



Department of Planning and Building Services
380 A Avenue
Post Office Box 369
Lake Oswego, OR 97034
503-635-0270
www.ci.oswego.or.us

ANNEXATION

WHY WOULD A PROPERTY OWNER ANNEX TO THE CITY?

Annexation is the means by which property owners in unincorporated areas can join the City of Lake Oswego, receive City services and vote in City elections. Usually, access to one or more major urban services is the reason residents and property owners outside the City consider annexation. These services include sanitary and storm sewers, City water, improved road maintenance, and greater police protection.

PRE-APPLICATION CONFERENCE NOT REQUIRED

A Pre-Application (Pre-App) Conference is not required for annexation applications; however, applicants are strongly encouraged to consult with staff on the availability of public services to the site prior to filing an application. In some cases, certain public services may not be readily available to the site.

APPLICATION PROCEDURE

The applicant files a complete application with the Department of Planning and Building Services using the attached Annexation Application form. The applicant also provides information and materials specified in the attached "Submittal Requirements" section of this handout. Within 45 days of receiving your application, staff will review it to determine whether all the required information has been included. If the application is "incomplete," a letter will be sent to the applicant indicating what additional information is necessary. When the application is deemed "complete," the City schedules a hearing date before the City Council and mails a Notice of Public Hearing to surrounding property owners at least 20 days prior to the hearing date. Annexation hearings before the City Council are held quarterly in January, April, July and October. **The applicant needs to file an application a minimum of 90 days before the annexation hearing date.**

Staff will prepare a report on the annexation application that will be presented to the City Council at the public hearing. The staff report will be available 15 days prior to the hearing date. Two weeks before the hearing, staff will post a public notice sign at the location of the proposed annexation.

WHO MAKES THE DECISION

The City Council will make a decision on the annexation application at the public hearing. The application will be evaluated on the basis of the information provided, the criteria listed in the pertinent sections of the City's Comprehensive Plan, Community Development Code and other applicable codes, public comment, and inspection of the property. Appeals of the Council's decision can be made to the Land Use Board of Appeals (LUBA).

EFFECTIVE DATES

Following the filing of the annexation with the Secretary of State, the effective date of the annexation shall be upon the **later of either** (see note below):

- a. The 30th day following the date of adoption of the ordinance, or
- b. The date of filing of the annexation records with the Secretary of State.

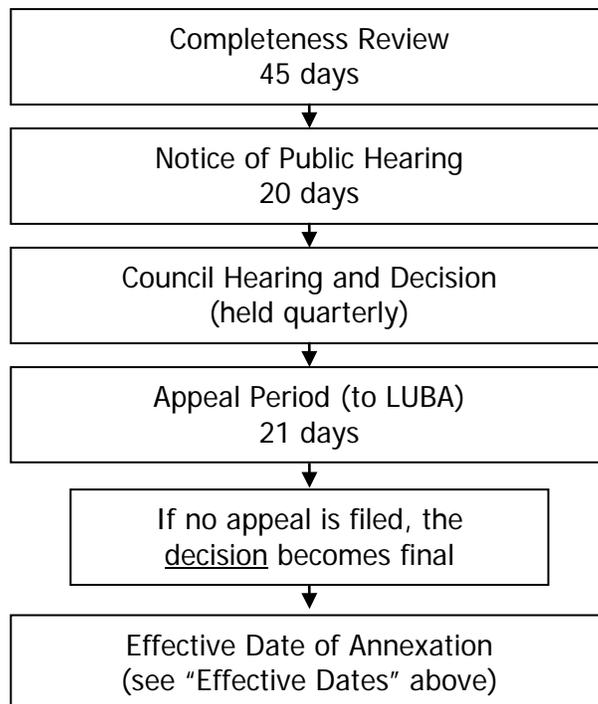
Note: Pursuant to ORS 222.040(2), if the effective date of the annexation as established above is a date that is within 90 days of a biennial primary or general election or after the deadline for filing notice of election before any other election held by any city, district or other municipal corporation involved in the area to be annexed, then the effective date of the annexation shall be delayed until, and the annexation shall become effective on, the day after the election.

The flow chart shown below identifies the typical review process for annexation applications; however, special circumstances may increase certain processing times.

CITY POLICY DISCOURAGING DESTRUCTION OF NATURAL RESOURCES PRIOR TO ANNEXATION

Resolution 04-38 states that no application for annexation to the City shall be processed for a property if the natural resources on the property have been damaged or destroyed prior to annexation. A copy of Resolution 04-38 is attached. It is strongly advised that you speak with planning staff prior to taking any actions that may affect trees, streams, wetlands, or other natural resources on an unincorporated property.

ANNEXATION REVIEW PROCESS



SUBMITTAL REQUIREMENTS

A complete application is required before the City can proceed with technical analysis and make an informed decision on an annexation application. Following is a list of materials that are required for annexation applications. Staff will not process the application until all the items on the list have been submitted. Consult with the Department of Planning and Building Services if you have a question. All application materials become public information.

GENERAL

- Completed Annexation Application form signed by the property owner(s).
- Annexation petition form with either:
 - a) Signatures of all property owners¹ of the land to be annexed and at least 50% of the registered voters residing on the property or properties to be annexed; **or**,
 - b) Signatures of more than half of the owners (see footnote 1, below) of land in the territory to be annexed who also own more than half of the land in the territory **AND** represent more than half of the assessed value of all property in the territory [ORS 222.170].
- Legal description and map of the parcel(s) or territory to be annexed, which shall be attached to the Annexation Petition. The legal description shall be a metes and bounds description, or if the areas is platted, a lot, block and subdivision description. The map (or maps) shall be a County Assessor's quarter-section map that clearly illustrates the area to be annexed and includes any unincorporated street rights-of-way abutting the parcel(s) proposed for annexation. Clearly highlight the parcel(s) and unincorporated streets proposed for annexation in red pen or pencil. If necessary, Planning staff can assist you in obtaining copies of the correct County Assessor's maps.
- Title report for the property and rights-of-way to be annexed to determine whether any easements or rights-of-way exist.
- Annexation Fee. See attached Annexation Fee handout to determine applicable fee.

Attachments:

Application for Annexation
Petition Form for Annexation
Annexation Fees
Resolution 04-38

¹ To give consent for a particular piece of property, persons who legally own an interest in the property or who are purchasers of property on a contract sale that is recorded with the county must sign the petition. Generally, this means that both husband and wife should sign. In the case of a corporation or business, the person who is authorized to sign legal documents for the firm may sign the petition. In the case of a trust, the documentation showing who may make decisions for the trust is required. If there is multiple ownership in a parcel, each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel's area [ORS 222.120(7)].



TO: Planning Staff

FROM: Paul Espe, Associate Planner
Planning and Building Services Department

SUBJECT: Annexation Schedule – Updated

DATE: April 20, 2016

This is the updated annexation schedule through January 17, 2017. This is a quarterly schedule designed so that annexations may be grouped into these four City Council hearings. The City Council meets on the first and third Tuesdays of every month. This schedule allows approximately 90 days for completeness review, noticing and report preparation for the public hearing.

City Annexation Schedule

Submit Date	CC Hearing Date
April 8, 2016	July 5, 2016
July 8, 2016	October 4, 2016
October 7, 2016	January 3, 2017
January 6, 2017	April 4, 2017

Invitations will continue to be sent to surrounding properties. In most cases, responses will not be received and a completed application will not be submitted in time to be included with the subject annexation. Those applicants joining an annexation as a result of an invite will get bumped to the next scheduled quarterly annexation hearing date. The applicant initiating the annexation will move forward as scheduled unless they are rescheduled with the other applicants.



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ANNEXATION FEES

Effective Date: January 1, 2016

City Fee:

The annexation fee categories adopted by the City Council as a part of Resolution 14-63 are as follows:

Parcel less than 3 times minimum lot area for the zone designation that will apply upon annexation..... \$0 + Applicable Metro Fee

Parcel 3 times or greater than the minimum lot area for the zone designation that will apply upon annexation.....\$768 x number of lots into which the parcel could be divided under the zone designation that will apply upon annexation + Metro fee

Parcel for which there is no minimum lot area for the zone designation that will apply upon annexation.....\$1,536 + Metro fee

- **Lots that do not have Resource Protection (RP) or Resource Conservation (RC) overlays:** For lots that do not have designated resources, the fees are calculated based on the gross number of lots that can be divided under the zone designation that will apply upon annexation + the Metro fee.

Potential Lots = Gross area of Lot / Minimum lot size of the zone.

* Potential lots are those lots that are divided into the gross area of the parcel (without subtracting Right-Of-Way or accounting for lot shape).

- **Lots with a designated RP or RC resource:** For lots with an RP or RC resource designation –

Potential Lots = gross area of lot – [100% RP + 50% RC, if applicable] / minimum lot size of the zone.

- **Lots that have responded to a mailed annexation invitation:** Applicable Metro fees are charged but no annexation fees are charged for these annexation applications.

Refunds:

When an applicant decides to withdraw an application, **prior** to the first public hearing notice being published, a partial refund will be made based on staff time and expenses spent on processing the application. Once the public hearing notice has been published, no refunds will be made on the **City fee**. The complete Metro fee will be reimbursed.

Metro Fee:

Applicants will also need to pay the applicable Metro filing fee:

Size of Area to be Annexed	Additional Filing Fee
Single tax lot less than 1 acre	\$150
1-5 acres	\$250
5.1-40 acres	\$300
Greater than 40 acres	\$400

Payment of Fees:

Applicants need to submit one check payable to the City of Lake Oswego, which includes both the City fee and Metro fee.



ANNEXATION APPLICATION

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FILE NAME: _____	SUBMIT: _____	REVIEW: _____
_____	RESUBMIT: _____	REVIEW: _____
FILE NUMBER(S): _____	HEARING DATE: _____	
CITY FEE RECEIVED: \$ _____	METRO FEE RECEIVED: \$ _____	CHECK #: _____
NEIGHBORHOOD ASSN.: _____	RECEIPT #: _____	
CHECKLIST: <input type="checkbox"/> Legal Description	<input type="checkbox"/> Title Report	COMPLETENESS DATE: _____
<input type="checkbox"/> Assessor's Map	<input type="checkbox"/> Petition	<input type="checkbox"/> Fees (City and Metro)
<input type="checkbox"/> Delineation of Natural Resources (if required)		
<input type="checkbox"/> Resolution 04-38 given to Applicant on _____ (date)		

PRINT OR TYPE ALL INFORMATION BELOW

APPLICANT USE MAILING ADDRESS FOR HEARING NOTIFICATION

YOUR NAME			PHONE #		
BUSINESS NAME			FAX #		
ADDRESS			SUITE		
CITY		STATE		ZIP	
E-MAIL ADDRESS					
SIGNATURE (ORIGINAL REQUIRED)			DATE		
Note: I consent to an on-site inspection by an employee(s) of the City of Lake Oswego					

PROPERTY OWNER (ADDITIONAL OWNER-SEE PAGE 2)

YOUR NAME			PHONE #		
BUSINESS NAME			FAX #		
ADDRESS			SUITE		
CITY		STATE		ZIP	
E-MAIL ADDRESS					
SIGNATURE (ORIGINAL REQUIRED)			DATE		
Note: I consent to an on-site inspection by an employee(s) of the City of Lake Oswego					

ATTACH ANNEXATION PETITION AND LEGAL DESCRIPTION FROM DEED
ADDITIONAL PROPERTY OWNER IF MORE THAN ONE OWNER

YOUR NAME			PHONE #
BUSINESS NAME			FAX #
ADDRESS		SUITE	
CITY	STATE	ZIP	
E-MAIL ADDRESS			
SIGNATURE (ORIGINAL REQUIRED)		DATE	
Note: I consent to an on-site inspection by an employee(s) of the City of Lake Oswego			

PROPERTY/ZONING DATA

Address _____

Location Description _____

MAP & TAX LOT (list one per line)	(DO NOT USE LOT & BLOCK)	SITE ACRES	ZONING/PROPERTY INFORMATION			
			EXISTING COUNTY ZONING DESIGNATION	CITY COMPREHENSIVE PLAN DESIGNATION	CURRENT ASSESSED VALUE	TOTAL EXISTING POPULATION
—						
—						
—						
—						
—						
TOTAL OF PARCEL AREAS:		ACRES	SQ. FT.			

RIGHTS-OF-WAY TO BE INCLUDED: _____

REASON FOR ANNEXATION: _____

DESCRIBE NUMBER AND TYPES OF STRUCTURES ON THE PARCEL(S) (USE TAX LOTS AS REFERENCE):

EXISTING USE OF AREA TO BE ANNEXED:

PROPOSED USE OF AREA TO BE ANNEXED:

DESCRIBE SURROUNDING LAND USES (USE TAX LOTS AS REFERENCE)

NORTH —

SOUTH —

EAST —

WEST —

PETITION FOR ANNEXATION TO THE CITY OF LAKE OSWEGO, OREGON

To the City Council of the City of Lake Oswego:

We, the undersigned owners and/or electors, petition and consent to be annexed to the City of Lake Oswego.

A map is attached, marked Exhibit A, showing the affected territory and its relationship to the present City boundaries.

PETITION SIGNERS							
Signature	Printed Name	I Am A* (check both if applicable)		Owner's /Elector's Mailing Address	Property Description		Date**
		PO	RV		Tax Map	Tax Lot	

* PO = Property Owner, RV = Registered Voter

**Within 1 year from the date of filing petition with City



City of Lake Oswego

Confidential Census Form

In Cooperation with Portland State University, the City of Lake Oswego would like a count of all persons in each household. This information will be kept confidential with the City Recorder and will be used to update the city's official population estimate. These estimates are used for disbursements of State revenue and program resources.

Address: _____

Housing Type

Tenure

Single Unit Structure

Owner Occupied

Multiple Unit Structure

Renter Occupied

Trailer or Mobile Home

Vacant

Group Quarters Facility

Seasonal

Residents

Last Name

First Name

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

RESOLUTION 04-38

A RESOLUTION OF THE LAKE OSWEGO CITY COUNCIL ADOPTING POLICIES DISCOURAGING DESTRUCTION OF NATURAL RESOURCES PRIOR TO ANNEXATION

WHEREAS the City of Lake Oswego has adopted regulations protecting environmentally sensitive natural resources and significant trees within the City; and

WHEREAS on occasion property owners have removed or degraded natural resources prior to filing a petition to annex property to the City in order to maximize development opportunities; and

WHEREAS the Urban Services Boundary defines Lake Oswego's ultimate growth area, within which the City will be the eventual provider of the full range of urban services; and

WHEREAS the City Council finds that it is in the public interest to discourage the practice of removing significant trees and degrading sensitive natural areas on properties within the unincorporated portions of the Urban Services Boundary.

BE IT RESOLVED by the Lake Oswego City Council that:

Section 1. The City Council hereby adopts the "Policies Discouraging Destruction of Natural Resources and Significant Trees Prior to Annexation" attached to this Resolution as Exhibit A and incorporated by this reference;

Section 2. This Resolution shall be effective upon passage.

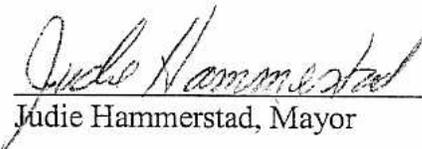
Considered and enacted at the meeting of the City Council of the City of Lake Oswego on the 18th day of May, 2004.

AYES: Mayor Hammerstad, Graham, Hoffman, Peterson, Turchi, McPeak, Rohde

NOES: none

EXCUSED: none

ABSTAIN: none



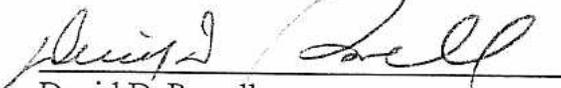
Judie Hammerstad, Mayor

ATTEST:



Robyn Christie, City Recorder

APPROVED AS TO FORM:



David D. Powell
City Attorney

POLICIES DISCOURAGING DESTRUCTION OF NATURAL RESOURCES AND SIGNIFICANT TREES PRIOR TO ANNEXATION

Purpose: To encourage property owners interested in petitioning the City for annexation to preserve and protect natural resources and significant trees prior to annexation.

Background: The City of Lake Oswego has inventoried, evaluated, mapped and developed a protection program for hundreds of acres of stream corridors, wetlands and tree groves within its planning area (LOC Article 50.16). This planning area includes lands outside the City limits but within the City's Urban Services Boundary. In this unincorporated area, the City and other jurisdictions have agreed that the City is the most logical future provider of urban services and, according to state law, should plan for land use and transportation needs in those areas. It is anticipated that, at some point in the future, properties within the City's Urban Services Boundary will eventually seek annexation, typically for future development purposes or to receive City services.

On several occasions, the City has received petitions to annex properties within the unincorporated areas of the Urban Service Boundary on which trees have been cut, vegetation removed and streams degraded. Although these actions may not have been regulated by the County, in some cases they would violate City natural resource protection requirements.

Removal of natural resources contributes to erosion and water quality issues resulting in degradation of wildlife habitat and siltation buildup in waterways. When such properties are subsequently annexed, the City may become obligated to develop programs and expend funds to mitigate the negative effects of natural resource removal.

These types of actions gain additional importance in light of the listing of salmonid species under the Endangered Species Act in the Tualatin and Willamette Rivers and their tributaries, which receive storm water runoff and other drainage from within the City. In addition, several creeks within the northerly portion of the unincorporated Urban Services Boundary are tributaries of Tryon Creek, which is a fish-bearing stream. The County, the City and private citizens should work together to ensure that their programs and activities are "salmon safe."

Removal of significant trees, whether or not within a protected tree grove, can have a negative effect upon aesthetics and natural processes, and should be discouraged in areas subject to annexation unless the criteria for tree removal under the City Code have been met.



I. Policy for parcels from which trees of a certain size and species have been removed:

The City Council declares that it will decline a petition for annexation of a parcel pursuant to ORS 222.125 or 222.170 if a tree of a size and species listed in the procedures below has been removed from the property following the date of this policy under circumstances that, in the determination of the City Manager, would not have warranted issuance of a permit for the removal of the tree under the criteria of the Lake Oswego Tree Code, unless the property owner:

- Mitigates for the removal of the tree to the satisfaction of the City Manager by planting a tree of the same or similar species, 15 to 20 feet tall and with a trunk size of 5 to 12 inch caliper dbh, on the same property in approximately the same location as the removed tree;
- Successfully maintains the replacement tree for at least three years prior to annexation, and commits to maintain the mitigation for at least two years following annexation; and
- Pays a restoration fee into the City of Lake Oswego Tree Fund in the amount of the value of the removed tree.

Compliance with this policy shall not be deemed to assure that the City Council will approve the annexation petition. This policy shall not be construed as preventing the Council from exercising its full discretionary authority in granting or denying petitions for annexation as otherwise permitted by Oregon law.

This policy applies to annexations that are initiated or requested by the owners of the property to be annexed and that require the consent of owners electors under ORS Chapter 222. It does not apply to annexations by election under ORS Chapters 222 or 195 or to non-consensual “island” annexations.

This policy applies notwithstanding the election requirements of Section 57 of the Lake Oswego Charter, which requires a City-wide vote prior to annexation of parcels within certain portions of the Stafford Area. If the owners of a parcel in that area initiate or request annexation contrary to this policy, the City Council will decline to refer the proposed annexation for a vote under Section 57.

Procedure:

1. Upon receipt of an annexation petition, the City Manager will determine whether a tree of a species and size greater than or equal to that listed below has been removed from the site following the date of this policy:

<u>Species</u>	<u>Common Name</u>	<u>Size (dbh)</u>
Quercus garryana	Oregon white oak	08"
Pseudotsuga menziesii	Douglas-fir	18"
Thuja plicata	Western red cedar	12"
Pinus Ponderosa	Ponderosa pine	12"
Other Deciduous and horticultural tree species		20"
Other evergreen and conifer trees		18"
Western Yew	Taxus Brevifolius	05"

2. If the City Manager determines that such a tree has been removed, the City Manager shall then allow the property owner an opportunity to establish, to the satisfaction of the City Manager, that the circumstances of the removal would have warranted issuance of a tree removal permit under the criteria of the Lake Oswego Tree Code.
3. If the City Manager determines that the property owner has established that the circumstances of the removal would have warranted issuance of a tree removal permit, the City Manager shall inform the Council that the property owner has complied with this policy.
4. If the City Manager determines that the property owner has failed to establish that the criteria for a tree removal permit would have been met, annexation shall be declined unless the property owner:
 - a. Plants a replacement tree of the same or a similar species (as determined by the City Manager), 15 to 20 feet tall and with a trunk size of 5 to 12 inch caliper dbh, in approximately the same location on the property as the removed tree. The height and trunk size within the above ranges shall be determined by the City Manager, considering the type of tree, its growth rate, availability of replacement trees at various sizes, and the size of the removed tree. The tree shall be planted according to the specifications in the City Tree Planting and Maintenance Guidelines as approved by the City Council;
 - b. Successfully maintains the replacement tree for at least three years prior to annexation (Successful maintenance includes, without limitation, immediate replacement of any

replacement tree that dies or otherwise declines during the maintenance period); and

- c. Pays a restoration fee into the City of Lake Oswego Tree Fund in the amount of the value of the removed tree as determined to the satisfaction of the City Manager in accordance with the methods set forth in the “Guide for Plant Appraisal” published by the International Society of Arboriculture, or such other method as may be deemed appropriate by the City Manager.

In addition to the pre-annexation requirements of Sections 4 a, 4 b and 4 c, above, annexation of the property shall be conditioned upon the following:

- d. The property owner shall execute an agreement with the City requiring the property owner to maintain the required mitigation (tree replacement), at his or her expense, in a manner consistent with this policy and to the satisfaction of the City Manager for a period of at least two years following the effective date of the annexation. The agreement shall also provide that, if the property owner fails to meet this obligation, the City may enter the property to restore and maintain the mitigation at the property owner’s expense;
- e. The property owner shall record a restrictive covenant against the property, in a form approved by the City Attorney, requiring the mitigation to be maintained for at least two years following the effective date of the annexation in a manner consistent with this policy and to the satisfaction of the City Manager, granting the City the right to enforce the restrictive covenant, and allowing recovery of attorney fees and other enforcement expense by the City;
- f. The property owner shall grant and record an easement, in the form approved by the City Attorney, allowing the City access to and use of the property for the purposes of restoring and maintaining the required mitigation during the two-year period; and
- g. The property owner provide the City with a bond, cash deposit or other security acceptable to the City Manager, in a sum deemed by the City Manager to be sufficient to cover

the costs of restoration and maintenance of the required mitigation during the two-year period.

5. Any person who owns property within the unincorporated portion of the City's Urban Services Boundary and who proposes to remove a tree may apply for certification by City staff that the proposed removal would qualify for a Lake Oswego Tree Removal Permit if the property were within the City's boundaries. Upon a subsequent annexation petition, the certification shall satisfy the property owner's burden under paragraph 2 of this policy with relation to the removal of the tree. An applicant for a certification under this paragraph shall pay the same fee as established for the corresponding tree removal permit.
6. The City Council will not approve annexation of property where the requirements of this policy have not been met, unless the City Council elects, in its discretion, to exempt the property from this policy.

II. Policy for parcels with resources that are inventoried or for which a determination is pending:

The City Council declares that it will decline a petition for annexation of a parcel pursuant to ORS 222.125 or 222.170 when:

(1) the parcel has previously been inventoried pursuant to the ESEE analysis performed by the City pursuant to the requirements of Statewide Planning Goal 5 and determined to have natural resources that would have been protected if located within the City, or the parcel is designated on the Lake Oswego Natural Resource Inventory Update Map as having natural resources for which there is a pending determination as to whether the criteria for such protection are met, and

(2) the natural resources on the parcel have been removed or otherwise degraded beyond that which would have been clearly permitted under the City natural resource regulations,

unless the property owner mitigates the effects of the natural resource removal by restoring the site to the condition which would exist if the site had complied with the City's natural resource regulations from the date of the inventory, or from the date of designation on the Lake Oswego Natural Resource Inventory Update Map, to the date of annexation, and unless the mitigation is successfully maintained by the property owner for a period of at least three years prior to annexation, and the property owner commits to

maintaining the mitigation for at least two years following annexation. If the property owner or other applicant for annexation cannot substantiate to the satisfaction of the City Manager the quality and quantity of natural resources that were on the site prior to the removal or degradation, the property owner must establish or enhance natural resources within the mapped natural resources area to a minimum quality and quantity determined by the City Manager, taking into consideration the data and analysis that resulted in the designation of the mapped natural resources area on the site.

In the case of annexation petitions for parcels with natural resources designated on the Lake Oswego Natural Resource Inventory Update Map, an analysis of the resources under the criteria of LOC 50.15.020 shall be completed by City staff at the applicant's expense prior to the City Council's consideration of the petition. If, in the determination of the City Manager, the resources meet the criteria for protection under the City's natural resources regulations, annexation will be declined pursuant to this policy unless mitigation occurs as provided above. If the City Manager determines that the resources do not meet the criteria for protection, this policy shall not apply.

Compliance with this policy shall not be deemed to assure that the City Council will approve the annexation petition. This policy shall not be construed as preventing the Council from exercising its full discretionary authority in granting or denying petitions for annexation as otherwise permitted by Oregon law.

This policy applies to annexations that are initiated or requested by the owners of the property to be annexed and that require the consent of owners electors under ORS Chapter 222. It does not apply to annexations by election under ORS Chapters 222 or 195 or to non-consensual "island" annexations.

This policy applies notwithstanding the election requirements of Section 57 of the Lake Oswego Charter, which requires a City-wide vote prior to annexation of parcels within certain portions of the Stafford Area.) If the owners of a parcel in that area initiate or request annexation contrary to this policy, the City Council will decline to refer the proposed annexation for a vote under Section 57.

Procedure: To identify annexing parcels on which natural resources have been degraded and for which the City has conducted natural resources inventory and mapping, the following procedures shall apply:

1. Upon receipt of an annexation petition, City staff will determine whether the site contains inventoried natural resources or contains

resources designated on the Lake Oswego Natural Resource Inventory Update (NRIU) Map. If so, staff will visit the parcel(s) proposed for annexation and compare existing site conditions to the City's site inventory of natural resources, or to the NRIU Map.

2. If it appears that the functions and values of the natural resources on the site have been compromised since the parcel was inventoried or designated on the NRIU Map beyond that which would be clearly permitted under the City's natural resource regulations:
 - a. For inventoried resources, and for resources designated on the NRIU Map that have been determined to meet the criteria for protection under paragraph 2(b), staff will instruct the property owner to develop a mitigation and restoration plan that restores and protects the functions and values of the resource on-site to the same degree as if the site had been protected under the City's natural resource programs from the date of inventory to the date of annexation. The plan shall be prepared by a certified professional (restoration ecologist, biologist, ecologist, etc.) approved by the City Manager. If the property owner or other applicant for annexation cannot substantiate to the satisfaction of the City Manager the quality and quantity of natural resources that were on the site prior the removal or degradation, the mitigation plan must provide for the establishment or enhancement of natural resources within the mapped natural resources area to a minimum quality and quantity determined by the City Manager, taking into consideration the data and analysis that resulted in the designation of the mapped natural resources area on the site. (A property owner who wishes to establish a natural resource "baseline" following inventory and prior to any development activities which could degrade the natural resources is encouraged to contact the City's Natural Resource Coordinator to obtain an inventory of the quality and quantity of the natural resources existing on the site.) The mitigation plan shall be reviewed and either approved by the City Manager or the City Manager shall make recommendations for improvement to the mitigation plan.
 - b. In the case of parcels with natural resources designated on the NRIU Map, an analysis of the resources under the criteria of LOC 50.15.020 shall be completed by City staff at the applicant's expense. Following the analysis, the City Manager shall determine whether the resources meet the criteria for protection. If so, mitigation under paragraph 2(a) shall be required to the same extent as though the resources had been inventoried prior to the filing of the annexation petition.

3. If the property owner complies with the mitigation plan as approved by the City Manager prior to annexation, and maintains the mitigation for at least three years prior to annexation, the property owner shall be deemed to have restored the natural resources on the parcel sufficient to be eligible for annexation under this policy. Annexation of the property shall be conditioned upon the following:
 - a. The property owner shall execute an agreement with the City requiring the property owner to maintain the required mitigation, at his or her expense, in a manner consistent with this policy and to the satisfaction of the City Manager for a period of at least two years following the effective date of the annexation. The agreement shall also provide that, if the property owner fails to meet this obligation, the City may enter the property to restore and maintain the mitigation at the property owner's expense;
 - b. The property owner shall record a restrictive covenant against the property, in a form approved by the City Attorney, requiring the mitigation to be maintained for at least two years following the effective date of the annexation in a manner consistent with this policy and to the satisfaction of the City Manager, granting the City the right to enforce the restrictive covenant, and allowing recovery of attorney fees and other enforcement expense by the City;
 - c. The property owner shall grant and record an easement, in the form approved by the City Attorney, allowing the City access to and use of the property for the purposes of restoring and maintaining the required mitigation during the two-year period; and
 - d. The property owner provide the City with a bond, cash deposit or other security acceptable to the City Manager, in a sum deemed by the City Manager to be sufficient to cover the costs of restoration and maintenance of the required mitigation during the two-year period.
4. The City Council will not approve annexation of property where the requirements of this policy have not been met, unless the City Council elects, in its discretion, to exempt the property from this policy.

III. Policy for parcels where water resources have been degraded in violation of state or federal law.

The City Council declares that it will decline a petition for annexation of a parcel pursuant to ORS 222.125 or 222.170 if, following the date of this policy, a water resource on the parcel has been filled, or has had material removed, or has otherwise been degraded, in violation of any state or federal law or regulation, unless the property owner:

- Pays in full all fines, civil penalties and other assessments imposed or otherwise required by any state or federal agency;
- Pays in full any damages awarded pursuant to the provisions of ORS Chapter 196 or pursuant to any similar or related statutes or regulations;
- Fully complies with any order of any state or federal agency related to the degradation of the water resource; and
- Complies with all mitigation or restoration requirements imposed or ordered by a state or federal agency, and successfully maintains the mitigation or restoration for at least three years prior to annexation and commits to maintain the mitigation for at least two years following annexation.

For the purposes of this policy, “water resource” shall mean any natural waterway including any bay, stream, lake, wetland or other body of water, whether navigable or non-navigable.

Compliance with this policy shall not be deemed to assure that the City Council will approve the annexation petition. This policy shall not be construed as preventing the Council from exercising its full discretionary authority in granting or denying petitions for annexation as otherwise permitted by Oregon law.

This policy applies to annexations that are initiated or requested by the owners of the property to be annexed and that require the consent of owners electors under ORS Chapter 222. It does not apply to annexations by election under ORS Chapters 222 or 195 or to non-consensual “island” annexations.

This policy applies notwithstanding the election requirements of Section 57 of the Lake Oswego Charter, which requires a City-wide vote prior to annexation of parcels within certain portions of the Stafford Area. If the owners of a parcel in that area initiate or request annexation contrary to this policy, the City Council will decline to refer the proposed annexation for a vote under Section 57.

Procedure:

1. Upon receipt of an annexation petition, City staff will determine whether the site contained a water resource prior to the date of this policy, and will visit the site to determine the current condition of the resource.

2. If it appears that, following the date of this policy, removal or fill has occurred, or that the functions and values of the water resource have otherwise been compromised, in violation of any state or federal law or regulation, and if the violation has not previously been reported to the appropriate state or federal agency, the violation shall be reported to the appropriate agency by City staff.
3. If it appears to staff that no violation has occurred and no report has been made, or if a report is made but the appropriate state or federal agency determines that no violation has occurred, the City Manager shall inform the City Council that the proposed annexation does not violate this policy.
4. If a report has been made, and the appropriate state or federal agency determines that a violation has occurred, the annexation petition shall be denied unless the property owner:
 - a. Pays in full all fines, civil penalties and other assessments imposed or otherwise required by any state or federal agency;
 - b. Pays in full any damages awarded pursuant to the provisions of ORS Chapter 196, or awarded pursuant to any similar or related statutes or regulations;
 - c. Fully complies, in the determination of the City Manager, with any order of any state or federal agency related to the degradation of the water resource; and
 - d. Fully complies, in the determination of the City Manager, with all mitigation or restoration requirements imposed or ordered by the state or federal agency, and successfully maintains the mitigation or restoration for at least five years prior to annexation.

In addition to the pre-annexation requirements of Sections 4 (a), 4 (b), 4 (c) and 4 (d), above, annexation of the property shall be conditioned upon the following:

- e. The property owner shall execute an agreement with the City requiring the property owner to maintain the required mitigation, at his or her expense, in a manner consistent with this policy and to the satisfaction of the City Manager for a period of at least two years following the effective date of the annexation. The agreement shall also provide that, if the property owner fails to meet this obligation, the City may enter the property to restore and maintain the mitigation at the property owner's expense;

- f. The property owner shall record a restrictive covenant against the property, in a form approved by the City Attorney, requiring the mitigation to be maintained for at least two years following the effective date of the annexation in a manner consistent with this policy and to the satisfaction of the City Manager, granting the City the right to enforce the restrictive covenant, and allowing recovery of attorney fees and other enforcement expense by the City;
 - g. The property owner shall grant and record an easement, in the form approved by the City Attorney, allowing the City access to and use of the property for the purposes of restoring and maintaining the required mitigation during the two-year period; and
 - h. The property owner provide the City with a bond, cash deposit or other security acceptable to the City Manager, in a sum deemed by the City Manager to be sufficient to cover the costs of restoration and maintenance of the required mitigation during the two-year period.
5. The City Council will not approve annexation of property that does not comply with the preceding requirements, unless the Council elects, in its discretion, to exempt the property from this policy.

IV. Obligations Run with the Land.

Any obligation of the “property owner” under these policies shall “run with the land” and shall be an obligation of the owner of the property at the time required for performance of the obligation, regardless of any prior transfers of title.

V. Public Notice.

The City Manager shall publicize the adoption of these policies by providing notice to the news media, local realtors, local arborists and foresters, the Home Builders Association of Metropolitan Portland, the Clackamas County Planning Department, and to those Neighborhood Associations and County Planning Organizations whose boundaries include unincorporated areas within the City’s Urban Services Boundary. The City Manager shall encourage the Neighborhood Associations and County Planning Organizations to provide notice of these policies to their membership, and to any realtor that posts signage advertising a property for sale within the unincorporated area. The City Manager shall also provide written notice of these policies to the owners (as listed in the property tax assessment roll) of property within the unincorporated area that have inventoried natural resources, or that have resources designated on the Lake Oswego Natural Resource Inventory Update Map.

VI. Replacement of previous annexation policy.

These policies replace the Interim Policy on Annexation adopted by the City Manager on April 5, 2004.