



CITY OF  
**West Linn**  
 PLANNING AND DEVELOPMENT

**STAFF REPORT**

**PLANNING DIRECTOR DECISION**

DATE: May 21, 2012

FILE NO.: DR-12-09/WAP-12-01

REQUEST: Class I Design Review for a trash compactor enclosure and Water Resources Area permit for stream bank stabilization at Bolton Primary School at 5933 Holmes Street

PLANNER: Tom Soppe, Associate Planner

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## **SPECIFIC DATA**

**APPLICANT/  
OWNER:**

West Linn-Wilsonville School District, 22210 SW Stafford Rd.,  
Tualatin, OR 97062

**CONSULTANTS:**

Keith Liden, Parsons Brinckerhoff, 400 SW 6<sup>th</sup> Ave., Ste. 802,  
Portland, OR 97204

Nancy Hubbard, Hubbard & Associates, P.O. Box 702, Tualatin, OR  
97062

**SITE LOCATION:**

5933 Holmes Street

**SITE SIZE:**

3.3 acres

**LEGAL  
DESCRIPTION:**

Clackamas County Assessor's Map 2-2E-30BC, Tax Lot 2300

**ZONING:**

R-10

**COMP PLAN  
DESIGNATION:**

Low Density Residential

**APPROVAL  
CRITERIA:**

CDC Chapter 32 Water Resource Area Protection; Chapter 55 Design  
Review; Chapter 11, Single-Family Residential Detached, R-10

**120-DAY RULE:**

The application became complete on April 20, 2011. The 120-day  
period therefore ends on August 18, 2011.

**PUBLIC NOTICE:**

Notice was mailed to property owners within 500 feet of the subject  
property and the Bolton Neighborhood Association on April 30,  
2012. A sign was posted on the property on May 1, 2012. The  
notice was printed in the West Linn Tidings on May 10, 2012. The  
notice was also posted on the City's website. Therefore, public  
notice requirements of Community Development Code Chapter 99  
have been met.

## **BACKGROUND**

The subject parcel is shown with red hatch lines on the following map. It is located in the Bolton neighborhood and zoned R-10. The school is a one-story primary school that has been at this location since the 1950's. It is a conforming Conditional Use that has existed at this location since before Conditional Use was a category in City codes. It is therefore "grandfathered in" as a recognized Conditional Use. Several Conditional Use and Design

Review approvals have allowed additions and modifications through the years since. The front entrance to the school faces Holmes Street where Holmes acts as a frontage road along Highway 43 (Willamette Drive), and the west end of the school borders the section of Holmes that turns north toward Buck Street. The southeast side of the school site borders Hammerle Park. The applicant proposes to install a trash compactor in the paved area that straddles the park boundary and enclose it with new fencing. Although the paved area straddles the park boundary, the trash compactor and its associated fencing are proposed within the school property only. The north side of the site includes a play area, beyond which is the Bolton Creek corridor, which is in a steep gully. This area of the Bolton Creek ravine is within the parcel as well. The applicant proposes grading, a retaining wall, rip rap, and buried gabion to address erosion and stability problems along this creek and along the side of the ravine.



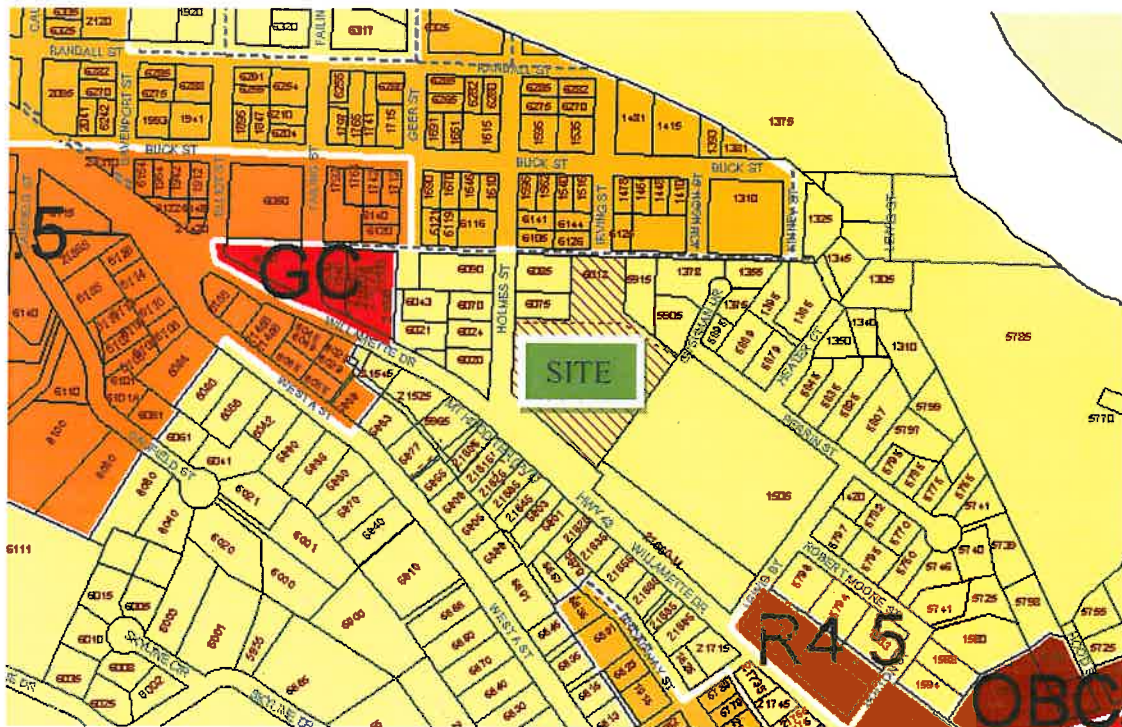
**Vicinity Map**

Site Conditions. The 1-story school building takes up much of the central and southern parts of the site. The U-shaped building faces the southwest segment of Holmes Street (which runs alongside Willamette Drive), and contains an outdoor amphitheater within the “U”. There is a bus and employee driveway along the north edge of the building. This driveway has head-in parking spaces, and connects Holmes Street with the west end of Perrin Street. A public water line is under this driveway, and has a public utility easement over it. Across this driveway is the north-central wing of the school parcel which includes a paved play area, beyond which is a steep wooded gully containing Bolton Creek. Bolton Creek is classified by the City as a significant riparian corridor. The play area is partly within what is now the transition area for the creek, as measured consistent with CDC Section 32.050(E). Along the southeast side of the building beginning at Holmes Street is a driveway. It stretches east along the side of the building

and provides delivery and garbage/recycling truck access to building entrances on this side, and to the existing garbage and recycling area outside. The driveway pavement and surrounding paved area extends slightly south onto the Hammerle Park parcel to the southeast. The driveway terminates at a dead end in the garbage and recycling area, but pedestrian access continues east to where the other driveway intersects with Perrin Street.

Project Description. The proposal calls for installation and construction of several features and modifications in and around the Bolton Creek gully, for the purpose of stabilizing the bank and controlling erosion. These include grading layered with rip-rap on the south side, a gabion retaining wall up the slope to the south, and a stormwater pipe and denser rip-rap at the southeast edge of the creek gully on site. The creek-related project will also include the development of a bark chip path between this proposed pipe area and the play area to the south, in order to access the construction area and maintain it in the future. The stream bank stabilization project is described in further detail under "Proposed Improvements" on Page 34-35 of Exhibit PD-5 in the applicant's submittal.

Also, at the other end of the site in the existing garbage area in the south driveway, the applicant proposes to install a trash compactor and surrounding fencing. The compactor and fencing are proposed to be set at an angle to the driveway and building in order to fit into this limited area within the property line, while still allowing room for existing recycling facilities and pedestrian and vehicle access.



**Vicinity/Zoning Map (Light Yellow is R-10 District; light orange is R-5)**



Surrounding Land Use. The site is in, and mostly surrounded by, the R-10 zone. Single-family residential uses and parks are the dominant land uses in the surrounding area. As can be seen on the Vicinity/Zoning Map above, there are some other uses and zones nearby.

**Table 1** Surrounding Land Use and Zoning

<b>DIRECTION FROM SITE</b>	<b>LAND USE</b>	<b>ZONING</b>
North	Single-family residential, Burnside Park	R-5, R-10
East	Single-family residential, Hammerle Park, various commercial uses	R-10, OBC, R-4.5, GC
South	Single-family residential	R-10, R-5
West	Single-family residential, retail, office, fire station	R-10, R-4.5, R-5, GC

**Source:** West Linn GIS, 2012

Approval Criteria and Analysis. The proposed fencing is subject to Class I Design Review approval per CDC Section 55.020(C), using the criteria of Section 55.090. As the proposal involves new infrastructure, grading, and work within the Bolton Creek significant riparian corridor and its transition area, a Water Resource Area permit is also needed per Section 32.020(B). The site is in the R-10 zone, so Chapter 11 criteria also apply.

Staff finds that the application meets Chapter 11, Chapter 55, and Chapter 32 criteria upon the dedication of a conservation easement over the undeveloped areas of the transition area, upon the sufficiently dense spacing of trees in the revegetation plan meeting Section 32.080(C), and upon the sufficient sizing of new alder trees proposed in the revegetation plan, meeting Section 32.080(D), upon assurance of future demonstration of revegetation plantings' survival, and upon assurance that work upslope from the creek will not be during the rainy season. Conditions of approval 2, 3, and 4 address these issues respectively. As Section 32.080(F) provides for the applicant to later demonstrate that revegetation plants are surviving, Condition of Approval 5 requires an appropriate assurance of this from the applicant. Condition of Approval 6 requires that work upstream from the creek.

**PUBLIC COMMENTS**

**Michael Alford, 5879 Perrin Street, May 1, 2012**

In today's mail I received a letter informing me of a project along Bolton Creek and at Bolton Primary School. I linked to the address in the letter but didn't find the answer to a question I have: just what is the "trash compactor" proposed for the school site? How

large is it, how much noise does it make, when will it operate? I have no objection at all to the stream bank stabilization.

Note: staff answered Mr. Alford's questions in an email, and included this as a comment since he gave his opinion on the stabilization proposal.

## **RECOMMENDATION**

Based on findings contained in the applicant's submittal in the City record and the staff findings, there are sufficient grounds to **approve** this application (DR-12-09/WAP-12-01) subject to the following conditions of approval:

1. Tentative Plans and Elevations. The improvements shall conform to a) the Site Plan Elevations (Sheet A2.00) dated March 15, 2012 on Page 42 of Exhibit PD-5; to b) the Compactor Site Plan (Sheet BO-C1) dated March 15, 2012 on Page 44 Exhibit PD-5, and; c) the Streamback Remediation- Site Storm Drainage, Grading & Erosion Control Plan dated March 22, 2012 on Page 49 of Exhibit PD-5, except as modified by these conditions of approval.
2. Conservation Easement. A conservation easement shall be placed over the creek and the undeveloped areas of the transition area (the entire site north of the north play area). The easement shall use the City's standard water resource conservation easement language, available from the Planning Department. The applicant shall record the easement with Clackamas County.
3. Landscape/Revegetation Plan. The applicant shall submit a new "Streambank Remediation and Landscape Restoration Plan" adding and respacing trees as appropriate so all trees are planted between 8 and 12 feet from each other on center. This new plan shall be implemented as the revegetation plan.
4. Alder Tree Caliper. All proposed alder trees shall be at least one half inch in caliper as specified by 32.080(C).
5. Replacement Vegetation. If less than 80% of trees and shrubs survive three years following final inspection of the completed project, the applicant shall replace dead or missing vegetation such that at least 80% of the trees and shrubs called for by the approved Streambank Remediation and Landscape Restoration Plan are in a healthy condition.
6. Disturbance Period. All work upslope from the creek shall be conducted outside of the rainy season between November 1 and April 30. All disturbed areas upslope from the creek shall be stabilized prior to November 1.

I declare to have no interest in the outcome of this decision due to some past or present involvement with the applicant, the subject property, or surrounding properties, and therefore, can render an impartial decision. The provisions of the Community

Development Code Chapter 99 have been met.

*John Sonnen*  
JOHN SONNEN, Planning Director

*May 22, 2012*  
DATE

Appeals to this decision must be filed with the West Linn Planning Department within 14 days of mailing date. Cost is \$400. The appeal must be filed by an individual who has established standing by submitting comments prior to or on May 21, 2012.

Mailed this *22<sup>nd</sup>* day of *May*, 2012.

Therefore, the 14-day appeal period ends at 5 p.m., on

*June 5, 2012.*

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# ADDENDUM

## APPROVAL CRITERIA AND FINDINGS

### DR-12-09/WAP-12-01

Staff recommends adoption of the findings for approval contained within the applicant's submittal, with the following exceptions and additions:

#### **Chapter 11**

#### **SINGLE-FAMILY RESIDENTIAL DETACHED, R-10**

#### **11.060 CONDITIONAL USES**

*The following are conditional uses which may be allowed in this zoning district subject to the provisions of Chapter 60 CDC, Conditional Uses.*

##### *7. Schools.*

#### **FINDING NO. 1:**

The site has been a school since the 1950's, before the current Community Development Code existed. It has been modified via Conditional Use and Design Review approvals in the more recent past, the most recent being an approval for a library expansion and other minor site and building modifications (file CUP-10-02/DR-10-03/VAR-10-04/MISC-10-06). The current proposal would not enlarge, alter, or intensify the conditional use itself but rather add fencing that requires Design Review for aesthetic and access reasons, and erosion control in the Bolton Creek corridor that requires a Water Resource Area approval. Conditional Use approval is not required. The criterion is met.

#### **11.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS**

#### **11.080 DIMENSIONAL REQUIREMENTS, CONDITIONAL USES**

*Except as may otherwise be established by this code, the appropriate lot size for a conditional use shall be determined by the approval authority at the time of consideration of the application based upon the criteria set forth in CDC 60.070(A) and (B).*

#### **FINDING NO. 2:**

The large site continues to be appropriate for a school of this size, including upon the addition of the trash compactor and its fencing enclosure. The criterion is met.



**CHAPTER 55**  
**DESIGN REVIEW**

**55.090 APPROVAL STANDARDS – CLASS I DESIGN REVIEW**

*The Planning Director shall make a finding with respect to the following criteria when approving, approving with conditions, or denying a Class I design review application:*

*A. The provisions of the following sections shall be met:*

*1. CDC 55.100(B)(1) through (4), Relationship to the natural and physical environment, shall apply except in those cases where the proposed development site is substantially developed and built out with no remaining natural physical features that would be impacted.*

*2. CDC 55.100(B)(5) and (6), architecture, et al., shall only apply in those cases that involve exterior architectural construction, remodeling, or changes.*

*3. Pursuant to CDC 55.085, the Director may require additional information and responses to additional sections of the approval criteria of this section depending upon the type of application.*

**FINDING NO. 3:**

The subsections of 55.100(B) listed above do not apply as the compactor and fencing are proposed in a developed area. Per Subsection (3), the applicant has responded to additional approval criteria sections from 55.100 as requested by staff. These are addressed on pages 35-36 of Exhibit PD-5 in the applicant's findings and below in staff's findings 6-11.

*B. An application may be approved only if adequate public facilities will be available to provide service to the property at the time of occupancy.*

**FINDING NO. 4:**

Public facilities will be adequate to serve the project.

*C. The Planning Director shall determine the applicability of the approval criteria in subsection A of this section.*

**FINDING NO. 5:**

The subsections of 55.100(B) listed above do not apply as the compactor and fencing are proposed in a developed area.

## **55.100 APPROVAL STANDARDS – CLASS II DESIGN REVIEW**

*The approval authority shall make findings with respect to the following criteria when approving, approving with conditions, or denying a Class II design review application.*

A. *The provisions of the following chapters shall be met:*

2. *Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.*

Excerpted from Chapter 34:

### **34.040 SETBACK PROVISIONS FOR NOISE-PRODUCING ACCESSORY STRUCTURES AND USES**

*Noise-producing accessory uses and structures such as heat pumps, swimming pool motors or pumps shall meet the setback requirements of the zone.*

#### **FINDING NO. 6:**

The compactor is an accessory use but not a structure. Except for the electrical connection unit, which is not noise-producing, the compactor is not affixed to the ground, as garbage trucks will regularly remove the unit to empty at a dump. While it is not an accessory structure it is still a noise-producing accessory use and subject to zoning setbacks as stated in Section 34.040. However, there are no standard setbacks required for conditional uses in the R-10 zone, per Section 11.080. In a Conditional Use approval, setbacks are determined discretionarily per analysis of the effects of the proposal. In this case, the noise-producing accessory use is close to the property line but not adjacent to a residential use. The adjoining area across the property line is several feet of pavement used by the school, on the park property, beyond which is the park itself. The closest residence to the proposed compactor is 5905 Perrin Street, which is 135 away. The trash compactor will not exceed City noise standards per the applicant (see Page 36 of Exhibit PC-4 in the applicant's submittal). In lieu of having more specific information regarding the decibel level that would be audible at the nearest residential property line, should complaints arise, staff reserves the right to require a report from the applicant that determines whether City standards (which are DEQ standards per Section 55.110[B][11]) are being met.

6. *Chapter 44 CDC, Fences.*

#### **FINDING NO. 7:**

The metal of the fence will be covered in black vinyl per Construction Note 11 on Sheet BO-C1 Compactor Site Plan, which is on Page 44 of Exhibit PD-5 of the applicant's submittal. The fence will be 6 feet tall at the most, which is allowed for a fence that is not in the 20-foot front setback. The criteria of Chapter 44 are met.

10. *Chapter 48 CDC, Access, Egress, and Circulation.*

Excerpt of Chapter 48:

**48.040 MINIMUM VEHICLE REQUIREMENTS FOR NON-RESIDENTIAL USES**

*Access, egress, and circulation system for all non-residential uses shall not be less than the following:*

*A. Service drives for non-residential uses shall be fully improved with hard surface pavement:*

- 1. With a minimum of 24-foot width when accommodating two-way traffic; or*
- 2. With a minimum of 15-foot width when accommodating one-way traffic. Horizontal clearance shall be two and one-half feet wide on either side of the driveway.*
- 3. Meet the requirements of CDC 48.030(E)(3) through (6).*

*B. All non-residential uses shall be served by one or more service drives as determined necessary to provide convenient and safe access to the property and designed according to CDC 48.030(A). In no case shall the design of the service drive or drives require or facilitate the backward movement or other maneuvering of a vehicle within a street, other than an alley.*

**FINDING NO. 8:**

The proposed compactor and enclosure fencing do not change the width of the dead-end driveway, as they are proposed at the dead end area. Also there are other existing areas of the driveway narrower than the end of the driveway will be after these are installed. Therefore while parts of the driveway are more narrow than the 24 feet required for two-way traffic for service driveways per Subsection 48.040(A)(1), the proposed compactor and enclosure do not change the width of the driveway. Since the proposal itself meets the provisions of the code, a permit to enlarge/alter a non-conforming structure is not needed, per Section 66.080(A). As is already the case with this existing driveway, any garbage or recycling truck needing to turn around can do so without maneuvering into a street or alley, because the front parking lot provides a turnaround off of this driveway. The criterion is met.

*C. Compatibility between adjoining uses, buffering, and screening.*

- 1. In addition to the compatibility requirements contained in Chapter 24 CDC, buffering shall be provided between different types of land uses; for example, buffering between single-family homes and apartment blocks. However, no buffering is required between single-family homes and duplexes or single-family attached units. The following factors shall be considered in determining the adequacy of the type and extent of the buffer:*

- a. *The purpose of the buffer, for example to decrease noise levels, absorb air pollution, filter dust, or to provide a visual barrier.*
- b. *The size of the buffer required to achieve the purpose in terms of width and height.*
- c. *The direction(s) from which buffering is needed.*
- d. *The required density of the buffering.*
- e. *Whether the viewer is stationary or mobile.*

2. *On-site screening from view from adjoining properties of such things as service areas, storage areas, and parking lots shall be provided and the following factors will be considered in determining the adequacy of the type and extent of the screening:*

- a. *What needs to be screened?*
- b. *The direction from which it is needed.*
- c. *How dense the screen needs to be.*
- d. *Whether the viewer is stationary or mobile.*
- e. *Whether the screening needs to be year-round.*

D. Privacy and noise.

3. *Structures or on-site activity areas which generate noise, lights, or glare shall be buffered from adjoining residential uses in accordance with the standards in subsection C of this section where applicable. Businesses or activities that can reasonably be expected to generate noise shall undertake and submit appropriate noise studies and mitigate as necessary. (See CDC 55.110(B)(11) and 55.120(M).)*

4. *Businesses or activities that can reasonably be expected to generate noise in excess of the noise standards contained in West Linn Municipal Code Section 5.487 shall undertake and submit appropriate noise studies and mitigate as necessary to comply with the code. (See CDC 55.110(B)(11) and 55.120(M).)*

**FINDING NO. 9:**

The compactor and fencing are proposed in an existing trash and recycling area, where facilities are not screened. The fencing will blend into the environment as it will be covered in black vinyl per Construction Note 11 on Sheet B0-C1 Compactor Site Plan, which is Page 44 of Exhibit PD-5 of the applicant's submittal. The proposed fencing and compactor are not adjacent to any residences, as they are midway along the side of the school facing the park.

The trash compactor will not exceed City noise standards per the applicant (see Page 36 of Exhibit PC-4 in the applicant's submittal). In lieu of having more specific information regarding the decibel level that would be audible at the nearest residential property line, should complaints arise, staff reserves the right to require a report from the applicant that determines whether City standards (which are DEQ standards per Section 55.110[B][11]) are being met.

*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.*

*5. Solid waste and recycling storage areas. Appropriately sized and located solid waste and recycling storage areas shall be provided. Metro standards shall be used.*

**FINDING NO. 10:**

Less area will be needed for the trash area due to the compactor, as it compacts the school's trash into smaller volumes. The area will continue to be appropriately sized for these facilities.

*J. Crime prevention and safety/defensible space.*

*3. Mailboxes, recycling, and solid waste facilities shall be located in lighted areas having vehicular or pedestrian traffic.*

*8. Security fences for utilities (e.g., power transformers, pump stations, pipeline control equipment, etc.) or wireless communication facilities may be up to eight feet tall in order to protect public safety. No variances are required regardless of location.*

**FINDING NO. 11:**

The existing lighting for the trash and recycling area will remain. The trash and recycling area is along the southeast side of the school building, where pavement and pathways connect between Holmes Street and Perrin Street. Also, this area is next to Hammerle Park. Therefore the area is open to pedestrian traffic. The fence will be 6 feet tall, meeting Subsection (8) above.

**32.050 APPROVAL CRITERIA**

*No application for development on property containing a water resource area shall be approved unless the decision-making authority finds that the following standards have been satisfied, or can be satisfied by conditions of approval.*

*A. Proposed development submittals shall identify all water resource areas on the project site. The most currently adopted Surface Water Management Plan shall be used as the basis for determining existence of drainageways. The exact location of drainageways identified in the Surface Water Management Plan, and drainageway classification (e.g., open channel vs. enclosed storm drains), may have to be verified in the field by the City Engineer. The Local*

*Wetlands Inventory shall be used as the basis for determining existence of wetlands. The exact location of wetlands identified in the Local Wetlands Inventory on the subject property shall be verified in a wetlands delineation analysis prepared for the applicant by a certified wetlands specialist. The Riparian Corridor Inventory shall be used as the basis for determining existence of riparian corridors.*

**FINDING NO. 12:**

The creek on site is identified. The criterion is met.

*B. Proposed developments shall be so designed as to maintain the existing natural drainageways and utilize them as the primary method of stormwater conveyance through the project site unless the most recently adopted West Linn Surface Water Management Plan calls for alternate configurations (culverts, piping, etc.). Proposed development shall, particularly in the case of subdivisions, facilitate reasonable access to the drainageway for maintenance purposes.*

**FINDING NO. 13:**

The site is already developed. The only development proposed related to the water resource area are the erosion control measures and the path to access them. These do not reduce stormwater conveyance into the creek.

*C. Development shall be conducted in a manner that will minimize adverse impact on water resource areas. Alternatives which avoid all adverse environmental impacts associated with the proposed action shall be considered first. For unavoidable adverse environmental impacts, alternatives that reduce or minimize these impacts shall be selected. If any portion of the water quality resource area is proposed to be permanently disturbed, the applicant shall prepare a mitigation plan as specified in CDC 32.070 designed to restore disturbed areas, either existing prior to development or disturbed as a result of the development project, to a healthy natural state.*

**FINDING NO. 14:**

The applicant proposes the work and modifications on site due to existing erosion and bank stabilization problems which could result in sedimentation in the creek. The creek is not fish bearing in this reach, so the primary environmental concern is water quality and temperature and terrestrial habitat. The work and modifications are proposed to ensure the long-term stability of the creek corridor and the adjacent development on site and in surrounding areas. The applicant's mitigation plan addresses the infrastructure proposed within the significant riparian corridor, and the transition area affected by the proposed stabilization project. Natural vegetation will be returned to all disturbed parts of the water resource area, with the exception of the areas proposed for the stormwater pipe, the surrounding riprap, and the gabion retaining wall.

*D. Water resource areas shall be protected from development or encroachment by dedicating the land title deed to the City for public open space purposes if either: (1) a finding can be made that the dedication is roughly proportional to the impact of the*



*development; or (2) the applicant chooses to dedicate these areas. Otherwise, these areas shall be preserved through a protective easement. Protective or conservation easements are not preferred because water resource areas protected by easements have been shown to be harder to manage and, thus, more susceptible to disturbance and damage. Required 15-foot-wide structural setback areas do not require preservation by easement or dedication.*

**FINDING NO. 15:**

The water resource area is not currently under a protective easement and has not been offered for dedication. There is no development proposed besides the erosion control measures, so a finding cannot be made that dedication of this area to the City is roughly proportional to the impact of the development. Therefore Condition of Approval 2 requires that a conservation easement be recorded over the water resource and the areas of the transition area setback proposed to remain undeveloped.

*E. The protected water resource area shall include the drainage channel, creek, wetlands, and the required setback and transition area. The setback and transition area shall be determined using the following table:*

**FINDING NO. 16:**

Part of the northern play area is already within the required transition area setback. This area is not proposed for change. The only changes proposed north of the play area in the remaining undeveloped area of the setback are the changes necessary for the erosion control and bank stabilization project (including the bark chip trail to access the project site and maintain it). The criterion is met.

*G. Prior to construction, 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.*

**FINDING NO. 17:**

Staff adopts the applicant's finding that orange construction fencing would be better than chain link fencing due to the steep and unstable slopes. The applicant will fence off the areas where no work is proposed, and will protect the proposed work areas as much as possible.

*I. Sound engineering principles regarding downstream impacts, soil stabilization, erosion control, and adequacy of improvements to accommodate the intended drainage through the drainage basin shall be used. Storm drainage shall not be diverted from its natural watercourse. Inter-basin transfers of storm drainage shall not be permitted.*

*J. Appropriate erosion control measures based on Chapter 31 CDC requirements shall be established throughout all phases of construction.*

**FINDING NO. 18:**

Engineers have designed the proposed project to improve stabilization and erosion control on site, which will improve future effects downstream as well. There will be no diversions from the natural watercourse and no inter-basin transfers. Condition of Approval 6 requires that all work upslope from the creek shall be conducted outside of the rainy season between November 1 and April 30, and that all disturbed areas upslope from the creek shall be stabilized prior to November 1.

*K. Vegetative improvements to areas within the water resource area may be required if the site is found to be in an unhealthy or disturbed state, or if portions of the site within the water resource area are disturbed during the development process. "Unhealthy or disturbed" includes those sites that have a combination of native trees, shrubs, and groundcover on less than 80 percent of the water resource area and less than 50 percent tree canopy coverage in the water resource area. Vegetative improvements will be documented by submitting a revegetation plan meeting CDC 32.080 criteria that will result in the water resource area having a combination of native trees, shrubs, and groundcover on more than 80 percent of its area, and more than 50 percent tree canopy coverage in its area. Where any existing vegetation is proposed to be permanently removed, or the original land contours disturbed, a mitigation plan meeting CDC 32.070 criteria shall also be submitted. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Upon approval of the mitigation plan, the applicant is responsible for implementing the plan during the next available planting season.*

**FINDING NO. 19:**

Per information provided by the applicant on Page 29 of Exhibit PD-5, the area of the entire currently undeveloped water resource area on site is approximately 12,300 square feet. The existing tree canopy within this area is approximately 7,400 square feet, which is approximately 60%. The site therefore has over 50% tree canopy and is not in an unhealthy state biologically as provided for by Section (K) above. Therefore the submitted revegetation plan is sufficient in the area it covers, as it revegetates only the areas to be temporarily disturbed by the proposed bank stabilization project. Also, upon the implementation of Conditions of Approval 3 and 4, it will provide native plants and tree canopy throughout the areas to be revegetated, to the standards of Section 32.080. See findings 22-24 below, the applicant's findings on pages 39-40 of Exhibit PD-5, and the applicant's Streambank Remediation Landscape Restoration Plan, Sheet L501, on Page 53 of Exhibit PD-5 for more about the revegetation plan and the aforementioned recommended conditions. The criterion is met upon the implementation of the recommended conditions of approval.

*L. Structural setback area. Where a structural setback area is specifically required, development projects shall keep all foundation walls and footings at least 15 feet from the edge of the water resource area transition and setback area if this area is located in the front or rear yard of the lot, and seven and one-half feet from the edge of the water resource area transition and setback area if this area is located in the side yard of the lot. Structural elements may not be built on or cantilever over the setback area. Roof overhangs of up to*

*three feet are permitted in the setback. Decks are permitted within the structural setback area.*

**FINDING NO. 20:**

No new structures for human habitation with foundation walls or footings are proposed. The retaining wall proposed does not have foundation walls or footings, so it is not regulated by this criterion.

**32.070 MITIGATION PLAN**

*A mitigation plan shall be required if any portion of the water resource area is proposed to be permanently disturbed by development.*

A. *All mitigation plans must contain an alternatives analysis demonstrating that:*

- 1. No practicable alternatives to the requested development exist that will not disturb the water resource area; and*
- 2. Development in the water resource area has been limited to the area necessary to allow for the proposed use; and*
- 3. An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to the water resource area will be avoided and/or minimized.*

B. *A mitigation plan shall contain the following information:*

- 1. A description of adverse impacts that will be caused as a result of development.*
- 2. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, the revegetation provisions of CDC 32.050(K).*
- 3. 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.*
- 4. A map showing where the specific mitigation activities will occur.*
- 5. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting, and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife water work periods.*
- 6. Assurances shall be established to rectify any mitigation actions that are not successful. This may include bonding or other surety.*

**FINDING NO. 21:**

The project is proposed to correct existing erosion and bank instability issues. Therefore the only development would be the implementation of the proposed infrastructure to fulfill the solutions to these problems. The applicant proposes to mitigate for this development via a fee-in-lieu to the Parks Department. Proposed Condition of Approval 3 requires this payment, based on a one-to-one square footage ratio, be paid to the Parks Department before the final inspection is approved for the project.

*C. Mitigation of any water resource areas that are not wetlands that are permanently disturbed shall be accomplished by creation of a mitigation area equal in size to the area being disturbed. Mitigation areas may be land that is either:*

- 1. On site, not within the water resource area, and is characterized by existing vegetation that does not meet the standard set forth in CDC 32.050(K); or*
- 2. Off site, and is characterized by existing vegetation that does not meet the standard set forth in CDC 32.050(K).*

*The applicant shall prepare and implement a revegetation plan for the mitigation area pursuant to CDC 32.080, and which shall result in the area meeting the standards set forth in CDC 32.050(K). Adequacy of off-site mitigation areas on City property must be consistent with and meet approval of the City Department of Parks and Recreation. Any off-site mitigation occurring on privately owned land shall be protected with a conservation easement.*

*E. To ensure that the mitigation area will be protected in perpetuity, proof that the area has been dedicated to the City or that a conservation easement has been placed on the property where the mitigation is to occur is required.*

**FINDING NO. 21:**

The area outside the existing transition area on site is largely developed, making on-site mitigation per Subsection (1) above not feasible. The applicant proposes to mitigate for this development via off-site mitigation in City-owned land, via a fee-in-lieu to the Parks Department. Condition of Approval 3 requires this payment, based on a one-to-one square footage ratio, be paid to the Parks Department before final inspection approval. An easement as discussed in Section (E) above is not required, as the mitigation will occur on City-owned property.

**32.080 REVEGETATION PLAN REQUIREMENTS**

*Metro's Native Plant List is incorporated by reference as a part of this chapter, and all plants used in revegetation plans shall be plants found on the Metro Native Plant List. Performance standards for planting upland, riparian and wetland plants include the following:*

- A. Native trees and shrubs will require temporary irrigation from June 15th to October 15th for the three years following planting.*

*B. Invasive non-native or noxious vegetation shall be removed within the area to be revegetated prior to planting.*

**FINDING NO. 22:**

Temporary irrigation will be provided as required, and non-natives will be removed in the revegetation plan area.

*C. 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.*

*D. 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 requirements.*

**FINDING NO. 23:**

Although the applicant states in their findings (on pages 39-40 of Exhibit PD-5) that Sheet L501 Streambank Remediation Landscape Restoration Plan is compliant with both of the above criteria, the plan shows some proposed trees to be more than 12 feet apart on center. Also the plan does not specify if the proposed 2 gallon alders will be at least one half inch in caliper. See this plan on Page 53 of Exhibit PD-5. Condition of Approval 3 requires the applicant to submit a new landscape restoration plan with all trees shown to be planted between 8-12 feet on center to each neighboring tree within the revegetation area. Condition of Approval 4 requires all proposed alder trees to be at least one half inch in caliper.

*E. Shrubs must consist of at least two different species. If 10 trees or more are planted, then no more than 50 percent of the trees may be of the same species.*

*F. The responsible party shall provide an appropriate level of assurance documenting that 80 percent survival of the plants has been achieved after three years, and shall provide annual reports to the Planning Director on the status of the revegetation plan during the three-year period.*

**FINDING NO. 24:**

No more than 50 percent of the proposed trees are of the same species, as can be seen on the Streambank Remediation Landscape Restoration Plan, Sheet L501, Page 53 of Exhibit PD-5. The applicant will provide an appropriate level of assurance documenting the required survival of the revegetation plants and trees per Section (F). See Condition of Approval 5.