



STAFF REPORT AND NOTICE OF DECISION
July 17, 2014

FILE NO.: NR 14-03

APPLICATION TYPE: Type II Natural Resource Overlay District Review

APPLICANT: AKS Engineering and Forestry, LLC
Monty Hurley
13910 SW Galbreath Drive, Suite 100
Sherwood, OR 97140

Rian Park Development, Inc.
15239 S Lakeridge Way
Oregon City, OR 97045

REQUEST: The applicant is seeking approval for adding stormwater infrastructure to the Natural Resource Overlay District.

LOCATION: 19821 Leland Road, Oregon City, Oregon 97045
Clackamas County Map 3-2E-18, Tax Lot 1206

REVIEWER: Kelly Moosbrugger, Planner

DECISION: Approval with Conditions

PROCESS: The decision of the Community Development Director is final unless appealed to the City Commission within fourteen (14) days following the mailing of this notice. Type II decisions involve the exercise of limited interpretation and discretion in evaluating approval criteria, similar to the limited land use decision-making process under state law. Applications evaluated through this process are assumed to be allowable in the underlying zone, and the inquiry typically focuses on what form the use will take or how it will look and include partitions, preliminary subdivision plats, site plan and design review. Notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood association and property owners within three hundred feet. Planning manager accepts comments for fourteen days and renders a decision. The planning manager's decision is appealable to the city commission with notice to the planning commission, by any party with standing (i.e., applicant and any party who submitted comments during the fourteen-day period). The city commission decision is the city's final decision and is appealable to the land use board of appeals (LUBA) within twenty-one days of when it becomes final.

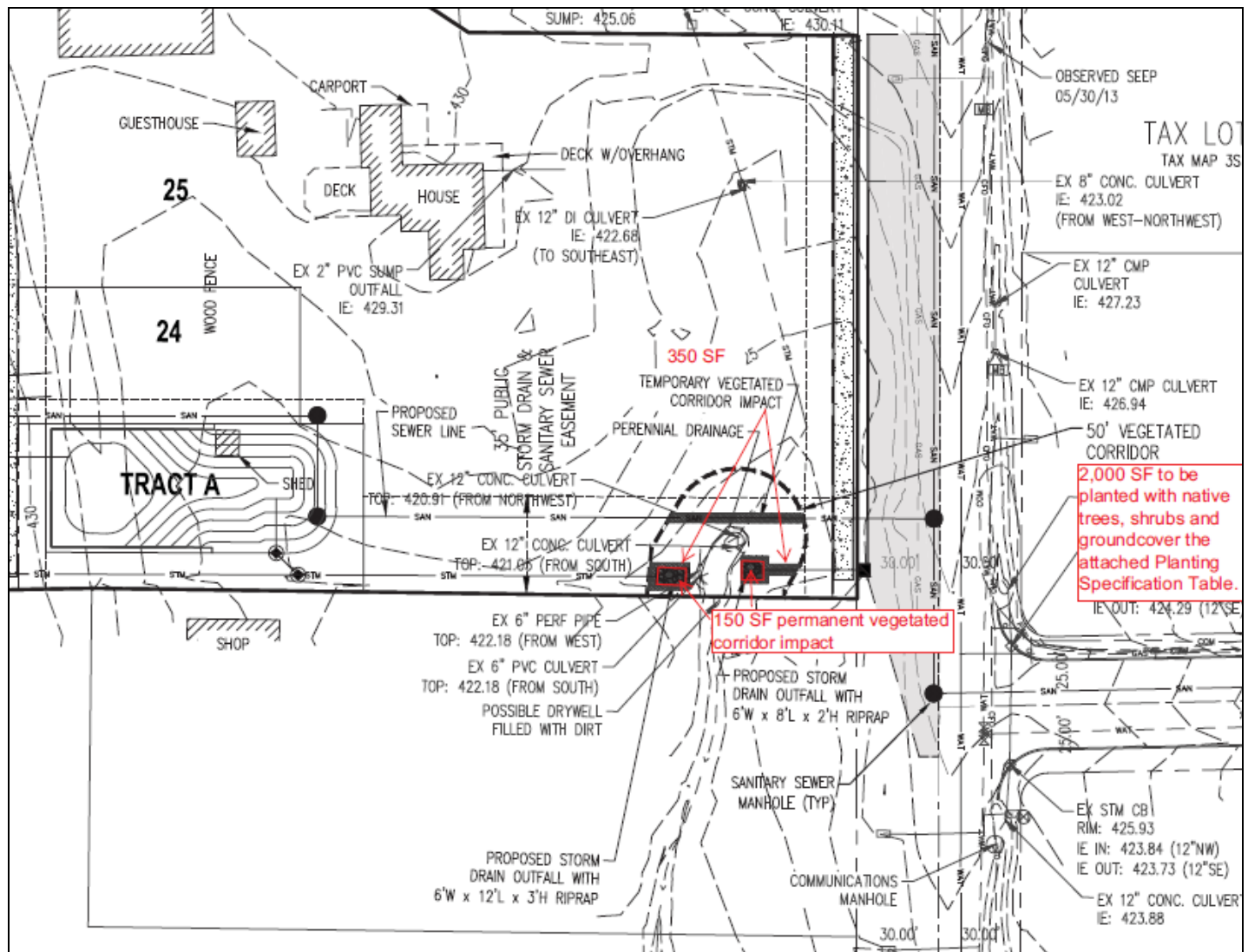
IF YOU HAVE ANY QUESTIONS ABOUT THIS DECISION, PLEASE CONTACT THE PLANNING DIVISION OFFICE AT (503) 657-0891.

BASIC FACTS:

Location. The subject site is located at 19821 Leland Road and is adjacent to the proposed and approved subdivision Lindsey Anne Estates (TP 13-04). The project under review is for a storm outfall and other utility lines that are to be located in the Natural Resource Overlay District (NROD). The storm infrastructure will serve the Lindsey Anne Estates subdivision.

The subject site is also proposed as a subdivision (TP 14-03); however, this application is being processed separately from the subdivision as requested by the applicant. The request for separation of the applications was made in order to expedite the infrastructure design for the adjacent subdivision Lindsey Anne Estates, which is currently undergoing construction plan review.

The proposed storm facilities will serve both subdivisions: TP 13-04 and TP 14-03. In the drawing below, Tract A is a stormwater pond, which drains into the NROD through the storm drain outfall shown.



Existing Conditions

A single-family residence and detached barn are present in the central portion of the 6-acre site. North of the house is a grassy area that was dominated by tall fescue. The remaining undeveloped area to the west of the house is an unmowed field. Oregon white oak and Douglas-fir trees were present in the southern portion of the site. The topography on the site has a gentle (less than 3%) southerly slope.

The project area is not covered under the 1999 study area for the City of Oregon City Local Wetland Inventory (LWI). However, the Oregon City NROD map shows a drainage (tributary to Mud Creek) flowing southerly through the northern portion of the tax lot.

Zoning and Surrounding Land Uses. The subject site is zoned R-6 Single-Family Dwelling District. Surrounding zoning is also R-6. The surrounding land use is residential.

Project Description. Residential development is proposed on the 5.94-acre site. A portion of a drainageway is present in the southeastern corner of the site. The perennial drainage has an adjacent slope of less than 25%, requiring a 50-foot-wide vegetated corridor. The project proposes 350 square feet of temporary and 150 square feet of permanent impacts to the vegetated corridor for sanitary and stormwater utilities. No impacts are proposed within the drainage itself.

Public Notice. Notice of this proposal was posted on site and sent to property owners within three hundred feet of the subject property and various City departments and other agencies on June 25, 2014.

William Gifford, on behalf of the Hillendale Neighborhood Association, submitted an email stating the neighborhood association reviewed the application and has no comment (Exhibit 3).

III. DECISION-MAKING CRITERIA

Municipal Code

Chapter 17.49 Natural Resource Overlay District

Chapter 17.49 Natural Resource Overlay District

The City of Oregon City (the City) has contracted with David Evans and Associates, Inc. (DEA), to review permit applications located within the Natural Resource Overlay District (NROD) and mitigation plans, as applicable, to ensure they meet Oregon City land development code criteria. This staff report includes DEA's findings and recommendations related to the Applicant's submittal.

The following documents were reviewed by DEA:

- *A Land Use Application for Ellis Estates Subdivision, Updated May 2014*
- *Natural Resource Assessment and Supplement to Natural Resource Assessment, SWCA Environmental Consultants (May 20, 2014)*

17.49.030 Map as reference.

Finding: Complies as Proposed. A perennial stream flows southerly through the eastern portion of tax lot 1282 (near Leland Road). The stream is mapped as a Title 3 Water Quality Resource on the City's Natural Resource Overlay District (NROD) map.

17.49.035 Addition of wetlands to map following adoption.

Finding: Complies as Proposed. Wetland determinations were conducted both in 2007 and 2013 by SWCA Environmental Consultants. No additional wetlands were identified on the tax lot.

17.49.060 Consistency and relationship to other regulations.

Finding: Not Applicable. The headwaters of a drainage were mapped in the northern portion of tax lot 1282. No wetlands were identified. The drainage delineated on tax lot 1282 was determined to be jurisdictional by DSL. The 2007 wetland delineation expired on December 13, 2012. A site visit was conducted on May 2, 2013, by Stacey Reed and Stacy Benjamin of SWCA to document current site conditions. The methodology used for determining the presence of wetlands followed the U.S. Army Corps of Engineers' (Corps') *Wetlands Delineation Manual (Environmental Laboratory 1987)* and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0) (Corps 2010)*, used by both the Corps and the Oregon DSL. No work will be conducted in the open part perennial stream (tributary to Mud Creek), below OHW. A potential water line may cross the drainage way. The application states that the plans show that there is no fill or excavation within the ordinary high water mark for the perennial stream (tributary to Mud Creek). The application states that the future extension of the waterline will cross the drainageway under the existing 12" concrete culvert. Therefore, the project does not require approval of the of the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers.

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*

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).*
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.
prohibited, unless part of an approved development activity.

Finding: Complies as Proposed. The project involves a land division of residentially zoned property. Therefore, the application is subject to Section 17.49.160. The project also included utility and stormwater facilities in the NROD and is subject to the standards of Section 17.49.140 and 17.49.155. Therefore it is an allowed use under prescribed conditions and requires a Type II review.

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.

Finding: Complies with conditions. One 27" Douglas Fir will be removed as part of the project for construction of the storm drain line. This impact is addressed under standard 17.49.140. Per the planting plan, vegetation proposed to be planted in the NROD are native and listed on the Oregon City Native Plant List. Mitigation for impacts to the buffer are regulated by 17.49.180. All undisturbed areas, including remaining trees and their root systems, should be identified and protected from grading and vehicle damage by flags, fencing, or a combination of both. The applicant shall identify on the grading plan the anticipated location of where excavated materials will be placed to make sure they do not impact the perennial stream and NROD. The applicant shall also provide an erosion and water quality control plan at time of construction to include:

- Silt fence, straw bale or similar erosion control along edge of disturbance area.
- Seeding and mulching all bare services following initial excavations and construction.

The applicant shall also meet the Conditions of Approval for TP 13-04 as they apply to the work done in the NROD.

The applicant can meet this standard through condition of approval 1, 2, 3 and 12.

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

<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(1).
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 with Condition. Per the *Natural Resource Assessment Report for Ellis Estates Residential Development* written by Stacey Reed Professional Wetland Scientist, the Applicant based the width of the vegetated corridor on the following: The drainage is mapped as an aboveground stream with Title 3 Water Quality Resources, and a Natural Resource Overlay District (NROD) is mapped adjacent to the drainage on the City of Oregon City's NROD map. The perennial drainage has an adjacent slope of less than 25%, requiring a 50-foot-wide vegetated corridor. The NROD boundary and OHW waterlines should be flagged prior to construction to ensure there are no unpermitted impacts. Impacts below OHW or additional impacts to the NROD will require additional regulatory review. **The applicant can meet this standard through condition of approval 4.**

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*

Finding: Not Applicable. The lot is not a highly constrained lot of record. Therefore, this standard does not apply.

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.

Finding: Not applicable. No development exists within the boundaries of the existing NROD area on the site. Therefore this standard does not apply.

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: Complies with Condition. The Applicant did not identify the width of the linear disturbance area for the private connection to utility lines. The disturbance area for utility connections cannot be greater than

ten feet wide per 17.49.140(A). The applicant shall submit documentation showing compliance with this standard. **The applicant can meet this standard through condition of approval 5.**

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.*

Finding: Not applicable. There will be no vehicular or pedestrian paths and roads within the NROD.

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: Complies with Condition. A stormwater facility is located outside of the vegetated corridor. The stormwater development activities should be consistent with Chapter 13.12 Stormwater Management of the City's Development Code. However, the stormwater outfalls are within the NROD boundary and must meet this section. Based on the Applicant's submittal, all criteria appear to be met except for 17.49.155(D). It is unclear whether or not the storm water facility, in this case the outfalls, encroach less than one-half the distance of the NROD corridor. Prior to issuance of permits, the applicant shall provide a map measuring the location of the outfalls to the edge of the NROD corridor boundary that demonstrates compliance with 17.49.155(D), which requires that the storm water facility may encroach up to one half the distance of the NROD corridor. **The applicant can meet this standard through Condition of Approval 6.**

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: Complies with Condition. The applicant proposes a subdivision on the subject property. The NROD area should be included within a conservation easement for the associated subdivision application, TP 14-03. **The applicant can meet this standard through condition of approval 7.**

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. No trail is proposed.

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;*

Finding: The Applicant's mitigation plan addresses impacts within the NROD. Impacts to the NROD buffer are limited because the area being developed is primarily non-native grasses and weeds. One tree will be removed as part of the project within the NROD. There will be no direct impacts to the perennial stream. The Applicant has provided a map showing the proposed mitigation area and planting plan as part of the application.

- 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 Applicant proposes that mitigation will occur on the site. This standard is met.

- 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 mitigation will occur on the site, within the NROD. This standard is met.

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

Finding: Complies as Proposed. Invasive and nuisance vegetation are proposed to be removed within the mitigation area.

The applicant's plan states: "Invasive species control is to be conducted as needed based upon the site inspections. Invasive species include: Himalayan and evergreen blackberry (*Rubus discolor* and *R. laciniatus*), reed canarygrass (*Phalaris arundinacea*), teasel (*Dipsacus fullonum*), Canada and bull thistle (*Cirsium arvense* and *C. vulgare*), Scotch broom (*Cytisus scoparius*), purple loosestrife (*Lythrum salicaria*), Japanese knotweed (*Polygonum cuspidatum*), morning glory (*Convolvulus* species), giant hogweed (*Heracleum mantegazzianum*), English ivy (*Hedera helix*), nightshade (*Solanum* species), and clematis (*Clematis ligusticifolia* and *C. vitalba*)."

- 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

Size of Tree to be Removed (DBH)	Number of Trees and Shrubs to be Replanted
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.

Finding: Complies with Condition. The Applicant provided a total amount of disturbance area within the NROD boundary as 500 square feet. The applicant is using the mitigation standards set forth 17.49.180(E)(2)-Mitigation Option 2. Using Option 1 would result in 7 mitigation trees due to the removal of

the 27" Doug Fir, compared to 5 mitigation trees resulting from Option 2; thus, the applicant is required to utilize mitigation option 1 because it requires a greater number of trees. Based on the Applicant's submittal, the mitigation plan ratios meet and exceed the mitigation ratios under Options 1 and 2. The required planting for Option 1 is 7 trees; the required planting for Option 2 is 5 native trees and 25 native shrubs per 500 square feet of impact. The applicant has proposed to plant 20 trees and 100 shrubs. Two different species of trees are proposed (10 of each type), along with three different shrub species. Additionally, disturbed areas in the NROD will be seeded as necessary. From a mitigation standpoint, it appears that the prescribed mitigation standards under 17.49.180(E)(2) will result in improving the project area which is currently degraded. The applicant shall construct the outfalls within the NROD to ensure that the water flow does not scour the receiving area.

The applicant indicated that the actual species planted may deviate from the proposal but that all plants will be on the city's native plant list. The applicant shall ensure that the plant diversity requirements are met, specifically that shrubs shall consist of at least two (2) different species and no more than one-half of the trees may be of the same genus. The applicant shall submit a final planting plan to the city once the planting is completed. **The applicant can meet this standard through conditions of approval 8 and 9.**

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.

Finding: Complies with Condition. The Applicant, as part of the maintenance and monitoring requirements, shall be required to monitor and maintain the mitigation area for five (5) years. The Applicant has provided general guidance about how this will be accomplished. The applicant shall submit annual monitoring reports that meet the standards in 14.49.180.F to the Planning Department for the next five years, and shall undertake remedial actions if the mitigation actions are unsuccessful during this time period. **The applicant can meet this standard through condition of approval 9.**

17.49.190 Alternative Mitigation Standards

Finding: Not applicable. The Applicant is proposing mitigation under the given Options. Therefore, this standard does not apply.

17.49.200 Adjustment from Standards

Finding: Not applicable. The Applicant does not require an adjustment.

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. The Applicant has submitted the required site plans.

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 with Condition. The memo *Natural Resource Assessment (SWCA 2014)* contains the majority of information required under this criterion. The memo states that Applicant will need to tend to plantings for them to survive, particularly watering, mulching and plant survival. The applicant shall provide a construction timetable for the project that identifies the key construction milestones, particularly when vegetation removal, regrading and replanting occurs. **The applicant can meet this standard through Condition of Approval 10.**

Conclusion and Decision

Based on the analysis and finding as described above, staff finds that Planning File, NR 14-03 Natural Resource Overlay Review can be approved with the attached Conditions of Approval for the property, identified as 19821 Leland Road, Oregon City, Oregon 97045, Clackamas County Map 3-2E-18, Tax Lot 1206.

EXHIBITS

1. Applicant's Submittal
2. Memorandum from David Evans and Associates dated May 21, 2014 (On File)
3. Public Comment (On File)
4. Engineering Policy 00-01 (On File)

CONDITIONS OF APPROVAL NR 14-03

1. All undisturbed areas, including remaining trees and their root systems, shall be identified and protected from grading and vehicle damage by flags, fencing, or a combination of both.
2. Identify on the grading plan the anticipated location of where excavated materials will be placed to make sure they do not impact the perennial stream and NROD.
3. Provide an erosion and water quality control plan at time of construction to include:
 - Silt fence, straw bale or similar erosion control along edge of disturbance area.
 - Seeding and mulching all bare services following initial excavations and construction.
4. The NROD boundary and OHW waterlines should be flagged prior to construction to ensure there are no unpermitted impacts. Impacts below OHW or additional impacts to the NROD will require additional regulatory review.
5. The disturbance area for utility connections cannot be greater than ten feet wide per 17.49.140(A). The applicant shall submit documentation showing compliance with this standard.

6. Prior to issuance of permits, the applicant shall provide a map measuring the location of the outfalls to the edge of the NROD corridor boundary that demonstrates compliance with 17.49.155(D), which requires that the storm water facility may encroach up to 1/2 the distance of the NROD corridor.
7. The NROD area shall be included within a conservation easement in the subdivision plat.
8. The applicant shall construct the outfalls within the NROD to ensure that the water flow does not scour the receiving area.
9. The applicant shall ensure that the plant diversity requirements are met, specifically that shrubs shall consist of at least two (2) different species and no more than one-half of the trees may be of the same genus. The applicant shall submit a final planting plan to the city once the planting is completed.
10. The applicant shall submit annual monitoring reports that meet the standards in 14.49.180.F to the Planning Department for the next five years, and shall undertake remedial actions if the mitigation actions are unsuccessful during this time period.
11. The applicant shall provide a construction timetable for the project that identifies the key construction milestones, particularly when vegetation removal, regrading and replanting occurs.
12. The applicant shall meet the Conditions of Approval for TP 13-04 as they apply to the work done in the NROD.

The following action is encouraged:

1. Personnel hired to remove invasive species must be licensed and trained to use herbicides in the vicinity of water bodies, if such chemicals are to be used.