



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/31/2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

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

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. 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: Tuesday, January 20, 2009

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 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: John Pettis, City of Gresham
Gloria Gardiner, DLCD Urban Planning Specialist
Amanda Punton, DLCD Regional Representative
Jennifer Donnelly, DLCD Regional Representative

<paa> YA/l

FORM 2

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: **City of Gresham**

Local file number: **CPA 08-284**

Date of Adoption: **12/16/2008**

Date Mailed: **12/29/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 9/11/2008

- | | |
|---|---|
| <input checked="" type="checkbox"/> Comprehensive Plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

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

Adoption of the Metro Model Ordinance, with changes, and the Title 13 map to comply with Title 13 of the Metro Growth Management Functional Plan. The new regulations adopt a Habitat Conservation Area (HCA) Overlay District, Habitat Classification Map, and Habitat Values Map; and amends the Pleasant Valley and Springwater ESRA subdistrict for processing correction of the ESRA map and verifying location of the ESRA boundary.

Does the Adoption differ from proposal? Yes, Please explain below:

Minor changes for clarification and enhancement of regulations.

Plan Map Changed from: **NA**

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

DLCD # 005-08 (17127)

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

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

Local Contact: **John Pettis, Community Planner**

Phone: (503) 618-2778 Extension:

Address: **1333 NW Eastman Parkway**

Fax Number: - -

City: **Gresham**

Zip: **97030-**

E-mail Address: **john.pettis@ci.gresham.or.us**

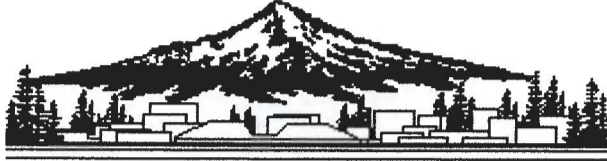
ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

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

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.



*Urban Design & Planning Services
City of Gresham*

CERTIFICATION OF MAILING

FILE NO.: CPA 08-284

PROJECT: City of Gresham-Title 13

I, TAMMY J. RICHARDSON, CERTIFY THAT I HAVE MAILED THE ATTACHED NOTICE OF ADOPTION TO THE FOLLOWING PARTIES:

DLCD

**Plan Amendment Specialist
635 Capitol Street, NE #150
Salem, OR 97301-2540**

**Metro
Growth Management
600 NE Grand
Portland OR 97232-2736**

**Jason Howard
Johnson Creek Watershed
1900 SE Milport Rd #B
Milwaukie, OR 97222**

**Jim Labbe
Audubon Society of Ptld.
5151 NW Cornell Rd
Portland, OR 97210**

**Lee Dayfield
16820 NE Hassalo
Portland, OR 97230**

**Narda Tolentino
1285 SW 27th Court
Gresham, OR 97080**

**Carol Rulla
5162 SE 28th Drive
Gresham, OR 97080**

SIGNATURE: *Tammy J. Richardson*

DATE OF MAILING: December 29, 2008

BEFORE THE CITY COUNCIL OF THE
CITY OF GRESHAM

IN THE MATTER OF AMENDMENTS TO VOLUME 3,) Order No. 608
DEVELOPMENT CODE, OF THE GRESHAM)
COMMUNITY DEVELOPMENT PLAN RELATED TO) CPA 08-284
THE NATURAL RESOURCES (METRO TITLE 13))
PROJECT)

On December 2, 2008, the City Council held a public hearing to take testimony on amendments to Volume 3, Development Code, of the Gresham Community Development Plan relating to the Natural Resources (Metro Title 13) Project.

The hearing was conducted under Type IV procedures. Mayor Shane T. Bemis presided at the hearing.

The Council closed the public hearing and approved the proposed amendments at the December 2, 2008 meeting, and a decision was made at the December 16, 2008 meeting.

A permanent record of this proceeding is to be kept on file in the Gresham City Hall, along with the original of the Order.

The Council orders that these amendments are approved, and adopts the findings, conclusions, and recommendations as stated in the attached Planning Commission Recommendation Order, Planning Commission staff report, memorandum to Mayor and Council of December 2, 2008 and the additional Staff Recommended Changes as set forth in Attachment 5 to the December 2, 2008, Memorandum to the Mayor and Council.

Dated: 12/16/08



City Manager



Mayor

**BEFORE THE PLANNING COMMISSION OF THE
CITY OF GRESHAM**

TYPE IV RECOMMENDATION ORDER

CPA 08-284

A public hearing was held on October 27, 2008, upon an application to consider proposed amendments to Volume 3, Development Code, of the Gresham Community Development Plan that would eliminate the Natural Resource and Water Quality Resource Area Overlay Districts and replace it with a new Habitat Conservation Area (HCA) Overlay District, amend the Pleasant Valley and Springwater ESRA subdistricts for processing correction of the ESRA map and verifying location of ESRA boundary; and to adopt a Habitat Conservation Area Habitat Classification Map and a Habitat Conservation Area Habitat Values Map.


The Commission closed the public hearing at the October 27, 2008 meeting, and a final recommendation to Council was made at the October 27, 2008 meeting.

Richard Anderson, Chairperson, presided at the hearing.

A permanent record of this proceeding is to be kept on file in the Gresham City Hall, along with the original of this Type IV Recommendation Order.

The Planning Commission recommends **ADOPTION** of the proposed Gresham Community Development Plan amendments to the City Council, and adopts the findings, conclusions and recommendations contained in the attached October 17, 2008 staff report with the following exceptions, additions and/or changes:

Minor changes recommended by Metro in October 24, 2008 letter documented as Hearing Exhibit #1


Chairperson

10-27-08
Date



MEMORANDUM

URBAN DESIGN & PLANNING DEPARTMENT

STAFF REPORT
TYPE IV HEARING—COMPREHENSIVE PLAN AMENDMENT
NATURAL RESOURCES (METRO TITLE 13) PROJECT AMENDMENTS

To: Gresham Planning Commission

From: Mike Abbaté, Planning Director
Jonathan Harker, AICP, Comprehensive Planning Manager
John Pettis, Associate Planner
Kathy Majidi, Natural Resources Program Coordinator, DES/Watershed Management Division

Hearing Date: October 27, 2008

Report Date: October 17, 2008

File: CPA 08-284

Proposal: To adopt comprehensive plan amendments to Volume 3 of the Community Development Plan relating to the Natural Resources (Metro Title 13) project which are:

1. Deleting the NR, Natural Resource Overlay District and WQRA, Water Quality Resource Area Overlay District code sections;
2. Adopting the HCA, Habitat Conservation Area Overlay District;
3. Adopting the HCA, Habitat Conservation Area Habitat Classification Map;
4. Adopting the HCA, Habitat Conservation Area Habitat Values Map;
5. Amending the Pleasant Valley ESRA sub-district and Springwater ESRA sub-district for processing corrections of the ESRA map and verifying the location of the ESRA boundary.

Exhibits: 'A' – Council Bill 05-08: Draft HCA, Habitat Conservation Area Amendments to Gresham Community Development Code (Volume 3 of Community Development Plan)
'B' – Draft Springwater & Pleasant Valley ESRA Amendments to Gresham Community Development Code (Volume 3 of Community Development Plan)
'C' – HCA, Habitat Conservation Area Riparian & Upland Habitat Classification Map (oversized map will be displayed at the Planning Commission hearing)
'D' – HCA, Habitat Conservation Area Habitat Values Map (oversized map will be displayed at the Planning Commission meeting).

Recommendation: Staff recommends **adoption** of the proposed Comprehensive Plan amendments and associated maps.

SECTION I EXECUTIVE SUMMARY

Background

The Natural Resources (Metro Title 13) project began in early 2008 as one of the projects of the 2008 City Council Work Plan. The purpose of this project is to adopt new fish and wildlife habitat protection standards and associated maps that will comply with Title 13 of the Metro Urban Growth Management Functional Plan.

Title 13 requires local jurisdictions to adopt map and code amendments to 1) conserve, protect, and restore the fish and wildlife habitat of streams and associated wetlands in a manner that is integrated with upland wildlife habitat and 2) control and prevent water pollution. Metro refers to these areas as "habitat conservation areas" and are shown on their Habitat Conservation Area Map. The deadline for complying with Title 13 is January 2009.

An ordinance, called the "Model Ordinance", was developed by Metro and the region's jurisdictions, so that cities and counties could then adopt it as part of their development/zoning codes and meet their obligations to comply with the performance standards of Title 13. This proposal is to adopt the Model Ordinance regulations, with some minor modifications, in the form of a new natural resource overlay district called the HCA, Habitat Conservation Area Overlay. It would replace the existing NR, Natural Resource Overlay as well as the Water Quality Resource Area (WQRA) Overlay code sections. This compliance approach was supported by the Planning Commission at the May 19 work session and by the City Council at their June 10 Policy Development Meeting.

The HCA overlay will not apply to the new communities of Springwater and Pleasant Valley. The natural resource areas of these areas will continue to be protected by the previously adopted ESRA-PV and ESRA-SW subdistricts which Metro has already determined meets Title 13. However, there are some code modifications proposed for the ESRA-PV and ESRA-SW subdistricts that would provide consistency with the proposed HCA overlay in regard to processing corrections of the ESRA map and verifying the location of the ESRA boundary.

The Natural Resources (Metro Title 13) project was a joint project of the Department of Environmental Services (DES), particularly the Watershed Management Division, and Urban Design & Planning. DES assistance was critical in the drafting of the amendments, and along with the GIS staff, refined and improved the accuracy of the Metro habitat maps.

The Planning Commission reviewed the proposed amendments at the September 22, 2008 work session. At that time, the Planning Commission recommended a number of changes to the HCA overlay district amendment. Those changes have been incorporated into the attached Council Bill.

Proposed Comprehensive Plan Amendments Overview

Text changes to the Development Code are proposed. The format of the attached Exhibit 'A' is a ~~strikeout~~ /underline version with comments inserted into the document to help explain the purpose of each proposed change. The overview below provides a summary of the amendments.

HCA, Habitat Conservation Area Overlay Code Proposal

The HCA overlay district is based on the Metro Model Ordinance and has the following key features:

- A list of uses and activities that are exempt from HCA review/permitting. These include:
 - Development that currently exists in the HCA such as buildings, roads/driveways, utilities, lawns and gardens. These remain legal uses and can continue to be maintained or be replaced.
 - An addition to an existing building can encroach up to 500 sq. ft. into the HCA.
 - Up to 120 sq. ft. of the HCA can be used for a new building or other impervious surface.
 - Single overhead utility poles or other minor utility services.
 - Planting native plants in the HCA and removing invasive (non-native) plants.

- Uses/activities that can be allowed within the HCA but would require an HCA permit and meeting applicable development standards are:
 - Additions to existing buildings that would develop more than 500 sq. ft. of HCA.
 - New buildings/paving that would develop more than 120 sq. ft. of HCA.
 - New roads and utilities that would develop more than 100 sq. ft. of HCA.
 - Dividing land in the HCA (partitions/subdivisions).
- Two alternative sets of development standards for applicants who want to develop within habitat areas:
 - "Clear and objective standards" where the applicant has to meet a number of specific development standards. These include a percentage limitation on the amount of habitat that can be disturbed, depending upon its habitat class rating (high, moderate or low), standards for proposed partitions and subdivisions, and specific mitigation standards for replacing impacted habitat.
 - "Discretionary standards" that are general guidelines without the limitations of the specific standards. These basically require the applicant to demonstrate that there is no way to avoid building in the habitat, that the design of the development, after analyzing alternative designs, minimizes impacts to the various functions of the habitat and that any loss of habitat functions will be mitigated. The discretionary standards also offer more flexibility in regard to the design and location of a mitigation area than the specific mitigation standards.
- It has a variance section for properties where the application of the standards would cause an unreasonable hardship and severely restrict their use.
- For development within habitat areas or proposed within 50 ft. of such areas, there is a mapping verification process to verify the location of the HCA boundary. This includes a simple process for applicants who believe that the habitat map is accurate. There are other processes for correcting mapping errors where the presence, location or size of a protected HCA feature is inaccurately shown on the map.
- Challenges to the underlying science that Metro used to establish HCA's are not allowed. This would include contesting the functions that the features contribute to making the habitat viable for fish and wildlife. For example, the presence or the location of a wetland on a site could be contested but not that the wetland does not support one of the functions of wetlands, such as they help to moderate flooding and improve water quality of streams.
- As required by Title 13, the Water Quality Resource Areas (Title 3 areas) would continue to be protected as part of the HCA.

HCA Habitat Classification Map

The HCA Habitat Classification Map shows the areas to be protected by the HCA overlay. These are designated as riparian or streamside areas (Classes I and II) and publicly owned upland habitat areas (Upland A and B). In total, there are 2,124 acres of HCA (15% of the City), of which 61% is publicly owned and 39% is privately owned.

In regard to riparian areas, the width of the HCA along each side of a stream is not a fixed distance. It varies from 50 to 200 ft., according to the presence of key land features within a certain distance of the stream and the corresponding ecological functions that they provide. These functions, such as microclimate/shade and streamflow moderation, support healthy habitat for fish and wildlife. Metro produced a technical report that summarizes the scientific literature that recommended various stream buffer widths in order to protect the features/ecological functions. Based on the consensus of this research, Metro established the overall HCA riparian buffer widths that are needed to protect the features.

Finally, Metro classified the HCA riparian area into Class I and Class II habitat areas. Class I represents the most important areas to protect and they are generally those areas closest to a stream or wetland. Special emphasis was placed on protecting major forested areas (one acre or larger) in both Class I and II, since trees play an important role in supporting many of the protected functions.

HCA Habitat Values Map

The HCA Values Map classifies the HCA into High, Moderate and Low categories which reflect the amount of the HCA that can be developed (with mitigation) when an applicant uses the specific development standards of the HCA overlay. High rated HCA allows the least development and the Low rated HCA allows the most development. This rating was based on balancing the value of protecting

habitat against economic values of allowing development. Greater importance was placed on developing industrial/commercial zoned lands and regional/town centers for their economic benefits than on protecting habitat. Conversely, habitat protection was given the highest priority on publicly owned lands.

- Low rated HCA: Non-LDR (single family) properties are allowed to develop up to 50% of their HCA. LDR properties are allowed to develop up to 6,000 sq. ft. of their HCA.
- Moderate rated HCA: Non-LDR properties are allowed to develop up to 15% of their HCA. LDR properties are allowed to develop up to 6,000 sq. ft. of their HCA.
- High rated HCA: Non-LDR properties are allowed to develop up to 10% of their HCA. LDR properties are allowed to develop up to 5,000 sq. ft. of their HCA.
- In the case of an LDR subdivision proposal, at least 90% of high rated or 80% of moderate rated HCA must be preserved on an unbuildable parcel (tract).

Pleasant Valley/Springwater ESRA Amendments

The purpose of these proposed amendments is to ensure that the ESRA map correction and boundary verification provisions are consistent with similar provisions in the HCA overlay. The amendments would accomplish the following:

- Include a requirement to have the ESRA boundary verified/marked on-site before development occurs within 100 ft. of the ESRA.
- Consistent with Title 13 and the HCA, state that ESRA boundary changes based on challenges to the underlying science that established the ESRA are not allowed. These would include contesting the value of the fish and wildlife habitat functions that the ESRA is intended to protect.
- Clearly state that the ESRA map can be corrected to accurately reflect the presence, location or size of the features (stream, wooded area, wetland, etc.) that support the habitat functions.
- Allow the City to update the ESRA map through the Type 1 process to:
 - Add newly discovered wetlands that meet state definition of Locally Significant Wetlands.
 - Refine ESRA boundary to reflect site surveys (part of development permit applications, etc.) or other information sources such as LIDAR mapping of streams.
 - Correct the ESRA maps on an annual basis, or as necessary.

SECTION II

APPLICABLE COMMUNITY DEVELOPMENT CODE PROCEDURES

Section 11.0400	Legislative Actions
Section 11.0205	Type IV Procedure – Legislative
Section 11.0300	Public Deliberations and Hearings

SECTION III

APPLICABLE COMMUNITY DEVELOPMENT PLAN GOALS & POLICIES

Section 10.014	Land Use Policies and Regulations
Section 10.100	Citizen Involvement
Section 10.210	Areas Prone to Flooding
Section 10.221	Natural Resources, Fish and Wildlife Habitat, Water Resources and Ecologically and Scientifically Significant Areas
Section 10.232	Water Resources Quality
Section 10.235	Thermal Pollution

SECTION IV

APPLICABLE METRO URBAN GROWTH FUNCTIONAL PLAN TITLES & STATEWIDE PLANNING GOALS

Title 8	Compliance Procedures
Title 13	Nature in the Neighborhoods

**SECTION V
STATEWIDE PLANNING GOALS**

Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces

**SECTION VI
FINDINGS OF FACT**

The proposed Community Development Plan amendments attached as Exhibit 'A' are consistent with all applicable procedures, goals and policies of the Community Development Plan and applicable titles of the Metro Urban Growth Management Functional Plan as indicated in the following findings.

A. Community Development Code Procedures

1. **Section 11.0400 - Legislative Actions.** This section requires that an amendment to the Community Development Code and the Community Development Plan be a legislative action under the Type IV Procedure pursuant to this section. This section applies to this proposal, as it is an amendment to the Community Development Code and the Community Development Plan.

2. **Section 11.0205 - Type IV Procedure - Legislative.** This section requires that the Planning Commission shall hold a public hearing and make a recommendation to the Council. The Council shall hold another public hearing and make a final decision. Interested persons may present evidence and testimony relevant to the proposal. The Planning Commission and Council will make findings for each of the applicable criteria. The section also provides for a hearing process consistent with Section 11.0300. Both the Planning Commission and the City Council, at public hearings in conformance with provisions of this section, will consider this proposal. Findings are made for the applicable criteria in this report or as revised in the record.

3. **Section 11.0300 – Public Deliberations and Hearings.** For a Type IV Comprehensive Plan Amendment this section requires that hearings be scheduled, a notice published in a newspaper of general circulation in the City and a copy of the decision be mailed to those required to receive such notice. Required notice of public hearing for these proposed text amendments has been published in the Gresham Outlook, as required by this section. The Planning Commission will make a recommendation and the Council will make a decision that will be based on findings of fact contained in this report and in the hearings record, and a decision will be sent to those who participated in the hearings. A decision shall be made accompanied by findings and an order.

Additionally, a Measure 56 notice was distributed as part of this Hearing. Measure 56, contained in ORS 227.186, requires that a city send a notice between 40 and 20 days before the first evidentiary hearing to all property owners in land use districts where the proposed change may affect the permissible uses of the property. Because the HCA overlay district would limit development within designated Habitat Conservation Areas, a Measure 56 notice was sent to all affected property owners. The Measure 56 notice was mailed on October 2, 2008, no sooner than 20 days before the first evidentiary hearing (October 27, 2008).

B. Community Development Plan Goals and Policies (Volume II)

This section identifies the applicable Community Development Plan goals and policies. The text (*italicized*) of the policy is followed by corresponding findings and conclusions. The applicable policies are grouped by general categories.

1. **General Goals & Policies**

Section 10.014 Land Use Policies and Regulations
Section 1. Land Use Policies and Regulations.

Goal: Maintain an up-to-date Comprehensive Plan and implementing regulations as the legislative foundation of Gresham's land use program.

Policy 2: The City's land use regulations, actions and related plans shall be consistent with and implement the Comprehensive Plan.

Policy 20: The City shall periodically review and update the Comprehensive Plan text and the Community Development Plan Map(s) to ensure they remain current and responsive to community needs; provide reliable information and dependable, factually based policy direction, and conform to applicable state law, administrative rules and regional requirements.

Policy 21: Council may, upon finding it is in the overall public interest, initiate legislative processes to change the Comprehensive Plan text and Community Development Plan Map(s) and Development Code.

Findings

The Natural Resources (Metro Title 13) Project began in early 2008 as one of the initiatives of the 2008 City Council Work Plan. The purpose of this project is to adopt new fish and wildlife habitat protection standards and associated maps that will comply with Title 13 of the Metro Urban Growth Management Functional Plan.

Title 13 requires local jurisdictions to adopt map and code amendments to 1) conserve, protect, and restore the fish and wildlife habitat of streams and associated wetlands in a manner that is integrated with upland wildlife habitat and 2) control and prevent water pollution. Metro refers to these areas as "habitat conservation areas" and are shown on their Habitat Conservation Area Map. The deadline for complying with Title 13 is January 2009.

Issues related to Title 13 were discussed with Council on June 10, 2008. The Council found that it would be in the overall best public interests to initiate the Code Amendment. The Council initiation took place on October 7, 2008.

Conclusion

Policy 2 is addressed by the proposed amendments that ensure that the Development Code regulations implement the Comprehensive Plan.

Policy 20 is met by conforming to a regional requirement that jurisdictions adopt development code standards that implement Title 13 of the Metro Urban Growth Functional Plan.

Policy 21 was addressed by the Council initiation on October 7, 2008 of the legislative process.

Goal 10.014 is addressed by these proposed amendments that adopt new regulations for the protection of significant fish and wildlife habitat so the Development Code may be consistent with the Comprehensive Plan.

The proposal is consistent with the applicable general goals and policies listed in this section.

2. Citizen Involvement Goals & Policies

Section 10.100 - Citizen Involvement

Goal: The City shall provide opportunities for citizens to participate in all phases of the planning process by coordinating citizen involvement functions; effectively communicating information; and facilitating opportunities for input.

Policy 1: The City shall ensure the opportunity for citizen participation and input when preparing and revising policies, plans and implementing regulations.

Findings

The public involvement goals and policies establish the City's intent that its citizens have meaningful opportunities throughout a planning project to be informed and to affect proposals.

City staff has conducted a public outreach effort to share information and answer questions about the proposed amendments with affected property owners, stakeholders and other interested parties:

- Development Group on September 18, 2008.
- Johnson Creek Watershed Council on September 23, 2008.
- Community forums for the general public and affected property owners were held on:
 - October 8, 2008 at Gresham City Hall
 - October 9, 2008 at Centennial High School
 - October 20, 2008 at Powell Valley Elementary School
 - October 21, 2008 at Hartley Elementary School
- Staff presented the proposal to the Gresham Coalition of Neighborhood Associations on October 14, 2008.
- Staff made a presentation to the Kelly Creek Neighborhood Association on October 22, 2008.
- Project information has been available on the City website and at the Urban Design & Planning office.
- Information on the project has been made available at other Comprehensive Planning workshops.
- The Ask Gresham tool has been used to alert interested parties about the above meetings.
- Articles on the project have been published in the Gresham newsletter and in Council Connections.

A Measure 56 notice was mailed to all affected property owners (1,837) on October 2, 2009 with information about the code amendments. A Measure 56 notice is required since development would be limited within the HCA areas. The notice informed property owners about how the adoption of the HCA proposal might affect their property, the dates of the Planning Commission and City Council hearings, where to access the proposed amendments and who to contact for more information. Information was also attached to the notice that informed property owners about the October 8 and 9 community forums.

Planning Commission work sessions have been held throughout this process. The Commission discussed this project on May 19, July 28, and September 22, 2008.

Conclusion

Policy 1 is addressed through the on-going effort to inform affected property owners, stakeholders and the public about the proposed amendments. This includes community forums and e-mails and presentations to neighborhood associations, stakeholder groups, and to the Planning Commission and City Council.

The *Citizen Involvement Goal (10.100)* is met by the combination of forums and meetings as well as providing information on the proposal on the City website.

The proposal is consistent with the applicable citizen involvement goals and policies listed in this section.

3. Areas Prone to Flooding Natural Resources Water Resources Quality Thermal Pollution

10.210 Areas Prone to Flooding

Goal: Protect life and property from flood hazards.

Policy 6: The City shall protect its wetlands, watercourses, and their riparian edges in order to safely contain and gradually convey floodwater and allow it to infiltrate into the ground as much as possible.

Findings

These amendments will help protect wetlands, streams/riparian areas and undeveloped floodplains by limiting development and impervious surfaces in these areas. These features act as natural sponges that absorb stormwater runoff and allow it to infiltrate into the ground rather than being directly discharged into streams during peak flows which increases flooding. Moderating streamflows during flood events and increasing water storage in watersheds was one of the primary ecological functions that the HCA was intended to support. By increasing the minimum buffer along a stream from 15 feet to 50 feet and

protecting more streams than under the current natural resource regulations (NR & WQRA), the HCA will provide more opportunities for water to infiltrate into the ground to decrease flooding.

Conclusion

The goal and Policy 6 of Section 10.210 is supported by this proposal by reducing development opportunities and impervious surfaces in wetland and riparian areas and allowing more water to infiltrate into the ground.

10.221 Natural Resources, Fish and Wildlife Habitat, Water Resources and Ecologically and Scientifically Significant Areas

Policy: The City shall assist in protecting the quality and quantity of the following resources:

1. *Fish and wildlife habitats.*
2. *Water resources.*
3. *Significant and unique natural features such as a major stand of trees.*

Findings

The goals of Title 13 and the HCA overlay proposal is to protect significant fish and wildlife habitat that is shown on the Metro Habitat Conservation Area Map and the water quality of streams and wetlands. Habitat significance was based on the presence of key natural features such as streams, wetlands, undeveloped floodplains, and forested areas that support key natural functions needed to sustain fish and wildlife. The protected habitat for Gresham includes all surface streams (perennial and intermittent), a 50 to 200 ft. wide riparian area along each streamside, and known wetlands and publicly owned upland (forested) habitat on Grant and Gresham buttes. Because of their importance in contributing to many of the fish/wildlife habitat functions, major stands of trees that are one acre and larger and within 150 ft. of a stream (200 ft. if on steep slopes) are part of the HCA.

The HCA will replace two existing environmental overlays that protect streams, wetlands and other habitat. These are the NR, Natural Resource Overlay District and the WQRA, Water Quality Resource Area Overlay District. The NR district was adopted in 1991 and was the City's first environmental district. It has a map that shows very general locations of potential resources. As a result, it requires applicants to first undertake a detailed site inventory of potential resources before applying for a permit to develop within the NR. The location of the resources that are protected by the NR are much better defined on the HCA map. Also, the HCA offers applicants a specific (clear and objective) set of standards to use as an alternative to using discretionary standards. The WQRA overlay was adopted in 2002 to comply with Metro Title 3 standards. It requires a certain buffer (15ft. to 200 ft.) around streams and wetlands to protect vegetation and meet water quality goals. The HCA overlay incorporates the WQRA area and its protections.

In total, 2,124 acres of habitat (15% of the City) will be protected by the HCA which is nearly double the acreage presently protected by the Natural Resource and Water Quality Resource Area overlays. Limiting development in these areas and requiring mitigation to compensate for habitat loss when development is allowed will ensure that the quality of these resources will be maintained.

Conclusion

By substantially increasing the amount of protected habitat, protecting major stands of trees in stream corridors and requiring mitigation when development is allowed within habitat areas, this proposal supports the Natural Resources policy.

Section 10.232 Water Resources Quality

Goal: Prevent surface and ground water pollution and improve water quality.

Policy 3: The City shall establish and maintain water quality plans, regulations and standards consistent with federal, state, and Metro laws and rules as necessary to protect surface and groundwater quality.

Findings

This proposal will help the City comply with federal/state Total Maximum Daily Loads water quality standards. These require that a minimum amount of trees be planted or maintained next to streams to provide shading and cool water temperatures that are beneficial for salmon and other endangered species. The mitigation requirements, in particular, have been drafted to comply with these requirements in regard to the kinds and densities of trees and shrubs that must be planted to compensate for habitat loss. Additionally, increasing the buffers near streams to protect major tree stands will also increase the microclimate cooling effect that trees can provide to streams and riparian habitat.

Policy 4: The City shall protect the water quality, conveyance, storage functions and associated environmental values of streams, wetlands, 100 year floodplains and other natural drainage ways and water bodies.

Findings

As described above, these amendments will increase protection of wetlands, streams, and riparian areas that include undeveloped floodplains. Protecting these features will help maintain the ability of local watersheds to store stormwater runoff, safely convey high peak stream flows and minimize flooding.

Policy 5: The City shall protect, and where practicable, restore water quality and the physical and biological integrity of the area's system of wetlands, rivers and streams and associated environmental values, including natural vegetation and fish and wildlife habitats.

Policy 12: The City shall adopt regulations and standards to protect streamside vegetative buffers and other natural resources that contribute to water quality consistent with Metro Goal 5 and Title 3 requirements. This includes the need to maintain water temperatures required for viable fish habitat.

Findings

Adopting the HCA standards and maps will implement Title 13 (Metro Goal 5) requirements. The Title 3 Water Quality Resource Areas will also continue to be protected as part of the HCA, as required by Title 13. The HCA map shows largely one continuous and connected system of riparian and upland habitat. This habitat connectivity will help maintain the system's natural functions that support fish and wildlife by avoiding isolating and creating small islands of habitat. Among the key functions that are protected by requiring vegetative buffers near streams are those relating to water quality and microclimate/shading. Maintaining these functions will help keep streams clean and cool for fish.

Conclusion

The physical and biological integrity of Gresham's wetlands and stream corridors will be protected as one connected system by these amendments. Critical watershed functions such as water storage, floodwater conveyance and the shading of streams for aquatic species will be maintained and enhanced. Therefore, the proposal supports Section 10.232 Water Resources.

Section 10.235 Thermal Pollution

Policy: It is the policy of the City to minimize the removal of streamside vegetation which would adversely impact stream temperatures.

Findings

As described above, protecting more streams and providing wider vegetative buffers near streams will help to prevent higher stream temperatures that are detrimental to fish and other aquatic species. The mitigation standards are intended to provide more trees in Gresham's riparian areas that currently lack this important vegetation type.

Conclusion

The thermal pollution policy of Section 10.235 is met by this proposal.

C. Metro Urban Growth Management Functional Plan

Title 8 Compliance Procedures

Findings

Section 3.07.820 of this title requires that the City submit the proposed amendments to Metro at least 45 days prior to the first evidentiary hearing on an amendment to a comprehensive plan or land use regulation. Metro may review the amendments and can request that the City provide an analysis of the compliance of the amendment with the Functional Plan.

The City submitted the proposed amendments to Metro on September 11, 2008 which was at least 45 days prior to the first evidentiary hearing of October 27, 2008. Metro has submitted no comments or request for an analysis.

Conclusion

The City has submitted the proposed amendments to Metro at least 45 days prior to the first evidentiary hearing and Metro has made no comments or request on the proposal.

The proposal is consistent with Title 8.

Title 13 Nature in the Neighborhoods

Findings

As mentioned, this proposal will implement Title 13 requirements. The Model Ordinance converts into the development code format/language of the Title 13 performance standards. Title 13 allows jurisdictions to adopt the Model Ordinance with minor changes as one way to comply with the title. Gresham staff met with Metro staff on August 13, 2008 to discuss its compliance approach and key changes proposed to the Model Ordinance. Metro staff felt comfortable with Gresham's approach and the Model Ordinance changes.

Conclusion

The proposed amendments will enable Gresham to comply with Metro Title 13 requirements. Based on prior discussions with Metro staff, these amendments are consistent with Title 13.

D. Statewide Planning Goals

Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces

Findings

Statewide Planning Goal 5 requires local governments to adopt programs and standards to protect natural resources such as wetlands, streams and riparian areas. Title 13 was a collective regional response to this state requirement. On January 5, 2007, the Oregon Department of Land Conservation and Development acknowledged that Title 13 complied with Goal 5 requirements. By adopting the HCA, which is essentially the Metro Model Ordinance that implements Title 13, Gresham would also comply with Goal 5.

Conclusion

The proposed amendments comply with Statewide Planning Goal 5

**SECTION VII
CONCLUSION**

The proposed comprehensive plan amendments are consistent with applicable criteria and policies of the Community Development Plan; the applicable development code of the Community Development Plan; and applicable Metro UGMFP code and Statewide Planning Goal 5 as indicated by findings contained or referenced in Section VII of this report.

**SECTION VIII
RECOMMENDATION**

Staff recommends **adoption** of the proposed comprehensive plan amendments and associated maps as contained in the attached exhibits.

End of Staff Report

Proposed new language is double-underlined;
Proposed deleted language is ~~stricken~~.

CB 11-08

ORDINANCE NO. 1664

AMENDMENT TO VOLUME 3, DEVELOPMENT CODE, OF THE GRESHAM COMMUNITY
DEVELOPMENT PLAN, RELATED TO THE NATURAL RESOURCES (METRO TITLE 13)
PROJECT

THE CITY OF GRESHAM DOES ORDAIN AS FOLLOWS:

Section 1. Volume 3, Development Code, Section 3.0010 is amended as follows:

Building Footprint (for Habitat Conservation Area). The area that is covered by buildings or other roofed structures. A roofed structure includes any structure more than 6 feet above grade at any point, and that provides an impervious cover over what is below. Building footprint also includes uncovered horizontal structures such as decks, stairways and entry bridges that are more than 6 feet above grade. Eaves are not included in building coverage. Underground facilities and structures are defined based on the foundation line.

Building Site. The area on a lot or parcel that is designated to contain a structure, impervious surface, or non-native landscaping.

Density, Net. The number of dwelling units per unit of land is expressed as the number of square feet of land per dwelling unit. The net density for any lot is computed by dividing the net square footage of the parcel by the number of dwelling units. The net square footage is determined by subtracting from the total square footage of the parcel that area deemed necessary for street dedication and, for development in the LDR and TLDR districts, that area used for private streets and common driveways. The land area dedicated without compensation for the widening or the extension of a public street may be included in calculating the number of attached dwelling units permitted on a lot in all other districts. Accessory and ancillary dwelling units do not count towards density requirements.

Density, Net - The number of dwelling units per unit of land is expressed as the number of square feet of land per dwelling unit. The net density for any lot is computed by dividing the net square footage of the parcel by the number of dwelling units. The net square footage is determined by subtracting from the total square footage of the parcel that area deemed necessary for street dedication and, for development in the LDR and TLDR districts, that area used for private streets and common driveways. The land area dedicated without compensation for the widening or the extension of a public street may be included in calculating the number of attached dwelling units permitted on a lot in all other districts. Accessory and ancillary dwelling units do not count towards density requirements. For the purpose of calculating minimum net density, the Habitat Conservation Area (HCA) and areas with slopes of 25% and greater are also deducted from the total square footage of a parcel.

Developed Areas not Providing Vegetative Cover - are areas that lack sufficient vegetative cover to meet the one-acre minimum mapping units of any other type of vegetative cover.

Developed Flood Area – A flood area (a) upon which a building or other structure has been located, or (b) that is an uncovered, hard-surfaced area or an area covered with a perforated hard surface (such as Grasscrete™) that is able to withstand vehicular traffic or other heavy-impact uses; provided, however, that graveled areas shall not be considered developed flood areas.

Disturb - Man-made changes to the existing physical status of the land, which are made in connection with development. The following uses are excluded from the definition:

- enhancement or restoration of the HCA, or
- planting native cover identified in the City of Gresham Native Plant List.

Disturbance Area - An area that contains all temporary and permanent development, exterior improvements, and staging and storage areas on the site. For new development the disturbance area must be contiguous. The disturbance area does not include agricultural and pasture lands or naturalized areas.

Ecological Functions - The primary biological and hydrologic characteristics of healthy fish and wildlife habitat. Riparian ecological functions include microclimate and shade, streamflow moderation and water storage, bank stabilization and sediment/pollution control, sources of large woody debris and natural channel dynamics, and organic material sources. Upland wildlife ecological functions include size of habitat area, amount of habitat with interior conditions, connectivity of habitat to water resources, connectivity to other habitat areas, and presence of unique habitat types.

Effective Impervious Area - A subset of total impervious area that is hydrologically connected via sheet flow or discrete conveyance to a drainage system or receiving body of water

Emergency - Any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

Engineer - A registered professional engineer licensed by the State of Oregon.

Enhancement - The process of improving upon the natural functions and/or values of an area or feature that has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate beneficial processes and features that occur naturally.

Erosion - Erosion is the movement of soil particles resulting from actions of water or wind.

Fill - Any material such as, but not limited to sand, gravel, soil, or rock that is placed in a wetland or floodplain for the purposes of development or redevelopment.

Flood Areas - Those areas contained within the 100-year floodplain and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and all lands that were inundated in the February 1996 flood (note that areas that were mapped as flood areas but were filled to a level above the base flood level prior to September 30, 2005, consistent with all applicable local, state, and federal laws shall no longer be considered habitat based on their status as flood areas).

Flood Management Areas - All lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

Floodplain - The land subject to periodic flooding, including the 100-year floodplain as mapped by FEMA Flood Insurance Studies or other substantial evidence of actual flood events.

Forest Canopy - Areas that are part of a contiguous grove of trees of one acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 feet of the relevant water feature.

Habitat Conservation Area or HCA - An area identified on the Habitat Conservation Areas Map and subject to the development standards of the HCA Overlay district.

Habitat-friendly Development - A method of developing property that has less detrimental impact on fish and wildlife habitat than does traditional development methods. Examples include clustering development to avoid habitat, using alternative materials and designs such as pier, post, or piling foundations designed to minimize tree root disturbance, managing storm water on-site to help filter rainwater and recharge groundwater sources, collecting rooftop water in rain barrels for reuse in site landscaping and gardening, and reducing the amount of effective impervious surface created by development.

Invasive Non-native or Noxious Vegetation - Plant species that are listed as nuisance plants or prohibited plants on the City of Gresham Native Plant List because they are plant species that have been introduced and, due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities.

Low Structure Vegetation or Open Soils - Areas that are part of a contiguous area one acre or larger of grass, meadow, crop-lands, or areas of open soils located within 300 feet of a surface stream. Structure vegetation areas may include areas of shrub vegetation less than one acre in size if they are contiguous with areas of grass, meadow, crop-lands, orchards, Christmas tree farms, holly farms, or areas of open soils located within 300 feet of a surface stream and together form an area of one acre in size or larger.

Mitigation - The reduction of adverse effects of a proposed project by considering, in the order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the affected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas or habitat conservation areas.

Native Vegetation or Native Plant - Vegetation listed as a native plant on the City of Gresham Native Plant List and any other vegetation native to the Portland metropolitan area provided that it is not listed as a nuisance plant or a prohibited plant on the City of Gresham Native Plant List.

Open Space - Land that is undeveloped and that is planned to remain so indefinitely. The term encompasses parks, forests and farmland. It may also refer only to land zoned as being available to the public, including playgrounds, watershed preserves and parks.

Owner or Property Owner - The person who is the legal record owner of the land, or where there is a recorded land sale contract, the purchaser there under.

Phased development project - A phased development plan includes the following:

- A site plan showing the proposed final development of the site and phases, including the initial and interim phases.
- A written statement describing each phase, including the potential uses, and the approximate timeline for each phase of development.

Practicable - means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose and probable impact on ecological functions. The practicability of a development option shall include consideration of the type of HCA that will be affected by the proposed development. For example, High HCAs have been so designated because they are areas that have been identified as having lower urban development value and higher-valued habitat, so it should be more difficult to show that alternative development options that avoid the habitat are not practicable. On the other hand, Low HCAs have been so designated because they are areas that have been identified as having higher urban development value and lower-valued habitat, so it should be less difficult to show that alternative development options that avoid the habitat are not practicable.

Redevelopment – Development that occurs on sites that have previously been developed.

Restoration - 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 occurred prior to impacts caused by human activity.

Riparian - Those areas associated with streams, lakes and wetlands where vegetation communities are predominately influenced by their association with water.

- **Class I Riparian Area** – Class I areas are the highest value part of the HCA riparian corridor. Metro found that they provide three to five primary functions in their riparian model used for resource significance. The primary functions to sustain fish and wildlife including 1) microclimate and shade; 2) streamflow moderation and water storage; 3) bank stabilization, sediment and pollution control; 4) large wood and channel dynamics; and 5) organic material services. Class I riparian land features providing these functions include rivers, streams, stream associated wetlands, undeveloped floodplains, forest canopy (one acre or greater) within 100 feet of a stream, and forest canopy within 200 feet of streams on slopes of 25% and greater.
- **Class II Riparian Area** – Class II areas are medium value riparian habitat. Metro found that they provide one to two primary functions to sustain fish and wildlife or a combination of one primary function and one or more secondary functions. Class II riparian habitat includes rivers, streams, a 50 foot area along developed stream segments, forest canopy or low structure vegetation (e.g. grass) within 200 feet of streams, and portions of undeveloped floodplains extending beyond 300 feet of streams. Class II areas are elevated to Class I when they contain Habitats of Concern as shown on the Metro Habitats of Concern Map.

Routine Repair and Maintenance - Activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

Setback Adjustment - The placement of a building a specified distance away from a road, property line or protected resource.

Significant Negative Impact - An impact that affects the natural environment, considered individually or cumulatively with other impacts on the HCA, to the point where existing fish and wildlife habitat functional values are degraded.

Statewide Land Use Planning Goal 5 - Oregon's statewide planning goal that addresses open space, scenic and historic areas, and natural resources. The purpose of the goal is to conserve open space and protect natural and scenic resources.

Steep Slopes - Steep slopes are those slopes that are equal to or greater than 25%. Steep slopes have been removed from the "buildable lands" inventory and have not been used in calculations to determine the number of acres within the urban growth boundary that are available for development.

Stormwater Pre-treatment Facility - Any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

Stream - A body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

Top of Bank - The same as "bankful stage" defined in OAR 141-85-010.

Urban Development Value - The economic value of a property lot or parcel as determined by analyzing three separate variables: assessed land value, value as a property that could generate jobs ("employment value"), and the Metro 2040 design type designation of property. The urban development value of all properties containing regionally significant fish and wildlife habitat is depicted on the Metro Habitat Urban Development Value Map

Urban Growth Boundary or UGB - means an urban growth boundary adopted pursuant to ORS chapter 197.

Utility Facilities - Buildings, structures or any constructed portion of a system which provides for the production, transmission, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television. Utility facilities do not include stormwater pre-treatment facilities.

Water-dependent - A use which can be carried out only on, in, or adjacent to water because it requires access to the water for waterborne transportation or recreation. Water-dependent also includes development, which by its nature, can be built only on, in, or over water. Bridges supported by piers or pillars, as opposed to fill, are water-dependent development.

Water Feature (Body) - All rivers, streams (regardless of whether they carry year-round flow, i.e., including intermittent streams), springs which feed streams and wetlands and have year-round flow, Flood Management Areas, wetlands, and all other bodies of open water.

Water Quality Resource Area - is an area identified by a city or county as a Water Quality Resource Area in order to comply with Title 3 of Metro's Urban Growth Management Functional Plan, Metro Code sections 3.07.310- 3.07.370.

Watershed - A watershed is a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake or wetland.

Wetland. An area having one or more of the following characteristics:

- An area which is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions;
- A water body fed by surface flows, sheet flows or precipitation, and has evidence of flooding during the growing season, and has 60 percent or greater vegetated cover, and is over one-half acre in size; or the wetland qualifies as having "intact water quality function" under the 1996 Oregon Freshwater Wetland Assessment Methodology;
- An area within the Flood Plain Special District which has evidence of flooding during the growing season, is five or more acres in size, and has a restricted outlet or no outlet; or the wetland qualifies as having "intact hydrologic control function" under the 1996 Oregon Freshwater Wetland Assessment Methodology;
- A water body located within a horizontal distance of less than one-fourth of a mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR 340-41;
- An area designated as NR (wetland) on the Community Development Plan Map, and identified as wetlands in the Inventory of Significant Natural Resources and Open Spaces.

Wetlands include swamps, bogs, marshes, and similar areas.

Wetland – A wetland is an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Identification and delineation of wetlands must be performed by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual, and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region.

Woody Vegetation - Areas that are part of a contiguous area one acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of a surface stream.

Section 2. Volume 3, Development Code, Sections 5.0400 and 5.0600 are deleted in their entirety and replaced with a new Section 5.0400 as follows:

Section 5.0400

HABITAT CONSERVATION AREA (HCA) OVERLAY DISTRICT

- Section 5.0401 Intent
- Section 5.0402 Applicability
- Section 5.0403 Exempt Uses and Conditioned Activities
- Section 5.0404 Prohibitions
- Section 5.0410 Construction Management Plans
- Section 5.0411 Specific Development Standards
- Section 5.0412 Alternative Discretionary Development Standards
- Section 5.0413 Variances
- Section 5.0414 Map Administration and HCA Verification
- Section 5.0415 Consistency and Relationship with Other Regulations

Section 5.0416 Violations
Section 5.0417 WQRA, Water Quality Resource Area

Section 5.0401. Intent

The purpose of this Overlay is to comply with Section 4 of Title 13 of Metro's Urban Growth Management Functional Plan.

- A. To protect and improve the following functions and values that contribute to fish and wildlife habitat in urban streamside areas:
 - 1. Microclimate and shade;
 - 2. Stream-flow moderation and water storage;
 - 3. Bank stabilization, sediment and pollution control;
 - 4. Large wood recruitment and retention and channel dynamics, and
 - 5. Organic material sources.
- B. To protect and improve the following functions and values that contribute to upland wildlife habitat in new urban growth boundary expansion areas:
 - 1. Large habitat patches
 - 2. Interior habitat
 - 3. Connectivity and proximity to water; and
 - 4. Connectivity and proximity to other upland habitat areas
- C. To establish High, Moderate, and Low Habitat Conservation Areas (HCA) to implement the performance standards of Title 13 of the Urban Growth Management Functional Plan.
- D. To provide clear and objective standards and a discretionary review process, applicable to development in Habitat Conservation Areas, in accordance with Statewide Land Use Planning Goal 5.
- E. To allow and encourage habitat-friendly development, while minimizing the impact on fish and wildlife habitat functions.
- F. To provide mitigation standards for the replacement of ecological functions and values lost through development in Habitat Conservation Areas.

Section 5.0402. Applicability

- A. This Overlay applies to all properties containing mapped Habitat Conservation Areas (HCA).
- B. All applicants must provide Construction Management Plans, in accordance with Section 5.0410 of this Overlay.

- C. Where applicants are proposing development entirely outside of the HCA, but within 50 feet of its boundary, applicants must verify this boundary through the procedures outlined in Section 5.0414 of this Overlay.
- D. Where applicants are proposing development within the HCA, they must comply with the Development Standards found in Section 5.0411 and Section 5.0412 of this Overlay, and the Map Verification procedures found in Section 5.0414 of this Overlay. Conditioned Uses, and Activities that are exempt from these requirements, may be found in Section 5.0403 of this Overlay.
- E. Applicants proposing to partition or subdivide properties containing HCA must comply with the partition and subdivision standards found in Section 5.0411(F) of this Overlay, or the Discretionary standards in Section 5.0412 of this Overlay; as well as the Map Verification procedure in Section 5.0414 of this Overlay.
- F. The Development Standards found in Sections 5.0411 and 5.0412 of this Overlay do not apply to development that occurs entirely outside of any portion of the HCA.
- G. The requirements of this Overlay apply in addition to other applicable local, state, regional, and federal development requirements, including those for Water Quality Resource Areas and Flood Management Areas; except that:
1. Applicants using the discretionary review process in Section 5.0412 of this Overlay or the specific development standards of Section 5.0411 that apply to "high value" HCAs (regardless of habitat value), do not need to engage in any additional review process for the WQRA, Water Quality Resource Area (Note: The WQRA is defined in Section 5.0417); and
 2. This overlay shall not impose additional mitigation requirements for wetlands that exceed the mitigation ratios or functions required by federal and state law.
- H. "Development," "Partition," and "Subdivision" are defined in Article 3 of the Gresham Community Development Code.
- I. A wetland identified during the course of a development permit review that meets the State of Oregon's definition of a "Locally Significant Wetland" shall be subject to the standards of this overlay. Such wetlands shall be added to the HCA map by the Manager, under the Type 1 procedure, after the development permit becomes final.

Section 5.0403. Exempt Uses and Conditioned Activities

The following uses and activities are exempt from the requirements of this overlay; chapter:

- A. Change of ownership.
- B. Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005; unless such development required obtaining a land use decision, or a building, erosion control, or grading permit.

- C. A building permit for a phased development project for which the applicant has previously met the application requirements, so long as the site for new construction was identified on the original permit and no new portion of the HCA will be disturbed.
- D. Where a property has been subdivided under subsection 5.0411(F) of this overlay, and the mitigation requirements of subsection 5.0411(E) (and, if appropriate, subsections 5.0412(B) and (C)) have been completed for the subdivision, development on the individual lots may proceed without further review under this overlay. Similarly, where a property has been subdivided under subsection 5.0412(D) of this overlay, and the mitigation requirements of subsection 5.0412(D) have been completed for the subdivision, development on the individual lots may proceed without further review under this overlay.
- E. Limited types of development, redevelopment, operations, and improvements, including the following:
 - 1. Maintenance, alteration, expansion, repair and replacement of existing structures provided that the building footprint is not increased
 - 2. The alteration, expansion, or replacement of existing structures, provided that
 - a. The alteration, expansion, or replacement of a structure will not intrude more than 500 sq. ft. into the HCA in addition to the area defined as the building footprint as of January 1, 2006, and
 - b. The new intrusion into the HCA is no closer to the protected water feature than the pre-existing structure or improvement.
 - 3. Minor encroachments not to exceed 120 sq. ft. of impervious surface such as accessory buildings, eave overhangs, exterior building improvements for access and exiting requirements, or other similar features
 - 4. Temporary and minor clearing not to exceed 200 square feet for the purpose of site investigations and pits for preparing soil profiles, provided that such areas are restored to their original condition when the investigation is complete.
 - 5. Maintenance of existing gardens, pastures, lawns and landscape perimeters, including the installation of new irrigation systems within existing gardens, pastures, lawns, and landscape perimeters
 - 6. Removal of plants identified as nuisance or prohibited plants on the City of Gresham Native Plant List and the planting or propagation of plants identified as native plants on the City of Gresham Native Plant List. Unless being conducted by City staff or their representatives, handheld tools must be used to remove nuisance or prohibited plants, and after such removal all open soil areas greater than 25 square feet must be replanted.
 - 7. Maintenance, alteration, repair, and replacement of roads and utilities when no additional incursion into the HCA is proposed.
 - 8. Maintenance and repair of existing streets, railroads, shipping terminals, and utilities within rights-of-way, easements, and access roads.

9. Existing water-dependent uses that can only be carried out on, in, or adjacent to water because they require access to the water for waterborne transportation or recreation.
 10. Operation, maintenance, and repair of manmade water control facilities such as irrigation and drainage ditches, constructed ponds or lakes, wastewater facilities, and stormwater pretreatment facilities.
 11. Projects with the sole purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat areas, provided that the project is part of an approved local, state, or federal restoration or enhancement plan.
 12. Low-impact outdoor recreation facilities for public use, outside of Water Quality Resource Areas, including, but not limited to, multi-use paths, access ways, trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture, provided that the facility meets the following requirements:
 - a. It contains less than 500 sq. ft. of new impervious surface; and,
 - b. Its trails shall be constructed using non-hazardous, pervious materials, with a maximum width of four feet.
 - c. Its trails are located outside the WQRA section of the HCA or the Class I riparian habitat area, whichever results in the greatest distance from the stream or wetland.
- F. Emergency procedures or activities undertaken which are necessary to remove or abate hazards and nuisances or for the protection of public health, safety and welfare; provided that such remedial or preventative action must take place within a timeframe too short to allow for compliance with the requirements of this Overlay. After the emergency, the person or agency undertaking the action shall fully restore any impacts to the HCA resulting from the emergency action. Hazards that may be removed or abated include those required to maintain aircraft safety.
- G. Multnomah County Drainage District - Within Habitat Conservation Areas located in Multnomah County Drainage District No. 1, Peninsula Drainage District No. 1, Peninsula Drainage District No. 2, and the area managed by the Sandy Drainage Improvement Company, routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing drainage and flood control facilities, and existing related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch clearing within the hydraulic cross-section in existing storm water conveyance drainageways, or other water quality and flood storage projects applicable to existing facilities and required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations, shall be allowed, provided that:
1. The project is consistent with all other applicable local, state, and federal laws and regulations;
 2. The project does not encroach closer to a surface stream or river, wetland, or other body of open water than existing operations and development;
 3. Disturbed areas are replanted with vegetation and no bare soils remain after project completion; the planting of native vegetation and removal of invasive non-native or noxious vegetation is encouraged; invasive non-native or noxious vegetation shall not be planted; and,

4. Each district submits an annual report, to all local permitting agencies in which the district operates, describing the projects the district completed in the previous year and how those projects complied with all applicable federal and state laws and requirements.

H. Utility service using a single utility pole or where no more than 100 sq. ft. of ground surface is disturbed outside of the top of bank of water bodies and where the disturbed area is restored to the pre-construction conditions.

I. Boundary and topographic surveys leaving no cut scars on trees greater than three inches in diameter.

J. Measures mandated by the City of Gresham to remove or abate a nuisance or hazardous conditions.

K. Planting of native vegetation and the removal of non-native, invasive vegetation (as identified on the City of Gresham Native Plant List), and the removal of refuse or fill, provided that:

1. All work is done using hand-held equipment;
2. No existing native vegetation is disturbed or removed;
3. All work occurs outside of wetlands and the tops of banks of streams;
4. The work is pre-approved by the City through the Type I development permit procedure.

Section 5.0404. Prohibitions

A. The planting of any invasive non-native or noxious vegetation is prohibited within the HCA.

B. Outside storage of materials is prohibited within the HCA, unless such storage began before the effective date of this Overlay; or, unless such storage is approved during development review under either Section 5.0411 or Section 5.0412 of this Overlay.

C. Any new gardens, lawns, structures, development, other than those allowed outright (exempted) or that is part of a regulated use that is approved with an HCA permit. Note: Gardens and lawns within the HCA prior to the effective date of the overlay are allowed to continue but cannot expand further into the HCA.

D. The dumping of materials of any kind is prohibited.

E. Unless part of an approved HCA development permit, grading, placement of fill or the removal of native vegetation within the HCA is prohibited.

Section 5.0410. Construction Management Plans

In order to ensure that trees and vegetation within HCAs are not damaged during construction, all applicants, even those not developing within an HCA, shall provide a construction management plan that includes the following information:

A. Location of site access and egress that construction equipment will use;

B. Equipment and material staging and stockpile areas;

C. Erosion and sediment control measures; and

D. Measures to protect trees and other vegetation located within the HCA, but outside of the disturbance area approved under the provisions of Section 5.0411 or Section 5.0412 of this overlay.

Section 5.0410 applies to development on properties with an HCA and on properties within 100 ft. of an HCA overlay boundary on an adjacent property, including development that will stay outside of the HCA.

Section 5.0411. Specific Development Standards

The development standards described in this section apply to all development and redevelopment that occurs entirely, or partially, within Habitat Conservation Areas, unless such development is exempt under Section 5.0403, or, unless the applicant chooses to follow the discretionary process in Section 5.0412 of this Overlay. This section also applies to subdivisions and partitions of properties that contain HCAs. An applicant may chose to use the mitigation standards of Section 5.0412 in lieu of the mitigation standards of this section.

Unless otherwise directed, development proposed within the HCA, that is not exempted, will be processed as a Type II development permit application. All applications must include the general development permit application items required by Section 11.0211 of the Gresham Community Development Code as a discussion of how the proposal meets all of the applicable HCA overlay standards.

A. Application Requirements. Applications for a building permit or development permit must provide a development plan and accompanying narrative explanation that includes the following information in addition to any other building permit or development permit requirements. All of the application requirements must be met prior to approval of a building or development permit.

1. Applicants must verify the HCA on their property as described in Section 5.0414 of this Overlay. They must also submit a construction management plan as required by Section 5.0410.

2. For the entire subject property (HCA and non-HCA), applicants must submit a scale map of the property that includes:

- a. Location of all High, Moderate, and Low HCAs on the property;
- b. Outline of any existing disturbance area, including the location of existing adjacent streets and paved areas, utilities, culverts, stormwater management facilities, or bridges;
- c. Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area;
- d. Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation;
- e. Topography shown by contour lines of 2-ft. intervals for slopes less than 15% and by 10 ft. intervals for slopes 15% or greater. On properties that are two acres or larger, such a contour map is required only for the portion of the property to be developed; and
- f. If applicable, the Hillside Physical Constraint Overlay and Flood Plain Overlay.

3. Detailed site plan of proposed development outlining total disturbance area, including, proposed building footprints, site property improvements, utilities and landscaping.
4. The following additional information shall be provided about the HCA:
 - a. For properties containing less than one acre of HCA, the location of all trees within the HCA that are greater than six inches diameter at breast height (DBH), shall be identified by size and species. For properties containing one acre or more of HCA, the applicant may approximate the number of trees and the diameter range, and provide a listing of the dominant species;
 - b. For proposed disturbance areas containing less than one acre of HCA, all trees with a diameter of six inches or greater that will be removed shall be specifically identified as to diameter at breast height (DBH) and species. For proposed disturbance areas containing one acre or more of HCA an approximate of the number of trees, their diameters and the dominant species;
 - c. Provide the tree removal/protection data requirements of (B) through (G) of Section 9.1011.
 - d. If grading will occur within the HCA, a grading plan showing the proposed alteration of the ground at 1-ft. vertical contours in areas of slopes less than 5%, and 2-ft. vertical contours in areas of slopes 6-15%, and at 5-ft. vertical contours of slopes 15% or greater.
 - e. An outline of the disturbance area that identifies the vegetation to be removed. All trees to be removed with a diameter of 6 inches or greater shall be specifically identified as to number, trunk diameters and species.

- B. Methods for avoiding Habitat Conservation Areas. The following habitat-friendly development practices may be used to avoid or minimize development within HCAs by allowing flexible site design.
1. Building setback flexibility to avoid or minimize, development within HCAs. The minimum building setback of the base zone may be reduced to any distance between the base zone minimum and zero, unless this reduction conflicts with applicable fire or life safety requirements.
 2. Flexible landscaping requirements to avoid, or minimize, development within HCAs.
 - a. Minimum percentage landscaping requirements, apart from those required for parking lots, street trees, buffers (Section 9.0100) and required mitigation areas may be met by preserving the HCA.
 - b. Facilities that infiltrate stormwater onsite, including the associated piping, may be placed within the HCA so long as the forest canopy and the areas within the driplines of the trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strip, and vegetated infiltration basins. Only native vegetation may be planted in these facilities.

3. Flexible Site Design (On-site Density Transfer) to avoid or minimize development within HCAs.

- a. Residential. For residential development proposals on lands with a HCA, a transfer of density of up to 50% of the maximum density permitted on the HCA portion of the site is permitted to be transferred onto the non-HCA portion of the site.
- b. In order to accommodate the transferred density, dimensional standards and lot sizes may be adjusted by no more than 20 percent.
- c. Commercial and Industrial Zones. For on-site density transfers in Commercial or Industrial zones, the transfer credit is 10,000 sq. ft floor area ratio (FAR) per acre of land within the HCA.
- d. Mixed-Use Zones. Within mixed-use zones the density transfer credit can be factored using either 3(a) or 3(c) above, depending on the type of development proposed.
- e. All remaining HCA shall be permanently restricted from development and maintained for habitat functions, such as by making a public dedication or executing a restrictive covenant.

4. Site Capacity Incentives. The following site capacity standards provide flexibility in the design of land divisions in order to allow ways to better protect HCAs.

- a. Density bonus if HCA is protected. In multi-family residential zones, a 25 percent density bonus may be allowed for any development of four (4) or more dwelling units if 75 percent or more of the HCA on a site is permanently preserved, such as by making a public dedication or executing a restrictive covenant. The bonus density shall be in addition to the base density allowed in the applicable zoning district.
- b. All area within a HCA, or any portion of it, and all areas with slopes of 25% and greater may be subtracted from the calculations of net size for purposes of determining the minimum number of units that must be built on the property, provided that such area is protected, such as by making a public dedication or executing a restrictive covenant. This provision may only be applied to properties that were inside the Metro UGB on January 1, 2002.

C. Development within HCAs. The following development standards apply to all development that occurs within the HCA except for exempt uses and conditioned activities addressed in Section 5.0403 of this overlay and utility facilities addressed in subsection 5.0411(D) of this overlay. If all development occurs outside of an HCA on a property, these standards do not apply. These standards also do not apply to development that occurs pursuant to the standards established by the alternative discretionary development standards in Section 5.0412 of this Overlay. (Note: Applicants seeking to develop within a Water Quality Resource Area must utilize either the discretionary standards located in Section 5.0412 of this Overlay or the Specific Standards of Section 5.0411 that apply to "high value" resource areas.

1. Disturbance area limitations to minimize impact to HCA.

- a. Single-family residential. The maximum disturbance area (MDA) allowed within HCAs is determined by subtracting the area of the lot or parcel outside of the HCAs from the total disturbance area (TDA) calculated as described in Table 1 below.
(TDA – Area outside the HCA = MDA)

- i. Moderate and Low HCAs are subject to the same disturbance area limitations.
- ii. Calculation of maximum disturbance area. If a lot or parcel includes both High and Moderate/Low HCAs then:
 - (A) If there is more High HCA than Moderate/Low HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were High, per Table 1 below; or
 - (B) If there is more Moderate/Low HCA than High HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were Moderate/Low, per Table 5.0411(A) below.
- iii. Location of MDA. If a lot or parcel includes different types of HCAs, then:
 - (A) The amount of development that may occur within the High HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High HCA (TDA - non-High HCA = MDA). If the area of the lot or parcel outside the High HCA is greater than the total disturbance area, then development shall not occur within the High HCA.

(Area outside High HCA > TDA = no development in High HCA);
 - (B) The amount of development that may occur within the Moderate HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High and Moderate HCA (TDA - (Low HCA + non-HCA) - MDA). If the area of the lot or parcel outside the Moderate HCA is greater than the total disturbance area, then development shall not occur within the Moderate HCA:

(Area outside Moderate HCA > TDA = no development in Moderate HCA);
and
 - (C) The amount of development that may occur within the Low HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High, Moderate and Low HCA (TDA - non-HCA = MDA). If the area of the lot or parcel outside the Low HCA is greater than the total disturbance area, then development shall not occur within the Low HCA.

(Area outside Low HCA > TDA = no development in Low HCA).

Table 5.0411(A) -- HCA Total Disturbance Area Limitations for LDR District

HCA type	Total Disturbance Area
High	50 percent of the lot area, up to maximum of 5,000 sq. ft.
Moderate/Low	65 percent of the lot area, up to maximum of 6,000 sq. ft.

- b. All other zones. The maximum disturbance area (MDA) allowed by right within Low, Moderate and High HCAs in these zones is found in Table 2 below; this MDA is subject to the mitigation requirements described in subsection 5.0411(E) of this Overlay.

Table 5.0411(B) - HCA Disturbance Area Limitations for all districts other than LDR

<u>HCA type</u>	<u>Maximum Disturbance Area</u>
High	10 percent of HCA on site
Moderate	15 percent of HCA on site
Low	50 percent of HCA on site

- c. Development within an HCA in accordance with the provisions of this Overlay shall not result in a change of the HCA status of such developed areas on a property. In the case of a later development request seeking to develop within previously undisturbed HCAs on a property where a prior development request was subject to the provisions of this Overlay, the calculation of the MDA allowed on the property shall be based on the location of the HCA at the time the previous development was approved, notwithstanding the location of any authorized development within the HCA.
2. Protection of habitat during site development. During development of any site containing a HCA, the following standards apply:
- a. Work areas shall be marked to reduce potential damage to the HCA.
 - b. Trees in HCAs shall not be used as anchors for stabilizing construction equipment.
 - c. Native soils disturbed during development shall be conserved on the property.
 - d. An erosion and sediment control plan is required for all development and shall be prepared in compliance with requirements set forth in the City of Gresham "Erosion Prevention and Sediment Control Manual".
 - e. Prior to construction, the HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed.
 - f. All construction activity on the property shall conform to the Construction Management Plan described in Section 5.0410 of this Overlay.
 - g. Tree protection shall be as recommended by a qualified arborist or, as a minimum, to include the following protective measures:
 - (i) Prior to any grubbing, clearing, grading, parking, preparation or storage of materials or machinery, or other construction activity on the site, all trees to be protected on the project site and adjacent to the site shall be clearly identified and temporary fencing shall be installed at the perimeter of the dripline.
 - (ii) To assure that there is no soil compaction or removal of vegetation or tree branches within the dripline, protective fencing is required around the dripline of trees designated for retention. Protective fencing shall be of a material that cannot easily be moved, removed, or broken during construction activities. Chain link fencing a minimum of 4 feet in height is preferred. An alternative dripline fencing material secured by metal posts staked at no more than 4 feet on center around the dripline of the tree or grove may be used with the approval of the Manager.

(iii) No machinery repair, cleaning or fueling shall be performed within 10 feet of the dripline of any trees identified for protection.

(iv) Digging a trench for placement of public or private utilities or other structure within the critical root zone of a tree to be protected is prohibited.

(v) The City may require that a Consulting Arborist be present during any construction or grading activities that may affect the dripline of trees to be protected.

D. Utility facility standards. The following disturbance area limitations apply to new utilities, private connections to existing or new utility lines, and upgrade;

a. The disturbance area for utility facility connections to utility facilities is no greater than 10 feet wide.

b. The disturbance area for the upgrade of existing utility facilities is no greater than 15 feet wide.

c. The disturbance area for new underground utility facilities is no greater than 25 feet wide and disturbs no more than 200 linear feet of Water Quality Resource Area, within any 1,000 linear foot stretch of Water Quality Resource Area; provided that this disturbance area shall be restored with the exception of necessary and permanent access points to the utility facility.

d. No fill or excavation is allowed within the ordinary high water mark of a stream, unless a permit is obtained from the US Army Corps of Engineers/Department of State Lands

e. Mitigation is required as described in subsection E below.

E. Mitigation requirements for disturbance in HCAs. In order to achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in Section 5.0401(A) of this Overlay, tree replacement and vegetation planting are required when development intrudes into a HCA according to the following standards. Wetland mitigation will be conducted per the functional and area replacement standards established by state and federal agencies.

1. Required plants and plant densities. All trees, shrubs and ground cover must be native plants selected from the *City of Gresham Native Plant List*. An applicant must meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the disturbance area is one acre or more, the applicant shall comply with Mitigation Option 2.

a. Mitigation Option 1. In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site must be replaced as shown in Table 3. Conifers must be replaced with conifers. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Table 5.0411(C) - Tree Replacement

<u>Size of tree to be removed (inches in diameter)</u>	<u>Number of trees and shrubs to be planted</u>
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

b. Mitigation Option 2. In this option, the mitigation requirement is calculated based on the size of the disturbance area within a HCA. Native trees and shrubs are required to be planted at a rate of 820 trees and 820 shrubs per acre for every acre of HCA disturbance. This amount shall be adjusted for smaller disturbance areas. For example, 410 trees and 410 shrubs shall be planted for one-half acre of disturbance. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

2. Plant size.
 - a. For Mitigation Option 1: Replacement trees must be at least one-half inch in caliper, measured at 6 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 must be in at least a 1-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.
 - b. For Mitigation Option 2: Plantings can range from live cuttings, to bare root stock to container stock in size. Initial plantings should be at least 12 inches in height.
3. Plant Spacing. With the exception of the outer edge of a mitigation area, trees and shrubs will not be planted in a linear fashion. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.
 - a. In Mitigation Option 1, trees shall be planted on average between 8 and 12 feet on-center and shrubs shall be planted on average between 4 and 5 feet on center, or clustered in single species groups of no more than four (4) plants, with each cluster planted on average between 8 and 10 feet on center.
 - b. In Mitigation Option 2, trees shall be planted at average intervals of 7 feet on-center. Shrubs may be clustered in single species groups of no more than four (4) plants, with clusters planted on average between 8 and 10 feet on center.
4. Plant diversity. Shrubs must consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.
5. Plant species. In order to meet the City stream shade goals (developed and approved by the Department of Environmental Quality in compliance with the Total Maximum Daily Load rules) for reducing summer stream temperatures, the following species guidelines need to be followed

for any mitigation occurring within 70 feet of a stream. At least 70% of the trees planted in this area need to be comprised of the tallest native tree species appropriate for the site, as indicated by an asterisk in Table 5.0411(D) or as reflected in the City of Gresham Native Plant Guide.

Table 5.0411(D)

Recommended Tree and Shrub Species for Planting within Riparian Shade Zone

<u>Site Conditions</u>	<u>Typical Soil Series</u>		<u>Recommended Plant Community</u>
Floodplain and wetlands adjacent to the Columbia Slough	Moag	Trees	Black cottonwood*
	Rafton	Shrubs	Pacific willow Red-osier dogwood Snowberry Willow Wild rose
Floodplain and wetlands adjacent to Johnson Creek, Fairview Creek, and Kelly Creek	Delena	Trees	Black cottonwood*
	Wapato Wollent	Shrubs	Pacific willow Red alder Oregon ash Western redcedar* Douglas spiraea Pacific ninebark Red-osier dogwood Snowberry Twinberry Wild rose Willow
Moist Riparian	Alona	Trees	Bigleaf maple*
	Cascade Powell	Shrubs	Black cottonwood* Grand fir* Red alder Western redcedar* Bitter cherry Black hawthorn Hazelnut Indian plum Oregon grape Red elderberry Salal Salmonberry Snowberry Thimbleberry Vine maple

Table 5.0411(D)

Recommended Tree and Shrub Species for Planting within Riparian Shade Zone

<u>Site Conditions</u>	<u>Typical Soil Series</u>		<u>Recommended Plant Community</u>
Dry Riparian	Cornelius	Trees	<u>Bigleaf maple*</u>
	Dabney		<u>Douglas fir*</u>
	Haploxerolls, steep		<u>Oregon white oak</u>
	Haplumbrepts, steep		<u>Western hemlock*</u>
	Latourell	Shrubs	<u>Hazelnut</u>
	Multnomah		<u>Indian plum</u>
	Quafeno		<u>Oceanspray</u>
			<u>Oregon grape</u>
			<u>Salal</u>
			<u>Snowberry</u>
			<u>Vine maple</u>

6. Location of mitigation area. All vegetation must be planted on the applicant's site within the HCA or in an area contiguous to the HCA, provided, however, that if the vegetation is planted outside of the HCA then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant.

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

8. Tree and shrub survival.

a. For Mitigation Option 1: A minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

b. For Mitigation Option 2: A minimum of 500 trees per acre and 650 shrubs per acre shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

9. Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind by the property owner or designee, as indicated on the mitigation plan. For a period of five years, the property owner/designee must submit an annual report to the Urban Design & Planning Department documenting the survival of the trees and shrubs on the mitigation site. Photos must accompany the annual report that shows the progress of the mitigation.

A financial guarantee, in the form of an instrument approved by the City, shall be submitted before development within the HCA commences. It shall be in an amount adequate to cover the cost of performing the mitigation. The City will release the guarantee at the end of the five year monitoring period, or before, if it determines that the trees and shrubs have been successfully established.

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

a. Weed control. Remove, or control, non-native or noxious vegetation throughout maintenance period.

b. Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.

11. To enhance survival of the mitigation plantings, the following practices are required for Mitigation Option 1. These are recommended for Mitigation Option 2 if annual survival goals are not being met.

a. Mulching. Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.

b. Irrigation. Water new plantings one inch per week from June 30th to September 15th, for the three years following planting.

12. To enhance survival of tree replacement and vegetation plantings, the following practices are recommended.

a. Planting season. Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.

F. Standards for Partitions and Subdivisions. The purpose of this section is to allow for partitions in a manner that limits the total amount of allowable development within HCAs on the partitioned parcels; and to require that new subdivision plats delineate and show the Moderate and High HCAs as a separate unbuildable tract.

1. Standards for Partitions containing HCAs:

a. When partitioning a property into parcels, an applicant shall verify the boundaries of the HCA on the property according to Section 5.0414 of this overlay.

b. Applicants who are partitioning, but are not simultaneously developing their property, do not need to comply with Section 5.0410 of this overlay.

c. When partitioning a property into parcels there shall be no more than a 30% percentage point difference in the percentage of HCA on the parcels; for example, a partition that produces two parcels, one that is 55% HCA and the other that is 35% HCA is permissible; whereas a partition that produces two parcels, one that is 75% HCA and the other that is 30% HCA is not permissible. However, an applicant may partition a property such that at least 90% of the original property's High HCA and 80% of its moderate HCA is on a separate unbuildable parcel, protected by a restrictive covenant or a public dedication. The restrictive covenant or public dedication document shall be submitted to the City as part of the final plat application review. After City approval, it shall be recorded with Multnomah County along with the final plat.

d. Subsequent development on any parcels containing HCAs shall comply with Section 5.0410, and the development standards of either Section 5.0411 or Section 5.0412 of this overlay.

2. Standards for Subdivisions containing HCAs:

a. Applicants who are subdividing, but not developing, must verify the location of the HCA boundary according to Section 5.0414 of this Overlay, and comply with this subsection

5.0411(F); such applicants do not need to comply with Section 5.0410 of this Overlay. Applicants who are subdividing, but not developing, property may:

i. Complete the mitigation requirements of subsection 5.0411(E) of this Overlay (and, if appropriate, subsections 5.0412(B) and (C)) and thereby exempt all subsequent development on lots containing HCA from further review under this Overlay (City will verify that the mitigation requirements have been met when individual lot building permit applications are processed); or

ii. Not complete the mitigation requirements of subsections 5.0411(E), 5.0412(B), or (C) of this Overlay, thus requiring that any subsequent development within an HCA be subject to this Overlay.

b. Applicants who are subdividing and developing properties must comply with Sections 5.0410, 5.0411 and 5.0414 of this Overlay.

c. When a property containing any HCA is subdivided, this Overlay requires that new subdivision plats delineate and show the Moderate and High HCA as a separate unbuildable tract according to the following process:

i. The applicant must place at least 90% of the High HCA and 80% of the Moderate HCA in a separate tract.

(A) If over 50% of the HCA on a property is of a High designation, the entire calculation is for High (i.e., 90% of the HCA must be placed within a separate tract).

(B) If over 50% of the HCA on a property is of a Moderate designation, the entire calculation is for Moderate (i.e., 80% of the HCA must be placed within a separate tract).

ii. If the tract is adjacent to the backyard for residences, the minimum rear yard setback can be reduced to 10 ft. in order to accommodate the HCA tract.

iii. The standards for subdivisions in Moderate and High HCAs shall apply in addition to the land division requirements of the City.

iv. Prior to preliminary plat approval, the Moderate and/or High HCA shall be shown as a separate tract, which shall not be a part of any lot used for construction of a dwelling unit.

v. Prior to final plat approval, ownership of the HCA tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:

(A) Private natural area held by the owner or homeowners association by a restrictive covenant conveying storm and surface water management rights to the City; or

(B) For residential subdivisions, private natural area subject to an easement conveying storm and surface water management rights to the City and preventing the owner of the tract from activities and uses inconsistent with the purpose of this Overlay; or

(C) At the owner's option, public natural area where the tract has been dedicated to the City or Metro, or a private non-profit with the mission of land conservation along with conveying storm and surface water management rights to the City; or

(D) Any of the above documents shall be submitted to the City for review and after it is approved as part of the final plat review process, be recorded with Multnomah County along with the subdivision plat.

Section 5.0412. Alternative Discretionary Development Standards

Applicants may choose to use the alternative discretionary development standards provided in this section rather than the development standards provided in Section 5.0411 of this Overlay. There are four discretionary review processes provided in this section: subsection A provides discretionary review for an applicant seeking only to partition a property; subsection B provides discretionary review for an applicant who will comply with the development standards in Section 5.0411 of this Overlay, except that the applicant seeks to meet the mitigation requirements of that section on a different property from the property on which a HCA will be disturbed; subsection C provides discretionary review for an applicant who will comply with the development standards in Section 5.0411 of this Overlay, except that the applicant seeks to meet the mitigation requirements of that section by proportionally varying the number and size of plants required to be planted; and subsection D provides general discretionary review standards applicable to an applicant seeking some other type of discretionary approval of development that will disturb an HCA. An applicant may chose to use the mitigation standards of Section 5.0411 in lieu of the mitigation standards of this section.

A. Discretionary Review for Partitions. An applicant seeking to partition land in ways that do not accord with the standards established in Section 5.0411(F)(1) may seek review under this subsection 5.0412(A).

1. The applicant shall verify the boundaries of the HCAs and WQRAs on the property according to Section 5.0414 of this Overlay.

2. The applicant shall submit the following application materials:

a. A scale map, using a standard engineering scale, of the entire property that includes:

i. Location of all High, Moderate, and Low HCA on the property;

ii. Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area;

iii. Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation;

iv. A delineation of the proposed partition;

v. Outlines of existing developed areas and proposed disturbance areas;

vi. Areas covered by other overlay (e.g. Hillside Physical Constraint, Flood Plain overlays) and

vii. Other items as required for partition proposals by Sections 6.0202 or 6.0403, as appropriate.

- b. A written and documented explanation of how and why the proposed partition satisfies the approval criteria in subsection 5.0412(A)(3). Such written documentation shall include an alternatives analysis of different possible partition plans, based on the characteristics and zoning of the property, and shall be included as part of the partition application narrative.
 - 3. Approval Criteria. A partition shall be approved under this subsection 5.0412(A) provided that the applicant demonstrates that it is not practicable to comply with the partition standards in Section 5.0411(F)(1) of this Overlay, and that the applicant's partition plan will result in the smallest practicable percentage point difference in the percentage of HCA on the parcels created by the partition (this will minimize the amount of allowable disturbance areas within HCAs on the parcels, assuming that the development standards in this Section 5.0411 were applied to future development on such parcels).
 - 4. Subsequent development on any parcels created by the partition and containing HCAs shall comply with all provisions of this Overlay, except that the map verification completed and approved as part of the partition may be used to satisfy the requirements of Section 5.0414 of this Overlay for any such development.
- B. Discretionary Review To Approve Off-Site Mitigation. An applicant seeking discretionary approval only for off-site mitigation within the same sub-watershed (6th Field Hydrologic Unit Code), but who will comply with all other provisions of Section 5.0411 of this Overlay, may seek review under this subsection 5.0412(B).
 - 1. The applicant shall submit.
 - a. A calculation of the number of trees and shrubs the applicant is required to plant under Section 5.0411(E) of this Overlay; and
 - b. A map and accompanying narrative that details the following:
 - i. A plant list that indicates the quantity, botanical name, common name, size and root type (balled, burlaped or bare root) of trees, shrubs and other proposed plantings;
 - ii. A plan that shows where the trees, shrubs and other plants will be planted;
 - iii. An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and
 - iv. The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a HCA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant; and
 - v. Planting details.
 - 2. Approval Criteria. Off-site mitigation shall be approved under this subsection 5.0412(B) provided that the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry out and ensure the success of the

off-site mitigation on a property within the same sub-watershed (6th Field Hydrologic Unit Code) as the related disturbed HCA.

3. Mitigation approved under this subsection 5.0412(B) of this Overlay shall be subject to all of the requirements of subsection 5.0411(E) of this Overlay, except for the requirements of subsection 5.0411(E)(5) of this overlay.

C. Discretionary Review To Approve Mitigation That Varies the Number and Size of Trees and Shrubs. An applicant seeking discretionary approval only to proportionally vary the number and size of trees and shrubs required to be planted under subsection 5.0411(E), for example to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs, but who will comply with all other provisions of Section 5.0411 of this Overlay overlay, may seek review under this subsection 5.0412(C).

1. The applicant shall submit:

- a. A calculation of the number of trees and shrubs the applicant would be required to plant under Section 5.0411(E) of this Overlay;
- b. The numbers, species, root types and sizes of trees and shrubs that the applicant proposes to plant;
- c. An explanation of why the numbers, species and sizes of trees and shrubs that the applicant proposes to plant will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of subsection 5.0411(E) of this Overlay. Such explanation shall be prepared and signed by a knowledgeable and qualified natural resources professional or a certified landscape architect and shall include discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity, plant spacing, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control; and
- d. The applicant's mitigation site monitoring and reporting plan.

2. Approval Criteria. A request to vary the numbers and sizes of trees and shrubs to be planted shall be approved if the applicant demonstrates that the proposed planting will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of subsection 5.0411(E) of this overlay. Such determination shall take into consideration all of the information required to be submitted under subsection 5.0412(C)(1) of this overlay.

3. Mitigation approved under this subsection 5.0412(C) of this Overlay shall be subject to the requirements of subsections 5.0411(E)(4) through (E)(9) of this Overlay, and it is recommended that such mitigation also follow the practices recommended in subsection 5.0411(E)(10) of this overlay.

D. Discretionary Review. An applicant seeking discretionary approval to undertake any development activity within a HCA that does not comply with subsection 5.0411 of this Overlay and is not described in subsections 5.0412(A), (B), or (C) of this Overlay may file an application under this Section 5.0412(D) of this overlay.

1. Application Requirements. The applicant shall provide all items described in subsection 5.0411.A of this overlay, except that, for utility projects undertaken by public utilities across property that is not owned by the utility, the utility shall not be required to map or provide any information about the property except for the area within 300 feet of the location of the proposed disturbance area of the utility's project, and the applicant shall also provide all of the following:

a. Impact Evaluation and Alternatives Analysis. An impact evaluation and alternatives analysis is required to determine compliance with the approval criteria and to evaluate development alternatives for a particular property. The alternatives must be evaluated on the basis of their impact on the HCA, the ecological functions provided by the HCA on the property, and off-site impacts within the sub-watershed (6th Field Hydrologic Unit Code) where the property is located. The impact evaluation shall include all of the following items:

i. Identification of the ecological functions of riparian habitat found on the property as described in Table 4 of this Overlay and the habitat connectivity ecological functions described in subsection 5.0412(D)(1)(a)(ii)(C) and (D) of this overlay.

ii. For upland habitat in areas to be added to the Metro urban growth boundary areas after October 1, 2005, identification of the impact the proposed development would have on the following ecological functions provided by upland wildlife habitat:

(A) Habitat patch size;

(B) Interior habitat;

(C) Connectivity of the habitat to water; and

(D) Connectivity of the habitat to other habitat areas.

Table 5.0412(A) - Ecological functional values of riparian corridors.

Ecological function	Landscape features providing functional values
Microclimate and shade	Forest canopy or woody vegetation within 100 feet of a stream; a wetland ¹ ; or a flood area ² .
Streamflow moderation and water storage	A wetland or other water body ³ with a hydrologic connection to a stream; or a flood area ² .
Bank stabilization, sediment and pollution control	All sites within 50 feet of a surface stream; Forest canopy, woody vegetation, or low structure vegetation/open soils within 100 feet of a stream or a wetland; or forest canopy, woody vegetation, or low structure vegetation/open soils within a flood area; and, Forest canopy, woody vegetation, or low structure vegetation/open soils within 100-200 feet of a stream if the slope is greater than 25%.
Large wood and channel dynamics	Forest canopy within 150 feet of a stream or wetland; or within a flood area; and The channel migration zone is defined by the floodplain, but where there is no mapped floodplain a default of 50 feet is established to allow for the channel migration zone.
Organic material sources	Forest canopy or woody vegetation within 100 feet of a stream or wetland; or within a flood area.

¹Refers to “hydrologically-connected wetlands,” which are located partially or wholly within ¼ mile of a surface stream or flood area.

²Developed floodplains are not identified as HCAs because they do not provide primary ecological functional value.

³“Other water body” could include lakes, ponds, reservoirs, or manmade water feature that is not a water quality facility or farm pond.

iii. Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the HCAs and the ecological functions provided on the property. At a minimum, the following approaches must be considered:

(A) The techniques described in subsection 5.0411(B) of this Overlay;

(B) Multi-story construction;

(C) Minimizing building and development footprint;

(D) Maximizing the use of native landscaping materials; and

(E) Minimal excavation foundation systems (e.g., pier, post or piling foundation).

(F) Minimizing impervious surfaces and using permeable surfaces.

iv. Determination of the alternative that best meets the applicable approval criteria and identification of significant detrimental impacts that are unavoidable.

b. Alternative Mitigation Plan. The purpose of a mitigation plan is to compensate for unavoidable significant detrimental impacts to ecological functions that result from the chosen development alternative as identified in the impact evaluation. However, when development occurs within delineated wetlands, then the mitigation required under subsection 5.0412(D)(2)(d) shall not impose additional mitigation requirements that exceed the mitigation ratios or functions required by state and federal law for the fill or removal of such wetlands.

i. An applicant may choose to develop a mitigation plan consistent with the requirements of subsection 5.0411(E) of this Overlay. If an applicant so chooses, then the applicant shall submit a mitigation plan demonstrating such compliance.

ii. If an applicant chooses to develop an alternative mitigation plan that would not comply with the requirements of subsection 5.0411(E) of this Overlay, including, for example, a proposal to create an alternative plant community type such as an oak savannah or a low-structure plant community, or where an applicant demonstrates that a portion of identified HCA on its property provides only impaired ecological functions, then the applicant shall submit a mitigation plan that includes all of the following:

(A) An explanation of how the proposed mitigation will adequately compensate for the impacts to ecological functions described in the impact evaluation required by subsection 5.0412(D)(1)(a). The applicant may use the mitigation that would be required under subsection 5.0411(E) of this Overlay as the baseline mitigation

required to compensate for disturbance to a HCA that provides an average level of ecological functions. Such explanation shall include:

- (1) If the applicant uses the mitigation that would be required under subsection 5.0411(E) of this Overlay as the baseline mitigation required to compensate for disturbance to a HCA, then the applicant shall submit a calculation of the number of trees and shrubs the applicant would be required to plant under subsection 5.0411(E) of this Overlay;
 - (2) A site plan showing where the specific mitigation activities will occur and the numbers, species, planting details and root types and sizes of trees, shrubs and other plants that the applicant proposes to plant; and
 - (3) A discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity, plant spacing, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control.
- (B) Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies.
- (C) A list of all parties responsible for implementing and monitoring the mitigation plan and, if mitigation will occur off-site, the names of the owners of property where mitigation plantings will occur.
- (D) The applicant's mitigation site monitoring and reporting plan.
- (E) If the proposed mitigation will not be conducted on-site, the applicant shall submit a map and accompanying narrative that details the following:
- (1) The number, species, sizes and root types of trees, and shrubs, and other plants that can be planted on-site;
 - (2) The on-site location where those trees and shrubs can be planted and planting details of how they will be planted;
 - (3) An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and
 - (4) The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a HCA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.

(F) If the mitigation area is off-site and not within the same sub-watershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall submit an explanation of why it is not practicable to conduct the mitigation within the same sub-watershed and of why and how, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the sub-watershed.

(G) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. If the applicant is proposing any in-stream work in fish-bearing streams as part of the mitigation project, then the applicant shall submit documentation that such work will be done in accordance with the Oregon Department of Fish and Wildlife in-stream work timing schedule.

c. The Impact Evaluation and Alternatives Analysis required by subsection 5.0412(D)(1)(a) and the Mitigation Plan required by subsection 5.0412(D)(1)(b) shall be prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist or (2) other appropriate and knowledgeable discipline or (3) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. The application shall include a description of the qualifications and experience of all persons that contributed to the Impact Evaluation and Alternatives Analysis and to the Mitigation Plan, and, for each person that contributed, a description of the elements of such reports to which the person contributed.

2. Approval Criteria. The following approval criteria apply to discretionary review applications under Section 5.0412.D:

a. All application requirements in subsection 5.0412(D)(1) shall be met.

b. Avoid. An applicant shall first avoid the intrusion of development into the HCA to the extent practicable. The development that is proposed must have less detrimental impact to HCAs than other practicable alternatives, including significantly different practicable alternatives that propose less development within HCAs. If there is more than one type of HCA on a property then the applicant shall first avoid the intrusion of development into the higher-valued HCA, to the extent practicable, and the development that is proposed must have less detrimental impact to the higher-valued HCAs than other practicable alternatives. To avoid development in HCAs, and to the extent practicable, applicants shall use the approaches described in subsection 5.0412(D)(1)(a)(iii).

c. Minimize. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then the development proposed by the applicant within the HCA shall minimize detrimental impacts to the extent practicable. If there is more than one type of HCA on a property then the development within higher-valued HCAs shall be considered more detrimental than development within lower-valued HCAs.

i. Development must minimize detrimental impacts to ecological functions and loss of habitat consistent with uses allowed by right under the base zone, to the extent practicable;

- ii. To the extent practicable within the HCA, the proposed development shall be designed, located, and constructed to:
- (A) Minimize grading, removal of native vegetation, and disturbance and removal of native soils by using the approaches described in subsection 5.0411(C)(2), reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post or piling foundation);
 - (B) Minimize adverse hydrological impacts on water resources such as by using the techniques described in Part (a) of Table 5, unless their use is prohibited by an applicable and required State or Federal permit issued to a unit of local government having jurisdiction in the area, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;
 - (C) Minimize impacts on wildlife corridors and fish passage such as by using the techniques described in Part (b) of Table 5; and
 - (D) Consider using the techniques described in Part (c) of Table 5 to further minimize the impacts of development in the HCA.

Table 5.0412(B) - Habitat-friendly development practices.¹

<i>Part (a): Design and Construction Practices to Minimize Hydrologic Impacts</i>
1. <u>Amend disturbed soils to original or higher level of porosity to regain infiltration and stormwater storage capacity.</u>
2. <u>Use pervious paving materials for residential driveways, parking lots, walkways, and within centers of cul-de-sacs.</u>
3. <u>Incorporate stormwater management in road right-of-ways.</u>
4. <u>Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.</u>
5. <u>Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics.</u>
6. <u>Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.</u>
7. <u>Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering.</u>
8. <u>Use multi-functional open drainage systems in lieu of more conventional curb-and-gutter systems.</u>
9. <u>Use bioretention cells as rain gardens in landscaped parking lot islands to reduce runoff volume and filter pollutants.</u>
10. <u>Apply a treatment train approach to provide multiple opportunities for storm water treatment and reduce the possibility of system failure.</u>
11. <u>Reduce sidewalk width and grade them such that they drain to the front yard of a residential lot or retention area.</u>
12. <u>Reduce impervious impacts of residential driveways by narrowing widths and moving access to the rear of the site.</u>
13. <u>Use shared driveways.</u>
14. <u>Reduce width of residential streets, depending on traffic and parking needs.</u>
15. <u>Reduce street length, primarily in residential areas, by encouraging clustering and using curvilinear designs.</u>

¹ These development practices represent the state of scientific knowledge at the time of this Overlay's enactment, if more effective habitat-friendly practices become available, they should be used.

16. Reduce cul-de-sac radii and use pervious vegetated islands in center to minimize impervious effects, and allow them to be utilized for truck maneuvering/loading to reduce need for wide loading areas on site.
17. Eliminate redundant non-ADA sidewalks within a site (i.e., sidewalk to all entryways and/or to truck loading areas may be unnecessary for industrial developments).
18. Minimize car spaces and stall dimensions, reduce parking ratios, and use shared parking facilities and structured parking.
19. Minimize the number of stream crossings and place crossing perpendicular to stream channel if possible.
20. Allow narrow street right-of-ways through stream corridors whenever possible to reduce adverse impacts of transportation corridors.

Part (b): Design and Construction Practices to Minimize Impacts on Wildlife Corridors and Fish Passage

1. Carefully integrate fencing into the landscape to guide animals toward animal crossings under, over, or around transportation corridors.
2. Use bridge crossings rather than culverts wherever possible.
3. If culverts are utilized, install slab, arch or box type culverts, preferably using bottomless designs that more closely mimic stream bottom habitat.
4. Design stream crossings for fish passage with shelves and other design features to facilitate terrestrial wildlife passage.
5. Extend vegetative cover through the wildlife crossing in the migratory route, along with sheltering areas.

Part (c): Miscellaneous Other Habitat-Friendly Design and Construction Practices

1. Use native plants throughout the development (not just in HCA).
2. Locate landscaping (required by other sections of the code) adjacent to HCA.
3. Reduce light spill-off into HCAs from development.
4. Preserve and maintain existing trees and tree canopy coverage, and plant trees, where appropriate, to maximize future tree canopy coverage.

- d. Mitigate. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then development must mitigate for adverse impacts to the HCA. All proposed mitigation plans must meet the following standards.
- i. The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological functions provided by HCAs, after taking into consideration the applicant's efforts to minimize such detrimental impacts through the use of the techniques described in Table 5 and through any additional or innovative techniques. A mitigation plan that requires the amount of planting that would be required under subsection 5.0411(E) of this Overlay based on the amount of proposed disturbance area within the HCA, and that otherwise complies with all of the mitigation requirements in subsection 5.0411(E) of this Overlay, shall be considered to have satisfied the requirements of this subsection 5.0412(D)(2)(d) of this Overlay.
 - ii. Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry

out and ensure the success of the off-site mitigation, as described in subsection 5.0412(B)(1)(b)(iv) of this Overlay. In addition, if the off-site mitigation area is not within the same sub-watershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall demonstrate that it is not practicable to complete the mitigation within the same sub-watershed and that, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the sub-watershed. Mitigation shall not be allowed outside of the impacted 5th Field Hydrologic Unit Code (i.e., an impact within the Johnson Creek watershed needs to be mitigated within the Johnson Creek watershed).

- iii. All re-vegetation plantings shall be with native plants listed on the *City of Gresham Native Plant List*.
 - iv. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream work-timing schedule.
 - v. A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting, and compliance with the plan shall be a condition of development approval.
- e. Municipal Water Utility Facilities Standards. Except as provided within this subsection, in addition to all other requirements of subsection 5.0412(D)(2) of this Overlay, municipal potable water, storm water (drainage) and wastewater utility facilities may be built, expanded, repaired, maintained, reconfigured, rehabilitated, replaced or upsized if not exempted in Section 5.0403 of this Overlay. These facilities may include but are not limited to water treatment plants, wastewater treatment plants, raw water intakes, pump stations, transmission mains, conduits or service lines, terminal storage reservoirs, and outfall devices provided that:
- i. Such projects shall not have to comply with the requirements of subsection 5.0412(D)(2)(b) of this Overlay, provided that, where practicable, the project does not encroach closer to a water feature than existing operations and development, or for new projects where there are no existing operations or development, that the project does not encroach closer to a water feature than practicable;
 - ii. Best management practices will be employed that accomplish the following:
 - (A) Account for watershed assessment information in project design;
 - (B) Minimize the trench area and tree removal within the HCA;
 - (C) Utilize and maintain erosion controls until other site stabilization measures are established, post-construction;
 - (D) Replant immediately after backfilling or as soon as effective;
 - (E) Preserve wetland soils and retain soil profiles;
 - (F) Minimize compactions and the duration of the work within the HCA;

(G) Complete in-water construction during appropriate seasons, or as approved within requisite Federal or State permits;

(H) Monitor water quality during the construction phases, if applicable; and

(I) Implement a full inspection and monitoring program during and after project completion, if applicable.

Section 5.0413. Variances

- A. The purpose of this Section is to ensure that compliance with this Overlay does not cause unreasonable hardship. To avoid such instances, the requirements of this Overlay may be varied. Variances are also allowed when strict application of this Overlay would deprive an owner of all economically viable use of land.
- B. This Section applies in addition to the standards governing proposals to vary the requirements of the district.
- C. Notice of variance applications shall be provided.
1. Upon receiving an application to vary the requirements of this overlay, the notice shall be provided to all property owners within 300 ft. of the site, as required by Section 11.0311 of the Gresham Community Development Code to Metro, to any neighborhood association recognized by the City of Gresham and whose boundaries include the property, and to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property and meet all other noticing requirements of Section 11.0311 of the Gresham Community Development Code.
 2. Within seven (7) days of a decision on the variance, notice of the decision shall be provided to Metro, to any neighborhood association recognized by the City of Gresham and whose boundaries include the property, to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property, and to any other person required to receive notice of such a decision in Section 11.0300 of the City of Gresham Community Development Code.
- D. Hardship Variance. Variances to avoid unreasonable hardship caused by the strict application of this Overlay are permitted subject to the criteria set forth in this section. To vary from the requirements of this Overlay, the applicant must demonstrate the following:
1. The variance is the minimum necessary to allow the proposed use or activity;
 2. Unless the proposed variance is from mitigation under Section 5.0411(E) or mitigation under Section 5.0412(B), (C), or (D)(1)(b) and D(2)(d), the proposed use will comply with those standards, as applicable; and
 3. The proposed use complies with the standards of the base zone.
- E. Buildable Lot Variance. A variance to avoid the loss of all economically viable use of an existing lot or parcel that is partially or wholly inside a HCA is permitted. Applicants must demonstrate the following:
1. Without the proposed variance, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that:

- a The proposed use cannot meet the standards in Section 5.0413(D) (hardship variance); and
 - b No other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.
2. The proposed variance is the minimum necessary to allow for the requested use;
 3. The proposed variance will comply with Section 5.0411(E) or 5.0412(B), (C), or D(1)(b) and D(2)(d) (mitigation); and
 4. The proposed use complies with the standards of the base zone.
- F. Additional Criteria. In addition to the above Hardship Variance or Buildable Lot Variance criteria, the following criteria apply:
1. A variance that would result in a reduction of not more than 20% of the HCA boundary width on a site or a 20% decrease/increase of another numerical standard of this overlay shall demonstrate compliance with the Type II Minor Variance criteria of Section 10.1510 of the Gresham Community Development Code. Such proposals shall be processed under the Type II development permit procedure.
 2. A variance that would result in a reduction of greater than 20% of the HCA width on a site or an increase/decrease of more than 20% of another numerical standard of this overlay shall demonstrate compliance with the Type III Major Variance criteria of Section 10.1530 of the Gresham Community Development Code. Also, all non-numerical variance proposals shall meet the Type III Major Variance criteria. Both kinds of variances shall be processed under the Type III development permit procedure.
- G. Variance Conditions. Conditions may be imposed to limit any adverse impacts that may result from granting any variance.

Section 5.0414. Map Administration and HCA Verification

- A. Exempt development. Development that is outside of any HCA and no closer than 50 feet to the border of an HCA (including all impervious surfaces and landscaping), based on the HCA map, may proceed without having to comply with this section or any other portion of this overlay except for Section 5.0410, Construction Management Plan.
- B. Verification of the location of HCAs as described in this section shall not be considered a comprehensive plan amendment. If developing within an HCA, the location of the HCA boundary on a development site must be marked in the field at the time the applicant requests an HCA permit.
- C. Map verification is available to correct for mistakes in the location, size or presence of HCAs on properties. Map verification shall not be used to dispute whether identified HCAs provide the ecological functions that they are assumed to provide based on the ecological criteria used by Metro to identify them in the 2002 Metro Goal 5 Technical Report. Nor shall it be used to dispute the Metro

methodology for locating Class I and II riparian resource areas that is shown on Table 6 of this overlay.

- D. The map verification requirements described in this Section 5.0414 of this Overlay shall be met at the time an applicant requests a building permit, grading permit, tree removal permit, land division approval, or some other land use decision. A property owner, or another person with the property owner's consent, may request to verify the location of HCAs on a real property lot or parcel pursuant to this Section 5.0414 of this Overlay at other times, but whether the City processes such request shall be at the Planning Director's sole discretion, based on staff availability, funding resources, and policy priorities. If a person receives verification separate from a simultaneous request for a building permit, grading permit, tree removal permit, land division approval, or some other land use decision, then the person may use the verification to satisfy the requirements of this section at any time up until five years after the date the verification was issued.
- E. Notwithstanding any other provisions of this Section 5.0414 of this Overlay, for utility projects undertaken by public utilities across property that is not owned by the utility, the utility shall not be required to map or provide any information about the property except for the area within 300 feet of the location of the proposed disturbance area of the utility's project.
- F. The City shall incorporate all HCA delineations associated with development permit applications and resource updates on the location of the HCA boundary on an annual basis, or as necessary, through the Type 1 permit procedure by the Planning Director. This shall not be considered a comprehensive plan map amendment.
- G. Basic Verification Approaches. The basic verification approaches described in subsections 5.0414(F)(1) through (3) of this Overlay are available for applicants who believe either (1) that the HCA map is accurate, (2) that there is a simple incongruity between the HCA map and the boundary lot lines of a property, or (3) that the property was developed prior to September 29, 2005.
 - 1. Applicant Believes HCA Map is Accurate. An applicant who believes that the HCA map is accurate may comply with this subsection 5.0414(F)(1) of this Overlay. The applicant shall submit the following information regarding the real property lot or parcel:
 - a. A detailed property description;
 - b. A copy of the applicable HCA map;
 - c. A summer 2005 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 20 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 50 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);
 - d. The information required to be submitted under Section 5.0411 or 5.0412 of this Overlay if the applicant proposes development within any HCA under those provisions; and
 - e. Any other factual information that the applicant wishes to provide to support map verification.

2. Obvious Misalignment Between Mapped Habitat and Property Lot Lines. In some cases, the mapped vegetative cover layer in the GIS database might not align precisely with the tax lot layer that shows property lines, resulting in a HCA map that is also misaligned with tax lot lines. An applicant who believes that the HCA map is inaccurate based on such an obvious misalignment may comply with this subsection 5.0414(F) (2) of this overlay. The applicant shall submit the following information regarding the real property lot or parcel:
 - a. The information described in subsections 5.0414(G)(1)(a) through (e) of this Overlay; and
 - b. A documented demonstration of the misalignment between the HCA map and the property's tax lot boundary lines. For example, an applicant could compare the boundary lot lines shown for roads within 500 feet of a property with the location of such roads as viewed on the aerial photograph of the area surrounding a property to provide evidence of the scale and amount of incongruity between the HCA maps and the property lot lines, and the amount of adjustment that would be appropriate to accurately depict habitat on the property.
 3. Property Developed Between Summer 2002 and September 29, 2005. Where a property was developed between the summer of 2002 (when the aerial photo used to determine the regional habitat inventory was taken) and September 29, 2005 (when Metro Council approved the Title 13 program), the applicant shall submit the following information regarding the real property lot or parcel:
 - a. The information described in subsection 5.0414(G)(1)(a) through (e) of this Overlay;
 - b. A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);
 - c. Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and September 29, 2005; and
 - d. A clear explanation and documentation, such as supporting maps or drawings or an more recent aerial photograph, indicating the new development that has occurred and where previously identified habitat no longer exists because it is now part of a developed area. Also, submit evidence that shows that the new development was legally approved by the City.
 4. Decision Process. The Planning Director's map verification decision made pursuant to subsection 5.0414(F)(1) of this overlay will be processed under the Type I development permit procedure. Decisions pursuant to subsections 5.0414(G)(2) and (G)(3) will be processed under the Type II development permit procedure. The Planning Director's decision shall be based on consideration of the information submitted by the applicant, any information collected during a site visit to the lot or parcel, any information generated by prior map verifications that have occurred on adjacent properties, and any other objective factual information that has been provided to the Planning Director.
- H. Detailed Verification Approach. All applicants who believe that the HCA map is inaccurate for a reason other than as described in subsections 5.0414(F)(2) and (3) may file a verification request

consistent with this subsection 5.0414(G) of this Overlay. Detailed verification requests will be processed under the Type II (administrative) development permit procedure.

1. Application requirements. The applicant shall submit a report prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. Such report shall include:
 - a. A description of the qualifications and experience of all persons that contributed to the report, and, for each person that contributed, a description of the elements of the analysis to which the person contributed;
 - b. The information described in subsections 5.0414(G)(1)(a) through (c) of this Overlay;
 - c. The information described in subsections 5.0414(G)(2)(b) and (G)(3)(b) through (d) of this Overlay, if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel;
 - d. Additional aerial photographs if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert's interpretation of the additional information they provide;
 - e. A map showing the topography of the property shown by contour lines of 2 foot intervals for slopes less than 15% and by 10 foot intervals for slopes 15% or greater; and
 - f. Any additional information necessary to address each of the verification criteria in subsection 5.0414(H)(4) of this Overlay, a description of where any HCAs are located on the property based on the application of the verification criteria in subsection 5.0414(H)(4) of this Overlay, and factual documentation to support the analysis.
2. Notice requirements. Upon receipt of a completed application pursuant to this subsection 5.0414(H) of this Overlay, the Planning Director shall provide notice of the map verification application to Metro, to the owners of record of property on the most recent property tax assessment roll where such property is located within 300 feet of the subject property, as required by Section 11.0311 of the Gresham Community Development Code to any neighborhood association recognized by the City of Gresham and whose boundaries include the property, and to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property. The notice provided by the jurisdiction shall comply with the notice requirements of Section 11.0311 of the Gresham Community Development Code. The Planning Director shall accept written public comments regarding the matter during a public comment period.
3. Decision process. The Planning Director shall apply the verification criteria in subsection 5.0414(H)(4) of this Overlay to confirm the location of any HCAs based on the HCA map, the information submitted by the applicant, any information received during the public comment period, and any additional information readily available, including information collected during a site visit to the lot or parcel. The applicant and all persons that submitted written comments shall be provided with a written explanation of the Planning Director's decision.
4. Verification Criteria. The verification of the location of HCAs shall be according to the four-step process described in this subsection 5.0414(H)(4) of this overlay. A verification application shall

not be considered complete and shall not be granted unless all the information required to be submitted with the verification application has been received.

a. Step 1. Verifying boundaries of inventoried riparian habitat. Locating habitat and determining its riparian habitat class is a four-step process:

i. Locate the Water Feature that is the basis for identifying riparian habitat.

(A) Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.

(B) Locate all flood areas within 100 feet of the property.

(C) Locate all wetlands within 150 feet of the property based on the Local Wetland Inventory map (if completed) and on the Metro 2002 Wetland Inventory Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232, 503-797-1742). Identified wetlands shall be further delineated consistent with methods currently accepted by the Oregon Department of State Lands and the U.S. Army Corps of Engineers.

ii. Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.

(A) Vegetative cover status shall be as identified on the Metro Vegetative Cover Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232, 503-797-1742).

(B) The vegetative cover status of a property may be adjusted only if (1) the property was developed prior to the time the regional program was approved (see subsection 5.0414(G)(3) of this Overlay, above), or (2) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the definitions of the different vegetative cover types provided in Section 5.0416 of this Overlay.

iii. Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25%. At least three slope measurements along the water feature at no more than 100 ft. increments shall be taken, and

iv. Identify the riparian habitat classes applicable to all areas on the property using Table 5.0414(A) and the data identified in subsections 5.014(H)(4)(a)(i) through (iii).

Table 5.0414(A) - Method for Locating Boundaries of Class I and II Riparian Areas.

<u>Distance from Water Feature</u>	<u>Development/Vegetation Status¹</u>			
	<u>Developed areas not providing vegetative cover</u>	<u>Low structure vegetation or open soils</u>	<u>Woody vegetation (shrub and scattered forest canopy)</u>	<u>Forest Canopy (closed to open forest canopy)</u>
Surface Streams				
0-50'	Class II	Class I ²	Class I	Class I
50'-100'	Not regulated	Class II ³	Class I	Class I
100'-150'	Not regulated	Class II ³ if slope > 25%	Class II ³ if slope > 25%	Class II ³
150'-200'	Not regulated	Class II ³ if slope > 25%	Class II ³ if slope > 25%	Class II ³ if slope > 25%
Wetlands (Wetland feature itself is a Class I Riparian Area)				
0-100'	Not regulated	Class II ³	Class I	Class I
100'-150'	Not regulated			Class II ²
Flood Areas				
Within 300' of river or surface stream	Not regulated	Class I	Class I	Class I
More than 300' from river or surface stream	⁴ Not regulated	Class II ³	Class II ³	Class I
0-100' from edge of flood area	Not regulated	Not regulated	Class II ^{3,5}	Class II ³

¹ The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as "forest canopy" the forested area had to be part of a larger patch of forest of at least one acre in size.

² Except that areas within 50 feet of surface streams shall be Class II riparian areas if their vegetation status is "Low structure vegetation or open soils," and if they are high gradient streams. High gradient streams are identified on the Metro Vegetative Cover Map. If a property owner believes the gradient of a stream was incorrectly identified, then the property owner may demonstrate the correct classification by identifying the channel type using the methodology described in the Oregon Watershed Assessment Manual, published by the Oregon Watershed Enhancement Board, and appended to the Metro's Riparian Corridor and Wildlife Habitat Inventories Report, Attachment 1 to Exhibit F to Metro Overlay No. 05-1077C.

³ Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they

do not meet the criteria used to identify habitats of concern as described in Metro's Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

⁴ If development prior to the effective date of Metro Overlay No. 05-1077C within a contiguous, undeveloped flood area (to include contiguous flood areas on adjacent properties) that was not mapped as having any vegetative cover has reduced the size of that contiguous flood area to less than one half of an acre in size, then the remaining flood area shall also be considered a developed flood area and shall not be identified as habitat.

⁵ Only if within 300 feet of a river or surface stream.

- b. Step 2. Verifying boundaries of inventoried upland habitat in future urban growth boundary expansion areas. Upland habitat was identified based on the existence of contiguous patches of forest canopy, with limited canopy openings. The "forest canopy" designation is made based on analysis of aerial photographs, as part of determining the vegetative cover status of land within the region. Upland habitat shall be as identified on the HCA map unless corrected as provided in this subsection.
- i. Except as provided in subsection 5.0414(H)(4)(b)(ii), vegetative cover status shall be as identified on the Metro Vegetative Cover Map used to inventory habitat at the time the area was brought within the urban growth boundary (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
- ii. The only allowed corrections to the vegetative cover status of a property are as follows:
- (A) To correct errors made when the vegetative status of an area was determined based on analysis of the aerial photographs used to inventory the habitat at the time the area was brought within the urban growth boundary. For example, an area may have been identified as "forest canopy" when it can be shown that such area has less than 60% canopy crown closure, and therefore should not have been identified as "forest canopy." The perimeter of an area delineated as "forest canopy" on the Metro Vegetative Cover Map may be adjusted to more precisely indicate the dripline of the trees within the canopied area provided that no areas providing greater than 60% canopy crown closure are de-classified from the "forest canopy" designation. To assert such errors, applicants shall submit an analysis of the vegetative cover on their property using the aerial photographs that were used to inventory the habitat at the time the area was brought within the urban growth boundary and the definitions of the different vegetative cover types provided in Section 5.0416 of this Overlay; and
- (B) To remove tree orchards and Christmas tree farms from inventoried habitat; provided, however, that Christmas tree farms where the trees were planted prior to 1975 and have not been harvested for sale as Christmas trees shall not be removed from the habitat inventory.
- iii. If the vegetative cover status of any area identified as upland habitat is corrected pursuant to subsection 5.0414(H)(4)(b)(ii)(A) to change the status of an area originally identified as "forest canopy," then such area shall not be considered upland habitat unless it remains part of a forest canopy opening less than one acre in area completely surrounding by an area of contiguous forest canopy.

- c. Step 3. Urban Development Value of the Property. The urban development value of property designated as regionally significant habitat is depicted on the Metro Habitat Urban Development Value Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
- i. A property's urban development value designation shall be adjusted upward if the Metro 2040 Design Type designation for the property lot or parcel has changed from a category designated as a lower urban development value category to one designated as a higher urban development value category. 2040 Design Type designations are identified on the Metro 2040 Applied Concept Map (also available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
 - ii. Properties in areas designated on the 2040 Applied Concept Map as the Central City, Regional Centers, Town Centers, and Regionally Significant Industrial Areas are considered to be of high urban development value; properties in areas designated as Main Streets, Station Communities, Other Industrial Areas, and Employment Centers are of medium urban development value; and properties in areas designated as Inner and Outer Neighborhoods and Corridors are of low urban development value.
 - iii. As designated in Title 13 of Metro's Urban Growth Management Functional Plan, properties owned by a regionally significant educational or medical facility are designated as high urban development value.
- d. Step 4. Cross-Reference Habitat Class With Urban Development Value. City and county verification of the locations of High, Moderate, and Low Habitat Conservation Areas shall be consistent with Tables 5.0414(B) and (C).

Table 5.0414(B) - Method for Identifying Habitat Conservation Areas ("HCA")

<u>Fish & wildlife habitat classification</u>	<u>High Urban development value¹</u>	<u>Medium Urban development value²</u>	<u>Low Urban development value³</u>	<u>Other areas: Parks and Open Spaces, no design types outside UGB</u>
Class I Riparian	Moderate HCA	High IICA	High HCA	High HCA / High HCA+ ⁴
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate IICA / High HCA+ ⁴
Class A Upland Wildlife	No HCA	No IICA	No IICA	No HCA / High HCA ⁵ / High HCA+ ⁴
Class B Upland Wildlife	No HCA	No HCA	No IICA	No HCA / High IICA ⁵ / High HCA+ ⁴

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.

¹Primary 2040 design type: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas

²Secondary 2040 design type: Main Streets, Station Communities, Other Industrial areas, and Employment Centers

³Tertiary 2040 design type: Inner and outer neighborhoods, Corridors

⁴Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.

⁵All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Table 5.0414(C) - Method for Identifying Habitat Conservation Areas ("HCA") in Future Urban Growth Boundary Expansion Areas

<u>Fish & wildlife habitat classification</u>	<u>High Urban development value¹</u>	<u>Medium Urban development value²</u>	<u>Low Urban development value³</u>	<u>Other areas: Parks and Open Spaces, no design types outside UGB</u>
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+ ⁴
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+ ⁴
Class A Upland Wildlife	Low HCA	Moderate HCA	Moderate HCA	High HCA / High HCA ⁵ / High HCA+ ⁴
Class B Upland Wildlife	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA ⁵ / High HCA+ ⁴

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.

¹Primary 2040 design types: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas

²Secondary 2040 design types: Main Streets, Station Communities, Other Industrial areas, and Employment Centers

³Tertiary 2040 design types: Inner and outer neighborhoods, Corridors

⁴Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.

⁵All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Section 5.0415. Consistency and Relationship with Other Regulations

A. Where the provisions of this Overlay are less restrictive or conflict with comparable provisions of the Gresham Community Development Code, other City requirements, regional, state or federal law, the provisions that are more restrictive shall govern. Where this Overlay imposes restrictions that are more stringent than regional, state and federal law, the provisions of this Overlay shall govern.

B. Proposed development located near certain streams must also comply with the Floodplain Overlay district standards of Section 5.0100 of the Community Development Code. Streams affected by this overlay are shown on the City's Special Purpose Districts Map.

C. Proposed development located on sites with slopes of 15% or greater may also be affected by the Hillside Physical Constraint Overlay district provisions of Section 5.0200 of the Community Development Code. This district may impose additional development requirements for sites with ravines and other sloped topographic features.

D. Development in or near wetlands and streams may require permits from the Oregon Department of State Lands (D.S.L.) and the U.S. Army Corps of Engineers. If a federal permit is required, a water quality certification from the Oregon Department of Environmental Quality may also be required. The Manager shall notify the Department of State Lands and the Army Corps of Engineers when an application for development within streams and wetlands is submitted. Because these agencies may have more restrictive regulations than the City, applicants are encouraged to contact them before they prepare their development plans.

E. The tree regulations of Section 9.1000 do not apply within HCA areas.

Section 5.0416 Violations

Actions that violate the HCA regulations, such as removing habitat without having a required HCA permit, are subject to the abatement and penalty provisions of Section 11.0600 of the Gresham Community Development Plan.

In addition, for correcting violations regarding unauthorized removal of habitat, the property owner violator must submit a remediation plan that meets all of the applicable standards of the HCA overlay district. The plan must be developed by a professional landscape architect or natural resource specialist. If one or more of these standards cannot be met then the applicant's remediation plan must demonstrate that there will be:

- (A) No permanent loss of any type of resource or functional value;
- (B) A significant improvement of at least one functional value; and
- (C) There will be minimal loss of resources and functional values during the remediation action until it is fully established.

Section 5.0417 WQRA, Water Quality Resource Area

The WQRA, Water Quality Resource Area is an area identified by the City of Gresham in order to comply with Title 3 of Metro's Urban Growth Management Functional Plan, Metro Code sections 3.07.310-3.07.370. These areas are shown on Gresham's Title 3 map. When development is proposed

within the WQRA, applicants can use either the specific standards of Section 5.0411 of the HCA (those that apply to High rated resources, regardless of classification) or the discretionary standards of Section 5.0412.

The WQRA consists of the protected water feature, either primary or secondary, and the adjacent vegetative corridor. Primary and secondary protected water features are defined below and the required width of the vegetative corridor is indicated in Table 5.0417.

Primary Protected Water Features:

- (A) Title 3 wetlands (as defined in Title 3 of Functional Plan)
- (B) Rivers, streams and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow)
- (C) Streams carrying year-round flow
- (D) Springs which feed streams and wetlands and that have year-round flow
- (E) Natural lakes

Secondary Protected Water Features:

These are intermittent streams and seeps downstream of the point at which 50 acres of land area are drained and upstream of the point at which 100 acres of land area are drained to that water feature.

Vegetative Corridor Width:

The required width of the vegetated corridor varies according to the type of protected water feature (primary or secondary) and the degree of slope (less or greater than 25%) adjacent to the water feature. Minimum required vegetated corridor widths are specified in Table 5.0417. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the slope of the land adjacent to the water feature, the width of the vegetated corridor will vary.

Table 5.0417 – Water Quality Resource Areas

<u>Protected Water Feature Type (see definitions below)</u>	<u>Slope Adjacent to Protected Water Feature</u>	<u>Starting Point for Measurements from Water Feature</u>	<u>Width of Vegetated Corridor (Required Setback)</u>
Primary Protected Water Features ¹	< 25%	Edge of bankfull stage (“top of bank”) ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	50 feet
Primary Protected Water Features ¹	≥ 25% for 150 feet or more ⁵	Edge of Bankfull stage ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	200 feet

<u>Primary Protected Water Features¹</u>	<u>≥ 25% for less than 150 feet⁵</u>	<u>Edge of bankfull stage⁶ or 2-year storm level, Delineated edge of Title 3 wetland</u>	<u>Distance from starting point of measurement to top of ravine (break in >25% slope)³, plus 50 feet.⁴</u>
<u>Secondary Protected Water Features²</u>	<u>< 25%</u>	<u>Edge of bankfull stage⁶ or 2-year storm level, Delineated edge of Title 3 wetland</u>	<u>15 feet</u>
<u>Secondary Protected Water Features²</u>	<u>≥ 25%⁵</u>	<u>Edge of bankfull stage⁶ or 2-year storm level, Delineated edge of Title 3 wetland</u>	<u>50 feet</u>

¹ Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural lakes and springs

² Secondary Protected Water Features include intermittent streams draining 50-100 acres.

³ Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the > 25% slope.

⁴ A maximum reduction of 25 feet may be permitted in the width of vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).

⁵ Vegetated corridors in excess of 50 feet for primary protected features, or in excess of 15 feet for secondary protected features, apply on steep slopes only in the uphill direction from the protected water feature.

⁶ "Bankfull Stage" (top of bank) is defined in OAR 141-85-010 (definitions for Removal/Fill Permits) as the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begins to inundate upland areas. In the absence of physical evidence, the two-year recurrent flood elevation may be used to approximate the bankfull stage.

Section 3. Volume 3, Development Code, Section 4.1431 is amended as follows:

Pleasant Valley Environmentally Sensitive/Restoration Areas

4.1431 How the ESRA-PV Works

The ESRA-PV sub-district establishes buffers to protect significant streams, riparian corridors, wetlands and forests, including their ecological functions, except as noted below. The sub-district provisions apply only to the mapped ESRA-PV areas that appear on the Pleasant Valley ESRA Map and to the newly discovered and created ESRA-PV areas as noted below.

Section 4. Volume 3, Development Code, Section 4.1432 is amended as follows:

4.1432 ESRA-PV Map Applicability as Reference

(A). The boundaries of the ESRA-PV sub-district are shown on the Pleasant Valley Plan District ESRA Map including approved amendments provided by the City at the time of application. The boundaries are based on a GIS-supported application of the Pleasant Valley Significance Matrix.

- (B). A wetland identified during the course of a development permit review that meets the State of Oregon's definition of a "Locally Significant Wetland" shall be subject to the standards of the ESRA-PV sub-district. These wetlands shall be officially added to the City's Pleasant Valley Plan District ESRA Map by the Manager, under a Type I procedure, after the development permit becomes final.
- (C). The City shall incorporate all ESRA-PV delineations associated with development permit applications and resource information updates on the Pleasant Valley Plan District ESRA Map on an annual basis, or as necessary, through a Type I procedure initiated by the Manager.
- (D). Where development is proposed entirely outside of the ESRA-PV, but within 100 feet of the ESRA-PV boundary, applicants must field verify this boundary through the Map Verification procedures outlined in Section 4.1452.
- (E). Where development is proposed within the ESRA-PV, applicants must field verify the ESRA boundary through the Map Verification procedures outlined in Section 4.1452(A). The developments shall also comply with the standards found in Sections 4.1438-4.1447, and others as applicable.
- (F). Additionally, applicants proposing to partition or subdivide properties containing ESRA-PV must comply with the partition and subdivision standards found in Section 4.1436(F), as well as the applicable provisions of Article VI Land Divisions and the Map Verification procedure in Section 4.1452.
- (G). Any change to the ESRA-PV boundary, not initiated by the City, that requires an adjustment of the boundary as shown on the Pleasant Valley Plan District ESRA Map and shall be processed under the Type II development permit procedure.

~~The ESRA-PV boundary shall be shown on all development permit application site plans that involve properties with this designation and its location shall be verified in the field before development activity (including grading) commences.~~

Section 5. Volume 3, Development Code, Section 4.1434 is amended as follows:

4.1434 Emergencies

The provisions of this ordinance do not apply to work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies. After the emergency has passed, any disturbed native vegetation areas shall be replanted with similar vegetation found in the ~~Metro~~City of Gresham Native Plant List. For purposes of this section emergency shall mean any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

Section 6. Volume 3, Development Code, Section 4.1436 is amended as follows:

4.1436 Uses Allowed Outright (Exempted)

The following uses are allowed within the ESRA-PV sub-district and do not require the issuance of an ESRA-PV permit:

(B) Utility service using a single utility pole or where the disturbed area is outside of the top-of-bank of water bodies and is no more than 100 square feet of ground surface, is disturbed outside of the top-of-bank of water bodies and where theat disturbed area is restored to the pre-construction conditions.

(C) Boundary and topographic surveys leaving no cut scars greater than three-inches in diameter on live parts of native plants listed in the ~~Metro~~ Native City of Gresham Native Plant List.

(E) Trails meeting all of the following:

(6) No native trees greater than one (1) inch in diameter may be removed or cut, unless replaced with an equal number of native trees of at least 3 inch diameter and planted within 10 ft. of the trail; and

(7) Trail plans and construction within the ESRA-PV must be authorized by the City.

(F) All land divisions with tentative plans and approved building permit/construction plans showing all of the following and noted on final plat:

(1) The boundaries of the ESRA-PV as field verified according to Section 4.1452,

~~(1)(2) The lots must have~~ Their building sites (or buildable areas) of the lots located at least 5 ft. from the ESRA-PV boundary. For the purpose of this subparagraph, "building site" means an area of at least 3,500 square feet with minimum dimensions of 40 feet wide by 40 feet deep;

~~(2)(3)~~ Public and private utilities (including water lines, sewer lines or drain fields, and stormwater disposal facilities) where none of these utilities are in the ESRA-PV;

~~(3)(4)~~ Streets, driveways and parking areas where all pavement is at least 10 ft. from the ESRA-PV sub-district; and

~~(5)~~ The ESRA-PV portions of all lots are protected by a conservation easement; or

~~(5)~~ Aa lot or tract created and dedicated solely for unimproved open space or conservation purposes.

(G) Routine repair and maintenance of existing structures, roadways, driveways, utility lines and utilities where the disturbed area is outside of the top-of-bank of a water body and is no more than 100 square feet of ground surface.

- (II) Replacement, additions, alterations and rehabilitation of existing structures, roadways, driveways, utility lines and utilities, etc. where the ground level impervious surface area is not increased and where the disturbed area is outside of the top-of-bank of a water body and is no more than 100 square feet of ground surface.
- (I) Measures mandated by the City of Gresham to remove or abate nuisances or hazardous conditions.
- (J) Planting of native vegetation and the removal of non-native, invasive vegetation (as identified on the Metro Native City of Gresham Native Plant List), and removal of refuse and fill, provided that

Section 7. Volume 3, Development Code, Section 4.1437 is amended as follows:

4.1437 Uses Allowed Under Prescribed Conditions

The following uses within the ESRA-PV sub-district are subject to the applicable standards listed in Sections 4.1438 through 4.1447, and others as applicable.

- (A) Alteration to existing structures within the ESRA-PV sub-district when not exempted by Section 4.1436.
- (B) Development on a vacant lot, ~~of record that existed before annexation~~ and that has less than 3,500 sq. ft. of buildable area, with minimum dimensions of 40 ft. by 40 ft., remaining outside the ESRA-PV portion of the property. ~~(Note: A lot of record is a lot that existed before a property was annexed into the City of Gresham.)~~
- (C) A land division that would create a new lot for an existing residence currently within the ESRA-PV.
- ~~(D) (C) Trails/pedestrian paths when not exempted by Section 4.1436.~~
- ~~(E) (D) New roadways, bridges/creek crossings, utilities, utility lines and stormwater facilities or alterations to such facilities when not exempted by Section 4.1436.~~

Section 8. Volume 3, Development Code, Section 4.1438 is amended as follows:

4.1438 General Development Standards

The following standards apply to all regulated development within the ESRA-PV sub-district with the exception of rights of ways (subject to Section 4.1442), trails (subject to Section 4.1444), utilities, utility lines and stormwater facilities (subject to Section 4.1441), land divisions (subject to Section 4.1443), and mitigation projects (subject to Section 4.1445 or 4.1446):

(A) Native trees may be removed within 10 ft. of any proposed structures or within 5 ft. of new driveways. Trees listed on the Metro Nuisance Plant List or Prohibited Plant List are exempt from this standard and may be removed. Mitigation for tree removal of native and non-native trees is required per Section 4.1445 or 4.1446.

(B) All vegetation planted in a resource area must be native and listed on the ~~Metro~~City of Gresham Native Plant List;

(E) Fences are allowed only within the disturbance area, as described in 4.1439(A);

Section 9. Volume 3, Development Code, Section 4.1439 is amended as follows:

4.1439 New Development Standards

In addition to the above General Development Standards of Section 4.1438, the following standards apply to new development within the ESRA-PV sub-district, except for trails, rights of ways, utilities, utility lines, stormwater facilities, and divisions and mitigation projects:

Section 10. Volume 3, Development Code, Section 4.1440 is amended as follows:

4.1440 Existing Development Standards

In addition to the General Development Standards of Section 4.1438, the following standards apply to alterations of existing development within the ESRA-PV sub-district, except for trails, rights of way, utilities, utility lines, stormwater facilities, and divisions and mitigation projects:

Section 11. Volume 3, Development Code, Section 4.1441 is amended as follows:

4.1441 Standards for Utilities, Utility Lines and Stormwater Facilities

(A) Utilities and Utility Lines

The following standards apply to new utilities, private connections to existing or new utility lines, and upgrades of existing utility lines within the ESRA-PV sub-district:

(1) ~~(A)~~—The disturbance area for private connections to utility lines is no greater than 10 feet wide;

(2) ~~(B)~~—The disturbance area for the upgrade of existing utility lines is no greater than 15 feet wide;

(3) ~~(C)~~—New utility lines must be within the right-of-way, unless it is shown that there are no feasible alternatives.

- (4) ~~(D)~~—No fill or excavation is allowed within the ordinary high water mark of a stream, unless necessary and any required permits are obtained from the US Army Corps of Engineers, and/or the Oregon Department of State Lands;
- (5) ~~(E)~~—The Department of State Lands must approve any work that requires excavation or fill in a wetland.
- (6) ~~(F)~~Native trees more than 10 inches in diameter may not be removed unless it is shown that there are no feasible alternatives; and
- ~~(5)(G)~~—Each 6 to 10-inch diameter native tree cut must be replaced at a ratio of three trees for each one removed. The replacement trees must be a minimum one-half-inch diameter and selected from the Metro Native Plant List. All trees must be planted on the applicant's site. Where a utility line is approximately parallel with the stream channel at least half of the replacement trees must be planted between the utility line and the stream channel.
- (7) ~~(H)~~—Mitigation is required, subject to Section 4.1445 or 4.1446. All trees must be planted on the applicant's site. The replacement trees must be selected from the City of Gresham Native Plant List.

(B) Stormwater Facilities, other than those listed in Section 4.1441A

The following standards apply to new stormwater facilities and upgrades of existing stormwater facilities within the ESRA-PV sub-district:

- (1) Stormwater facilities may be placed in the ESRA-PV sub-district when shown on the adopted Pleasant Valley Master Plan or when there is no feasible alternative location outside the ESRA-PV;
- (2) No fill or excavation is allowed within the ordinary high water mark of a stream, unless necessary and any required permits are obtained from the US Army Corps of Engineers, and/or the Oregon Department of State Lands;
- (3) The Department of State Lands must approve any work that requires excavation or fill in a wetland.
- (4) Native trees more than 10 inches in diameter may not be removed unless it is shown that there are no feasible alternatives; and
- (5) Mitigation is required, subject to Section 4.1445 or 4.1446. All trees must be planted on the applicant's site. The replacement trees must be selected from the City of Gresham Native Plant List.

Section 12. Volume 3, Development Code, Section 4.1445 is amended as follows:

4.1445 Mitigation Standards

The following standards (or the alternative standards of Section 4.1446) apply to required mitigation:

- (A) Mitigation must occur at a 2:1 ratio of mitigation area to proposed disturbance area, except as noted in Section 4.1445(E) below;

(B) Mitigation must occur on the site where the disturbance occurs, except as follows:

(2) The mitigation will occur in the Kelley Creek watershed wherever possible; and

(C) Mitigation must occur within the ESRA-PV area of a site unless it is demonstrated that this is not feasible because there is a lack of available and appropriate area. In which case, the proposed mitigation area must be contiguous to the existing ESRA-PV area so the ESRA-PV boundary can be easily extended in the future to include the new resource site. If mitigation cannot occur within the Kelley Creek watershed, mitigation shall occur within the Johnson Creek watershed, as close to the area of impact as possible.

(D) Invasive vegetation must be removed within the mitigation area;

(E) Wetland mitigation shall be conducted per the functional and area replacement standards established by the Army Corps of Engineers and the Oregon Department of State Lands. An alternative planting plan using native plants can be approved in order to create a new wetland area, if it is part of a wetlands mitigation plan that has been approved by the Oregon Department of State Lands in conjunction with a wetland fill permit application.

(EF) Required plants and planting densities: Mitigation requirements for disturbance in the ESRA-PV:

(1) Required plants and plant densities. All trees, shrubs and ground cover must be native plants selected from the City of Gresham Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings, except that where the mitigation area is one acre or more, the applicant shall comply with Mitigation Option 2:

a Mitigation Option 1. In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site must be replaced as shown in Table 4.1445(A). Conifers must be replaced with conifers. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Table 4.1445 (A) - Tree Replacement

<u>Size of tree to be removed (inches in diameter)</u>	<u>Number of trees and shrubs to be planted</u>
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

Three trees, three shrubs, and four other plants are required to be planted for every 100 square feet of mitigation area. Plants must be selected from the Metro Native Plant List; or

An alternative planting plan using native plants can be approved in order to create a new wetland area, if it is part of a wetlands mitigation plan that has been approved by the Oregon Division of State Lands in conjunction with a wetland fill permit application.

- b. Mitigation Option 2. In this option, the mitigation requirement is calculated based on the size of the mitigation area required. Native trees and shrubs are required to be planted at a rate of 820 trees and 820 shrubs per acre of mitigation required. This amount shall be adjusted proportionally for smaller mitigation areas. For example, 410 trees and 410 shrubs per mitigation acre shall be planted for one-half acre of mitigation area. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

(2) Plant size.

- a. For Mitigation Option 1: Replacement trees must be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees unless they are Oak or Madrone trees which may be one gallon size. The one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round. Shrubs must be in at least a 1-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.
- b. For Mitigation Option 2: Plantings can range from live cuttings, to bare root stock to container stock in size. Initial plantings should be at least 12 inches in height.

(3) Plant Spacing. With the exception of the outer edge of a mitigation area, trees and shrubs will not be planted in a linear fashion. Do not plant within the dripline of existing trees.

- a. In Mitigation Option 1, trees shall be planted on average between 8 and 12 feet on-center and shrubs shall be planted on average between 4 and 5 feet on center, or clustered in single species groups of no more than four (4) plants, with each cluster planted on average between 8 and 10 feet on center.
- b. In Mitigation Option 2, trees shall be planted at average intervals of 7 feet on-center. Shrubs may be clustered in single species groups of no more than four (4) plants, with clusters planted on average between 8 and 10 feet on center.

(4) Plant diversity. Shrubs must consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees shall be of the same genus.

(5) Plant species. In order to meet the City stream shade goals (developed and approved by the Department of Environmental Quality in compliance with the Total Maximum Daily Load rules) for reducing summer stream temperatures, the following species standards need to be followed for any mitigation occurring within 70 feet of a stream. At least 70% of the trees planted in this area need to be comprised of the tallest native tree species appropriate for the site, as indicated by an asterisk in Table 4.1445(B) or as reflected in the City of Gresham Native Plant Guide.

Table 4.1445(B)			
Recommended Tree and Shrub Species for Planting within Riparian Shade Zone			
Site Conditions	Typical Soil Series	Recommended Plant Community	
Floodplain and wetlands	Moag Rafton	Trees	Black cottonwood* Pacific willow
		Shrubs	Red-osier dogwood Snowberry Willow Wild rose
Floodplain and wetlands	Delena Wapato Wollent	Trees	Black cottonwood* Pacific willow Red alder Oregon ash Western redcedar*
		Shrubs	Douglas spiraea Pacific ninebark Red-osier dogwood Snowberry Twinberry Wild rose Willow
Moist Riparian	Aloha Cascade Powell	Trees	Bigleaf maple* Black cottonwood* Grand fir* Red alder Western redcedar*
		Shrubs	Bitter cherry Black hawthorn Hazelnut Indian plum Oregon grape Red elderberry Salal Salmonberry Snowberry Thimbleberry Vine maple
Dry Riparian	Cornelius Dabney Haploxerolls, steep Haplumbrepts, steep Latourell Multnomah Quafeno	Trees	Bigleaf maple* Douglas fir* Oregon white oak Western hemlock*
		Shrubs	Hazelnut Indian plum Oceanspray Oregon grape Salal Snowberry Vine maple

(6) Location of mitigation area. All vegetation must be planted on the applicant's site within the ESRA-PV or in an area contiguous to the ESRA-PV, provided, however, that if the vegetation is planted outside the ESRA-PV, the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. If mitigation cannot occur within the Kelley Creek watershed, mitigation shall occur within the Johnson Creek watershed, as close to the area of impact as possible.

~~(2)~~

~~(F) — Plant size. Trees must be a minimum 1/2-inch caliper or bare root unless they are oak or madrone which may be one-gallon size. Shrubs must be a minimum of one-gallon size or bare root. All other species must be a minimum of four-inch pots; and~~

(G) Monitoring, reporting and replanting. Monitoring of the mitigation site is the responsibility of the property owner. Plants that die must be replaced in kind on an annual cycle by the property owner or designee, as indicated on the mitigation plan. For a period of five years, the property owner/designee must submit an annual report to the City of Gresham as described in 4.1450 documenting the survival of the trees and shrubs on the mitigation site. Photos must accompany the annual report that shows the progress of the mitigation.

A financial guarantee, in the form of an instrument approved by the City, shall be submitted before development within the ESRA-PV commences. It shall be in an amount adequate to cover the cost of performing the mitigation. The City will release the guarantee at the end of the five year monitoring period provided the mitigation survival rates of Section 4.1445(G)(1) below have been met, or before, if it determines that the trees and shrubs have been successfully established. If the mitigation survival rates have not been met at the end of the five year monitoring period, the guarantee will be held until such time as the City determines that the trees and shrubs have been successfully established.

(1) Required Tree and Shrub Survival Rates.

- a. For Mitigation Option 1: A minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.
- b. For Mitigation Option 2: A minimum of 500 trees and 650 shrubs per mitigation acre required shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

(H) General Stewardship Practices. To enhance survival of the mitigation plantings, the following practices are required:

- a. Weed control. Remove, or control, non-native or noxious vegetation throughout maintenance period.
- b. Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.

(I) Mitigation 1 Stewardship Practices. To enhance survival of the mitigation plantings, the following practices are required for Mitigation Option 1. These are recommended for Mitigation Option 2 if annual survival goals are not being met:

- a. Mulching. Mulch new plantings three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.

- b. Irrigation. Water new plantings one inch per week from June 30th to September 15th, for the three years following planting.
- (J) To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:
- b. Planting season. Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.
- The mitigation plan must include a 5-year monitoring and maintenance plan.

Section 13. Volume 3, Development Code, Section 4.1446 is amended as follows:

4.1446 Alternative Mitigation Standards

In lieu of the above mitigation standards of Section 4.1445, the following standards can be used. However, compliance with these standards must be demonstrated in a mitigation plan report prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry. At the applicant's expense, the City may require the report and mitigation plan to be reviewed by its environmental consultant.

- (B) The proposed mitigation must result in a significant improvement of at least one functional value;
- (C) There will be no detrimental impact on resources and functional values in area designated to be left undisturbed;

- (E) Mitigation must occur on the site of the disturbance and in the same subwatershed as much as possible. All mitigation shall occur within the Johnson Creek watershed, as close to the area of impact as possible. If the proposed mitigation will not occur on the site of the disturbance, then the applicant must possess a legal instrument, such as an easement, sufficient to carryout and ensure the success of the mitigation.;

Section 14. Volume 3, Development Code, Section 4.1448 is amended as follows:

4.1448 ~~Type II~~ Development Permit Application Type

~~Unless otherwise directed by the ESRA-PV standards, proposed development within the ESRA-PV subdistrict will be processed as a Type II development permit application.~~ All applications must include the general development permit application items required by Section 11.0211 of the Gresham Community Development Code as well as a narrative discussion of how the proposal meets all of the applicable ESRA-PV development standards. The Manager shall supply information sheets for applications, which detail the specific information which must be contained in the application.

- (A) Type I Process

- (1) ~~The Map Verification process to verify the location of the ESRA-PV sub-district boundary per the approved Pleasant Valley Plan District ESRA Map or approved ESRA-PV sub-district boundary amendments provided by the City shall be processed as a Type I application.~~
- (2) ~~City updates to the Pleasant Valley Plan District ESRA Map associated with development permit applications and resource information updates shall be processed as a Type I procedure. This shall not be considered a comprehensive plan map amendment.~~

(B) ~~Type II Process~~

- (1) ~~The Map Modification process, unless otherwise noted in Section 4.1432 or directed by the ESRA-PV standards, will be processed as a Type II development permit application.~~
- (2) ~~Proposed development within the ESRA-PV sub-district shall be processed as a Type II development permit application.~~

(C) ~~Decision Process~~

~~The Manager's decision shall be based on consideration of the information submitted by the applicant, any information collected during a site visit to the lot or parcel, any information generated by prior ESRA boundary determinations that have occurred on adjacent properties, and any other objective factual information that has been provided to the Manager.~~

Section 15. Volume 3, Development Code, Section 4.1449 is amended as follows:

4.1449 Required Site Plans

Site plans showing the following required items must be part of the application:

- (A) For the entire subject property (ESRA-PV and non-ESRA-PV areas):
 - (1) The ESRA-PV sub-district boundary. This may be scaled in relation to property lines from the Pleasant Valley Plan District Plan Map. If the ESRA-PV sub-district boundary is proposed to be modified, then the existing and proposed ESRA-PV boundary shall appear on the plan;
 - (2) 100 year floodplain and floodway boundary (if determined by FEMA);
 - (3) Creeks, streams and other waterbodies;
 - (4) Any wetlands, with the boundary of the wetland that will be adjacent to the proposed development determined in a wetlands delineation report prepared by a professional wetland specialist and following the Oregon Department of State Lands wetlands delineation procedures;
 - (5) Topography shown by contour lines of 2 or 1 ft. intervals for slopes less than 15% and by 10 ft. intervals for slopes 15% or greater;

(6) Existing improvements such as structures or buildings, utility lines, fences, driveways, parking areas, etc., and

(7) The existing and proposed ESRA-PV area acreage.

(B) Within the ESRA-PV area of the subject property:

(1) The distribution outline of shrubs and ground covers, with a list of the most abundant species;

(2) The individual location of trees 6 inches or greater in diameter, identified by species and size. When trees are located in clusters they may be described by the approximate number of trees, the diameter range, and a listing of dominant species;

(3) An outline of the disturbance area or ESRA-PV area being challenged that identifies the vegetation that will be removed. All trees to be removed with a diameter of 6 inches or greater shall be specifically identified as to location, number, trunk diameters and species;

(4) If grading will occur within the ESRA-PV, a grading plan showing the proposed alteration of the ground at 2 ft. vertical contours in areas of slopes less than 15% and at 5 ft. vertical contours of slopes 15% or greater.

(C) A construction management plan including:

(1) Location of site access and egress that construction equipment will use;

(2) Equipment and material staging and stockpile areas;

(3) Erosion control measures that conform to City of Gresham erosion control standards;

(4) Measures, such as the installation of tree protection fencing, to protect trees and other vegetation located outside the disturbance area.

(D) A mitigation plan demonstrating compliance with Section 4 1455 or 4 1456, including:

(1) Dams, weirs or other in-water features;

(2) Distribution outline, species composition, and percent cover of ground covers to be planted or seeded, including a plant list with quantities, botanical name, common name and size of proposed groundcover plantings;

(3) Distribution outline, species composition, size, and spacing of shrubs to be planted, including a plant list with quantities, botanical name, common name, size and root type of proposed shrub plantings;

(4) Location, species and size of each tree to be planted, including a plant list with quantities, botanical name, common name, size and root type of proposed tree plantings;

(5) Stormwater management features, including retention, infiltration, detention, discharges and outfalls;

- (6) Water bodies or wetlands to be created, including depth;
- (7) Water sources to be used for irrigation of plantings or for a water source for a proposed wetland.

Section 16. Volume 3, Development Code, Section 4.1450 is amended as follows:

4.1450 Mitigation Plan Report

A mitigation plan report that accompanies the above mitigation site plan is also required. It needs to discuss:

- (E) Annual Monitoring and evaluation procedures and a contingency plan for undertaking remedial actions that might be needed to correct unsuccessful mitigation actions during the first 5 years of the mitigation area establishment.

Section 17. Volume 3, Development Code, Section 4.1451 is amended as follows:

4.1451 Density Transfer

The Pleasant Valley Plan District allocates urban densities to the non-ESRA-PV portions of properties located partially within the ESRA-PV sub-district, generally resulting in a substantial increase in net development potential. For lots of record that are located within the ESRA-PV Sub-district, additional density transfer credits are allowed, subject to the following provisions:

- (B) The residential transfer credit shall be 1 unit per acre of land within the ESRA-PV Subdistrict Sub-district. ~~(e) Conventional rounding applies, e.g., a property with ≥ 5 acre to 1 acre shall receive a density credit of 1 unit. A property with 1.5 or more acres of land in the ESRA-PV but less than 2.5 acres is eligible for 2 transfer credits).~~

Section 18. Volume 3, Development Code, Section 4.1452 is amended as follows:

4.1452 Map Verification and Modification of ESRA-PV Boundary

The ESRA-PV sub-district boundary may have to be adjusted occasionally to reflect the true location of a resource and its feature functional-values on a site as a result of a site specific environmental survey. ~~Also, in those cases where an Environmental Report demonstrates that the Pleasant Valley Significance Matrix does not apply to a site-specific area—~~Also, in those cases where mitigation occurs outside the current ESRA-PV and/or part of a site within the ESRA-PV has been developed, the ESRA-PV boundary must be adjusted to recognize the relocation of the resource. ~~Modifications of the ESRA-PV shall be processed under the Type-II permit procedure.~~

(A) ESRA-PV Map Verification.

- (1) Exempt Development. Development, (including all impervious surfaces and landscaping), that is outside of any ESRA-PV and no closer than 100 feet to the border of an ESRA-PV

based on the City's Pleasant Valley Plan District ESRA Map, may proceed without having to comply with this section.

- (2) The ESRA-PV Boundary shall be field verified, field staked and located to scale on all submittal documents.
- (3) The Map Verification process is the process of verifying the location of the ESRA-PV boundary in the field relative to the location of the ESRA-PV boundary on the Pleasant Valley Plan District Map. The Map Verification process shall not be used to dispute whether identified ESRA-PV sub-districts provide the features or the ecological functions that they are assumed to provide.
- (4) The map verification requirements described in this section shall be met at the time an applicant requests a development permit, building permit, grading permit, tree removal permit, land division approval, or some other land use decision. A property owner, or another person with the property owner's consent, may request to verify the location of the ESRA-PV on a real property lot or parcel pursuant to this section at other times. If a person receives verification of the ESRA-PV boundary separate from a concurrent request for a development permit, building permit, grading permit, tree removal permit, land division approval, or some other land use decision, then the person may use the verification to satisfy the requirements of this section at any time up until five years after the date the verification was issued.
- (5) Notwithstanding any other provisions of this section for utility projects undertaken by public utilities, the utility shall not be required to map or provide information about the property except for the proposed area of construction impact within the ESRA-PV or within 100 feet of the ESRA-PV boundary.

(B) ESRA-PV Map Modification

The Map Modification process shall be used to modify the location of the ESRA-PV Boundary in the following circumstances:

(1) Obvious Misalignment between Property Lot Lines and Mapped ESRA-PV

In some cases, the mapped ESRA-PV layer in the GIS database might not align precisely with the tax lot layer that shows property lines, resulting in an ESRA-PV map that is also misaligned with tax lot lines. An applicant who believes that the ESRA-PV map is inaccurate based on such an obvious misalignment may comply with this subsection. The applicant shall submit the following information regarding the real property lot or parcel:

- (a) A detailed property description, and
- (b) A scaled property map indicating the City adopted ESRA-PV, any approved ESRA-PV map amendments provided by the City at the time of application and any proposed development improvements, and
- (c) The most recent summer aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742), and

- (d) The information required to be submitted under Section 4.1449 of this ordinance if the applicant proposes development within any ESRA-PV under those provisions; and
 - (c) A documented demonstration of the misalignment between the ESRA-PV map and the property's tax lot boundary lines. For example, an applicant could compare the boundary lot lines shown for roads within 500 feet of a property with the location of such roads as viewed on the aerial photograph of the area surrounding a property to provide evidence of the scale and amount of incongruity between the ESRA-PV maps and the property lot lines, and the amount of adjustment that would be appropriate to accurately depict the ESRA-PV location on the property.
 - (f) Any other factual information that the Manager requests or the applicant wishes to provide to support map verification.
- (2) Mapping Error in the Presence, Location, Size or Extent of the Natural Resource Feature. Mapping errors of this nature are limited to natural resource features that include only the following: vegetation, both woody and non-woody; tree groves; water bodies, such as streams, creeks and wetlands, and floodplain. In some cases, the mapped natural resource feature such as a stream or creek in the GIS database might not align precisely with the verified field location of that resource. An applicant who believes that the ESRA-PV map is inaccurate based on such an obvious misalignment may comply with this subsection. The applicant shall submit the following information regarding the real property lot or parcel
- (a) A detailed property description; and
 - (b) A scaled property map indicating the City adopted ESRA-PV and GIS natural resource feature, any approved ESRA-PV map amendments provided by the City at the time of application and any proposed development improvements; and
 - (c) The most recent summer aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742); and
 - (d) The information required to be submitted under Section 4.1449 of this ordinance if the applicant proposes development within any ESRA-PV under those provisions; and
 - (e) A narrative justifying the ESRA-PV map modification prepared by a qualified professional with experience and credentials in natural resource areas, including wildlife biology, ecology, hydrology and forestry; and
 - (f) A documented scaled property plan demonstrating the misalignment between the adopted ESRA-PV map location and GIS natural resource feature and the proposed ESRA-PV map location and field verified natural resource; and

(g) The existing and proposed ESRA PV Boundary shall be field verified, field staked and located to scale on all submittal documents, and

(h) Any other factual information that the Manager requests or the applicant wishes to provide to support map modification.

(D)(C) The ESRA-PV boundary may be adjusted after the following has been met, as applicable:

(1) (A) — Adding a mitigation area to the ESRA-PV sub-district: An approved mitigation plan has been successful and a new restored, or enhanced resource site presently exists outside the ESRA-PV which should be included in the ESRA-PV for future protection.

(B) Removing a recently developed area from the ESRA-PV sub-district: All of the following has been met:

(1) All approved development in the ESRA-PV sub-district has been completed;

(2) All mitigation required for the approved development, located within the ESRA-PV, has been successful; and

(3) The previously identified resources and functional values on the developed site no longer exist or have been subject to a significant detrimental impact.

(2) (C) — Relocating or modifying the ESRA-PV resource in accordance with Section 4.1452(B). Correcting a map error: The proposed ESRA-PV boundary accurately reflects the true location of the resources and functional values on the site based on a site survey. The resources are identified in the natural resources inventory for Pleasant Valley.

(D) — Correcting application of Significance Matrix: The proposed ESRA-PV boundary adjustment demonstrates in an Environmental Report prepared by one or more qualified professionals with experience and credentials in natural resource areas, including wildlife biology, ecology, hydrology and forestry, that a resource function(s) and/or land feature(s) does not apply to a site specific area.

(4)(3) (E) — If the modification of ESRA-PV boundary under this section results in land being removed, relocated or removed from ESRA-PV designation then the former ESRA-PV land shall assume the Pleasant Valley Plan District sub-district(s) designation adjacent to the land.

Section 19. Volume 3, Development Code, Section 4.1453 is amended as follows:

4.1453 Corrections to Violations

For correcting violations, the violator must submit a remediation plan that meets all of the applicable standards of the ESRA-PV sub-district. If one or more of these standards cannot be met then the applicant's remediation plan must demonstrate that there will be:

(A) No permanent loss of any type of resource or functional value;

(B) A significant improvement of at least one functional value; and

- (C) There will be minimal loss of resources and functional values during the remediation action until it is fully established.

Section 20. Volume 3, Development Code, Section 4.1469 is amended as follows:

4.1469 Tree Planting Requirements

- (B) Tree planting requirements

Applicants must submit a tree preservation or planting plan indicating how they will meet the following requirements. All planted trees shall be selected from the Pleasant Valley City of Gresham Recommended Tree List.

Section 21. Volume 3, Development Code, Section 4.1565 is amended as follows:

Springwater Environmentally Sensitive/Restoration Areas

4.1565 Tree Planting Requirements

- (B) Tree planting requirements

Applicants must submit a tree preservation or planting plan indicating how they will meet the following requirements. All planted trees shall be selected from the Springwater City of Gresham Recommended Tree List.

Section 22. Volume 3, Development Code, Section 4.1571 is amended as follows:

4.1571 How the ESRA-SW Works

The ESRA-SW sub-district protects as one connected system, the critical habitats and associated natural functions of the streams, riparian corridors, wetlands and the forested parts of buttes found in Springwater. These habitats and functions are described in the Springwater Natural Resources Report. The ESRA-SW provisions apply only to the ESRA-SW sub-district that is shown on the Springwater Plan Map and to the newly discovered or created ESRA-SW areas as noted below.

Section 23. Volume 3, Development Code, Section 4.1572 is amended as follows:

4.1572 ESRA-SW Map Applicability as Reference

- (A) The boundaries of the ESRA-SW sub-district are shown on the Springwater Plan District ESRA Map including approved amendments provided by the City at the time of application. The boundaries are based on a GIS-supported application of the Springwater Significance Matrix.
- (B) A wetland identified during the course of a development permit review that meets the State of Oregon's definition of a "Locally Significant Wetland" shall be subject to the standards of the ESRA-SW sub-district. These wetlands shall be officially added to the City's Springwater Plan District ESRA Map by the Manager, under a Type I procedure, after the development permit becomes final.
- (C) The City shall incorporate all ESRA-SW delineations associated with development permit applications and resource information updates on the Springwater Plan District ESRA Map on an annual basis, or as necessary, through a Type I procedure initiated by the Manager.
- (D) Where development is proposed entirely outside of the ESRA-SW, but within 100 feet of the ESRA-SW boundary, applicants must field verify this boundary through the Map Verification procedures outlined in Section 4.1592.
- (E) Where development is proposed within the ESRA-SW, applicants must field verify the ESRA boundary through the MAP Verification procedures outlines in Section 4.1592. The developments shall also comply with the standards found in Sections 4.1578-4.1587, and others as applicable.
- (F) Additionally, applicants proposing to partition or subdivide properties containing ESRA-SW must comply with the partition and subdivision standards found in Section 4.1576(G), as well as the applicable provisions of Article VI Land Divisions and the Map Verification procedure in Section 4.1592.
- ~~(+)(G)~~ Any change to the ESRA-SW boundary, not initiated by the City, that requires an adjustment of the boundary as shown on the Springwater Plan District ESRA Map and shall be processed under the Type II development permit procedure. ~~The ESRA-SW boundary shall be shown on all development permit application site plans that involve properties with this designation and its location shall be verified in the field before development activity (including grading) commences.~~

Section 24. Volume 3, Development Code, Section 4.1574 is amended as follows:

4.1574 Emergencies

The provisions of this ordinance do not apply to work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies. After the emergency has passed, any disturbed native vegetation areas shall be replanted with similar vegetation found in the MetroCity of Gresham Native Plant List. For purposes of this section emergency shall mean any man-made or natural event or circumstance causing or Threatening loss of life, injury to person or property, and includes, but is not limited to fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

Section 25. Volume 3, Development Code, Section 4.1576 is amended as follows:

4.1576 Uses Allowed Outright (Exempted)

The following uses are allowed within the ESRA-SW sub-district and do not require the issuance of an ESRA-SW permit:

- (C) Utility service using a single utility pole or where the disturbed area is outside of the top-of-bank of water bodies and is no more than 100 square feet of ground surface, is disturbed outside of the top-of-bank of water bodies and where that disturbed area is restored to the pre-construction conditions.
- (D) Boundary and topographic surveys leaving no cut scars greater than three inches in diameter on live parts of native plants listed in the ~~Metro Native City~~ of Gresham Native Plant List.

- (F) Trails meeting all of the following:

- (6) No native trees greater than one (1) inch in diameter may be removed or cut, unless replaced with an equal number of native trees of at least 3-inch diameter and planted within 10 feet of the trail; and
 - (7) Trail plans and construction within the ESRA-SW must be authorized by the City.
- (G) All land divisions with tentative plans and approved building permit/construction plans showing all of the following and noted on final plat:
 - (6) The boundaries of the ESRA-SW as field verified according to Section 4.1592.
 - ~~(1)~~(7) The lots must have their building sites (or buildable areas) of the lots located at least 5 feet from the ESRA-SW boundary. For the purpose of this subparagraph, "building site" means an area of at least 3,500 square feet with minimum dimensions of 40 feet wide by 40 feet deep;
 - ~~(2)~~(8) Public and private utilities (including water lines, sewer lines or drain fields, and stormwater disposal facilities) where none of these utilities are in the ESRA-SW;
 - ~~(3)~~(9) Streets, driveways and parking areas where all pavement is at least 10 feet from the ESRA-SW sub-district; and
 - ~~(4)~~(10) The ESRA-SW portions of all lots are protected by a conservation easement; or
~~(5)~~A lot or tract created and dedicated solely for unimproved open space or conservation purposes.

(H) Routine repair and maintenance of existing structures, roadways, driveways, utility lines and utilities where the disturbed area is outside of the top-of-bank of a water body and is no more than 100 square feet of ground surface.

(I) Replacement, additions, alterations and rehabilitation of existing structures, roadways, driveways, utility lines and utilities, etc., where the ground level impervious surface area is not increased and where the disturbed area is outside of the top-of-bank of a water body and is no more than 100 square feet of ground surface.

(K) Planting of native vegetation and the removal of non-native, invasive vegetation (as identified on the ~~Metro Native~~City of Gresham Native Plant List), and removal of refuse and fill, provided that:

Section 26. Volume 3, Development Code, Section 4.1577 is amended as follows:

4.1577 Uses Allowed Under Prescribed Conditions

The following uses within the ESRA-SW sub-district are subject to the applicable standards listed in Sections 4.1578 through 4.1587, and others as applicable.

(A) Alteration to existing structures within the ESRA-SW subdistrict when not exempted by Section 4.1576, subject to Section 4.1580.

(B) A residence on a vacant lot that existed ~~before annexation of record and~~ that had less than 5,000 square feet of buildable area, with minimum dimensions of 50 feet by 50 feet, remaining outside the ESRA-SW portion of the property, subject to subsection 4.1579 A. ~~(Note: A lot of record is a lot that existed before a property was annexed into the City of Gresham.)~~

(C) A land division that would create a new lot for an existing residence currently within the ESRASW, subject to Section 4.1583.

~~(D)(E)~~ Trails/pedestrian paths when not exempted by Section 4.1576, subject to Section 4.1584 (for trails) or Section 4.1582 (for paved pedestrian paths).

~~(E)(D)~~ New roadways, bridges/creek crossings, utilities, utility lines and stormwater facilities or alterations to such facilities when not exempted by Section 4.1576, subject to Section 4.1582 (for roads, bridges/creek crossings) or Section 4.1581 (for utility lines) or Section 4.1578 (for stormwater detention or pre-treatment facilities).

(F) Industrial development on a vacant lot of record situated in an area designated IND-SW or RTISW that has more than 75% of its area covered by the ESRA-SW, subject to subsection 4.1579(B). (Note: A lot of record is a lot that existed before a property was annexed into the City of Gresham.)

Section 27. Volume 3, Development Code, Section 4.1578 is amended as follows:

4.1578 General Development Standards

The following standards apply to all regulated development within the ESRA-SW sub-district with the exception of rights of ways (subject to Section 4.1582), trails (subject to Section 4.1584), utilities, utility lines and stormwater facilities (subject to Section 4.1581), land divisions (subject to Section 4.1583), and mitigation projects (subject to Section 4.1585 or 4.1586):

- (A) Native trees may only be removed if they occur within 10 feet of any proposed structures or within 5 feet of new driveways. Trees listed on the Metro Nuisance Plant List or Prohibited Plant List are exempt from this standard and may be removed. Mitigation for tree removal of native and non-native trees is required per Section 4.1585 and 4.1586;
- (B) All vegetation planted in a resource area must be native and listed on the MetroCity of Gresham Native Plant List;

- (E) Fences are allowed only within the disturbance area, as described in Section 4.1579(A);

Section 28. Volume 3, Development Code, Section 4.1580 is amended as follows:

4.1580 Existing Development Standards

In addition to the General Development Standards of Section 4.1578, the following standards apply to alterations of existing development within the ESRA-SW sub-district, except for trails, rights of way, utilities, utility lines, stormwater facilities, and divisions and mitigation projects:

Section 29. Volume 3, Development Code, Section 4.1581 is amended as follows:

4.1581 Standards for Utilities, Utility Lines and Stormwater Facilities

The following standards apply to new utilities, private connections to existing or new utility lines, and upgrades of existing utility lines within the ESRA-SW sub-district:

- (A) Utilities and Utility Lines
The disturbance area for private connections to utility lines is no greater than 10 feet wide;
- (B)(1) The disturbance area for the upgrade of existing utility lines is no greater than 15 feet wide;
- (C)(2) New utility lines must be within the right-of-way unless it is shown that there are no feasible alternatives.
- (D)(3) No fill or excavation is allowed within the ordinary high water mark of a stream;

~~(E)~~(4) The Department of State Lands must approve any work that requires excavation or fill in a wetland;

~~(F)~~(5) Native trees more than 10 inches in diameter may not be removed unless it is shown that there are no feasible alternatives; and

~~(G)~~ Each 6 to 10 inch diameter native tree cut must be replaced at a ratio of three trees for each one removed. Each 11 inch or greater diameter native tree shall be replaced at a ratio of five trees for each removed. The replacement trees must be a minimum one-half inch diameter and selected from the Metro Native Plant List. All trees must be planted on the applicant's site. Where a utility line is approximately parallel with the stream channel at least half of the replacement trees must be planted between the utility line and the stream channel.

~~(H)~~(6) Mitigation is required, subject to Section 4.1585 or 4.1586. All trees must be planted on the applicant's site. The replacement trees must be selected from the City of Gresham Native Plant List.

(B) Stormwater Facilities, other than those listed in Section 4.1581(A)

The following standards apply to new stormwater facilities and upgrades of existing stormwater facilities within the ESRA-SW sub-district:

(1) Stormwater facilities may be placed in the ESRA SW sub-district when shown on the adopted Springwater Master Plan or when there is no feasible alternative location outside the ESRA-SW.

(2) No fill or excavation is allowed within the ordinary high water mark of a stream, unless necessary and any required permits are obtained from the US Army Corps of Engineers, and/or the Oregon Department of State Lands,

(3) The Department of State Lands must approve any work that requires excavation or fill in a wetland.

(4) Native trees more than 10 inches in diameter may not be removed unless it is shown that there are no feasible alternatives; and

(5) Mitigation is required, subject to Section 4.1585 or 4.1586. All trees must be planted on the applicant's site. The replacement trees must be selected from the City of Gresham Native Plant List.

Section 30. Volume 3, Development Code, Section 4.1565 is amended as follows:

4.1585 Mitigation Standards

The following standards (or the alternative standards of Section 4.1586) apply to required mitigation:

(A) Mitigation must occur at a 2:1 ratio of mitigation area to proposed disturbance area, except as noted in Section 4.1585(E) below;

(C) Mitigation must occur within the ESRA-SW area of a site unless it is demonstrated that this is not feasible because there is a lack of available and appropriate area. In which case, the proposed mitigation area must be contiguous to the existing ESRA-SW area so the ESRA-SW boundary can be easily extended in the future to include the new resource site. All mitigation shall occur within the Johnson Creek watershed, as close to the area of impact as possible

(D) Invasive vegetation must be removed within the mitigation area;

~~(E) Required plants and planting densities. Three trees, three shrubs, and four other plants are required to be planted for every 100 square feet of mitigation area. Plants must be selected from the Metro Native Plant List; or~~

~~An alternative planting plan using native plants can be approved in order to create a new wetland area, if it is part of a wetlands mitigation plan that has been approved by the DSL or the U.S. Army Corps of Engineers (USACE) in conjunction with a wetland joint removal/fill permit application.~~

(E) Wetland mitigation shall be conducted per the functional and area replacement standards established by the Army Corps of Engineers and the Oregon Department of State Lands. An alternative planting plan using native plants can be approved in order to create a new wetland area, if it is part of a wetlands mitigation plan that has been approved by the Oregon Department of State Lands in conjunction with a wetland fill permit application.

(F) Mitigation requirements for disturbance in the ESRA-SW:

(1) Required plants and plant densities. All trees, shrubs and ground cover must be native plants selected from the City of Gresham Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the mitigation area required is one acre or more, the applicant shall comply with Mitigation Option 2:

a. Mitigation Option 1. In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site must be replaced as shown in Table 4.1585(A). Conifers must be replaced with conifers. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Table 4.1585 (A) - Tree Replacement

<u>Size of tree to be removed (inches in diameter)</u>	<u>Number of trees and shrubs to be planted</u>
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

b. Mitigation Option 2. In this option, the mitigation requirement is calculated based on the size of the mitigation area required. Native trees and shrubs are required to be planted at a rate of 820 trees and 820 shrubs per acre of mitigation required. This amount shall be adjusted proportionally for smaller mitigation areas. For example, 410 trees and 410 shrubs per mitigation acre shall be planted for one-half acre of mitigation area. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

(2) Plant size.

a. For Mitigation Option 1, Replacement trees must be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees unless they are Oak or Madrone trees which may be one gallon size. The one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round. Shrubs must be in at least a 1-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.

b. For Mitigation Option 2, Plantings can range from live cuttings, to bare root stock to container stock in size. Initial plantings should be at least 12 inches in height.

(3) Plant Spacing. With the exception of the outer edge of a mitigation area, trees and shrubs will not be planted in a linear fashion. Do not plant within the dripline of existing trees.

a. In Mitigation Option 1, trees shall be planted on average between 8 and 12 feet on-center and shrubs shall be planted on average between 4 and 5 feet on center, or clustered in single species groups of no more than four (4) plants, with each cluster planted on average between 8 and 10 feet on center.

b. In Mitigation Option 2, trees shall be planted at average intervals of 7 feet on-center. Shrubs may be clustered in single species groups of no more than four (4) plants, with clusters planted on average between 8 and 10 feet on center.

(4) Plant diversity. Shrubs must consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees shall be of the same genus.

(5) Plant species. In order to meet the City stream shade goals (developed and approved by the Department of Environmental Quality in compliance with the Total Maximum Daily Load rules) for reducing summer stream temperatures, the following species standards need to be followed for any mitigation occurring within 70 feet of a stream. At least 70% of the trees planted in this area need to be comprised of the tallest native tree species appropriate for the site, as indicated by an asterisk in Table 4.1585(I3) or as reflected in the City of Gresham Native Plant Guide.

Table 4.1585(B)			
Recommended Tree and Shrub Species for Planting within Riparian Shade Zone			
Site Conditions	Typical Soil Series	Recommended Plant Community	
Floodplain and wetlands	Moag Ruffon	Trees	Black cottonwood* Pacific willow
		Shrubs	Red-osier dogwood Snowberry Willow Wild rose
Floodplain and wetlands	Delena Wapato Wollent	Trees	Black cottonwood* Pacific willow Red alder Oregon ash Western redcedar*
		Shrubs	Douglas spiraea Pacific ninebark Red-osier dogwood Snowberry Twinberry Wild rose Willow
Moist Riparian	Aloha Cascade Powell	Trees	Bigleaf maple* Black cottonwood* Grand fir* Red alder Western redcedar*
		Shrubs	Bitter cherry Black hawthorn Hazelnut Indian plum Oregon grape Red elderberry Salal Salmonberry Snowberry Thimbleberry Vine maple
Dry Riparian	Cornelius Dabney Haploxerolls, steep Haplumbrepts, steep Latourell Multnomah Quafeno	Trees	Bigleaf maple* Douglas fir* Oregon white oak Western hemlock*
		Shrubs	Hazelnut Indian plum Oceanspray Oregon grape Salal Snowberry Vine maple

(6) Location of mitigation area. All vegetation must be planted on the applicant's site within the ESRA-SW or in an area contiguous to the ESRA-SW, provided, however, that if the vegetation is planted outside the ESRA-SW, the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. All mitigation shall occur within the Johnson Creek watershed, as close to the area of impact as possible.

(G) Monitoring, reporting and replanting. Monitoring of the mitigation site is the responsibility of the property owner. Plants that die must be replaced in kind on an annual cycle by the property owner or designee, as indicated on the mitigation plan. For a period of five years, the property owner/designee must submit an annual report to the City of Gresham as described in 4.1590 documenting the survival of the trees and shrubs on the mitigation site. Photos must accompany the annual report that shows the progress of the mitigation.

A financial guarantee, in the form of an instrument approved by the City, shall be submitted before development within the ESRA-SW commences. It shall be in an amount adequate to cover the cost of performing the mitigation. The City will release the guarantee at the end of the five year monitoring period provided the mitigation survival rates of Section 4.1585(G)(1) below have been met, or before, if it determines that the trees and shrubs have been successfully established. If the mitigation survival rates have not been met at the end of the five year monitoring period, the guarantee will be held until such time as the City determines that the trees and shrubs have been successfully established.

(I) Required Tree and Shrub Survival Rates.

- a. For Mitigation Option 1: A minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.
- b. For Mitigation Option 2: A minimum of 500 trees and 650 shrubs per mitigation acre required shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

(H) General Stewardship Practices. To enhance survival of the mitigation plantings, the following practices are required:

- a. Weed control. Remove, or control, non-native or noxious vegetation throughout maintenance period.
- b. Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.

(I) Mitigation 1 Stewardship Practices. To enhance survival of the mitigation plantings, the following practices are required for Mitigation Option 1. These are recommended for Mitigation Option 2 if annual survival goals are not being met:

- a. Mulching. Mulch new plantings three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
- b. Irrigation. Water new plantings one inch per week from June 30th to September 15th, for the three years following planting.

- (J) To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:
- a. Planting season. Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.
- (F) ~~Plant size. Trees must be a minimum ½-inch caliper or bare root unless they are oak, madrone, ash, or alder which may be one-gallon size. Shrubs must be a minimum of one-gallon size or bare root. All other species must be a minimum of four inch-pots; and~~
- (G) ~~The mitigation plan must provide for a 5-year monitoring and maintenance plan. Monitoring of the mitigation site is the on-going responsibility of the property owner, who must submit an annual report to the City's Natural Resources Program Coordinator, documenting plant survival rates. A minimum of 80% survival of trees and shrubs of those species planted is required at the end of the 5-year maintenance and monitoring period. Plants that die must be replaced in kind.~~

Section 31. Volume 3, Development Code, Section 4.1586 is amended as follows:

4.1586 Alternative Mitigation Standards

In lieu of the above mitigation standards of Section 4.1585, the following standards can be used. However, compliance with these standards must be demonstrated in a mitigation plan report and mitigation plan prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry. At the applicant's expense, the City may require the report to be reviewed by its environmental consultant.

- (B) ~~The proposed mitigation must result in a significant improvement of at least one functional value;~~
- (C) ~~There will be no detrimental impact on resources and functional values in area designated to be left undisturbed.~~
- (E) ~~Mitigation must occur on the site of the disturbance and in the same subwatershed as much as possible. All mitigation shall occur within the Johnson Creek watershed, as close to the area of impact as possible. If the proposed mitigation will not occur on the site of the disturbance, then the applicant must possess a legal instrument, such as an easement, sufficient to carryout and ensure the success of the mitigation.~~

Section 32. Volume 3, Development Code, Section 4.1588 is amended as follows:

4.1588 Type II Development Permit Application Type

~~All applications must include the general development permit application items required by Section 11.0211 of the Gresham Community Development Code as well as a narrative discussion of how the proposal meets all of the applicable ESRA-SW development standards. The Manager shall supply information sheets for applications, which detail the specific information which must be contained in the application.~~

- (A) ~~Type I Process~~

(1) The Map Verification process to verify the location of the ESRA-SW sub-district boundary per the approved Springwater Plan District ESRA Map or approved ESRA-SW sub-district boundary amendments provided by the City shall be processed as a Type I application.

(2) City updates to the Springwater Plan District ESRA Map associated with development permit applications and resource information updates shall be process as a Type I procedure. This shall not be considered a comprehensive plan map amendment.

(B) Type II Process

(1) The Map Modification process, unless otherwise noted in Section 4.1432 or directed by the ESRA-SW standards, will be processed as a Type II development permit application.

(2) Proposed development within the ESRA-SW sub-district shall be processed as a Type II development permit application.

(C) Decision Process

The Manager's decision shall be based on consideration of the information submitted by the applicant, any information collected during a site visit to the lot or parcel, any information generated by prior ESRA boundary determinations that have occurred on adjacent properties, and any other objective factual information that has been provided to the Manager.

Unless otherwise directed by the ESRA-SW standards, proposed development within the ESRA-SW subdistrict will be processed as a Type II development permit application. All applications must include the general development permit application items required by Section 4.0211 of the Gresham Community Development Code as well as a discussion of how the proposal meets all of the applicable ESRA-SW development standards.

Section 33. Volume 3, Development Code, Section 4.1589 is amended as follows:

4.1589 Required Site Plans

Site plans showing the following required items must be part of the application:

(A) For the entire subject property (ESRA-SW and non-ESRA-SW areas):

(1) The ESRA-SW sub-district boundary. This may be scaled in relation to property lines from the Springwater Plan District Plan Map; If the ESRA-SW sub-district boundary is proposed to be modified, then the existing and proposed ESRA-SW boundary shall appear on the plan;

(2) 100 year floodplain and floodway boundary (if determined by FEMA);

(3) Creeks, streams and other waterbodies;

(4) Any wetlands, with the boundary of the wetland that will be adjacent to the proposed development determined in a wetlands delineation report prepared by a professional

wetland specialist and following the Oregon Department of State Lands wetlands delineation procedures;

- (5) Topography shown by contour lines of 2 or 1 foot intervals for slopes less than 15% and by 10 foot intervals for slopes 15% or greater;
- (6) Existing improvements such as structures or buildings, utility lines, fences, driveways, parking areas, etc., and
- (7) The existing and proposed ESRA-SW area acreage.

(B) Within the ESRA-SW area of the subject property:

- (1) The distribution outline of shrubs and ground covers, with a list of most abundant species;
- (2) The individual location of trees 6 inches or greater in diameter, identified by species and size. When trees are located in clusters they may be described by the approximate number of trees, the diameter range, and a listing of dominant species;
- (3) An outline of the disturbance area or ESRA-SW area being challenged that identifies the vegetation that will be removed. All trees to be removed with a diameter of 6 inches or greater shall be specifically identified as to location, number, trunk diameters and species;
- (4) If grading will occur within the ESRA-SW, a grading plan showing the proposed alteration of the ground at 2 foot vertical contours in areas of slopes less than 15% and at 5 foot vertical contours of slopes 15% or greater.

(C) A construction management plan including:

- (1) Location of site access and egress that construction equipment will use;
- (2) Equipment and material staging and stockpile areas;
- (3) Erosion control measures that conform to City of Gresham erosion control standards;
- (4) Measures, such as the installation of tree protection fencing, to protect trees and other vegetation located outside the disturbance area.

(D) A mitigation plan demonstrating compliance with Section 4.1585 or 4.1586, including:

- (1) Dams, weirs or other in-water features;
- (2) Distribution outline, species composition, and percent cover of ground covers to be planted or seeded, including a plant list with quantities, botanical name, common name and size of proposed groundcover plantings;
- (3) Distribution outline, species composition, size, and spacing of shrubs to be planted, including a plant list with quantities, botanical name, common name, size and root type of proposed shrub plantings ;

- (4) Location, species and size of each tree to be planted, including a plant list with quantities, botanical name, common name, size and root type of proposed tree plantings;
- (5) Stormwater management features, including retention, infiltration, detention, discharges and outfalls;
- (6) Water bodies or wetlands to be created, including depth;
- (7) Water sources to be used for irrigation of plantings or for a water source for a proposed wetland.

Section 34. Volume 3, Development Code, Section 4.1590 is amended as follows:

4.1590 Mitigation Plan Report

A mitigation plan report that accompanies the above mitigation site plan is also required. It needs to discuss.

- (E) Annual monitoring and evaluation procedures and a contingency plan for undertaking remedial actions that might be needed to correct unsuccessful mitigation actions during the first 5 years of the mitigation area establishment.

Section 35. Volume 3, Development Code, Section 4.1591 is amended as follows:

4.1591 Density Transfer

- (B) The residential transfer credit shall be 1 unit per acre of land within the ESRA-SW sub-district. ~~(Conventional rounding applies, e.g., a property with >.5 acre to 1 acre shall receive a density credit of 1 unit. A property with 1.5 or more acres of land in the ESRA-SW but less than 2.5 acres is eligible for 2 transfer credits).~~

Section 36. Volume 3, Development Code, Section 4.1592 is amended as follows:

4.1592 Map Verification and Modification of ESRA-SW Boundary

The ESRA-SW sub-district boundary may have to be adjusted occasionally to reflect the true location of a resource and its ~~function~~ feature values on a site. This could occur as a result of a site specific environmental survey. ~~or, in those cases where an Environmental Report demonstrates that the Springwater Significance rating does not apply to a site-specific area.~~ Also, in those cases where mitigation occurs outside the current ESRA-SW and/or part of a site within the ESRA-SW has been developed, the ESRA-SW boundary must be adjusted to recognize the relocation of a natural resource. ~~Modifications of the ESRA-SW shall be processed under the Type II permit procedure.~~

(A) ESRA-SW Map Verification.

- (1) Exempt Development. Development, (including all impervious surfaces and landscaping), that is outside of any ESRA-SW and no closer than 100 feet to the border of an ESRA-SW based on the City's Springwater Plan District ESRA Map, may proceed without having to comply with this section.

- (2) The ESRA-SW Boundary shall be field verified, field staked and located to scale on all submittal documents.
- (3) The Map Verification process is the process of verifying the location of the ESRA-SW boundary in the field relative to the location of the ESRA-SW boundary on the Springwater Plan District Map. The Map Verification process shall not be used to dispute whether identified ESRA-SW sub-districts provide the features or the ecological functions that they are assumed to provide.
- (4) The map verification requirements described in this section shall be met at the time an applicant requests a development permit, building permit, grading permit, tree removal permit, land division approval, or some other land use decision. A property owner, or another person with the property owner's consent, may request to verify the location of the ESRA-SW on a real property lot or parcel pursuant to this section at other times. If a person receives verification of the ESRA-SW boundary separate from a concurrent request for a development permit, building permit, grading permit, tree removal permit, land division approval, or some other land use decision, then the person may use the verification to satisfy the requirements of this section at any time up until five years after the date the verification was issued.
- (5) Notwithstanding any other provisions of this section for utility projects undertaken by public utilities, the utility shall not be required to map or provide information about the property except for the proposed area of construction impact within the ESRA-SW or within 100 feet of the ESRA-SW boundary.

(B) ESRA-SW Map Modification.

The Map Modification process shall be used to modify the location of the ESRA-SW Boundary in the following circumstances.

- (1) Obvious Misalignment between Mapped ESRA-SW and Property Lot Lines.
In some cases, the mapped ESRA-SW layer in the GIS database might not align precisely with the tax lot layer that shows property lines, resulting in an ESRA-SW map that is also misaligned with tax lot lines. An applicant who believes that the ESRA-SW map is inaccurate based on such an obvious misalignment may comply with this subsection. The applicant shall submit the following information regarding the real property lot or parcel:
 - (a) A detailed property description; and
 - (b) A scaled property map indicating the City adopted ESRA-SW, any approved ESRA-SW map amendments provided by the City at the time of application and any proposed development improvements; and
 - (c) The most recent summer aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742); and

- | (B) A significant improvement of at least one functional value; and
- | (C) There will be minimal loss of resources and functional values during the remediation action until it is fully established.

Section 38. Volume 2, Gresham Community Development Plan, Appendix D is amended as follows:

Appendix D

The Community Development Special Purpose District Maps are reproduced as separate documents. Special Purpose District Maps identify:

Land which lies within the

- Flood Plain Physical Constraint District;
- Hillside Physical Constraint District;
- ~~Natural Resource~~ and Open Space Districts;
- Historical and Cultural Landmark sites, and
- Water Quality Resource Area (WQRA)
- ~~Habitat Conservation Area (HCA) Habitat Classification Map~~
- ~~Habitat Conservation Area (HCA) Habitat Values Map~~

Specific regulations apply to land or sites that have a Special Purpose District Map designation.

First reading: December 2, 2008

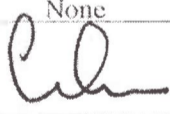
Second reading and passed: December 16, 2008

Yes: Bemis, Warr-King, Craddick, Widmark, Nielsen-Hood

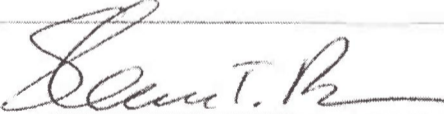
No: None

Absent: Bennett, Strathern

Abstain: None




City Manager



Mayor

Approved as to Form:



Senior Assistant City Attorney

CITY OF GRESHAM
DEVELOPMENT SERVICES
PLANNING SERVICES
1333 NW EASTMAN PARKWAY
GRESHAM, OR 97030

DLCD
Plan Amendment Specialist
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