



November 17, 2015

Lake Oswego City Council
C/O Scot Siegel, Director, Planning and Building Services
City of Lake Oswego Planning & Building Services Department
380 A Avenue
P.O. Box 369
Lake Oswego, OR 97034

Mayor Studebaker and City Council,

This letter constitutes the joint comments of Audubon Society of Portland, the Tualatin Riverkeepers and several Lake Oswego residents addressing the proposed Natural Resources Program and Sensitive Lands amendments (LU 15-0019, Ordinance 2687). We request that the City of Lake Oswego City Council reject the proposal in Ordinance 2687 to remove the Resource Conservation (RC) District from Significant Tree Groves within the City of Lake Oswego. We believe removing the RC district represents a significant unmitigated roll back in environmental protections for wildlife habitat and water quality within the City of Lake Oswego.

Audubon Society of Portland and Tualatin Riverkeepers have been active participants in the development and implementation of Title 3 and 13 of Metro's Regional Functional Plan. For over 30 years, Audubon Society of Portland has also helped develop and implement Goal 5 programs adopted by local governments in the Portland-Metro region, including Lake Oswego's Sensitive Lands Program. In addition several of the long-time residents and landowners listed below have helped shape the City's Sensitive Lands Program over the last 20+ years or have been involved in local natural resource conservation in some capacity.

We want to begin our comments with some important background that was not included in the staff report to the Planning Commission in September and that provide context for our comments. In 2009 and 2010, the City Council charged the Second Look Task Force with *"reviewing the environmental and regulatory purposes of Sensitive Lands regulations, and*

providing recommendations to the Planning Department for changes that comply with Metro and State Standards, increase flexibility and clarity, and maintain the community's commitment to our natural environment.” Specifically, the Task Force was explicitly charged to “Maintain or improve the current level of environmental protection” and “Maintain compliance with Metro and State standards.”¹

Both these aspects of the Second Look Task Force's charge remain principles of reform that are widely shared by Lake Oswego residents. The attached 2010 *Resident Petition to the Lake Oswego Council* signed by over 100 Lake Oswego residents upheld both these principles and opposed *“any significant rollback in natural resource protections and environmental safeguards under the existing Sensitive Lands Overlay Program.”* (Attachment I)

The Second Look Task Force met 17 times over nine months and included a wide range of stakeholders. They reviewed hundreds of documents, accepted input from stakeholders and hosted public open houses. Audubon and our members actively participated in the deliberations of the Second Look Task Force, Planning Commission, and the City Council which led to revisions to the Sensitive Lands Program in 2010. Furthermore, the City Council's decision in 2010 was acknowledgement by Metro substantial compliance with Title 13 in March of 2011 (see Attachment II).

These details are important for at least three reasons. First none of them were included in the Planning Commission staff report associated with the current proposed revisions to the Sensitive Lands Program. For reasons we do not entirely understand, the entire public process between 2009 and 2011 including the Second Look Task Force's, City Council decisions, and the Metro acknowledgement of substantial compliance in 2011 are not even mentioned. Second, the current proposed Natural Resources Program and Sensitive Lands amendments (LU 15-0019) removes environmental protections to significant Tree Groves and regionally significant Goal 5 resources leaving them vulnerable to loss, degradation and fragmentation, especially from future development. We believe this reduces the minimum environmental safeguards for Lake Oswego's water quality and wildlife required comply with Title 13. Therefore LU 15-0019, Ordinance 2687 of LU 15-0019 is in violation of both Title 13 of the Regional Functional Plan and State Law.

I. Violation of Metro Code Section 3.07.1330 (A)(2)

The proposed Natural Resources Program and Sensitive Lands amendments (LU 15-0019) proposes to remove regulatory protections provided by the RC District from over 120 acres of private land designated wildlife habitat within the City of Lake Oswego. The vast majority of these sites include regionally significant upland wildlife habitat. Such a significant repeal of the RC District and rollback of the City's acknowledged Goal 5 program is in violation of Metro Code Section 3.07.1330 (A)(2) of the Title 13 Regional Functional Plan which clearly states:

¹ Report of the Second Look Task Force to the Director of Planning & Building Services, May 28, 2010.
https://www.ci.oswego.or.us/sites/default/files/archives/projects/planningprojects/PP09-0011_Sensitive_Lands_Outreach/Second_Look_Task_Force/Second_Look_Task_Force_Report_06-01-10_Final.pdf

A city or county that, prior to December 28, 2005, adopted any comprehensive plan amendments or land use regulations that (a) apply to areas identified as upland wildlife habitat on the Inventory Map but not identified as riparian habitat on the Inventory Map, (b) limit development in order to protect fish or wildlife habitat, and (c) were adopted in compliance with division 23 of OAR chapter 660, shall not repeal such amendments or regulations, nor shall it amend such provisions in a manner that would allow any more than a de minimis increase in the amount of development that could occur in areas identified as upland wildlife habitat;

The removal of the RC district on over 120 acres of significant Tree Groves with regionally significant habitat would allow more than a *de minimis* increase in the amount of development that could occur. Changes to the RC District that would allow more than a *de minimis* increase in the development fall into three categories:

- A. Significant Tree Groves inclusive of regionally significant upland habitat where the RC District is proposed to be removed from non-dividable lots based on assumption that removal will be a *de minimis* change. The following SL tree groves fit this category: TG-1, TG-6, TG-8, TG-34, portions of TG-19, TG-22, and portions of TG-28. The fact that a Goal 5 resource is on a property that cannot be divided or is developed to the maximum extent within the current zone or lot figuration does not itself represent protection program for a Goal 5 resource. The fact that a lot is non-dividable does not mean it cant be redeveloped in the future. Such redevelopment could - absent the RC District- include the changing the location of the current building footprint relative to the significant tree grove. In addition, zoning and allowable uses within zones can and do change. For example, additional accessory structures could be allowed in the future as in happening in some jurisdictions in the region. In situations where the existing property redevelops or where new uses are authorized on an non-dividable lot, there will be no way to ensure new development avoids and minimizes potential significant environmental impacts to the tree grove located on the lot or on an adjacent property. These circumstances illustrate how removing the RC District from non-dividable lots could result in more than *de minimis* change in the amount of development allowed in significant Tree Groves. As detailed below, reliance on the Lake Oswego Tree Code, Erosion Control Standards, and storm drainage requirements do not constitute equivalent level of protection that could prevent more than a *de minimis* increase in development.
- B. Significant Tree Groves inclusive of regionally significant upland habitat where the RC District is proposed to be removed and HBA added on dividable lots and where Hillslope Protection Standards provide partial but not equivalent level of protection. Tree groves that fit this category include: TG-2, TG-3, TG-18, TG-19, parts of TG-28, and maybe TG-34. In these situations a portion of the former RC District has 20-50% slopes which require 35% non-disturbance under the Hillslope Protection Standards rather than 50% currently required by the RC District. Only in TG-18 – where 95% this site has slopes over 20% and 89% have slopes over 50% – would the Hillslope Protection Standards protect up to 75% of the Tree Grove. As detailed below, reliance on the HBA designation, the Lake Oswego Tree Code, Erosion Control Standards, and storm drainage

requirements do not constitute equivalent level of protection that could prevent more than a *de minimis* increase in development.

- C. Significant Tree Groves where the RC District is proposed to be removed and HBA added on dividable lots and where Hillslope Protection Standards provide no or less than half the level of protection afforded by the RC District. Tree groves that fit this category include: TG-5, TG-10, TG-11, TG-12, TG-13, and portions of TG-22. In these tree groves the applicability of the Hillslope Protection Standards are absent or very limited. As detailed below, reliance on the HBA designation, the Lake Oswego Tree Code, Erosion Control Standards, and storm drainage requirements do not constitute equivalent level of protection that could prevent more than a *de minimis* increase in development.

In categories B and C outlined above, the voluntary HBA designation is proposed as a protection measure. However the HBA designation establishes limited incentives that are entirely voluntary for developers and thus allows more than *de minimis* level of development. The HBA are inadequate and can not prevent degradation or loss of significant Tree Groves from future development.

In categories A, B and C outlined above, reliance of Lake Oswego Tree Code, Erosion Control Standards, and storm drainage requirements do not protect understory vegetation and provide very limited protection for only select trees and native soil around their root-zones. Furthermore, the City is currently conducting a review of the tree code with the “*desire for less stringent regulation.*” Therefore the Tree Code is not a reliable substitute for the RC District.

In all the categories above, the Hillslope Protection Standards are not a reliable substitute for the protections provided by the RC District. The Hillslope Protection Standards are established to ensure public safety and could change in the future in such a way that would allow more than a *de minimis* increase in development. Innovation in engineering and design has generally expanded the economic and technical feasibility of building on steep slopes. If the development on steep slopes continues to become more technically feasible at the same or lower level of acceptable degree of risk to public safety, the City Council could increase the amount of allowed development without regard to the direct and cumulative impact to wildlife habitat and water quality which is the explicit purpose of the RC District.

For all the reasons outlined above, removing the RC District will allow more than a *de minimis* increase development in Significant Tree Groves and thus is in violation of Metro Code Section 3.07.1330 (A)(2).

II. Insufficiency to Substantially Comply with Title 13

We also believe that the changes proposed in Natural Resources Program and Sensitive Lands amendments (LU 15-0019, Ordinance 2687) jeopardizes Lake Oswego’s substantial compliance with Title 13 for the following reasons.

1. The intent of Title 13 is “*to conserve, protect, and restore a continuous ecologically viable streamside corridor system from the streams’ headwaters to their confluence with other*

streams and rivers, and with their floodplains in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape” (Metro Code 3.07.1310). The approach Natural Resources Program and Sensitive Lands amendments (LU 15-0019) to remove regulations from specific private land is counter to this intent, will result in discontinuous stream corridors and will further isolate with upland habitat. Metro did not inventory Goal 5 resource sites, assess their significance, and determine whether particular resource sites (and much less individual properties) would be regulated or not based on private ownership. In many cases the removal of RC District from Tree Groves that happen to be on private land will result in fragmented and discontinuous protection for regionally significant habitat, both Riparian Class I and II and Upland Habitat Class A and B.

2. The proposed changes to RP District, repeal of the RC District, and other measures together do not “*substantially comply with the Metro Habitat Conservation Areas Map*” as required by 3.07.1330 (B) (2). Nor do proposed changes to RP District, repeal of the RC District Tree, and other measures together represent viable “*alternative approaches that will achieve protection and enhancement of Class I and II riparian habitat areas... substantially comparable with the protection and restoration that would result from the application of a program that complied with Metro Code Sections 3.07.1330(B)(1) or (B)(2).*”

The regulatory protections provided by the Resource Protection (RP) District leave substantial acreage and distribution of Class I and II resources unprotected and vulnerable to future development and fragmentation which, over time, will reduce the ecological viability of stream corridors in Lake Oswego. The removal of the RC District from select Tree Groves based the mere fact they are currently in private ownership will further fragment natural resources that were inventoried based on their quality, quantity and location, not on ownership.

Lake Oswego Tree Code does not protect understory vegetation, and provides limited and scattered protection for some trees and native soil around their root-zones. It therefore has limited impact for the protection of regionally significant habitat. Moreover since the Tree Code is currently under review to provide “*less stringent regulation,*” it is not an existing tree protection ordinance that can be relied upon for substantial compliance with Title 13.

A number of non-regulatory measures are proposed in Natural Resources Program and Sensitive Lands amendments (LU 15-0019) as substitutes for regulatory safeguards in order to claim substantial compliance with Title 13. Audubon Society of Portland has played a key role in developing voluntary and non-regulatory tools for habitat protection in this region. While useful and valuable measures, the proposed voluntary and non-regulatory tools do not provide the certainty in habitat protection and restoration necessary to substantially comply with Title 13. Specifically:

Habitat Benefit Areas (HBA). Proposed development in HBAs is not required to go through environmental review and therefore nothing in the HBA requires that regionally significant habitat be protected at the same level as the current RC District. Moreover, the “Habitat-Friendly Development Practices” provided as an incentive in HBAs are already required under Metro Code Section 3.07.1330 (E) for all regionally significant habitat. Therefore the

HBA designation is not a viable substitute for the habitat protection program required under Metro Code Section 3.07.1330 (B) to substantially comply with Title 13.

New Habitat Enhancement Fund. The City of Lake Oswego’s recently established a Habitat Enhancement Fund to create incentives for habitat improvement on public or private properties. While a worthy and valuable contribution to habitat enhancement, the funds \$250,000 is a very small amount of funding when spread over all the regionally significant habitat in the City of Lake Oswego. More over, there no plan or detail about how this funding will have more than a very limited impact on habitat improvement at that relevant City-wide scale. Finally, the Habitat Enhancement Fund is not a proven program with a record of being a stable and continuing funding source sufficient to support habitat enhancement over the extent of the City over time.

Backyard Habitat Certification Program (BYHCP) Audubon Society of Portland and Columbia River Land Trust jointly developed the Backyard Certification Program as a way to encourage ordinary homeowners to enhance their yards for biodiversity. However, BYHCP was never intended to be a substitute for complying with the Title 13 regulations which primarily govern where and how development occurs. The BYHCP certifies the yards of current and willing owners, therefore it does not provide certainty of habitat protection and enhancement over time and across the landscape that is substantially comparable that provided by the Title 13 Model Ordinance or the existing RP and RC District.

There are a handful of public parks where Ordinance 2687 proposes to expand the RC District and the percentage of the Significant Tree Groves that would be protected from future development. We welcome this change. However, in our experience it is exceedingly rare that residents in the Portland Metro region accept proposes to develop public parkland that involves significant unmitigated loss of habitat. Therefore we believe the staff report overstates that extent to which conflicting uses on these sites are likely to occur- especially relative to non-dividable lots where future development- and thus that actual difference expanding the RC District on public parkland for Title 13 compliance.

In sum, we find the Natural Resources Program and Sensitive Lands revisions proposed in Ordinance 2687 do not meet the test for substantial compliance with Title 13 because it does not provide adequate “*certainty of habitat protection and enhancement to achieve the intended results*” of protection and enhancement “*substantially comparable*” to the Title 13 Model Ordinance or the current regulatory protections of the RC District that are proposed to be removed.

We therefore request that the City of Lake Oswego City Council reject proposals in Ordinance 2687 to remove the RC District from Significant Tree Groves within the City of Lake Oswego.

Sincerely,



Jim Labbe
Urban Conservationist
Audubon Society of Portland



Brian Wegener
Advocacy & Communications Manager
Tualatin Riverkeepers

Claire A. Puchy
Lake Oswego Resident

Helen Hendrickson Lyons
Lake Oswego Resident

Todd Prager
Lake Oswego Resident

Heidi Schrimsher
Lake Oswego Resident

Julia Campbell
Lake Oswego Resident

Mary Ann Dougherty
Lake Oswego Resident

Chris Rotvik
Lake Oswego Resident

Frank A. Junga
Lake Oswego Resident

Karen Crichton
Lake Oswego Resident

Attachments

- I. *2010 Resident Petition to the Lake Oswego Council*
- II. *March 9, 2011 Metro Letter to Lake Oswego acknowledging substantial compliance with Title 13.*

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Resident Petition to the Lake Oswego City Council

A petition of Lake Oswego residents to the Lake Oswego City Council regarding the [Sensitive Lands Overlay Program](#) prepared by the Audubon Society of Portland & Tualatin Riverkeepers Sensitive Lands Working Group

Whereas,

- Lake Oswego residents strongly support public policies to protect, enhance, and restore healthy watersheds for clean water, biodiversity, and public health and safety.*
- Lake Oswego prides itself in being a leader in natural resource conservation and the City Comprehensive Plan calls for the protection and enhancement of stream corridors, wetlands, and tree groves.*
- All land within Lake Oswego is ecologically significant but the protection of some environmentally sensitive lands is essential to maintaining the overall health of Lake Oswego's watersheds in the face of increased population and development.*
- The direct and cumulative impacts of poorly planned development can degrade or destroy environmentally sensitive lands and the clean water, biodiversity, and public health and safety they support and sustain.*
- Voluntary programs alone are insufficient to protect the ecological condition of Lake Oswego's natural environment and land-use regulations provide critical environmental safeguards to ensure development and other activities avoid, minimize and mitigate negative impacts to environmentally sensitive lands on both public and private land.*
- Regulations alone are insufficient to improve the ecological condition of Lake Oswego's natural environment and must be complemented with public investment, incentives, and education.*
- The Second Look Task Force has reviewed and deliberated for 9 months on the [Lake Oswego's Sensitive Lands Overlay Program](#) and made 63 recommendations for improving the program, adding flexibility, and responding to public concerns.*

We the undersigned residents of Lake Oswego,

1. Believe the City of Lake Oswego should develop policies that protect, enhance and restore habitat and natural ecosystems resilient in supporting clean water, native wildlife including sensitive or at-risk species, and public health and safety. Natural resource

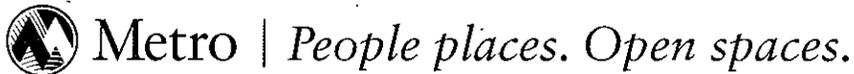
conservation should be a shared responsibility of landowners, businesses, city government, and the public at large and consist of regulatory, voluntary and incentive programs to protect and improve healthy watersheds.

2. Support the overall recommendations of the Second Look Task Force regarding revisions to the [Sensitive Lands Overlay Program](#).
3. Oppose any significant rollback in natural resource protections and environmental safeguards under the existing [Sensitive Lands Overlay Program](#).
4. Support code or administrative changes associated with the [Lake Oswego's Sensitive Lands Overlay Program](#) that increase flexibility while maintaining or improving protections of environmentally sensitive lands.
5. Urge the City Council to expand public investment in high priority natural resource stewardship and enhancement activities over the short and long term in order to improve water quality, wildlife habitat, and public health and safety in Lake Oswego.
6. Urge the Lake Oswego City Council and staff to adopt and implement new and revised protections for environmentally sensitive lands and new public investments in natural area stewardship in a timely fashion.

<u>Name</u>	<u>City</u>	<u>Zip</u>
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John Sather	Lake Oswego	97035
Sally Weersing	Lake Oswego	97035
Christopher Platt	Lake Oswego	97035
Joan Gornbein	Lake Oswego	97035
Chris Groner	Lake Oswego	97035
Jane Norman	Lake Oswego	97034
Cristy Murray	Lake Oswego	97034
James E. Fisher	Lake Oswego	97034
George Norman	Lake Oswego	97034
Janet L Hudson	Lake Oswego	97034
Claire Puchy	Lake Oswego	97034
Luanne Bye	Lake Oswego	97035
Kristen Taylor	Lake Oswego	97035
Julia Campbell	Lake Oswego	97034
Darlene MacNair	Lake Oswego	97034
Carol Radich	Lake Oswego	97034
Elizabeth A. Moore	Lake Oswego	97034
Nicholas Brouhard	Lake Oswego	97034
James Crane	Lake Oswego	97034

Carla Staedter	Lake Oswego	97034
Cheryl Rucks	Lake Oswego	97034
Darryl Boom	Lake Oswego	97034
Diana Boom	Lake Oswego	97034
David Beckett	Lake Oswego	97034
Judith Crowley	Lake Oswego	97034
Lori Malone	Lake Oswego	97034
Tom Malone	Lake Oswego	97034
Jennifer Prager	Lake Oswego	97034
Sarah McCarty	Lake Oswego	97034
Todd Prager	Lake Oswego	97034
Linda Fergusson-Kolmes	Lake Oswego	97034
Marilyn Abend	Lake Oswego	97034
Brenda Falson	Lake Oswego	97034
Ralph Holcomb	Lake Oswego	97034
Penny Troolin	Lake Oswego	97034
Mary Puskas	Lake Oswego	97034
Tim Nay	Lake Oswego	97034
Fran Nay	Lake Oswego	97034
Chuck O'Leary	Lake Oswego	97034
John Hammerstad	Lake Oswego	97034
Judie Hammerstad	Lake Oswego	97034
Allan Solares	Lake Oswego	97035
Mary Solares	Lake Oswego	97035
Merrill McPeak	Lake Oswego	97035
Paul Lyons	Lake Oswego	97034
Michael E. Moore	Lake Oswego	97035
Barbara Manildi	Lake Oswego	97035
Christine Broshar	Lake Oswego	97035
Cynthia Arnott	Lake Oswego	97035
Lynn Herring	Lake Oswego	97034
Don Herring	Lake Oswego	97034
Alex Herring	Lake Oswego	97034
Mary Ann Dougherty	Lake Oswego	97034
Connie P Ozawa	Lake Oswego	97035
Jonathan Snell	Lake Oswego	97035
Peter Paquet	Lake Oswego	97034
David Fornof	Lake Oswego	97035
Denise M. Gregory	Lake Oswego	97035
Judith Werner	Lake Oswego	97035
Kit Johnson	Lake Oswego	97035
Lisa Mamet	Lake Oswego	97035
Sue Marshall	Lake Oswego	97035
Susan Killoran	Lake Oswego	97035
Susan Severance	Lake Oswego	97035
Greg Waldref	Lake Oswego	97035

Cynthia Ellison	Lake Oswego	97035
David Dunning	Lake Oswego	97035
Stephanie Wagner	Lake Oswego	97034
Bob Swanson	Lake Oswego	97035
Valerie Eakins	Lake Oswego	97035
Andrea Pepitone	Lake Oswego	97034
Elaine M. Burke	Lake Oswego	97034
Helen H. Lyons	Lake Oswego	97034
John D. Clark	Lake Oswego	97034
Patricia Crane	Lake Oswego	97034
Roger Sausn	Lake Oswego	97034
Vernon L. Long	Lake Oswego	97034
Chris Rotvik	Lake Oswego	97035
Frank Junga	Lake Oswego	97035
Irene Junga	Lake Oswego	97035
Susan Rotvik	Lake Oswego	97035
Luke Lowther	Lake Oswego	97035
Debbi Robertson	Lake Oswego	97035
Jack Carter	Lake Oswego	97035
Cynthia Arnott	Lake Oswego	97035
Cheryl Rucks	Lake Oswego	97035
Robert Dickey	Lake Oswego	97035
George W Norman	Lake Oswego	97035
Anthony Skowlund	Lake Oswego	97035
Jim Fisher	Lake Oswego	97034
Barbara Fisher	Lake Oswego	97034
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Carla Staedter	Lake Owego	97034
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June Boyle	Lake Oswego	97034
Ingrid Boozer	Lake Oswego	97035
Janice Castle	Lake Oswego	97034
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March 9, 2011

Denise Frisbee
Director
Planning and Building Services
City of Lake Oswego
PO Box 369
Lake Oswego, OR 97034

Dear Denise:

This letter is to confirm that the City of Lake Oswego is in substantial compliance with Urban Growth Management Functional Plan Title 13: Nature in Neighborhoods and Title 3: Water Quality and Flood Management. This determination of substantial compliance relies upon the recent code amendments the City adopted, the existing Sensitive Lands Atlas and the City's existing code provisions that allow for the opportunity to implement habitat friendly development practices.

A component of the substantial compliance determination is the ongoing work the City is undertaking with the Audubon Backyard Habitat Certification Program and your current partnerships with Friends of Tryon Creek State Park, Tryon Creek Watershed Council and the Columbia Land Trust to promote the educational and voluntary incentive/restoration components of the Sensitive Lands program. In addition, the current update of the Parks and Recreation Master Plan provides a great opportunity to prioritize natural areas maintenance and future restoration efforts. Finally, it is our understanding that the City is moving forward with its planned update of the Sensitive Lands Atlas to provide consistent resource protection measures citywide.

Again, we recognize all of the hard work the City has done to achieve substantial compliance with Titles 3 & 13 thereby helping the region meet its goals for habitat protection and restoration. We look forward to assisting the City with its educational and voluntary program goals in the future.

Sincerely,

Tim O'Brien, AICP
Principal Regional Planner

c: Councilor Carlotta Collette, District No. 2
Jonna Papaefthimiou, Natural Resources Planner
Christina Deffebach, Manager
Brian Harper, Assistant Regional Planner

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