



**TYPE III
STAFF REPORT AND RECOMMENDATION**
December 29, 2017

FILE NUMBER: NR 17-10: Natural Resource Overlay District Review

APPLICANT/OWNER: Kevin Dier
379 Barker Avenue
Oregon City, OR 97045

Submitted: July 28, 2017
Complete: October 20, 2017
120 Day Deadline: March 16, 2017

REPRESENTATIVE: Tina Farrelly
9450 SW Commerce Circle
Wilsonville, OR 97070

REQUEST: The applicant has requested approval of a Natural Resource Overlay District Review application for a deck expansion.

LOCATION: 379 Barker Avenue, Oregon City, OR 97045
Clackamas County Map 3-2E-06BB, Tax Lot 3903

REVIEWER: Diliana Vassileva, Assistant Planner
Gigi Cooper, David Evans and Associates

RECOMMENDATION: Approval with Conditions.

PROCESS: Type III Quasi-Judicial Public Hearing. Pursuant to OCMC 17.50. C. Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. In the event that any decision is not classified, it shall be treated as a Type III decision. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission or the historic review board hearing is published and mailed to the applicant, recognized neighborhood association(s) and property owners within three hundred feet. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission or the historic review board, all issues are addressed. The decision of the planning commission or historic review board is appealable to the city commission, on the record. The city commission decision on appeal from the historic review board or the planning commission is the city's final decision and is appealable to LUBA within twenty-one days of when it becomes final.

Recommended Conditions of Approval
Planning File NR 17-10

(P) = Verify that condition of approval has been met with the Planning Division.

(DS) = Verify that condition of approval has been met with the Development Services Division.

(B) = Verify that condition of approval has been met with the Building Division.

(F) = Verify that condition of approval has been met with Clackamas Fire Department.

The applicant shall include the following information with submittal of a Building permit associated with the proposed application. The information shall be approved prior to issuance.

1. The applicant shall submit a revised mitigation plan:
 - a. Identifying that the bare ground in the mitigation area will be planted or seeded with native grasses or herbs. (P)
 - b. That demonstrates compliance with plant spacing standards in accordance with OCMC Section 17.49.180.E.2.c. (P)

The applicant shall include the following information prior to issuance of a Building permit final associated with the proposed application. The information shall be approved prior to issuance.

2. The applicant shall provide the City with a copy of a recorded covenant or conservation easement demonstrating compliance with OCMC 17.49.180.G. (P)
3. The applicant shall provide the City with a financial guarantee per OCMC 17.49.180.H. (P)
4. Invasive species within the mitigation area shall be removed. (P)

The applicant shall provide the following information to the Planning Division associated with this approval.

5. The applicant shall comply with all standards for monitoring and maintenance within the NROD per OCMC 17.49.180.F. Following the mitigation planting, the property owner shall submit annual monitoring and maintenance reports to the Planning Division. A minimum of 80% survival of mitigation plantings shall be required at the end of the 5-year monitoring and maintenance period. Any invasive species shall be removed and plants that die shall be replaced in kind. Bare spots and areas of invasive vegetation larger than 10 square feet that remain at the end of the 5-year monitoring period shall be replanted or reseeded with native grasses and ground cover species. (P)

I. BACKGROUND:

1. Existing Conditions

The property located at 379 Barker Avenue, Oregon City, is approximately 10,500 square feet in size and is zoned “R-10” Single-Family Dwelling District. The subject property is developed with a single-family residence. Surrounding properties are also developed with single-family homes and have low-density residential zoning. Properties to the north and west are zoned “R-10” Single-Family Residential District, while properties to the south and east are zoned “R-8” Single-Family Residential District.

The subject property is entirely located within the City’s mapped Natural Resource Overlay District (NROD). The Oregon City Municipal Code protects habitat and water features through the Natural Resource Overlay District. The overlay utilizes vegetated corridors consisting of native plantings adjacent to features such as streams and wetlands to improve water quality and functions and discourages development within this area. The subject site was created in 1993 under Planning file MP 92-03, prior to the enactment of the current stream and habitat protections identified in the Natural Resource Overlay District. Though the entire property is within the mapped Natural Resources Overlay District, the applicant submitted a delineation and associated report, conducted by Tina Farrelly of Pacific Habitat Services, demonstrating that the vegetated corridor is limited to the rear portion of the site.

Coffee Creek, a tributary of the Willamette River, flows northward along the eastern property line of the subject site. The following excerpt from the applicant’s narrative provides a discussion of the natural features onsite:

*Coffee Creek adjacent to the Applicant’s parcel is not considered to be an anadromous fishbearing stream (Oregon Department of State Lands [DSL] 2017; Shapiro and Associates 1999; StreamNet 2017). Slopes adjacent to Coffee Creek do not exceed 25 percent within the parcel. One sample point was collected adjacent to the stream channel to document that there are no wetlands within the property. Riparian vegetation within the property is dominated by lawn species, but also includes several native and ornamental woody species, including Douglas and English hawthorn (*Crataegus douglasii* and *C. monogyna*), big-leaf maple (*Acer macrophyllum*), vine maple (*A. circinatum*), Japanese maple (*A. palmatum*), blue atlas cedar (*Cedrus atlantica*), laurel (*Prunus laurocerasus*), daphne (*Daphne sp.*), and rhododendron (*Rhododendron sp.*). A small amount of slough sedge (*Carex obnupta*) is present within the stream channel.*

The existing home was constructed in 1996 and included a rear deck approximately 119 square feet in size. The pre-existing deck also included a set of steps, a concrete pad, and pavers leading to Coffee Creek, resulting in a total of 169 square feet of impervious surface associated with the deck. In 2016, the pre-existing deck was reconfigured and expanded to an approximately 269 square-foot deck. This report analyzes the 100 square foot expansion of the deck within the vegetated corridor associated with Coffee Creek.

Figure 1. Vicinity Map



Figure 2: Existing Conditions – Aerial Image



Figure 3: NROD from the City's GIS

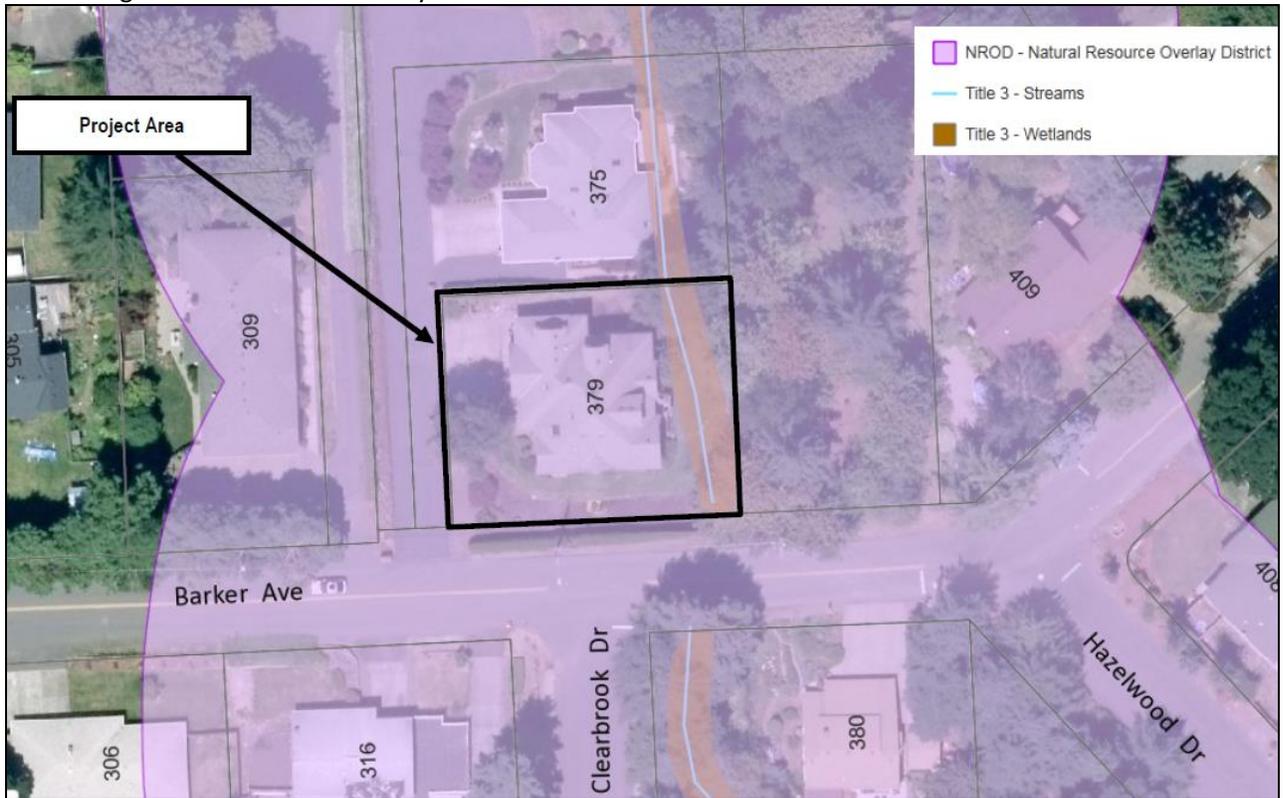
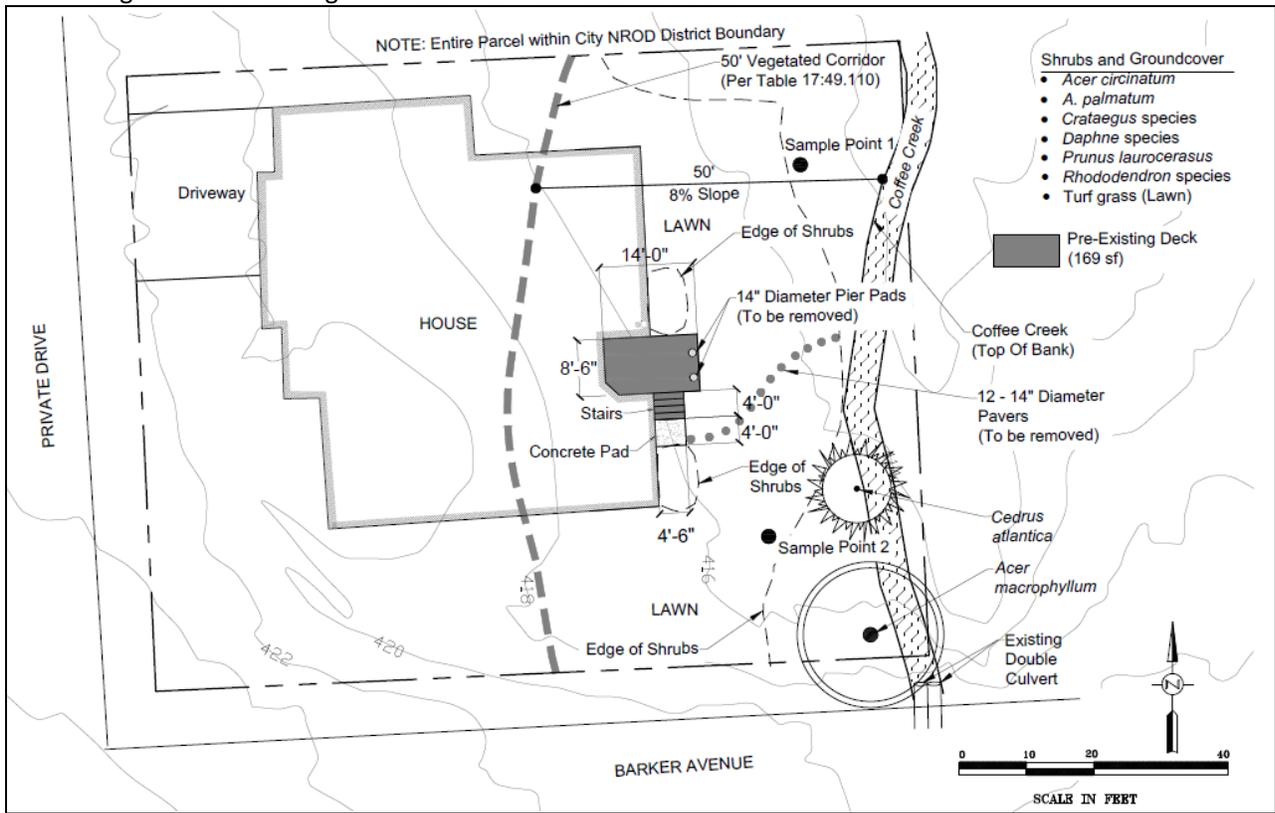


Figure 4: Pre-existing Deck and Coffee Creek Delineation



2. Project Description

The existing residence was developed with a back deck approximately 120 square feet in size. The applicant's narrative identifies that the deck was deteriorated, posed a safety risk, and required replacement. In the summer of 2016, the back deck was reconfigured and expanded. The new deck includes two separate platforms and two sets of steps with a total surface area of approximately 269 square feet. Impervious surfaces associated with the previous deck configuration, such as the concrete pad, concrete footings, and pavers leading to Coffee Creek are proposed to be removed as part of the new deck expansion. The total surface area of impervious surface associated with deck expansion is 269 feet, resulting in a net increase of impervious area within the NROD of 100 feet. No native vegetation was removed to accommodate the deck expansion.

Figure 5: Deck Expansion Constructed in 2016

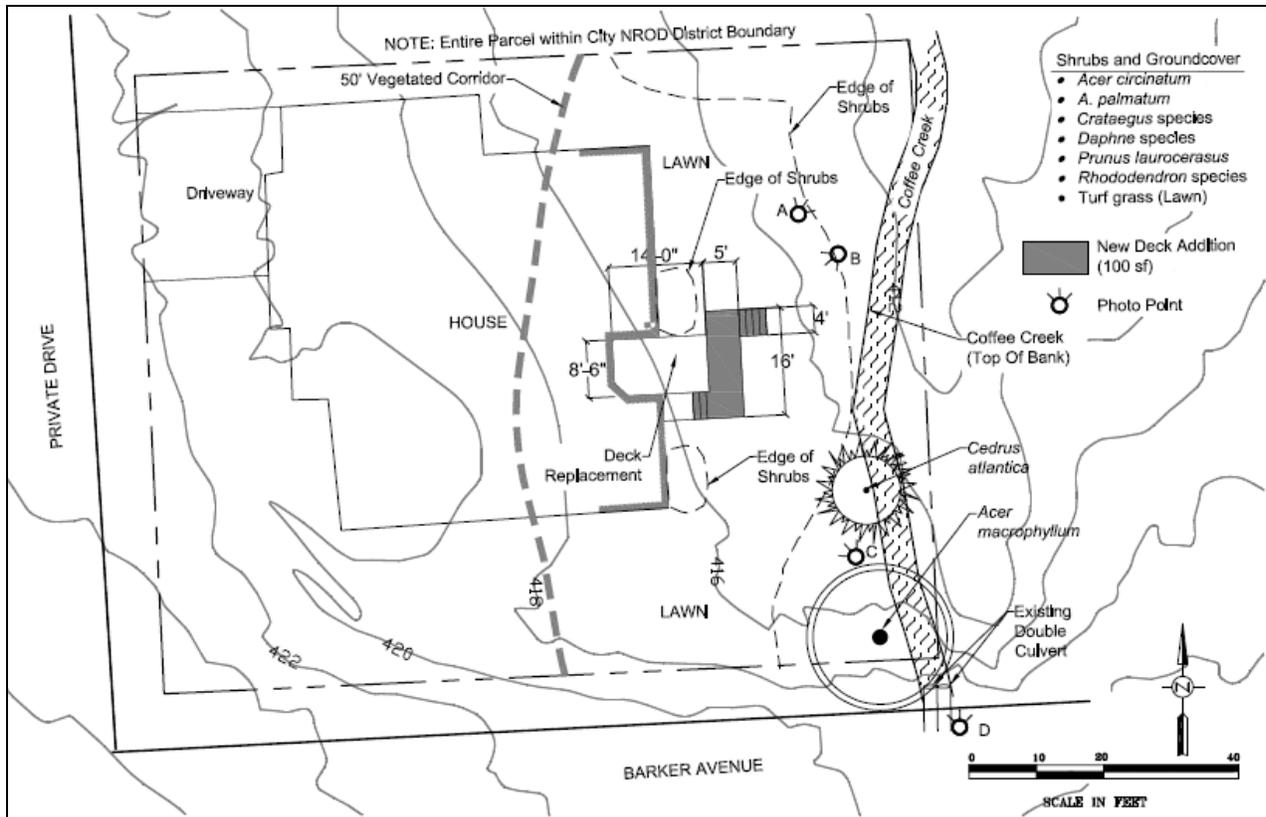
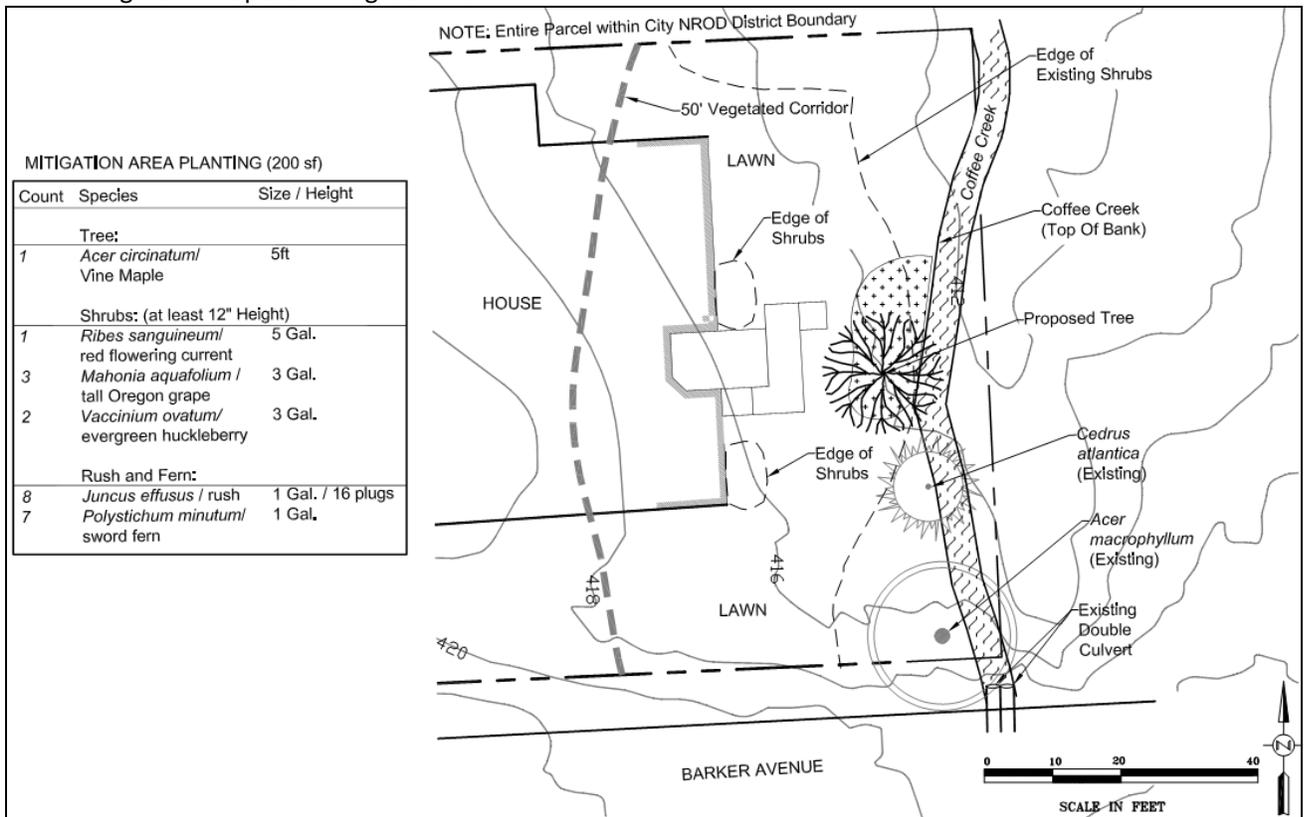


Figure 6: Photograph of Deck Expansion



Figure 7: Proposed Mitigation Plan



3. **Municipal Code Standards and Requirements:** The following sections of the Oregon City Municipal Code are applicable to this land use approval:

17.49 – Natural Resource Overlay District
17.50 - Administration and Procedures

The City Code Book is available on-line at www.orcity.org.

4. **Permits and Approvals:** The applicant is responsible for obtaining approval and permits from each applicable governmental agency and department at Oregon City including but not limited to the Engineering and Building Divisions.
5. **Notice and Public Comment**

Notice of the proposal was sent to various City departments, affected agencies, property owners within 300 feet, and the Neighborhood Association. Additionally, the subject property was posted with signs identifying that a land use action was occurring on the property. As of the writing of this staff report, a comment from the Oregon City School District (Exhibit 3) and a comment from Dorothy Dahlsrud have been received (Exhibit 4). Both comments indicate support for the proposal and do not identify any issues associated with the development.

Comments of the Public Works Department and Development Services Division are incorporated into this report and Conditions of Approval.

None of the comments provided indicate that an approval criterion has not been met or cannot be met through the Conditions of Approval attached to this Staff Report.

II. ANALYSIS AND FINDINGS:

CHAPTER 17.49 NATURAL RESOURCE OVERLAY DISTRICT

17.49.050 Emergencies

The provisions of this ordinance do not apply to work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies. After the emergency has passed, any disturbed native vegetation areas shall be replanted with similar vegetation found in the Oregon City Native Plant List pursuant to the mitigation standards of Section 17.49.180. For purposes of this section emergency shall mean any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

Finding: Not Applicable. The proposed development is a deck expansion, and is not an emergency subject to these standards.

17.49.060 Consistency and Relationship to Other Regulations

A. Where the provisions of the NROD are less restrictive or conflict with comparable provisions of the Oregon City Municipal Code, other City requirements, regional, state or federal law, the provisions that provides the greater protection of the resource shall govern.

Finding: Not Applicable. No conflicts within the Natural Resource Overlay District have been identified.

17.49.060.B. Compliance with Federal and State Requirements.

a. If the proposed development requires the approval of any other governmental agency, such as the Division of State Lands or the U.S. Army Corps of Engineers, the applicant shall make application for such approval prior to or simultaneously with the submittal of its development application to the City. The planning division shall coordinate City approvals with those of other agencies to the extent necessary and feasible. Any permit

issued by the City pursuant to this chapter shall not become valid until other agency approvals have been obtained or those agencies indicate that such approvals are not required.

b. The requirements of this chapter apply only to areas within the NROD and to locally significant wetlands that may be added to the boundary during the course of development review pursuant to Section 17.49.035. If, in the course of a development review, evidence suggests that a property outside the NROD may contain a wetland or other protected water resource, the provisions of this chapter shall not be applied to that development review. However, the omission shall not excuse the applicant from satisfying any state and federal wetland requirements which are otherwise applicable. Those requirements apply in addition to, and apart from the requirements of the City's comprehensive plan and this code.

Finding: Complies as Proposed. Pacific Habitat Services has identified that the project does not propose impacts to potentially jurisdictional wetlands or waters that would warrant coordination with the Department of State Lands or the Army Corps of Engineers, and thus, further documentation of coordination with appropriate regulatory or resource agencies is not required. Based on the Pacific Habitat Services delineation report provided by the applicant, the City's natural resource consultant, David Evans and Associates Inc., has concurred that the proposal does not require coordination or approvals from other agencies. David Evans and Associates, Inc. did not conduct a site visit.

17.49.[0]70 - Prohibited uses.

The following development and activities are not allowed within the NROD:

A. Any new gardens, lawns, structures, development, other than those allowed outright (exempted) by the NROD or that is part of a regulated use that is approved under prescribed conditions. Note: Gardens and lawns within the NROD that existed prior to the time the overlay district was applied to a subject property are allowed to continue but cannot expand further into the overlay district.

B. New lots that would have their buildable areas for new development within the NROD are prohibited.

C. The dumping of materials of any kind is prohibited except for placement of fill as provided in (D) below. The outside storage of materials of any kind is prohibited unless they existed before the overlay district was applied to a subject property. Uncontained areas of hazardous materials as defined by the Oregon Department of Environmental Quality (ORS 466.005) are also prohibited.

D. Grading, the placement of fill in amounts greater than ten cubic yards, or any other activity that results in the removal of more than ten percent of the existing native vegetation on any lot within the NROD is prohibited, unless part of an approved development activity.

Finding: Not Applicable. The applicant has proposed a deck expansion being reviewed pursuant to OCMC Section 17.49.090 – Uses Allowed under Prescribed Conditions. No prohibited uses are being proposed as part of this application.

17.49.[0]80 –Uses allowed outright (Exempted).

The following uses are allowed within the NROD and do not require the issuance of an NROD permit:

A. Stream, wetland, riparian, and upland restoration or enhancement projects as authorized by the City.

B. Farming practices as defined in ORS 215.203 and farm uses, excluding buildings and structures, as defined in ORS 215.203.

C. Utility service using a single utility pole or where no more than 100 square feet 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.

D. Boundary and topographic surveys leaving no cut scars greater than three inches in diameter on live parts of native plants listed in the Oregon City Native Plant List.

E. Soil tests, borings, test pits, monitor well installations, and other minor excavations necessary for geotechnical, geological or environmental investigation, provided that disturbed areas are restored to pre-existing conditions as approved by the Community Development Director.

F. Trails meeting all of the following:

1. Construction shall take place between May 1 and October 30 with hand held equipment;

2. Widths shall not exceed 48 inches and trail grade shall not exceed 20 percent;

3. Construction shall leave no scars greater than three inches in diameter on live parts of native plants;

4. Located no closer than 25 feet to a wetland or the top of banks of a perennial stream or 10 feet of an intermittent stream;
 5. No impervious surfaces; and
 6. No native trees greater than one (1) inch in diameter may be removed or cut, unless replaced with an equal number of native trees of at least 2-inch diameter and planted within 10 feet of the trail.
- G. Land divisions provided they meet the following standards, and indicate the following on the final plat:
1. Lots shall have their building sites (or buildable areas) entirely located at least 5 feet from the NROD boundary shown on the City's adopted NROD map. For the purpose of this subparagraph, "building site" means an area of at least 3,500 square feet with minimum dimensions of 40 feet wide by 40 feet deep;
 2. All public and private utilities (including water lines, sewer lines or drain fields, and stormwater disposal facilities) are located outside the NROD;
 3. Streets, driveways and parking areas where all pavement shall be located at least 10 feet from the NROD; and
 4. The NROD portions of all lots are protected by:
 - a. A conservation easement; or
 - b. A lot or tract created and dedicated solely for unimproved open space or conservation purposes.
- H. Site Plan and Design Review applications where all new construction is located outside of the NROD boundary shown on the City's adopted NROD map, and the NROD area is protected by a conservation easement approved in form by the City.
- I. Routine repair and maintenance of existing structures, roadways, driveways and utilities.
- J. Replacement, additions, alterations and rehabilitation of existing structures, roadways, utilities, etc., where the ground level impervious surface area is not increased.
- K. Measures mandated by the City of Oregon City to remove or abate nuisances or hazardous conditions.
- L. Planting of native vegetation and the removal of non-native, invasive vegetation (as identified on the Oregon City Native Plant List), and removal of refuse and fill, provided that:
1. All work is done using hand-held equipment;
 2. No existing native vegetation is disturbed or removed; and
 3. All work occurs outside of wetlands and the top-of-bank of streams.

Finding: Not Applicable. The proposed development includes an activity allowed under prescribed conditions, and therefore is subject to compliance with OCMC Section 17.49.090, and requires an issuance of an NROD permit.

17.49.090 Uses Allowed Under Prescribed Conditions

The following uses within the NROD are subject to the applicable standards listed in Sections 17.49.100 through 17.49.190 pursuant to a Type II process:

- A. Alteration to existing structures within the NROD when not exempted by Section 17.49.080, subject to Section 17.49.130.
- B. A residence on a highly constrained vacant lot of record that has less than 3,000 square feet of buildable area, with minimum dimensions of 50 feet by 50 feet, remaining outside the NROD portion of the property, subject to the maximum disturbance allowance prescribed in subsection 17.49.120.A.
- C. A land division that would create a new lot for an existing residence currently within the NROD, subject to Section 17.49.160.
- D. Land divisions when not exempted by Section 17.49.080, subject to the applicable standards of Section 17.49.160.
- E. Trails/pedestrian paths when not exempted by Section 17.49.080, subject to Section 17.49.170 (for trails) or Section 17.49.150 (for paved pedestrian paths).
- F. New roadways, bridges/creek crossings, utilities or alterations to such facilities when not exempted by Section 17.49.080,
- G. Roads, bridges/creek crossings Subject to Section 17.49.150 --
- H. Utility lines subject to Section 17.49.140 (
- I. Stormwater detention or pre-treatment facilities subject to Section 17.49.155 ().

J. Institutional, Industrial or Commercial development on a vacant lot of record situated in an area designated for such use that has more than 75% of its area covered by the NROD, subject to subsection 17.49.120(B). K City, county and state capital improvement projects, including sanitary sewer, water and storm water facilities, water stations, and parks and recreation projects.

Finding: Complies as Proposed. The applicant has proposed an alteration to an existing structure within the NROD, a prescribed use per 17.49.090.A, therefore, the application is being reviewed pursuant with Section 17.49.130.

17.49.100 General Development Standards

The following standards apply to all Uses Allowed under Prescribed Conditions within the NROD with the exception of rights of ways (subject to Section 17.49.150), trails (subject to Section 17.49.170), utility lines (subject to Section 17.49.140), land divisions (subject to Section 17.49.160), and mitigation projects (subject to Section 17.49.180 or 17.49.190):

A. Native trees may be removed only if they occur within 10 feet of any proposed structures or within 5 feet of new driveways or if deemed not wind-safe by a certified arborist. Trees listed on the Oregon City Nuisance Plant List or Prohibited Plant List are exempt from this standard and may be removed. A protective covenant shall be required for any native trees that remain;

Finding: Not Applicable. The applicant has identified that no trees or other native vegetation were removed to accommodate the deck expansion.

17.49.100.B. The Community Development Director may allow the landscaping requirements of the base zone, other than landscaping required for parking lots, to be met by preserving, restoring and permanently protecting habitat on development sites in the Natural Resource Overlay District.

Finding: Not Applicable. The applicant has not proposed to meet base zone landscaping requirements within the NROD.

17.49.100.C. All vegetation planted in the NROD shall be native and listed on the Oregon City Native Plant List;

Finding: Complies as Proposed. The applicant's mitigation plan includes a list of plant species in the mitigation plan. All proposed vegetation within the mitigation plan was identified on the Oregon City Native Plant List.

17.49.100.D. Grading is subject to installation of erosion control measures required by the City of Oregon;

Finding: Please refer to the analysis within Chapter 15.48 of this report.

17.49.100.E. The minimum front, street, or garage setbacks of the base zone may be reduced to any distance between the base zone minimum and zero in order to minimize the disturbance area within the NROD portion of the lot;

Finding: Not Applicable. The applicant has not proposed a reduction in the minimum setback.

17.49.100.F. Any maximum required setback in any zone, such as for multi-family, commercial or institutional development, may be increased to any distance between the maximum and the distance necessary to minimize the disturbance area within the NROD portion of the lot;

Finding: Not Applicable. The subject property is located in the "R-10" Single-Family Dwelling District, where there are no maximum setbacks. This standard is not applicable.

17.49.100.G. Fences are allowed only within the disturbance area;

Finding: Not Applicable. The applicant has not proposed a fence within the vegetated corridor.

17.49.100.H. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200 watt incandescent light) shall be placed or shielded so that they do not shine directly into resource areas;

Finding: Complies as Proposed. The applicant has not proposed any new lighting as part of this development.

17.49.100.I. If development will occur within the 100 yr. floodplain, the FEMA floodplain standards of Chapter 17.42 shall be met; and

Finding: Not Applicable. The subject site is not located within the 100-Year Floodplain. OCMC Chapter 17.42 is not applicable.

17.49.100.J. Mitigation of impacts to the regulated buffer is required, subject to Section 17.49.180 or 17.49.190.

Finding: Complies as Proposed. A mitigation plan has been provided for impacts to the regulated buffer. Please refer to the analysis in Section 17.49.180 of this report.

17.49.110 Width of Vegetated Corridor.

Calculation of Vegetated Corridor Width within City Limits. The NROD consists of a vegetated corridor measured from the top of bank or edge of a protected habitat or water feature. The minimum required width is the amount of buffer required on each side of a stream, or on all sides of a feature if non-linear. The width of the vegetated corridor necessary to adequately protect the habitat or water feature is specified in Table 17.49.110.

Table 17.49.110

<i>Protected Water Feature Type (see definitions)</i>	<i>Slope Adjacent to Protected Water Feature</i>	<i>Starting Point for Measurements from Water Feature</i>	<i>Width of Vegetated Corridor (see Note 1)</i>
<i>Anadromous fish-bearing streams</i>	<i>Any slope</i>	<i>• Edge of bankfull flow</i>	<i>200 feet</i>
<i>Intermittent streams with slopes less than 25 percent and which drain less than 100 acres</i>	<i>< 25 percent</i>	<i>• Edge of bankfull flow</i>	<i>15 feet</i>
<i>All other protected water features</i>	<i>< 25 percent</i>	<i>• Edge of bankfull flow • Delineated edge of Title 3 wetland</i>	<i>50 feet</i>
	<i>≥ 25 percent for 150 feet or more (see Note 2)</i>		<i>200 feet</i>
	<i>≥ 25 percent for less than 150 feet (see Note 2)</i>		<i>Distance from starting point of measurement to top of ravine (break in ≥25 percent slope) (See Note 3) plus 50 feet.</i>

Notes:

1. Required width (measured horizontally) of vegetated corridor unless reduced pursuant to the provisions of Section 17.49.050(I).

2. Vegetated corridors in excess of fifty feet apply on steep slopes only in the uphill direction from the

protected water feature.

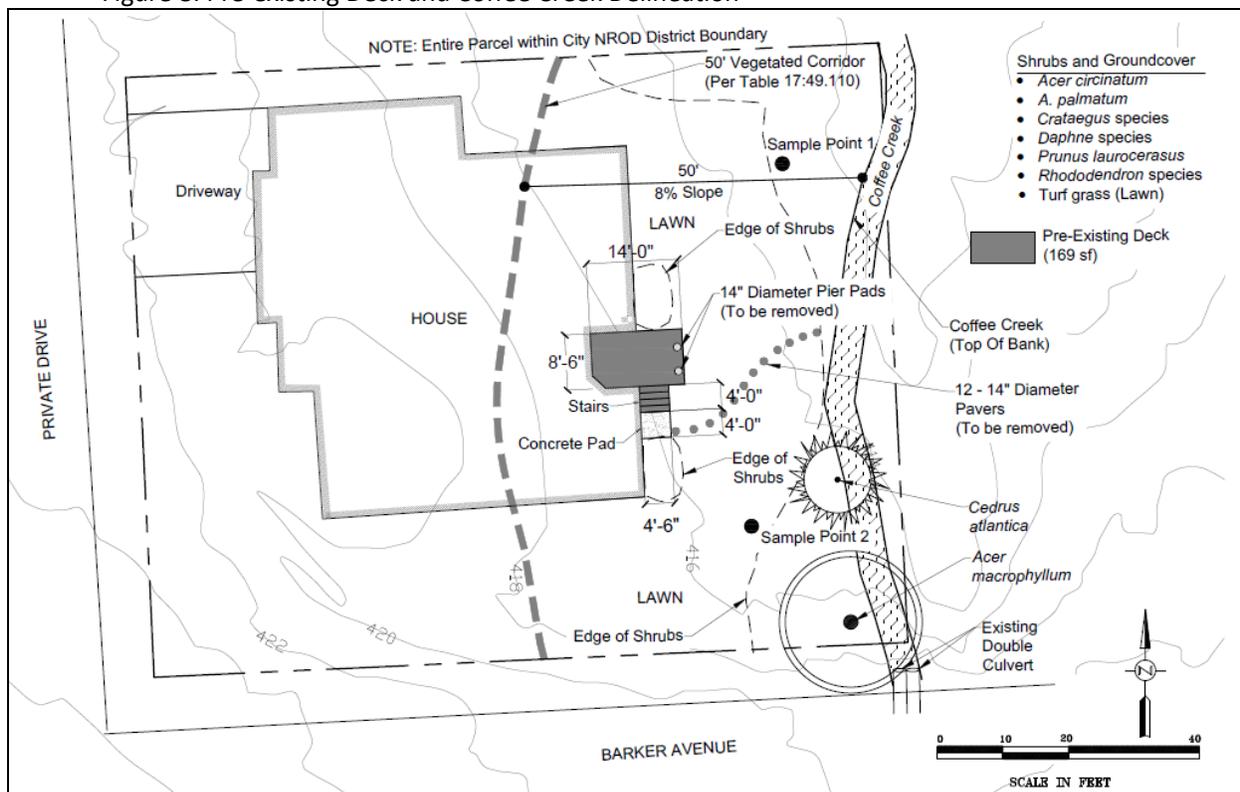
3. Where the protected water feature is confined by a ravine or gully, the top of the ravine is the break in the ≥ 25 percent slope.

B. Habitat Areas within City Parks. For habitat and water features identified by Metro as regionally significant which are located within city parks, the NROD Boundary shall correspond to the Metro Regionally Significant Habitat Map.

C. Habitat Areas outside city limit / within UGB. For habitat and water features identified by Metro as regionally significant which are located outside of the city limits as of the date of adoption of this ordinance, the minimum corridor width from any non-anadromous fish bearing stream or wetland shall be fifty feet (50').

Finding: Complies as Proposed. The City's GIS, based on the 1999 Local Wetland Inventory of Oregon City, identifies a stream and wetland along the eastern property line of the subject site, and an associated vegetated corridor of approximately 200 feet. Based on the City's mapped NROD, the entire property resides within the Natural Resource Overlay District. As part of this application, a delineation of Coffee Creek was conducted by Tina Farrelly of Pacific Habitat Services. The delineation report identified that Coffee Creek is not an anadromous fish-bearing stream, slopes adjacent to the Creek are approximately 8%, and that no wetlands are present onsite. Therefore, based on Table 17.49.110, a 50-foot vegetated corridor from the top of bank is required. In a memo dated December 18, 2017 (Exhibit 4), the City's Natural Resource Consultant, Gigi Cooper of David Evans and Associates, verified that Coffee Creek is not an anadromous fish-bearing stream, and it is subject to a 50-foot vegetated corridor from the top of bank. A map of the delineated feature is provided.

Figure 8: Pre-existing Deck and Coffee Creek Delineation



17.49.120 Maximum Disturbance Allowance for Highly Constrained Lots of Record

In addition to the General Development Standards of Section 17.49.100, the following standards apply to a vacant lot of record that is highly constrained by the NROD, per subsections 17.49.90(B) and 17.49.90(F):

Finding: Not Applicable. The subject property is developed and is not a highly constrained lot of record.

17.49.130 Existing Development Standards

In addition to the General Development Standards of Section 17.49.100, the following standards apply to alterations and additions to existing development within the NROD, except for trails, rights of way, utility lines, land divisions and mitigation projects. Replacement, additions, alterations and rehabilitation of existing structures, roadways, utilities, etc., where the ground level impervious surface area is not increased are exempt from review pursuant to Section 17.49.080(J). As of June 1, 2010, applicants for alterations and additions to existing development that are not exempt pursuant to Section 17.49.080(J) shall submit a Type II or Type III application pursuant to this section. The application shall include a site plan which delineates a permanent disturbance area that includes all existing buildings, parking and loading areas, paved or graveled areas, patios and decks. The same delineated disturbance area shall be shown on every subsequent proposal for alterations and additions meeting this standard.

A. The following alterations and additions to existing development are permitted subject to the following standards.

1. Alterations or additions that cumulatively total up to a maximum of five-hundred (500) square feet of additional disturbance area after June 1, 2010 shall be processed as a Type II permit pursuant to this Chapter. The new disturbance area shall not encroach closer than 1/2 of the distance of the regulated NROD buffer.

2. Alterations or additions that cumulatively exceed five-hundred (500) square feet of additional disturbance area or which propose encroachment closer than 1/2 of the distance of the regulated NROD buffer after June 1, 2010 shall be processed as a Type III permit pursuant to Section 17.49.200, Adjustment from Standards.

Finding: Complies as Proposed. Based on the delineation performed by Tina Farrelly of Pacific Habitat Services, as verified by David Evans and Associates and Table 17.49.110, the vegetated corridor associated with Coffee Creek is 50 feet from the top of bank. At its closest point, the deck expansion is as close as approximately 14'7" from the top of bank. Though the deck expansion does not result in more than 500 feet of disturbance, a Type III application is required because the deck encroaches more than halfway into the 50-foot vegetated corridor. Please refer to the analysis in Section 17.49.200 of this report.

17.49.130.B. Mitigation is required, subject to Section 17.49.180 or 17.49.190.

Finding: Complies as Proposed. A mitigation plan has been provided for impacts to the regulated buffer. Please refer to the analysis in Section 17.49.180.

17.49.140 Standards for Utility Lines

The following standards apply to new utilities, private connections to existing or new utility lines, and upgrades of existing utility lines within the NROD:

A. The disturbance area for private connections to utility lines shall be no greater than 10 feet wide;

B. The disturbance area for the upgrade of existing utility lines shall be no greater than 15 feet wide;

C. New utility lines shall be within the right-of-way, unless reviewed under D.

D. New utility lines that cross above or underneath a drainage way, wetland, stream, or ravine within the NROD but outside of a right-of-way shall be processed as a Type III permit pursuant to Section 17.49.200, Adjustment from Standards.

E. No fill or excavation is allowed within the ordinary high water mark of a stream without the approval of the Division of State Lands and/or the U.S. Army Corps of Engineers;

F. The Division of State Lands must approve any work that requires excavation or fill in a wetland;

G. Native trees more than 10 inches in diameter shall not be removed unless it is shown that there are no feasible alternatives; and

H. Each 6 to 10-inch diameter native tree cut shall be replaced at a ratio of three trees for each one removed. Each 11-inch or greater diameter native tree shall be replaced at a ratio of five trees for each removed. The replacement trees shall be a minimum one-half inch diameter and selected from the Oregon City Native Plant List. All trees shall be planted on the applicant's site. Where a utility line is approximately parallel with the stream channel, at least half of the replacement trees shall be planted between the utility line and the stream channel.

I. Mitigation is required, subject to Section 17.49.180 or 17.49.190.

Finding: Not Applicable. The applicant has not proposed any utility lines associated with the deck expansion.

17.49.150 Standards for Vehicular or Pedestrian Paths and Roads

The following standards apply to public rights-of-way and private roads within the NROD, including roads, bridges/stream crossings, driveways and pedestrian paths with impervious surfaces:

A. Stream crossings shall be limited to the minimum number and width necessary to ensure safe and convenient pedestrian, bicycle and vehicle connectivity, and shall cross the stream at an angle as close to perpendicular to the stream channel as practicable. Bridges shall be used instead of culverts wherever practicable.

17.49.150.B. Where the right-of-way or private road crosses a stream the crossing shall be by bridge or a bottomless culvert;

17.49.150.C. No fill or excavation shall occur within the ordinary high water mark of a stream without the approval of the Division of State Lands and/or the U.S. Army Corps of Engineers;

17.49.150.D. If the Oregon Department of State Lands (DSL) has jurisdiction over any work that requires excavation or fill in a wetland, required permits or authorization shall be obtained from DSL prior to release of a grading permit;

17.49.150.E. Any work that will take place within the banks of a stream shall be conducted between June 1 and August 31, or shall be approved by the Oregon Department of Fish and Wildlife; and

17.49.150.F. Mitigation is required, subject to Section 17.49.180 or 17.49.190.

Finding: Not Applicable. The applicant has not proposed vehicular or pedestrian paths within the vegetated corridor.

17.49.155 Standards for Stormwater Facilities

Approved facilities that infiltrate stormwater on-site in accordance with Public Works Low-Impact Development standards, including but not limited to; vegetated swales, rain gardens, vegetated filter strips, and vegetated infiltration basins, and their associated piping, may be placed within the NROD boundary pursuant to the following standards:

A. The forest canopy within the driplines of existing trees shall not be disturbed.

B. Only vegetation from the Oregon City Native Plant List shall be planted within these facilities.

C. Mitigation is required, subject to Section 17.49.180 or 17.49.190.

D. The storm water facility may encroach up to 1/2 the distance of the NROD corridor.

E. The stormwater facility shall not impact more than 1,000 square feet of the NROD. Impacts greater than 1,000 square feet shall be process as a Type III application.

F. The Community Development Director may allow landscaping requirements of the base zone, other than landscaping required for parking lots, to be met by preserving, restoring and permanently protecting habitat on development sites within the Natural Resource Overlay District.

Finding: Not Applicable. The applicant has not proposed any stormwater facilities associated with the deck expansion.

17.49.160 Standards for Land Divisions

Other than those land divisions exempted by Section 17.49.070 (G), new residential lots created within the NROD shall conform to the following standards.

A. For a lot for an existing residence currently within the NROD. This type of lot is allowed within the NROD for a residence that existed before the NROD was applied to a subject property. A new lot for an existing house may be created through a partition or subdivision process when all of the following are met:

1. There is an existing house on the site that is entirely within the NROD area; and

2. The existing house will remain; and

3. The new lot is no larger than required to contain the house, minimum required side setbacks, garage, driveway and a 20-foot deep rear yard, with the remaining NROD area beyond that point protected by a conservation easement, or by dedicating a conservation tract or public open space.

B. Subdivisions.

1. Prior to preliminary plat approval, the NROD area shall be shown either as a separate tract or part of a larger tract that meets the requirements of subsection (3) of this section, which shall not be a part of any parcel used for construction of a dwelling unit.

2. Prior to final plat approval, ownership of the NROD 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 open space held by the owner or a homeowners association; or
 - b. For residential land divisions, private open space subject to an easement conveying stormwater 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 document; or
 - c. At the owners option, public open space where the tract has been dedicated to the city or other governmental unit; or
 - d. Any other ownership proposed by the owner and approved by the city.
 - e. Tracts shall be exempt from minimum frontage requirements.

C. Partitions

1. New partitions shall delineate the NROD area either as a separate tract or conservation easement that meets the requirements of subsection (2) of this section.
2. Prior to final plat approval, ownership and maintenance of the NROD area shall be identified to distinguish it from the buildable areas of the development site. The NROD area may be identified as any one of the following:
 - a. A tract of private open space held by the owner or homeowners association; or
 - b. For residential land divisions, a tract of private open space subject to an easement conveying stormwater 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 document; or
 - c. At the owners option, public open space where the tract has been dedicated to the city or other governmental unit;
 - d. Conservation easement area pursuant to subsection 17.49.180(G) and approved in form by the Community Development Director
 - e. Any other ownership proposed by the owner and approved by the Community Development Director.
 - f. Tracts shall be exempt from minimum frontage requirements.

Finding: Not Applicable. The applicant has not proposed a land division as part of this development.

17.49.170 Standards for Trails

The following standards apply to trails within the NROD:

- A. All trails that are not exempt pursuant to Section 17.49.80(F), except as designated in the Oregon City Parks, Open Space and Trails Master Plans; and
- B. Mitigation is required, subject to Section 17.49.180 or 17.49.190.

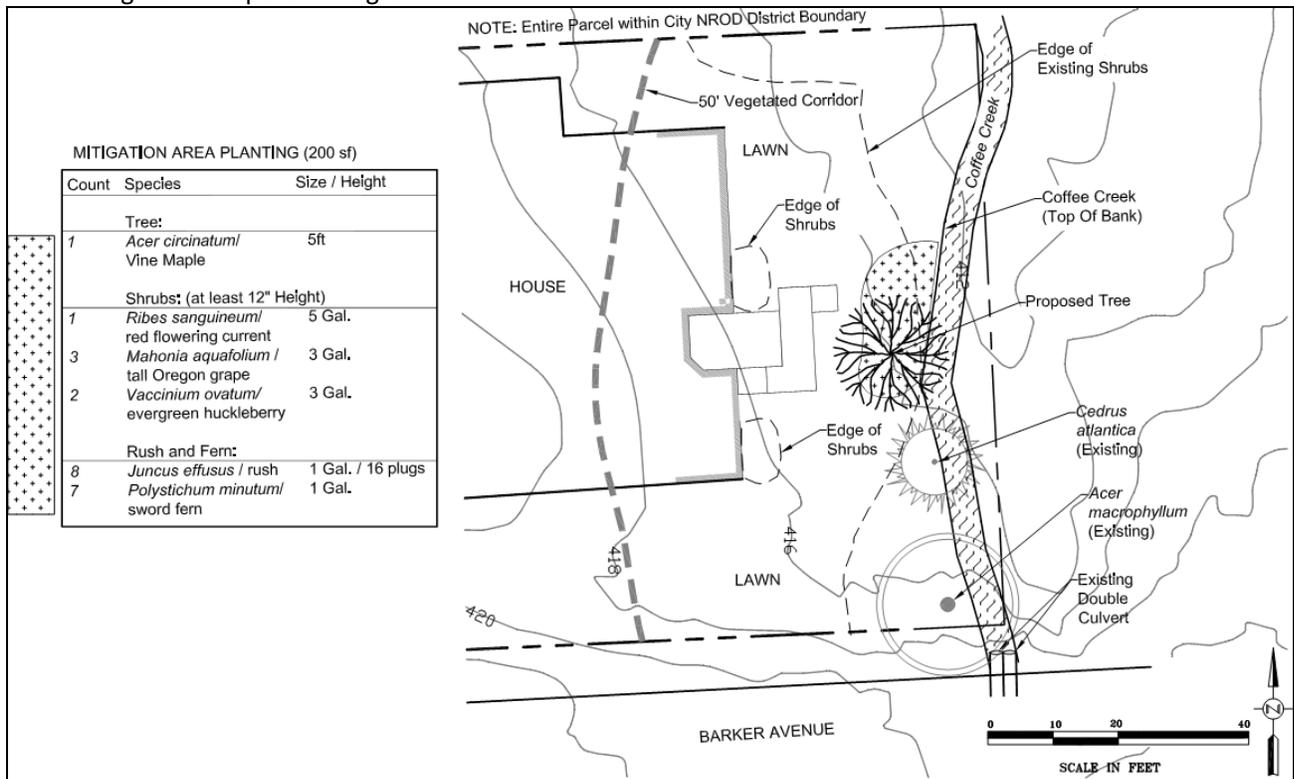
Finding: Not Applicable. The applicant has not proposed a trail as part of this development.

17.49.180. Mitigation Standards

The following standards (or the alternative standards of Section 17.49.190) apply to required mitigation:

Finding: Complies as Proposed. The deck expansion includes a total surface area of 269 square feet. The pre-existing deck and associated features (stairs, concrete pad, and pavers) included a total disturbance area of approximately 169 square feet. The pre-existing 169 square feet is exempt from review pursuant with OCMC Section 17.49.080.J and does not require mitigation. Therefore, the deck expansion resulted in a net increase of 100 square feet of disturbance within the vegetated corridor requiring mitigation. No native trees or other native vegetation were removed to accommodate the deck expansion.

Figure 9: Proposed Mitigation Plan



17.49.180.A. Mitigation shall occur at a 2:1 ratio of mitigation area to proposed NROD disturbance area. Mitigation of the removal or encroachment of a wetland or stream shall not be part of this chapter and will be reviewed by the Division of State Lands or the Army Corp of Engineers during a separate review process;
Finding: Complies as proposed. The proposed disturbance area, excluding disturbance to existing impervious areas which are exempt per OCMC Section 17.49.080.J, is 100 square feet; therefore, a 200-square-foot mitigation area is required.

17.49.180.B. Mitigation shall occur on the site where the disturbance occurs, except as follows:

1. The mitigation is required for disturbance associated with a right-of-way or utility in the right-of-way;
2. The mitigation shall occur first on the same stream tributary, secondly in the Abernethy, Newell or Livesay Creek or a tributary thereof, or thirdly as close to the impact area as possible within the NROD; and
3. An easement that allows access to the mitigation site for monitoring and maintenance shall be provided as part of the mitigation plan.

Finding: Complies as Proposed. The proposed mitigation area is located on the disturbance site near Coffee Creek.

17.49.180.C. Mitigation shall occur within the NROD area of a site unless it is demonstrated that this is not feasible because of a lack of available and appropriate area. In such cases, the proposed mitigation area shall be contiguous to the existing NROD area so the NROD boundary can be easily extended in the future to include the new resource site.

Finding: Complies as Proposed. The proposed mitigation area is located within the NROD area of the subject site.

17.49.180.D. Invasive and nuisance vegetation shall be removed within the mitigation area;

Finding: Complies with Condition. The applicant's narrative identified that invasive species within the mitigation area will be removed. **Staff has determined that it is possible, likely, and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.180.E. Required Mitigation Planting. An applicant shall meet Mitigation Planting Option 1 or 2 below, whichever option results in more tree plantings, except that where the disturbance area is one acre or more, Mitigation Option 2 shall be required. All trees, shrubs and ground cover shall be selected from the Oregon City Native Plant List.

Mitigation Planting Option 1.

Finding: Complies as Proposed. The applicant has proposed Mitigation Planting Option 2 as it will result in more tree and shrub plantings. All proposed mitigation plantings have been identified on the Oregon City Native Plant List.

17.49.180.E.2. Mitigation Planting Option 2.

17.49.180.E.2a. Option 2 - Planting Quantity. In this option, the mitigation requirement is calculated based on the size of the disturbance area within the NROD. Native trees and shrubs are required to be planted at a rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Finding: Complies with condition. The mitigation planting quantity is based on the disturbance area within the NROD. The disturbance area of 100 square feet requires one tree $((100/500)*5= 1 \text{ tree})$ and five shrubs $((100/500)*25= 5 \text{ shrubs})$. The applicant's mitigation plan identifies that one tree and 6 shrubs will be planted. The applicant's narrative and mitigation plan also identified that several ground cover species will be planted in the mitigation area, but did not specify that all bare ground in the mitigation area will be planted or seeded with native grasses and herbs. Prior to issuance of a building permit associated with the proposed development, the applicant shall submit a revised mitigation plan identifying that the bare ground in the mitigation area will be planted or seeded with native grasses or herbs. **Staff has determined that it is possible, likely, and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.180.E.2.b Option 2 - Plant Size. Plantings may vary in size dependent on whether they are live cuttings, bare root stock or container stock, however, no initial plantings may be shorter than 12 inches in height.

Finding: Complies as Proposed. The applicant's mitigation plan and narrative identify that all trees and shrubs will be at least 12 inches in height.

17.49.180.E.2.c Option 2 - Plant Spacing. Trees shall be planted at average intervals of seven (7) feet on center. Shrubs may be planted in single-species groups of no more than four (4) plants, with clusters planted on average between 8 and 10 feet on center.

Finding: Complies as Proposed. The applicant's narrative identifies that the proposed mitigation tree will be located a minimum of seven feet from any other existing trees, and that shrubs will be planted with an average spacing of three to four feet on center, however, the mitigation plan only shows the general location of shrubs and does not provide specific locations of shrubs that demonstrate compliance with shrub spacing standards. Prior to issuance of a building permit associated with the proposed development, the applicant shall submit a revised mitigation plan that demonstrates compliance with plant spacing standards in accordance with OCMC Section 17.49.180.E.2.c. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.180.E.2.d Option 2 – Mulching and Irrigation shall be applied in the amounts necessary to ensure 80% survival at the end of the required 5-year monitoring period.

Finding: Complies as Proposed. The applicant's narrative identified compliance with this standard. The survival rate will be verified through the 5-year monitoring and maintenance plan and annual reports submitted by the applicant.

17.49.180.E.2.e Option 2 – Plant Diversity. *Shrubs shall consist of at least three (3) different species. If 20 trees or more are planted, no more than one-third of the trees may be of the same genus.*

An alternative planting plan using native plants may be approved in order to create a new wetland area, if it is part of a wetlands mitigation plan that has been approved by the DSL or the U.S. Army Corps of Engineers (USACE) in conjunction with a wetland joint removal/fill permit application.

Finding: Complies as Proposed. The applicant's mitigation plan identifies at least three different species of shrubs. Only a single mitigation tree is required, therefore, plant diversity for mitigation trees is not necessary. An alternative planting plan has not been proposed.

17.49.180.F. Monitoring and Maintenance. *The mitigation plan shall provide for a 5-year monitoring and maintenance plan with annual reports in a form approved by the Director of Community Development. Monitoring of the mitigation site is the on-going responsibility of the property owner, assign, or designee, who shall submit said annual report to the City's Planning Division, documenting plant survival rates of shrubs and trees on the mitigation site. Photographs shall accompany the report that indicate the progress of the mitigation. A minimum of 80% survival of trees and shrubs of those species planted is required at the end of the 5-year maintenance and monitoring period. Any invasive species shall be removed and plants that die shall be replaced in kind. Bare spots and areas of invasive vegetation larger than ten (10) square feet that remain at the end the 5 year monitoring period shall be replanted or reseeded with native grasses and ground cover species.*

Finding: Complies with Condition. The applicant's narrative identifies that the mitigation area will be monitored and maintained for a minimum of five years with annual progress reports that include documentation of the survival rate of mitigation plantings and photo documentation of the mitigation area submitted to the Planning Division on an annual basis by the property owner. Following the mitigation planting, the property owner shall submit annual monitoring and maintenance reports to the Planning Division. A minimum of 80% survival of mitigation plantings shall be required at the end of the 5-year monitoring and maintenance period. Any invasive species shall be removed and plants that die shall be replaced in kind. Bare spots and areas of invasive vegetation larger than 10 square feet that remain at the end of the 5-year monitoring period shall be replanted or reseeded with native grasses and ground cover species. The applicant shall comply with all standards for monitoring and maintenance within the NROD per OCMC 17.49.180.F. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.180.G. Covenant or Conservation Easement. *Applicant shall record a restrictive covenant or conservation easement, in a form provided by the City, requiring the owners and assigns of properties subject to this section to comply with the applicable mitigation requirements of this section. Said covenant shall run with the land, and permit the City to complete mitigation work in the event of default by the responsible party. Costs borne by the City for such mitigation shall be borne by the owner.*

Finding: Complies with Condition. The applicant's narrative identified that the NROD will be identified onsite with a recorded covenant or easement. Prior to building permit final, the applicant shall provide the City with a copy of a recorded covenant or conservation easement demonstrating compliance with OCMC 17.49.180.G. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.180.H. Financial Guarantee. *A financial guarantee for establishment of the mitigation area, in a form approved by the City, shall be submitted before development within the NROD disturbance area commences. The City will release the guarantee at the end of the five-year monitoring period, or before, upon its determination that the mitigation plan has been satisfactorily implemented pursuant to this section.*

Finding: Complies with condition. The applicant’s narrative identified that a financial guarantee will be provided to the City. Prior to building permit final, the applicant shall provide the City with a financial guarantee per OCMC 17.49.180.H. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.190 Alternative Mitigation Standards

In lieu of the above mitigation standards of Section 17.49.180, the following standards may be used. Compliance with these standards shall be demonstrated in a mitigation plan report prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry. At the applicant’s expense, the City may require the report to be reviewed by an environmental consultant.

The report shall document the existing condition of the vegetated corridor as one of the following categories:

<i>Good Existing Corridor:</i>	<i>Combination of trees, shrubs and groundcover are eighty percent present, and there is more than fifty percent tree canopy coverage in the vegetated corridor.</i>
<i>Marginal Existing Vegetated Corridor:</i>	<i>Combination of trees, shrubs and groundcover are eighty percent present, and twenty-five to fifty percent canopy coverage in the vegetated corridor.</i>
<i>Degraded Existing Vegetated Corridor:</i>	<i>Less vegetation and canopy coverage than marginal vegetated corridors, and/or greater than ten percent surface coverage of any non-native species.</i>

- B. The proposed mitigation shall occur at a minimum 2:1 ratio of mitigation area to proposed disturbance area;*
- C. The proposed mitigation shall result in a significant improvement to Good Existing Condition as determined by a qualified environmental professional;*
- D. There shall be no detrimental impact on resources and functional values in the area designated to be left undisturbed;*
- E. Where the proposed mitigation includes alteration or replacement of development in a stream channel, wetland, or other water body, there shall be no detrimental impact related to the migration, rearing, feeding or spawning of fish;*
- F. Mitigation shall occur on the site of the disturbance to the extent practicable. If the proposed mitigation cannot practically occur on the site of the disturbance, then the applicant shall possess a legal instrument, such as an easement, sufficient to carryout and ensure the success of the mitigation.*

Finding: Not Applicable. The applicant has not proposed alternative mitigation in lieu of the standards in OCMC Section 17.49.180.

17.49.200. Adjustment from Standards

If a regulated NROD use cannot meet one or more of the applicable NROD standards then an adjustment may be issued if all of the following criteria are met. Compliance with these criteria shall be demonstrated by the applicant in a written report prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry. At the applicant’s expense, the City may require the report to be reviewed by an environmental consultant. Such requests shall be processed under the Type III development permit procedure. The applicant shall demonstrate:

Finding: Complies as Proposed. Because the applicant has proposed development that encroaches closer than one-half the distance of the regulated NROD buffer, a Type III application subject to compliance with this is required pursuant with OCMC Section 17.49.130.A.2. The applicant’s submittal includes a delineation report prepared by Tina Farrelly of Pacific Habitat Services demonstrating compliance with the applicable criteria.

17.49.200.A. *There are no feasible alternatives for the proposed use or activity to be located outside the NROD area or to be located inside the NROD area and to be designed in a way that will meet all of the applicable NROD development standards;*

Finding: Complies as Proposed. The single-family home was constructed in 1997, prior to the City's adoption of the NROD. Consequently, the design and location of the residence did not include consideration of impacts to the resource areas. The living space of the residence is located approximately 28 feet from Coffee Creek, and the pre-existing deck was located approximately 21 feet from Coffee Creek. Per OCMC Section 17.49.110, the buffer associated with Coffee Creek is 50 feet rendering it impossible to expand the pre-existing deck without encroaching closer than one-half of the regulated NROD buffer. Although the pre-existing deck could have been expanded along the exterior wall of the residence instead of away from the residence and towards Coffee Creek, this configuration would have required removal of vegetation along the rear of the home, including a mature vine maple, and likely still would have encroached closer than one-half of the 50-foot NROD buffer. Though the proposed configuration results in the deck encroaching closer to Coffee Creek, the expansion only impacted lawn and no native or woody vegetation was removed to accommodate the deck expansion.

17.49.200.B. *The proposal has fewer adverse impacts on significant resources and resource functions found in the local NROD area than actions that would meet the applicable environmental development standards;*

Finding: Complies as Proposed. The deck expansion only impacted lawn and did not result in the removal of native plants or vegetation. Although the pre-existing deck could have been expanded along the exterior wall of the residence instead of away from the residence and towards Coffee Creek, this configuration would have required the removal of native vegetation along the rear of the home, including a mature vine maple, and the deck likely still would have encroached closer than one-half of the regulated NROD buffer. Though the proposed configuration results in the deck encroaching closer to Coffee Creek, the expansion only impacted lawn and no native or woody vegetation was removed to accommodate the expansion resulting in fewer adverse impacts on significant resources.

17.49.200.C. *The proposed use or activity proposes the minimum intrusion into the NROD area that is necessary to meet development objectives;*

Finding: Complies as Proposed. The applicant's narrative identifies that the purpose of the replacement deck was to address safety concerns of the pre-existing deck, and the deck expansion was designed to provide a reasonably-sized addition that would improve the recreational use and aesthetic quality of the deck. The deck expansion resulted in an increase of the deck surface area of approximately 100 square feet, which is less than the allowance for existing development allowed by OCMC Section 17.49.130. The expanded deck is not excessive in size, is appropriately sized for the home, and is similar in size to other decks in the neighborhood. As previously discussed, the deck could have been expanded along the exterior wall of the home as opposed to towards Coffee Creek, however, this would have required removal of mature native vegetation which would have resulted in a more substantial intrusion to the NROD. As proposed, the deck expansion only impacted lawn area. The project's intrusion into the NROD is further minimized by creating a mitigation area within the NROD and improving the conditions of the existing vegetated corridor.

17.49.200.D. *Fish and wildlife passage will not be impeded;*

Finding: Complies as Proposed. The delineation report prepared by Tina Farrelly of Pacific Habitat Services identified:

Fish passage in the existing stream is impeded by off-site fish passage barriers, and the proposed project will not alter the existing fish passage. Wildlife passage through the property is already impeded by existing developments, fences, and adjacent roads. The addition of 100 square feet of new deck is not expected to further impede wildlife passage.

The City's natural resource consultant, David Evans and Associates, Inc., agrees with this assessment, although a field visit was not conducted. The applicant is in compliance with this criteria.

17.49.200.E. *With the exception of the standard(s) subject to the adjustment request, all other applicable NROD standards can be met; and*

Finding: Complies as Proposed. The project encroaches closer than one-half the distance of the regulated NROD buffer, however, all other applicable NROD standards have been met. A majority of the NROD area will remain intact and/or will be improved in function.

17.49.200.F. *The applicant has proposed adequate mitigation to offset the impact of the adjustment.*

Finding: Please refer to the analysis in Section 17.49.180 of this report.

17.49.210 *Type II Development Permit Application*

Finding: Not Applicable. The applicant has proposed a Type III application.

17.49.220 *Required Site Plans*

Site plans showing the following required items shall be part of the application:

A. For the entire subject property (NROD and non-NROD areas):

- 1. The NROD district boundary. This may be scaled in relation to property lines from the NROD Map;*
- 2. 100 year floodplain and floodway boundary (if determined by FEMA);*
- 3. Creeks and other waterbodies;*
- 4. Any wetlands, with the boundary of the wetland that will be adjacent to the proposed development determined in a wetlands delineation report prepared by a professional wetland specialist and following the Oregon Division of State Lands wetlands delineation procedures;*
- 5. Topography shown by contour lines of 2 or 1 foot intervals for slopes less than 15% and by 10 foot intervals for slopes 15% or greater;*
- 6. Existing improvements such as structures or buildings, utility lines, fences, driveways, parking areas, etc.*
- 7. Extent of the required Vegetated Corridor required by Table 17.49.110.*

B. Within the NROD area of the subject property:

- 1. The distribution outline of shrubs and ground covers, with a list of most abundant species;*
- 2. Trees 6 inches or greater in diameter, identified by species. When trees are located in clusters they may be described by the approximate number of trees, the diameter range, and a listing of dominant species;*
- 3. An outline of the disturbance area that identifies the vegetation that will 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;*
- 4. If grading will occur within the NROD, a grading plan showing the proposed alteration of the ground at 2 foot vertical contours in areas of slopes less than 15% and at 5 foot vertical contours of slopes 15% or greater.*

C. A construction management plan including:

- 1. Location of site access and egress that construction equipment will use;*
- 2. Equipment and material staging and stockpile areas;*
- 3. Erosion control measures that conform to City of Oregon City erosion control standards;*
- 4. Measures to protect trees and other vegetation located outside the disturbance area.*

D. A mitigation site plan demonstrating compliance with Section 17.49.180 or 17.49.190, including:

- 1. Dams, weirs or other in-water features;*
- 2. Distribution, species composition, and percent cover of ground covers to be planted or seeded;*
- 3. Distribution, species composition, size, and spacing of shrubs to be planted;*
- 4. Location, species and size of each tree to be planted;*
- 5. Stormwater management features, including retention, infiltration, detention, discharges and outfalls;*
- 6. Water bodies or wetlands to be created, including depth;*
- 7. Water sources to be used for irrigation of plantings or for a water source for a proposed wetland.*

Finding: Complies as Proposed. The applicant's submittal materials were evaluated during the completeness review.

17.49.230 Mitigation Plan Report

A mitigation plan report that accompanies the above mitigation site plan is also required. The report shall be prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry. The mitigation plan report shall, at a minimum, discuss:

- A. Written responses to each applicable Mitigation Standard 17.49.180 or 17.49.190 indicating how the proposed development complies with the mitigation standards;*
- B. The resources and functional values to be restored, created, or enhanced through the mitigation plan;*
- C. Documentation of coordination with appropriate local, regional, state and federal regulatory/resource agencies such as the Oregon Department of State Lands (DSL) and the United States Army Corps of Engineers (USACE);*
- D. Construction timetables;*
- E. Monitoring and Maintenance practices pursuant to Section 17.49.230 (F) and a contingency plan for undertaking remedial actions that might be needed to correct unsuccessful mitigation actions during the first 5 years of the mitigation area establishment.*

Finding: Complies as Proposed. The applicant's submittal materials were evaluated during the completeness review.

17.49.240 Density Transfer

The NROD allocates urban densities to the non-NROD portions of properties located partially within the NROD, generally resulting in a substantial increase in net development potential.

For lots of record that are located within the NROD, additional density transfer credits are allowed, subject to the following provisions:

Density may be transferred from the NROD to non-NROD portions of the same property or of contiguous properties within the same development site;

Finding: Not Applicable. The applicant has not proposed to utilize the density transfer for the proposed development

17.49.250 Verification of NROD Boundary

The NROD boundary may have to be verified occasionally to determine the true location of a resource and its functional values on a site. This may through a site specific environmental survey or, in those cases where existing information demonstrates that the NROD significance rating does not apply to a site-specific area.

Applications for development on a site located in the NROD area may request a determination that the subject site is not in an NROD area and therefore is not subject to the standards of Section 17.49.100.

Verifications shall be processed as either a Type I or Type II process.

Finding: Not Applicable. The development proposal does not include a Verification of the NROD boundary. The application is being reviewed pursuant with the Type III process.

17.49.260. Type II Verification

Finding: Not Applicable. The development proposal does not include a Type II Verification request. The application is being reviewed pursuant with the Type III process

17.49.265 - Corrections to violations.

For correcting violations, the violator shall submit a remediation plan that meets all of the applicable standards of the NROD. The remediation plan shall be prepared by one or more qualified professionals with experience and credentials in natural resource areas, including wildlife biology, ecology, hydrology and forestry. If one or more of these standards cannot be met then the applicant's remediation plan shall demonstrate that there will be:

Finding: Applicable. The deck expansion was constructed in 2016 without obtaining required approvals from the Oregon City Planning and Building Divisions, resulting in a violation. The applicant has submitted a Type III Natural Resource Review application which includes a delineation of the natural features onsite, responses to applicable standards of the Oregon City Municipal Code and a mitigation plan that also serves as a

remediation plan, as it was prepared by a qualified natural resources professional. The proposal does not meet all of the applicable standards of Chapter 17.49, as the deck encroaches approximately 36 feet into the 50-foot NROD buffer, and OCMC 17.49.130.A.1 requires that new disturbance area does not encroach closer than one-half of the distance of the regulated NROD buffer. Therefore, compliance with A-C is required.

A. No permanent loss of any type of resource or functional value listed in Section 17.49.10, as determined by a qualified environmental professional;

Finding: Complies as Proposed. For reference, the functional values identified in OCMC Section 17.49.010 have been provided below.

17.49.010 – Purpose

The NROD contributes to the following functional values:

A. Protect and restore streams and riparian areas for their ecologic functions and as an open space amenity for the community.

B. Protect floodplains and wetlands, and restore them for improved hydrology, flood protection, aquifer recharge, and habitat functions.

C. Protect upland habitats, and enhance connections between upland and riparian habitat.

D. Maintain and enhance water quality and control erosion and sedimentation through the revegetation of disturbed sites and by placing limits on construction, impervious surfaces, and pollutant discharges.

E. Conserve scenic, recreational, and educational values of significant natural resources.

The application was prepared by a qualified natural resources professional, who identified that the deck impacted approximately 100 square feet of lawn, did not result in the removal of native or woody vegetation, and the mitigation associated with the deck will result in an increase of coverage of native trees, shrubs, and groundcover within the vegetated corridor. The City's natural resource consultant, David Evans and Associates, Inc., agrees with the applicant's assessment that the deck does not result in a permanent loss of any type of resource or functional value listed in OCMC Section 17.49.010.

B. A significant improvement of at least one functional value listed in section 17.49.10, as determined by a qualified environmental professional; and

Finding: Complies as Proposed. The applicant has identified that the project would significantly improve function value D, however, the City's natural resource consultant disagreed identifying that functional value D also requires placing limits on construction, which the applicant has not proposed to do. Instead, David Evans and Associates, Inc. has identified that the removal of existing concrete and the new native plantings will enhance connections between upland and riparian habitat resulting in a significant improvement of functional value C. The applicant is in compliance with this standard.

C. There will be minimal loss of resources and functional values during the remediation action until it is fully established.

Finding: Complies as Proposed. The applicant stated:

Given the relatively small amount of new encroachment area (100 square feet), the limited habitat value of the lawn within the encroachment area, and the absence of temporary disturbance areas, it is reasonably certain that the temporal loss of resources and functional values during the remediation action will be minimal.

The City's natural resources consultant, David Evans and Associates, Inc. agrees with the applicant's determination that the loss or resources and functional values during the remediation action will be minimal. The applicant is in compliance with this standard.

CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES

17.50.030 Summary of the City's Decision-Making Processes.

Finding: Complies as Proposed. The proposed Natural Resource Review application is being reviewed pursuant to the Type III process. Notice was posted onsite, online, mailed to property owners within 300 feet of the proposed development site and posted in a general circulation newspaper.

17.50.050 Preapplication Conference

A. Preapplication Conference. Prior to submitting an application for any form of permit, the applicant shall schedule and attend a preapplication conference with City staff to discuss the proposal. To schedule a preapplication conference, the applicant shall contact the Planning Division, submit the required materials, and pay the appropriate conference fee. At a minimum, an applicant should submit a short narrative describing the proposal and a proposed site plan, drawn to a scale acceptable to the City, which identifies the proposed land uses, traffic circulation, and public rights-of-way and all other required plans. The purpose of the preapplication conference is to provide an opportunity for staff to provide the applicant with information on the likely impacts, limitations, requirements, approval standards, fees and other information that may affect the proposal. The Planning Division shall provide the applicant(s) with the identity and contact persons for all affected neighborhood associations as well as a written summary of the preapplication conference. Notwithstanding any representations by City staff at a preapplication conference, staff is not authorized to waive any requirements of this code, and any omission or failure by staff to recite to an applicant all relevant applicable land use requirements shall not constitute a waiver by the City of any standard or requirement.

B. A preapplication conference shall be valid for a period of six months from the date it is held. If no application is filed within six months of the conference or meeting, the applicant must schedule and attend another conference before the city will accept a permit application. The community development director may waive the preapplication requirement if, in the Director's opinion, the development does not warrant this step. In no case shall a preapplication conference be valid for more than one year.

Finding: Complies as Proposed. The pre-application conference requirement was waived by the Community Development Director in accordance with subsection B.

17.50.055 Neighborhood Association Meeting

Finding: Not Applicable. A neighborhood association meeting is not required for a Natural Resource Review application.

17.50.060 Application Requirements.

Finding: Complies as Proposed. All application materials required are submitted with this narrative. The applicant has provided full-size and two reduced size sets of plans to accompany the submittal items.

17.50.070 Completeness Review and 120-day Rule.

Finding: Complies as Proposed. This land use application was submitted on July 28, 2017. The application was deemed incomplete on August 23, 2017, and after the submittal of additional information the application was deemed complete on October 20, 2017. The applicant has extended the 120-day period, and the City has until March 16, 2018, to make a final determination.

17.50.080 Complete Application--Required Information.

Finding: Complies as Proposed. This land use application was submitted on July 28, 2017. The application was deemed incomplete on August 23, 2017 and after the submittal of additional information the application was deemed complete on October 20, 2017.

17.50.090 Public Notices.

Finding: Complies as Proposed. Staff provided public notice within 300 feet of the site via mail, posted on the Oregon City website, in a general circulation newspaper, and the site was posted with a Land Use Notice. Staff provided email transmittal of the application and notice to affected agencies, the Natural Resource Committee and to all Neighborhood Associations requesting comment.

17.50.100 Notice Posting Requirements.

Finding: Complies as Proposed. The site was posted with a sign longer than the minimum requirement.

CONCLUSION AND DECISION:

Based on the analysis and findings as described above, Staff concludes that the proposed Natural Resource Overlay District Review application for the site located at 379 Barker Avenue, Oregon City and identified as Clackamas County Map 3-2E-06BB, Tax Lot 3903, can meet the requirements as described in the Oregon City Municipal Code by complying with the Conditions of Approval provided in this report. Therefore, the Community Development Director recommends the Planning Commission approve file NR 17-10 with conditions, based upon the findings and exhibits contained in this staff report.

EXHIBITS:

1. Vicinity Map
2. Applicant's Narrative and Plans
3. Comment from Oregon City School District
4. Comment from Dorothy Dahlsrud
5. Memo from David Evans and Associates