



Oregon

Theodore R. Kubogowski, Governor

Department of Land Conservation and Development
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NOTICE OF ADOPTED AMENDMENT

08/19/2013

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Lake Oswego Plan Amendment
DLCD File Number 005-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, September 04, 2013

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the 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). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Jonna Papaefthimiou, City of Lake Oswego
Gordon Howard, DLCD Urban Planning Specialist
Amanda Punton, DLCD Natural Resources Specialist
Jennifer Donnelly, DLCD Regional Representative

<paa> YA/l

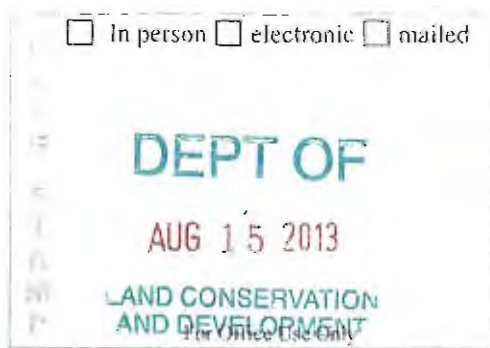


FORM 2

DLCD

Notice of Adoption

In person electronic mailed



This Form 2 must be mailed to DLCD within **20-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **City of Lake Oswego**

Local file number: **LU 08-0051**

Date of Adoption: **04/21/2009**

Date Mailed: **08/14/2013**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: **08/2008**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

LU 08-0051 proposed a series of amendments to Chapter 50.16 (Sensitive Lands Overlay Districts) of the Community Development Code. During the review process, the proposed amendments were broken into 3 parts: LU 08-0051A, B, and C. The Lake Oswego City Council adopted Ordinance 2527 (**LU 08-0051A**) on April 21, 2009. Ordinance 2527 included amendments to correct errors, eliminate ambiguities in language and graphics, reflect existing interpretations, simplify review of very small projects and come into compliance with Metro Title 3. It also includes an amendment to allow homeowners to replace non-conforming single-family dwellings located within Sensitive Lands districts if they are destroyed by circumstances outside the owner's control.

Does the Adoption differ from proposal? **Yes**

During the review process, the proposed amendments were broken into 3 parts: LU 08-0051A, B, and C. **LU 08-0051A (Ordinance 2527)** was adopted as described above. **LU 08-0051B** included all policy-related code changes, except setback modifications. The Council decided not to proceed with these proposed changes. **LU 08-0051C** addressed setback modifications only. On May 27, 2009, the Planning Commission forwarded a recommendation to the City Council; however, the Council did not consider the recommendation.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location: **Citywide**

Acres Involved: **0**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD File No. 005-08 (17067) [17578]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **Andrea Christenson**

Phone: (503) 675-3990 Extension:

Address: **PO Box 369**

Fax Number: - -

City: **Lake Oswego**

Zip: **97034**

E-mail Address: **achristenson@ci.oswego.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

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

Updated December 6, 2012

ORDINANCE No. 2527

AN ORDINANCE OF THE LAKE OSWEGO CITY COUNCIL AMENDING LOC ARTICLE 50.16 (SENSITIVE LANDS OVERLAY DISTRICT) OF THE LAKE OSWEGO CODE FOR THE PURPOSE OF CLARIFYING, CORRECTING, AND MODIFYING VARIOUS PROVISIONS, AND ADOPTING FINDINGS (LU-08-0051(A)-1699)

WHEREAS, a notice of public hearing for consideration of this Ordinance was duly given in the manner required by law; and,

WHEREAS, a public hearing was held before the Planning Commission on December 8, 2008, and Lake Oswego City Council on March 3, 2009 to review the Planning Commission's recommendation to amend Articles 50.02 (Definitions) and 50.16 (Sensitive Lands Overlay District); and,

WHEREAS, the purpose of the following amendments to Articles 50.02 and 50.44 is to comply with Metro Title 3 and Title 13 relating to sensitive lands.

The City of Lake Oswego ordains as follows:

Section 1. The City Council hereby adopts the Findings and Conclusions LU 08-0051(A)-1699 attached as Exhibit "A".

Section 2. Section 50.02.005 of the Lake Oswego Code is hereby amended as follows (new text shown in **bold, double underlined type**):

50.02.005 Definitions.

For the purposes of this Code certain terms and words are defined as follows: the words "used for" include "designed for" and vice-versa; words used in the present tense include the future, the singular tense includes the plural and vice-versa; the word "shall" is always mandatory; the word "may" is discretionary; the masculine gender includes the feminine gender, except as otherwise provided. The following terms shall mean:

* * * * *

Stream Corridor. A stream corridor is an area of land that includes **both a stream and the area ten feet on either side of the centerline of the stream and any area beyond ten feet that includes** a set of natural features generally associated with the stream. **See LOC Appendix 50.16.035.1(c).** These natural features include, stream channels, flood plains, wetlands, riparian vegetation, associated vegetation, steep slopes, and habitat features. A stream corridor generally includes the following:

a. **Hydrological Characteristics.** Physical features that affect stream flow capacity, rates of channel erosion and patterns of sedimentation including but not limited to stream alignment, cross section and profile, roughness of channel and banks, and drainage patterns.

b. **Plant Communities and Wildlife Habitat.** The association of trees, shrubs, ground cover, and aquatic plants that affects the hydrological characteristics of a stream corridor, reduces runoff turbidity, provides shade which lessens thermal pollution, filters out nutrients carried by runoff, protects stream corridor soils and slopes from erosion, and provides habitat for fish, wildlife and aquatic organisms.

c. **Soils with Potential for Severe Erosion.** Soils within stream corridors tend to be very erosion-prone by nature. This feature affects channel erosion rates, patterns of sedimentation downstream, and potential for hazards to property within and adjacent to the stream corridor.

d. **Ravines and Steep Slopes.** Lake Oswego steam corridors frequently include ravines and steep slopes.

e. Associated Aquatic Elements. Floodplains and wetlands may be adjacent to or associated with the stream.

Stream, Perennial. A stream or part of a stream that flows continuously above ground during years of average or near-average rainfall, as a result of ground-water discharge or surface runoff.

Section 3. Section 50.16.005 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type, deleted text shown in ~~strike through type~~):

50.16.005 Overview.

1. Purpose. LOC Article 50.16 creates the Resource Protection (RP) and Resource Conservation (RC) District overlay districts to: ~~protect environmentally sensitive natural resources such as wetlands, stream corridors, and tree groves.~~

- ~~(a) protect wildlife habitat~~
- ~~(b) protect and improve water quality~~
- ~~(c) control and prevent water pollution for the protection of public health and safety~~
- ~~(d) comply with federal laws including the Clean Water Act and the Endangered Species Act~~
- ~~(e) comply with State Land Use Goal 5~~
- ~~(f) comply with Metro's Urban Growth Management Functional Plan.~~

12. Comprehensive Plan and Zoning Map: The overlay districts and their associated buffers shall be designated on the Comprehensive Plan Map and Zoning Map. The purpose of these maps is to give a general overview as to the location of the districts and the associated buffers and is not intended to show the precise location of the district boundaries.

23. Sensitive Land Atlas: The boundaries of the districts and their associated buffers shall be shown on individual property maps at a scale of 1:200300 in the Sensitive Lands (SL) Atlas. The SL Atlas is intended to govern the applicability of LOC Article 50.16 pursuant to LOC 50.16.015. The SL Atlas shall be adopted as part of the City's Comprehensive Plan and Zoning Maps.

Section 4. Section 50.16.015 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type, deleted text shown in ~~strike through type~~):

50.16.015 Applicability.

1. This Article applies to all lands designated as RP or RC on the Sensitive Lands Map and Atlas.
2. Sensitive Lands Development Review Required.
 - a. Development ~~that would result in any land disturbance within:~~
 - i. The RP District, or the area adjacent the District that would form the District Buffer; the RP or RC District, or within 35 feet of the RP District boundary
 - ii. The RC District or within 5 feet of the RC District boundary; or
 - iii. The construction setbacks established by LOC 50.16.075 (4) (as shown on maps in the Sensitive Lands Atlas), shall be subject to the standards and criteria identified in LOC 50.16.030.
 - b. Land divisions, lot line adjustments, mitigation proposals, and adjustments of a District Boundary shall be subject to the standards and criteria identified in LOC 50.16.030.
 - c. To the degree that any requirement of LOC Article 50.16 conflicts with a requirement of the underlying zone, Article 50.16 shall prevail.
3. Exception: The provisions in LOC Article 50.16 shall not apply to:
 - a. A resource located within the boundaries of a partition, subdivision, Planned Development, or lot line adjustment, approved prior to August 21, 1997 if:

i. The resource was identified and protected pursuant to regulations in effect at the time of approval; and

ii. 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 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 Article.

b. Resource restoration required as a result of violation of this Article or pursuant to settlement of a potential enforcement action by the City Manager, subject to City Manager approval of the restoration plan and procedures, and compliance with the Construction Standards set forth in LOC 50.16.095.

c. Development that meets all of the following criteria:

i. The development does not result in any new permanent structure or development within the RP or RC District, or its associated buffer, except the replacement or vertical expansion of an existing non-conforming structure, within the footprint of the non-conforming structure; and

ii. The development does not remove any vegetation designated as native vegetation in the Lake Oswego Plants List; and

iii. All replacement vegetation used is listed as "native vegetation" in the Lake Oswego Plants List.

4. Wetlands, stream corridors, and tree groves that are not contained within a RP or RC District shall not be subject to the regulations of this Article. 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 Division of State Lands (DSL) or the Army Corp. of Engineers.

5. In addition to the notification required for the particular development by LOC Articles 50.80 - 50.82, the City shall notify the Oregon Division of State Lands and the Army Corp. 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.

6. Mitigation Required for Violation. If development occurs in violation of this Article, 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 50.16.100 to 50.16.110.

[Cross-References: See LODS 3 (streams) and 4 (wetlands) if property is not designated under LOC Article 50.16, 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.]

Section 5. Section 50.16.016 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type):

50.16.016 Rebuilding Nonconforming Single-Family or Duplex Dwelling Located in Resource Area, Resource Buffer, or 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 non-conforming due to its location within a resource district, resource buffer, or construction setback, the rebuilding or reconstruction of the nonconforming dwelling shall be exempt from LOC 50.16.055 (2), 50.16.060 (3)(a-d), and 50.16.075 (2)(a)(iv and v) LOC Article 50.70, and to the other requirements of the Code not within LOC Article 50.16, to the extent that the damaged or destroyed portions of the dwelling failed to conform to 50.16.055(2), 50.16.060(3)(a - d), or 50.16.075 (2)(a)(iv and v) and to other requirements of this

Code not within LOC Article 50.16. In order to utilize the rights granted by this subsection the reconstruction must be commenced within one year of the date of the damage and completed within two years of such date.

Section 6. Section 50.16.020 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type, deleted text shown in ~~strike through type~~):

50.16.020 Criteria for Designating Property within an Overlay District.

1. Goal 5 Analysis Required. In order to include an individual property, a portion of a property, or a group of properties within an RP or RC Overlay District, 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 analysis in compliance with Statewide Land Use Planning Goal 5 and merits a Resource Protection (RP) and/or Resource Conservation (RC) designation.

2. Procedure. An RP or RC designation may be 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. ~~The former A group of properties~~ shall be processed as a legislative Comprehensive Plan Map and Zoning Map amendment pursuant to LOC Chapter 50.75.005 (1), and ~~the latter a single property~~ shall be processed as a quasi-judicial Comprehensive Plan Map and Zoning Map amendment pursuant to LOC 50.75.005 (2).

3. Addition of Resources.

a. 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 (2) above.

b. Criteria. The reviewing authority shall adopt a Comprehensive Plan Map and Zoning Map Amendment to add the resource to the Sensitive Lands Atlas, and designate the RP District or RC District, as applicable, if the reviewing authority finds that the proposed resources are "significant resources," by meeting the requirements of either subsection (5) [stream or wetland] or subsection (6) [tree grove], and if an ESEE analysis shows that the resources are required to be protected.

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

a. Lake Oswego ESEE Analysis Methodology to be Utilized. The City shall determine:

i. Tree Grove: ~~utilize~~ The Wildlife Habitat Assessment Score (HAS); or

ii. Stream Corridors and Wetlands: The Oregon Freshwater Wetland Assessment and 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 LOC Appendix 50.16-A.

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

45. Applicability of RP Overlay District: The Resource Protection (RP) Overlay District shall protect environmentally significant stream corridors and wetlands. The following resources may be placed within the RP District:

a. Stream corridors and wetlands that have a HAS ranking of 50 or more (defined as "Class I" stream corridors and wetlands).

b. Stream corridors and wetlands that have a HAS ranking of 35-49 or have a "high" ranking for scenic values (defined as "Class II" stream corridors and wetlands).

c. Wetlands that are significant under OFWAM guidelines, including:

i. Wetlands fed by surface flows, sheet flows or precipitation, that have evidence of flooding during the growing season, and have 60 percent 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 Oregon Freshwater Wetland Assessment Methodology; or

ii. 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 Oregon Freshwater Wetland Assessment Methodology; or

iii. 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.

d. All perennial streams.

§6. Applicability of RC Overlay District: The Resource Conservation (RC) Overlay District shall protect significant tree groves. A tree grove may be placed within an RC District if the tree grove has:

a. A HAS ranking of at least 35 ~~in the 1994/95 ESEE study;~~ or

b. A "high" ranking for scenic values in the study; or

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

Section 7. Section 50.16.025 of the Lake Oswego Code is hereby amended as follows (new text shown in **bold, double underlined type**, deleted text shown in ~~strike through type~~):

50.16.025 Removing an Overlay District Designation.

1. In order to remove an overlay District designation the review body shall find that one of the following criteria are met:

a. As a result of natural occurrences or evolution the resource has been degraded to the extent that the subject property no longer meets the criteria for designation found in Section 50.16.020 (4) or (5) and a re-application of the ESEE analysis demonstrates that the designation is no longer justified; or

b. ~~There was a mistake in the analysis of quality, or quantity or location in the original designation of the resource and a re-application of the ESEE analysis demonstrates that the designation is no longer justified~~meets the criteria; or

c. There was a mistake in the location of the original designation of the resource or the buffer, such that no portion of the resource or buffer was on the subject property.

2. An overlay district designation shall not be removed as a result of damage caused by the property owner, another party, or other than natural causes.

3. A removal application pursuant to subsection (1)(a) or (1)(b) above shall be processed in the same manners as a designation application pursuant to LOC 50.16.020.

4. An Overlay District Designation may be removed pursuant to subsection (1)(c) above by a delineation on the subject site in accordance with LOC 50.16.035 and a finding that there is not now nor was there any resource located upon the site at the time of designation.

Section 8. Section 50.16.030 of the Lake Oswego Code is hereby amended as follows (new text shown in **bold, double underlined type**):

50.16.030 Environmental Review.

An applicant for a development subject to this Article pursuant to LOC 50.16.015 shall comply with:

1. For exempt development under LOC 50.79.005 occurring within an RC or RP District, its associated buffer, or its associated construction setback area, the applicant shall:

i. Comply with the applicable RP District or RC District Development Standards (LOC 50.16.060 or 50.16.075);

ii. Comply with the Construction Standards (LOC 50.16.095) to the satisfaction of the City Manager;

iii. Meet the steps of avoidance and minimization as stated in LOC 50.16.105(1) and (2);
and

iv. File a mitigation plan that complies with the standards of LOC 50.16.110, for the review and approval of the City Manager.

2. For development other than under subsection (1) above, the environmental review requirements in LOC 50.16.035 to 50.16.045 and LOC 50.16.055 to 50.16.060 (for RC Zones), LOC 50.16.065-070 to 50.16.085 (for RP Zones) or LOC 50.16.090 (Special Standards for the Oswego Canal), whichever sections are applicable.

Section 9. Section 50.16.035 of the Lake Oswego Code is hereby amended as follows (new text shown in **bold, double underlined type**, deleted text shown in ~~strikethrough type~~):

50.16.035 Delineation of Resource.

1. Preparation/Criteria. Except as provided in subsection (4) of this section, an applicant for a development subject to environmental review shall first delineate the resource. A delineation is a more precise, site specific determination of the location of the resource prepared by a qualified professional. The delineation shall include a map showing the delineated boundary to plus or minus 2 feet. The delineation map shall also show the buffer area, if required for the particular resource. Resource boundaries shall be delineated as follows:

a. Tree Groves. **The RC District shall be delineated as follows:**

i. **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 an RP District (stream corridor or wetland). (Area that is a buffer to an RP District is not itself deemed to be within an RP District.); and-**

b. Wetlands. A wetland boundary shall be ~~measured or delineated~~ in accordance with the 1987 *Federal Manual for Identifying and Delineating Jurisdictional Wetlands* ~~or equivalent methodology approved by the City, except that:~~

i. **The methodology and must include soils testing, and**

ii. **When a delineated wetland boundary is abutting a steep slope, the buffer shall be applied from the top of the slope rather than from the delineated boundary. The top of slope shall be determined according to the same criteria as the top of bank, pursuant to LOC Appendix 50.16.035 (1)(c).**

c. Stream Corridors. A stream corridor boundary shall be measured or delineated based on topographic maps, hydrology maps, and/or field observations, pursuant to **LOC Appendix 50.16.035 (1)(c) 50.16 B, "Methods for Establishing Stream Corridor Boundaries"**.

2. Review of Delineation. ~~The City Manager reviewing authority~~ shall compare the applicant's delineation maps with the 1994/1995 ESEE Study and the SL Atlas, and shall inspect staked, delineated resource boundaries. ~~The City Manager reviewing authority~~ shall approve the delineation if ~~he or she finds that the delineated boundary more accurately reflects the locations of the RP and/or RC resources than the boundary as shown in the SL Atlas. If the City Manager reviewing authority finds that the evidence is contradictory or does not support the proposed delineations, he or she shall deny the application shall be denied.~~ In the alternative, ~~the City Manager may continue the review of the application may be continued~~ for additional information if:

a. The applicant agrees to conduct a new delineation by an expert selected by the City Manager at the applicant's expense; and

b. 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.

3. Adjustment of Overlay District Boundaries to Reflect Approved Delineation. An approved delineated boundary shall replace the boundary in the Sensitive Lands Atlas for the purposes of review of the development proposal for compliance with this Article. 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 SL Map (if necessary), shall be modified to be consistent with the delineated boundary, and the SL Atlas and SL Map shall show the required buffer outward from the delineated boundary.

4. Re-delineation not Required; Exceptions. An applicant for a development subject to this Article shall not be required to delineate the resource pursuant to this section if:

a. ~~The resource has been previously delineated pursuant to an earlier development application subject to this Article.~~ Exception: The City Manager may require a new delineation if:

a1. The applicant desires to demonstrate that the previously delineated boundary is no longer accurate;

a2. There is evidence of a substantial change in circumstances on the property that has affected the location of the resource as previously delineated; or

a3. The City Council has adopted new delineation standards or requirements since the previous delineation, or

b. The proposed development consists solely of landscaping and/or tree removal or qualifies as a resource enhancement project, and complies with LOC 50.16.075 (2)(a)(i) [Landscaping], 50.16.075 (2)(ii) [Tree Removal], or either LOC 50.16.060 (3)(f) or 50.16.075 (2)(a)(vi) [Resource Enhancement Projects].

5. 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. ~~In this circumstance, an application to delineate a resource shall be processed as a ministerial development pursuant to LOC Article 50.80.~~

Section 10. Section 50.16.055 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type, deleted text shown in ~~strike through type~~):

50.16.055 RC District Protection Area.

1. The applicant for a major or minor development permit on a property containing an RC District shall designate a minimum of 50% of the RC District after delineation as the "RC Protection Area". 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.

2. Except as otherwise provided in LOC 50.16.060, no development shall be permitted within the Protection Area. The area outside of the Protection Area may be fully developed pursuant to applicable regulations.

3. Except as provided in subsection (4) of this section, the location of the Protection Area shall be based upon the following criteria:

a. The Protection Area shall link to other RP or RC lands on the development site and on abutting properties, if such lands are present;

b. The trees having DBH width greater than the median DBH within an RC District shall be included in the Protection Area;

c. The location of the Protection Area shall be designed to protect development from blow-down hazards;

d. The Protection Area shall protect steep slopes and resources close to water areas from potential erosion and water quality impacts;

e. The Protection Area shall protect wildlife habitat and travel corridors;

f. The Protection Area shall be designed to protect a contiguous canopy and a clustered configuration that does not fragment lands within an RC-District;

g. The Protection Area shall consist of ~~maintain an ecologically viable plant and wildlife communities~~ community;

h. The Protection Area shall maintain the scenic qualities of the site.

4. It is recognized that all of the criteria listed in subsection (3) 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 balance the applicable criteria in order to protect the most environmentally significant portion of the RC District.

5. Once a Protection Area has been identified and protected pursuant to LOC Article 50.16 and approval becomes final, no future reduction in the RC 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 (3) 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 50.16.020.

6. The City Manager shall note the establishment of a Protection Area in the SL Atlas, along with a reference to the application in which the Protection Area was created.

7. In order to put ~~future~~ property owners and occupants on notice, the applicant shall execute a covenant running with the land that references the Protection Area and the City of Lake Oswego Department of Planning application file in which the Protection Area was established.

Section 11. Section 50.16.060 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type, deleted text shown in ~~strike through type~~):

50.16.060 RC District Development Standards.

1. Except as provided in subsection g. of this section, a criterion applicable to the RC Protection Area shall apply to the entire RC District if no Protection Area has been established pursuant to LOC 50.16.055.

2. In addition to compliance with any other applicable regulations, the following development uses and activities on properties containing an RC District are permitted within the RC District or its buffer, subject to the standards set forth in this subsection 3 below:

a. Streets, driveways, lake trams, and public transportation facilities,

b. New structures, accessory structures, decks, parking areas, active use recreational facilities,

c. ~~Accessory structures,~~ Additions to existing structures and to non-conforming structures,

d. ~~Decks,~~ Temporary construction activities,

e. ~~Parking areas,~~

f. ~~Active use recreational facilities,~~

g. ~~Fences,~~

h. ~~Passive use recreational facilities,~~

i. ~~Utilities,~~

j. ~~Resource enhancement projects,~~

k. ~~Landscaping, new and existing, and~~

l. ~~Tree removal,~~

m. Limited hazardous materials storage.

3. Development Standards. If the proposed types of development are permitted within the RC District or its buffer, the development activity, use or activity shall comply with the following standards, and the construction standards set forth in LOC 50.16.095:

a. Streets, Driveways, Lake Trams, and Public Transportation Facilities.—Public or private streets, driveways or public transportation facilities shall not be placed through the RC Protection Area to access buildable areas of the property unless there is no other practicable method of access.

i. Driveways shall be set back at least 5 feet from, and shall not be placed through an RC Protection Area unless there is no other practicable method of access to the buildable areas of property served by the driveway.

ii. Public or private streets, trams to access Oswego Lake, and public transportation facilities shall be set back at least 5 feet from, and shall not be placed in or through an RCPA unless:

A. for public or private streets, there is no other practical method of providing for access to buildable parcels.

B. 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.

C. for trams to access Oswego Lake, there is no other practical method of providing for access to Oswego Lake;

D. for regional trails, (designated as a regional trail on the City's Trails and Pathway Master Plan), they may be located within an RCPA provided the trail width shall be no greater than 12 feet wide (as determined by the standards in the City's Trails and Pathway Master Plan).

iii. If allowed within the Protection Area and five-foot setback pursuant to this criterion, the applicant shall comply with the following requirements:

iA. Roadways, Streets, private streets, driveways and bridges shall be the minimum width necessary to protect resources within the Protection Area while also allowing for safe passage of vehicles and/or pedestrians.

iiB. 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;

iiiC. 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-foot setback area;

ivD. 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 Protection Area used for the public or private street, driveway, or public transportation facility, or by complying with the mitigation requirements in LOC Sections 50.16.100 to 50.16.110.

b. New Structures, Accessory Structures, Decks, Parking Areas, Active Use Recreational Facilities, and Driveways. New structures, parking areas, and active use recreational facilities, and driveways shall be set back at least 5 feet from the Protection Area boundary in order to protect tree roots. Accessory structures, decks, and similar structures meeting the criteria of LOC 50.14.005 (5)(a-c) and LOC 50.22.045 (2) are permitted within the 5 foot setback area so long as they are placed no closer than 3 feet from the Protection Area boundary.

c. Additions to Existing Structures and to Non-conforming Structures. Additions to existing structures or to non-conforming structures are permitted provided the addition does not expand the lot coverage in the resource area.

d. Temporary Construction Activities. A temporary construction zone, not greater than 10 feet 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.

ee. Fences. Fences shall not be placed in a Protection Area unless they are constructed the bottom of the fence (except for posts) is not less than 12 inches above ground and the top of the fence is not taller than 4 feet tall, or of another design approved by the City Manager, to allow wildlife passage.

ef. Passive Use Recreational Facilities in Protection Area. Passive use recreational facilities, including soft surface trails and pedestrian bridges, may be located within the RC Protection Area. If

construction of such facilities disturbs any adjacent land within an RC Protection Area, the disturbed area shall be restored and revegetated with plants identified on the ~~Restoration-Plants List~~ as appropriate for resource landscaping.

eg. Utilities. Public or private utilities shall not be placed in or through the RC 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 Protection Area, the applicant shall restore and revegetate the disturbed area with plants identified on the ~~Restoration-Plants List~~ and mitigation shall be required pursuant to LOC Sections 50.16.100 to 50.16.110. When applying Step 1 (avoidance) of the mitigation process:

i. 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;

2. 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.

ii. ~~Tunneling under a resource shall be permitted where tree roots can be avoided.~~

fh. Resource Enhancement Projects. Resource enhancement projects shall remove only invasive vegetation, and shall plant only vegetation within the RC District or Protection Area, if one has been established, listed on the ~~Restoration-Plants List~~. Any pathways or structures proposed as part of a resource enhancement project shall retain existing trees.

gi. Landscaping.

i. Plants. Plants used for landscaping within a Protection Area shall:
A. Be adapted to local soils and growing conditions;
B. Require no fertilizers or pesticides detrimental to the resource;
C. Not be dependant on long-term irrigation, which can increase erosion and sedimentation. (Irrigation necessary for initial establishment of the plants is not considered long term irrigation); and
D. Provide food or cover for wildlife.

ii. The City shall maintain a ~~Restoration-Plant List~~ on file in the Planning ~~Department~~ Division listing species that comply with the criteria in subsection (3)(g)(i) of this section. If a plant is listed in the applicable section of the ~~Restoration-Plant List~~ for resource landscaping, it shall be presumed to comply with subsection (3)(g)(i) of this section. The ~~Restoration-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 subsection (3)(g)(i) of this section are discovered or become available. An applicant may utilize a plant not on the ~~Restoration-Plant List~~ as long as it complies with the criteria in subsection 3 (g)(i) of this section.

iii. Removal of vegetation identified on the ~~Restoration-Plant List~~ as appropriate for resource landscaping is not permitted from a protection area.

iv. No herbicides or pesticides shall be used except for control of invasive plants as identified on the ~~Invasive-Plants List~~ maintained in the Planning Department.

v. New landscaping shall not include any invasive plants on the City's ~~Invasive-Plants~~ list.

vi. Existing Landscaping: Non-conforming 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 the modified pursuant to LOC 50.70.005. However, a non-conforming landscaped area may not be expanded pursuant to LOC 50.70.025.

hj. Tree Removal. Tree removal on property within the RC District shall be subject to the following criteria:

i. Tree removal in a RC district that has not established a 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 is prohibited in an RC District prior to designation of the Protection Area.

ii. Tree removal within a designated 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 for development permitted pursuant to this section, excepting subsection (g) and this subsection, within a Protection Area is permitted pursuant to LOC 55.02.080.

iii. Tree removal outside of the Protection Area shall comply with LOC Chapter 55.

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

k. 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 Resource Conservation District.

EXCEPTION:

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.

Section 12. Section 50.16.065 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type; deleted text shown in ~~striketrough type~~):

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

In addition to compliance with LOC 50.16.030 to 50.16.045, applicants for development that is subject to environmental review on property containing an RP District shall comply with the standards contained in LOC ~~50.16.065~~5070 to 50.16.085, in order to:

1. 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 50.16.100 to 50.16.110;

2. 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;

3. Allow for development opportunities for at least one single family home in residential zones where an RP District occupies most or all of an individual property, pursuant to applicable mitigation criteria of LOC 50.16.100 to 50.16.110.

Section 13. Section 50.16.070 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type; deleted text shown in ~~striketrough type~~):

50.16.070 RP District Buffer Requirements and Structure/Improvement Construction Setback Requirements.

1. Buffer areas shall be provided around delineated RP resources.

a. The purpose of the buffer area is to ensure that the resource is protected for the shelter, food, travel, and nesting needs of wildlife and to provide continuity of the resource for aesthetic, surface water quality, slope protection, and flood protection functions and values.

b. The buffer area shall be shown on the delineation map prepared pursuant to LOC 50.16.035.

2. The following buffer areas, measured outward from the edge of a delineated RP resource, shall be provided:

- a. Class I Wetlands and Class II Wetlands abutting Class I Stream Corridors - 30 feet
- b. Other Class II Wetlands - 25 feet
- c. Class I Stream Corridors- 30 feet

- d. Class II Stream Corridors - 25 feet
3. Exceptions/Modifications to Buffer Requirements: The review authority may allow portions of the required buffer to be reduced when the applicant shows that:
- a. The proposed development complies with LOC 50.16.105; and
- b. The reduction in buffer width is not solely for the purpose of maximizing development of the site; and
- c. Development abuts a Class I or II Resource:
- ai. Development abutting a Class I Resource. The review authority may allow portions of the required buffer abutting a Class I resource to be reduced to a minimum of 15 feet if:
- iA. A qualified professional demonstrates that such an adjustment will not reduce the functions and values of the resource as a whole; and
- iiB. The width is increased in other areas to maintain a 30 foot average buffer width.
- bii. Development abutting a Class II Resource. The review authority may allow portions of the required buffer abutting a Class II resource to be reduced to a minimum of 10 feet if:
- iA. A qualified professional demonstrates that such an adjustment will not reduce the functions and values of the resource as a whole; and
- iiB. The width is increased in other areas to maintain a 25 foot average buffer width.
- ed. The review authority may permit a buffer width that is less than the average minimums required in subsections (3)(c)(i)(a) or (3)(c)(ii)(b) of this section when a qualified professional shows that such an adjustment will not damage the system as a whole, and one of the following conditions exist:
- i1. The presence of an existing topographic feature or human-made development physically precludes establishment of the minimum buffer width required; or
- ii2. The size or configuration of the subject parcel is insufficient to provide the minimum buffer width required.

4. ~~The review authority shall not permit a reduction in buffer width solely for the purpose of maximizing development of the site.~~ Additional construction setbacks are required from the RP District buffer by LOC 50.16.075 for the following:

A. New structures, parking areas, active use recreation facilities, streets and driveways - 10 feet.

B. Accessory structures, decks, and similar outdoor facilities meeting the criteria of LOC 50.14.005 (5)(a) - (c) and LOC 50.22.045 (2) - 3 feet.

Section 14. Section 50.16.075 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type, deleted text shown in ~~strike through type~~):

50.16.075 RP District Development Standards.

1. In addition to compliance with any other applicable regulations, and subject to the requirement for compliance with subsection (3) below, the following development, use or activity on properties containing an RP District are permitted within the RP District or its buffer, subject to the standards set forth in subsection (2) below:

- a. Landscaping, ~~new and existing,~~
- b. Tree removal,
- c. Utilities,
- ed. Streets, driveways, lake trams and public transportation facilities,
- de. Resource enhancement projects [LOC 50.16.075 (2)(a)(vi)],
- ef. ~~New~~ Structures,
- fg. Parking areas,
- gh. Active use recreation facilities,
- hj. Hard surfaced pathways, ~~and~~
- i. ~~Streets and driveways.~~

- i. Limited hazardous materials storage, and
- k. Signs and kiosks along streets, trails, parks, and minor or major public facilities.

2. Except as provided in LOC 50.16.085, all development listed in subsection (1) above is subject to environmental review and shall comply with the following standards:

a. Specific Development Standards.

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

A. Plants: Plants used for landscaping within a delineated resource and buffer area shall:

- (1) Be adapted to local soils and growing conditions;
- (2) Require no fertilizers or pesticides detrimental to the resource;
- (3) Not be dependant on long-term irrigation, which can increase erosion and sedimentation. (Irrigation necessary for initial establishment of the plants is not considered long term irrigation); and

(4) Provide food or cover for wildlife.

B. The City shall maintain a ~~Restoration-Plant List on file in the Planning Department~~ listing species that comply with the criteria in subsection (2)(a)(i)(A) of this section. If a plant is listed on the ~~Restoration-Plant List as appropriate for resource landscaping~~, it shall be presumed to comply with subsection (2)(a)(i)(A) of this section. The ~~Restoration-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 subsection (2)(a)(i)(A) of this section are discovered or become available. An applicant may utilize a plant not on the ~~Restoration-Plant List~~ as long as it complies with the criteria in subsection (2)(a)(i)(A) of this section.

C. Removal of vegetation identified on the ~~Restoration-Plant List as appropriate for resource landscaping~~ is not permitted from an RP District delineated resource or buffer area, except as otherwise allowed in this section.

D. No herbicides or pesticides shall be used within the delineated resource or buffer area except for control of invasive plants as identified on the ~~Invasive-Plants List-maintained in the Planning Department.~~

E. New landscaping within the delineated resource or and buffer area shall not include any plants on the City's ~~Invasive-Plants-List.~~

F. Existing Landscaping: Non-conforming formal landscaped areas including ornamental gardens and lawns located within a delineated resource or buffer area and in existence at the time of the adoption of these standards, may be maintained, altered or the modified pursuant to LOC 50.70.005. However, a non-conforming landscaped area may not be expanded pursuant to LOC 50.70.025.

ii. Tree Removal. Tree removal within an RP District or RP District buffer pursuant to LOC 50.16.070 shall be subject to the following criteria:

1. Type I and Type requires a Class-II tree removal permits, in accordance with LOC 55.02.042 for development purposes, for those limited development activities allowed and approved to this section:

2. Type II tree removal permit, in accordance with LOC 55.02.42 for landscaping purposes, in conjunction and consistent with a Resource Enhancement project;
~~or an Emergency Tree Removal Permit, in accordance with LOC 55.02.042 (2) and 55.02.080 (Tree Cutting), except that a tree removal pursuant to LOC 55.02.080 (3) shall only be permitted for those limited development activities allowed and approved pursuant to this section.~~

3. Hazard Tree removal permit, in accordance with LOC 55.02.042(4), except any portion of the tree that is not likely be hazardous to persons or property shall be retained for wildlife habitat and natural resources.

4. Emergency tree removal permit, in accordance with LOC 55.02.042(5).

5. Verification permit, in accordance with LOC 55.02.042(6).

iii. Utilities.

A. Placement/New Construction: Public or private utilities shall not be placed within an RP district or buffer 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 or RP District buffer pursuant to LOC 50.16.070, mitigation shall be required pursuant to LOC 50.16.100 to 50.16.110. When applying the mitigation process to this section:

(1)A. 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, can be avoided and the functions and values of a resource will be maintained.

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

iv. Streets, Driveways, Lake Trams and Public Transportation Facilities.

A. Public or private streets, driveways or public transportation facilities shall not be placed through an RP Resource or buffer area to access buildable areas of the property unless there is no other practicable method of access to buildable parcels.

B. Driveways shall not be placed through an RP Resource or buffer area 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;

C. Trams to access Oswego Lake shall not be placed through an RP Resource or buffer area unless there is no other practicable method of access to Oswego Lake;

D. Public streets and public transportation facilities shall not be placed in or through an RP District or its buffer unless:

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

(2) 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.

(3) For regional trails, (designated as a regional trail 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 feet wide (as determined by the standards in the City's Trails and Pathway Plan),

E. If allowed pursuant to the subsections of this criterion (iv), the applicant shall comply with the following criteria.

A-(1) Streets, driveways and bridges shall be the minimum width necessary to protect resources within the RP district or buffer while also allowing for safe passage of vehicles and/or pedestrians.

B-(2) Stream and/or wetlands crossings shall be avoided if practicable. 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-(3) 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 or Buffer;

D-(4) The applicant shall mitigate for loss of any portion of an RP Resource pursuant to LOC 50.16.100 to 50.16.110.

v. Structures, Parking Areas, Pathways, Driveways, Lighting and Fences.

A. 1. Except as provided in subsection (2)(a)(iv) above, ~~new~~ structures, parking areas, active use recreation facilities, hard surfaced pathways, streets and driveways shall be set back at least 10 feet from an RP District buffer.

2. ~~In addition to other applicable standards, Accessory structures, patios, decks, and similar outdoor facilities, and lighting meeting the criteria of LOC 50.14.005 (5)(a) (c) and LOC 50.22.045 (2) are permitted within the 10 foot setback area so long as they are~~ shall not be placed no closer than 3 feet from the resource buffer boundary.

B. Passive use recreation facilities, such as soft surface trails and pedestrian bridges, may be located within the RP district or its buffer. Any disturbed land area shall be restored with plants as described on the ~~Restoration Plants List~~.

C. Exterior lights ~~are not allowed within the RP District or its buffer; any exterior lighting outside of the RP District or its buffer~~

shall be hooded and positioned so that light does not shine directly into the RP District ~~and its buffer~~.

D. Fences shall not be placed in a resource or its buffer, unless they are constructed so that:

- the bottom of the fence (except for posts) is not less than 12 inches above ground.

- the top of the fence is no taller than 4 feet tall.

- the fence is not within 20 feet of a stream centerline.

- the fence is not within a wetland,

or of another design approved by the City Manger, to allow wildlife passage.

vi. 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 or RP District buffer pursuant to LOC 50.16.070 shall be approved if the applicant demonstrates that all of the following criteria are met:

A. The project will cause ~~the minimum permanent~~ degradation, or loss of natural features in the stream corridor ~~necessary to accommodate the enhancement project; and~~

B. There will be ~~a significant~~ improvement in the quality of at least one function or value of the resource; and

C. Only vegetation described in the ~~Restoration 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 Sections 50.16.100 to 50.16.110.

vii. 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 and its buffer.

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.

viii. Signs and Kiosks. Signs and kiosks are permitted in the following locations:

A. Within 8 feet of the improved portions of public streets and trails;

B. Minor or major public facilities, subject to LOC Article 47 (Sign Code), provided the permanent land disturbance area of any sign or cluster of signs may not exceed 12 square feet.

b. 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 50.16.095:

i. Resource Alterations.

A. Streams shall not be impounded or diverted from their natural channels unless the applicant demonstrates:

(1) The diversion or impoundment will cause minimum degradation or loss of natural features in the stream corridor;

(2) 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:

(a) A diversion would return a previously altered 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 or improve water quality.

B. 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 LOC 50.16.075 (2) (a)(vi) have been met.

ii. (Reserved).

3. Land Divisions and Lot Line Adjustments. The following standards apply to properties containing an RP District or its buffer for applications for land divisions including partitions, subdivisions, and Planned Developments (PDs), and to lot line adjustments of properties containing an RP District or its buffer:

a. All new lots or reconfigured lots proposed on lands that include an RP District or RP District buffer shall have designated sites for buildings, ~~vehicular access, and utility service~~ that are located outside of the delineated RP resource and buffer area. A 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 under LOC 50.16.085 in order to site a dwelling upon the proposed lot.

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 where the entire lot is included in a conservation easement that prohibits development on the site; ~~and~~

b. Permanent signage is required in planned developments and subdivisions to identify the RP District and buffer area 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.

Section 15. Section 50.16.090 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type; deleted text shown in ~~strikethrough type~~):

50.16.090 Special Standards for the Oswego Canal.

1. 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 a RP Class I and Class II stream corridor. The Canal provides the primary 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 storm water 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 ~~Article~~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 LOC Appendix 50.16-C. These regulations are intended to preserve the community-wide benefits of the natural resource functions and values of the Canal, but are not intended:

a. To prevent the Lake Oswego Corporation from exercising its water rights to ensure an unimpeded supply of water to Oswego Lake;

b. To prevent the Lake Corporation from undertaking necessary management and maintenance activities to ensure water quality of the Canal or Oswego Lake, or

c. 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 Article 50.44 Flood Plain, applicable Federal Emergency Management Association (FEMA) regulations, and any other City codes or standards that are applicable.

2. Exempt Activities. The following activities within the Oswego Canal Stream Corridor are exempt from the requirements of this Article when undertaken by the City of Lake Oswego or the Lake Corporation:

a. 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 ripraped areas, reinforcement areas, gabions and other features;

b. Emergency and routine removal of fallen trees, siltation, slides and other debris from the channel and banks of the canal and buffer areas as needed to ensure a continuous flow of water to Oswego Lake and to prevent flood damage;

c. 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;

d. Emergency and routine repair and maintenance of failing or collapsed sections of the canal bank or buffers, including removal of contributing vegetation;

e. Maintenance, major repair of the Oswego Canal sanitary sewer interceptor and any service laterals connecting to the sewer.

3. 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 ~~by the City Manager~~ 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 50.79.025 and any other City Codes or Standards that are applicable. These projects are exempt from the RP District requirements.

4. Environmental Mitigation Required. Any effects of the above activities in subsection (3) which impact the Canal's stream corridor functions and values as determined by the adopted ESEE analysis, ~~whether when~~ conducted either as part of an approved maintenance and management plan ~~or in the course of an emergency~~ shall be mitigated pursuant to a plan approved by the City Manager reviewing authority. The mitigation plan shall be appropriate to the scale of disturbance, conform to the Oregon Division of State Lands and the U.S. Army Corps of Engineers requirements and shall also, to the extent practical, replace plant communities and wildlife habitat disturbed by the above activities.

5. Boat Houses. Boat houses and docks shall not be placed within the portions of the Oswego Canal stream corridor or its buffer areas as described in LOC 50.16.090 above and illustrated by LOC Appendix 50.16-C.

Section 16. Section 50.16.095 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type, deleted text shown in ~~strike through type~~):

50.16:095 Construction Standards.

~~Following approval of an application but prior to any grading, clearing, or construction on a development site which contains a RP or RC District, the applicant~~ An owner shall submit a construction plan and narrative ~~which demonstrates to the satisfaction of the City Manager~~ Engineer ~~prior to any grading, clearing, or construction on a development site which contains an RP or RC District. The construction plan and narrative shall demonstrate~~ that the following standards will be met:

1. RC Protection Areas or RC Districts where no ~~P~~ protection areas have been approved and delineated RP ~~District~~ Resources and buffers shall be protected during construction with either:

a. a minimum 46 feet tall chain link fencing secured with a minimum of 46 feet 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 Article;

or

b. Such alternative method to subsection (a) above 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.

2. RC protection boundaries, delineated resource boundaries and buffer boundaries, as applicable, shall be located and staked by a qualified professional prior to placement of fencing and other protective measures.

3. Hazardous Materials. The site shall be inventoried for hazardous materials, debris and noxious materials, and these materials shall be removed prior to the development of the site.

4. No construction, demolition, grading, or site clearing shall begin until after protective measures, signs, and erosion control measures are in place and have been inspected and approved by the City Manager and all applicable permits have been issued. Fencing and other protective measures shall not be removed, even temporarily, without the permission of the City Manager.

5. No stockpiling of fill materials, or parking or storage of construction equipment shall be allowed within a resource District.

6. When transportation facilities, pathways, utilities, or structures are approved within a delineated RP resource, they shall be constructed in such a way that a minimum of excavation is required and so that no permanent draining or filling of a stream corridor or wetland will occur.

7. Surface runoff and other water sources supplying hydrology to an RP District shall be designed and maintained so as not to adversely impact the functions and values of the resource.

~~7~~ Any additional construction requirements imposed as conditions of approval or which may be required by the Development Standards, the Lake Oswego Building Code (LOC Chapter 45) or the Erosion Control Code (LOC Chapter 52).

[Cross-Reference: Mitigation and Avoidance Review Requirements of LOC 50.16.100 to 50.16.110.]

Section 17. Section 50.16.105 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type, deleted text shown in ~~strike through type~~):

50.16.105 Progressive Mitigation Steps Required.

The approving authority shall permit development allowable within:

- ~~a~~ An RC Protection Area;
- ~~or a~~ A delineated RP resource;
- RP resource buffer established by LOC 50.16.070

pursuant to LOC 50.16.060 or 50.16.075 through 50.16.085, whichever is applicable, only if it finds that the following progressive steps have been met:

1. 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 district 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.

2. Step #2-Minimization: If the applicant has endeavored to avoid detrimental impacts on the resource according to subsection (2)(a), above, and the review authority finds that detrimental impacts cannot be avoided; then the applicant shall minimize impacts by demonstrating that:

a. 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

b. 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 50.16.110 (5) or (6), whichever is applicable.

Section 18. Section 50.16.110 of the Lake Oswego Code is hereby amended as follows (new text shown in bold, double underlined type, deleted text shown in ~~strike through type~~):

50.16.110 Mitigation Requirements.

1. 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:

a. For proposed development, ~~Demonstrates compliance with LOC 50.16.105 and this section.~~ For mitigation of violations of this Code, demonstrates compliance with LOC 50.16.105 (2)(b).

b. Includes a maintenance and monitoring plan ~~to ensure the viability of the mitigation over time.~~ 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 31st of each year for a 3 year period. The report shall be prepared by a qualified professional and shall document site conditions with narrative and pictures.

c. Provisions for regular maintenance and periodic monitoring of the mitigation site.

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 and 34.08.

2. If a Division of State Lands (DSL) wetland permit, Army Corp. 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.

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

4. On-site mitigation is required where possible, taking into consideration the existing natural and human-made features of a site. If the review authority finds that on-site mitigation is not possible, then off-site mitigation shall be permitted according to the following priorities:

a. 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

b. Outside of the drainage system, but inside the City limits; or

c. Outside the drainage system and City limits, but within the Lake Oswego Urban Services Boundary.

5. Stream corridors and tree groves: When mitigation is proposed, the review 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.

6. Wetlands: When wetland mitigation is proposed within an RP Class I or Class II District, the review authority shall require minimum mitigation ratios (area of wetland created or enhanced to area of wetland lost) as follows:

a. Wetlands Creation or Restoration - 2:1 ratio

b. Wetlands Enhancement - 3:1 ratio

c. 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.

7. Vegetation restoration shall be required to mitigate the loss of plant communities disturbed by development activities. In-kind vegetation shall be required for all mitigation projects, including trees,

shrubs, and ground cover plants as identified on the Restoration-Plants List (on file in the Planning ~~Division~~Department). The restoration plant community chosen shall recreate a diverse and healthy environment which is compatible with the resource.

8. Initial 3 Year Bonding Period:

a. Except as provided in subsection (8)(d) of this section, the applicant or property owner of a development subject to an approved mitigation plan 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 a 3 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.

b. The performance bond or the letter of credit will be released by the City after three (3) 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.

c. 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.

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

Section 19. The Lake Oswego Community Development Code Appendix is hereby amended by deleting Appendix 50.16-B and Figures A1, A2, B, C, D1 and D2, and replacing with LOC Appendix 50.16.035 (1)(c), Figures 1, 2, 3, 4, 5, 6a and 6b, as shown in Exhibit B.

Section 20. The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Enacted at the meeting of the Lake Oswego City Council of the City of Lake Oswego held on the 21st day of April, 2009.

AYES: Mayor Hoffman, Hennagin, Jordan, Moncrieff, Johnson, Tierney


NOES: Olson


ABSENT: None

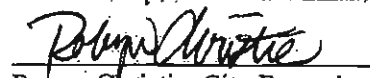
ABSTAIN: None

ATTEST:

APPROVED AS TO FORM:


David D. Powell, City Attorney


Jack D. Hoffman, Mayor
Dated: 4/21/09


Robyn Christie, City Recorder

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BEFORE THE CITY COUNCIL
OF THE CITY OF LAKE OSWEGO

A REQUEST TO AMEND THE TEXT) LU 08-0051(A)-1699
OF THE LAKE OSWEGO) (City of Lake Oswego)
COMMUNITY DEVELOPMENT CODE,)
ARTICLE 50.16 (SENSITIVE LANDS)) FINDINGS AND CONCLUSIONS
TO CLARIFY, CORRECT AND MODIFY)
VARIOUS PROVISIONS)
[ORDINANCE No. 2527])

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NATURE OF PROCEEDING

This matter came before the City Council pursuant to a recommendation by the Lake Oswego Planning Commission to amend the text of the Lake Oswego Community Development Code, Article 50.16 (Sensitive Lands), for the purpose of clarifying and updating provisions, complying with Metro Titles 3 and 13, making the text consistent with current interpretations and practices, improving Code graphics and simplifying review of certain projects.

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HEARINGS

The Planning Commission held public hearings and considered this application at its meetings of September 22 and September 29, 2008, October 13, 2008, November 10 and 24, 2008, and December 8, 2008. The City Council held study sessions on February 3 and 19, 2009 and held a public hearing to consider the Planning Commission's recommendations on March 3, 2009.

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CRITERIA AND STANDARDS

A. City of Lake Oswego Comprehensive Plan:

Goal 1: Citizen Involvement, Policies 1 and 5

Goal 2: Land Use Planning, Section 1, Policies 4, 7, 9, and 23

FINDINGS AND CONCLUSIONS (LU 08-0051(A)-1699)

1 Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources, Section 1,
2 Policies 1, 2, 3, 4, and 6; Section 2, Policies 1,2,3,9, and 14; Section 3, Policies
3 1,3,5,6,7,8, and 9; Section 4, Policies 1,3,4,7,8,9,10,11,12, and 13; Section 5,
4 Policies 1,4,5,6,7, and 9

5 Goal 6: Air, Water, and Land Resources, Section 1, Policy 3; Section 2, Policies 3 and 9

6 B. City of Lake Oswego Community Development Code:

7 LOC 50.75.005 Legislative Decision Defined.
8 LOC 50.75.010 Criteria for Legislative Decision
9 LOC 50.75.015 Required Notice to DLCD
10 LOC 50.75.020 Planning Commission Recommendation Required
11 LOC 50.75.025 City Council Review and Decision

12 C. Statewide Planning Goal or Administrative Rule adopted pursuant to ORS Chapter 197

13 Goal 1: Citizen Involvement
14 Goal 2: Land Use Planning
15 Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources
16 Goal 6: Air, Water, and Land Resources

17 **FINDINGS AND REASONS**

18 The City Council incorporates the staff Council Reports, dated January 25, 2009 and
19 March 3, 2009 for LU 08-0051 (with all exhibits) the September 9, 2008 Staff Report (with all
20 exhibits) together with all supplemental reports, as support for its decision, together with the
21 Findings and Conclusions of the Planning Commission in this matter. To the extent they are
22 consistent with the approval granted herein, the City Council also adopts by reference its oral
23 deliberations in this matter as further findings in support of this decision.

24 In addition to the incorporated findings above, the City Council also finds that a new
25 provision should be added to Article 50.16 of the Lake Oswego Code to allow property owners
26 to repair or rebuild a residential structure that is nonconforming due to its location within a
27 resource district, resource buffer, or construction setback, and that is damaged or destroyed by

28 FINDINGS AND CONCLUSIONS (LU 08-0051(A)-1699)

29 2 - [City of Lake Oswego, LU 08-0051-1692]

Page

EXHIBIT A

1 causes not under the control of the owner, without correcting the nonconformity. The intent of
2 the Council is to adopt this new provision as an interim measure, pending a recommendation by
3 the Planning Commission as to whether a similar provision should be adopted permanently,
4 possibly including all nonconforming residences (whether or not within a sensitive lands area).
5 The City Council finds that the following Code language is appropriate for this interim
6 provision:

7
8 **Rebuilding Nonconforming Single-Family or Duplex Dwelling Located In
Resource Area, Resource Buffer, or Construction Setback.**

9 Excluding single-family or duplex dwellings subject to the Flood
10 Management Area, if a portion of a nonconforming single-family or duplex
11 dwelling is damaged or destroyed by causes not under the control of the owner
12 (including but not limited to fire, earthquake, flood, landslide, and wind or tree
13 damage, but not including destruction due to lack of structural maintenance by the
14 owner, remodeling, or new construction), and the dwelling was non-conforming
15 due to its location within a resource district, resource buffer, or construction
16 setback, the rebuilding or reconstruction of the nonconforming dwelling shall be
17 exempt from LOC 50.16.055(2), 50.16.060(3)(a - d), and 50.16.075 (2)(a)(iv and
18 v) LOC Article 50.70, and to the other requirements of the Code not within LOC
Article 50.16, to the extent that the damaged or destroyed portions of the dwelling
failed to conform to 50.16.055(2), 50.16.060(3)(a - d), or 50.16.075 (2)(a)(iv and
v) and to other requirements of this Code not within LOC Article 50.16. In order
to utilize the rights granted by this subsection the reconstruction must be
commenced within one year of the date of the damage and completed within two
years of such date.

19 **CONCLUSION**

20
21 The City Council concludes that LU 08-0051(A)-1699, as modified to include the new
22 Code provision described in these findings, complies with all applicable criteria and is consistent
23 with applicable Statewide Goals and Lake Oswego Comprehensive Plan Policies.
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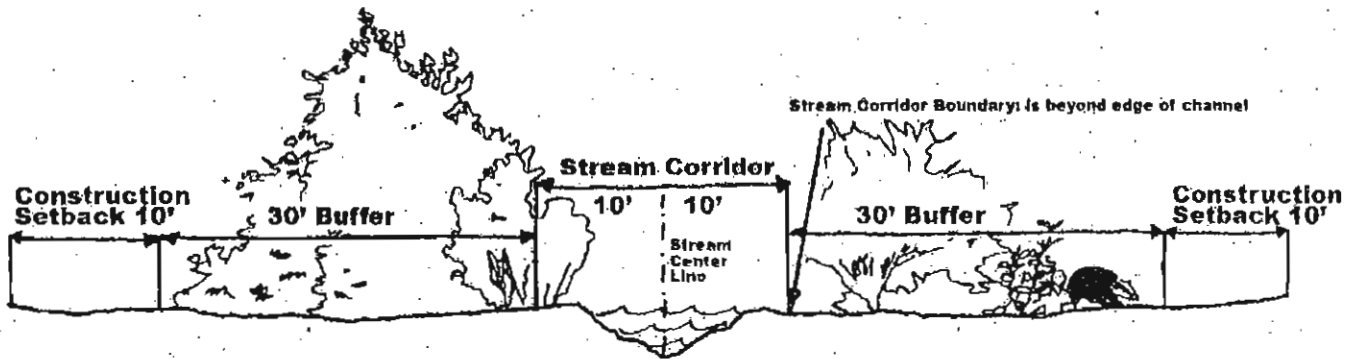
26 **FINDINGS AND CONCLUSIONS (LU 08-0051(A)-1699)**

Page 3 - [City of Lake Oswego, LU 08-0051-1692]

EXHIBIT A

LOC APPENDIX 50.16.035 (1)(c)

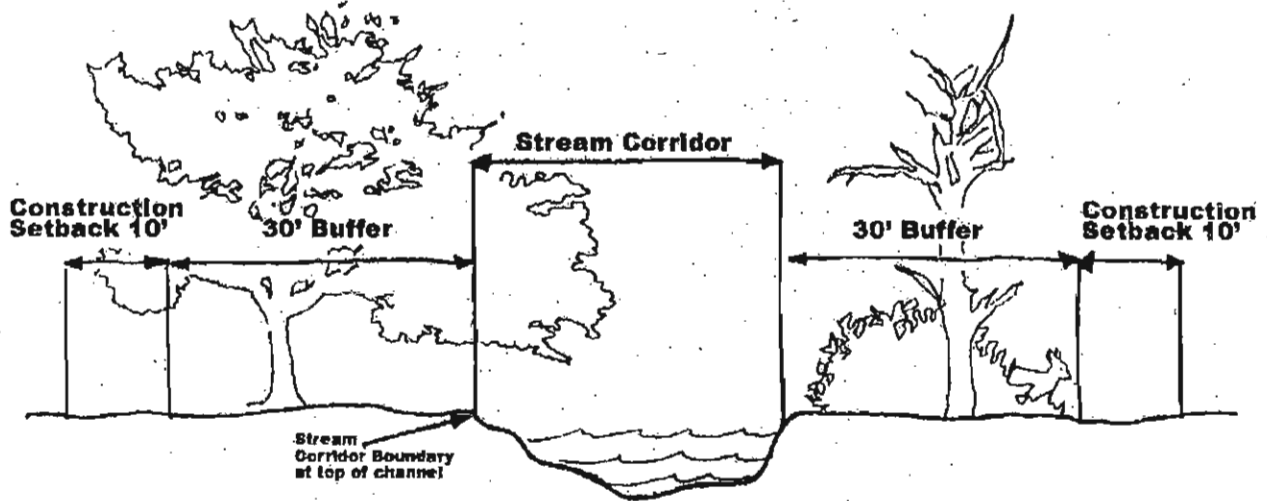
FIGURE 1



20' Wide Stream Corridor

No wetlands, culverts, or slopes greater than 25%.
30' buffer illustrated here; class II streams receive a 25' buffer.

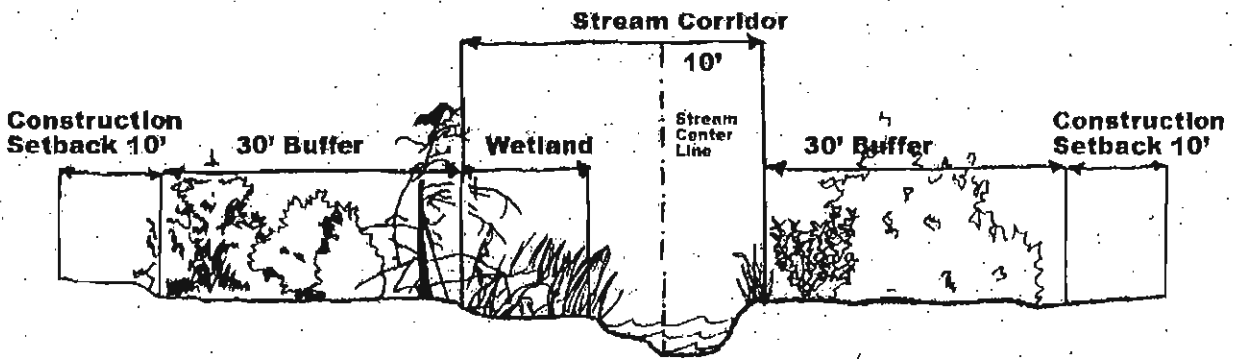
FIGURE 2



Stream Corridor > 20' Wide

No wetlands, culverts, or slopes greater than 25%.
30' buffer illustrated here; class II streams receive 25' buffer.

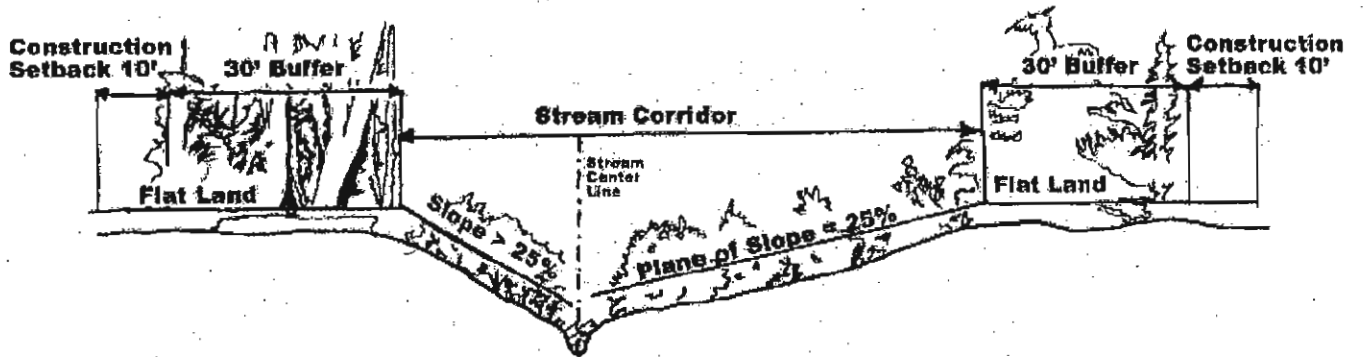
FIGURE 3



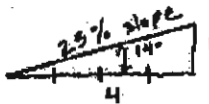
Streams with Associated Wetlands

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.

FIGURE 4

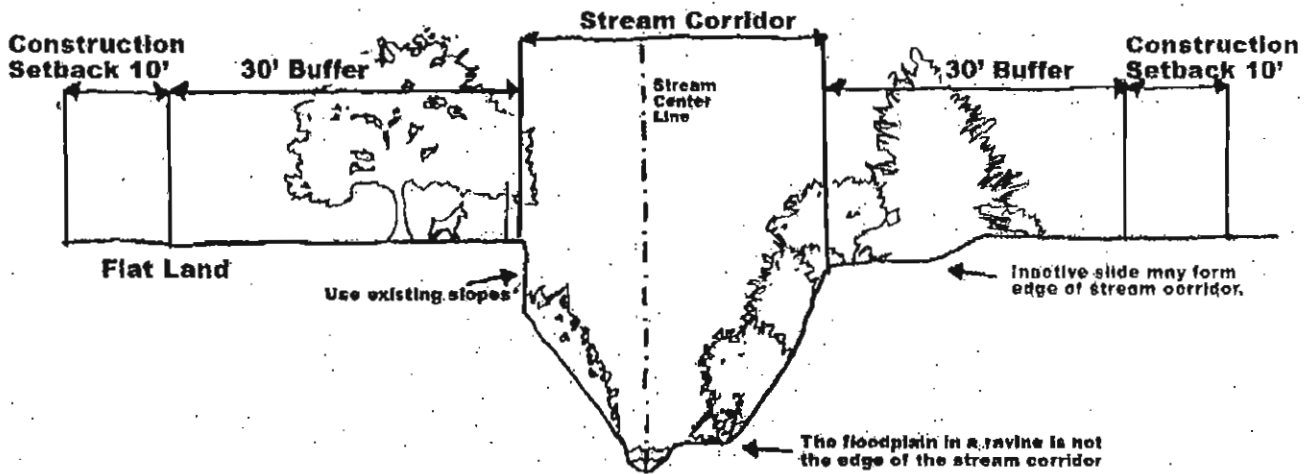


Streams with Steep Slopes or Ravines



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

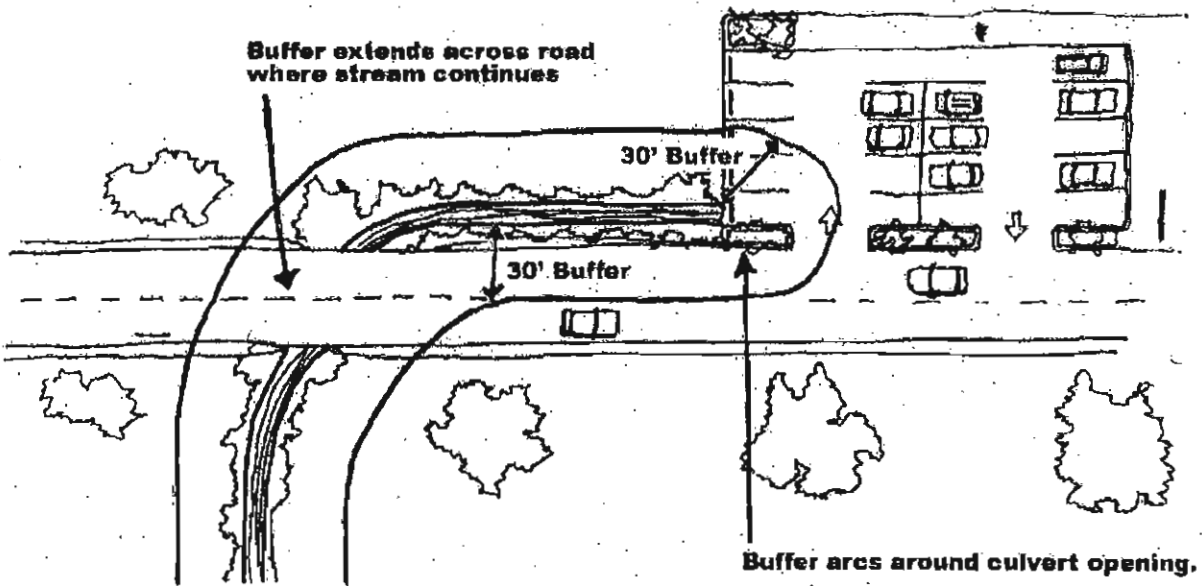
FIGURE 5



Streams with Topographic Variations

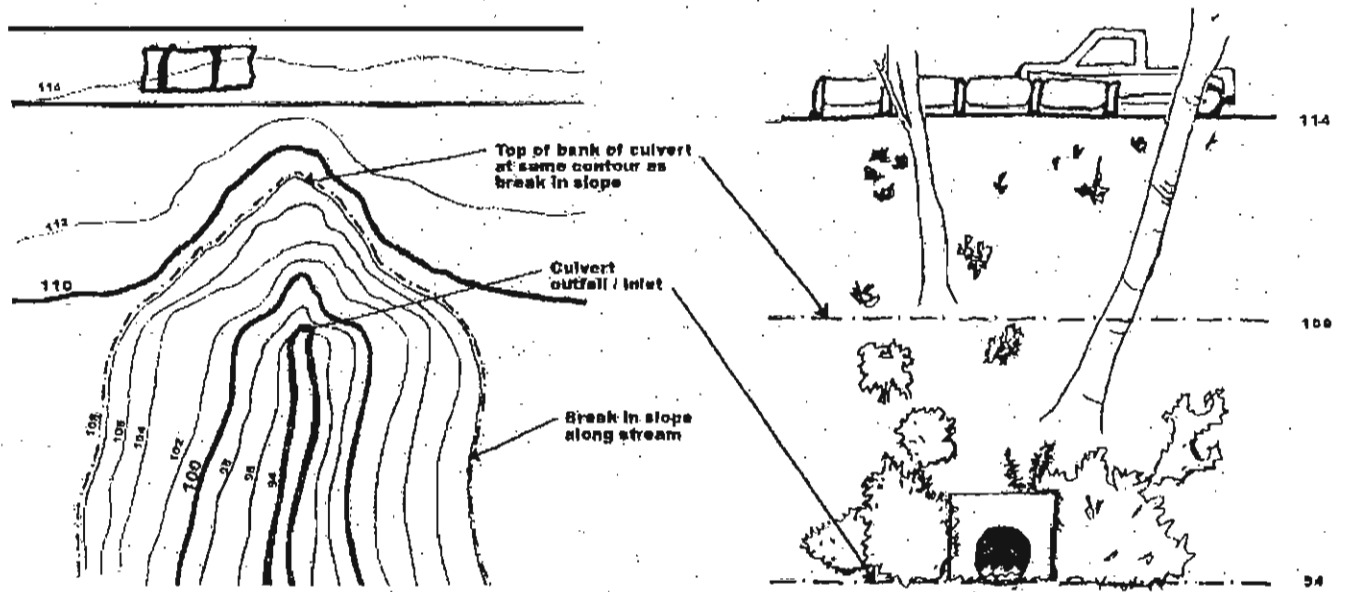
* Illegal fill is not treated as stream corridor boundary;
please refer to the first page of this appendix.

FIGURE 6a



Buffers on Culverts

FIGURE 6b



Top of Bank of Culvert - Ravine or Steep Slope



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LAND CONSERVATION
AND DEVELOPMENT

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

