



TO: Kent Studebaker, Mayor
Members of the City Council

FROM: Scot Siegel, Director
Shannan Stoll, Assistant Natural Resources Planner
Planning and Building Services

SUBJECT: Quick-Fix Sensitive Lands Code Revisions and Incentives - PP 12-0002

DATE: August 22, 2014

ACTION

Receive an update and provide direction on quick-fix code revisions and potential incentive programs for sensitive lands reforms.

INTRODUCTION/BACKGROUND

A City Council goal for 2014 is to “adopt changes to the Community Development Code to implement the reform of regulations on sensitive lands,” reducing the regulatory burden on private property owners. Toward that end, the City is proposing to replace the sensitive lands regulations with a new Natural Resource Protection Program that:

- Aligns the City’s regulations for stream and wetland protection with minimum Metro Title 3 requirements;
- Increases protection of riparian and upland wildlife habitat (Metro Title 13) resources on public property and private open space tracts; and
- Replaces Title 13 regulations on private property with incentive-based programs.

On June 10, 2014, Council provided feedback on a draft framework of the new program. On July 29, the Council received further information and provided direction on how to best coordinate the proposal with the City’s compliance with the Clean Water Act. The timeline was extended to allow for an analysis of water quality compliance this fall when updated topographic maps will be available, to ensure the new program meets federal, state, and regional requirements.

In the interim, the City Council directed staff to prepare a series of quick-fix code amendments to address problems with the current sensitive lands regulations. The intent is to focus on

changes that can be adopted this year. The quick-fix amendments are temporary; they are to be replaced with the overall sensitive lands program reforms next year. As requested by Council, staff has also prepared a summary of tax incentive programs and grant opportunities that the City can begin pursuing this year as other elements of the program are developed.

DISCUSSION

Three documents are attached for the City Council's review:

A **Summary of Quick-Fix Sensitive Lands Code Amendments** (code concepts) is contained in **Attachment 1**. Based on Council input on the concepts, staff will prepare code language for review by the Planning Commission. The goal is to adopt the amendments by the end of this year. Property owners with Sensitive Lands will be notified of the proposed changes and the public will have five opportunities to comment, as follows¹:

1. Two-week comment period on "public discussion draft", September 12-26
2. Planning Commission work session, October 13
3. City Council study session, October 21
4. Planning Commission hearing, November 10
5. City Council hearing, December 2

The code amendments must be consistent with the current Comprehensive Plan, Metro Code, and Statewide Planning Goals. Additionally, the changes should not trigger review by the state Department of Environmental Quality for compliance with water quality anti-degradation rules. Any code change found not to meet these objectives, or any change that would require vetting beyond the 2014 (not "quick") timeline, will be removed from the package.

Tax Incentives for the new Natural Resource Protection Program are summarized in **Attachment 2**. These property tax reduction programs are enabled through state statute and administrative rules. There is one program for wildlife habitat protection and one for riparian habitat. Council should provide feedback on the concepts and any direction regarding suggested next steps as outlined in the attachment.

Grant Opportunities for the new Natural Resource Protection Program are summarized in **Attachment 3**. The intent is to begin using the \$250,000 budgeted in FY 2014-15 to leverage outside funding for restoration work. This would build on existing efforts managed by the Parks and Recreation Department.

¹ The above meeting and hearing dates are tentative until officially noticed.

ALTERNATIVES & FISCAL IMPACT

Of the proposals in this report, only the tax incentive programs would have a direct fiscal impact as the City would forego property tax revenue. Further research and program development is needed to determine the extent of that impact and potential alternatives.

RECOMMENDATION

Begin the legislative process for advancing the quick-fix code changes. With Council direction, staff will continue to research property tax incentives and grants for natural resources protection in conjunction with sensitive lands program reforms.

ATTACHMENTS

1. Summary of Quick-Fix Sensitive Lands Code Amendments
2. Tax Incentives for new Natural Resource Protection Program
3. Grant Opportunities for new Natural Resource Protection Program

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SUMMARY OF QUICK-FIX SENSITIVE LANDS CODE AMENDMENTS

Code Fix #1: Exception for Replacement of Utilities

Problem: Existing code (LOC 50.05.010.2.b) exempts routine maintenance and repair of utilities from development review, but it does not clearly address situations where a utility is deteriorated beyond repair and must be replaced. This has added cost and delay, or uncertainty, to some critical public works projects where the project has no adverse impact on the resource.

Code Fix: Add a specific exemption under LOC 50.05.010.2c for replacement of an existing utility provided it does not come closer to a protected water feature. A utility replacement project that comes closer to a protected water feature would be subject to development review, including an examination of alternatives/impact avoidance, impact minimization, and mitigation. A construction management plan approved by the City Manager is required for both projects that are subject to development review and those that are exempt; vegetation restoration is required for both under LOC 50.05.010.4.d.

Code Fix #2: Fence Regulation

Problem: Existing code (LOC 50.05.010.2.c.iv) requires wildlife-friendly fences (fences with gaps or holes for wildlife passage) in the RP district. This is perceived as unduly restrictive, particularly where property owners want fencing for security, children's safety, or pets.

Code Fix: Continue to prohibit fences within wetlands and stream channels, but remove the design standards for fences elsewhere. Metro's Title 3 Model Code does not regulate fencing. The Title 13 Model Code contains this related best practice: "Carefully integrate fencing into the landscape to guide animals toward animal crossings under, over, or around transportation corridors." See Model Code, B.1: Design and Construction Practices to Minimize Impacts on Wildlife Corridors and Fish Passage.

Code Fix #3: RC District Protection Area

Problem: Existing code (LOC 50.05.010.5.b) regulates some properties with both RP and RC districts more than is required to protect water features and riparian habitat in compliance with Titles 3 and 13.

Code Fix: Allow credit toward meeting RC district requirements where the abutting RP district contains contiguous tree canopy. Establish an outer limit on the total

combined width of an RC-RP protection area while maintaining compliance with Titles 3 and 13. (Meets the de minimis test under Title 13.)

Code Fix #4: RC District Landscaping Standards

Problem: The current RC district landscape requirements (LOC 50.05.010.5.c.8) are perceived as unduly restricting the use of private backyards.

Code Fix: Remove the requirement that landscape plants “provide food or cover for wildlife” as this standard is not clear and objective. The above provision applies to the RC district, which implements Metro’s Titles 3 and 13. However, the Title 3 Model Code does not prescribe the use of wildlife-friendly plant materials, and the Title 13 Model Code (Section 6.E.1) only recommends the use of native plants; it does not prescribe the use of plants that provide food or cover for wildlife. The Title 13 Model Code also contains this related best practice: “Use native plants throughout the development (not just in the HCA).” See C.1: Miscellaneous Other Habitat-Friendly Design and Construction Practices.

Code Fix #5: RP District Landscaping Standards

Problem: The current RP district landscape requirements (LOC 50.05.010.6.c.1.a) are perceived as unduly restricting the use of private backyards.

Code Fix: Remove the requirement that landscape plants “provide food or cover for wildlife”. (Same rationale for the parallel change to RC District Development Standards.)

Code Fix #6: RP District Lighting Standards

Problem: The current RP district lighting regulation (LOC 50.05.010.6.c.1.e) is perceived as unduly restricting the use of security lighting in private backyards, particularly those that abut open space.

Code Fix: Remove the construction setback for lighting in the RP district. The RP district lighting standards were adopted in December 2010; previously, no exterior lighting was allowed. The above provisions are limited to the RP district, which implements Metro’s Title 3. However, the Title 3 Model Code does not regulate lighting. The Title 13 Model Code contains a related best practice: “Reduce light spill-off into Habitat Conservation Areas from development.” See C.3: Miscellaneous Other Habitat-Friendly Design and Construction Standards.

Code Fix #7: Map Corrections

Problem: The existing map correction process (LOC 50.07.004.8.b) is cumbersome, time consuming and unpredictable.

Code Fix: Revise the code to provide for simpler, timelier, and more predictable map corrections, particularly where obvious mapping errors exist. Provide a clear path for map corrections initiated by a property owner or the City. Establish a threshold below which obvious map corrections limited to a small area can be made administratively.

Code Fix #8: Delineation of Tree Groves

Problem: The current approach to delineating the RC area (LOC 50.07.004.d.i.1) is inflexible, requires staff interpretation, and can lead to illogical delineations. At times the approach results in a larger delineated area than is appropriate because of the presence of invasive-noxious or non-native trees, including abandoned orchards. There is also uncertainty for the property owner when the delineated area greatly exceeds the inventoried resource area or extends onto adjacent properties when properties are assembled for development.

Code Fix: Amend the code to provide greater predictability while focusing on the most significant resources. Allow the deduction of invasive-noxious or non-native species from the RC district and limit the RC delineation to a certain percentage of the area designated RC on the Sensitive Lands Atlas.

Code Fix #9: Delineation of Stream Corridors (Steep/Variable Slopes)

Problem: The current approach to delineating the RP area for streams with steep slopes or topographic variations (LOC 50.07.004.d.i.3) requires interpretation and can result in delineations with boundaries that are a considerable distance from the stream corridor centerline, particularly on long slopes where an RC district abuts the RP area. There is also uncertainty for the property owner when the delineated area greatly exceeds the inventoried resource area.

Code Fix: Establish a limit on the width of stream corridor delineations consistent with the Metro Title 3 Model Code. The Metro Model Code limits Water Quality Resource Area buffers to 200 feet.

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TAX INCENTIVES FOR NEW NATURAL RESOURCE PROTECTION PROGRAM

Wildlife habitat property tax incentives are provided for in ORS 308A.400 and OAR 635-430-0000. Riparian habitat tax incentives are provided for in ORS 308A.350 and OAR 635-430-0300-0430.

IMPLEMENTATION BY THE CITY

Both the City of Lake Oswego and Clackamas County must approve designation of properties that can be eligible for the tax incentives. Logical areas would include mapped Water Quality Resource Areas (WQRA) in the case of riparian habitat and mapped Habitat Benefit Areas (HBA) in the case of wildlife habitat. Note that these designations are necessary but not sufficient for tax incentives; the property must meet additional conditions established by the Oregon Department of Fish & Wildlife (ODFW).

Designation by the City of property eligible for riparian incentives includes a condition (OAR 635-430-0320) that the City “If possible, describe how the city or county will provide technical assistance to landowners preparing riparian management plans and will monitor compliance with approved plans.” Technical assistance could be as simple as maintaining a list of ODFW resources and guidelines along with a list of professionals who offer services in this discipline. Though not expressly required in OAR 635-430-0320, staff has received preliminary input from ODFW that City staff support for ongoing compliance monitoring would likely be a requirement of the City’s participation in the program.

PROGRAM ELEMENTS

	Riparian Habitat	Wildlife Habitat
To be eligible:	Identification by City of eligible properties (WQRA map)	Identification by City of eligible properties (HBA map)
AND	Submission of Riparian Management Plan by property owner	Submission of Wildlife Conservation and Management Plan
AND	Approval of Riparian Management Plan by ODFW	Approval of the Plan by ODFW along with a certified copy of the written declaration from Fish and Wildlife that the landowner has begun implementing the plan
AND	Submission of Application Form to County Tax Assessor	Submission of Application Form to County Tax Assessor

Tax Incentive	"Partial" exemption from property taxes (635-430-0320). This isn't defined, but it probably means that only the portion of the land under Riparian Management is exempt from taxation.	(Per application form): Land designated as Wildlife Habitat will be valued for assessment purposes at forestland or farm use specially assessed values even though it has a higher market value for other purposes. Only the portion of the tax lot under wildlife habitat management would be subject to this method of assessment.
Monitoring	Monitoring performed by City and ODFW, and compliance reporting submitted to ODFW	Monitoring performed by City and ODFW, and compliance reporting submitted to ODFW
Sale of property	Purchaser has 120 days to apply for continuation of the designation; otherwise the tax incentive is removed by default	Doesn't affect designation as long as management plan continues to be implemented and the property continues to be taxable

FISCAL IMPACT

It is difficult to estimate the cost to the city, since there is no way to know how many property owners would choose to participate. ODFW accepts no more than 50 applications per year for the Riparian Program, while the Wildlife Habitat Program does not have a limit. However, the City could choose to put its own cap on the number of participants it would allow to opt-in to the two programs each year. For example, the City may choose to put the cap at 15 new participants each year. Based on this constraint and the number of mapped WQRA and HBA properties that would be eligible, staff could provide a rough estimate of how much the program may cost each year.

Following are some preliminary considerations of program costs:

- The land area within the WQRA designation will be a small percentage of total taxable property. The land area within the HBA designation will be larger, with more eligible properties, but the requirement for an actively-managed wildlife conservation plan that meets ODFW requirements will, as a practical matter, limit eligibility. Further, while riparian areas may be completely exempt from assessment, wildlife habitat areas are still assessed, although at a lower (farm or forest) rate.

- The tax assessor already makes allowances for the amount of a property that is actually buildable. For example, the assessed value for the land component of total assessed value may be similar for a 7,500 square foot buildable parcel and for a 15,000 square foot parcel with a stream in the back.

It is unclear whether the Riparian and Wildlife Habitat Programs have acreage requirements for participation; this would need to be researched further. If not, the City could choose to set its own acreage requirement. The disadvantage of setting an acreage requirement would be to exclude property owners with smaller pieces of property. Homeowners with small pieces of property could choose to enter into a management agreement with a neighbor or group of neighbors in order to meet the acreage requirement, however. The advantage of setting an acreage requirement would be to prioritize the tax incentive at pieces of property likely to have a greater environmental benefit if managed properly.

Drafting the enabling legislation (city ordinance) will take some staff time, but not very much since the incentive program has already been defined by state law and administrative rules. Monitoring compliance with management plans would be the most significant program expense, outside of reduced tax revenues, but this could be offset by a small application and renewal fee that would be charged to participating property owners. Limiting the annual number of applications is another way that this expense could be reduced.

EFFECTIVENESS AS AN INCENTIVE

This program could be a very positive element of an overall package of incentives for resource conservation. Preparing and submitting a management plan could take some time and effort on the property owner's part, but there could be long term cumulative benefits to the property owner.

No other cities within the metro region have yet opted into either of these tax incentive programs. If Lake Oswego opts into these incentive programs, and clears the way for property owners to apply for these incentives, it could be seen as a positive step in rewarding property owners for their role in protecting natural resources. This step could also help build a strong case for substantially comparable non-regulatory protection of Title 13 resources under the City's new Natural Resource Protection Program.

SUGGESTED IMPLEMENTATION STEPS

1. Continue researching the program and provide a report to Council, which will include a fiscal analysis. Staff will meet with the County Assessor to confirm compliance with state law and rules, and will continue to coordinate program research with ODFW staff to provide an accurate and detailed report on the program.
2. Seek Council feedback on issues such as:

- a. Interest in tax incentives for one or the other of riparian and wildlife protection, or both;
 - b. Any limitations on eligibility for properties within mapped areas;
 - c. Any limitations on the number of new applications the City would accept each year; and
 - d. Fiscal impacts, including any potential impacts on other taxing districts.
3. Begin drafting an implementing ordinance.
4. Seek informal feedback from the Board of County Commissioners on willingness to accept the City's designation of eligibility, and from ODFW commission on willingness to accept the City's enabling ordinance.
5. Complete the WQRA and HBA definitions and maps.
6. At the time of adoption of the other elements of the sensitive lands reform program, adopt the tax incentives implementation ordinance.
7. Formally request adoption of an ordinance or resolution by Clackamas County concurring with the City's designations.
8. Formally seek approval from ODFW for program eligibility.
9. Communicate with owners of potentially benefitted properties, and encourage them to participate in the program(s).

GRANT OPPORTUNITIES FOR NEW NATURAL RESOURCE PROTECTION PROGRAM

The City has created a new \$250,000 Habitat Preservation Fund as part of the FY 2014-15 budget. These funds will support expanded and new restoration, enhancement, and acquisition programs identified under the new Natural Resource Protection Program. These funds may be leveraged or augmented through grant partnerships. The following list provides preliminary research on grant opportunities. This fall, Planning and Parks and Recreation staff will work together per Council direction to prioritize potential projects to target for grant funding.

OREGON WATERSHED ENHANCEMENT BOARD: REGULAR GRANTS

Who is eligible: Cities are eligible.

What is funded: There are five grant areas within the OWEB Regular Grants Program: 1. Land Acquisition Grants, 2. Restoration Grants, 3. Technical Assistance Grants, 4. Outreach Grants, and 5. Monitoring Grants. Restoration project types may receive funding for upland erosion control, grazing management, vegetation management, riparian area enhancement, channel and bank alteration, fish passage improvement, stream habitat enhancement, in-stream water enhancement, estuarine enhancement, and wetland enhancement. Technical assistance projects may receive funding for technical design of a restoration project, development of an implementation plan for restoration activities, or landowner recruitment for future restoration projects. Outreach projects may receive funding for professional development training programs, volunteer training programs, and public outreach education programs. Specific project types that would be funded under land acquisition grants and monitoring grants need to be researched further.

Requirements: These grants require a 25% matching donation, which may be provided through financial or in-kind contributions of materials, services, or volunteer assistance. Additionally, projects with support from diverse public and private parties are prioritized.

Grant deadline: Applications are accepted twice per year, in April and October. All five grant areas may not be available each funding cycle. For example, in the current granting cycle ending October 20, 2014, OWEB is accepting applications for land acquisition, restoration, and technical assistance grants only. Monitoring and outreach grants may be available in the April 2015 cycle.

Distribution method: Advance funds are released for estimated expenses up to 120 days.

Comments: The City could provide financial matching through the Habitat Preservation Fund. The City could also partner with local watershed councils, soil and water conservation districts, or other local groups to create a competitive grant application and further leverage this opportunity through in-kind donations from additional partners.

OREGON STATE WEED BOARD GRANT PROGRAM

Who is eligible: Cities are eligible.

What is funded: The Oregon State Weed Board (OSWB) and Oregon Watershed Enhancement Board (OWEB) fund projects that restore, enhance, or protect fish and wildlife habitat, watershed function, native salmonid populations, or water quality. Projects must provide on-the-ground control of state listed noxious weeds. In Lake Oswego, this could include English ivy, garlic mustard, Himalayan blackberry, Western Clematis, and other species identified as invasive species on the Lake Oswego Master Plant List (LOC 50.11.004). Projects must include control of weed species, but may also include survey, monitoring, prevention, restoration, and outreach components as well.

Requirements: This grant requires a 25% matching donation, which may be provided through financial or in-kind contributions of materials, services, or volunteer assistance. Additionally, projects with support from diverse public and private parties are prioritized.

Grant deadline: Grant applications are due in December. For the current cycle, applications are due December 5, 2014.

Distribution method: At the time of the award, the grantee gets 50% of requested funds, typically in March or April. The second disbursement of 25% of project funds takes place when the interim report is submitted in September, and the last disbursement of the final 25% of funds takes place when the final report is submitted in June.

Comments: The City could provide financial matching through the Habitat Preservation Fund. The City could also partner with local watershed councils, soil and water conservation districts, or other local groups to create a competitive grant application and further leverage this opportunity through in-kind donations from additional partners.

METRO NATURE IN NEIGHBORHOODS CAPITAL GRANTS

Who is eligible: Cities are eligible. Projects must be on publicly-owned property or result in a publicly-owned asset.

What is funded: The program funds capital improvements projects of at least \$50,000 that protect water quality, enhance wildlife habitat, or facilitate the experience of nature in neighborhoods. Projects can include property acquisition, urban redevelopment, restoration and enhancement, or neighborhood livability projects.

Requirements: This grant requires a match equal to two-thirds of the total project costs. Matching donations may come from financial or in-kind contributions of materials, services, or volunteer assistance. Projects must demonstrate cooperation between public and private partners.

Grant deadline: Simple applications are due in the fall. In the current cycle, these are due October 15, 2014. Finalists are then invited to submit full applications, and grants are awarded in the spring.

Distribution method: Funds are available through reimbursement payments.

Comments: The City could provide financial matching through the Habitat Preservation Fund. The City could also partner with watershed councils, soil and water conservation districts, homeowners associations, private restoration engineering companies, or other local groups in order to create a competitive grant application and further leverage this opportunity through in-kind donations from additional partners.

Recently, the City partnered with Oregon State Parks and Clackamas County Soil and Water Conservation District to provide matching funding for a \$146,481 culvert replacement project that qualified for a Metro Capital Grant. The City provided \$20,000 in funding. The grant was coordinated by the Tryon Creek Watershed Council, who also provided in-kind support. Additional in-kind support was provided by the Tryon Creek State Natural Area, Henderson Land Services, and Oregon Department of Fish and Wildlife. This project restored upstream access to resident cutthroat trout in Nettle Creek, and is an excellent example of the kind of grant and partnership opportunities the City could pursue in order to leverage the Habitat Preservation Fund.

METRO NATURE IN NEIGHBORHOODS RESTORATION GRANTS

Who is eligible: Cities are eligible. Projects must be on publicly-owned property or permanently protected lands.

What is funded: The program funds two kinds of projects: community stewardship in developed areas, or restoration in natural areas. These grants may be small grants with a maximum of \$25,000 or large grants with a maximum of \$100,000.

Requirements: Projects require at least three partners, as well as a 1:1 match that may come from financial or in-kind contributions of materials, services, or volunteer assistance. Projects must preserve and restore fish and wildlife habitat and/or engage people in learning about, protecting, and managing natural areas.

Grant deadline: Simple applications are due in April. Finalists are then invited to submit full applications, and grants are awarded in summer.

Distribution method: Funds are available through reimbursement payments.

Comments: The City could partner with watershed councils, soil and water conservation districts, homeowners associations, private restoration engineering companies, or other local groups in order to create a competitive grant application and further leverage this opportunity through in-kind donations from additional partners.