

**Oregon City Municipal Code**  
**Chapter 17.49 - Natural Resource Overlay District**

**17.49.010 Purpose**

The Natural Resource Overlay District designation provides a framework for protection of Metro Titles 3 and 13 lands, and Statewide Planning Goal 5 resources within Oregon City. The Natural Resource Overlay District (NROD) implements the Oregon City Comprehensive Plan Natural Resource Goals and Policies, as well as Federal Clean Water Act requirements for shading of streams and reduction of water temperatures, and the recommendations of the Metro ESEE Analysis. It is intended to resolve conflicts between development and conservation of habitat, stream corridors, wetlands, and floodplains identified in the City's maps. 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 NROD ecological functions listed above are planned for integration with existing neighborhoods and new residential and commercial developments. The long-term goal of the NROD is to restore and enhance stream corridors, wetlands, and forests to more natural vegetated conditions, recognizing that existing homes and other existing uses will continue in the district. This chapter does not regulate the development within the identified water resource. Separate permits from the Division of State Lands and the Army Corp of Engineers may be required for work within a stream or wetland.

**17.49.020 NROD Identifying Documents**

- A. The NROD protects as one connected system the habitats and associated functions of the streams, riparian corridors, wetlands and the regulated upland habitats found in Oregon City. These habitats and functions are described in the following documents upon which the NROD is based:
  - 1. The 1999 Oregon City Local Wetland Inventory
  - 2. The Oregon City Water Quality Resource Area Map (Ord. 99-1013)
  - 3. 2004 Oregon City slope data and mapping (LIDAR)
  - 4. Metro Regionally Significant Habitat Map (Aerial Photos taken 2002)
  - 5. National Wetland Inventory (published 1992).
  - 7. Beaver Creek Road Concept Plan (adopted September 2008).
  - 8. Park Place Concept Plan (adopted April 2008).

The NROD provisions apply only to properties within the NROD as shown on the NROD Map, as amended.

The intent of these regulations is to provide applicants the ability to choose a clear and objective review process or a discretionary review process. The NROD provisions do not affect existing uses and development, or the normal maintenance of existing structures, driveways/parking areas, public

facilities, farmland and landscaped areas. New public facilities such as recreation trails, planned road and utility line crossings and stormwater facilities, are allowed within the overlay district under prescribed conditions as described in Section 17.49.090. In addition, provisions to allow a limited portion of the NROD to be developed on existing lots of record that are entirely or mostly covered by the NROD (“highly constrained”) are described in Section 17.49.120.

#### **17.49.030 Map as Reference**

This chapter applies to all development within the Natural Resources Overlay District as shown on the NROD Map, which is a regulatory boundary mapped 10’ beyond the required vegetated corridor width specified in section 17.49.110. The mapped NROD boundary is based on a GIS-supported application of the adopted documents, plans and maps listed in 17.49.020(A)(1)-(8), however the adopted map may not indicate the true location of protected features. Notwithstanding changing field conditions or updated mapping approved by the City (and processed as a Type I Verification per OCMC 17.49.255), the applicant may choose to either accept the adopted NROD boundary or provide a verifiable delineation of the true location of the natural resource feature pursuant to the Type I or Type II procedure in accordance with this Chapter. The NROD boundary shall be shown on all development permit applications and its location shall be verified in the field before development activity (including grading) commences. The official NROD map can only be amended by the City Commission. Verification of the map shall be processed pursuant to Section 17.49.250.

#### **17.49.035 Addition of Wetlands to Map following Adoption**

The NROD boundary shall be expanded to include a wetland identified during the course of a development permit review if it is within or partially within the mapped NROD boundary and meets the State of Oregon’s definition of a “Locally Significant Wetland”. In such cases the entire wetland and its required vegetated corridor as defined in Table 17.49.110 shall be regulated pursuant to the standards of this Chapter. The NROD boundary shall be added to the NROD map by the Community Development Director after the development permit becomes final.

#### **17.49.040 NROD Permit**

An NROD permit is required for those uses regulated under Section 17.49.90, Uses Allowed under Prescribed Conditions. An NROD permit shall be processed under the Type II development permit procedure, unless an adjustment of standards pursuant to Section 17.49.200 is requested or the application is being processed in conjunction with a concurrent application or action requiring a Type III or Type IV development permit. Applications for development on properties affected by the NROD shall delineate or verify the exact location of the NROD as part of a Type I or II development review process unless exempted pursuant to section 17.40.080.

#### **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.

#### **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.

**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.

**Prohibited, Exempted and Regulated Uses**

**17.49.070 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.

**17.49.080 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.

#### **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.

#### **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;
- 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.
- C. All vegetation planted in the NROD shall be native and listed on the Oregon City Native Plant List;
- D. Grading is subject to installation of erosion control measures required by the City of Oregon;
- 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;
- 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;
- G. Fences are allowed only within the disturbance area;
- 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;
- I. If development will occur within the 100 yr. floodplain, the FEMA floodplain standards of Chapter 17.42 shall be met; and
- J. Mitigation of impacts to the regulated buffer is required, subject to Section 17.49.180 or 17.49.190.

### 17.49.110 Width of Vegetated Corridor

- A. 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**

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

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  $\geq 25$  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').

#### **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):

- A. Standard for Residential Development. In the NROD where the underlying zone district is zoned Residential (R-10, R-8, R-6, R-5, R-3.5): the maximum disturbance area allowed for new residential development within the NROD area of the lot is 3,000 square feet.
  - B. Standard for all developments not located in R-10, R-8, R-6, R-5, and R-3.5. For all other underlying zone districts, including R-2 multifamily, the maximum disturbance area allowed for a vacant, constrained lot of record development within the NROD is that square footage which when added to the square footage of the lot lying outside the NROD portion equals 25% of the total lot area.
- [1] Lots that are entirely covered by the NROD will be allowed to develop 25% of their area.
- [1] Note: This can be determined by (1) Multiplying the total square footage of the lot by .25; (2) Subtracting from that amount the square footage of the lot that is located outside the NROD; (3) The result is the maximum square footage of disturbance to be allowed in the NROD portion of the lot. If the result is  $<$  or  $=$  to 0, no disturbance is permitted and the building shall be located outside of the boundary.
- C. In all areas of Oregon City, the disturbance area of a vacant, highly constrained lot of record within the NROD shall be set back at least 50 feet from the top of bank on Abernethy Creek, Newell Creek, or Livesay Creek or 25 feet from the top of bank of any tributary of the afore-mentioned Creeks, other water body, or from the delineated edge of a wetland located within the NROD area.
  - D. If the highly constrained lot of record cannot comply with the above standards, a maximum 1500 square foot disturbance within the NROD area may be allowed

#### **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.
- B. Mitigation is required, subject to Section 17.49.180 or 17.49.190.

#### **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.

#### **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.



- B. Where the right-of-way or private road crosses a stream the crossing shall be by bridge or a bottomless culvert;
- 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;
- 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;
- 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
- F. Mitigation is required, subject to Section 17.49.180 or 17.49.190.

#### **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.

#### **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.

#### **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.

#### **17.49.180 Mitigation Standards**

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

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

NOTE: Applications on sites where no trees are present or which are predominantly covered with invasive species shall be required to mitigate the site, remove the invasive species and plant trees and native plants pursuant to Option 2.

1. Mitigation Planting Option 1.

- a. Option 1 - Planting Quantity. This option requires mitigation planting based on the number and size of trees that are removed from the site pursuant to Table 17.49.180(E)(1)(a). Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses and ground cover species.

Table 17.49.180(E)(1)(a) – Required Planting Option 1

<b>Size of Tree to be Removed (DBH)</b>	<b>Number of Trees and Shrubs to be Replanted</b>
6 to 12"	2 trees and 3 shrubs
13 to 18"	3 trees and 6 shrubs
19 to 24"	5 trees and 12 shrubs
25 to 30"	7 trees and 18 shrubs
Over 30"	10 trees and 30 shrubs

- b. Option 1 - Plant Size. Replacement trees shall be at least one-half inch in caliper on average, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees. Oak, madrone, ash or alder may be one gallon size. Conifers shall be a minimum of six (6') in height. Shrubs must be in at least 1-gallon container size or the equivalent in ball and burlap, and shall be at least 12 inches in height at the time of planting. All other species shall be a minimum of four-inch pots;
  - c. Option 1 - Plant Spacing. Except for the outer edges of mitigation areas, trees and shrubs shall be planted in a non-linear fashion. Plant spacing for new species shall be measured from the driplines of existing trees when present. Trees shall be planted on average between 8 and 12 feet on center, and shrubs shall be planted on average between 4 and 5 feet on center, or clustered in single species groups of no more than four (4) plants, with each cluster planted on average between 8 and 10 feet on center.
  - d. Option 1 - Mulching and Irrigation. Mulch new plantings a minimum of three inches in depth and 18 inches in diamters. Water new plantings one inch per week from June 30th to September 15th, for the three years following planting.
  - e. Option 1 – Plant Diversity. Shrubs shall consist of at least two (2) different species. If 10 trees or more are planted, no more than one-half of the trees may be of the same genus.
2. Mitigation Planting Option 2.
- a. 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..
- 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.
  - 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.
  - 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.
  - 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.

- 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.
- 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.
- 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 it's determination that the mitigation plan has been satisfactorily implemented pursuant to this section.

#### **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:

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

- 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.

#### **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:

- 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;
- 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;
- C. The proposed use or activity proposes the minimum intrusion into the NROD area that is necessary to meet development objectives;
- D. Fish and wildlife passage will not be impeded;
- E. With the exception of the standard(s) subject to the adjustment request, all other applicable NROD standards can be met; and
- F. The applicant has proposed adequate mitigation to offset the impact of the adjustment.

## **Application Requirements**

### **17.49.210 Type II Development Permit Application**

Unless otherwise directed by the NROD standards, proposed development within the NROD shall be processed as a Type II development permit application. All applications shall include the items required for a complete application by Sections 17.49.220-230, and Section 17.50.080 of the Oregon City Municipal Code as well as a discussion of how the proposal meets all of the applicable NROD development standards 17.49.100-170.

### **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.

#### **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.

#### **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:

- A. Density may be transferred from the NROD to non-NROD portions of the same property or of contiguous properties within the same development site;
- B. The residential transfer credit shall be as follows: for new residential partitions and subdivisions, 1/3 of the area of the NROD tract or conservation easement area may be added to the net developable area outside of the tract or conservation easement area within the boundary of the development site in order to calculate the allowable number of lots.
- C. Permitted Modifications to Residential Dimensional Standards. In order to allow for a transfer of density pursuant to (B) above, the dimensional standards of the base zone may be modified in order to minimize disturbance to the NROD. The permissible reductions are specified in Tables 17.49.240(C-D).
- D. The applicant shall demonstrate that the minimum lot size of the underlying zone has been met. The area of the NROD in B above that is used to transfer density may be included in the calculation of the average minimum lot size.
- E. The applicant may choose to make the adjustments over as many lots as required. For example, the lot reduction could be spread across all the remaining lots in the proposed subdivision or partition or could be applied to only those needed to incorporate the areas of the NROD Tract.

**Table 17.49.240 A**  
Lot Size Reduction

ZONE	Min. Lot Size (%)	Min. Lot Width	Min. Lot Depth
R-10	5,000 sq. feet	50'	65'
R-8	4,000 sq. feet	45'	60'
R-6	3,500 sq. feet	35'	55'
R-5	3,000 sq. feet	30'	50'
R-3.5	1,800 sq. feet	20'	45'

**Table 17.49.240 B**  
Reduced Dimensional Standards for Detached Single-Family Residential Units

Size of Reduced Lot	Front Yard Setback	Rear Yard Setback	Side yard Setback	Corner Side	Lot Coverage
8,000-9,999 square feet	15 feet	20 feet	7/9 feet	15 feet	40%
6,000-7,999 square feet	10 feet	15 feet	5/7 feet	15 feet	40%
4,000-5,999 square feet	10 feet	15 feet	5/5 feet	10 feet	40%
1,800-3,999 square feet	5 feet	15 feet	5/5 feet	10 feet	55%

**Table 17.49.240 C**  
Reduced Dimensional Standards for Single-Family Attached or Two-Family Residential Units

Size of Reduced Lot	Front Yard Setback	Rear Yard Setback	Side yard Setback	Corner Side	Lot Coverage
3,500-7,000 square feet	10 feet	15 feet	5/0* feet	10 feet	40%
1,800-3,499 square feet	5 feet	15 feet	5/0* feet	10 feet	55%

\*0 foot setback is only allowed on single-family attached units

- F. Transfers for properties zoned Commercial, Institutional, Industrial or Multi-Family uses the transfer credit is 10,000 sq. ft. per acre of land within the NROD;
- G. The area of land contained in the NROD area may be excluded from the calculations for determining compliance with minimum density requirements of the land division code.
- H. The owner of the transferring property shall execute a covenant with the City that records the transfer of density. The covenant shall be found to meet the requirements of this section and be recorded before building permits are issued; and
- I. All other applicable development standards, including setbacks, building heights, and maximum lot coverage shall continue to apply when a density transfer occurs.

#### **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.

#### **17.49.255 Type I Verification.**

- A. Applicants for a determination under this section shall submit a site plan meeting the requirements of 17.49.220, as applicable.
- B. Alternatively, an applicant may request a Type I Verification determination by the Community Development Director by making an application therefore and paying to the City a fee as set by resolution of the City Commission. Such requests may be approved provided that there is evidence substantiating that all the requirements of this chapter relative to the proposed use are satisfied and demonstrates that the property also satisfies the following criteria, as applicable:
  - 1. No soil, vegetation, hydrologic features have been disturbed;
  - 2. No hydrologic features have been changed;
  - 3. There are no man-made drainage features, water marks, swash lines, drift lines present on trees or shrubs, sediment deposits on plants, or any other evidence of sustained inundation.
  - 4. The property does not contain a wetland as identified by the City's local wetland inventory or water quality and flood management areas map.
  - 5. There is no evidence of a perennial or intermittent stream system or other protected water feature. This does not include established irrigation ditches currently under active farm use, canals or manmade storm or surface water runoff structures or artificial water collection devices.
  - 6. Evidence of prior land use approvals that conform to the City's existing Water Quality Resource Area Overlay District.
    - There is an existing physical barrier between the site and a protected water feature, including:
      - a. streets, driveways, alleys, parking lots or other approved impervious areas wider than 15 feet and which includes drainage improvements that are connected to the City storm sewer system, as approved by the City.
      - b. Walls, buildings, drainages, culverts or other structures and which form a physical barrier between the site and the protected water features, as approved by the City.
- C. If a the City is not able to clearly determine, through the Type I verification process that the applicable criteria (B)1-6 above are met the verification application shall be denied. An applicant may then opt to apply for an verification through the Type II process defined below.

#### **17.49.260. Type II Verification**

Verifications of the NROD which cannot be determined pursuant to the standards of 17.49.255 may be processed under the Type II permit procedure.

- A. Applicants for a determination under this section shall submit a site plan meeting the requirements of 17.49.220 as applicable.
- B. Such requests may be approved provided that there is evidence that demonstrates in an environmental report prepared by one or more qualified professionals with experience and credentials in natural resource areas, including wildlife biology, ecology, hydrology and forestry, that a resource function(s) and/or land feature(s) does not apply to a site-specific area.
- C. Verification to remove a recently developed area from the NROD shall show that all of the following have been met:
  - 1. All approved development in the NROD has been completed;
  - 2. All mitigation required for the approved development, located within the NROD, has been successful; and
  - 3. The previously identified resources and functional values on the developed site no longer exist or have been subject to a significant detrimental impact.

#### **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:

- 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;
- B. A significant improvement of at least one functional value listed in section 17.49.10, as determined by a qualified environmental professional; and
- C. There will be minimal loss of resources and functional values during the remediation action until it is fully established.