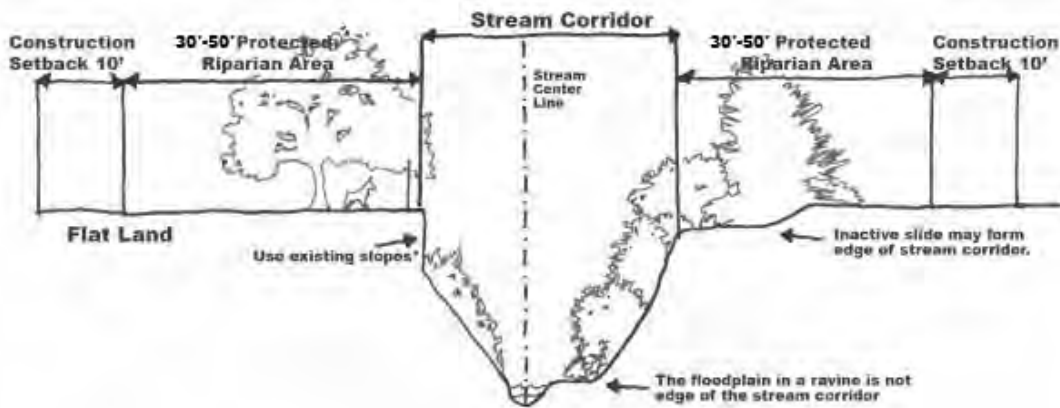


### Streams with Steep Slopes or Ravines



Steep slopes are equal to or greater than 25% measured as rise / run.

**Class I RP district illustrated here; Class II receives 25'-50' protected area. See LOC 50.05.010.6.biii for allowed reductions.**  
**Maximum RP district and construction setback width capped at 200' from edge of ordinary high water line.**



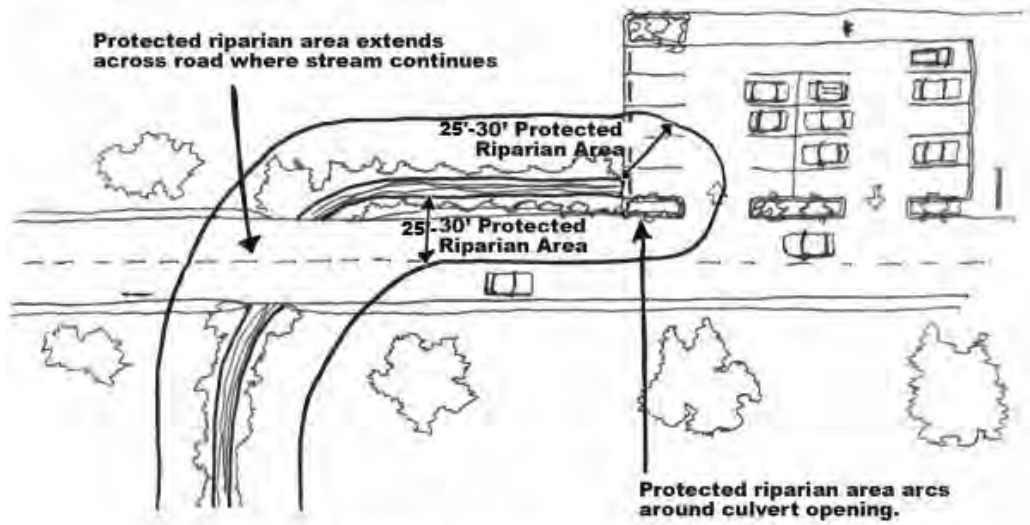
### Streams with Topographic Variations

\* Illegal fill is not treated as stream corridor boundary; refer to the first page of this appendix.

**Class I RP district illustrated here; Class II receives 25'-50' protected area. See LOC 50.05.010.6.biii for allowed reductions.**  
**Maximum RP district and construction setback width capped at 200' from edge of ordinary high water line.**

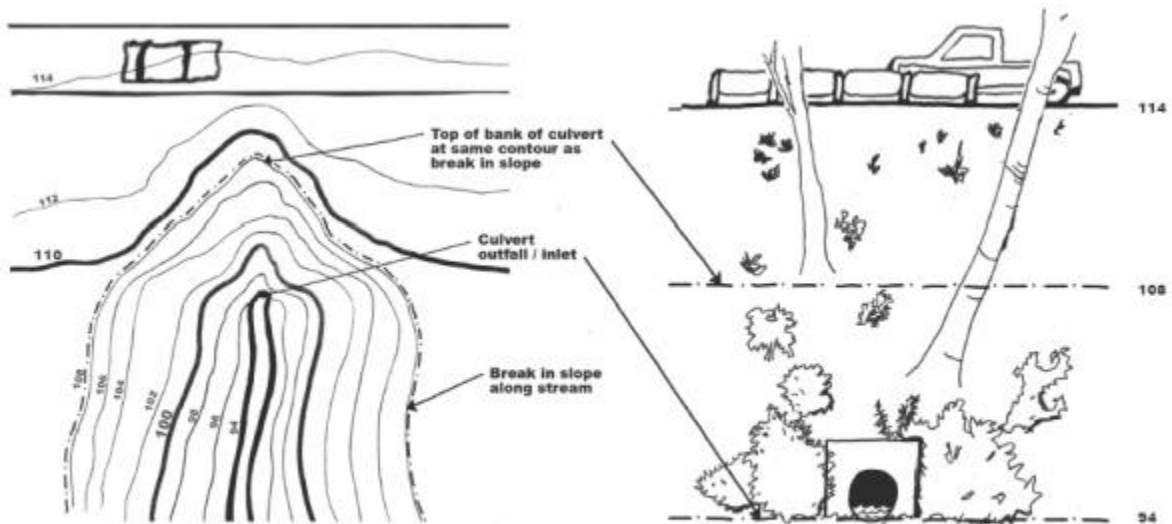
\*Figure 50.07.004-A is for illustration purposes. The standards in Table 50.07.004-A govern.





### Protected Riparian Areas on Culverts

Class I RP district illustrated here; Class II receives 25'-50' protected area. See LOC 50.05.010.6.biii for allowed reductions.



Top of Bank of Culvert - Ravine or Steep Slope

**ii. Review of Delineation**

The reviewing authority shall compare the applicant's delineation maps with the 1994/1995 ESEE Study and the Sensitive Lands Map-~~SL Atlas~~, and shall inspect staked, delineated resource boundaries. The reviewing authority shall approve the delineation if the delineated boundary more accurately reflects the locations of stream, wetland, and/or tree grove ~~RP and/or RC~~ resources than the boundary as shown in the Sensitive Lands Map-~~SL Atlas~~. If the reviewing authority finds that the evidence is contradictory or does not support the proposed delineations, the application shall be denied. In the alternative, review of the application may be continued for additional information if:

- (1) The applicant agrees to conduct a new delineation by an expert selected by the City Manager at the applicant's expense; and
- (2) The applicant waives the applicable statutory deadline for completing a local decision on the application for the period of time necessary to conduct the new delineation.

**iii. Adjustment of Overlay District Boundaries to Reflect Approved Delineation**

An approved delineated boundary shall replace the boundary in the Sensitive Lands Map~~Atlas~~ for the purposes of review of the development proposal for compliance with this section. If and when the proposed development receives final approval, including resolution of any appeals, the boundary of the RP or RC district as shown in the ~~SL Atlas~~ and Sensitive Lands Map (if necessary), shall be modified as necessary to be consistent with the delineated boundary.

**iv. Delineation Not Required; Exceptions**

An applicant for a development subject to this section shall not be required to delineate the resource pursuant to this section if:

- (1) The resource has been previously delineated pursuant to an earlier development application subject to this section. Exception: The City Manager may require a new delineation if:
  - (a) The applicant desires to demonstrate that the previously delineated boundary is no longer accurate;
  - (b) There is evidence of a substantial change in circumstances on the property that has affected the location of the resource as previously delineated; or
  - (c) The City Council has adopted new delineation standards or requirements since the previous delineation; or

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(2) The proposed development consists solely of landscaping and/or tree removal or qualifies as a resource enhancement project, and complies with LOC 50.05.010.6.c.ii(1)(a), Landscaping; LOC 50.05.010.6.c.ii(1)(b), Tree Removal; or either LOC 50.05.010.5.c.iii(6), Utilities, or LOC 50.05.010.6.c.ii(1)(f), Resource Enhancement Projects; or

(3) The entire subject property is designated RP or RC, and the applicant agrees that a delineation would not reduce the area covered by the RP or RC district.

(4) The City Manager finds based on the 1994/1995 ESEE Study, the Sensitive Lands Map, existing aerial photography or remote sensing that the proposed development disturbance area is clearly located outside the subject RP or RC district including required protection areas and construction setbacks.

v. **Delineation in the Absence of a Development Application**

An applicant may apply to delineate a resource in absence of an application for a specific development.

**NON-SENSITIVE LANDS SECTIONS**

**42.03.025 (STREETS AND SIDEWALKS) Standards Generally; Criteria**

The following factors shall be considered in arriving at the design of a particular street through application of the standards set forth in this Chapter:

\* \* \*

10. Presence of ~~sensitive lands~~ **Sensitive Lands** as designated in the Comprehensive Plan.
11. Natural hazards.

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**42.03.095 (STREETS AND SIDEWALKS) Modification to Street Design Standards.** <http://www.codepublishing.com/or/lakeoswego/html/lakeoswego42/lakeoswego4203.html-42.03.095>

When physical circumstances on site or in the vicinity of the site make strict compliance with the standards of LOC Article 42.03 impracticable when applied to a specific application or street project, the approving authority may permit modifications to such standards. Site or vicinity conditions that could create a need for modification include, but are not limited to, steep slopes or other topographical or geologic conditions, presence of ~~sensitive lands~~ **Sensitive Lands**, drainage issues, and condition or design of neighboring or adjacent street systems. Such modifications shall be minimized to the degree practical in order to address the special site or vicinity condition.

**47.06.205 (SIGNS) Permanent Signs Exempt From Permit and Fee.** <http://www.codepublishing.com/or/lakeoswego/html/lakeoswego47/lakeoswego4706.html> - [47.06.205](#)

The following signs shall comply with all provisions and regulations of this chapter; however, no fee, permit or application is required.

\* \* \*

- 10. Signs that identify a **Sensitive Lands district** ~~RP District~~, as required by LOC 50.05.010.6.c.iii(3).

\* \* \*

**50.01.004 ZONING DESIGNATIONS, BOUNDARIES, MAPS, AND ANNEXATION**

**1. ZONING DISTRICTS**

The City is divided into the following zoning designations:

<b>TABLE 50.01.004-1: Zoning Designations</b>	
<b>Zone District Category</b>	<b>Map Designation</b>
<b>Overlay Districts – Resource Specific</b>	
Greenway Management Overlay District	GM
Sensitive Lands Overlay	
Resource Conservation (Tree Groves)	RC
Resource Protection (Streams and Wetlands)	RP
<b>Habitat Benefit Area (Tree Groves)</b>	<b>HBA</b>
Flood Management Area	FMA

\* \* \*

**5. COMPREHENSIVE PLAN MAP DESIGNATIONS AUTOMATICALLY APPLIED UPON ANNEXATIONS; EXCEPTIONS** <http://www.codepublishing.com/or/lakeoswego/html/lakeoswego50/lakeoswego5001004.html> - [50.01.004.5](#)

\* \* \*

- b.** Where the Comprehensive Plan Map indicates an RP, ~~or RC~~, **or HBA** District designation on territory proposed for annexation, the City shall notify the owners of the annexing territory that they have 20

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days prior to the initial public hearing on the annexation to contest the designation pursuant to LOC 50.07.004.8.b, Sensitive Lands Overlay Districts. No fee shall be charged for such review. If, following review, the decision-maker determines the property was improperly designated, the RP, ~~or RC~~, or HBA designation shall be removed.

c. When evidence indicates that a resource that potentially qualifies for an RP or RC District or HBA overlay designation pursuant to LOC 50.07.004.8 exists on territory to be annexed, the City may conduct an Economic, Social, Environmental, and Energy (ESEE) Analysis and determine whether such a zone should be imposed pursuant to LOC 50.07.004.8, Sensitive Lands Overlay Districts. City staff may request a delay in the effective date of annexation to complete review.

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### 50.03.003 USE-SPECIFIC STANDARDS

\* \* \*

#### 2. RESIDENTIAL – CONDITIONAL USES

##### a. Residential Care Housing and Congregate Housing

###### i. Generally Applicable Standards

\* \* \*

(8) At least 20% of the development site exclusive of areas required for park land and ~~sensitive lands~~ Sensitive Lands protection shall be landscaped. The required landscaped area is inclusive of landscaping required for parking lots, and within required buffer areas. Landscaping may include courtyards, raised beds and planters, espaliers, arbors and trellises.

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### 50.04.001 DIMENSIONAL TABLE

\* \* \*

#### 2. RESIDENTIAL MEDIUM DENSITY ZONES

\* \* \*

##### c. Lot Dimensions – Additional Standards

\* \* \*

###### ii. R-5, R-6, and R-DD with Sensitive Lands ~~RP/RC~~ Designation

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For projects on properties subject to ~~a Sensitive Lands~~ **a Sensitive Lands** ~~an RP or RC~~ designation, lot areas may be modified as provided in LOC 50.05.010, Sensitive Lands Overlay Districts.

\* \* \*

### iv. R-DD Additional Height Standards

#### (1) Primary Structures

Average height may increase to 40 ft. over the entire site, with no individual structure exceeding 50 ft., in the following circumstances:

- (a) The lot or lots developed are one-half acre or greater in area; and
- (b) 25% or more of the gross site area is constrained by steep slopes, floodplain, or mapped ~~sensitive lands~~ **Sensitive Lands**; and
- (c) Any portion of structures taller than 35 ft. is set back at least 50 ft. from a public street.

\* \* \*

## 3. RESIDENTIAL HIGH DENSITY ZONES

\* \* \*

### c. Lot Area and Floor Area – Additional Standards

i. For projects on properties ~~with a Sensitive Lands~~ **with a Sensitive Lands** ~~overlay subject to an RP or RC district~~ designation, lot areas and floor area may be modified as provided in LOC 50.05.010, Sensitive Lands Overlay Districts.

ii. Habitable areas of detached accessory structures that would normally be counted as floor area shall be exempt from floor area calculations up to a maximum of:

- (1) For lot sizes up to 10,000 sq. ft. – up to a cumulative maximum of 200 sq. ft.
- (2) For lot sizes greater than 10,000 sq. ft. – up to a cumulative maximum of 400 sq. ft.

\* \* \*

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## 50.04.003 EXCEPTIONS, PROJECTIONS, AND ENCROACHMENTS

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**10. EXCEPTIONS TO THE MINIMUM DENSITY REQUIREMENT FOR ALL ZONES**

\* \* \*

c. The number of lots required by the minimum density provisions may be reduced as necessary in any of the following circumstances:

\* \* \*

~~iii. Where an RC tree grove is designated on the site and preservation of more than 50% minimum protection area required by LOC 50.05.010.5.b, Sensitive Lands Overlay Districts, would preclude development such that the minimum number of lots could not be developed; or~~

**iii.iv.** Where topographic, natural resources and/or soil constraints exist on site, to the extent that an applicant can demonstrate that compliance with LOC 50.06.006.2, Hillside Protection, LOC 50.05.010, Sensitive Lands Overlay Districts, or other soil constraints regulated by the City’s Codes or the State of Oregon Uniform Building Code, would preclude development such that the minimum number of lots could not be developed; or

**iv. Where an application is for land division approval using the HBA incentives in LOC 50.05.010.**

\* \* \*

---

**50.06.003 CIRCULATION AND CONNECTIVITY**

\* \* \*

**4. LOCAL STREET CONNECTIVITY**

\* \* \*

**c. Standards for Approval of Development Which Requires the Construction of a Street**

\* \* \*

**vi.** The reviewing authority may allow an exception to the review standards of subsections 4.c.i through 4.c.v of this section based on findings that the modification is the minimum necessary to address the constraint and the application of the standards is impracticable due to the following:

\* \* \*

## SENSITIVE LANDS CODE REVISIONS

(2) The presence of ~~sensitive lands~~ **Sensitive Lands** as described in LOC 50.05.010, or LOC 50.05.011, Flood Management Area, or other lands protected by City ordinances, where regulations discourage construction of or prescribe different standards for street facilities, unless the nearest through street pairs (see Figure 50.06.003-A: Street Connectivity) surrounding the subject site are more than one-quarter mile apart. The reviewing authority may determine that connectivity is not required under this circumstance, if a benefit/cost analysis shows that the traffic impacts from development are low and do not provide reasonable justification for the estimated costs of a full street connection;

\* \* \*

---

### 50.06.005 PARK AND OPEN SPACE CONTRIBUTIONS

\* \* \*

## 3. STANDARDS FOR APPROVAL

### a. Amount of Open Space Required

\* \* \*

iv. Subdivisions and major partitions of 75,000 sq. ft. or less shall provide open space for the following areas of the site, **in order of priority**:

(1) Areas identified as RP (Resource Protection) ~~or RC (Resource Conservation)~~ on the Sensitive Lands ~~Atlas~~ **Map**.

(2) If a pathway identified on the Transportation System Plan already exists on or abutting the site, or is to be dedicated or improved as part of the subdivision or major partition, a five-ft. buffer shall be provided along each side of the pathway, to a maximum of 20% of the gross site area. If the buffer area would exceed 20% of the gross site area, the buffer area shall be uniformly reduced along the pathway so that the buffer area is 20% of the gross site area.

Exception: The buffer width may be reduced to a lesser amount, up to zero, as designated by an adopted plan for the mapped pathway.

(3) The area of the site contains resources identified as Class I or II Riparian Corridors/Wildlife Habitat **that are not designated RP Class A or B Upland Wildlife Habitat** as mapped on Metro's Title 13 Regionally Significant Fish and Wildlife Habitat Inventory Map (~~adopted by Metro on September 29, 2005, and amended on December 8, 2005~~); provided,



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however, the maximum required area is 20% of the gross site area. ~~See Figure 50.07.007-C: Regionally Significant Fish and Wildlife Habitat Inventory Map.~~

**(4) The area of the site contains resources meeting the criteria for Habitat Benefit Areas (HBA) and the applicant elects to use the code incentives in pursuant to LOC 50.05.010.7 Habitat Benefits Areas.**

**b. Required Open Space – How Provided**

Open space land in commercial, institutional, public use, industrial and office campus development may be provided as a combination of reserved land and landscaping. Where no RP or RC district resources or public park land is located on the site, the open space requirement can be met by protecting **designated Habitat Benefit Area (HBA) area pursuant to LOC 50.05.010.7, by protecting** nondesignated natural resource areas, and/or providing landscaping which meets the requirements of the landscaping standard.

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**50.06.006      GEOLOGICAL HAZARDS AND DRAINAGE**

\* \* \*

**3. DRAINAGE STANDARDS**

**a. Drainage Standards for Minor Development Other Than Partitions, Subdivisions and Certain Structures**

\* \* \*

**ii. Standards for Approval**

Development shall be conducted in such a manner that alterations of drainage patterns (streams, ditches, swales, and surface runoff) do not adversely affect:

- (1)** Other property;
- (2)** RC districts on adjacent property; ~~or~~
- (3) HBA protection areas on adjacent property; or**
- (4)** RP districts on adjacent property.

\* \* \*

**b. Drainage Standard for Major Developments, Partitions, Subdivisions, and Certain Structures**

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\* \* \*

ii. **Standards for Approval**

\* \* \*

**(3) Drainage Pattern Alteration**

Development shall be conducted in such a manner that alterations of drainage patterns (streams, ditches, swales, and surface runoff) do not adversely affect:

- (a) Other properties;
- (b) RC districts on adjacent property; ~~or~~
- (c) **HBA protection areas on adjacent properties; or**
- (d) RP districts on adjacent property.

\* \* \*

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**50.07.003 REVIEW PROCEDURES**

\* \* \*

**12. EXEMPT DEVELOPMENT**

**a. Classification**

Exempt developments include:

- i. Landscaping or landscape alterations, unless:
  - (1) Such landscaping or alterations would modify or violate a condition of approval of a prior permit. In such instance, the permit shall be processed as a modification of the prior permit;
  - (2) Located within the Greenway Management Overlay District; or
  - (3) Located within an RP or RC overlay district, ~~or an RC~~ **or HBA** protection area, and not exempt from the requirements of the **Sensitive Lands regulations** ~~RP or RC district~~ pursuant to LOC 50.05.010.2.b.

\* \* \*

**13. MINISTERIAL DEVELOPMENT DECISIONS**

**a. Ministerial Development Classification**

\* \* \*

**ii. Ministerial Development Types**

\* \* \*

**(2)** Construction or exterior modification of a detached single-family dwelling, a single duplex on a lot, zero lot line dwelling or a structure accessory to such structures which:

**(a)** Is not processed through the residential infill design review process pursuant to LOC 50.08.007;

**(b)** Is not located within a delineated RP resource, ~~or~~ RC protection area, or HBA protection area pursuant to LOC 50.05.010, Sensitive Lands Overlay Districts;

**(c)** Does not impact a historic landmark designated pursuant to LOC 50.06.009;

**(d)** Does not change the nature of the use or occupancy classification to a use that does not qualify as a permitted use in the zone or as an approved conditional use;

**(e)** Does not require special design review by the zone, design district, prior development approval or Overall Development Plan and Schedule (ODPS) for the development in which the subject property is located; or

**(f)** Is not located in the Greenway Management Overlay District, as identified in LOC 50.05.009.

\* \* \*

**(5)** Resource enhancement projects in an RP or RC district, or HBA protection area.

**(6)** Passive use recreational facilities within an RC or RP district, or HBA protection area, if such facility would otherwise qualify as a ministerial development.

**(7)** Passive use recreational facilities that require a building permit such as pedestrian bridges, observation decks and handicapped facilities.

**(8)** Construction or alteration of public transportation or utility facilities consistent with the applicable public facility master plan and Comprehensive Plan and land use regulations, and is not located in a delineated RP district, ~~or~~ RC protection area, or HBA protection area.

\* \* \*

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(12) Delineation of an RC or HBA resource boundary.

\* \* \*

**14. MINOR DEVELOPMENT DECISIONS**

**a. Minor Development Classification**

\* \* \*

ii. "Minor development" under subsection a.i.(1) of this section includes:

\* \* \*

(12) Determining an RC district protection area or HBA protection area pursuant to LOC 50.05.010.5.b, except as required under LOC 50.07.003.15 Major Development.

\* \* \*

(17) Construction of any public or private road, or major transportation or utility facility within a delineated RP district, ~~or RC protection area,~~ or HBA protection area.

\* \* \*

(20) Delineation of an RP district.

(21) Modification of dimensional standards and setbacks pursuant to LOC 50.05.010.4.b (Sensitive Lands), Modifications to Dimensional Standards, ~~and Setbacks,~~ and Floor Area of the Underlying Zone, and LOC 50.05.010.6.b.iii, Reduction of RP District.

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**50.07.004 ADDITIONAL SUBMITTAL REQUIREMENTS**

\* \* \*

**7. PARK AND OPEN SPACE CONTRIBUTION**

\*\*\*

**c. Priority Open Space Areas**

Lands shall be selected by the City for reservation as open space areas in accordance with the following priorities:

ORDINANCE 2687  
(LU 15-0019)

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- i. Delineated RP resources;
- ii. RC district protection areas;
- iii. Proposed public open space including intra-city bike/pedestrian pathways;
- iv. Woodlands, tree groves, including HBA protection areas;
- v. Specimen trees;
- vi. Natural meadows;
- vii. Topographic variations, such as rock outcrops, cliffs, extreme slopes, riverbanks;
- viii. Conveniently located areas where recreation opportunities can be created. Examples include trails, nature study sites, picnic areas, or view points;
- ix. Scenic views and vistas; or
- x. Others.

\*\*\*

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**50.07.007 LAND DIVISIONS**

\* \* \*

**2. FLAG LOTS**

\* \* \*

**f. Screening, Buffering and Landscape Installation**

\* \* \*

iii. The rear and side yards of the flag lot shall be screened from abutting lots outside of the partition site with a six-ft. tall fence, except:

- (1) Where a four-ft. fence is required by LOC 50.06.004.2.b.i, Fences, or where such screening would conflict with standards for ~~by LOC 50.05.010.2.c(iv)~~ Sensitive Lands Overlay Districts; or

\* \* \*

**4. PLANNED DEVELOPMENT OVERLAY**

\* \* \*

**b. Applicability**

Use of the PD overlay is allowed in any zone for subdivision proposals, except when the property is located in the R-7.5, R-10, or R-15 zone, at least one of the following circumstances must exist:

## SENSITIVE LANDS CODE REVISIONS

- i. The property is greater than 75,000 square ft. in size;
- ii. An RC ~~district or~~ RP district **or HBA overlay** is located on the property;
- iii. A tree grove greater than 15,000 square ft. in size exists on the property; or
- iv. The property includes resources identified as Class I or II Riparian Corridors/Wildlife Habitat or Class A or B Upland Wildlife Habitat as mapped on Metro's Title 13 Regionally Significant Fish and Wildlife Habitat Inventory Map (adopted by Metro on September 29, 2005, and amended on December 8, 2005). See Figure 50.07.007-C: Regionally Significant Fish and Wildlife Habitat Inventory Map.

**Cross-Reference:** This subsection is automatically repealed upon enactment of an updated Sensitive Lands ~~Atlas Map~~, which includes the resources inventoried between 2003 and 2007 per Ordinance 2499, Section 6.]

\* \* \*

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## 50.08.001 ADJUSTMENTS

### 1. R-6 ADMINISTRATIVE MODIFICATION

\* \* \*

- b. The granting authority may grant an administrative modification if:
  - i. The proposed development makes desirable visual linkages between surrounding buildings by repeating or incorporating similar ridge lines, eaves, window and door openings; or
  - ii. The requested modification results in a development that is designed more compatibly with the topography and/or physical limitations of the site; or
  - iii. The requested modification will enhance or better protect a significant natural feature(s) on the site (RC or RP overlay districts, **or HBA protection area**); or
  - iv. The proposed development provides visual continuity and cohesiveness with any abutting historic landmarks through the incorporation of style features, proportions and massing of the landmark structure.

\* \* \*

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**50.08.002 MINOR VARIANCE**

\* \* \*

**2. VARIANCE STANDARDS**

a. The reviewing authority may grant a minor variance from the requirements of this Code, except as expressly prohibited, if it is established that:

- i. The granting of the variance will not be detrimental to the public health or safety, or materially injurious to properties or improvements within 300 ft. of the property.
  
- ii. The proposed development will not adversely affect existing physical and natural systems such as traffic, drainage, Oswego Lake, hillsides, designated ~~sensitive lands~~ **Sensitive Lands**, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development were located as specified by the requirements of the zone.

\* \* \*

---

**50.08.006 LGVC ADJUSTMENTS**

\* \* \*

**5. ADJUSTMENT APPROVAL CRITERIA**

**a. Criteria for Minor and Major Adjustments**

Except as provided in LOC 50.08.006.5.b, both minor adjustments and major adjustments applications shall satisfy all of the following criteria:

\* \* \*

- iv. The adjustment will not adversely affect existing physical and natural systems such as traffic, access, circulation, connectivity, drainage, designated ~~sensitive lands~~ **Sensitive Lands**, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development fully met the standards of the overlay district; and

\* \* \*

---

**50.10.003 DEFINITIONS**

\* \* \*

## 2. DEFINITION OF TERMS

The following terms shall mean:

\* \* \*

### **Delineated Resource**

An RP district stream corridor or wetland, or an RC district or HBA overlay tree grove delineated pursuant to LOC 50.07.004.8.d.

\* \* \*

### **Density Transfer Acre/Acreage**

Potentially hazardous or resource areas within which development may occur or from which density may be transferred to buildable portions of an eligible ~~the~~ site, only after it has been demonstrated by the applicant that development can occur in compliance with criteria established by this Code, including the Development Standards. "Density transfer acre" includes the following:

- a. Area within the floodway and the floodway fringe as shown on the FEMA flood maps;
- b. Area of over 25% slope;
- c. Area in known landslide areas or in areas shown to have potential for severe or moderate landslide hazard;
- d. Area in the RC or RP districts and HBA protection area pursuant to LOC 50.05.010.4.c, Density Transfer, stream buffer areas of major stream corridors, wetlands and distinctive natural areas; and
- e. Area to be dedicated as part of the development for public open space and parks.

\* \* \*

### **Habitat Benefit Area (HBA) Protection Area**

**The portion of an HBA resource identified pursuant to LOC 50.05.010.5.b, HBA protection area.**

### **Habitat Benefit Area (HBA) Resource**

**A tree grove designated with an HBA overlay zone pursuant to LOC 50.05.010 and 50.07.004.8.**

\*\*\*

### **Lake Oswego Master Plant List (Plant List)**



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See LOC 50.11.004, Appendix D, for a listing of native plants, invasive plants, street trees – prohibited, street trees – approved (applicable to LOC 50.05.006, Old Town Neighborhood Design only), and solar-friendly plants.

\*\*\*

**Natural Resource Areas, Nondesignated**

"Natural areas" that have not been included in an RP or RC district, or HBA overlay, pursuant to LOC 50.07.004.8.

\* \* \*

**Sensitive Lands Map**

**A map containing only the Sensitive Lands elements of the Comprehensive Plan Map and Zoning Map, i.e., RP, RC, and HBA districts, used in administering the Sensitive Lands regulations.**

\* \* \*

**55.02.042 (TREE CODE) Permit Classifications and Review Procedures.**

A person who desires to remove a tree shall first apply for and receive one of the following tree cutting permits before tree removal occurs:

- 1. Type 1 Permit is required for:

\* \* \*

- c. A tree that is not:

\* \* \*

- iv. Located within an RC or RP district or an HBA protection area; sensitive land overlay district;

\* \* \*

- 3. Dead Tree Removal Permit:

\* \* \*

- b. In order to provide for wildlife habitat and natural processes, the City Manager may require the retention of a dead tree. Dead trees shall not be removed if located in wetlands, RC

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~~protection areas~~ ~~Protection Areas~~ (LOC 50.05.010.5.b), **HBA protection areas**, stream corridors, parks or open space areas required to be preserved as a condition of development approval unless the tree presents a potential hazard to persons or property.

\*\*\*

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**55.02.072 (TREE CODE) Forest Management Permit.**

\*\*\*

2. Applicability. An owner of a large forested tract or the owner's authorized agent may apply for removal of one or more trees from the subject tract provided the tract is not subject to a pending application for minor or major development, and the subject trees are not:

\*\*\*

d. Located within an **RP or RC District, Resource Conservation Overlay District or a Resource Protection Overlay District or HBA protection area;**

\*\*\*

---

**55.02.084 (TREE CODE) Mitigation Required.**

\*\*\*

2. Mitigation for invasive tree species removal is required when:

\*\*\*

b. The removal is from an **RP or RC District, or HBA protection area** ~~Resource Conservation or Resource Protection Overlay District;~~ or

---

**55.02.130 (TREE CODE)**

**Penalties.** <http://www.codepublishing.com/or/lakeoswego/html/lakeoswego55/lakeoswego5502.html> - [55.02.130](#)

\* \* \*

4. Restoration.

\* \* \*

b. The City may require the person to pay into the City's Tree Fund an increased fee per caliper inch for the total number of caliper inches of the tree removed in violation of this Chapter in an

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amount as established by resolution of the City Council or the value of the tree as determined by an arborist in accordance with the methods set forth in the "Guide for Plant Appraisal," an official publication of the International Society of Arboriculture, whichever is greater, if any of the following apply:

\* \* \*

iii. The tree removed was any of the following:

\* \* \*

(E) Part of an RP or RC District, or HBA protection area, ~~Resource Conservation (RC) or Resource Protection (RP) area~~, per LOC 50.05.010,

(F) Located on public right-of-way, City-owned or dedicated property, a public or private open space area or conservation easement.

-END-