



Agenda Report 2014-05-19-03

Date: May 19, 2014

To: John Kovash, Mayor
Members, West Linn City Council

Through: Chris Jordan, City Manager *CJ*

From: Peter Spir, Associate Planner

Subject: Public hearing to consider "repealing and replacing" Community Development Code (CDC) Chapter 32: Water Resource Area (WRA) (Land Use Case Number: CDC-10-03)

Purpose:

Since its adoption in 2007, CDC Chapter 32: WRA has been beset with problems which gave rise to Land Use Board of Appeals (Horsey vs. City of West Linn) decisions, having to purchase property on Cedar Oak Drive to avoid a takings claim, and continued difficulty by City Council, Planning Commission, staff and the public in the use and interpretation of the WRA chapter. To address these problems, and to meet the legal obligations of compliance with Oregon Statewide Planning Goal 5 and Metro Titles 3 and 13, the Planning Commission is recommending that CDC Chapter 32: WRA, be repealed and replaced by the attached new language. City Council is expected to hold a public hearing to decide whether the new chapter language should be approved and adopted.

Question(s) for Council:

Does the Council with the recommended CDC Chapter 32 amendments?

Staff Recommendation:

Staff recommends adoption of the new chapter language and adoption of the new WRA map.

Background and Discussion:

In 2010, the Planning Commission formed an ad hoc committee that met 24 times from 2010-2013 to re-write Chapter 32. The recommendations of the committee were then forwarded to the Planning Commission. After Measure 56 notice was sent to approximately 1,700 property owners of lands within 200 feet of streams and wetlands, the Planning Commission held two public hearings on January 15, 2014 and February 5, 2014 and voted to recommend the amendments. (The proposed amendments are extensive to the point that it is regarded as a "repeal and replace" of the existing chapter.)

City Council held a work session on these amendments on May 5, 2014. At that time, staff explained the benefits of the Planning Commission's recommended version:

- Simplify the review process
- Adopt a map specific to WRAs and eliminate the use of the Public Works Department's Surface Water Management Plan (SWMP) map to identify WRAs
- Allow "reasonable use" of hardship properties and allow the development of 5,000 square feet or 30% of the WRA, whichever is greater
- Provide continued protection of the resources through setbacks
- Provide the option for property owners to hire wetland biologists or similarly trained professionals to propose WRA setbacks specific to the value and function of the WRA
- Include Metro's "Habitat Friendly Development Practices". Property owners can make simple modifications to their development proposals to improve water quality and habitat protection (e.g. use of water permeable pavers)
- Exempt Temporarily Disturbed Areas ("TDAs") from counting against the maximum amount of water resource area that a property owner can develop. TDAs are areas that are completely restored to natural grade and re-vegetated with native plants after the property is developed and disturbance is caused to the area
- Increase exemptions from the permitting process
- Provide more definitions of terms
- Provide more illustrations that better communicate of how WRA setbacks should be measured
- Create an incentive to daylight piped streams
- Create procedures for the re-alignment of streams
- Introduce low flow ephemeral stream category with commensurately reduced setbacks
- Increase mitigation and re-vegetation standards

Sustainability Considerations:

- Aquatic and terrestrial habitats and wildlife corridors are sustained and improved by protecting WRAs (wetlands, streams and associated riparian areas)
- The water quality of the City's streams and rivers is enhanced through the use of proposed setbacks, retention of groundcover, and the use of habitat friendly design techniques to intercept and filter eroded material and pollutants
- The protection of the riparian area tree canopy provides shade to maintain cooler stream temperatures which in turn sustains fisheries
- Wetlands and associated floodplains provide valuable long term impoundment areas for potentially damaging floods

Budget Impact:

The expansion of exemptions from WRA permits will reduce the amount of staff resources needed to manage the WRA program.

Council Options:

- Adopt the new chapter as proposed
- Adopt the new chapter with changes
- Retain the existing chapter

Public Hearing Required:

Yes

Potential Motions:

Move to direct staff to prepare an ordinance adopting the proposed amendments and continue the hearing to a date certain.

Attachments:

1. Memorandum from Assistant City Attorney Megan Thornton proposing alternative language for conservation easements
2. Proposed WRA amendments
3. Planning Commission staff report (January 15, 2014 and February 5, 2014) with attached written testimony.

Memorandum

Date: May 7, 2014

To: John Kovash, Mayor
Members, West Linn City Council

From: Megan Thornton, Assistant City Attorney

Subject: Water Resource Area Amendments – Modified language for conservation easements

Purpose

The City Council gave staff direction on May 5, 2014, to draft alternative language to 32.060(C) regarding dedications and easements that would allow the City to accept easements that have a public benefit without the City being forced to accept all easements offered by applicants. The Council determined that it should not be a mandatory code requirement that each applicant provide an easement.

Alternative Language

32.060 Approval Criteria

C. The City shall request dedications of the WRA to the City when acquisition of the WRA by dedication or easement would serve a public purpose. When such a dedication or easement is mutually agreed upon, the applicant shall provide the documentation for the dedication or easement.

Recommendation

Staff recommends the Council replace 32.060(C) with the language above.

Exhibit 1: Proposed WRA Amendments

PROPOSED AMENDMENTS
TO CHAPTERS 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 23, 24, 32, 33, 46, 46, 54,
and 55 of the
COMMUNITY DEVELOPMENT CODE

DISCUSSION DRAFT

May 19, 2014

Chapter 32
Water Resource Area Protection

Sections

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32.090	MITIGATION PLAN
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32.110	HARDSHIP PROVISIONS
32.120	WRA MAP

32.000 WATER RESOURCE AREA (WRA) PROTECTION

32.010 PURPOSES

The purposes of this chapter are to:

- A. Comply with Title 13 and Title 3 of Metro’s Urban Growth Management Functional Plan while balancing resource protection with property rights and development needs.
- B. Protect or improve water quality by filtering sediment and pollutants and absorbing excess nutrients for the protection of public health, safety and the environment and to comply with both state and federal laws and regulations, including the Clean Water Act and the Endangered Species Act.
- C. Moderate storm water impacts by slowing, storing, filtering and absorbing storm water and to maintain storm water storage and conveyance to prevent or minimize flooding and erosion for the protection of public health and safety.
- D. Prevent erosion and minimize sedimentation of water bodies by protecting root masses along streams that resist erosion and stabilize the stream bank and by protecting vegetation on steep slopes to maintain their stability.
- E. Protect and improve the following functions and values of WRAs that enhance the value of fish and wildlife habitat:
 - 1. Natural stream corridors that provide habitat and habitat connectivity for terrestrial wildlife,
 - 2. Microclimate habitats that support species adapted to those conditions,
 - 3. Shade to maintain healthy stream temperatures,
 - 4. Vegetation to absorb and filter pollution and sediment that would otherwise contaminate the water body,
 - 5. Sources of organic material that support the food chain,
 - 6. Recruitment of large wood that enhances the habitat of fish bearing streams, and
 - 7. Moderation of stream flow by storing and delaying storm water runoff, and
 - 8. Vegetated areas surrounding wetlands that, together with the wetland, provide vital habitat for birds, amphibians, and other species.
- F. Provide mitigation standards and guidance to address water quality values and ecological functions and values lost through development within WRAs.
- G. Encourage the use of habitat friendly development practices.
- H. Minimize construction of structures and improvements where they are at risk of flooding, to enable natural stream migration and channel dynamics, and protect water resources from the potential harmful impacts of development.
- I. Provide for uses and activities in WRA that have negligible impact on such areas. And to provide for other uses that must be located in such areas in a way that will avoid or, when avoidance is not possible, minimize potential impacts.

32.020 APPLICABILITY

- A. This chapter applies to all development, activity or uses within WRAs identified on the WRA Map. It also applies to all verified, unmapped WRAs. The WRA Map shall be amended to include the previously unmapped WRAS.
- B. The burden is on the property owner to demonstrate that the requirements of this Chapter are met, or are not applicable to the land, development activity, or other proposed use or alteration of land. The Planning Director may make a determination of applicability based on the WRA Map, field visits, and any other relevant maps, site plans and information, as to:
1. The existence of a WRA,
 2. The exact location of the WRA, and/or
 3. Whether the proposed development, activity or use is within the WRA boundary.

In cases where the location of the WRA is unclear or disputed, the Planning Director may require a survey, delineation, or sworn statement prepared by a natural resource professional/wetland biologist or specialist that no WRA exist on the site. Any required survey, delineation, or statement shall be prepared at the applicant's sole expense.

32.030 PROHIBITED USES

- A. Alteration, development, or use of real property designated as, and within, a WRA is strictly prohibited except as specifically allowed or exempted in this chapter.

Table 32-1: Summary of where development and activities may occur in areas subject to this chapter

Type of Development or Activity	In Water Resource	Water Resource Area
New House, Principal Structure(s)	No	No, except by hardship section 32.100. Geotechnical study may reduce WRA width per table 32-2 (footnote 5).
Additions to Existing House, Principal Structure(s) and replacement in kind. (Replacement in kind does not count against the 500 sq. ft. limit so long as it remains within the existing footprint.)	No	Yes, so long as it gets no closer to the WRA than building footprint that existed Jan. 1, 2006. Max. 500 sq. ft. of addition(s) to side or 500 sq. ft. to side of building footprint furthest from WRA. No limit on vertical additions within existing footprint. (See 32.030 (C)). Geotechnical study may reduce the WRA width per table 32-2 (footnote 5).
New cantilevered decks (over 30-inches), balconies, roof overhangs and pop outs towards the WRA from Existing House or Principal Structure(s)	No	Yes, but only 5 ft. into the WRA. Foundation or supports of structure cannot extend vertically to grade in the WRA. Geotechnical study may reduce the WRA width per table 32-2 (footnote 5).
Decks within 30-inches of grade, at grade patios.	No	Yes, but only to within 50 feet of the water resource or 10 feet behind the top of slope (ravine), whichever is greater. ¹ Geotechnical study may reduce the WRA width per table 32-2 (footnote 5).
New Accessory Structure under 120 sq. ft. and 10 ft. tall	No	Yes, but only if it is a minimum of 50 feet from the water resource or 10 feet behind the top of slope (ravine), whichever is greater. ¹
Repair and maintenance to existing accessory structures	No	Yes, but no increase in footprint or height.
Storm water treatment and detention (e.g. rain gardens, storm outfall/energy dissipaters)	No	Yes, Private and Public facilities including outfall and energy dissipaters are permitted if no reasonable alternatives exist.
Driveways/ streets/ bridges and parking lots	No, unless a WRA crossing is the only available route. No parking lots.	No, unless a WRA crossing is the only available route, or it is part of a hardship application. Parking lots only allowed in hardship cases the maximum distance from water resource.

New Fence(s)	No markers or posts in a water resource.	Yes, but only to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater. ¹ In remainder of a WRA, only City approved property markers or posts every 25 ft. to delineate property.
Demolition of structure and/or removal of impervious surfaces in the WRA	Yes, Restoration and re-vegetation required.	Yes, Restoration and re-vegetation required.
Exterior Lighting	No	No, except on existing buildings, additions or hardship cases but light must be directed away from the WRA and less than 12 ft. high.
Public passive recreation facilities	No, except for bridges and utility crossings.	Yes, but only soft or permeable surface trails, bridges and elevated paths, interpretive facilities and signage. Hard surface ADA trails are allowed in WRA above top of slope associated with well-defined ravine WRAs.
Public active recreation facilities	No, except for bridges and utility crossings.	Yes, but natural surface playing fields and playground areas only in WRA above top of slope associated with well-defined ravine WRAs.
Grading, fill (see also TDAs)	No, except for bridges and utility crossings.	Yes, after a WRA permit is obtained. Restoration and re-vegetation required.
Temporarily Disturbed Areas (TDA) (e.g. buried utilities)	No, except as allowed by WRA permit.	Yes. Restoration and re-vegetation required.
Removal of existing vegetation or planting new vegetation	No, except invasive plants and hazard trees per 32.030(A) (2) (b) or per 32.100.	Yes, if it is replaced by native vegetation. Exemption 32.030(A) (4) applies,
Realigning water resources	Yes after "Alternate Review" Process	Not applicable

¹ Development to within 50 feet of the water resource applies to Table 32-2 WRA types (A), (C), (D), and (H). Development behind top of slope (ravine) applies to WRA type (B).

32.040 EXEMPTIONS

The following development, activities or uses are exempt from a WRA permit but must conform to any applicable requirements of this section.

A. Vegetation Maintenance, Planting and Removal

1. The routine maintenance of any existing WRA, consistent with the provisions of this Chapter such as, but not limited to, removing pollutants, trash, unauthorized fill, and dead or dying vegetation that constitutes a hazard to life or property.
2. Removal of plants identified as nuisance, invasive or prohibited plants, provided that after plant removal, re-vegetation of disturbed areas is performed pursuant to Section 32.100.
3. The planting or propagation of plants identified as native plants on the Portland Plant list.
4. Maintenance of existing gardens, pastures, lawns, and landscape perimeters, including the installation of new irrigation systems within existing gardens, lawns, and landscape perimeters.
5. The use of pesticides and herbicides with applicable state (e.g. Oregon DEQ) permits.

B. Building, Paving, Grading, and Testing

1. Maintenance. Routine repair, maintenance and replacement of legally established above and below ground utilities and related components (including storm water catch

basins, intakes, etc.), roads, driveways, paths, trails, fences and manmade water control facilities such as constructed ponds, wastewater facilities, and storm water treatment facilities that do not expand the disturbed area at grade or footprint, provided re-vegetation of disturbed areas or corridors is performed pursuant to Section 32.100.

2. Trails. The establishment of unpaved trails constructed of non-hazardous, pervious materials with a maximum width of four feet in generalized corridors approved in a Parks or Trails Master Plan, provided that:
 - a. The trail is set back from the water resource at least 30 feet, except at stream crossing points or at points where the topography forces the trail closer to the stream.
 - b. Foot bridge crossings shall be kept to a minimum. When the stream bank adjacent to the foot bridge is accessible (e.g. due to limited vegetation or topography), fences or railings shall be installed from the foot bridge and extend 15 feet beyond the terminus of the foot bridge to discourage trail users and pets from accessing the stream bank, disturbing wildlife and habitat areas, and causing vegetation loss, stream bank erosion and stream turbidity.
 - c. Trails shall be designed to minimize disturbance to existing vegetation, work with natural contours, avoid the fall line on slopes where possible, and avoid areas with evidence of slope failure to ensure that trail runoff does not create channels in the WRA.
3. Site investigations. Temporary and minor clearing outside of wetlands not to exceed 200 square feet per acre or site, whichever is more, provided that no individual area is greater than 200 feet in size, for the purpose of site investigations and pits for preparing soil profiles, provided that such areas are restored to their original condition when the investigation is complete. While such temporary and minor clearing is exempt from the provisions of this chapter, it is subject to all other City codes, including provisions for erosion control and tree removal.
4. Support structures for overhead power or communication lines where the support structures are outside of the WRA.
5. The installation, within the developed portions of street right-of-ways, of new utilities, the maintenance or replacement of existing utilities and street repaving projects.

C. Nonconforming Structures.

1. Expansion of the principal Non-Conforming Structure. Additions to the existing building footprint of a principal non-conforming structure within, or partially within, the WRA are exempt, and additionally exempt from Chapter 66, Non-Conforming Structures, as long as the addition(s) meets the following restrictions:
 - a. Re-vegetation of temporarily disturbed areas will be performed per Section 32.100 after the addition is completed;
 - b. There is no net increase in storm water runoff flowing toward the water resource as a result of the addition(s);
 - c. The addition to the principal structure is not closer to the water resource than

the existing principal structure,

- d. If it is a lateral addition, it does not extend more than 25 feet laterally from the side of the existing principal structure,
- e. The addition does not increase the footprint of the existing principal structure by more than 500 square feet, at any one time or incrementally.
- f. Lateral additions to decks cannot come closer to the water resource than the existing deck.
- g. Vertical additions to existing principal structures that comply with the maximum height requirements of the underlying zone are exempt.

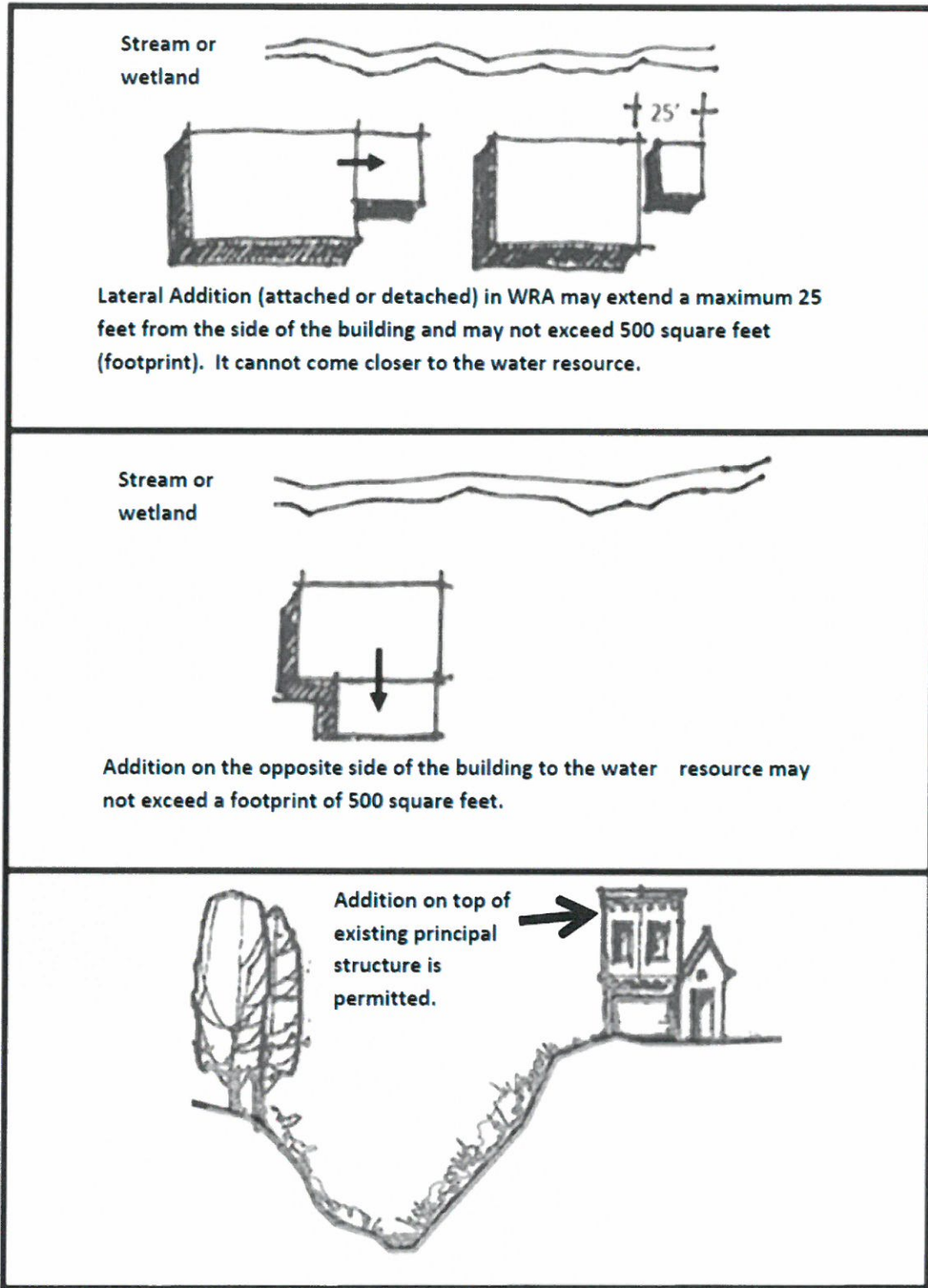
2. Repair, Replacement and Removal of Non-Conforming structures:

- a. Interior remodeling of a non-conforming structure.
- b. Repair, maintenance, rehabilitation and replacement of non-conforming structures, accessory structures, utilities and related components, roads, driveways, paths, trails, fences, and manmade water and storm water control facilities that do not expand the disturbed area or footprint. Re-vegetation of temporarily disturbed areas or corridors pursuant to 32.100 is required.
- c. This section also applies in the event that a non-conforming structure burned down or was otherwise damaged by natural or other disaster. The structure could be re-built so long as the structure did not expand the original footprint and the original access driveway (PDA) was used.
- d. Demolition and removal of non-conforming structure's impervious surfaces are exempt as long as the affected areas are restored with native vegetation pursuant to Section 32.100.

D. New Construction Activities allowed in the WRA.

- 1. Structures shall be located out of the WRA, except that eaves, balconies, decks, "pop outs," and similar additions, may cantilever over the outer boundary of the WRA a maximum of five feet. No vertical supports may extend down to grade within the WRA.
- 2. Construction of an accessory structure, less than 120 square feet in size and under 10 feet tall, may be constructed to within 50 feet of the water resource or 10 feet behind the top of slope (ravine, per figure 32-4), whichever is greater. No more than one accessory structure is permitted in the WRA. Accessory structures in the WRA that existed prior to January 1, 2006 may remain in place and not count against the limitation in new accessory structures.
- 3. Construction of a water permeable patio or deck within 30 inches of the original grade and construction of approved water permeable footpaths may be constructed to within 50 feet of the water resource or 10 feet behind the top of slope (ravine, per figure 32-4), whichever is greater.
- 4. Fences may be built to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater.

Figure 32-1: Additions to Non-Conforming Principal Structures within the WRA Boundary



F. Emergency Activities. Actions authorized by the City Manager that must be taken immediately or within a period of time too short to fully comply with this Chapter, to:

1. Prevent immediate danger to life or property,
2. Prevent immediate threat of serious environmental degradation,
3. Restore existing utility service, or
4. Reopen a public thoroughfare to traffic.

However, after the emergency has passed any disturbed area shall be restored, pursuant to Section 32.100.

G. Exempt Areas

1. The Tualatin or Willamette rivers are regulated by Chapter 28 and are not subject to this chapter. However, wetlands and buffers, regardless of their proximity to these rivers, are subject to this chapter. In areas where there is overlap with Chapter 28, this chapter shall prevail.
2. Existing enclosed or piped sections of streams, including any development at right angles to the enclosed or piped sections.

32.050 APPLICATION

- A. An application requesting approval for a use or activity regulated by this chapter shall be initiated by the property owner, or the owner's authorized agent, and shall include an application form and the appropriate deposit/or fee as indicated on the master fee schedule.
- B. A pre-application conference shall be a prerequisite to the filing of the application.
- C. The applicant shall submit maps and diagrams at 11x17 inches and a written narrative addressing the approval criteria and requirements of this Chapter, and any additional copies required by the Planning Director.
- D. Where review of soil maps, Department of Geology and Mineral Industries (DOGAMI) maps, or on-site inspection by the City Engineer reveals evidence of slope failures or that WRA slopes are potentially unstable or prone to failure, geotechnical studies may be required to demonstrate that the proposed development will not cause, or contribute to, slope failure or increased erosion or sedimentation in the WRA or adversely impact surface or modify groundwater flow or hydrologic conditions. These geotechnical studies shall include all necessary measures to avoid or correct the potential hazard.
- E. Applications proposing that streets or utilities cross water resources, or any other development that modifies the water resource, shall present evidence in the form of adopted utility master plans or transportation master plans, or findings from a registered Oregon civil engineer, certified engineering geologist or similarly qualified professional to demonstrate that the development or improvements are consistent with accepted engineering practices.
- F. Site Plan. The applicant shall submit a site plan which contains the following information, as applicable:
 1. The name, address, and telephone number of the applicant, the scale (lineal) of the plan, and a north arrow.
 2. Property lines, rights-of-way, easements, etc.
 3. Topographic information at two foot contour increments identifying both existing

grades and proposed grade changes.

4. A slope map delineating slopes 0-25% and over 25%.
 5. Boundaries of the WRA, specifically delineating the water resource, and any riparian corridor boundary. If the proposal includes development of a wetland, a wetlands delineation prepared by a professional wetland specialist will be required. The wetland delineation may be required to be accepted or waived through the Department of State Lands (DSL) delineation review process.
 6. Location of existing and proposed development, including all existing and proposed structures, accessory structures, any areas of fill or excavation, water resource crossings, alterations to vegetation, or other alterations to the site's natural state.
 7. Identify the location and square footage of previously disturbed areas, areas that are to be temporarily disturbed, and area to be permanently disturbed or developed.
 8. When an application proposes development within the WRA, an inventory of vegetation within the WRA, sufficient to categorize the existing condition of the WRA, including:
 - a. the type and general quality of groundcover, including the identification of dominant species and any occurrence of non-native, invasive species;
 - b. square footage of ground cover; and,
 - c. square footage of tree canopy as measured either through aerial photographs or by determining the tree drip lines. Where only a portion of a WRA is to be disturbed, the tree inventory need only apply to the impacted area. The remaining treed area shall be depicted by outlining the canopy cover.
 9. Locations of all significant trees as defined by the City Arborist.
 10. Identify adopted transportation, utility and other plan documents applicable to this proposal.
 11. For cases processed under 32.110(Hardship), provide the maximum disturbed area (MDA) calculations.
- G. Construction Management Plan. The applicant shall submit a Construction Management Plan which includes the following:
1. The location of proposed TDAs (site ingress/egress for construction equipment, areas for storage of material, construction activity areas, grading and trenching, etc.) that will subsequently be restored to original grade and replanted with native vegetation, shall be identified, mapped and enclosed with fencing per (3) below.
 2. Appropriate erosion control measures consistent with CDC Chapter 31 and a tentative schedule of work.
 3. The WRA shall be protected, prior to construction, with an anchored chain link fence (or equivalent approved by the City) at its perimeter that shall remain undisturbed, except as specifically authorized by the approval authority. Additional fencing to delineate approved TDAs may be required. Fencing shall be mapped and identified in the Construction Management Plan and maintained until construction is complete.
- H. Mitigation Plan prepared in accordance with the requirements in 32.090.

- I. Re-vegetation Plan prepared in accordance with the requirements in 32.100.
- J. The Planning Director may modify the submittal requirements per CDC Section 99.035.
- K. The following additional requirements apply to applications being submitted under the Alternative Review Process pursuant to CDC 32.070 through 32.080.
 - 1. Identify the affected WRA and describe the functions it performs (see Table 32-4).
 - 2. Provide a scaled map that delineates the proposed WRA boundaries determined to be sufficient to sustain the functions occurring at the site and a narrative that justifies the proposal, consistent with Section 32.080.
 - 3. Identify the recommended WRA boundary at the site with colored tape, survey markers or other easily identified means for field inspection by staff.
 - 4. Consultant Required for Alternate Review Process.
 - a. The narrative and analysis required by sections 32.070 and 32.080 shall be prepared and signed by a qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist. The Planning Director shall determine the scope of work and specific products required from the consultant. The Planning Director may require a mitigation plan pursuant to Section 32.090 and/or a re-vegetation plan pursuant to Section 32.100.
 - b. The Planning Director may waive the consultant requirement for simple or minor projects if he or she determines that it is not necessary in order to satisfy the requirements of this chapter.

32.060 APPROVAL CRITERIA (STANDARD PROCESS)

No application for development on property containing a WRA shall be approved unless the approval authority finds that the proposed development is consistent with the following approval criteria, or can satisfy the criteria by conditions of approval:

- A. WRA Protection/Minimizing Impacts. Development shall be conducted in a manner that will avoid or, if avoidance is not possible, minimize adverse impact on WRAs.
- B. Storm Water and Storm Water Facilities.
 - 1. Proposed developments shall be designed to maintain the existing WRAs and utilize them as the primary method of storm water conveyance through the project site unless:
 - a. the Surface Water Management Plan calls for alternate configurations (culverts, piping, etc.); or
 - b. under Section 32.070, the applicant demonstrates that the relocation of the water resource will not adversely impact the function of the WRA including, but not limited to, circumstances where the WRA is poorly defined or not clearly channelized.

Re-vegetation, enhancement and/or mitigation of the re-aligned water resource shall be required as applicable.
 - 2. Public and private storm water detention, storm water treatment facilities and storm

water outfall or energy dissipaters (e.g. rip rap) may encroach into the WRA if:

- a. accepted engineering practice requires it;
- b. encroachment on significant trees shall be avoided when possible, and any tree loss shall be consistent with the City's Tree Technical Manual and mitigated per Section 32.090;
- c. there shall be no direct outfall into the water resource, and any resulting outfall shall not have an erosive effect on the WRA or diminish the stability of slopes; and
- d. there are no reasonable alternatives available.

A geotechnical report may be required to make the determination regarding slope stability.

3. Roadside storm water conveyance swales and ditches may be extended within rights-of-way located in a WRA. When possible, they shall be located along the side of the road furthest from the water resource. If the conveyance facility must be located along the side of the road closest to the water resource, it shall be located as close to the road/sidewalk as possible and include habitat friendly design features (treatment train, rain gardens, etc.).
4. Storm water detention and/or treatment facilities in the WRA shall be designed without permanent perimeter fencing and shall be landscaped with native vegetation.
5. Access to public storm water detention and/or treatment facilities shall be provided for maintenance purposes. Maintenance driveways shall be constructed to minimum width and use water permeable paving materials. Significant trees, including roots, shall not be disturbed to the degree possible. The encroachment and any tree loss shall be mitigated per Section 32.090. There shall also be no adverse impacts upon the hydrologic conditions of the site.

C. Dedications and Easements Water

1. To protect WRAs from potential disturbance, damage and encroachment caused by human activity, at such time that property is subdivided or developed, the City shall:
 - a. Encourage applicant to place a restrictive covenant recognizing the limitations on development in the WRA on the land title deed.
 - b. Alternately, the applicant may consider dedication of the land title deed for the WRA to a private trust or conservation group for open space and resource protection purposes, with the exception of known or suspected contaminated sites.
 - c. The dedication of land or restrictive covenant on the deed, under subsections (C) (1) (a) or (b) above, shall be contingent on the City demonstrating that an essential nexus and rough proportionality exists. Alternately, the applicant may choose to waive the nexus and proportionality requirement. Where appropriate, the City may require that the "right to exclude" be legally relinquished by the property owner.
 - d. The City shall not pursue dedications or restrictive covenants from individual

property owners in residential zones applying for WRA permits that do not involve the creation of additional housing or lots.

2. The area appropriate for dedication or a restrictive covenant under Subsection (C) (1) (a) and (b) above should include, at a minimum, the water resource and extend to:
 - a. the outer or uphill edge of the WRA when WRA type (A), (C), (E), (F), or (H), shown in Table 32-2 applies; or,
 - b. to the distinct top of slope or ravine when protected WRA type (B) in Table 32-2 applies; or,
 - c. a smaller area, if any, based on the nexus and proportionality analysis under Subsection(C) (1) (c).

D. WRA Width. Except for the exemptions in Section 32.040, applications that are using the alternate review process of 32.070, or as authorized by the Approval Authority consistent with the provisions of this Chapter, all development is prohibited in the WRA as established in Table 32-2 below:

Table 32-2. Required Width of WRA

Protected WRA Resource (see CDC Chapter 2 Definitions)	Slope Adjacent to Protected Water Resource ^{1,3}	Starting Point for Measurements from Water Resource ^{1,3}	Width of WRA on each side of the Water Resource
A. Water Resource	0% - 25%	Edge of bankfull stage or OHW-Delineated edge of wetland	65 feet
B. Water Resource (Ravine)	over 25% to a distinct top of slope ²	Edge of bankfull stage/OHW or Delineated edge of wetland	From water resource to top of slope ² (30 foot minimum), plus an additional 50 feet ⁴
C. Water Resource	over 25% for more than 30 feet, and no distinct top of slope for at least 150 feet	Edge of bankfull stage/OHW or Delineated edge of wetland	200-feet
D. Riparian Corridor	any	Edge of bankfull stage/OHW	100 feet
E. Formerly Closed Drainage Channel Reopened	Variable: see Section 32.050(P)	Edge of bankfull stage/OHW	15 feet
F. Ephemeral Stream	Any	Stream thread or centerline	15-feet with treatment or vegetation (see 32.050(G) (1)).
G. Fish bearing streams per Oregon Department of Fish and Wildlife (ODFW) or 2003-2004 survey	Applies to all that stream section where fish were inventoried and upstream to the first known barrier to fish passage.	Edge of bankfull stage/OHW or Delineated edge of wetland	100 feet when no greater than 25% slope. See B or C above for steeper slopes.
H. Re-aligned Water Resource	See A, B, C, D, F, or G. above	Edge of bankfull stage/OHW; Delineated edge of wetland	See A, B, C, D, F, or G, above

¹ The slope is the average slope in the first 50 feet as measured from bankfull stage or OHW.

² Where the protected water resource is confined by a ravine or gully, the top of slope is the location (30 foot minimum) where

the slope breaks to less than 15% for at least 50 feet.

³ At least three slope measurements along the water resource, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending upon topography, the width of the protected corridor may vary.

⁴ The 50 foot distance may be reduced to 25 feet if a geotechnical study by a licensed engineer or similar accredited professional demonstrates that the slope is stable and not prone to erosion.

Table 32-3.

Determining the starting point for the measurement of the WRA

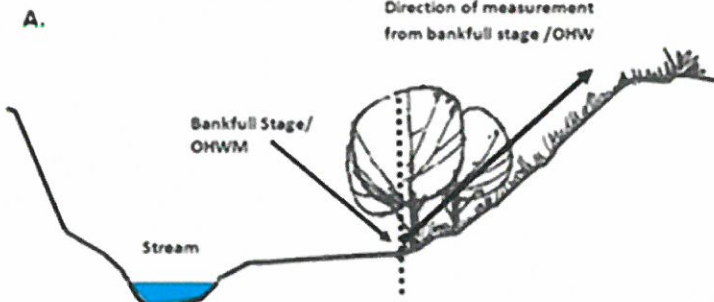
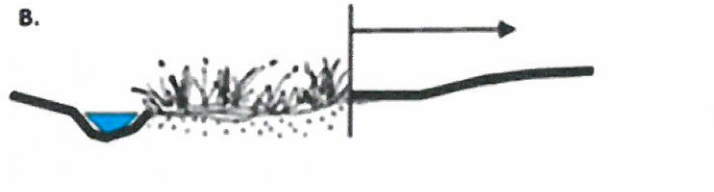
<p>A.</p> 	<p>The bankfull stage or OHW level of stream systems is typically delineated in the field by:</p> <ul style="list-style-type: none"> • the outer extent of facultative or obligate plants; • the litter of branches, twigs and organic debris below and the presence of woody vegetation (e.g., willow and alder species) above; • textural change of depositional sediment or changes in the character of the soil (e.g. from silts, sand, cobble and gravel to upland soils); • top of the zone of washed or exposed roots; • a clear natural line impressed on the bank; • a break or change in slope angle.
<p>B.</p> 	<p>When there are wetlands or wetlands adjacent to a stream the measurement begins at the outer edge of the wetland or the OHW/bankfull stage, whichever is greater.</p>

Figure 32-2

Determining the appropriate slope and measuring the WRA width:

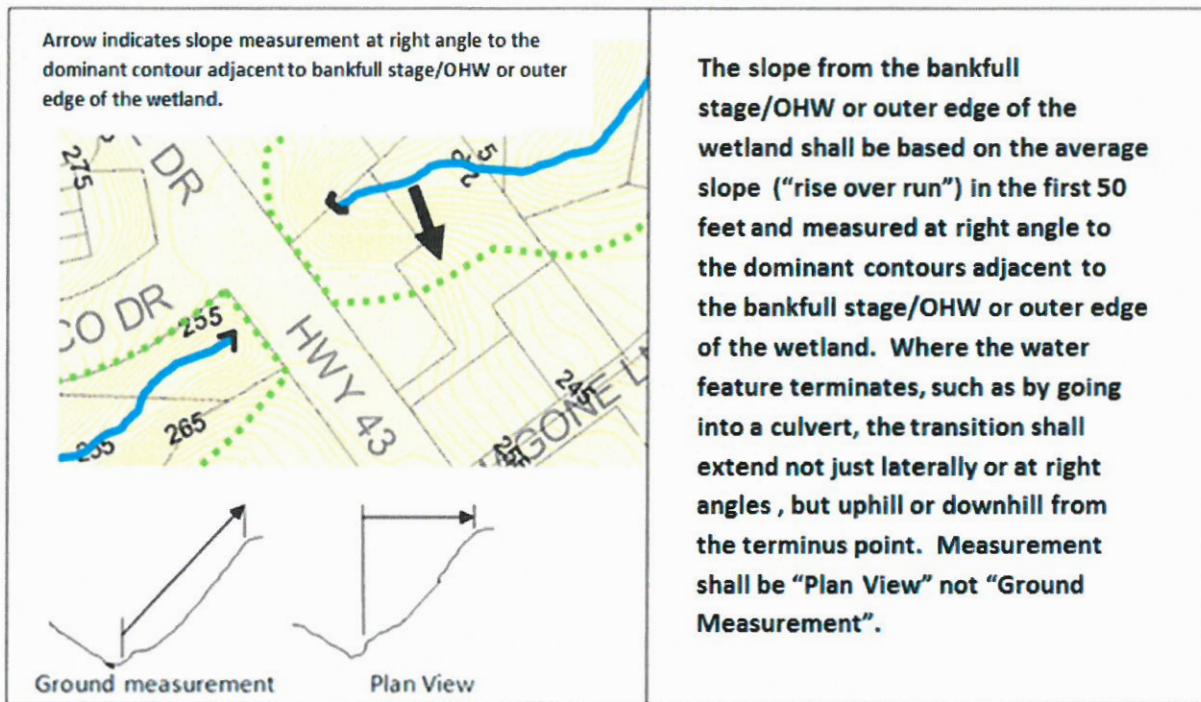


Figure 32-3

SLOPES 0-25%

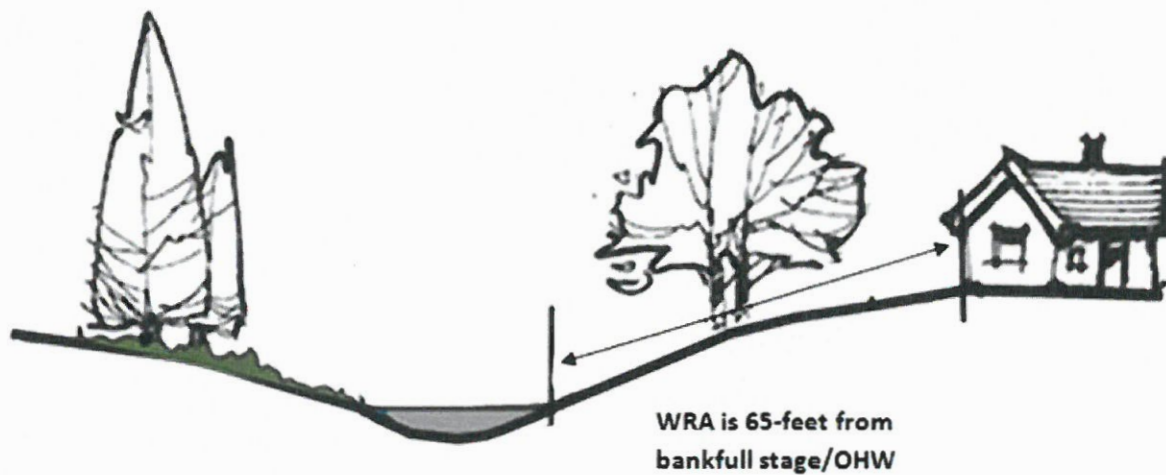


Figure 32-4

**WELL DEFINED RAVINE. SLOPES OVER 25%.
DISTINCT OR IDENTIFIABLE TOP OF SLOPE.**

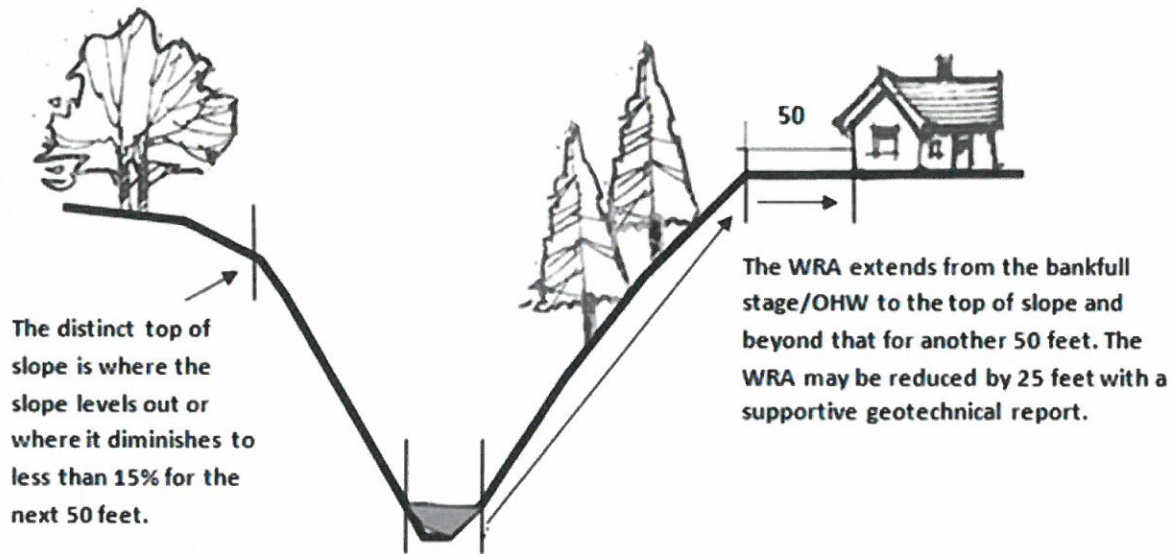


Figure 32-5

STEEP DRAINAGEWAY OVER 25% SLOPE WITH NO DISTINCT TOP OF SLOPE IN THE FIRST 150 FEET FROM THE WATER RESOURCE

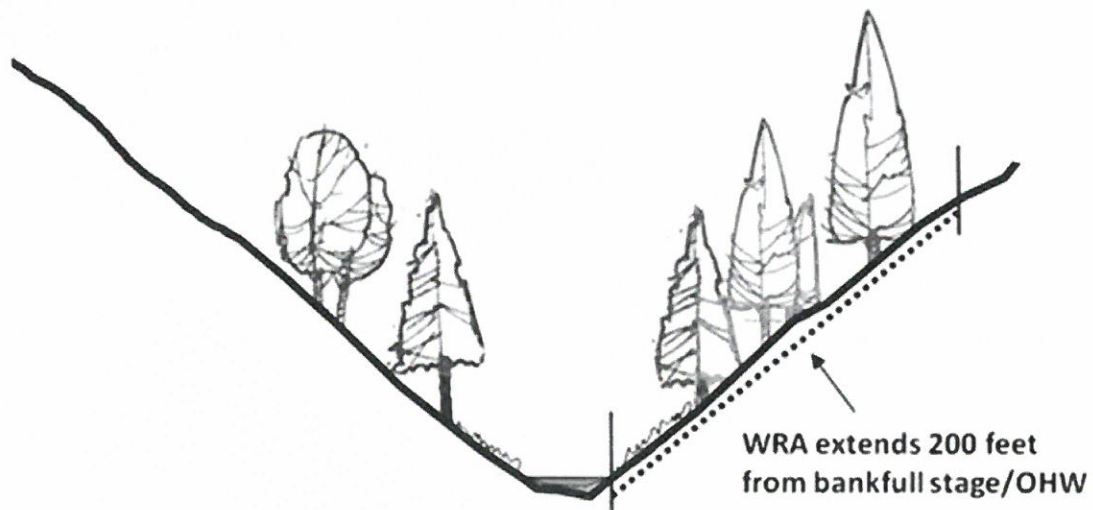
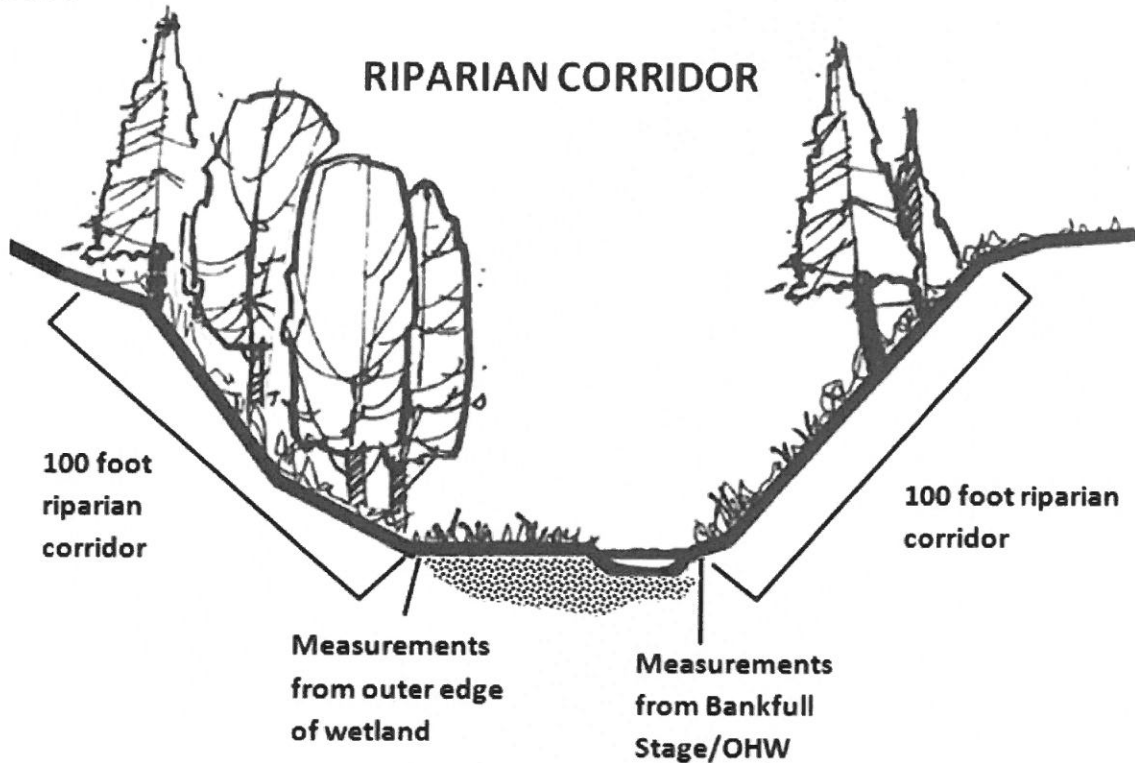


Figure 32-6



E. Roads, Driveways and Utilities

1. New roads, driveways, or utilities shall avoid WRAs unless the applicant demonstrates that no other practical alternative exists. In that case, road design and construction techniques shall minimize impacts and disturbance to the WRA by the following methods:
 - a. New roads and utilities crossing riparian habitat areas or streams shall be aligned as close to perpendicular to the channel as possible.
 - b. Roads and driveways traversing WRAs shall be of the minimum width possible to comply with applicable road standards and protect public safety. The footprint of grading and site clearing to accommodate the road shall be minimized.
 - c. Road and utility crossings shall avoid, where possible:
 - i. salmonid spawning or rearing areas,
 - ii. stands of mature conifer trees in riparian areas,
 - iii. highly erodible soils,
 - iv. landslide prone areas,
 - v. damage to, and fragmentation of, habitat, and
 - vi. wetlands identified on the WRA Map.
2. Crossing of fishing bearing streams and riparian corridors shall use bridges or arch-bottomless culverts or the equivalent that provides comparable fish protection, to allow

passage of wildlife and fish and to retain the natural stream bed.

3. New utilities spanning fish bearing stream sections, riparian corridors, and wetlands shall be located on existing roads/bridges, elevated walkways, conduit, or other existing structures or installed underground via tunneling or boring at a depth that avoids tree roots and does not alter the hydrology sustaining the water resource, unless the applicant demonstrates that it is not physically possible or it is cost prohibitive. Bore pits associated with the crossings shall be restored upon project completion. Dry, intermittent streams may be crossed with open cuts during a time period approved by the City and any agency with jurisdiction.
4. No fill or excavation is allowed within the ordinary high water mark of a water resource, unless all necessary permits are obtained from the City, US Army Corps of Engineers and Oregon Department of State Lands (DSL).
5. Crossings of fish bearing streams shall be aligned, whenever possible, to serve multiple properties and be designed to accommodate conduit for utility lines. The applicant shall, to the extent legally permissible, work with the City to provide for a street layout and crossing location that will minimize the need for additional stream crossings in the future to serve surrounding properties.

F. Passive Recreation.

Low impact or passive outdoor recreation facilities for public use including, but not limited to, multi-use paths and trails, not exempted per 32.040(B)(2), viewing platforms, historical or natural interpretive markers, and benches in the WRA, are subject to the following standards:

1. Trails shall be constructed using non-hazardous, water permeable materials with a maximum width of four feet or the recommended width under the applicable American Association of State Highway and Transportation Officials (AASHTO) standards for the expected type and use, whichever is greater.
2. Paved trails are limited to the area within 20 feet of the outer boundary of the WRA, and such trails must comply with the stormwater provisions of this Chapter.
3. All trails in the WRA shall be set back from the water resource at least 30 feet except at stream crossing points or at points where the topography forces the trail closer to the water resource.
4. Trails shall be designed to minimize disturbance to existing vegetation, work with natural contours, avoid the fall line on slopes where possible, avoid areas with evidence of slope failure and ensure that trail runoff does not create channels in the WRA.
5. Foot bridge crossings shall be kept to a minimum. When the stream bank adjacent to the foot bridge is accessible (e.g. due to limited vegetation or topography), where possible fences or railings shall be installed from the foot bridge and extend 15 feet beyond the terminus of the foot bridge to discourage trail users and pets from accessing the stream bank, disturbing wildlife and habitat areas, and causing vegetation loss, stream bank erosion and stream turbidity. Bridges shall not be made of continuous impervious materials or be treated with toxic substances that could leach into the WRA.

6. Interpretive facilities (including viewpoints) shall be at least 10 feet from the top of the water resource's bankfull flow/OHW or delineated wetland edge and constructed with a fence between users and the resource. Interpretive signs may be installed on footbridges.

G. Daylighting Piped Streams

1. As part of any application, covered or piped stream sections shown on the WRA Map are encouraged to be "daylighted" or opened. Once it is daylighted, the WRA will be limited to 15 feet on either side of the stream. Within that WRA, water quality measures are required which may include a storm water treatment system (e.g. vegetated bioswales), continuous vegetative ground cover (e.g. native grasses) at least 15 feet in width that provides year round efficacy, or a combination thereof.
2. The re-opened stream does not have to align with the original piped route but may take a different route on the subject property so long as it makes the appropriate upstream and downstream connections and meet the standards of subsections (G)(3) and (4) below.
3. A re-aligned stream must not create WRAs on adjacent properties not owned by the applicant unless the applicant provides a notarized letter signed by the adjacent property owner(s) stating that the encroachment of the WRA is permitted.
4. The evaluation of proposed alignment and design of the reopened stream shall consider the following factors:
 - a. The ability of the reopened stream to safely carry storm drainage through the area without causing significant erosion.
 - b. Continuity with natural contours on adjacent properties, slope on site and drainage patterns.
 - c. Continuity of adjacent vegetation and habitat values.
 - d. The ability of the existing and proposed vegetation to filter sediment and pollutants and enhance water quality.
 - e. Provision of water temperature conducive to fish habitat.
5. Any upstream or downstream WRAs or riparian corridors shall not apply to, or overlap, the daylighted stream channel.
6. When a stream is daylighted the applicant shall prepare and record a legal document describing the reduced WRA required by subsections (G) (1) and (5). The document will be signed by a representative of the City and recorded at the applicant's expense to better ensure long term recognition of the reduced WRA and reduced restrictions for the daylighted stream section.

H. The following habitat-friendly development practices shall be incorporated into the design of any improvements or projects in the WRA to the degree possible:

1. Restore disturbed soils to original or higher level of porosity to regain infiltration and storm water storage capacity.
2. Apply a treatment train or series of storm water treatment measures to provide multiple opportunities for storm water treatment and reduce the possibility of system

failure.

3. Incorporate storm water management in road right-of-ways.
4. Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.
5. Use multi-functional open drainage systems in lieu of conventional curb-and-gutter systems.
6. Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics.
7. Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering.
8. Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.
9. Use pervious paving materials for driveways, parking lots, sidewalks, patios, and walkways.
10. Reduce sidewalk width to a minimum four feet. Grade the sidewalk so it drains to the front yard of a residential lot or retention area instead of towards the street.
11. Use shared driveways.
12. Reduce width of residential streets and driveways, especially at WRA crossings.
13. Reduce street length, primarily in residential areas, by encouraging clustering.
14. Reduce cul-de-sac radii and use pervious and/or vegetated islands in center to minimize impervious surfaces.
15. Use previously developed areas (PDAs) when given an option of developing PDA vs. non-PDA land.
16. Minimize the building, hardscape and disturbance footprint.
17. Consider multi-story construction over a bigger footprint.

32.070 ALTERNATE REVIEW PROCESS.

This section establishes a review and approval process that applicants can use when there is reason to believe that the width of the WRA prescribed under the standard process (32.0060(D)) is larger than necessary to protect the functions of the water resource at a particular site. It allows a qualified professional to determine what water resources and associated functions (see Table 32-4 below) exist at a site and the WRA width that is needed to maintain those functions.

32.080 APPROVAL CRITERIA (ALTERNATE REVIEW PROCESS)

Applications reviewed under the alternate review process shall meet the following approval criteria:

- A. The proposed WRA shall be, at minimum, qualitatively equal, in terms of maintaining the level of functions allowed by the WRA standards of Section 32.060(D).

- B. If a WRA is already significantly degraded (e.g., native forest and ground cover have been removed or the site dominated by invasive plants, debris, or development), the approval authority may allow a reduced WRA in exchange for mitigation, if:
1. The proposed reduction in WRA width, coupled with the proposed mitigation, would result in better performance of functions than the standard WRA without such mitigation. The approval authority shall make this determination based on the applicant's proposed mitigation plan and a comparative analysis of ecological functions under existing and enhanced conditions (see Table 32-4).
 2. The mitigation project shall include all of the following components as applicable. It may also include other forms of enhancement (mitigation) deemed appropriate by the approval authority.
 - a. Removal of invasive vegetation.
 - b. Planting native, noninvasive plants (at minimum, consistent with 32.100) that provide improved filtration of sediment, excess nutrients, and pollutants. The amount of enhancement (mitigation) shall meet or exceed the standards of 32.090(C).
 - c. Providing permanent improvements to the site hydrology that would improve water resource functions.
 - d. Substantial improvements to the aquatic and/or terrestrial habitat of the WRA.
- C. Identify and discuss site design and methods of development as they relate to WRA functions.
- D. Address the approval criteria of 32.060, with the exception of 32.060(D).

Table 32-4 Ecological functions of WRA.

Ecological function	Landscape features potentially providing the function
Stream flow moderation and/or water storage	A wetland or other water body with a hydrologic connection to a stream or flood area, the presence of fallen trees and density of vegetation in the WRA that slows the flow of storm water and increases its ability to retain sediment and infiltrate storm water, and the porosity of the WRA's surface to enable it to infiltrate storm water.
Sediment or pollution control	Vegetation within 100 feet of a WRA on gentle slopes and up to 200 feet of a WRA if the slope is greater than 25%. The presence of fallen trees and other material that slows the flow of water and increase the ability to retain sediment absorb pollutants and infiltrate storm water; the composition and density of vegetation; slope; and soils.
Bank stabilization	Root masses, existing large rocks or anchored large wood along the stream bank
Large wood recruitment for a fish bearing section of stream	Forest canopy within 50-150 feet of a fish bearing stream

Organic material sources	Forest canopy or woody vegetation within 100 feet of a water resource; or within a flood area.
Shade (water temperature moderation) and microclimate	Forest canopy or woody vegetation within 100 feet of the water resource. Roughly 300 feet of continuous canopy for microclimate.
Stream flow that sustains in-stream and adjacent habitats	Seasonal or perennial flow
Other terrestrial habitat	Forest canopy natural vegetation contiguous to and within 100 -300 feet of the water resource.

32.090 MITIGATION PLAN

- A. A mitigation plan shall only be required if development is proposed within a WRA (including development of a PDA). (Exempted activities of 32.040 do not require mitigation unless specifically stated. Temporarily Disturbed Areas, including TDAs associated with exempted activities; do not require mitigation, just grade and soil restoration and re-vegetation.) The mitigation plan shall satisfy all applicable provisions of 32.100 "Re-Vegetation Plan".
- B. Mitigation shall take place in the following locations, according to the following priorities (1-4):
1. On-site mitigation by restoring, creating or enhancing WRAs.
 2. Off-site mitigation in the same sub-watershed will be allowed, but only if the applicant has demonstrated that:
 - a. it is not practicable to complete mitigation on-site, for example, there is not enough area on-site, and
 - b. the mitigation will provide equal or superior ecological function and value.
 3. Off-site mitigation outside the sub-watershed will be allowed, but only if the applicant has demonstrated that:
 - a. it is not practicable to complete mitigation on-site, for example, there is not enough area on-site; and,
 - b. the mitigation will provide equal or superior ecological function and value.
 4. Purchasing mitigation credits through DSL or other acceptable mitigation bank.
- C. Amount of Mitigation
1. The amount of mitigation shall be based on the square footage of the permanent disturbance area by the application. For every one square foot of non-PDA disturbed area, on-site mitigation shall require one square foot of WRA to be created, enhanced or restored.
 2. For every one square foot of PDA that is disturbed, on-site mitigation shall require one half a square foot of WRA vegetation to be created, enhanced or restored.
 3. For any off-site mitigation, including the use of DSL mitigation credits, the requirement shall be for every one square foot of WRA that is disturbed, two square feet of

WRA shall be created, enhanced or restored. The DSL mitigation credits program or mitigation bank shall require a legitimate bid on the cost of on-site mitigation multiplied by two to arrive at the appropriate dollar amount.)

- D. The Planning Director may limit or define the scope of the mitigation plan and submittal requirements commensurate with the scale of the disturbance relative to the resource and pursuant to the authority of CDC Chapter 99. The Planning Director may determine that a consultant is required to complete all or a part of the mitigation plan requirements.
- E. A mitigation plan shall contain the following information:
 - 1. A list of all responsible parties including, but not limited to, the owner, applicant, contractor, or other persons responsible for work on the development site.
 - 2. A map showing where the specific adverse impacts will occur and where the mitigation activities will occur.
 - 3. A re-vegetation plan for the area(s) to be mitigated that meets the standards of section 32.100.
 - 4. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, and reporting. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife.
 - 5. Assurances shall be established to rectify any mitigation actions that are not successful within the first three years. This may include bonding or other surety.

32.100 RE-VEGETATION PLAN REQUIREMENTS

- A. In order to achieve the goal of re-establishing forested canopy, native shrub and groundcover and to meet the mitigation requirements of Section 32.090 and vegetative enhancement of 32.080, tree and vegetation plantings are required according to the following standards:
 - 1. All trees, shrubs and ground cover to be planted must be native plants selected from the Portland Plant List.
 - 2. Plant size. Replacement trees must be at least one-half inch in caliper, measured at six inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs must be in at least a one-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.
 - 3. Plant coverage.
 - a. Native trees and shrubs are required to be planted at a rate of five trees and 25 shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile

wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

- b. Trees shall be planted between eight and 12 feet on-center and shrubs shall be planted between four and five feet on center, or clustered in single species groups of no more than four plants, with each cluster planted between eight and 10 feet on center. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.
 4. Plant diversity. Shrubs must consist of at least two different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.
 5. Invasive vegetation. Invasive non-native or noxious vegetation must be removed within the mitigation area prior to planting.
 6. Tree and shrub survival. A minimum survival rate of 80% of the trees and shrubs planted is expected by the third anniversary of the date that the mitigation planting is completed.
 7. Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind.
 8. To enhance survival of tree replacement and plantings, the following practices are required:
 - a. Mulching. Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
 - b. Irrigation. Water new plantings one inch per week between June 15th to October 15th, for the three years following planting.
 - c. Weed control. Remove, or control, non-native or noxious vegetation throughout maintenance period.
 - d. Planting season. Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.
 - e. Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.
- B. When weather or other conditions prohibit planting according to schedule, the applicant shall ensure that disturbed areas are correctly protected with erosion control measures and shall provide the City with funds in the amount of 125% of a bid from a recognized landscaper or nursery which will cover the cost of the plant materials, installation and any follow up maintenance. Once the planting conditions are favorable the applicant shall proceed with the plantings and receive the funds back from the City upon completion, or the City will complete the plantings using those funds.

32.110 HARDSHIP PROVISIONS

The purpose of this section is to ensure that compliance with this chapter does not deprive an owner of reasonable use of land. To avoid such instances, the requirements of this chapter may be reduced. The

decision-making authority may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief.

- A. The right to obtain a hardship allowance is based on the existence of a lot of record recorded with the County Assessor's Office on, or before, January 1, 2006. The lot of record may have been, subsequent to that date, modified from its original platted configuration but must meet the minimum lot size and dimensional standards of the base zone.

- B. For lots described in 32.110(A) that are located completely or partially inside the WRA, development is permitted, consistent with this section. The Maximum Disturbed Area (MDA) of the WRA shall be determined on a per lot basis and shall be:
 - a. 5,000 square feet; or,
 - b. A maximum of 30% of the total area of the WRA; whichever is greater, and consistent with 32.110(C) below.

- C. The MDA shall be located as follows:
 - 1. In areas where the development will result in the least square footage encroachment into the WRA.
 - 2. The applicant shall demonstrate, through site and building design, that the proposed development is the maximum practical distance from the water resource based on the functional needs of the proposed use.
 - 3. The minimum distance from a water resource shall be 15 feet.
 - 4. Access driveways shall be the minimum permitted width; select an alignment that is least impactful upon the WRA; and shall share use of the driveway, where possible.

- D. The MDA shall include:
 - 1. The footprints of all structures, including accessory structures, decks and paved water impermeable surfaces including sidewalks, driveways, parking pads, paths, patios and parking lots, etc. Only 75 percent of water permeable surfaces at grade shall be included in the MDA.
 - 2. All graded, disturbed or modified areas that are not subsequently restored to their original grade and replanted with native groundcover per an approved plan.

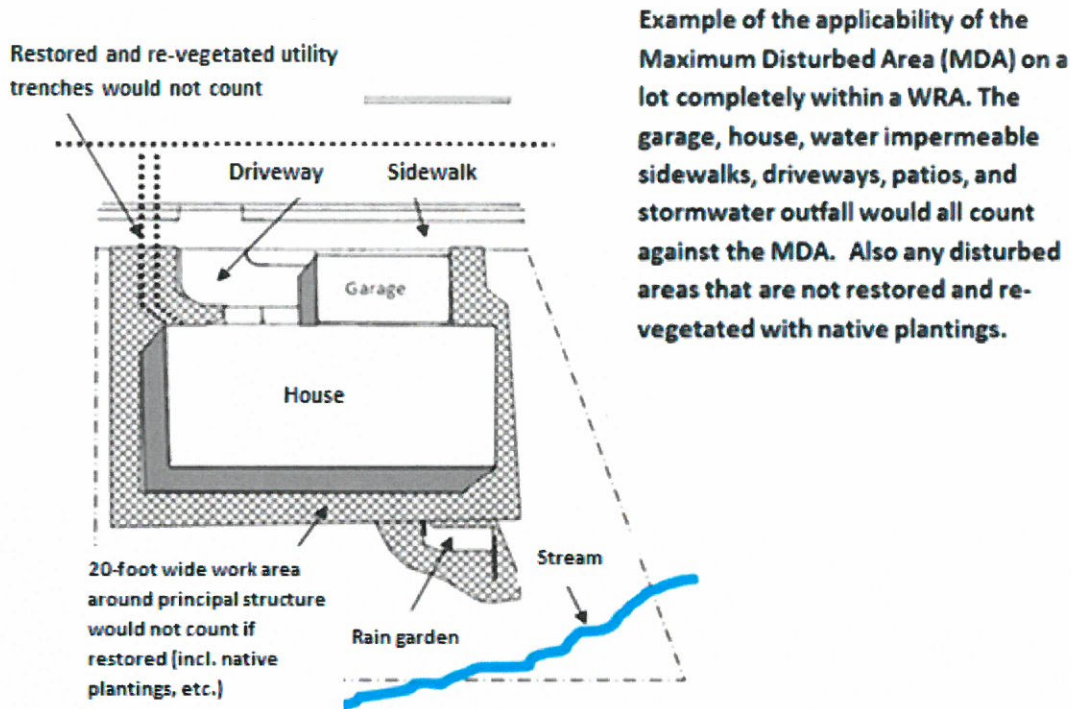
- E. The MDA shall not include:
 - 1. Temporarily Disturbed Areas (TDAs) adjacent to an approved structure or development area for the purpose of grading, material storage, construction activity, trenched or buried utilities and other temporary activities so long as these areas are subsequently restored to the original grades and soil permeability, and re-vegetated with native plants per Section 32.100, such that they are at least equal in functional value to the area prior to the initiation of the permitted activity;

2. Bay windows and similar cantilevered elements (including decks, etc.) of the principal or secondary structure so long as they do not extend more than five feet towards the WRA from the vertical plane of the house, and have no vertical supports from grade;
3. PDAs that are not built upon as part of the development proposal will not count in the MDA (e.g. use of an existing access driveway). (Conversely, PDAs that are built upon as part of the development proposal will count in the MDA.)
4. The installation of public streets and public utilities that are specifically required to meet either the Transportation System Plan or a Utility Master Plan so long as all trenched public utilities are subsequently restored to the original grades and soil permeability, and revegetated with native plants per Section 32.100, such that they are at least equal in functional value to the area prior to the initiation of the permitted activity. All areas displaced by streets shall be mitigated for.

Table 32-5 MDA Calculation Summary:

Type of development	Square footage included in MDA calculation?
All structures	YES
Non-water permeable paved surfaces incl. driveways, parking lots, patios, and paths	YES
Approved water permeable paved surfaces incl. driveways, parking lots, patios, and paths	YES but at 75% of total water permeable surface square footage
TDA's/Graded areas that are restored and re-vegetated with native vegetation	NO
TDA's/All utility trenches and buried utilities restored or re-vegetated with native vegetation	NO
PDA's that are built upon or developed as part of the application.	YES
PDA's that are not built upon or developed as part of the application.	NO
Storm water detention or treatment pond	YES
Rain garden or bioswale with the native plantings as part of re-vegetation plan	NO
Storm water outfall, energy dissipaters (at, or above, grade)	YES
Non-native landscaping	YES
Sharing an existing driveway	NO

Figure 32-7



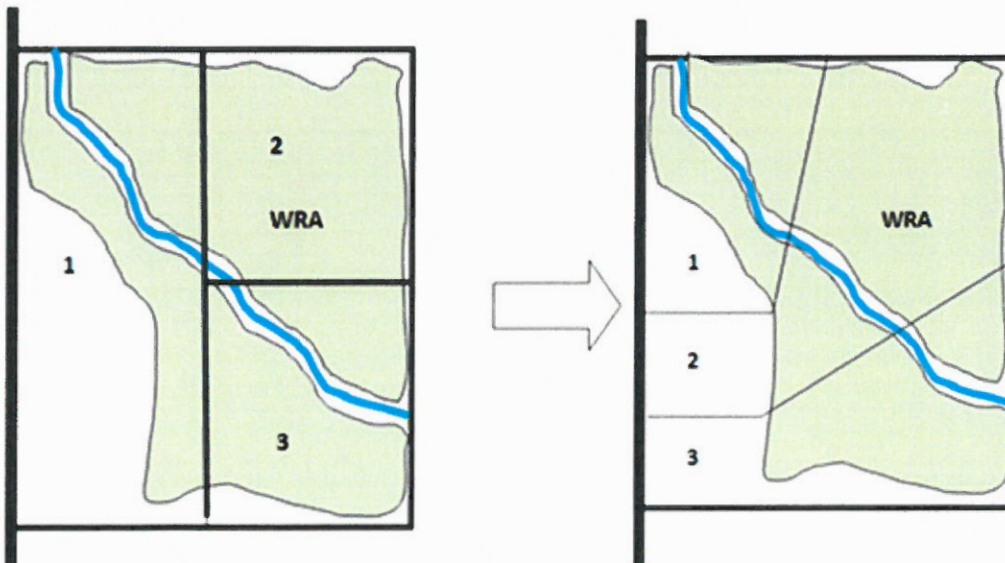
- F. Development allowed under Section 32.110(A) may use the following provisions:
1. Setbacks required by the underlying zoning district may be reduced up to 50% where necessary to avoid construction within the WRA, as long as the development would otherwise meet the standards of this Chapter. However, front loading garages shall be setback a minimum of 18 feet, while side loading garages shall be setback a minimum of three feet.
 2. Landscaping and parking requirements may be reduced for hardship properties but only if all or part of the WRA is dedicated pursuant to CDC 32.060(C) or if a restrictive deed covenant is established. These reductions shall be permitted outright and, to the extent that the practices are inconsistent with other provisions or standards of the West Linn CDC, this section is given precedence so that no variance is required. The allowable reductions include:
 - a. Elimination of landscaping for the parking lot interior.
 - b. Elimination of the overall landscape requirement (e.g. 20% for commercial uses).
 - c. Elimination of landscaping between parking lots and perimeter non-residential properties.
 - d. Landscaping between parking lots and the adjacent right-of-way may be

reduced to 8 feet. This 8-foot wide landscaped strip may be used for vegetated storm water detention or treatment.

- e. A 25% reduction in total required parking is permitted to minimize or avoid intrusion into the WRA.
 - f. Adjacent improved street frontage with curb and sidewalk may be counted towards the parking requirement at a rate of one parking space per 20 lineal feet of street frontage adjacent to the property, subject to City Engineer approval based on the street width and classification.
 - g. The current compact and full sized parking mix may be modified to allow up to 100% compact spaces and no full sized spaces. However, any required ADA compliant spaces shall be provided.
- G. Where a property owner owns multiple platted lots of record where each lot could be built upon under the hardship provisions, the property owner may either use the MDA for each lot on an individual lot by lot basis or may transfer 100% of the cumulative MDA of all the lots to those lots that are further away from, or less impactful upon, the WRA. Lot line adjustments may also be used to facilitate the density transfer. See Figure 32-8.

Figure 32- 8

Transferring MDA from constrained lots 2 and 3 to the west edge of lot 1 which is out of the WRA. In this case, the transfer is accomplished by a lot line adjustment.



- H. Any further modification of the standards of this chapter or the underlying zone shall require approval of a Variance pursuant to CDC Chapter 75.

32.120 WRA MAP

- A. The WRA Map, dated September 2013, is adopted as the official WRA map. It is intended to identify WRA water features (wetlands, streams, ephemeral streams and riparian corridors). It is not intended to delineate the exact WRA boundaries or water feature alignment. That task will be carried out by staff in the course of site visits where the provisions of table 32-2 shall apply.
- B. Amendments to the WRA Map may be made in accordance with the provisions of CDC Chapters 98 and 99. Copies of all map amendments shall be dated with the effective date of the document adopting the map amendment and shall be maintained without change, together with the adopting documents, on file in the Planning Department.
- C. The Planning Director shall maintain in his office, and available for public inspection, an up-to-date copy of the WRA Map.

Related Proposed Amendments to CDC Chapter 02, DEFINITIONS

Section 02.030 SPECIFIC WORDS AND TERMS

Bankfull Stage: The level of stream flow where water reaches or exceeds the top of channel or otherwise inundates the adjacent floodplain on a frequency of approximately every 1.5 to 2 years. This is sometimes known as Ordinary High Water (OHW). In some high gradient or incised streams, the 1.5 to 2 year floods may be restricted to the deepened channel. Conversely, in low gradient streams, where the grades adjacent to the streams are in the 0-15% range, the bankfull stage/OHW is likely to be at the outer edge of adjacent floodplain areas. The bankfull stage or OHW level of stream systems is typically delineated in the field by:

- the outer extent of facultative or obligate plants;
- the upper elevation of float debris (litter of branches, twigs and organic material);
- the lower elevation of woody vegetation (e.g., willow and alder species);
- textural change of depositional sediment or changes in the character of the soil (e.g. from silts, sand, cobble and gravel to upland soils);
- top of the zone of washed or exposed roots;
- a clear natural line impressed on the bank; or
- a break or change in slope angle.

For the purpose of this code, the terms “bankfull stage” and “OHW” may be used interchangeably and are illustrated and further defined in Table 32-3.

Channel: The channel is the physical confine of a stream within the “bankfull stage” and “OHW.”

Development: Any manmade change defined as the construction of buildings or other structures, mining, dredging, paving, filling, grading or site clearing, and grubbing in amounts greater than 10 cubic yards on any lot or excavation. Within the flood management area, this term shall also include storage of equipment or materials. Within the Willamette and Tualatin River Protection Areas, this term shall also include any change of use or intensification of the use of land or water, including construction of structures (such as houses, structures, docks and associated pilings or piers), significant grading, or removal or addition of vegetation and groundcover unless specifically exempted per CDC 28.040. Development shall not include grading, site clearing, grubbing or filling where it is part of a submitted land use application that includes the restoration of grades and replanting the affected area with native vegetation per a re-vegetation plan. This definition is distinct and separate from Previously Disturbed Areas (PDAs) and Temporarily Disturbed Areas (TDAs).

Disturbance: For the purpose of this code, the terms “disturbance” and “development” may be used interchangeably.

Disturbed Areas: Areas that have been subjected to disturbance or development. For the purpose of this code, the terms “disturbance” and “development” may be used interchangeably.

Enhancement: See “Mitigation”.

Ephemeral Streams: A stream or reach of a stream which flows only in direct response to precipitation and whose channel are always above groundwater or water table levels. Ephemeral streams typically drain sub basins of under 20 acres, have slopes of less than 10 percent as measured laterally from the stream thread and often traverse surficially with no recognizable drainage channel.

Functions and values: Ecological functions describe the numerous functions that WRAs perform including water quality improvement, floodwater storage, terrestrial or aquatic habitat, aquifer recharge etc. WRA values express the relative efficacy of the resource in meeting specific functions.

Intermittent Streams: A stream that flows only during certain times of the year when it receives water from springs or surface sources such as precipitation. The term may be restricted to a stream that flows continuously during periods of at least one month; also may be a stream that does not flow continuously as when water losses from evaporation or seepage exceed the available stream flow. For the purpose of this code, intermittent and perennial streams are protected identically.

Large Wood (recruitment): Large wood comprises trees that have fallen down in the WRA due to chronic mortality, disease, windstorms, landslides, erosion, flooding, etc., which in turn may provide aquatic and terrestrial habitat opportunities, modify stream velocities, channel depths and flow patterns and stabilize banks in the WRA. "Large wood recruitment" describes forested WRAs of sufficient size that have the potential to supply these trees which ultimately become "large wood".

Maximum Disturbed Area (MDA): The MDA, as measured in square feet, is the maximum area within a WRA that can be disturbed in hardship cases under CDC Chapter 32, Water Resource Areas.

Mitigation: Mitigation is creating, restoring or enhancing WRAs (including wetlands) to replace or compensate for the WRA lost. Creation entails constructing a WRA in an area that never supported WRAs historically. Restoration entails re-establishing WRA hydrology and vegetation to sites that have lost most of their function and value such as a site that was historically a WRA but dried out by draining or filling. Enhancement entails improving an existing but degraded WRA by correcting the conditions that cause it to be degraded. This might include providing more water to the site or the removal of invasive plant species and replacement with appropriate native plant material and trees.

Passive-oriented recreation and parks: The focus is upon unstructured play, relaxation, environmental interpretation, family picnics and similar activities. Support facilities, such as covered picnic, play structures or playing fields, etc. are discouraged or limited. Restrooms, trails and interpretive facilities would be appropriate.

Previously Disturbed Areas (PDA): Areas, such as old driveways, trails, gardens, graded areas, old abandoned structural foundations, storm water outfalls and intakes, manholes, utilities, etc. that existed and were altered or modified before January 1, 2006, typically as a result of clearing, grubbing, grading, excavation or construction whereby the topography, ground cover and vegetation have been modified from their original or natural state and not re-established or returned to their natural state. The burden shall be on the applicant to date the PDA through photographs or other credible evidence. The PDA definition applies to Chapter 32 and is distinct and separate from Temporarily Disturbed Areas (TDAs) and Maximum Disturbed Areas (MDAs).

Principal Structure: The structure that represents the main use of the property; to which all other structures on the property serve an incidental or subordinate purpose.

Reasonable Use: Uses, similar in size, intensity and type, to uses allowed on other properties in the City, that have the same zoning designation as the subject property.

Riparian corridor: An area within and adjacent to a WRA on the West Linn WRA map for its vegetative, forested and habitat values.

Soil infiltration: The process by which water on the surface enters the soil and replenishes below ground water tables.

Slope determination (for WRAs): Slope (e.g. rise over run) is the average slope in the first 50 feet as measured at right angle from the OHW mark, the edge of bankfull stage or outer edge of wetland.

Stream: A body of water with a current or flow confined within the OHW mark or the edge of bankfull stage. (See also ephemeral stream or water resource.)

Stream centerline or thread: The starting point of measurement for ephemeral streams which often lack an identifiable bankfull stage or OHW mark.

Temporarily Disturbed Areas (TDA): Area impacted by clearing, grubbing, grading, excavation, storage of building materials, building equipment, construction activity or other temporary activity whereby the area is modified from its original state but is subsequently fully restored in terms of soil character and grades and re-vegetated. TDAs will not have any new structures or other physical improvements built on them, but they may have buried utilities approved consistent with Chapter 32. The TDA definition is distinct and separate from disturbed areas, PDAs and MDAs. TDA's shall not include significant trees or wetlands that cannot be replicated in a timely way through restoration.

Type II lands. Lands which have constraints that are sufficient to preclude most standard types of development. Constraints in these areas generally do not constitute a health or safety hazard, but require the use of non-standard technical design criteria. Type II lands exist in the following areas:

Slope: All lands with slopes between 25 and 35 percent.

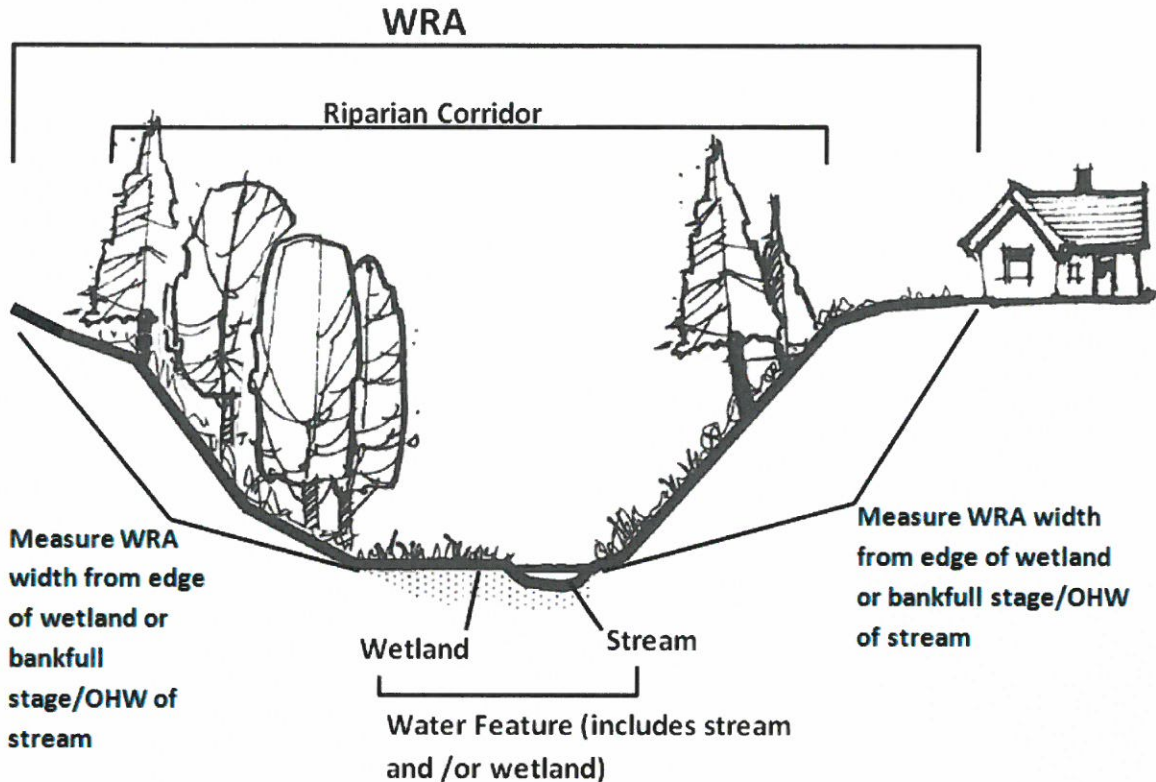
Water Resource Areas

Geology: All known mineral and aggregate deposits.

“Unhealthy or disturbed state”: defines an area of a WRA that is dominated by non-native vegetation and/or grading which is an appropriate candidate for restoration to its natural condition.

Water resource (or feature): Any stream or wetland identified on the West Linn WRA Map.

Water resource area (WRA): Any water resource or riparian area identified in the West Linn - WRA map and the adjacent area of varying widths, established pursuant to Chapter 32, in which development activities are restricted in order to protect the functions and values of the associated water resource. (see graphic below)



Wetlands: Those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are also defined by the sub-categories of “high quality wetlands” and “locally significant wetlands”.

Related Proposed Amendments to CDC Chapter 33, STORMWATER QUALITY AND DETENTION

33.040 APPROVAL CRITERIA

The Planning Director and City Engineer shall make written findings with respect to the following criteria when approving, approving with conditions or denying applications for storm water detention permits and storm water quality permits.

- A. Storm water quality facilities shall meet non-point source pollution control standards required by the Public Works Design Standards.
- B. Design of storm water detention and pollution reduction facilities and related detention and water quality calculations shall meet Public Works Design Standards and shall be prepared by a professional engineer licensed to practice in the State of Oregon.
- C. Soil stabilization techniques, erosion control, and adequate improvements to accommodate the intended drainage through the drainage basin shall be used. Storm drainage shall not be

diverted from its natural watercourse unless no feasible alternatives exist. Interbasin transfers of storm drainage will not be permitted.

- D. Storm water detention and treatment facilities. May be installed in Water Resource Areas (WRAs) per section 32.060(B) and consistent with Habitat Friendly provisions of 32.060(H).
- E. Storm water detention and treatment facilities shall be vegetated with plants from the Metro's Native Plant List as described in CDC 32.100(A).
- F. Projects must either stockpile existing topsoil for reuse on the site or import topsoil, rather than amend subsoils. Soil amendments are allowed only where the applicant can demonstrate they are the only practical alternative for enabling the soil to support healthy plantings, promoting better storm water treatment, or improving soil infiltration capacity (where appropriate).
- G. Interim erosion control measures, such as mulching, shall be placed immediately upon completion of grading of the facilities.

Related Proposed Amendments to CDC Chapter, 46 OFF-STREET PARKING, LOADING AND RESERVOIR AREAS

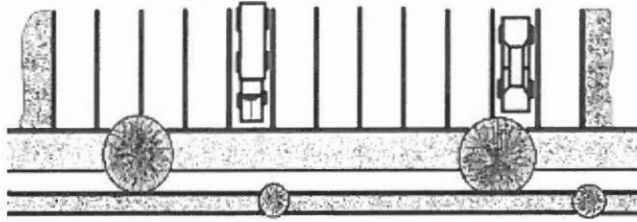
46.090 MINIMUM OFF-STREET PARKING SPACE REQUIREMENTS

- J. Development in Water Resource Areas may reduce the required number of parking spaces by up to 25%. Adjacent improved street frontage with curb and sidewalk may also be counted towards the parking requirement at a rate of one parking space per 20 lineal feet of street frontage adjacent to the property.

46.150 DESIGN AND STANDARDS

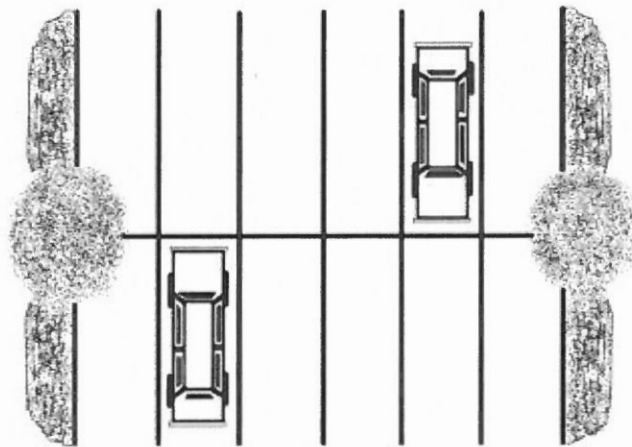
The following standards apply to the design and improvement of areas used for vehicle parking, storage, loading, and circulation:

- A. Design standards.
 - 1. "One standard parking space" means a minimum for a parking stall of eight feet in width and 16 feet in length. These stalls shall be identified as "compact." To accommodate larger cars, 50 percent of the required parking spaces shall have a minimum dimension of nine feet in width and 18 feet in length (nine feet by 18 feet). When multi-family parking stalls back onto a main driveway, the stalls shall be nine feet by 20 feet. Parking for development in Water Resource Areas may have 100% compact spaces.
 - 19. Areas of the parking lot improved with asphalt or concrete surfaces shall be designed into areas of 12 or less spaces through the use of defined landscaped area. Groups of 12 or less spaces are defined as:
 - a. Twelve spaces in a row, provided there are no abutting parking spaces, as in the case when the spaces are abutting the perimeter of the lot; or



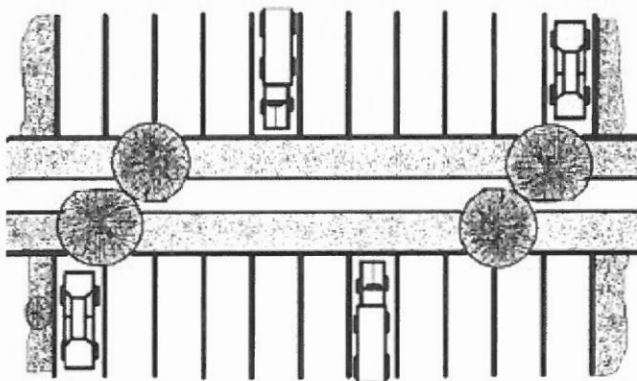
12 SPACES IN A ROW

- b. Twelve spaces in a group with six spaces abutting together; or



6 SPACES X 2 = 12

- c. Two groups of twelve spaces abutting each other, but separated by a 15-foot wide landscape area including a six-foot-wide walkway.



12 SPACES X2 WITH LANDSCAPING

- d. Parking areas improved with a permeable parking surface may be designed using the configurations shown in subsections (A)(19)(a), (b) and (c) of this section except that groups of up to 18 spaces are allowed.

- e. The requirements of this chapter relating to total parking lot landscaping, landscaping buffers, perimeter landscaping, and landscaping the parking lot islands and interior may be waived or reduced pursuant to CDC 32.110(F) in a WRA application without a variance being required.

Related Proposed Amendments to CDC Chapter 54, LANDSCAPING

54.020 APPROVAL CRITERIA

- G. Landscaping requirements in Water Resource Areas (WRAs).

Pursuant to CDC 32.110(E)(3) the requirements of this chapter relating to total site landscaping, landscaping buffers, landscaping around parking lots, and landscaping the parking lot interior may be waived or reduced in a WRA application without a variance being required.

Related Proposed Amendments to CDC Chapter 55, DESIGN REVIEW

55.100 APPROVAL STANDARDS – CLASS II DESIGN REVIEW

- I. Public facilities. An application may only be approved if adequate public facilities will be available to provide service to the property prior to occupancy.
 - 1. Streets. Sufficient right-of-way and slope easement shall be dedicated to accommodate all abutting streets to be improved to the City's Improvement Standards and Specifications. The City Engineer shall determine the appropriate level of street and traffic control improvements to be required, including any off-site street and traffic control improvements, based upon the transportation analysis submitted. The City Engineer's determination of developer obligation, the extent of road improvement and City's share, if any, of improvements and the timing of improvements shall be made based upon the City's systems development charge ordinance and capital improvement program, and the rough proportionality between the impact of the development and the street improvements.

In determining the appropriate sizing of the street in commercial, office, multi-family, and public settings, the street should be the minimum necessary to accommodate anticipated traffic load and needs and should provide substantial accommodations for pedestrians and bicyclists. Road and driveway alignment should consider and mitigate impacts on adjacent properties and in neighborhoods in terms of increased traffic loads, noise, vibrations, and glare.

The realignment or redesign of roads shall consider how the proposal meets accepted engineering standards, enhances public safety, and favorably relates to adjacent lands and land uses. Consideration should also be given to selecting an alignment or design that minimizes or avoids hazard areas and loss of significant natural features (drainageways, wetlands, heavily forested areas, etc.) unless site mitigation can clearly produce a superior landscape in terms of shape, grades, and reforestation, and is fully consistent with applicable code restrictions regarding resource areas.

Streets shall be installed per Chapter 85 CDC standards. The City Engineer has the authority to require that street widths match adjacent street widths. Sidewalks shall be

installed per CDC 85.200(A) (3) for commercial and office projects, and CDC 85.200(A) (16) and 92.010(H) for residential projects, and applicable provisions of this chapter. Where streets bisect or traverse Water Resource Areas (WRAs) the street width shall be reduced to the minimum standard of 20 feet (two 10-foot travel lanes) plus four foot wide curb flush sidewalks or alternate configurations which are appropriate to site conditions, minimize WRA disturbance or are consistent with an adopted Transportation System Plan. The street design shall also be consistent with Habitat Friendly provisions of section 32.060(H).

Based upon the City Manager's or Manager's designee's determination, the applicant shall construct or cause to be constructed, or contribute a proportionate share of the costs, for all necessary off-site improvements identified by the transportation analysis commissioned to address CDC 55.125 that are required to mitigate impacts from the proposed development. Proportionate share of the costs shall be determined by the City Manager or Manager's designee, who shall assume that the proposed development provides improvements in rough proportion to identified impacts of the development.

Exhibit 2: Planning Commission staff report
(January 15, 2014 and February 5, 2014)
with attached written testimony



Memorandum

Date: January 15, 2014
To: Planning Commission
From: Peter Spir, Associate Planner
Subject: Review of Proposed Water Resource Area Code Amendments (CDC-10-03)

Purpose

Staff is seeking a recommendation from the Planning Commission on the attached proposed amendments to chapter 32 of the Community Development Code (CDC). These amendments revise and replace the entirety of the chapter that addresses Water Resource Areas (WRA). The changes include adding definitions, clarifying the applicable criteria, introducing an individualized process whereby property owners may propose alternate WRA widths, greater sensitivity to hardship properties and adoption of a WRA map.

Background

Since 2010, the amendment of the WRA chapter has been a City Council priority. This was prompted by ambiguities in the code which resulted in two costly Land Use Board of Appeals (Horsey vs. City of West Linn), having to purchase property on Cedar Oak Drive to avoid a takings claim, and continued difficulty by City Council, Planning Commission, staff and the public in the use and interpretation of this chapter.

The West Linn Planning Commission created the WRA Advisory Committee in early 2011 to write amendments to Community Development Code Chapter 32: *Water Resource Areas* (File CDC-10-04). The committee was comprised of Planning Commission members Bob Martin, Michael Babbitt and former commissioner Laura Horsey. Additional members, Indranil Basak, former Planning Commissioner Michael Bonoff, Glenn Puro, Brad Rawls, and soon to be Planning Commissioner Russell Axelrod, were later added based on their professional background or interest in water resource areas.

The committee held a total of 24 meetings through May 2, 2013, including two meetings in the field to determine how the standards would work in actual WRAs. Initially it was expected that the amendments would be limited to the "low hanging fruit" but that soon expanded to address the Land Use Board of Appeals decision (Horsey v. West Linn), provide better definitions, and balance the interests of resource protection and private property rights. To make these changes, the entire chapter had to be changed both substantively and in terms of format.

Through the course of these meetings, the public was welcome to participate. Attendees included Alma Coston, Troy Bundy, Ann Miller, Sheila Bietschek, and Ole Olson with regular input from Matthew Miller.

Public comment was wide ranging and constructive with particular emphasis on the hardship provisions including the inequity of a 5,000 square foot development limitation for larger lots.

The initial phase also included a City "West Linn Update" newsletter explaining the work to be done and a City web site page with numerous links to access more information.

An Open House was held at City Hall on August 29, 2013 to give the public the opportunity to discuss the proposed changes with staff.

The Planning Commission, acting in their capacity as the Citizen Involvement Advisory Committee, met on June 5, 2013 so they could be updated on the extent and type of citizen involvement.

Both City Council (September 23, 2013) and the Planning Commission (June 19, October 23, November 20, and December 4, 2013) held work sessions to familiarize themselves with the proposed chapter.

Measure 56 notices were mailed for the January 15, 2014 public hearing. The notice included links to the proposed amendments and to a city website which explained how the proposed amendments might impact their property. Since the notice was mailed out, staff has fielded almost 100 e-mails, phone calls and visits to City Hall by residents asking about the proposed changes, and specifically, how they would impact their property. Staff provided full analysis of many of these properties and, in almost every case, determined that the proposed changes would have, at worst, a benign or neutral impact on their property and property values. By offering alternate means of delineating WRAs, some property owners could realize greater utilization of parts of their property with the corresponding need to mitigate elsewhere.

Discussion

CDC Chapter 98 provides the administrative procedures for legislative amendments such as those being proposed. All notice requirements of the CDC have been met. CDC Section 98.100 lists factors (goals and polices) to be addressed when considering legislative amendments. The applicable factors along with staff's assessment of the proposed amendments compliance with them are listed in the Addendum. The proposed amendments are intended to:

- Simplify the review process.
- Eliminate the use of the Public Works Department's Surface Water Management Plan (SWMP) map to identify WRAs. The SWMP is a utility plan and is not concerned with identifying WRAs. By adopting a map specific to WRAs we can avoid confusion as to whether a property is affected by the WRA chapter.
- Make reasonable allowances to develop for owners of "hardship" properties that are partially or completely within the WRA.
- Provide continued protection of the resources. (Increase protection for fish bearing streams.)
- Add the option for property owners to create WRA boundaries specific to their property based on findings by wetland biologists or similarly trained professionals.
- Include Metro's "Habitat Friendly Development Practices". Property owners can make simple modifications to their development proposals to improve water quality and habitat protection (e.g. use of water permeable pavers).

- Temporarily Disturbed Areas (“TDAs”) from will not count against the maximum amount of water resource area that a property owner can develop. TDAs are areas that are completely restored to natural grade and re-vegetated with native plants after the property is developed and disturbance is caused to the area.
- Increase exemptions from the permitting process where appropriate.
- Better explain how we delineate the WRA boundaries.

Recommendation

Staff recommends that the Planning Commission review, and revise as needed, the proposed code amendments to chapter 32 of the Community Development Code, and recommend approval to the City Council.

Attachments:

1. Public Hearing WRA Draft (Dec. 11, 2013 version)
2. Proposed WRA Map

ADDENDUM
PLANNING COMMISSION STAFF REPORT
January 15, 2014

**STAFF EVALUATION OF THE PROPOSAL'S COMPLIANCE
WITH APPLICABLE APPROVAL CRITERIA**

Chapter 98 of the CDC provides administrative procedures for legislative amendments to the CDC. Section 98.100 lists the factors upon which a decision shall be based. The applicable standards along with staff's response are as follows:

1. *The statewide planning goals and rules adopted under ORS Chapter 197 and other applicable state statutes.*

Staff Response: Staff reviewed the statewide planning goals and found that Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces, Goal 6: Air, Water and Land Resources Quality, Goal 7: Areas Subject to Natural Disasters and Hazards and Goal 1: Citizen Involvement are applicable to the proposed amendments.

Goal 5 states, "To protect natural resources and conserve scenic and historic areas and open spaces." Goal 5 adds the corollary: "Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability."

Goal 6 states: "To maintain and improve the quality of the air, water and land resources of the state."

Goal 7 states: "To protect people and property from natural hazards."

Goal 1 states: "To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."

Staff finds that the proposed amendments are consistent with these goals as discussed in staff response below relating to compliance with the West Linn Comprehensive Plan (see (4) below).

2. *Any federal or state statutes or rules found applicable;*

Staff Response: The City is required to be in compliance with Oregon Statewide Planning Rules and the Federal Clean Water Act. Compliance with the Federal Clean Water Act is managed at the State level by the Department of State Lands, Oregon Department of Environmental Quality, and the Oregon Department of Fish and Wildlife and at the regional level by compliance with Metro's Title 3 and 13 standards. Staff finds that these amendments are in compliance with the Metro rules and, by extension, compliance with the Federal rules is implicit. Compliance with the Oregon Statewide Planning Rules was discussed in the earlier finding (see (1) above).

3. *Applicable plans and rules adopted by the Metropolitan Service District;*

Staff Response: Metro's Urban Growth Management Functional Plan provides the means to satisfy the goals in Metro's long-range growth management plan: the 2040 Growth Concept. The Urban Growth Management Functional Plan is Section 3.07 of the Metro Code. The applicable titles in that section are summarized below:

Title 3 (Metro Code Sections 3.07.310 – 3.07.360) – Water Quality and Flood Management

The intent of Title 3 is to protect the beneficial water uses and functions and values of resources within the Water Quality and Flood Management Areas by limiting or mitigating the impact on these areas from development activities and protecting life and property from dangers associated with flooding.

Title 13 (Metro Code Sections 3.07.1310 – 3.07.1370) – Nature in Neighborhoods

The purpose of this title is to conserve, protect and restore a continuous ecologically viable streamside corridor system that is integrated with upland wildlife habitat and the surrounding urban landscape.

To facilitate compliance with these two titles, Metro offers cities a model ordinance which can be adopted verbatim or substantively. The City is proposing to be in substantive compliance with the model ordinance. For example, most of the WRA setbacks of this chapter meet or exceed those of the model ordinance.

Staff submitted an earlier version of the WRA amendments to Metro in summer 2013 and was informed by Metro staff that the version, at that time, was in general agreement with Metro Title 13 and 3 requirements.

4. *The applicable Comprehensive Plan policies and map;*

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces, states, "Encourage and assist in the preservation of permanent natural areas for fish and wildlife habitat in suitable, scientific/ecological areas." "Protect sensitive environmental features such as steep slopes, wetlands and riparian lands, including their contributory watersheds." "Preserve trees in park lands, natural areas, and open space wherever possible."

Staff Response: By establishing WRA boundaries (see table 32-2) which limit development and disturbance of the WRA (which includes wetlands, streams, riparian areas, habitat areas and associated slopes) these amendments protect fish and wildlife habitat. The proposed language provides increased setback standards for fish bearing streams.

Goal 5 Natural Environment policy 4 states: Require that all areas containing tree clusters, significant trees, and native vegetation along natural drainage courses and waterways in areas of new development be maintained to the maximum extent possible to preserve habitats, prevent erosion, and maintain water quality." Policy 6 states: "Restore, enhance and expand the existing habitats found along rivers and streams including planting native trees to reduce water temperature."

Staff Response: The amendments retain a generous 100 foot WRA boundary for riparian corridors (table 32-2) which provide the tree canopy needed to sustain habitats and keep water temperatures cool for the benefit of fish and other aquatic life. The 100 foot wide riparian areas will also accommodate downed trees that provide habitat and shelter as well as woody debris in the stream channel. The 100 foot width (65 feet for non-riparian corridors) provides sufficient width for vegetated understory and groundcover to intercept and trap eroded materials and pollutants and thus improve the stream's water quality.

Goal 5 Natural Environment policy 16 states: "Where practical, obtain dedication of wetlands and riparian areas to the City to assure protection and maintenance and to preserve locations for public facilities."

Staff Response: Proposed section 32.060(C) "Dedications and Easements" speaks directly to this issue. It recognizes that transferring ownership or conveying an easement to the City, a private trust or conservation group may be an appropriate way to better protect the resource. The language is tempered by the need to demonstrate nexus and proportionality in certain cases.

Goal 5 Natural Environment policy 18 states: "Encourage private landowners to maintain and restore natural vegetation and other features, as long as such activities do not violate city nuisance laws."

Staff Response: The proposed chapter encourages the removal of non-native vegetation and re-planting native vegetation by exempting that activity from the permit process (see 32.040(A) (2-3)). The chapter also provides specific detail on appropriate re-vegetation requirements (see 32.100).

Goal 6, Air, Water and Land Resources Quality, states, "*Maintain or improve the quality of West Linn's water resources*".

Staff Response: Water quality is protected by establishing WRA boundaries (table 32-2) which limit development and disturbance of the WRA's slopes and emphasizes the planting and retention of native plant material to trap and filter out eroded soils, pollutants and other materials. Protecting and encouraging the tree canopy over the WRA also helps maintain water quantity by reducing evaporation and helps maintain cooler water temperatures needed to sustain fish and healthy aquatic life.

Goal 7 Areas Subject to Natural Disasters and Hazards states, "*Protect life and property from flood, earthquake, other geological hazards, and terror threats or attacks.*"

Staff Response: The proposed amendments discourage the disturbance/development of wetlands which, in the Willamette area, also do double duty as floodplains. Any development in floodplains is discouraged, but under the hardship provisions, it may be allowed so long as the disturbance is minimized and the floodproof construction techniques of Chapter 27: Flood Management are used.

Goal 7 Policy 4 states: "Promote slope and soil stability and the use of natural drainageways in areas with landslide potential by retaining existing vegetation in those areas to the greatest extent possible."

Staff Response: The use of WRA boundaries extending up to 200 feet from the water feature (stream, etc.) minimize hillside development and the attendant risk of slope failure or erosion (see table 32-2). Where development is proposed near ravines, the standard WRA width can only be reduced if a geotechnical engineer inspects the site and determines that conditions that may lead to slope failure

and erosion do not exist. The chapter also requires that when vegetation is removed, as in the case of non-native plants, that it must be replaced by native plants per the re-vegetation standards of 32.100.

Goal 1 Citizen Involvement, states: *"Provide the opportunity for broadly based, ongoing citizen participation, including opportunities for two-way dialogue between citizens and City elected and appointed officials." "Provide clear, simple, user friendly information about how the planning process works and how citizens can be involved in land use and other City policy decisions."*

Staff Response: Since 2010, the planning process associated with these amendments has made considerable use of the City run media (city website) in order to communicate and dialogue with the public. The City's homepage regularly featured WRA updates. Over 20 meetings by an advisory committee from 2011-2013 drew regular public participation and very useful input, some of which was incorporated into the amendments. In summer 2013, an open house at City Hall offered another forum for public discussion. Measure 56 notices, as mandated by state law, provided notice to over 2,000 property owners within 200 feet of WRAs in December 2013. This Measure 56 notice piqued the greatest interest with almost 100 telephone, e-mail and in person contacts with staff. Almost exclusively, the public wanted to know how the proposed changes might impact their property and property value. (Almost all discovered that the effect would be benign or positive in that it would provide more options.) In tandem with the direct contact, a link in the Measure 56 notices directed the public to a City site which answered questions about the proposed WRA amendments in clear and simple terms.

5) The applicable provisions of the implementing ordinances.

Staff Response: The implementing ordinance is the City of West Linn Community Development Code (CDC). The relevant section of the CDC is Chapter 32: Water Resource Areas. The provisions of that chapter were fully considered in the course of the three year amendment process culminating in the decision to recommend repealing and replacing the chapter's language with the language in the attached amendments.

B. Consideration may also be given to:

- 1. A mistake or inconsistency in the Comprehensive Plan or implementing ordinance as it relates to the property which is the subject of the proposal; and*
- 2. Factual oral testimony or written statements from the parties, other persons and other governmental agencies relevant to the existing conditions or factors in subsection A or (B)(1) of this section. (Ord. 1226, 1988; Ord. 1474, 2001)*

Staff Response: Although the current language has been a useful tool in the management and protection of WRAs since it was introduced in 2007, it has flaws that need to be corrected. To begin with, the use of the Surface Water Management Plan Map as the means to identify WRAs wrongly identified 260 miles of storm water facilities when only 125 miles are actually viable water resources requiring protection. (Most of the 260 miles on that map are underground storm pipes or shallow man made road side ditches.) Their inclusion undervalued WRAs elsewhere and led to confusion as to what is protected. Other ambiguities in the chapter made its interpretation very difficult. For

example, the current section 32.050(F)(3): "*For new underground utility facilities, no greater than 25 feet wide, and disturbance of no more than 200 linear feet of water quality resource area, or 20 percent of the total linear feet of water quality resource area, whichever is greater*" is still unfathomable to this day.

There was also an ongoing problem as to where the WRA was supposed to be measured from in the field. This problem introduced the need for improved "definitions" of terms in the chapter. The new chapter also recognized that not all WRAs are created equally. Using language from Metro's model ordinance, we provide the option for property owners to hire wetland specialists who can propose modified setbacks, balanced with mitigation, to provide protection appropriate to the quality of the resource.

Although no changes are proposed to the Comprehensive Plan, the City is recommended to adopt a WRA Map which will delineate all WRAs in the City, replacing the Surface Water Management Plan Map (see proposed changes to Chapter 32 language below).

Regarding the consideration of oral testimony or written statements from others including the public relative to the approval criteria, staff expects that many of these comments will be made at the public hearings before the Planning Commission and City Council.

Proposed changes to the amendments:

In order to minimize confusion potentially caused by multiple versions of the code amendments being in circulation, staff has refrained from any updates to the language since early December 2013. Since that date, a number of minor changes have been identified which should make the amendments clearer and less likely to require interpretation. Staff would request that these changes be considered and incorporated during the course of the Planning Commission hearing.

C. Nonconforming Structures.

1. Expansion of the principal Non-Conforming Structure. Additions to the existing building footprint of a principal non-conforming structure within, or partially within, the WRA are exempt, and additionally exempt from Chapter 66, Non-Conforming Structures, as long as the addition(s) meets the following restrictions:
 - a. Re-vegetation of temporarily disturbed areas will be performed per Section 32.100 after the addition is completed;
 - b. There is no net increase in storm water runoff flowing toward the water resource as a result of the addition(s);
 - c. The addition (~~including decks and other cantilevered designs, etc.~~) **to the principal structure** is not closer to the water resource than the existing principal structure
 - d. If it is a lateral addition, it does not extend more than 25 feet laterally from the side of the existing principal structure,
 - e. The addition does not increase the footprint of the existing principal structure by more than 500 square feet, at any one time or incrementally.
 - f. **Lateral additions to decks cannot come closer to the water resource than the existing deck.**
 - g. Vertical additions to existing principal structures that comply with the maximum height requirements of the underlying zone are exempt.
2. Repair, Replacement and Removal of Non-Conforming structures:
 - a. Interior remodeling of a non-conforming structure.
 - b. Repair, maintenance, rehabilitation and replacement of non-conforming structures, accessory structures, utilities and related components, roads, driveways, paths, trails, fences, and manmade water and storm water control facilities that do not expand the disturbed area or footprint. Re-vegetation of temporarily disturbed areas or corridors pursuant to 32.100 is required.

- c. This section also applies in the event that a non-conforming structure burned down or was otherwise damaged by natural or other disaster. The structure could be re-built so long as the structure did not expand the original footprint and the original access driveway (PDA) was used.
- d. Demolition and removal of non-conforming structure's impervious surfaces are exempt as long as the affected areas are restored with native vegetation pursuant to Section 32.100.

D. New Construction Activities allowed in the WRA.

- 1. Structures shall be located out of the WRA, except that eaves, balconies, decks, "pop outs," and similar additions, may cantilever over the outer boundary of the WRA a maximum of five feet. No vertical supports may extend down to grade within the WRA.
- 2. Construction of an accessory structure, less than 120 square feet in size and under 10 feet tall, may be constructed to within 50 feet of the water resource or behind the top of slope (ravine, per figure 32-4), whichever is greater. No more than one accessory structure is permitted in the WRA. Accessory structures in the WRA that existed prior to January 1, 2006 may remain in place and not count against the limitation in new accessory structures.
- 3. Construction ~~or repair~~ of a water permeable patio or deck within 30 inches of the original grade and construction of approved water permeable footpaths may be **built to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater.** ~~constructed behind the top of slope (ravine).~~
- 4. Fences may be built to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater.

This allows exemptions 2-4 to have consistent language.

F. Development allowed under Section 32.110(A) may use the following provisions:

- 1. Setbacks required by the underlying zoning district may be reduced up to 50% where necessary to avoid construction within the WRA, as long as the development would otherwise meet the standards of this Chapter. However, front loading garages shall be setback a minimum of 18 feet, while side loading garages shall be setback a minimum of three feet.
- 2. Landscaping and parking requirements may be reduced for hardship properties but only if all or part of the WRA is dedicated pursuant to CDC 32.060(C) or if a restrictive deed covenant is established. These reductions shall be permitted outright and, to the extent that the practices are inconsistent with other provisions or standards of the West Linn CDC, this section is given precedence so that no variance is required. The allowable reductions include:
 - a. Elimination of landscaping for the parking lot interior.[±]
 - b. Elimination of the overall landscape requirement (e.g. 20% for commercial uses).[±]

- c. Elimination of landscaping between parking lots and perimeter non-residential properties.[‡]
- d. Landscaping between parking lots and the adjacent right-of-way may be reduced to 8 feet. This 8-foot wide landscaped strip may be used for vegetated storm water detention or treatment.
- e. A 25% reduction in total required parking is permitted to minimize or avoid intrusion into the WRA.
- f. Adjacent improved street frontage with curb and sidewalk may be counted towards the parking requirement at a rate of one parking space per 20 lineal feet of street frontage adjacent to the property, subject to City Engineer approval based on the street width and classification.
- g. The current compact and full sized parking mix may be modified to allow up to 100% compact spaces and no full sized spaces. However, any required ADA compliant spaces shall be provided.

The footnotes ⁽¹⁾ have been removed since they no longer reference anything.

32.120 WRA MAP

A. The WRA Map, dated September 2013, is adopted as the official WRA map. It is intended to identify WRA water features (wetlands, streams, ephemeral streams and riparian corridors). It is not intended to delineate the exact WRA boundaries or water feature alignment. That task will be carried out by staff in the course of site visits where the provisions of table 32-2 shall apply.

B. Amendments to the WRA Map may be made in accordance with the provisions of CDC Chapters 98 and 99. Copies of all map amendments shall be dated with the effective date of the document adopting the map amendment and shall be maintained without change, together with the adopting documents, on file in the Planning Department.

C. The Planning Director shall maintain in his office, and available for public inspection, an up-to-date copy of the WRA Map.

PROPOSED AMENDMENTS
TO CHAPTERS 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 23, 24, 32, 33, 46, 46, 54,
and 55 of the
COMMUNITY DEVELOPMENT CODE

DISCUSSION DRAFT

December 11, 2013

Chapter 32
Water Resource Area Protection

Sections

32.010	PURPOSE AND INTENT
32.020	APPLICABILITY
32.030	PROHIBITED USES
32.040	EXEMPTIONS
32.050	THE APPLICATION (STANDARD PROCESS)
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32.000 WATER RESOURCE AREA (WRA) PROTECTION

32.010 PURPOSES

The purposes of this chapter are to:

- A. Comply with Title 13 and Title 3 of Metro's Urban Growth Management Functional Plan while balancing resource protection with property rights and development needs.
- B. Protect or improve water quality by filtering sediment and pollutants and absorbing excess nutrients for the protection of public health, safety and the environment and to comply with both state and federal laws and regulations, including the Clean Water Act and the Endangered Species Act.
- C. Moderate storm water impacts by slowing, storing, filtering and absorbing storm water and to maintain storm water storage and conveyance to prevent or minimize flooding and erosion for the protection of public health and safety.
- D. Prevent erosion and minimize sedimentation of water bodies by protecting root masses along streams that resist erosion and stabilize the stream bank and by protecting vegetation on steep slopes to maintain their stability.
- E. Protect and improve the following functions and values of WRAs that enhance the value of fish and wildlife habitat:
 - 1. Natural stream corridors that provide habitat and habitat connectivity for terrestrial wildlife,
 - 2. Microclimate habitats that support species adapted to those conditions,
 - 3. Shade to maintain healthy stream temperatures,
 - 4. Vegetation to absorb and filter pollution and sediment that would otherwise contaminate the water body,
 - 5. Sources of organic material that support the food chain,
 - 6. Recruitment of large wood that enhances the habitat of fish bearing streams, and
 - 7. Moderation of stream flow by storing and delaying storm water runoff, and vegetated areas surrounding wetlands that, together with the wetland, provide vital habitat for birds, amphibians, and other species.
- F. Provide mitigation standards and guidance to address water quality values and ecological functions and values lost through development within WRAs.
- G. Encourage the use of habitat friendly development practices.
- H. Minimize construction of structures and improvements where they are at risk of flooding, to enable natural stream migration and channel dynamics, and protect water resources from the potential harmful impacts of development.
- I. Provide for uses and activities in WRA that have negligible impact on such areas. And to provide for other uses that must be located in such areas in a way that will avoid or, when avoidance is not possible, minimize potential impacts.

32.020 APPLICABILITY

- A. This chapter applies to all WRAs identified on the WRA Map. It also applies to all verified, unmapped WRAs. The WRA Map shall be amended to include the previously unmapped WRAs.
- B. The burden is on the property owner to demonstrate that the requirements of this Chapter are met, or are not applicable to the land, development activity, or other proposed use or alteration of land. The Planning Director may make a determination of applicability based on the WRA Map, field visits, and any other relevant maps, site plans and information, as to:
1. The existence of a WRA,
 2. The exact location of the WRA, and/or
 3. Whether the proposed development, activity or use is within the WRA boundary.

In cases where the location of the WRA is unclear or disputed, the Planning Director may require a survey, delineation, or sworn statement prepared by a natural resource professional/wetland biologist or specialist that no WRA exist on the site. Any required survey, delineation, or statement shall be prepared at the applicant's sole expense.

32.030 PROHIBITED USES

- A. Alteration, development, or use of real property designated as, and within, a WRA is strictly prohibited except as specifically allowed or exempted in this chapter.

Table 32-1: Summary of where development and activities may occur in areas subject to this chapter

Type of Development or Activity	In Water Resource	Water Resource Area
New House, Principal Structure(s)	No	No, except by hardship section 32.100. Geotechnical study may reduce WRA width per table 32-2 (footnote 5).
Additions to Existing House, Principal Structure(s) and replacement in kind. (Replacement in kind does not count against the 500 sq. ft. limit so long as it remains within the existing footprint.)	No	Yes, so long as it gets no closer to the WRA than building footprint that existed Jan. 1, 2006. Max. 500 sq. ft. of addition(s) to side or 500 sq. ft. to rear of building footprint. No limit on vertical additions within existing footprint. (See 32.030 (C)). Geotechnical study may reduce the WRA width per table 32-2 (footnote 5).
New cantilevered decks (over 30-inches), balconies, roof overhangs and pop outs towards the WRA from Existing House or Principal Structure(s)	No	Yes, but only 5 ft. into the WRA. Foundation or supports of structure cannot extend vertically to grade in the WRA. Geotechnical study may reduce the WRA width per table 32-2 (footnote 5).
Decks within 30-inches of grade, at grade patios.	No	Yes, but only to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater. ¹ Geotechnical study may reduce the WRA width per table 32-2 (footnote 5).
New Accessory Structure under 120 sq. ft. and 10 ft. tall	No	Yes, but only if it is a minimum of 50 feet from the water resource or behind the top of slope (ravine), whichever is greater. ¹
Repair and maintenance to existing accessory structures	No	Yes, but no increase in footprint or height.
Storm water treatment and detention (e.g. rain gardens, storm outfall/energy dissipaters)	No	Yes, Private and Public facilities including outfall and energy dissipaters are permitted if no reasonable alternatives exist.
Driveways/ streets/ bridges and parking lots	No, unless a WRA crossing is the only available route. No parking lots.	No, unless a WRA crossing is the only available route, or it is part of a hardship application. Parking lots only allowed in hardship cases the maximum distance from water resource.

New Fence(s)	No markers or posts in a water resource.	Yes, but only to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater. ¹ In remainder of a WRA, only City approved property markers or posts every 25 ft. to delineate property.
Demolition of structure and/or removal of impervious surfaces in the WRA	Yes, Restoration and re-vegetation required.	Yes, Restoration and re-vegetation required.
Exterior Lighting	No	No, except on existing buildings, additions or hardship cases but light must be directed away from the WRA and less than 12 ft. high.
Public passive recreation facilities	No, except for bridges and utility crossings.	Yes, but only soft or permeable surface trails, bridges and elevated paths, interpretive facilities and signage. Hard surface ADA trails are allowed in WRA above top of slope associated with well-defined ravine WRAs.
Public active recreation facilities	No, except for bridges and utility crossings.	Yes, but natural surface playing fields and playground areas only in WRA above top of slope associated with well-defined ravine WRAs.
Grading, fill (see also TDAs)	No, except for bridges and utility crossings.	Yes, after a WRA permit is obtained. Restoration and re-vegetation required.
Temporarily Disturbed Areas (TDA) (e.g. buried utilities)	No, except as allowed by WRA permit.	Yes. Restoration and re-vegetation required.
Removal of existing vegetation or planting new vegetation	No, except invasive plants and hazard trees per 32.030(A) (2) (b) or per 32.100.	Yes, if it is replaced by native vegetation. Exemption 32.030(A) (4) applies,
Realigning water resources	Yes after "Alternate Review" Process	Not applicable

¹ Development to within 50 feet of the water resource applies to Table 32-2 WRA types (A), (C), (D), and (H). Development behind top of slope (ravine) applies to WRA type (B).

32.040 EXEMPTIONS

A. Vegetation Maintenance, Planting and Removal

1. The routine maintenance of any existing WRA, consistent with the provisions of this Chapter such as, but not limited to, removing pollutants, trash, unauthorized fill, and dead or dying vegetation that constitutes a hazard to life or property.
2. Removal of plants identified as nuisance, invasive or prohibited plants, provided that after plant removal, re-vegetation of disturbed areas is performed pursuant to Section 32.100.
3. The planting or propagation of plants identified as native plants on the Portland Plant list.
4. Maintenance of existing gardens, pastures, lawns, and landscape perimeters, including the installation of new irrigation systems within existing gardens, lawns, and landscape perimeters.
5. The use of pesticides and herbicides with applicable state (e.g. Oregon DEQ) permits.

B. Building, Paving, Grading, and Testing

1. Maintenance. Routine repair, maintenance and replacement of legally established above and below ground utilities and related components (including storm water catch basins, intakes, etc.), roads, driveways, paths, trails, fences and manmade water control facilities such as constructed ponds, wastewater facilities, and storm water treatment

facilities that do not expand the disturbed area at grade or footprint, provided re-vegetation of disturbed areas or corridors is performed pursuant to Section 32.100.

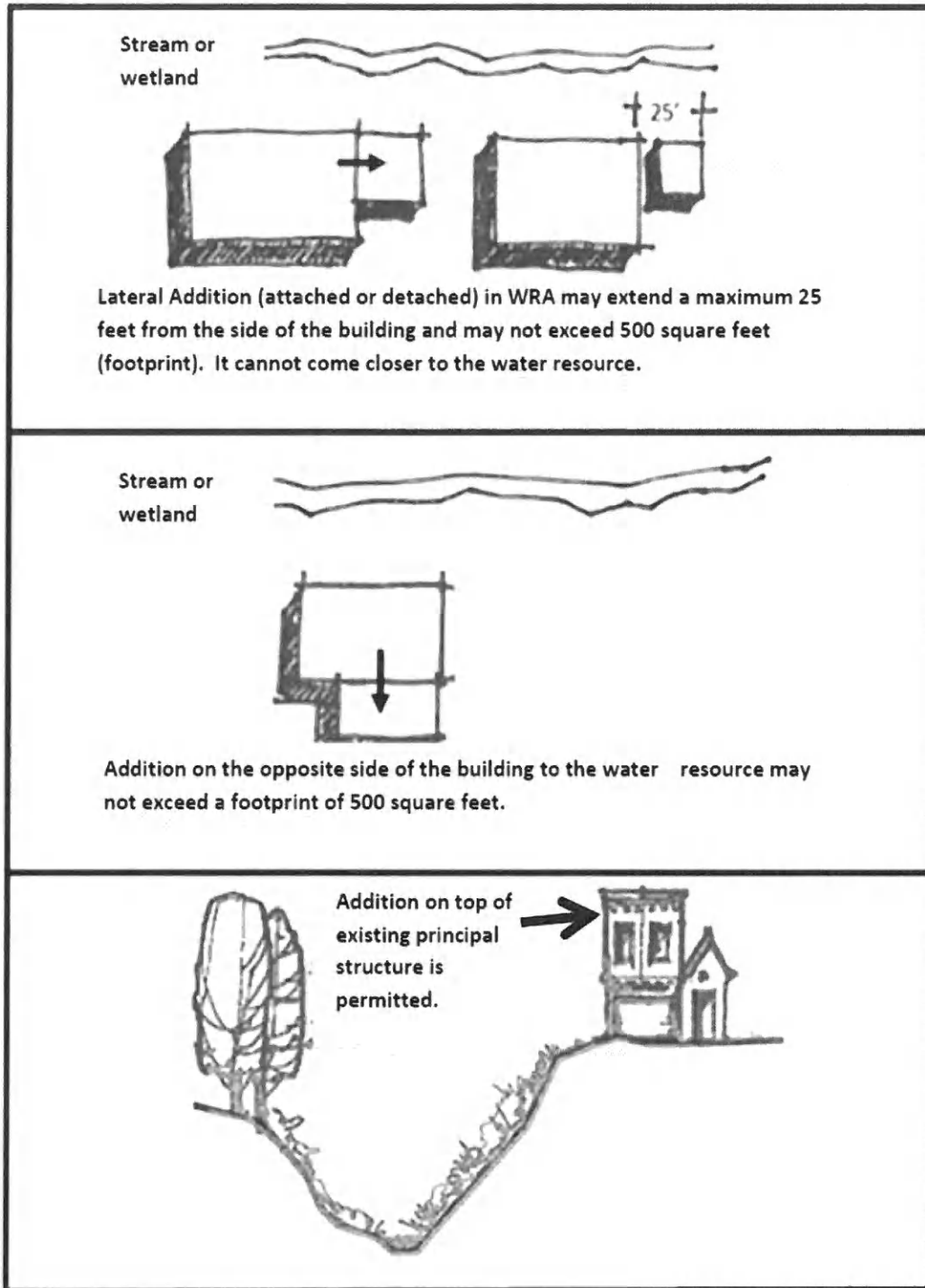
2. Trails. The establishment of unpaved trails constructed of non-hazardous, pervious materials with a maximum width of four feet in generalized corridors approved in a Parks or Trails Master Plan, provided that:
 - a. The trail is set back from the water resource at least 30 feet, except at stream crossing points or at points where the topography forces the trail closer to the stream.
 - b. Foot bridge crossings shall be kept to a minimum. When the stream bank adjacent to the foot bridge is accessible (e.g. due to limited vegetation or topography), fences or railings shall be installed from the foot bridge and extend 15 feet beyond the terminus of the foot bridge to discourage trail users and pets from accessing the stream bank, disturbing wildlife and habitat areas, and causing vegetation loss, stream bank erosion and stream turbidity.
 - c. Trails shall be designed to minimize disturbance to existing vegetation, work with natural contours, avoid the fall line on slopes where possible, and avoid areas with evidence of slope failure to ensure that trail runoff does not create channels in the WRA.
3. Site investigations. Temporary and minor clearing outside of wetlands not to exceed 200 square feet per acre or site, whichever is more, provided that no individual area is greater than 200 feet in size, for the purpose of site investigations and pits for preparing soil profiles, provided that such areas are restored to their original condition when the investigation is complete. While such temporary and minor clearing is exempt from the provisions of this chapter, it is subject to all other City codes, including provisions for erosion control and tree removal.
4. Support structures for overhead power or communication lines where the support structures are outside of the WRA.
5. The installation, within the developed portions of street right-of-ways, of new utilities, the maintenance or replacement of existing utilities and street repaving projects.

C. Nonconforming Structures.

1. Expansion of the principal Non-Conforming Structure. Additions to the existing building footprint of a principal non-conforming structure within, or partially within, the WRA are exempt, and additionally exempt from Chapter 66, Non-Conforming Structures, as long as the addition(s) meets the following restrictions:
 - a. Re-vegetation of temporarily disturbed areas will be performed per Section 32.100 after the addition is completed;
 - b. There is no net increase in storm water runoff flowing toward the water resource as a result of the addition(s);
 - c. The addition (including, decks and other cantilevered designs, etc.) is not closer to the water resource than the existing principal structure,

- d. If it is a lateral addition, it does not extend more than 25 feet laterally from the side of the existing principal structure,
 - e. The addition does not increase the footprint of the existing principal structure by more than 500 square feet, at any one time or incrementally.
 - f. Vertical additions to existing principal structures that comply with the maximum height requirements of the underlying zone are exempt.
2. Repair, Replacement and Removal of Non-Conforming structures:
- a. Interior remodeling of a non-conforming structure.
 - b. Repair, maintenance, rehabilitation and replacement of non-conforming structures, accessory structures, utilities and related components, roads, driveways, paths, trails, fences, and manmade water and storm water control facilities that do not expand the disturbed area or footprint. Re-vegetation of temporarily disturbed areas or corridors pursuant to 32.100 is required.
 - c. This section also applies in the event that a non-conforming structure burned down or was otherwise damaged by natural or other disaster. The structure could be re-built so long as the structure did not expand the original footprint and the original access driveway (PDA) was used.
 - d. Demolition and removal of non-conforming structure's impervious surfaces are exempt as long as the affected areas are restored with native vegetation pursuant to Section 32.100.
- D. New Construction Activities allowed in the WRA.
- 1. Structures shall be located out of the WRA, except that eaves, balconies, decks, "pop outs," and similar additions, may cantilever over the outer boundary of the WRA a maximum of five feet. No vertical supports may extend down to grade within the WRA.
 - 2. Construction of an accessory structure, less than 120 square feet in size and under 10 feet tall, may be constructed to within 50 feet of the water resource or behind the top of slope (ravine, per figure 32-4), whichever is greater. No more than one accessory structure is permitted in the WRA. Accessory structures in the WRA that existed prior to January 1, 2006 may remain in place and not count against the limitation in new accessory structures.
 - 3. Construction or repair of a water permeable patio or deck within 30 inches of the original grade and construction of approved water permeable footpaths may be constructed behind the top of slope (ravine).
 - 4. Fences may be built to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater.

Figure 32-1: Additions to Non-Conforming Principal Structures within the WRA Boundary



- F. Emergency Activities. Actions authorized by the City Manager that must be taken immediately or within a period of time too short to fully comply with this Chapter, to:

1. Prevent immediate danger to life or property,
2. Prevent immediate threat of serious environmental degradation,
3. Restore existing utility service, or
4. Reopen a public thoroughfare to traffic.

However, after the emergency has passed any disturbed area shall be restored, pursuant to Section 32.100.

G. Exempt Areas

1. The Tualatin or Willamette rivers are regulated by Chapter 28 and are not subject to this chapter. However, wetlands and buffers, regardless of their proximity to these rivers, are subject to this chapter. In areas where there is overlap with Chapter 28, this chapter shall prevail.
2. Existing enclosed or piped sections of streams, including any development at right angles to the enclosed or piped sections.
3. Isolated areas. If a topographic feature or legally established road, other linear facility, or barrier physically separates and functionally isolates a portion of the WRA from the main portion of the WRA, including the associated water resource, the approval authority may exclude the isolated area from the WRA and the permitting procedure.

32.050 APPLICATION

- A. An application requesting approval for a use or activity regulated by this chapter shall be initiated by the property owner, or the owner's authorized agent, and shall include an application form and the appropriate deposit/or fee as indicated on the master fee schedule.
- B. A pre-application conference shall be a prerequisite to the filing of the application.
- C. The applicant shall submit maps and diagrams at 11x17 inches and a written narrative addressing the approval criteria and requirements of this Chapter, and any additional copies required by the Planning Director.
- D. Where review of soil maps, Department of Geology and Mineral Industries (DOGAMI) maps, or on-site inspection by the City Engineer reveals evidence of slope failures or that WRA slopes are potentially unstable or prone to failure, geotechnical studies may be required to demonstrate that the proposed development will not cause, or contribute to, slope failure or increased erosion or sedimentation in the WRA or adversely impact surface or modify groundwater flow or hydrologic conditions. These geotechnical studies shall include all necessary measures to avoid or correct the potential hazard.
- E. Applications proposing that streets or utilities cross water resources, or any other development that modifies the water resource, shall present evidence in the form of adopted utility master plans or transportation master plans, or findings from a registered Oregon civil engineer, certified engineering geologist or similarly qualified professional to demonstrate that the development or improvements are consistent with accepted engineering practices.
- F. Site Plan. The applicant shall submit a site plan which contains the following information, as applicable:

1. The name, address, and telephone number of the applicant, the scale (lineal) of the plan, and a north arrow.
 2. Property lines, rights-of-way, easements, etc.
 3. Topographic information at two foot contour increments identifying both existing grades and proposed grade changes.
 4. A slope map delineating slopes 0-25% and over 25%.
 5. Boundaries of the WRA, specifically delineating the water resource, and any riparian corridor boundary. If the proposal includes development of a wetland, a wetlands delineation prepared by a professional wetland specialist will be required. The wetland delineation may be required to be accepted or waived through the Department of State Lands (DSL) delineation review process.
 6. Location of existing and proposed development, including all existing and proposed structures, accessory structures, any areas of fill or excavation, water resource crossings, alterations to vegetation, or other alterations to the site's natural state.
 7. Identify the location and square footage of previously disturbed areas, areas that are to be temporarily disturbed, and area to be permanently disturbed or developed.
 8. When an application proposes development within the WRA, an inventory of vegetation within the WRA, sufficient to categorize the existing condition of the WRA, including:
 - a. the type and general quality of groundcover, including the identification of dominant species and any occurrence of non-native, invasive species;
 - b. square footage of ground cover; and,
 - c. square footage of tree canopy as measured either through aerial photographs or by determining the tree drip lines. Where only a portion of a WRA is to be disturbed, the tree inventory need only apply to the impacted area. The remaining treed area shall be depicted by outlining the canopy cover.
 9. Locations of all significant trees as defined by the City Arborist.
 10. Identify adopted transportation, utility and other plan documents applicable to this proposal.
 11. For cases processed under 32.110(Hardship), provide the maximum disturbed area (MDA) calculations.
- G. Construction Management Plan. The applicant shall submit a Construction Management Plan which includes the following:
1. The location of proposed TDAs (site ingress/egress for construction equipment, areas for storage of material, construction activity areas, grading and trenching, etc.) that will subsequently be restored to original grade and replanted with native vegetation, shall be identified, mapped and enclosed with fencing per (3) below.
 2. Appropriate erosion control measures consistent with CDC Chapter 31 and a tentative schedule of work.
 3. The WRA shall be protected, prior to construction, with an anchored chain link fence (or equivalent approved by the City) at its perimeter that shall remain undisturbed, except as

specifically authorized by the approval authority. Additional fencing to delineate approved TDAs may be required. Fencing shall be mapped and identified in the Construction Management Plan and maintained until construction is complete.

- H. Mitigation Plan prepared in accordance with the requirements in 32.090.
- I. Re-vegetation Plan prepared in accordance with the requirements in 32.100.
- J. The Planning Director may modify the submittal requirements per CDC Section 99.035.
- K. The following additional requirements apply to applications being submitted under the Alternative Review Process pursuant to CDC 32.070 through 32.080.
 - 1. Identify the affected WRA and describe the functions it performs (see Table 32-4).
 - 2. Provide a scaled map that delineates the proposed WRA boundaries determined to be sufficient to sustain the functions occurring at the site and a narrative that justifies the proposal, consistent with Section 32.080.
 - 3. Identify the recommended WRA boundary at the site with colored tape, survey markers or other easily identified means for field inspection by staff.
 - 4. Consultant Required for Alternate Review Process.
 - a. The narrative and analysis required by sections 32.070 and 32.080 shall be prepared and signed by a qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist. The Planning Director shall determine the scope of work and specific products required from the consultant. The Planning Director may require a mitigation plan pursuant to Section 32.090 and/or a re-vegetation plan pursuant to Section 32.100.
 - b. The Planning Director may waive the consultant requirement for simple or minor projects if he or she determines that it is not necessary in order to satisfy the requirements of this chapter.

32.060 APPROVAL CRITERIA (STANDARD PROCESS)

No application for development on property containing a WRA shall be approved unless the approval authority finds that the proposed development is consistent with the following approval criteria, or can satisfy the criteria by conditions of approval:

- A. WRA Protection/Minimizing Impacts. Development shall be conducted in a manner that will avoid or, if avoidance is not possible, minimize adverse impact on WRAs.
- B. Storm Water and Storm Water Facilities.
 - 1. Proposed developments shall be designed to maintain the existing WRAs and utilize them as the primary method of storm water conveyance through the project site unless:
 - a. the Surface Water Management Plan calls for alternate configurations (culverts, piping, etc.); or
 - b. under Section 32.070, the applicant demonstrates that the relocation of the water resource will not adversely impact the function of the WRA including, but not limited to, circumstances where the WRA is poorly defined or not

clearly channelized.

Re-vegetation, enhancement and/or mitigation of the re-aligned water resource shall be required as applicable.

2. Public and private storm water detention, storm water treatment facilities and storm water outfall or energy dissipaters (e.g. rip rap) may encroach into the WRA if:
 - a. accepted engineering practice requires it;
 - b. encroachment on significant trees shall be avoided when possible, and any tree loss shall be consistent with the City's Tree Technical Manual and mitigated per Section 32.090;
 - c. there shall be no direct outfall into the water resource, and any resulting outfall shall not have an erosive effect on the WRA or diminish the stability of slopes; and
 - d. there are no reasonable alternatives available.

A geotechnical report may be required to make the determination regarding slope stability.

3. Roadside storm water conveyance swales and ditches may be extended within rights-of-way located in a WRA. When possible, they shall be located along the side of the road furthest from the water resource. If the conveyance facility must be located along the side of the road closest to the water resource, it shall be located as close to the road/sidewalk as possible and include habitat friendly design features (treatment train, rain gardens, etc.).
4. Storm water detention and/or treatment facilities in the WRA shall be designed without permanent perimeter fencing and shall be landscaped with native vegetation.
5. Access to public storm water detention and/or treatment facilities shall be provided for maintenance purposes. Maintenance driveways shall be constructed to minimum width and use water permeable paving materials. Significant trees, including roots, shall not be disturbed to the degree possible. The encroachment and any tree loss shall be mitigated per Section 32.090. There shall also be no adverse impacts upon the hydrologic conditions of the site.

C. Dedications and Easements Water

1. To protect WRAs from potential disturbance, damage and encroachment caused by human activity, at such time that property is subdivided or developed, the City shall:
 - a. Encourage applicant to place a restrictive covenant recognizing the limitations on development in the WRA on the land title deed.
 - b. Alternately, the applicant may consider dedication of the land title deed for the WRA to a private trust or conservation group for open space and resource protection purposes, with the exception of known or suspected contaminated sites.
 - c. The dedication of land or restrictive covenant on the deed, under subsections (C) (1) (a) or (b) above, shall be contingent on the City demonstrating that an essential nexus and rough proportionality exists. Alternately, the applicant may

choose to waive the nexus and proportionality requirement. Where appropriate, the City may require that the “right to exclude” be legally relinquished by the property owner.

- d. The City shall not pursue dedications or restrictive covenants from individual property owners in residential zones applying for WRA permits that do not involve the creation of additional housing or lots.

- 2. The area appropriate for dedication or a restrictive covenant under Subsection (C) (1) (a) and (b) above should include, at a minimum, the water resource and extend to:
 - a. the outer or uphill edge of the WRA when WRA type (A), (C), (E), (F), or (H), shown in Table 32-2 applies; or,
 - b. to the distinct top of slope or ravine when protected WRA type (B) in Table 32-2 applies; or,
 - c. a smaller area, if any, based on the nexus and proportionality analysis under Subsection(C) (1) (c).

D. WRA Width. Except for the exemptions in Section 32.040, applications that are using the alternate review process of 32.070, or as authorized by the Approval Authority consistent with the provisions of this Chapter, all development is prohibited in the WRA as established in Table 32-2 below:

Table 32-2. Required Width of WRA

Protected WRA Resource (see CDC Chapter 2 Definitions)	Slope Adjacent to Protected Water Resource ^{1,4}	Starting Point for Measurements from Water Resource ³	Width of WRA on each side of the Water Resource ⁴
A. Water Resource	0% - 25%	Edge of bankfull stage or OHW-Delineated edge of wetland	65 feet
B. Water Resource (Ravine)	over 25% to a distinct top of slope ²	Edge of bankfull stage/OHW or Delineated edge of wetland	From water resource to top of slope ² (30 foot minimum), plus an additional 50 feet ⁵
C. Water Resource	over 25% for more than 30 feet, and no distinct top of slope for at least 150 feet	Edge of bankfull stage/OHW or Delineated edge of wetland	200-feet
D. Riparian Corridor	any	Edge of bankfull stage/OHW	100 feet
E. Formerly Closed Drainage Channel Reopened	Variable; see Section 32.050(P)	Edge of bankfull stage/OHW	15 feet
F. Ephemeral Stream	Any	Stream thread or centerline	15-feet with treatment or vegetation (see 32.050(G) (1)).
G. Fish bearing streams per Oregon Department of Fish and Wildlife (ODFW) or 2003-2004 survey	Applies to all that stream section where fish were inventoried and upstream to the first known barrier to fish passage.	Edge of bankfull stage/OHW or Delineated edge of wetland	100 feet when no greater than 25% slope. See B or C above for steeper slopes.

H. Re-aligned Water Resource	See A, B, C, D, F, or G. above	Edge of bankfull stage/OHW; Delineated edge of wetland	See A, B, C, D, F, or G, above
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¹ The slope is the average slope in the first 50 feet as measured from bankfull stage or OHW.

² Where the protected water resource is confined by a ravine or gully, the top of slope is the location (30 foot minimum) where the slope breaks to less than 15% for at least 50 feet.

³ At least three slope measurements along the water resource, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending upon topography, the width of the protected corridor may vary.

⁴ Isolated WRA. If a topographic feature or legally established road, other linear facility, or barrier physically separates and functionally isolates a water resource from a portion of the associated WRA, the Planning Director or approval authority may allow the WRA's width to be reduced to the minimum extent needed to exclude the isolated area. The applicant shall provide sufficient information to enable the approval authority to determine whether or not the subject area qualifies under Subsection 32.040(G). If the applicant fails to provide credible information, the planning director or approval authority may require technical review by a qualified professional, at the applicant's expense, to verify and evaluate the information submitted by the applicant.

⁵ The 50 foot distance may be reduced to 25 feet if a geotechnical study by a licensed engineer or similar accredited professional demonstrates that the slope is stable and not prone to erosion.

Table 32-3.

Determining the starting point for the measurement of the WRA

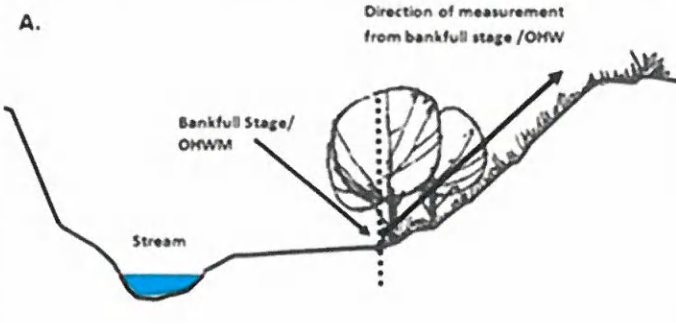
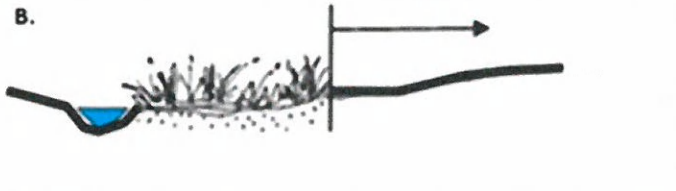
<p>A.</p> 	<p>The bankfull stage or OHW level of stream systems is typically delineated in the field by:</p> <ul style="list-style-type: none"> • the outer extent of facultative or obligate plants; • the litter of branches, twigs and organic debris below and the presence of woody vegetation (e.g., willow and alder species) above; • textural change of depositional sediment or changes in the character of the soil (e.g. from silts, sand, cobble and gravel to upland soils); • top of the zone of washed or exposed roots; • a clear natural line impressed on the bank; • a break or change in slope angle.
<p>B.</p> 	<p>When there are wetlands adjacent to a stream the measurement begins at the outer edge of the wetland or the OHW/bankfull stage, whichever is greater.</p>

Figure 32-2

Determining the appropriate slope and measuring the WRA width:

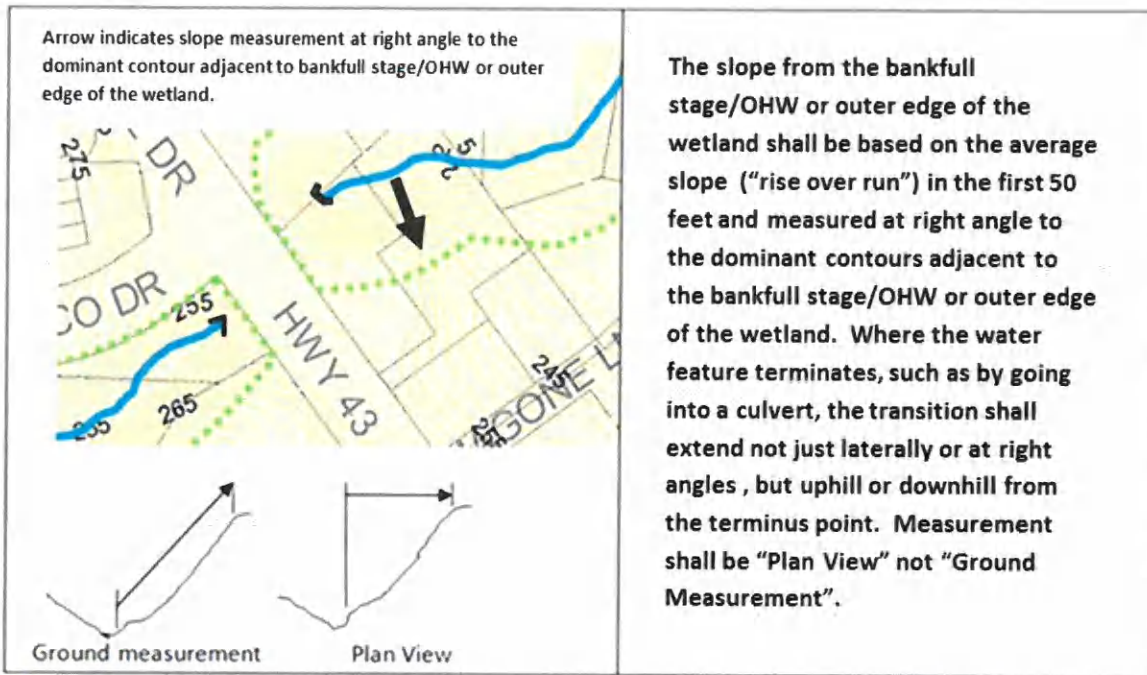


Figure 32-3

SLOPES 0-25%

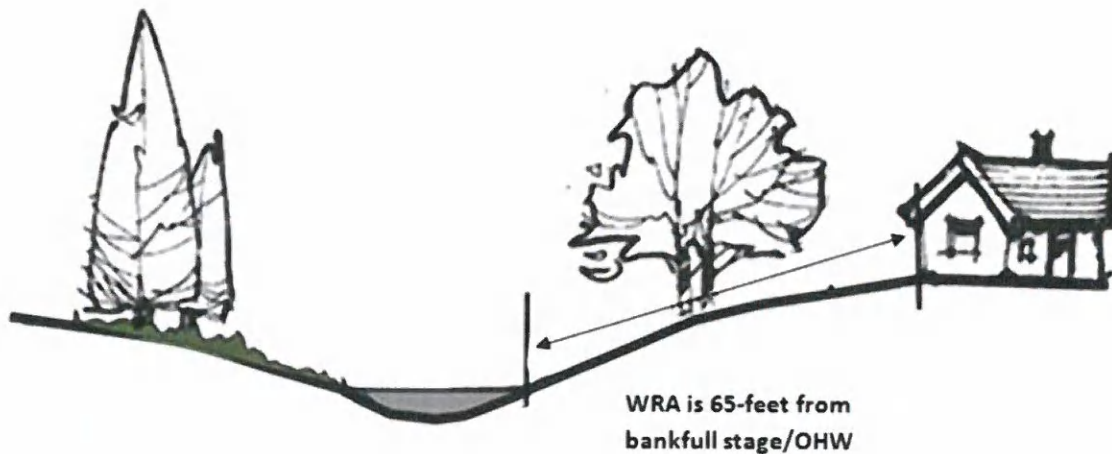


Figure 32-4

**WELL DEFINED RAVINE. SLOPES OVER 25%.
DISTINCT OR IDENTIFIABLE TOP OF SLOPE.**

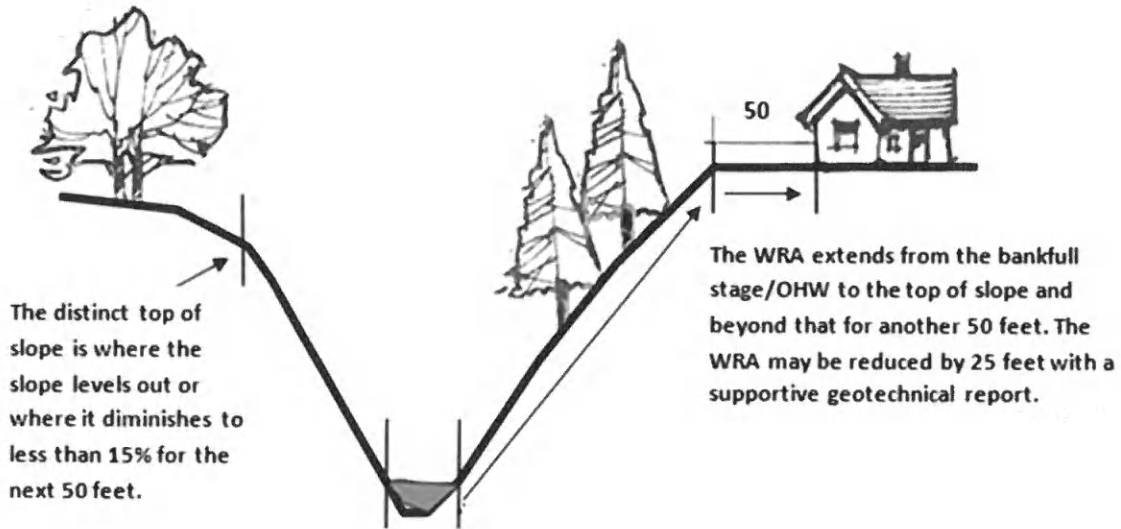


Figure 32-5

**STEEP DRAINAGEWAY OVER 25% SLOPE WITH NO DISTINCT TOP
OF SLOPE IN THE FIRST 150 FEET FROM THE WATER RESOURCE**

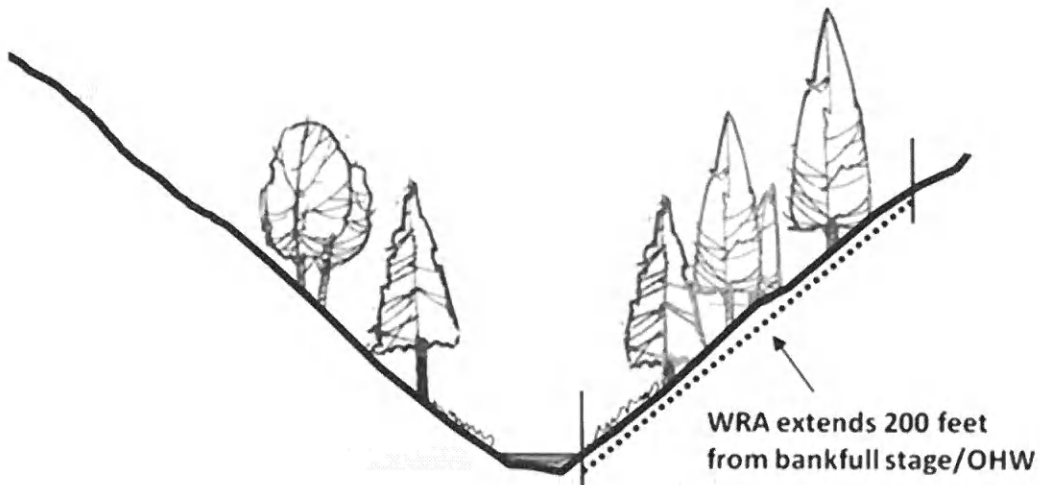
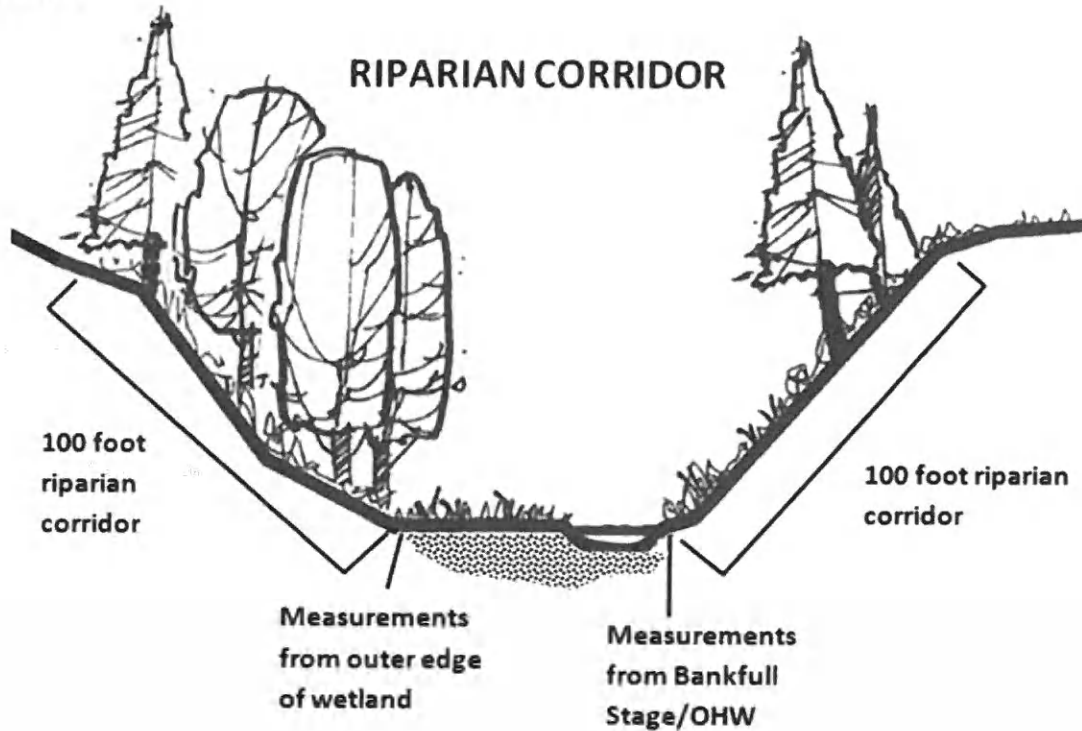


Figure 32-6



E. Roads, Driveways and Utilities

1. New roads, driveways, or utilities shall avoid WRAs unless the applicant demonstrates that no other practical alternative exists. In that case, road design and construction techniques shall minimize impacts and disturbance to the WRA by the following methods:
 - a. New roads and utilities crossing riparian habitat areas or streams shall be aligned as close to perpendicular to the channel as possible.
 - b. Roads and driveways traversing WRAs shall be of the minimum width possible to comply with applicable road standards and protect public safety. The footprint of grading and site clearing to accommodate the road shall be minimized.
 - c. Road and utility crossings shall avoid, where possible:
 - i. salmonid spawning or rearing areas,
 - ii. stands of mature conifer trees in riparian areas,
 - iii. highly erodible soils,
 - iv. landslide prone areas,
 - v. damage to, and fragmentation of, habitat, and
 - vi. wetlands identified on the WRA Map.

2. Crossing of fishing bearing streams and riparian corridors shall use bridges or arch-bottomless culverts or the equivalent that provides comparable fish protection, to allow passage of wildlife and fish and to retain the natural stream bed.
3. New utilities spanning fish bearing stream sections, riparian corridors, and wetlands shall be located on existing roads/bridges, elevated walkways, conduit, or other existing structures or installed underground via tunneling or boring at a depth that avoids tree roots and does not alter the hydrology sustaining the water resource, unless the applicant demonstrates that it is not physically possible or it is cost prohibitive. Bore pits associated with the crossings shall be restored upon project completion. Dry, intermittent streams may be crossed with open cuts during a time period approved by the City and any agency with jurisdiction.
4. No fill or excavation is allowed within the ordinary high water mark of a water resource, unless all necessary permits are obtained from the City, US Army Corps of Engineers and Oregon Department of State Lands (DSL).
5. Crossings of fish bearing streams shall be aligned, whenever possible, to serve multiple properties and be designed to accommodate conduit for utility lines. The applicant shall, to the extent legally permissible, work with the City to provide for a street layout and crossing location that will minimize the need for additional stream crossings in the future to serve surrounding properties.

F. Passive Recreation.

Low impact or passive outdoor recreation facilities for public use including, but not limited to, multi-use paths and trails, not exempted per 32.040(B)(2), viewing platforms, historical or natural interpretive markers, and benches in the WRA, are subject to the following standards:

1. Trails shall be constructed using non-hazardous, water permeable materials with a maximum width of four feet or the recommended width under the applicable American Association of State Highway and Transportation Officials (AASHTO) standards for the expected type and use, whichever is greater.
2. Paved trails are limited to the area within 20 feet of the outer boundary of the WRA, and such trails must comply with the stormwater provisions of this Chapter.
3. All trails in the WRA shall be set back from the water resource at least 30 feet except at stream crossing points or at points where the topography forces the trail closer to the water resource.
4. Trails shall be designed to minimize disturbance to existing vegetation, work with natural contours, avoid the fall line on slopes where possible, avoid areas with evidence of slope failure and ensure that trail runoff does not create channels in the WRA.
5. Foot bridge crossings shall be kept to a minimum. When the stream bank adjacent to the foot bridge is accessible (e.g. due to limited vegetation or topography), where possible fences or railings shall be installed from the foot bridge and extend 15 feet beyond the terminus of the foot bridge to discourage trail users and pets from accessing the stream bank, disturbing wildlife and habitat areas, and causing vegetation loss, stream bank erosion and stream turbidity. Bridges shall not be made of continuous impervious materials or be treated with toxic substances that could leach into the WRA.

6. Interpretive facilities (including viewpoints) shall be at least 10 feet from the top of the water resource's bankfull flow/OHW or delineated wetland edge and constructed with a fence between users and the resource. Interpretive signs may be installed on footbridges.

G. Daylighting Piped Streams

1. As part of any application, covered or piped stream sections shown on the WRA Map are encouraged to be "daylighted" or opened. Once it is daylighted, the WRA will be limited to 15 feet. Within that WRA, water quality measures are required which may include a storm water treatment system (e.g. vegetated bioswales), continuous vegetative ground cover (e.g. native grasses) at least 15 feet in width that provides year round efficacy, or a combination thereof.
2. The re-opened stream does not have to align with the original piped route but may take a different route on the subject property so long as it makes the appropriate upstream and downstream connections and meet the standards of subsections (G)(3) and (4) below.
3. A re-aligned stream must not create WRAs on adjacent properties not owned by the applicant unless the applicant provides a notarized letter signed by the adjacent property owner(s) stating that the encroachment of the WRA is permitted.
4. The evaluation of proposed alignment and design of the reopened stream shall consider the following factors:
 - a. The ability of the reopened stream to safely carry storm drainage through the area without causing significant erosion.
 - b. Continuity with natural contours on adjacent properties, slope on site and drainage patterns.
 - c. Continuity of adjacent vegetation and habitat values.
 - d. The ability of the existing and proposed vegetation to filter sediment and pollutants and enhance water quality.
 - e. Provision of water temperature conducive to fish habitat.
5. Any upstream or downstream WRAs or riparian corridors shall not apply to, or overlap, the daylighted stream channel.
6. When a stream is daylighted the applicant shall prepare and record a legal document describing the reduced WRA required by subsections (G) (1) and (5). The document will be signed by a representative of the City and recorded at the applicant's expense to better ensure long term recognition of the reduced WRA and reduced restrictions for the daylighted stream section.

H. The following habitat-friendly development practices shall be incorporated into the design of any improvements or projects in the WRA to the degree possible:

1. Restore disturbed soils to original or higher level of porosity to regain infiltration and storm water storage capacity.

2. Apply a treatment train or series of storm water treatment measures to provide multiple opportunities for storm water treatment and reduce the possibility of system failure.
3. Incorporate storm water management in road right-of-ways.
4. Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.
5. Use multi-functional open drainage systems in lieu of conventional curb-and-gutter systems.
6. Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics.
7. Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering.
8. Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.
9. Use pervious paving materials for driveways, parking lots, sidewalks, patios, and walkways.
10. Reduce sidewalk width to a minimum four feet. Grade the sidewalk so it drains to the front yard of a residential lot or retention area instead of towards the street.
11. Use shared driveways.
12. Reduce width of residential streets and driveways, especially at WRA crossings.
13. Reduce street length, primarily in residential areas, by encouraging clustering.
14. Reduce cul-de-sac radii and use pervious and/or vegetated islands in center to minimize impervious surfaces.
15. Use previously developed areas (PDAs) when given an option of developing PDA vs. non-PDA land.
16. Minimize the building, hardscape and disturbance footprint.
17. Consider multi-story construction over a bigger footprint.

32.070 ALTERNATE REVIEW PROCESS.

This section establishes a review and approval process that applicants can use when there is reason to believe that the width of the WRA prescribed under the standard process (32.0060(D)) is larger than necessary to protect the functions of the water resource at a particular site. It allows a qualified professional to determine what water resources and associated functions (see Table 32-4 below) exist at a site and the WRA width that is needed to maintain those functions.

32.080 APPROVAL CRITERIA (ALTERNATE REVIEW PROCESS)

Applications reviewed under the alternate review process shall meet the following approval criteria:

- A. The proposed WRA shall be, at minimum, qualitatively equal, in terms of maintaining the level of functions allowed by the WRA standards of Section 32.060(D).

- B. If a WRA is already significantly degraded (e.g., native forest and ground cover have been removed or the site dominated by invasive plants, debris, or development), the approval authority may allow a reduced WRA in exchange for mitigation, if:
1. The proposed reduction in WRA width, coupled with the proposed mitigation, would result in better performance of functions than the standard WRA without such mitigation. The approval authority shall make this determination based on the applicant's proposed mitigation plan and a comparative analysis of ecological functions under existing and enhanced conditions (see Table 32-4).
 2. The mitigation project shall include all of the following components as applicable. It may also include other forms of enhancement (mitigation) deemed appropriate by the approval authority.
 - a. Removal of invasive vegetation.
 - b. Planting native, noninvasive plants (at minimum, consistent with 32.100) that provide improved filtration of sediment, excess nutrients, and pollutants. The amount of enhancement (mitigation) shall meet or exceed the standards of 32.090(C).
 - c. Providing permanent improvements to the site hydrology that would improve water resource functions.
 - d. Substantial improvements to the aquatic and/or terrestrial habitat of the WRA.
- C. Identify and discuss site design and methods of development as they relate to WRA functions.
- D. Address the approval criteria of 32.060, with the exception of 32.060(D).

Table 32-4 Ecological functions of WRA.

Ecological function	Landscape features potentially providing the function
Stream flow moderation and/or water storage	A wetland or other water body with a hydrologic connection to a stream or flood area, the presence of fallen trees and density of vegetation in the WRA that slows the flow of storm water and increases its ability to retain sediment and infiltrate storm water, and the porosity of the WRA's surface to enable it to infiltrate storm water.
Sediment or pollution control	Vegetation within 100 feet of a WRA on gentle slopes and up to 200 feet of a WRA if the slope is greater than 25%. The presence of fallen trees and other material that slows the flow of water and increase the ability to retain sediment absorb pollutants and infiltrate storm water; the composition and density of vegetation; slope; and soils.
Bank stabilization	Root masses, existing large rocks or anchored large wood along the stream bank
Large wood recruitment for a fish bearing section of stream	Forest canopy within 50-150 feet of a fish bearing stream
Organic material sources	Forest canopy or woody vegetation within 100 feet of a water resource; or

	within a flood area.
Shade (water temperature moderation) and microclimate	Forest canopy or woody vegetation within 100 feet of the water resource. Roughly 300 feet of continuous canopy for microclimate.
Stream flow that sustains in-stream and adjacent habitats	Seasonal or perennial flow
Other terrestrial habitat	Forest canopy natural vegetation contiguous to and within 100 -300 feet of the water resource.

32.090 MITIGATION PLAN

- A. A mitigation plan shall only be required if development is proposed within a WRA (including development of a PDA). (Exempted activities of 32.040 do not require mitigation unless specifically stated. Temporarily Disturbed Areas, including TDAs associated with exempted activities; do not require mitigation, just grade and soil restoration and re-vegetation.) The mitigation plan shall satisfy all applicable provisions of 32.100 "Re-Vegetation Plan".
- B. Mitigation shall take place in the following locations, according to the following priorities (1-4):
1. On-site mitigation by restoring, creating or enhancing WRAs.
 2. Off-site mitigation in the same sub-watershed will be allowed, but only if the applicant has demonstrated that:
 - a. it is not practicable to complete mitigation on-site, for example, there is not enough area on-site; and
 - b. the mitigation will provide equal or superior ecological function and value.
 3. Off-site mitigation outside the sub-watershed will be allowed, but only if the applicant has demonstrated that:
 - a. it is not practicable to complete mitigation on-site, for example, there is not enough area on-site; and,
 - b. the mitigation will provide equal or superior ecological function and value.
 4. Purchasing mitigation credits through DSL or other acceptable mitigation bank.
- C. Amount of Mitigation
1. The amount of mitigation shall be based on the square footage of the permanent disturbance area by the application. For every one square foot of non-PDA disturbed area, on-site mitigation shall require one square foot of WRA to be created, enhanced or restored.
 2. For every one square foot of PDA that is disturbed, on-site mitigation shall require one half a square foot of WRA vegetation to be created, enhanced or restored.
 3. For any off-site mitigation, including the use of DSL mitigation credits, the requirement shall be for every one square foot of WRA that is disturbed, two square feet of WRA shall be created, enhanced or restored. The DSL mitigation credits program or

mitigation bank shall require a legitimate bid on the cost of on-site mitigation multiplied by two to arrive at the appropriate dollar amount.)

- D. The Planning Director may limit or define the scope of the mitigation plan and submittal requirements commensurate with the scale of the disturbance relative to the resource and pursuant to the authority of CDC Chapter 99. The Planning Director may determine that a consultant is required to complete all or a part of the mitigation plan requirements.
- E. A mitigation plan shall contain the following information:
 - 1. A list of all responsible parties including, but not limited to, the owner, applicant, contractor, or other persons responsible for work on the development site.
 - 2. A map showing where the specific adverse impacts will occur and where the mitigation activities will occur.
 - 3. A re-vegetation plan for the area(s) to be mitigated that meets the standards of section 32.100.
 - 4. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, and reporting. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife.
 - 5. Assurances shall be established to rectify any mitigation actions that are not successful within the first three years. This may include bonding or other surety.

32.100 RE-VEGETATION PLAN REQUIREMENTS

- A. In order to achieve the goal of re-establishing forested canopy, native shrub and groundcover and to meet the mitigation requirements of Section 32.090 and vegetative enhancement of 32.080, tree and vegetation plantings are required according to the following standards:
 - 1. All trees, shrubs and ground cover to be planted must be native plants selected from the Portland Plant List.
 - 2. Plant size. Replacement trees must be at least one-half inch in caliper, measured at six inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs must be in at least a one-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.
 - 3. Plant coverage.
 - a. Native trees and shrubs are required to be planted at a rate of five trees and 25 shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to

the native grasses or herbs.

- b. Trees shall be planted between eight and 12 feet on-center and shrubs shall be planted between four and five feet on center, or clustered in single species groups of no more than four plants, with each cluster planted between eight and 10 feet on center. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.
4. Plant diversity. Shrubs must consist of at least two different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.
 5. Invasive vegetation. Invasive non-native or noxious vegetation must be removed within the mitigation area prior to planting.
 6. Tree and shrub survival. A minimum survival rate of 80% of the trees and shrubs planted is expected by the third anniversary of the date that the mitigation planting is completed.
 7. Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind.
 8. To enhance survival of tree replacement and plantings, the following practices are required:
 - a. Mulching. Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
 - b. Irrigation. Water new plantings one inch per week between June 15th to October 15th, for the three years following planting.
 - c. Weed control. Remove, or control, non-native or noxious vegetation throughout maintenance period.
 - d. Planting season. Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.
 - e. Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.
- B. When weather or other conditions prohibit planting according to schedule, the applicant shall ensure that disturbed areas are correctly protected with erosion control measures and shall provide the City with funds in the amount of 125% of a bid from a recognized landscaper or nursery which will cover the cost of the plant materials, installation and any follow up maintenance. Once the planting conditions are favorable the applicant shall proceed with the plantings and receive the funds back from the City upon completion, or the City will complete the plantings using those funds.

32.110 HARDSHIP PROVISIONS

The purpose of this section is to ensure that compliance with this chapter does not cause unreasonable hardship or deprive an owner of reasonable use of land. To avoid such instances, the requirements of this chapter may be reduced. The decision-making authority may impose

such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief.

- A. The right to obtain a hardship allowance is based on the existence of a lot of record recorded with the County Assessor's Office on, or before, January 1, 2006. The lot of record may have been, subsequent to that date, modified from its original platted configuration but must meet the minimum lot size and dimensional standards of the base zone.

- B.
 - 1. For lots described in 32.110(A) that are located completely or partially inside the WRA, development is permitted, consistent with this section. The Maximum Disturbed Area (MDA) of the WRA shall be determined on a per lot basis and shall be:
 - a. 5,000 square feet; or,
 - b. A maximum of 30% of the total area of the WRA; whichever is greater, and consistent with 32.110(C) below.

- C. The MDA shall be located as follows:
 - 1. In areas where the development will result in the least square footage encroachment into the WRA.
 - 2. The applicant shall demonstrate, through site and building design, that the proposed development is the maximum practical distance from the water resource based on the functional needs of the proposed use.
 - 3. The minimum distance from a water resource shall be 15 feet.
 - 4. Access driveways shall be the minimum permitted width; select an alignment that is least impactful upon the WRA; and shall share use of the driveway, where possible.

- D. The MDA shall include:
 - 1. The footprints of all structures, including accessory structures, decks and paved water impermeable surfaces including sidewalks, driveways, parking pads, paths, patios and parking lots, etc. Only 75 percent of water permeable surfaces at grade shall be included in the MDA.
 - 2. All graded, disturbed or modified areas that are not subsequently restored to their original grade and replanted with native groundcover per an approved plan.

E. The MDA shall not include:

1. Temporarily Disturbed Areas (TDAs) adjacent to an approved structure or development area for the purpose of grading, material storage, construction activity, trenched or buried utilities and other temporary activities so long as these areas are subsequently restored to the original grades and soil permeability, and re-vegetated with native plants per Section 32.100, such that they are at least equal in functional value to the area prior to the initiation of the permitted activity;
2. Bay windows and similar cantilevered elements (including decks, etc.) of the principal or secondary structure so long as they do not extend more than five feet towards the WRA from the vertical plane of the house, and have no vertical supports from grade;
3. PDAs that are not built upon as part of the development proposal will not count in the MDA (e.g. use of an existing access driveway). (Conversely, PDAs that are built upon as part of the development proposal will count in the MDA.)
4. The installation of public streets and public utilities that are specifically required to meet either the Transportation System Plan or a Utility Master Plan so long as all trenched public utilities are subsequently restored to the original grades and soil permeability, and revegetated with native plants per Section 32.100, such that they are at least equal in functional value to the area prior to the initiation of the permitted activity. All areas displaced by streets shall be mitigated for.

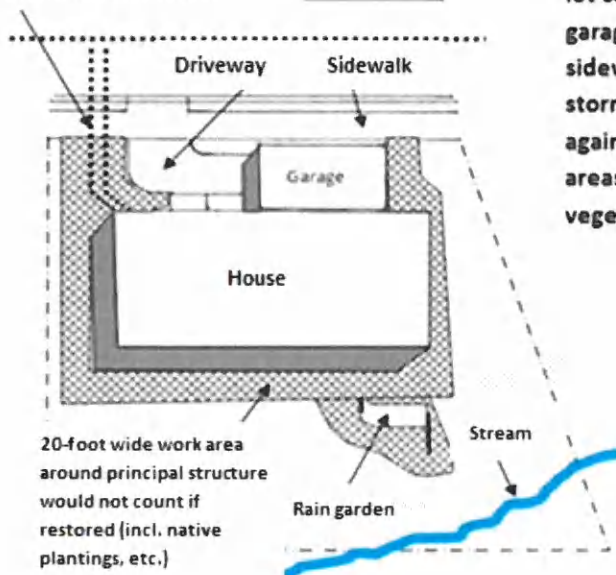
Table 32-5 MDA Calculation Summary:

Type of development	Square footage included in MDA calculation?
All structures	YES
Non-water permeable paved surfaces incl. driveways, parking lots, patios, and paths	YES
Approved water permeable paved surfaces incl. driveways, parking lots, patios, and paths	YES but at 75% of total water permeable surface square footage
TDAs/Graded areas that are restored and re-vegetated with native vegetation	NO
TDAs/All utility trenches and buried utilities restored or re-vegetated with native	NO

vegetation	
PDA's that are built upon or developed as part of the application.	YES
PDA's that are not built upon or developed as part of the application.	NO
Storm water detention or treatment pond	YES
Rain garden or bioswale with the native plantings as part of re-vegetation plan	NO
Storm water outfall, energy dissipaters (at, or above, grade)	YES
Non-native landscaping	YES
Sharing an existing driveway	NO

Figure 32-7

Restored and re-vegetated utility trenches would not count

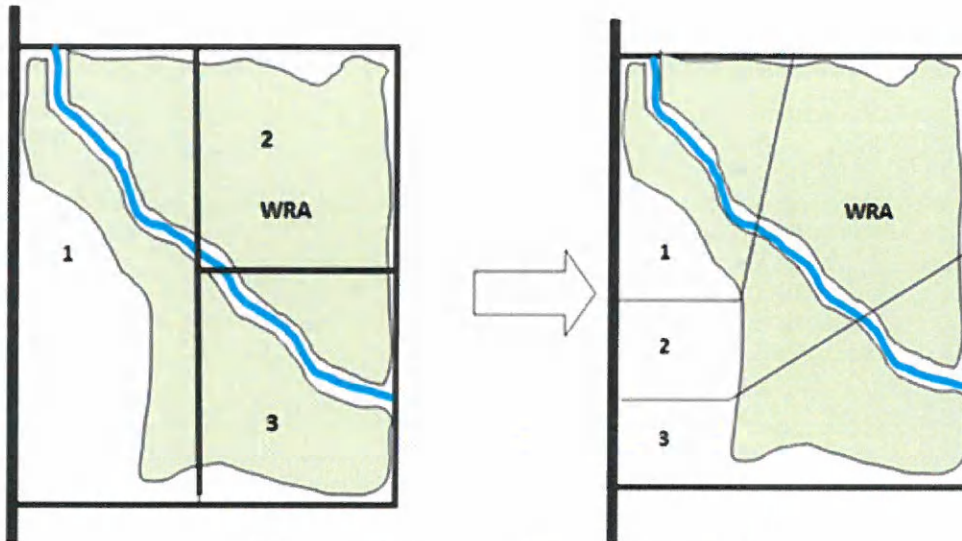


Example of the applicability of the Maximum Disturbed Area (MDA) on a lot completely within a WRA. The garage, house, water impermeable sidewalks, driveways, patios, and stormwater outfall would all count against the MDA. Also any disturbed areas that are not restored and re-vegetated with native plantings.

- F. Development allowed under Section 32.110(A) may use the following provisions:
1. Setbacks required by the underlying zoning district may be reduced up to 50% where necessary to avoid construction within the WRA, as long as the development would otherwise meet the standards of this Chapter. However, front loading garages shall be setback a minimum of 18 feet, while side loading garages shall be setback a minimum of three feet.
 2. Landscaping and parking requirements may be reduced for hardship properties but only if all or part of the WRA is dedicated pursuant to CDC 32.060(C) or if a restrictive deed covenant is established. These reductions shall be permitted outright and, to the extent that the practices are inconsistent with other provisions or standards of the West Linn CDC, this section is given precedence so that no variance is required. The allowable reductions include:
 - a. Elimination of landscaping for the parking lot interior.¹
 - b. Elimination of the overall landscape requirement (e.g. 20% for commercial uses).¹
 - c. Elimination of landscaping between parking lots and perimeter non-residential properties.¹
 - d. Landscaping between parking lots and the adjacent right-of-way may be reduced to 8 feet. This 8-foot wide landscaped strip may be used for vegetated storm water detention or treatment.
 - e. A 25% reduction in total required parking is permitted to minimize or avoid intrusion into the WRA.
 - f. Adjacent improved street frontage with curb and sidewalk may be counted towards the parking requirement at a rate of one parking space per 20 lineal feet of street frontage adjacent to the property, subject to City Engineer approval based on the street width and classification.
 - g. The current compact and full sized parking mix may be modified to allow up to 100% compact spaces and no full sized spaces. However, any required ADA compliant spaces shall be provided.
- G. Where a property owner owns multiple platted lots of record where each lot could be built upon under the hardship provisions, the property owner may either use the MDA for each lot on an individual lot by lot basis or may transfer 100% of the cumulative MDA of all the lots to those lots that are further away from, or less impactful upon, the WRA. Lot line adjustments may also be used to facilitate the density transfer. See Figure 32-8.

Figure 32- 8

Transferring MDA from constrained lots 2 and 3 to the west edge of lot 1 which is out of the WRA. In this case, the transfer is accomplished by a lot line adjustment.



- H. Any further modification of the standards of this chapter or the underlying zone shall require approval of a Variance pursuant to CDC Chapter 75.

Related Proposed Amendments to CDC Chapter 02, DEFINITIONS

(Deletions and Additions will be subsequently noted)

Section 02.030 SPECIFIC WORDS AND TERMS

Bankfull Stage: The level of stream flow where water reaches or exceeds the top of channel or otherwise inundates the adjacent floodplain on a frequency of approximately every 1.5 to 2 years. This is sometimes known as Ordinary High Water (OHW). In some high gradient or incised streams, the 1.5 to 2 year floods may be restricted to the deepened channel. Conversely, in low gradient streams, where the grades adjacent to the streams are in the 0-15% range, the bankfull stage/OHW is likely to be at the outer edge of adjacent floodplain areas. The bankfull stage or OHW level of stream systems is typically delineated in the field by:

- the outer extent of facultative or obligate plants;
- the upper elevation of float debris (litter of branches, twigs and organic material);
- the lower elevation of woody vegetation (e.g., willow and alder species);
- textural change of depositional sediment or changes in the character of the soil (e.g. from silts, sand, cobble and gravel to upland soils);
- top of the zone of washed or exposed roots;
- a clear natural line impressed on the bank; or
- a break or change in slope angle.

For the purpose of this code, the terms “bankfull stage” and “OHW” may be used interchangeably and

are illustrated and further defined in Table 32-3.

Channel: The channel is the physical confine of a stream within the “bankfull stage” and “OHW.”

Development: Any manmade change defined as the construction of buildings or other structures, mining, dredging, paving, filling, grading or site clearing, and grubbing in amounts greater than 10 cubic yards on any lot or excavation. Within the flood management area, this term shall also include storage of equipment or materials. Within the Willamette and Tualatin River Protection Areas, this term shall also include any change of use or intensification of the use of land or water, including construction of structures (such as houses, structures, docks and associated pilings or piers), significant grading, or removal or addition of vegetation and groundcover unless specifically exempted per CDC 28.040. Development shall not include grading, site clearing, grubbing or filling where it is part of a submitted land use application that includes the restoration of grades and replanting the affected area with native vegetation per a re-vegetation plan. This definition is distinct and separate from Previously Disturbed Areas (PDAs) and Temporarily Disturbed Areas (TDAs).

Disturbance: For the purpose of this code, the terms “disturbance” and “development” may be used interchangeably.

Disturbed Areas: Areas that have been subjected to disturbance or development. For the purpose of this code, the terms “disturbance” and “development” may be used interchangeably.

Enhancement: See “Mitigation”.

Ephemeral Streams: A stream or reach of a stream which flows only in direct response to precipitation and whose channel are always above groundwater or water table levels. Ephemeral streams typically drain sub basins of under 20 acres, have slopes of less than 10 percent as measured laterally from the stream thread and often traverse surficially with no recognizable drainage channel.

Functions and values: Ecological functions describe the numerous functions that WRAs perform including water quality improvement, floodwater storage, terrestrial or aquatic habitat, aquifer recharge etc. WRA values express the relative efficacy of the resource in meeting specific functions.

Intermittent Streams: A stream that flows only during certain times of the year when it receives water from springs or surface sources such as precipitation. The term may be restricted to a stream that flows continuously during periods of at least one month; also may be a stream that does not flow continuously as when water losses from evaporation or seepage exceed the available stream flow. For the purpose of this code, intermittent and perennial streams are protected identically.

Large Wood (recruitment): Large wood comprises trees that have fallen down in the WRA due to chronic mortality, disease, windstorms, landslides, erosion, flooding, etc., which in turn may provide aquatic and terrestrial habitat opportunities, modify stream velocities, channel depths and flow patterns and stabilize banks in the WRA. “Large wood recruitment” describes forested WRAs of sufficient size that have the potential to supply these trees which ultimately become “large wood”.

Maximum Disturbed Area (MDA): The MDA, as measured in square feet, is the maximum area within a WRA that can be disturbed in hardship cases under CDC Chapter 32, Water Resource Areas.

Mitigation: Mitigation is creating, restoring or enhancing WRAs (including wetlands) to replace or compensate for the WRA lost. Creation entails constructing a WRA in an area that never supported WRAs historically. Restoration entails re-establishing WRA hydrology and vegetation to sites that have lost most of their function and value such as a site that was historically a WRA but dried out by draining or filling. Enhancement entails improving an existing but degraded WRA by correcting the conditions

that cause it to be degraded. This might include providing more water to the site or the removal of invasive plant species and replacement with appropriate native plant material and trees.

Passive-oriented recreation and parks: The focus is upon unstructured play, relaxation, environmental interpretation, family picnics and similar activities. Support facilities, such as covered picnic, play structures or playing fields, etc. are discouraged or limited. Restrooms, trails and interpretive facilities would be appropriate.

Previously Disturbed Areas (PDA): Areas, such as old driveways, trails, gardens, graded areas, old abandoned structural foundations, storm water outfalls and intakes, manholes, utilities, etc. that existed and were altered or modified before January 1, 2006, typically as a result of clearing, grubbing, grading, excavation or construction whereby the topography, ground cover and vegetation have been modified from their original or natural state and not re-established or returned to their natural state. The burden shall be on the applicant to date the PDA through photographs or other credible evidence. The PDA definition applies to Chapter 32 and is distinct and separate from Temporarily Disturbed Areas (TDAs) and Maximum Disturbed Areas (MDAs).

Principal Structure: The structure that represents the main use of the property; to which all other structures on the property serve an incidental or subordinate purpose.

Reasonable Use: Uses, similar in size, intensity and type, to uses allowed on other properties in the City, that have the same zoning designation as the subject property.

Riparian corridor: An area within and adjacent to a WRA on the West Linn WRA map for its vegetative, forested and habitat values.

Soil infiltration: The process by which water on the surface enters the soil and replenishes below ground water tables.

Slope determination (for WRAs): Slope (e.g. rise over run) is the average slope in the first 50 feet as measured at right angle from the OHW mark, the edge of bankfull stage or outer edge of wetland.

Stream: A body of water with a current or flow confined within the OHW mark or the edge of bankfull stage. (See also ephemeral stream or water resource.)

Stream centerline or thread: The starting point of measurement for ephemeral streams which often lack an identifiable bankfull stage or OHW mark.

Temporarily Disturbed Areas (TDA): Area impacted by clearing, grubbing, grading, excavation, storage of building materials, building equipment, construction activity or other temporary activity whereby the area is modified from its original state but is subsequently fully restored in terms of grades and re-vegetated. TDAs will not have any new structures or other physical improvements built on them, but they may have buried utilities approved consistent with Chapter 32. The TDA definition is distinct and separate from disturbed areas, PDAs and MDAs. TDA's shall not include significant trees or wetlands that cannot be replicated in a timely way through restoration.

Type II lands. Lands which have constraints that are sufficient to preclude most standard types of development. Constraints in these areas generally do not constitute a health or safety hazard, but require the use of non-standard technical design criteria. Type II lands exist in the following areas:

Slope: All lands with slopes between 25 and 35 percent.

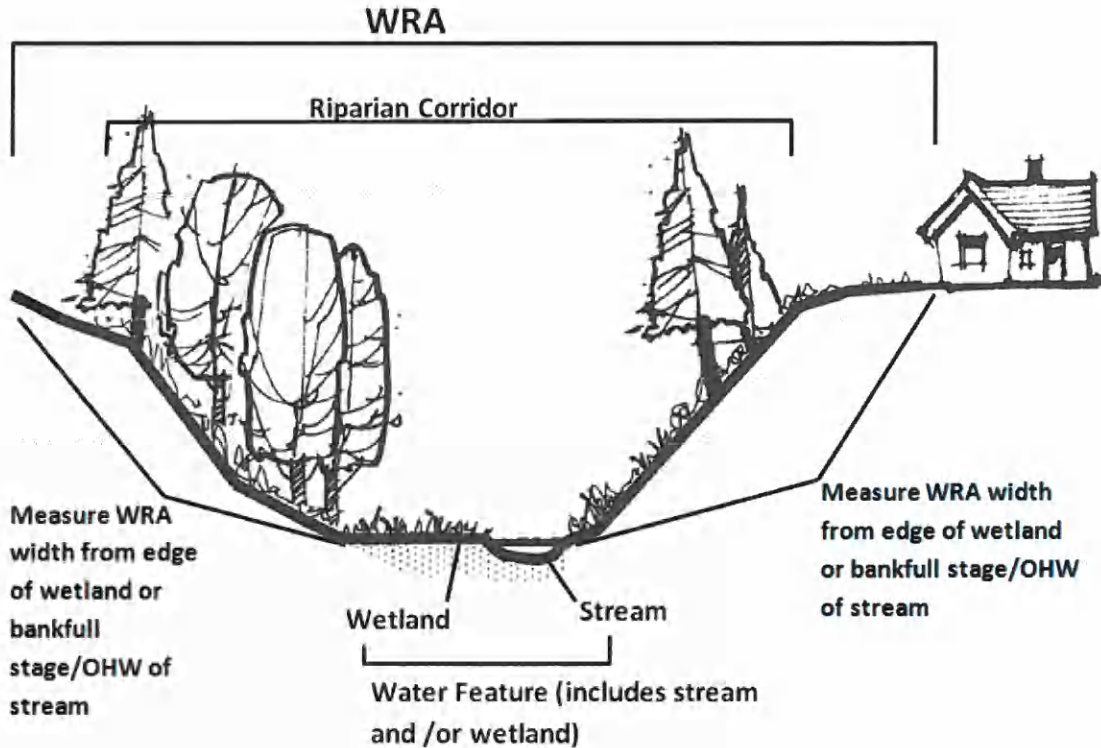
Water Resource Areas

Geology: All known mineral and aggregate deposits.

“Unhealthy or disturbed state”: defines an area of a WRA that is dominated by non-native vegetation and/or grading which is an appropriate candidate for restoration to its natural condition.

Water resource: Any stream or wetland identified on the West Linn WRA Map.

Water resource area (WRA): Any water resource or riparian area identified in the West Linn - WRA map and the adjacent area of varying widths, established pursuant to Chapter 32, in which development activities are restricted in order to protect the functions and values of the associated water resource. (see graphic below)



Wetlands: Those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are also defined by the sub-categories of “high quality wetlands” and “locally significant wetlands”.

Related Proposed Amendments to CDC Chapter 33, STORMWATER QUALITY AND DETENTION

33.040 APPROVAL CRITERIA

The Planning Director and City Engineer shall make written findings with respect to the following criteria when approving, approving with conditions or denying applications for storm water detention permits and storm water quality permits.

- A. Storm water quality facilities shall meet non-point source pollution control standards required by the Public Works Design Standards.
- B. Design of storm water detention and pollution reduction facilities and related detention and water quality calculations shall meet Public Works Design Standards and shall be prepared by a professional engineer licensed to practice in the State of Oregon.
- C. Soil stabilization techniques, erosion control, and adequate improvements to accommodate the intended drainage through the drainage basin shall be used. Storm drainage shall not be diverted from its natural watercourse unless no feasible alternatives exist. Interbasin transfers of storm drainage will not be permitted.
- D. **Storm water detention and treatment facilities may be installed in Water Resource Areas (WRAs) per section 32.060(B) and consistent with Habitat Friendly provisions of 32.060(H).**
(add deleted text)
- E. Storm water detention and treatment facilities shall be vegetated with plants from the Metro's Native Plant List as described in CDC 32.100(A).
- F. Projects must either stockpile existing topsoil for reuse on the site or import topsoil, rather than amend subsoils. Soil amendments are allowed only where the applicant can demonstrate they are the only practical alternative for enabling the soil to support healthy plantings, promoting better storm water treatment, or improving soil infiltration capacity (where appropriate).
- G. Interim erosion control measures, such as mulching, shall be placed immediately upon completion of grading of the facilities.

Related Proposed Amendments to CDC Chapter, 46 OFF-STREET PARKING, LOADING AND RESERVOIR AREAS

46.090 MINIMUM OFF-STREET PARKING SPACE REQUIREMENTS

- J. **Development in Water Resource Areas may reduce the required number of parking spaces by up to 25%. Adjacent improved street frontage with curb and sidewalk may also be counted towards the parking requirement at a rate of one parking space per 20 lineal feet of street frontage adjacent to the property.**

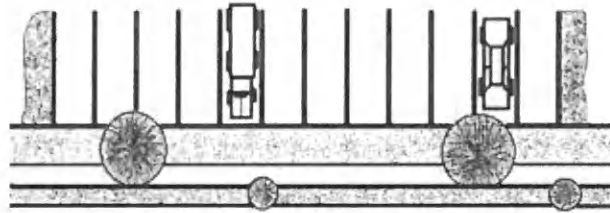
46.150 DESIGN AND STANDARDS

The following standards apply to the design and improvement of areas used for vehicle parking, storage, loading, and circulation:

- A. Design standards.
 - 1. "One standard parking space" means a minimum for a parking stall of eight feet in width and 16 feet in length. These stalls shall be identified as "compact." To accommodate larger cars, 50 percent of the required parking spaces shall have a minimum dimension of nine feet in width and 18 feet in length (nine feet by 18 feet). When multi-family parking stalls back onto a main driveway, the stalls shall be nine feet by 20 feet. **Parking for development in Water Resource Areas may have 100% compact spaces.**

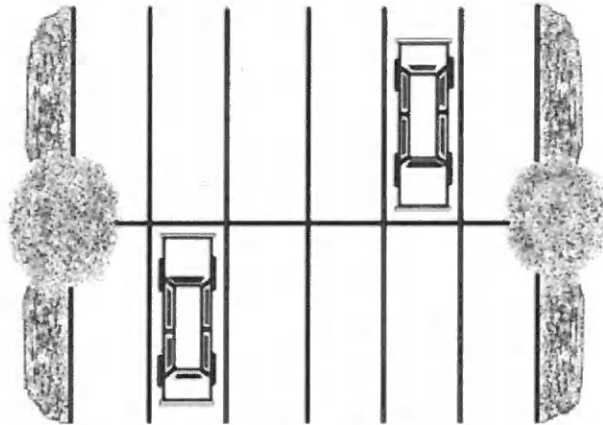
19. Areas of the parking lot improved with asphalt or concrete surfaces shall be designed into areas of 12 or less spaces through the use of defined landscaped area. Groups of 12 or less spaces are defined as:

- a. Twelve spaces in a row, provided there are no abutting parking spaces, as in the case when the spaces are abutting the perimeter of the lot; or



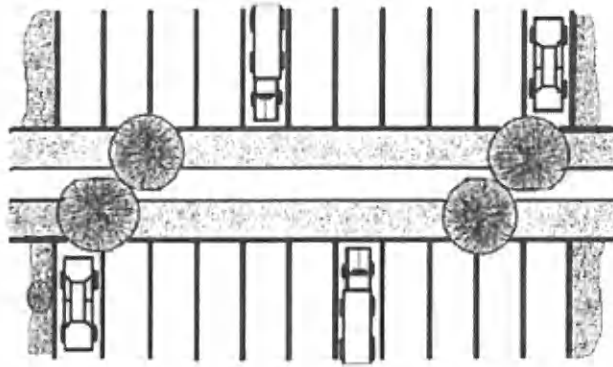
12 SPACES IN A ROW

- b. Twelve spaces in a group with six spaces abutting together; or



6 SPACES X 2 = 12

- c. Two groups of twelve spaces abutting each other, but separated by a 15-foot wide landscape area including a six-foot-wide walkway.



12 SPACES X2 WITH LANDSCAPING

- d. Parking areas improved with a permeable parking surface may be designed using the configurations shown in subsections (A)(19)(a), (b) and (c) of this section except that groups of up to 18 spaces are allowed.
- e. The requirements of this chapter relating to total parking lot landscaping, landscaping buffers, perimeter landscaping, and landscaping the parking lot islands and interior may be waived or reduced pursuant to CDC 32.110(F) in a WRA application without a variance being required.

Related Proposed Amendments to CDC Chapter 54, LANDSCAPING

54.020 APPROVAL CRITERIA

G. Landscaping requirements in Water Resource Areas (WRAs).

Pursuant to CDC 32.110(E)(3) the requirements of this chapter relating to total site landscaping, landscaping buffers, landscaping around parking lots, and landscaping the parking lot interior may be waived or reduced in a WRA application without a variance being required.

Related Proposed Amendments to CDC Chapter 55, DESIGN REVIEW

55.100 APPROVAL STANDARDS – CLASS II DESIGN REVIEW

- I. Public facilities. An application may only be approved if adequate public facilities will be available to provide service to the property prior to occupancy.
 - 1. Streets. Sufficient right-of-way and slope easement shall be dedicated to accommodate all abutting streets to be improved to the City's Improvement Standards and Specifications. The City Engineer shall determine the appropriate level of street and traffic control improvements to be required, including any off-site street and traffic control improvements, based upon the transportation analysis submitted. The City Engineer's determination of developer obligation, the extent of road improvement and City's share, if any, of improvements and the timing of improvements shall be made

based upon the City's systems development charge ordinance and capital improvement program, and the rough proportionality between the impact of the development and the street improvements.

In determining the appropriate sizing of the street in commercial, office, multi-family, and public settings, the street should be the minimum necessary to accommodate anticipated traffic load and needs and should provide substantial accommodations for pedestrians and bicyclists. Road and driveway alignment should consider and mitigate impacts on adjacent properties and in neighborhoods in terms of increased traffic loads, noise, vibrations, and glare.

The realignment or redesign of roads shall consider how the proposal meets accepted engineering standards, enhances public safety, and favorably relates to adjacent lands and land uses. Consideration should also be given to selecting an alignment or design that minimizes or avoids hazard areas and loss of significant natural features (drainageways, wetlands, heavily forested areas, etc.) unless site mitigation can clearly produce a superior landscape in terms of shape, grades, and reforestation, and is fully consistent with applicable code restrictions regarding resource areas.

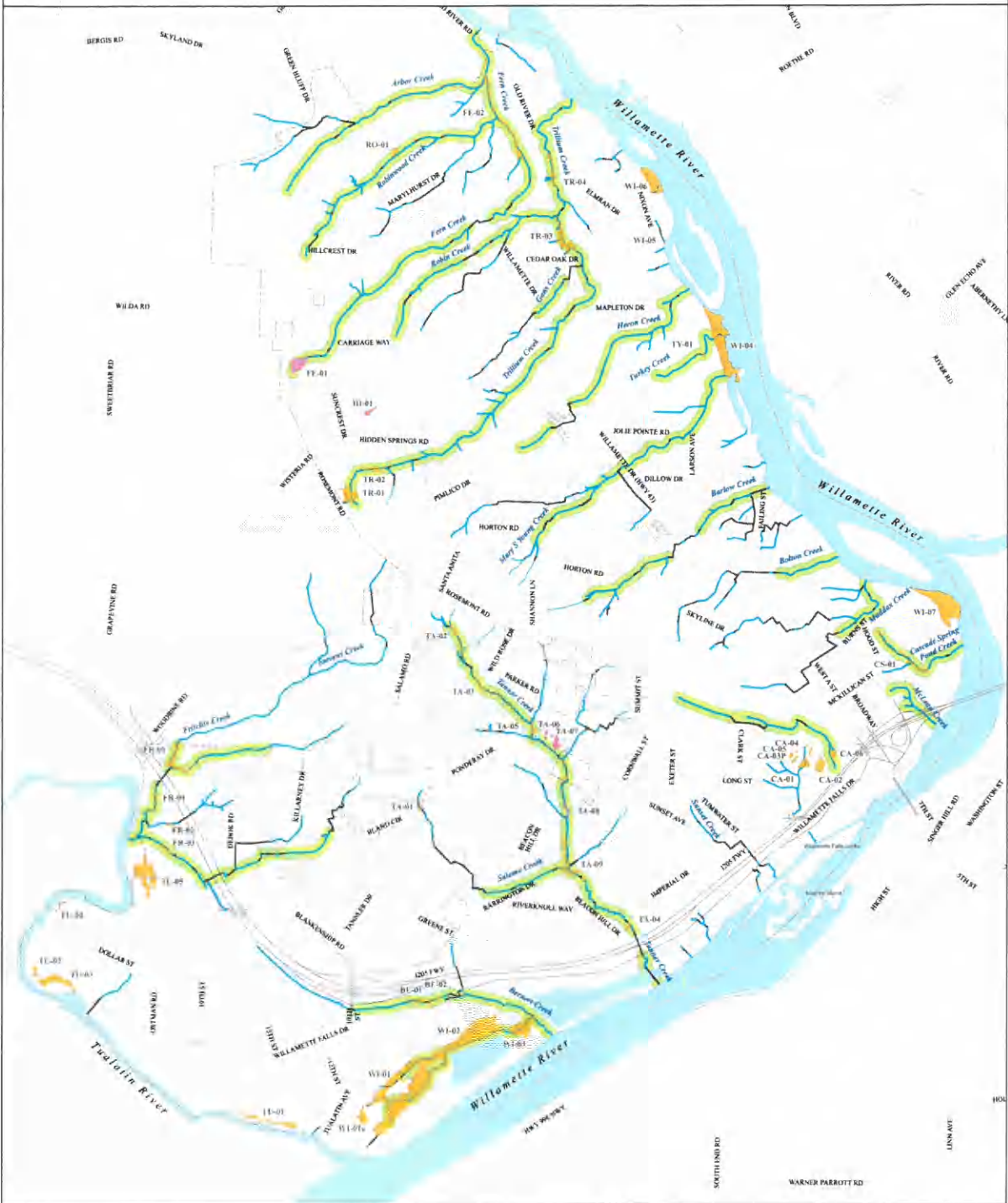
Streets shall be installed per Chapter 85 CDC standards. The City Engineer has the authority to require that street widths match adjacent street widths. Sidewalks shall be installed per CDC 85.200(A) (3) for commercial and office projects, and CDC 85.200(A) (16) and 92.010(H) for residential projects, and applicable provisions of this chapter.

Where streets bisect or traverse Water Resource Areas (WRAs) the street width shall be reduced to the minimum standard of 20 feet (two 10-foot travel lanes) plus four foot wide curb flush sidewalks or alternate configurations which are appropriate to site conditions, minimize WRA disturbance or are consistent with an adopted Transportation System Plan. The street design shall also be consistent with Habitat Friendly provisions of section 32.060(H).

Based upon the City Manager's or Manager's designee's determination, the applicant shall construct or cause to be constructed, or contribute a proportionate share of the costs, for all necessary off-site improvements identified by the transportation analysis commissioned to address CDC 55.125 that are required to mitigate impacts from the proposed development. Proportionate share of the costs shall be determined by the City Manager or Manager's designee, who shall assume that the proposed development provides improvements in rough proportion to identified impacts of the development.



Proposed Water Resource Area (WRA) Map



Map Developed by West Linn Planning Department and GIS

MAP OVERLAYS:
 *Streams, Pipe Segments, Other Open Ditches, and Significant Riparian Corridors
 Map Source: "Significant Riparian Corridors West Linn Goal 5 Inventory, January 2007"
 Map publication date: 1/2/2007
 Modified Streams and added Ephemeral Streams, April 2013, July 2013, September 2013

** Locally Significant Wetlands and Other Wetlands
 Map Source: "Local Wetland Inventory, West Linn Goal 5 Inventory, January 2005"
 Map publication date: 6/5/2006.

***Taxlot Base Map provided by Clackamas County GIS, 2013

WETLANDS/GOAL 5 DISCLAIMER (DSL STANDARD):
 Information shown on this map is for planning purposes only and wetland information is subject to change. There may be unmapped wetlands subject to regulation and all wetland boundary mapping is approximate. In all cases, actual field conditions determine wetland boundaries. You are advised to contact the Oregon Division of State Lands and the U.S. Army Corps of Engineers with any regulatory questions.

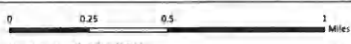
This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Goal 5 Significant Riparian Corridors*

- Significant Riparian Corridors
- Streams
- Ephemeral Stream
- Piped Segments

Goal 5 Wetland Inventory**

- Locally Significant Wetlands, DSL 2005
- Other Wetlands, DSL 2005
- Specific Wetland Identifier
- Rivers & Ponds
- West Linn City Limits
- Taxlot Base Map***



Map Created: 9/17/2013

LOC: G:\PROJECTS\GIS\GOALS_2005\SIGRIP\PARA\ SIGRIP\PARA_WETLANDS_20130919_PROPOSED.MXD | KAH4





Memorandum

Date: February 5, 2014

To: Planning Commission

From: Peter Spir, Associate Planner

Subject: Staff response to questions raised at the January 15, 2014 hearing on the proposed Water Resource Area code amendments (CDC-10-03)

Purpose

At their hearing date of January 15, 2014, the Planning Commission took public testimony. The Planning Commission continued the hearing to February 5, 2014 to allow staff to develop responses to questions or concerns raised in the testimony; most of which was tied to specific properties and site conditions. Staff responses are provided below to each of the individuals who testified.

Staff is also including "Attachment B" in this packet. It comprises minor changes to the proposed amendments. In order to minimize confusion potentially caused by multiple versions of the code amendments being in circulation, staff has refrained from any updates to the language since early December 2013. Since that date, a number of minor changes have been identified which should make the amendments clearer and less likely to require interpretation. Staff would request that these changes be considered and incorporated during the course of the Planning Commission hearing.

Discussion of Public Testimony

Ann Miller

Ann Miller testified in support of the amendments; in particular, the hardship provisions that will allow 5,000 square feet or 30% of WRAs to be developed, whichever is greater, in those cases where the property is fully or partially within the WRA. She also supported the provision to exclude "temporarily disturbed areas". Mrs. Miller expressed concern that proposed section 32.110(A) states:

- A. *The right to obtain a hardship allowance is based on the existence of a lot of record recorded with the County Assessor's Office on, or before, January 1, 2006. The lot of record may have been, subsequent to that date, modified from its original platted configuration but must meet the minimum lot size and dimensional standards of the base zone.*

Mrs. Miller would like the 2006 date eliminated or extended to allow partitioning of her property.

Staff discussed this with Metro's planner who manages Title 13 compliance, Miranda Bateschell. Her response to the proposal was as follows:

"Title 13 was adopted on September 29, 2005. The provision / statement in the model code you asked about (Section 3(B)) was to recognize that some development projects may have been approved by cities/counties but not developed yet by the T13 adoption date (originally up for adoption on 9/22 but continued / adopted on 9/29). Those projects would move forward as approved and not be subject to the provisions in Title 13.

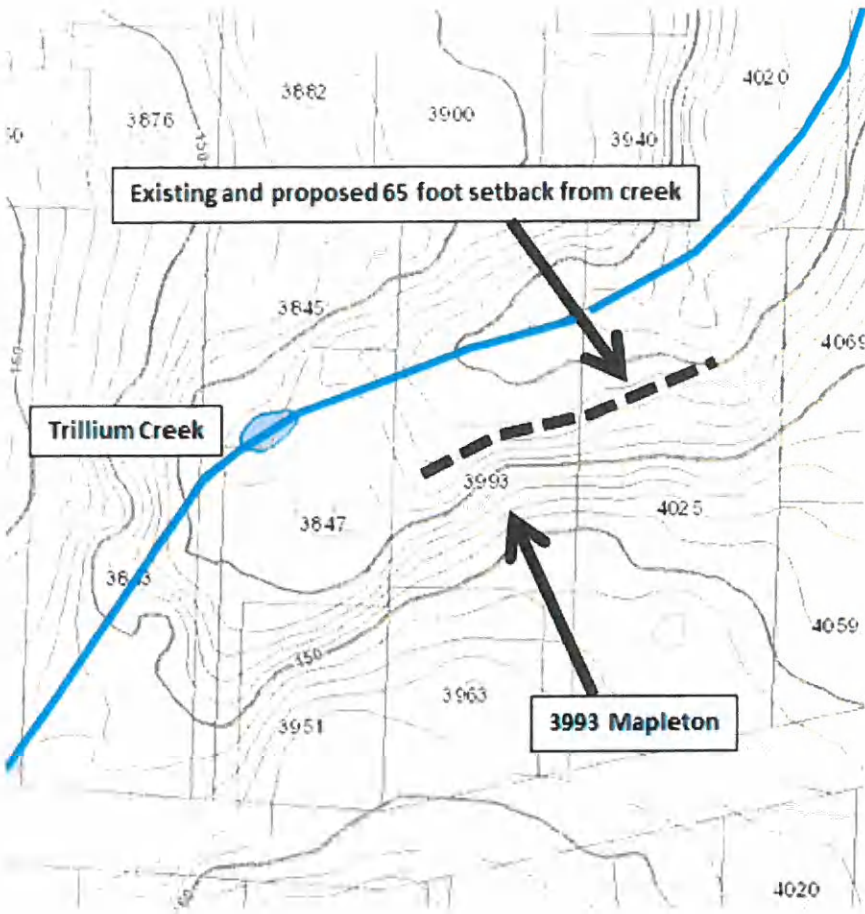
In your code, changing it to January 1, 2013 would not make sense / work because this whole issue and exemption is in the past."

So like most programs that "grandfather in" properties, there has to be a cutoff date or deadline to establish grandfather status. According to Metro, selecting a contemporary date would not be sanctioned.

It is noted however that Mrs. Miller will, under the proposed code language, have the ability to develop three lots of record under the hardship provisions and utilize lot line adjustments to configure the lots so as to minimize disturbance of the WRA.

Cindy Kaufman

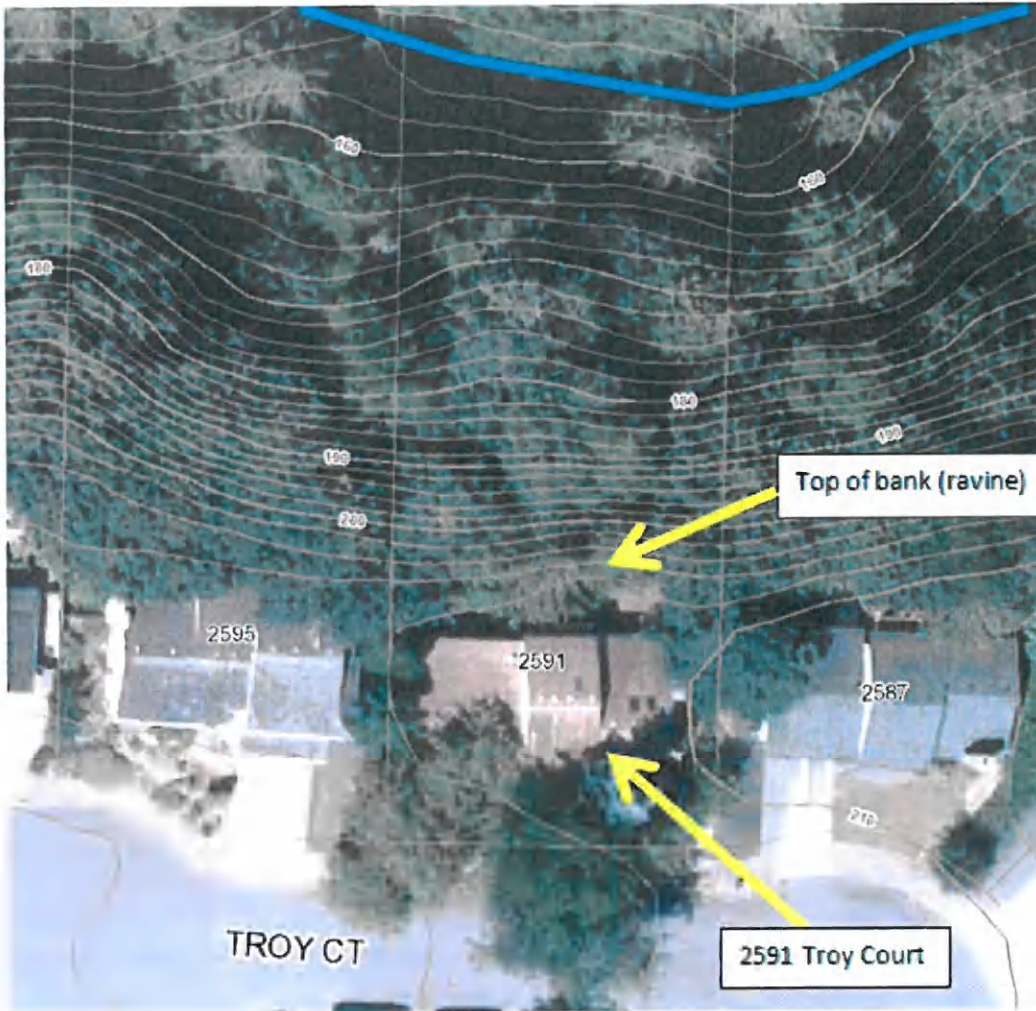
Cindy Kaufman of 3993 Mapleton Drive expressed concern about the possibility that the new code will allow increased density in her area. The map below shows the WRA's existing 65 foot setback at 3993 Mapleton, and the proposed 65 foot setbacks. The new language would not change developability in this area.



Scott Warner

Scott Warner of 2591 Troy Court asked why the City is not required to disclose WRA and other zoning restrictions at the time that property purchases occur. Disclosure is the responsibility of the seller per ORS 105.464. It requires the seller to make known to the prospective buyer known easements and zoning regulations that may impact the home and the property. ORS aside, many purchasers of properties accept responsibility to find out the zoning restrictions prior to purchase. No city or county has the legal obligation and, most importantly, the technical ability, to search out unknown prospective purchasers and provide that information during the sales/purchase process.

Regarding the existing rear deck, the deck may be replaced so long as it does not come closer to the WRA than the existing one. Staff has recommended changes to the draft language to allow lateral additions to the deck so long as they go no closer to the WRA than the existing deck.



Ole Olson

Ole Olson of 3993 Kenthorpe Way stated that several neighbors and the Robinwood Neighborhood either did not receive notice and/or did not have the chance to properly review the proposed language and Mr. Olson's rebuttal to the proposed amendments. Staff reviewed the mailing list and found that Mr. Olson and the Robinwood Neighborhood Association received Measure 56 notice.

Mr. Olson cited ORS 92.040 as applicable. The relevant section of ORS 92.040 is:

(2)After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.

(3) A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government

That ORS provision sets a default period of 10 years for the applicability of regulations in place at the time a subdivision's initial application. ORS 92.040 does not apply in this case since no subdivision is proposed on, or nearby, Mr. Olson's property.

Mr. Olson questioned the city's authority to establish resource protection areas. The city is legally required and empowered by the State of Oregon to adopt comprehensive plans and implementing regulations that meet the Oregon Statewide Planning Goals including Goal 5: "Natural Areas".

Alice Richmond

Alice Richmond stated that she did not receive a notice. Review of the notice list revealed that a notice was sent to her address on December 12, 2013. Mrs. Richmond has a WRA on her property in the form of an intermittent creek which, under the existing code, already has a WRA setback of 57.5-65 feet. The proposed language would have a 65 foot setback.

Audrey Lazar

Audrey Lazar of 6555 Failing Street spoke about her concerns regarding the buried storm water pipe along her north property line. Staff spoke with Public Works' storm water operations manager, Mike Cardwell, who explained that a 24-inch concrete pipe runs near the north property line then it transitions to a corrugated metal pipe near the base of the hill (see map). Mr. Cardwell stated that there is a problem when the incoming flow of water from the river at high tide exceeds or equals the pressure or velocity of storm water coming down the pipe. When that happens there is leaking/spraying at the junction point between the concrete pipe and the corrugated pipe which erodes holes in the beach/foreshore. Public Works would like to see the corrugated pipe removed and to have the storm water conveyed by open ditch across the foreshore area to the river. (Given the water volumes and the lack of an existing channel, removing the concrete section adjacent to Mrs. Lazar's house would be both impractical and potential dangerous in terms of flooding.)

Staff Note: This issue is a public works issue. It is not a WRA issue and should not be considered an issue to be resolved or addressed in this legislative process.



Bill Perkins

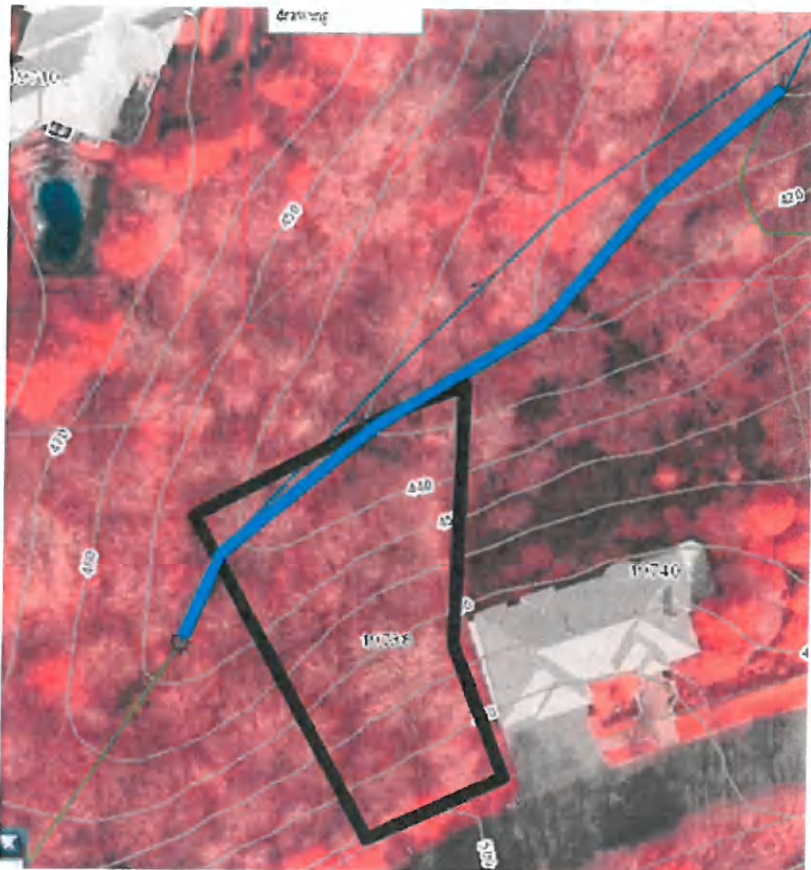
Bill Perkins of 19740 Wildwood Drive stated that, apart from the Measure 56 notice for this Planning Commission hearing, he had received no notices of previous meetings. None of the previous meetings and work sessions of the past three years required any notice; but, during that same period there were numerous articles about the upcoming WRA amendments in utility bill newsletters, on the City website and in the West Linn Tidings. An open house was advertised and held to discuss these amendments this past summer.

Mr. Perkins explained that he had gone through the land use process to build on his property and received approval but the approval had lapsed. He wondered if the proposed amendments would make a new application more difficult. Staff would contend that the proposed changes will be more accommodating to his plans and also better protect the resource by pushing the house closer to the street and away from the WRA.

Mr. Perkins' property can be described as a ravine that extends to the curbline of Wildwood Drive. The proposed language allows development of up to 5,000 square feet of permanently disturbed area (house footprint, sidewalk, driveways, non-native landscaping, etc.) This would require a WRA permit. The fee is \$2,600. Helping to minimize intrusion into the WRA, the hardship language allows:

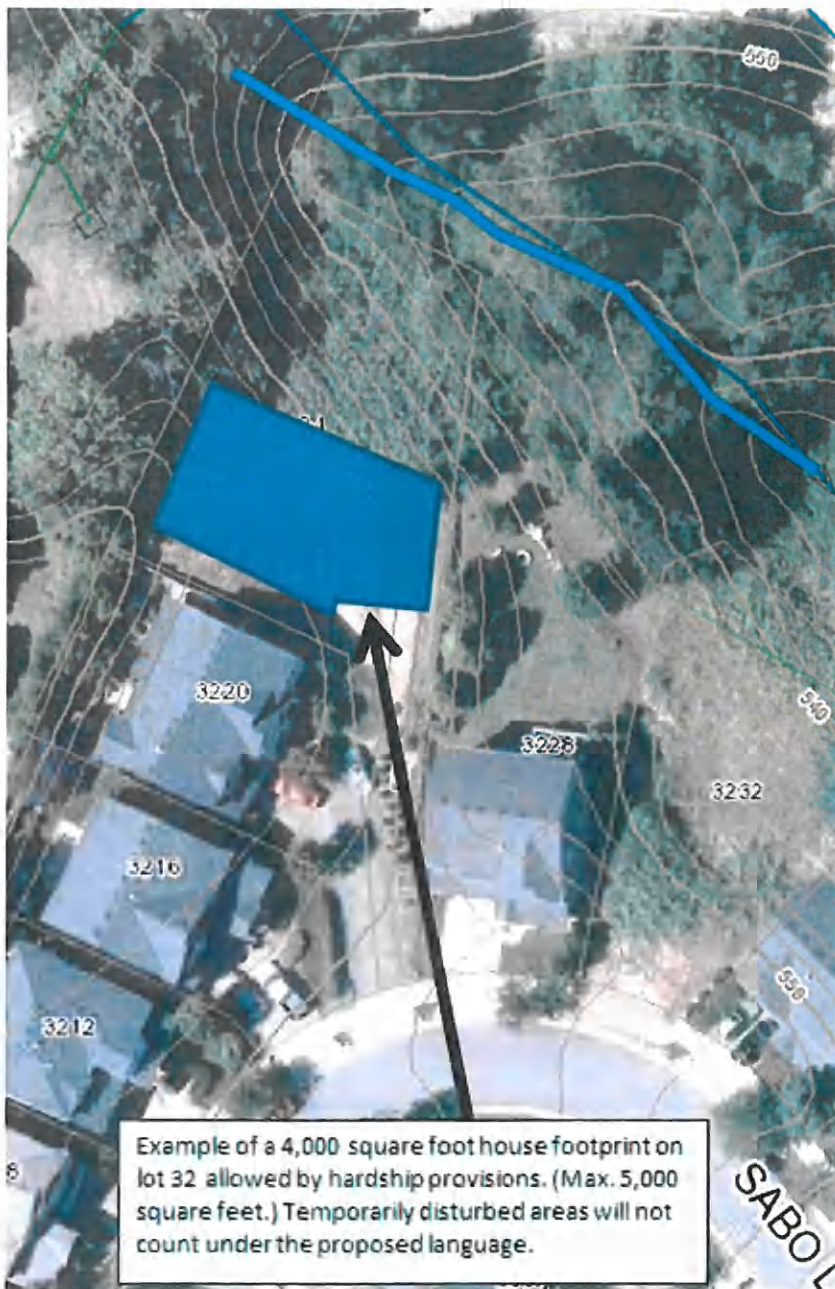
1. *Setbacks required by the underlying zoning district may be reduced up to 50% where necessary to avoid construction within the WRA, as long as the development would otherwise meet the standards of this Chapter. However, front loading garages shall be setback a minimum of 18 feet, while side loading garages shall be setback a minimum of three feet.*

Also helping with this project will be the exemption for temporarily disturbed areas, so once trenching and other related construction work is done and so long as the grade is restored and planted with native plants, those areas will not count against the 5,000 square foot disturbed area.



Sam Sabo

Sam Sabo owner of lot 32 of Rogerfield 2 subdivision is concerned that this lot is unbuildable or severely limited in terms of available building footprint. In a January 16, 2014 e-mail to Mr. Sabo, staff explained that the plat for Rogerfield 2 was recorded in June 2002. The original subdivision application was submitted prior to that date.



ORS 92.040(2)(3) states that from the date that the subdivision application is made any subsequent code changes in the next 10 years shall not apply. Essentially you would be vested with the code language in place at the time of the original application (pre-2002). That 10 year period has lapsed so the current provisions apply.

So what is next? Both the existing and proposed language guarantee a maximum 5,000 square feet of disturbed area for the construction of a house on the lot. The proposed language improves upon that by exempting temporarily disturbed areas, so once trenching and other related construction work is

done and so long as the grade is restored and planted with native plants, those areas will not count against the 5,000 square foot disturbed area. Bottom line: although a \$2,600 WRA permit will be required, Mr. Sabo will be guaranteed the right to build on lot 32.

Laura Sabo

Laura Sabo of 3232 Sabo Lane stated that the proposed changes are significantly better than the existing language. Mrs. Sabo proposed a waiver of WRA standards for lots in existing PUDs. Staff finds that ORS 92.040(2) (3) makes an accommodation for lots within subdivisions and imposes a reasonable ten year limit before the grandfather status is lost. An indefinite waiver would not be appropriate.

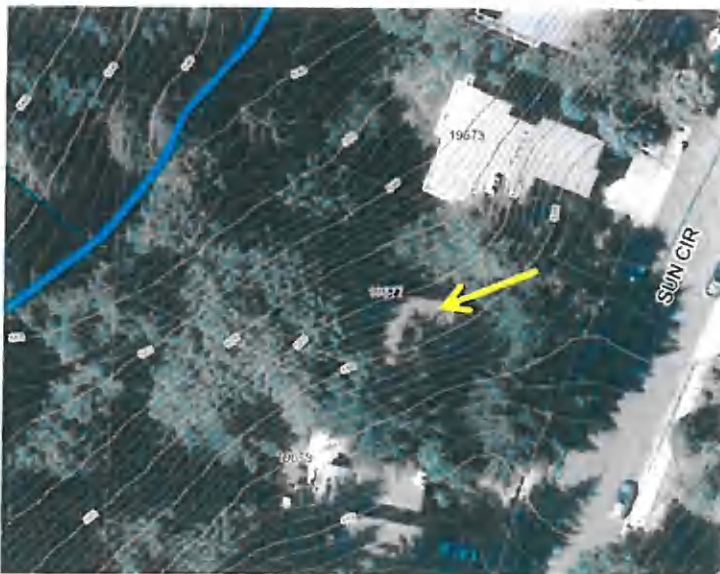
Mrs. Sabo also proposed that lots that had been graded during site development should be declared as "previously disturbed areas" (PDAs). The proposed language addresses PDAs:

PDAs that are not built upon as part of the development proposal will not count in the MDA (e.g. use of an existing access driveway). (Conversely, PDAs that are built upon as part of the development proposal will count in the MDA.)

Therefore, whether it is or is not a PDA will not influence the permitted size of the maximum disturbed area which is 5,000 square feet.

Steve Simmons

Steve Simmons of 19677 Sun Circle was concerned about rain drain runoff from his house into the creek downhill and whether that discharge method might require a WRA permit. Currently, rain water exits his home's rain drains and flows surficially 95 feet through a healthy groundcover and understory of native fern, twigs, conifer needles and grasses before it reaches the creek. No WRA permit is, or will be, required.



Attachment B: Proposed changes to the amendments

(for February 5, 2014)

In order to minimize confusion potentially caused by multiple versions of the code amendments being in circulation, staff has refrained from any updates to the language since early December 2013. Since that date, a number of minor changes have been identified which should make the amendments clearer and less likely to require interpretation. Staff would request that these changes be considered and incorporated during the course of the Planning Commission hearing. (Additions are identified by underlined and highlighted text while deletions are identified by strikethroughs.)

C. Nonconforming Structures.

1. Expansion of the principal Non-Conforming Structure. Additions to the existing building footprint of a principal non-conforming structure within, or partially within, the WRA are exempt, and additionally exempt from Chapter 66, Non-Conforming Structures, as long as the addition(s) meets the following restrictions:
 - a. Re-vegetation of temporarily disturbed areas will be performed per Section 32.100 after the addition is completed;
 - b. There is no net increase in storm water runoff flowing toward the water resource as a result of the addition(s);
 - c. The addition ~~(including decks and other cantilevered designs, etc.)~~ **to the principal structure** is not closer to the water resource than the existing principal structure
 - d. If it is a lateral addition, it does not extend more than 25 feet laterally from the side of the existing principal structure,
 - e. The addition does not increase the footprint of the existing principal structure by more than 500 square feet, at any one time or incrementally.
 - f. **Lateral additions to decks cannot come closer to the water resource than the existing deck.**
 - g. Vertical additions to existing principal structures that comply with the maximum height requirements of the underlying zone are exempt.
2. Repair, Replacement and Removal of Non-Conforming structures:
 - a. Interior remodeling of a non-conforming structure.
 - b. Repair, maintenance, rehabilitation and replacement of non-conforming

structures, accessory structures, utilities and related components, roads, driveways, paths, trails, fences, and manmade water and storm water control facilities that do not expand the disturbed area or footprint. Re-vegetation of temporarily disturbed areas or corridors pursuant to 32.100 is required.

- c. This section also applies in the event that a non-conforming structure burned down or was otherwise damaged by natural or other disaster. The structure could be re-built so long as the structure did not expand the original footprint and the original access driveway (PDA) was used.
- d. Demolition and removal of non-conforming structure's impervious surfaces are exempt as long as the affected areas are restored with native vegetation pursuant to Section 32.100.

D. New Construction Activities allowed in the WRA.

1. Structures shall be located out of the WRA, except that eaves, balconies, decks, "pop outs," and similar additions, may cantilever over the outer boundary of the WRA a maximum of five feet. No vertical supports may extend down to grade within the WRA.
2. Construction of an accessory structure, less than 120 square feet in size and under 10 feet tall, may be constructed to within 50 feet of the water resource or behind the top of slope (ravine, per figure 32-4), whichever is greater. No more than one accessory structure is permitted in the WRA. Accessory structures in the WRA that existed prior to January 1, 2006 may remain in place and not count against the limitation in new accessory structures.
3. Construction ~~or repair~~ of a water permeable patio or deck within 30 inches of the original grade and construction of approved water permeable footpaths may be **built to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater.** ~~constructed behind the top of slope (ravine).~~
4. Fences may be built to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater.

(Staff note: This allows exemptions 2-4 to have consistent language.)

F. Development allowed under Section 32.110(A) may use the following provisions:

1. Setbacks required by the underlying zoning district may be reduced up to 50% where necessary to avoid construction within the WRA, as long as the development would otherwise meet the standards of this Chapter. However, front loading garages shall be setback a minimum of 18 feet, while side loading garages shall be setback a minimum of three feet.
2. Landscaping and parking requirements may be reduced for hardship properties but only if all or part of the WRA is dedicated pursuant to CDC 32.060(C) or if a restrictive deed covenant is established. These reductions shall be permitted outright and, to the extent that the practices are inconsistent with other provisions or standards of the West Linn CDC, this section is given precedence so that no variance is required. The allowable reductions include:

- a. Elimination of landscaping for the parking lot interior.³
- b. Elimination of the overall landscape requirement (e.g. 20% for commercial uses).³
- c. Elimination of landscaping between parking lots and perimeter non-residential properties.³
- d. Landscaping between parking lots and the adjacent right-of-way may be reduced to 8 feet. This 8-foot wide landscaped strip may be used for vegetated storm water detention or treatment.
- e. A 25% reduction in total required parking is permitted to minimize or avoid intrusion into the WRA.
- f. Adjacent improved street frontage with curb and sidewalk may be counted towards the parking requirement at a rate of one parking space per 20 lineal feet of street frontage adjacent to the property, subject to City Engineer approval based on the street width and classification.
- g. The current compact and full sized parking mix may be modified to allow up to 100% compact spaces and no full sized spaces. However, any required ADA compliant spaces shall be provided.

(Staff note: The footnotes ⁽¹⁾ have been removed since they no longer reference anything.)

32.120 WRA MAP

A. The WRA Map, dated September 2013, is adopted as the official WRA map. It is intended to identify WRA water features (wetlands, streams, ephemeral streams and riparian corridors). It is not intended to delineate the exact WRA boundaries or water feature alignment. That task will be carried out by staff in the course of site visits where the provisions of table 32-2 shall apply.

B. Amendments to the WRA Map may be made in accordance with the provisions of CDC Chapters 98 and 99. Copies of all map amendments shall be dated with the effective date of the document adopting the map amendment and shall be maintained without change, together with the adopting documents, on file in the Planning Department.

C. The Planning Director shall maintain in his office, and available for public inspection, an up-to-date copy of the WRA Map.

32.010 PURPOSES.....

- E. Protect and improve the following functions and values of WRAs that enhance the value of fish and wildlife habitat:

1. Natural stream corridors that provide habitat and habitat connectivity for terrestrial wildlife,
2. Microclimate habitats that support species adapted to those conditions,
3. Shade to maintain healthy stream temperatures,
4. Vegetation to absorb and filter pollution and sediment that would otherwise contaminate the water body,
5. Sources of organic material that support the food chain,
6. Recruitment of large wood that enhances the habitat of fish bearing streams, and
7. Moderation of stream flow by storing and delaying storm water runoff, and ~~vegetated areas surrounding wetlands that, together with the wetland, provide vital habitat for birds, amphibians, and other species.~~
8. **Vegetated areas surrounding wetlands that, together with the wetland, provide vital habitat for birds, amphibians, and other species.**

(Staff note: Item 8 was originally part of above and made no sense.)

32.060

G. Daylighting Piped Streams

1. As part of any application, covered or piped stream sections shown on the WRA Map are encouraged to be "daylighted" or opened. Once it is daylighted, the WRA will be limited to 15 feet **on each side of the stream**. Within that WRA, water quality measures are required which may include a storm water treatment system (e.g. vegetated bioswales), continuous vegetative ground cover (e.g. native grasses) at least 15 feet in width that provides year round efficacy, or a combination thereof.

CDC Chapter 33, STORMWATER QUALITY AND DETENTION

33.040 APPROVAL CRITERIA

- D. **Storm water detention and treatment facilities. may be installed in Water Resource Areas (WRAs) per section 32.060(B) and consistent with Habitat Friendly provisions of 32.060(H).**
~~Stormwater detention and treatment facilities shall encroach no further than 25 feet into the outside boundary of a water quality resource area. The area of encroachment must be replaced by adding an equal area to the water quality resource area on the subject property.~~

32.040 EXEMPTIONS

The following activities are exempt from a WRA permit so long as the applicable conditions or standards of this section are met:

F. E. Emergency Activities. Actions authorized by the City Manager that must be taken immediately or within a period of time too short to fully comply with this Chapter, to:

1. Prevent immediate danger to life or property,
2. Prevent immediate threat of serious environmental degradation,
3. Restore existing utility service, or
4. Reopen a public thoroughfare to traffic.

However, after the emergency has passed any disturbed area shall be restored, pursuant to Section 32.100.

G. F. Exempt Areas

1. The Tualatin or Willamette rivers are regulated by Chapter 28 and are not subject to this chapter. However, wetlands and buffers, regardless of their proximity to these rivers, are subject to this chapter. In areas where there is overlap with Chapter 28, this chapter shall prevail.
2. Existing enclosed or piped sections of streams, including any development at right angles to the enclosed or piped sections.
3. Isolated areas. If a topographic feature or legally established road, other linear facility, or barrier physically separates and functionally isolates a portion of the WRA from the main portion of the WRA, including the associated water resource, the approval authority may exclude the isolated area from the WRA and the permitting procedure.

(Staff note: there was no 32.040 (E), it skipped from (D) to (F).)

Exhibits to be entered into the Planning Commission record
for Water Resource Area amendments
(CDC-10-03)

from:

Greg Morse (dated January 6, 2014)

Robert E. McCarthy (date stamped January 9, 2014)

Ruth Grant (sent January 13, 2014)

Aaik van der Poel (sent January 14, 2014)

Jane Hickman (dated January 14, 2014)

Ann Miller (date stamped January 15, 2014)

Ed and Sheila Bietschek (sent January 15, 2014)

Brenda Ray Scott (dated January 15, 2014)

Alma Coston and others (dated January 15, 2014)

Claudia Davis (dated January 15, 2014)

Ole Olson (dated January 15, 2014)

Sam Sabo (dated January 15, 2014)

Peter Spir,
January 6, 2014
West Linn City Hall,
22500 Salamo Road,
West Linn, OR, 97068



Re: PC Public Hearing CDC-10-03

DON'T WEAKEN WETLANDS PROTECTIONS

On January 15th, 2014, the City's Planning Commission holds a Public Hearing to **weaken** Stream and Wetlands protections that were finally enacted in 2007 - after years of foot-dragging and avoidance.

I was closely involved in the process creating the 2007 Water Resource Area code, with much input from the Audubon Society, local Defenders of Wildlife, Metro, West Linn High School students, and many involved citizens. The best available **science** (not politics) was used to protect West Linn's Natural Environment.

I have a Water Resource on my property and **oppose any weakening of the code**, let alone the "entire chapter" 32. Why?

- 1) **The City's own Sustainability study**, like subsequent ones, has shown that the natural environment is one of the greatest assets that attract residents to West Linn .
- 2) **State Planning Goal 6 states**, "Maintain or improve the quality of West Linn's water resources" (see p. 6 of Addendum of staff).
- 3) **Yet Peter Spir's letter** to the Planning Commission for the 1/15 hearing says that the "**amendments are intended to**"...:

- "Make reasonable **allowances to develop** for owners..." (p. 2)

- "**Add the option for property owners to create** (*their own*) **WRA boundaries** ...based on (*their own*) ...**wetland biologists or similarly trained professionals.**"(p. 2)
The italics are mine: we all know what happens when a landowner/developer hires their own expert: they always support the desires of the person who pays.

- "**Increase exemptions from the permitting process...**" (p.3)

Clearly, these amendments do not "maintain or improve" our water resources, but **add loopholes** to already weakly enforced wetlands protections.

Greg Morse, 18335 Nixon Avenue

To: West Linn Planning Commission and West Linn City Council

Re: Proposed Code Amendments for Chapter 32: Water Resource Areas

The proposed changes to the comprehensive plan make several improvements to protect wetlands that are desirable and well-considered. However, the proposed language regarding small structures and their possible impact on wetlands areas is unnecessarily burdensome, demanding and expensive.

I appreciate the need for a wetlands specialist to review the impact of a proposed large structure on wetlands areas. The same requirement should not apply to small structures.

It is unreasonable for a homeowner to hire a consultant at a cost of \$2,000-5,000 to evaluate the impact of a small structure on wetlands whose impacts are likely to be small or de minimis. Such a requirement imposes an unnecessary expense and a hardship on the homeowner.

A more reasonable approach that meets the test of common sense and protects wetlands is that the proposed ordinance include a provision whereby a structure of 250ft.² or less, would be evaluated and approved /disapproved by the planning director or his/her assignee.

I ask that make this reasonable change to the proposed code.

Sincerely,

Robert E. McCarthy

1535 Burns Street
West Linn
503-557-0941

Spir, Peter

From: Ruth Grant <snoozledog77@gmail.com>
Sent: Monday, January 13, 2014 11:31 PM
To: Spir, Peter
Cc: CWL Planning Commission
Subject: Subject: CDC-10-03 Notice

Planning Commission:

I own land in West Linn with a wet area. Property taxes have been paid a long time--since early 1970's. The subject of runoff water has immense attention from councils for pollution and loss of water animals. However, pollution starts way above where it ends up in low areas.

Maybe you've already made efforts to encourage clean up where pollution originates--at the highest flat lands with houses with concrete foundations and pretty lawns. I don't know. I have just returned from two decades in the midwest.

Runoff from lawns sends down contaminants from fertilizers, weed killers, and gas mowers into the lower areas, those basins of water that you want to protect. Also add to the lawn mess normal human trash and dirt from traffic.

Environmental groups-- promote the many alternatives to the common lawn !

And are you also looking for alternate building methods to replace failed homes with concrete bunker foundations that imprison the Earth and prevent any absorption of rain water?

A word to promote stilt / pier home construction: This method invades less land, allows for air circulation, and likely wouldn't have any kind of high maintenance lawn. It seems that this type of construction is discriminated against by most, and why is that so ? It makes less impact on the Earth than those homes on the flat lands.

My objective is to preserve the permission to build on my land.

I hope Environmental groups will work at cleaning up the water basins where pollution starts--from the Top !

R.G. Grant
01-13-2014

Spir, Peter

From: van der Poel, Aaik <Aaik_vanderPoel@mentor.com>
Sent: Tuesday, January 14, 2014 3:09 PM
To: Spir, Peter
Subject: CDC-10-03
Attachments: waterflow.gif

Hi Peter

Welcome back, didn't realize you moved to WL again!

I'd like to make an official comment on page 15 (the calculation) of the slope for CD10-03 to be discussed on Jan 15th. I believe Staff and Planning commission can save themselves headaches if they spend a bit more time nailing the measurement criteria.

As you recall we have had significant different interpretations in the past and even the example in the online doc will show multiple ways of calculating the slope.

In my humble opinion as an engineer there is ONLY ONE WAY to do this right and that is to go as the water flows, which is straight down hill.

Making 90 degree angles on the streambed is NOT always the right path calculation.

After all slope measurements are done because of erosion issues, and that is caused by the path the water follows.

So in the attached picture one can see the 90 degree to the creek blue lines (proposed) is very different in places from the red 90 degree to high lines (my suggestion to use as calculation)

In my experience applicants will find the 90 degree angles that benefit them, but it all comes down what nature does, and that is roll the shortest way down the hill, which is the steepest and most erosive way.

Please consider adjust the measurements method to 90 degree to the high lines (contours) instead of dominant contour (the creek bed)

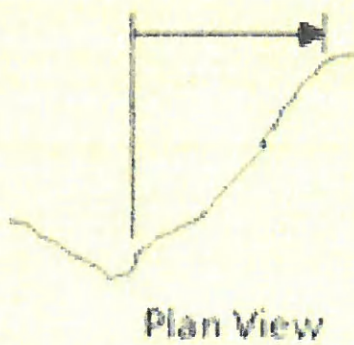
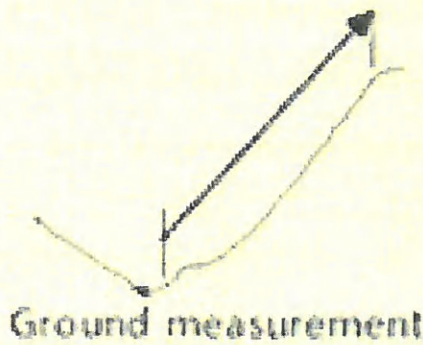
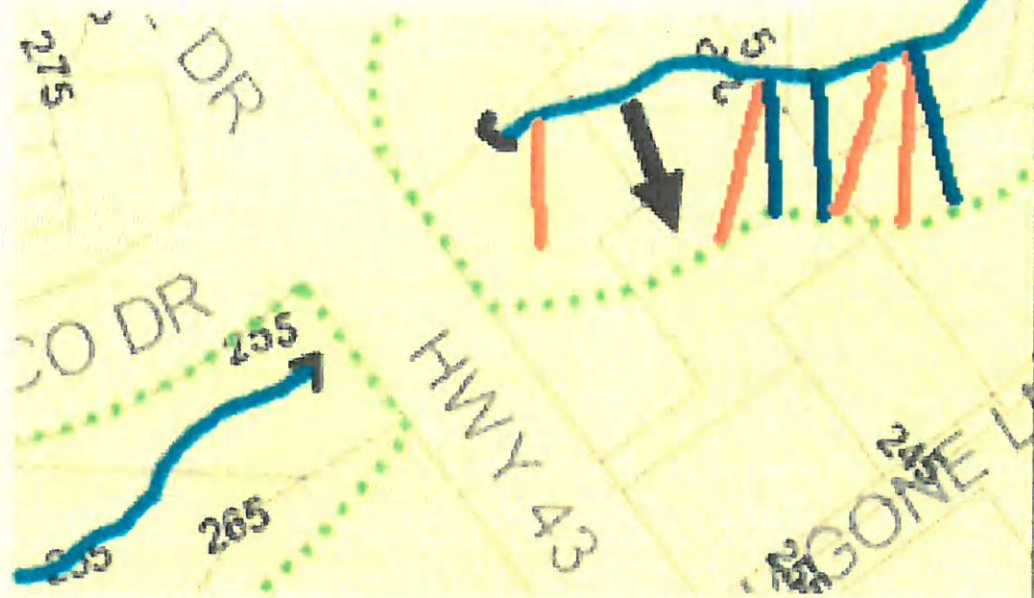
I have other obligations on the 15th, please for the sake of a good applications consider the above.

Thanks

Aaik

Aaik van der Poel
2408 Woodhaven Ct
West Linn, OR 97068

Arrow indicates slope measurement at right angle to the dominant contour adjacent to bankfull stage/OHW or outer edge of the wetland.



January 14, 2014

To West Linn Planning Department: Following are my comments on the proposed Water Resource Area Code. Thank you for the opportunity to comment. My contact information follows the comments. Please give me notice of any responses to comments and public hearings and future opportunity to comment on any proposed rules related to water resources.

General Comments: The "About the WRA Rules" document on the city's website says the proposed changes to the CDC "should better protect WRAs." Nearly all of the proposed amendments provide less protection for water resource areas (WRAs), not more. The proposed code is arranged in a way that makes it difficult to ascertain what is allowed in a WRA and what isn't.

Whether certain activities are allowed in a WRA often depends on whether there is a "disturbed area," yet I can't find any definition for that term. I found a definition for "temporarily disturbed area" but not for "disturbed area." It may be in the code, but I wasn't able to locate it. I suggest you include a "Definitions" section at the beginning of the code.

Many of the requirements are written in passive voice, with no subject, so the city may have difficulty enforcing such provisions if the code doesn't specify *who* is required to do X or Y.

Specific Comments: 32.030 Prohibited Uses: The listed activities are "strictly prohibited except as specifically allowed or exempted in this chapter." The chart is helpful, but I suggest you include a citation to the codes being summarized.

I oppose changing "minimum economically viable use" of the land to "reasonable use" of the land. "Reasonable" is in no way less subjective than the existing limitation. More importantly, the U.S. Constitution only requires the minimum economically viable use. Since protection of water resource areas is a designated public priority, and such areas are so important and at great risk of loss and degradation, I do not support this expansion of the ability to develop WRAs.

I oppose the addition of an "alternate discretionary review" so that property owners can argue that the code shouldn't apply to them. This review opens up the process to inconsistency and unfairness. One of the goals of the code amendments is to decrease red tape and promote efficiency. Allowing property owners to argue about why their property should be exempted from the rules will increase the burden on city resources.

While I strongly oppose this alternate discretionary review process, at a minimum, if the city decides to allow such a process, each time an exemption is granted, the city should be required to public a notice in the West Linn Tidings and on the city website in order to promote transparency and consistency.

What is the justification for decreasing protection for ephemeral streams? Such intermittent streams fall within the definition of "waters of the state" in ORS 468B and there are no exemptions in state statute from protection. Ephemeral streams play an important role in the ecosystem and serve many of the purposes listed for protection in 32.010.

Regarding removing protections for roadside ditches, please see the comment regarding ephemeral streams. It is fine to save landowners from costly permits as long as protections for roadside ditches and ephemeral streams are not reduced -- as long as the landowners are required to still protect these areas from development and impact.

32.040 Exemptions: There needs to be an introductory sentence providing context for the following sections, which as proposed consist of a list with no explanation about what they are "exempted" from, and where physically these exemptions apply.

32.040C Nonconforming structures -- There needs to be a definition of "non-conforming structures." Change the word "will" in C.1.a. to "must" so that this requirement is enforceable.

32.040C.1.d. and e. should be deleted, because they have the potential to result in additional negative impacts to WRAs.

32.040D.1. and 3 should be deleted, because they have the potential to result in additional negative impacts to WRA.

32.060E - Roads, Driveways and Utilities: Subsection 1 - Delete this exemption, or at a minimum modify it to require the applicant to show that without the new road, driveway or utility located in the WRA, the applicant will be unable to achieve the minimum economically viable use of the property. Otherwise, the subsection as drafted undermines protection of the WRAs. There is no definition of "practical," which leaves too much discretion up to city staff and will cause inconsistency, more work from city staff to make the determination about what is "practical." Destruction or degradation of WRAs should be allowed only to the extent required by the U.S. Constitution. Same comment specifically for E.1.c. "where possible."

Require mitigation for any such disturbances, since it appears from 32.090 that no mitigation plan is required unless specified in the code.

Please include a definition for "PDA" in the definitions section requested.

Please include definitions for terms such as "practical," "possible" and "reasonable" if these terms are used in the code (which I oppose) in a separate definitions section.

Please include a definition for "MDA" in a definitions section.

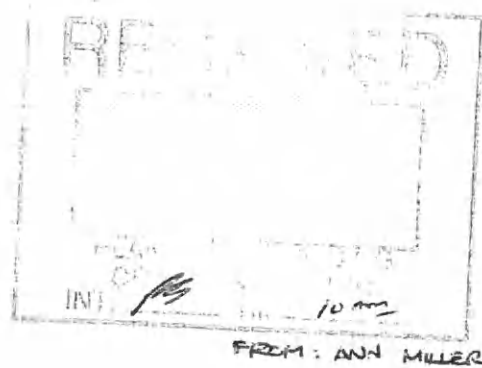
Ditto for "TDA"

32.110 - Hardship Provisions: I oppose reducing protections for WRAs so that an owner can get "reasonable use of land." The state has identified protection of WRAs as being a compelling public interest. Private interests should be protected to the extent required by the Constitution and no more. Do not expand availability of the hardship provisions. Expanding the use of hardship provisions will increase the potential for inconsistency and lack of transparency in implementation of the Code and result in use of city resources to evaluate such claims. Many

owners were aware of the existence of such resources on the land when they purchased the land, and it is not necessary or fair or protective to uphold private interests over the public interest.

Respectfully submitted by:

Jane Hickman
22030 Shannon Place
West Linn, OR 97068
(503) 656-2083 (evening)
(503) 229-5555 (day)
Email: oregonhickmans@comcast.net



Planning Commission Hearing

First I would like to thank the citizens who gave their time to revise the WRA protection code amendments. As some of you know from previous hearings I have been seriously impacted by the existing code. I own 2.34 acres that were originally intended to be 2 lots as per my first pre-application conference in 2003. Subsequent code changes resulted in this property, that I have owned and paid taxes on since 1986, becoming worthless. I had counted on the development of this property to fund my retirement after my husband passed away.

The exclusion of previously disturbed area, PDA, in the revised code would allow me to benefit from the 5000 square foot square hardship provision included in the current code. Another feature in the revised code seems an even more equitable provision because it allows development of larger lots, such as mine, based on 30% of the total area of the WRA, which is a more proportional approach than a flat 5000 square foot hardship provision. I would encourage you to accept this revision to prevent financial hardship for owners of larger properties. I am also encouraged by the revision that Temporarily Disturbed Areas will not count against the maximum amount of the WRA that a property owner can develop.

I remain concerned, however, about 32.110 A that states “the right to obtain a hardship allowance is based on the existence of a lot of record recorded with the County Assessor’s Office on, or before, January 1, 2006. Some effected property owners may not have sub-divided and recorded lots because of the increased property taxes they would incur, because they worked full time and lacked the time or resources to take on property development or perhaps had confusion about the former code. These same people, like me, may be counting on the value of developed land to see them through their retirement. I would hope ownership of their property by that date would be sufficient.

I sincerely hope these code amendments can move forward and allow citizens like me to feel some confidence we are being treated fairly and that we can enjoy some financial benefit from the land we have cared for and paid taxes on without inflicting undue harm on the environment.

Respectfully submitted,

Ann Miller

Spir, Peter

From: ann miller <annivancade@yahoo.com>
Sent: Wednesday, January 15, 2014 10:07 AM
To: Spir, Peter
Subject: Fw: Planning Commission Hearing Tomorrow

I sent my notes for the hearing to Ed and Sheila Bietschek and they agree with my position as noted in his attached e-mail. Thanks again. Ann

On , ann miller <annivancade@yahoo.com> wrote:

Sorry you can't attend, I will let you know how it goes. I will forward your e-mail to Peter Spir so that it can be part of the record.

On Wednesday, January 15, 2014 12:48 AM, Ed F Bietschek (TMS) <ed_bietschek@toyota.com> wrote:
Thanks ann

I will be out of town traveling for work. I read your statement and agree. Thanks for getting this into the record. Please feel free to note that we feel the same if it helps

Thanks again.

Also we are planning to attend the task force meeting regarding the new owners of the pond and will let you know what their plans are and how they may affect us all

Thanks again

Sent from my iPhone

On Jan 14, 2014, at 7:15 PM, "ann miller" <annivancade@yahoo.com> wrote:

Just in case you want to attend I'll remind you the hearing for the revised Water Resource Code is tomorrow, Wednesday, at 7PM. I've attached a draft of my comments that I will send to Peter Spir for the record. He suggested I also testify. They have a work session at 6:30 and the open meeting starts at 7PM. I plan to get there early to sign up to be heard, Hope to see you there.

Ann

<Planning Commission Hearing.doc>

TERWILLIGER PLAZA FOUNDATION

Creating a secure future and enhancing the quality of living for Plaza members

January 15, 2014

City of West Linn
Planning Department
22500 Salamo Road #1000
West Linn, OR 97068

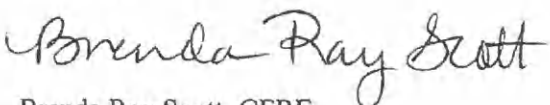
Dear Planning Commission:

I am writing on behalf of the Terwilliger Plaza Foundation and Terwilliger Plaza Foundation Holdings LLC to express support of the proposed changes to the West Linn Community Development Code. We are writing as property owners who will be impacted by the changes proposed in an ordinance relating to Water Resource Areas as described in the notice for the Planning Commission Meeting taking place on January 15, 2014. Terwilliger Plaza Foundation became the owner of a 15.89 gross acres located at 1270 Rosemont Road (the intersection of Salamo and Rosemont Roads) in December, 2006.

The property came to the Terwilliger Plaza Foundation through a charitable gift made by a generous donor. The property has been held by the Terwilliger Plaza Foundation Holdings LLC during this time. The intent of the donor is that the proceeds from an eventual sale be used for charitable purposes.

Thank you for this opportunity to express our support for these proposed changes and to let you know more about how we came to be in possession of this property. Please feel free to contact me at 503-808-7884 or by email at bscott@terwilligerplaza.com with questions regarding this letter or the Foundation.

Sincerely,



Brenda Ray Scott, CFRE
Executive Director

cc: Dee Sellner
Diane Gibson
Joe West
John Junkin

2545 SW Terwilliger Boulevard · Portland, Oregon 97201
503.299.4221 · FAX 503.299.4803 · email: foundation@terwilligerplaza.com

Shroyer, Shauna

From: Alma Coston <billnalma@comcast.net>
Sent: Wednesday, January 15, 2014 4:44 PM
To: Shroyer, Shauna
Subject: draft--Personal Comments regarding Water Resource Area Hearing January 15

Personal Comments regarding Water Resource Area Hearing January 15, 2014:
To the West Linn Planning Commission

We have always been careful and protective of our property that was purchased partly because of its proximity to creeks, animals, and green area, and use as a little mini farm, but also because of its location close to commercial, schools, and services. We bought it before there were any codes to regulate any uses. Using carefully and lovingly is one thing, destroying is another, and we would never/have never felt we were party to or tolerant of any destruction.

As individuals whose property is 100% affected by the Water Resource boundaries, I oppose any language that gives reason for any individual/individuals to feel the right to walk on any part of our property for pleasure or business without my written permission.

I also do not want restrictions or regulations on care and maintenance that I feel may restrict or be excessively costly in time or money to the most common sense way for me to avoid damage by trees or by wild fire to our residence or vehicles.

In the code as it was written, there are a great many regulations that limit the possible use and improvements or replacement that in and of themselves affect the value enough without any wording that additionally gives a feeling of rights to the use of my property by any others than my own people. Any such language is highly objected to.

Thank you,
Bill and Alma Coston,
5798 Hood Street, West Linn

Shroyer, Shauna

From: Alma Coston <billnalma@comcast.net>
Sent: Wednesday, January 15, 2014 4:42 PM
To: Shroyer, Shauna
Subject: Comments about the Water Resource Area (2)

Comments about the Water Resource Area language in Chapter 32 that affect development in Maddax Woods as part of the Water Resource Area for PC Hearing January 15, 2014:



Ceres is one of Virgil's earliest boats (early 1940s).

I understand that the proposed language in Chapter 32 called the "Alternative Discretionary Review Process" could allow for reasonable development while respecting the resource".

We as Friends of Maddax Woods would support the new language in the WRA Chapter 32. This new "Alternative Discretionary Review Process" in the chapter could allow for the restoration of the Maddax Pole Boat Barn at Maddax Woods (which we have been working to do for the last 2 ½ years).

For almost 50 years of our West Linn History Virgil Maddax built boats on his property with a perfect drainage swale to the river to launch his boats in his 'mini industrial park'. His "resource" was the geography of his land and he used that "resource" to assist him to accomplish his early industry. The interpretation of that industry and "resource" at Maddax Woods is an important part of our West Linn Story as seen in the Willamette Falls Heritage Trail brochure (attached) highlighting economic and historic resources for our city.

In our somewhat crude way of Interpretive Presentation at the Park there are pictures of 5 of Virgil's 14 boats (to date) displayed in the Pole Barn's surviving exposed and visible foundation. The Maddax's, we older neighbors and Friends, will soon be gone – Without interpretation many important stories are lost. It takes great effort and so long to accomplish valuable interpretive sites as evidenced by the Locks efforts, the Mills, the McLean House and Maddax Woods. The excitement to do the pole barn in an 'old fashion barn raising' by all who heard about it should be taken advantage of! We are only waiting for approval that we feel this Chapter 32 language could provide.

We, as Friends of Maddax Woods, and many others hope that this proposed language will be ratified and make the Barn Restoration possible and could even expedite its reality.

List of some of the Names and contacts to be added in agreement to testimony:

Alma and Bill Coston, BOD, Friends of Maddax Woods,

billnalma@comcast.net

Sally McLarty, BOD, Friends of Maddax Woods, Pres, Bolton NA

Sandy, sandyblomster@me.com and Bill Streeter, BOD and neighbor of Friends of Maddax Woods

Claudia Davis, ced2011@comcast.net BOD, Friends of Maddax Woods

Mike and Peggy Waiters PLAYMIKE@aol.com Friends of McLean and Maddax

Elizabeth Rocchia erocchia@comcast.net

Roger Shepherd Roger and Marla <qaarshep@easystreet.net> Friends of Maddax Woods

Jim Mattis mattisj@comcast.net Member Friends of Maddax and Member Willamette Falls Heritage Foundation

Jerry Herrmann, River Resource Museum, Oregon City, New History Minstrels (in Word and Song)



Mar Azul and Lorraine are the last two steel boats built at Maddax Woods.

Susan Carley, rscarleys@comcast.net BOD Maddax Woods
Steve Ellwood ellwood4292@comcast.net Antique and Classic Boat Society, Vice. Pres
Elaine Mahoney emahoney240@comcast.net past Pres of Maddax Woods *emahoney240@msn.com*
James Weaver weavers5796@hotmail.com Pres. Friends of Maddax Woods
and many more!

Jan 15, 2014
CD

Claudia Davis
21000 Wisteria Road
West Linn, OR 97068

Dear Planning Commission,
I am a member of the Board of Directors of the Friends of Maddax Woods. I would like to submit the following comments to be entered into the record of the Planning Commission Hearing tonight, January 15, 2014.

I understand that the proposed change to the language in Chapter 32 called the "Alternative Discretionary Review Process" could allow for reasonable development while respecting the resource".

These comments are submitted in reference to the proposed change to the Water Resource Area language in Chapter 32 that are relevant to development in Maddax Woods which is part of the Water Resource Area.

We as Friends of Maddax Woods would support the new language in the WRA Chapter 32. This new "Alternative Discretionary Review Process" could allow for the restoration of the Maddax Pole Boat Barn. The Boat Barn foundation still exists and the Friends of Maddax Woods have been working to rebuild the structure for the last 2½ years. Because this structure was an integral part of Virgil and Dorothy Maddax's livelihood on the property for over 50 years we feel that it is a reasonable development while also respecting the resource.

Virgil Maddax built boats under the barn located in a natural swale close to the river so he could launch his boats into to the Willamette River from his 'mini industrial park'.

His "resource" was more than about "flora and fauna" and about the usability of that "resource (location)" to assist him to accomplish his early industry. The interpretation of that industry and "resource" at Maddax Woods is an important part of our West Linn Story as identified in the Willamette Falls Heritage Trail brochure, and is an economic and historic resource for our city.

The Friends of Maddax Woods have attempted to share an Interpretive Presentation at the Park where there are pictures of five of Virgil's 14 boats that he built there in his Boat Barn. The "story" is now told in temporary displays in the Barn's existing exposed and visible foundation. Without a more permanent presentation in a weather protected structure, the Maddax's story will soon be gone. Those of us older neighbors and Friends try to share the many important stories but our efforts are hindered because it takes so long and the efforts are too great to accomplish in a reasonable time the work to accomplish the project. Some examples of efforts in the past that have been lost are the West Linn Inn, the Locks and the Mills. It took many years to reclaim the McLean House for public use and Maddax Woods is now an example of the time it takes to accomplish a goal of preserving and sharing history for future generations.

We the Friends of Maddax Woods, and many others, hope that this proposed language change will make the Barn Restoration possible and could even expedite its reality. The excitement to rebuild the Boat Barn in an 'old fashion barn raising' was very exciting for all who heard about it! However, with the current language in Chapter 32 there doesn't seem to be any hope for this goal. Please consider this comment in the decision making process.

Sincerely, Claudia Davis

*rec'd
Jan. 15, 2014
JS*

City of West Linn
Planning Commission Public Hearing
CDC 10-3; Water Resource Areas

January 15, 2014

Per mailed notification regarding CDC Chapter 32:

Ole's Memo of 01/15/14

It was intended that this matter be discussed at a meeting in association with the Robinwood Neighborhood Association (RNA).

On January 14, 2014 the RNA officers said they had not been notified by the city as required by law.

I would like to reserve the right to address all issues after discussing this matter in a forum where all members of the RNA have a right to participate. I expect this to take at least 4 months.

Attached to this memo are the following:

1. Copy of the Planning Committee Notice for Public Hearing CDC-10-03 Water Resource Areas unsigned and undated.
2. Copy of Ole's City of West Linn Organization Chart
3. Copy of Ole's Lot Partition Subject Chart
4. Copy of Ole's Lot Partition Resources Protected Chart
5. Copy of Due Process Rights
6. Copy of OR Constitution Article I Bill of Rights Sec. 18,21,22
7. Copy of OR Constitution Article XI Sec. 2 and 4
8. Copy of Oregon 1893 Incorporation Act ORS 221.901 - 905
9. Copy of OR Constitution Article III Sec. 1 Separation of Powers
10. Copy of Oregon Revised Statutes ORS 92.040(2), ORS 92.285
11. Copy of Oregon Revised Statutes ORS 92.990(1), (2) Penalties
12. Copy of Oregon Revised Statutes ORS 164.005 to 164.085
13. Copy of Ole's abbreviated Oregon Public Records and Meetings Law
14. Copy of 2003 mailing list of effected properties. 3071 properties

Without an explanation of the charts Attachments 2, 3, 4 the meaning may be lost.

The Community Development Code Chapter 32 was not available at the Public Library for me to read.

No one at the RNA meeting of January 14, 2014 had a copy of CDC Chapter 32. No one had seen a copy of CDC Chapter 32 on line.

I have attended all known meetings on this issue from about 2000 to date and have a large file on this issue.

Ole Olsen

Ole Olsen 1/15/14

3993 Kenthorpe Way
West Linn OR 97068

**CITY OF WEST LINN
PLANNING COMMISSION PUBLIC HEARING
CDC-10-03: WATER RESOURCE AREAS**

This is to notify you that the City of West Linn has proposed a land use regulation that may affect the permissible uses of your property and other properties.

AN ORDINANCE RELATING TO WATER RESOURCE AREAS, REPEALING AND REPLACING COMMUNITY DEVELOPMENT CODE CHAPTER 32, AND AMENDING CHAPTERS 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 23, 24, 33, 46, 54, and 55.

The West Linn Planning Commission is scheduled to hold a public hearing on Wednesday January 15, 2014, at 7:00 p.m., in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider a proposal to repeal and replace chapter 32 and amend chapters 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 23, 24, 33, 46, 54, and 55 of the Community Development Code (CDC). The proposed chapter 32 replacement applies to the City's water resource areas (WRAs), which include all wetlands, streams, creeks and adjacent riparian areas.

You have been notified of this proposal because County records indicate that you own property that is adjacent to a WRA. The City has determined that the adoption of the replacement chapter and amendments may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property. This notice satisfies Measure 56 requirements. Answers to questions you may have about the Measure 56 notice are provided on the City's web site at <http://westlinnoregon.gov/Measure56>.

The hearing will be conducted in accordance with the rules of CDC Section 98.120. Anyone wishing to present written testimony on this proposed action may do so in writing prior to, or at the public hearing. Oral testimony may be presented at the public hearing. At the public hearing, the Planning Commission will receive a staff presentation, and invite both oral and written testimony. The Planning Commission may continue the public hearing to another meeting to obtain additional information, leave the record open, or close the public hearing and take action on the proposed amendments as provided by state law. Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

The proposed land use regulations are available for inspection at City Hall, 22500 Salamo Road, West Linn, OR 97068. A copy is available for purchase at a minimal charge. At least 10 days prior to the hearing, a copy of the proposed amendments and associated staff report will be available for inspection and also on the City's web site at <http://westlinnoregon.gov/planning/discussion-draft-chapter-32-wra-amendments>. In addition, the project file CDC-10-03, Water Resource Area Amendments, containing the proposed chapter replacement and amendments and related information is available for review at the Planning Department.

Following the hearing, the Planning Commission will make a recommendation to the City Council. The Council will make a final decision regarding the proposed chapter replacement and amendments following its own public hearing. For further information, please contact Peter Spir, Associate Planner, at City Hall, 22500 Salamo Road, West Linn, OR 97068, phone (503) 723-2539, or via e-mail at pspir@westlinnoregon.gov

Shauna Shroyer
Planning Administrative Assistant

LEGISLATIVE - CITY COUNCIL

WLMC 3-00 ORG. CHART CITY OF WEST LINN

OREGON INCORPORATED CITY GOVERNMENT		ADPT BUDGET, CODES & RULES, ENHANCE LIVABILITY	
WL 3-00	PART VI PERSON:	OUTLINE OF JURISDICTION:	
WL4-01 MAYOR	JOHN KOVASH	PART I AREA WL (NOT US, ST-STATE OR CO-COUNTY)	PART II BRANCH: 30 LEGIS, 40 ADMIN 30 JUDICIAL
WL3-01 COUNCIL PRES	JENNI TAN	PART III DEPARTMENT, TYPE OF LAW, CODE & ADVISE	PART IV SUBJECT & CONDITIONS
WL3-02 COUNCILOR	MIKE JONES	PART V PROCEDURE FOR DEPARTMENTS	PART VI PEOPLE (DISTRICT, PUBLIC BUSINESS, PERSON)
WL3-03 COUNCILOR	JODY CARSON	WL3-10 PLANS & CODES	
WL3-04 COUNCILOR	THOMAS FRANK	WL3-11 WLCP - WEST LINN COMPREHENSIVE PLAN	WL3-12 WLMO - WEST LINN MUNICIPAL CODE
WL3-05 COUNCILOR		WL3-13 WL CDC - WEST LINN COMMUNITY DEV. COD	
WL3-06 COUNCILOR		WL3-20 ADVISE & REPORTS	WL3-21 LEGAL WLCH CH 5 IN
WL3-07 COUNCILOR		WL3-22 BUDGET	WL3-23 PUBLIC COMMENT
WL3-08 COUNCILOR		WL3-24 AUDIT	WL3-25 BID, CONTRACTS WLMC 2.085 E
WL3-09.1 VACANCY, DISMISS ORS 221.904		WL3-26 CONSULTANTS REPORTS - ADOPTED	WL3-27 DEPARTMENT REPORTS - ADOPTED
WL3-09.2 CITY COUNCIL RULES		WL3-28 STAFF/COMMITTEE SPECIAL REPORT.	
WL3-09.3 CITY COUNCIL MEETINGS		PUBLIC SERVICES & FACILITIES	
WL3-30 PART III TYPE OF COMMITTEE		PART IV SUBJECT	CITY CODE, STATE STATUTE
WL3-30.1 NAME		CRIME TRAFFIC, FIRE	WLMC 2.085 J
WL3-30.2 PUBLIC SAFETY MEMBERS			
ENGINEERING			
WL3-31 TRAFFIC 7 MEMBERS		TRANSPORTATION, MASS TRANS	WLMC 2.085 P
SUSTAINABILITY 7 MEMBERS		ENVIRONMENT NR 0.0	WLMC 2.085 Q
WL3-32 UTILITY 7 MEMBERS		WATER RATES, OTHER	WLMC 2.085 D
WL3-33 PARKS & RECREATION 7 MEMBERS		NEEDS, BUDGET, LAND	WLMC 2.085 H
WL3-34 LIBRARY 9 MEMBERS		PARKS MASTER PLAN	
WL3-35 HISTORIC 5 MEMBERS		NEEDS, BUDGET, LAND	WLMC 2.085 G - ORS 367
WL3-36 ARTS 9 MEMBERS		PROTECT HISTORIC PLACES	WLMC 20085 G
WL3-37 FAIR 12 MEMBERS		MUSIC, DANCE, POETRY	WLMC 2.085 I, 2.200
WL3-38 NBHD 10 NEIGHBORHOODS		PAINTING, PHOTO, OTHE	
WL3-39 PLAN COMMISSION 7 MEMBERS		WEST LINN FAIR	WLMC 2.085 M
WL3-40 TYPE OF COMMITTEE - PROPERTY SERVICES			WLMC 2.100
WL3-41 PLAN COMMISSION		TRAFFIC, HOUSING, LOT SIZE	WLMC 2.085 A, ORS 227
WL3-42 PLAN COMMISSION		BUILDING SIZE, GROWTH	
WL3-46 PART III TYPE OF COMMITTEE - PRIVATE SERVICES			

EXECUTIVE & ADMINISTRATIVE DEPT

WLMC 4-00 ORG. CHART CITY OF WEST LINN

WL 4-00	DUE PROCESS OF LAW	SEPARATION OF POWERS	CHECKS & BALANCES
WL4-01 MAYOR	JOHN KOVASH	GENERAL WLMC CH1	DUTIES ORS 221.917
WL4-02 PART III CITY CORPORATE LAWS, RECORDS & FINANCE		GOVERNMENT WLMC CH2	WLCH 5 22 ORS 221.130A
WL4-11 RECORDED ELECTIONS	P1 - KATHY MOLLUSKY	ORS 221.500 221.265-285	ORS 192.412-165 ORS 221.914
WL4-15 FINANCE	P2 - RICHARD SEALS	ORS 240, 247, 248, 249, 250	WLCH V 5 22(c)(3), III B 3 4
WL4-22 POLICE OFFICERS	P2 to P29	251, 259, 254 255, 256, 260	ORS 222, 223, 224, 225
WL4-23 CITY ATTORNEY	P50	LIVE WL Y N BOND Y N	DUTIES ORS 221.920, 225
WL4-24 FIRE & RESCUE	P1 - TERRY TIMEUS	ELECT Y N OATH Y N	ANNEA ORS 222 228B ORS 223
WL4-31 CITY MANAGER	P1 - CHRIS JORDAN	WL3-51 WL LAW, INFRACTION	ORS 35, 224, 226, 228, 312
WL4-32 CITY ENGINEER	P1 - LANCE CALVERT	ORS-60 PROPERTY, PERSON	DUTIES ORS 221.919
WL4-33 PUBLIC WORKS	P12 - LANCE CALVERT	ELECT Y N OATH Y N	US-60 CIVIL RIGHTS
WL4-34 RECREATION	P13 - KEN WORCESTER	WL3-70 VIOLATIONS	ORS-70 VIOLATIONS
WL4-35 PUBLIC FACILITIES	P20		ORS-80 CR MISEMEANOR
WL4-38 HUMAN RESOURCES	P21		ORS-80 CRIMINAL FELONY
WL4-41 PLAN DIRECTOR	P1 -		ORS 221.339
WL4-42 PLAN ZONE	P1-18 STAFF		ORS 131, 139, 199, 221
WL4-46 LAND DIVISION	P14 - SURVEYOR		ORS 211, 315, 326, 456
WL4-47 BUILDING	P1 - JOHN NAOMI		WLCP G 11, 5.4(A)
	P1 - DAVID DAVIES		WLMC D 175, ORS 479
	P1 - KIRSTEN WYATT		

STEPS TO FOLLOW

WL5-00	CITY OF WEST LINN	CLACKAMAS COUNTY
PART I - AREA JURISDICTION	MUNICIPAL COURT	CIRCUIT COURT
0 - CITY, (NOT US, ST, CO)		
PART II - BRANCH 5 JUDICIAL (NOT 3 LEG, 4 ADMIN)		
PART III - TYPE OF LAW		
MAJOR SECTION NAME	CHARTER, ORDINANCE	CIVIL ACTION, PROPERTY
PART IV - SUBJECTS- MAIN	SAFETY, ENGINEERING	REAL PROPERTY LAW WORKBOOK
MINOR SECTIONS/SUBSECTION	PROPERTY, PARKS, SERVICE	TITLE, DIVISION, SALES
PART V - PROCEDURES	WEST LINN MUNICIPAL CODE	CIVIL PROCEDURES - ORS 11-35
SECTION # AND NAME	WLMC 1.235(B)	PLAINTIFF & DEFENDANT
330 COMPLAINT, EVIDENCE	WLMC 1.235 (A), MGR, CITIZEN	PLAINTIFF INVESTIGATION
330 ALLEGATION/CHARGE	WEST LINN & DEFENDANT	PLAINTIFF v. DEFENDANT
340 ANSWER/RESPONSE	CITY ATTY	
340 PAY PETITION, RECORDS	WLMC 1.240 (1), (2), (3), (4)	
350 PRE-HEARING/TRIAL	DOES NOT APPLY ?	
560 DURING HEARING/TRIAL	HEARING MUNICIPAL JUDGE	TRIAL, JUDGE & JURY
TESTIMONY, EVIDENCE	JUDGE RHETT BERNSTEIN	ORS 221.358, ORS 221.354
DEFAULT RECORD	WLMC 1.245 JURY WLMC 2.600-650	ORS 40-45
BURDEN OF PROOF	REASONABLE & PRUDENT	PREPONDERANCE OF EVIDENCE
350 PRE-HEARING/TRIAL	WLMC 1.250 - 1.260	
630 REMEDY/ENFORCE	CLASS A INFRACTION \$600	PRIVATE PROPERTY - RESIDENTIAL
FA CASE/APPEAL	CLASS B INFRACTION \$250	PRIVATE PROPERTY - COMMODITIES
	CLASS C INFRACTION \$150	PRIVATE PROPERTY - PUBLIC USE
	CLASS D INFRACTION \$50	PUBLIC PROPERTY - PUBLIC USE
	MUNICIPAL COURT MAX \$	PUBLIC PROPERTY - PRIVATE USE
	WLMC 1.250 (FORFEITURE)	
		L-LAND, S-SALES, P-PERMIT
		KW-03 INDEX, INTRO & PROCESS
		LW10-10 APPLY PARTITION/DIVISION
		SW17-20 SALE PROPERTY, WITHOUT
		PW21-25 BUILDING PERMIT
		Oregon Dept. of Consumer & Business Services - DIVISIONS
		SW PRE-PROCESS
		ENG ADMIN/STAFF-TIME DEPT
		SSO DISCLOSURE
		ROG NATURAL RESOURCES
		SSO TENT, FINAL PLAT DRAW
		S70 PROCESS & PURPOSE
		S63 FINAL APPROVE & FILE
		FA APPEAL - CIRCUIT COURT

2/5/14 PC Meeting
34

JUDICIAL - MUNICIPAL & CIRCUIT COURT

WLMC 5-00 ORG. CHART CITY OF WEST LINN

POWER TO DECIDE A CASE, OBLIGATION TO BE FAIR AND JUST	CITY MUNICIPAL COURT or COUNTY CIRCUIT COURT	CLACKAMAS COUNTY CIRCUIT COURT
ORS-70 VIOLATIONS /NEW 2000	QUASI - CRIMINAL (NON JAIL)	CRS-50 CRIMINAL FELONY
WILDLIFE, FISHING, BOATING	TRAFFIC, CITY NUISANCE, OTHER	THEFT, ASSAULT, DRUNK
NO RULES ? ORS 153.033	NO RULES ? ORS 153.033	BURGLARY, KIDNAP, ARSON, ORDER
POLICE, SHERIFF, DOJ, OTHER	POLICE, SHERIFF, DOJ, OTHER	FRAUD, PERJURY, BRIBE, MURDER
STATE v. DEFENDANT	STATE v. DEFENDANT	CRIMINAL PROCEDURES
FORM ORS 1.525, 133.007-015	FORM ORS 1.525, 133.007-015	CRIMINAL PROCEDURES
ORS 153	ORS 153	
TRIAL BY JUDGE	TRIAL BY JUDGE	
PREPONDERANCE OF EVIDENCE	PREPONDERANCE OF EVIDENCE	
ORS 153.090, 012, 018	ORS 153.090, 012, 018	
CLASS A VIOLATION \$720	CLASS A VIOLATION \$720	
CLASS B VIOLATION \$350	CLASS B VIOLATION \$350	
CLASS C VIOLATION \$180	CLASS C VIOLATION \$180	
CLASS D VIOLATION \$90	CLASS D VIOLATION \$90	
UNCLASSIFIED - USE B	UNCLASSIFIED - USE B	
ORS 30.315, LIEN ORS 221.351	ORS 30.315, LIEN ORS 221.351	
CIRCUIT CT ORS 151.057, 221.359	CIRCUIT CT ORS 151.057, 221.359	
VIOLATIONS AGAINST STATE	VIOLATIONS AGAINST STATE	
WILDLIFE ORS 496.002	WILDLIFE ORS 496.002	
COMMERCIAL FISH ORS 500.001	COMMERCIAL FISH ORS 500.001	
TRAFFIC ORS 802-826	TRAFFIC ORS 802-826	
VEHICLES & TRAFFIC WLMC CH3	VEHICLES & TRAFFIC WLMC CH3	
BOATING ORS 930	BOATING ORS 930	
WEST LINN MUNICIPAL COURT	WEST LINN MUNICIPAL COURT	
VIOLATIONS AGAINST WEST LINN	VIOLATIONS AGAINST WEST LINN	
WL3-70	WL3-70	
CR MISEMEANOR - PERSON, PROPERTY	CR MISEMEANOR - PERSON, PROPERTY	
OREGON REVISED STATUTES - CRIMES & PUNISHMENTS	OREGON REVISED STATUTES - CRIMES & PUNISHMENTS	
GENERAL PROVISIONS ORS 161	GENERAL PROVISIONS ORS 161	
STATE & JUSTICE ORS 162	STATE & JUSTICE ORS 162	
PERSON ORS 163	PERSON ORS 163	
PROPERTY ORS 164	PROPERTY ORS 164	
SEE WL PUBLIC PROPERTY PROTECT WLMC CH3	SEE WL PUBLIC PROPERTY PROTECT WLMC CH3	
CR FELONY AGAINST OREGON	CR FELONY AGAINST OREGON	
ORS 161 - 169	ORS 161 - 169	
FRAUD & DECEPTION ORS 165	FRAUD & DECEPTION ORS 165	
ORDER, FIRE ARMS ORS 166	ORDER, FIRE ARMS ORS 166	
HEALTH & ANIMALS ORS 167	HEALTH & ANIMALS ORS 167	
CORRECTIONAL ORS 168	CORRECTIONAL ORS 168	

ENTER CITY NAME		APPLICANT NAME		APP #	LOT PARTITION		mm/dd/yy	Cy LW10.01 SUBJECT		LW		
STREET		STREET		LOT TENT/FINAL PARTITION (Civil)		by BY		LAND WORKBOOK		-10		
CITY ST ZIP		CITY ST ZIP		STATUTE	@		01/13/14		OLE OLSEN			
DEPARTMENT OR CONTACT		TAX LOT		CODE	APPLY		mm/dd/yy	PRE-PRO	mm/dd/yy	INDEX		
ADMIN	mm/dd/yy	DISCLOSE	mm/dd/yy	NAT. RES	mm/dd/yy	FINAL PLAT	mm/dd/yy	TENT APPR	mm/dd/yy	FINAL APPR	mm/dd/yy	
WORKBK	PROCESS	LAND WORKBOOK NAME			DATE	FORM #						
LW 10.00	APPLICATION	LOT TENT/FINAL PARTITION (Civil)			mm/dd/yy	APPLICANT DECLARATION - COMPLETE						
LW #.00	APPLICATION	OTHER WORKBOOK NAME										
LW #.00	APPLICATION	OTHER WORKBOOK NAME										
Sec 30.0		PRE-PROCESS		LOT TENT/FINAL PARTITION (Civil)		mm/dd/yy						
S 31.0	STAFF REVIEW	D4-43	P8 STAFF		mm/dd/yy							
S 32.0	FEE'S/BASIC \$	1 LOTS \$	2 ENGINEERING	3 ROADS \$	4 STORM \$	5 EROSION \$	mm/dd/yy					
S 33.0	NOTICE/Conference	mm/dd/yy										
S 34.0	CONFERENCE	NOTES										
S 35.0	STAFF REPORT	D4-43	P7 STAFF		mm/dd/yy							
S 36.0	APPLY COMPLETE	NOTES										
S 37.0	120 DAY RULE TO	NOTES										
D4-00		ADMIN DEPT		FINANCE, SAFETY, SERVICES, FACILITIES		mm/dd/yy		D = CITY		D4-10 FINANCE		
D4-20		PUBLIC SAFETY		1 POLICE	4 FIRE	D4-30 PUBLIC SERVICES		D4-31 MANAGER	D4-32 ENGINEER/PLN	10 LAND TRANSPORT		
		11 ROADS	12 DRIVEWAYS	13 WALKWAYS	14 TRANSIT	15 ST TREES	16 ROAD GIS	17 NAVIGATION	18 AVAITION			
.40		ENERGY/FUELS	41 ELECTRIC	42 WATER	43 WIND	44 SOLAR	45 NUCLEAR	46 NAT. GAS	47 OIL	48 WOOD		
.50		WATER/SURFACE	51 DRAINAGE	52 FLOOD	53 FLOOD PL	54 STORM	55 STORM GIS	56 EROSION	57 DEQ NPDES	58 OPEN		
D4-23		WATER	61 SUPPLY	62 TREAT	63 STORE	64 DISTRIBUTE	65 WATER GIS	66 SEWER	67 TREAT	68 SEWER GIS		
D4-34		PARKS & REC	1 PARKS/REC	2 OPEN SPACE	3 TRAILS	4 ACQUIRE	5 DEVELOP	6 MAINTAIN	7 GAMES	8 PARKS GIS		
D4-35		PUBLIC FACILITIES	1 EDUCATION	2 SCHOOLS	3 LIBRARY	4 CITY HALL	5 POLICE	6 FIRE	7 SENIOR CTR	8 HISTORIC		
D4-36		HUMAN RESOURCE	1 PERSONNEL	2 COURT ADMIN	3 RISK MGMT.	4 OPEN	5 OPEN	6 OPEN	7 INFO	8 NEIGHBOR		
D4-37		PROPERTY SERVICE	42 PLAN/ZONE	44 HEAR OFF	D4-45 LAND DIVISION		1 SURVEYOR	D4-47 BUILDING	1 PLAN	2 INSPECT		
			1 REFUSE	2 ELECTRIC	3 GAS	4 PHONE/TV	5 HEALTH	6 AMBULANCE	7 HOSPITAL	8 ELDERLY		
Sec 50.0		DISCLOSURE TO		OWNER - REAL PROPERTY, LAND, BUILDINGS		mm/dd/yy						
S 51.0		FORM ORS 105.464		P 03		OWNER		T0 = TITLE INITIAL - 0				
S 52.0		BASIC INFO		1 TAX LOT	2 ZONING		6 LOCATE GIS		7 PHOTO GIS	8 OTHER GIS		
S 53.0		DEED & DIMENSIONS		1 DEDICATION	2 DECLARATION	3 RIGHT OF WAYS (UTILITIES)		4 EASEMENT	A. PRIVATE	B. PUBLIC	C. CONSERVE	
S 54.0		AGREEMENTS		1 DEVELOPER	2 CCRs	A. CONDITIONS	B. COVENANTS	C. RESTRICTION	3 ACCESS BY PERMISSION			
S 55.0		STRUCTURES		1 EXISTING	2 NEW	3 SETBACK	A. FRONT	B. REAR	C. SIDE	4 OPEN		
S 56.0		INSPECTION		1 ENGINEER	2 ARCHITECT	3 BUILDING	4 ELECTRICAL	5 ROOF	6 PEST	7 SEWER	8 ADVICE	
S 57.0		FINANCES		1 LIENS	2 TAXES	3 MORTGAGE	4 LOAN					
NR 0.0		NAT RESOURCES		INVENTORY (Civil), RES. PROTECT (US, ST, Admin)		mm/dd/yy						
NR 1.0		LAND		1 SOIL GIS								
NR 2.0		MINERALS		1 METAL	2 NON-METAL	3 GEMS	4 SEMI-GEMS	5 AGGREGATE	6 FUELS	7 STRATEGIC		
NR 3.0		PLANTS, LAND		1 WOOD TREE	2 FRUIT TREES	3 FLOWERS	4 GRASS/SHRU	5 FERN/SEED	6 MOSS/MOLD	7 ALGAE/FUNG	8 BACTERIA	
NR 4.0		ANIMALS, LAND		1 MAN, PRIMAT	2 DOMESTIC	3 WILD	4 REPTILE	5 RODENTS	6 WORMS	7 BUGS	8 INSECTS	
NR 5.0		WATER		1 RIVERS	2 STREAMS	3 RIPARIAN	4 WETLAND	5 LAKES	6 PONDS	7 WELLS	8 WATER GIS	
NR 6.0		FISH, MARINE		1 FISH	2 MAMMAL	3 CRUSTACEAN	4 MOLLUSKS	5 AMPHIBIANS	6 WORMS	7 SPONGE/CORAL	8 PROTO ZOA	
NR 7.0		AIR		1 WIND	2 LIGHT	3 NOISE	4 GLARE	5 SMOKE	6 CHEMICAL			
NR 8.0		BIRDS, FEATHER		1 LAND	2 FOREST	3 BUSH	4 WATER	5 GAME	6 SEA	7 PREY	8 OTHER	
NRP 9.0		RES. PROTECTED		1 LAND/PARKS	2 WATER	3 OCEAN	4 UNIQUE	5 DISASTERS	6 HAZARD	7 HEALTH	8 OTHER	
Sec 60.0T		TENT PLAT DWG		LOT TENTATIVE PARTITION (Civil)		mm/dd/yy						
Sec 60.0F		FINAL PLAT DWG		LOT FINAL PARTITION (Civil)		mm/dd/yy						
S 63.0		LEGEND		1 SCALE	2 SIZE	3 NORTH						
S 64.0		DIMENSIONS (S 53)		1 MONUMENT	2 BOUNDARY	3 LENGTH						
S 65.0		EASEMENTS (S 53)		3 RIGHT OF WAYS (UTILITIES)		4 EASEMENT	A. PRIVATE	B. PUBLIC	C. CONSERVE			
S 66.0		STRUCTURES (S 55)		1 EXISTING	2 NEW	3 SETBACK	A. FRONT	B. REAR	C. SIDE			
S 67.0		OPEN										
S 68.0		NAT RESOURCES		R 1 LAND	R 2 MINERALS	R 3 PLANTS	R 4 ANIMALS	R 5 WATER	R 6 FISH	R 7 AIR	R 8 BIRDS	
S 69.0		RES. PROTECTED		1 LAND/PARKS	2 WATER	3 OCEAN	4 UNIQUE	5 DISASTERS	6 HAZARD	7 HEALTH	8 OPEN	
Sec 70.0		PLAT PROCESS		LOT TENT/FINAL PARTITION (Civil)		mm/dd/yy						
S 71.0		OWNERS, AGENT'S CERTIFICATES		P 03 OWNER	P 11 ENGINEER	P 14 SURVEYOR	P 15 Architect	P 19 TITLE Co	P 21 Developer	P 23 Contractor		
S 72.0		STAFF REVIEW		GENERAL DATA		S30, D4.00, S50, NR0.0, S60	4 REVIEW	D4-45 P6-B STAFF REVIEW		mm/dd/yy		
S 73.0		PUBLIC COMMENTS		1 NAMES	2 NOTICE	3 COMMENTS	4 REPORT	D4-45 P6 STAFF		mm/dd/yy		
S 74.0		HEARINGS		1 PETITION	2 NOTICE	3 HEARING	4 REPORT	D4-44 P4 HEARINGS OFFICER		mm/dd/yy		
S 75.0		OPEN		mm/dd/yy								
Sec 76.0		TENT APPROVE		LOT TENT/FINAL PARTITION (Civil)		mm/dd/yy						
S 77.0		APPEAL		NOTES		D4-43 P3 RESPONSIBLE OFFICIAL						
S 78.0		FILE #		NOTES		mm/dd/yy						
Sec 80.0		FINAL PROPOSE		LOT TENT/FINAL PARTITION (Civil)		mm/dd/yy						
P 00		OWNER/AGENT SIGNATURES		mm/dd/yy	D4-00	CITY SIGNATURES		mm/dd/yy	C4-00	COUNTY SIGNATURES		
P 03		OWNER		mm/dd/yy	D4-12	P2 FINANCE		mm/dd/yy	C4-12	P2 TREASURER		
P 03		OWNER		mm/dd/yy	D4-20	P1 POLICE		mm/dd/yy	P4 FIRE	P3 ASSESSOR		
P 11		ENGINEER		mm/dd/yy	D4-32	P11 ENGINEER		mm/dd/yy	C4-32	P11 ENGINEER		
P 14		SURVEYOR		mm/dd/yy	D4-46	P14 SURVEYOR		mm/dd/yy	C4-46	P14 SURVEYOR		
P 15		ARCHITECT		mm/dd/yy	D4-41	P1 PLAN DIR.		mm/dd/yy	B4-00	ST AGENCY		
P 15		ARCHITECT		mm/dd/yy	D4-41	P1 PLAN DIR.		mm/dd/yy	A4-00	US AGENCY		
Sec 83.0		PLAT & DEED APPROVE/FILE		mm/dd/yy		VARIES BY ORDINANCE		mm/dd/yy				
S 84.0		WARRANTY DEED		mm/dd/yy		S 85.0	CoC FILE #		mm/dd/yy	S 86.0	PLAT TO SURVEYOR	
FILE FA		APPEAL - COURT		LOT TENT/FINAL PARTITION (Civil)		2/5/14 POC Meeting						

ENTER CITY NAME		APPLICANT NAME		APP #	LOT PARTITION	mm/dd/yy	Cy NRP 9.0 PROTECTED		INDEX
STREET		CITY	ST	ZIP	TAX LOT	@	by	BY	
ENG., PLAN & ZONE		CITY NAME	STREET		CITY	ST	ZIP	PHONE	
ENGINEERING, PLAN & ZONE		NATURAL RESOURCE PROTECTED INTRO						CONTACT	
NR 9.1 LAND/PARKS									
R 9.11	FOREST SERVICE								R 9.0 RESOURCES
R 9.12	BLM								R 9.1 LAND/PARKS
R 9.13	RESERVES								
R 9.14	PRESERVES								
R 9.15	SCENIC								
R 9.16									
R 9.17									
R 9.18	LAND/PARKS GIS MAP								
NR 9.2 WATER AREAS									
R 9.21	RIVERS								R 9.0 RESOURCES
R 9.22	FLOODPLAIN								R 9.2 WATER AREAS
R 9.23	WETLAND								
R 9.24	LAKES								
R 9.25									
R 9.26									
R 9.27									
R 9.28	WATER AREAS GIS MAP								
NR 9.3 OCEAN AREA									
R 9.31	ESTUARY								R 9.0 RESOURCES
R 9.32	SHORE								R 9.3 OCEAN AREA
R 9.33	BEACHES								
R 9.34	DUNES								
R 9.35									
R 9.36									
R 9.37									
R 9.38	OCEAN AREA GIS MAP								
NR 9.4 UNIQUE									
R 9.41	HISTORICAL								R 9.0 RESOURCES
R 9.42	GEOLOGICAL								R 9.4 UNIQUE
R 9.43	CULTURAL								
R 9.44	ARCHEOLOGICAL								
R 9.45	ARCHITECTURAL								
R 9.46	AESTHETICAL								
R 9.47									
R 9.48	UNIQUE GIS MAP								
NR 9.5 DISASTERS									
R 9.51	FLOOD								R 9.0 RESOURCES
R 9.52	VOLCANO								R 9.5 DISASTERS
R 9.53	EARTHQUAKE								
R 9.54	FIRE								
R 9.55	HURRICANE								
R 9.56	EROSION								
R 9.57	LANDSLIDE								
R 9.58	DISASTERS GIS MAP								
NR 9.6 HAZARDS									
R 9.61	FLOODPLAIN								R 9.0 RESOURCES
R 9.62	CHEMICAL								R 9.6 HAZARDS
R 9.63	SEDIMENT								
R 9.64	TURBIDITY								
R 9.65									
R 9.66									
R 9.67									
R 9.68	HAZARDS GIS MAP								
NR 9.7 HEALTH									
R 9.71	SMOG								R 9.0 RESOURCES
R 9.72									R 9.7 HEALTH
R 9.73									
R 9.74									
R 9.75									
R 9.76									
R 9.77									
R 9.78	HEALTH GIS MAP								
NR 9.8 OPEN									
R 9.81									R 9.0 RESOURCES
R 9.82									R 9.8 OPEN
R 9.83									
R 9.84									
R 9.85									
R 9.86									
R 9.87									
R 9.88	OPEN GIS MAP								

Due process clause. Two such clauses are found in the U.S. Constitution, one in the 5th Amendment pertaining to the federal government, the other in the 14th Amendment which protects persons from state actions. There are two aspects: procedural, in which a person is guaranteed fair procedures and substantive which protects a person's property from unfair governmental interference or taking. Similar clauses are in most state constitutions. See Due process of law.

Due process of law. Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoyer v. Neff*, 95 U.S. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. The concept as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. Fundamental requisite is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. Aside from all else, "due process" means fundamental fairness.

The essential elements of due process of law are notice and opportunity to be heard and to defend in orderly proceeding adapted to nature of case, and the guarantee of due process requires that every man have protection of day in court and benefit of general law. Daniel Webster defined this phrase to mean a law which hears before it condemns, which proceeds on inquiry and renders judgment only after trial. This constitutional guaranty demands only that law shall not be unreasonable, arbitrary, or capricious, and that means selected shall have a real and substantial relation to object.

See also Procedural due process; Substantive due process.

Due process rights. All rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice.

Procedural due process. Those safeguards to one's liberty and property mandated by the 14th Amend., U.S.Const., such as the right to counsel appointed for one who is indigent, the right to a copy of a transcript, the right of confrontation; all of which are specifically provided for in the 6th Amendment and made applicable to the states' procedure by the 14th Amendment.

Procedural law. That which prescribes method of enforcing rights or obtaining redress for their invasion; machinery for carrying on procedural aspects of civil or criminal action; e.g. Rules of Civil, Criminal, and Appellate Procedure, as adopted by the Federal and most state courts. As a general rule, laws which fix duties, establish rights and responsibilities among and for persons, natural or otherwise, are "substantive laws" in character, while those which merely prescribe the manner in which such rights and responsibilities may be exercised and enforced in a court are "procedural laws" See also Procedure.

Procedure. The mode of proceeding by which a legal right is enforced, as distinguished from the substantive law which gives or defines the right, and which, by means of the proceeding, the court is to administer; the machinery, as distinguished from its product. That which regulates the formal steps in an action or other judicial proceeding; a form, manner, and order of conducting suits or prosecutions; e.g. Rules of Circuit or Criminal Procedure. The judicial process for enforcing rights and duties recognized by substantive law and for justly administering redress for infraction of them.

The law of procedure is what is commonly termed by jurists "adjective law" (q.v.).

See also Procedural law; Rules of court.

Substantial evidence. Such evidence that a reasonable mind might accept as adequate to support a conclusion. It is that quality of evidence necessary for a court to affirm a decision of an administrative board. Under the "substantial evidence rule," reviewing courts will defer to an agency determination so long as, upon an examination of the whole record, there is substantial evidence upon which the agency could reasonably base its decision.

Under the substantial evidence rule, as applied in administrative proceedings, all evidence is competent and may be considered, regardless of its source and nature, if it is the kind of evidence that "a reasonable mind might accept as adequate to support a conclusion." In other words, the competency of evidence for purposes of administrative agency adjudicatory proceedings is made to rest upon the logical persuasiveness of such evidence to the reasonable mind in using it to support a conclusion.

Substantive due process. Such may be broadly defined as the constitutional guarantee that no person shall be arbitrarily deprived of his life, liberty or property; the essence of substantive due process is protection from arbitrary and unreasonable action.

CONSTITUTION OF OREGON 2009 EDITION

ARTICLE I BILL OF RIGHTS

Section 18. Private property or services taken for public use. Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided, that the use of all roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use. [Constitution of 1859; Amendment proposed by S.J.R. 17, 1919, and adopted by the people May 21, 1920; Amendment proposed by S.J.R. 8, 1923, and adopted by the people Nov. 4, 1924]

Section 21. Ex-post facto laws; laws impairing contracts; laws depending on authorization in order to take effect; laws submitted to electors. No *ex-post facto* law, or law impairing the obligation of contracts shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution; provided, that laws locating the Capitol of the State, locating County Seats, and submitting town, and corporate acts, and other local, and Special laws may take effect, or not, upon a vote of the electors interested. —

Section 22. Suspension of operation of laws. The operation of the laws shall never be suspended, except by the Authority of the Legislative Assembly.

ARTICLE XI CORPORATIONS AND INTERNAL IMPROVEMENTS

Section 2. Formation of corporations; municipal charters; intoxicating liquor regulation. Corporations may be formed under general laws, but shall not be created by the Legislative Assembly by special laws. The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon, and the exclusive power to license, regulate, control, or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon. [Constitution of 1859; Amendment proposed by initiative petition filed Dec.13, 1905, and adopted by the people June 4, 1906; Amendment proposed by initiative petition filed June 23, 1910, and adopted by the people Nov. 8, 1910]

Section 4. Compensation for property taken by corporation. No person's property shall be taken by any corporation under authority of law, without compensation being first made, or secured in such manner as may be prescribed by law.

221.901 Cities organized under 1893 Act; officers; "city" defined for ORS 221.901 to 221.928. (1) The officers of every municipal corporation organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, shall be a mayor, six aldermen, a recorder, who shall be ex officio clerk of the common council, a marshal, a treasurer and such subordinate officers as are provided in ORS 221.902.

(2) Unless the context indicates otherwise, "city" as used in ORS 221.901 to 221.928 includes any area or territory incorporated under sections 1 to 6, pages 119 to 123, Oregon Laws 1893.

221.902 City officers; elective; appointive; terms. (1) The mayor, aldermen, recorder, treasurer, and marshal of a municipal corporation organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, shall be elected to two-year terms by the electors of the city. Each term of office commences on the first Monday in January next following the general election and expires on the day immediately preceding the first Monday in January next following the subsequent general election.

(2) The council may appoint an attorney, a superintendent of streets, a civil engineer, a municipal judge and police and other subordinate officers, and fix their compensation. These officers shall hold office during the pleasure of the council. [Amended by 1981 c.173 §8; 1983 c.350 §29; 1999 c.788 §53]

221.903 Bond and oath of officers. The recorder, treasurer and marshal mentioned in ORS 221.902 shall, before entering upon the duties of their respective offices, each execute a bond to the city in such penal sum as the council by ordinance may determine upon, conditioned for the faithful performance of duties, including in the same bond the duties of all offices of which the recorder, treasurer or marshal is ex officio incumbent under ORS 221.901 to 221.928. The bond shall be approved by the council before the officer enters upon the discharge of duties. The bonds approved shall be filed with the recorder, except the bond of the recorder, which shall be filed with the mayor. All the provisions of any law of this state relating to official bonds of officers shall apply to such bonds, except as otherwise provided in ORS 221.901 to 221.928. Every officer of the city, before entering upon the duties of office, shall take and file with the recorder an oath to honestly and faithfully discharge the duties of office, and that the officer will support the laws and Constitution of this state and of the United States to the best of the ability of the officer.

221.904 Vacancies. (1) The council shall fill any vacancy occurring in any of the offices provided for in ORS 221.902 by appointment.

(2) If the office is elective, the appointee shall hold office until the first Monday in January after the general election next following the appointment. At the general election next following the appointment, a person shall be elected to serve any remaining portion of the term. A person elected under this subsection shall take office on the first Monday in January after the election.

(3) If a council member is absent for three consecutive meetings without permission of the council, the council shall declare the office vacant and fill the office by appointment. [Amended by 1983 c.350 §30]

221.905 Compensation of city officers. The mayor and aldermen mentioned in ORS 221.902 shall receive no compensation whatever for their services as such officers. The recorder, treasurer, marshal, police and other subordinate officers shall severally receive at stated times compensation to be fixed by ordinance by the council, which compensation shall not be increased nor diminished after their election, or during their several terms of office. Nothing contained in this section shall be construed to prevent the council from fixing several amounts of compensation, in the first instance, during the term of office of any such officer after the election of the officer. The compensation of all other officers shall be fixed from time to time by ordinance, duly passed by the council.

ARTICLE III DISTRIBUTION OF POWERS

- Sec. 1. Separation of powers
 2. Budgetary control over executive and administrative officers and agencies
 3. Joint legislative committee to allocate emergency fund appropriations and to authorize expenditures beyond budgetary limits
 4. Senate, confirmation of executive appointments

Section 1. Separation of powers. The powers of the Government shall be divided into three separate [sic] departments, the Legislative, the Executive, including the administrative, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided. —

PROPERTY RIGHTS AND TRANSACTIONS SUBDIVISIONS AND PARTITIONS

92.040 Application for approval of subdivision or partition; tentative plan; applicability of local government laws. (1)

(2) After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.

MISCELLANEOUS PROVISIONS

92.285 Retroactive ordinances prohibited. No retroactive ordinances shall be adopted under ORS 92.010 to 92.048, 92.060 to 92.095, 92.120, 93.640, 93.710 and 215.110. [1973 c.696 §21]

PENALTIES

92.990 Penalties. (1) Violation of any provision of ORS 92.010 to 92.090, 92.100 and 92.120 to 92.170 or of any regulation or ordinance adopted thereunder, is punishable, upon conviction, by a fine of not less than \$50 nor more than \$500 or imprisonment in the county jail for not less than 25 days nor more than 50 days, or both.

(2) Any person who violates any of the provisions of ORS 92.325 (1), 92.345 to 92.365, 92.405 (1), (2) and (3), 92.425, 92.433, 92.460 to 92.475 and any alternative requirements of the Real Estate Commissioner prescribed pursuant to ORS 92.425 (3), not waived by the commissioner pursuant to ORS 92.395, or who provides false information or omits to state material facts pursuant to ORS 92.337, shall be punished by a fine not exceeding \$10,000, or by imprisonment in the custody of the Department of Corrections for a period not exceeding three years, or in the county jail not exceeding one year, or by both such fine and imprisonment. [Amended by 1955 c.756 §20; subsection (2) enacted as 1963 c.624 §20; 1965 c.584 §12; 1973 c.421 §48; subsection (2) (1973 Replacement Part) enacted as 1973 c.421 §10; subsection (3) (1973 Replacement Part) enacted as 1973 c.421 §49; subsections (2), (3) (1973 Replacement Part) repealed by 1974 c.1 §23; subsection (2) (1974 Replacement Part) enacted as 1974 c.1 §22; 1975 c.643 §21; 1977 c.809 §14; 1987 c.320 §14]

DEFINITIONS

164.005 Definitions. As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) "Appropriate property of another to oneself or a third person" or "appropriate" means to:

(a) Exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit of such property; or

(b) Dispose of the property of another for the benefit of oneself or a third person.

(2) "Deprive another of property" or "deprive" means to:

(a) Withhold property of another or cause property of another to be withheld from that person permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to that person; or

(b) Dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

(3) "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

(4) "Owner of property taken, obtained or withheld" or "owner" means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

(5) "Property" means any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, real property, choses-in-action, evidence of debt or of contract. [1971 c.743 §121]

Note: Legislative Counsel has substituted "chapter 743, Oregon Laws 1971," for the words "this Act" in sections 121 and 131, chapter 743, Oregon Laws 1971, compiled as 164.005 and 164.115. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1971 Comparative Section Table located in Volume 20 of ORS.

164.010 [Amended by 1959 c.236 §1; repealed by 1971 c.743 §432]

THEFT AND RELATED OFFENSES

164.015 "Theft" described. A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof;

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065;

(3) Commits theft by extortion as provided in ORS 164.075;

(4) Commits theft by deception as provided in ORS 164.085; or

(5) Commits theft by receiving as provided in ORS 164.095. [1971 c.743 §123; 2007 c.71 §47]

164.020 [Amended by 1959 c.236 §2; repealed by 1971 c.743 §432]

164.025 Consolidation of theft offenses; pleading and proof. (1) Except for the crime of theft by extortion, conduct denominated theft under ORS 164.015 constitutes a single offense.

(2) If it is an element of the crime charged that property was taken by extortion, an accusation of theft must so specify. In all other cases an accusation of theft is sufficient if it alleges that the defendant committed theft of property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(3) Proof that the defendant engaged in conduct constituting theft as defined in ORS 164.015 is sufficient to support any indictment, information or complaint for theft other than one charging theft by extortion. An accusation of theft by extortion must be supported by proof establishing theft by extortion. [1971 c.743 §122]

164.030 [Amended by 1955 c.37 §1; 1959 c.236 §3; repealed by 1971 c.743 §432]

164.035 Defenses to theft. (1) In a prosecution for theft it is a defense that the defendant acted under an honest claim of right, in that:

(a) The defendant was unaware that the property was that of another; or

(b) The defendant reasonably believed that the defendant was entitled to the property involved or had a right to acquire or dispose of it as the defendant did.

(2) In a prosecution for theft by extortion committed by instilling in the victim a fear that the victim or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that the sole purpose of the defendant was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

(3) In a prosecution for theft by receiving, it is a defense that the defendant re-

ceived, retained, concealed or disposed of the property with the intent of restoring it to the owner.

(4) It is a defense that the property involved was that of the defendant's spouse, unless the parties were not living together as husband and wife and were living in separate abodes at the time of the alleged theft. [1971 c.743 §132; 2001 c.104 §53]

164.040 [Amended by 1959 c.236 §4; repealed by 1971 c.743 §432]

164.043 Theft in the third degree. (1) A person commits the crime of theft in the third degree if:

(a) By means other than extortion, the person commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or an aggregate transaction is less than \$100.

(2) Theft in the third degree is a Class C misdemeanor. [1987 c.907 §2; 2009 c.11 §11; 2009 c.16 §1]

164.045 Theft in the second degree. (1) A person commits the crime of theft in the second degree if:

(a) By means other than extortion, the person commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or aggregate transaction is \$100 or more and less than \$1,000.

(2) Theft in the second degree is a Class A misdemeanor. [1971 c.743 §124; 1987 c.907 §3; 1993 c.680 §19; 2009 c.11 §12; 2009 c.16 §2]

164.050 [Repealed by 1965 c.253 §153]

164.055 Theft in the first degree. (1) A person commits the crime of theft in the first degree if, by means other than extortion, the person commits theft as defined in ORS 164.015 and:

(a) The total value of the property in a single or aggregate transaction is \$1,000 or more;

(b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an area affected by the riot, fire, explosion, catastrophe or other emergency;

(c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the security of the property;

(d) The subject of the theft is a firearm or explosive;

(e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); or

(f) The subject of the theft is a precursor substance.

(2) As used in this section:

(a) "Companion animal" means a dog or cat possessed by a person, business or other entity for purposes of companionship, security, hunting, herding or providing assistance in relation to a physical disability.

(b) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(c) "Firearm" has the meaning given that term in ORS 166.210.

(d) "Livestock animal" means a ratite, psittacine, horse, gelding, mare, filly, stallion, colt, mule, ass, jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

(e) "Precursor substance" has the meaning given that term in ORS 475.940.

(3) Theft in the first degree is a Class C felony. [1971 c.743 §125; 1973 c.405 §1; 1983 c.740 §32; 1987 c.907 §4; 1991 c.837 §9; 1993 c.252 §5; 1993 c.680 §20; 2005 c.706 §10; 2009 c.16 §3; 2009 c.610 §6]

164.057 Aggravated theft in the first degree. (1) A person commits the crime of aggravated theft in the first degree, if:

(a) The person violates ORS 164.055 with respect to property, other than a motor vehicle used primarily for personal rather than commercial transportation; and

(b) The value of the property in a single or aggregate transaction is \$10,000 or more.

(2) Aggravated theft in the first degree is a Class B felony. [1987 c.907 §5]

164.060 [Repealed by 1965 c.253 §153]

164.061 Sentence for aggravated theft in the first degree when victim 65 years of age or older. When a person is convicted of aggravated theft in the first degree under ORS 164.057, the court shall sentence the person to a term of incarceration ranging from 16 months to 45 months, depending on the person's criminal history, if:

(1) The victim of the theft was 65 years of age or older at the time of the commission of the offense; and

(2) The value of the property stolen from the victim described in subsection (1) of this section, in a single or aggregate transaction, is \$10,000 or more. [2008 c.14 §4]

Note: 164.061 was enacted into law but was not added to or made a part of ORS chapter 164 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

164.063 Disproportionate impact. (1) As used in this section, "disproportionate impact" means that, in a case of theft in the first degree under ORS 164.055 or aggravated theft in the first degree under ORS 164.057:

(a) The offender caused damage to property during the commission of the theft and the cost to restore the damaged property to the condition the property was in immediately before the theft is more than three times the value of the property that was the subject of the theft; or

(b) The theft of the property creates a hazard to public health or safety or the environment.

(2) The Oregon Criminal Justice Commission shall adopt rules that establish disproportionate impact as an aggravating factor that a court may consider as a substantial and compelling reason to impose an upward departure from a presumptive sentence under the rules of the commission. [2009 c.811 §7]

Note: 164.063 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.065 Theft of lost, mislaid property. A person who comes into control of property of another that the person knows or has good reason to know to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with intent to deprive the owner thereof, the person fails to take reasonable measures to restore the property to the owner. [1971 c.743 §126]

164.070 [Amended by 1965 c.253 §131; repealed by 1971 c.743 §432]

164.075 Theft by extortion. (1) A person commits theft by extortion when the person compels or induces another to deliver property to the person or to a third person by instilling in the other a fear that, if the property is not so delivered, the actor or a third person will in the future:

(a) Cause physical injury to some person;

(b) Cause damage to property;

(c) Engage in other conduct constituting a crime;

(d) Accuse some person of a crime or cause criminal charges to be instituted against the person;

(e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;

(f) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such conduct is not considered extortion when the prop-

erty is demanded or received for the benefit of the group in whose interest the actor purports to act;

(g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

(h) Use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(i) Inflict any other harm that would not benefit the actor.

(2) Theft by extortion is a Class B felony. [1971 c.743 §127; 1987 c.158 §27; 2007 c.71 §48]

164.080 [Repealed by 1971 c.743 §432]

164.085 Theft by deception. (1) A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, the person:

(a) Creates or confirms another's false impression of law, value, intention or other state of mind that the actor does not believe to be true;

(b) Fails to correct a false impression that the person previously created or confirmed;

(c) Prevents another from acquiring information pertinent to the disposition of the property involved;

(d) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance that the person does not intend to perform or knows will not be performed.

(2) "Deception" does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed. For purposes of this subsection, the theft of a companion animal, as defined in ORS 164.055, or a captive wild animal is a matter having pecuniary significance.

(3) In a prosecution for theft by deception, the defendant's intention or belief that a promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed.

(4) In a prosecution for theft by deception committed by means of a bad check, it is prima facie evidence of knowledge that the check or order would not be honored if:

(a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

OR AG'S RECORDS/MEETINGS LAW	RECORDS/MEETINGS LAW INTRO & INDEX	JH	11/01/11	F0a INTRODUCTION	F0a
TYPE LAW WORKBOOK NAME	DESCRIPTION - PORTRAIT HEADING	©	OO	05/01/11	

Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both." *James Madison (1822).*

Hardy Meyers, Attorney General
October 1, 2011

Copies of Attorney General's Manual may be purchased from:
Department of Justice, 100 Justice Building
1162 Court Street, NE, Salem, Oregon 97301-4096
(503) 378-2992, x 325

rec'd
1-15-14

Samuel Sabo
18171 Waldow Rd
West Linn, OR 97045
1/15/2014

Reference: CDC-10-03: Water resource Areas

To: Planning Commission

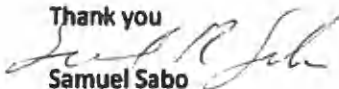
Dear Sir/Madam

First I want to thank you for allowing me to comment on the property Lot #32. My understanding by letter from the Planning Department several years ago was that I had 10 years before the Goal 5 would take effect my property. I was told it would be when the Final Plat (dated about May, 2004) was made for the PUD of Rogerfield Development. When My Son Damon tried to apply for a building permit about 2 years ago he was informed Goal 5 was in effect 10 years from the time the PUD for Rogerfield was submitted.

I own lot # 32 and previously owned Lot # 34. Our sons were not ready to build out there lots sooner in the time frame from when the PUD was recorded. My Son Damon Sabo was finally able to build his home on lot # 34 after going thru the Planning Department for approval which was very difficult, confusing, aggravating for all of us.

If I am still not able to build out Lot # 32 with a suitable lot size with the new amendments, I would like to go through the Planning Department to hear my options. No other lots in Rogerfield except Now Lot #32 is being affected and are all developed. Lot #32 is also encroached upon but a water right away.

Thank you



Samuel Sabo