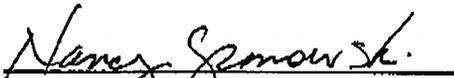


CITY OF LAKE OSWEGO SENSITIVE LANDS PROGRAM

REPORT OF THE SECOND LOOK TASK FORCE TO THE DIRECTOR OF PLANNING & BUILDING SERVICES May 28, 2010

The members of the Second Look Task Force hereby transmit this report to the Director of Planning and Building Services in response to the charge to review the Sensitive Lands chapter of the Community Development Code in the context of its environmental and regulatory purposes and provide recommendations to the Planning Department. In signing our names to these recommendations, we are acknowledging that:

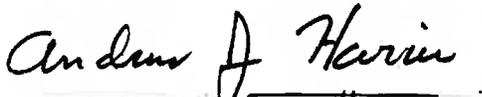
- The review process was credible;
- There was an adequate opportunity to raise and discuss issues and concerns;
- To the best of our ability, we have responded to community concerns that were within the Task Force's purview;
- Input that we have been provided has been appropriately considered in the development of the report's recommendations; and
- While we may not each agree with every recommendation, we believe that the report represents the consensus of the group.



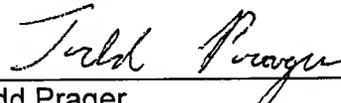
Nancy Gronowski



Tim Mather



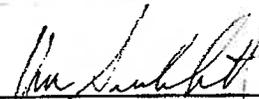
Andy Harris



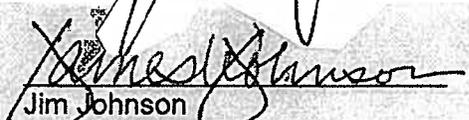
Todd Prager



Cap Hedges



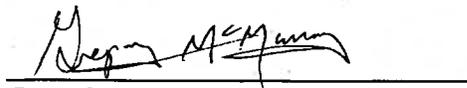
Ken Sandblast



Jim Johnson



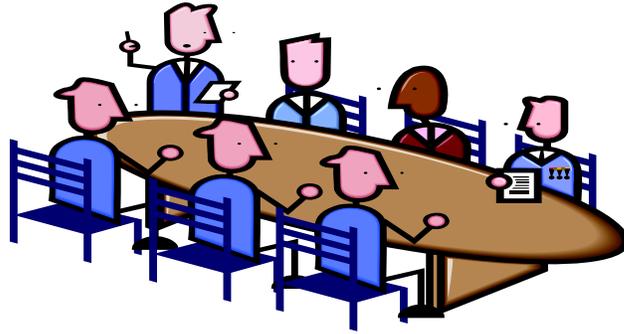
Amin Wahab



Greg McMurray



Jim Owens, Facilitator



CITY OF LAKE OSWEGO SENSITIVE LANDS PROGRAM

**REPORT OF THE SECOND LOOK TASK FORCE
TO THE DIRECTOR OF PLANNING & BUILDING SERVICES**

May 28, 2010

A. APPROACH

Purpose and Format of This Report

This report documents the recommendations of the Second Look Task Force to the Director of Planning and Building Services for revisions to the City of Lake Oswego's Sensitive Lands program, as well as the issues, key considerations and supporting documentation that served as the basis for developing these recommendations. These recommendations were developed by the Task Force following a three-phased review process that was initiated in September 2009 and completed in May 2010. This process entailed 17 meetings over the past nine months and the review of numerous background documents, presentations by agency representatives and interest groups, case studies and site visits to representative properties, a public meeting with over 120 persons in attendance, and written input throughout the process.

Included in this report are:

- A recommended general approach to implementation of the Sensitive Lands program that is intended to respond to community concerns while meeting requirements for resource protection.
- A summary of the Task Force process.
- The context that guided the development of the Task Force's recommendations.
- A total of 63 recommended refinements to the program in the following five key issue areas organized around questions and considerations identified through the process:
 1. The City leading by example
 2. Designating Sensitive Lands
 3. Providing flexibility in the provisions to protect designated resources
 4. Improving the permitting process by making it easier to understand and navigate and more affordable for developers and landowners
 5. Increasing public awareness by providing beneficial public education and outreach to property owners, developers and the general public
- Supplemental considerations and recommendations related to noxious vegetation (e.g., ivy) control that relate to all properties in the City, not just Sensitive Lands.

- Supporting documentation.

Task Force Charge

The City of Lake Oswego wishes to respond to community concerns about its sensitive lands ordinance by considering recommendations from a Second Look Task Force established by the Planning Director to:

Review the Sensitive Lands chapter of the Community Development Code in the context of its environmental and regulatory purposes, and provide recommendations to the Planning Department for changes that:

- Maintain or improve the current level of environmental protection;
- Maintain compliance with Metro and State standards;
- Increase flexibility for property owners;
- Simplify or clarify the code or permit application process; and
- Result in a Sensitive Lands program that can engender community support.

It is important to note that the Task Force was not charged with:

- Developing specific Code amendments or revisions to the inventory of properties mapped as Sensitive Lands.
- Specifically responding to questions and issues raised by the Citizens for Stewardship of Lake Oswego Lands, Portland Audubon Society, and other interest groups and individuals, although efforts have been made to address a number of the issues raised in these comments.

Key Messages

In developing and forwarding these recommendations, the Task Force wishes to reflect the following key messages:

- Lake Oswego residents value the City's streams, wetlands, tree groves and other natural resources. Protection of riparian areas and significant upland habitat, irrespective of whether or not it is designated as Sensitive Lands, is integral to ensuring a livable community.
- Natural resources are not evenly distributed in the City and they are dynamic.
- Having a resource protection program is not a choice. As further explained below, the City is required to comply with Titles 3 and 13 of Metro's Urban Growth Management Functional Plan.
- Lake Oswego's resource protection measures are not fundamentally different from those in other jurisdictions in the region. Like these other jurisdictions, the City is attempting to comply with the requirements of Titles 3 and 13 in its own unique way.
- The City and this Task Force recognize the perceptions that the Sensitive Lands program is inequitably applied and administered, is overly restrictive, and is a burden to a limited number of property owners. The responsiveness of the City to those and other concerns is evidenced by this Second Look process.
- In developing specific program revisions, the Planning Department should assess other similar programs in the region.

Program Revisions

To respond to community concerns while meeting State, Metro and City Comprehensive Plan requirements for resource protection, the Task Force recommends that City should refine its Sensitive Lands program to:

- Employ a combination of regulatory, voluntary and incentive measures;
- Apply to both public and private lands;
- Provide more flexibility to property owners than the current program;
- Consider adopting portions of Metro’s model code; and
- Simplify/clarify code provisions and the permit application process.

The City should also consider renaming the Sensitive Lands program and its components to reflect a proactive approach to resource protection and the balance in the above recommendation, e.g. habitat-friendly program.

Moving Forward

As the City moves forward with defining, protecting and restoring its natural resources, the Task Force believes that it is critical that:

- The City lead by example, recognizing that “the city” means all citizens, not just the Planning Department and City Council.
- Adequate funding be dedicated to resource protection and restoration, as well as associated public education and incentives.
- A watershed-based approach be employed to holistically address streams, riparian vegetation and upland habitat as an integrated natural resource system and that links the City’s multiple regulatory and voluntary programs.
- Recognizing that the City is largely built out, flexibility be provided in the review of and application of code provisions to development within areas designated as sensitive lands.
- Clearer, more user-friendly code provisions be developed.
- Efforts to improve the City’s customer service should be continually reinforced and supported.
- Recognizing that Sensitive Lands are designated on less than 10% of the single family residential lots within the City, stewardship incentives be developed for Sensitive Lands property owners, including fee waivers.
- Ongoing public education and outreach be provided about the values of the City’s natural resources and the process/implications of their designation as sensitive lands.

B. PROCESS

Task Force Composition and Functioning

The Second Look Task Force was appointed and a neutral facilitator contracted by the Director of Planning and Building Services in September 2009. Initially, seven members were appointed; the group’s membership was expanded to nine following the first meeting in order to include additional Sensitive Lands property owners. All members are Lake Oswego residents.

Task Force Membership

Amin Wahab	Watershed manager and past member, Sustainability Advisory Board
Andy Harris	Principal, Harris Stream Services
Cap Hedges	Neighborhood association board member, sensitive lands owner
Gregory McMurray	Environmental consultant and marine scientist, sensitive lands owner
Jim Johnson	Land use planner and Planning Commission Member
Ken Sandblast	President, Planning Resources Inc.
Nancy Gronowski	Park planner and Natural Resources Advisory Board Member
Tim Mather	Builder and sensitive lands owner
Todd Prager	Arborist and planner

Facilitator

Jim Owens	Partner, Cogan Owens Cogan, LLC
Ellie Fiore	Senior Planner, Cogan Owens Cogan, LLC

City Staff Support

Morgan Holen	Assistant Natural Resources Planner
Jonna Papaefthimiou	Natural Resources Planner (on maternity leave for portion)

The Task Force conducted its deliberations on an informal consensus basis. Of note to its functioning:

- Procedural ground rules were adopted to ensure an open, respectful process.
- Declarations of potential conflicts of interest were made at the beginning of each meeting.
- While non-members attended all 17 Task Force meetings as observers, public comment was not solicited at these meetings in order to focus the discussions among group members. Rather, public involvement was provided through:
 - A well-attended public roundtable sponsored by the City Council at the kickoff of the process.
 - A “Public Check-in” open house attended by over 120 persons.
 - Written public comment was accepted throughout the process. (See Supporting Documentation)
 - All Task Force materials were available on the Department’s web site throughout process.

Three-Phased Process

The Task Force’s recommendations were developed through a three-phased process.

1. Information Collection (September 2009-January 2010)
 - Collection and presentation of background information on Statewide Planning Goals, Titles 3 and 13 of Metro’s Urban Growth Management Functional Plan, Lake Oswego Comprehensive Plan, City code, and other relevant materials.
 - Review of City regulatory and investment programs whose primary purpose is to improve local environmental quality.

- Overview of Title 13 program approaches in other jurisdictions in the region.
 - Presentations by City staff and consultants on the Clean Streams Plan, City water quality programs, and the Habitat Assessment Scoring (HAS) process.
 - Two presentations by Metro staff to provide an overview of Tiles 3 and 13 requirements and to respond to questions regarding compliance options.
 - Presentation by Citizens for Stewardship of Lake Oswego Lands.
 - Presentation by Clean Water Services staff on the Tualatin Basin Goal 5 program and Healthy Streams Plan.
 - Solicitation of information from Lake Oswego Corporation on management of water quality in Oswego Lake.
2. Organization and Vetting of Issues (January-February 2010)
- Site visits to four properties with development constraints attributable to Sensitive Lands regulations and identification of issues that these sites raise.
 - Identification of key questions organized by issue area.
 - Conduct of a February 4 “Public Check-in” Open House designed to share the issues identified to date by the Work Group, identify any additional issues that the Working Group should consider, and identify how the issues identified can best be addressed. A modified World Café style open house format was used to obtain input on six topics, with questions on each. Task Force members solicited input on questions at each station; an exit questionnaire was also provided as an additional input opportunity. (See Supporting Documentation for a Summary Report).
 - Assessment of issues to focus on based on the input received.
3. Development of Recommendations (March 2010-May 2010)
- Identification of questions and considerations for developing recommendations by issue area.
 - Development of draft recommendations.
 - One-on-one interviews with Task Force members to identify outstanding issues and concerns.
 - Consensus agreement on draft recommendations.
 - Circulation of a final draft report for Task Force review/concurrence and preparation of this final report.

C. CONTEXT

The overall policy context for the City’s Sensitive Lands program is illustrated in the diagram below and includes the Statewide Planning Goals (most notably Goal 5), Titles 3 and 13 from Metro’s Urban Growth Management Functional Plan, and the City’s Comprehensive Plan. Regulations to implement state, regional and local policy for the protection of sensitive natural resources in Lake Oswego are contained primarily in Section 50.16 of the Development Code. Based on review of this regulatory context and input from Metro and City staff, the Task Force identified the following as sideboards to its recommendations:

1. The City is in substantial compliance with Metro Title 3, though it has not received formal approval of its Title 3 compliance package. The City received an extension on the submittal of its Title 13 program in 2009 to enable the City, through the Second Look Task Force, to review and revise its sensitive lands program.
2. Title 3 does not prohibit development. Development is allowed even if the property is entirely within the resource area as long as the property owner follows the avoid, minimize, mitigate approach. This appears to be an area where the City could provide some flexibility in allowed uses.
3. It is not possible to have an entirely voluntary program and meet Metro requirements. Title 3's water quality program in particular has riparian area buffer requirements that could not be replaced by a voluntary program.
4. The City also could not comply with Title 3 by regulating only public property, as resource lands within the City are split approximately evenly between public and private lands.
5. All Title 13 programs in the region are based on regulation of riparian areas. All address a combination of public and private lands.
6. Although other City programs are relied upon in part to protect the City's sensitive resources, none of them are designed to specifically address tree groves, upland habitat and riparian habitat. These other programs in themselves would not achieve Titles 3/13 compliance.
7. The City's Sensitive Lands program is a map-based standard that prohibits or restricts development and uses within areas delineated as Sensitive Lands. In Resource Protection (RP) Districts, a 30-40 foot buffer is applied around delineated resources (wetlands and stream corridors). In Resource Conservation (RC) Districts, vegetation removal and development is limited to a maximum of 50% of delineated tree groves. Under current standards, 50% of the area under the tree canopy must be preserved as a natural area.
8. Through its Comprehensive plan, the City has determined that tree protection is a priority. The City's tree code has been in place since the 1970s. The Tree Code addresses one tree at a time; the Sensitive Lands Code addresses tree groves.
9. A breakdown of the distribution of Sensitive Lands is provided in Appendix A; a map of Sensitive lands is included in that report. Key data from that report includes:
 - Approximately 15% (950 acres) of land within the City is mapped as Sensitive Lands.
 - Mapped Sensitive Lands are relatively evenly split between public lands (54%) and private lands (46%).
 - The 438 acres of private properties with mapped Sensitive Lands represent 6.8% of the total land in the City.

Overall Context for Second Look Task Force

Statewide Planning Goal 5 (Open Space, Scenic, Nat Res), Goal 6 (Air, Water, Land)

Implementing ordinances



Metro Functional Plan: Title 3

Implements Goal 6, regulatory, water quality, no development in water resource areas, preserve original character, actively manage the resources, inventory and determine significance of resources

Metro Functional Plan: Title 13

Implements Goal 5, regulatory and voluntary, significant riparian corridors, wildlife habitat, Metro's HCA maps, protects intermittent streams that Title 3 doesn't, establishes performance standards

Required to comply with Title 3 before Title 13



LO Comprehensive Plan

Policies



LO Implementing Land Use Codes and Ordinances

Regulations

RP overlay protects water resources (Title 3): 52% of LO mapped resources
RC overlay protects tree groves (Title 13): 48% of LO mapped resources

SL Overlay: Regulates land use actions on mapped lands

Resource Protection Process:

1. Inventory
2. Delineate
3. Analyze: ESEE analysis
4. Designate and protect with codes, programs, activities, etc.

Current City Programs For pertinent natural resources

Regulatory

- SL standards: LOS 50.16
- Tree code: LOC 55 (not sufficient for Title 13)
- Water Quality Program: MS4 Permit: Stormwater Management
- Stormwater Master Plan: Clean Streams
- Erosion Control: LOC 52
- Drainage Standards; LOC 50.40-41

Non-regulatory / Voluntary

- Natural area park restoration (400 acres)
- Surface water utility CIP funds
- Stream restoration projects
- Landscaping for conservation workshops (free)
- Community forestry classes (free)
- Water conservation audits (free)
- Greenstreets (swales and planters on existing streets)

D. RECOMMENDATIONS

Recommendations were developed by the Task Force in five key issue areas, which were in turn organized around questions about the Sensitive Lands program identified through the group's deliberations and public input. Several of the key issue areas have a number of sub-issues. For example, there are seven sub-issues under the topic of Designating Sensitive Lands. Considerations leading to the group's recommendations are identified for each issue. In total, the Task Force developed 63 recommendations for refinements to the existing Sensitive Lands program generally intended to provide more flexibility to property owners, simplify/clarify code provisions and the permit application process, and increase public awareness.

1. LEADING BY EXAMPLE

Considerations

1. The City should lead by example in the maintenance and restoration of City-owned lands.
2. Greater resource protection measures should be applied to public lands.
3. A plan is needed for active management of the City's urban forest, including tree planting on public lands and rights-of-way.
4. English ivy runs rampant in many Lake Oswego tree groves, including on both private property (e.g., the north side of South Shore Drive) and in public parks. The City should invest in a serious program to address control and removal of invasive species on public lands.
5. There is currently limited City funding for natural resource education, incentives, and management. Funding these types of activities will improve natural resource quality, especially if programs are targeted towards Sensitive Lands.

Recommendations

1. **Create and budget for a city program for the long-term maintenance of Sensitive Lands in city parks and public open space.**
2. **Create, budget for, and implement a program to provide support and incentives for the long-term maintenance of Sensitive Lands on private property and designated private open space.**
3. **Identify priority restoration needs and target funding to these priorities, both on a short and long-term basis.**

2. DESIGNATING SENSITIVE LANDS

A. PROCESS TO DESIGNATE SENSITIVE LANDS

Questions Addressed

- Should the City continue using the Habitat Assessment Score (HAS) system for determining resources to protect? If not, what is a preferred approach? Can the HAS system be modified to provide more flexibility?

- Is more accurate mapping needed for the designation of resources and delineation of resource boundaries, e.g., defining and protecting contiguous tree grove canopy?
- Does the current system erroneously designate “ditches” and other man-made irrigation and drainage channels as sensitive lands?
- Should properties outside the City’s boundary be inventoried and mapped as sensitive lands?

Issue 1: Use of HAS system to assess resource values.

Considerations

1. HAS (Habitat Assessment Scoring) is the most commonly used approach by jurisdictions in the region to inventory significant natural resources. HAS ratings determine whether a property is considered significant. For properties that are determined to be significant, the City must conduct an ESEE (environment, economic, social and energy consequences) analysis, through which the City chooses to protect or not protect identified resources. The HAS rating by itself does not determine designation as sensitive lands.
2. HAS scoring is not property-specific; it is resource-specific. The HAS is intentionally applied to biological systems such as tree groves and stream segments, not to individual tax lots, in order to assess the significance of the resource rather than a portion of a resource on a tax lot. Because elements of the HAS score relate to the size and connectivity of a resource, scoring properties tax lot by tax lot would not be accurate.
3. It is likely that there will be little difference in terms of resources designated under alternative approaches. The primary complaint heard is that HAS system does not address water quality or other natural functions performed by resources.
4. Metro uses remote sensing (data from aerial flyovers) and computer programs to prepare their natural resource inventories rather than a HAS system. The City’s GIS mapping generally provides better site-specific data than Metro’s remote sensing mapping.
5. HAS scores can be adjusted by the Planning Commission based upon alternative information submitted.

Recommendations

The City should continue using the Habitat Assessment Score (HAS) system for determining resources to protect. In the longer term, consider adoption of an alternative system if one is demonstrated to be more accurate and easier to administer.

Issue 2: More accurate mapping for the designation of resources and delineation of resource boundaries, e.g., defining and protecting contiguous tree grove canopy.

Considerations

1. Designation and delineation are separate processes and this often causes confusion. The designation process precedes delineation; delineation is only concerned with resource boundaries.

2. The current mapping and Sensitive Lands program protect resources at the property lot level rather than as resource units. Resource boundaries are designated property by property and not as intact units. Delineation is done within property lines/tax lots.
3. Approximate edges of resource areas (boundaries) are defined on maps. The general nature of these mapped boundaries can lead to confusion on the specific on-the-ground location of resources.
4. The application process requires a delineation when development (including tree removal) is proposed within a mapped resource or buffer. Property owners may request a resource delineation by City staff.
5. For stream corridors, the City relies on a visual standard defined by change in slope. A buffer and construction setback is added to this area. Currently, the buffer areas are not mapped though the City generally expects a landowner to protect the buffer. The most recent code update requires mapping buffers, although the implementation of this code has been delayed pending results of the Second Look process.
6. A field meets and bounds survey would better define boundaries but is cost prohibitive to conduct for the whole city. Field surveys are required as part of a development application.
7. The City's mapped tree groves are not well-defined -- the Task Force referred to them as the "green blobs on the map." To better define these areas would entail surveys and delineation.
8. RC district delineation involves survey of the drip-lines of contiguous tree groves. Native and non-native trees are included in the delineation as long as they are contiguous.
9. To more accurately define sensitive lands, the City could exempt non-native trees that may be contiguous to sensitive tree groves.
10. Providing property owners the opportunity to submit plans for resource stewardship on their land would create flexibility.

Recommendations

1. **To provide more specific resource designation, review/refine mapped tree grove "green blobs" on an ongoing basis.**
2. **In delineating tree groves as Sensitive Lands, exclude non-native trees in cases where they do not contribute to the resource value of the tree stands, e.g. non-native species on the edge of native tree stands, or do not have value on their own, e.g. heritage trees.**

Issue 3: Confusion about whether "ditches" and other man-made irrigation and drainage channels are, in some cases, designated as sensitive lands.

Considerations

1. There is general confusion about this issue and what is being referred to, in part because the City code has no definition of ditches; Section 50.16 only defines "drainage way."
2. Based upon definitions of ditch used by Clean Water Services and the Oregon Department of State Lands, the City is not protecting ditches or other man-made drainage channels.
3. Goal 5 excludes any man-made irrigation and drainage channels from resource protection requirements.

4. Staff is not aware of any man-made irrigation or drainage channels that are regulated under the Sensitive Lands code. These features would generally not achieve a qualifying HAS score. Some natural stream channels that have been straightened or that accept some piped runoff are regulated; these could be mistaken for “man-made” channels.
5. In developing a watershed-based approach to resource management, ditches and channels should be viewed from a functional perspective, e.g. slowing down water and improving water quality.
6. The City can lead by example in upgrading/improving ditches under its ownership.

Recommendations

1. **Include the Oregon Department of State Lands definition of ditches in the City Development Code and specifically indicate that it is not the City’s intent to regulate such under the Sensitive Lands program.**
2. **Re-evaluate specific areas where there may be questions about the designation of man-made irrigation and drainage channels as Sensitive Lands.**

Issue 4: Inventorying and mapping properties outside the City’s boundary as Sensitive Lands.

Considerations

1. The City has no jurisdiction outside its boundaries, but needs to collect information on natural resources within its urban services boundary.
2. While there is no need to adopt an inventory for areas outside of City limits for purposes of Title 3/13 compliance, there is value in advising property owners of potential resources that will be subject to the Sensitive Lands program upon annexation. Mechanisms to inform and educate property owners should be explored.

Recommendations

1. **Continue the mapping process for sensitive lands outside the City’s boundary as resources are available.**
2. **Develop informational materials for property owners within areas likely to be annexed within short and medium-term timeframes to inform them of the City’s Sensitive Lands program and to advise them of its annexation policy regarding loss of known resources.**

B. MODIFICATIONS TO SENSITIVE LANDS MAP (ADDING OR SUBTRACTING RESOURCE AREAS)

Questions Addressed

- Should the City’s sensitive lands map be revised to reflect all resources designated on Metro’s maps as having environmental significance?
- Are there resources that the City should inventory or re-inventory and designate as sensitive lands? Examples include: a) Oswego Lake and canals; b) Tualatin and

Willamette rivers; c) First Addition, Foothills, areas in LORA plan; and d) City parks such as Foothills and Millennium.

- Are there gaps in the current inventory and designation of resources in terms of protecting stream systems as connected systems, e.g. headwaters?

Issue 5: Revising the City’s sensitive lands map to reflect all resources designated on Metro’s maps as having environmental significance

Considerations

1. The City’s Sensitive Lands map depicts known resources, not simply delineated resources.
2. The City has been advised that its Sensitive Lands map is in substantial compliance with Metro’s Title 3 Water Quality Map. While there are some differences based primarily on different data sources, the City’s map is also expected to be in substantial compliance with Metro’s Title 13 map.
3. Approximately 150 1B sites have been identified as potential significant resource areas based on remote-sensing but have had no on-the ground (HAS scoring) or ESEE (environmental, economic, social and energy consequences) analyses.
4. Mapping of resources in all jurisdictions is an ongoing process, as land use is not static. The inventory and mapping of sensitive lands should be continually updated to reflect changing conditions and new information. Resources may need to be added or deleted from the maps. Generally and where feasible given staffing resource constraints, such updating will occur as part of a Comprehensive Plan update (with standard due process and public notice).

Recommendations

1. **Except in response to specific property owner requests that merit changes, the existing map should continue to be utilized without modifications. There are no specific additions or deletions to the existing Sensitive Lands map recommended at this time.**
2. **Complete key development code revisions before adding any additional resources to the inventory and map, including 1B sites.**
3. **In completing future mapping for 1B sites, apply the same methodologies as were used for currently mapped sites (HAS scoring, ESEE analyses and resource protection determinations, with due process notice and hearing required.).**

Issue 6: Resources identified through public comment as needing to be inventoried or re-inventoried and designated as sensitive lands

a) Oswego Lake and canals

Considerations

1. Oswego Lake has not been designated by Metro as a significant resource; this is true for other large water bodies in the Metro region such as Columbia Slough and Blue Lake.
2. Metro staff stated that from the Title 3 vantage point, Oswego Lake’s primary function is that of flood storage and flood control; the Title 3 and 13 focus is on streams and water courses that drain into the lake.

2. Development on the lake (water body) is not currently considered to be a “land use” action.
3. The Sensitive Lands protection program is a land use program and thus not the appropriate or best vehicle to address Oswego Lake water quality issues.
4. Comprehensive Plan policies recommend considering Oswego Lake eligible for protection as sensitive lands and require development within and adjacent to Oswego Lake to protect natural and scenic resources.
5. It remains unclear to the Task Force how jurisdiction is distributed and exercised among the City, Lake Corporation and state regulatory agencies over the water quality of the Lake and development in the Lake (cut, fill, boat docks, boat houses, building foundations, sewer lines, bridges, etc.).
6. While Metro does not require protection of Oswego Lake as part of the City’s Title 13 compliance package, Lake Oswego has a history of going above and beyond the “minimum requirements” and that is what makes the community such a great place to live.

Recommendations

1. **Encourage the Lake Corporation and City to cooperatively engage in a comprehensive and coordinated watershed-based approach to water quality.**
2. **During the upcoming Comprehensive Plan update, assess designation of Oswego Lake as a Goal 5 resource and whether land use and zoning regulations should be applied to development in the Lake to protect its natural resource and other Goal 5 functions.**
3. **To provide more transparency, regularly inform the public about water quality in the lake and provide public education about how the public can help improve it.**

b) Tualatin and Willamette Rivers

Considerations

1. Resource lands along the Willamette River are adequately protected though Statewide Planning Goal 15 and local greenway restrictions. Greenway Overlay Standards limit development within 150’ of the 50-year flood elevation along the river and generally prohibit new residential development.
2. Resource protection measures along the Tualatin River fall within the jurisdictions adjacent to the river. There are five properties along the Tualatin River east of Oswego Canal which have RP designations. Three are in the City, while two are still in the County. Of the three properties in the City, two are City parks (set aside as part of River Run I and II planned developments) and one is a private home site.

Recommendations

1. **Continue to rely upon Willamette River Greenway provisions to protect resource lands along the Willamette River and existing RP designations to protect resource lands along the Tualatin River.**
2. **Assess whether resource lands along the Willamette River are adequately protected through Greenway provisions or whether they can be better protected with Sensitive Lands provisions.**

c) Existing City parks and other areas identified through the public comment process, such as First Addition, Foothills, areas in LORA plan.

Considerations

1. Existing City parks are either designated as Sensitive Lands or do not qualify as such due to the nature of their development, e.g. landscaping, impervious surfaces and recreational facilities. The City owns about 400 acres of natural park areas.
2. Not all City-owned areas qualify for designation as sensitive lands.
3. In developing new parks and open spaces, it is standard operating procedure to consider how best to balance recreational needs with resource protection and designation..

Issue 7: Gaps in the current inventory and designation of resources in terms of protecting stream systems as connected systems, e.g. headwaters.

Considerations

1. Small streams, wetlands, and headwater swales are all integral to a properly functioning riparian system. Headwater swales (upstream of defined stream channels) and upland buffers provide water quality and runoff attenuation functions. Protection of headwater functions would have a measurable positive impact on riparian (stream) systems.
2. In Title 3, intermittent streams that drained less than 50 acres are not identified as secondary protected water features. One of the main differences between Title 3 and Title 13 is that while Title 13 provides protection to intermittent streams, Title 3 does not. Title 13 does not include a drained acreage limitation.
3. While there were assertions of such in public comments, there is no specific evidence of intermittent streams and roadside ditches being inappropriately mapped as Sensitive Lands.
4. While no specific gaps in stream systems have been identified as part of this review process, opportunities to daylight sections of streams that have been placed into culverts, paved or otherwise modified should be explored through voluntary actions or through land use incentives, e.g. density bonuses.

Recommendations

- 1. Begin the process to develop and implement a watershed-based approach that holistically addresses streams, riparian vegetation and upland habitat as an integrated natural resource system and that links the City's multiple regulatory and voluntary programs.**
- 2. Seek assistance from watershed councils in identifying any gaps in the current inventory and designation of stream systems as Sensitive Lands and, as part of periodic review, develop appropriate approaches to address such.**
- 3. Investigate a program for voluntary action for daylighting of stream sections that have been placed into culverts, paved or otherwise modified, particularly in association with major developments. Investigate the feasibility of providing incentives such as density bonuses to encourage daylighting.**

3. PROVIDING FLEXIBILITY IN THE PROVISIONS TO PROTECT DESIGNATED RESOURCES

Questions Addressed

- How can resource and buffer boundaries be better defined?
- Should a two-tiered development review system offering a combination of clear and objective and discretionary standards be pursued?
- Should the City consider adopting a net environmental benefit approach to development? If so, what factors should the City consider in determining net environmental benefit and corresponding allowances for property owners?
- What role should mitigation play in providing flexibility to modify or expand existing homes? What types of mitigation should be considered?
- What incentives should be provided for voluntary resource protection measures such as ivy removal?
- Should credit be given for mitigation undertaken prior to submittal or approval of a land use application?

A. PROVIDING FLEXIBILITY IN THE APPLICATION OF PROTECTION MEASURES

Considerations

1. Public input indicates that more flexibility is desired in terms of fences, play structures, patios, lights, building height, gardening (particularly at the edges of upland tree groves), and very minor development and benign activities (de minimis).
2. Other Metro area cities provide flexibility for property owners by allowing impact areas of a certain size and not regulating all uses or actions within those areas.
3. Title 13 does not require buffers; Title 3 does. Buffer requirements are based on the scientific literature. These were reviewed and approved through a public process.
4. The City's riparian buffers are smaller than those in Metro's Model Code and those in most other jurisdictions in the region, however, its regulations for those buffers are generally more stringent and complicated.
5. It is unclear to the Task Force how buffer averaging is calculated.
6. The City has adequate mapping to apply a tiered buffer system. With a tiered system, there may be a need to apply larger buffers to larger water bodies in order to ensure a positive net environmental effect.
7. Retroactively applying larger buffers could trigger Measure 49 claims. Effects (e.g., reduction on property values) could be claimed with either larger or smaller buffers.
8. Trees are the backbone of the City's natural resources regardless of whether they are located in sensitive lands. They help manage stormwater quality and quantity, prevent erosion, provide bird and wildlife habitat, improve air quality, and are a scenic resource.
9. The Planning department indicates that it expects that the vast majority (75%+) of permit applications for Sensitive Lands will be for remodels or additions
10. More flexibility could be provided with tree groves than with riparian areas. De minimis encroachments into the outer portion of tree grove canopy would not be expected to adversely impact the health of trees.
11. Metro Model Code provisions provide examples of flexible provisions that could be tailored to Lake Oswego's situation.

12. The City of Portland's conservation protections have some upland protection. That program may be the most comparable to Lake Oswego's. Other cities have focused on a combination of riparian area protections and some tree protections.
13. In urban environments, a more active role is required in forest management activities to reduce overstocking of trees, reduce fire risk, manage pests and diseases, increase light for understory, assist with forest succession, etc.
14. Some of the attendees at the February 4 Open House expressed frustration that they are unable to implement forest restoration plans which would require large-scale thinning. .
15. The process and cost of applying for tree removal permits for forest thinning operations and for removal of invasive plants are barriers to natural resource stewardship.

Recommendations

Maintain existing riparian buffers and tree grove protections through RP and RC overlay districts that establish stream, wetland and riparian area buffers and limit vegetation removal and development to 50% of significant tree groves. At the same time, provide flexibility in the application of resource protection standards to permit limited development and uses that do not adversely affect or minimize impacts to resource values. To improve flexibility in applying these standards:

Construction Setback

1. **Address confusion about the 10-foot construction setback required by Section 50.16.070 being a buffer on a buffer. If the intent of the setback is for construction purposes, then it should be considered temporary and rescinded following completion of construction.**

Optional Development Review Processes

2. **Adopt a two-tiered review system that allows applicants to apply for development permits using either (1) quantitative, clear-and-objective standards (safe harbor approach), or (2) alternative discretionary development standards which offer flexibility, but are more likely to result in compromise or negotiated approvals. Applicants would need to be advised that the discretionary review process could be more expensive than a safe harbor approach and would need to be conducted within an avoid, minimize, mitigate hierarchy as a review standard.**

Safe Harbor Approach

3. **Adopt clear and objective standards modeled after those in the Metro Model Ordinances for Titles 3 and 13.**
4. **Adopt a definition of "development" and permit outright the uses identified in Metro's Title 3 Model Ordinance (Exhibit C, p.65) and Title 13 Model Ordinance (Exhibit E, p. 132).**
5. **Adopt a definition of "disturbance area" and a de minimis standard for disturbance within buffers. Options to consider:**
 - **As defined in Metro's Title 13 Model Ordinance (Exhibit E, p. 133).**
 - **Different thresholds for varying levels of development:**
 - **Less than a certain disturbance area, e.g. 200 sq.ft. -- encroachments are permitted outright**

- Between 200 to 500 sq. ft. – encroachments must be accompanied by commensurate mitigation
- More than 500 sq ft -- a de minimis encroachment standard would not apply

Discretionary Review Process

6. Investigate elements of a discretionary review process as described in the Metro Model Code (Exhibit E, page 145) and utilized by other jurisdictions in the region that would be appropriate to Lake Oswego. The process should enable a property owner to submit a plan for discretionary review that would allow flexibility in the application of regulations while avoiding significant adverse effects to Sensitive Lands resources. The discretionary review process should include standards for avoiding and minimizing environmental impacts before allowing for mitigation.
7. Develop guidelines on the types of mitigation required based on the Metro Model Ordinances and programs used by other jurisdictions in the region.
8. Create a separate permit type for resource enhancement activities and restoration projects, e.g. tree thinning, in RC and RP zones that is a discretionary review

Exemptions from Tree Removal Permitting

9. Update the City’s invasive plant list to include a complete listing of invasive tree species; exempt these non-native species from tree removal permit requirements.

B. APPLYING A NET ENVIRONMENTAL BENEFIT APPROACH TO MITIGATION OF DEVELOPMENT IMPACTS

Considerations

1. A net environmental benefit approach would allow greater flexibility for landowners. Such an approach will involve subjective judgments and the exercise of discretion by staff and negotiations between staff and property owners. The factors for determining net environmental benefit will need to be defined (see tree grove standards in Section 50.16 as an example).
2. Applicants should be required to demonstrate that a range of alternatives has been considered.
3. Applicants would need to understand that a net environmental benefit review process could entail greater costs than a safe harbor approach due to costs for resource expert analyses and the level of staff review and consequent fees.
4. When mitigation is proposed in such a process, mitigation plans, rather than voluntary mitigation, should be required. One-time mitigation efforts do not work very well and do not provide net environmental benefits.
5. Landowners can feel penalized for restoration work because it can lead to higher HAS scores. Landowners can also feel penalized for restoration work conducted prior to submitting a development application because they do not get “credit” for that work in the context of the current development review process. These efforts could be acknowledged in the net environmental benefit review process.

Recommendations

1. Investigate examples (e.g. Portland and Oregon City) and the mechanics of a net environmental benefit approach that provide a process that would allow a property owner to submit a plan for discretionary review that seeks flexibility in the application of regulations in return for enhanced resource protection and/or mitigation that results in a net environmental benefit.
2. Include minimum requirements for maintenance standards or ongoing mitigation programs. Avoid one-time mitigation measures. Consider enforcement and monitoring challenges.
3. A net environmental benefit approach should be structured to:
 - Identify and clearly define the functions performed by resource area (stream, wetland, buffer, upland). (See Appendix B on natural resource functions)
 - Assess the condition of the resource. Is it functioning properly? Quantify the findings.
 - Quantify the impacts of a proposed land use action. (i.e. impervious area, shade reduction, direct hydrologic connections, etc.)
 - Identify measures that would avoid or minimize these impacts.
 - Identify the mitigation measure that could be taken to enhance the resource.
 - Ensure that the net result is a more properly functioning resource.
4. Tailor Metro model code mitigation provisions to Lake Oswego, ensuring that they are readily understandable and easily administered.

C. PROVIDING INCENTIVES FOR RESOURCE PROTECTION

Considerations

1. Currently, there are no incentives or available for restoration activities or removal of invasive species from Sensitive Lands properties.
2. Voluntary removal of non-native species without a permit should be recognized as a positive action versus penalized, as is the current case.
3. OSU is launching a new Oregon Master Naturalist Program to teach citizens about a broad range of natural processes and resource management techniques in exchange for volunteer service.

Recommendations

1. Investigate the City of Beaverton's resource protection credits program, including types of credit and how mitigation can be quantified for purposes of credits.
2. Provide credit for mitigation undertaken prior to submittal or approval of a land use application,
3. Provide resource information to volunteers and property owners for removal of vegetative invasive species and restoration projects.
4. Consider providing disposal support to volunteers and property owners in conjunction with vegetative invasive species removal
5. Provide assistance to Sensitive Lands property owners in securing conservation easements.
6. Provide public recognition for exemplary resource stewardship, e.g. "Habitat Friendly Excellence" awards.

7. Consider providing flexibility to property owners certified as Master Naturalists when submitting applications for permits for undertaking resource management projects, e.g. tree thinning, that allows the property owners to avoid the cost of hiring a professional arborists or resource experts.
8. Foster volunteer service by certified Master Naturalists on Sensitive Lands.

D. APPLYING REASONABLE STANDARDS TO HIGHLY CONSTRAINED LOTS

Issue 1: Applying an avoid–minimize-mitigate standard to development of highly constrained lots.

Issue 2: Applying a reasonable development standard to totally encumbered lots.

Considerations

1. There are an estimated 143 highly constrained lots (more than 50% of the lot is subject to development restrictions) and 50-75 totally encumbered lots out of a total of approximately 15,000 lots single family lots within the City (of which approximately 1,500 are designated as Sensitive Lands).
2. The current “largest-house-allowed-on-the-smallest-lot-in-the-zone” standard is considered by some to be arbitrary and may have no relationship to the protection of resources.
3. A function-based (net-benefit) standard would allow a more thoughtful consideration of site design, mitigation of impacts with the use of low impact development methods, and mitigation through site-specific enhancement approaches.
4. Other cities provide for discretionary review with clear criteria. For example, the City of West Linn provides for a maximum disturbance area of 5,000 square feet on totally encumbered lots that allows the landowner to allocate space between structures, decks, driveways, dwelling units, etc. Oregon City allows up to 2,500 square feet of disturbance on larger residential lots and up to 25% of lot area for small residential lots and non-residential lots.

Recommendations

1. Given the limited number of properties that are highly or fully constrained, retain the current “largest-house-allowed-on-the-smallest-lot-in-the-zone” standard with the option for discretionary review to provide flexibility when it can be demonstrated that there will be less impact on resource values. Elements of flexibility to investigate include:
 - Allow for additional building height to offset buffer restrictions where neighboring properties are not adversely affected.
 - Make allowances for mitigation such as easements for public access to trails or other features.
 - Provide an exception to the single home limitation when resource protection is determined to be better served by more than one dwelling.
2. Develop a program to purchase totally encumbered lots with significant resource value.

4. IMPROVING THE PERMITTING PROCESS BY MAKING IT EASIER TO UNDERSTAND AND NAVIGATE AND MORE AFFORDABLE FOR DEVELOPERS AND LANDOWNERS

Questions Addressed

- How can the City make the process easier to understand and navigate for developers and landowners?
- How can the permit application process be simplified?
- Are adjustments to the existing appeal process needed?
- How can the cost of the process be reduced?

Considerations

1. There is a negative perception voiced by some citizens that not all property owners receive fair and equitable treatment from the Planning Department when addressing Sensitive Lands issues.
2. Lake Oswego is asserted to be a very difficult jurisdiction to work with an inordinately expensive development review process. However, every city in the region is accused by its citizens of being arbitrary, inflexible and non-responsive. For example, it has long been asserted by the development community that Portland is the most difficult jurisdiction in the region to work with. As a fee-financed program, the City's development review costs have not been shown to be out of line with others in the region.
3. The City is currently conducting a comprehensive audit of its community development code with the longer term goal of producing a development code that is easier to understand and simpler to navigate.
4. In delineating resource boundaries, if there is a disagreement with staff's delineation, a property owner must apply for a code amendment to remove or modify the Sensitive Lands designation (\$8,000 application fee) or delay development until the next update of the City's Sensitive Lands map.
5. The Planning Commission operates as a citizen review (appeals) board.

Recommendations

1. **Explore the feasibility, including costs, of establishing an ombudsman position to assist property owners and developers in navigating the permitting process and accessing incentives for resource protection and restoration.**
2. **Develop a guidance manual for habitat friendly development practices (per the City of Beaverton).**
3. **In responding to the Code Audit project currently underway, consider providing a concise statement of code purpose and effect at the outset of code (per Oregon City code); providing better organization to the code; and using plain language.**
4. **Investigate revising Code definitions to be more customer-friendly, e.g. changing RC and RP overlays to habitat benefit areas, land use regulations to best management practices.**
5. **Provide customer service training on an ongoing basis to Department staff.**
6. **At least every five years, offer a free arborist review to property owners with designated tree groves to assist in assessing tree grove health and recommending best practices.**

7. Provide periodic site visits to refine mapped tree grove boundaries.
8. In lieu of hiring surveyors, encourage the County to property owners to use GPS technology to delineate boundaries in RC zones.
9. Better advertise the services that the Planning Department provides to development applicants.
10. Conduct periodic informational workshops on the Sensitive Lands program tailored to realtors and developers.
11. Investigate establishment of a review process to resolve differences in delineation of Sensitive Lands that is generally modeled after the City of Portland process.
12. In acknowledgement of the resource protection benefits that their properties provide to the City as a whole, investigate opportunities for fee reductions and waivers for property owners with designated Sensitive Lands. Examples include:
 - Increase utility and utility access fees, e.g. \$3/household, and dedicate those savings to public outreach and resource restoration projects.
 - Waive fees for resource delineation.
 - Reduce costs of pre-applications and applications.
 - Reimbursement of appeal fees for successful appeals of delineations.

5. INCREASING PUBLIC AWARENESS BY PROVIDING BENEFICIAL PUBLIC EDUCATION AND OUTREACH TO PROPERTY OWNERS, DEVELOPERS AND THE GENERAL PUBLIC

Questions Addressed

- What types of public education are recommended? What type of property owner education and outreach would be beneficial?
- Should the City promote use of disclosure statements for transfers of property to advise new owners of the existence of sensitive lands and requirements for resource protection and maintenance?

Considerations

1. Public education efforts need to address a broader range of resource issues than Sensitive Lands regulations as they are only one component of the City's land use and natural resource programs.
2. The City currently offers a variety of public education opportunities, including Landscaping for Conservation workshops, Community Forestry classes, and has partnered with the Friends of Tryon Creek in offering backyard nature friendly audits.
3. When a property owner chooses to develop property with a mapped tree grove (RC), he or she must designate 50% for protection. The Code requires that the property owner record a "Notice of Development Restriction" with the County so that prospective purchasers can be made aware of which portion of the tree grove is selected for protection. By practice, the City has also required recording of RP zone boundaries when viewed as important information for property owners, particularly in anticipation of the transfer of property. Although not required by Metro for Title 3 or 13 compliance, several cities in the region, e.g. Tigard, Wilsonville, Oregon City, have similar disclosure requirements. Since 2003, this requirement has been applied to 62 properties.

Recommendations

1. Provide ongoing public education about the values of stream corridors, riparian areas, tree groves and other natural resources in the City and why they are being protected. Produce a regular series of newspaper and newsletter articles on habitat friendly practices.
2. Conduct periodic informational mailings to all Sensitive Lands property owners. Include information on the package of services offered by the City, including information on tax relief that may be available for conserving natural resources, if known and if available.
3. Continue to provide free landscaping for conservation workshops and in-home consultations on landscape improvements.
4. Continue to provide tree care workshops through the Community Forestry Program.
5. Identify sustainable sources of funding for public education programs.
6. Promote use of disclosure statements for transfers of property to advise new owners of the existence of Sensitive Lands and requirements for resource protection and maintenance.
7. Conduct targeted mailings to new property owners to advise them of potential Sensitive Lands restrictions and services offered by the City.

COMPLEMENTARY RECOMMENDATIONS

During the Task Force process, considerations and recommendations related to noxious vegetation (e.g., ivy) control were identified. These relate to all properties in the City, not just Sensitive Lands, and are attached as complementary recommendations.

A. Establishing minimum maintenance requirements to limit the growth of plants identified on the City's noxious weed list

Considerations

1. English ivy runs rampant in many Lake Oswego tree groves, including both on private property (e.g., the north side of South Shore Drive) and in public parks. Lake Oswego is reported to have much more of an ivy problem than other communities in the region.
2. Over time, invasive plants and ivy specifically can eliminate trees and tree groves in the following ways:
 - Limit air circulation, increasing tree susceptibility to disease.
 - Increase load and wind sail effect on mature trees and can result in branch and whole tree failure.
 - As ivy reaches the crown of trees, it set seeds which are eaten by birds and spread to new areas. Ivy leaves in tree crowns outcompete host tree leaves, which leads to tree decline and death.

When the forest floor is covered with ivy, tree seedlings are suppressed. Therefore when mature tree canopy fails due to ivy, tree grove regeneration is suppressed. Based on these factors, allowing a tree or tree grove to decline or die by choosing not to limit vining invasive or ivy growth could be considered comparable to actively

removing trees or tree groves. Alternatively, it could be seen as expanding a non-conforming landscape situation.

3. Lake Oswego's *State of the Urban Forest Report* (2009) contained a detailed inventory of the City's street trees (trees in the public right-of-way), and found that the greatest threat to the health of the street trees was English ivy. This vining invasive was found on over 35% of street trees. This problem is likely as or more prevalent on private property trees.
4. Tree removal permits are required for tree removal whether or not they are in an RC or RP district. Requiring tree removal permits for invasive plants is a barrier to natural resource stewardship.
5. There should be minimum maintenance requirements to limit the growth of vining plants identified on the City's noxious weed list into the canopies of protected trees. This language could rest in the Tree Code and thus apply to all of Lake Oswego's trees (regardless of whether the trees happen to be in a tree grove or stream buffer).

Recommendations

1. **Update the City's invasive plant list, and include a complete listing of invasive tree species.**
2. **Exempt from tree removal permit requirements those trees identified on the invasive plant list. Apply this exemption to all properties within the City (not just Sensitive Lands).**
3. **Even though exempt from permit requirements, require property owners to retain proof of exemption (photo of invasive trees/written documentation from an arborist, landscape architect, forester, or other natural resource professional) for up to one year following removal. This is intended to protect property owners from uninformed complaints.**
4. **In consultation with NPAB, the City should develop a voluntary or incentive program for removal of ivy and other invasive species from private property.**
5. **For city-owned properties, the City should develop an aggressive program for removal of ivy and other invasive species that "leads by example".**
6. **Include requirements for minimum tree/ivy maintenance in the Tree Code.**

B. Prioritizing code enforcement against noxious vegetation

Considerations

1. Prioritization of enforcement of existing code provisions is needed, as it is practically impossible to enforce the code's prohibition against all noxious vegetation. This prioritization would clearly demonstrate that the community is committed to protecting its community forests (whether or not in sensitive lands) from noxious vegetation. It would also show that this type of vegetation control is more important than not mowing lawns and letting grass grow over 10 inches (which is a good thing in many cases for wildlife).

Recommendations

Either as code or City policy, consider prioritizing enforcement actions against noxious vegetation.

SUPPORTING DOCUMENTATION

To be assembled by the Planning Department and include:

- Appendix A: Sensitive Lands Data Summary (April 2008)
- Appendix B: Sensitive Land Functions prepared Andrew Harris (November 2009),
- Task Force meeting summaries
- Staff reports provided to the Task Force
- Metro and Lake Oswego Corporation responses to Task Force questions
- Presentation materials, e.g. PowerPoint presentation to the Task Force by Citizens for Stewardship of Land Oswego Lands
- Open house summary
- Public comments received