



TO: Mayor Studebaker and City Council

CC: Scott Lazenby, City Manager
David Powell, City Attorney

FROM: Scot Siegel, Director
Planning and Building Services

SUBJECT: Public Hearing on Natural Resources Program and Sensitive Lands Revisions
(LU 15-0019/Ordinance 2687)

DATE: November 4, 2015 **HEARING:** November 17, 2015

On November 17, 2015, the City Council will conduct a public hearing on the proposed Natural Resources Program and Sensitive Lands Revisions (LU 15-0019/Ordinance 2687). These revisions consist of the following:

- Section 1 of the ordinance amends the City’s Comprehensive Plan to include a new Healthy Ecosystems Chapter with goals, policies, and recommended action measures for Natural Resources, Urban Forest and Vegetation, Open Spaces, Oswego Lake, Air Quality, and Willamette River Greenway, as shown in **Exhibit A-1.1, Attachment B**.
- Section 2 repeals existing Comprehensive Plan chapters titled “Goal 5: Open Spaces & Natural Areas,” “Goal 6: Air Resources Quality,” and “Goal 15: Willamette River Greenway.” The Healthy Ecosystems Chapter consolidates and replaces these chapters, each of which had previously been carried forward from the 1994 Comprehensive Plan into the 2013 Plan.
- Section 3 amends the Sensitive Lands Map (Comprehensive Plan Map and Zoning Map) to update the locations and boundaries of existing Resource Conservation (RC) and Resource Protection (RP) Overlay District designations, and to add Habitat Benefit Areas (HBA) Overlay District designations (for a new incentives program), as depicted in **Exhibit A-1.1, Attachment C**.
- Section 4 amends Lake Oswego Code Chapter 50 (Community Development Code), Chapter 42 (Streets and Sidewalks), Chapter 47 (Signs), and Chapter 55 (Tree Code), as contained in **Exhibit A-1.1, Attachment D**, as relating to Sensitive Lands.

CITY COUNCIL GOAL AND POLICY DIRECTION

In addition to updating the Natural Resources provisions of the Comprehensive Plan, Ordinance 2687 implements the City Council goal to revise the Sensitive Lands regulations and reduce the regulatory burden on private property owners. It was developed pursuant to the following Council direction provided on May 19, 2015:

- Use the most current and accurate mapping available, which is the 2014 LiDAR (Light Detection and Ranging) aerial photography, from the Oregon Department of Geology and Mineral Industries (DOGAMI) for the Portland region;
- Apply RP district (stream and wetland) regulations consistently based on updated mapping and the City's current level of regulation;
- Remove RC districts where allowed by Metro and the State, and avoid triggering water quality compliance issues (maintain stream protections); and
- Pursue other code reforms that provide relief to property owners while maintaining compliance with Metro and State requirements.

BACKGROUND AND DISCUSSION

The Planning Commission on October 12 recommended the City Council approve the proposed amendments. The Commission held eight public work sessions, issued two public review drafts of the proposal, received input from Metro and State natural resource regulatory agencies, and conducted two public hearings on the final draft in September. The proposal is responsive to the above City Council direction.

The proposed Sensitive Lands Map is attached as **Exhibit A-1.1, Attachment C**. A full size version of the map can be viewed at City Hall or online using the City's interactive GIS map, which is accessed here:

<http://gis.ci.oswego.or.us/PCRecommended101215/>

The Sensitive Lands revisions are intended to accomplish the following:

1. **Correct the mapping of existing Resource Protection (RP) Districts.** The RP designation applies to streams and wetlands that are designated Sensitive Lands. The proposed map maintains the current designations but is based on the most up to date and accurate information available for determining stream location and topography (Oregon Department of Geology and Mineral Industries 2014 LiDAR mapping). The proposed map shows existing stream and wetland classifications with corrected stream centerlines, topography/top of bank, and required protection areas or buffers as currently required by code. Unlike the current Sensitive Lands Map, which in many instances shows stream corridors and wetlands without their required protection areas, or with buffers on only one side of a stream (where an RP district delineation has occurred), the proposed map shows RP districts with required buffers on both sides of a stream and for the full extent of the stream. These changes result in RP districts being added to some properties and removed from others. (Field verification will continue to

be required prior to development for RP-designated properties.) However, more properties overall are proposed to have Sensitive Lands regulations (RP or RC districts) entirely removed than added. Where a Sensitive Lands designation would be newly added to a property, the City provided notice of the change in zoning per state law; a total of 335 properties were affected in this way, as compared to 432 properties that are having Sensitive Lands regulations completely removed. The City also provided notice and information on the proposal to owners of existing Sensitive Lands.

2. **Provide clear and objective standards.** The proposed code amendments (**Exhibit A-1.1, Attachment D**) are intended to provide clear and objective standards while simplifying the Sensitive Lands overlay districts as described in #3, below. The amendments also add flexibility for property owners where lots are fully encumbered, and provide more clarity for minor building additions and remodel projects. (See in LOC 50.05.010 and LOC 50.07.04.8, as amended in Exhibit A-1.1, Attachment D.) The City is not proposing to remove any stream or wetland from the Sensitive Lands program, and no change is proposed to the City's Flood Management program, storm drainage standards, or erosion control requirements.
3. **Simplify the zoning overlays.** Where an RC district currently abuts an RP district on private property, the portion of the RC district closest to the stream or wetland is consolidated with the RP district to create a standard stream/wetland buffer of 50 feet, consistent with Metro Title 3. The area of consolidation is represented on the proposed map by the dark blue edging at the perimeter of some RP districts. Portions of RC districts beyond the 50 foot riparian buffer are proposed to be removed from private property if they are not further dividable (De Minimis change) or replaced with the Habitat Benefit Areas (HBA) incentive program described below. Where no RC district abuts an existing RP district, the RP district is not extended. By consolidating districts (RP and a portion of RC), the proposal simplifies stream and wetland overlays while maintaining substantial compliance with Metro Title 3. The consolidation is necessary because the City is proposing to remove or replace RC districts, or portions of RC, that lie within areas subject to Title 3. See also, the proposed amendments to LOC 50.07.004.8 (**Exhibit A-1.1, Attachment D**) and the discussion below under items 6-8, relating to the proposed changes to RC Districts.
4. **Complete the mapping of contested case sites.** The City is proposing to add RP districts to properties that were proposed for designation in 1997 but were not designated RP because the then owners contested the designations at the time. The former West End Building property at Kruse Way and Daniel Way is an example of where this occurred and where the City now proposes to designate RP (and HBA) districts.

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 receives 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 but other code requirements such as those for Hillside Protection, trees, drainage, and erosion control would continue to 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. Staff has been in contact with the owner of the former West End Building property (Yakima) regarding the proposed ordinance; the owner did not submit testimony for the Planning Commission hearing. The Planning Commission did receive testimony from the owner at 2810 Poplar Way, another contested case property; the Commission's findings (#4) respond to the testimony.

5. **Expand the RP designation where resources exist on City-owned property.** The City is proposing to expand the RP district located to the east of the Hunt Club (Lake Oswego-Tigard Water Project Staging Area) adjacent to Iron Mountain Road, to complete the mapping of the wetland complex in that area. The Parks Department is currently developing a plan for Iron Mountain Park which will provide for restoration of the wetlands, thereby adding to the City's Sensitive Lands inventory.
6. **Increase protections on public and private open spaces.** The RC designation will remain on public and private open spaces, where the level of protection for designated tree groves is proposed to increase from 50% to 85% of the grove. (See summary table on page 5.) This includes all currently designated RC districts on public land and private open spaces. As detailed in the Planning Commission Staff Report (**Exhibit D-1**, pages 19-23) the proposed increased level of protection compensates for the shift to an incentive program on private properties where Title 13 resources remain. The proposed code amendments also provide for the transfer of required RC protection area between lands under the same ownership, and allow credit where tree groves are restored, provided the transfer or restoration is within the same Habitat Resource Area (as shown in the City's Natural Resources Inventory).

Summary of Sensitive Lands Map Changes*		
Changes to RC Districts	Properties	Acres
Removal of RC	364	33
RC converted to HBA incentive	395	91
RC converted to RP	380	74
RC retained on public and private open spaces	180	284
Total RC area		482
Effect of Changes to RC Districts		
Existing RC protection area (50% of total RC area)		241
Proposed RC protection area (85% of RC, plus 100% of RC convert to RP)		315
Net change in RC protected area		+74
Changes to RP Districts		
RP properties added per LiDAR mapping (Includes 73 acres of single family residential land, 44 acres of open space and public land, and 31 acres of ROW)	335	182
RP properties removed per LiDAR mapping (Includes 8 acres of single family residential land, 5 acres of open space and public land, and 1 acre ROW)	68	19
Net RP lands added	267	163

***Notes:**

Some properties under “Changes to RC Districts” are included in more than one RC category. For example, on some lots RC is both converted to HBA (or removed) and converted to RP, in order to maintain compliance with Metro Title 3. However, acreage is counted only once as subtotals are specific to each subcategory. (See also, **Exhibits E-1.1 and E-2.2** for a breakdown of properties by property type and resource designation.)

One metric that is not included but which has been of interest to the community is the number of single family residential lots affected by the removal of Sensitive Lands districts.

Approximately 468 non-dividable residential lots with RC districts today are proposed to have RC district removed or converted to the non-regulatory HBA designation. By comparison, RP districts will apply (or continue to apply) to 887 non-dividable residential lots. **See also, Exhibits E-1.1 and E-2.2.**

It is also important to note that the estimated net increase in RC protected area on public and private open spaces should be discounted somewhat, as a few RC districts already have an RC Protection Area established. However, the overall effect of the code changes will be a comparable or increased level of habitat protection.

7. **Provide incentives for habitat protection and enhancement on private property.** The Habitat Benefit Area (HBA) designation is an incentive program that applies to private properties formerly designated RC; except where Title 13 allows removal of RC districts outright, as a “De Minimis” change. The HBA designation is part of the City’s alternative approach to compliance with Metro Title 13, which allows for non-regulatory approaches to habitat conservation. It applies to dividable residential properties and properties that may not be dividable but that Metro designates as Title 13 Riparian areas. It is important to note that even where RC districts are proposed to be removed, development is already subject to other regulations that provide varying levels of protection. In these areas, as well as for the City as a whole, the following existing code requirements, some of which are not land use code requirements, continue benefit habitat conservation: Planned Developments (open space requirement), Hillside Protection Standards, Tree Code, Clean Streams/Surface Water Management Standards, and Erosion Control. The Planning Commission Staff Report, **Exhibit D-1** (pages 19-23), and **Exhibits E-2.1, E-3, and E-4** address the City’s compliance with Title 13 in detail.

Other properties not designated HBA may opt-in to the incentives program (code exceptions) if they meet certain code criteria. See **Exhibit A-1.1, Attachment D**, LOC 50.05.010.7. The Planning Commission has also recommended the City Council explore the availability of opportunities with the State to develop and implement a tax incentive program to further encourage habitat protection and habitat-friendly development.

8. **Removal of RP and RC designations.** The proposed Sensitive Lands Map (**Exhibit A-1.1, Attachment C**) shows RP district lands removed where they exceed current code criteria for protection areas; these areas are shown in red and reflect corrections based on more accurate LiDAR data on stream locations and topography. Removed designations also consist of current RC district lands that meet Metro criteria for removal under Title 13 (“De Minimis” change) or are no longer significant under the City’s prior Goal 5 program (shown in orange). Again, in these areas, as well as for the City as a whole, the following existing code requirements, some of which are not land use code requirements, benefit habitat conservation: Planned Developments (open space requirement), Hillside Protection Standards, Tree Code, Clean Streams/Surface Water Management Standards, and Erosion Control.

POLICY ISSUES FOR CONSIDERATION

In addition to recommending approval of LU 15-0019 (adoption of Ordinance 2687), as contained in Exhibit A-1.1, the Planning Commission approved two related motions:

1. *The Planning Commission recommends the City Council explore the availability of opportunities with the State to develop and implement a tax incentive program to encourage habitat protection and habitat-friendly development.*

The Oregon Department of Fish and Wildlife (ODFW) administers two tax reduction programs, one for upland wildlife habitat and one for riparian habitat.¹ The Council may wish to consider if such a program would apply, given that it would be a new program that would potentially impact the general fund. Staff with ODFW has indicated it would work with the City to develop such a program, but has limited staff resources to administer it. ODFW recommends that any tax reduction be directed first to habitat areas where regulations are removed.

2. *The Planning Commission recommends the City Council direct the City Manager to evaluate annexed lots consistent with the provisions of the Sensitive Lands code. This recommendation pertains to designation of RP districts where streams and wetlands are not already mapped and an annexation is proposed. The Code (LOC 50.07.004.8) directs the City Manager to initiate the designation process upon finding ‘a previously unmapped resource that is likely to meet the criteria for resource designation’. Under the proposed code, on private property (non-open space tracts), this would apply only to streams and wetlands. Commissioners reasoned that it is important to treat similarly situated properties the same and to maintain an effective natural resources program.*

EXHIBITS

A. Draft Ordinances

A-1.1 Draft Ordinance 2687, 10/23/15

Attachment B: Proposed Amendments to Comprehensive Plan Healthy Ecosystems Chapter, 10/12/15

Attachment C: Proposed Amendments to Comprehensive Plan Map and Zoning Map, 10/05/15

Attachment D: Proposed Amendments to Community Development Code, 10/12/15

B. Findings, Conclusion and Order

B-1 Planning Commission Findings, Conclusions and Order, 10/12/15

(Please note that Attachment B (10/12/15), Attachment C (10/05/15) and Attachment D (10/12/15) referenced in the Findings are not included. Refer to

¹ In a study session on March 10, 2015, the City Council discussed the tax incentive/reduction programs administered by the Oregon Department of Fish and Wildlife.

Attachments B, C, and D of Draft Ordinance 2687 (Exhibit A-1.1). The complete set of Findings can be viewed using the link below.

C. Minutes

- C-1 Planning Commission Minutes, 09/14/15
- C-2 Planning Commission Minutes, 09/28/15

D. Staff Reports

- D-1 Planning Commission Staff Report, 09/04/15
- D-2 Planning Commission Supplemental Staff Report, 09/10/15
- D-3 Planning Commission Supplemental Staff Report, 09/23/15

E. Graphics/Plans

- E-1 RP Districts Summary Table, 09/03/15 (superseded by Exhibit E-1.1)
- E-1.1 RP Districts Summary Table, 11/04/15
- E-2 RC and HBA Districts Summary Table, 09/02/15 (superseded by Exhibit E-2.1)
- E-2.1 RC and HBA Districts Summary Table, 09/10/15 (superseded by Exhibit E-2.2)
- E-2.2 RC and HBA Districts Summary Table, 11/04/15
- E-3 ESEE Analysis of Tree Groves, 09/04/15
- E-4 RC and HBA Slope Analysis Map, 08/31/15

F. Written Materials

- F-1 Summary of Public Testimony and Staff Response, 09/22/15

G. Letters

- G-1 E-Mail from Eero Tantt, 08/28/15
- G-2 E-Mail from Roger Locke, 09/08/15
- G-3 Letter from Lake Oswego School District, 09/10/15
- G-4 Letter from Peter Finley Fry, 09/14/15
- G-5 E-Mail from Matt McCullough, 09/12/15
- G-6 E-Mail from Scott Bullard, Forest Highlands NA, 09/12/15
- G-7 Letter from John (Cap) Hedges, 09/14/15
- G-8 E-Mail from Jerry and Joan Wells, 09/14/15
- G-9 E-Mail from Skip Ormsby, Birdshill NA, 09/14/15
- G-10 E-Mail Letter from Jim Labbe, Audubon Society of Portland, 09/14/15
- G-11 E-Mail from Tryon creek Watershed Council, 09/14/15
- G-12 Letter from LO Stewards, 09/14/15
- G-13 E-Mail from Chris Robinson, 09/14/15
- G-14 E-Mail from Tim Dugan, 09/15/15
- G-15 E-Mail from Joe Barra, 09/15/15
- G-16 Letter from LO Stewards, 09/28/15
- G-17 Statement from Michael Buck, 09/28/15
- G-18 Statement from Carolyn Jones, 09/28/15

BACKGROUND MATERIAL AND REFERENCES

Staff reports and background materials that were prepared for this proposal (including Planning Commission work sessions) can be found by visiting the project webpage for LU 15-0019.

Use the following link to visit the City's "Project" page. In the "Search" box enter LU 15-0019 then press "Submit": <http://www.ci.oswego.or.us/projects>