

City Council Public Hearing Water Resource Area (WRA)

May 19, 2014



Proposed changes to Community Development Code (CDC) Chapter 32: WRA (CDC-10-03)*



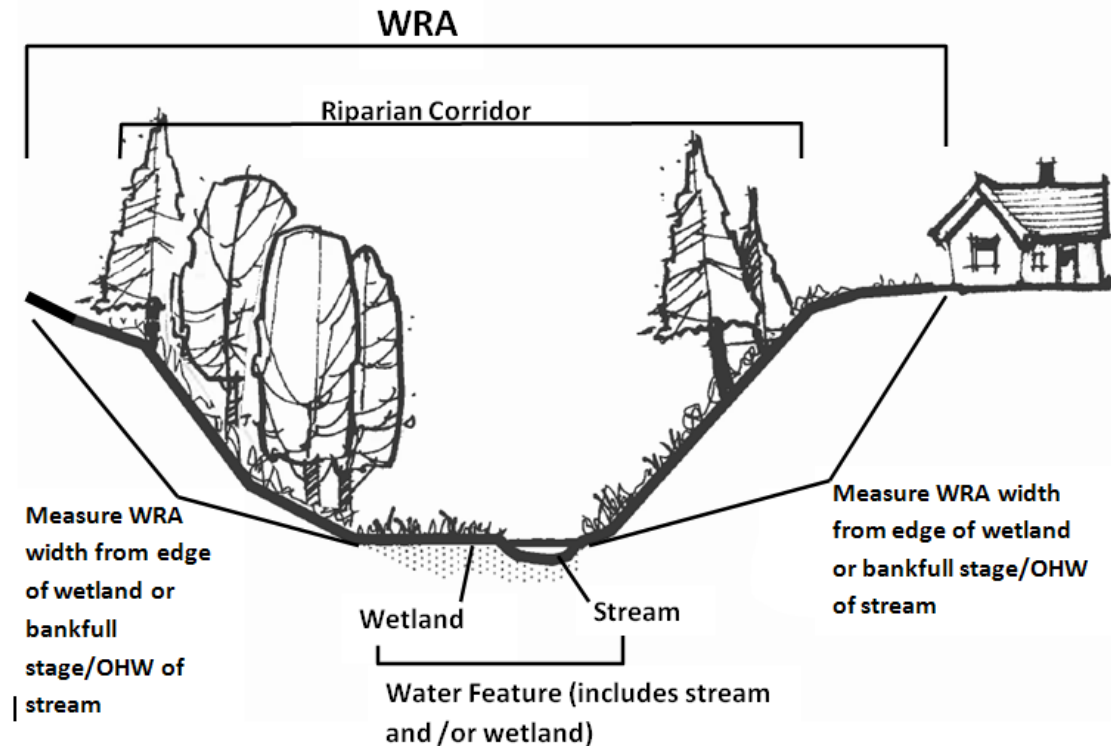
Background

- ◆ In 2007, the current WRA chapter was adopted and revealed problems from its inception.
- ◆ Revising the chapter became City Council goal in 2010.
- ◆ Over the next three years, an ad hoc group met 24 times resulting in a complete re-write of the chapter.
- ◆ About 1,700 Measure 56 notices were sent to every property owner within 200 feet of a WRA regarding the Planning Commission and City Council hearings.
- ◆ The Planning Commission held public hearings in January and February 2014 and recommended approval of the changes.
- ◆ Metro staff have positively reviewed this language three times, most recently, last week.

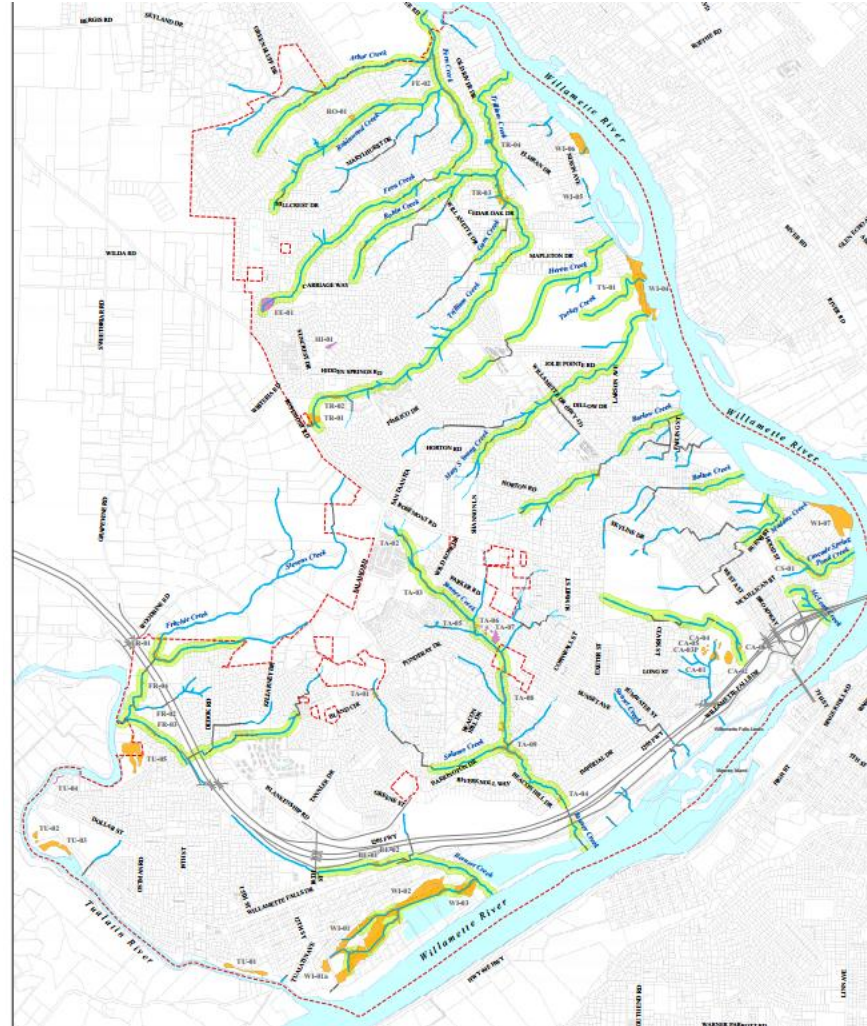
What is a Water Resource Area (WRA)?



The WRA boundary comprises all streams, wetlands, and any associated riparian areas plus an additional setback to buildings or structures.



West Linn has about 26 lineal miles of streams, wetlands and riparian corridors, not counting the Tualatin and Willamette Rivers





Five reasons why we need to protect WRAs

- ◆ **Legal.** To be in compliance with Oregon Statewide Planning Goal 5, cities in the Metro area are required to adopt land use regulations that address water quality and flood management (Metro Title 3) and protect fish and wildlife habitat (Metro Title 13).
- ◆ **Maintaining water quality.** Wetlands and vegetated areas along streams trap and filter pollutants that would otherwise reach the stream. This helps to maintain water quality at levels that will sustain fish and wildlife. Riparian area trees shade streams to keep water temperatures cool for fish.
- ◆ **Flood mitigation.** Wetlands plus instream and riparian vegetation slow down and store storm water that might otherwise result in flooding and erosion.
- ◆ **Wildlife habitat.** Wetlands, streams and riparian areas provide a variety of habitats for aquatic and terrestrial species. WRAs serve as corridors for wildlife to move around the city.
- ◆ **Recreation/aesthetic value.** Wetlands and stream corridors provide scenic relief from the urban environment as well as recreational opportunities such as hiking and wildlife viewing.



What's wrong with the current code?

- ◆ **No way to propose alternative setbacks** appropriate to the quality of the WRA.
- ◆ **No incentives to open up or daylight piped stream sections and restore these streams.**
- ◆ **Inadequate definitions and explanations.** (The LUBA case, City of West Linn vs. Horsey, pointed out the need to define “*development*”, “*temporarily disturbed land*”, etc.)
- ◆ **There is no WRA map to identify WRAs.** Instead we must use the Public Works Department’s Surface Water Management Plan (SWMP) map.
- ◆ **Legal lots of record within WRAs only get the minimum “*economically viable use*” of the land under the “Hardship” provisions.** This imposes severe limitations on the use of these properties.
- ◆ **Hardship cases can only develop a maximum of 5,000 square feet regardless of whether you own a small 6,000 square foot lot or a large 10 acre lot.** This raises the question of fairness for the large lot owner.

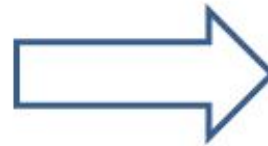


Proposed Solutions:

Replace utility map with a WRA specific map.



Existing Surface Water Management Plan Map



Proposed WRA Map

Proposed WRA Map eliminates the distraction of over 100 miles of buried concrete storm water pipe and similar facilities.

Continued protection of wetlands, streams and riparian areas



The existing and proposed protective setbacks will be substantially the same.



Comparison of existing and proposed WRA width

(as measured from edge of wetland, edge of bankfull flow/Ordinary High Water Mark, or other)



WRA by type	Existing	Proposed
0-25% slope	50'+7.5-15'	65'
Over 25% to distinct top of slope (ravine)	50'+7.5-15' from distinct top of bank	50' from distinct top of bank (may be reduced to 25 feet after geotechnical study demonstrates slope stability and no increased threat of erosion)
Riparian Corridor	100'+ 7.5-15'	100'

Create incentives to Daylight Streams



To staff's knowledge, no piped streams have been daylighted in the past 25 years.

Reducing the setback from 57.5 to 15 feet may encourage the property owner to daylight the stream.



Provide an alternative process to create WRA setbacks appropriate to specific site conditions



Per Metro's model ordinance, property owners will have the option to hire a wetland biologist or similarly trained professional to propose setbacks appropriate to the quality of their WRA, particularly severely disturbed sites.

Mitigation would be required at rates of "one to one" for on-site mitigation and "two to one" for off-site mitigation.

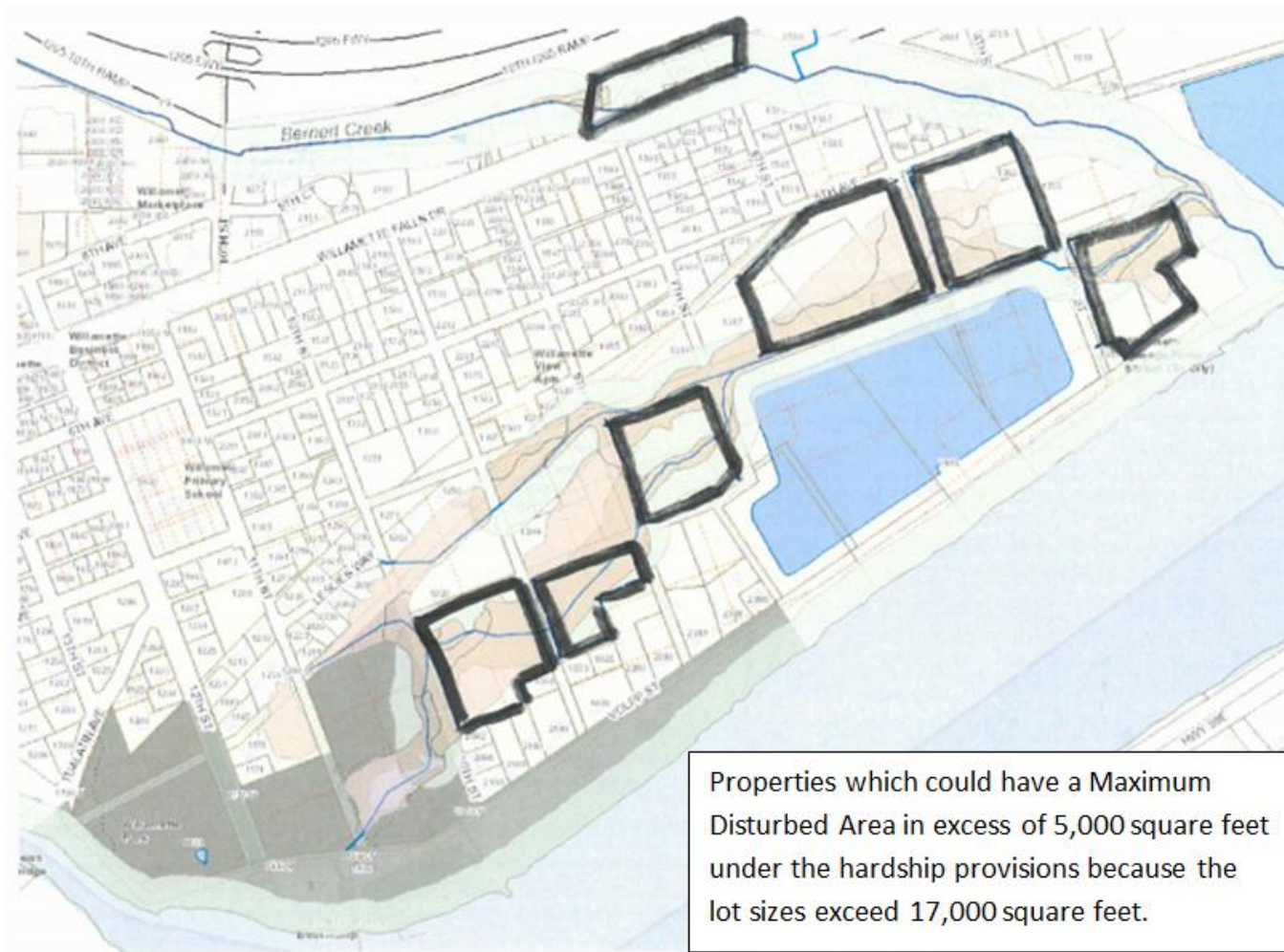


Comparison of existing and proposed hardship provisions



	Existing	Proposed
Show hardship	Must deprive owner of all economically viable use of their land.	Must deprive owner of reasonable use of their land.
Maximum Disturbance Area (MDA)	No more than 5,000 square feet of the WRA including access roads and driveways and temporarily disturbed areas.	5,000 square feet or 30% of the total area of the WRA; whichever is greater. Includes access roads, driveways and all graded areas. Does not include temporarily disturbed areas. Existing or previously disturbed areas shall not count against the MDA.

The 30% provision would only apply to about eight properties in the city.





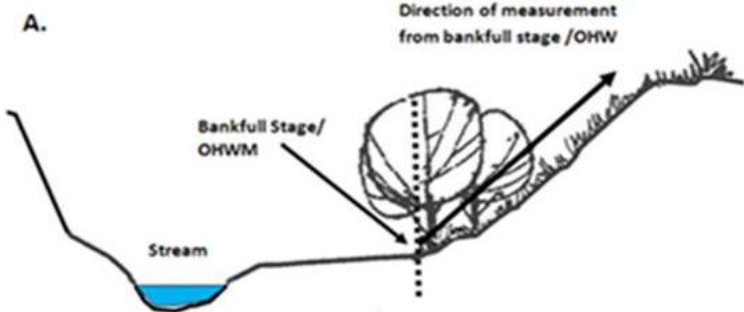

Exempt Temporarily Disturbed Areas

- Temporarily Disturbed Areas, like utility trenches that are subsequently backfilled and vegetatively restored, will not count in the Maximum Disturbed Area.



Make it easier to understand with more tables, illustrations and definitions.



<p>A.</p>  <p>Direction of measurement from bankfull stage /OHW</p> <p>Bankfull Stage/OHWM</p> <p>Stream</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>

Metro's Habitat Friendly Development Practices are incorporated into the approval criteria.





Additional thoughts...



Additional Recommended Changes: Mitigation

The proposed hardship provisions currently require no mitigation. That should be modified to require mitigation for disturbed areas as follows:

32.110 HARDSHIP PROVISIONS

I. The disturbed area created by the hardship provisions shall be mitigated for on a one to one basis for on-site mitigation or two to one basis for off-site mitigation and in agreement with 32.090.



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.

1. Development shall be conducted in a manner that will avoid or, if avoidance is not possible, minimize adverse impact on WRAs.

2. Mitigation and re-vegetation of disturbed WRA's shall be completed per sections 32.090 and 32.100 respectively.

Additional Recommended Changes: Hardships



32.110 HARDSHIP PROVISIONS OPTION

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. **The following provision shall also apply:**

1. The burden shall be on the applicant to demonstrate that the use of standards of this chapter, including Table 32-2 "Required Width of WRA", will deny them "reasonable use" of their property.

Additional Recommended Changes: Hardships



Type of development	Square footage included in MDA calculation?
<i>Table 32-5 MDA Calculation Summary:</i>	
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 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
<u>The development of lands that are not within the WRA</u>	<u>NO</u>

Additional Recommended Changes: Dedications and Easements



Recommended language from Assistant City Attorney relating to 32.050(C)

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.



Questions?