COUNCILOR BURGESS' PROPOSAL
(received August 14, 2008)

28.000 WILLAMETTE AND TUALATIN RIVER PROTECTION

28.010 PURPOSE

The purposes of the Willamette and Tualatin River Protection District are the following:

A. Protect, conserve, enhance, and maintain the natural, scenic historical, economic, and recreational qualities of lands along the Willamette and Tualatin Rivers.

B. Implement the policies of the West Linn Comprehensive Plan and the State of Oregon's Willamette River Greenway program.

C. Establish standards and requirements for the existing and future use of lands within the Willamette and Tualatin River Protection Areas.

D. Provide for the review of any intensification of use, change of use, or development within the Willamette and Tualatin River Protection Areas.

E. Encourage local stewardship of the Willamette and Tualatin River Protection Areas.

F. Protect, preserve and enhance legal public use and access to and along the shoreline and river, while recognizing and preserving private property rights.

G. Create incentives to direct development to areas where it is most appropriate.

H. Protect and enhance riparian habitat for native flora, fish, and wildlife within the Willamette and Tualatin Rivers and along their banks.

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Comment [SB1]: Highlighted for emphasis. I do not think this was done, e.g. speaking only of protecting public property rights and no incentives for single-family residential

28.020 DEFINITIONS

A. Anchor-secured docks. Docks that are held in place by cables that are then attached to the riverbed or shoreline by an anchoring system.

B. Authorized area. The area within the preference right area, as determined by DSL, where the applicant may place their water dependent structure (e.g. dock) is called the authorized area. (see preference rights definition and figures 28.1 and 28.2)

C. Boat House. Roofed structure to store and protect a boat. Boat houses may also include roofed open sided boat shelters.

D. Development. As used in this chapter includes any change of use or intensification of the use of land or water, to include 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.

E. Dock. Dock/ Float means an individual secured and stationary or floating structure (other than a mooring buoy) used exclusively for mooring boats and for similar uses. Dock can also refer herein to water dependent uses generically unless otherwise indicated from the context.

F. DSL Department of State Lands.

G. Gangway/Ramp. A variable slope structure intended to provide pedestrian access from the shore to a dock.

H. Habitat Conservation Areas (HCAs). Metro classified sensitive riparian areas as Habitat Conservation Areas or HCAs because of a combination of factors including vegetation, wildlife and fisheries habitat potential, slopes, forested overstory, wetlands, streams etc. These areas have been mapped by Metro (see http://www.metro-region.org/index.cfm/go/by.web/id=8385.) and are to be avoided to the degree possible with development instead directed to the areas designated "Not Affected by Recommendation" or "Allow Development". Lands that are designated as an HCA only due to a forested canopy shall be exempted under 28.040 "Exemptions" since trees are already protected in the Municipal Code and CDC Chapters 85 and 55. Similar exemptions will apply to lands that exhibit no constraints.

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Comment [SB2]: Can this be determined? Implication is that trees are not part of "habitat"

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I. Joint-use boat docks. These structures are designed for, and shall be used exclusively by, two or more riverfront property owners. Typically, two adjacent riverfront property owners share the joint dock. Owners of non-riverfront property may be co-applicants for a joint boat dock

J. Metro's Habitat Protection Map. An extensive review of the scientific literature, mapping and field work helped Metro identify the location of fish and wildlife habitat: one for waterside, or riparian, habitat and one for drier upland wildlife habitat. In 2001, Metro mapped the specific landscape features associated with these criteria, such as the location of trees, shrubs, wetlands, flood areas and steep slopes. Habitat areas were then ranked based on their relative health and importance for providing benefits to fish and wildlife. The resulting maps provide West Linn with the means to delineate areas that contain no constraints: "Not Affected by Recommendation" or "Allow Development" and where there are constraints (HCAs) ranging from low, medium to high. The maps are available at Metro's website at http://www.metro-region.org/index.cfm/go/by.web/id=8385.

Metro's Habitat Protection Map is incorporated by reference as part of this Chapter. Lands that are designated as an HCA only due to a forested canopy shall be exempted under 28.040 "Exemptions" since trees are already protected in the Municipal Code and CDC Chapters 85 and 55. Similar exemptions will apply to lands that exhibit no constraints.

K. Minor Modification. A change in the approved design that is equal to or less than a ten percent increase in the length, width or height of the facility. A change

of location by under 20 feet laterally for any part of the structure, ramp, dock etc. also constitutes a minor modification.

L. Non-Conforming Docks. Docks that do not meet the criteria of Chapter 28.

M. ODFW Oregon Department of Fish and Wildlife.

N. Ordinary high water (OHW) mark. The line on the bank or shore to which the water ordinarily rises in season. Also known as OHWM.

O. Ordinary low water (OLW) mark. The line on the bank or shore to which the water ordinarily recedes in season. Also known as OLWM.

P. Pilings. Plastic, wood, steel, or composite poles that are driven into, or otherwise attached to, the river bed to hold a dock in place or to support a pier.

Q. Pre-existing Docks. Docks that are in existence prior to the date of adoption of this code.

R. Preference Rights. The preference rights area represents the water surface that is allocated to each riverfront property owner by Department of State Lands (DSL). Starting with the center thread of the river, DSL extends lines at right angles from that thread towards the OHW mark of the respective properties along the shoreline. (Because the thread of the river twists and turns, the line extending to shore can vary also in its angle.) The area within the preference right area that the applicant may place their water dependant structure (e.g. dock) is called the authorized area.
(see authorized area definition and figures 28.1 and 28.2)

S. Private railed launch facilities. These are rail lines that usually extend from an on-shore boat storage facility above OHW, across the beach and into the water below OLW for the purpose of launching a boat.

T. Protection Area. Collective term to describe the Willamette River Greenway boundary and/or Tualatin River Protection Area boundary.

Figure 28.1

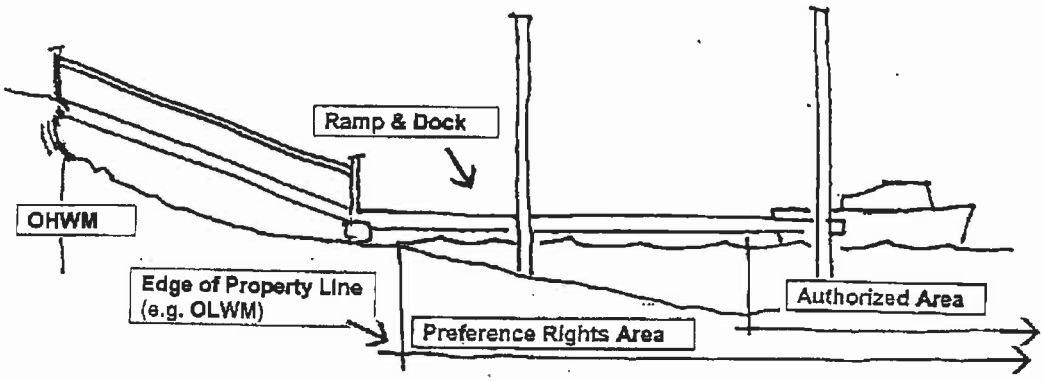
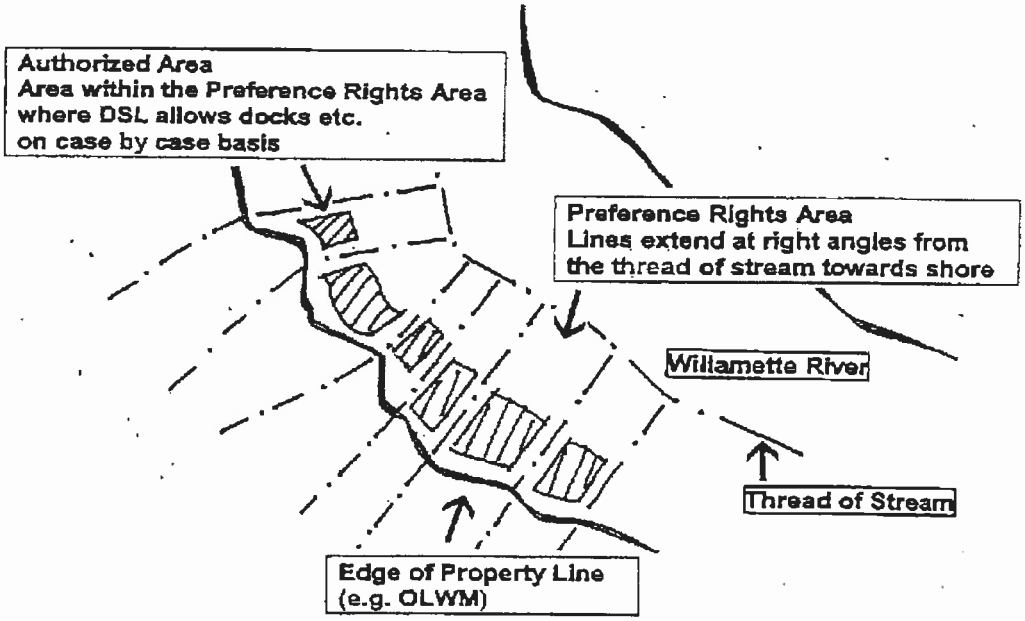


Figure 28.2



U. Riparian Areas. Land and semi-submerged lands between the OHW and OLW.

V. Riparian Vegetation. Plants native to the riparian areas.

W. Significant modification. A change in the approved design that is more than a ten percent increase in the length, width or height of the facility. A change of location by 20 feet or more laterally for any part of the ramp or dock also constitutes a significant modification.

X. Walkway/Boardwalk. A floating or non-floating platform that either provides pedestrian access along a shoreline or within a riparian area, it may also act as a bridge between two bodies of land.

Y. Water Dependent Uses. Any use that requires access to, or use of, the rivers.

Z. Water Resource Area. Any area that consists of a wetland identified in the West Linn Local Wetlands Inventory and the required transition and setback area around the wetland pursuant to CDC Chapter 32, or any major or minor open channel drainageway identified by the most recently adopted West Linn Surface Water Management Plan and the required transition and setback area around the major or minor open channel pursuant to CDC Chapter 32, except for small man-made open roadside drainage swales in residential areas, or any riparian corridor (not including lands adjacent to the Willamette or Tualatin Rivers) and the required transition and setback area for the riparian corridor pursuant to CDC Chapter 32.

Comment [SB3]: This appears to be a hold over from Chapeter 32; at best it conflicts with 28110.L

AA. Willamette River Greenway Area. The area designated by the City of West Linn Comprehensive Plan as within the Willamette River Greenway and thus subject to the provisions of Goal 15 (Willamette Greenway) of the Oregon Statewide Planning Program.

28.030 APPLICABILITY

A. The Willamette and Tualatin River Protection Area is an overlay zone. The zone boundaries are identified on the city's zoning map, and include

1. All land within the City of West Linn's Willamette River Greenway Area.

2. All land within 200 feet of the mean low water line of the Tualatin River, and all land within the 100-year floodplain of the Tualatin River.

3. In addition to the Willamette Greenway and Tualatin River Protection Area boundaries, this chapter also relies on Metro's Habitat Protection Map to delineate where development should or should not occur.

Specifically, the intent is to keep out of, or minimize disturbance of, the Habitat Conservation Areas (HCA's). Therefore, if all, or any part, of a lot is in the Willamette Greenway and Tualatin River Protection Area boundaries, and there are HCA's on the lot a Willamette and Tualatin River Protection Area permit shall be required unless the development proposal is exempt per CDC 28.040.

B. Where a stream, creek or riparian corridor (not including the Willamette and Tualatin River riparian corridor) passes through, bisects or is adjacent to a property which is also in the Willamette or Tualatin River Protection areas, the standards of this chapter shall apply only to those portions of the lot fronting the river. Meanwhile, development in those portions of the property facing or adjacent to the stream, creek or riparian corridor shall meet the transition, setbacks and other provisions of the CDC Chapter 32: WRA.

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Comment [SB4]: Confusing

C. All uses permitted under the provisions of the underlying base zone and within the Willamette and Tualatin River Protection Area zone are allowed in the manner prescribed by the base zone subject to applying for and obtaining a permit issued under the provisions of this chapter unless specifically exempted per CDC 28.040.

D. The construction of a structure in the HCA or the expansion of a structure into the HCA when the new intrusion is closer to the protected water feature than the pre-existing structure.

28.040 EXEMPTIONS/USES PERMITTED OUTRIGHT

The following development activities do not require a permit under the provisions of this chapter. (Other permits may still be required.)

A. Customary dredging and channel maintenance conducted under permit from the state of Oregon.

B. Seasonal increases in gravel operations under permit from the state of Oregon and/or the United States Army Corps of Engineers.

C. Scenic easements and their maintenance.

D. Replacement-in-kind or minor modification by public utilities for pump stations, public bathrooms, utilities, existing utility lines, wires, fixtures, equipment, circuits, appliances, and conductors and similar facilities.

E. Flood emergency procedures and the maintenance and repair of existing flood control facilities.

F. Signs, markers, announcements, etc. placed by a public agency to serve the public.

G. Maintenance or repair of existing residential houses, structures, docks, provided the work does not involve expansion of building square footage or building footprint. Painting with earth tones is exempt too.

H. Storage of equipment or material associated with uses permitted, providing that the storage complies with applicable provisions of this chapter.

I. A change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated.

J. Landscaping with native or existing vegetative materials only.

K. Routine repair and maintenance of legally established structures, utilities, roads, and manmade water control facilities such as constructed ponds or lakes, wastewater facilities, and stormwater treatment facilities that do not alter the location or footprint of the structure, utility, or road.

L. Reasonable emergency procedures necessary for the safety or protection of property.

M. Minor modifications, reviewed and approved by the Planning Director.

N. The action of any City officer or employee of any public utility to remove or alleviate from immediate danger to life or property, to restore existing utility service or to reopen a public thoroughfare to traffic provided that after the emergency has passed, adverse impacts are mitigated in accordance with CDC 32.070.

O. Routine maintenance activities such as removing dead or dying vegetation that constitutes a hazard to life or property, pollutants, trash, eroded material, etc.

P. Wetland, riparian, and upland enhancement or restoration projects done with approval of city staff and regulatory agency personnel (e.g. ODFW, DSL).

Q. Temporary and minor clearing not to exceed 200 square feet 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. For wetlands, such clearing shall not occur within the actual wetland itself, but only within the adjacent wetland transition area. 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.

R. Removal of plants identified as nuisance or prohibited plants on the Metro Native Plant List and the planting or propagation of plants identified as native plants on the Metro Native Plant List. Handheld tools must be used to remove nuisance or

Comment [SB5]: At best out of place but more importatntly, when did we start regulating the color of single-family houses/

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Comment [SB6]: Does this mean if English Ivy is there , we will allow more of it?

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Comment [SB7]: Define

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Comment [SB8]: Good

Comment [SB9]: Good

prohibited plants, and after such removal all open soil areas greater than 25 square feet must be replanted.

S. In cases where the required development standards of this chapter are applied and met with no encroachment into HCAs, and also meets (T) and (U) below, where applicable, then no permit under the provisions of this chapter will be required. For example, if the proposed development or action will be located in the "Not Affected by Recommendation" or "Allow Development" area and keeps out of the Habitat Conservation Areas a Willamette or Tualatin River Protection Area permit shall not be required. Floodplain Management Area or other permits may still be required.

T. The construction, remodeling or additions of home and accessory structures that take place completely within the "Not Affected by Recommendation" or "Allow Development" of Metro's Habitat Conservation Maps shall be exempt from a Willamette or Tualatin River Protection Area permit. Where the "Not Affected by Recommendation" or "Allow Development" area goes to the edge of a clearly defined top of bank, the applicant's home and accessory structures shall be set back at least 15 feet from top of bank. At grade patios and deck areas within 30 inches of natural grade may extend to within five feet from top of bank. No overhang or cantilevering of structures permitted over HCA or over setback area. If these terms are met then no permit will be required under this chapter.

U. Maintenance, alteration, expansion, repair and replacement of existing structures are exempt, provided that;

(1) the rebuilding of existing residential and non-residential structures within the same foundation lines as the original structure(s) including, but not limited to, those damaged or destroyed by fire or other natural hazards; or,

(2) an alteration, expansion, repair and replacement of a house or structure per the standards of 28.110(E)

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(3) the alteration, expansion, repair and replacement of a house or structure in the vertical sense where the applicant is adding additional floors or expanding above the footprint of the existing structure regardless of whether the structure's footprint is in an HCA or not.

Comment [SB10]: What if the expansion requires additional parking area?

V. Maintenance of existing gardens, pastures, lawns, and landscape perimeters, including the installation of new irrigation systems within existing gardens, lawns, and landscape perimeters. However, the city encourages restoration of areas within the drainageway transition to native vegetation.

Comment [SB11]: No, this does not encourage zero- or nature-scaping

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W. Low impact public or private outdoor recreation facilities including, but not limited to, multi-use water permeable paths and trails to a maximum width of four feet, picnic areas, interpretive displays, benches. Gazebos or similar structures

must be out of the HCA areas to be exempt. No more than 500 square feet of new lot coverage allowed under this provision.

X. Interior remodeling.

Y. Installation of new and/or replacement water permeable driveways, paths and patios and two track driveways outside of HCAs. Surface area cannot exceed amount allowed by lot coverage standards of underlying zone.

Z. Accessory structures under 15 feet tall and 500 square feet located on the opposite side of the house or principal structure from the resource area requires only a building permit.

AA. Lands that are designated as an HCA only due to a forested canopy shall be exempted since trees are already protected in the Municipal Code and CDC Chapters 85 and 55. Development of lands that are designated as HCA due to other variables such as wetlands, flood areas and steep slopes shall still be regulated by the provisions of this chapter and not exempted.

28.050 PROHIBITED USES

A. The following are prohibited:

1. Residential floating structures, also known as floating homes or houseboats.

2. Permanent ski jumps.

3. More than one dock with or without a boathouse per river front lot of record, except city owned tax lots 100, 200, 300, 400, and 500 of Assessor's Map 21 East 24.

4. The location of any dock under any water condition that prevents what would otherwise be historic, safe, uninterrupted water passage.

5. Any new lawn area or garden area consisting primarily of non-native vegetation within HCA lands. A lawn area in the "Allowed Development" area is permitted.

Comment [SB12]: Good

6. Planting of any species identified as nuisance or prohibited plants on the Metro Native Plant List.

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7. Uncontained storage of hazardous materials as defined by the Oregon Department of Environmental Quality and dumping of any materials of any kind.

Comment [SB13]: But storage of contained hazardous wastes is okay?

8. Excessive trimming or removal of existing native vegetation within the HCA unless it is to reestablish native vegetation in place of non-native or invasive vegetation.

28.060 ADMINISTRATION AND APPROVAL PROCESS

An application for a Protection Area Permit shall be processed pursuant to the provisions of CDC Chapter 99, Procedures for Decision-Making: Quasi-Judicial.

28.070 PLANNING DIRECTOR VERIFICATION OF METRO HABITAT PROTECTION MAP BOUNDARIES

A. 1. Metro's Habitat Protection map is the basis for identifying lands "Not Affected by Recommendations" or "Allow Development" areas and the HCA areas. A copy of the map is on file at the city and is adopted by reference as the mapping tool to be used with this chapter.

It is inevitable, given the large area that Metro's Habitat Protection map covers, that there may be some errors. In cases where, for example, three properties share the same contours and the same natural features but the map shows the middle lot with an HCA designation on it, it is reasonable to question the accuracy of that HCA classification. Using tree canopy as the sole basis for HCA designation will also allow a change in designation since trees are already protected in the Municipal Code and CDC Chapters 55 and 85.

2. The Planning Director shall verify the appropriate HCA or non-HCA classification by site visits or consultations with Metro or by other means. In cases where the determination is that the map is incorrect, the Planning Director will make a written finding of this as well as the site conditions that led to that conclusion.

Comment [SB14]: What are the criteria to make this determination?

3. Class C public notice, per CDC Chapter 99, shall be required prior to issuance of the reclassification decision if it involves re-classification of the HCA boundary to allow the construction of, or addition to, a house.

4. This determination and findings shall become part of the City record and part of the record for any associated land use application. The Planning Director shall also include in the record the revised map boundary. The

Planning Director's determination and map revisions shall also be sent to Metro so that their map may be corrected as necessary.

5. The Planning Director determination is appealable to City Council per CDC Chapter 99.

28.080 TIME LIMIT ON APPROVAL

A. Approval of a Protection Area permit shall be void if

1. Substantial work (e.g. piling installation etc) is not complete within three years of the approval date.

Comment [SB15]: Is this longer than vesting for other land use approvals?

2. The site plan on which the approval is based is significantly modified or where actual construction deviates from the approved plans to the extent that it constitutes more than a minor modification as defined by this chapter. Any such change in the plan or conditions of approval shall require a new application and hearing pursuant to the provisions set forth in this chapter and Chapter 99.

28.090 SUBMITTAL REQUIREMENTS: THE APPLICATION

A. An application for a Protection Area permit shall be initiated by the property owner or the owner's authorized agent. Evidence shall be provided to demonstrate that the applicant has the legal right to use the land above the OLW. The property owner's signature is required on the application form.

B. A prerequisite to the filing of an application is a pre-application conference at which time the Planning Director shall explain the provisions of this chapter and provide appropriate forms as set forth in Section 99.030(B).

C. An application for a Protection Area permit shall include the completed application and:

1. Narrative which addresses the approval criteria of Section 28.110.

2. A site plan, (28.120).

3. A grading plan if applicable, (28.130).

4. Architectural drawings if applicable, (28.140).

5. A landscape plan if applicable, (28.150).

6. A mitigation plan, if applicable (28.160).

Comment [SB16]: Why is a HCA map not required?; See 28.110.H.1.

One original application form must be submitted. Three copies at the original scale and three copies reduced to 11 X 17 inches or smaller of all drawing and plans must be submitted. Three copies of all other items, including the narrative, must be submitted. The applicant shall also submit a disk, in electronic readable format, of the complete application. When the application submittal is determined to be complete, additional copies may be required as determined by the Planning Director.

D. The applicant shall pay the requisite fees.

E. The applicant shall be responsible for, and shall apply for, all applicable State and/or Federal permits.

F. The applicant shall include a DSL map, if available, of the preference rights area if a water surface structure is proposed.

28.100 ADDITIONAL SUBMITTAL INFORMATION REQUIRED, WAIVER OF SUBMITTAL REQUIREMENTS

A. The Planning Director may require additional information as a part of the application subject to the provisions of Section 99.035(A).

B. The Planning Director may waive any submittal requirement for the application subject to the provisions of Section 99.035(B) and (C).

28.110 APPROVAL CRITERIA

No application for development on property within the Protection Area shall be approved unless the decision making authority finds that the following standards have been met or can be met by conditions of approval.

The development shall comply with the following criteria as applicable:

A. Development: All Sites

1. Sites shall first be reviewed using Metro's Habitat Protection Map to determine if the site is buildable or what portion of the site is buildable. HCAs shall be verified by the Planning Director per section 28.070 and site visit. Also, "tree canopy only" HCAs shall not constitute a development limitation and may be exempted per section 28.070A)(1). The Municipal Code protection for trees and CDC Chapter 55 and 85 tree protection shall still apply.

2. Development in the "Not affected by recommendation" or "Allow Development" areas as designated in the Metro Map for HCAs shall be the preferred choice.

3. If the subject property contains no lands designated "Not affected by recommendation" or "Allow Development" and development within HCA land is the only option it shall be directed towards the low HCA areas first then medium HCA areas and then to High HCA as the last choice. The goal is to, at best, avoid or, at least, minimize disturbance of the HCAs. (Water dependant uses are exempt from this provision.)

B. Single-family or attached residential.

1. Development of single-family homes or attached housing shall be permitted on the following Metro Habitat Protection Map land classifications and in the following order of preference with "a" being the most appropriate and "d" being the least appropriate:

   a. "Not affected by recommendation" or "Allow Development"
   b. Low HCA
   c. Moderate HCA
   d. High HCA

   (i) Land classifications b, c and d shall be avoided if at least a 5,000 square foot area of buildable land ("a") exists for home construction, and associated impermeable surfaces (driveways, patios etc.).

   (ii) If 5,000 square feet of buildable land ("a") is not available for home construction and associated impermeable surfaces (driveways, patios etc.), then combinations of land classifications (a, b and c) totaling a maximum of 5,000 square feet shall be used to avoid intrusion into high HCA lands. The underlying zone FAR shall also apply as well as allowable lot coverage.

   (iii) Development may occur on legal lots and non-conforming lots of record located completely within the HCA areas or that have the majority of the lot in the HCA to the extent that the applicant has less than 5,000 square feet of non-HCA land.

   Development shall disturb the minimum necessary area to allow the proposed use or activity, shall direct development to any available non-HCA lands, and in any situation shall create no more than 5,000 square feet of impervious surface. (Driveways, paths, patios etc that are constructed of approved water permeable materials will not count in

Comment [SB17]: "May be permitted"?
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Comment [SB18]: Allowed or not in HCA?
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Comment [SB19]: Weak language
Comment [SB20]: This is a very big house even if only one story
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calculating the 5,000 square foot lot coverage.) The underlying zone FAR shall also apply as well as allowable lot coverage.

Comment [SB21]: Is this true only for the lots within "HCA" aeas?

When only HCA land is available then the structure shall be placed as far away from the water resource area or river as possible. To facilitate this, the front setback of the structure or that side which is furthest away from the water resource or river may be reduced to a five foot setback from the front property line without a variance. Any attached garage must provide a 20 foot by 20 foot parking pad or driveway so as to provide off street parking exclusive of the garage. The setbacks of 28.110(C) shall still apply.

(iv) Driveways, paths, patios etc that are constructed of approved water permeable materials will be exempt from the lot coverage calculations of i-iv above and the underlying zone. All other lot coverage and floor area ratio standards shall apply.

Comment [SB22]: No this conflicts with habitat and access

(v) Table showing development allowed by land classification:

	Development Allowed
Non-HCA ("a")	Yes
Low-Medium HCA ("b" & "c")	Yes if less than 5,000 sq. ft. of non-HCA land available. Avoid "d".
High HCA ("d")	Yes if less than 5,000 sq. ft. of a, b and c land available. Avoid "d".
Non-Conforming Structures (structures on HCA land)	Yes: vertically, laterally and/or away from river. Avoid "d".

(The underlying zone FAR shall also apply as well as allowable lot coverage.)

C. Setbacks from Top of Bank

1. Development of single family homes or attached housing on lands classified as "Not affected by recommendation" or "Allow Development" shall require a structural setback of 15 feet from any top of bank that represents the edge of the land classified as "Allow Development".
2. At grade water permeable patios or decks within 30 inches of grade may encroach into that setback but must keep five feet from top of bank and cannot cantilever over the top of bank or into the five foot setback area.
3. For properties that lack a distinct top of bank a structural setback of 15 feet shall be back from the edge of the "allowed development" area closest to the river or water resource.

Comment [SB23]: What about when the top of bank is within the HCA?

Comment [SB24]: I would like to see language that says everywhere -"15' from top of bank or 35' from OHW whichever is greater"

D. Development of Lands Designated for Industrial, Commercial, Office, Public and other Non-Residential uses.

1. Development of lands designated for industrial, multi-family, mixed use, commercial, office, public and other non-single family residential uses may be permitted on the following land classifications and in the following order of preference with "a" being the most appropriate for development and "d" being the least appropriate:

   a. "Not affected by recommendation" or "Allow Development"
   b. Low HCA
   c. Moderate HCA
   d. High HCA

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2. Developing HCA land

   a. Where non-HCA or areas designated as "Not affected by recommendation" or "Allow Development" are lacking or are in such limited supply as to render uses allowed by the underlying zone (e.g. general industrial) functionally impractical, the HCA may be utilized and built upon but shall emphasize "b" and "c" classifications.

   b. Where it is proposed that a "d" or high HCA classification be used, the property owner must demonstrate that the proposed use is clearly a water dependent use. Proximity to the river for the purpose of views is not valid grounds. Public interpretive facilities of historic facilities such as the government locks will be permitted.

E. Hardship Provisions and Non-Conforming Structures

1. For the purpose of this chapter, non-conforming structures are those whose building footprint is completely or partially on HCA lands. Any additions, alterations, replacement, or rehabilitation of existing non-conforming non-water-related structures (including decks), roadways, driveways, accessory uses and accessory structures shall avoid encroachment upon the HCAs, especially high HCAs, except that:

    a. A 10 foot lateral extension of an existing building footprint is allowed if the lateral extension does not encroach any further into the HCA or closer to the river or water resource area than the portion of the existing footprint immediately adjacent.

    b. An addition to the existing structure on the side of the structure opposite to the river or water resource area shall be allowed.

    c. The same allowance for the use of, and construction of, 5,000 square feet of total impervious surface for sites in HCA's per section 28.110(B) (ii-iv) shall apply to lots in this section.

    d. Vertical additions are permitted including the construction of additional floors.

    e. The provisions of CDC Chapter 66: Non Conforming Structures-shall not apply.

F. Access and Property Rights

1. Private lands within the Protection Area shall be recognized and respected.

2. Where a legal pre-existing public access to the river or elsewhere in the Protection Area exists, that legal public right shall be recognized and respected.

Comment [SB25]: What about not pre-exisitng public access? I thought we wanted to encourage access even where it does not currently exist.

3. To construct a water dependent structure such as a dock, ramp, or gangway shall require that all pre-existing legal public access or similar legal rights in the Protection Area be recognized and respected. Where pre-existing legal public access, such as below

the OLW is to be obstructed by, for example, a ramp, the applicant shall provide a reasonable alternate route around, over or under the obstruction. The alternate route shall be as direct as possible. The proposed route, to include appropriate height clearances under ramps/docks, specifications for safe passage over or around ramps and docks, shall be reviewed and approved by the Planning Director for adequacy.

4. Any public or private water dependent use or facility shall be within established DSL authorized areas.

G. Incentives to Encourage Access in Industrial, Multi-family, Mixed use, Commercial, Office, Public and Non Single Family Residential Zoned Areas

Comment [SB26]: Why don't we want to encourage access with incentives in single-family zones?

1. For all industrial, multi-family, mixed use, commercial, office, public and other non-single family residential zones, this section encourages the dedication or establishment of access easements to allow legal public access to, and along, the river. Support for access may be found in the Parks Master Plan, a neighborhood plan or any applicable adopted sub-area plans. The emphasis will be upon locating paths where there is a reasonable expectation that the path can be extended to adjacent properties to form a connective trail system in the future, and/or where the trail will provide opportunities for appreciation of, and access to, the river.

2. Height or density incentives may be available to developers who provide public access. Specifically, commercial, industrial, multi-family, mixed use, and public projects may be constructed to a height of up to 60 feet on the condition that they:

Comment [SB27]: What about coverage or other incentives

   a. Provide a minimum 24 foot wide all weather public access path along the project's entire river frontage; and,

   b. Provide a minimum 10 foot wide all weather public access path from an existing right of way to that riverfront path or connect the riverfront path to an existing riverfront path on an adjoining property that accesses a public right of way.

No variance is required for this height allowance. Density incentives are available to developers to encourage provision of similar public access to, and/or along, the river for planned unit developments per CDC 24.150(B).

Comment [SB28]: Confusing

H. Partitions, Subdivisions and Incentives

1. When partitioning a property into parcels, an applicant shall verify the boundaries of the HCA on the property.

2. Applicant shall partition or subdivide the site so that all parcels have a buildable site or envelope available for home construction located on non-HCA land or areas designated "Not affected by recommendation" or "Allow Development" per the Metro HCA map.

3. Development of HCA dominated lands shall be undertaken as a last resort. A Planned Unit Development (PUD) of CDC Chapter 24 may be required.

4. Incentives are available to encourage provision of public access to, and/or along, the river. By these means, Planned Unit Developments shall be able to satisfy the shared outdoor recreation area requirements of CDC 55.100(F). Specifically, for every square foot of riverfront path, the applicant will receive credit for two square feet in calculating the required shared outdoor recreation area square footage. Applicants shall also be eligible for a density bonus under CDC 24.150(B). To be eligible to receive either of these incentives, applicants shall:

   a. Provide a minimum 24 foot wide all weather public access path along the project's entire river frontage; and,

   b. Provide a minimum 10 foot wide all weather public access path from an existing right of way to that riverfront path or connect the riverfront path to an existing riverfront path on an adjoining property that accesses a public right of way.

I. Docks and other Water Dependent Structures

1. Once the preference rights area is established by DSL, the property owner identifies where the water dependent use will be located within the authorized portion of the preference rights area. The water dependent use should be centered or in the middle of the preference rights/authorized area or meet the side yard setbacks of the underlying zone.

   Private and public non-commercial docks are permitted where dredging is required so long as all applicable Federal and State permits are obtained. Dredging is encouraged if deposits silt up

under an existing dock. Dredging is seen as preferable to the construction of longer docks/ramps.

2. Both joint and single use docks shall not extend into the water any further than necessary to provide four feet between the ships keel or fixed propeller/rudder and the bottom of the water at any time during the waters lowest point.

3. In no case except as provided in Section 28.110 shall the ramp and dock extend more than 100 feet from OLW towards the center of the river or slough. In the case of L shaped docks, the 100 feet shall be measured from the OLW to the furthest part of the dock closest to the center of the river.

4. Docks on sloughs and similar channels shall not extend more than 30% of the distance between two land masses at OHW such as between the main land and an island or peninsula, measured in a lineal manner at right angle to the dominant shoreline. In no way shall a dock impede existing public usage or block navigation of a channel.

5. Boat storage associated with a rail launch facility shall be located above the OHW, either vertically raised above the ordinary high water line or set back behind the OHW. Such boat storage structure will be natural wood colors or similar earth tones. Private railed launch facilities are permitted for individual boat owners. The onshore setback of the storage structure is equal distance on both sides as extended perpendicular to the thread of the stream, or 7.5 feet whichever is greater setback.

6. The width of each deck section shall be no more than 12 feet wide.

7. For both single user and joint user docks, pilings shall not exceed a maximum height of eight feet above the 100-year flood elevation.

8. A single user non-commercial dock shall not exceed 400 square feet in deck area. The boat slip is not included in the calculation of this square footage limitation.

9. Private non-commercial boathouses are allowed but only if they are within 50 feet of OLW and/or in locations sufficiently screened from view so that they do not have a significant visual impact on views from adjacent and nearby homes. Building and roof colors shall be brown, gray, beige, natural or similar earth tones. Noncommercial boathouses shall not exceed 12 feet in height measured from the boathouse deck level to the roof peak. The size

of the boathouse shall be sized to accommodate one boat only and shall not exceed a footprint greater than 500 square feet. Boatlifts are permitted within the boathouse. The above provisions also apply to open walled boat shelters with or without boatlifts.

J. Joint Docks

1. Joint use boat docks may be permitted by the reviewing authority where the applicants are riverfront property owners, ideally owners of adjacent lots of record.

2. Co-owners of the joint dock use shall be prohibited from having their own non-joint dock.

3. A joint use agreement shall be prepared which will be included in the application for review by the reviewing authority and subsequently recorded. A copy of the recorded document with County Recorder's stamp shall be submitted to the city.

4. A condition of approval for any joint use permit shall be that the dock must be used to serve the same lots of record for which the dock permit was issued. Joint use cannot be transferred to, or used by, any party other than the original applicants or the future owners of those properties.

5. Joint docks may go on the common property line between the two landowners who are sharing the dock. Unless agreed to by the adjoining owner, joint docks not being shared with the adjacent property owner must be at least 15 feet from the preference rights area side lines or centered in the middle of the preference rights area.

K. Non-Conforming Docks and other Water related structures.

Pre-existing non-conforming structures including docks, ramps, boathouses etc. as defined in this chapter may remain in place. Replacement in kind (e.g. replacement of decking and other materials) will be allowed provided the replacement meets the standards of this chapter. However, any non-conforming structure that is damaged and destroyed or otherwise to be replaced to the extent that the rebuilding or replacing (including replacement in kind) would exceed 50 percent of the current replacement cost of the entire structure, the owner shall be required to meet all the standards of this chapter.

Comment [SB29]: Is this a repeat of the dock language we already approved and repeated here? If so, why not just reference the section?

Is there new additional limitation in an HCA area?

L. Roads, Driveways, Utilities, or Passive Use Recreation Facilities

Roads, driveways, utilities, or passive use recreation facilities may be built in and across water resource areas when no other practical alternative exists but shall use water permeable materials unless City Engineering standards do not allow that. Construction to the minimum dimensional standards for roads is required. Full mitigation and revegetation is required, with the applicant to submit a mitigation plan pursuant to CDC Section 32.070 and a revegetation plan pursuant to CDC Section 32.080. The maximum disturbance width for utility corridors is as follows:

Comment [SB30]: IS this a hold over from Chapeter 32 , i.e. should it say HCA? "Water Resource Area" by definition excludes the Willamette and Tualatin Rivers.

1. For utility facility connections to utility facilities, no greater than 10 feet wide.
2. For upgrade of existing utility facilities, no greater than 15 feet wide.
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% of the total linear feet of Water Quality Resource Area, whichever is greater.

M. Structures

All buildings and structures in HCA's and riparian areas, including all exterior mechanical equipment should be screened, colored, or surfaced so as to blend with the riparian environment. Surfaces shall be non-polished/reflective or at least expected to lose their luster within a year. In addition to the specific standards and criteria applicable to water dependent uses (docks), all other provisions of Chapter 28 shall apply to water dependent uses, and any structure shall be no larger than necessary to accommodate the use.

N. Water Permeable Materials for Hardscapes

The use of water permeable materials for parking lots, driveways, patios, paths as well as flow through planters, box filters, bioswales and drought tolerant plants are strongly encouraged in all "a-b" land classifications and shall be required in all "c-d" land classifications. The only exception in the "c-d" classification would be where it is demonstrated that water permeable driveways/hardscapes could not structurally support the axle weight of vehicles or equipment/storage load using those areas. Flow through planters, box filters, bioswales, drought tolerant plants and other measures of treating and/or detaining runoff would still be required in these areas.

Comment [SB31]: Should these "heavy" uses even be allowed in the HCA?

O. Signs and graphics

No sign or graphic display inconsistent with the purposes of the Protection Area shall have a display surface oriented toward or visible from the Willamette or Tualatin River. A limited number of signs may be allowed to direct public access along legal routes in the Protection Area.

P. Lighting

Lighting shall not be focused or oriented onto the surface of the river except as required by the Coast Guard. Lighting elsewhere in the Protection Area shall be the minimum necessary and shall not create off site glare or be omni directional. Screens and covers will be required.

Q. Parking

Parking and unenclosed storage areas located within or adjacent to the Protection Area boundary shall be screened from the river in accordance with Chapter 46, Off Street Parking. The use of water permeable material to construct the parking lot is either encouraged or required depending on HCA classification per section 28.110(D)(4).

R. Views

Significant views of the Willamette and Tualatin Rivers shall be protected as much as possible as seen from the following public viewpoints: Mary S. Young Park, Willamette Park, Cedar Oak Park, Burnside Park, Maddox Park, Cedar Island, the Oregon City Bridge, Willamette Park, and Fields Bridge Park.

Where options exist in the placement of ramps and docks, the applicant shall select the least visually intrusive location as seen from a public viewpoint. However if no options exist, then the ramp, pilings and dock shall be allowed at the originally proposed location.

S. Aggregate Deposits

Extraction of aggregate deposits or dredging shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise and safety, and to promote necessary reclamation.

T. Changing the Landscape/Grading

1. Existing predominant topographical features of the bank line and escarpment shall be preserved and maintained except for

disturbance necessary for the construction or establishment of a water related or water dependent use. Measures necessary to reduce potential bank and escarpment erosion, landslides, or flood hazard conditions shall also be taken.

Why would this even be allowed in the HCA?

2. The applicant shall establish to the satisfaction of the approval authority that steps have been taken to minimize the impact of the proposal on the riparian environment (areas between the top of the bank and the low water mark of the river including lower terrace, beach and river edge)

3. The applicant shall demonstrate that stabilization measures shall not cause subsequent erosion or deposits on upstream or downstream properties.

4. Prior to any grading or development, the water resource area shall be protected with an anchored chain link fence (or approved equivalent) at its perimeter and shall remain undisturbed except as specifically allowed by an approved water resource area permit. Such fencing shall be maintained until construction **is complete.** The water resource area shall be identified with City-approved permanent markers at all boundary direction changes and at 30- to 50-foot intervals that clearly delineate the extent of the protected area.

Comment [SB32]: See comments above, WRA v HCA

5. Full erosion control measures shall be in place and approved by the City Engineer prior to any grading, development or site clearing.

U. Protect Riparian and Adjacent Vegetation

Vegetative ground cover and trees upon the site shall be preserved, conserved, and maintained according to the following provisions:

1. Riparian vegetation below OHW removed during development shall be replaced with indigenous vegetation, which shall be compatible with and enhance the riparian environment and approved by the approval authority as part of the application.

Comment [SB33]: Why would this removal or development even be allowed in HCA?

2. Vegetative improvements to areas within the protection area may be required if the site is found to be in an unhealthy or disturbed state by the City Arborist or his designated expert. "Unhealthy or disturbed" includes those sites that have a combination of native trees, shrubs, and groundcover on less than 80% of the water

resource area and less than 50% tree canopy coverage in the primary and secondary habitat conservation area to be preserved. "Vegetative improvements" will be documented by submitting a revegetation plan meeting CDC Section 28.160 criteria that will result in the primary and secondary habitat conservation area to be preserved having a combination of native trees, shrubs, and groundcover on more than 80% of its area, and more than 50% tree canopy coverage in its area. Once approved, the applicant is responsible for implementing the plan prior to final inspection.

3. Tree cutting shall be prohibited in the Protection Area except that:

   a) Diseased trees or trees in danger of falling may be removed with City Arborist's approval and

   b) Tree cutting may be permitted in conjunction with those uses listed in Section 28.030 with City Arborist approval; to the extent necessary to accommodate the listed uses.

   c) Selective cutting in accordance with the Oregon Forest Practices Act, if applicable, shall be permitted with City Arborist approval within the area between the OHW and the greenway boundary provided the natural scenic qualities of the greenway are maintained.

28.120 SITE PLAN

A. All site plans and maps shall include the name, address and telephone number of the applicant, a lineal scale of the plot plan, a north arrow and a vicinity map.

B. The applicant shall submit a site plan drawn to an appropriate scale (in order of preference; 1"=10' to 1" = 30'), which contains the following information:

   1. Assessor's Map number and tax lot number.

   2. The parcel boundaries, dimensions and gross area.

   3. The applicant's property and the surrounding property to a distance sufficient to determine the relationship between the applicant's property and proposed development to the adjacent property and development.

4. The location, dimensions, and names of all existing and platted streets and other public ways and easements on adjacent property and on the site.

5. The location, dimensions and setback distances of all:

   a. Existing structures, improvements, utility facilities and drainage ways on site and on adjoining properties;

   b. Proposed structures or changes to existing structures, improvements, utility facilities and drainage ways on the site.

6. All developments shall define and map existing public access rights on, and adjacent to, the subject property.

7. A slope contour map at minimum 2 foot intervals showing slope classifications of 0-25% and greater than 25%.

8. If a wetland on the West Linn Local Wetland Inventory is identified on the property and the proposed activity is expected to encroach within 25 feet of the wetland, a delineation of the precise boundaries of that wetland prepared by a wetland biologist.

9. The location of the ordinary high water mark and the ordinary low water mark on the property and on abutting properties.

10. The delineation of areas designated "Not Affected by Recommendation" or "Allowed Development" and HCA areas by low, medium and high classification shall be mapped based on Metro's HCA map and any necessary verification by the Planning Director.

28.130 GRADING PLAN

A. The grading plan shall be at the same scale as the Site Plan (Section 20.130) and shall show:

   1. The location and extent to which grading will take place indicating general contour lines, slope ratios, and slope stabilization proposals.

   2. The location of the proposed drainage ways.

   3. All grading in the 100 year and 1996 floodplain areas and in areas at, or below, OHWM shall require a study by accredited professional to demonstrate that the addition or removal of material including the addition of rip rap and other stabilization measures will not adversely impact

upstream or downstream properties by causing erosion or deposits on those properties, particularly in the event of a flood.

Comment [SB34]: What about the damage to the subject site?

4. Show erosion control measures.

28.140 ARCHITECTURAL DRAWINGS

A. Architectural drawings shall be submitted at the same scale as the Site Plan scale, as described in the site plan, showing:

1. Elevations of structure(s). For additions, the drawings should clearly distinguish between existing structure and proposed addition and show distance from addition and existing structure to the protected water resource.

2. The exterior building materials: type, color, and texture.

3. For docks, all pilings and their heights shall be shown. The applicant shall indicate the depth from the end of the dock to the river bottom during typical summer months. The applicant shall also provide any available product literature and photographs from the manufacturer or installer.

4. For docks, the applicant shall provide a plan view of the structure in relation to the shoreline and river. The plans shall also indicate graphically the OLW and the OHW and the DSL's preference rights and authorized area.

28.150 LANDSCAPE PLAN

A. The landscape plan shall be prepared per Site Plan standards (Section 28.120) and in addition shall show:

1. The location, size and type of existing trees and location and type vegetation to be removed and to be retained;

2. The location and design of landscaped areas;

3. The varieties and sizes of trees and materials to be planted;

4. The location and height of fences and other buffering or screening materials; and

5. The location, materials, dimensions and design of terraces, decks, patios, shelters, footpaths, retaining walls and play areas.

B. Revegetation Plan per CDC 32.080.

28.160 MITIGATION PLAN

If any HCA is permanently disturbed as a result of the proposed development of any uses or structures, the applicant shall prepare and implement a re-vegetation and mitigation plan pursuant to the provisions of CDC 32.070 and 32.080.

28.170 PENALTIES

Violation of any provision or requirement of this chapter or conditions of approval is a Class A infraction, and shall also constitute a public nuisance. Each day of violation constitutes a separate offense. In addition, the City retains the authority to require any water resource area which has been altered illegally, to have erosion control measures put in place and be re-established to its natural condition, including replanting trees, shrubs, etc. and reseeding open areas at the owner's expense. In addition, the City Attorney may institute any necessary legal proceedings to enforce the provisions of this chapter, or cure any problems resulting from violations of this chapter.