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## INTRODUCTION

The following sections of Lake Oswego Code apply or contain references to Sensitive Lands, which are stream corridors, wetlands, and some tree groves. Strikeout text (~~strikeout~~) indicates text to be deleted, and bold underline text (**underline**) indicates text to be added. Where sections do not directly apply but contain references to Sensitive Lands key terms are highlighted in yellow. Within the draft, three consecutive asterisks (\*\*\*) or ellipses (...) indicate where text is omitted because it does not pertain to Sensitive Lands. Explanatory text (to be removed from final adopted ordinance) is provided in comment boxes below key code sections and amendments. Text designated as a Cross-Reference is not part of the ordinance text, but either has been added by the City Recorder as a code editor's note, or if ~~strikeout~~ or bold underlined, an existing cross-reference is suggested to be modified.

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

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

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

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

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

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

**LOC 50.05.010 SENSITIVE LANDS OVERLAY DISTRICTS**

**1. OVERVIEW**

**a. Purpose**

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

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

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

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

**Comment:** The stream locations and buffers on the proposed Comprehensive Plan Map and Zoning Map were developed from updated Lidar mapping (2014), which is more accurate than the aerial photography originally used to draft the Sensitive Lands program in the 1990s. The proposed maps depict required stream and wetland buffers (also based on Lidar), which the earlier generation of maps did not show consistently, or at all for some streams and wetlands. The Sensitive Lands Map is a map that contains only the Sensitive Lands elements of the Comprehensive Plan Map and Zoning Map, i.e., the RP, RC, and HBA districts. It is used by the City in administering the Sensitive Lands regulations.

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

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

## 2. APPLICABILITY

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

### a. Sensitive Lands Development Review Required

i. **Except as provided by LOC 50.05.010.2.b-d**, Development within:

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

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

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

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

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

**Comment:** Environmental review is required for development within HBA districts only where a development establishes a protection area utilizing the incentive program.

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

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

### b. Exceptions – General

The provisions in this section shall not apply to:

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

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

(2) The proposed development is in compliance with the conditions protecting the resource imposed at the time of approval. Any modification of the prior approved ~~partition, subdivision, or planned~~ development **permit** that would impact or modify

any protection measures imposed at the time of original approval shall be subject to the standards and criteria of this section.

**Comment:** August 21, 1997 is when the Sensitive Lands regulations first became effective. It is important to note that the present Sensitive Lands Atlas, which is to be retired, and the proposed Sensitive Lands Map (Comprehensive Plan Map and Zoning Map), as amended, all include RP and RC districts within developments that are exempt per subsection b.i. The proposed change in language broadens the exemption to all types of development permits, not just land divisions (partitions, subdivisions and planned developments) and lot line adjustments which protected a resource prior to that date.

The City is not proposing to remove the districts where a development is exempt because the exemption applies only insofar as the development remains in compliance with the conditions of approval protecting the resource. Instead, as suggested by the Planning Commission, the Sensitive Lands Map should contain notations where the general exception (b.i) is known to apply. In this way, property owners, including homeowners associations, would have clarity on where the exception applies and their responsibility for maintaining compliance with conditions protecting natural resources. The notation would be added to the Sensitive Lands Map (online and printed) administratively as the prior approval and compliance with conditions are verified.

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

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

**c. Exceptions – Specific**

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

i. Replacement or vertical expansion of an existing structure within the footprint of that structure.

ii. Normal or emergency replacement of a utility that is not closer to a protected water feature than the pre-existing utility. Normal replacement of a utility for purposes of this subsection means the replacement is within the same general location or alignment as the pre-existing utility. Replacement of utilities that are within the stream channel or wetland must consider alternative locations; where no practicable alternative location exists, replacement shall occur as described above, subject to the mitigation requirements of

subsections 4.e through 4.g of this section. Temporarily disturbed areas must be restored to their original grades and soil permeability, and revegetated with plants identified on the Plant List, pursuant to subsection 4.g of this section.

iii. Alteration, expansion, or replacement of an existing primary dwelling unit where the **cumulative total increase in** footprint of the new intrusion **since August 21, 1997**, is not more than 700 sq. ft. ~~in the RP or RC district and is not closer to a protected water feature than the pre-existing structure.~~

**Comment:** The above edit clarifies that the 700 sq. ft. intrusion is an ultimate limit. LOC 50.05.010.2 Applicability includes RP, RC, and HBA protection areas, though as a practical matter this exemption will only apply in RP and HBA protection areas.

iv. Development that meets all of the following criteria:

- (1) Is not located within a wetland or below the top of the bank or stream;
- (2) Does not require a grading permit; and
- (3) The cumulative total of all development **since August 21, 1997** ~~under this subsection 2.c.iii~~ does not exceed 200 sq. ft.

v. Fences that are not located within a wetland **or flood hazard area**, or **below top of bank of** a stream ~~channel~~.

vi. Other development that does not remove any native vegetation or create new permanent structures ~~within the RP or RC district~~.

**Comment:** The above revisions clarify existing exemptions. A proposed policy change is to require development review for fences below the top of bank of a stream or within a flood hazard area. This change is recommended to address potential impacts from removal of vegetation and placement of a structure in these areas, such as slope stability, erosion and sedimentation. The development review process does not preclude construction of a fence below top of bank, but requires consideration of options to avoid, minimize, and, as applicable, mitigate construction impacts.

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

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

**Comment:** In 2003, the Legislature changed the name of the Division of State Lands to Department of State Lands (DSL). The agency administers Oregon's Removal-Fill Law (ORS 196.795-990), which requires people who plan to remove or fill material in waters of the state to obtain a permit from the DSL. The definition and regulations for protecting *Waters of the State* predate the definition of *Waters of the United States* (under the 2015 federal Clean Water Rule), which is currently stayed by the U.S. Court of Appeals for the Sixth Circuit.

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

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

**f. Mitigation Required for Violation**

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

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

**Comment:** When Sensitive Lands Overlay districts were first established in 1997, the City had not completed its review of properties eligible for RP or RC designations. To avoid a gap in protection, the City Council enacted a transition program, which provides that until designation decisions have been made for all properties determined to be eligible for RP or RC overlay district designations in 1997, the City's former Goal 5 program—implemented through text-based Lake Oswego Development Standards (LODS) 3 and 4—will continue to apply. Where a property is evaluated under an ESEE analysis and received a sufficient ranking to qualify for an RP or RC Overlay it would be designated. Where a property had been evaluated and failed to qualify for an RP or RC designation, LODS 3 and 4 would no longer apply. With adoption of the proposed Sensitive Lands amendments, the transition program will no longer apply, because the City will have completed the decision making process for all of the properties that had been found eligible for RP or RC designation in 1997, including properties where the owner had contested a proposed designation (contested case properties). The legislative process for LU 15-0019 provides the hearing opportunity for the contested case properties.





### 3. DEVELOPMENT REVIEW

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

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

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

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

**Comment:** LOC 50.01.006 Nonconforming Structures and Uses requires that a building permit be issued within one year of damage or destruction (in order to rebuild). It also provides for exceptions granted by the City Manager, for example, where an insurance claim is pending. The above amendment is intended to be more flexible than the existing Sensitive Lands code, such that the owner is only required to submit an application for (not commence) building within one year.

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

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

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

**Comment:** The Planning Commission had asked staff if the above provision would create substandard lots: “lot does not meet minimum lot size or dimension of the zone....” (Planning Commission recommended definition of “Substandard Lot”, LU 15-0017). It would not because the reductions in lot size and/or lot dimensions permitted by the overlay districts, which are a type of zone themselves, supersede the base zone standards. A lot reduced in size below the base zone standard by this section still complies with the minimum lot size of the overlay district. This is how overlay zones operate. See also, LOC 50.05.010.2.a.iii, which states, “To the degree that any requirement of this section conflicts with a requirement of the underlying zone, this section shall prevail.”

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

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

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

**Comment:** The above amendment adds flexibility for the use of private property where protection of an RP district is required or an applicant voluntarily protects an HBA as part of a development. Where the current code limits density transfer to a contiguous property under the same ownership, the proposed code allows floor area and density transfer to adjacent property under the same ownership, which may include a property across the street. This is one component of the City’s Title 13 compliance program. (Where development is proposed using HBA incentives, environmental review is required.)

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

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

**Comment:** The City may not delegate code authority by accepting written approval of a modification of standards from an abutting property owner. Instead, LOC 50.07.003.14(21) provides for notification to adjacent property owners of proposed modifications, with an opportunity comment/appeal through the minor development process. The above amendment is provided for greater clarity and does not change the current code, per LOC 50.07.003.14(21).

**c. Density Transfer**

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

**i. Density Transfer Ratios**

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

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

**Comment:** The above amendment adds flexibility for the use of private property where new residential land divisions avoid impacting an RP district or HBA protection area. Where the current code limits density transfer to a contiguous property under the same ownership, the proposed code allows transfers to adjacent properties under the same ownership, which may include a property across the street. This is one component of the City's Title 13 compliance program. Where development is proposed using HBA incentives, environmental review is required.

**ii. No Future Subdivision or Partition**

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

**d. Construction Standards**

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

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

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

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

\*\*\*

**Comment:** The reference to HBAs implements the incentives component of the City's proposed Title 13 compliance program. (Where development is proposed using HBA incentives, environmental review is required.)

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

**e. Mitigation; Purpose**

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

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

**f. Progressive Mitigation Steps Required**

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

**i. Step #1 Avoidance**

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

**ii. Step #2 Minimization**

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

**(1)** Alternative and significantly different site plans and development locations on the subject site have been considered, and that the alternative chosen is the least environmentally damaging; and

**(2)** When mitigation is proposed, there will be no net loss of resource area, functions, or values as a result of development actions pursuant to LOC 50.05.010.4.g.v, Stream Corridors and Tree Groves, or LOC 50.05.010.4.g.vi, Wetlands, whichever is applicable.

**g. Mitigation Requirements**

**i. Mitigation Plan**

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

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

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

**Comment:** The modification to allow a monitoring period of 1-3-years, instead of 3 years for all projects, reflects the fact that not all projects have the same level of risk for plant survival, and the City does not have the staffing resources to enforce a 3-year monitoring period for all mitigation sites. Further, the new mitigation planting standards in subsection viii, below, should help clarify the City's expectations regarding mitigation, and streamline the monitoring and maintenance requirement. (See also, subsection ix., Bonding.)

**ii. Required Permits**

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

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

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

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

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

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

**v. Stream Corridors and Tree Groves**

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

**vi. Wetlands**

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

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



**vii. Vegetation Restoration**

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

**Comment:** The above amendment is for brevity. A qualified professional recommends the mitigation plan plants. "Plant List" is the abbreviation of Lake Oswego Master Plant List.

**viii. Planting Standards**

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

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

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

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

**(2) Plant Size**

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

**(3) Plant Spacing**

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

**(4) Plant Diversity**

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

**(5) Timing of Plantings**

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

**(6) Invasive Vegetation**

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

**(7) Tree and Shrub Survival**

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

**(8) Maintenance**

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

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

**Comment:** The above clear and objective planting standards are intended to clarify City requirements and add certainty to the development review process. The standards are based on Metro's Title 13 Model Code.

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

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

**Comment:** The above amendment adds authority to require bonding where mitigation is required following a code violation.

- (2) The performance bond or the letter of credit will be released by the City after three years upon receiving proof that the mitigation measures have been successfully implemented according to approved plans. Following release of the financial guarantee, the property owner(s) or other designated party (such as a homeowners association) shall remain responsible for maintenance of the resource.
- (3) If mitigation improvements fail during the bonding period and the responsible party does not replace said improvements after notification by the City, the bond shall be forfeited and shall be used by the City to correct the problem pursuant to the mitigation plan and the conditions of approval.
- (4) Property owners of individual tax lots that are lots of record that are zoned for single-family residential use, are not large enough to be further divided, and were in existence prior to the date this section becomes effective shall be exempt from these bonding requirements.

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

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

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

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

**Comment:** The RC districts are proposed to be removed from private property, but will remain on public and private open spaces where the required level of protection (Resource Conservation protection area) is proposed to increase from 50% to 85%.

Where an RC district currently abuts an RP district (in any ownership), up to 50% of the RC district (portion closest to the stream or wetland) will be consolidated with the RP district to create a standard stream/wetland buffer of 50 feet, in substantial compliance with Metro Title 3.

The proposed Habitat Benefit Areas (HBA) incentives program will take the place of the RC districts, or portions of RC, that fall outside the above described riparian areas. These are dividable residential properties and non-dividable properties that Metro designates Title 13 Riparian areas, pursuant to Title 13. Other properties meeting the criteria for HBA incentives may opt-in to the incentives program. Applications for subdivision approval will continue to be required to provide 20% open space.

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

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

**(1) The reviewing authority may approve a transfer of RC protection area from one RC district to another RC district under common ownership where the two RC districts are located within the same Resource Area as identified by the City of Lake Oswego 1994/95 Natural Resource Inventory and ESEE Analysis;**

**(2) The reviewing authority may approve an RC protection area that expands the boundary of a delineated RC district where tree planting is proposed as part of a tree grove restoration project.**

**Comment:** The above amendment responds to testimony from the Lake Oswego School District requesting that the RC protection area requirements be amended to facilitate school campus/facilities planning and to provide an incentive for habitat restoration. See Exhibit G-3.

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

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

**Comment:** The required level of protection for an HBA protection area is 50%, similar to the current RC protection area requirement, or 25% where habitat restoration is proposed, under LOC 50.05.010.7. The required RC protection area is proposed to increase from 50% to 85% on public and private open spaces in part to provide greater

certainty of protection. This change combined with the HBA incentives offsets the removal of RC districts from dividable private properties.

The change from 50% to 85% is significant because there are approximately 300 acres of public and private open spaces that will remain RC, and these areas are often under pressure from competing demands (e.g., parks or the expansion of play fields versus natural areas and habitat enhancement). Further, in most areas where HBA replaces RC on dividable land, the City's Hillside Protection standards (LOC 50.06.006.2) limit development; the code requires that 35% of slopes between 20%-50% be left undisturbed (no clearing or grading), and 70% of slopes >50% must remain free of structures and impervious surfaces. In addition, the Tree Code and Erosion Control standards will remain, and new subdivisions will continue to be required to set aside 20% open space.

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

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

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

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

**Comment:** The amendment to subsection 'iv' is recommended to prioritize health and safety in establishing protected areas.

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

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

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

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

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

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

- (1) Streets, driveways, lake trams, and public transportation facilities;
- (2) New structures, accessory structures, decks, parking areas, active use recreational facilities;

- (3) Additions to existing structures and to nonconforming structures;
- (4) Temporary construction activities;
- (5) Passive use recreational facilities;
- (6) Utilities;
- (7) Resource enhancement projects;
- (8) Landscaping, new and existing;
- (9) Tree removal; and
- (10) Limited hazardous materials storage.

**iii. Development Standards**

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

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

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

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

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

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

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

(iv) For regional, community connector, or local access trails (**such as those** designated **in the City's or another agency's Transportation System Plan** ~~on the City's Trails and Pathway Master Plan~~), the trail width

is no greater than 12 ft. ~~(as determined by the standards in the City's Trails and Pathway Master Plan).~~ **Dimensions for other trails shall be determined using the progressive mitigation steps in LOC 50.05.010.4.f. See also, LOC 50.05.010.5.c.iii.5 Passive Use Recreational Facilities.**

**Comment:** The above amendment is intended to provide standards for different types of trails, including those on the City's Transportation System Plan, and those managed by other entities (e.g., Tryon Creek State Natural Area, Lake Oswego Schools, Homeowners Associations, etc.).

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

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

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

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

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

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

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

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



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

**(4) Temporary Construction Activities**

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

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

Passive use recreational facilities, including soft surface trails and pedestrian bridges, may be located within the RC **or HBA** protection area. If construction of such facilities disturbs any adjacent land within an RC **or HBA** protection area, the disturbed area shall be restored and revegetated with plants identified on the Plant List as appropriate for resource landscaping.

**(6) Utilities**

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

**(a)** Sanitary sewer, water, power, gas, telecommunications, cable and storm drain lines shall be maintained in public rights-of-way and routed around significant resources rather than through a resource wherever possible;

**(b)** Drainage patterns shall not be altered in the resource area, or if altered, shall be designed and maintained so as not to adversely impact the functions and values of the resource.

**(7) Resource Enhancement Projects**

Resource enhancement projects shall remove only invasive vegetation, and shall plant only vegetation within the RC district or **HBA** protection area, if one has been

established, listed on the Plant List. Any pathways or structures proposed as part of a resource enhancement project shall retain existing trees.

**(8) Landscaping**

**(a)** Plants. Plants used for landscaping within a protection area shall:

**(i)** Be well-suited to local soils and growing conditions; and

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

**(b)** The City shall maintain a Plant List on file in the Planning Division listing species that comply with this subsection. If a plant is listed in the applicable section of the Plant List for resource landscaping, it shall be presumed to comply with subsection 5.c.iii(7) of this section, Resource Enhancement Projects. The Plant List is not intended to be an exclusive listing of allowable landscaping materials, but shall be used as a guideline and may be updated by the City Manager from time to time as new plants in compliance with this section are discovered or become available. An applicant may utilize a plant not on the Plant List as long as it complies with the criteria in this section.

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

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

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

**[Note to City Recorder: Recommend adding the following:  
Cross-Reference: LOC 50.05.010.3.g.viii. Mitigation Planting Standards.]**

**(9) Tree Removal**

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

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

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

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

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

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

**(10) Limited Hazardous Materials Storage**

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

Exceptions:

(a) Materials that are typically used for household purposes and in quantities which are normal for household use.

- (b) Materials that are stored in a boathouse and are typically used for recreational boat operation and maintenance.

## 6. STANDARDS APPLICABLE TO RP DISTRICTS

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

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

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

<p><b>Comment:</b> Cross-reference added to existing/amended provision relating to encumbered lots in LOC 50.05.010.4.g.</p>
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### b. RP District and Construction Setback Requirements

- i. The RP district shall include the delineated stream or wetland and a protected riparian area.
  - (1) The protected riparian area contributes to the functions and values of the stream or wetland, including: shelter, food, travel, and nesting needs of wildlife; aesthetics; surface water quality; slope stability; and flood storage.
  - (2) The entire RP district including the stream or wetland and its protected riparian area shall be shown on the delineation map.
  - (3) **The City Manager may use existing aerial photography, remote sensing, and topographic data, subject to field verification, to approve an RP district delineation without requiring a separate survey of the resource.**

**Comment:** The proposed Sensitive Lands Map amendments provide improved accuracy on the location of RP districts based on 2014 Lidar data, which should simplify the development review process and provide greater certainty for property owners. In some cases a separate RP district delineation prior to construction may not be necessary, particularly where the top of bank is well defined and reflected on the Sensitive Lands Map, and where disturbance areas are located well outside a resource and its associated protection area and erosion control standards are met. Furthermore, prior to construction, City review and approval of construction management plan, establishment of the RP district boundary, staking of construction setbacks, and installation and inspection of RP district (and tree) protection fencing all continue to be requirements under the proposed code revisions.

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

- (1) Class I Wetlands and Class II Wetlands abutting Class I Stream Corridors – 30 ft. **or 50 ft.**
- (2) Other Class II Wetlands – 25 ft. **or 50 ft.**
- (3) Class I Stream Corridors – 30 ft. **or 50 ft.**
- (4) Class II Stream Corridors – 25 ft. **or 50 ft.**

**Comment:** The above standards are detailed/illustrated in LOC 50.07.004.8.d. See Table 50.07.004-A.

iii. **Reduction of RP District**

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

- (1) The proposed development complies with LOC 50.05.010.4.f, Progressive Mitigation Required; and
- (2) The reduction in protected riparian area is not solely for the purpose of maximizing development of the site; and

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

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

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

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

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

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

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

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

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

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

**Comment:** The above performance-based options for reducing RP buffers are existing code.

**iv. Construction Setbacks**

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

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

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

**c. RP District Development Standards**

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

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

**Comment:** The above RP district standards are existing code. While they may appear similar to the standards for RC districts and HBA protection areas, they are not the same, and for clarity the standards are organized in separate sections.

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

**(1) Specific Development Standards**

**(a) Landscaping**

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

- (i)** Plants: Plants used for landscaping within the RP district shall:
  - (A)** Be well-suited to local soils and growing conditions; and
  - (B)** Not be dependent on long-term irrigation, which can increase erosion and sedimentation (irrigation necessary for initial establishment of the plants is not considered long-term irrigation).
- (ii)** The City shall maintain a Plant List listing species that comply with the criteria in this section. If a plant is listed on the Plant List as appropriate for resource landscaping, it shall be presumed to comply with this section. The Plant List is not intended to be an exclusive listing of allowable landscaping materials, but shall be used as a guideline and may be updated by the City Manager from time to time as new plants in compliance with this section are discovered or become available. An applicant may utilize a plant not on the Plant List as long as it complies with the criteria in this section.
- (iii)** Removal of vegetation identified on the Plant List as appropriate for resource landscaping is not permitted from an RP district except as otherwise allowed in this section.
- (iv)** New landscaping within the RP district shall not include any invasive plants on the City's Plant List.
- (v)** Existing Landscaping: Nonconforming formal landscaped areas including ornamental gardens and lawns located within an RP district and in existence at the time of the adoption of these standards may be maintained, altered or modified pursuant to LOC 50.01.006.1, Nonconforming Use, Structure Defined; Rights Granted. However, a nonconforming landscaped area may not be expanded pursuant to LOC 50.01.006.5, Expansion of Nonconforming Industrial or Commercial Uses or Structures.

**Comment:** The above RP district standards are existing code.



**(b) Tree Removal**

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

- (i)** Type I and Type II tree removal permits, in accordance with LOC 55.02.042, Permit Classifications and Review Procedures, for development purposes, for those limited development activities allowed and approved by this section.
- (ii)** Type II tree removal permit, in accordance with LOC 55.02.042 for landscaping purposes, in conjunction and consistent with a resource enhancement project.
- (iii)** Hazard tree removal permit, in accordance with LOC 55.02.042.4, except any portion of the tree that is not likely to be hazardous to persons or property shall be retained for wildlife habitat and natural resources.
- (iv)** Emergency tree removal permit, in accordance with LOC 55.02.042.5, Emergency Permit.
- (v)** Verification permit, in accordance with LOC 55.02.042.6.

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

**Comment:** The above RP district standards are existing code. The Planning Commission had noted in its July 27 work session that following development standards appear redundant with those in LOC 50.05.010.5. The Commission suggested consolidating or streamlining the text. However, the standards for utilities, streets, trams, etc., for RP districts are different than those for RC districts; RC districts and HBA protection areas function differently than RP districts, where 100% of the area is protected. Staff recommends retaining the current code structure for clarity.

**(c) Utilities**

Placement/New Construction: Public or private utilities shall not be placed within an RP district unless tunneling under a resource will not cause any adverse effect upon the resource and the functions and values of a resource will be maintained, or there is no other practicable alternative. If a public or

private utility is allowed within an RP district, mitigation shall be required pursuant to LOC 50.05.010.4.e through 50.05.010.4.g. When applying the mitigation process to this section:

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

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

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

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

(ii) Driveways shall not be placed through an RP district unless there is no other practicable method of access to the buildable areas of property served by the driveway. The amount of disturbance for driveways in the protection area shall be minimized through use of shared access for abutting lots and access through easements for adjacent lots.

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

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

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

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

(C) For regional, community connector, or local access trails (such as those designated in the City's or another agency's

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

**Comment:** The above amendment is intended to provide standards for different types of trails, including those on the City's Transportation System Plan, and those managed by other entities (e.g., Tryon Creek State Natural Area, Lake Oswego Schools, Homeowners Associations, etc.

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

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

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

(C) If applicable, the applicant shall plan for future extension of shared access, access easement, or private streets to access potential new building sites in order to avoid subsequent encroachments into the RP district;

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

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

(i) **Construction Setbacks**

(A) Except as provided in subsection 6.c.ii(1)(d) of this section, structures, parking areas, active use recreation facilities, hard

surfaced pathways, streets and driveways shall be set back at least ten ft. from an RP district to prevent construction impacts to the RP district.

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

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

**Comment:** The above RP district standards are existing code.

**(f) Resource Enhancement Projects**

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

- (i)** The project will cause no permanent degradation, or loss of natural features in the RP district; and
- (ii)** There will be improvement in the quality of at least one function or value of the resource; and
- (iii)** Only vegetation described in the Plant List as appropriate for resource landscaping shall be planted. For the purpose of this subsection, "resource enhancement project" does not include required mitigation pursuant to LOC 50.05.010.4.e through 50.05.010.4.g.

**(g) Limited Hazardous Materials Storage**

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

Exceptions:

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

**Comment:** The above RP district standards are existing code.

## **(2) General Development Standards**

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

### **(a) Resource Alterations**

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

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

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

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

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

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

(ii) A wetland shall not be impounded or the hydrology of the wetland modified through such activities as draining the resource or enlargement of the resource to create a pond, unless it can be demonstrated that the criteria for allowing resource enhancement in subsection 6.c.ii(1)(f) of this section have been met.

**Comment:** The above RP district standards are existing code.

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

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

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

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

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

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

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

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

**Comment:** Above amendments to subsection ‘c.iii’ and ‘d’, above, are intended to allow greater flexibility for property owners while maintaining current levels of RP district protection.

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

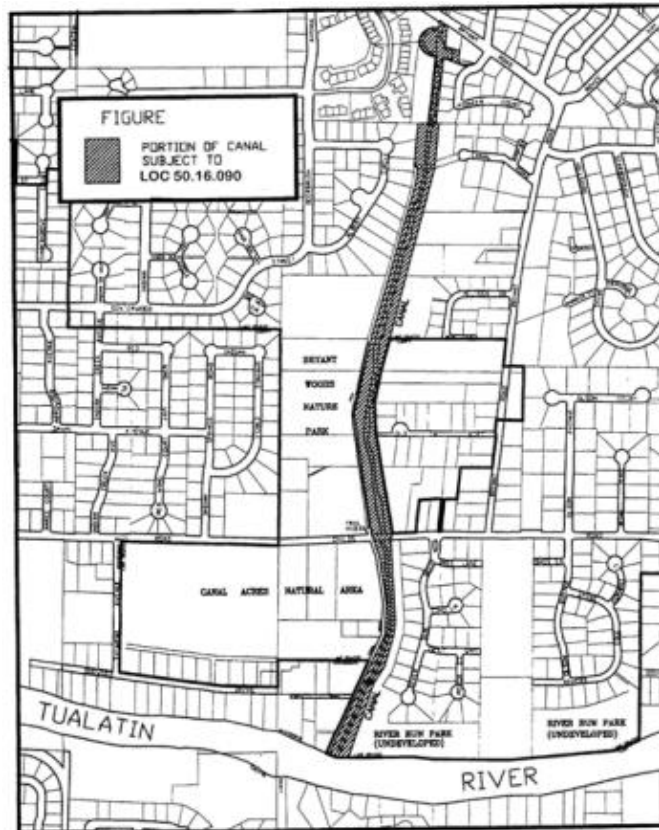
**e. Special Standards for the Oswego Canal**

**i. Purpose**

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

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

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



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

**ii. Exempt Activities**

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

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



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

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

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

<b>Comment:</b> The above provisions are existing code.
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**iv. Environmental Mitigation Required**

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

**v. Boathouses and Docks**

**New** Boathouses and docks shall not be placed within the portions of the Oswego Canal RP district as described above and illustrated by Figure 50.05.010-A: Oswego Canal.  
**Replacement of an existing lawfully constructed boathouse or dock within the current footprint of the structure is allowed pursuant to this section and other applicable code requirements.**

**Comment:** The above amendment clarifies the current allowance of lawfully constructed (pre-Sensitive Lands) docks and boathouses on Oswego Canal. It is added based on comments from the Lake Oswego Corporation, which represents lakefront property owners and regulates lakefront uses. It is consistent with LOC 50.05.010.2.c, which provides for replacement of existing structures, although it does not exempt this type of construction from development review.

## **7. HABITAT BENEFIT AREAS (HBA) INCENTIVES**

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### **a. Purpose**

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

**Comment:** The above text is revised in response to input from the Planning Commission. The Commission had requested a definition or clarification of “habitat-friendly development.”

### **b. Applicability**

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

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

**Comment:** The Habitat Benefits Areas (HBA) designation is proposed to replace the RC District on dividable private properties containing upland wildlife habitat (tree groves), and non-dividable properties containing riparian wildlife habitat (outside RP districts). The HBA designation is an incentive-based program for protecting and restoring habitat that consists of code incentives/exceptions granting flexibility for Habitat-Friendly development projects. The City has also established funding for habitat enhancement projects, and is working with Oregon Department of Fish and Wildlife in potentially develop a tax reduction program for private properties where resources are protected voluntarily.

The HBA designation does not apply where the RC District is removed from private properties that are not further dividable and meet Metro’s criteria for *de minimis* removal of a resource district under Title 13. These are generally portions of tree groves that are not associated with a stream corridor or wetland and are not Title 13 riparian wildlife habitat. It also does not apply where a property contains no tree grove from which to establish an HBA protection area.

The required level of protection for an HBA protection area is 50%, similar to the current RC protection area requirement, or 25% where habitat restoration is proposed, under LOC 50.05.010.7. The required RC protection area is proposed to increase from 50% to 85% on public and private open spaces in part to provide greater certainty of protection. This change combined with the HBA incentives offsets the removal of RC districts from dividable private properties.

The change from 50% to 85% is significant because there are approximately 300 acres of public and private open spaces that will remain RC, and these areas are often under pressure from competing demands (e.g., parks or the expansion of play fields versus natural areas and habitat enhancement). Further, in most areas where HBA replaces RC on dividable land, the City’s Hillside Protection standards (LOC 50.06.006.2) limit development; the code requires that 35% of slopes between 20%-50% be left undisturbed (no clearing or grading), and 70% of slopes >50% must remain free of structures and impervious surfaces. In addition, the Tree Code and Erosion Control standards will remain, and new subdivisions will continue to be required to set aside 20% open space.

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

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

- i. Delineate the HBA using the procedure under LOC 50.07.004.8.d; and**
- ii. Establish an HBA protection area using the procedure under LOC 50.07.004.8, except that the HBA protection area shall be a minimum of 50% of the HBA area; or**
- iii. The reviewing authority may approve an HBA protection area that is 25% or more of the HBA, where**
  - (1) Invasive species cover more than 50% of the designated protection area (during the growing season);**

**(2) A Habitat Restoration Plan prepared by a biologist or other qualified professional provides for removal of all invasive species within the designated protection area and replanting with native plants on the Plant List; and**

**(3) The mitigation planting standards under LOC 50.05.010.4.g.viii are used for the design of the restoration projects.**

**Comment:** The proposed 50% HBA protection area is consistent with the current RC protection area requirement. (The proposed RC protection area standard is 85% of the RC district.) The alternative standard for restoration projects is intended to encourage habitat restoration and enhancement. The City may also focus its investment of habitat enhancement funds and technical assistance on HBAs.

**e. Habitat Preservation Incentives**

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

- i. Allow lot density and floor area transfer (based on minimum lot area of underlying zone) from an HBA protection areas to a nonresource areas of a property, or to an adjacent property under common ownership, as allowed for development within an RP districts.**

**Comment:** This provision would allow density transfers without requiring approval of a Planned Development overlay. It is similar to the existing Sensitive Lands provision, but the existing code limits density transfers to “abutting” properties. The proposed code allows transfers from a property designated HBA to an “adjacent” property under the same ownership. This is an added incentive that implements the City’s alternative compliance program under Title 13.

“Adjacent” means: Touching; across a public right-of-way from; across an easement from; across a small stream or creek from. Lot density is the number of lots otherwise allowable pursuant to the underlying zoning designation. Based on input from a developers’ focus group, and input from the Planning Commission, no density bonus is proposed.

- ii. Lot Area, Dimensional Standards, and Setbacks. Allow reductions to the minimum lot area, lot dimensions, and setbacks of the zone on nonresource portions of a site, without limitation, as allowed for RP districts. Where an abutting property is within a residential zone, the minimum setback along the common property line shall be that of the abutting property’s zone.**

**Comment:** This provision would allow modifications to code standards without requiring approval of a Planned Development overly or variance, and without the additional 5-foot perimeter buffer that is required of Planned Developments. It is similar to the existing Sensitive Lands provision but contains an additional setback requirement for structures abutting to residential zones. This is an added incentive that implements the City’s alternative compliance program under Title 13.

- iii. Lot Coverage and Floor Area. Allow lot coverage and floor area standards to be applied with reference to the total site area (based on the minimum lot area standard of zone) as allowed for RP districts.**

**Comment:** This provision would operate similar to a Planned Development in allowing modification of code standards but would not require a Planned Development overlay or variance. The code flexibility for floor area is not currently allowed by the existing Sensitive Lands code, but the above provision for lot coverage and floor area is allowed for Planned Developments (LOC 50.07.007.4). The proposed amendments allow transfer of floor area and density for properties designated RP and/or providing an HBA protection area. This is an added incentive that implements the City's alternative compliance program under Title 13.

- iv. Minimum Density. Allow reductions to the minimum density standard.**

**Comment:** This replaces the current exception to the minimum density requirement for RC districts under LOC 50.04.003.10 and with the same exception for land divisions where an HBA protection area is established. It maintains an existing incentive that implements the City's alternative compliance program under Title 13.

- v. Building Design.**

- a. The front setback plane standard of LOC 50.06.001.2 does not apply, except where the subject lot is adjacent to and directly across the street from a lot that is not part of the HBA development.**
- b. The side setback plane and side yard appearance and screening standards of LOC 50.06.001.2 do not apply where a required setback yard abuts an HBA protection area for the length of the shared property line.**

**Comment:** These are new incentives for the City's alternative compliance program under Title 13.

- vi. Off-Site Parking. For land divisions in commercial, industrial, and campus institutional zones, allow an increase in the distance a remote parking facility may be located from the property line of the use to be served, pursuant to LOC 50.06.002, if the proposed parking facility is shown to be viable.**

**Comment:** This is a new incentive for the City's alternative compliance program under Title 13.

- vii. Street Connectivity. The reviewing authority may grant an exception to the local street connectivity standard of LOC 50.06.003.4, as allowed for RP and RC districts.**

**Comment:** This provision maintains an existing incentive that implements the City’s alternative compliance program under Title 13.

**f. Development Review**

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

- a. **Habitat protection. The required HBA protection area is identified and protected, or restored and protected, as applicable, pursuant to LOC 50.05.010.5.b.**
- b. **Shared driveways. The proposed development utilizes shared driveways, as applicable, to minimize resource area disturbance.**
- c. **Use of pervious materials. The proposed development uses pervious building materials for hard surfaces, where practicable, to maintain the natural hydrology of the site and to minimize resource area disturbance.**
- d. **Landscaping. Only native plants listed on the Plant List are used in new landscaping.**
- e. **Habitat-friendly fencing. Habitat-friendly fencing is used within and abutting any RP district and where passive open space areas abut a collector or arterial streets, and shall meet the following criteria:**
  - i. **The fence is not located within a wetland or a stream channel; and**
  - ii. **If the fence is below the top of the bank of a stream, at least a two-foot section of every 100-foot segment or portion thereof is:**
    - A. **Not less than 12 inches above the ground; and**
    - B. **Not more than four feet tall, measured from the ground.**

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

**Comment:** The above habitat-friendly development standards are from the Metro Title 13 Model Code and are in addition to existing habitat-friendly standards in the Community Development Code. City staff reviewed the Metro Model Code and incorporated only those best practices that the City is not already using and which might be appropriate for Lake Oswego. The provisions for wildlife friendly fences were removed from the code in 2014 by Ordinance 2658. The above amendment would restore them for developments using HBA incentives.

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

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

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

**i. Goal 5 Analysis Required**

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

**Comment:** The above revision clarifies existing policy and practice for “designating” resources. This is different than delineating resources.

**ii. Procedure**

An RP, ~~or RC,~~ **or HBA** designation may be **applied** ~~imposed~~, modified or removed pursuant to either a City or area-wide Goal 5 analysis or a Goal 5 analysis of a single property or small number of individual properties. A City-wide or area-wide analysis shall be processed as a legislative Comprehensive Plan Map and Zoning Map amendment pursuant to LOC 50.07.003.16.a.i, and an analysis affecting a single property or small number of individual properties shall be processed as a quasi-judicial Comprehensive Plan Map and Zoning Map amendment pursuant to LOC 50.07.003.16.a.ii.

**Comment:** The above procedure is existing code. As adopted in 2014 (Ordinance 2658), LOC 50.07.004.8.d contains a separate Map Corrections procedure which is unchanged by this proposal.

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

**(1) Submission of Application**

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

**(2) Criteria**

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

**Comment:** The above procedures are existing code. As adopted in 2014 (Ordinance 2658), LOC 50.07.004.8.d contains a separate Map Corrections procedure. The amendments ensure that the City's natural resource protection program allows for future designation of HBAs, for example, as the City annexes territory.

**iv. Methodologies**

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

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

The City shall use the following methods to determine:

- (a)** Tree grove: The Wildlife Habitat Assessment Score (HAS); or
- (b)** Stream corridors and wetlands: The Oregon Freshwater Wetland Assessment Methodology developed in the City of Lake Oswego Resource Areas Report and ESEE Process Analysis for evaluation and comparison of inventoried sites pursuant to Statewide Land Use Planning Goal 5. The HAS is a numerical ranking applied in an ESEE inventory which represents the relative wildlife values of a given natural resource site. Six features are evaluated to determine the total Wildlife Habitat Assessment Score: Water; Food; Cover; Disturbance; Linkage; Unique Features. In addition, the City shall consider the scenic value of the resource pursuant to the methodology established in the ESEE analysis. See Lake Oswego Resource Areas Report and ESEE analysis dated April 1, 1997, as revised on July 15, 1997, on file with the Lake Oswego Community Planning and Building Services Department.



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

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

**Comment:** The above criteria are existing code. As adopted in 2014 (Ordinance 2658), LOC 50.07.004.8.d contains criteria for Map Corrections.

**v. Applicability of RP Overlay District**

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

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

- (4) All perennial streams.

**Comment:** The above criteria are existing code. Based on input from Metro and direction from City Council, the proposal maintains the City's existing inventory of significant streams and wetlands. It does not remove or add any RP district to the Sensitive Lands program, but instead amends the riparian protection area standards, maintaining substantial compliance with Metro Title 3. Where the Sensitive Lands Atlas had previously excluded portions of existing streams designated RP, the mapping is updated to include those portions.

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

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

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

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

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

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

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

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

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

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

**Comment:** The above revision reflects the proposed consolidation of RP districts with "associated" RC districts, maintaining substantial compliance with Title 3, and the shift to an alternative compliance program under Title 13. The intent is to maintain RC for tree groves on public and private open spaces, and to apply new RC districts only to property brought into the UGB, if any.

**b. Map Corrections**

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

- i. Within 45 days of receiving a property owner request regarding a possible error in the existence or location of an RC or RP district, the City Manager shall advise the affected property owner(s) in writing of the applicable procedure to process the request.
- ii. Where the map correction is initiated by the City Manager, the City Manager shall notify the property owner(s) in writing of the proposed corrective action.
- iii. Based on information provided by the property owner, as applicable, and such maps, aerial photographs, prior resource delineations, and studies or reports prepared by qualified professionals, etc., the City Manager shall select the applicable review procedure, which shall be:
  - (a) Ministerial Development Decision, for corrections to scrivener's errors. The Sensitive Lands Map shall be updated with each correction and the updates shall be reported to the Planning Commission and City Council not less than annually;
  - (b) Minor Development Decision, for map corrections other than scrivener's errors;  
or
  - (c) Legislative Decision, for map corrections affecting more than a small number of identified properties.
- iv. The reviewing authority shall approve a map correction, including the removal or re-delineation of a resource, as applicable, where the applicant demonstrates one of the following is met:
  - (a) That the inventoried resource no longer exists because it was lawfully filled, culverted, logged, or developed;
  - (b) The boundaries of the resource have changed since adoption of the resource inventory;
  - (c) There was a mistake in the analysis used in the designation of the resource and it does not meet the criteria for designation under subsection 8.a of this section, and a re-application of the ESEE analysis demonstrates that the designation is no longer justified;
  - (d) There was a mistake in the location, size, or configuration of the designation, including instances where no portion of the resource is on the subject lot; or

(e) The tree grove is an isolated tree grove not located on public open space, on a private designated open space tract, or on property brought into the Urban Growth Boundary after July 10, 2012, and removing the RC district complies with Metro Code Section 3.07.1330(A)(2).

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

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

**Comment:** The above Map Corrections procedure and criteria are existing code as amended in 2014 (Ordinance 2658).

**c. Environmental Review**

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

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

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

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

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

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

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

**Comment:** The above provisions are amended to include HBA protection areas (for properties where voluntary HBA incentives are used).

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

**i. Preparation/Criteria**

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

**(1) Tree Groves**

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

The boundary of a tree grove shall be measured at the outer edge of a contiguous tree canopy based on aerial photos and/or visual field observations, but shall not include any tree canopy that is within a wetland or below the top bank of a stream. Tree canopy from invasive tree species and non-native tree species, per the City's Plant List, shall not be included in the measurement of contiguous tree canopy, and the delineated boundary shall not increase the size of the RC district by more than 15% from what is designated on the Sensitive Lands **MapAtlas**.

<p><b>Comment:</b> The above revision reflects the retirement of the outdated Sensitive Lands "Atlas" and its replacement with an updated Sensitive Lands Map.</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------

**(2) Wetlands**

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

**(a)** The methodology must include soils testing, and

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

**(3) Stream Corridors**

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

**Comment:** The above edit references the proposed new table on the next page. While the table is new only substantive code changes are shown as **bold underline**.

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

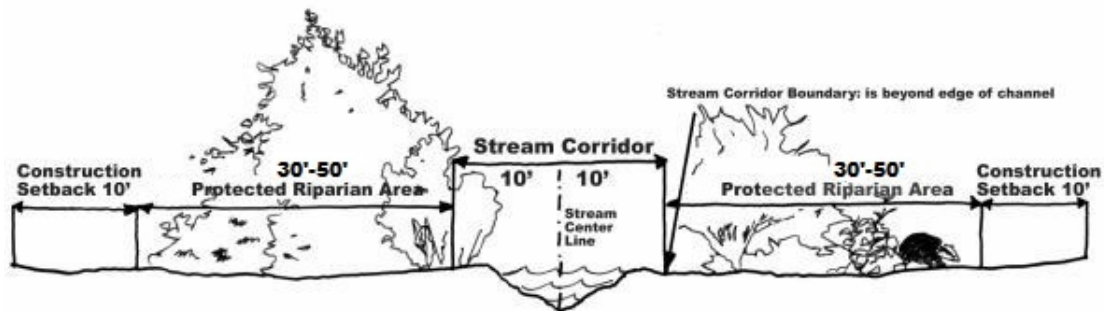
**The following areas are protected riparian areas. They are measured outward from the edge of a delineated stream corridor or wetland boundary and are included in the RP district:**

**Comment:** The following table updates the riparian area standards to reflect the consolidation of RC and RP districts, as applicable, in substantial compliance with Metro Title 3. Where an RC district currently abuts an RP district, up to 50% of the RC district (portion closest to the stream or wetland) is consolidated with the RP district to create a standard stream/wetland buffer of 50 feet. In areas where required RP buffers already exceed 50 feet (e.g., due to steep topography) or where no RC district is present, the standards are unchanged from existing code. Attachment 3 (Sensitive Lands Map) shows the consolidated areas. While the table is new, only substantive code changes are shown as **bold underline**.

<b>Table 50.07.004-A: Stream and Wetland Riparian Area Measurement</b>		
<b>Stream/Wetland Classification</b>	<b>Slope Adjacent to Resource</b>	<b>Width of Vegetated Corridor and Method of Measurement</b>
<b>Class I</b>	<25%	30- <del>50</del> feet, measured from the outer edge of the stream corridor or delineated wetland as shown on the Sensitive Lands Map and as detailed in Figure 50.07.004-A.
	>=25%	30-200 feet, measured from the outer edge of the stream corridor or delineated wetland to the natural break in the 25% slope, <b><u>as shown on the Sensitive Lands Map and</u></b> as detailed in Figure 50.07.004-A. <b><u>Slope is measured perpendicular to and at intervals of not more than 25 feet along the outer edge of the stream or wetland. Where a stream or wetland is confined by a ravine or gully, the top of ravine is where there is a consistent break in the 25% slope that is more than 30 feet from the stream/wetland edge; the width of the vegetated corridor may vary.</u></b>

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

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

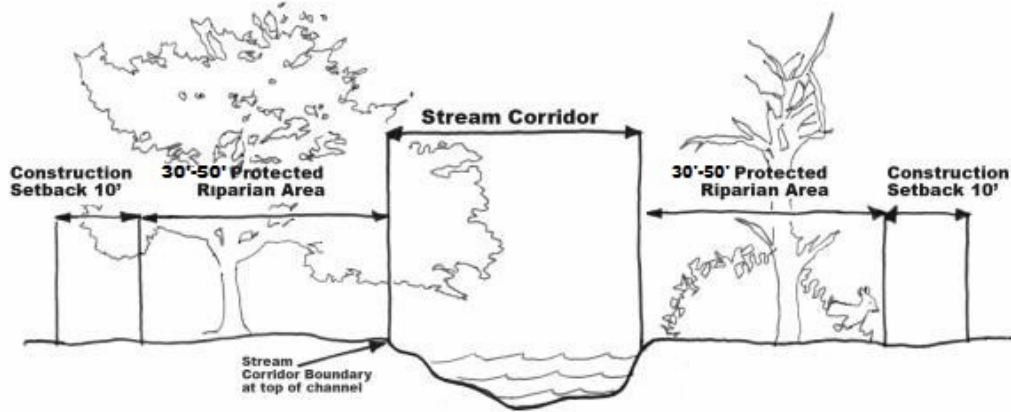


### 20' Wide Stream Corridor

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

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

**Comment:** The graphics here are updated from the existing code and reflect a 50 ft. protected riparian area where RC districts abutting RP districts are removed. The note referring to allowed buffer width reductions is new. The preceding table clarifies the measurement methods.

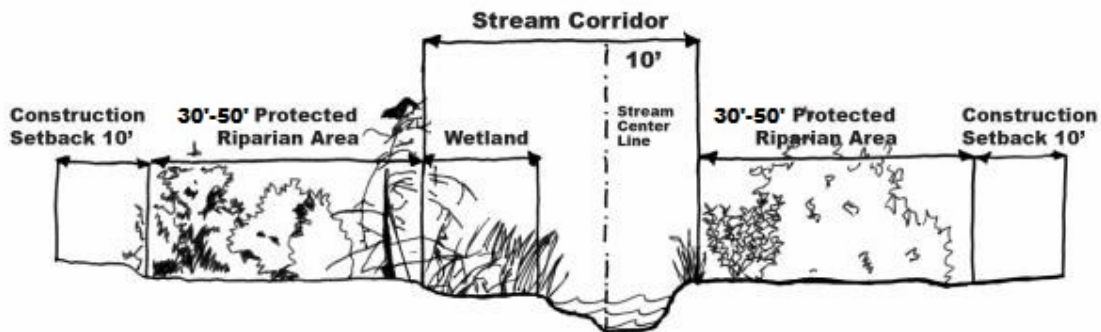


### Stream Corridor > 20' Wide

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

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

**Comment:** The graphics here are updated from the existing code and reflect a 50 ft. protected riparian area where RC districts abutting RP districts are removed. The note referring to allowed buffer width reductions is new. The preceding table clarifies the measurement methods.

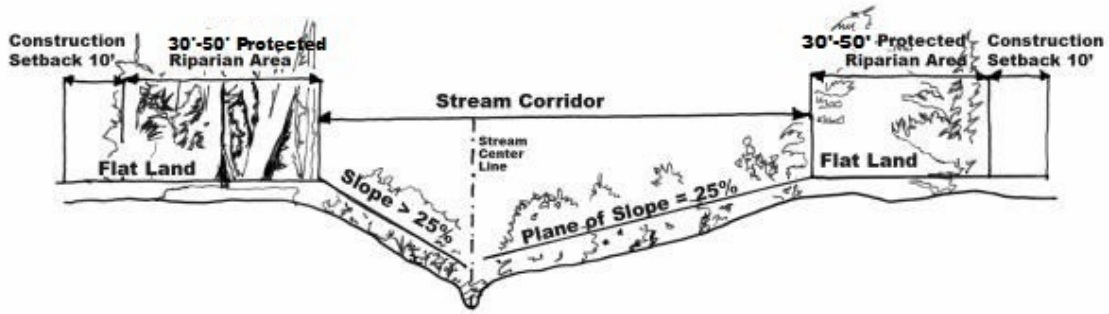


### Streams with Associated Wetlands

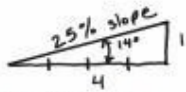
Stream corridor boundary remains at least 10' from the stream centerline on both sides. Wetland boundaries are delineated according to the 1987 Corps of Engineers Manual.

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



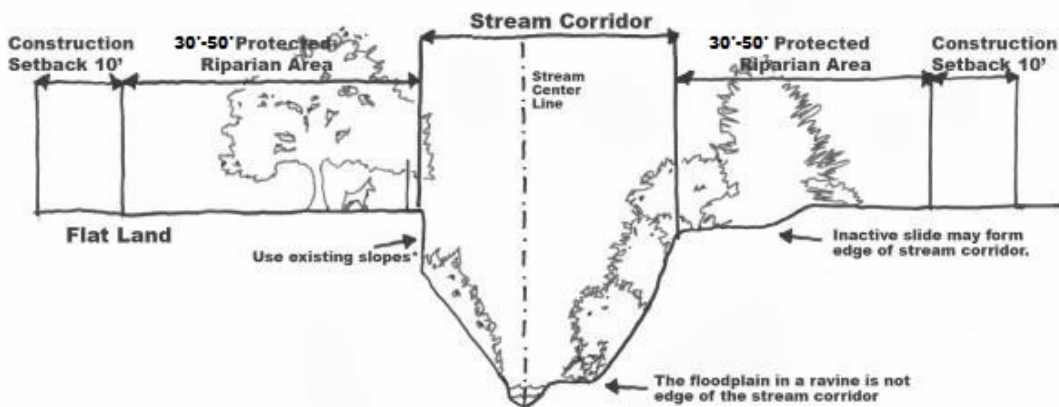


## Streams with Steep Slopes or Ravines



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

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



## Streams with Topographic Variations

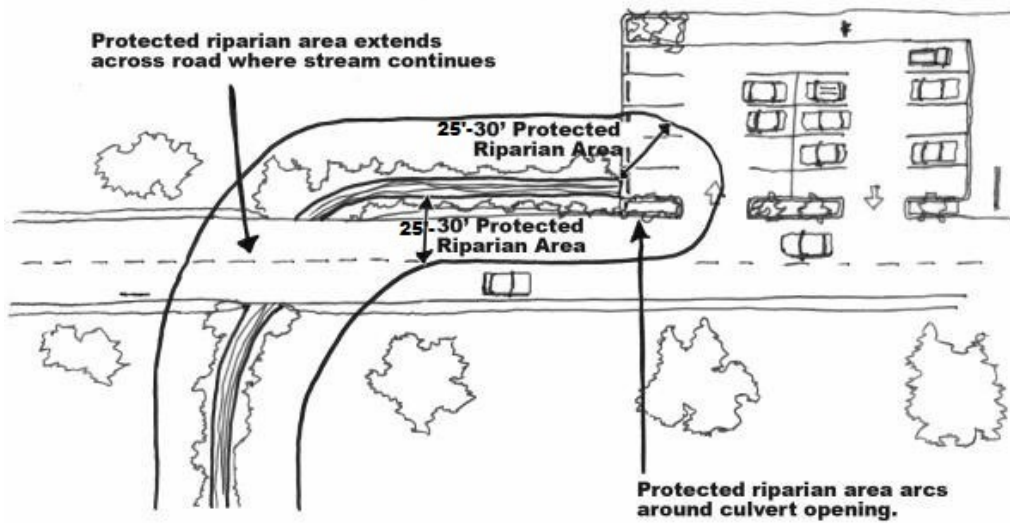
\* Illegal fill is not treated as stream corridor boundary; refer to the first page of this appendix.

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

**Maximum RP district and construction setback width capped at 200' from edge of ordinary high water line.**

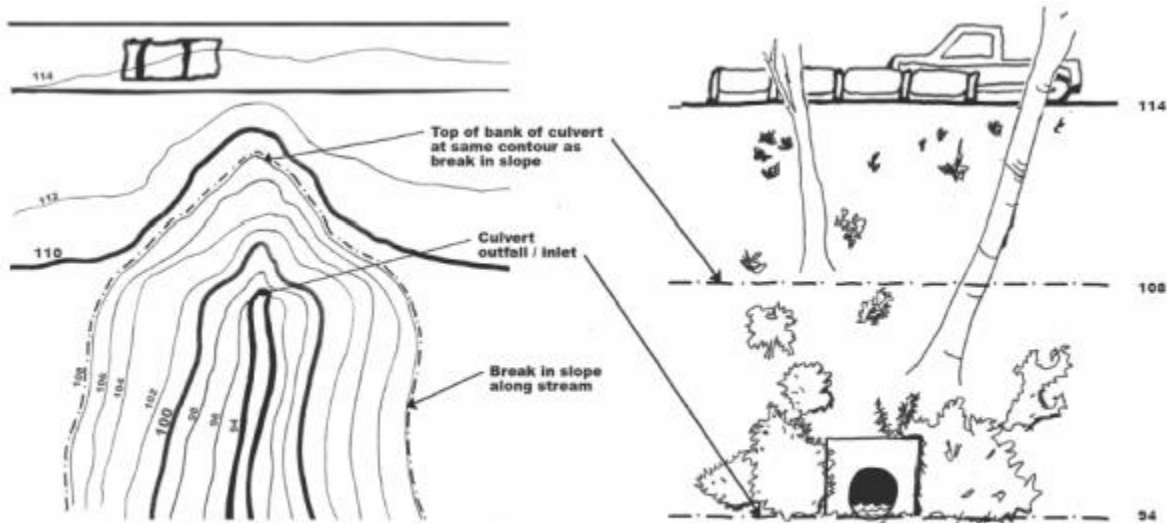
**\*Figure 50.07.004-A is for illustration purposes. The standards in Table 50.07.004-A govern.**

**Comment:** The graphics here are updated from the existing code and reflect a 50 ft. protected riparian area where RC districts abutting RP districts are removed. The note referring to allowed buffer width reductions is new. The preceding table clarifies the measurement methods.



### Protected Riparian Areas on Culverts

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



**Top of Bank of Culvert - Ravine or Steep Slope**

**Comment:** The graphics are carried forward from the existing code. The preceding table clarifies the measurement methods.

**ii. Review of Delineation**

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

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

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

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

<p><b>Comment:</b> The above revision reflects the retirement of the outdated Sensitive Lands "Atlas" with an updated Sensitive Lands Map.</p>
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**iv. Delineation Not Required; Exceptions**

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

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

(c) The City Council has adopted new delineation standards or requirements since the previous delineation; or

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

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

**Comment:** The above addition of '3' is intended to streamline the review process for properties that are fully encumbered by an RP or RC district. The exception would not apply where the application is for HBA incentives.

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

**Comment:** The proposed Sensitive Lands Map amendments provide improved accuracy on the location of RP districts based on 2014 Lidar data, which should simplify the development review process and provide greater certainty for property owners. In some cases a separate RP district delineation prior to construction may not be necessary, particularly where the top of bank is well defined and reflected on the Sensitive Lands Map, and where disturbance areas are located well outside a resource and its associated protection area and erosion control standards are met.

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

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

**NON-SENSITIVE LANDS SECTIONS**

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

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

\* \* \*

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

11. Natural hazards.

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**42.03.085 (STREETS AND SIDEWALKS) Cul-de-Sacs and Dead End Streets.**

\* \* \*

3. A cul-de-sac or dead end street shall be no longer than 200 feet in length and shall serve no more than 25 dwellings, except where extreme topography, the presence of **Sensitive Lands** as described in LOC 50.05.010 and 50.07.004.8, floodplains as described in LOC 50.10.003.2, freeways, existing development patterns on abutting property or arterial access restrictions, preclude the logical connection of streets. A cul-de-sac shall provide a turnaround without the use of a driveway.

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**42.03.095 (STREETS AND SIDEWALKS) Modification to Street Design Standards.**

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

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**47.06.205 (SIGNS) Permanent Signs Exempt From Permit and Fee.**

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

\* \* \*

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

**Comment:** This amendment is proposed because signs may be useful for identifying protected tree groves as well as streams and wetlands, particularly where developers use the Habitat Benefit Areas incentives in LOC 50.05.010.7.

\* \* \*

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

**1. ZONING DISTRICTS**

The City is divided into the following zoning designations:

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

\* \* \*

**5. COMPREHENSIVE PLAN MAP DESIGNATIONS AUTOMATICALLY APPLIED UPON ANNEXATIONS; EXCEPTIONS**

\* \* \*

b. Where the Comprehensive Plan Map indicates an **RP, ~~RC,~~ or HBA** District designation on territory proposed for annexation, the City shall notify the owners of the annexing territory that they have 20 days prior to the initial public hearing on the annexation to contest the designation pursuant to LOC 50.07.004.8.b, **Sensitive Lands** Overlay Districts. No fee shall be charged for such review. If, following review, the decision-maker determines the property was improperly designated, the **RP, ~~RC,~~ or HBA** designation shall be removed.

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

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#### 4. DAMAGE AND RECONSTRUCTION OF NONCONFORMING STRUCTURES Revised 4/15

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##### iii. Nonconforming Single-Family or Duplex Dwelling or Landscaping Located in an RP or RC District or Construction Setback

(1) **Nonconforming Structures.** See LOC 50.05.010.4.a, Rebuilding Nonconforming Single-Family or Duplex Dwelling Located in RP or RC District or Construction Setback, and LOC 50.05.010.2.b and c, General and Specific Exceptions.

(2) **Nonconforming Landscaping.** See LOC 50.05.010.5.c.iii(8)(e), Landscaping in an RC district, and LOC 50.05.010.6.c.ii(1)(a)(v), Landscaping in an RP district.

**Comment:** The existing code as it pertains to nonconforming structures in an RP or RC district is not proposed to change. Although RC districts are proposed to be removed from properties other than open space tracts, the proposed amendments maintain the process for designating new RC districts on lands brought into the Urban Growth Boundary (LOC 50.07.004.8.a).

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#### 50.03.003 USE-SPECIFIC STANDARDS

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#### 2. RESIDENTIAL – CONDITIONAL USES

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

##### i. Generally Applicable Standards

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

**Comment:** No proposed change.

**50.03.004      ACCESSORY STRUCTURES AND USES**

\* \* \*

**2. ACCESSORY STRUCTURES**

**a. Structure Specific Regulations**

- i. Pool covers shall not exceed 15 ft. in height.
- ii. "Dish" type antenna may only be placed in rear yards, on the ground, and must be screened by landscaping.
- iii. Except as provided in LOC 50.05.010, Sensitive Lands Overlay Districts, boathouses and docks along Oswego Lake and its canals may be placed on a property line.
- iv. Heat pumps or similar mechanical equipment shall meet the required setbacks of the zone, except as provided under subsection 2.b.i of this section.

**Comment:** No proposed change.

\* \* \*

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**50.04.001      DIMENSIONAL TABLE**

\* \* \*

**2. RESIDENTIAL MEDIUM DENSITY ZONES**

\* \* \*

**c. Lot Dimensions – Additional Standards**

\* \* \*

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

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

**Comment:** The proposed change simplifies the text, as Sensitive Lands designation would include RP and RC (where RC remains on open space tracts), new RC if any land is brought into the UGB, and HBA.



\* \* \*

**iv. R-DD Additional Height Standards**

**(1) Primary Structures**

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

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

**Comment:** No proposed change. See also, cross-reference under LOC 50.05.010.7 Habitat Benefit Areas.

\* \* \*

**3. RESIDENTIAL HIGH DENSITY ZONES**

\* \* \*

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

- i.** For projects on properties **with a Sensitive Lands** overlay subject to an **RP** or **RC** district designation, lot areas **and floor area** may be modified as provided in LOC 50.05.010, **Sensitive Lands** Overlay Districts.
- ii.** Habitable areas of detached accessory structures that would normally be counted as floor area shall be exempt from floor area calculations up to a maximum of:
  - (1)** For lot sizes up to 10,000 sq. ft. – up to a cumulative maximum of 200 sq. ft.
  - (2)** For lot sizes greater than 10,000 sq. ft. – up to a cumulative maximum of 400 sq. ft.

**Comment:** The above inclusion of 'floor area' corresponds to the revision to LOC 50.05.010.4.b.ii, which adds flexibility for the use of private property where new residential development avoids impacting an RP District, or where the owner elects to use HBA incentives for habitat-friendly development. This is one component of the City's Title 13 compliance program. (Where development is proposed using HBA incentives, environmental review is required.)

\* \* \*

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## 50.04.003 EXCEPTIONS, PROJECTIONS, AND ENCROACHMENTS

### 1. ADDITIONAL DIMENSIONAL EXCEPTIONS

The following section may include exceptions to the dimensional standards of LOC 50.04.001.

#### a. Adjustments

The setbacks set forth in LOC 50.04.001 may be adjusted or excepted by LOC 50.05.010.4.b (Sensitive Lands Setback Modifications), LOC 50.04.003.3 (General Exceptions to Yard Requirements), LOC 50.04.003.6 (Special Determination of Yards and Yard Requirements), LOC 50.04.003.8 (General Exceptions for Building Projections, Decks, and Walkways and Pathways to Setbacks), LOC 50.03.004.2.b (Accessory Structures), and LOC 50.08.001.3 (Solar Access). Structures which are permitted within the Oswego Lake setback (LOC 50.04.003.7) are similarly permitted within the setbacks in LOC 50.04.001 to the extent the setback area is co-terminus with the Oswego Lake setback.

\*\*\*

**Comment:** No change proposed.

### 2. GENERAL EXCEPTION TO LOT AREA AND DIMENSION REQUIREMENTS

#### a. Exceptions

If a proposed partition or subdivision would result in any existing structure becoming noncomplying with any regulation of this Code, and the structure was constructed three or more years prior to the filing of the application for the partition or subdivision, the following adjustments are allowed: a 15% deviation from lot coverage, floor area, yard setback or height requirements (adjustment to yard setbacks and height may only be applied to the lot upon which the existing structure is located); or 10% deviation from the lot area, lot width, lot depth, or lot frontage standard; provided the following criteria are met:

\* \* \*

- v. If in an RC or RP district, the partition or subdivision shall comply with LOC 50.05.010, Sensitive Lands Overlay Districts.

**Comment:** No change proposed. The reference to RC districts remains because some RC protection areas (open spaces) are comprised of conservation easements that may be located on lots where a non-conforming structure exists.

\* \* \*

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

\* \* \*

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

\* \* \*

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

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

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

**Comment:** The above provision is one component of the City’s Title 13 compliance program. Where development is proposed using HBA incentives, environmental review is required.

The exception to the minimum density standard for RC would no longer apply because existing RC on dividable property becomes HBA (Incentives). If the City were ever to amend the Urban Growth Boundary (through a Comprehensive Plan update) and apply new RC districts to the added area, it could require that development there meet the minimum density standard.

\* \* \*

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**50.06.003 CIRCULATION AND CONNECTIVITY**

\* \* \*

**3. ON-SITE CIRCULATION – BIKEWAYS, WALKWAY, AND ACCESSWAYS**

\* \* \*

**4. LOCAL STREET CONNECTIVITY**

\* \* \*

**b. Purpose and Intent**

The purpose of the connectivity standard is to ensure that:

\* \* \*

iii. Street and pedestrian and bicycle accessway design is responsive to topography and other natural features and avoids or minimizes impacts to LOC 50.05.010, Sensitive Lands Overlay Districts; LOC 50.05.011, Flood Management Area; and steep slopes pursuant to LOC 50.06.006.2, Hillside Protection;

\* \* \*

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

\* \* \*

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

\* \* \*

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

**Comment:** No changes to the connectivity standards proposed.

\* \* \*

---

**50.06.005 PARK AND OPEN SPACE CONTRIBUTIONS**

\* \* \*

**3. STANDARDS FOR APPROVAL**

**a. Amount of Open Space Required**

\* \* \*

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

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

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

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

(3) The area of the site contains resources identified as Class I or II Riparian Corridors/Wildlife Habitat **that are not designated RP** ~~Class A or B Upland Wildlife Habitat as mapped on Metro's Title 13 Regionally Significant Fish and Wildlife Habitat Inventory Map (adopted by Metro on September 29, 2005, and amended on December 8, 2005); provided, however, the maximum required area is 20% of the gross site area. See Figure 50.07.007-C: Regionally Significant Fish and Wildlife Habitat Inventory Map.~~

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

**Comment:** The above amendment is intended to prioritize open space to protect significant natural resources, while providing an incentive for habitat conservation where the City is removing RC districts from private property. This is one component of the City's Title 13 compliance program. (Where development is proposed using HBA incentives, environmental review is required.)

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

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

**Comment:** The above amendment is intended to prioritize open space to protect significant natural resources, while providing an incentive for habitat conservation where the City is removing RC districts from private property. This is one component of the City's Title 13 compliance program. (Where development is proposed using HBA incentives, environmental review is required.)

\*\*\*

**4. STANDARDS FOR CONSTRUCTION**

**a. Maintenance.**

**i. Natural Areas.**

Natural areas shall remain in natural condition existing at the time of their designation, except as follows:

- (1) Removal of invasive plants (i.e., see the Lake Oswego Master Plant List).
- (2) Removal of litter.
- (3) Installation and maintenance of any soft surface trails (note: see LOC 50.05.010.5.c.iii(5) and 50.05.010.6.c.ii(1)(e)(i)(C).

\* \* \*

- (9) Installation and maintenance of fencing that complies with the following:

\* \* \*

Such fencing shall be compliant with the provisions of LOC 50.06.004.2 regarding standards for construction and standards for maintenance of fences, and, if applicable, LOC 50.05.010.5 or 50.05.010.6.

**Comment:** No change proposed.

**50.06.006      GEOLOGICAL HAZARDS AND DRAINAGE**

\* \* \*

**3. DRAINAGE STANDARDS**

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

\* \* \*

**ii. Standards for Approval**

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

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

<b>Comment:</b> This change is for consistency with HBA procedures.
---------------------------------------------------------------------

\* \* \*

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

\* \* \*

**ii. Standards for Approval**

\* \* \*

**(3) Drainage Pattern Alteration**

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

- (a) Other properties;
- (b) RC districts on adjacent property; ~~or~~

(c) HBA protection areas on adjacent properties; or

(d) **RP** districts on adjacent property.

**Comment:** This change is for consistency with HBA procedures.

\* \* \*

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### 50.07.003 REVIEW PROCEDURES

\* \* \*

## 12. EXEMPT DEVELOPMENT

### a. Classification

Exempt developments include:

i. Landscaping or landscape alterations, unless:

(1) Such landscaping or alterations would modify or violate a condition of approval of a prior permit. In such instance, the permit shall be processed as a modification of the prior permit;

(2) Located within the Greenway Management Overlay District; or

(3) Located within an **RP** or **RC** overlay district, or an **RC** or **HBA** protection area, and not exempt from the requirements of the Sensitive Lands regulations **RP** or **RC** district pursuant to LOC 50.05.010.2.b.

**Comment:** This change is for consistency with HBA procedures.

\* \* \*

## 13. MINISTERIAL DEVELOPMENT DECISIONS

### a. Ministerial Development Classification

\* \* \*

ii. Ministerial Development Types

\* \* \*



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

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

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

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

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

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

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

\* \* \*

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

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

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

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

(9) Mitigation required under LOC 50.05.010.4.f for exempt development or **Sensitive Lands** violation mitigation.

\* \* \*

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

<b>Comment:</b> The above changes are for consistency with HBA procedures.
----------------------------------------------------------------------------

\* \* \*

## 14. MINOR DEVELOPMENT DECISIONS

### a. Minor Development Classification

\* \* \*

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

\* \* \*

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

\* \* \*

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

\* \* \*

(20) Delineation of an **RP** district.

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

**Comment:** The above changes are for consistency with the HBA procedures. Major Development Review is recommended for HBA developments where density or floor area is proposed to be transferred off-site (e.g., to an adjacent property under common ownership). See below.

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## 50.07.004 ADDITIONAL SUBMITTAL REQUIREMENTS

\* \* \*

### 7. PARK AND OPEN SPACE CONTRIBUTION

\*\*\*

#### c. Priority Open Space Areas

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

- i. Delineated RP resources;
- ii. RC district protection areas;

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

**Comment:** The above amendment supports habitat conservation where the City is replacing RC districts with the HBA overlay on private property. This is one component of the City's Title 13 compliance program. (Where development is proposed using HBA incentives, environmental review is required.)

\*\*\*

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**50.07.007 LAND DIVISIONS**

\* \* \*

**2. FLAG LOTS**

\* \* \*

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

\* \* \*

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

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

**Comment:** The Sensitive Lands overlay district supersedes other code sections. The above amendment is intended to clarify the intent, which is to avoid code conflicts.

\* \* \*

#### 4. PLANNED DEVELOPMENT OVERLAY

\* \* \*

##### b. Applicability

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

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

***[Note to City Recorder: Recommend modifying the following***

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

#### Figure 50.07.007-C: Regionally Significant Fish and Wildlife Habitat Inventory Map

\* \* \*

**Comment:** The Planned Development procedure allows adjustments to development standards of the applicable zone. The above amendment is for consistency with the proposed Habitat Benefit Areas procedures. The reference to Metro's Title 13 map is existing; it was adopted as part of a package of amendments to the Planned Development procedures in 2008, prior to the City achieving substantial compliance with Title 13. The Metro map is limited to providing an applicability threshold for Planned Developments; it does not entitle property owners to the HBA incentives under LOC 50.05.010.7. The HBA incentives are linked to the City's natural resource inventory and are limited to former RC districts.

**50.08.001      ADJUSTMENTS**

**1. R-6 ADMINISTRATIVE MODIFICATION**

\* \* \*

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

**Comment:** The above change is made for consistency with the HBA procedures.

\* \* \*

---

**50.08.002      MINOR VARIANCE**

\* \* \*

**2. VARIANCE STANDARDS**

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

**Comment:** No change proposed.

\* \* \*

#### 4. VARIANCES NOT ALLOWABLE

\* \* \*

c. No minor variance shall be granted to a setback required under LOC 50.05.010, Sensitive Lands Overlay Districts. This provision does not prevent modification of protected riparian areas or setbacks as permitted in that section.

**Comment:** No change proposed.

---

#### 50.08.003      HARSHIP VARIANCES

\* \* \*

#### 4. VARIANCE NOT ALLOWABLE

\* \* \*

c. No hardship variance shall be granted to a setback required under LOC 50.05.010, Sensitive Lands Overlay Districts. This provision does not prevent modification of protected riparian areas or setbacks as permitted by that section.

**Comment:** No change proposed.

---

#### 50.08.006      LGVC ADJUSTMENTS

\* \* \*

#### 5. ADJUSTMENT APPROVAL CRITERIA

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

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

\* \* \*

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

**Comment:** No change proposed.

\* \* \*

---

50.10.003      **DEFINITIONS**

**Comment:** Existing **Sensitive Lands terms** are provided for reference. Terms with track changes are proposed to be amended for consistency with the preceding code amendments.

\* \* \*

**2. DEFINITION OF TERMS**

The following terms shall mean:

\* \* \*

**Delineated Resource**

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

\* \* \*

**Density Transfer Acre/Acreage**

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

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

**Comment:** The above edit clarifies that density transfer may be to any “eligible” receiving site. The proposed Sensitive Lands amendments change the density transfer criteria specifically to allow transfers to adjacent sites under common ownership, not just abutting sites or other portions of the same lot.

\* \* \*

### **ESEE Analysis (Historic Preservation)**

An evaluation in which the economic, social, environmental and energy consequences to the community of designating or preserving a historic or cultural resource are considered and balanced with the community benefit of allowing change or loss of the historic or cultural resource to a conflicting use.

### **ESEE Process Analysis**

The Economic, Social, Environmental, and Energy Analysis required under Statewide Land Use Planning Goal 5. The purpose of the ESEE analysis is to balance the relative value of an inventoried natural resource against conflicting uses and thereby determine an appropriate level of protection through land use regulations. The ESEE analysis that formed the factual basis for the **Sensitive Lands** Overlay Districts (LOC 50.05.010) and was used initially to designate properties for protection under the program is the Lake Oswego Resource Areas Report and ESEE analysis, dated April 1, 1997, as revised on July 15, 1997.

\* \* \*

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

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

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

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

\*\*\*

### **HAS (Habitat Assessment Score)**

The numerical ranking applied in an ESEE inventory which represents the relative wildlife habitat values of a given natural resource site in comparison with other sites in the City. Six features are evaluated to determine the total Wildlife Habitat Assessment Score:

- a. Water;
- b. Food;
- c. Cover;



- d. Disturbance;
- e. Linkage;
- f. Unique features.

Each feature receives a "High, Medium, or Low" description and a numeric ranking as shown in the HAS rankings sheet in the Lake Oswego Resource Areas Report and ESEE analysis dated April 1, 1997, as revised on July 15, 1997 (on file in the Planning Department), to the **Sensitive Lands** districts. The maximum possible score is 124. A minimum score of 35 is necessary for a site to be considered significant for wildlife values. See the City of Lake Oswego 1994/95 Natural Resource Inventory and ESEE analysis (on file in the Planning Department) for a detailed explanation of the methodology used in applying the HAS rankings.

\* \* \*

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

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

\*\*\*

#### **Natural Resource Areas, Nondesignated**

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

\* \* \*

#### **Protected Riparian Area**

The area adjacent to a water resource described in LOC **50.05.010**.6.b.i. The protected riparian area may provide water resource functions and values and/or protect the functions and values of the adjacent stream or wetland

\* \* \*

#### **Resource Conservation Protection Area**

The portion of an **RC** district resource identified pursuant to LOC 50.05.010.5.b, **RC** District Protection Area.

**Resource Conservation (RC) District Resource**

A tree grove protected by an RC district overlay zone pursuant to LOC 50.05.010 and 50.07.004.8.

\* \* \*

**Resource Protection (RP) District Resource**

A wetland or stream corridor and protected riparian area protected by an RP district overlay zone pursuant to LOC 50.05.010, Sensitive Lands Overlay Districts.

\* \* \*

**Sensitive Lands**

Lands containing natural resources that have environmental significance within the Lake Oswego planning area (Urban Service Boundary) including wetlands, stream corridors, and tree groves. Such lands are more sensitive or easily damaged by development impacts than nonresource lands.

**Sensitive Lands Map**

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

\* \* \*

**Tree Grove**

A stand of three or more trees (of the same species or a mixture) which form a visual and biological unit, including the area between the forest floor and the canopy, including skyline trees, and including any understory vegetation existing within the canopied area. A stand of trees must be at least 15 ft. in height and must have a contiguous crown width of at least 120 ft. to qualify as a tree grove.

a. Associated Tree Grove. An associated tree grove is one that contributes to the resource value of a riparian area by extending and operating in conjunction with the habitat of the riparian area and providing flood control and water quality enhancement. A tree grove is associated if any portion of its subsite is contiguous with an RP District (stream corridor or wetland), or is contiguous with an RC District (tree grove) that itself is contiguous with an RP District. A tree grove subsite is a unit of analysis in the Natural Resource Inventory, as existing or as updated.

b. Isolated Tree Grove. A grove of trees that is not an associated tree grove.

**Comment:** Changes to definitions are for consistency with the code.

\* \* \*

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

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

1. Type 1 Permit is required for:

\* \* \*

c. A tree that is not:

\* \* \*

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

**Comment:** No change proposed. Where a property receives development approval with HBA incentives, conditions of approval will require tree preservation which would supersede LOC 55.

\* \* \*

3. Dead Tree Removal Permit:

\* \* \*

b. In order to provide for wildlife habitat and natural processes, the City Manager may require the retention of a dead tree. Dead trees shall not be removed if located in wetlands, **RC protection areas** ~~Protection Areas~~ (LOC 50.05.010.5.b), **HBA protection areas**, stream corridors, parks or open space areas required to be preserved as a condition of development approval unless the tree presents a potential hazard to persons or property.

**Comment:** No change proposed. Where a property receives development approval with HBA incentives, conditions of approval will require tree preservation which would supersede LOC 55.

\*\*\*

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**55.02.050 (TREE CODE) Application for Permits.**

1. An application for a tree cutting permit shall be made upon forms prescribed by the City.
  - a. Invasive Tree Species Removal Permit. An application for an invasive tree species removal permit shall contain:
    - i. Photograph(s) that positively identify the tree species;
    - ii. The number, DBH, species, and location of the trees proposed to be cut on a site plan of the property. For large forested tracts, the City Manager may accept an estimate of the number of invasive trees to be removed with a site plan indicating the estimated number, location, DBH, and species;
    - iii. Information as to whether the tree is located in a public right-of-way, is within a Resource Conservation or Resource Protection Overlay District, or is part of an approved landscape or mitigation plan;

**Comment:** No change proposed.

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---

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

\*\*\*

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

\*\*\*

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

**Comment:** The above change is for consistency with the HBA procedures.

\*\*\*

---

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

\*\*\*

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

\*\*\*

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

**55.02.130 (TREE CODE) Penalties.**

\* \* \*

4. Restoration.

\* \* \*

b. The City may require the person to pay into the City's Tree Fund an increased fee per caliper inch for the total number of caliper inches of the tree removed in violation of this Chapter in an amount as established by resolution of the City Council or the value of the tree as determined by an arborist in accordance with the methods set forth in the "Guide for Plant Appraisal," an official publication of the International Society of Arboriculture, whichever is greater, if any of the following apply:

\* \* \*

iii. The tree removed was any of the following:

\* \* \*

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

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

**Comment:** The above change is for consistency with the HBA procedures.

-END-