

STAFF REPORT
CITY OF LAKE OSWEGO

PLANNING DIVISION

APPLICANT:

City of Lake Oswego

FILE NO:

LU 12-0011

PROPERTY OWNERS:

Multiple owners; see Exhibit F-1

STAFF:

Andrea Christenson

TAX LOT REFERENCE:

Tax Lots 1500, 1600, 1700, 1701, 1800, 1900, 2000, 7200, 7300, 7400, 7500, 7600, 7700, 7800, 7900, 8200, 8300, and 8400 of Tax Map 21E09DA

LOCATION:

Oak Terrace: 1225, 1175, 1115, 1075, 1035, 975, and 955
Schukart Lane: 1075, 1150, 1100, 1050, 1000, 950, 900, and 850
Terrace Drive: 1030, 990, and 950

COMP. PLAN AND ZONING DESIGNATION:

R-15 and R-7.5; see Exhibit E-1

NEIGHBORHOOD ASSOCIATION:

McVey – South Shore

DATE OF REPORT:

April 11, 2012

PLANNING COMMISSION HEARING DATE:

April 23, 2012

I. APPLICANT'S REQUEST

The City is requesting amendments to the Sensitive Lands Overlay Districts on the Comprehensive Plan Map and Zoning Map to remove a 2.3-acre Resource Conservation (RC) District designation from 18 properties.

II. BACKGROUND

Sensitive Lands Overlay Districts

The Sensitive Lands Program was adopted by the City Council on August 5, 1997. It is implemented by the Sensitive Lands Article of the Community Development Code (LOC 50.16). LOC Article 50.16 creates two Sensitive Lands overlay districts: the Resource Protection (RP) District and the Resource Conservation (RC) District. The RP District applies to environmentally significant stream corridors and wetlands, and the RC District applies to significant tree groves. Natural resources protected by the program are identified in the

Natural Resources Inventory of the Comprehensive Plan and are mapped in the Sensitive Lands Atlas.

Removal of Isolated Tree Groves from RC Districts

The City undertook a review of the Sensitive Lands Program in 2009 and 2010. On July 27, 2010, the City Council identified a list of program improvements that it wished to make to the City's natural resource protection program (Resolution 10-51A). Included on that list was a request to *"consider removing small, isolated tree groves from the overlay zone on private property, not including private, dedicated open space."*

On January 17, 2012, the City Council held a study session on the options for removing the RC District designation from isolated tree groves. To identify isolated groves, the City's contract arborist and staff used GIS to examine each tree grove's relationship to protected wetlands and stream corridors (RP Districts). A tree grove was considered isolated if it is not adjacent to or connected to a protected water resource. Nine tree groves were categorized as isolated: TG-13, TG-17, TG-23, TG-24, TG-27, TG-30, TG-31, TG-32, and TG-33.

The City Council directed staff to initiate the process of removing isolated groves from private property. According to LOC 50.16.025, mapped resources may be removed from Sensitive Lands designation if, "as a result of natural occurrences or evolution," the resource has been degraded to the extent that the subject property no longer meets the criteria for designation and a reapplication of the ESEE analysis demonstrates that the designation is no longer justified. A mapped resource may also be removed if there was a mistake in the mapped location of the resource, or if there was a mistake in the analysis of quality or quantity in the original designation of the resource. The code states that an overlay district designation shall not be removed as the result of damage caused by the property owner, another party, or other than natural causes.¹

Upon review of inventory data sheets, staff discovered that one tree grove (TG-17) was placed on the Sensitive Lands Atlas due to a mistake in the analysis of resource quality during the original designation. TG-17 can therefore be evaluated for removal under the existing code criteria, which is the purpose of this application.

Location

The subject properties are located along the north side of Oak Terrace, the south side and west end of Schukart Lane, and the east side of Terrace Drive in the McVey – South Shore neighborhood. The properties are comprised of 18 tax lots, described as tax lots 1500, 1600, 1700, 1701, 1800, 1900, 2000, 7200, 7300, 7400, 7500, 7600, 7700, 7800, 7900, 8200, 8300, and 8400 of Tax Map 21E09DA. The site addresses are 1225, 1175, 1115, 1075, 1035, 975, and 955 Oak Terrace; 1075, 1150, 1100, 1050, 1000, 950, 900, and 850 Schukart Lane; and 1030, 990, and 950 Terrace Drive. The location of the properties is shown on Exhibit E-1.

Site Description

¹ To remove isolated tree groves for reasons other than those listed above (natural degradation, location mistake, or quality/quantity mistake), an amendment to Article 50.16 will be necessary. A proposed code amendment is the subject of file number LU 12-0012.

The subject properties total 6.83 acres. The RC District designation is located on the northern portions of the properties located at 1225, 1175, 1115, 1075, and 1035 Oak Terrace; on the southern portions of 1100, 1050, 1000, 950 and 900 Schukart Lane; the eastern portions of 1030, 990, and 950 Terrace Drive, and the western portion of 1075 Schukart Lane. The designation covers most of the property at 1150 Schukart Lane, the northeast corner of 1225 Oak Terrace, and very narrow slivers on 975 and 955 Oak Terrace and 850 Schukart Lane. (The boundaries of the RC District would be adjusted upon delineation; 990 Terrace Drive is the only property with a delineated Resource Conservation Protection Area, or RCPA.) An aerial photograph of the properties is provided as Exhibit E-2.

Land Use Designation and Existing Use

The subject properties on Oak Terrace are zoned Residential R-7.5, which allows for the development of single-family dwellings on a minimum lot size of 7,500 square feet. The properties on Schukart Lane and Terrace Drive are zoned Residential R-15, which allows for the development of single-family dwellings on a minimum lot size of 15,000 square feet. All of the properties are currently developed with single-family dwellings. Abutting land uses include single-family residential properties zoned R-15 and R-7.5.

III. APPLICABLE REGULATIONS

Lake Oswego Development Code Procedural Requirements

LOC 50.82.005-LOC 50.82.020	Review of Major Development Applications
LOC 50.83.005-LOC 50.83.040	Hearings Before a Hearing Body
LOC 50.75.015	Required Notice to DLCD

Sections Relating to the Removal of a Sensitive Lands Overlay District Designation

LOC 50.16.025	Removing an Overlay District Designation
LOC 50.16.020	Criteria for Designating Property within an Overlay District

IV. FINDINGS

Procedure

An RC District designation may be imposed, modified, or removed pursuant to a Goal 5 analysis of a single property or small number of individual properties. In this case, the removal of the RC District from the subject properties is being processed as a legislative Comprehensive Plan Map and Zoning Map amendment because it involves more than one property. See LOC 50.16.020(2). A legislative Comprehensive Plan Map and Zoning Map amendment is *processed* as provided in LOC Ch. 50.75.

Identification of Criteria to be Applied

Notwithstanding that the application is to be processed as a legislative amendment per LOC 50.16.020(2), the applicable criteria is LOC 50.16.025, not LOC 50.75.010. “Generally, a legislative decision is a policy choice,” and the criteria to be applied are set forth in LOC 50.75.010. In this instance, however, the criteria for consideration of removal of a Sensitive Lands Overlay District are specifically required by LOC 50.16.025.

Under LOC 50.16.025(1), a Sensitive Lands Overlay District designation shall only be removed if one of the following criteria is met:

- a. *As a result of natural occurrences or evolution the resource has been degraded to the extent that the subject property no longer meets the criteria for designation found in Section 50.16.020 (4) or (5) and a re-application of the ESEE analysis demonstrates that the designation is no longer justified; or*
- b. *There was a mistake in the analysis of quality or quantity in the original designation of the resource and a re-application of the ESEE analysis demonstrates that the designation no longer meets the criteria; or*
- c. *There was a mistake in the location of the original designation of the resource, such that no portion of the resource was on the subject property.*

The RC District designation on the subject properties is proposed for removal under LOC 50.16.025(1)(b), due to a mistake in the analysis of resource quality in the original designation. The process for removal is identified in LOC 50.16.025(3):

A removal application pursuant to subsection [LOC 50.16.025(1)(a)] or [50.16.025(1)(b)] shall be processed in the same manners as a designation application pursuant to LOC 50.16.020.

Analysis of Criteria

In order to remove an Overlay District designation under LOC 50.16.025(1)(b), the review body must find:

There was a mistake in the analysis of quality or quantity in the original designation of the resource and a re-application of the ESEE analysis demonstrates that the designation no longer meets the criteria.

LOC 50.16.020(3)(b) states that the reviewing authority shall designate an RC District if the proposed resource is “significant” and an ESEE analysis shows that the resource is required to be protected. Per LOC 50.16.020(6), a tree grove is considered significant if it has:

- a. *A HAS ranking of at least 35; or*
- b. *A “high” ranking for scenic values in the study; or*
- c. *Is associated with a stream corridor or wetland that has an RP ranking.*

Findings: Tree grove TG-17 was evaluated for significance in 1994, as part of the Lake Oswego Resource Areas Report & ESEE Analysis prepared by Winterowd Planning Services (Resource Areas Report). That evaluation included a calculation of the tree grove’s Wildlife Habitat Assessment Score, or HAS. The HAS is a numerical ranking which represents the relative wildlife values of a given natural resource site. Six features are evaluated to determine the HAS ranking: water, food, cover, disturbance, linkage, and unique features. TG-17 received a HAS ranking of 33, which is below the threshold of 35 specified in 50.16.020(6). (The Natural Resource Inventory Site Summary and HAS worksheet are provided in Exhibit F-2.)

Since its HAS ranking did not meet the threshold, TG-17 was determined to be significant based on high scenic value.² The “Site-Specific Significance Determination and ESEE Analysis” chapter of the Resource Areas Report states that TG-17 received a high rating for scenic value based on neighborhood aesthetics, and Appendix C of the report lists the scenic value of TG-17 as “H-M/Yes.” However, a rating of high scenic value does not reflect the data recorded in the Supplemental Field Ratings for Education, Scenic, and Recreational Values worksheet.

Appendix F of the Resource Areas Report explains the criteria for determining whether a resource has high scenic value. It states, “Of the three following scenic categories, the site has a Salix ranking of ‘high’ in at least one category, and ‘medium’ or higher in at least one additional category”:

- a. Unusual or particularly attractive vegetation or feature(s)
- b. High visibility for large number of people
- c. Screening value (e.g., incompatible or unsightly land uses)

(An excerpt from Appendix F of the Resource Areas Report is provided in Exhibit F-3.)

“A Salix ranking” refers to the Supplemental Field Ratings worksheets prepared by Salix Associates, another project consultant. TG-17 received “medium” rankings in all three of the above categories. TG-17 received a “high” ranking for “neighborhood aesthetics,” which was a factor on the Supplemental Field Rating worksheet but was not one of the categories used to determine high scenic value as described in Appendix F of the Resource Areas Report. (The Supplemental Field Ratings worksheet is provided in Exhibit F-2.) Since high scenic value requires a “high” ranking in one of the three categories above, TG-17 does not qualify.

A reapplication of the ESEE analysis demonstrates that TG-17 does not meet the significance criteria required for an RC District designation. TG-17 has a HAS ranking of 33, does not meet the criteria for high scenic value, and is not associated with a stream corridor or wetland that has an RP ranking. It is therefore not considered a significant tree grove and is not eligible to be designated as an RC District. (When a resource site does not meet the significance criteria, it is not necessary to perform any further ESEE analysis.)

Conclusion: TG-17 was mistakenly determined to be of high scenic value during the original designation. A re-application of the ESEE analysis demonstrates that TG-17 does not meet the significance criteria required for an RC District designation. The proposal is in compliance with LOC 50.16.025(1)(b).

V. **CONCLUSION**

Based on the information referenced in the attached exhibits and the findings presented in this report, the removal of the RC District from the subject properties is justified.

VI. **RECOMMENDATION**

Staff recommends that the Planning Commission’s recommendation to the City Council be to amend the Sensitive Lands Overlay Districts on the Lake Oswego Comprehensive Plan

² Tree grove TG-17 is not “associated with a stream corridor or wetland that has an RP ranking,” so the third criterion for significance under LOC 50.16.020(6) does not apply.

Map and Zoning Map to remove a 2.3-acre Resource Conservation (RC) District designation from 18 properties, as illustrated in Exhibit E-3. The removal of the overlay district will be effective 30 days following adoption of the Ordinance.

EXHIBITS

A. Ordinances

A-1 Draft Ordinance 2588, dated 04/11/12

B. Findings, Conclusions and Order (No current exhibits)

C. Minutes (No current exhibits)

D. Staff Reports (No current exhibits)

E. Graphics/Plans

E-1 Existing RC Designation on TG-17, 04/10/12

E-2 Aerial Photograph of TG-17, 04/10/12

E-3 Proposed Map Amendments to Remove RC District Designation from TG-17, 04/10/12

F. Written Materials

F-1 List of Subject Properties, 04/03/12

F-2 Natural Resource Inventory Site Summary and Field Worksheets

F-3 Excerpt from Appendix F of the Lake Oswego Resource Areas Report & ESEE Analysis:
Scenic Quality

G. Letters

G-1 Letter from Jacqueline Aschenbrenner, 04/09/12