

To: City Commission
From: Christina Robertson-Gardiner, Senior Planner
RE: LEG 19-0003-Beavercreek Road (Thimble Creek) Concept Plan Zoning and Code Amendments – Draft Planning Commission Recommendations
Date: March 11, 2020

The purpose of this memo is to provide additional background information on items identified by the City Commission at the March 10, 2020 City Commission Work Session on the Beavercreek Road (Thimble Creek) Concept Plan.

1. Live/Work Regulations and Review

Live/work dwellings provide important flexibility by combining residential and commercial uses and allowing for commercial uses on the ground floor when the market is ready to support them. The standards for live/work are identified in OCMC 17.20.040. The business portion of the dwelling shall be limited to the ground floor and may not exceed fifty percent of the square footage of the entire dwelling, excluding the garage, or one thousand square feet, whichever is the smaller number. The standards also include a variety of requirements such as a business entrance facing the street and a minimum amount of windows, a limitation of employees, a prohibition of outdoor storage, and a limitation of the hours the business may be open to clients or to the public. Given the size limitation of the business portion, coupled with the limits on employees and hours, the code prioritizes living over the business. No adjustment to the live/work code was proposed with the implementation of the Beavercreek Road (Thimble Creek) Concept Plan.

The City Commission expressed concern about the interplay between the zoning requirements for live/work and the Building Division requirements. Live/work units are reviewed by the Planning and Building Divisions. Prior to the release of any permits, approval is required from both divisions, ensuring the respective requirements have been met. Mike Roberts, Building Official, has provided the attached memorandum with additional information.

2. Marijuana Regulations in Oregon City

In 2015, the City of Oregon City adopted Ordinance 15-1017, banning the establishment and operation of marijuana businesses for both recreational and medical use. On November 8, 2016, voters lifted the ban. All marijuana businesses are required to comply with OCMC 17.54.110 (Ord. No. 16-1008). The proposed amendments to the Thimble Creek/Beavercreek Road Concept Plan aim to follow the city-wide approach for marijuana regulation and has provided additional clarity when needed. Specifically, not allowing marijuana retail in the enhanced home occupation/cottage industry code and clarifying that marijuana retail is allowed within size-restrictions subsections of the Concept Plan code for both the Mixed-Use Corridor and Neighborhood Commercial Districts. The separation requirements from schools and other adopted regulations would continue to apply within the Concept Plan boundary. More information can be found at the following link: www.orcity.org/planning/marijuana-regulation-oregon-city or in OCMC 17.54.110.

3. Low-Density Reference in Staff Report

Sections of the staff report incorrectly identify the R-5 Zone as being categorized as low density. The R-5 District is located within the Medium Density Residential District. The staff report has been revised to correct this error.

4. Home Occupation/Cottage Manufacturing

Discussed at: Two Open Houses, Online Survey and at the September 9, September 23, November 18th Planning Commission Hearings

As part of the 2016 re-adoption of the plan, the City Commission recommended that during the process to create implementing code and zoning for the BRCP, staff should further analyze the issue of allowing expanded home occupation uses, also known as cottage manufacturing/industry within the mixed-use and residential areas. As much of the urban growth boundary expansion was related to jobs, expanding the types of business and how they operate within the Concept Plan boundary would be appropriate. This item was discussed during the two open houses at Oregon City High School and through an online survey in the fall of 2019. The Planning Commission provided staff clear direction that they supported expanded opportunities for home-based businesses within the concept plan area. Staff worked with the Planning Commission on options to create new opportunities for home-based businesses in Oregon City.

Background

As part of the 2016 re-adoption of the plan, the City Commission direct staff to further analyze the issue of allowing expanded home occupation uses, also known as cottage manufacturing/industry within the mixed-use and residential areas during the future code implementation process.

"In 2008, the City Commission specifically considered amending the plan to include cottage manufacturing within the mixed-use area, consistent with the instructions on remand, and decided the details of cottage housing are more appropriately addressed when the code language was created "Additionally, live-work units and home occupations, that may include cottage industries, are supported by the mixed-use approach. Adoption of the BRCP does not preclude the provision of cottage manufacturing or a greater variety of home occupations within the mixed-use and residential areas. The proposed land use mix, combined with the improved transportation network, will guide the future development of the area in a manner that supports this policy. Finally, as part of creating the implementing zoning for the BRCP, the City Commission directs staff to further analyze the issue of allowing expanded home occupation uses, also known as cottage manufacturing, within the mixed-use and residential areas." Cottage industry was not added to the text of the Beaver Creek Road Concept Plan in 2008 or in 2016. ¹

As the term cottage industry or cottage manufacturing was not incorporated into the adopted plan, it is neither encouraged nor discouraged. As part of the code implementation process, the Planning Commission should make findings relating to this issue and how it was addressed as part of the adoption process.

The Merriam Webster Dictionary definition defines cottage industry as:

- 1: an industry whose labor force consists of family units or individuals working at home with their own equipment
- 2: a small and often informally organized industry
- 3: a limited but enthusiastically pursued activity or subject

In Oregon City, a home occupation is a business carried on by the resident of a dwelling as a secondary use, with the activity conducted so that there is no audible, visual, or other appearance of a business. The primary use must continue to be a residence. Partners or employees are not allowed on site for business purposes. This means that the business must be conducted by the resident(s) and family members who live at the dwelling. In order to renew your business license, your home occupation statement must be

¹ Response Brief of Respondent City of Oregon City -LUBA No. 2016-044 Page 8

reviewed annually. All of this is shorthand for – do your work inside a building and make sure it is not adversely affecting your neighbors.

17.04.580 -Home occupation. "Home occupation" means an occupation carried on solely by the resident or residents of a dwelling unit as a secondary use in accordance with 17.54.120.

17.54.120 -Home Occupations

Home occupations shall comply with all of the following:

A. No employees reporting to work onsite who are not residents unless otherwise required by State law. The business may have off-site employees or partners provided that they do not report for work at the subject residence;

B. All business conducted on sites shall be conducted within the home or accessory structure;

C. No outdoor storage of materials or commercial vehicles associated with the business shall occur onsite; and

D. Not more than one-half of the square footage of the primary dwelling is devoted to such use

The following question was discussed at the April 9, 2019 BRCP Meeting #2, which was also available through an online survey.

11. East Mixed-Use Neighborhood- Should home occupations and/or live/work units be broadened to allow "cottage industries" that manufacture and sell goods? What additional compatibility standards should apply, such as use limitations, impacts, size, storage, or customer visits? Are there other ideas to integrate live-work opportunities in these neighborhoods, and the district generally?

There was very little feedback on this question from either in person comments or through online comments. At the April 9, 2019 meeting, the question asked to those assembled if there should be additional allowances for offsite employees, retail customers, outside storage, or outside activities in the R-2 or R-5 residential zones within the BRCP. Very few people expressed support verbally. The few people who commented online supported adding additional elements to the home occupation definition.

Online comments from the open house worksheets from the spring of 2016 can be found below:

- 1. Limit cottage industries to those w/o traffic impact*
- 2. Because in 2002 and 2004 Metro and Oregon City brought the Beavercreek Road Concept Plan Urban Growth Boundary Expansion (most of the BRCP area) into the UGB specifically for industrial use due to the need for family-wage jobs in Oregon City and because this need remains, all Residential Densities should allow employment in the BRCP area.*
 - o Oregon City has a very poor job: housing ratio which leads to poor city finances – since business generates more tax revenues and residential costs more services.*
 - o The lack of family wage jobs in Oregon City makes the City a bedroom city with excessive commuting and with multiple roads over capacity already before projected growth occurs and with road subject to alternative mobility standards because the previous higher, more livable standards could not be met without roadway improvements that the City did not budget for. More jobs at home will lessen the increase in road congestion and loss of livability.*
 - o New businesses need to develop in a low risk, low cost environment such as the entrepreneur's home until it begins to be successful and can move to a mature business location.*

As there was no clear direction given during the public outreach meetings during the spring of 2019 and there are existing provisions for many types of home occupation allowed city-wide, staff did not recommend any changes to the Home Occupation Code for the Beavercreek Road Concept Plan area.

At the September 9, 2019 Planning Commission Hearing, the Planning Commission directed staff to look at options to increase employment opportunities in the Residential Districts of the Beaver Creek Road Concept Plan. An initial survey was sent out to over 200 people participating in the Beaver Creek Road Concept Plan email listserve, and the combined response can be found attached to the City Commission agenda.

The survey looked at different ways the home occupation license could be enhanced within the Beaver Creek Road Concept Plan area to allow more intense employment options. Survey results show that there are varied opinions for these options and staff requested further direction on the following items at the October 14, 2014 PC Hearing:

- Retail (picking up goods for sale)
- Outdoor storage associated with a business (landscaping equipment, construction materials)
- Parking commercial vehicles (landscape trucks, 5th wheel cabs)
- Work performed outdoors (welding, outdoor yoga)
- Offsite employees working at the residence (1-3 employees checking in at residence or working at the house)
- Using a majority of a residence for business (more than 50% of the residence devoted to business use)

The Planning Commission provided staff clear direction that they supported expanded opportunities for home-based businesses within the concept plan area. Staff worked with the Planning Commission on options creating new opportunities for home-based business in Oregon City, these include allowing vehicles associated with the business to be allowed to park outside of buildings, limited retail opportunities, and up to 3 employees allowed during normal business hours.

Staff recommendation: As there was no clear direction given during the public outreach meetings in the spring of 2019 and there are existing provisions for many types of home occupation allowed city-wide, staff did not recommend any changes to the Home Occupation code for the Beaver Creek Concept Plan area.

Planning Commission: Planning Commission directed staff to create specific cottage industry home occupation business license criteria to implement the Beaver Creek Road Concept Plan vision to encourage job creation in this district.

Implementation of Goal 5 Resources in the Concept Plan through OCMC 17.49 Natural Resources Overlay District.

Natural resources subject to Goal 5 are addressed in detail in the Natural Resource Inventory which was part of the existing conditions analysis required by Metro Title 11 during the 2008 Concept Plan adoption. A detailed review of the Goal 5 resources within the study area was conducted, including wetlands, streams, riparian area, wildlife habitat and historic and cultural resources. The inventory consisted of two parts:

- 1) An examination of existing resource information for the Plan area; and
- 2) A field study to verify the location and evaluate resource habitat quality.

The first phase of the inventory included review of existing documents, such as Metro Goal 5 Inventory Maps, National Wetland Inventory maps, Natural Resource Conservation Service Soils Survey of Clackamas County, Stream Net fisheries data and other sources. Phase two consisted of a field verification of the BRCP area by a team of biologists. The team visited each of the previously mapped natural resource areas to confirm the location, size and quality. The natural areas determined to be of high resource value were

distinguished from natural areas of lesser resource value and the lower quality natural areas were given a designation of enhancement potential in order to identify both the highest quality natural resource and provide a determination of the feasibility of enhancement.

The Natural Resources Inventory that was conducted as part of the existing conditions analysis for the BRCP consisted of examination of existing resource information for the area and a field study. This inventory was part of the part of the 2008 record. The inventory identified and summarized 19 natural areas within the BRCP area and were assigned values for their condition and enhancement potential. Of those 19 areas, the majority were consistent with Metro's Goal 5 mapping. The city's initial GIS analysis of the NROD areas for the entire urban growth boundary was completed in 2008. The Natural Resource Overlay District was adopted in 2008 and replaced the old Water Resources Overlay District with a combined overlay district, which regulates both Metro Title 13 habitat and Metro Title 3 water resources. In particular Trimble Creek is an identified Goal 5 resource that runs from south to north through the site crossing Loder Road. The concept plan envisions this protected resource being combined within a linear park feature.

The BRCP will protect Goal 5 natural resource areas by guiding the designation of Natural Resource Overlay District areas and the restriction of development in those areas pursuant to OCMC 17.49. The code requires that further on-site analysis be conducted to determine the current extent of the protected resources which initially was done with the concept plan. More detailed, site specific delineations of the resources and the required associated vegetated corridors is required prior to development, along with impact analysis and mitigation for impacts. Though, as with all inventories, there may have been features which were missed, these existing restrictions will adequately protect natural resource areas and to the extent necessary serve as a natural resource protection plan.

6. Upland Habitat regulation under OCMC 17.49 Natural Resource Overlay District (NROD).

Discussed at: September 23, 2019, January 13, 2020 and February 10, 2020 Planning Commission Hearings October 9, 2020 and November 13, 2020 Natural Resource Committee Meetings

This item was not discussed during the Spring open houses or through a survey.

The 2008 Beaver Creek Road Site Inventory Map identified habitat areas which may be protected. A majority of the habitat is regulated under OCMC 17.49 Natural Resources Overlay District or OCMC 17.44 Geologic Hazards, though there are locations which are not. Additional regulations could be adopted to address these areas but would not be required. Staff determined that a sufficient amount of land identified as habitat is being protected through the City's existing code or through the tree requirements identified citywide in OCMC 17.41 to show substantial compliance with the goals and policies of the Beaver Creek Road Concept Plan.

Background

In 2008, the City was in the middle of the design and adoption of the Beaver Creek Road Concept Plan and was beginning reviewing code amendments to implement Metro Title 13, which conserves and protects streamside corridor system integrated with upland wildlife habitat. The aim of Title 13 is to combine the ecological needs of wetlands and streams with habitat protection. Oregon City adopted a stream protection code in 1999, which placed a 50-foot buffer from break-in 25% slope (up to 200 feet) along a perennial stream and 15 feet protection from a seasonal stream. Anadromous or fish-bearing streams such as the Willamette River and Abernethy Creek received a 200-foot buffer.

In 2008 and 2009, Oregon City worked with Metro to identify habitat areas within Oregon City. A majority of the areas identified as conservation habitat areas were located within the existing stream buffers or were further regulated by the Geologic Hazards Overlay District. The City requested compliance with this approach and included any city-owned parks and open spaces habitat areas if located outside of the existing stream buffer into the newly revised Natural Resource Overlay District (NROD). A June 3, 2009 letter to Pete Walter from Brian Harper, Metro Assistant Regional Planner confirming compliance with Title 13, can be found attached to this memo.

Staff has reviewed the 2008 Site Inventory Map and has identified some areas that are not currently regulated under OCMC 17.49- Natural Resources Overlay District or OCMC 17.44 Geologic Hazards. Staff presented this analysis to the Natural Resource Committee (NRC) on October 9, 2019, and November 13, 2019. The Natural Resource Committee submitted a letter with a keyed map into the record requesting the Planning Commission create code to regulate and protect upland habitat areas 3 and 4 as they are of specific interest to the committee and are contiguous to large habitat areas. They supported additional protection in Area 2 in locations that abut the identified and protected stream. Area 1 merits additional protection if analysis can show enough tree area located outside of the Natural Resource Overlay District exists. Staff requested further direction from the Planning Commission on this issue.

Nancy Brochot, NRC Chair, speaking on behalf of herself, provided additional testimony about the benefit of protecting large habitat areas. Her letter can be found attached to the public comment matrix. "Forest fragmentation is one of the major documented negative impacts of urbanization and is an insidious threat to natural areas. Large intact areas of forest contribute to species diversity (both plant and animal), help remove pollutants from the air, mitigate climate change, and protect water quality. Development chips away at forests edges, reducing interior habitat until the land no longer functions ecologically as forest habitat." She recognizes the importance of additional housing in our area, but felt the need to balance development with protection of important natural resources that, once gone, cannot be replaced. She recommended protection of Areas 3 and 4.

Below are four maps that further described this issue. The 1st map- Figure 1, looked at streams, wetlands and habitat areas during the Concept Plan design process prior to the adoption of the revised Title 13 code amendments. The areas identified in orange are labeled as habitat areas.

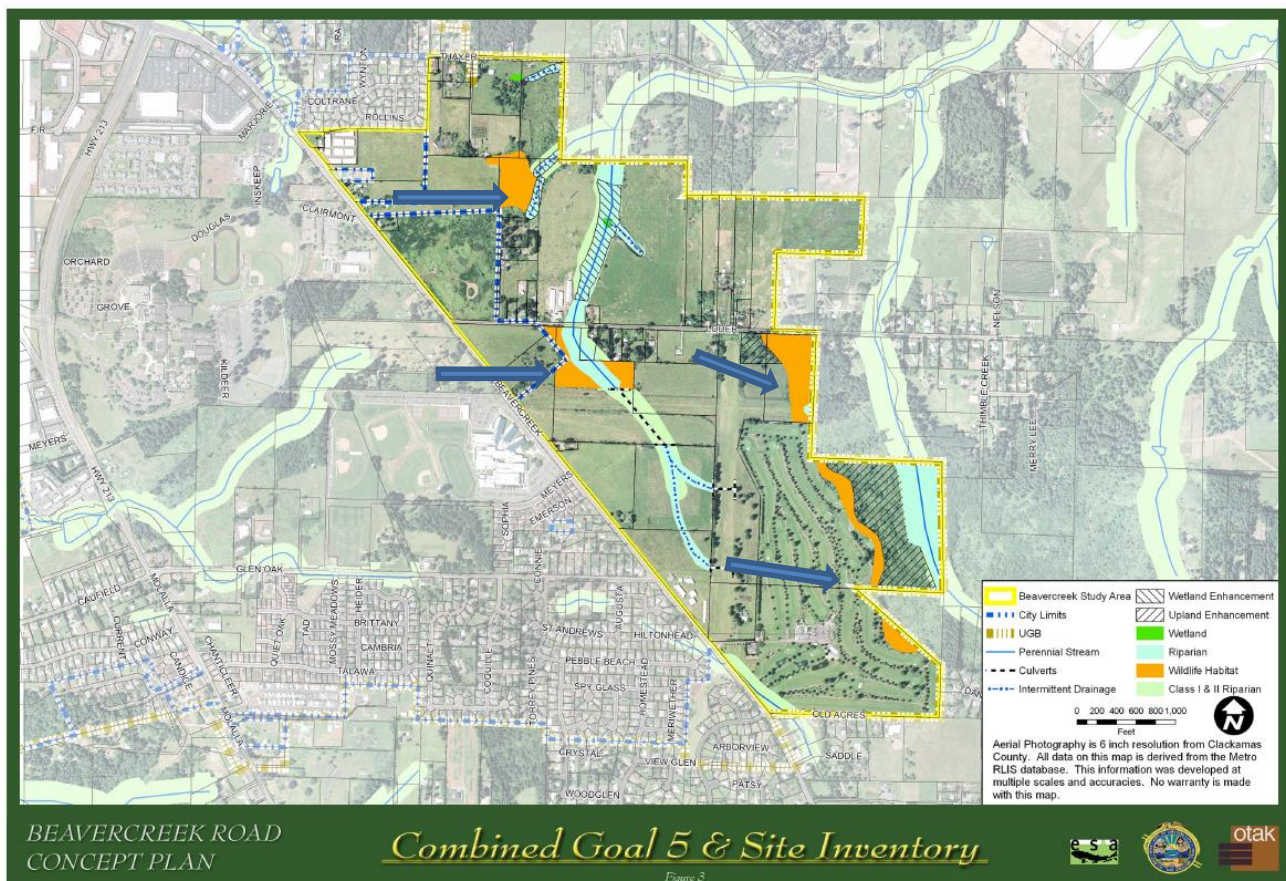


Figure 1 - Goal 5 Site Inventory- Beaver Creek Road Concept Plan Design Process

The 2nd Map- Figure 2 consists of the adopted Metro Title 13 compliant Natural Resource Overlay District. The habitat areas are identified as salmon pink (NROD HCA- High), and the Natural Resource Overlay District is identified as bright pink. Please note that the Metro identified habitat areas regulated under OCMC 17.49 Natural Resource Overlay District are smaller than the habitat areas identified by the Concept Plan consultant team above in Figure 1 and have been demarcated with red numbers (1-4)

All of the currently regulated habitat areas located within the Natural Resource Overlay District in this area are protected through OCMC 17.49.

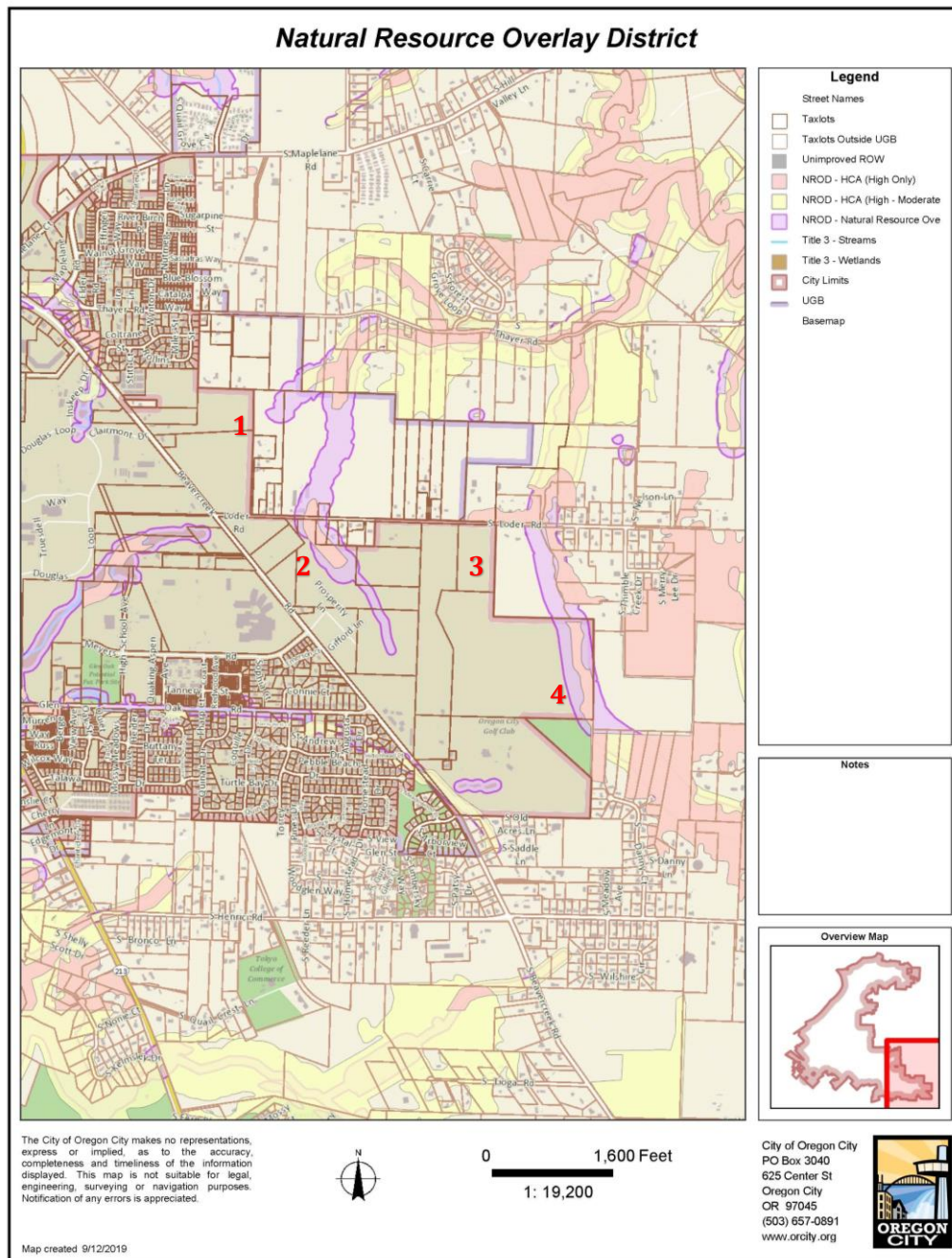


Figure 2 Natural Resource Overlay District (NROD)

The areas located outside of the NROD District and identified as orange in Concept Plan Inventory in Figure 1 are further protected through the Geologic Hazards District. Figure 3 below identifies areas with historic landslides, sloped over 25% slope and 50 buffers around these features. Oregon City regulates and limits tree removal, grading, and development in areas with steep slopes or historic landslides; more information can be found in [Chapter 17.44 of the Oregon City Municipal Code](#).

Geologic hazards fall into two categories: steep slopes and historic landslide deposits. The City regulates properties of 25% or greater and a buffer of 50 feet from those sloped areas as well as ancient landslide areas and a buffer of 200 feet from the landslide areas. Density is limited on slopes between 25-35% and prohibited in most cases on slopes greater than 35%. Landslide areas are analyzed individually for their appropriateness. Most developments within the Geologic Hazards Overlay District requires extensive review to minimize cuts and fills and overall disturbance to the existing land. Construction in geologic hazard areas is generally limited to May 1 to October 31. The City uses a third-party consultant to verify the work of an applicant's geotechnical engineer, resulting in two engineers reviewing the appropriateness of development.

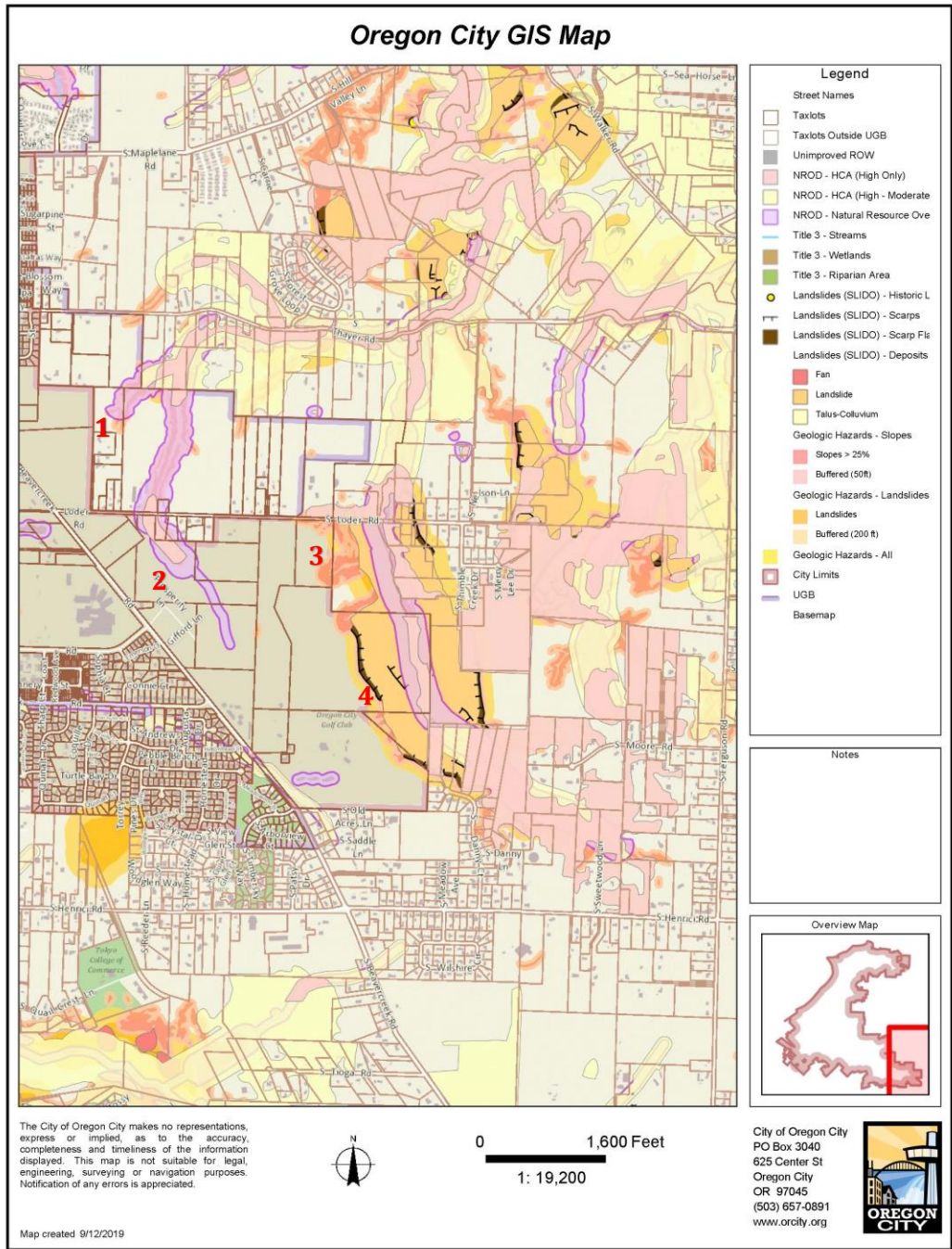


Figure 3- Geologic Hazards + Natural Resource Overlay District (NROD)

Oregon City GIS Map

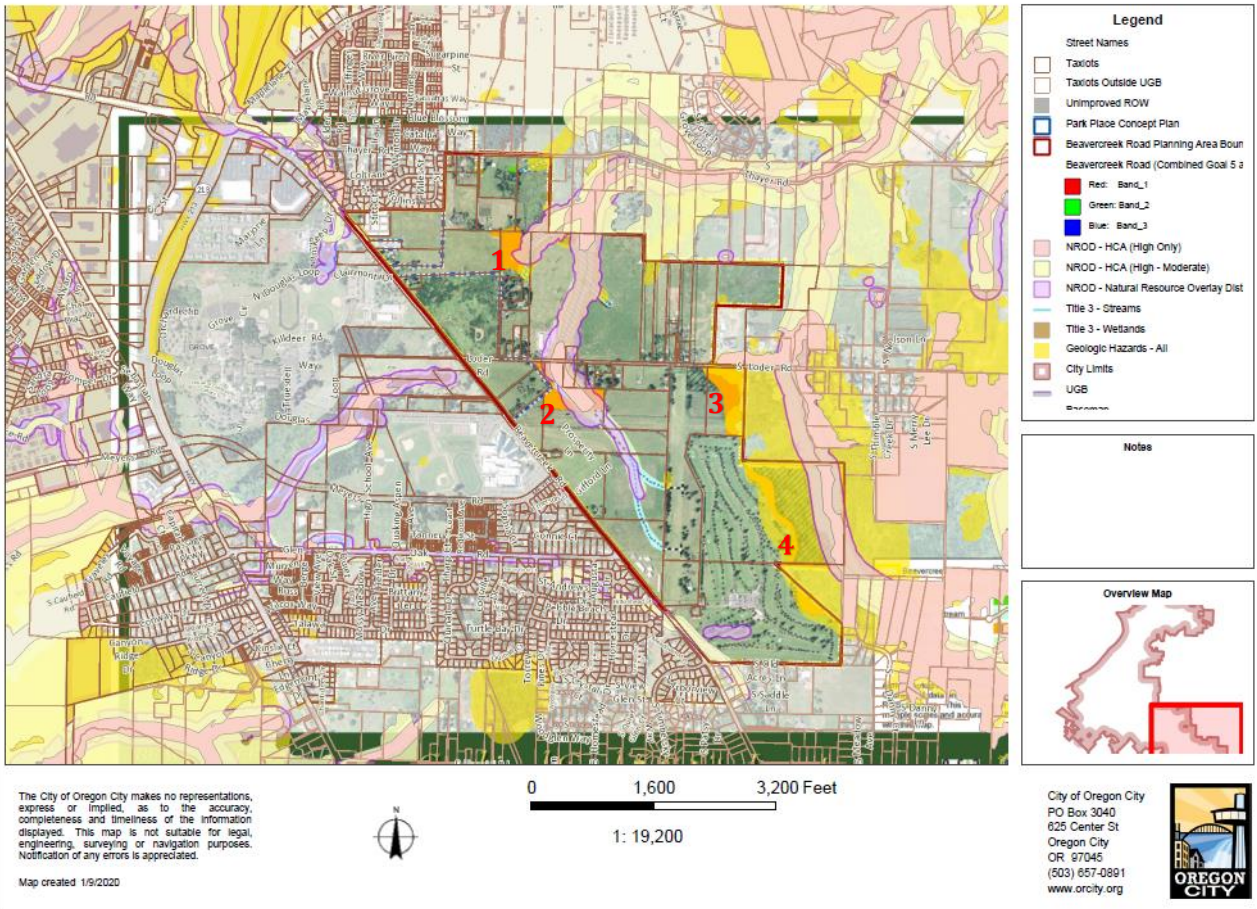


Figure 4- Geologic Hazards + Natural Resource Overlay District (NROD) overlaid with the 2008 Goal 5 Upland Habitat Map.

The Natural Resource Overlay District (OCMC 17.49) and Geologic Hazards (17.44) account for much of the concept plan identified habitat area associated with Thimble Creek Canyon (area 4) at the far SE quadrant of the plan and some of Area 3 closer to Loder Road.

The Concept Plan identified habitat area proposed to be zoned Campus Industrial (areas 1 and 2) that abuts the stream which runs north along the airfield and crosses over Loder Road is not fully regulated by these two overlay districts.

However, OCMC 17.41 Chapter 17.41 Tree Protection, Preservation, Removal, and Replanting Standards provides some additional protection along this tributary to Thimble Creek. Any tree removed in non-residential districts prior to a development application or any development removed as part of a development application in a residential district requires mitigation per the table below. While the replanting of trees removed may not necessarily be completed in the same area- the mitigation tree replanting provides an approach to no net loss of city tree canopy as part of a development application.

Table 17.41.060-1
Tree Replacement Requirements
All replacement trees shall be either:
Two-inch caliper deciduous, or
Six-foot high conifer

Size of tree removed (DBH)	Column 1 Number of trees to be planted. (If removed Outside of construction area)	Column 2 Number of trees to be planted. (If removed Within the construction area)
6 to 12"	3	1
13 to 18"	6	2
19 to 24"	9	3
25 to 30"	12	4
31 and over"	15	5

The analysis contained above reviews how the City regulates the area identified in the Beaver Creek Road Concept Plan habitat areas. Staff finds that the combination of OCMC 17.49 Natural Resource Overlay District, Geologic Hazards Overlay District and Chapter 17.41 Tree Protection, Preservation, Removal, and Replanting Standards provide substantial implementation of protection standards to meet the goals and vision of the Concept Plan. Moreover, the areas with the largest gap in protection have been identified for future Campus Industrial jobs, which is a major goal of the Concept Plan.

Staff did not recommend any revisions to the proposed code amendments.

Planning Commission did not recommend any revisions to the proposed code amendments at the September 23, 2019 Planning Commission Meeting and discussed the NRC's recommendation at the January 13, 2019 and February 10, 2020 Planning Commission Meetings. At the February 24, 2020 Planning Commission Meeting, the Planning Commission directed staff not pursue any additional measures or research for this topic. Staff will be providing an update to the NRC at the March 11, 2020 meeting.