

ARTICLE 5 OVERLAY DISTRICTS

SECTION 5.0000 PURPOSE AND AUTHORITY

General

5.0001 Overlay Districts

General

5.0001 Overlay Districts

An overlay district is a special purpose district that may be combined with any land use district. The regulations of an overlay district shall be supplementary to the regulations of the underlying land use district and the regulations of the overlay district shall prevail if there is a conflict. The following are overlay districts:

1. Floodplain Overlay District
2. Hillside Physical Constraint Overlay District
3. Historic and Cultural Landmarks Overlay District
4. Habitat Conservation Area Overlay District
5. Open Space Overlay District

SECTION 5.0100

FLOODPLAIN OVERLAY DISTRICT

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General

5.0101 Introductory Provisions

Provisions of this section apply to all areas within the Floodplain Overlay District as designated on the Community Development Special Purpose District Map. This designation shall apply to all areas of special flood hazard within the city. The areas of special flood hazard identified by the Federal Insurance Administration in scientific and engineering reports entitled, "Flood Insurance Study, Multnomah County, Oregon and Incorporated Areas", December 18, 2009 with the accompanying maps entitled "Flood Insurance Rate Map, Multnomah County, Oregon and Incorporated Areas", December 18, 2009 are hereby adopted by reference and declared to be a part of this code. When base flood elevation data has not been provided in these flood insurance studies and maps, the Manager may obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source in order to administer provisions applying to the Floodplain Overlay District.

5.0102 Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This code does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This code shall not create liability on the part of the City, any officer or

employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

5.0103 Interpretation of FIRM Boundaries

The Manager shall determine the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), based on data referenced in **Section 5.0101**. Any person contesting the determination of the Manager may appeal such determination as provided in **Section 11.0302**.

Permitted Uses

5.0110 Permitted Land Uses

Uses permitted in the Floodplain Overlay District shall be those listed as permitted in the underlying district designated for the site. Within areas of special flood hazard which are also designated as Habitat Conservation Area Overlay Districts or Open Space (OS) Districts, development shall be permitted only in accordance with provisions of those special purpose districts. In Floodplain Overlay Districts within the Fairview Creek, Burlingame Creek, and Kelly Creek drainage basins, proposed developments shall demonstrate consistency with guidelines and recommendations of the master storm drain plan for that stream. In addition, any proposal for development within the Floodplain Overlay District shall be accompanied by documentation prepared by a registered civil engineer demonstrating to the satisfaction of the Manager that the development:

- A.** Will not result in an increase in floodplain area on other properties;
- B.** Will not reduce natural flood storage volumes; and
- C.** Will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduced slope stability downstream of the development. Stream velocity following development shall not exceed findings and recommendations of the storm drainage master plan for the affected stream.

Development Standards

5.0120 Standards for Development in the Floodplain Overlay District

In addition to standards applying to development within the underlying Plan Map district, the following standards shall apply to development proposed within the Floodplain Overlay District:

- A.** Anchoring
 - 1.** All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 - 2.** All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage.

Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

- B.** Construction Materials and Methods
 - 1.** All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Utilities

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals

1. All subdivision proposals shall be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres, whichever is less.

E. Residential Construction

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation plus one foot.
2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be no higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
3. Below grade crawl spaces are allowed subject to the current Oregon Residential Specialty Code Section R324.

F. Non-Residential Construction

1. New construction and substantial improvement of any commercial, industrial, institutional or other non-residential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation plus one foot; or together with attendant

utility and sanitary facilities, shall:

- a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 - c. Be certified by a registered professional engineer or architect to have design and methods of construction which are in accordance with accepted standards of practice for meeting the intent of provisions of this subsection.
2. Non-residential structures that are elevated, not flood proofed, must meet the same standards for space below the lowest floor as described in **Section 5.0120(E)(2)**.
 3. Applicants floodproofing non-residential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).

G. Placement of Manufactured Homes

All manufactured homes to be placed or substantially improved within the Floodplain Overlay District shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation plus 18 inches (46 cm), and be securely anchored to an adequately anchored foundation system in accordance with the provisions of **Section 5.0120(A)(2)**.

H. Recreational Vehicles

Recreational vehicles placed on sites are required to either:

1. Be on the site for fewer than 180 consecutive days;
2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
3. Meet the elevation requirements of **Section 5.0120(G)** and the anchoring requirements of **Section 5.0120(A)(2)**.

5.0121 Floodways

Located within the Floodplain Overlay District (areas of special flood hazard) are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential. Due to this fact, encroachments, including fill, new construction, substantial improvements, retaining walls, and other development shall be prohibited. Exceptions to this are fences (except walls or footings for a fence that change the shape of the floodway), public bridges, outfall structures, and fire hydrants which are allowed subject to standards established in the City Public Works Standards. Under no circumstances shall any of these exceptions cause a change in floodway capacity.

- A. New installations of manufactured dwellings in the floodway are prohibited (2002 Oregon Manufactured Dwelling and Park Specialty Code). Manufactured dwellings may only be located in floodways according to one of the following conditions:
 1. If the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general welfare of the public; or

2. A new manufactured dwelling is replacing an existing manufactured dwelling whose original placement was permitted at the time of installation and the replacement home will not be a threat to life, health, property, or the general welfare of the public and it meets the following criteria:
 - a. As required by 44 CFR Chapter 1, Subpart 60.3(d)(3), it must be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge;
 - b. The replacement manufactured dwelling and any accessory buildings or accessory structures (encroachments) shall have the finished floor elevated a minimum of 18 inches (46 cm) above the BFE as identified on the Flood Insurance Rate Map;
 - c. The replacement manufactured dwelling is placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction;
 - d. The replacement manufactured dwelling, its foundation supports, and any accessory buildings, accessory structures, or property improvements (encroachments) do not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties;
 - e. The location of a replacement manufactured dwelling is allowed by the local planning department's ordinances; and
 - f. Any other requirements deemed necessary by the authority having jurisdiction.

5.0122 Coordination With Other Regulatory Agencies

Prior to issuance of a development permit for development within the Floodplain Overlay District, an applicant shall provide evidence to the Manager that all necessary permits have been obtained from other federal, state, and local government agencies involved in regulating development activity within and adjacent to areas of special flood hazard.

5.0123 Information to be Obtained and Maintained

- A. Where base flood elevation data is provided as required in **Section 5.0101**, the Manager shall obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, for which a development permit has been issued in the Floodplain Overlay District.
- B. For all new or substantially improved floodproofed structures, the Manager shall:
 1. Verify and record the actual elevation (in relation to mean sea level), and
 2. Maintain the certifications of registered engineers and architects required in conformance with these provisions.

5.0124 Alteration of Watercourses

- A. When development activity is proposed which would result in relocation or alteration of a watercourse lying within a Floodplain Overlay District, the Manager shall cause notice of the proposed development to be mailed to those jurisdictions through which the watercourse passes, to the Division of State Lands, and to the State Department of Land Conservation and Development.

- B.** The Manager shall approve issuance of a development permit for proposed relocation or alteration of a watercourse only when the following criteria are satisfied:
 - 1.** Satisfactory documentation, prepared by a registered professional engineer, shall be submitted demonstrating that such development will not diminish the flood carrying capacity of the watercourse within the altered or relocated portion of said watercourse.
 - 2.** A plan providing for on-going maintenance of the watercourse and adjacent land areas adequate to maintain the flood carrying capacity of the watercourse shall be prepared and submitted.

5.0125 Flood Management Performance Standards

- A.** All development, excavation and fill in the Floodplain Overlay District shall conform to the following performance standards.
 - 1.** Development, excavation and fill shall be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.
 - 2.** All fill placed at or below the design flood elevation in the Floodplain Overlay District shall be balanced with at least an equal amount of soil material removal.
 - 3.** Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.
 - 4.** Temporary fills permitted during construction shall be removed.
 - 5.** Uncontained areas of hazardous materials as defined by DEQ in the Floodplain Overlay District shall be prohibited.
 - 6.** Development, excavation and fill shall be performed in a manner to maintain or increase slope stability and maintain or decrease erosive velocities.
- B.** The following uses and activities are not subject to the requirements of **Subsection (A)** above:
 - 1.** Excavation and fill necessary to plant new trees or vegetation.
 - 2.** Excavation and fill required for the construction of public detention facilities or structures, and other facilities specifically designed to reduce or mitigate flood impacts. Such facilities shall not be used to create new buildable lands.
 - 3.** New culverts, stream crossings, and transportation projects may be permitted only if designed as balanced cut and fill projects or designed to not raise the design flood elevation. Such projects shall be designed to minimize the area of fill in the Floodplain Overlay District and to minimize erosive velocities. Stream crossing shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.

5.0126 Standards for Shallow Flooding Areas (AO Zones)

Shallow flooding areas appear on the Flood Insurance Rate Maps (FIRM) as AO zones with depth designations. The base flood depths in these zones range from 1 to 3 feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

- A.** New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest grade

adjacent to the building, a minimum of one foot above the depth number specified on the FIRM (at least two feet if no depth number is specified).

- B.** New construction and substantial improvements of nonresidential structures within AO zones shall either:
 - 1.** Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified); or
 - 2.** Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in Section 5.2-2(3).
- C.** Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
- D.** Recreational vehicles placed on sites within AO Zones on the community's FIRM either:
 - 1.** Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - 2.** Meet the requirements of above **subsections A, B, and C** and the elevation and anchoring requirements for manufactured homes contained in **Sections 5.0120(G)** and **5.0120(A)(2)**.

SECTION 5.0200 HILLSIDE PHYSICAL CONSTRAINT OVERLAY DISTRICT

General

5.0201 Purpose

5.0202 Definition and Applicability

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5.0210 Submittal Requirements

Development Standards

5.0220 Development Standards

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5.0222 Development on Slopes Greater than 35%

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5.0226 Surface and Groundwater Drainage

5.0227 Development in “Further Review Areas”

General

5.0201 Purpose

The purpose of the Hillside Physical Constraint Overlay District (HPCD) is to ensure that development in or adjacent to hillside areas occurs in such a manner as to:

- A. Minimize the potential for earth movement and resultant hazards to life and property;
- B. Minimize soil erosion and siltation;
- C. Protect water quality;
- D. Minimize vegetation removal in sloped areas;
- E. Protect the aesthetic and scenic qualities of hillside areas;
- F. Assure the compatibility of a new development with surrounding areas;
- G. Encourage site and building design which is consistent with the natural topography; and
- H. Minimize the cost of public infrastructure provision; and provide for adequate access for emergency services.

5.0202 Definition and Applicability

- A. Hillside Physical Constraint Overlay District Definition - The Hillside Physical Constraint Overlay District (HPCD) are those areas of the City that are shown on the Community Development Hillside Special Purpose District Map and:
1. Where the slope of the land (before development) is 15% or greater; or
 2. Are within a “Higher Landslide Risk Area”;
 3. Are within a “Transition Area” (see **5.0202(C)** below); or
 4. Are within a “Further Review Area”.

For the purposes of this section, areas of slope that are subject to the provisions of the HPCD, are contiguous areas that exhibit slopes of 15% or greater (before development) and that are at least 10,000 square feet in size. Areas of slope are considered to be contiguous if they are located within 50 feet of each other.

- B. Applicability
1. The Soils and Geology Report (**Section 5.0210(C)**) is required for any development in the HPCD as defined in **subsection (A)** above.
 2. The provisions of the HPCD (**Sections 5.0201 – 5.0227**) apply to all development permit applications, with the following exceptions:
 - a. A LDR-5, LDR-7, TLDR or TR dwelling lot. Only **Section 5.0227** applies to an LDR-5, LDR-7, TLDR or TR dwelling building permit when it is on a lot located within a “Further Review Area”.
 - b. Only **Section 5.0221(A)** applies where development, including future development such as a “left-over” parcel, does not include any area of the parcel with slopes of 15% or greater, or the Transition Area (as defined in **Subsection (C)** below).
 3. Where there is a conflict between the standards of the underlying district or the Planned Development standards, and the standards of this HPCD, the standards of the HPCD shall apply. Where there is a conflict between the standards of the HPCD and the Habitat Conservation Area Overlay District, the standards of the Habitat Conservation Area Overlay District shall apply.
- C. Transition Areas
1. The purpose of Transition Areas is to identify situations in which development near a steeply sloped area could affect slope stability.
 2. Transition Areas include those parcels or portions of parcels that:
 - a. Are within 100 feet of a contiguous area that exhibits slopes of 15% or greater and that is at least 10,000 square feet in size; and
 - b. Are shown on the Community Development Hillside Special Purpose District Map.
 3. A Soils and Geology Report as described in **Section 5.0210(C)** shall be required for development on parcels within the Transition Area.
- D. Buildable Area – a portion of an existing or proposed lot that is free of building restrictions. For the purposes of this section, a buildable area cannot contain any setback areas, easements, and similar building restrictions, and cannot contain any land that is identified as Floodplain, Habitat Conservation Area, or any land that has slope greater than 35% (before development), except as provided in **Section 5.0222(F)**.
- E. Further Review Area – an area of land within which further site specific review should occur

before land management or building activities begin because either the State Department of Geology and Mineral Industries or the State Forestry Department determines that the area reasonably could be expected to include sites that experience rapidly moving landslides as a result of excessive rainfall (ORS 195.250).

- F. Certified Engineering Geologist – any State of Oregon Registered Geologist who is certified in the specialty of Engineering Geology under provisions of ORS 672.505 to 672.705.
- G. Geotechnical Engineer – a Professional Engineer, registered in the State of Oregon provided by ORS 672.002 to 672.325, who by training, education and experience is qualified in the practice of geotechnical or soils engineering practices.
- H. Landslide – any detached mass of soil, rock or debris that is of sufficient size to cause damage and that moves down a slope or a stream channel.
- I. Rapidly Moving Landslide – a landslide that is difficult for people to outrun or escape.
- J. Higher Landslide Risk Area – an area of land within which further site-specific review should occur before land management activities begin. These are areas originally identified by the State Department of Geology and Mineral Industries and the State Forestry Department as “Further Review Areas” (9/27/02).

Submittal Requirements

5.0210 Submittal Requirements

- A. Slope Analysis Map (see Land Division and/or Design Review submittal requirements).
- B. Hillside Slope Analysis Map. Applications for development subject to the HPCD shall include supplemental information in addition to that required for a Land Division or Design Review. The following submittals are required:

Slope Analysis Map described in **Section 5.0210(A)** above, shall include additional information for the purpose of determining maximum allowed density as well as the location of the proposed development in relation to steeply sloped areas. In addition to the information required for Slope Analysis Map for Land Divisions or Design Review (**Section 5.0210(A)**), the Hillside Slope Analysis Map for sites in the HPCD shall contain the following information:

1. Measurement of Area in Each Slope Category:
 - Slope categories shall be delineated as described in **Section 5.0210(A)**. The boundary of each polygon delineating a slope area shall run perpendicular to slope along the 10-foot contour lines and parallel to slope between contour lines. The applicant shall determine the area of the parcel which lies within each of the slope categories listed under **Section 5.0210(A)**.

The area within each slope category may be measured manually using a planimeter or calculated using a computer application. The land area of each polygon containing slopes of each of the above slope categories shall be expressed in square feet and labeled on the Slope Analysis Map. The Slope Analysis Map or application narrative shall include a table showing:

- the summed area of each slope category within the parcel, excluding rights-of-way;
- the summed area of each slope category within the proposed rights-of-way;
- the summed area over 35% slope (before development) within buildable areas; and

- the total area of the parcel.
2. The location of slopes of 35% or greater in relation to proposed rights of way, utilities, and buildable areas. This information may be provided on the Hillside Slope Analysis Map if clearly readable, or on a separate map of the same scale as the Hillside Slope Analysis Map.
 3. The Transition Area as defined in **Section 5.0202(C)** above.
- C. A Soils and Geology Report prepared by a Certified Engineering Geologist or a Geotechnical Engineer. The purpose of the Soils and Geology Report is to evaluate the existing geologic condition of the subject parcel, particularly with respect to slope stability; evaluate the potential risks with respect to potential geologic hazards associated with development of the parcel; and provide guidelines to minimize the potential for earth movements and erosion, and to minimize impacts to the natural condition of the site. A Soils and Geology Report is required for sites in the HPCD as well as the Transition Area.

The Manager shall select and consult with a Geotechnical Engineer or Certified Engineering Geologist to evaluate the methodology, conclusions, and recommendations of the Soils and Geology Report regarding site conditions and potential geologic hazards. A Geotechnical Engineer shall be specifically consulted when there is a Geotechnical Report submitted. The consultant for the City shall conduct a site visit prior to submitting an evaluation to the City. The written evaluation and recommendation of the Soils and Geology Report from the City's consultant shall include an evaluation regarding the following:

- the completeness of the required elements of the Soils and Geology Report;
- the acceptability of the observations, procedure, and assumptions made; and
- the support of the conclusions and recommendations by evidence provided.

The written evaluation and recommendation of the Soils and Geology Report from the City's Consultant shall be received prior to a recommendation for a Type III process, or before a decision for a Type II process. Costs for such consultation shall be paid by the applicant, in accordance with the City of Gresham's Development Fee Resolution.

The Soils and Geology Report shall be of sufficient detail to describe the geologic conditions of the parcel and immediate vicinity and evaluate the potential geologic hazards associated with the parcel. At a minimum, the Soils and Geology Report shall be formatted to generally follow the outline below, and shall include the following:

1. An Executive Summary in a format outlined and adopted by the Manager.
2. General Information.
 - a. Client or party that commissioned the report.
 - b. Name(s) of Certified Engineering Geologist(s) or Geotechnical Engineer(s) who did the mapping and other investigation on which the report is based, and dates when the work was done.
 - c. Location and size of areas, and the general setting with respect to major or regional geographic and geologic features.

- d. Purpose and scope of the report and geologic investigation, including the proposed use of the site. Also, identify level of the study, i.e., feasibility, preliminary, final, etc.
 - e. Topography and drainage within or affecting the area.
 - f. General nature, distribution, and abundance of exposures of earth materials within the area.
 - g. Nature and source of available subsurface information and geologic reports or maps. Suitable explanations of the available data shall be provided to allow a technical reviewer the means of evaluating the reliability. Reference to cited works or field observations shall be made, to substantiate opinions and conclusions.
 - h. Disclosure of known or suspected geologic hazards affecting the area, including a statement regarding past performance of existing facilities (such as buildings or utilities) in the immediate vicinity.
 - i. Locations of test holes and excavations (drill holes, test pits, and trenches) shown on maps and sections and described in the text of the report. The actual data, or processed data upon which interpretations are based, shall be included in the report to permit technical reviewers to make their own assessments regarding reliability and interpretation.
 - j. All field and laboratory testing procedures (by ASTM designation, if appropriate) and test results.
 - k. Disclosure statement of geologist's or engineer's financial interest, if any, in the project or the client's organization.
 - l. The signature and seal of the Certified Engineering Geologist (Geologist) or Geotechnical Engineer (Engineer) who prepared the report.
3. Soils and Geology Mapping and Investigation. Geologic mapping and investigation of the parcel shall be completed in sufficient detail to describe the geology of the parcel, and evaluate and describe existing or potential geologic hazards associated with the parcel. The scope of the investigation and level of detail will depend in part of the size of parcel, slope, existing geologic conditions and hazards, and the proposed improvements. The description shall address:
- a. Soil and rock types;
 - b. Stratigraphy;
 - c. Soil and rock properties;
 - d. Geologic structure;
 - e. Surficial expressions of potential geologic hazards;
 - f. Groundwater conditions;
 - g. Relevant surface and topographic features;
 - h. Any geologic or topographic changes to the site between available published geologic maps (if used) from field observations;
 - i. Seismic setting and seismic hazards; and

- j.** The three-dimensional distribution of earth material exposed and inferred within the area. A clear distinction shall be made between observed and inferred features and relationships.

One or more appropriately positioned and scaled cross-section maps showing subsurface relationships may be used for descriptive purposes.

- 4.** Soils and Geology Description. The report shall contain brief but complete descriptions of all natural materials and structural features recognized or inferred within the subject area. Where interpretations are added to the recording of direct observations, the basis for such interpretations shall be clearly stated. If any of the report items on the following checklist do not apply to the development, provide brief, but complete explanation. Describe all field mapping and exploration procedures (surface geologic reconnaissance, drilling, trenching, geophysical survey, etc.). The following checklist, at a minimum, shall be used:

- a.** Bedrock
 - i.** Identification of rock types.
 - ii.** Relative and absolute age and, where possible, correlation with named formations and other stratigraphic units.
 - iii.** Surface and subsurface expression, area distribution, and thickness.
 - iv.** Pertinent physical characteristics (e.g., color, grain size, nature of stratification, strength, variability).
 - v.** Distribution and extent of zones of weathering; significant differences between fresh and weathered rock.
 - vi.** Special engineering geologic characteristics or concerns (e.g., factors affecting proposed grading, construction, and land use).
- b.** Structural features – stratification, faults, discontinuities, foliation, schistosity, folds
 - i.** Occurrence, distribution, dimensions, orientation, and variability, both within and projecting into the area.
 - ii.** Relative ages, where pertinent.
 - iii.** Special features of faults (e.g., topographic expression, zones of gouge and breccia, nature of offsets, age of movements, youngest faulted unit and oldest unfaulted unit).
 - iv.** Other significant structural characteristics or concerns.
- c.** Surficial deposits – alluvial, colluvial, eolian, glacial, lacustrine, marine, residual, mass movement, volcanic (such as cinders and ash), and fill
 - i.** Identification of material, grain size, relative age, degree of activity of originating process.
 - ii.** Distribution, dimensional characteristics, variations in thickness, degree of soil development, surface expression.
 - iii.** Pertinent physical or chemical features (e.g., color, grain size, lithology, compactness, cementation, strength, thickness, variability).

- iv. Special physical or chemical features (e.g., indications of volume changes or instability, such as expansive clays or peat).
 - v. Other significant engineering geologic characteristics or concerns.
 - d. Surface and shallow subsurface hydrologic conditions, including groundwater, springs, and streams and their possible effect on the site, as well as impacts of soil movement on receiving streams. Indicate how conditions may be affected by variations in precipitation, temperature, etc.
 - i. Distribution, occurrence, and variations (e.g., drainage courses, ponds, swamps, springs, seeps, aquifers).
 - ii. Identification and characterization of aquifers, depth to groundwater and seasonal fluctuations, flow direction, temperature, etc.
 - iii. Relationships to topographic and geologic features.
 - iv. Evidence for earlier occurrence of water at localities now dry (e.g., vegetation, mineral deposits, historical records).
 - v. Other significant engineering geologic characteristics or concerns, such as fluctuating water table and the effects of proposed modifications on future hydrologic processes.
 - e. Seismic considerations
 - i. Description of the seismotectonic setting of the area (including size, frequency, and location of historic earthquakes), current seismic zoning, and expected seismic risk.
 - ii. Potential for area to be affected by surface rupture (including sense and amount of displacement, and width of surface deformation zone).
 - iii. Probable response of site to likely earthquakes (estimated ground motion).
 - iv. Potential for area to be affected by earthquake-induced landslides or liquefaction.
 - v. Potential for area to be affected by regional tectonic deformation (subsidence or uplift).
- 5. Assessment. Assessment of existing soils and geologic conditions with respect to the intended use of the site constitutes the principal contribution of the report. It involves (1) the effects of the soils and geologic features upon the proposed grading, construction, and land use; and (2) the effects of the proposed modifications upon future geologic conditions and processes in the area. The following checklist includes, at a minimum, the topics that shall be considered in discussions, conclusions, and recommendations in the Soils and Geology Report:
 - a. General suitability of proposed land use to the soils and geologic conditions.
 - i. Areas to be avoided, if any, and mitigation alternatives.
 - ii. Topography and slope.
 - iii. Stability of geologic units.
 - iv. Flood inundation, erosion, and deposition.

- v. Problems caused by geologic features or conditions in adjacent properties.
 - vi. Other general problems.
- b.** Identification and extent of known or probable geologic conditions that may result in risk to the proposed land use (such as flood inundation, shallow groundwater, surface and groundwater pollution, landslide, debris flow, rock fall, expansive soil, collapsible soil, subsidence, erosion, deposition, earthquake shaking, fault rupture, tectonic deformation, liquefaction).
- c.** Recommendations for site grading.
- i. Prediction of what materials and structural features will be encountered in proposed cuts.
 - ii. Prediction of stability based on geologic factors; recommended avoidance or mitigation alternatives to cope with existing or potential landslide masses.
 - iii. Excavation considerations (hard or massive rock, groundwater flows).
 - iv. General considerations of proposed fill masses in canyons or on sidehills.
 - v. Suitability of on-site material for use as compacted fill.
 - vi. Recommendations for positioning fill masses, provision for subdrainage, buttressing, and the need for erosion protection on fill slopes.
 - vii. Recommendations for vegetation removal and revegetation for erosion control and slope stabilization.
 - viii. Recommendation as to how the site can be developed in a manner that minimizes site disturbance. Measures to be taken to stabilize slopes, minimize soil erosion, and revegetate areas where the natural vegetative cover will be removed shall be included. Such measures shall be, at a minimum, consistent with the guidance and requirements presented in the City's Erosion Prevention and Sediment Control Manual, and current erosion control and slope stability engineering practices. It may be necessary to describe and evaluate alternative site development scenarios in order to explain how the proposed development represents minimal impacts.
 - ix. Other recommendations required by the proposed land use, such as the angle of cut slopes, position of drainage terraces, need for rock-fall and/or erosion protection on cut slopes.
- d.** Drainage considerations.
- i. Soil permeability.
 - ii. Protection from sheet flood or gully erosion, and debris flows or mud flows.
 - iii. This section shall include findings and recommendations for the developed hydrologic conditions, as proposed, including treatment and detention facilities, complying with the City's Water Quality Manual. If infiltration facilities are proposed, the findings and recommendations shall include the effect of the facilities on slope stability.
- e.** Limitations of study, and recommendations for additional investigations. Considering the scope of work and intended use of the site, provide a statement of

and expressed as a percentage of the total area of the parcel. Grading area limitations are described in **Section 5.0223**.

- E. Summary Narrative. A summary narrative of applicant responses to the requirements of the HPCD Development Standards (**Sections 5.0221 – 5.0227**).

Development Standards

5.0220 Development Standards

5.0221 Lot Development Standards

- A. For parcels in the HPCD, the minimum and maximum number of permitted units shall be as follows:
 - 1. The maximum number of permitted units: that permitted by the underlying district for the portions of the site that have slopes less than 15%.
 - 2. The minimum number of required units: that required by the underlying district for the portions of the site that have slopes less than 15%.
 - 3. No density credit is permitted for portions of the site that have slopes 15% or greater, or for portion of the site within a Habitat Conservation Area Overlay District, except as provided in subparagraph (4) below.
 - 4. The maximum number of permitted units for the site can be increased through a Planned Development, as provided by **Section 6.0300**.
- B. The site development requirements of the underlying land use district, except as provided in **Subsections 5.0221(A)** and **5.0202(B)** above, shall apply.
- C. Each residential lot shall have a minimum, contiguous “buildable area”, as defined in **Section 5.0202(D)**, of 50% of the lot or 2,000 square feet, whichever is less.
- D. Lots in the LDR-5, LDR-7, TLDR or TR Districts that are entirely within the HPCD are exempt from the Safe Neighborhood Design Performance Standards of **Section 4.0132(D)**.
- E. A Geotechnical Report and structural engineering design is required for any building permit submittal on individual lots in the LDR-5, LDR-7, TLDR and TR Districts, which had native slopes (prior to development) of 35% of greater.

5.0222 Development on Slopes Greater than 35%

Limited development on slopes of greater than 35% (before development) may be permitted, as supported by **Section 5.0210(C)(5)**, for the following purposes:

- A. Public Facilities and Utilities.
 - 1. Public facilities (including streets) and utilities may be allowed on slopes greater than 35% (before development), if designed such that these improvements avoid slopes exceeding 35% (before development) to the maximum extent possible. Public streets or accessways may be developed on slopes over 35% (before development) if the street location is necessary to provide street connectivity or for emergency vehicle access. Construction of public streets shall comply with maximum grades as specified in the Gresham Public Works Standards.
 - 2. Public facilities (including streets) and utilities may be constructed as described above if the following specific determination is made in the Soils and Geology Report:

- a. That these facilities can be constructed given the geologic condition of the area of development; and
 - b. That these facilities can be constructed in a manner to minimize the potential for earth movement and erosion.
- B. Open Space Development.**
Open spaces and conservation easements may be improved with public or private walking/hiking trails, or with public or private multi-use paths, subject to the determinations in the Soils and Geology Report described in **5.0222(A)(2)**. Public trails or paths shall be limited to public open spaces, and private trails or paths shall be limited to private open spaces and conservation easements.
- C. Preservation of Slopes Greater than 35%.**
All areas exhibiting slopes of 35% or greater (before development), not developed under **Subsection 5.0222(A), (D) and (F)**, shall be preserved by easement (public or private). If preservation is proposed to be private, it can be either by tract or as a part of an individual lot (with the easement overlay). Public preservation shall be by tract only. Easement types shall be conservation, open space, or public trail easements, in accordance with **Section 9.0300**. The type of easement appropriate for preservation of the excessively steep slopes shall be at the discretion of the Manager. Acceptance of proposed dedication of open space shall be at the City’s discretion. Any proposal to dedicate open space shall be in accordance with **Section 5.0500**.
- D. Lots of Record**
 - 1. Legal lots of record may be improved with a maximum of one dwelling unit on slopes over 35% (before development) with a finding that there is not a sufficient, and accessible, land area on less than 35% slope (before development) for the proposed dwelling.
 - 2. Legal lots of record with less than 10,000 square feet of land exhibiting slopes less than 15%, may be improved with a maximum of one dwelling unit without processing a Planned Development, in accordance with **Section 6.0300**.
- E. Lot Building Area**
 - 1. All lots shall have a “buildable area” as defined in **Section 5.0202(D)**. No building area shall include slopes greater than 35% (before development), except as provided in **Section 5.0222(F)**.
 - 2. The impacts of any driveway crossing slopes of 35% or greater (before development) are addressed in the geotechnical portion of the Soils and Geology Report (**Section 5.0210(C)(5)**).
- F. Lot Building Area (Restricted to PDs)**
 - 1. A lot building area may include slopes (before development) greater than 35% up to 60% only when the PD is 10 acres or more in size.
 - 2. No more than 30 percent of the net land area where slopes (before development) are greater than 35% up to 60% slopes within the PD may be included within lot building areas.
 - 3. No lot building area shall include land which exceeds 60% slope (before development).
 - 4. The findings of the applicable sections of the Specific Reports of **Section 5.0210**, as well as the analysis of these reports, indicate that: these sloped areas of 35%-60% (before development) are not susceptible to earth movement or landslide hazard; and the proposed

construction and design techniques will minimize cuts, fills and potential adverse impacts to existing vegetation and have no adverse impacts to existing drainage ways, water quality and slope stability.

5.0223 Minimizing Site Disturbance

The applicant shall show all site grading, clearing and other site disturbance including that proposed for rights-of-way, utilities, buildable areas and driveways, as described in **Section 5.0210(D)**, Preliminary Grading Plan.

- A.** No more than 35% of the total site of the area exhibiting slopes of 15% or greater (before development), shall be graded, cleared or otherwise disturbed. Except that one additional percentage of land may be disturbed for each percentage of land dedicated to open space above the minimum required in Section 6.0324 (i.e. – 40% [35%+5%] of the total site over 15% slope may be disturbed if a minimum of 30% [25%+5%] open space is dedicated). For individual single-family dwelling building permits, see **Section 5.0202(B)(2)(a)**.

In order to meet this requirement, applicants are encouraged to pursue innovative site design techniques such as:

- Limiting grading on building lots only to that area needed for driveways and building pads;
- Limiting the total area of the site dedicated to roadways while maintaining adequate connectivity and providing for adequate emergency access consistent with the roadway standards;
- Locating roads on less steeply sloped areas to minimize the width of graded areas needed for roads;
- Designing and locating structures so that they fit into the contour of the hillside rather than altering the hillside to fit the structure;
- Using retaining structures as an alternative to banks of cuts and fills;
- Building designs, which require less grading, such as split-level and stair-stepping foundations and the use of piers;
- Placing structures as close as possible to the street so as to minimize driveway construction in the sloped areas; and
- Focusing development on slopes less than 15%.

B. Hillside Grading and Drainage Control

All development on lands within the HPCD shall provide construction plans that conform to the following items:

1. All grading, retaining wall design, drainage, and erosion control for development on HPCD lands shall be designed by a Registered Civil Engineer in accordance with the recommendations and guidelines provided in the Soils and Geology Report, as approved by the Manager. All cuts, grading or fills shall conform to Building Code. Erosion control measures shall conform to **Section 9.0514**.
2. For developments other than single-family detached dwellings, all grading, drainage improvements, or other land disturbances on slopes of 15% or greater, shall only occur from May 31 to October 1. Wet-weather erosion control measures shall be installed and functional by October 1. The time period for land disturbance activities may be extended

(either earlier than May 31 or later than October 1) by the City's Engineer after approval by the Stormwater Manager or designee, based on the recommendations of the Soils and Geology Report, with the concurrence from the City's consulting engineer. The modification of dates shall be the minimum necessary, based upon evidence provided by the applicant, to accomplish the necessary project goals.

3. Revegetation requirements. Where required by this Section, all required revegetation of cut and fill slopes shall be installed prior to the issuance of a certificate of occupancy, acceptance of public facilities, or other time as determined by the Manager.
4. Inspections and Final Report. Prior to the acceptance of public facilities or issuance of a building permit for a structure, the developer's engineer of record shall provide a final report indicating that the approved grading, drainage, and erosion control measures were installed as per the approved plans, and that all scheduled inspections, as per **Section 5.0210(C)(6)**, were conducted by the engineer of record periodically throughout the project.

5.0225 Trees and Vegetation

Trees and vegetation shall be maintained on site in order to provide protection against soil erosion and earth movement as well as to protect the aesthetic value of those hillside areas that may be highly visible to the surrounding community. Any proposed tree removal shall comply with the provisions of **Section 9.1000**, including no tree removal on slopes over 15% (before development) that results in clear cutting, as defined in **Section 3.0100**, except as follows:

- A. The removal of existing trees with a circumference of 25" or greater shall be limited to and within 10 feet of those areas required for the grading of roads, driveways, utilities, and the preliminary grading area for building pads. Tree removal that is confined to the approved grading plan (up to the grading limitations of **Section 5.0223(A)**) shall not constitute "clear cutting" as defined in **Section 3.0100**.
- B. A Vegetation/Revegetation Plan to stabilize slopes and minimize soil erosion is required based on the findings and recommendations in the Soils and Geology Report. The Vegetation/Revegetation Plan shall be prepared by a licensed Landscape Architect registered in the State of Oregon, and shall discuss any special measures proposed to protect water resources on or near the site for areas identified as particularly highly susceptible to erosion. Temporary erosion control measures, as they relate to construction activity, shall be, at a minimum, consistent with the guidance and requirements presented in the City's Prevention and Sediment Control Manual, and current erosion control and slope stability engineering practices. Revegetated areas shall be continuously maintained until vegetation is established. The maintenance of the revegetation shall be included as part of the Public Facilities Maintenance Bond.

5.0226 Surface and Groundwater Drainage

All facilities for the collection of stormwater runoff for any development in the HPCD shall be required to be constructed on the site and in accordance with **Section 9.0500** and the following requirements:

- A. Stormwater facilities shall include storm drain systems associated with street construction, facilities for accommodating drainage from driveways, parking areas and other impervious surfaces, and roof drainage systems.

- B.** Stormwater facilities, when part of the overall site improvements, shall be, to the greatest extent feasible, the first improvements constructed on the development site.
- C.** Stormwater facilities shall be designed to divert surface water away from cut faces or sloping surfaces of a fill.
- D.** Existing natural drainage systems shall be utilized, as much as possible, in their natural state, recognizing the erosion potential from increased storm drainage.
- E.** Flow-retarding devices, such as detention ponds and recharge berms, shall be used where practical to minimize increases in runoff volume and peak flow rate due to development. Each facility shall consider the needs for an emergency overflow system to safely carry any overflow water to an acceptable disposal point.
- F.** Stormwater facilities shall be designed, constructed and maintained in a manner that will avoid erosion on-site and to adjacent and downstream properties.
- G.** Alternate stormwater systems, such as dry well systems, detention ponds, and leach fields, shall be designed by a Registered Civil Engineer in accordance with the recommendations and guidelines provided in the Soils and Geology Report, as approved by the Manager.

5.0227 Development in “Further Review Areas”

The purpose of this section is to prevent the loss of human life and damage to property associated with “Rapidly Moving Landslides.”

This section applies only to the siting of dwellings and other structures inside a “Further Review Area.” This section does not apply to agricultural buildings or repair and maintenance of structures exempt from building codes under ORS 455.310.

- A.** Assessment of Hazard. A Soils and Geology Report shall be submitted, in accordance with **Section 5.0210(C)**, with a building permit.
- B.** Geotechnical Report. A Geotechnical Report, in accordance with **Section 5.0210(C)(5)**, shall be submitted for all land developments other than building permits. For building permits, a Geotechnical Report shall be submitted if the Soils and Geology Report recommends said report.

All Geotechnical Reports shall be submitted for review to the Oregon Department of Geology and Mineral Industries (DOGAMI). Comments from DOGAMI for land use developments shall be submitted with the development application.

- C.** Development Permitting.
 - 1.** No building permit shall be issued without a Soils and Geology Report. If a Geotechnical Report is recommended in the Soils and Geology Report, the report shall be submitted for review to DOGAMI. DOGAMI shall have the opportunity to provide comments to the City during the normal review of the building permit.
 - 2.** Alternative Siting and/or Mitigation.
 - a.** If an alternative site does not require mitigation and is available, the owner shall construct on the alternative site, if relocating does not exceed \$20,000. If relocating costs exceed \$20,000, the property owner may construct on the alternative site; or construct on the original site and implement recommended mitigation measures. Mitigation costs shall not exceed \$10,000.

SECTION 5.0300

HISTORIC AND CULTURAL LANDMARKS OVERLAY DISTRICT

General

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General

5.0301 Introductory Provisions

The purpose of the Historic and Cultural Landmarks Overlay District is to identify resources which have been designated as landmarks on the Historic and Cultural Landmarks List, adopted as an appendix to the Community Development Plan. Parcels on which a landmark is located shall be designated HL on the Community Development Special Purpose District Map. It is also the purpose of this district to regulate certain actions affecting these landmarks with the intent of substantially protecting and preserving those characteristics which make the landmark a visible link to the heritage of the community and enhance the quality of life for all residents of Gresham. It is also the purpose of this section to have a process for adding and removing a landmark to/from the Historic and Cultural Landmarks List.

Permitted Uses

5.0310 Permitted Land Uses

Uses permitted in the HL Overlay District shall be those listed as permitted in the underlying district designated on the Community Development Plan Map for the site.

Development Requirements

5.0320 Dimensional Development Standards and Non-Conforming Signs

Dimensional standards relating to site development, including minimum lot size, minimum yard setbacks, and maximum building height shall be as specified for the underlying Plan Map District designation. However, landmark structures which are non-conforming as to setbacks or building height, and for which reconstruction of damaged or deteriorated portions is proposed, may be reconstructed to match dimensions existing prior to the damage or deterioration. In addition, non-conforming signs that are attached to a landmark structure may be retained and shall not be subject to provisions of **Section A6.080** concerning removal of non-conforming signs.

5.0321 Review of Proposed Alterations Affecting the Exterior Appearance of Landmarks

- A. Prior to issuance of a building permit for proposed alterations affecting the exterior appearance of a Class 1 landmark, the Historic Resources Subcommittee and the hearing body under the Type III procedure shall review the proposal and act to approve, approve with modifications, or prohibit the proposed alteration. However, reconstruction of a Class 1 landmark which has been accidentally damaged or destroyed may be permitted by the Manager without review by the Committee or the hearing body when plans submitted by the owner clearly indicate that the structure will be reconstructed to match its appearance prior to the accident. A proposed alteration shall be approved or approved with modifications only upon finding conformance with the following standards:
1. The historic character of a property shall be retained and preserved. The relocation of distinctive materials or alteration of features, spaces, and spatial relationships shall be avoided.
 2. A property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.
 3. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.
 4. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
 5. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.
 6. New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
 7. New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property

and its environment would be unimpaired.

8. Chemical and physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
 9. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
 10. Archaeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.
- B.** If a property owner has submitted a written request to remove a structure from the Historic and Cultural Landmarks List per **Section 5.0327.A**, then submits a building permit application to alter the exterior of the structure, the City shall approve the permit but delay its issuance for at least 120 days but no longer than 180 days from the building permit application submittal date. The City shall place a notice in the local newspaper about the proposal and permit delay by the second week of the delay period.

5.0322 Review of Proposed Demolition of Landmark Buildings

- A.** Prior to the issuance of a demolition permit for a Class 1 or Class 2 landmark building, the Historic Resources Subcommittee and the hearing body under the Type III procedure shall review the proposal and act to approve, approve with modifications, or delay the proposed demolition for a period of up to 180 days from the time of the Subcommittee's initial consideration of the proposal. In delaying issuance of a demolition permit, it must be found that such delay would result in a genuine effort which would have a reasonable chance of success to preserve the building, and that:
1. The resource is of such architectural, historic, or scenic interest that its demolition would be detrimental to the public interest; or
 2. The resource is of such interest or significance that it is or could be included in the National Register of Historic Places; or
 3. The resource has such unusual design, texture, or material characteristics that it could not be reproduced, or could be reproduced only with great difficulty or expense; or
 4. Retention of the resource would aid substantially in the preservation of another landmark resource or in preservation of the character of the adjacent area.
- B.** If a property owner has submitted a written request to remove a building from the Historic and Cultural Landmarks List, per **Section 5.0327.A**, and then submits a demolition permit application for the building, the City shall approve the permit but delay its issuance for at least 120 days but no longer than 180 days from the demolition permit application submittal date. The City shall place a notice in the local newspaper about the proposal and permit delay by the second week of the delay period.
- C.** When action is taken to approve a proposed demolition as proposed or as modified under **Section 5.0322.A**, a demolition permit shall be withheld pending expiration of the appeal period specified in **Section 11.1100**.
- D.** If a resource is on the National Register List, it must first be removed from that list, administered by the State Historic Preservation Office, before a demolition permit is issued.

5.0323 Review of Proposed Actions Affecting Landmark Objects

Proposed alterations affecting a non-building landmark, such as a monument, mile-post, or other object, shall be submitted to the Historic Resources Subcommittee and the hearing body for review and approval prior to such alteration, pursuant to **Section 5.0321**. In addition to alterations and actions requiring a building permit, provisions of this section shall apply to proposals to remove, relocate, or otherwise alter the outward appearance of the object. A decision on a proposed alteration or other action affecting a landmark object shall be based on the following criteria:

- A. Whenever possible, the object shall remain on the same parcel where it was located at the time of its designation as a landmark; relocation to another parcel may be permitted when reliable evidence is submitted indicating that the object's original location was on a parcel other than its current location.
- B. Alterations or other actions which maintain or increase the visibility of the object shall be encouraged.

5.0324 Discovery of Archaeological Objects and Sites North of Interstate 84

In addition to specific landmark resource objects and sites identified in the Inventory of Historic and Cultural Landmarks, all property within the City lying north of Interstate Highway No. 84 shall be designated as a Historic and Cultural Landmarks Overlay District due to the likelihood of discovering archaeological sites and objects in this area. Within this area, the following provisions shall apply to development activities when archaeological sites or objects are discovered:

- A. When an archaeological site or object is discovered during the course of any development activity, the property owner or his agent, employees, or contractors on the site shall notify the Manager immediately and development activity on the site shall be suspended.
- B. Following receipt of notice of discovery of an archaeological site or object, the Manager shall order all development activity on the site to be halted for at least ten days.
- C. Within five days after being notified of discovery of an archaeological site or object, the Manager shall furnish written notice, describing the location of the site and the nature of the items discovered, to the following parties:
 - 1. Department of Land Conservation and Development;
 - 2. State Historic Preservation Office;
 - 3. The Grande Ronde and Siletz Indian Tribal Council;
 - 4. Commission on Indian Services;
 - 5. Confederated Tribes of the Warm Springs Indian Reservation.
- D. If no written response is received by the Manager from any of the parties listed in **Section 5.0324(C)** within fifteen days after mailing notice of the discovery, the Manager shall permit the suspended development activity to resume in conformance with the development permit issued for the activity.
- E. Based on responses received from the notice required by **Section 5.0324(C)**, the Manager may require that the owner retain the services of a qualified archaeologist to investigate the site, and prepare a report concerning the nature and significance of the site and any objects discovered. Pending completion of this investigation and report, all development activity on the site shall be suspended, provided such suspension shall not exceed a period of 30 days from the date a qualified

archaeologist is engaged to conduct the investigation and prepare the report. When required, an archaeologist's report shall include the following items:

1. A description of the nature and significance of artifacts or other evidence of prehistoric activities discovered on the site, approximate boundaries of the archaeological site, and an analysis of the quality and quantity of the site and objects discovered.
 2. Recommendations as to whether the pending development activity should proceed as proposed, or proceed with limitations or modifications, or be discontinued.
- F.** If the Manager finds, based on evidence presented in the archaeologist's report, that the archaeological site lacks significance, the Manager shall permit the suspended development activity to resume in conformance with development permits issued by the City, and subject to conformance with applicable state statutes regarding archaeological sites and objects.
- G.** If the Manager determines, based on evidence presented in the archaeologist's report, that the archaeological site is significant and that some degree of protection is warranted, the Manager shall make findings as to measures which may be required to reduce or eliminate adverse impacts to the archaeological site, and may require issuance of an amended development permit prior to the resumption of development activity on the site. Such measures may include any of the following alternatives:
1. Redesigning the proposed development so it would avoid the archaeological site;
 2. Leaving the archaeological site in its natural condition;
 3. Burial or other non-destructive covering of the archaeological site.
- H.** An application for an amended development permit which may be required under **Section 5.0324** shall be submitted and processed under the same procedure as for the development activity which was in progress at the time of discovery of the archaeological site or object.
- I.** When the Manager determines that an archaeological site is significant, pursuant to **Section 5.0324**, the Manager shall propose amendment of the Historic and Cultural Landmarks List and the Community Development Special Purpose District Map to include a description of the site and to designate the site as a Historic and Cultural Landmarks special purpose district. Such proposal shall be processed as a Type IV procedure, and pursuant to provisions of **Section 5.0326**.
- J.** No provision of this section shall relieve an applicant or landowner of any relevant State or Federal statute or responsibility.

5.0325 Criteria for Designation of Historic and Cultural Landmarks

The Historic Resources Subcommittee may recommend to the council the designation of resources as historic or cultural landmarks. Resources designated as landmarks shall be included in the Historic and Cultural Landmarks List, adopted as an appendix to the Gresham Community Development Code, and shall be indicated on the Community Development Plan Map with an HL overlay district designation. A resource may be designated a historic or cultural landmark upon finding that at least one of the following criteria is satisfied:

- A.** The resource possesses significance in the history of Gresham, Multnomah County, the State of Oregon, or the nation as evidenced by:
 1. Association with the lives of persons holding a significant place in the history of the community; or
 2. Association with significant past events, trends, or values that may be either cultural,

economic, social, or political.

- B.** The resource possesses architectural significance as evidenced by:
 - 1.** Embodiment of the distinctive characteristics of a type, period, or method of construction; or
 - 2.** Development of the resource early in the sequence of local history; or
 - 3.** Rarity of the resource type in the area; or
 - 4.** Retention of the integrity of the original design of the resource.
- C.** The resource is representative of the work of a designer, architect, or master builder who influenced the development and appearance of Gresham, the State or Oregon, or the nation.
- D.** The resource has yielded, or may be likely to yield, information important in prehistory or history.

5.0326 Procedure for Designation as a Historic or Cultural Landmark

- A.** Designation of a site, structure, or object as a historic or cultural landmark may be proposed by the owner, by the Historic Resources Subcommittee, by the planning commission, or by the council. A proposal for landmark designation shall first be considered by the Subcommittee. The Committee shall recommend approval, or approval with modifications, or denial of the proposed landmarks designation, and shall make its recommendation based on findings made in response to the criteria of **Section 5.0325**. The recommendation and all findings shall be transmitted to the City Council and the proposal shall be processed under the Type IV procedure.
- B.** In acting to approve or approve with modifications a proposed landmarks designation, findings shall be made as to the location and quality of the resource and conflicting uses that might affect the resource. Based on such consideration, the council shall act to include the resource on the Historic and Cultural Landmarks List as a Class 1 or a Class 2 landmark.
- C.** When designation of a Class 1 or Class 2 landmark occurs by action of the council, the parcel on which the landmark is located shall be indicated on the Community Development Plan Map as being in the HL district. However, for purposes of applying provisions of **Sections 5.0321, 5.0322, and 5.0323** of the Community Development Code only the specific site, structure or object designated on the List shall be considered to be the landmark, and other structures, uses and improvements on the parcel shall not be subject to those provisions.
- D.** The City shall notify property owners at three year intervals by first class mail of the existence of a Class I or Class II landmark on their property. The notice shall include a copy of the landmark regulations.
- E.** If during the procedure for adding a property to the Historic and Cultural Landmarks List, the property owner submits oral or written testimony in the record objecting to its addition, it shall not be added to the List.
- F.** Properties that have been placed on the National Register of Historic Places shall be added to the Historic and Cultural Landmarks List and protected with the Historic and Cultural Landmarks Overlay District. This shall be done by the Manager under the Type I development permit procedure. Findings pursuant to the criteria of **Section 5.0325** are not necessary.

5.0327 Procedure for a Change in Status or for Removal of Historic or Cultural Landmark Designation

- A.** Removal of landmark designation from a landmark resource or a change in the status of a landmark as a Class 1 or Class 2 landmark may be proposed by the owner of the landmark, by the Historic Resources Subcommittee, by the planning commission, or by the council. Other than property owner initiated removal requests, the proposal will be provided to the Subcommittee. The Subcommittee may recommend approval, or approval with modifications, or denial of the proposed removal of landmark designation or change in status, and shall make its recommendation based on findings made in response to the criteria of **Section 5.0325**. The proposal shall be processed under the Type II procedure. If the property owner wishes to have a landmark designation removed, the Manager shall remove the designation under the Type I development permit procedure, without making findings under **Section 5.0325**.
- B.** In acting to approve or approve with modifications a proposal for removal of landmark designation or for a change in status, findings shall be made as to the quality of the resource and its continued eligibility due to compliance with the criteria of **Section 5.0325**. Based on such consideration, action shall be taken to remove entirely or in part landmark designation from the resource, or to change the status of the landmark as a Class 1 or a Class 2 landmark.
- C.** When landmark designation is removed from a resource, or a landmark's status is changed as a Class 1 or Class 2 landmark, the Community Development Plan Map and the Historic and Cultural Landmarks List shall be revised accordingly.
- D.** Notwithstanding the requirements of **Section 5.0327.A**, if a landmark resource is also on the National Register of Historic Places List, it must first be removed from that list, administered by the State Historic Preservation Office, before its landmark designation is removed.

5.0328 Procedure for Proposed Alterations or Demolition Affecting a Landmark

An application for a building permit for work that would affect the exterior appearance of a Class 1 landmark, or an application for a demolition permit affecting a Class 1 or a Class 2 landmark, shall be reviewed by the Committee and by the Hearings Officer. The Committee shall act to recommend approval, or approval with modifications, or denial of the proposed action, and shall make its recommendation based on findings made in response to the criteria of **Sections 5.0321** or **5.0322** or **5.0323** of the Community Development Code. The recommendation and all findings shall be transmitted to the Hearings Officer and the proposal shall be processed under the Type III procedure.

5.0329 Requirements for Historic Resources Inventory

The *Historic Resources Inventory Report* (1987) lists, describes and determined the historical significance of 238 sites, buildings and objects within the city. A number of these resources were found to be significant. These were placed on the Historic and Cultural Landmarks List and protected with the Historic and Cultural Landmarks Overlay District. The following requirements apply to inventories of historic resources:

- A.** Before the City commences future inventory studies/updates, it shall provide a public notice describing the inventory, its purposes and invite public participation, especially from property owners in the area affected by the inventory. The notice shall be published in the local newspaper at least 10 days before the inventory begins.

- B.** Inventory documents, including survey sheets shall be maintained, periodically updated as needed, and open to the public for viewing.
- C.** Inventory documents and processes shall be compatible with the practices of the State Historic Preservation Office for maintaining the Oregon Inventory of Historic Sites.
- D.** Records concerning archaeological sites shall not be made available to the public, except to the extent necessary to comply with State open records laws.
- E.** Properties listed in the inventory are not subject to the standards of the Historic and Cultural Landmarks District unless they are also listed on the Historic and Cultural Landmarks List.

5.0330 Historic and Cultural Landmarks List

Table 5.0330 lists those historic resources that have been found to be significant and which are protected with the Historic and Cultural Landmarks Overlay District.

**Table 5.0330
HISTORIC AND CULTURAL LANDMARKS LIST**

Class 1 Landmarks					
No.	Address	Name	Points	Use	National Register
1	17111 NE Sandy	Zimmerman House	100	Institutional	Yes
2	410 N. Main	Carnegie Library	95	Institutional	Yes
3	1304 E. Powell	William Gedamke House	90	Commercial	Yes
4	722 NE 162nd	The Louise Home	90	Institutional	Yes
5	1420 SE Roberts	Anderson House	85	Residential	Yes
6	3680 SW Towle	Heiney House	85	Residential	
7	765 SW Walters Road	Olson, Charles & Fae House		Residential	Yes
8	938 SE Roberts	Bernard Witter Residence	85	Residential	
9	330 W. Powell	W. Gresham Grade School	80	Institutional	
10	140 SE Roberts	Rev. Thompson Resid.	80	Residential	
11	1325 W. Powell	J. R. Elkhorn Ranch	75	Residential	
12	2415 SE Ambleside	Ambleside House	90	Residential	
13	43 NW Ava	W. K. Hamilton Residence	70	Residential	
14	307 NE Kelly	Freeman Property	75	Residential	
15	1229 W. Powell	Dr. Hughes Residence	65	Residential	Yes
16	1265 SE Roberts	Judge Stapleton House	80	Residential	
17	3655 SE Powell	Peterson Residence	80	Residential	
18	611 NW Wallula	Fred Honey House	75	Residential	
19	31 NW 11th	Lunceford Residence	80	Residential	
20	53 NW 12th	Walker Residence	80	Residential	
21	54 NW 12th	Aldrich/Bliss House	80	Residential	
22	1801 NE 201st	Lowitt Estate	70	Residential	
23	2202 SW Pleasant View	Giese House, Workshop & Cellar	50	Residential	
24	720 NW Division	VanDoninck House		Residential	
25	42 NW Wilson Ave.	Moen House		Residential	
26	2075 Palmlad	Ott House		Residential	Yes
27	1322 SE 282 nd	Hamlin-Johnson House		Residential	Yes

Class 2 Landmarks

No.	Address	Name	Points	Use	National Register
28	103 W. Powell	US Post Office	85	Institutional	
29	122 N. Main	Duane C. Ely Building	75	Commercial	
30	58 W. Powell	Gresham Masonic Lodge #152	75	Institutional	
31	19720 SE Stark	11-Mile marker	75	Object	
32	23500 SE Stark	13-Mile Marker	75	Object	
33	25700 SE Stark	14-Mile Marker	75	Object	
34	I-84 & NE 169th	Pioneer Grave	75	Object	
35	18706 E. Burnside	Satellite Restaurant Sign	70	Object	
36	101-117 N. Main	Congdon Building	60	Commercial	

Source: Gresham Historic and Cultural Resources Inventory (1990), 93-32-CPA, and Gresham Comprehensive Plan Map

SECTION 5.0400 HABITAT CONSERVATION AREA (HCA) OVERLAY DISTRICT

- 5.0401 Intent
- 5.0402 Applicability
- 5.0403 Exempt Uses and Conditioned Activities
- 5.0404 Prohibitions
- 5.0410 Construction Management Plans
- 5.0411 Specific Development Standards
- 5.0412 Alternative Discretionary Development Standards
- 5.0413 Variances
- 5.0414 Map Administration and HCA Verification
- 5.0415 Consistency and Relationship with Other Regulations
- 5.0416 Violations
- 5.0417 WQRA, Water Quality Resource Area

Section 5.0401 Intent

The purpose of this Overlay is to comply with Section 4 of Title 13 of Metro's Urban Growth Management Functional Plan.

- A.** To protect and improve the following functions and values that contribute to fish and wildlife habitat in urban streamside areas:
 - 1. Microclimate and shade;
 - 2. Stream-flow moderation and water storage;
 - 3. Bank stabilization, sediment and pollution control;
 - 4. Large wood recruitment and retention and channel dynamics; and
 - 5. Organic material sources.
- B.** To protect and improve the following functions and values that contribute to upland wildlife habitat in new urban growth boundary expansion areas:
 - 1. Large habitat patches
 - 2. Interior habitat
 - 3. Connectivity and proximity to water; and
 - 4. Connectivity and proximity to other upland habitat areas
- C.** To establish High, Moderate, and Low Habitat Conservation Areas (HCA) to implement the performance standards of Title 13 of the Urban Growth Management Functional Plan.

- D. To provide clear and objective standards and a discretionary review process, applicable to development in Habitat Conservation Areas, in accordance with Statewide Land Use Planning Goal 5.
- E. To allow and encourage habitat-friendly development, while minimizing the impact on fish and wildlife habitat functions.
- F. To provide mitigation standards for the replacement of ecological functions and values lost through development in Habitat Conservation Areas.

Section 5.0402 Applicability

- A. This Overlay applies to all properties containing mapped Habitat Conservation Areas (HCA).
- B. All applicants must provide Construction Management Plans, in accordance with **Section 5.0410** of this Overlay.
- C. Where applicants are proposing development entirely outside of the HCA, but within 50 feet of its boundary, applicants must verify this boundary through the procedures outlined in **Section 5.0414** of this Overlay.
- D. Where applicants are proposing development within the HCA, they must comply with the Development Standards found in **Section 5.0411** and **Section 5.0412** of this Overlay, and the Map Verification procedures found in **Section 5.0414** of this Overlay. Conditioned Uses, and Activities that are exempt from these requirements, may be found in **Section 5.0403** of this Overlay.
- E. Applicants proposing to partition or subdivide properties containing HCA must comply with the partition and subdivision standards found in **Section 5.0411(F)** of this Overlay, or the Discretionary standards in **Section 5.0412** of this Overlay; as well as the Map Verification procedure in **Section 5.0414** of this Overlay.
- F. The Development Standards found in **Sections 5.0411 and 5.0412** of this Overlay do not apply to development that occurs entirely outside of any portion of the HCA.
- G. The requirements of this Overlay apply in addition to other applicable local, state, regional, and federal development requirements, including those for Water Quality Resource Areas and Flood Management Areas; except that:
 1. Applicants using the discretionary review process in **Section 5.0412** of this Overlay or the specific development standards of **Section 5.0411** that apply to “high value” HCAs (regardless of habitat value), do not need to engage in any additional review process for the WQRA, Water Quality Resource Area (Note: The WQRA is defined in **Section 5.0417**); and
 2. This overlay shall not impose additional mitigation requirements for wetlands that exceed the mitigation ratios or functions required by federal and state law.
- H. “Development,” “Partition,” and “Subdivision” are defined in **Article 3** of the Gresham Community Development Code.
- I. A wetland identified during the course of a development permit review that meets the State of Oregon’s definition of a “Locally Significant Wetland” shall be subject to the standards of this overlay. Such wetlands shall be added to the HCA map by the Manager, under the Type 1 procedure, after the development permit becomes final.

Section 5.0403 Exempt Uses and Conditioned Activities

The following uses and activities are exempt from the requirements of this Overlay District:

- A. Change of ownership.
- B. Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005; unless such development required obtaining a land use decision, or a building, erosion control, or grading permit.
- C. A building permit for a phased development project for which the applicant has previously met the application requirements, so long as the site for new construction was identified on the original permit and no new portion of the HCA will be disturbed.
- D. Where a property has been subdivided under **subsection 5.0411(F)** of this overlay, and the mitigation requirements of **subsection 5.0411(E)** (and, if appropriate, **subsections 5.0412(B)** and **(C)**) have been completed for the subdivision, development on the individual lots may proceed without further review under this overlay. Similarly, where a property has been subdivided under **subsection 5.0412(D)** of this overlay, and the mitigation requirements of **subsection 5.0412(D)** have been completed for the subdivision, development on the individual lots may proceed without further review under this overlay.
- E. Limited types of development, redevelopment, operations, and improvements, including the following:
 1. Maintenance, alteration, expansion, repair and replacement of existing structures provided that the building footprint is not increased.
 2. The alteration, expansion, or replacement of existing structures, provided that:
 - a. The alteration, expansion, or replacement of a structure will not intrude more than 500 sq. ft. into the HCA in addition to the area defined as the building footprint as of January 1, 2006; and
 - b. The new intrusion into the HCA is no closer to the protected water feature than the pre-existing structure or improvement.
 3. Minor encroachments not to exceed 120 sq. ft. of impervious surface such as accessory buildings, eave overhangs, exterior building improvements for access and exiting requirements, or other similar features.
 4. Temporary and minor clearing not to exceed 200 square feet for the purpose of site investigations and pits for preparing soil profiles, provided that such areas are restored to their original condition when the investigation is complete.
 5. Maintenance of existing gardens, pastures, lawns and landscape perimeters, including the installation of new irrigation systems within existing gardens, pastures, lawns, and landscape perimeters.
 6. Removal of plants identified as nuisance or prohibited plants on the City of Gresham Native Plant List and the planting or propagation of plants identified as native plants on the City of Gresham Native Plant List. Unless being conducted by City staff or their representatives, handheld tools must be used to remove nuisance or prohibited plants, and after such removal all open soil areas greater than 25 square feet must be replanted.

7. Maintenance, alteration, repair, and replacement of roads and utilities when no additional incursion into the HCA is proposed.
 8. Maintenance and repair of existing streets, railroads, shipping terminals, and utilities within rights-of-way, easements, and access roads.
 9. Existing water-dependent uses that can only be carried out on, in, or adjacent to water because they require access to the water for waterborne transportation or recreation.
 10. Operation, maintenance, and repair of manmade water control facilities such as irrigation and drainage ditches, constructed ponds or lakes, wastewater facilities, and stormwater pretreatment facilities.
 11. Projects with the sole purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat areas, provided that the project is part of an approved local, state, or federal restoration or enhancement plan.
 12. Low-impact outdoor recreation facilities for public use, outside of Water Quality Resource Areas, including, but not limited to, multi-use paths, access ways, trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture, provided that the facility meets the following requirements:
 - a. It contains less than 500 sq. ft. of new impervious surface; and,
 - b. Its trails shall be constructed using non-hazardous, pervious materials, with a maximum width of four feet.
 - c. Its trails are located outside the WQRA section of the HCA or the Class I riparian habitat area, whichever results in the greatest distance from the stream or wetland.
- F.** Emergency procedures or activities undertaken which are necessary to remove or abate hazards and nuisances or for the protection of public health, safety and welfare; provided that such remedial or preventative action must take place within a timeframe too short to allow for compliance with the requirements of this Overlay. After the emergency, the person or agency undertaking the action shall fully restore any impacts to the HCA resulting from the emergency action. Hazards that may be removed or abated include those required to maintain aircraft safety.
- G.** Multnomah County Drainage District - Within Habitat Conservation Areas located in Multnomah County Drainage District No. 1, Peninsula Drainage District No. 1, Peninsula Drainage District No. 2, and the area managed by the Sandy Drainage Improvement Company, routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing drainage and flood control facilities, and existing related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch clearing within the hydraulic cross-section in existing storm water conveyance drainageways, or other water quality and flood storage projects applicable to existing facilities and required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations, shall be allowed, provided that:
1. The project is consistent with all other applicable local, state, and federal laws and regulations;
 2. The project does not encroach closer to a surface stream or river, wetland, or other body of open water than existing operations and development;

3. Disturbed areas are replanted with vegetation and no bare soils remain after project completion; the planting of native vegetation and removal of invasive non-native or noxious vegetation is encouraged; invasive non-native or noxious vegetation shall not be planted; and,
 4. Each district submits an annual report, to all local permitting agencies in which the district operates, describing the projects the district completed in the previous year and how those projects complied with all applicable federal and state laws and requirements.
- H.** Utility service using a single utility pole or where no more than 100 sq. ft. of ground surface is disturbed outside of the top of bank of water bodies and where the disturbed area is restored to the pre-construction conditions.
- I.** Boundary and topographic surveys leaving no cut scars on trees greater than three inches in diameter.
- J.** Measures mandated by the City of Gresham to remove or abate a nuisance or hazardous conditions.
- K.** Planting of native vegetation and the removal of non-native, invasive vegetation (as identified on the City of Gresham Native Plant List), and the removal of refuse or fill, provided that:
1. All work is done using hand-held equipment;
 2. No existing native vegetation is disturbed or removed;
 3. All work occurs outside of wetlands and the tops of banks of streams;
 4. The work is pre-approved by the City through the Type 1 development permit procedure.

5.0404 Prohibitions

- A.** The planting of any invasive non-native or noxious vegetation is prohibited within the HCA.
- B.** Outside storage of materials is prohibited within the HCA, unless such storage began before the effective date of this Overlay; or, unless such storage is approved during development review under either **Section 5.0411** or **Section 5.0412** of this Overlay.
- C.** Any new gardens, lawns, structures, development, other than those allowed outright (exempted) or that is part of a regulated use that is approved with an HCA permit. Note: Gardens and lawns within the HCA prior to the effective date of the overlay are allowed to continue but cannot expand further into the HCA.
- D.** The dumping of materials of any kind is prohibited.
- E.** Unless part of an approved HCA development permit, grading, placement of fill or the removal of native vegetation within the HCA is prohibited.

5.0410 Construction Management Plans

In order to ensure that trees and vegetation within HCAs are not damaged during construction, all applicants, even those not developing within an HCA, shall provide a construction management plan that includes the following information:

- A.** Location of site access and egress that construction equipment will use;
- B.** Equipment and material staging and stockpile areas;
- C.** Erosion and sediment control measures; and
- D.** Measures to protect trees and other vegetation located within the HCA, but outside of the

disturbance area approved under the provisions of **Section 5.0411** or **Section 5.0412** of this overlay.

Section 5.0410 applies to development on properties with an HCA and on properties within 100 ft. of an HCA overlay boundary on an adjacent property, including development that will stay outside of the HCA.

5.0411 Specific Development Standards

The development standards described in this section apply to all development and redevelopment that occurs entirely, or partially, within Habitat Conservation Areas, unless such development is exempt under **Section 5.0403**, or, unless the applicant chooses to follow the discretionary process in **Section 5.0412** of this Overlay. This section also applies to subdivisions and partitions of properties that contain HCAs. An applicant may choose to use the mitigation standards of **Section 5.0412** in lieu of the mitigation standards of this section.

Unless otherwise directed, development proposed within the HCA, that is not exempted, will be processed as a Type II development permit application. All applications must include the general development permit application items required by **Section 11.0211** of the Gresham Community Development Code as a discussion of how the proposal meets all of the applicable HCA overlay standards.

- A. Application Requirements.** Applications for a building permit or development permit must provide a development plan and accompanying narrative explanation that includes the following information in addition to any other building permit or development permit requirements. All of the application requirements must be met prior to approval of a building or development permit.
 - 1.** Applicants must verify the HCA on their property as described in **Section 5.0414** of this Overlay. They must also submit a construction management plan as required by **Section 5.0410**.
 - 2.** For the entire subject property (HCA and non-HCA), applicants must submit a scale map of the property that includes:
 - a.** Location of all High, Moderate, and Low HCAs on the property;
 - b.** Outline of any existing disturbance area, including the location of existing adjacent streets and paved areas, utilities, culverts, stormwater management facilities, or bridges;
 - c.** Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area;
 - d.** Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation;
 - e.** Topography shown by contour lines of 2-ft. intervals for slopes less than 15% and by 10 ft. intervals for slopes 15% or greater. On properties that are two acres or larger, such a contour map is required only for the portion of the property to be developed; and
 - f.** If applicable, the Hillside Physical Constraint Overlay and Flood Plain Overlay.
 - 3.** Detailed site plan of proposed development outlining total disturbance area, including, proposed building footprints, site property improvements, utilities and landscaping.
 - 4.** The following additional information shall be provided about the HCA:

- a. For properties containing less than one acre of HCA, the location of all trees within the HCA that are greater than six inches diameter at breast height (DBH), shall be identified by size and species. For properties containing one acre or more of HCA, the applicant may approximate the number of trees and the diameter range, and provide a listing of the dominant species;
 - b. For proposed disturbance areas containing less than one acre of HCA, all trees with a diameter of six inches or greater that will be removed shall be specifically identified as to diameter at breast height (DBH) and species. For proposed disturbance areas containing one acre or more of HCA an approximation of the number of trees, their diameters and the dominant species;
 - c. Provide the tree removal/protection data requirements of **Sections 9.1022, 9.1024, 9.1026, 9.1032, 9.1034 and 9.1036.**
 - d. If grading will occur within the HCA, a grading plan showing the proposed alteration of the ground at 1-ft. vertical contours in areas of slopes less than 5%, and 2-ft. vertical contours in areas of slopes 6-15%, and at 5-ft. vertical contours of slopes 15% or greater.
 - e. An outline of the disturbance area that identifies the vegetation to be removed. All trees to be removed with a diameter of 6 inches or greater shall be specifically identified as to number, trunk diameters and species.
- B. Methods for avoiding Habitat Conservation Areas.** The following habitat-friendly development practices may be used to avoid or minimize development within HCAs by allowing flexible site design.
- 1. Building setback flexibility to avoid or minimize development within HCAs. The minimum building setback of the base district may be reduced to any distance between the base district minimum and zero, unless this reduction conflicts with applicable fire or life safety requirements.
 - 2. Flexible landscaping requirements to avoid, or minimize, development within HCAs.
 - a. Minimum percentage landscaping requirements, apart from those required for parking lots, street trees, buffers (**Section 9.0100**) and required mitigation areas may be met by preserving the HCA.
 - b. Facilities that infiltrate stormwater onsite, including the associated piping, may be placed within the HCA so long as the forest canopy and the areas within the driplines of the trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strip, and vegetated infiltration basins. Only native vegetation may be planted in these facilities.
 - 3. Flexible Site Design (On-site Density Transfer) to avoid or minimize development within HCAs.
 - a. Residential. For residential development proposals on lands with a HCA, a transfer of density of up to 50% of the maximum density permitted on the HCA portion of the site is permitted to be transferred onto the non-HCA portion of the site.

- b. In order to accommodate the transferred density, dimensional standards and lot sizes may be adjusted by no more than 20 percent.
 - c. Commercial and Industrial Districts. For on-site density transfers in Commercial or Industrial districts, the transfer credit is 10,000 sq. ft floor area ratio (FAR) per acre of land within the HCA.
 - d. Mixed-Use Districts. Within mixed-use districts the density transfer credit can be factored using either 3(a) or 3(c) above, depending on the type of development proposed.
 - e. All remaining HCA shall be permanently restricted from development and maintained for habitat functions, such as by making a public dedication or executing a restrictive covenant.
4. Site Capacity Incentives. The following site capacity standards provide flexibility in the design of land divisions in order to allow ways to better protect HCAs.
- a. Density bonus if HCA is protected. In multi-family residential districts, a 25 percent density bonus may be allowed for any development of four (4) or more dwelling units if 75 percent or more of the HCA on a site is permanently preserved, such as by making a public dedication or executing a restrictive covenant. The bonus density shall be in addition to the base density allowed in the applicable zoning district.
 - b. All area within a HCA, or any portion of it, and all areas with slopes of 25% and greater may be subtracted from the calculations of net size for purposes of determining the minimum number of units that must be built on the property, provided that such area is protected, such as by making a public dedication or executing a restrictive covenant. This provision may only be applied to properties that were inside the Metro UGB on January 1, 2002.
- C. Development within HCAs. The following development standards apply to all development that occurs within the HCA except for exempt uses and conditioned activities addressed in **Section 5.0403** of this overlay and utility facilities addressed in **Subsection 5.0411(D)** of this overlay. If all development occurs outside of an HCA on a property, these standards do not apply. These standards also do not apply to development that occurs pursuant to the standards established by the alternative discretionary development standards in **Section 5.0412** of this Overlay. (Note: Applicants seeking to develop within a Water Quality Resource Area must utilize either the discretionary standards located in **Section 5.0412** of this Overlay or the Specific Standards of **Section 5.0411** that apply to “high value” resource areas.
1. Disturbance area limitations to minimize impact to HCA.
- a. Single-family residential districts. The maximum disturbance area (MDA) allowed within HCAs is determined by subtracting the area of the lot or parcel outside of the HCAs from the total disturbance area (TDA) calculated as described in Table 1 below.
- (TDA – Area outside the HCA = MDA)
- i. Moderate and Low HCAs are subject to the same disturbance area limitations.

- ii. Calculation of maximum disturbance area. If a lot or parcel includes both High and Moderate/Low HCAs then:
 - A. If there is more High HCA than Moderate/Low HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were High, per Table 5.0411(A) below; or
 - B. If there is more Moderate/Low HCA than High HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were Moderate/Low, per **Table 5.0411(A)** below.
- iii. Location of MDA. If a lot or parcel includes different types of HCAs, then:
 - A. The amount of development that may occur within the High HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High HCA ($TDA - \text{non-High HCA} = MDA$). If the area of the lot or parcel outside the High HCA is greater than the total disturbance area, then development shall not occur within the High HCA:

(Area outside High HCA > TDA = no development in High HCA);
 - B. The amount of development that may occur within the Moderate HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High and Moderate HCA ($TDA - (\text{Low HCA} + \text{non-HCA}) = MDA$). If the area of the lot or parcel outside the Moderate HCA is greater than the total disturbance area, then development shall not occur within the Moderate HCA:

(Area outside Moderate HCA > TDA = no development in Moderate HCA);
and
 - C. The amount of development that may occur within the Low HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High, Moderate and Low HCA ($TDA - \text{non-HCA} = MDA$). If the area of the lot or parcel outside the Low HCA is greater than the total disturbance area, then development shall not occur within the Low HCA:

(Area outside Low HCA > TDA = no development in Low HCA).

Table 5.0411(A) -- HCA Total Disturbance Area Limitations for LDR-5 and LDR-7 Districts

HCA type	Total Disturbance Area
High	50 percent of the lot area, up to maximum of 5,000 sq. ft.
Moderate/Low	65 percent of the lot area, up to maximum of 6,000 sq. ft.

- b. All other districts. The maximum disturbance area (MDA) allowed by right within Low, Moderate and High HCAs in these districts is found in **Table 5.0411(B)** below; this MDA is subject to the mitigation requirements described in **subsection 5.0411(E)** of this Overlay.

Table 5.0411(B)
HCA Disturbance Area Limitations for all districts other than LDR-5 and LDR-7

HCA type	Maximum Disturbance Area
High	10 percent of HCA on site
Moderate	15 percent of HCA on site
Low	50 percent of HCA on site

- c. Development within an HCA in accordance with the provisions of this Overlay shall not result in a change of the HCA status of such developed areas on a property. In the case of a later development request seeking to develop within previously undisturbed HCAs on a property where a prior development request was subject to the provisions of this Overlay, the calculation of the MDA allowed on the property shall be based on the location of the HCA at the time the previous development was approved, notwithstanding the location of any authorized development within the HCA.
2. Protection of habitat during site development. During development of any site containing a HCA, the following standards apply:
- a. Work areas shall be marked to reduce potential damage to the HCA.
 - b. Trees in HCAs shall not be used as anchors for stabilizing construction equipment.
 - c. Native soils disturbed during development shall be conserved on the property.
 - d. An erosion and sediment control plan is required for all development and shall be prepared in compliance with requirements set forth in the City of Gresham “Erosion Prevention and Sediment Control Manual”.
 - e. Prior to construction, the HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed.
 - f. All construction activity on the property shall conform to the Construction Management Plan described in **Section 5.0410** of this Overlay.
 - g. Tree protection shall be as recommended by a qualified arborist or, as a minimum, to include the following protective measures:
 - i. Prior to any grubbing, clearing, grading, parking, preparation or storage of materials or machinery, or other construction activity on the site, all trees to be protected on the project site and adjacent to the site shall be clearly identified and temporary fencing shall be installed at the perimeter of the dripline.

- ii. To assure that there is no soil compaction or removal of vegetation or tree branches within the dripline, protective fencing is required around the dripline of trees designated for retention. Protective fencing shall be of a material that cannot easily be moved, removed, or broken during construction activities. Chain link fencing a minimum of 4 feet in height is preferred. An alternative dripline fencing material secured by metal posts staked at no more than 4 feet on center around the dripline of the tree or grove may be used with the approval of the Manager.
 - iii. No machinery repair, cleaning or fueling shall be performed within 10 feet of the dripline of any trees identified for protection.
 - iv. Digging a trench for placement of public or private utilities or other structure within the critical root zone of a tree to be protected is prohibited.
 - v. The City may require that a Consulting Arborist be present during any construction or grading activities that may affect the dripline of trees to be protected.
- D. Utility facility standards. The following disturbance area limitations apply to new utilities, private connections to existing or new utility lines, and upgrade:
 - a. The disturbance area for utility facility connections to utility facilities is no greater than 10 feet wide.
 - b. The disturbance area for the upgrade of existing utility facilities is no greater than 15 feet wide.
 - c. The disturbance area for new underground utility facilities is no greater than 25 feet wide and disturbs no more than 200 linear feet of Water Quality Resource Area, within any 1,000 linear foot stretch of Water Quality Resource Area; provided that this disturbance area shall be restored with the exception of necessary and permanent access points to the utility facility.
 - d. No fill or excavation is allowed within the ordinary high water mark of a stream, unless a permit is obtained from the US Army Corps of Engineers/Department of State Lands
 - e. Mitigation is required as described in **Subsection E** below.
- E. Mitigation requirements for disturbance in HCAs. In order to achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in **Section 5.0401(A)** of this Overlay, tree replacement and vegetation planting are required when development intrudes into a HCA according to the following standards. Wetland mitigation will be conducted per the functional and area replacement standards established by state and federal agencies.
 - 1. Required plants and plant densities. All trees, shrubs and ground cover must be native plants selected from the *City of Gresham Native Plant List*. An applicant must meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the disturbance area is one acre or more, the applicant shall comply with Mitigation Option 2:
 - a. Mitigation Option 1. In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site must be replaced as shown in **Table 5.0411(C)**. Conifers must be replaced with conifers. Bare ground must be planted or seeded with native

5. Plant species. In order to meet the City stream shade goals (developed and approved by the Department of Environmental Quality in compliance with the Total Maximum Daily Load rules) for reducing summer stream temperatures, the following species guidelines need to be followed for any mitigation occurring within 70 feet of a stream. At least 70% of the trees planted in this area need to be comprised of the tallest native tree species appropriate for the site, as indicated by an asterisk in **Table 5.0411(D)** or as reflected in the City of Gresham Native Plant Guide.

Table 5.0411(D)
Recommended Tree and Shrub Species for Planting within
Riparian Shade Zone

Site Conditions	Typical Soil Series	Recommended Plant Community		
Floodplain and wetlands adjacent to the Columbia Slough	Moag	Trees	Black cottonwood*	Pacific willow
	Rafton	Shrubs	Red-osier dogwood Willow	Snowberry Wild rose
Floodplain and wetlands adjacent to Johnson Creek, Fairview Creek, and Kelly Creek	Delena	Trees	Black cottonwood*	Pacific willow
	Wapato Wollent		Red alder Western redcedar*	Oregon ash
Moist Riparian	Aloha Cascade Powell	Trees	Bigleaf maple* Grand fir* Western redcedar*	Black cottonwood* Red alder
		Shrubs	Bitter cherry Hazelnut Oregon grape Salal Snowberry Vine maple	Black hawthorn Indian plum Red elderberry Salmonberry Thimbleberry
Dry Riparian	Cornelius	Trees	Bigleaf maple* Oregon white oak	Douglas fir* Western hemlock*
	Dabney Haploxerolls, steep Haplumbrepts, steep Latourell Multnomah Quafeno	Shrubs	Hazelnut Oceanspray Salal Vine maple	Indian plum Oregon grape Snowberry

6. Location of mitigation area. All vegetation must be planted on the applicant's site within the HCA or in an area contiguous to the HCA; provided, however, that if the vegetation is planted outside of the HCA then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant.
7. Invasive vegetation. Invasive non-native or noxious vegetation must be removed within the mitigation area prior to planting.
8. Tree and shrub survival.
 - a. For Mitigation Option 1: A minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.
 - b. For Mitigation Option 2: A minimum of 500 trees per acre and 650 shrubs per acre shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.
9. Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind by the property owner or designee, as indicated on the mitigation plan. For a period of five years, the property owner/designee must submit an annual report to the Urban Design & Planning Department documenting the survival of the trees and shrubs on the mitigation site. Photos must accompany the annual report that shows the progress of the mitigation.

A financial guarantee, in the form of an instrument approved by the City, shall be submitted before development within the HCA commences. It shall be in an amount adequate to cover the cost of performing the mitigation. The City will release the guarantee at the end of the five year monitoring period, or before, if it determines that the trees and shrubs have been successfully established.

10. To enhance survival of the mitigation plantings, the following practices are required:
 - a. Weed control. Remove, or control, non-native or noxious vegetation throughout maintenance period.
 - b. Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.
11. To enhance survival of the mitigation plantings, the following practices are required for Mitigation Option 1. These are recommended for Mitigation Option 2 if annual survival goals are not being met:
 - a. Mulching. Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
 - b. Irrigation. Water new plantings one inch per week from June 30th to September 15th, for the three years following planting.
12. To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:
 - a. Planting season. Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.

- F.** Standards for Partitions and Subdivisions. The purpose of this section is to allow for partitions in a manner that limits the total amount of allowable development within HCAs on the partitioned parcels; and to require that new subdivision plats delineate and show the Moderate and High HCAs as a separate unbuildable tract.
- 1.** Standards for Partitions containing HCAs:
 - a.** When partitioning a property into parcels, an applicant shall verify the boundaries of the HCA on the property according to **Section 5.0414** of this overlay.
 - b.** Applicants who are partitioning, but are not simultaneously developing their property, do not need to comply with **Section 5.0410** of this overlay.
 - c.** When partitioning a property into parcels there shall be no more than a 30% percentage point difference in the percentage of HCA on the parcels; for example, a partition that produces two parcels, one that is 55% HCA and the other that is 35% HCA is permissible; whereas a partition that produces two parcels, one that is 75% HCA and the other that is 30% HCA is not permissible. However, an applicant may partition a property such that at least 90% of the original property's High HCA and 80% of its moderate HCA is on a separate unbuildable parcel, protected by a restrictive covenant or a public dedication. The restrictive covenant or public dedication document shall be submitted to the City as part of the final plat application review. After City approval, it shall be recorded with Multnomah County along with the final plat.
 - d.** Subsequent development on any parcels containing HCAs shall comply with **Section 5.0410**, and the development standards of either **Section 5.0411** or **Section 5.0412** of this overlay.
 - 2.** Standards for Subdivisions containing HCAs:
 - a.** Applicants who are subdividing, but not developing, must verify the location of the HCA boundary according to **Section 5.0414** of this Overlay, and comply with this **Subsection 5.0411(F)**; such applicants do not need to comply with **Section 5.0410** of this Overlay. Applicants who are subdividing, but not developing, property may:
 - i.** Complete the mitigation requirements of **Subsection 5.0411(E)** of this Overlay (and, if appropriate, **Subsections 5.0412(B)** and **(C)**) and thereby exempt all subsequent development on lots containing HCA from further review under this Overlay (City will verify that the mitigation requirements have been met when individual lot building permit applications are processed); or
 - ii.** Not complete the mitigation requirements of **Subsections 5.0411(E)**, **5.0412(B)**, or **(C)** of this Overlay, thus requiring that any subsequent development within an HCA be subject to this Overlay.
 - b.** Applicants who are subdividing and developing properties must comply with **Sections 5.0410, 5.0411 and 5.0414** of this Overlay.
 - c.** When a property containing any HCA is subdivided, this Overlay requires that new subdivision plats delineate and show the Moderate and High HCA as a separate unbuildable tract according to the following process:

- i. The applicant must place at least 90% of the High HCA and 80% of the Moderate HCA in a separate tract.
 - A. If over 50% of the HCA on a property is of a High designation, the entire calculation is for High (i.e., 90% of the HCA must be placed within a separate tract).
 - B. If over 50% of the HCA on a property is of a Moderate designation, the entire calculation is for Moderate (i.e., 80% of the HCA must be placed within a separate tract).
- ii. If the tract is adjacent to the backyard for residences, the minimum rear yard setback can be reduced to 10 ft. in order to accommodate the HCA tract.
- iii. The standards for subdivisions in Moderate and High HCAs shall apply in addition to the land division requirements of the City.
- iv. Prior to preliminary plat approval, the Moderate and/or High HCA shall be shown as a separate tract, which shall not be a part of any lot used for construction of a dwelling unit.
- v. Prior to final plat approval, ownership of the HCA tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:
 - A. Private natural area held by the owner or homeowners association by a restrictive covenant conveying storm and surface water management rights to the City; or
 - B. For residential subdivisions, private natural area subject to an easement conveying storm and surface water management rights to the City and preventing the owner of the tract from activities and uses inconsistent with the purpose of this Overlay; or
 - C. At the owner's option, public natural area where the tract has been dedicated to the City or Metro, or a private non-profit with the mission of land conservation along with conveying storm and surface water management rights to the City; or
 - D. Any of the above documents shall be submitted to the City for review and after it is approved as part of the final plat review process, be recorded with Multnomah County along with the subdivision plat.

5.0412 Alternative Discretionary Development Standards

Applicants may choose to use the alternative discretionary development standards provided in this section rather than the development standards provided in **Section 5.0411** of this Overlay. There are four discretionary review processes provided in this section: **Subsection A** provides discretionary review for an applicant seeking only to partition a property; **Subsection B** provides discretionary review for an applicant who will comply with the development standards in **Section 5.0411** of this Overlay, except that the applicant seeks to meet the mitigation requirements of that section on a different property from the property on which a HCA will be disturbed; **Subsection C** provides discretionary review for an applicant who will comply with the development standards in **Section 5.0411** of this Overlay, except that the applicant seeks to meet the mitigation requirements of that section by proportionally varying the number

and size of plants required to be planted; and **Subsection D** provides general discretionary review standards applicable to an applicant seeking some other type of discretionary approval of development that will disturb an HCA. An applicant may choose to use the mitigation standards of **Section 5.0411** in lieu of the mitigation standards of this section.

- A.** Discretionary Review for Partitions. An applicant seeking to partition land in ways that do not accord with the standards established in **Section 5.0411(F)(1)** may seek review under this **Subsection 5.0412(A)**.
 - 1.** The applicant shall verify the boundaries of the HCAs and WQRAs on the property according to **Section 5.0414** of this Overlay.
 - 2.** The applicant shall submit the following application materials:
 - a.** A scale map, using a standard engineering scale, of the entire property that includes:
 - i.** Location of all High, Moderate, and Low HCA on the property;
 - ii.** Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area;
 - iii.** Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation;
 - iv.** A delineation of the proposed partition;
 - v.** Outlines of existing developed areas and proposed disturbance areas;
 - vi.** Areas covered by other overlay (e.g. Hillside Physical Constraint, Flood Plain overlays) and
 - vii.** Other items as required for partition proposals by **Sections 6.0202** or **6.0403**, as appropriate.
 - b.** A written and documented explanation of how and why the proposed partition satisfies the approval criteria in **Subsection 5.0412(A)(3)**. Such written documentation shall include an alternatives analysis of different possible partition plans, based on the characteristics and zoning of the property, and shall be included as part of the partition application narrative.
 - 3.** Approval Criteria. A partition shall be approved under this **Subsection 5.0412(A)** provided that the applicant demonstrates that it is not practicable to comply with the partition standards in **Section 5.0411(F)(1)** of this Overlay, and that the applicant's partition plan will result in the smallest practicable percentage point difference in the percentage of HCA on the parcels created by the partition (this will minimize the amount of allowable disturbance areas within HCAs on the parcels, assuming that the development standards in this **Section 5.0411** were applied to future development on such parcels).
 - 4.** Subsequent development on any parcels created by the partition and containing HCAs shall comply with all provisions of this Overlay, except that the map verification completed and approved as part of the partition may be used to satisfy the requirements of **Section 5.0414** of this Overlay for any such development.
- B.** Discretionary Review to Approve Off-Site Mitigation. An applicant seeking discretionary approval only for off-site mitigation within the same sub-watershed (6th Field Hydrologic Unit

Code), but who will comply with all other provisions of **Section 5.0411** of this Overlay, may seek review under this **Subsection 5.0412(B)**.

1. The applicant shall submit:
 - a. A calculation of the number of trees and shrubs the applicant is required to plant under **Section 5.0411(E)** of this Overlay; and
 - b. A map and accompanying narrative that details the following:
 - i. A plant list that indicates the quantity, botanical name, common name, size and root type (balled, burlaped or bare root) of trees, shrubs and other proposed plantings;
 - ii. A plan that shows where the trees, shrubs and other plants will be planted;
 - iii. An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and
 - iv. The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a HCA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant; and
 - v. Planting details.
2. Approval Criteria. Off-site mitigation shall be approved under this **Subsection 5.0412(B)** provided that the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry out and ensure the success of the off-site mitigation on a property within the same sub-watershed (6th Field Hydrologic Unit Code) as the related disturbed HCA.
3. Mitigation approved under this **Subsection 5.0412(B)** of this Overlay shall be subject to all of the requirements of **Subsection 5.0411(E)** of this Overlay, except for the requirements of **Subsection 5.0411(E)(5)** of this overlay.

C. Discretionary Review to Approve Mitigation That Varies the Number and Size of Trees and Shrubs. An applicant seeking discretionary approval only to proportionally vary the number and size of trees and shrubs required to be planted under **Subsection 5.0411(E)**, for example to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs, but who will comply with all other provisions of **Section 5.0411** of this Overlay, may seek review under this **Subsection 5.0412(C)**.

1. The applicant shall submit:
 - a. A calculation of the number of trees and shrubs the applicant would be required to plant under **Section 5.0411(E)** of this Overlay;
 - b. The numbers, species, root types and sizes of trees and shrubs that the applicant proposes to plant;
 - c. An explanation of why the numbers, species and sizes of trees and shrubs that the applicant proposes to plant will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be

- A. Habitat patch size;
- B. Interior habitat;
- C. Connectivity of the habitat to water; and
- D. Connectivity of the habitat to other habitat areas.

Table 5.0412(A) - Ecological Functional Values Of Riparian Corridors

Ecological function	Landscape features providing functional values
Microclimate and shade	Forest canopy or woody vegetation within 100 feet of a stream; a wetland ¹ ; or a flood area ² .
Streamflow moderation and water storage	A wetland or other water body ³ with a hydrologic connection to a stream; or a flood area ² .
Bank stabilization, sediment and pollution control	All sites within 50 feet of a surface stream; Forest canopy, woody vegetation, or low structure vegetation/open soils within 100 feet of a stream or a wetland; or forest canopy, woody vegetation, or low structure vegetation/open soils within a flood area; and, Forest canopy, woody vegetation, or low structure vegetation/open soils within 100-200 feet of a stream if the slope is greater than 25%.
Large wood and channel dynamics	Forest canopy within 150 feet of a stream or wetland; or within a flood area; and The channel migration zone is defined by the floodplain, but where there is no mapped floodplain a default of 50 feet is established to allow for the channel migration zone.
Organic material sources	Forest canopy or woody vegetation within 100 feet of a stream or wetland; or within a flood area.

1 Refers to "hydrologically-connected wetlands," which are located partially or wholly within ¼ mile of a surface stream or flood area.

2 Developed floodplains are not identified as HCAs because they do not provide primary ecological functional value.

3 "Other water body" could include lakes, ponds, reservoirs, or manmade water feature that is not a water quality facility or farm pond.

- iii. Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the HCAs and the ecological functions provided on the property. At a minimum, the following approaches must be considered:
 - A. The techniques described in **Subsection 5.0411(B)** of this Overlay;
 - B. Multi-story construction;
 - C. Minimizing building and development footprint;
 - D. Maximizing the use of native landscaping materials; and
 - E. Minimal excavation foundation systems (e.g., pier, post or piling foundation).
 - F. Minimizing impervious surfaces and using permeable surfaces.

- iv. Determination of the alternative that best meets the applicable approval criteria and identification of significant detrimental impacts that are unavoidable.
- b. Alternative Mitigation Plan. The purpose of a mitigation plan is to compensate for unavoidable significant detrimental impacts to ecological functions that result from the chosen development alternative as identified in the impact evaluation. However, when development occurs within delineated wetlands, then the mitigation required under **Subsection 5.0412(D)(2)(d)** shall not impose additional mitigation requirements that exceed the mitigation ratios or functions required by state and federal law for the fill or removal of such wetlands.
 - i. An applicant may choose to develop a mitigation plan consistent with the requirements of **Subsection 5.0411(E)** of this Overlay. If an applicant so chooses, then the applicant shall submit a mitigation plan demonstrating such compliance.
 - ii. If an applicant chooses to develop an alternative mitigation plan that would not comply with the requirements of **Subsection 5.0411(E)** of this Overlay, including, for example, a proposal to create an alternative plant community type such as an oak savannah or a low-structure plant community, or where an applicant demonstrates that a portion of identified HCA on its property provides only impaired ecological functions, then the applicant shall submit a mitigation plan that includes all of the following:
 - A. An explanation of how the proposed mitigation will adequately compensate for the impacts to ecological functions described in the impact evaluation required by **Subsection 5.0412(D)(1)(a)**. The applicant may use the mitigation that would be required under **Subsection 5.0411(E)** of this Overlay as the baseline mitigation required to compensate for disturbance to a HCA that provides an average level of ecological functions. Such explanation shall include:
 - 1. If the applicant uses the mitigation that would be required under **Subsection 5.0411(E)** of this Overlay as the baseline mitigation required to compensate for disturbance to a HCA, then the applicant shall submit a calculation of the number of trees and shrubs the applicant would be required to plant under **Subsection 5.0411(E)** of this Overlay;
 - 2. A site plan showing where the specific mitigation activities will occur and the numbers, species, planting details and root types and sizes of trees, shrubs and other plants that the applicant proposes to plant; and
 - 3. A discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity, plant spacing, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control.

- B.** Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies.
 - C.** A list of all parties responsible for implementing and monitoring the mitigation plan and, if mitigation will occur off-site, the names of the owners of property where mitigation plantings will occur.
 - D.** The applicant's mitigation site monitoring and reporting plan.
 - E.** If the proposed mitigation will not be conducted on-site, the applicant shall submit a map and accompanying narrative that details the following:
 - 1.** The number, species, sizes and root types of trees, and shrubs, and other plants that can be planted on-site;
 - 2.** The on-site location where those trees and shrubs can be planted and planting details of how they will be planted;
 - 3.** An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and
 - 4.** The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a HCA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.
 - F.** If the mitigation area is off-site and not within the same sub-watershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall submit an explanation of why it is not practicable to conduct the mitigation within the same sub-watershed and of why and how, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the sub-watershed.
 - G.** An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. If the applicant is proposing any in-stream work in fish-bearing streams as part of the mitigation project, then the applicant shall submit documentation that such work will be done in accordance with the Oregon Department of Fish and Wildlife in-stream work timing schedule.
- c.** The Impact Evaluation and Alternatives Analysis required by **Subsection 5.0412(D)(1)(a)** and the Mitigation Plan required by **Subsection 5.0412(D)(1)(b)** shall be prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist or (2) other appropriate and knowledgeable discipline or (3) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm

water facilities, or other similar facilities. The application shall include a description of the qualifications and experience of all persons that contributed to the Impact Evaluation and Alternatives Analysis and to the Mitigation Plan, and, for each person that contributed, a description of the elements of such reports to which the person contributed.

2. Approval Criteria. The following approval criteria apply to discretionary review applications under **Section 5.0412(D)**:
 - a. All application requirements in **Subsection 5.0412(D)(1)** shall be met.
 - b. Avoid. An applicant shall first avoid the intrusion of development into the HCA to the extent practicable. The development that is proposed must have less detrimental impact to HCAs than other practicable alternatives, including significantly different practicable alternatives that propose less development within HCAs. If there is more than one type of HCA on a property then the applicant shall first avoid the intrusion of development into the higher-valued HCA, to the extent practicable, and the development that is proposed must have less detrimental impact to the higher-valued HCAs than other practicable alternatives. To avoid development in HCAs, and to the extent practicable, applicants shall use the approaches described in **Subsection 5.0412(D)(1)(a)(iii)**.
 - c. Minimize. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then the development proposed by the applicant within the HCA shall minimize detrimental impacts to the extent practicable. If there is more than one type of HCA on a property then the development within higher-valued HCAs shall be considered more detrimental than development within lower-valued HCAs.
 - i. Development must minimize detrimental impacts to ecological functions and loss of habitat consistent with uses allowed by right under the base zone, to the extent practicable;
 - ii. To the extent practicable within the HCA, the proposed development shall be designed, located, and constructed to:
 - A. Minimize grading, removal of native vegetation, and disturbance and removal of native soils by using the approaches described in **subsection 5.0411(C)(2)**, reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post or piling foundation);
 - B. Minimize adverse hydrological impacts on water resources such as by using the techniques described in Part (a) of Table 5, unless their use is prohibited by an applicable and required State or Federal permit issued to a unit of local government having jurisdiction in the area, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;

- C. Minimize impacts on wildlife corridors and fish passage such as by using the techniques described in Part (b) of **Table 5.0412(B)**; and
- D. Consider using the techniques described in Part (c) of **Table 5.0412(B)** to further minimize the impacts of development in the HCA.

Table 5.0412(B) - Habitat-friendly development practices.¹

Part (a): Design and Construction Practices to Minimize Hydrologic Impacts	
1.	Amend disturbed soils to original or higher level of porosity to regain infiltration and stormwater storage capacity.
2.	Use pervious paving materials for residential driveways, parking lots, walkways, and within centers of cul-de-sacs.
3.	Incorporate stormwater management in road right-of-ways.
4.	Landscaped with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.
5.	Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics.
6.	Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.
7.	Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering.
8.	Use multi-functional open drainage systems in lieu of more conventional curb-and-gutter systems.
9.	Use bioretention cells as rain gardens in landscaped parking lot islands to reduce runoff volume and filter pollutants.
10.	Apply a treatment train approach to provide multiple opportunities for storm water treatment and reduce the possibility of system failure.
11.	Reduce sidewalk width and grade them such that they drain to the front yard of a residential lot or retention area.
12.	Reduce impervious impacts of residential driveways by narrowing widths and moving access to the rear of the site.
13.	Use shared driveways.
14.	Reduce width of residential streets, depending on traffic and parking needs.
15.	Reduce street length, primarily in residential areas, by encouraging clustering and using curvilinear designs.
16.	Reduce cul-de-sac radii and use pervious vegetated islands in center to minimize impervious effects, and allow them to be utilized for truck maneuvering/loading to reduce need for wide loading areas on site.
17.	Eliminate redundant non-ADA sidewalks within a site (i.e., sidewalk to all entryways and/or to truck loading areas may be unnecessary for industrial developments).
18.	Minimize car spaces and stall dimensions, reduce parking ratios, and use shared parking facilities and structured parking.
19.	Minimize the number of stream crossings and place crossing perpendicular to stream channel if possible.
20.	Allow narrow street right-of-ways through stream corridors whenever possible to reduce adverse impacts of transportation corridors.

¹ These development practices represent the state of scientific knowledge at the time of this Overlay's enactment, if more effective habitat-friendly practices become available, they should be used.

Part (b): Design and Construction Practices to Minimize Impacts on Wildlife Corridors and Fish Passage	
1.	Carefully integrate fencing into the landscape to guide animals toward animal crossings under, over, or around transportation corridors.
2.	Use bridge crossings rather than culverts wherever possible.
3.	If culverts are utilized, install slab, arch or box type culverts, preferably using bottomless designs that more closely mimic stream bottom habitat.
4.	Design stream crossings for fish passage with shelves and other design features to facilitate terrestrial wildlife passage.
5.	Extend vegetative cover through the wildlife crossing in the migratory route, along with sheltering areas.
Part (c): Miscellaneous Other Habitat-Friendly Design and Construction Practices	
1.	Use native plants throughout the development (not just in HCA).
2.	Locate landscaping (required by other sections of the code) adjacent to HCA.
3.	Reduce light spill-off into HCAs from development.
4.	Preserve and maintain existing trees and tree canopy coverage, and plant trees, where appropriate, to maximize future tree canopy coverage.

- d.** Mitigate. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then development must mitigate for adverse impacts to the HCA. All proposed mitigation plans must meet the following standards.
 - i.** The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological functions provided by HCAs, after taking into consideration the applicant’s efforts to minimize such detrimental impacts through the use of the techniques described in **Table 5.0412(B)** and through any additional or innovative techniques. A mitigation plan that requires the amount of planting that would be required under **Subsection 5.0411(E)** of this Overlay based on the amount of proposed disturbance area within the HCA, and that otherwise complies with all of the mitigation requirements in **Subsection 5.0411(E)** of this Overlay, shall be considered to have satisfied the requirements of this **Subsection 5.0412(D)(2)(d)** of this Overlay.
 - ii.** Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry out and ensure the success of the off-site mitigation, as described in **Subsection 5.0412(B)(1)(b)(iv)** of this Overlay. In addition, if the off-site mitigation area is not within the same sub-watershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall demonstrate that it is not practicable to complete the mitigation within the same sub-watershed and that, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the sub-watershed. Mitigation shall not be allowed outside of the impacted 5th Field

Hydrologic Unit Code (i.e., an impact within the Johnson Creek watershed needs to be mitigated within the Johnson Creek watershed.

- iii. All re-vegetation plantings shall be with native plants listed on the *City of Gresham Native Plant List*.
 - iv. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream work-timing schedule.
 - v. A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting, and compliance with the plan shall be a condition of development approval.
- e. Municipal Water Utility Facilities Standards. Except as provided within this subsection, in addition to all other requirements of **Subsection 5.0412(D)(2)** of this Overlay, municipal potable water, storm water (drainage) and wastewater utility facilities may be built, expanded, repaired, maintained, reconfigured, rehabilitated, replaced or upsized if not exempted in **Section 5.0403** of this Overlay. These facilities may include but are not limited to water treatment plants, wastewater treatment plants, raw water intakes, pump stations, transmission mains, conduits or service lines, terminal storage reservoirs, and outfall devices provided that:
- i. Such projects shall not have to comply with the requirements of **Subsection 5.0412(D)(2)(b)** of this Overlay, provided that, where practicable, the project does not encroach closer to a water feature than existing operations and development, or for new projects where there are no existing operations or development, that the project does not encroach closer to a water feature than practicable;
 - ii. Best management practices will be employed that accomplish the following:
 - A. Account for watershed assessment information in project design;
 - B. Minimize the trench area and tree removal within the HCA;
 - C. Utilize and maintain erosion controls until other site stabilization measures are established, post-construction;
 - D. Replant immediately after backfilling or as soon as effective;
 - E. Preserve wetland soils and retain soil profiles;
 - F. Minimize compactions and the duration of the work within the HCA;
 - G. Complete in-water construction during appropriate seasons, or as approved within requisite Federal or State permits;
 - H. Monitor water quality during the construction phases, if applicable; and
 - I. Implement a full inspection and monitoring program during and after project completion, if applicable.

5.0413 Variances

- A. The purpose of this Section is to ensure that compliance with this Overlay does not cause unreasonable hardship. To avoid such instances, the requirements of this Overlay may be varied. Variances are also allowed when strict application of this Overlay would deprive an owner of all economically viable use of land.
- B. This Section applies in addition to the standards governing proposals to vary the requirements of the district.
- C. Notice of variance applications shall be provided:
 - 1. Upon receiving an application to vary the requirements of this overlay, the notice shall be provided to all property owners within 300 feet of the site, as required by **Section 11.0311** of the Gresham Community Development Code to Metro, to any neighborhood association recognized by the City of Gresham and whose boundaries include the property, and to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property and meet all other noticing requirements of **Section 11.0311** of the Gresham Community Development Code.
 - 2. Within seven (7) days of a decision on the variance, notice of the decision shall be provided to Metro, to any neighborhood association recognized by the City of Gresham and whose boundaries include the property, to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property, and to any other person required to receive notice of such a decision in **Section 11.0300** of the City of Gresham Community Development Code.
- D. **Hardship Variance.** Variances to avoid unreasonable hardship caused by the strict application of this Overlay are permitted subject to the criteria set forth in this section. To vary from the requirements of this Overlay, the applicant must demonstrate the following:
 - 1. The variance is the minimum necessary to allow the proposed use or activity;
 - 2. Unless the proposed variance is from mitigation under **Section 5.0411(E)** or mitigation under **Section 5.0412(B), (C), or (D)(1)(b) and D(2)(d)**, the proposed use will comply with those standards, as applicable; and
 - 3. The proposed use complies with the standards of the base zone.
- E. **Buildable Lot Variance.** A variance to avoid the loss of all economically viable use of an existing lot or parcel that is partially or wholly inside a HCA is permitted. Applicants must demonstrate the following:
 - 1. Without the proposed variance, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that:
 - a. The proposed use cannot meet the standards in **Section 5.0413(D)** (hardship variance); and
 - b. No other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.
 - 2. The proposed variance is the minimum necessary to allow for the requested use;
 - 3. The proposed variance will comply with **Section 5.0411(E)** or **5.0412(B), (C), or D(1)(b) and D(2)(d)** (mitigation); and

4. The proposed use complies with the standards of the base zone.
- F. Additional Criteria.** In addition to the above Hardship Variance or Buildable Lot Variance criteria, the following criteria apply:
1. A variance that would result in a reduction of not more than 20% of the HCA boundary width on a site or a 20% decrease/increase of another numerical standard of this overlay shall demonstrate compliance with the Type II Minor Variance criteria of **Section 10.1510** of the Gresham Community Development Code. Such proposals shall be processed under the Type II development permit procedure.
 2. A variance that would result in a reduction of greater than 20% of the HCA width on a site or an increase/decrease of more than 20% of another numerical standard of this overlay shall demonstrate compliance with the Type III Major Variance criteria of **Section 10.1530** of the Gresham Community Development Code. Also, all non-numerical variance proposals shall meet the Type III Major Variance criteria. Both kinds of variances shall be processed under the Type III development permit procedure.
- G. Variance Conditions.** Conditions may be imposed to limit any adverse impacts that may result from granting any variance.

5.0414 Map Administration and HCA Verification

- A.** Exempt development. Development that is outside of any HCA and no closer than 50 feet to the border of an HCA (including all impervious surfaces and landscaping), based on the HCA map, may proceed without having to comply with this section or any other portion of this overlay except for **Section 5.0410**, Construction Management Plan.
- B.** Verification of the location of HCAs as described in this section shall not be considered a comprehensive plan amendment. If developing within an HCA, the location of the HCA boundary on a development site must be marked in the field at the time the applicant requests an HCA permit.
- C.** Map verification is available to correct for mistakes in the location, size or presence of HCAs on properties. Map verification shall not be used to dispute whether identified HCAs provide the ecological functions that they are assumed to provide based on the ecological criteria used by Metro to identify them in the 2002 Metro Goal 5 Technical Report. Nor shall it be used to dispute the Metro methodology for locating Class I and II riparian resource areas that is shown on **Table 5.0414(A)** of this overlay.
- D.** The map verification requirements described in this **Section 5.0414** of this Overlay shall be met at the time an applicant requests a building permit, grading permit, tree removal permit, land division approval, or some other land use decision. A property owner, or another person with the property owner's consent, may request to verify the location of HCAs on a real property lot or parcel pursuant to this **Section 5.0414** of this Overlay at other times, but whether the City processes such request shall be at the Planning Director's sole discretion, based on staff availability, funding resources, and policy priorities. If a person receives verification separate from a simultaneous request for a building permit, grading permit, tree removal permit, land division approval, or some other land use decision, then the person may use the verification to satisfy the requirements of this section at any time up until five years after the date the verification was issued.
- E.** Notwithstanding any other provisions of this **Section 5.0414** of this Overlay, for utility projects undertaken by public utilities across property that is not owned by the utility, the utility shall not

be required to map or provide any information about the property except for the area within 300 feet of the location of the proposed disturbance area of the utility's project.

- F.** The City shall incorporate all HCA delineations associated with development permit applications and resource updates on the location of the HCA boundary on an annual basis, or as necessary, through the Type 1 permit procedure by the Planning Director. This shall not be considered a comprehensive plan map amendment.
- G.** **Basic Verification Approaches.** The basic verification approaches described in **Subsections 5.0414(G)(1) through (3)** of this Overlay are available for applicants who believe either (1) that the HCA map is accurate, (2) that there is a simple incongruity between the HCA map and the boundary lot lines of a property, or (3) that the property was developed prior to September 29, 2005.
- 1.** **Applicant Believes HCA Map is Accurate.** An applicant who believes that the HCA map is accurate may comply with this **Subsection 5.0414(G)(1)** of this Overlay. The applicant shall submit the following information regarding the real property lot or parcel:
 - a.** A detailed property description;
 - b.** A copy of the applicable HCA map;
 - c.** A summer 2005 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 20 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 50 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);
 - d.** The information required to be submitted under **Section 5.0411** or **5.0412** of this Overlay if the applicant proposes development within any HCA under those provisions; and
 - e.** Any other factual information that the applicant wishes to provide to support map verification.
 - 2.** **Obvious Misalignment Between Mapped Habitat and Property Lot Lines.** In some cases, the mapped vegetative cover layer in the GIS database might not align precisely with the tax lot layer that shows property lines, resulting in a HCA map that is also misaligned with tax lot lines. An applicant who believes that the HCA map is inaccurate based on such an obvious misalignment may comply with this **subsection 5.0414(G)(2)** of this overlay. The applicant shall submit the following information regarding the real property lot or parcel:
 - a.** The information described in **subsections 5.0414(G)(1)(a) through (e)** of this Overlay; and
 - b.** A documented demonstration of the misalignment between the HCA map and the property's tax lot boundary lines. For example, an applicant could compare the boundary lot lines shown for roads within 500 feet of a property with the location of such roads as viewed on the aerial photograph of the area surrounding a property to provide evidence of the scale and amount of incongruity between the HCA maps and the property lot lines, and the amount of adjustment that would be appropriate to accurately depict habitat on the property.
 - 3.** **Property Developed Between Summer 2002 and September 29, 2005.** Where a property was developed between the summer of 2002 (when the aerial photo used to determine the

regional habitat inventory was taken) and September 29, 2005 (when Metro Council approved the Title 13 program), the applicant shall submit the following information regarding the real property lot or parcel:

- a. The information described in **Subsection 5.0414(G)(1)(a)** through **(e)** of this Overlay;
- b. A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);
- c. Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and September 29, 2005; and
- d. A clear explanation and documentation, such as supporting maps or drawings or an more recent aerial photograph, indicating the new development that has occurred and where previously identified habitat no longer exists because it is now part of a developed area. Also, submit evidence that shows that the new development was legally approved by the City.

4. Decision Process. The Planning Director's map verification decision made pursuant to **Subsection 5.0414(G)(1)** of this overlay will be processed under the Type I development permit procedure. Decisions pursuant to **Subsections 5.0414(G)(2)** and **(G)(3)** will be processed under the Type II development permit procedure. The Planning Director's decision shall be based on consideration of the information submitted by the applicant, any information collected during a site visit to the lot or parcel, any information generated by prior map verifications that have occurred on adjacent properties, and any other objective factual information that has been provided to the Planning Director.

H. Detailed Verification Approach. All applicants who believe that the HCA map is inaccurate for a reason other than as described in **Subsections 5.0414(G)(2)** and **(3)** may file a verification request consistent with this **Subsection 5.0414(G)** of this Overlay. Detailed verification requests will be processed under the Type II (administrative) development permit procedure.

1. Application requirements. The applicant shall submit a report prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. Such report shall include:
 - a. A description of the qualifications and experience of all persons that contributed to the report, and, for each person that contributed, a description of the elements of the analysis to which the person contributed;
 - b. The information described in **Subsections 5.0414(G)(1)(a)** through **(e)** of this Overlay;
 - c. The information described in **Subsections 5.0414(G)(2)(b)** and **(G)(3)(b)** through **(d)** of this Overlay, if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel;
 - d. Additional aerial photographs if the applicant believes they provide better

Identified wetlands shall be further delineated consistent with methods currently accepted by the Oregon Department of State Lands and the U.S. Army Corps of Engineers.

- ii.** Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.
 - A.** Vegetative cover status shall be as identified on the Metro Vegetative Cover Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
 - B.** The vegetative cover status of a property may be adjusted only if (1) the property was developed prior to the time the regional program was approved (see **Subsection 5.0414(G)(3)** of this Overlay, above), or (2) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the definitions of the different vegetative cover types provided in **Section 5.0416** of this Overlay.
- iii.** Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25%. At least three slope measurements along the water feature at no more than 100 ft. increments shall be taken, and
- iv.** Identify the riparian habitat classes applicable to all areas on the property using **Table 5.0414(A)** and the data identified in **Subsections 5.014(H)(4)(a)(i) through (iii)**.

Table 5.0414(A) - Method for Locating Boundaries of Class I and II Riparian Areas

Distance from Water Feature	Development/Vegetation Status ¹			
	Developed areas not providing vegetative cover	Low structure vegetation or open soils	Woody vegetation (shrub and scattered forest canopy)	Forest Canopy (closed to open forest canopy)
Surface Streams				
0-50'	Class II	Class II ²	Class I	Class I
50'-100'	Not regulated	Class II ³	Class I	Class I
100'-150'	Not regulated	Class II ³ if slope>25%	Class II ³ if slope>25%	Class II ³
150'-200'	Not regulated	Class II ³ if slope>25%	Class II ³ if slope>25%	Class II ³ if slope>25%
Wetlands (Wetland feature itself is a Class I Riparian Area)				
0-100'	Not regulated	Class II ³	Class I	Class I
100'-150'	Not regulated			Class II ²
Flood Areas				
Within 300' of river or surface stream	Not regulated	Class I	Class I	Class I
More than 300' from river or surface stream	⁴ Not regulated	Class II ³	Class II ³	Class I
0-100' from edge of flood area	Not regulated	Not regulated	Class II ^{3, 5}	Class II ³

- 1 The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as "forest canopy" the forested area had to be part of a larger patch of forest of at least one acre in size.
- 2 Except that areas within 50 feet of surface streams shall be Class II riparian areas if their vegetation status is "Low structure vegetation or open soils," and if they are high gradient streams. High gradient streams are identified on the Metro Vegetative Cover Map. If a property owner believes the gradient of a stream was incorrectly identified, then the property owner may demonstrate the correct classification by identifying the channel type using the methodology described in the Oregon Watershed Assessment Manual, published by the Oregon Watershed Enhancement Board, and appended to the Metro's Riparian Corridor and Wildlife Habitat Inventories Report, Attachment 1 to Exhibit F to Metro Overlay No. 05-1077C.
- 3 Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro's Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

- 4 If development prior to the effective date of Metro Overlay No. 05-1077C within a contiguous, undeveloped flood area (to include contiguous flood areas on adjacent properties) that was not mapped as having any vegetative cover has reduced the size of that contiguous flood area to less than one half of an acre in size, then the remaining flood area shall also be considered a developed flood area and shall not be identified as habitat.
- 5 Only if within 300 feet of a river or surface stream.

b. Step 2. Verifying boundaries of inventoried upland habitat in future urban growth boundary expansion areas. Upland habitat was identified based on the existence of contiguous patches of forest canopy, with limited canopy openings. The “forest canopy” designation is made based on analysis of aerial photographs, as part of determining the vegetative cover status of land within the region. Upland habitat shall be as identified on the HCA map unless corrected as provided in this subsection.

- i.** Except as provided in **Subsection 5.0414(H)(4)(b)(ii)**, vegetative cover status shall be as identified on the Metro Vegetative Cover Map used to inventory habitat at the time the area was brought within the urban growth boundary (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
- ii.** The only allowed corrections to the vegetative cover status of a property are as follows:
- A.** To correct errors made when the vegetative status of an area was determined based on analysis of the aerial photographs used to inventory the habitat at the time the area was brought within the urban growth boundary. For example, an area may have been identified as “forest canopy” when it can be shown that such area has less than 60% canopy crown closure, and therefore should not have been identified as “forest canopy.” The perimeter of an area delineated as “forest canopy” on the Metro Vegetative Cover Map may be adjusted to more precisely indicate the dripline of the trees within the canopied area provided that no areas providing greater than 60% canopy crown closure are de-classified from the “forest canopy” designation. To assert such errors, applicants shall submit an analysis of the vegetative cover on their property using the aerial photographs that were used to inventory the habitat at the time the area was brought within the urban growth boundary and the definitions of the different vegetative cover types provided in **Section 5.0416** of this Overlay; and
- B.** To remove tree orchards and Christmas tree farms from inventoried habitat; provided, however, that Christmas tree farms where the trees were planted prior to 1975 and have not been harvested for sale as Christmas trees shall not be removed from the habitat inventory.
- iii.** If the vegetative cover status of any area identified as upland habitat is corrected pursuant to **subsection 5.0414(H)(4)(b)(ii)(A)** to change the status of an area originally identified as “forest canopy,” then such area shall not be considered upland habitat unless it remains part of a forest canopy

opening less than one acre in area completely surrounding by an area of contiguous forest canopy.

- c. Step 3. Urban Development Value of the Property. The urban development value of property designated as regionally significant habitat is depicted on the Metro Habitat Urban Development Value Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
 - i. A property’s urban development value designation shall be adjusted upward if the Metro 2040 Design Type designation for the property lot or parcel has changed from a category designated as a lower urban development value category to one designated as a higher urban development value category. 2040 Design Type designations are identified on the Metro 2040 Applied Concept Map (also available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
 - ii. Properties in areas designated on the 2040 Applied Concept Map as the Central City, Regional Centers, Town Centers, and Regionally Significant Industrial Areas are considered to be of high urban development value; properties in areas designated as Main Streets, Station Communities, Other Industrial Areas, and Employment Centers are of medium urban development value; and properties in areas designated as Inner and Outer Neighborhoods and Corridors are of low urban development value.
 - iii. As designated in Title 13 of Metro’s Urban Growth Management Functional Plan, properties owned by a regionally significant educational or medical facility are designated as high urban development value.
- d. Step 4. Cross-Reference Habitat Class With Urban Development Value. City and county verification of the locations of High, Moderate, and Low Habitat Conservation Areas shall be consistent with **Tables 5.0414(B) and (C)**.

Table 5.0414(B) - Method for Identifying Habitat Conservation Areas (“HCA”)

Fish & wildlife habitat classification	High Urban development value ¹	Medium Urban development value ²	Low Urban development value ³	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+ ⁴
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+ ⁴
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA ⁵ / High HCA+ ⁴
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA ⁵ / High HCA+ ⁴

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040

Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.

- 1 Primary 2040 design type: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
- 2 Secondary 2040 design type: Main Streets, Station Communities, Other Industrial areas, and Employment Centers
- 3 Tertiary 2040 design type: Inner and outer neighborhoods, Corridors
- 4 Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.
- 5 All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Table 5.0414(C) - Method for Identifying Habitat Conservation Areas (“HCA”) in Future Urban Growth Boundary Expansion Areas

Fish & wildlife habitat classification	High Urban development value ¹	Medium Urban development value ²	Low Urban development value ³	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA ⁴
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA ⁴
Class A Upland Wildlife	Low HCA	Moderate HCA	Moderate HCA	High HCA / High HCA ⁵ / High HCA ⁴
Class B Upland Wildlife	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA ⁵ / High HCA ⁴

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.

- 1 Primary 2040 design types: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
- 2 Secondary 2040 design types: Main Streets, Station Communities, Other Industrial areas, and Employment Centers
- 3 Tertiary 2040 design types: Inner and outer neighborhoods, Corridors
- 4 Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.
- 5 All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Section 5.0415 Consistency and Relationship with Other Regulations

- A. Where the provisions of this Overlay are less restrictive or conflict with comparable provisions of the Gresham Community Development Code, other City requirements, regional, state or federal law, the provisions that are more restrictive shall govern. Where this Overlay imposes restrictions that are more stringent than regional, state and federal law, the provisions of this Overlay shall govern.

- B.** Proposed development located near certain streams must also comply with the Floodplain Overlay district standards of **Section 5.0100** of the Community Development Code. Streams affected by this overlay are shown on the City's Special Purpose Districts Map.
- C.** Proposed development located on sites with slopes of 15% or greater may also be affected by the Hillside Physical Constraint Overlay district provisions of **Section 5.0200** of the Community Development Code. This district may impose additional development requirements for sites with ravines and other sloped topographic features.
- D.** Development in or near wetlands and streams may require permits from the Oregon Department of State Lands (D.S.L.) and the U.S. Army Corps of Engineers. If a federal permit is required, a water quality certification from the Oregon Department of Environmental Quality may also be required. The Manager shall notify the Department of State Lands and the Army Corps of Engineers when an application for development within streams and wetlands is submitted. Because these agencies may have more restrictive regulations than the City, applicants are encouraged to contact them before they prepare their development plans.
- E.** Regulated Tree removals within HCA areas shall meet the applicable removal and tree protection standards of **Section 9.1000**. All mitigation and replacement requirements shall comply with applicable provisions of the HCA **Section 5.0400**. Tree removal activities that include disturbance or alteration of undeveloped HCA area exceeding 200 square feet shall be subject to full Type II or Type III provisions of the HCA code as outlined in **Section 5.0400**. HCA areas disturbed during tree removal activities shall be restored to their original condition when the tree removal is complete.

Section 5.0416 Violations

Actions that violate the HCA regulations, such as removing habitat without having a required HCA permit, are subject to the abatement and penalty provisions of **Section 2.0008** of the Gresham Community Development Code.

In addition, for correcting violations regarding unauthorized removal of habitat, the property owner violator must submit a remediation plan that meets all of the applicable standards of the HCA overlay district. The plan must be developed by a professional landscape architect or natural resource specialist. If one or more of these standards cannot be met then the applicant's remediation plan must demonstrate that there will be:

- A.** No permanent loss of any type of resource or functional value;
- B.** A significant improvement of at least one functional value; and
- C.** There will be minimal loss of resources and functional values during the remediation action until it is fully established.

Section 5.0417 WQRA, Water Quality Resource Area

The WQRA, Water Quality Resource Area is an area identified by the City of Gresham in order to comply with Title 3 of Metro's Urban Growth Management Functional Plan, Metro Code sections 3.07.310-3.07.370. These areas are shown on Gresham's Title 3 map. When development is proposed within the WQRA, applicants can use either the specific standards of **Section 5.0411** of the HCA (those that apply to High rated resources, regardless of classification) or the discretionary standards of **Section 5.0412**.

The WQRA consists of the protected water feature, either primary or secondary, and the adjacent vegetative corridor. Primary and secondary protected water features are defined below and the required width of the vegetative corridor is indicated in **Table 5.0417**.

Primary Protected Water Features:

- A.** Title 3 wetlands (as defined in Title 3 of Functional Plan)
- B.** Rivers, streams and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow)
- C.** Streams carrying year-round flow
- D.** Springs which feed streams and wetlands and that have year-round flow
- E.** Natural lakes

Secondary Protected Water Features:

These are intermittent streams and seeps downstream of the point at which 50 acres of land area are drained and upstream of the point at which 100 acres of land area are drained to that water feature.

Vegetative Corridor Width:

The required width of the vegetated corridor varies according to the type of protected water feature (primary or secondary) and the degree of slope (less or greater than 25%) adjacent to the water feature. Minimum required vegetated corridor widths are specified in **Table 5.0417**. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the slope of the land adjacent to the water feature, the width of the vegetated corridor will vary.

Table 5.0417 – Water Quality Resource Areas

Protected Water Feature Type (see definitions below)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Vegetated Corridor (Required Setback)
Primary Protected Water Features ¹	< 25%	Edge of bankfull stage ("top of bank") ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	50 feet
Primary Protected Water Features ¹	≥ 25% for 150 feet or more ⁵	Edge of Bankfull stage ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	200 feet
Primary Protected Water Features ¹	≥ 25% for less than 150 feet ⁵	Edge of bankfull stage ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	Distance from starting point of measurement to top of ravine (break in >25% slope) ³ , plus 50 feet. ⁴
Secondary Protected Water Features ²	< 25%	Edge of bankfull stage ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	15 feet
Secondary Protected Water Features ²	≥ 25% ⁵	Edge of bankfull stage ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	50 feet

¹ Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural

lakes and springs

- 2 Secondary Protected Water Features include intermittent streams draining 50-100 acres.
- 3 Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the > 25% slope.
- 4 A maximum reduction of 25 feet may be permitted in the width of vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).
- 5 Vegetated corridors in excess of 50 feet for primary protected features, or in excess of 15 feet for secondary protected features, apply on steep slopes only in the uphill direction from the protected water feature.
- 6 "Bankfull Stage" (top of bank) is defined in OAR 141-85-010 (definitions for Removal/Fill Permits) as the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begins to inundate upland areas. In the absence of physical evidence, the two-year recurrent flood elevation may be used to approximate the bankfull stage.

SECTION 5.0500

OPEN SPACE OVERLAY DISTRICT

General

5.0501 Introductory Provisions

Open Space Dedication

5.0510 Open Space Dedication

5.0511 Public Open Space Criteria

5.0512 Private Open Space Criteria

Permitted Uses

5.0520 Permitted Land Uses

5.0521 Residential Density Transfer Credit

Development Requirements

5.0530 Site Development Requirements

5.0531 Design Standards and Supplementary Regulations

5.0532 Conservation of Open Space

General

5.0501 Introductory Provisions

Provisions of this section apply to all areas designated as Open Space Overlay District (OS) on the Community Development Special Purpose District Map. Designation of OS sites is based on the Inventory of Significant Natural Resources and Open Spaces adopted as an appendix to the Community Development Plan. It is the purpose of the OS district is to conserve undeveloped and landscaped areas that reduce air pollution and enhance the value of adjacent property, to enhance the value to the public of public parks, public urban plazas, public trails, public open spaces, natural areas and public school sites, to enhance recreation opportunities, and to promote orderly urban development.

Open Space Dedication

5.0510 Open Space Dedication

The Manager may accept the dedication of open space in connection with a development proposal for the purpose of off-setting the payment of parks system development charges, as provided in Article 6.15, System Development Charges, Gresham Revised Code. This acceptance of dedicated open space shall take place under the Type I procedure when the property to be dedicated is identified as an Open Space or Natural Resource site in the Inventory of Significant Natural Resources and Open Spaces. For all other areas, the acceptance of dedicated open space shall take place under the Type II procedure.

5.0511 Public Open Space Criteria

Any proposal to accept an area not identified in the Inventory of Significant Natural Resources and Open Spaces as dedicated open space must meet criteria (A), (B), (C), and at least one of the remaining criteria below.

- A. The potential costs associated with the maintenance of the area will not exceed the recreational value of the open space to the public.
- B. The area will meet a need identified in the Gresham Parks Development Plan.
- C. The open space area will not exhibit features that represent an obvious hazard to users or create a significant liability for the City.
- D. The open space area will link parks, neighborhoods, schools, or community activity centers or it will provide continuity within an existing greenway or planned greenway corridor.
- E. The open space area is in a usable location to serve passive or active recreational needs. Active park areas shall be located in accordance with the Gresham Parks Development Plan Map.
- F. The open space area has sufficient width and suitable topography to accommodate pedestrian or bicycle trails.
- G. The open space area will provide special opportunities for a nature trail, scenic walkway, exercise circuit, or other special purpose trail.
- H. The open space area will conserve any of the following natural resources or features:
 - 1. Fish and wildlife habitat;
 - 2. Water resources, streams, drainageways, ponds, lakes, floodplains, or wetlands;
 - 3. Natural vegetation, stands of trees, or forest areas;
 - 4. Scenic views and landscapes, such as forested hills and ravines;
 - 5. Geologic features;
 - 6. Ecologically and scientifically significant areas, such as Hogan Cedars; or
 - 7. Hazardous slopes greater than 35 percent.
- I. The open space area represents an historical or culturally significant site.

5.0512 Private Open Space Criteria

The City shall permit a development proposal that includes private open space if it meets the following criteria:

- A. Portions of the land are sufficiently improved to offer active or passive recreational opportunities;
- B. The proposal would not interfere with the continuity of an existing or planned public greenway corridor;
- C. An Open Space easement in accordance with **Section 9.0304** is recorded; and
- D. A Homeowner's Association or other mechanism acceptable to the Manager shall be formed for the maintenance and control of the private open space. The by-laws or similar instrument shall also include a financial mechanism that insures maintenance of the property.

Permitted Uses

5.0520 Permitted Land Uses

- A. The following uses are permitted in the Open Space Overlay District:
1. Utility structures, including but not limited to substations, telephone switching stations, electrical generation facilities, and other facilities required for the transmission of power or communications
 2. Sewerage or drainageway system structures, including but not limited to pump stations, or sewage or storm water treatment plants
 3. Water system structures, including but not limited to treatment plants, storage reservoirs, pump stations, or other major facilities associated with the supply or distribution of water
 4. Emergency service facility such as a fire station or ambulance service
 5. Public urban plazas, public neighborhood parks, public community parks, public walking/hiking trails and public multi-use paths
 6. Public greenway
 7. Cemeteries
 8. Portable classroom for public schools
 9. Public or private elementary school
 10. Public or private high school or college
 11. Golf course
 12. Community private recreational uses such as bicycle and pedestrian paths, play areas, athletic fields and private open space.
 13. Temporary, Intermittent and Interim Uses (**Section 10.1400**) and Food and Beverage Carts (**Section 10.1600**)

5.0521 Residential Density Transfer Credit

A density transfer credit shall be permitted for those parcels with a plan map designation allowing residential development when one acre or more of the parcel lies within an OS district. For parcels with a low density residential designation, the density transfer credit shall be calculated at the rate of two dwelling units per acre of that portion of the parcel lying within the OS district. For parcels with a moderate density residential designation, the density transfer credit shall be calculated on the basis of the maximum number of dwelling units permitted per acre in that residential district for each acre of site area within the OS district. The number of units calculated on this basis shall be added to the number of units permitted on that portion of the parcel lying outside the OS district to determine the total number of dwelling units which may be developed on the non-OS portion of the parcel. Where a density transfer credit is allowed in a low density residential district, minimum lot sizes and lot dimensions as specified for detached dwellings and duplexes may be reduced on the non-OS portion of the parcel. In both low density and moderate density residential districts, all other applicable development standards, including setback and building heights, shall continue to apply when a density transfer occurs.

Development Requirements

5.0530 Site Development Requirements

Site development standards including minimum lot size and dimensions, minimum yard setbacks, and maximum building height shall be as specified for the underlying Plan Map District designation, except as may be modified through a Special Use Review, under **Section 8.0100**.

5.0531 Design Standards and Supplementary Regulations

All uses permitted in the OS district shall be designed in conformance with applicable provisions and requirements of the Community Development Code.

5.0532 Conservation of Open Space

The design and development of any use permitted in the OS district shall take place in such a manner as to limit to the maximum extent possible the intrusion of buildings, off-street parking areas, and driveways into natural areas and areas of the site which are landscaped or in recreational use.

SECTION 5.0600

GRESHAM BUTTE SCENIC VIEW OVERLAY DISTRICT

General

5.0601 Purpose

Development Standards

5.0602 Permitted Uses

5.0603 Restricted Development Types

Additional Development Requirements

5.0604 Additional Standards in the Gresham Butte Scenic View Overlay District

Maps

5.0610 Gresham Butte Scenic Overlay District Map

General

5.0601 Purpose

The Gresham Butte Scenic View (GBSV) District is an overlay district designed to provide additional regulations that will help protect and enhance the scenic vista provided by the Butte. Contained in this section are special requirements for development within this area that will help to preserve the natural beauty of Gresham Butte. The boundaries of the GBSV Overlay District are shown on **Map 5.0610**.

Due to the impact of certain Special Uses, allowed projections above maximum height, amateur radio antenna structures and the effects of artificial light on Gresham Butte, additional regulations apply.

Development Standards

5.0602 Permitted Uses

The uses permitted and standards applied generally are those of the Low Density Residential-5 District and the Gresham Butte Plan District unless modified by this section. Unless otherwise amended by **Section 5.0603** or **Section 5.0604**:

- A. The permitted uses of **Table 4.0120** under LDR-5 apply for those properties with an underlying LDR-5 District.
- B. The permitted uses, setbacks, density, lot size and site development standards in **Sections 4.1310, 4.1311, Table 4.1311(A)** and **Section 4.1312** apply for those properties designated Gresham Butte Plan District.

5.0603 Restricted Development Types

The following development types are Special Use Reviews under **Section 8.0100** and are restricted in the GBSV District as follows:

- A. The following uses are prohibited:
 - 1. New Cemeteries
 - 2. Elementary Schools
 - 3. Middle Schools
 - 4. Telephone Switching Stations*
 - 5. New Water Storage Facilities
 - 6. Major Stormwater Treatment Facilities
 - 7. Substations

(*This is current code language that may be outdated. A more appropriate term may be Telecommunications Facilities.)

- B. The following Special Use Review is required to be reviewed through the Type III process and is subject to the requirements in **Section 8.0140**:
 - 1. Wireless Communication Facilities
- C. The following Special Use Review is required to be reviewed through the Type II process under **Section 8.0110**:
 - 1. Replacement Water Storage Facilities meeting the underlying district height requirements.
- D. The following Special Use Review is required to be reviewed under the standards outlined in **Section 8.0110** and the Type III Major Variance criteria set forth in **Section 10.1530**.
 - 1. Replacement Water Storage Facilities exceeding the underlying district height requirements. The hearing body is the Planning Commission.

Additional Development Requirements

5.0604 Additional Standards for the GBSV District

The Site Development Requirements of LDR-5 and the Gresham Butte Plan District shall apply unless modified by this section. These additional requirements have been included to help protect the scenic and aesthetic views provided by the Butte.

- A. The following regulations are designed to minimize the effect of tall structures on the scenic resource:
 - 1. All variances to maximum height shall be reviewed under the Type III procedures and under the criteria in **Section 10.1530**.
 - 2. Residential adjustments to height allowed by **Section 10.1521.B.3** are prohibited in the GBSV District.
 - 3. Additional regulations regarding the height of and process required for the placement of Amateur Radio Antennas in the GBSV as found in **Section 10.1011** shall apply.

4. Projections above maximum height as allowed by **Section 9.0901** shall be required to be reviewed under the Type II process and meet the criteria of **Section 10.1510** or demonstrate the need for such projections as part of a Special Use Review as found in **Section 8.0100**.
- B.** The following regulations are designed to help ensure that developments are complementary to the scenic nature of Gresham Butte. These regulations apply to all structures including but not limited to single-family detached homes and accessory structures:
1. All exterior lighting must be directed downward, hooded and shielded by opaque materials. The light bulb shall not be visible from adjacent properties. The use of lower wattage lights is encouraged. Exceptions are:
 - a. Street lighting necessary for safety purposes,
 - b. Lighting required by emergency response agencies,
 - c. Lighting fixtures required by the Federal Communication Commission, the Federal Aviation Administration, the Federal Occupational Safety and Health Administrations or other federal, state, county or municipal agencies,
 - d. Landscape lighting aimed away from adjacent properties that is contained by an overhanging architectural element or evergreen landscaping such that light is not directed to the night sky,
 - e. Residential decorative low wattage lighting used for yards and driveways that do not shine glare, emit illumination or cast a shadow onto adjoining properties,
 - f. Lighting required to illuminate the flag of the United States of America. Such lighting must be shielded and not visible off of the property.
 2. Colors used for all structures are encouraged to be dark earth tones that are present in the landscape at or near the proposed structures. Dark earth tone colors recommended are browns, tans, greens and grays that should be as dark or darker than the surrounding area.
 3. Reflective materials (including, but not limited to mirrored glass, aluminum and smooth metals) are discouraged. The maximum reflectivity of glass is encouraged to be no more than 20%. Painted structures are encouraged to be of an eggshell or flat finish.

Maps

Map 5.0610 Gresham Butte Scenic Overlay District Map

