

STAFF REPORT

CITY OF LAKE OSWEGO

PLANNING AND BUILDING SERVICES DEPARTMENT

APPLICANT

City of Lake Oswego

FILE NO.

LU 15-0019 – Natural Resources Program and Sensitive Lands Revisions (Ordinance 2687)

LOCATION

Citywide

STAFF

Scot Siegel, Planning and Building Director

DATE OF REPORT

September 4, 2014

PLANNING COMMISSION HEARING DATE

September 14, 2015

I. APPLICANT'S REQUEST

This is a request from the City of Lake Oswego to amend the Comprehensive Plan (text and map), Community Development Code, and Zoning Map. Ordinance 2687 would amend the Comprehensive Plan by adopting a new Healthy Ecosystems chapter, replacing Plan provisions under Goal 5 (Open Spaces, Scenic and Natural Resources), Goal 6 (Air Resources Quality), and Goal 15 (Willamette River Greenway). The ordinance would amend the Community Development Code (CDC) and Zoning Map to implement revisions to the Sensitive Lands overlay districts (LOC 50.05.010 and LOC 50.07.004.8), consistent with the Healthy Ecosystems chapter. Code cross-references contained in the CDC, LOC 42 (Streets and Sidewalks), LOC 47 (Signs), and LOC 55 (Trees) are also to be amended for consistency with the CDC.

II. APPLICABLE REGULATIONS

The Planning Commission must apply the following policies and regulations in its review of this legislative proposal:

A. City of Lake Oswego Comprehensive Plan (2013)

Land Use Planning Chapter

Community Culture Chapter, Citizen Engagement Section

Community Health and Public Safety Chapter, Public Facilities and Services:
Surface Water Management Section

Healthy Ecosystems Chapter (*Proposed*)

Open Spaces, Scenic and Natural Resources Chapter (Goal 5) – *Proposed to be replaced with new Healthy Ecosystems chapter*

Air Resources Quality Section (Goal 6) – *Proposed to be replaced with new Healthy Ecosystems chapter*

Willamette River Greenway (Goal 15) – *Proposed to be replaced with new Healthy Ecosystems chapter*

B. Metro Urban Growth Management Functional Plan

Title 3: Water Quality and Flood Management, Metro Code Sections 3.07.330 and 3.07.340

Title 13: Nature in the Neighborhoods, Metro Code Section 3.07.1330

C. Statewide Planning Goals

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

Goal 6: Air, Water, and Land Resources Quality

Goal 15: Willamette River Greenway

D. City of Lake Oswego Community Development Code – Legislative Decision

LOC 50.07.003.a Legislative Decisions

LOC 50.07.003.b Criteria for Legislative Decisions

LOC 50.07.003.c Required Notice to DLCD

LOC 50.07.003.d Planning Commission Recommendation Required

LOC 50.07.003.e City Council Review and Decision

III. INTRODUCTION/BACKGROUND INFORMATION

Proposal Summary

Ordinance 2687 addresses changes in the community since the Comprehensive Plan was last updated with respect to natural resources in 1994, and it carries out the City Council's longstanding goal to implement the reform of the Sensitive Lands regulations. Over the past two years, the City has consulted with Metro and State natural resource regulatory agencies,

conducted ongoing citizen involvement, and performed modeling of various resource protection options, resulting in the proposed package of legislative amendments.

In summary, Ordinance 2687:

1. Amends the Lake Oswego 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. The Healthy Ecosystems chapter provides updated background information to reflect changes in the community since 1994. See Exhibit A-1, Attachment B.
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 updates these chapters, each of which had previously been carried forward from the 1994 Comprehensive Plan.
3. Amends the 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 adds a Habitat Benefit Areas (HBA) Overlay District designation (identifying lands eligible for habitat-friendly development incentives), as depicted in Exhibit A-1, Attachment C.
4. Amends Lake Oswego Code Chapter 50 (Community Development Code), Chapter 42 (Streets and Sidewalks), Chapter 47 (Signs), Chapter 52 (Erosion Control), and Chapter 55 (Tree Code), for consistency with the Healthy Ecosystems chapter and updated natural resources policies, and implements revisions to the Sensitive Lands program as directed by City Council. See Exhibit A-1, Attachment D.

The Planning Commission will conduct a public hearing on the proposed ordinance September 14, 2015 and make a recommendation to the City Council.

Intent of Sensitive Lands Revisions

The proposed ordinance is based on City Council direction, citizen input and Planning Commission discussion at eight work sessions during 2014-2015, public comment on two public review drafts of the proposal published in April and May of 2015, and input from Metro and State natural resource regulatory agencies.

The City Council provided the following direction with regard to Sensitive Lands, most recently when it met on May 19, 2015:

- Use the most current and accurate mapping available, which is the 2014 LiDAR (Light Detection and Ranging) aerial photography, prepared by Oregon Department of Geology and Mineral Industries (DOGAMI) for the Portland region;

- Apply natural resource regulations evenly (fairly) based on updated mapping and current levels of regulation;
- Remove RC districts where allowed by Metro, 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.

Overview of Sensitive Lands Map Revisions (“Refined Option 2”)

The proposed amendments to the Sensitive Lands Map (Exhibit A-1, Attachment C), summarized below, can be viewed in hardcopy format at City Hall or downloaded from the project [webpage](#) (see page 25). In addition, the interactive map can be viewed here:

<http://gis.ci.oswego.or.us/RevisedOption2>

1. **Resource Protection (RP) District.** The RP designation applies to streams and wetlands that are currently designated Sensitive Lands. The proposed map is based on the most current and accurate mapping available (2014 LiDAR) and was developed after the City modeled various resource protection options in consultation with DEQ and Metro. It shows existing stream and wetland classifications with corrected stream centerlines and topography. Unlike the current Sensitive Lands Map, which in many instances shows stream corridors and wetlands without their required riparian protection areas (buffers), or with buffers on only one side of a stream where an RP district delineation has occurred, this map shows RP districts with required buffers on both sides of a stream and for the full extent of the stream. Field verification is required prior to development.
2. **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 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 if they are not further dividable (de minimis change). For properties that are dividable, a newly created incentive program applies; see “Habitat Benefit Areas,” below.
3. **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. This includes all currently designated RC districts on public land and private open spaces. The proposed increased level of protection compensates for the shift to an incentive program on private properties where Title 13 resources remain.
4. **Habitat Benefit Areas (HBA).** The HBA designation indicates a property is eligible for habitat protection incentives. It applies to private properties formerly designated RC; except where Title 13 allows removal of RC districts as a “De Minimis” change. The HBA designation appears on dividable residential properties and properties that may not be

dividable but that Metro designates as Title 13 Riparian areas. Other properties not designated HBA may opt-in to the incentives program if they meet certain code criteria. See LOC 50.05.010.7, under the proposed Sensitive Lands code changes.

5. **Removed Designations.** Removed designations consist of current RP district lands (on the Comprehensive Plan Map or Zoning Map) that do not meet current code criteria for RP districts; these areas are shown in red and reflect corrections based on more accurate LiDAR data. 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. In these areas, as well as for the City as a whole, the following existing non-land use code requirements indirectly continue to result in benefits to habitat conservation: Planned Developments, Tree Code, Hillside Protections, Clean Streams/Surface Water Management Standards, and Erosion Control.

IV. NOTICE OF APPLICATION

A. Newspaper Notice

On September 3, 2015, public notice of the proposed Comprehensive Plan and Community Development Code amendments and Planning Commission public hearing was published in the *Lake Oswego Review*.

B. ORS 227.186 (Measure 56) Notice

As the proposed Community Development Code amendments do not limit allowed uses of property (the proposal provides for greater flexibility in private property use), no notice of the proposal was required by ORS 227.186 (Measure 56) to owners of property in the affected zones.

C. DLCD Notice

Pursuant to LOC 50.07.003.16.c and ORS 197.610, staff provided notice of the proposed CDC text amendment to the Oregon Department of Land Conservation and Development (DLCD).

D. Metro Notice

Pursuant to Metro Code 3.07.810 and .820, staff provided notice of the proposed CDC text amendment to Metro not less than 45 days prior to the hearing date.

V. COMPLIANCE WITH APPROVAL CRITERIA

A. City of Lake Oswego Comprehensive Plan

Land Use Planning Chapter Policies (Statewide Planning Goal 2):

Response: The Land Use Planning Chapter implements Statewide Planning Goal 2 (Land Use Planning), which requires a legislative decision to be supported by an “adequate factual base.” Goal 2 also requires such a decision to be coordinated with affected governmental units.

The City is using an adequate factual base for the proposed amendments, as demonstrated by the use of current LiDAR (2014) mapping for proposed Sensitive Lands amendments, the City’s responsiveness to public comments on two public review drafts, and vetting of the proposal with Metro, the State Department of Environmental Quality, Oregon Department of Land Conservation and Development, and Oregon Department of Fish and Wildlife. This coordination began two years ago and has continued through the duration of the project. The following Comprehensive Plan policies implement Goal 2:

A-1 Maintain land use regulations and standards to:

- 1. Ensure the provision of park and open space lands, and protection of natural resources;*

A-2 Ensure that land use regulations have sufficient flexibility to allow developers and the City propose measures to:

- 1. Adapt development to unique and difficult site conditions;*
- 2. Preserve open space and natural resources; and,*
- 3. Avoid negative impacts on surrounding properties.*

A-4 Use the Planned Development (PD) process as a mechanism to provide flexibility, allow innovative site design and building design, and preserve open space and natural resources.

Response: The proposed amendments to the RP district regulations are focused on the addition of clear and objective standards (e.g., mitigation), simplification of the overlay districts for certain lands (combining certain abutting RC and RP district lands to a single RP district, see page 12-13, #3), added flexibility for property owners (e.g., where lots are predominately or fully encumbered), and procedural improvements. The proposed amendments increase the protection area requirement for RC districts on public and private open space lands (from 50% to 85%) and replace RC districts with a new incentive program for habitat-friendly

development on private properties (Habitat Benefit Areas (HBAs)). The incentives include modification to lot area and dimensional standards, transfer of density and floor area (e.g., from HBA lands to adjacent sites under the same ownership), and increased building height and exceptions to certain building design standards where negative impacts to surrounding properties are mitigated. See LOC 50.05.010.7 in Exhibit A-1, Attachment D.

The above criteria are met.

B-6 Use the Community Development Code and non-regulatory programs to protect significant natural resources.

B-10 Maintain land use regulations and development standards that require new residential subdivisions and developments of four or more units to address all of the following design criteria:

- 1. Preservation of required open space and natural resources;*

Response: The proposed amendments maintain and improve the Community Development Code requirements for protection of significant natural resources by providing updated and more accurate mapping of RP districts; increased protection of RC districts on public and private open space lands; clear and objective code standards for avoidance, minimization, and mitigation of natural resource impacts; and establishment of incentives to further protect and enhance these resources. New subdivisions and developments of four or more units are currently required, and will continue to be required, to protect significant natural resources. Protection of these resource areas can also be used to satisfy the 20% open space requirement that applies to all developments of four or more dwellings, and where slopes are 20% or greater, the City's Hillside Protection Standards further restrict clearing and grading. See Exhibit A-1, Attachment D.

This criterion is met.

E-1 Ensure that amendments to the Comprehensive Plan Map (Figure 2) and Zoning Map are subject to specific locational criteria and other standards, including:*

Response: The designation (locational) criteria for Sensitive Lands (RP, RC, HBA) districts, including requirements for designating and removing districts, are contained in LOC 50.07.004.8 (Exhibit A-1, Attachment D). The proposed amendments to the Comprehensive Plan Map and Zoning Map ("Sensitive Lands Map") are consistent with these location criteria, as the Map was prepared specifically to implement the revised code in conformance with revised

Comprehensive Plan (Healthy Ecosystems). The proposed Plan, Map, and Code amendments are therefore coordinated and consistent with one another. See also, Exhibit A-1, Attachments B and C.

This criterion is met.

Community Culture Chapter, Citizen Engagement Policies (Statewide Planning Goal 1):

- 1. Provide citizen involvement opportunities appropriate to the scale of a given planning effort, and ensure those affected by a Plan have opportunities to participate in the planning process.*
- 2. Ensure that information related to land use planning and decision-making is readily accessible to the public and easy to understand.*
- 3. Utilize City boards and commissions, neighborhood associations, and other community groups to ensure a diverse and geographically broad range of citizen input in land use issues.*
- 4. Provide opportunities for citizens to engage in land use planning and decision-making, including opportunities for individual citizens who may not otherwise participate.*
- 5. Ensure direct and ongoing two-way communications between the City and Lake Oswego citizens regarding land use issues.*

- 8. Define how the public will be engaged in each phase of the land use planning process at the beginning of the process.*

Response: The proposed amendments are the result of over two years of work by staff, a technical committee, the former Comprehensive Plan Citizens Advisory Committee, and City advisory boards and commissions. It also responds to input from owners of property with sensitive lands, as it follows a long-standing goal of the City Council to reform the Sensitive Lands regulations.

During 2014-15, the Planning Commission held eight public work sessions where it reviewed drafts of the proposal and received citizen input. The Natural Resources Advisory Board provided input on the Healthy Ecosystems chapter as the proposal was refined. The City maintained constant contact with owners of Sensitive Lands properties with a series of project update letters, and notified the City's neighborhood associations as well as subscribers to City list serves. Property owners submitted comments or contacted the City with questions about preliminary drafts of the proposal, which helped to shape proposed ordinance. The City has also

provided information to the public in Hello LO, and indirectly through news articles and announcements appearing in the Lake Oswego Review.

The City published two Public Review Drafts of the proposal, one in April, and one in June of 2015. These documents were posted on the project web page (where other background and meeting information is stored). For the Public Review Drafts, the City published online, interactive, GIS maps, which allowed citizens to locate their property on a map and compare the current mapping of Sensitive Lands districts with the revised district boundaries and new designations (i.e., Habitat Benefit Areas). It also contained graphics for slope and other criteria which help made the proposal easier to understand. The online map has been updated to reflect the current proposal in Exhibit A-1, Attachment C and is accessed using this link:

<http://gis.ci.oswego.or.us/RevisedOption2>

Every person who contacted the Planning Department (by email, phone, or in person) during the Public Review Draft comment period received a personal reply and an answer to their question. In response to some contacts, as requested, City staff visited the property and met in person with the owner. All contacts were documented and reported to the Planning Commission in its final work session on the proposal, July 27, 2015.

In summary, the citizen involvement opportunities for this proposal have been appropriate to the scale of the proposal, and those who are affected have had many opportunities to participate in a variety of forums, including online, in person, on-site, and at meetings/work sessions with the Planning Commission, Natural Resources Advisory Board, and City Council. Maps, draft reports, and background on the proposal have been readily accessible to the public and the City has made an earnest effort to make the information easy to understand. Neighborhood associations and other community groups, including the Lake Oswego Corporation, were contacted and invited to comment on the Public Review Drafts, as well, to ensure a diverse and geographically broad range of citizen input. Citizens have been able to engage in the process without being on an advisory committee or attending other formal meetings.

The above criterion is met.

Community Health and Public Safety Chapter, Public Facilities and Services: Surface Water Management Policies (Statewide Planning Goal 11 Public Facilities; and Goal 6 Land and Water Resources Quality provisions):

2. *Apply development best practices to restore, protect and enhance the environmental functions and values of rivers, the lake and stream corridors, as a means to enhance water quality and fish and wildlife habitat.*

Response: The existing code and proposed amendments support the use of development best practices. The proposed Sensitive Lands amendments maintain riparian buffers consistent with Metro Title 3, and the City has coordinated the proposal with the Oregon Department of Environmental Quality (DEQ), which found that “Option 2” maintains current levels of water quality protection, consistent with the City’s Total Maximum Daily Load (TMDL) requirements. See Exhibit A-1, Attachments C and D.

This criterion is met.

3. *Protect and improve existing drainage systems and easements by:
 - b. *Discouraging modification to existing open drainage ways* that negatively impact surface water function.**

Response: The above policy is not directly applicable to the proposal. The existing Community Development Code (CDC), Utility Code (LOC 38), and proposed CDC amendments restrict or discourage development in streams and riparian areas, and therefore discourage modification of open drainage ways. See Exhibit A-1, Attachment D.

7. *Coordinate the City’s development review process with appropriate state and federal agencies and the Lake Oswego Corporation, as it pertains to water quality in Oswego Lake and the Willamette and Tualatin Rivers.*

Response: The proposed Healthy Ecosystems chapter and amendments to the Sensitive Lands regulations have been coordinated with the Oregon Department of Environmental Quality (DEQ) and the Lake Oswego Corporation, to ensure the protection of water quality in the Lake and the two major rivers, as well as area streams and wetlands. The proposal to correct the mapping of RP districts using current LiDAR data (and to not reduce riparian area buffers) is a result of the City’s modeling of water quality (i.e., potential instream temperature) impacts in consultation with the DEQ and Metro.

This criterion is met.

8. *Provide and maintain development standards that promote Low Impact Development to improve water quality, reduce impervious surfaces, promote infiltration, and preserve open space.*

Response: The proposed amendments to the Sensitive Lands regulations maintain standards and add incentives that promote low impact development. Low impact

development includes protection (or improvement of) water quality and preservation of open space through the development review process. The proposed incentives for habitat-friendly development in LOC 50.05.010.7 (Exhibit A-1, Attachment D) further support the policy. In addition, existing City standards that are not proposed to change, such as those for Park and Open Space Contribution (LOC 50.06.005), Geologic Hazards and Drainage/Hillside Protection (LOC 50.06.006), as well as two non-land use code provisions, Erosion Control (LOC 52), and Trees (LOC 55), continue to further low impact development.

This criterion is met.

Goal 5: Open Spaces, Scenic and Natural Resources

Response: The proposed Healthy Ecosystems Chapter consolidates and updates the current Goal 5 Chapter, which had been carried forward from the 1994 Comprehensive Plan to the 2013 Plan. See finding under State Goal 5, below.

Goal 6: Air Resources Quality (Statewide Planning Goal 6 Air Resources Quality provisions)

Response: The proposed Healthy Ecosystems Chapter contains an updated section on Air Resources Quality that consolidates and updates the current Air Resources Section under Goal 6, which had been carried forward from the 1994 Comprehensive Plan to the 2013 Plan. The updated section incorporates background and data from Metro on the Portland region's air quality issues and compliance plan.

This criterion is met.

Goal 15: Willamette River Greenway

Response: The proposed Healthy Ecosystems Chapter contains an updated section on the Willamette River Greenway (WRG) that consolidates and updates the current Goal 15 Chapter, which had been carried forward from the 1994 Comprehensive Plan to the 2013 Plan. Changes to this section are limited to minor edits and updates. The City is not proposing any amendments to the WRG Management Overlay District (LOC 50.05.009).

This criterion is met.

Metro Urban Growth Management Functional Plan

Title 3: Water Quality and Flood Management, Metro Code 3.07.330 and 3.07.340

Response: Metro Code Section 3.07.330 requires that the City demonstrate the proposed plan and regulations substantially comply with the performance standards in Section 3.07.340, and that its comprehensive plan/zoning map substantially complies with the

Metro Title 3 Map. “Substantial compliance” means that regulations “on the whole” conform to the purposes of the performance standards in the Metro Functional Plan and any failure to meet individual performance standard requirements is “technical or minor in nature.” [Metro Code Section 3.07.1010(fff)]

The City achieved compliance with Title 3 in 2009. At that time Metro found the Sensitive Lands Map and regulations substantially complied with the performance standards of Section 3.07.0340. Metro found that the City’s Resource Protection (RP) districts (regulations for streams and wetlands), or the RP districts combined with portions of the Resource Conservation (RC) within riparian areas, met Title 3. Although the City adopted the RP and RC districts in 1997, pursuant to Statewide Goal 5, before the existence of Title 3, Metro found these regulations provided the required vegetated corridors for streams and wetlands under Title 3.

The proposed Sensitive Lands Map amendments are based on the most current and accurate mapping available (2014 LiDAR) and were developed after the City modeled various resource protection options in consultation with Metro and the DEQ. The proposed Sensitive Lands Map shows existing stream and wetland classifications with corrected stream centerlines and topography. Unlike the current Sensitive Lands Map, which in some instances shows stream corridors and wetlands without their required protection areas (buffers), or with buffers on only one side of a stream, the proposed map shows RP districts with complete buffers, which are subject to field verification prior to issuance of a development permit.

This proposal also updates the Comprehensive Plan and amends the Community Development Code (and cross-referencing code sections). The map, policy, and code amendments maintain compliance with Title 3, as follows:

1. The City proposes to maintain existing RP district protections for streams and wetlands that are presently designated Sensitive Lands. The map amendments, based on current LiDAR aerial photography (Oregon Department of Geology and Mineral Industries, 2014), provide for greater accuracy and certainty in the location and configuration of the RP districts and their buffers, as compared to the mapping of streams for the 1997 Sensitive Lands Map. Environmental review, including verification of the location of resources, will continue to be required prior to issuance of a development permit unless the development is exempt under LOC 50.05.010.2. See Exhibit A-1, Attachment D.
2. All streams and wetlands currently regulated as RP districts will continue to be protected as RP districts and subject to the Sensitive Lands regulations in LOC 50.05.010 and LOC 50.07.04.8, as amended in Exhibit A-1, Attachment D. The City is not proposing to remove any RP district, and no change is proposed to the City’s flood management program. Amendments to the RP district regulations are focused on the addition of clear and objective standards (e.g., mitigation), simplification of

the overlay districts for certain lands (combining certain abutting RC and RP district lands to a single RP district, as described in #3, below), added flexibility for property owners (e.g., where lots are fully encumbered), and procedural improvements.

3. Where existing RC districts presently abut an RP District, and the RP District is presently less than 50 feet in width, that portion of the RC District that is within 50 feet of the subject stream or wetland is consolidated with the RP district to provide a minimum vegetated corridor of 50 feet, consistent with Title 3. By consolidating the two overlays (RP and a portion of RC), the proposal simplifies the riparian area protections while maintaining substantial compliance with the performance standards of Metro Code Section 3.07.0340. This step is necessary because the City is proposing to remove or replace RC districts, or portions of RC, lying outside the Title 3 buffers. See also, the proposed amendments to LOC 50.07.004.8 (Exhibit A-1, Attachment D) and the discussion below under Title 13, relating to proposed changes to the RC Districts.
4. The RP districts are proposed to be extended to the upper reaches or headwaters of some streams or tributaries that are currently omitted from the Sensitive Lands Map. The City had previously considered removing RP districts from all areas draining less than 50 acres, per Metro's criteria for Secondary Water Features; however, upon closer analysis and modeling of potential water quality impacts (reduced shade and increased pollutant loads), and in consultation with the DEQ, the City now proposes to complete the mapping of those areas as described above. Environmental review, including verification of the location of resources, is required prior to issuance of a development permit unless the development is exempt under LOC 50.05.010.2. See Exhibit A-1, Attachment D.
5. The code criteria for designating or removing RP districts, as contained in LOC 50.07.04.8, are not proposed to change. While Metro's criteria for Primary and Secondary Protected Water Features do not translate directly to the City's RP designations of Class I and Class II streams (e.g., under Metro criteria, some Class I streams would be Secondary Protected Water Features, and some Class II streams would be Primary Protected Water Features) the differences are not germane. The City is proposing to amend (for accuracy) its acknowledged Title 3 (and Goal 5) compliant Sensitive Lands program (map and code), not repeal and replace it, as had been presented in the April, 2015 Public Review Draft of the proposal.
6. The City is proposing to add RP districts to properties with streams and wetlands 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 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 but other code requirements such as those for 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.

7. The City is proposing to expand the RP district located to the east of the Hunt Club (Lake Oswego-Tigard Water Project Staging Area) along Iron Mountain Road, to complete the mapping of the wetland complex in this area. The City is currently developing a plan for this portion of Iron Mountain Park and plans to restore the wetlands, which will add to the inventory of protected wetland resources in the City.

This criterion is met.

B. Water Quality Performance Standards.

1. *The purpose of these standards is to: (1) protect and improve water quality to support the designated beneficial water uses as defined in Title 10, and (2) protect the functions and values of the Water Quality Resource Area which include, but are not limited to:*
 - a. Providing a vegetated corridor to separate Protected Water Features from development;*
 - b. Maintaining or reducing stream temperatures;*
 - c. Maintaining natural stream corridors;*
 - d. Minimizing erosion, nutrient and pollutant loading into water;*
 - e. Filtering, infiltration and natural water purification; and*
 - f. Stabilizing slopes to prevent landslides contributing to sedimentation of water features.*

Response: The proposed Sensitive Lands amendments maintain substantial compliance with the above water quality performance standards. Current RP district standards require retention of vegetation, including tree canopy, which provides shading over streams. This can have the effect of reducing water temperature over time as the tree canopy grows. Restrictions on land disturbing activity and retention of vegetation also help to control erosion and nutrient and pollutant loading in streams (e.g., by providing for slope stabilization, filtering surface water runoff, and reducing volumes or slowing the rate of runoff).

Where RC areas are proposed to be removed or consolidated with RP districts, current riparian area protections will be maintained in substantial compliance with Title 3. Where greater flexibility in property use is proposed (e.g., options for fully encumbered lots), the proposed code contains performance standards for low impact development and requires environmental review to avoid, minimize, mitigate negative impacts. See LOC 50.05.010.6.d, Exhibit A-1, Attachment D.

The City has also coordinated the proposed Sensitive Lands revisions with DEQ, which has found that the proposal (“Option 2”) maintains current levels of water quality protection, in compliance with the Total Maximum Daily Load (TMDL) requirements. See Exhibit A-1, Attachments C and D.

This criterion is met

2. *Local codes shall require all development in Water Quality Resource Areas to conform to the following performance standards:*
 - a. *The Water Quality Resource Area is the vegetated corridor and the Protected Water Feature. The width of the vegetated corridor is specified in Table 3.07-3. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the width of the property, the width of the vegetated corridor will vary.*

Response: The City’s existing Sensitive Lands Map and Code are not directly comparable to the Metro Title 3 Map and Code (Table 3.07-3). The City’s program predates Title 3, and the City and Metro classify streams differently. However, the proposed amendments maintain substantial compliance with Title 3, as described above. The proposed RP district regulations in LOC 50.05.010 and LOC 50.07.004.8 maintain vegetated riparian corridors that are equivalent to the current (RP+RC districts) protections, within the areas subject to Title 3, while increasing the accuracy of the Sensitive Lands Map and improving certainty for property

owners. The proposed amendments to the RP district measurement methodology in LOC 50.07.004.8 (e.g., intervals for slope measurement) conform to the above standard, as well. See Exhibit A-1, Attachments C and D.

This criterion is met.

b. Water Quality Resource Areas shall be protected, maintained, enhanced or restored as specified in Section 3.07.340(B)(2).

Response: This criterion is met, per the response to 'a', above.

c. Prohibit development that will have a significant negative impact on the functions and values of the Water Quality Resource Area, which cannot be mitigated in accordance with subsection 2(f).

Response: The proposed amendments to the Sensitive Lands regulations continue to require avoidance of negative impacts to designated resources. Where avoidance is not practicable, impacts must be minimized and any unavoidable impacts must be mitigated. Where an applicant elects to use the performance standards for development on fully encumbered lots, the proposed code contains performance standards for low impact development and requires environmental review to avoid, minimize, and mitigate negative impacts. See LOC 50.05.010.6.d in Exhibit A-1, Attachment D.

This criterion is met.

d. Native vegetation shall be maintained, enhanced or restored, if disturbed, in the Water Quality Resource Area. Invasive non-native or noxious vegetation may be removed from the Water Quality Resource Area. Use of native vegetation shall be encouraged to enhance or restore the Water Quality Resource Area. This shall not preclude construction of energy dissipaters at outfalls consistent with watershed enhancement, and as approved by local surface water management agencies.

Response: The proposed Sensitive Lands amendments require protection of native vegetation, to the extent practicable, where development is permitted, and mitigation with the use of native vegetation on the City's Master Plant List. The amendments also encourage the removal of invasive species and replanting with native

species. See HBA incentives in LOC 50.05.010.7 (Exhibit A-1, Attachment D).

The proposed amendments also establish objective planting standards for mitigation and encourages resource enhancement and restoration projects by allowing these projects through a ministerial permit process. The City's Master Plant List is codified in LOC 50.11.004, and is not proposed to change.

This criterion is met.

e. Uncontained areas of hazardous materials as defined by DEQ in the Water Quality Resource Area shall be prohibited.

Response: The City is not proposing any change to the existing restrictions on dumping and uncontained storage of hazardous materials. This criterion is met.

f. Cities and counties may allow development in Water Quality Resource Areas provided that the governing body, or its designate, implement procedures which:

- i. Demonstrate that no practicable alternatives to the requested development exist which will not disturb the Water Quality Resource Area; and*
- ii. If there is no practicable alternative, limit the development to reduce the impact associated with the proposed use; and*
- iii. Where the development occurs, require mitigation to ensure that the functions and values of the Water Quality Resource Area are restored.*

Response: The Sensitive Lands amendments maintain the current requirement that development avoidance negative impacts to designated resources, or, where avoidance is not practicable, minimize impacts, and mitigate any unavoidable impacts.

This criterion is met.

g. Cities and counties may allow development for repair, replacement or improvement of utility facilities so long as the Water Quality Resource Area is restored consistent with Section 3.07.340(B)(2)(d).

Response: The Sensitive Lands amendments maintain the current allowed uses of repair, replacement and improvement of utility facilities, subject to construction management and mitigation requirements.

This criterion is met.

h. The performance standards of Section 3.07.340(B)(2) do not apply to routine repair and maintenance of existing structures, roadways, driveways, utilities, accessory uses and other development.

Response: The Sensitive Lands amendments maintain the current exemption for the routine repair and maintenance activities described above.

This criterion is met.

3. *For lots or parcels which are fully or predominantly within the Water Quality Resource Area and are demonstrated to be unbuildable by the vegetative corridor regulations, cities and counties shall reduce or remove vegetative corridor regulations to assure the lot or parcel will be buildable while still providing the maximum vegetated corridor practicable. Cities and counties shall encourage landowners to voluntarily protect these areas through various means, such as conservation easements and incentive programs.*

Response: The proposed Sensitive Lands amendments clarify the current standards for development on parcels that are fully or predominantly within an RP district or RC protection area. The RP District currently allows for construction of one dwelling in these circumstances, regardless of lot size. The code has been interpreted to require that the dwelling shall be no larger than the maximum dwelling size allowed on the minimum lot size of the zone. A proposed amendment to LOC 50.05.010.6.d codifies that interpretation and allows for one dwelling or the equivalent dwelling space (floor area and lot coverage). The amendment contains performance standards for low impact development and requires environmental review to avoid, minimize, and mitigate negative impacts. See LOC 50.05.010.6.d, in Exhibit A-1, Attachment D.

This criterion is met.

Title 13: Nature in the Neighborhoods, Metro Code Section 3.07.1330

Response: The three alternative methods for demonstrating compliance with Title 13 in subsection 3.07.1330B are intended to be functionally equivalent: Subsection B.1 (adoption of the Model Ordinance and Metro Map) is a safe harbor; Subsection B.2 (demonstrate that the existing or new regulations and maps substantially comply with the performance criteria in Title 13 and the Metro Map) is the City's existing program; and B.3 (allowing a combination of regulations, incentives, and non-regulatory programs) is what the City proposes in Ordinance 2687.

In order to comply with Title 13, the City has to demonstrate that the alternative B.3 program provides "substantially comparable protection and restoration" to the protection provide by a B.1 or B.2 program. The City must also demonstrate that its B.3 program will "provide a certainty of habitat protection." Read in context, the City interprets this as requiring clear proof that the program will in fact provide levels of protection comparable to the B.1 or B.2 alternatives.

Reliance on regulations other than sensitive lands, such as the City's tree protection ordinance (LOC 55) and hillside protection standards (LOC 50.06.006, Geologic Hazards and Drainage) are some of the listed Title 13 strategies that can be used to demonstrate that a B.3 alternative program will provide a comparable level of protection. See B.3.b.i. However, for the last twenty years the City has had hillside protections *and* sensitive lands code provisions that have resulted in protection to upland habitat, as well as non-land use tree code provisions which have had indirect habitat benefits. Therefore, the hillside standards and the indirect benefits of the tree code provisions alone may not be sufficient to demonstrate compliance with Title 13.

Notwithstanding the above, Title 13 allows the City to use hillside protection standards and the benefits of the non-land use tree code provisions, in *combination* with a robust incentive program (per the strategies listed in B.3.b), to demonstrate that the City's B.3 program provides comparable levels of protection. The City's Habitat Enhancement Fund is an example of a newly created program that provides incentives for habitat improvement on public and private properties. The program is funded at \$250,000 annually, and in its first year the City has approved \$90,000 in habitat enhancements on public and private lands. In 2015, the City has also commenced master planning for three natural areas within existing City parks (Woodmont, Iron Mountain, and Rasekh Property on Stafford Road). While these projects are funded separately (through parks system development charges and mitigation fees) they further bolster the City's commitment to an alternative (B.3) program of habitat protection and restoration.

In terms of regulation, the City's proposed code amendments encourage both protection and restoration, whereas the existing program does nothing to achieve restoration or enhancement. The City's suite of B.3 regulatory strategies, including the Habitat Benefit Areas (HBA) incentives proposed in Ordinance 2687 (See LOC 50.05.010.7, incentives for

Habitat Benefit Areas, in Exhibit A-1.D.), and regulations that already exist (Sensitive Lands Overlay Districts, LOC 50.05.010; Hillside Protection, LOC 50.06.006; and the indirect effects that the non-land use regulations of the Erosion Control Standards, LOC 52; Tree Code, LOC 55; and Utility Code/Surface Water Management Standards, LOC 38 will have), will provide the "substantially comparable" (and possibly greater) levels of protection as compared to the existing program.

The following analysis responds to Title 13's "certainty of habitat protection" criterion:

- Approximately 74.33 acres or 15% of the current RC lands are proposed to become RP, where RC and RP are consolidated to provide a minimum 50 ft. wide buffer, per Title 3. These riparian areas are indicated by the dark blue fringes on the map in Exhibit A-1.C, which is where the required protection level is proposed to increase from 50% under RC to 100% under RP, per LOC 50.05.010.6.
- The proposal removes 36.08 acres out of 489.71 acres, or 7%, of RC district lands, including 365 lots, or an average of 0.09 acres per lot. These are non-dividable, upland properties, primarily existing residences, where the RC districts can be removed under Title 13 (De Minimis)¹. Where the properties contain steep slopes, such as those in the Skylands Neighborhood (above Glenmorrie Drive) the City's Hillside Protection requirements in LOC 50.06.006 already restrict development. Where RC is to be removed from non-hillside lots, the removal does not fragment habitat areas because the lots are already developed or the removal is at the edge (not interior) of a tree grove, as shown in Exhibit A-1, Attachment C. See also, the RC and HBA Slope Analysis Map in Exhibit E-4.
- Approximately 284.6 acres or 58% of current RC district lands are retained as RC on public and private open spaces, where the minimum required protection under LOC 50.05.010.5 is proposed to increase from 50% to 85% of the RC district on each property. The increased level of protection is significant because public and private open spaces are valuable community amenities which are often under pressure for development (e.g., for active recreation use, expansion of play fields, etc.) versus preservation as natural areas or places for habitat enhancement. These areas are distributed throughout the City and represent relatively large blocks of contiguous habitat, as opposed to the smaller, fragmented lands where RC districts are proposed to be removed from already-developed or non-dividable lots. See Exhibit A-1, Attachment C.

¹ In determining whether a property is potentially dividable, the City used the same methodology as was used for the Building Lands Inventory and Housing Needs Analysis, adopted with the 2013 Comprehensive Plan; a lot must be 2.5 times the minimum lot size of the zone, or larger. A property that is large enough to divide may not be dividable, e.g., if it does not meet other standards for development.

- Where RC districts currently apply to dividable upland properties, the City proposes a new Habitat Benefit Areas (HBA) Overlay District to replace RC. A total of 94.7 acres or 19% of RC district lands are proposed to be converted to HBA. (This includes the proposed addition of approximately 2 acres of HBA to the former West End Building Property on Kruse Way, which had been proposed as RC in 1997 but was contested by the then owner and not applied.) The HBA incentive program provides code exceptions and potential financial assistance where a land division applicant voluntarily protects or restores and protects habitat. It works in concert with the City's existing regulations, particularly the Hillside Protection standards and Tree Code, which already limit development to varying degrees, and Habitat Enhancement Grant Program.

Where the properties contain steep slopes, the City's Hillside Protection requirements in LOC 50.06.006 restrict development. As noted above, the Hillside Protection standards require that where lands contain slopes of 20%-50%, not less than 35% of the land must be left undisturbed (no clearing or grading); and where slopes are >50%, not less than 70% of the land must remain free of structures and impervious surfaces. In addition, the indirect benefits of the non-land use code provisions of the Tree Code and Erosion Control standards, and other code requirements indirectly protect habitat; new subdivisions will continue to be required to set aside 20% open space under LOC 50.06.006, even where the applicant chooses not to apply for approval using the HBA incentives. See also, the RC and HBA Slope Analysis Map in Exhibit E-4.

In conclusion, a "substantially comparable" level of protection, and possibly a greater level of restoration, is provided, where the City proposes to re-designate 94.69 acres of RC (regulated lands) to HBA (lands eligible for incentives where protection is provided). A certainty of protection by regulations is assured, consistent with Title 13, because the effective area of Title 13/Goal 5 upland habitat that is protected by the amended regulations increases with the proposed amendments. That is, where the current RC districts effectively protect approximately 245 acres out of 490 acres total RC land, per the current 50% protection area standard, the amended regulations will protect approximately 316 acres from the same land base (i.e., 242 acres of remaining RC land now protected at 85%, plus 74 acres of RC that converts to RP, which is protected at 100%). This is a 29% increase in effective protection area.² In addition, adoption of the HBA incentives gives the City and property owners more tools for protecting and restoring habitat as the community reaches build-out.

The changes apply both to tree groves that were found to be significant under Title 13 and those that were designated under the City's Goal 5 program prior to Metro's adoption of

² While it should be noted that some private open space tracts are already fully protected (per development conditions of approval), not all of them are. RC districts on private open space tracts comprise 36 acres (12%) of all open space areas (approximately 284 acres) to be retained. Public open space includes parks, natural areas, school lands, and right-of-way with RC resources.

Title 13. If the City were ever to amend its urban services boundary (following expansion of the urban growth boundary by Metro), newly added lands would be subject to concept area planning, they would be evaluated under Titles 3 and 13, and the City's Comprehensive Plan would be amended accordingly to designate the resources. See LOC 50.07.004.8.a, in Exhibit A-1, Attachment D.

C. Statewide Planning Goals

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

Response: The proposed Healthy Ecosystems Chapter consolidates and updates the current Goal 5 Chapter, which had been carried forward from the 1994 Comprehensive Plan to the 2013 Plan. This chapter addresses the same natural resource and open space elements as the present plan (Fish and Wildlife Habitat, Vegetation, Wetlands, Stream Corridors, Sensitive Lands, Open space, and Oswego Lake) but in a unified format (incorporating Goal 6 Air Quality and Goal 15 Willamette River Greenway elements) and with updated content. The chapter also provides the policy basis for revisions to Sensitive Lands, specifically amendments to the RP and RC districts, and establishment of the HBA overlay, as discussed in Part B of this report.

Amendments to the RP districts consist of corrections to the location of streams and wetlands and their associated buffers, and consolidation of RC and RP protections within riparian areas in compliance with Title 3 and the City's Total Maximum Daily Load (TMDL) water quality requirements. By maintaining compliance with Title 3, the proposed amendments to the RP districts (LOC 50.05.010.6 and LOC 50.07.004.8) also comply with Goal 5. See Part B of this report.

The proposed amendments to RC districts and the application of HBA districts as described in Part B increase the level of protection and opportunities for restoration of wildlife habitat, including upland and riparian habitat, on public and private open space lands. (LOC 50.05.010.5 and LOC 50.05.010.7) The proposed amendments also provide needed reform to the current system of regulation on other private property, which presently do nothing to encourage habitat restoration or enhancement. Together, the amendments maintain compliance with Goal 5 (via Metro Code 3.07.1330.B.3) and are not a rollback of protections under MC 3.07.1330(A). Therefore, the City finds that Goal 5 does not apply directly to the proposed plan and code changes. See OAR 660-023-0080(3), Metro Regional Resources.

The proposal also removes RC districts from private lands that are not subject to Title 13 because they meet the criteria for "De minimis" change under Metro Code. Removal of an RC district is a *de minimis* change where the subject property is non-dividable (or within the City's urban service boundary but in unincorporated Clackamas County and therefore

not subject to City zoning) or is not designated by Metro as wildlife habitat.³ These are primarily developed lands with residences. Per the terms of MC 3.07.1330(A) and OAR 660-23-0080 [LCDC Goal 5; Metro Regional Resources], the City does not directly apply Goal 5 and therefore an ESEE analysis is not required where an action qualifies for the *de minimis* exception under Title 13.

However, notwithstanding the above findings relative to Goal 5 (non-applicable), the City can find that the proposed amendments meet Goal 5. Regulatory protections are to increase for Tree Groves that the City regulated prior to Title 13, both in aggregate and within the subareas (inventoried “resource areas”) of the City where these groves exist, as described in Part B, above. Where RC districts on individual properties are to be replaced with HBA districts, pursuant to the City’s Title 13 B.3 program, the City is not deviating from its current approach to protecting Tree Groves under Goal 5, which is to limit but not prohibit conflicting uses.

Background on Goal 5 ESEE Analysis

When the City adopted its Goal 5 inventory, it prepared an ESEE analysis pursuant to then Goal 5 procedures (OAR 660-016)⁴. The ESEE analysis identified the resource sites (tree groves), land uses and activities that might conflict with (i.e., adversely impact) the resources, and the impact areas. The City considered the economic, social, environmental and energy consequences of prohibiting conflicting uses/providing full protection of the resource site; limiting conflicting uses/offering limited protection of the resource site (balance development and conservation objectives); or allowing conflicting uses fully with no local protection for the resource site. Based on its ESEE analysis, the City adopted a program to protect some but not all significant Tree Groves, and only a portion of each RC-designated grove was protected under Goal 5.⁵

ESEE Analysis

Although the City maintains that it is not required to apply Goal 5 directly to the proposed RC district amendments, if it were applicable, the current Goal 5 ESEE procedures would be applied. OAR 660-023-0250(3), Applicability. The City has provided an ESEE analysis for Tree Groves the City designated prior to Title 13 (under Goal 5) in Exhibit E-3. Goal 5 is met.

³ In its letter of June 22, 2012 (comments on LU 12-0002), Metro provided its interpretation of “de minimis” removal of RC districts under MC 3.07.1330(A).

⁴ An ESEE analysis weighs the Economic, Social, Environmental, and Energy consequences of a proposed amendment and resolves any conflicts pursuant to State Planning Goal 5.

⁵ Presently, LOC 50.05.010.5, states, in part: “The applicant for a major or minor development permit on a property containing an RC district shall designate a minimum of 50% of the RC district after delineation as the ‘RC protection area’... Except as otherwise provided in LOC 50.05.010.5.c, no development shall be permitted within the protection area. The area outside of the protection area may be fully developed pursuant to applicable regulations.” This provision is proposed to be amended to require designation of a *minimum of 85% of the RC district as a protection area*.

Goal 6: Air Resources Quality

Response: The proposed Healthy Ecosystems Chapter contains an updated section on Air Resources Quality that consolidates and updates the current Air Resources Section under Goal 6, which had been carried forward from the 1994 Comprehensive Plan to the 2013 Plan. The updated section incorporates background and data from Metro on the Portland region’s air quality issues and compliance plan.

This criterion is met.

Goal 15: Willamette River Greenway

Response: The proposed Healthy Ecosystems Chapter contains an updated section on the Willamette River Greenway (WRG) that consolidates and updates the current Goal 15 Chapter, which had been carried forward from the 1994 Comprehensive Plan to the 2013 Plan. Changes to this section are limited to minor edits and updates. The City is not proposing any amendments to the WRG Management Overlay District (LOC 50.05.009).

This criterion is met.

D. City of Lake Oswego Community Development Code – Legislative Decision

- LOC 50.07.003.a Legislative Decisions
- LOC 50.07.003.b Criteria for Legislative Decisions
- LOC 50.07.003.c Required Notice to DLCD
- LOC 50.07.003.d Planning Commission Recommendation Required
- LOC 50.07.003.e City Council Review and Decision

Response: The City as complied with the required notification and hearing procedures for a legislative decision under LOC 50.07.003. See also, Section IV of this report summarizing public notification for the Planning Commission hearing.

VI. CONCLUSION/RECOMMENDATION

Upon receiving any public testimony, the Planning Commission should recommend the City Council approve Ordinance 2687 with the map refinements noted in Exhibit E-3. The Commission may also recommend approval with other modifications, or request additional information of staff.

EXHIBITS

A. Draft Ordinances

A-1 Draft Ordinance 2687, 08/25/15

Attachment B: Proposed Amendments to Comprehensive Plan Healthy Ecosystems Chapter, 08/25/15

Attachment C: Proposed Amendments to Comprehensive Plan Map and Zoning Map, 08/24/15

Attachment D: Proposed Amendments to Community Development Code, 08/25/15

B. Findings, Conclusion and Order

[No current exhibits]

C. Minutes

[No current exhibits]

D. Staff Reports

[No current exhibits]

E. Graphics/Plans

E-1 RP Districts Summary Table, 09/03/15

E-2 RC and HBA Districts Summary Table, 09/02/15

E-3 ESEE Analysis of Tree Groves, 09/04/15

E-4 RC and HBA Slope Analysis Map, 08/31/15

F. Written Materials

[No current exhibits]

G. Letters

G-1 E-Mail from Eero Tantt, 08/28/15

BACKGROUND MATERIAL AND REFERENCES

Staff reports and background materials that were prepared for this proposal can be found by visiting the project web page for LU 15-0019.

Use the link below 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>

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