

ORDINANCE No. 2567

AN ORDINANCE OF THE LAKE OSWEGO CITY COUNCIL AMENDING LAKE OSWEGO CODE ARTICLE 50.16 (SENSITIVE LANDS OVERLAY DISTRICTS) TO CLARIFY TERMS AND ALLOW DE MINIMIS DEVELOPMENT IN RESOURCE OVERLAY DISTRICTS, AND ADOPTING FINDINGS (LU 10-0043-1752)

Whereas, notices of the public hearings for consideration of this ordinance were duly given in the manner required by law; and

Whereas, a public hearing was held before the Planning Commission on September 27, 2010; and

Whereas, a public hearing was held before the Lake Oswego City Council on December 13, 2010, to review the Planning Commission's recommendation; now, therefore,

The City of Lake Oswego ordains as follows:

Section 1. Adoption of Findings and Conclusions. The City Council hereby adopts the Findings and Conclusions attached as Exhibit 1 (LU 10-0043-1752).

Section 2. Section 50.02.005 of the Lake Oswego Code is hereby amended by adding the text shown in double underlined type as follows:

**50.02.005 Definitions.**

For the purposes of this Code certain terms and words are defined as follows: the words "used for" include "designed for" and vice-versa; words used in the present tense include the future, the singular tense includes the plural and vice-versa; the word "shall" is always mandatory; the word "may" is discretionary; the masculine gender includes the feminine gender, except as otherwise provided. The following terms shall mean:

\* \* \*

Ditch. A manmade water conveyance channel. Channels that are manipulated streams are not considered ditches.

\* \* \*

Protected Riparian Area. The area adjacent to a water resource described in LOC 50.16.070 (2). The Protected Riparian Area may provide resource functions and values and/or protect the functions and values of the adjacent stream or wetland.

\* \* \*

Section 3. LOC Article 50.16 (Sensitive Lands Overlay Districts) of the Lake Oswego Code is hereby amended by adding the text shown in double underlined type and deleting the text shown in ~~strikethrough~~ type, as follows:

**50.16.005 Overview.**

1. Purpose. LOC Article 50.16 creates the Resource Protection (RP) and Resource Conservation (RC) District overlay districts to:

- (a) protect wildlife habitat;
- (b) protect and improve water quality;
- (c) control and prevent water pollution for the protection of public health and safety;

- (d) comply with federal laws including the Clean Water Act and the Endangered Species Act;
- (e) comply with State Land Use Goal 5; and
- (f) comply with Metro's Urban Growth Management Functional Plan.

2. Comprehensive Plan and Zoning Map: The overlay districts ~~and their associated buffers~~ shall be designated on the Comprehensive Plan Map and Zoning Map. The purpose of these maps is to give a general overview as to the location of the districts ~~and the associated buffers~~ and is not intended to show the precise location of the district boundaries.

3. Sensitive Land Atlas: The boundaries of the districts ~~and their associated buffers~~ shall be shown on individual property maps at a scale of 1:300 in the Sensitive Lands (SL) Atlas. The SL Atlas is intended to govern the applicability of LOC Article 50.16 pursuant to LOC 50.16.015. The SL Atlas shall be adopted as part of the City's Comprehensive Plan and Zoning Maps.

#### 50.16.015 Applicability.

1. This Article applies to all lands designated as RP or RC on the Sensitive Lands Map and Atlas.
2. Sensitive Lands Development Review Required.
  - a. Development within:
    - i. The RP District, as defined in LOC 50.16.070 ~~or the area adjacent the District that would form the District Buffer;~~
    - ii. The RC District or within 5 feet of the RC District boundary; or
    - iii. The construction setbacks established by LOC 50.16.075 (4) (as shown on maps in the Sensitive Lands Atlas), shall be subject to the standards and criteria identified in LOC 50.16.030.
  - b. Land divisions, lot line adjustments, mitigation proposals, and adjustments of a District Boundary shall be subject to the standards and criteria identified in LOC 50.16.030.
  - c. To the degree that any requirement of LOC Article 50.16 conflicts with a requirement of the underlying zone, Article 50.16 shall prevail.
3. Exception:—The provisions in LOC Article 50.16 shall not apply to:
  - a. A resource located within the boundaries of a partition, subdivision, Planned Development, or lot line adjustment, approved prior to August 21, 1997 if:
    - i. The resource was identified and protected pursuant to regulations in effect at the time of approval; and
    - ii. The proposed development is in compliance with the conditions protecting the resource imposed at the time of approval. Any modification of the prior approved partition, subdivision, or planned development that would impact or modify any protection measures imposed at the time of original approval shall be subject to the standards and criteria of this Article.
  - b. Resource restoration required as a result of violation of this Article or pursuant to settlement of a potential enforcement action by the City Manager, subject to City Manager approval of the restoration plan and procedures, ~~and compliance with the Construction Standards set forth in LOC 50.16.095.~~

c. Routine maintenance and repair of existing legal development, including non-conforming structures and landscaping.

4. The provisions in LOC Article 50.16, except for the Construction Standards in LOC 50.16.095, shall not apply to:

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

b. Alteration, expansion, or replacement of an existing primary dwelling unit where the footprint of the new intrusion is not more than 700 square feet in the RP or RC District and is no closer to a protected water feature than the pre-existing structure.

c. Development that meets all of the following criteria:

i. Is not located within a wetland or below the top of the bank of a stream;

ii. Does not require a grading permit; and  
iii. The cumulative total of all development under this subsection (c) does not exceed 200 square feet.

d. Fences that meet the following criteria:

i. The fence is not located within a wetland or a stream channel; and

ii. If the fence is below the top of the bank of a stream, at least a two-foot section of every 100-foot segment or portion thereof is:

A. Not less than 12 inches above the ground; and

B. Not more than four feet tall, measured from the ground.

e. Other development that does not remove any native vegetation or create new permanent structures within the RP or RC District.

i. The development does not result in any new permanent structure or development within the RP or RC District, or its associated buffer, except the replacement or vertical expansion of an existing non-conforming structure, within the footprint of the non-conforming structure; and

ii. The development does not remove any vegetation designated as native vegetation in the Lake Oswego Plants List; and

iii. All replacement vegetation used is listed as "native vegetation" in the Lake Oswego Plants List.

45. Wetlands, stream corridors, and tree groves that are not contained within a RP or RC District shall not be subject to the regulations of this Article. However, an application for development that impacts a stream corridor or wetland may still be subject to state or federal wetland or stream regulations. Notice of such applications will be sent to the Division of State Lands (DSL) or the Army Corp. of Engineers.

56. In addition to the notification required for the particular development by LOC Articles 50.80 - 50.82, the City shall notify the Oregon Division of State Lands and the Army Corp. of Engineers upon receipt of a complete application for development, change or intensification of use within an RP District that impacts a wetland or stream corridor.

67. Mitigation Required for Violation. If development occurs in violation of this Article, the violator shall not only be subject to any and all enforcement and penalties that can be brought or imposed for violation of this Code he or she shall be responsible for mitigating any damage caused by the violation to a protected resource pursuant to LOC 50.16.100 to 50.16.110.

[Cross-References: See LODS 3 (streams) and 4 (wetlands) if property is not designated under LOC Article 50.16, but was inventoried on City Hydrology Map or may meet criteria under LODS 3, Section 5, or LODS 4, Section 4.015 (2). See also Transition Rule, Ord. 2148, Sec. 5, and Ord. 2293 amending Sec. 5. Obtain copy of LODS 3 and 4 from Planning Division.]

**50.16.016 Rebuilding Nonconforming Single-Family or Duplex Dwelling Located in Resource Area, Resource Buffer RP or RC District or Construction Setback.**

Excluding single-family or duplex dwellings subject to the Flood Management Area, if a portion of a nonconforming single-family or duplex dwelling is damaged or destroyed by causes not under the control of the owner (including but not limited to fire, earthquake, flood, landslide, and wind or tree damage, but not including destruction due to lack of structural maintenance by the owner, remodeling, or new construction), and the dwelling was non-conforming due to its location within a resource district, ~~resource buffer~~, or construction setback, the rebuilding or reconstruction of the nonconforming dwelling shall be exempt from LOC 50.16.055 (2), 50.16.060 (3)(a-d), and 50.16.075 (2)(a)(iv and v), LOC Article 50.70, and to the other requirements of the Code not within LOC Article 50.16, to the extent that the damaged or destroyed portions of the dwelling failed to conform to 50.16.055(2), 50.16.060(3)(a-d), or 50.16.075 (2)(a)(iv and v) and to other requirements of this Code not within LOC Article 50.16. In order to utilize the rights granted by this subsection the reconstruction must be commenced within one year of the date of the damage and completed within two years of such date.

### 50.16.020 Criteria for Designating Property within an Overlay District.

1. Goal 5 Analysis Required. In order to include an individual property, a portion of a property, or a group of properties within an RP or RC Overlay District, the reviewing body shall find that the resource on the site or sites has been ranked and evaluated through an Economic, Social, Environmental, and Energy (ESEE) Process Analysis in compliance with Statewide Land Use Planning Goal 5 and merits a Resource Protection (RP) and/or Resource Conservation (RC) designation.

2. Procedure. An RP or RC designation may be imposed, modified or removed pursuant to either a City or area-wide Goal 5 analysis or a Goal 5 analysis of a single property or small number of individual properties. A group of properties shall be processed as a legislative Comprehensive Plan Map and Zoning Map amendment pursuant to LOC Chapter 50.75.005 (1), and a single property shall be processed as a quasi-judicial Comprehensive Plan Map and Zoning Map amendment pursuant to LOC 50.75.005 (2).

3. Addition of Resources.

a. Submission of Application. Within 90 days of receiving evidence that a previously unmapped resource is likely to meet the criteria for resource designation, the City Manager shall submit an application for designation of resource to the reviewing authority pursuant to subsection (2) above.

b. Criteria. The reviewing authority shall adopt a Comprehensive Plan Map and Zoning Map Amendment to add the resource to the Sensitive Lands Atlas, and designate the RP District or RC District, as applicable, if the reviewing authority finds that the proposed resources are "significant resources," by meeting the requirements of either subsection (5) [stream or wetland] or subsection (6) [tree grove], and if an ESEE analysis shows that the resources are required to be protected.

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

a. Lake Oswego ESEE Analysis Methodology to be Utilized. The City shall determine:

i. Tree Grove: The Wildlife Habitat Assessment Score (HAS); or

ii. Stream Corridors and Wetlands: The Oregon Freshwater Wetland Assessment Methodology developed in the City of Lake Oswego Resource Areas Report and ESEE Process Analysis for evaluation and comparison of inventoried sites pursuant to Statewide Land Use Planning Goal 5. The HAS is a numerical ranking applied in an ESEE Inventory which represents the relative wildlife values of a given natural resource site. Six features are evaluated to determine the total Wildlife Habitat Assessment Score: Water; Food; Cover; Disturbance; Linkage; Unique Features. In addition, the City shall consider the scenic value of the resource pursuant to the methodology established in the ESEE Analysis. See LOC Appendix 50.16-A.

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

5. Applicability of RP Overlay District: The Resource Protection (RP) Overlay District shall protect environmentally significant stream corridors and wetlands. Non-Jurisdictional Irrigation Ditches and Non-Jurisdictional Roadside and Railway Ditches, as defined by the Oregon Department of State Lands, shall not be placed within the RP District.

The following resources may be placed within the RP District:

a. Stream corridors and wetlands that have a HAS ranking of 50 or more (defined as "Class I" stream corridors and wetlands).

b. Stream corridors and wetlands that have a HAS ranking of 35-49 or have a "high" ranking for scenic values (defined as "Class II" stream corridors and wetlands).

c. Wetlands that are significant under OFWAM guidelines, including:

i. Wetlands fed by surface flows, sheet flows or precipitation, that have evidence of flooding during the growing season, and have 60 percent or greater vegetated cover, and are over one-half acre in

size; or other wetlands that qualify as having "intact water quality function" under the Oregon Freshwater Wetland Assessment Methodology; or

ii. Wetlands in the Flood Management Area, that have evidence of flooding during the growing season, and are five acres or more in size, and have a restricted outlet or no outlet; or other wetlands that qualify as having "intact hydrologic control function" under the Oregon Freshwater Wetland Assessment Methodology; or

iii. Wetlands where at least a portion of the resource is within a horizontal distance of less than one-fourth mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR Chapter 340, Division 41.

d. All perennial streams.

6. Applicability of RC Overlay District: The Resource Conservation (RC) Overlay District shall protect significant tree groves. A tree grove may be placed within an RC District if the tree grove 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.

#### **50.16.025 Removing an Overlay District Designation.**

1. In order to remove an overlay District designation the review body shall find that one of the following criteria ~~is~~ are 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 ~~or the buffer~~, such that no portion of the resource ~~or buffer~~ was on the subject property.

2. An overlay district designation shall not be removed as a result of damage caused by the property owner, another party, or other than natural causes.

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

4. An Overlay District Designation may be removed pursuant to subsection (1)(c) above by a delineation on the subject site in accordance with LOC 50.16.035 and a finding that there is not now nor was there any resource located upon the site at the time of designation.

#### **50.16.030 Environmental Review.**

An applicant for a development subject to this Article pursuant to LOC 50.16.015 shall comply with:

1. For exempt development under LOC 50.79.005 occurring within an RC or RP District, ~~its associated buffer~~, or its associated construction setback ~~area~~, the applicant shall:

i. Comply with the applicable RP District or RC District Development Standards (LOC 50.16.060 or 50.16.075);

ii. Comply with the Construction Standards (LOC 50.16.095) to the satisfaction of the City Manager;

iii. Meet the steps of avoidance and minimization as stated in LOC 50.16.105(1) and (2); and

iv. File a mitigation plan that complies with the standards of LOC 50.16.110. for the review and approval of the City Manager.

2. For development other than under subsection (1) above, the environmental review requirements in LOC 50.16.035 to 50.16.045 and LOC 50.16.055 to 50.16.060 (for RC Zones), LOC 50.16.070 to

50.16.085 (for RP Zones) or LOC 50.16.090 (Special Standards for the Oswego Canal), whichever sections are applicable.

#### **50.16.035 Delineation of Resource Streams, Wetlands, and Tree Groves.**

1. Preparation/Criteria. Except as provided in subsection (4) of this section, an applicant for a development subject to environmental review shall first delineate the resource stream, wetland or tree grove. A delineation is a more precise, site specific determination of the location of the resource tree grove or water resource prepared by a qualified professional. The delineation shall include a map showing the delineated boundary to plus or minus 2 feet. The delineation map shall also show the buffer area protected riparian area, if required for the particular resource. Resource boundaries shall be delineated as follows:

a. Tree Groves. The RC District shall be delineated as follows:

i. The boundary of a tree grove shall be measured at the outer edge of a contiguous tree canopy based on aerial photos and/or visual field observations, but shall not include any tree canopy that is within an RP District (stream corridor or a wetland) or below the top of the bank of a stream; (Area that is a buffer to an RP District is not itself deemed to be within an RP District.); and

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

i. The methodology must include soils testing, and

ii. When a delineated wetland boundary is abutting a steep slope, the buffer protected riparian area shall be applied from the top of the slope rather than from the delineated boundary. The top of the slope shall be determined according to the same criteria as the top of the bank, pursuant to LOC Appendix 50.16.035 (1)(c).

c. Stream Corridors. A stream corridor boundary shall be measured or delineated based on topographic maps, hydrology maps, and/or field observations, pursuant to LOC Appendix 50.16.035 (1)(c).

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

a. The applicant agrees to conduct a new delineation by an expert selected by the City Manager at the applicant's expense; and

b. The applicant waives the applicable statutory deadline for completing a local decision on the application for the period of time necessary to conduct the new delineation.

3. Adjustment of Overlay District Boundaries to Reflect Approved Delineation. An approved delineated boundary shall replace the boundary in the Sensitive Lands Atlas for the purposes of review of the development proposal for compliance with this Article. If and when the proposed development receives final approval, including resolution of any appeals, the boundary of the RP or RC district as shown in the SL Atlas and SL Map (if necessary), shall be modified to be consistent with the delineated boundary, and the SL Atlas and SL Map shall show the required buffer outward from the delineated boundary.

4. Delineation not Required; Exceptions. An applicant for a development subject to this Article shall not be required to delineate the resource pursuant to this section if:

a. The resource has been previously delineated pursuant to an earlier development application subject to this Article. Exception: The City Manager may require a new delineation if:

1. The applicant desires to demonstrate that the previously delineated boundary is no longer accurate;

2. There is evidence of a substantial change in circumstances on the property that has affected the location of the resource as previously delineated; or

3. The City Council has adopted new delineation standards or requirements since the previous delineation, or

b. The proposed development consists solely of landscaping and/or tree removal or qualifies as a resource enhancement project, and complies with LOC 50.16.075 (2)(a)(i) [Landscaping], 50.16.075 (2)(ii) [Tree Removal], or either LOC 50.16.060 (3)(f) or 50.16.075 (2)(a)(vi) [Resource Enhancement Projects].

5. Delineation in the Absence of a Development Application. An applicant may apply to delineate a resource in absence of an application for a specific development.

#### **50.16.040 Modifications to Dimensional Standards and Setbacks of the Underlying Zone.**

1. Except as provided in subsections (2) and (3) of this section, an applicant for development subject to environmental review may vary from the lot dimensional standards (building setbacks, lot size, lot width, and lot depth) otherwise applicable without a formal variance pursuant to LOC Article 50.68, if the applicant demonstrates that:

a. Compliance with the applicable dimensional standard or standards would cause the proposed development to disrupt lands within an RP or RC District ~~or within a required buffer~~, or would preclude or reduce the transfer of allowable density from RP or RC zoned areas of the property to non RP or RC zoned areas;

b. The proposed development will result in greater protection of the resources identified on the site than would occur without the dimensional modification, and

c. In the case of a Planned Development, the criteria of LOC 50.17.015 have been met.

2. An application to vary from standards other than the dimensional standards above or that does not comply with the criteria contained in subsection (1) of this section may qualify for a variance under LOC Article 50.68 or other applicable article or section for modification or exception.

3. Where the request is not part of an application subject to the notice requirements of a minor or major development (either LOC 50.81.010 or LOC 50.82.020), and the proposed development would be located within 20 feet of an existing primary structure on abutting property, written approval from the abutting property owner shall be required.

#### **50.16.045 Density Transfer.**

1. Lot density transfer shall be permitted on residentially zoned lands subject to an RC or RP District pursuant to this section.

##### **2. Density Transfer Ratios.**

a. Lot density (the number of lots otherwise allowable pursuant to the underlying zoning designation but for the RP District ~~and buffer~~) may be transferred from RP District lands to contiguous non-resource zoned lands in the same ownership at a 1:1 ratio.

b. Lot density (the number of lots otherwise allowable pursuant to the underlying zoning designation but for the RC Protection Area) may be transferred from RC District lands to contiguous non-RC lands on the same ownership at a 1:1 ratio for the portion of the RC District which is to remain undeveloped (the Protection Area).

3. When an applicant chooses to transfer lot density from one area or parcel to another contiguous area or parcel, the area or parcel that is protected shall no longer be eligible for future partition or subdivision. In order to put future property owners on notice, the applicant shall execute a covenant running with the land that effects this restriction.

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**50.16.050 Resource Conservation (RC) District Environmental Review Standards; Applicability and Purpose.**

In addition to compliance with LOC 50.16.040 to 50.16.045, applicants for development which are subject to environmental review pursuant to LOC 50.16.015 on property containing an RC District shall comply with the standards contained in LOC 50.16.055 to 50.16.060, in order to:

1. Ensure that new development and alterations are compatible with and maintain the functions and values of resources within the RC District; and
2. Limit the amount of disturbance allowed within RC Districts, while permitting reasonable development of property.

**50.16.055 RC District Protection Area.**

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

2. Except as otherwise provided in LOC 50.16.060, no development shall be permitted within the Protection Area. The area outside of the Protection Area may be fully developed pursuant to applicable regulations.

3. Except as provided in subsection (4) of this section, the location of the Protection Area shall be based upon the following criteria:

- a. The Protection Area shall link to other RP or RC lands on the development site and on abutting properties, if such lands are present;
- b. The trees having DBH width greater than the median DBH within an RC District shall be included in the Protection Area;
- c. The location of the Protection Area shall be designed to protect development from blow-down hazards;
- d. The Protection Area shall protect steep slopes and resources close to water areas from potential erosion and water quality impacts;
- e. The Protection Area shall protect wildlife habitat and travel corridors;
- f. The Protection Area shall be designed to protect a contiguous canopy and a clustered configuration that does not fragment lands within an RC District;
- g. The Protection Area shall consist of viable plant and wildlife communities;
- h. The Protection Area shall maintain the scenic qualities of the site.

4. It is recognized that all of the criteria listed in subsection (3) of this section may not be applicable to every site. In some cases, the criteria may conflict on a given site. In such cases, the reviewing authority shall balance the applicable criteria in order to protect the most environmentally significant portion of the RC District.

5. Once a Protection Area has been identified and protected pursuant to LOC Article 50.16 and approval becomes final, no future reduction in the RC Protection Area shall be permitted, unless the property owner files for a modification to the original permit and establishes a new Protection Area in compliance with subsection (3) of this section that is at least as large as the previously designated protection area, or demonstrates that the Protection Area as originally designated has degraded through natural causes pursuant to LOC 50.16.020.

6. The City Manager shall note the establishment of a Protection Area in the SL Atlas, along with a reference to the application in which the Protection Area was created.



7. In order to put property owners and occupants on notice, the applicant shall execute a covenant running with the land that references the Protection Area and the City of Lake Oswego Department of Planning application file in which the Protection Area was established.

**50.16.060 RC District Development Standards.**

1. Except as provided in subsection ~~e.3(h)~~ of this section, a criterion applicable to the RC Protection Area shall apply to the entire RC District if no Protection Area has been established pursuant to LOC 50.16.055.

2. In addition to compliance with any other applicable regulations, the following development uses and activities on properties containing an RC District are permitted within the RC District or its buffer, subject to the standards set forth in this subsection 3 below:

- a. Streets, driveways, lake trams, and public transportation facilities,
- b. New structures, accessory structures, decks, parking areas, active use recreational facilities,
- c. Additions to existing structures and to non-conforming structures,
- d. Temporary construction activities,
- ~~e. Fences,~~
- ~~fg.~~ Passive use recreational facilities,
- ~~gf.~~ Utilities,
- ~~hg.~~ Resource enhancement projects,
- ~~ih.~~ Landscaping, new and existing,
- ~~ji.~~ Tree removal,
- ~~kj.~~ Limited hazardous materials storage.

3. Development Standards. If the proposed types of development are permitted within the RC District or its buffer, the development activity, use or activity shall comply with the following standards, and the construction standards set forth in LOC 50.16.095:

- a. Streets, Driveways, Lake Trams, and Public Transportation Facilities.
  - i. Driveways shall be set back at least 5 feet from, and shall not be placed through an RC Protection Area unless there is no other practicable method of access to the buildable areas of property served by the driveway.
  - ii. Public or private streets, trams to access Oswego Lake, and public transportation facilities shall be set back at least 5 feet from, and shall not be placed in or through an RCPA unless:
    - A. for public or private streets, there is no other practical method of providing for access to buildable parcels.
    - B. for public transportation facilities, there is no other suitable location nearby for siting the public transportation facilities which would provide equal or greater public use of the public transportation facilities.
    - C. for trams to access Oswego Lake, there is no other practical method of providing for access to Oswego Lake;
    - D. for regional trails, (designated as a regional trail on the City's Trails and Pathway Master Plan), they may be located within an RCPA provided the trail width shall be no greater than 12 feet wide (as determined by the standards in the City's Trails and Pathway Master Plan),
  - iii. If allowed within the Protection Area and five-foot setback pursuant to this criterion, the applicant shall comply with the following requirements:
    - A. Streets, private streets, driveways and bridges shall be the minimum width necessary to while also allowing for safe passage of vehicles and/or pedestrians.
    - B. The amount of disturbance for driveways shall be minimized through use of shared access for abutting lots and access through easements for adjacent lots;

C. If applicable, the applicant shall plan for future extension of shared access, access easements, or private streets to access potential new building sites in order to avoid subsequent encroachments into the Protection Area and five-foot setback area;

D. The applicant shall mitigate for loss of Protection Area by increasing the size of the protection area, where feasible, to compensate for the area of the RC Protection Area used for the public or private street, driveway, or public transportation facility, or by complying with the mitigation requirements in LOC Sections 50.16.100 to 50.16.110.

b. New Structures, Accessory Structures, Decks, Parking Areas, Active Use Recreational Facilities. New structures, parking areas, and active use recreational facilities shall be set back at least 5 feet from the Protection Area boundary in order to protect tree roots. Accessory structures, decks, and similar structures meeting the criteria of LOC 50.14.005 (5)(a-c) and LOC 50.22.045 (2) are permitted within the 5 foot setback area so long as they are placed no closer than 3 feet from the Protection Area boundary.

c. Additions to Existing Structures and to Non-conforming Structures. Additions to existing structures or to non-conforming structures are permitted provided the addition does not expand the lot coverage in the resource area.

d. Temporary Construction Activities. A temporary, construction zone, not greater than 10 feet wide, is allowed around the footprint of any structure when necessary for tools, scaffolds, etc. related to the construction, maintenance, or repair of the structure. No storage of materials or supplies may occur within this zone.

~~e. Fences. Fences shall not be placed in a Protection Area unless the bottom of the fence (except for posts) is not less than 12 inches above ground and the top of the fence is not taller than 4 feet tall, or of another design approved by the City Manager, to allow wildlife passage.~~

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

gf. Utilities. Public or private utilities shall not be placed in or through the RC Protection Area unless tunneling under a resource where tree roots can be avoided and the functions and values of a resource will be maintained, or there is no other practicable alternative. If allowed to be located within an RC Protection Area, the applicant shall restore and revegetate the disturbed area with plants identified on the Plant List and mitigation shall be required pursuant to LOC Sections 50.16.100 to 50.16.110. When applying Step 1 (avoidance) of the mitigation process:

4i. Sanitary sewer, water, power, gas, telecommunications, cable and storm drain lines shall be maintained in public rights of way and routed around significant resources, rather than through a resource wherever possible;

2ii. Drainage patterns shall not be altered in the resource area, or if altered, shall be designed and maintained so as not to adversely impact the functions and values of the resource.

hg. Resource Enhancement Projects. Resource enhancement projects shall remove only invasive vegetation, and shall plant only vegetation within the RC District or Protection Area, if one has been established, listed on the Plant List. Any pathways or structures proposed as part of a resource enhancement project shall retain existing trees.

ih. Landscaping.

i. Plants. Plants used for landscaping within a Protection Area shall:

- A. Be adapted to local soils and growing conditions;
- B. Require no fertilizers or pesticides detrimental to the resource;

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

D. Provide food or cover for wildlife.

ii. The City shall maintain a Plant List on file in the Planning Division listing species that comply with the criteria in subsection (3)~~(g)(i)(h)~~ of this section. If a plant is listed in the applicable section of the Plant List for resource landscaping, it shall be presumed to comply with subsection (3)(g)~~(i)~~ of this section. The Plant List is not intended to be an exclusive listing of allowable landscaping materials, but shall be used as a guideline and may be updated by the City Manager from time to time as new plants in compliance with subsection (3)~~(g)(i)(h)~~ of this section are discovered or become available. An applicant may utilize a plant not on the Plant List as long as it complies with the criteria in subsection 3 ~~(g)(i)(h)~~ of this section.

iii. Removal of vegetation identified on the Plant List as appropriate for resource landscaping is not permitted from a protection area.

~~iv. No herbicides or pesticides shall be used except for control of invasive plants as identified on the Plant List.~~

~~iv.v.~~ iv.v. New landscaping shall not include any invasive plants on the City's Plant list.

~~v.vi.~~ v.vi. Existing Landscaping: Non-conforming formal landscaped area including ornamental gardens and lawns located within a Protection Area and in existence at the time of the adoption of these standards, may be maintained, altered or the modified pursuant to LOC 50.70.005. However, a non-conforming landscaped area may not be expanded pursuant to LOC 50.70.025.

jj. Tree Removal. Tree removal on property within the RC District shall be subject to the following criteria:

iA. Tree removal in a RC district that has not established a RC Protection Area shall be subject to a Dead Tree Removal Permit (LOC 55.02.042 (3)) or Hazard Tree Removal Permit (LOC 55.02.042 (4)). Tree removal pursuant to LOC 55.02.080 is prohibited in an RC District prior to designation of the Protection Area.

iiB. Tree removal within a designated RC Protection Area shall be subject to a Dead Tree Removal Permit (LOC 55.02.042 (3)) or Hazard Tree Removal Permit (LOC 55.02.042 (4)). Tree removal for development permitted pursuant to this section, excepting subsection ~~(g)3(h)~~ and this subsection, within a Protection Area is permitted pursuant to LOC 55.02.080.

~~iiiC.~~ iiiC. Tree removal outside of the Protection Area shall comply with LOC Chapter 55.

~~ivD.~~ ivD. These limitations are not intended to prohibit removal of trees in an emergency pursuant to LOC 55.02.042 (5).

kj. Limited Hazardous Materials Storage. Uncontained hazardous material, as defined by the Department of Environment Quality, or development providing for the storage or processing of materials that are flammable, explosive, toxic, or that could be injurious to human, animal, or plant life are prohibited in the Resource Conservation District.

EXCEPTION:

Aj. Materials that are typically used for household purposes and in quantities which are normal for household use.

Bjj. Materials that are stored in a boathouse and are typically used for recreational boat operation and maintenance.

#### 50.16.065 Resource Protection (RP) District Environment Review Standards; Applicability and Purpose.

In addition to compliance with LOC 50.16.030 to 50.16.045, applicants for development that is subject to environmental review on property containing an RP District shall comply with the standards contained in LOC 50.16.070 to 50.16.085, in order to:

1. Prohibit new development within an RP District following delineation of the resource or resources, except as provided in this section. In the event that development is allowed within an RP District, the applicant shall mitigate for the loss of or damage to the RP resource pursuant to LOC 50.16.100 to 50.16.110;

2. Ensure that new development and alterations are compatible with and maintain the total land area and the functions and values of resources designated as RP;

3. Allow for development opportunities for at least one single family home in residential zones where an RP District occupies most or all of an individual property, pursuant to applicable mitigation criteria of LOC 50.16.100 to 50.16.110.

**50.16.070 RP District Buffer Requirements and Construction Setback Structure Improvement Requirements.**

1. The RP District shall include the delineated stream or wetland and a protected riparian area. Buffer areas shall be provided around delineated RP resources.

a. The protected riparian area contributes to the functions and values of the stream or wetland, including The purpose of the buffer area is to ensure that the resource is protected for the shelter, food, travel, and nesting needs of wildlife, and to provide continuity of the resource for aesthetics, surface water quality, slope stability protection, and flood storage protection functions and values.

b. The entire RP District including the stream or wetland and its protected riparian area buffer area shall be shown on the delineation map prepared pursuant to LOC 50.16.035.

2. The following buffer areas; are Protected Riparian Areas. They are measured outward from the edge of a delineated stream corridor or wetland, and included in the RP District resource, shall be provided:

- a. Class I Wetlands and Class II Wetlands abutting Class I Stream Corridors - 30 feet
- b. Other Class II Wetlands - 25 feet
- c. Class I Stream Corridors- 30 feet
- d. Class II Stream Corridors - 25 feet

3. Reduction of RP District ~~Exceptions/Modifications to Buffer Requirements.~~ The review authority may allow portions of the protected riparian area required buffer to be reduced when the applicant shows that:

- a. The proposed development complies with LOC 50.16.105; and
- b. The reduction in protected riparian area buffer width is not solely for the purpose of maximizing development of the site; and
- c. Development abuts a Class I or II Resource:

i. Development abutting a Class I Resource. The review authority may allow portions of the protected riparian area required buffer abutting a Class I resource to be reduced to a minimum of 15 feet if:

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

B. The width is increased in other areas to maintain a 30 foot average buffer width.

ii. Development abutting a Class II Resource. The review authority may allow portions of the protected riparian area required buffer abutting a Class II resource to be reduced to a minimum of 10 feet if:

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

B. The width is increased in other areas to maintain a 25 foot average buffer width.

d. The review authority may permit a protected riparian area buffer width that is less than the average minimums required in subsections (3)(c)(i) or (3)(c)(ii) of this section when a qualified

professional shows that such an adjustment will not damage the system as a whole, and one of the following conditions exist:

1. The presence of an existing topographic feature or human-made development physically precludes establishment of the minimum protected riparian area ~~buffer width~~ required; or

2. The size or configuration of the subject parcel is insufficient to provide the minimum protected riparian area ~~buffer width~~ required.

4. ~~A~~ Additional construction setback is ~~are~~ required from the RP District ~~buffer~~ by LOC 50.16.075 only for the following:

~~A~~g. New structures, parking areas, active use recreation facilities, streets and driveways - 10 feet.

~~B~~h. Accessory structures, decks, and similar outdoor facilities meeting the criteria of LOC 50.14.005 (5)(a) - (c) and LOC 50.22.045 (2) - 3 feet.

#### 50.16.075 RP District Development Standards.

1. In addition to compliance with any other applicable regulations, and subject to the requirement for compliance with subsection (3) below, the following development, use or activity on properties containing an RP District are permitted within the RP District ~~or its buffer~~, subject to the standards set forth in subsection (2) below:

- a. Landscaping,
- b. Tree removal,
- c. Utilities,
- d. Streets, driveways, lake trams and public transportation facilities,
- e. Resource enhancement projects [LOC 50.16.075 (2)(a)(vi)],
- f. Structures,
- g. Parking areas,
- h. Active use recreation facilities,
- i. Hard surfaced pathways,
- j. Limited hazardous materials storage, and
- k. ~~Signs and kiosks along streets, trails, parks, and minor or major public facilities.~~

2. Except as provided in LOC 50.16.085, all development listed in subsection (1) above is subject to environmental review and shall comply with the following standards:

a. Specific Development Standards.

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

A. Plants: Plants used for landscaping within the RP District ~~delineated resource and buffer area~~ shall:

- (1) Be adapted to local soils and growing conditions;
- (2) Require no fertilizers or pesticides detrimental to the resource;
- (3) Not be ~~dependant~~ dependent on long-term irrigation, which can increase erosion and sedimentation. (Irrigation necessary for initial establishment of the plants is not considered long term irrigation); and

(4) Provide food or cover for wildlife.

B. The City shall maintain a Plant List listing species that comply with the criteria in subsection (2)(a)(i)(A) of this section. If a plant is listed on the Plant List as appropriate for resource landscaping, it shall be presumed to comply with subsection (2)(a)(i)(A) of this section. The Plant List is not intended to be an exclusive listing of allowable landscaping materials, but shall be used as a guideline and may be updated by the City Manager from time to time as new plants in compliance with subsection (2)(a)(i)(A) of this section are discovered or become available. An applicant may utilize a plant not on the Plant List as long as it complies with the criteria in subsection (2)(a)(i)(A) of this section.

C. Removal of vegetation identified on the Plant List as appropriate for resource landscaping is not permitted from an RP District or buffer area, except as otherwise allowed in this section.

~~D. No herbicides or pesticides shall be used within the delineated resource or buffer area except for control of invasive plants as identified on the Plant List.~~

~~E. New landscaping within the RP District delineated resource or and buffer area shall not include any plants on the City's Plant List.~~

~~F. Existing Landscaping: Non-conforming formal landscaped areas including ornamental gardens and lawns located within an RP District delineated resource or buffer area and in existence at the time of the adoption of these standards, may be maintained, altered or the modified pursuant to LOC 50.70.005. However, a non-conforming landscaped area may not be expanded pursuant to LOC 50.70.025.~~

ii. Tree Removal. Tree removal within an RP District or RP District buffer pursuant to LOC 50.16.070 shall be subject to the following criteria:

~~1A.~~ Type I and Type II tree removal permits, in accordance with LOC 55.02.042 for development purposes, for those limited development activities allowed and approved to this section:

~~2B.~~ Type II tree removal permit, in accordance with LOC 55.02.042 for landscaping purposes, in conjunction and consistent with a Resource Enhancement project:

~~3C.~~ Hazard tree removal permit, in accordance with LOC 55.02.042(4), except any portion of the tree that is not likely be hazardous to persons or property shall be retained for wildlife habitat and natural resources.

~~4D.~~ Emergency tree removal permit, in accordance with LOC 55.02.042(5).

~~5E.~~ Verification permit, in accordance with LOC 55.02.042(6).

iii. Utilities.

A. Placement/New Construction: Public or private utilities shall not be placed within an RP district or buffer unless tunneling under a resource will not cause any adverse effect upon the resource and the functions and values of a resource will be maintained, or there is no other practicable alternative. If a public or private utility is allowed within an RP District or RP District buffer pursuant to LOC 50.16.070, mitigation shall be required pursuant to LOC 50.16.100 to 50.16.110. When applying the mitigation process to this section:

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

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

iv. Streets, Driveways, Lake Trams and Public Transportation Facilities.

A. Private streets shall not be placed through an RP District Resource or buffer area unless there is no other practicable method of access to buildable parcels.

B. Driveways shall not be placed through an RP District Resource or buffer area unless there is no other practicable method of access to the buildable areas of property served by the driveway. The amount of disturbance for driveways in the Protection Area shall be minimized through use of shared access for abutting lots and access through easements for adjacent lots;

C. Trams to access Oswego Lake shall not be placed through an RP District Resource or buffer area unless there is no other practicable method of access to Oswego Lake;

D. Public streets and public transportation facilities shall not be placed in or through an RP District or its buffer unless:

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

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

(3) For regional trails, (designated as a regional trail on the City's Trails and Pathway Plan), they may be located within an RP District provided the trail width shall be no greater than 12 feet wide (as determined by the standards in the City's Trails and Pathway Plan),

E. If allowed pursuant to the subsections of this criterion (iv), the applicant shall comply with the following criteria.

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

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

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

(4) The applicant shall mitigate for loss of any portion of an RP ~~District~~ Resource pursuant to LOC 50.16.100 to 50.16.110.

v. Structures, Parking Areas, Pathways, Driveways, and Lighting and Fences.

A. Construction Setbacks.

(1) Except as provided in subsection (2)(a)(iv) above, structures, parking areas, active use recreation facilities, hard surfaced pathways, streets and driveways shall be set back at least 10 feet from an RP District ~~to prevent construction impacts to the RP District~~ ~~buffer~~.

(2) In addition to other applicable standards, accessory structures, patios, decks, and similar outdoor facilities, and lighting shall ~~not be set back~~ ~~placed closer than 3 feet from an RP District~~ ~~the resource buffer boundary~~.

B. Passive use recreation facilities, such as soft surface trails and pedestrian bridges, may be located within the RP district ~~or its buffer~~. Any disturbed land area shall be restored with plants as described on the Plant List.

C. Exterior lights other than Low-Voltage Landscape Lighting as defined in LOC Article 50.63 are not allowed within the RP District ~~or its buffer~~; any exterior lighting outside of the RP District ~~or its buffer~~ shall be hooded and positioned so that light does not shine directly into the RP District and its buffer.

D. ~~Fences shall not be placed in a resource or its buffer, unless they are constructed so that:~~

- ~~the bottom of the fence (except for posts) is not less than 12 inches above ground,~~
- ~~the top of the fence is no taller than 4 feet tall,~~
- ~~the fence is not within 20 feet of a stream centerline,~~
- ~~the fence is not within a wetland,~~

~~or of another design approved by the City Manager, to allow wildlife passage.~~

vi. Resource Enhancement Projects. Resource enhancement projects such as bank stabilization, restoration plantings, in-channel habitat improvements, and similar projects which propose to improve or maintain the quality of a natural resource within RP Districts ~~or RP District buffer~~ pursuant to LOC 50.16.070 shall be approved if the applicant demonstrates that all of the following criteria are met:

A. The project will cause no permanent degradation, or loss of natural features in the RP District stream corridor; and

B. There will be improvement in the quality of at least one function or value of the resource; and

C. Only vegetation described in the Plant List as appropriate for resource landscaping shall be planted. For the purpose of this subsection, "resource enhancement project" does not include required mitigation pursuant to LOC Sections 50.16.100 to 50.16.110.

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

Exceptions:

A. Materials that are typically used for household purposes and in quantities which are normal for household use.

B. Materials that are stored in a boathouse and are typically used for recreational boat operation and maintenance.

viii. Signs and Kiosks. Signs and kiosks are permitted in the following locations:

A. Within 8 feet of the improved portions of public streets and trails;

B. Minor or major public facilities, subject to LOC Article 47 (Sign Code), provided the permanent land disturbance area of any sign or cluster of signs may not exceed 12 square feet.

b. General Development Standards. In carrying out the permitted development activity, the applicant shall also comply with the following general development standards, if applicable to the proposed development, and the construction standards set forth in LOC 50.16.095:

i. Resource Alterations.

A. Streams shall not be impounded or diverted from their natural channels unless the applicant demonstrates:

(1) The diversion or impoundment will cause minimum degradation or loss of natural features in the stream corridor;

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

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

or

(b) A stream channel occupies all or most of a legally created lot; or

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

B. A wetland shall not be impounded or the hydrology of the wetland modified through such activities as draining the resource or enlargement of the resource to create a pond, unless it can be demonstrated that the criteria for allowing resource enhancement in LOC 50.16.075 (2) (a)(vi) have been met.

ii. (Reserved).

3. Land Divisions and Lot Line Adjustments. The following standards apply to properties containing an RP District or its buffer for applications for land divisions including partitions, subdivisions, and Planned Developments (PDs), and to lot line adjustments:

a. All new lots or reconfigured lots proposed on lands that include an RP District or RP District buffer shall have designated sites for buildings that are located outside of the delineated RP District resource and buffer area. A lot division or lot line adjustment shall not create a lot that would necessitate, due to the presence of RP or RC resources on the created lot, an exception under LOC 50.16.085 in order to site a dwelling upon the proposed lot.



Exception: This standard shall not apply to lots established as open space tracts, for transfer to a public agency or private trustee to manage as a natural area, or where the entire lot is included in a conservation easement that prohibits development on the site.

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

#### **50.16.085 Exceptions Where the RP District Prohibits all Reasonable Development Opportunities.**

1. When a delineated RP District occupies most or all of a lot in any residential district, the property owner shall be permitted development on the parcel of a single family home. All other applicable City Codes and Development Standards shall be complied with, and the mitigation criteria of LOC 50.16.100 to 50.16.110 shall also be applicable.

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

[Cross-Reference: Lot created by land division: LOC 50.16.075 (3).]

#### **50.16.090 Special Standards for the Oswego Canal.**

1. Purpose. The Oswego Canal was originally constructed and continues to be used for conveying water from the Tualatin River to Oswego Lake for the purpose of enhancing and maintaining the lake. Although originally artificial, certain portions of the Oswego Canal have acquired the characteristics of a RP Class I and Class II stream corridor. The Canal provides the primary source of water to Oswego Lake for the purposes of recreation, navigation, scenic value, irrigation, maintenance and enhancement of water quality and to produce hydroelectric power. It is also an important element of flood and storm water control for Oswego Lake and surrounding areas and it serves as the route for a sanitary sewer interceptor which is necessary to provide sewer service to several areas of Lake Oswego. This section is applicable to the portions of Oswego Canal described as beginning immediately south of the Bryant Road bridge and extending to the Tualatin River as illustrated by LOC Appendix 50.16-C. These regulations are intended to preserve the community-wide benefits of the natural resource functions and values of the Canal, but are not intended:

a. To prevent the Lake Oswego Corporation from exercising its water rights to ensure an unimpeded supply of water to Oswego Lake;

b. To prevent the Lake Corporation from undertaking necessary management and maintenance activities to ensure water quality of the Canal or Oswego Lake, or

c. To prevent the City of Lake Oswego or the Lake Corporation from repairing, maintaining or making necessary improvements to essential public facilities and flood management measures within the Canal per LOC Article 50.44 Flood Plain, applicable Federal Emergency Management Association (FEMA) regulations, and any other City codes or standards that are applicable.

2. Exempt Activities. The following activities within the Oswego Canal Stream Corridor are exempt from the requirements of this Article when undertaken by the City of Lake Oswego or the Lake Corporation:

a. Operation of the Oswego Canal headgate, including variation of water flow rates and emergency or routine maintenance and repairs of the headgate, approaches to the headgate, associated banks and channel including ripraped areas, reinforcement areas, gabions and other features;

b. Emergency and routine removal of fallen trees, siltation, slides and other debris from the channel and banks of the canal and protected riparian ~~buffer~~ areas as needed to ensure a continuous flow of water to Oswego Lake and to prevent flood damage;

c. Treatment of waters or flows of water for water quality purposes, and the control or eradication of aquatic weeds and similar threats to the aquatic environment of Oswego Lake;

d. Emergency and routine repair and maintenance of failing or collapsed sections of the canal bank or protected riparian areas buffers, including removal of contributing vegetation;

e. Maintenance, major repair of the Oswego Canal sanitary sewer interceptor and any service laterals connecting to the sewer.

3. Activities Approved Pursuant to a Maintenance and Management Plan. Activities other than those described as exempt above, or incidental thereto, shall be reviewed as a minor development when proposed by the City of Lake Oswego or the Lake Corporation and when as part of an approved maintenance and management plan. Activities approved pursuant to a maintenance and management plan are subject to the minor development review criteria of LOC 50.79.025 and any other City Codes or Standards that are applicable. These projects are exempt from the RP District requirements.

4. Environmental Mitigation Required. Any effects of the above activities in subsection (3) which impact the Canal's stream corridor functions and values as determined by the adopted ESEE analysis, when conducted as part of an approved maintenance and management plan shall be mitigated pursuant to a plan approved by the reviewing authority. The mitigation plan shall be appropriate to the scale of disturbance, conform to the Oregon Division of State Lands and the U.S. Army Corps of Engineers requirements and shall also, to the extent practical, replace plant communities and wildlife habitat disturbed by the above activities.

5. Boat Houses. Boat houses and docks shall not be placed within the portions of the Oswego Canal RP District stream corridor or its buffer areas as described in LOC 50.16.090 above and illustrated by LOC Appendix 50.16-C.

#### **50.16.095 Construction Standards.**

An owner shall submit a construction plan and narrative to the City Manager prior to any grading, clearing, or construction on a development site which contains an RP or RC District. The construction plan and narrative shall demonstrate that the following standards will be met:

1. RC Protection Areas or RC Districts where no protection areas have been approved and RP District ~~and buffers~~ shall be protected during construction with either:

a. A minimum 6 feet tall chain link fencing secured with a minimum of 6 feet tall steel posts. The fencing shall be in place and maintained for the duration of construction. In addition, temporary signage shall be placed on the fencing which shall clearly identify the resource District and shall state the penalty for violations of this Article:

or

b. Such alternative method to subsection (a) above that is approved by the City Manager to demarcate and protect the RC/PA or RC/RP District from the adverse effects of construction activity upon the resources.

2. RC protection boundaries ~~and RP District~~ delineated resource boundaries and buffer boundaries, as applicable, shall be located and staked by a qualified professional prior to placement of fencing and other protective measures.

3. Hazardous Materials. The site shall be inventoried for hazardous materials, debris and noxious materials, and these materials shall be removed prior to the development of the site.

4. No construction, demolition, grading, or site clearing shall begin until after protective measures, signs, and erosion control measures are in place and have been inspected and approved by the City Manager and all applicable permits have been issued. Fencing and other protective measures shall not be removed, even temporarily, without the permission of the City Manager.

5. No stockpiling of fill materials, or parking or storage of construction equipment shall be allowed within a ~~R~~Resource District.

6. When transportation facilities, pathways, utilities, or structures are approved within a delineated RP ~~District~~ resource, they shall be constructed in such a way that a minimum of excavation is required and so that no permanent draining or filling of a stream corridor or wetland will occur.

7. Surface runoff and other water sources supplying hydrology to an RP District shall be designed and maintained so as not to adversely impact the functions and values of the resource.

8. Any additional construction requirements imposed as conditions of approval or which may be required by the Development Standards, the Lake Oswego Building Code (LOC Chapter 45) or the Erosion Control Code (LOC Chapter 52).

[Cross-Reference: Mitigation and Avoidance Review Requirements of LOC 50.16.100 to 50.16.110.]

#### **50.16.100 Mitigation; Purpose.**

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

LOC 50.16.100 to 50.16.110 recognizes that true replacement of mature or complex natural resource systems is difficult and can take many years. Mitigation is discouraged by first requiring that avoidance of development siting within the resource be explored. Then, if that is not possible, actions should be taken to minimize damage to the resource. Mitigation ratios are established according to the type of mitigation proposed and the value of the resource. Maintenance and monitoring of the mitigation measures are also required.

#### **50.16.105 Progressive Mitigation Steps Required.**

The approving authority shall permit development allowable within an RC Protection Area or RP District:

- ~~• An RC Protection Area;~~
- ~~• A delineated RP resource;~~
- ~~• RP resource buffer established by LOC 50.16.070 pursuant to LOC 50.16.060 or 50.16.075 through 50.16.085, whichever is applicable, only if it finds that the following progressive steps have been met:~~

1. Step #1 Avoidance: The applicant shall endeavor to avoid detrimental impacts on the resource altogether by providing alternative site plans along with the development proposal demonstrating that alternative designs have been explored. If disturbance of a resource district resource is proposed, the applicant shall first demonstrate that intrusion into the resource district cannot be avoided by a reduction in the size or configuration of the proposed development or by changes in the design that would avoid adverse effects on the resource while still allowing development of the property.

2. Step #2 Minimization: If the applicant has endeavored to avoid detrimental impacts on the resource according to subsection (2)(a), above, and the review authority finds that detrimental impacts cannot be avoided; then the applicant shall minimize impacts by demonstrating that:

- a. Alternative and significantly different site plans and development locations on the subject site have been considered, and that the alternative chosen is the least environmentally damaging; and
- b. When mitigation is proposed, there will be no net loss of resource area, functions, or values as a result of development actions pursuant to LOC 50.16.110 (5) or (6), whichever is applicable.

///

**50.16.110 Mitigation Requirements.**

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

a. For proposed development, demonstrates compliance with LOC 50.16.105 and this section. For mitigation of violations of this Code, demonstrates compliance with LOC 50.16.105 (2)(b).

b. Includes a maintenance and monitoring plan. The maintenance and monitoring plan shall include task timelines and quantitative goals to ensure the viability of the mitigation over time. As part of the monitoring plan, the applicant or other legally responsible agent shall provide an annual report to the City Manager on October 31st of each year for a 3 year period. The report shall be prepared by a qualified professional and shall document site conditions with narrative and pictures.

c. Provisions for regular maintenance and periodic monitoring of the mitigation site.

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

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

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

4. On-site mitigation is required where possible, taking into consideration the existing natural and human-made features of a site. If the review authority finds that on-site mitigation is not possible, then off-site mitigation shall be permitted according to the following priorities:

a. Within the same drainage system (as defined by the Lake Oswego Surface Water Management Plan or the Winterowd Natural Resources Inventory) and within the City limits; or

b. Outside of the drainage system, but inside the City limits; or

c. Outside the drainage system and City limits, but within the Lake Oswego Urban Services Boundary.

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

6. Wetlands: When wetland mitigation is proposed within an RP Class I or Class II District, the review authority shall require minimum mitigation ratios (area of wetland created or enhanced to area of wetland lost) as follows:

a. Wetlands Creation or Restoration - 2:1 ratio

b. Wetlands Enhancement - 3:1 ratio

c. Wetlands Creation, Restoration or Enhancement - 5:1 ratio where the wetland is a Class I RP District and is forested or contains a sensitive, threatened or endangered species as identified in an adopted ESEE inventory.

7. Vegetation restoration shall be required to mitigate the loss of plant communities disturbed by development activities. In-kind vegetation shall be required for all mitigation projects, including trees, shrubs, and ground cover plants as identified on the Plant List (on file in the Planning Division). The restoration plant community chosen shall recreate a diverse and healthy environment which is compatible with the resource.

8. Initial 3 Year Bonding Period.

a. Except as provided in subsection (8)(d) of this section, the applicant or property owner of a development subject to an approved mitigation plan shall post a performance bond or a letter of credit to the City that is equal to 120% of the value of the improvements installed pursuant to the plan for a 3 year

period. The bond shall be posted prior to the issuance of a building permit to ensure the success of mitigation improvements and the survival of plant materials.

b. The performance bond or the letter of credit will be released by the City after three (3) years upon receiving proof that the mitigation measures have been successfully implemented according to approved plans. Following release of the financial guarantee, the property owner(s) or other designated party (such as a homeowners association) shall remain responsible for maintenance of the resource.

c. If mitigation improvements fail during the bonding period and the responsible party does not replace said improvements after notification by the City, the bond shall be forfeited and shall be used by the City to correct the problem pursuant to the Mitigation Plan and the Conditions of approval.

d. Property owners of individual tax lots that are lots of record which are zoned for single family residential use, are not large enough to be further divided, and were in existence prior to the date this Article becomes effective shall be exempt from these bonding requirements.

Section 4. The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.


Enacted at the meeting of the Lake Oswego City Council of the City of Lake Oswego held on the 13th day of December, 2010.

AYES: Mayor Hoffman, Hennagin, Jordan, Tierney, Moncrieff, Vizzini

NOES: Olson

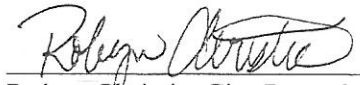
ABSENT: none

ABSTAIN: none

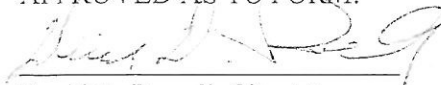
  
\_\_\_\_\_  
Jack D. Hoffman, Mayor

Dated: 12/14/10

ATTEST:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David D. Powell, City Attorney



BEFORE THE CITY COUNCIL  
OF THE CITY OF LAKE OSWEGO

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A REQUEST TO AMEND THE TEXT	)	LU 10-0043-1752
OF THE CITY OF LAKE OSWEGO	)	( <i>City of Lake Oswego</i> )
COMMUNITY DEVELOPMENT CODE,	)	
ARTICLE 50.16 (SENSITIVE LANDS)	)	FINDINGS AND CONCLUSIONS
TO CLARIFY TERMS AND ALLOW	)	
DEVELOPMENT WITH DE MINIMIS	)	
IMPACTS TO NATURAL RESOURCES	)	
[ORDINANCE NO. 2567]	)	

NATURE OF PROCEEDING

This matter came before the City Council pursuant to a recommendation by the Lake Oswego Planning Commission to amend the text of the Lake Oswego Community Development Code, Articles 50.02 (Definitions) and 50.16 (Sensitive Lands), for the purpose of clarifying terms used in the code and allowing development in Sensitive Lands Overlay Zones when that development has a de minimis impact on the protected natural resources.

HEARINGS

The Planning Commission held a public hearing and considered this application at its September 27, 2010 meeting. The City Council held a study session on November 9, 2010 and a Public Hearing on December 13, 2010 to consider the Planning Commission's recommendations.

CRITERIA AND STANDARDS

- A. City of Lake Oswego Comprehensive Plan
- Goal 1: Citizen Participation, Policy 1
- Goal 2: Land Use Planning
- Section 1, Policies 4(a) and 7(a,b)

1 Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources  
 2 Section 1, Policies 1, 2, 3, 4, and 6  
 3 Section 2, Policies 1,2,3,9, and 14  
 4 Section 3, Policies 1,3,6,8, and 9  
 5 Section 4, Policies 1, 3, 4, 7, 8, 9, 10, 11, 12, and 13  
 6 Section 5, Policies 1,4,5,7, and 9

7  
 8 Goal 6: Air, Water, and Land Resources  
 9 Section 1, Policy 3  
 10 Section 2, Policy 3

11  
 12 B. Lake Oswego Community Development Code

13 LOC 50.75.005 Legislative Decisions Defined  
 14 LOC 50.75.010 Criteria for a Legislative Decision  
 15 LOC 50.75.015 Required Notice to DLCD  
 16 LOC 50.75.020 Planning Commission Recommendation Required  
 17 LOC 50.75.025 City Council Review and Decision

18  
 19 C. Metro Urban Growth Management Functional Plan

20 Title 3: Water Quality, Flood Management and Fish and Wildlife Conservation  
 21 Title 13: Nature in Neighborhoods

22  
 23 D. Oregon Statewide Planning Goals or Administrative Rule adopted pursuant to ORS  
 24 Chapter 197

25 Goal 1: Citizen Involvement  
 26 Goal 2: Land Use Planning  
 27 Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces  
 28 Goal 6: Air, Water and Land Resources Quality

29  
 30 **FINDINGS AND REASONS**

31  
 32 The City Council incorporates the staff Council Reports dated November 24, 2010, and  
 33 October 27, 2010 for LU 10-0043 (with all exhibits) as support for its decision, together with the  
 34 Findings and Conclusions of the Planning Commission in this matter, as well as the staff  
 35 memorandum dated September 2, 2010 and the September 16, 2010 staff report. To the  
 36 extent they are consistent with the approval granted herein, the City Council also adopts by  
 37 reference its oral deliberations in this matter as further findings in support of this decision.



1 The City Council concurs with the Planning Commission and finds that:

2 1. Amending LOC Article 50.16 as proposed, and allowing development with *de minimis*  
3 impacts to resources, is intended to increase flexibility for property owners, thereby promoting  
4 acceptance of the resource protection program and encouraging voluntary compliance with the  
5 provisions of the Article. This in turn should result in greater benefits to environmental  
6 resources.

7 2. The Lake Oswego Comprehensive Plan establishes goals of:

- 8 a. Preserving and restoring environments that provide fish and wildlife habitat (Goal  
9 5, Section 1 Sub-goal);  
10  
11 b. Protecting and restoring the community's wooded character and vegetation  
12 resources (Goal 5, Section 2 Sub-goal);  
13  
14 c. Protecting, maintaining, enhancing and restoring wetlands (Goal 5, Section 3 Sub-  
15 goal).  
16  
17 d. Protecting, restoring and maintaining stream corridors to maintain water quality  
18 and to provide open space and wildlife habitat (Goal 5, Section 4, Sub-goal).  
19  
20 e. Protecting, enhancing and maintaining the wooded character and natural features  
21 of Lake Oswego that are prized by residents (Goal 5, Section 5, Sub-goal).  
22  
23 f. Providing for economic development opportunities that enhance the prosperity  
24 and livability of the community (Goal 9).  
25  
26 g. Providing for needed housing while protecting environmentally sensitive areas  
27 (Goal 10(c)).  
28

29 Each of these goals has implementing policies as set forth in the incorporated Planning  
30 Commission findings. Some policies require "maximization" of efforts, e.g., developers are  
31 required to maximize protection of the "natural functions and values." In other cases, polices

1 are stated without quantification, e.g., policies require the City or developers to “protect,  
2 restore, maintain” without a numerical threshold or quantification of the preservation efforts.

3 4. *De minimis* impacts to natural resources by their nature do not appreciably degrade  
4 the resource when considering the extent of the entire resource, and therefore do not lessen  
5 the preservation and protection of the resources’ contribution to the environment and natural  
6 landscape. At the same time, allowing *de minimis* impacts enhances development  
7 opportunities and flexibility for property owners.

8 5. Allowing the footprint of an existing dwelling to be increased by up to 700 square feet,  
9 with the limitations described below, will have a *de minimis* impact because:

- 10 a. Additions are allowed only to existing primary residential structures; additions will  
11 not allow new residential uses to be established in the resource area.  
12  
13 b. Additions will not be closer to the resource area than the pre-existing use.  
14  
15 c. The size of additions will be limited by other factors including lot coverage,  
16 architectural and design considerations, the internal configuration of structures,  
17 and setbacks.  
18  
19 d. Following enactment of Titles 3 and 13, Metro concluded that 500 square feet  
20 additions to all types of structures have *de minimis* impacts upon natural  
21 resources.  
22  
23 e. An additional 200-square foot expansion area, although not identical to Metro’s  
24 500-square foot allowed expansion, will similarly have a *de minimis* impact upon  
25 the natural resources, particularly when considering the limitation on the type of  
26 structure (primary residential) and internal configuration limitations, together with  
27 the prohibition against expansion closer to the resource.  
28

29 6. The City Council agrees with the Planning Commission that *de minimis* impacts result  
30 from allowing fences below the top of a bank of a stream so long as, for every 100-foot section  
31 of the fence, at least one two-foot section is not less than 12 inches above the ground and not

1 more than four feet tall when measured from the ground. However, the Council also finds that  
2 fences should not be allowed within wetlands or the channels of streams. The Code  
3 amendments recommended by the Planning Commission should be modified in this respect.

4 7. The City Council also agrees with the Planning Commission that *de minimus* impacts  
5 result from development totaling no more than 200 square feet that does not require a grading  
6 permit. However, the City Council finds that, because the impacts of such development are so  
7 minor, there is little to be gained by adding a provision allowing only low-voltage landscape  
8 lighting for the described *de minimis* development. That limitation should be deleted from the  
9 Code language recommended by the Planning Commission. It should be noted that the  
10 recommended lighting voltage limitation remains for "non-*de minimis*" development within an  
11 RP District.

12 8. Finally, the City Council finds that the recommended clarifying text amendments are  
13 appropriate, including using the Department of State Lands definition for "ditch," eliminating  
14 the textual distinction between the resource district and the resource buffer, and adding  
15 language to make it clear that routine maintenance and repair of existing legal development is  
16 not regulated by Article 50.16

#### 17 CONCLUSION

18 The City Council concludes that LU 10-0043-1752, as modified to be consistent with  
19 these findings, complies with all the applicable criteria, including applicable Statewide Planning  
20 Goals and Lake Oswego Comprehensive Plan Policies.

21 ///

