



TYPE III – PLANNING COMMISSION REVIEW
Natural Resources Overlay District
STAFF REPORT AND RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL
May 2, 2016
Planning Commission Public Hearing: May 9, 2016

FILE NUMBER: NR 16-01: Natural Resource Overlay District

APPLICANT / OWNER: Mark Shaw, 16341 Hiram Avenue, Oregon City, OR 97045

PROPOSAL: The applicant proposes to construct a single-family residence on a highly constrained lot of record within the Natural Resources Overlay District. The total impervious surface and encroachment into the Vegetated Corridor created by the proposed development would be 1,500 sq. ft. with a setback of less than 25' from the delineated resource. The application requires a Type III review.

LOCATION: 16348 Frederick St, Oregon City, OR 97045
Clackamas County APN 2-2E-28BC-04001

WEBPAGE: <http://www.orcity.org/planning/landusecase/nr-16-01>

NEIGHBORHOOD: Park Place Neighborhood Association

SUBMITTED: 12/23/2015
COMPLETE: 03/04/2015
120-DAY DEADLINE: 07/02/2016

REVIEWER: Pete Walter, AICP, Planner
Matt Palmer, EIT, Development Services Project Engineer
David Evans and Associates (NROD)

RECOMMENDATION: Approval with Conditions.

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

addressed. The decision of the planning commission or historic review board is appealable to the city commission on the record pursuant to Section 17.50.190. The city commission decision on appeal is the city's final decision and is subject to review by LUBA within twenty-one days of when it becomes final, unless otherwise provided by state law. The application, decision (including specific conditions of approval), and supporting documents are available for inspection at the Oregon City Planning Division. Copies of these documents are available (for a fee) upon request. A city-recognized neighborhood association requesting an appeal fee waiver pursuant to 17.50.290(C) must officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal. IF YOU HAVE ANY QUESTIONS ABOUT THIS APPLICATION, PLEASE CONTACT THE PLANNING DIVISION OFFICE AT (503) 722-3789.

Recommended Conditions of Approval
NR 16-01: Natural Resources Overlay District

Planning Division

(Applicant shall confirm with the Planning Division that the following Conditions of Approval are met)

1. Prior to building permit issuance, the applicant shall replace the Pacific Willow with additional red-osier dogwood or approved similar shrub species for approval by the City's consultant at the time of the building permit application.
2. Prior to building occupancy, the 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 OCMC 17.49. 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.
3. Prior to building occupancy the applicant shall be responsible for providing the annual mitigation plan reports to the Planning Division pursuant to OCMC 17.49.180.F for the five year monitoring and maintenance period.

End of Conditions of Approval

I. BACKGROUND:

1. Existing Conditions

The subject property is a platted lot of record within the Clackamas Heights Subdivision (1889), in the Park Place neighborhood of Oregon City, north of Holcomb Boulevard and ½ a block west of Hiram Avenue. The lot measures approximately 50' by 100' and is zoned R-6 Single Family Residential.

According to the applicant, there was an existing shed on the western edge of the lot that has recently been demolished. The shed dimensions were approximately 15' x 25'. There was another small shed on the northwest corner of Lot 9 directly to the east that was also recently demolished. The dimensions were approximately 10' x 10'. There is an existing residence on the eastern portion of Lot 9, which abuts Hiram Ave. There is an existing residence to the south on tax lot 4100.

The city right-of-way for Frederick Street runs along the western boundary of Lot 4, an unimproved street. OCWebmaps illustrates utilities in the vicinity of Lot 4. Water utilities are shown running north up Frederick Street and stopping just shy of the subject property. Sewer utilities are depicted on the surrounding Hiram Avenue, Gain Street, Front Avenue, and Clear Street but not on Frederick Street. Stormwater utilities are depicted on Hiram Avenue and Front Avenue but not on Frederick Street.

Natural Features

The City's NROD map indicates that the entire property falls within the Natural Resources Overlay District. The stream is indicated on the City's adopted Local Wetland Inventory (LWI) (Shapiro, 1999). Street Reach PP-3 is a tributary to the Abernethy Creek Basin and is associated with a wetland that is shown on Map Section 28 of the LWI. The LWI indicates that *"This drainage ditch is a continuation of a drainage ditch located further upslope it is very channelized and even piped beneath several residential properties. The vegetation directly along the sides of the ditch varies from ornamental to native species It appears that many homeowners either mow the ditch or spray it with herbicide. Some portions are professionally landscaped. The majority of this ditch was viewed from roadways because access was denied by homeowners."* According to the LWI, the wetland does not meet the criteria for a Local Significant Wetland (See Exhibit 4).

The applicant included several photos of the ditch in the application, which indicates that the south side of the ditch is actually concreted in. It is unknown when the ditch was channelized or the concrete wall added.

According to the applicant, one freshwater perennial stream was identified within the project area. A wetland is present within the OHWL of the stream but the Interagency document Wetland Delineation Report Guidance (DSL/USACE/EPA, 2005) states that "In most instances, incidental amounts of wetland entirely within OHW do not need to be separately delineated." The creek flows from east to west along the northern property boundary. This reach of the creek is classified as Riverine Upper Perennial using Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al, 1979).

According to Oregon City Municipal Code ("OCMP") Table 17.49.110, a perennial stream has a 50-foot Vegetated Corridor.

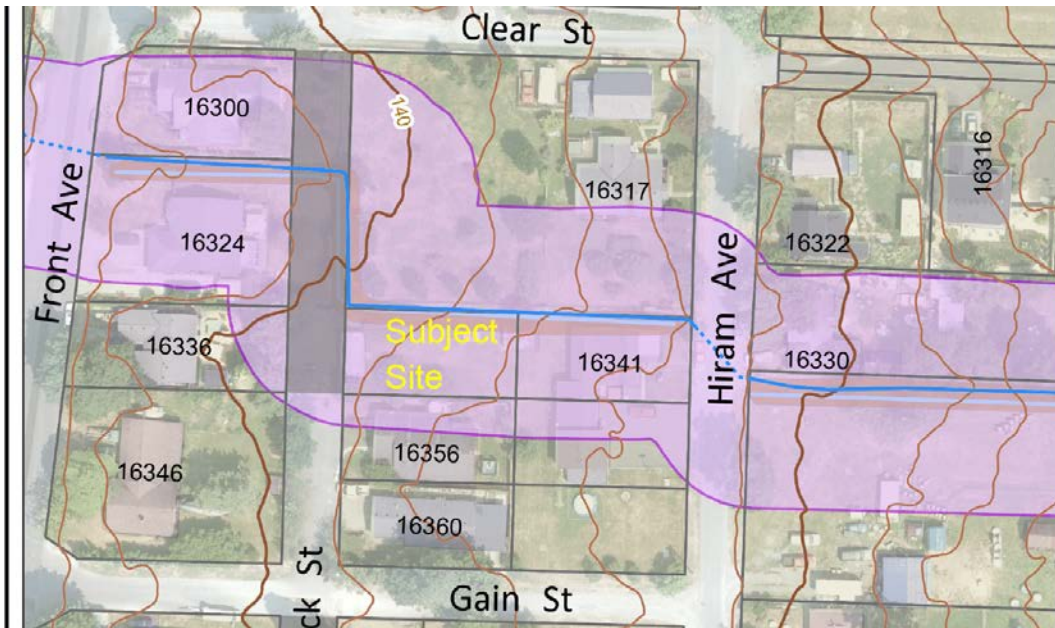


Figure 1. Vicinity Map

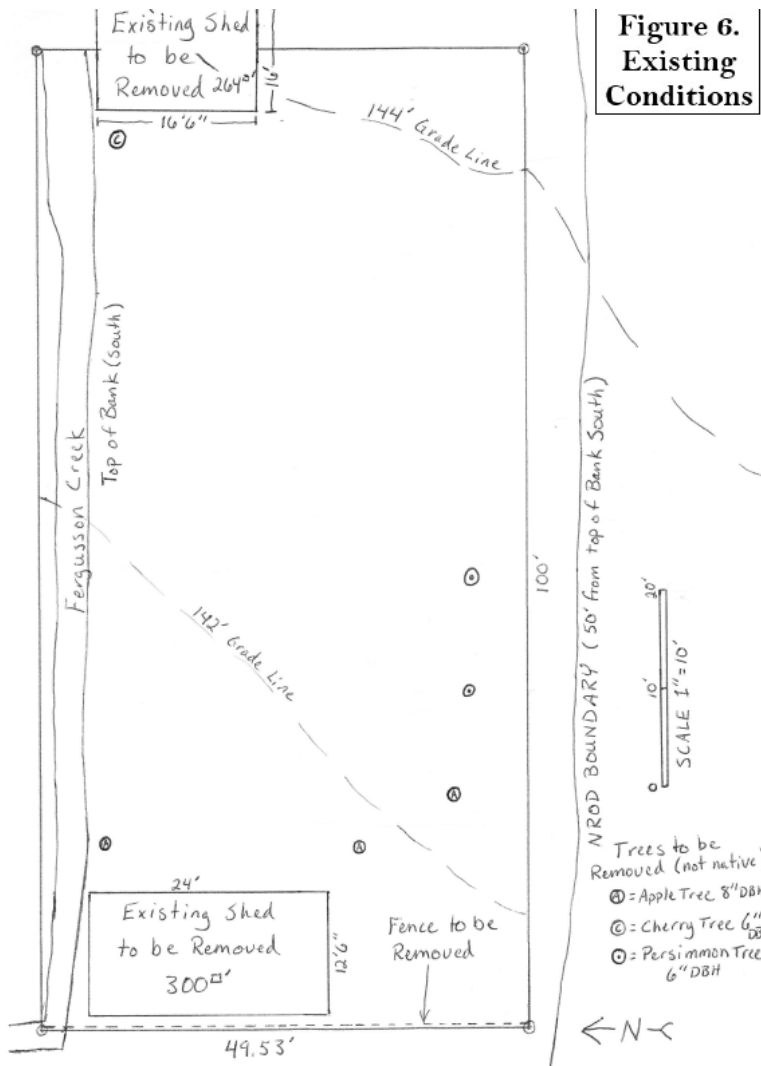


Figure 2: Existing Conditions – Not to Scale

2. Project Description

The applicant proposes to construct a single-family residence on an existing Lot of Record which is entirely within the adopted Natural Resources Overlay District. The house would occupy 1,032 sq ft and the driveway, sidewalk, and rear patio would occupy 468 sq ft. The total impervious surface and encroachment into the Vegetated Corridor created by the proposed development would be 1,500 sq ft.

Code permits a maximum disturbance area of 1500 sf for a pre-existing lot of record, and a minimum setback of 25' from the OHW or top-of-bank of less than 25' from the delineated resource. The application requires a Type III review.

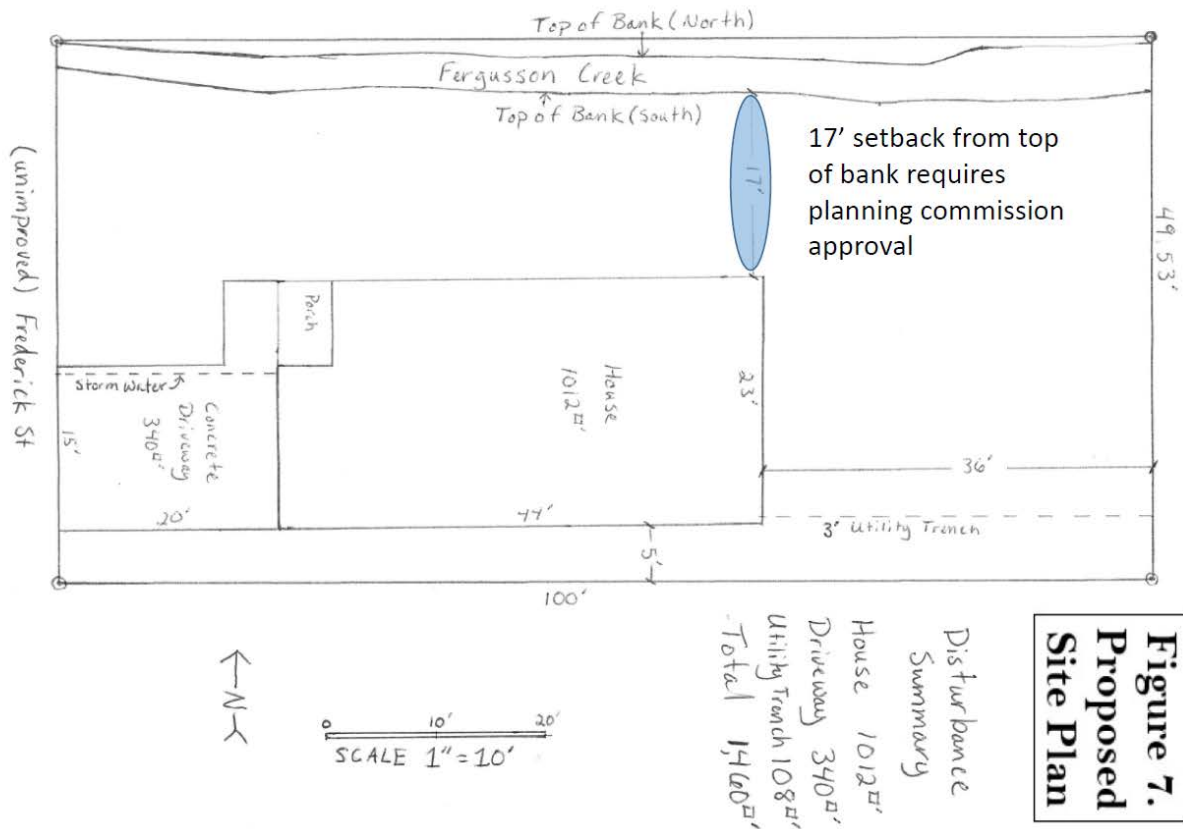


Figure 3: Proposed Site Plan – Not to Scale

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

[17.49 - Natural Resource Overlay District](#)

[17.50 - Administration and Procedures](#)

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

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

5. Notice and Public Comment

Public Notice of the public hearing for this application was provided pursuant OCMC 17.50.030(C) on April 18, 2016. Notice of the proposal was sent to various City departments, affected agencies, property owners within 300 feet, and the Neighborhood Association. Additionally, the subject property was posted with signs identifying that a land use action was occurring on the property. Notice was also provided in the April 13th, 2016 edition of the Clackamas Review / Oregon City News.

Public Comments

No public comments were submitted.

Staff gave a presentation (Exhibit 3) about the application to the Oregon City Natural Resources Committee (NRC), on April 13, 2016. The NRC unanimously approved the proposal.

6. Agency Comments

The application was transmitted for agency comments on April 18, 2016. No comments were received regarding the application.

The applicant will be seeking approval of public right-of-way improvements through a separate permit issued by the Public Works Department.

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

II. ANALYSIS AND FINDINGS:

17.49.[0]35 – 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.

Finding: Complies as proposed. The wetlands identified by Turnstone Environmental Consultants in the NROD Report (March 2016; Wetland Delineation Report completed December 4, 2015) are within the OHWL of the creek referred to as "Fergusson" (Unnamed per Oregon City, and USGS mapping). Therefore, the NROD boundary does not need to be expanded. Wetlands are shown on Figure 3, Wetland Delineation Map, in Appendix A of the applicant's NROD Report. Wetland delineation forms are in Appendix B. The applicant does not propose any fill or other activity in wetlands.

17.49.[0]40 - 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.

Finding: Complies as Proposed. The applicant submitted an NROD application to meet the requirements of this chapter. The application is being processed as a Type III. The applicant submitted an NROD Report by Turnstone Environmental Consultants, dated March 2016 (revised date).

17.49.050 Emergencies

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

Finding: Not applicable. This is not an emergency.

17.49.060 Consistency and Relationship to Other Regulations

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

Finding: Not applicable. No conflicts within the Natural Resource Overlay District have arisen.

17.49.060.B. Compliance with Federal and State Requirements.

a. If the proposed development requires the approval of any other governmental agency, such as the Division of State Lands or the U.S. Army Corps of Engineers, the applicant shall make application for such approval prior to or simultaneously with the submittal of its development application to the City. The planning division shall coordinate City approvals with those of other agencies to the extent necessary and feasible. Any permit issued by the City pursuant to this chapter shall not become valid until other agency approvals have been obtained or those agencies indicate that such approvals are not required.

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

Finding: Complies as proposed. The wetlands identified by Turnstone Environmental Consultants in the NROD Report (March 2016; Wetland Delineation Report completed December 4, 2015) are within the OHWL of the creek referred to as "Fergusson." Wetlands are shown on Figure 3, Wetland Delineation Map, in Appendix A of the applicant's NROD Report. Wetland delineation forms are in Appendix B. No additional wetlands outside of those associated with the stream occur on the lot or adjoining lots. The applicant does not propose any fill or other activity in wetlands, therefore, the proposal does not require approval from a state or federal agency.

17.49.[0]70 - Prohibited uses.

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

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

Finding: Not applicable. The applicant is only proposing development that is allowed outright or is part of a regulated use.

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

Finding: Not applicable. The applicant is not proposing the creation of any new lots.

- 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.*

Finding: Not applicable. The applicant is not proposing to dump any materials.

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

Finding: Complies as proposed. The applicant does not propose any fill or activities that are not part of approved development activity.

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

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

- A. Stream, wetland, riparian, and upland restoration or enhancement projects as authorized by the City.*
- B. Farming practices as defined in ORS 215.203 and farm uses, excluding buildings and structures, as defined in ORS 215.203.*
- C. Utility service using a single utility pole or where no more than 100 square feet of ground surface is disturbed outside of the top-of-bank of water bodies and where the disturbed area is restored to the pre-construction conditions.*
- D. Boundary and topographic surveys leaving no cut scars greater than three inches in diameter on live parts of native plants listed in the Oregon City Native Plant List.*
- E. Soil tests, borings, test pits, monitor well installations, and other minor excavations necessary for geotechnical, geological or environmental investigation, provided that disturbed areas are restored to pre-existing conditions as approved by the Community Development Director.*
- F. Trails meeting all of the following:*

1. Construction shall take place between May 1 and October 30 with hand held equipment;
 2. Widths shall not exceed 48 inches and trail grade shall not exceed 20 percent;
 3. Construction shall leave no scars greater than three inches in diameter on live parts of native plants;
 4. Located no closer than 25 feet to a wetland or the top of banks of a perennial stream or 10 feet of an intermittent stream;
 5. No impervious surfaces; and
 6. No native trees greater than one (1) inch in diameter may be removed or cut, unless replaced with an equal number of native trees of at least 2-inch diameter and planted within 10 feet of the trail.
- G. Land divisions provided they meet the following standards, and indicate the following on the final plat:
1. Lots shall have their building sites (or buildable areas) entirely located at least 5 feet from the NROD boundary shown on the City's adopted NROD map. For the purpose of this subparagraph, "building site" means an area of at least 3,500 square feet with minimum dimensions of 40 feet wide by 40 feet deep;
 2. All public and private utilities (including water lines, sewer lines or drain fields, and stormwater disposal facilities) are located outside the NROD;
 3. Streets, driveways and parking areas where all pavement shall be located at least 10 feet from the NROD; and
 4. The NROD portions of all lots are protected by:
 - a. A conservation easement; or
 - b A lot or tract created and dedicated solely for unimproved open space or conservation purposes.
- H. Site Plan and Design Review applications where all new construction is located outside of the NROD boundary shown on the City's adopted NROD map, and the NROD area is protected by a conservation easement approved in form by the City.
- I. Routine repair and maintenance of existing structures, roadways, driveways and utilities.
- J. Replacement, additions, alterations and rehabilitation of existing structures, roadways, utilities, etc., where the ground level impervious surface area is not increased.
- K. Measures mandated by the City of Oregon City to remove or abate nuisances or hazardous conditions.
- L. Planting of native vegetation and the removal of non-native, invasive vegetation (as identified on the Oregon City Native Plant List), and removal of refuse and fill, provided that:
1. All work is done using hand-held equipment;
 2. No existing native vegetation is disturbed or removed; and
 3. All work occurs outside of wetlands and the top-of-bank of streams.

Finding: Not applicable. The proposed development is a single-family house and does not include enhancement; farming; surveys; testing; trails; land divisions; construction outside the NROD boundary; repair, maintenance, alterations to existing development; or abatement. It does include L., planting native vegetation and removal of non-native vegetation. However, the application requires issuance of an NROD permit.

17.49.090 Uses Allowed Under Prescribed Conditions

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

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

I. Stormwater detention or pre-treatment facilities subject to Section 17.49.155 (I).

J. Institutional, Industrial or Commercial development on a vacant lot of record situated in an area designated for such use that has more than 75% of its area covered by the NROD, subject to subsection 17.49.120(B).

K City, county and state capital improvement projects, including sanitary sewer, water and storm water facilities, water stations, and parks and recreation projects.

Finding: Applicable. The proposed development does not include alteration of an existing structure; a land division; a trail; roadway; creek crossing; stormwater facility; institutional, industrial, or commercial development; or a capital improvement project. The proposal is for a residence on a highly constrained lot of record within the NROD (B.).

17.49.100 General Development Standards

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

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

Finding: Not applicable. There are no native trees on the property.

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

Finding: Not applicable. The base zone does not have any landscaping requirements other than the residential landscape requirements of OCMC 17.20. The applicant has proposed landscaping requirements in accordance with the NROD.

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

Finding: Complies with condition. The Mitigation Plan (Figure 4) and NROD Report clearly define the nature of the development, the existing conditions, and the mitigation measures. The proposed plants are native. However, there is one concern. Pacific Willow is listed as a tree in Table 3, Plant Specifications, in Section 5.4 of the NROD Report (p. 25). However, it is categorized as a shrub on the mitigation plan (Figure 4) to be planted in the tight constraints of Planting Area A. As Planting Area A already has many shrub willows proposed, the Pacific Willow shall be eliminated from the applicant's plant list and the quantity be made up in additional red-osier dogwood. The applicant shall review this recommendation and propose an alternative for approval by the City's consultant at the time of the building permit application. **Staff has determined that it is reasonable and likely that the applicant can meet this standard through compliance with the Conditions of Approval.**

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

Finding: Compliance with grading standards and erosion control measures will be determined at the time a building permit application is submitted.

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

Finding: Not applicable. A reduction in the minimum setback has not been proposed.

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

Finding: Not applicable. An increase in the maximum setback has not been proposed.

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

Finding: Not applicable. The applicant has not proposed a fence within the vegetated corridor. An existing fence would be removed.

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

Finding: Complies as proposed. The applicant states in the NROD Report that any lights exceeding 200 watts will be placed or shielded so as to not shine into the resource area. The proposed use is a single-family residence, which does not utilize extensive outdoor lighting.

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

Finding: Not applicable. The proposed development occurs outside of the FEMA floodplain.

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

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

17.49.110 *Width of Vegetated Corridor.*

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

Table 17.49.110

<i>Protected Water Feature Type (see definitions)</i>	<i>Slope Adjacent to Protected Water Feature</i>	<i>Starting Point for Measurements from Water Feature</i>	<i>Width of Vegetated Corridor (see Note 1)</i>
<i>Anadromous fish-bearing streams</i>	<i>Any slope</i>	<ul style="list-style-type: none"> • <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>	<ul style="list-style-type: none"> • <i>Edge of bankfull flow</i> 	<i>15 feet</i>
<i>All other protected water features</i>	<i>< 25 percent</i>	<ul style="list-style-type: none"> • <i>Edge of bankfull flow</i> • <i>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>

	<p>≥ 25 percent for less than 150 feet (see Note 2)</p>	<p>Distance from starting point of measurement to top of ravine (break in ≥25 percent slope) (See Note 3) plus 50 feet.</p>
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Notes:

1. Required width (measured horizontally) of vegetated corridor unless reduced pursuant to the provisions of Section 17.49.050(I).
2. Vegetated corridors in excess of fifty feet apply on steep slopes only in the uphill direction from the protected water feature.
3. Where the protected water feature is confined by a ravine or gully, the top of the ravine is the break in the ≥ 25 percent slope.

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

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

Finding: Complies as proposed. The creek that the applicant refers to as "Fergusson" is perennial and not anadromous fish-bearing and slopes on the subject site are less than 25 percent. Therefore, according to Table 17.49.110, the vegetated corridor is 50 feet.

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.

Finding: Complies as proposed. The site is in R-6 and is a highly constrained lot of record. The disturbance area, as shown on Figure 7, is 1,460 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.

Finding: Not applicable. The site is in R-6 Single-Family Dwelling District.

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.

Finding: Complies as proposed. The site is a highly constrained lot of record and the disturbance area is entirely within 25 feet of the top of bank of the stream that the applicant refers to as Fergusson Creek. Therefore, D., below, is applicable. The applicant's proposed disturbance area (house) is 17 feet from the top of bank, which is less than the 25-foot minimum. Therefore, the applicant is requesting an adjustment from standards. See findings for 17.49.200, below.

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: Complies as proposed. The site is a highly constrained lot of record and does not comply with 17.49.120 C. The maximum area of disturbance, per Figure 7, is 1,460 square feet, less than the 1,500 maximum. Therefore the proposal complies with this standard.

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. The only existing development on the site are a 265.6-square-foot shed and a 302.4-square-foot shed, both of which would be removed. The applicant does not propose any alterations or additions to existing development.

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;*

Finding: Complies as proposed. The proposal includes a three-foot-wide utility trench, which meets this maximum standard of ten feet. The water, sanitary sewer, and gas lines would be in the trench. Electric line would be overhead.

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

Finding: Not applicable. The proposal does not include an upgrade of an existing utility line.

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

Finding: Complies as proposed. The proposed utility trench is not within the right-of-way; see finding for D., below.

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.*

Finding: Complies as proposed. The proposed new utility lines to not cross above or below any drainage way, wetland, stream, or ravine. The trench and overhead electric line would be on the far side of the property from the creek referred to as "Fergusson" and its associated wetlands.

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;

Finding: Not applicable. The proposal does not include any fill or excavation in the OHW of the stream.

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

Finding: Not applicable. The proposal does not include any fill or excavation 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

Finding: Not applicable. The applicant does not propose to remove trees for utilities installation.

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.

Finding: Not applicable. The applicant does not propose to remove trees for utilities installation.

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

Finding: Not applicable. Mitigation is not required for installation of utilities, but the applicant is proposing mitigation for the overall development proposal.

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:

17.49.150 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.*

Finding: Not applicable. The proposal does not include any stream crossings.

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

Finding: Complies as proposed. The proposal does not include a private road. The proposed driveway accessed from Frederick Street does not cross the stream referred to as "Fergusson"—it is on the other side of the lot from the stream.

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

Finding: Not applicable. The proposal does not include any fill or excavation in the OHW of the stream.

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

Finding: Not applicable. The proposal does not include any fill or excavation in a wetland.

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

Finding: Not applicable. The proposal does not include any work within the stream.

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

Finding: Complies as proposed. A mitigation plan has been provided for impacts. Please refer to the findings in Section 17.49.180.

17.49.155 Standards for Stormwater Facilities

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

- A. The forest canopy within the driplines of existing trees shall not be disturbed.*
- B. Only vegetation from the Oregon City Native Plant List shall be planted within these facilities.*
- C. Mitigation is required, subject to Section 17.49.180 or 17.49.190.*
- D. The storm water facility may encroach up to 1/2 the distance of the NROD corridor.*
- E. The stormwater facility shall not impact more than 1,000 square feet of the NROD. Impacts greater than 1,000 square feet shall be process as a Type III application.*
- F. The Community Development Director may allow landscaping requirements of the base zone, other than landscaping required for parking lots, to be met by preserving, restoring and permanently protecting habitat on development sites within the Natural Resource Overlay District.*

Finding: Not applicable. The proposal does not include stormwater facilities. The applicant proposes stormwater drainage along the driveway to Frederick Street.

17.49.160 Standards for Land Divisions

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

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

- 1. There is an existing house on the site that is entirely within the NROD area; and*
- 2. The existing house will remain; and*
- 3. The new lot is no larger than required to contain the house, minimum required side setbacks, garage, driveway and a 20-foot deep rear yard, with the remaining NROD area beyond that point protected by a conservation easement, or by dedicating a conservation tract or public open space.*

B. Subdivisions.

- 1. Prior to preliminary plat approval, the NROD area shall be shown either as a separate tract or part of a larger tract that meets the requirements of subsection (3) of this section, which shall not be a part of any parcel used for construction of a dwelling unit.*
- 2. Prior to final plat approval, ownership of the NROD tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:*
 - a. Private open space held by the owner or a homeowners association; or*
 - b. For residential land divisions, private open space subject to an easement conveying stormwater and surface water management rights to the city and preventing the owner of the tract from activities and uses inconsistent with the purpose of this document; or*
 - c. At the owners option, public open space where the tract has been dedicated to the city or other governmental unit; or*
 - d. Any other ownership proposed by the owner and approved by the city.*
 - e. Tracts shall be exempt from minimum frontage requirements.*

C. Partitions

- 1. New partitions shall delineate the NROD area either as a separate tract or conservation easement that meets the requirements of subsection (2) of this section.*
- 2. Prior to final plat approval, ownership and maintenance of the NROD area shall be identified to distinguish it from the buildable areas of the development site. The NROD area may be identified as any one of the following:*
 - a. A tract of private open space held by the owner or homeowners association; or*
 - b. For residential land divisions, a tract of private open space subject to an easement conveying stormwater and surface water management rights to the city and preventing the owner of the tract from activities and uses inconsistent with the purpose of this document; or*
 - c. At the owners option, public open space where the tract has been dedicated to the city or other*

- governmental unit;
- d. Conservation easement area pursuant to subsection 17.49.180(G) and approved in form by the Community Development Director
- e. Any other ownership proposed by the owner and approved by the Community Development Director.
- f. Tracts shall be exempt from minimum frontage requirements.

Finding: Not Applicable. The applicant has not proposed a land division.

17.49.170 Standards for Trails

The following standards apply to trails within the NROD:

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

Finding: Not Applicable. The applicant has not proposed a trail.

17.49.180. Mitigation Standards

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

17.49.180.A. Mitigation shall occur at a 2:1 ratio of mitigation area to proposed NROD disturbance area.

Mitigation of the removal or encroachment of a wetland or stream shall not be part of this chapter and will be reviewed by the Division of State Lands or the Army Corp of Engineers during a separate review process;

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

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

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

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

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

Mitigation Planting Option 1.

17.49.180.E.2. Mitigation Planting Option 2.

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

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

Finding: Complies as proposed. All woody plant material, trees and shrubs will be 12" or taller at installation. The requirement cannot apply to wetland plants, emergent plants or groundcover plants, many of which will not be 12" in height at maturity.

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

17.49.180.E.2.d Option 2 – Mulching and Irrigation shall be applied in the amounts necessary to ensure 80%

survival at the end of the required 5-year monitoring period.

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

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

Finding: Not Applicable. The applicant proposes to meet the alternative mitigation standards of 17.49.190.

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

Finding: Complies with conditions. The mitigation plan section of the NROD Report (Section 5) states that, "Maintenance would be conducted once per month between April and October throughout the five-year monitoring period.... Monitoring will be conducted once per year throughout the five-year monitoring period. Monitoring will occur late in the growing season before deciduous leaves begin to fall. Monitoring reports will be submitted prior to December 31 of each monitoring year." The applicant shall be responsible for providing the mitigation plan reports pursuant to OCMC 17.49.180.F for the five year period as provided in this section. **Staff has determined that it is reasonable and likely that the applicant can meet this standard through compliance with the Conditions of Approval.**

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

Finding: Complies with condition. The applicant includes this language in the Mitigation Plan section of the NROD Report. The applicant 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. **Staff has determined that it is reasonable and likely that the applicant can meet this standard through compliance with the Conditions of Approval.**

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

Finding: Complies as proposed. The applicant includes this language in the Mitigation Plan section of the NROD Report.

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.

Finding: Complies as proposed. The applicant proposes alternative mitigation in lieu of the standards in 17.49.180. The NROD Report was prepared by Turnstone Environmental Consultants.

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

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

Finding: Complies as proposed. The NROD Report, in Tables 1 and 2, assesses the existing condition of the creek function and the vegetated corridor function as low.

B. The proposed mitigation shall occur at a minimum 2:1 ratio of mitigation area to proposed disturbance area;

Finding: Complies as proposed. The applicant proposed 650 square feet of enhancement of the stream and 2,350 square feet of enhancement of the vegetated corridor, for a total of 3,000 square feet, which is more than double the 1,460 square feet of proposed disturbance.

C. The proposed mitigation shall result in a significant improvement to Good Existing Condition as determined by a qualified environmental professional;

Finding: Complies as proposed. The NROD Report, in Tables 1 and 2, assesses the proposed condition of the creek function and the vegetated corridor function as mostly moderate, with some high conditions and low channel sinuosity. The NROD Report was prepared by Turnstone Environmental Consultants.

D. There shall be no detrimental impact on resources and functional values in the area designated to be left undisturbed;

Finding: Complies as proposed. The proposed removal of non-natives and plantings of natives would improve the creek function and the vegetated corridor function.

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;

Finding: Not applicable. No alteration or development is proposed in the stream or wetlands except plantings, which would enhance habitat.

F. Mitigation shall occur on the site of the disturbance to the extent practicable. If the proposed mitigation cannot practically occur on the site of the disturbance, then the applicant shall possess a legal instrument, such as an easement, sufficient to carryout and ensure the success of the mitigation.

Finding: Complies as proposed. Mitigation planting would occur mostly on the subject lot, but some within the Frederick Street right-of-way and some on the adjacent Lot 9 to the east, as approved by the City.

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:

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

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

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

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

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

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

Finding: Complies as proposed. As shown on Figure 7 (Proposed Site Plan), the applicant's proposed disturbance area (house) is 17 feet from the top of bank of the stream that the applicant refers to as Fergusson Creek, which is less than the 25-foot minimum for a vacant, highly constrained lot of record per 17.49.120 C. Therefore, the applicant is requesting an adjustment from standards and the application is being reviewed with a Type III process. The applicant submitted an NROD Report by Turnstone Environmental Consultants, a professional environmental consulting firm (March 2016, revised).

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

Finding: Complies as proposed. The entire lot is mapped in the NROD, therefore there are no alternatives that would have the residence located at least 25 feet from the top of bank. The lot is 49.53 feet wide. With the top of bank approximately 4.5 feet from the north lot line and a 5-foot setback from the south lot line, the remaining 40 feet allows for a 23-foot house (a standard width) and a 17-foot disturbance area setback.

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

Finding: Complies as proposed. The applicant proposes to remove non-native vegetation and plant native vegetation along the stream. The stream and wetlands functions would be improved and enhanced in comparison with existing conditions. The applicant states that "runoff would be dispersed in the Vegetated Corridor to offset peak flows during precipitation events." There is no action that would allow the lot to be developed with an approved use (single-family residence) that would have fewer adverse impacts.

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

Finding: Complies as proposed. The entire 49.53-foot-wide lot is mapped in the NROD. With the top of bank approximately 4.5 feet from the north lot line and a 5-foot setback from the south lot line, the remaining 40 feet allows for a 23-foot house (a standard width) and a 17-foot disturbance area setback. The position of the house is designed to minimize the intrusion into the 25-foot-wide vegetated corridor standard.

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

Finding: Complies as proposed. The applicant does not propose any impediment to fish or wildlife passage. The proposal includes non-native removal and native plantings to enhance stream habitat.

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

Finding: Complies as proposed. The applicant meets other standards, as described in the findings for other sections.

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

Finding: Complies as proposed. As described in the findings for 17.49.190, the applicant proposes adequate mitigation—650 square feet of enhancement of the stream and 2,350 square feet of enhancement of the vegetated corridor, for a total of 3,000 square feet, which is more than double the 1,460 square feet of proposed disturbance.

17.49.210 Type II Development Permit Application

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

17.49.220 Required Site Plans

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

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

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

B. Within the NROD area of the subject property:

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

C. A construction management plan including:

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

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

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

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

17.49.230 Mitigation Plan Report

A mitigation plan report that accompanies the above mitigation site plan is also required. The report shall be

prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry. The mitigation plan report shall, at a minimum, discuss:

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

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

17.49.240 Density Transfer

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

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

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

- A. 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.
- B. 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 minimize disturbance to the NROD. The permissible reductions are specified in Tables 17.49.240(C-D).
- C. 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.
- D. 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*

- E. 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;
- F. 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.
- G. 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
- H. All other applicable development standards, including setbacks, building heights, and maximum lot coverage shall continue to apply when a density transfer occurs.

Finding: Not applicable. The proposal does not include a density transfer.

17.49.250 Verification of NROD Boundary

The NROD boundary may have to be verified occasionally to determine the true location of a resource and its functional values on a site. This may through a site specific environmental survey or, in those cases where existing information demonstrates that the NROD significance rating does not apply to a site-specific area. Applications for development on a site located in the NROD area may request a determination that the subject site is not in an NROD area and therefore is not subject to the standards of Section 17.49.100. Verifications shall be processed as either a Type I or Type II process.

Finding: Not applicable. The development proposal does not include a Verification of the NROD boundary.

17.49.260. Type II Verification

Finding: Not applicable. The development proposal does not include a Type II Verification request.

CHAPTER 17.12 - "R-6" SINGLE-FAMILY DWELLING DISTRICT

17.12.020 - Permitted uses.

Permitted uses in the R-6 district are:

- A. Single-family detached residential units;
- B. Parks, playgrounds, playfields and community or neighborhood centers;
- C. Home occupations;
- D. Farms, commercial or truck gardening and horticultural nurseries on a lot not less than twenty thousand square feet in area (retail sales of materials grown on-site is permitted);
- E. Temporary real estate offices in model homes located on and limited to sales of real estate on a single piece of platted property upon which new residential buildings are being constructed;
- F. Accessory uses, buildings and dwellings;
- G. Family day care provider, subject to the provisions of Section 17.54.050;
- H. Residential home per ORS 443.400;
- I. Cottage housing;
- J. Transportation facilities.

Finding: Complies as proposed. The applicant has proposed a single family detached home.

17.12.040.A. Minimum lot area, six thousand square feet;

17.58.020 - Lawful nonconforming lots of record. Lots or parcels lawfully created but which do not now conform to the legal lot standards in this land use code may be occupied by uses otherwise permitted if those uses comply with all other provisions of this land use code.

Finding: Complies as proposed. The applicant has proposed a single family home on a lot of record which is 5000 square feet. The lot of record was lawfully created as part of the Clackamas Heights Subdivision and is zoned R-6. Compliance with other applicable code sections has been determined through the findings in this staff report.

17.12.040.B. Minimum lot width, fifty feet;

Finding: Complies as proposed. The lot width is 50 feet.

17.12.040.C. Minimum lot depth, seventy feet;

Finding: Complies as proposed. The lot depth is 100 feet.

17.12.040.D. Maximum building height: two and one-half stories, not to exceed thirty-five feet.

Finding: This will be determined at the time of building permit application.

17.12.040.E

1. Front yard: ten feet minimum depth.

Finding: Complies as proposed. The applicant has proposed a 20' front yard setback.

2. Front porch, five feet minimum setback,

Finding: Complies as proposed. The applicant has proposed a 20' front porch setback.

3. Attached and detached garage, twenty feet minimum setback from the public right-of-way where access is taken, except for alleys. Detached garages on an alley shall be setback a minimum of five feet in residential areas.

Finding: Complies as proposed. The applicant has proposed a 20' garage setback.

4. Interior side yard, nine feet minimum setback for at least one side yard; five feet minimum setback for the other side yard,

Finding: Complies as proposed. The applicant has proposed a 5' side setback on the south lot line and approximately 24' setback on the north side.

5. Corner side yard, fifteen feet minimum setback,

Finding: Not applicable. This is not a corner lot.

6. Rear yard, twenty-foot minimum setback

Finding: Complies as proposed. The applicant has proposed a 36-foot rear setback.

7. Rear porch, fifteen-foot minimum setback.

Finding: Not applicable. The applicant has not proposed a separate rear porch setback.

17.12.040.F. Garage standards: See Chapter 17.21—Residential Design Standards.

Finding: This will be determined at the time of building permit application.

17.12.040.G. Maximum lot coverage: The footprint of all structures two hundred square feet or greater shall cover a maximum of forty percent of the lot area.

Finding: Complies as proposed. The applicant has proposed lot coverage in accordance with the NROD requirements, and complies with the standard at approximately 30% of the lot.

CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES

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

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

17.50.050 Preapplication Conference

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

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

Finding: Complies as Proposed. The applicant held a pre-application conference (file PA 15-36) on November 18, 2015. The land use application was submitted within 6 months of the pre-application conference on February 2, 2016. The application was deemed incomplete on February 26, 2016 and after the submittal of additional information the application was deemed complete on March 31st, 2016.

17.50.055 Neighborhood Association Meeting

Finding: Not applicable. The application is not listed as one of the applications requiring a Neighborhood Association Meeting and the applicant did not attend one.

17.50.060 Application Requirements.

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

17.50.070 Completeness Review and 120-day Rule.

Finding: Complies as Proposed. The land use application was submitted within 6 months of the pre-application conference on February 2, 2016. The application was deemed incomplete on February 26, 2016 and after the submittal of additional information the application was deemed complete on March 31st, 2016. The 120-day Decision Deadline is July 29, 2016.

17.50.080 Complete Application--Required Information.

Finding: Complies as Proposed. See above.

17.50.090 Public Notices.

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

17.50.100 Notice Posting Requirements.

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

III. CONCLUSION AND RECOMMENDATION

Based on the analysis and findings as described above, staff recommends that the proposed Natural Resource Overlay District application for construct of a single-family residence on a highly constrained lot of record within the Natural Resources Overlay District, located at 16348 Frederick St, Oregon City, OR 97045, and identified as Clackamas County APN 2-2E-28BC-04001, can meet the requirements as described in the Oregon City Municipal Code by complying with the Condition of Approval provided in this report.

Therefore, the Community Development Director recommends that files NR 16-01 be approved as submitted with conditions, based upon the findings and exhibits contained in this staff report.

EXHIBITS

1. Application
2. Public Notices
3. Natural Resources Committee Presentation of April 13, 2016
4. 1999 Local Wetland Inventory Excerpts