

LAND USE APPLICATION
Berryhill Apartments Retaining Wall - 13945 and 14155 Beaver Creek Road (SP 16-08)
June 9, 2016

APPLICANT: George Glass
Berryhill Equity, LLC
4004 Kruse Way Place, Suite 160
Lake Oswego, Oregon 97035

OWNER: George Glass
Berryhill Equity, LLC
4004 Kruse Way Place, Suite 160
Lake Oswego, Oregon 97035

Representative: David Higgins
Shannon & Wilson, Inc.
3990 Collins Way, Suite 100
Lake Oswego, Oregon 97035

REQUEST: Construction of a retaining wall

LOCATION: 13945 and 14155 Beaver Creek Road
Oregon City, Oregon 97045
(Map and Tax Lot Numbers: 3-2E-04C-00803 and -00807)
Note: Retaining wall entirely within property boundary of 13945 Beaver Creek Road, 14155 Beaver Creek Road property used for construction access.

I. BACKGROUND:

The duplex and eightplex of the Berryhill Apartments, and the entirety of the neighboring Forest Edge Apartments, were built on an ancient landslide complex. A portion of the ancient landslide head scarp, the uppermost boundary of the complex, is located along the short slope between the Berryhill duplex/eightplex structures and the parking lot to the west. The toe, or bottom, of the landslide is located below the Forest Edge Apartments, along Newell Creek.

On January 13, 2006, after a period of heavy precipitation, landslide movements occurred within the Forest Edge Apartments property, down-slope and northeast of the Berryhill Apartments. On January 26, 2006, several ground cracks were observed near the top of the hillside within approximately 10 feet of the Berryhill Apartments duplex and eightplex. Between 2006 and 2011, the vertical offset of the Berryhill Apartments ground cracks increased in size, and several small landslides occurred on the hillside below the cracks. By 2011, a major scarp had formed at the location where the Berryhill cracks were first observed in 2006, and several smaller ground cracks were apparent between the new scarp and the duplex/eightplex. Foundation cracks appeared in both the duplex and eightplex in January 2011.

Shannon & Wilson, Inc., first visited the site in February 2013, and performed initial geotechnical borings, inclinometer and groundwater instrumentation monitoring, and slope stability analysis between October 2014 and July 2015. Based upon our field explorations, our review of local geologic mapping, and our observations since 2013, we concluded that the landslide movements on the hillside below the Berryhill duplex/eightplex occurred due to movement of the larger, down-slope Forest Edge Apartments landslide blocks. Our slope stability analysis indicated that the landslide block immediately beneath the Berryhill duplex/eightplex is supported by the down-slope landslide blocks underlying the Forest Edge Apartments. As the Forest Edge Apartments landslide blocks continue to move, the upper slope will become increasingly unstable. We recommended a soldier pile wall with tiebacks be installed at the top of the upper slope, to stabilize the ground beneath the duplex and eightplex and to avoid possible future damage to these structures. The wall would also serve to mitigate expansion of the landslide further upslope behind the wall. If a retaining wall is not constructed, the landslide could expand further into the Berryhill Apartments complex and damage additional apartment buildings, as well as adjacent properties which are upslope of the proposed location of the retaining wall.

From March 2011 to December 2015, there was minor movement of the Forest Edge Apartments landslide and landslides on the upper slope below the Berryhill duplex/eightplex. The minor movement resulted in increased size of existing ground cracks and additional offset at the scarp immediately below the duplex/eightplex. Existing ground cracks and scarp offsets increased by several inches, and some by a few feet, but new ground cracks or head scarps were not observed. Around December 18, 2015, during the wettest December ever recorded, and after a period of particularly heavy precipitation, the Forest Edge Apartments landslide accelerated and new offsets occurred at the active scarp adjacent to the duplex/eightplex. On December 21, 2015, the Forest Edge Apartment units within the active portion of the landslide, as well as the Berryhill Apartments duplex/eightplex, were evacuated. We observed a slight increase in some of the existing foundation cracks. Based on observations made during our site visit on January 25, 2016, the ground cracks above the active Berryhill scarp and foundation cracking of the duplex/eightplex have not significantly changed since December 21, 2015. However, the slope below the active scarp has continued to move. There are new ground cracks with offsets several feet wide, a large slump has formed in the center of the hillside approximately 80 feet down-slope of the eightplex, and offsets at the scarp have increased by a few feet. In an inclinometer casing installed a few feet upslope of the scarp, in the area between the eightplex and duplex, we have recorded approximately 0.4 inches of movement from December 10, 2015 to January 25, 2016.

1. Existing Conditions

In summary, the proposed retaining wall location currently consists of a steep, unstable soil slope that has been temporarily covered with plastic sheeting to prevent erosion, water infiltration, and further deterioration. The adjacent Berryhill duplex and eightplex have been evacuated and cannot be reoccupied until the proposed wall is constructed to stabilize the landslide block on which they are founded. In our opinion, the acceleration of the landslide this winter, the increase of landslide movement causing loss of support to upslope structures, evacuation of two Berryhill Apartment buildings, and risk of the landslide expanding further upslope beyond its current limits constitute an emergency. Construction of the proposed soldier pile and tieback retaining wall would stabilize the ground upslope of the scarp, preventing the landslide from increasing in size upslope of the wall and allowing the Berryhill Apartment buildings to be reoccupied. If the wall is not constructed prior to next winter, there is a significant risk that the landslide will permanently damage the duplex and eightplex and that it could increase in size, causing damage to upslope structures and properties.

2. Project Description

The soldier pile and tieback retaining wall will be constructed on the downslope side of the duplex and eightplex, approximately 10 feet from the rear of the building. The wall will be approximately 250 feet long and extend a minimum distance of 15 feet beyond the ends of the duplex and eightplex, as shown on the retaining wall construction plans attached to this application. The soldier piles will consist of 50-foot long steel piles set into 30-inch diameter drilled boreholes. The soldier piles will be installed on approximately 6-foot centers and will be backfilled with concrete. Only the upper 12 feet of the wall will be exposed (12-foot apparent wall height, not including the cedar fence at the top). The remainder of the soldier piles will be embedded below ground. The exposed 12-foot high face of the wall will have wood lagging between the piles. Tiebacks, approximately 60 to 80 feet long, will be installed on a downward angle through the face of the wall. The tiebacks will be extended toward the upslope parking lot and will be completely buried below ground and below any utilities or structures. The tiebacks will be grouted, anchoring the soldier piles into the ground horizontally, which will help support the wall.

All existing utilities are upslope of the wall and will not be impacted. Site drainage and hydraulics will also not be altered. Surface drainage will flow over the wall and continue downslope, similar to the current condition. Construction access will be from the upslope parking lot between the duplex and eightplex. There is also a construction easement agreement in place with the owner of the Forest Edge Apartments and some materials may be brought in from the lower construction easement. If soil is removed from the site as part of retaining wall construction, soil removal may also occur through the lower construction easement. A construction access and erosion control plan is attached to this application.

The applicant understands that the proposed wall height of up to 12 feet (not including the fence) exceeds the maximum wall height of 8.5 feet set forth in the Oregon City Municipal Code. Justification for the proposed variance is provided below in responses to the Oregon City Municipal Code.

II. RESPONSES TO THE OREGON CITY MUNICIPAL CODE:

CHAPTER 17.16 – “R-3.5” DWELLING DISTRICT

17.16.040 Dimensional standards.

Dimensional standards in the R-3.5 district are:

A. Minimum Lot Areas.

1. Residential uses, three thousand five hundred square feet per unit.

2. Non-residential uses, zero minimum;

B. Minimum lot width, twenty-five feet;

C. Minimum lot depth, seventy feet;

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

E. Minimum Required Setbacks:

1. Front yard, five feet minimum setback,

2. Front porch, zero feet minimum setback,

3. Interior side yard,

Detached unit, five feet minimum setback

Attached unit, seven feet minimum setback on the side that does not abut a common property line.

4. Corner side yard, ten-foot minimum setback,

5. Rear yard, fifteen-foot minimum setback,

6. Rear porch, ten-foot minimum setback.

Applicant's Response: This section does not apply to the project. Construction of the proposed wall will not alter lot dimensions or the spatial relationship between lot boundaries and existing dwellings.

CHAPTER 17.18 “R-2” MULTI-FAMILY DWELLING DISTRICT

17.18.040 - Dimensional standards.

Dimensional standards in the R-2 district are:

A. Minimum lot areas: Two thousand square feet per unit.

B. Minimum lot width, fifty feet;

C. Minimum lot depth, seventy-five feet;

D. Maximum building height, four stories, not to exceed fifty-five feet;

E. Minimum required setbacks:

1. Front yard, five feet minimum setback (May be reduced to zero through Site Plan and Design Review)

2. Side yard, five feet minimum setback,

3. Corner side yard, ten feet minimum setback,

4. Rear yard, ten feet minimum setback,

5. Buffer area. If a multi-family residential unit in this district abuts R-10, R-8, or R-6 use, there shall be required a landscaped yard of ten feet on the side abutting the adjacent zone in order to provide a buffer area and landscaping thereof shall be subject to site plan review. The community development director may waive any of the foregoing requirements if it is found that the requirement is unnecessary on a case-by-case basis.

Applicant’s Response: This section does not apply to the project. Construction of the proposed wall will not alter lot dimensions or the spatial relationship between lot boundaries and existing dwellings.

CHAPTER 17.62 SITE PLAN AND DESIGN REVIEW

17.62.015 Modifications that will better meet design review requirements.

Applicant’s Response: None applicable.

17.62.035 - Minor site plan and design review.

This section provides for a minor site plan and design review process. Minor Site Plan Review is a Type II decision subject to administrative proceedings described in OCMC 17.50 section and may be utilized as the appropriate review process only when authorized by the community development director. The purpose of this type of review is to expedite design review standards for uses and activities that require only a minimal amount of review, typical of minor modifications and/or changes to existing uses or buildings.

A. Generally. Minor site plan and design review applies to the following uses and activities:

1. Modification of an office, commercial, industrial, institutional, public or multi-family structure for the purpose of enhancing the aesthetics of the building and not increasing the interior usable space (for example covered walkways or entryways, addition of unoccupied features such as clock tower, etc.).

2. Modification to parking lot layout and landscaping or the addition of up to 5 parking spaces.

3. A maximum addition of up to one thousand square feet to a commercial, office, institutional, public, multi-family, or industrial building provided that the addition is not more than thirty-five percent of the original building square footage.

4. Other land uses and activities may be added if the community development director makes written findings that the activity/use will not increase off-site impacts and is consistent with the type and/or scale of activities/uses listed above.

Applicant’s Response: Minor site plan and design review is appropriate for this project based on Part 4. Construction of the proposed wall will not increase off-site impacts and is consistent with the scale of activities/uses listed in Part 1 through Part 3. Construction of the wall may actually decrease off-site impacts by stabilizing the hillside above the wall and reducing debris cast downslope during landslide movements.

17.62.050 - Standards.

A. All development shall comply with the following standards:

1. Landscaping, A minimum of fifteen percent of the lot shall be landscaped. Existing native vegetation shall be retained to the maximum extent practicable. All plants listed on the Oregon City Nuisance Plant List shall be removed from the site prior to issuance of a final occupancy permit for the building.

- a. Except as allowed elsewhere in the zoning and land division chapters of this Code, all areas to be credited towards landscaping must be installed with growing plant materials. A reduction of up to twenty-five percent of the overall required landscaping may be approved by the community development director if the same or greater amount of pervious material is incorporated in the non-parking lot portion of the site plan (pervious material within parking lots are regulated in OCMC 17.52.070).*
- b. Pursuant to Chapter 17.49, landscaping requirements within the Natural Resource Overlay District, other than landscaping required for parking lots, may be met by preserving, restoring and permanently protecting native vegetation and habitat on development sites.*
- c. The landscaping plan shall be prepared by a registered landscape architect and include a mix of vertical (trees and shrubs) and horizontal elements (grass, groundcover, etc.) that within three years will cover one hundred percent of the Landscape area. No mulch, bark chips, or similar materials shall be allowed at the time of landscape installation except under the canopy of shrubs and within two feet of the base of trees. The community development department shall maintain a list of trees, shrubs and vegetation acceptable for landscaping.*
- d. For properties within the Downtown Design District, or for major remodeling in all zones subject to this chapter, landscaping shall be required to the extent practicable up to the ten percent requirement.*
- e. Landscaping shall be visible from public thoroughfares to the extent practicable.*
- f. Interior parking lot landscaping shall not be counted toward the fifteen percent minimum, unless otherwise permitted by the dimensional standards of the underlying zone district.*

Applicant's Response: The location of the proposed retaining wall is not currently landscaped. It consists of bare, steeply sloping, unstable soil that is temporarily covered in plastic sheeting to prevent erosion, infiltration, and further degradation of the slope. After construction of the retaining wall is complete, adjacent areas of exposed ground will be planted with grass seed and covered with an erosion control blanket as shown in the attached erosion control plan.

2. Vehicular Access and Connectivity.

- a. Parking areas shall be located behind buildings, below buildings, or on one or both sides of buildings.*
- b. Ingress and egress locations on thoroughfares shall be located in the interest of public safety. Access for emergency services (fire and police) shall be provided.*
- c. Alleys or vehicular access easements shall be provided in the following Districts: R-2, MUC-1, MUC-2, MUD and NC zones unless other permanent provisions for access to off-street parking and loading facilities are approved by the decision-maker. The corners of alley intersections shall have a radius of not less than ten feet.*
- d. Sites abutting an alley shall be required to gain vehicular access from the alley unless deemed impracticable by the community development director.*
- e. Where no alley access is available, the development shall be configured to allow only one driveway per frontage. On corner lots, the driveway(s) shall be located off of the side street (unless the side street is an arterial) and away from the street intersection. Shared driveways shall be required as needed to accomplish the requirements of this section. The location and design of pedestrian access from the sidewalk shall be emphasized so as to be clearly visible and distinguishable from the vehicular access to the site. Special landscaping, paving, lighting, and architectural treatments may be required to accomplish this requirement.*
- f. Driveways that are at least twenty-four feet wide shall align with existing or planned streets on adjacent sites.*
- g. Development shall be required to provide existing or future connections to adjacent sites through the use of vehicular and pedestrian access easements where applicable. Such easements shall be required in addition to applicable street dedications as required in [Chapter 12.04](#).*
- h. Vehicle and pedestrian access easements may serve in lieu of streets when approved by the decision maker only where dedication of a street is deemed impracticable by the city.*
- i. Vehicular and pedestrian easements shall allow for public access and shall comply with all applicable pedestrian access requirements.*
- j. In the case of dead-end stub streets that will connect to streets on adjacent sites in the future, notification that the street is planned for future extension shall be posted on the stub street until the street is extended and shall inform the public that the dead-end street may be extended in the future.*
- k. Parcels larger than three acres shall provide streets as required in [Chapter 12.04](#). The streets shall connect with existing or planned streets adjacent to the site.*

l. Parking garage entries shall not dominate the streetscape. They shall be designed and situated to be ancillary to the use and architecture of the ground floor. This standard applies to both public garages and any individual private garages, whether they front on a street or private interior access road.

m. Buildings containing above-grade structured parking shall screen such parking areas with landscaping or landscaped berms, or incorporate contextual architectural elements that complement adjacent buildings or buildings in the area. Upper level parking garages shall use articulation or fenestration treatments that break up the massing of the garage and/or add visual interest.

Applicant's Response: This section does not apply to the project. The proposed retaining wall is not in a location that impacts vehicular access or connectivity.

3. Building structures shall be complimentary to the surrounding area. All exterior surfaces shall present a finished appearance. All sides of the building shall include materials and design characteristics consistent with those on the front. Use of inferior or lesser quality materials for side or rear facades or decking shall be prohibited.

a. Alterations, additions and new construction located within the McLoughlin Conservation District, Canemah National Register District, and the Downtown Design District and when abutting a designated Historic Landmark shall utilize materials and a design that incorporates the architecture of the subject building as well as the surrounding district or abutting Historic Landmark. Historic materials such as doors, windows and siding shall be retained or replaced with in kind materials unless the community development director determines that the materials cannot be retained and the new design and materials are compatible with the subject building, and District or Landmark. The community development director may utilize the Historic Review Board's Guidelines for New Construction (2006) to develop findings to show compliance with this section.

b. In historic areas and where development could have a significant visual impact, the review authority may request the advisory opinions of appropriate experts designated by the community development director from the design fields of architecture, landscaping and urban planning. The applicant shall pay the costs associated with obtaining such independent professional advice; provided, however, that the review authority shall seek to minimize those costs to the extent practicable.

Applicant's Response: Exposed portions of the retaining wall will consist of steel piles and wood lagging. The wood lagging, which makes up the majority of the exposed wall surface area, will blend into the surrounding forest environment. The proposed wall location is in a relatively low-visibility area, partially screened by existing trees at the base of the slope. These trees will remain during construction.

6. Drainage shall be provided in accordance with city's drainage master plan, [Chapter 13.12](#), and the public works stormwater and grading design standards.

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not create new impervious surfaces, or modify existing drainage conditions.

9. A well-marked, continuous and protected on-site pedestrian circulation system meeting the following standards shall be provided:

a. Pathways between all building entrances and the street are required. Pathways between the street and buildings fronting on the street shall be direct. Exceptions may be allowed by the director where steep slopes or protected natural resources prevent a direct connection or where an indirect route would enhance the design and/or use of a common open space.

b. The pedestrian circulation system shall connect all main entrances on the site. For buildings fronting on the street, the sidewalk may be used to meet this standard. Pedestrian connections to other areas of the site, such as parking areas, recreational areas, common outdoor areas, and any pedestrian amenities shall be required.

c. Elevated external stairways or walkways, that provide pedestrian access to multiple dwelling units located above the ground floor of any building are prohibited. The community development director may allow exceptions for external stairways or walkways located in, or facing interior courtyard areas provided they do not compromise visual access from dwelling units into the courtyard.

d. The pedestrian circulation system shall connect the main entrances of adjacent buildings on the same site.

e. The pedestrian circulation system shall connect the principal building entrance to those of buildings on adjacent commercial and residential sites where practicable. Walkway linkages to adjacent developments shall not be required within industrial developments or to industrial developments or to vacant industrially-zoned land.

f. On-site pedestrian walkways shall be hard surfaced, well drained and at least five feet wide. Surface material shall contrast visually to adjoining surfaces. When bordering parking spaces other than spaces for parallel parking, pedestrian walkways shall be a minimum of seven feet in width unless curb stops are provided. When the pedestrian circulation system is parallel and adjacent to an auto travel lane, the walkway shall be raised or separated from the auto travel lane by a raised curb, bollards, landscaping or other physical barrier. If a raised walkway is used, the ends of the raised portions shall be equipped with curb ramps for each direction of travel. Pedestrian walkways that cross drive isles or other vehicular circulation areas shall utilize a change in textual material or height to alert the driver of the pedestrian crossing area.

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not impact any existing pedestrian pathways and is not located in an area where pedestrian pathways are required.

10. There shall be provided adequate means to ensure continued maintenance and necessary normal replacement of private common facilities and areas, drainage ditches, streets and other ways, structures, recreational facilities, landscaping, fill and excavation areas, screening and fencing, groundcover, garbage storage areas and other facilities not subject to periodic maintenance by the city or other public agency.

Applicant's Response: This section does not apply to the project. The proposed retaining wall is located in an unmaintained area that was generally wooded prior to recent landslide activity. The project will not impact or disrupt access to any facilities.

13. All development shall maintain continuous compliance with applicable federal, state, and city standards pertaining to air and water quality, odor, heat, glare, noise and vibrations, outdoor storage, radioactive materials, toxic or noxious matter, and electromagnetic interference. Prior to issuance of a building permit, the community development director or building official may require submission of evidence demonstrating compliance with such standards and receipt of necessary permits. The review authority may regulate the hours of construction or operation to minimize adverse impacts on adjoining residences, businesses or neighborhoods. The emission of odorous gases or other matter in such quantity as to be readily detectable at any point beyond the property line of the use creating the odors or matter is prohibited.

Applicant's Response: Soldier piles and tiebacks will be drilled, not driven, and drilling generally produces less noise than pile driving. However, contractors may drive piles to create temporary scaffolding for equipment access. Driving of these temporary piles may be accomplished using a vibratory or pneumatic hammer. Apart from noise related to drilling and pile driving, and outdoor storage of materials such as piles and grout components, none of the other impacts listed above are anticipated (i.e., air quality, water quality, odor, heat, glare, etc.). Construction of the proposed retaining wall will likely take about 8 weeks to complete.

14. Adequate public water and sanitary sewer facilities sufficient to serve the proposed or permitted level of development shall be provided. The applicant shall demonstrate that adequate facilities and services are presently available or can be made available concurrent with development. Service providers shall be presumed correct in the evidence, which they submit. All facilities shall be designated to city standards as set out in the city's facility master plans and public works design standards. A development may be required to modify or replace existing offsite systems if necessary to provide adequate public facilities. The city may require over sizing of facilities where necessary to meet standards in the city's facility master plan or to allow for the orderly and efficient provision of public facilities and services. Where over sizing is required, the developer may request reimbursement from the city for over sizing based on the city's reimbursement policy and fund availability, or provide for recovery of costs from intervening properties as they develop.

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not alter usage of public water or sanitary sewer facilities.

15. Adequate right-of-way and improvements to streets, pedestrian ways, bike routes and bikeways, and transit facilities shall be provided and be consistent with the city's transportation master plan and design standards and this title. Consideration shall be given to the need for street widening and other improvements in the area of the proposed development impacted by traffic generated by the proposed development. This shall include, but not be

limited to, improvements to the right-of-way, such as installation of lighting, signalization, turn lanes, median and parking strips, traffic islands, paving, curbs and gutters, sidewalks, bikeways, street drainage facilities and other facilities needed because of anticipated vehicular and pedestrian traffic generation. Compliance with [Chapter] 12.04, Streets, Sidewalks and Public Places shall be sufficient to achieve right-of-way and improvement adequacy.

Applicant's Response: This section does not apply to the project. The proposed retaining wall is not adjacent to any right-of-way and will not generate traffic of any kind.

16. If a transit agency, upon review of an application for an industrial, institutional, retail or office development, recommends that a bus stop, bus turnout lane, bus shelter, accessible bus landing pad, lighting, or transit stop connection be constructed, or that an easement or dedication be provided for one of these uses, consistent with an agency adopted or approved plan at the time of development, the review authority shall require such improvement, using designs supportive of transit use. Improvements at a major transit stop may include intersection or mid-block traffic management improvements to allow for crossings at major transit stops, as identified in the transportation system plan.

Applicant's Response: This section does not apply to the project. The proposed retaining wall is not adjacent to any right-of-way and will not generate traffic of any kind.

17. All utility lines shall be placed underground.

Applicant's Response: This section does not apply to the project. There will be no utilities associated with the proposed retaining wall.

18. Access and facilities for physically handicapped people shall be incorporated into the site and building design consistent with applicable federal and state requirements, with particular attention to providing continuous, uninterrupted access routes.

Applicant's Response: This section does not apply to the project. There are no existing access routes that will be impacted by the proposed retaining wall.

19. For a residential development, site layout shall achieve at least eighty percent of the maximum density of the base zone for the net developable area. Net developable area excludes all areas for required right-of-way dedication, land protected from development through Natural Resource or Geologic Hazards protection, and required open space or park dedication.

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not alter the density of development on the subject parcel.

20. Screening of Mechanical Equipment:

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not include mechanical equipment. Therefore, no screening of mechanical equipment will be necessary.

21. Building Materials.

a. Preferred building materials. Building exteriors shall be constructed from high quality, durable materials.

Preferred exterior building materials that reflect the city's desired traditional character are as follows:

i. Brick.

ii. Basalt stone or basalt veneer.

iii. Narrow horizontal wood or composite siding (generally five inches wide or less); wider siding will be considered where there is a historic precedent.

iv. Board and baton siding.

v. Other materials subject to approval by the community development director.

vi. Plywood with battens or fiber/composite panels with concealed fasteners and contiguous aluminum sections at each joint that are either horizontally or vertically aligned.

vii. Stucco shall be trimmed in wood, masonry, or other approved materials and shall be sheltered from extreme weather by roof overhangs or other methods.

b. Prohibited materials. The following materials shall be prohibited in visible locations unless an exception is granted by the community development director based on the integration of the material into the overall design of the structure.

i. Vinyl or plywood siding (including T-111 or similar plywood).

ii. Glass block or highly tinted, reflected, translucent or mirrored glass (except stained glass) as more than ten percent of the building facade.

iii. Corrugated fiberglass.

iv. Chain link fencing (except for temporary purposes such as a construction site or as a gate for a refuse enclosure).

[v.] Crushed colored rock/crushed tumbled glass.

[vi.] Non-corrugated and highly reflective sheet metal.

c. Special material standards: The following materials are allowed if they comply with the requirements found below:

1. Concrete block. When used for the front facade of any building, concrete blocks shall be split, rock- or ground-faced and shall not be the prominent material of the elevation. Plain concrete block or plain concrete may be used as foundation material if the foundation material is not revealed more than three feet above the finished grade level adjacent to the foundation wall.

2. Metal siding. Metal siding shall have visible corner moldings and trim and incorporate masonry or other similar durable/permanent material near the ground level (first two feet above ground level).

3. Exterior Insulation and Finish System (EIFS) and similar troweled finishes shall be trimmed in wood, masonry, or other approved materials and shall be sheltered from extreme weather by roof overhangs or other methods.

4. Building surfaces shall be maintained in a clean condition and painted surfaces shall be maintained to prevent or repair peeling, blistered or cracking paint.

Applicant's Response: Exposed portions of the retaining wall will consist of steel piles and treated wood lagging. The wood lagging, which makes up the majority of the exposed wall surface area, will blend into the surrounding forest environment. The proposed wall location is in a relatively low-visibility area, partially screened by existing trees at the base of the slope. These trees will remain during construction.

17.62.055 - Institutional and commercial building standards.

Applicant's Response: This section does not apply to the project because it will be a low-visibility retaining wall, not an institutional or commercial building in constant view of the general public.

17.62.057 - Multi-family standards.

Applicant's Response: This section does not apply to the project because it will be a low-visibility retaining wall, not a multi-family residential development. While adjacent to multi-family residences, the wall face will not be in plain view.

17.62.065 - Outdoor lighting.

Applicant's Response: This section does not apply to the project. The project will not change the amount or effectiveness of outdoor lighting already in place at the site. The area where the project will be located is not currently intended for regular public use or traverse.

17.62.080 - Special development standards along transit streets.

Applicant's Response: This section does not apply to the project because the project is not along a transit street. The project will not inhibit pedestrian access to retail, office, or institutional buildings from public sidewalks or transit facilities because it will not be located between retail, office, or institutional buildings and public sidewalks or transit facilities.

CHAPTER 17.52 OFF-STREET PARKING AND LOADING

Applicant's Response: This section does not apply to the proposed project because the project will not be built in a location where it will impact any parking or loading areas. Due to evacuations of the apartments above and below the site, nearby parking areas will not be needed by residents during construction and may be occupied by construction equipment without conflict.

CHAPTER 13.12 - STORMWATER CONVEYANCE, QUANTITY AND QUALITY

13.12.050 Pursuant to each of the subsections below, proposed activities may be required to meet the performance standards for stormwater conveyance, stormwater quantity or stormwater quality.

13.12.050.A. Stormwater Conveyance. The stormwater conveyance requirements of this chapter shall apply to all stormwater systems constructed with any development activity, except as follows:

- 1. The conveyance facilities are located entirely on one privately owned parcel;*
- 2. The conveyance facilities are privately maintained; and*
- 3. The conveyance facilities receive no stormwater runoff from outside the parcel's property limits.*

Those facilities exempted from the stormwater conveyance requirements by the above subsection will remain subject to the requirements of the Oregon Uniform Plumbing Code. Those exempted facilities shall be reviewed by the building official.

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not create new impervious surfaces, or modify existing drainage conditions.

13.12.050.B. Stormwater Quantity Control. The stormwater quantity control requirements of this chapter shall apply to the following proposed activities, uses or developments:

- 1. Activities located wholly or partially within water quality resource areas pursuant to Chapter 17.49 that will result in the creation of more than five hundred square feet of impervious surface within the WQRA or will disturb more than one thousand square feet of existing impervious surface within the WQRA as part of a commercial or industrial redevelopment project. These square footage measurements will be considered cumulative for any given seven-year period;*
- 2. Activities that create more than two thousand square feet of impervious surface, cumulated over any given seven year period; or*
- 3. Redevelopment of a commercial or industrial land use that will disturb more than five thousand square feet of existing impervious surface. This five thousand square foot measurement cumulates over any given seven year period;*
- 4. An exemption to the stormwater quantity control requirements of this chapter will be granted in the following circumstances:*
 - a. The development site discharges to a stormwater quantity control facility approved by the city engineer to receive the developed site runoff after verification that the facility is adequately sized to receive the additional stormwater, or,*
 - b. The development site discharges to one of the following receiving bodies of water: Willamette River, Clackamas River or Abernethy Creek; and either lies within the one hundred year floodplain or is up to ten feet above the design flood elevation as defined in Chapter 17.42*

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not create new impervious surfaces, or modify existing drainage conditions.

13.12.050.C. Stormwater Quality Control. The stormwater quality control requirements of this chapter shall apply to the following proposed activities, uses or developments:

- 1. Category A. Activities subject to general water quality requirements of this chapter:*
 - a. The construction of four or more single-family residences;*
 - b. Activities located wholly or partially within water quality resource areas pursuant to Chapter 17.49 that will result in the creation of more than five hundred square feet of impervious surface within the WQRA or will disturb more than one thousand square feet of existing impervious surface within the WQRA as part of a commercial or industrial redevelopment project. These square footage measurements will be considered cumulative for any given seven year period; or*
 - c. Activities that create more than eight thousand square feet of new impervious surface for other than a single-family residential development. This eight thousand square foot measurement will be considered cumulative for any given seven year period;*
 - d. An exemption to the stormwater quantity control requirements of this subsection will be granted if the development site discharges to a stormwater quality control facility approved by the city engineer to receive the developed site runoff after verification that the facility is adequately sized to receive the additional stormwater.*

2. *Category B. Uses Requiring Additional Management Practices. In addition to any other applicable requirements of this chapter, the following uses are subject to additional management practices as contained in the Public Works Stormwater and Grading Design Standards:*
 - a. *Fuel dispensing facilities;*
 - b. *Bulk petroleum storage in multiple stationary tanks;*
 - c. *Solid waste storage areas for commercial, industrial or multi-family uses;*
 - d. *Loading and unloading docks for commercial or industrial uses; or*
 - e. *Covered vehicle parking for commercial or industrial uses.*
3. *Category C. Clackamas River Watershed. In addition to any other applicable requirements of this chapter, any development that creates new waste discharges and whose stormwater runoff may directly or indirectly flow into the Clackamas River is subject to additional requirements associated with Oregon Administrative Rules (OAR) 340-41-470 (Thee Basin Rule).*

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not create new impervious surfaces, or modify existing drainage conditions.

13.12.090 Approval criteria for engineered drainage plans and drainage report.

An engineered drainage plan and/or drainage report shall be approved only upon making the following findings:

- A. *The plan and report demonstrate how the proposed development and stormwater management facilities will accomplish the purpose statements of this chapter;*
- B. *The plan and report meet the requirements of the Public Works Stormwater and Grading Design Standards adopted by resolution under Section 13.12.020*
- C. *Unless otherwise exempted by Section 13.12.050(B), the plan and report includes adequate stormwater quantity control facilities, so that when the proposed land development activity takes place, peak rates and volumes of runoff:*
 1. *Do not exceed the capacity of receiving drainage conveyance facilities;*
 2. *Do not increase the potential for streambank erosion; and*
 3. *Do not add volume to an off-site closed depression without providing for mitigation.*
- D. *Unless otherwise exempted by Section 13.12.050(C), the proposed development includes:*
 1. *Adequate stormwater quality control facilities, so that when the proposed land development activity takes place, the temperature and overall pollution level of stormwater runoff is no greater than the water entering. When no water enters a project, then stormwater runoff shall be compared to rain samples; and*
 2. *Stormwater quality control facilities which:*
 - a. *Are in compliance with applicable National Pollutant Discharge Elimination System (NPDES) requirements;*
 - b. *Minimize the deterioration of existing watercourses, culverts, bridges, dams and other structures; and*
 - c. *Minimize any increase in nonpoint source pollution.*
- E. *The storm drainage design within the proposed development includes provisions to adequately control runoff from all public and private streets and roof, footing, and area drains and ensures future extension of the current drainage system.*
- F. *Streambank erosion protection is provided where stormwater, directly or indirectly, discharges to open channels or streams. The postdevelopment peak stormwater discharge rate from a development site for the two year, twenty-four hour duration storm event shall not exceed fifty percent of the two year, twenty-four hour predevelopment peak runoff rate.*
- G. *Specific operation and maintenance measures are proposed that ensure that the proposed stormwater quantity control facilities will be properly operated and maintained.*

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not create new impervious surfaces, or modify existing drainage conditions. Therefore, no engineered drainage plans or drainage report are required.

CHAPTER 12.04 - STREETS SIDEWALKS AND PUBLIC PLACES

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not be located near or interface with a street, sidewalk, or public place.

Chapter 12.08 - PUBLIC AND STREET TREES^[2]

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not be located near or interface with a street or sidewalk. No removal of existing trees is anticipated.

GEOLOGIC HAZARDS – CHAPTER 17.44

17.44.025 - *When required; regulated activities; permit and approval requirements.*

No person shall engage in any of the following regulated activities within the adopted Oregon City Geologic Hazards Overlay Zone as defined in section 17.04.515 of the Oregon City Municipal Code without first obtaining permits or approvals as required by this chapter:

- A. Installation or construction of an accessory structure greater than 500 square feet in area;*
- B. Development of land, construction, reconstruction, structural alteration, relocation or enlargement of any building or structure for which permission is required pursuant to the Oregon City Municipal Code;*
- C. Tree removal on slopes greater than 25 percent where canopy area removal exceeds 25 percent of the lot.*

D. Excavation which exceeds two feet in depth, or which involves twenty-five or more cubic yards of volume; The requirements of this chapter are in addition to other provisions of the Oregon City Municipal Code. Where the provisions of this chapter conflict with other provisions of the Oregon City Municipal Code, the provisions that are the more restrictive of regulated development activity shall govern.

Applicant's Response: This code is written to prevent issues associated with development and building new structures in geologically hazardous areas. The proposed project is designed to mitigate existing hazards to structures and previously developed properties already built in a geologically hazardous area.

17.44.030 - *Procedures.*

No building or site development permit or other authorization for development shall be issued until the plans and other documents required by this chapter have been reviewed and found by the review authority to comply with the requirements of this chapter.

- A. Where the development is part of a land use permit application, review shall occur in the manner established in Chapter 17.50 for review of land use decisions.*
- B. Where the development is part of a limited land use permit application, review shall occur in the manner established in Chapter 17.50 for review of limited land use decisions.*
- C. Where the development is solely part of a grading permit or building permit, the city engineer may allow review to occur in the manner established in Title 15, Chapters 15.04 and 15.48 if the application meets Section 17.44.060 development standards.*
- D. For any other proposed development not otherwise subject to review as a land use or limited land use permit application, review shall occur in the manner established in Chapter 17.50 for limited land use decisions.*

Applicant's Response: Acknowledged.

17.44.035 - *Exemptions.*

The following activities, and persons engaging in same, are EXEMPT from the provisions of this chapter.

- A. An excavation which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;*
- B. A fill which does not exceed two feet in depth or twenty-five cubic yards of volume;*
- C. Structural alteration of any structure of less than five hundred square feet that does not involve grading as defined in this chapter;*
- D. Installation, construction, reconstruction, or replacement of utility lines in city right-of-way, or public easement, not including electric substations;*
- E. The removal or control of noxious vegetation;*
- F. Emergency actions which must be undertaken immediately to prevent an imminent threat to public health or safety, or prevent imminent danger to public or private property. The person undertaking emergency action shall notify the building official on all regulated activities associated with any building permit or city engineer/public works director on all others within one working day following the commencement of the emergency activity. If the city engineer/public works director or building official*

determine that the action or part of the action taken is beyond the scope of allowed emergency action, enforcement action may be taken.

Applicant's Response: Acknowledged. Proposed excavations below the wall, which will be necessary to install tieback anchors and reduce slope hazards, will exceed 25 cubic yards. The project, therefore, does not meet exemption criteria as defined in this section.

17.44.050 Development - Application Requirements and Review Procedures and Approvals.

Except as provided by subsection B of this section, the following requirements apply to all development proposals subject to this chapter:

A. A geological assessment and geotechnical report that specifically includes, but is not limited to:

- 1) Comprehensive information and data regarding the nature and distribution of underlying geology, the physical and chemical properties of existing soils and groundwater; an opinion of site geologic stability, and conclusions regarding the effect of geologic conditions on the proposed development. In addition to any field reconnaissance or subsurface investigation performed for the site, the following resources, as a minimum, shall be reviewed to obtain this information and data:*
 - a) The State of Oregon Department of Geology and Mineral Industries (DOGAMI) in Bulletin 99, Geology and Geological Hazards of North Clackamas County, Oregon (1979), or in any subsequent DOGAMI mapping for the Oregon City area;*
 - b) Portland State University study entitled "Environmental Assessment of Newell Creek Canyon, Oregon City, Oregon" (1992);*
 - c) Portland State University study, "Landslides in the Portland, Oregon, Metropolitan Area Resulting from the Storm of February 1996: Inventory Map, Database and Evaluation" (Burns and others, 1998);*
 - d) DOGAMI Open File Report O-06-27, "Map of Landslide Geomorphology of Oregon City, Oregon, and Vicinity Interpreted from LIDAR Imagery and Aerial Photographs" (Madin and Burns, 2006);*
 - e) "Preliminary Geologic Map of the Oregon City Quadrangle, Clackamas County, Oregon" (Madin, in press);*
- 2) Information and recommendations regarding existing local drainage, proposed permit activity impacts on local drainage, and mitigation to address adverse impacts;*
- 3) Comprehensive information about site topography;*
- 4) Opinion as to the adequacy of the proposed development from an engineering standpoint;*
- 5) Opinion as to the extent that instability on adjacent properties may adversely affect the project;*
- 6) Description of the field investigation and findings, including logs of subsurface conditions and laboratory testing results;*
- 7) Conclusions regarding the effect of geologic conditions on the proposed development, tree removal, or grading activity;*
- 8) Specific requirements and recommendations for plan modification, corrective grading, and special techniques and systems to facilitate a safe and stable site;*
- 9) Recommendations and types of considerations as appropriate for the type of proposed development:*
 - a. General earthwork considerations, including recommendations for temporary and permanent cut and fill slopes and placement of structural fill,*
 - b. Location of residence on lot,*
 - c. Building setbacks from slopes,*
 - d. Erosion control techniques applicable to the site,*
 - e. Surface drainage control to mitigate existing and potential geologic hazards,*
 - f. Subdrainage and/or management of groundwater seepage,*
 - g. Foundations,*
 - h. Embedded/retaining walls,*
 - i. Management of surface water and irrigation water, and*
 - j. Impact of the development on the slope stability of the lot and the adjacent properties.*
- 10) Scaled drawings that describe topography and proposed site work, including:*
 - a. Natural physical features, topography at two or ten-foot contour intervals locations of all test excavations or borings, watercourses both perennial and intermittent, ravines and all existing and manmade structures or features all fully dimensioned, trees six- inch caliper or greater measured four feet from ground level, rock outcroppings and drainage facilities;*

- b. All of the features and detail required for the site plan above, but reflecting preliminary finished grades and indicating in cubic yards whether and to what extent there will be a net increase or loss of soil.*
- c. A cross-section diagram, indicating depth, extent and approximate volume of all excavation and fills.*

11) For properties greater than 1 acre, a preliminary hydrology report, prepared by a suitably qualified and experienced hydrology expert, addressing the effect upon the watershed in which the proposed development is located; the effect upon the immediate area's stormwater drainage pattern of flow, the impact of the proposed development upon downstream areas and upon wetlands and water resources; and the effect upon the groundwater supply.

Applicant's Response: Geotechnical reports that address sections 1, 2, 4, 5, 6, 7, 8, and 9, as applicable, have been prepared by Shannon & Wilson, Inc., and are attached to this application. Drawings that address sections 3 and 10 are also attached. The hydrology report, described in section 11, will not be required because the work area will be less than 1 acre, no new impervious surface will be created, and existing drainage conditions will not be modified.

17.44.050.B. Review Procedures and Approvals require the following:

- 1) Examination to ensure that:*
 - a) Required application requirements are completed;*
 - b) Geologic assessment and geotechnical report procedures and assumptions are generally accepted; and*
 - c) All conclusions and recommendations are supported and reasonable.*

Applicant's Response: Acknowledged.

17.44.050.B.2 *Conclusions and recommendations stated in an approved assessment or report shall then be directly incorporated as permit conditions or provide the basis for conditions of approval for the regulated activity.*

Applicant's Response: Acknowledged.

17.44.050.B.3 *All geologic assessments and geotechnical reports shall be reviewed by an engineer certified for expertise in geology or geologic engineering and geotechnical engineering, respectively, as determined by the City. The City will prepare a list of prequalified consultants for this purpose. The cost of review by independent review shall be paid by the applicant.*

Applicant's Response: Acknowledged.

17.44.050.C. *The city engineer may waive one or more requirements of subsections A and B of this section if the city engineer determines that site conditions, size or type or development of grading requirements do not warrant such detailed information. If one or more requirements are waived, the city engineer shall, in the staff report or decision, identify the waived provision(s), explain the reasons for the waiver, and state that the waiver may be challenged on appeal and may be denied by a subsequent review authority.*

Applicant's Response: Acknowledged.

17.44.060 Development Standards.

Notwithstanding any contrary dimensional or density requirements of the underlying zone, the following standards shall apply to the review of any development proposal subject to this chapter. Requirements of this chapter are in addition to other provision of the Oregon City Municipal Code. Where provision of this chapter conflict with other provision of the Oregon City Municipal Code, the provisions that are more restrictive of regulated development activity shall govern.

17.44.060.A *All developments shall be designed to avoid unnecessary disturbance of natural topography, vegetation and soils. To the maximum extent practicable as determined by the review authority, tree and ground cover removal and fill and grading for residential development on individual lots shall be confined to building footprints and driveways, to areas required for utility easements and for slope easements for road construction, and to areas of geotechnical remediation.*

Applicant's Response: The location of the proposed wall is currently occupied by a steep, barren, unstable soil slope with exposed soil. No removal of trees or ground cover is anticipated. Construction of the wall will stabilize the slope above it. Excavation on the downslope side of the wall will be limited

to the minimum necessary to the install tieback anchors, which are required for the wall to function and stabilize the hillside above the wall.

17.44.060B *All grading, drainage improvements, or other land disturbances shall only occur from May 1 to October 31. Erosion control measures shall be installed and functional prior to any disturbances. The City Engineer may allow grading, drainage improvements or other land disturbances to begin before May 1 (but no earlier than March 16) and end after October 31 (but no later than November 30), based upon weather conditions and in consultation with the project geotechnical engineer. The modification of dates shall be the minimum necessary, based upon the evidence provided by the applicant, to accomplish the necessary project goals. Temporary protective fencing shall be established around all trees and vegetation designed for protection prior to the commencement of grading or other soil disturbance.*

Applicant's Response: Construction of the proposed retaining wall will take approximately 8 weeks to complete. Construction will begin with installation of the steel soldier piles, which will improve slope stability even before the tiebacks and lagging are installed. Completion of the project by October 31, 2016 would be contingent on rapid approval of this application. If construction is delayed until 2017, heavy winter precipitation could further deteriorate the slope and potentially cause severe damage to structures that would have been otherwise usable with the wall in place. If the wall is not installed prior to next winter there is risk of additional damage to the subject property and neighboring adjacent properties up slope of the wall. If additional landslide movement occurs the retaining wall may no longer be feasible and mitigation of the landslide may not occur.

17.44.060.C *Designs shall minimize the number and size of cuts and fills.*

Applicant's Response: Some excavation will be required on the down-slope side of the wall in order to install tieback anchors which are required for the wall to function. The removed soil will not be replaced because the existing soil slopes along the base of the proposed wall are already over-steepened and unstable. Removal of soil at the base of the wall at the head of the landslide will further increase landslide stability by reducing driving force. Fill will be limited to minor granular backfill, used to fill voids behind the timber lagging in the wall.

17.44.060.D *Cut and fill slopes, such as those for a street, driveway accesses, or yard area, greater than seven feet in height (as measured vertically) shall be terraced. Faces on a terraced section shall not exceed five feet. Terrace widths shall be a minimum of three feet and shall be vegetated. Total cut and fill slopes shall not exceed a vertical height of fifteen feet. Except in connection with geotechnical remediation plans approved in accordance with the chapter, cuts shall not remove the toe of any slope that contains a known landslide or is greater than twenty-five percent slope. The top of cut or fill slopes not utilizing structural retaining walls shall be located a minimum of one-half the height of the cut slope from the nearest property line.*

Applicant's Response: The existing slope at the site is not terraced, but is unstable and exceeds the height specified above. Wall construction will begin with installation of vertical steel soldier piles. These piles will temporarily support the slope while the front of the wall is excavated and lagging is installed down to the tieback elevation. The finished wall with tiebacks will support the slope above and will be about 12 feet in height. Due to the active landslide below the retaining wall fill cannot be replaced at the face of the wall over the landslide soils because it will decrease landslide stability.

17.44.060.E *Any structural fill shall be designed by a suitably qualified and experienced civil or geotechnical engineer licensed in Oregon in accordance with standard engineering practice. The applicant's engineer shall certify that the fill has been constructed as designed in accordance with the provisions of this chapter.*

Applicant's Response: Fill will be limited to minor granular backfill, used to fill voids behind the timber lagging in the wall.

17.44.060.F *Retaining walls shall be constructed in accordance with the Oregon Structural Specialty Code adopted by the State of Oregon.*

Applicant's Response: The proposed retaining wall will be designed and constructed in accordance with the Oregon Structural Specialty Code.

17.44.060.G Roads shall be the minimum width necessary to provide safe vehicle and emergency access, minimize cut and fill and provide positive drainage control. The review authority may grant a variance from the City's required road standards upon findings that the variance would provide safe vehicle and emergency access and is necessary to comply with the purpose and policy of this chapter.

Applicant's Response: This section does not apply to the project. No new roads are planned as part of the project and construction of the proposed wall will not impact any existing roads.

17.44.060.H Density shall be determined as follows

- 1) For those areas with slopes less than twenty-five percent between grade breaks, the allowed density shall be that permitted by the underlying zoning district;
- 2) For those areas with slopes of twenty-five to thirty-five percent between grade breaks, the density shall not exceed two dwelling units per acre except as otherwise provided in subsection I of this section;
- 3) For those areas with slopes over thirty-five percent between grade breaks, development shall be prohibited except as otherwise provided in subsection I 4 of this section.

Applicant's Response: This section does not apply to the project because the project will not impact the density of development on the subject parcel.

17.44.060.I For properties with slopes of twenty-five to thirty-five percent between grade breaks:

- 1) For those portions of the property with slopes of twenty-five to thirty-five percent, the maximum residential density shall be limited to two dwelling units per acre; provided, however, that where the entire site is less than one-half acre in size, a single dwelling shall be allowed on a lot or parcel existing as of January 1, 1994 and meeting the minimum lot size requirements of the underlying zone;
- 2) An individual lot or parcel with slopes between twenty-five and thirty-five percent shall have no more than fifty percent or four thousand square feet of the surface area, whichever is smaller, graded or stripped of vegetation or covered with structures or impermeable surfaces.
- 3) No cut into a slope of twenty-five to thirty-five percent for the placement of a housing unit shall exceed a maximum vertical height of 15 feet for the individual lot or parcel.
- 4) For those portions of the property with slopes over thirty-five percent between grade breaks:
 - a. Notwithstanding any other City land use regulation, development other than roads, utilities, public facilities and geotechnical remediation shall be prohibited; provided, however, that the review authority may allow development upon such portions of land upon demonstration by an applicant that failure to permit development would deprive the property owner of all economically beneficial use of the property. This determination shall be made considering the entire parcel in question and contiguous parcels in common ownership on or after January 1, 1994, not just the portion where development is otherwise prohibited by this chapter. Where this showing can be made on residentially zoned land, development shall be allowed and limited to one single-family residence. Any development approved under this chapter shall be subject to compliance with all other applicable City requirements as well as any applicable State, Federal or other requirements;
 - b. To the maximum extent practicable as determined by the review authority, the applicant shall avoid locating roads, utilities, and public facilities on or across slopes exceeding thirty-five percent.

Applicant's Response: This section does not apply to the project because it does not include construction of residential units, roads, utilities, or public facilities. The proposed retaining wall constitutes a geotechnical remediation. The existing site condition is predominantly bare disturbed ground, and no fill will be placed over the surface, so stripping of vegetation will not be necessary. Grading will be limited to that which is required for wall installation and will affect an area less than 4,000 square feet.

17.44.060.J The geotechnical engineer of record shall review final grading, drainage, and foundation plans and specifications and confirm in writing that they are in conformance with the recommendations provided in their report.

Applicant's Response: Acknowledged.

17.44.060.K *At the City's discretion, peer review shall be required for the geotechnical evaluation/investigation report submitted for the development and/or lot plans. The peer reviewer shall be selected by the City. The applicant's geotechnical engineer shall respond to written comments provided by the City's peer reviewer prior to issuance of building permit.*

Applicant's Response: Acknowledged.

17.44.060.L *The review authority shall determine whether the proposed methods of rendering a known or potential hazard site safe for construction, including proposed geotechnical remediation methods, are feasible and adequate to prevent landslides or damage to property and safety. The review authority shall consult with the City's geotechnical engineer in making this determination. Costs for such consultation shall be paid by the applicant. The review authority may allow development in a known or potential hazard area as provided in this chapter if specific findings are made that the specific provisions in the design of the proposed development will prevent landslides or damage. The review authority may impose any conditions, including limits on type or intensity of land use, which it determines are necessary to assure that landslides or property damage will not occur.*

Applicant's Response: Acknowledged.

17.44.070 *Access to Property.*

- A. *Shared private driveways may be required if the city engineer or principal planner determines that their use will result in safer location of the driveway and lesser amounts of land coverage than would result if separate private driveways are used.*
- B. *Innovations in driveway design and road construction shall be permitted in order to keep grading and cuts or fills to a minimum and to achieve the purpose and policy of this chapter.*
- C. *Points of access to arterials and collectors shall be minimized.*
- D. *The city engineer or principal planner shall verify that adequate emergency services can be provided to the site.*

Applicant's Response: This section does not apply to the project. The proposed retaining wall does not impact access to the property.

17.44.080 *Utilities.*

All new service utilities, both on-site and off-site, shall be placed underground and under roadbeds where practicable. Every effort shall be made to minimize the impact of utility construction. Underground utilities require the geologic hazards permitting and review prescribed herein.

Applicant's Response: This section does not apply to the project because the project does not include construction of new utilities.

17.44.090 *Stormwater Drainage.*

The applicant shall submit a permanent and complete stormwater control plan. The program shall include, but not be limited to the following items as appropriate: curbs, gutters, inlets, catch basins, detention facilities and stabilized outfalls. Detention facilities shall be designed to City standards as set out in the City's drainage master plan and design standards. The review authority may impose conditions to ensure that waters are drained from the development so as to limit degradation of water quality consistent with Oregon City's Title III section of the Oregon City Municipal Code Chapter 17.49 and the Oregon City Public Works Stormwater Management Design Manual and Standards Plan or other adopted standards subsequently adopted by the City Commission. Drainage design shall be approved by the city engineer before construction, including grading or other soil disturbance, has begun.

Applicant's Response: This section does not apply to the project. The proposed retaining wall will not create new impervious surfaces, or modify existing drainage conditions. Therefore, no stormwater control plan is required. Storm water and erosion during construction will be controlled using the methods described in the erosion control plan.

17.44.100. Construction Standards.

During construction on land subject to this chapter, the following standards shall be implemented by the developer:

17.44.100.A *All development activity shall minimize vegetation removal and soil disturbance and shall provide positive erosion prevention measures in conformance with OCMC Chapter 17.47 – Erosion and Sediment Control.*

Applicant's Response: Vegetation removal for the project will be minimal as the existing slope where the wall is to be located currently consists of bare, unstable soil that has been disturbed by recent landslide movements. An erosion control plan, prepared by AKS Engineering and Forestry, is attached to this application.

17.44.100.B *No grading, clearing or excavation of any land shall be initiated prior to approval of the grading plan, except that the city engineer shall authorize the site access, brush to be cleared and the location of the test pit digging prior to approval of such plan to the extent needed to complete preliminary and final engineering and surveying. The grading plan shall be approved by the city engineer as part of the city's review under this chapter. The developer shall be responsible for the proper execution of the approved grading plan.*

Applicant's Response: Acknowledged.

17.44.100.C *Measures shall be taken to protect against landslides, mudflows, soil slump and erosion. Such measures shall include sediment fences, straw bales, erosion blankets, temporary sedimentation ponds, interceptor dikes and swales, undisturbed buffers, grooving and stair stepping, check dams, etc. The applicant shall comply with the measures described in the Oregon City Public Works Standards for Erosion and Sedimentation Control (Ordinance 99-1013).*

Applicant's Response: The purpose of the project is to mitigate part of an existing landslide. An erosion control plan, prepared by AKS Engineering and Forestry, is attached to this application.

17.44.100.D *All disturbed vegetation shall be replanted with suitable vegetation upon completion of the grading of the steep slope area.*

Applicant's Response: The project area is located on a steep, bare, unstable soil slope. Upon completion of wall construction, bare ground will be seeded with grass seed.

17.44.100.E *Existing vegetative cover shall be maintained to the maximum extent practicable. No grading, compaction or change in ground elevation, soil hydrology and/or site drainage shall be permitted within the drip line of trees designated for protection, unless approved by the City.*

Applicant's Response: The existing slope where the wall is to be located currently consists of bare, unstable soil that has been disturbed by recent landslide movements. No grading, compaction, or change in ground elevation, soil hydrology, or site drainage is planned within the drip line of trees designated for protection.

17.44.100.F *Existing perennial and intermittent watercourses shall not be disturbed unless specifically authorized by the review authority. This includes physical impacts to the stream course as well as siltation and erosion impacts.*

Applicant's Response: There are no existing perennial or intermittent watercourses in the area of the proposed construction. Erosion control measures will prevent siltation and erosion impacts offsite watercourses lower in the watershed. An erosion control plan, prepared by AKS Engineering and Forestry, is attached to this application.

17.44.100.G *All soil erosion and sediment control measures shall be maintained during construction and for one year after development is completed, or until soils are stabilized by revegetation or other measures to the satisfaction of the city engineer. Such maintenance shall be the responsibility of the developer. If erosion or sediment control measures are not being properly maintained or are not functioning properly due to faulty installation or neglect, the City may order work to be stopped.*

Applicant's Response: Acknowledged.

17.44.100.H All newly created lots, either by subdivision or partition, shall contain building envelopes with a slope of 35% or less.

Applicant's Response: The project does not include lot creation.

17.44.100.I The applicant's geotechnical engineer shall provide special inspection during construction to confirm that the subsurface conditions and assumptions made as part of their geotechnical evaluation/investigation are appropriate. This will allow for timely design changes if site conditions are encountered that are different from those anticipated.

Applicant's Response: Shannon & Wilson, Inc. will provide observation at appropriate times during construction to confirm subsurface conditions and that assumptions made as part of the geotechnical evaluation are appropriate.

17.44.100.J Prior to issuing an occupancy permit, the geotechnical engineer shall prepare a summary letter stating that the soils- and foundation-related project elements were accomplished in substantial conformance with their recommendations.

Applicant's Response: The proposed wall itself is not intended for occupancy. Assuming that this code in this situation pertains to occupancy of the Berryhill duplex and eightplex, Shannon & Wilson, Inc. agrees to provide the requisite summary letter.

17.44.110 Approval of Development.

The city engineer shall review the application and verify, based on the applicant's materials and the land use record, whether the proposed development constitutes a hazard to life, property, natural resources or public facilities. If, in the city engineer's opinion, a particular development poses such a hazard, the city engineer shall recommend to the review authority permit conditions designed to reduce or eliminate the hazard. These conditions may include, but are not limited to, prohibitions on construction activities between November 1st and March 31st.

Applicant's Response: Acknowledged.

17.44.120 Liability.

Approval of an application for development on land subject to this chapter shall not imply any liability on the part of the city for any subsequent damage due to earth slides. Prior to the issuance of a building permit, a waiver of damages and an indemnity and hold harmless agreement shall be required which releases the City from all liability for any damages resulting from the development approved by the City's decision.

Applicant's Response: Acknowledged.

17.44.130 Compliance.

Nothing contained in this chapter shall relieve the developer of the duty to comply with any other provision of law. In the case of a conflict, the more restrictive regulation shall apply.

Applicant's Response: Acknowledged.

17.44.140 Appeal.

The review authority's decision may be appealed in the manner set forth in Chapter 17.50.

Applicant's Response: Acknowledged.

CHAPTER 17.47 - EROSION AND SEDIMENT CONTROL

17.47.070 Erosion and sediment control plans.

A. An application for an erosion and sediment control permit shall include an erosion and sediment control plan, which contains methods and interim measures to be used during and following construction to prevent or control erosion prepared in compliance with City of Oregon City public works standards for erosion and sediment control. These standards are incorporated herein and made a part of this title and are on file in the office of the city recorder.

Applicant's Response: An erosion control plan, prepared by AKS Engineering and Forestry, is attached to this application.

CHAPTER 17.49 NATURAL RESOURCE OVERLAY DISTRICT

17.49.050 Emergencies

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

Applicant's Response: The unstable slope below the Berryhill Apartments duplex and eightplex presents a clear potential for injury to property. Pursuant to the code referenced above, this constitutes an emergency condition for the proposed project, which is specifically designed to mitigate the landslide hazard to the Berryhill duplex and eightplex structures.

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.

Applicant's Response: Acknowledged.

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.

Applicant's Response: Acknowledged.

17.49.[0]70 - Prohibited uses.

Applicant's Response: The proposed retaining wall is not consistent with any category listed as a prohibited use, as described in the above-reference code.

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

Applicant's Response: The proposed retaining wall is not consistent with any category listed as an exempted use or use allowed outright, as described in the above-reference code.

17.49.090 Uses Allowed Under Prescribed Conditions

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

- A. Alteration to existing structures within the NROD when not exempted by Section 17.49.080, subject to Section 17.49.130.
- B. A residence on a highly constrained vacant lot of record that has less than 3,000 square feet of buildable area, with minimum dimensions of 50 feet by 50 feet, remaining outside the NROD portion of the property, subject to the maximum disturbance allowance prescribed in subsection 17.49.120.A.
- C. A land division that would create a new lot for an existing residence currently within the NROD, subject to Section 17.49.160.
- D. Land divisions when not exempted by Section 17.49.080, subject to the applicable standards of Section 17.49.160.
- E. Trails/pedestrian paths when not exempted by Section 17.49.080, subject to Section 17.49.170 (for trails) or Section 17.49.150 (for paved pedestrian paths).
- F. New roadways, bridges/creek crossings, utilities or alterations to such facilities when not exempted by Section 17.49.080,
- G. Roads, bridges/creek crossings Subject to Section 17.49.150 --
- H. Utility lines subject to Section 17.49.140 (
- I. Stormwater detention or pre-treatment facilities subject to Section 17.49.155 ().
- J. Institutional, Industrial or Commercial development on a vacant lot of record situated in an area designated for such use that has more than 75% of its area covered by the NROD, subject to subsection 17.49.120(B).
- K. City, county and state capital improvement projects, including sanitary sewer, water and storm water facilities, water stations, and parks and recreation projects.

Applicant's Response: The proposed retaining wall does is not consistent with any category listed a use allowed under prescribed conditions, as described in the above-reference code.

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;

Applicant's Response: The proposed project does not include tree removal.

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.*

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Moreover, the existing site is a steep, bare, unstable soil slope that has been disturbed by recent landslide movements. Once construction of the proposed retaining wall is completed, exposed ground in the project area will be seeded with grass seed.

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Once construction of the proposed retaining wall is completed, exposed ground in the project area will be seeded with grass seed.

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;

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Front, street, and garage setbacks are not applicable to the proposed retaining wall. Location of the proposed retaining wall is controlled by the shape and position of the existing landslide hazard.

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;

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Location of the proposed retaining wall is controlled by the shape and position of the existing landslide hazard.

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. For safety, a wood fence will be constructed along the top of the wall, offset 2 feet from the wall face. Holes for the soldier piles that make up the wall will be drilled from the side of the wall where the fence will ultimately be installed. Since equipment has to track in this area to build the wall, the ground at the fence location is part of the disturbance area anyway.

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;

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Regardless, this section would not apply to the project because no lighting of any kind will be installed.

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Regardless, this section would not apply to the project because the proposed wall location is not within the 100 year flood plain.

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

17.49.110 Width of Vegetated Corridor.

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

Table 17.49.110

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

Notes:

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

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

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

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.*

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Regardless, this section would not apply to the project because the proposed retaining wall will not involve any installation of (or connection to) utilities of any kind.

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.*

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Regardless, this section would not apply to the project because the proposed improvements do not include any roads, bridges, stream crossings, driveways, pedestrian paths, or other impervious surfaces.

- 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;*

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Regardless, this section would not apply to the project because the proposed improvements do not include any stream crossings, bridges, or culverts.

- 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;*

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Regardless, this section would not apply to the project because no fill or excavation is being proposed within the ordinary high water mark of a 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;*

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Regardless, this section would

not apply to the project because no excavation or fill in wetland areas is being proposed.

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Regardless, this section would not apply to the project because no work within the banks of stream is being proposed.

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. No mitigation is required.

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.

Applicant's Response: : Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

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.

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

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.

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

Good Existing Corridor:	Combination of trees, shrubs and groundcover are eighty percent present, and there is more than fifty percent tree canopy coverage in the vegetated corridor.
-------------------------	---

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

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

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:

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

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;*

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

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;*

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS

Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. Regardless, the proposed improvements will not impede fish or wildlife passage.

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*

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes.

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

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. No mitigation is required.

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.*

Applicant's Response: Based on the attached Natural Resource Assessment report, prepared by AKS Engineering and Forestry, the project area should not be included in the Natural Resource Overlay District, and is therefore not subject to the associated municipal codes. No mitigation is required.

CHAPTER 17.41 - TREE PROTECTION STANDARDS

17.41.020 - Tree protection—Applicability.

- 1. Applications for development subject to Chapters 16.08 or 16.12 (Subdivision or Minor Partition) or Chapter 17.62 (Site Plan and Design Review) shall demonstrate compliance with these standards as part of the review proceedings for those developments.*
- 2. For public capital improvement projects, the city engineer shall demonstrate compliance with these standards pursuant to a Type II process.*
- 3. Tree canopy removal greater than twenty-five percent on sites greater than twenty-five percent slope, unless exempted under Section 17.41.040, shall be subject to these standards.*
- 4. A heritage tree or grove which has been designated pursuant to the procedures of Chapter 12.08.050 shall be subject to the standards of this section.*

Applicant's Response: The proposed project does not include tree removal.

17.41.030 - Tree protection—Conflicting code provisions.

Except as otherwise specified in this section, where these standards conflict with adopted city development codes or policies, the provision which provides the greater protection for regulated trees or groves, as defined in Section 17.04, shall govern.

Applicant's Response: Acknowledged.

17.41.040 - Same—Exemptions.

These regulations are not intended to regulate normal cutting, pruning and maintenance of trees on private property except where trees are located on lots that are undergoing development review or are otherwise protected within the Natural Resource Overlay District (NROD) of [section 17.49](#). These standards are not intended to regulate farm and forest practices as those practices are defined under ORS 30.930. Farm or forest resources. An applicant for development may claim exemption from compliance with these standards if the development site containing the regulated grove or trees was a designated farm or forest use, tree farm, Christmas tree plantation, or other approved timber use within one year prior to development application. "Forest practices" and "forestlands" as used in this subsection shall have the meaning as set out in ORS 30.930. The community development director has the authority to modify or waive compliance in this case.

Applicant's Response: Acknowledged.

17.41.050 - Same—Compliance options.

Applicants for review shall comply with these requirements through one or a combination of the following procedures:

A. Option 1—Mitigation. Retention and removal of trees, with subsequent mitigation by replanting pursuant to Sections [17.41.060](#) or [17.41.070](#). All replanted and saved trees shall be protected by a permanent restrictive covenant or easement approved in form by the city.

B. Option 2—Dedicated Tract. Protection of trees or groves by placement in a tract within a new subdivision or partition plat pursuant to Sections [17.41.080](#)—[17.41.100](#); or

C. Option 3—Restrictive Covenant. Protection of trees or groves by recordation of a permanent restrictive covenant pursuant to Sections [17.41.110](#)—[17.41.120](#); or

D. Option 4—Cash-in-lieu of planting pursuant to [Section 17.41.130](#).

A regulated tree that has been designated for protection pursuant to this section must be retained or permanently protected unless it has been determined by a certified arborist to be diseased or hazardous, pursuant to the following applicable provisions.

The community development director, pursuant to a Type II procedure, may allow a property owner to cut a specific number of trees within a regulated grove if preserving those trees would:

- 1. Preclude achieving eighty percent of minimum density with reduction of lot size; or*
- 2. Preclude meeting minimum connectivity requirements for subdivisions.*

Applicant's Response: The proposed project does not include tree removal.

17.41.060 - Tree removal and replanting—Mitigation (Option 1).

A. Applicants for development who select this option shall ensure that all healthy trees shall be preserved outside the construction area as defined in [Chapter 17.04](#) to the extent practicable. Compliance with these standards shall be demonstrated in a tree mitigation plan report prepared by a certified arborist, horticulturalist or forester or other environmental professional with experience and academic credentials in forestry or arboriculture. At the applicant's expense, the city may require the report to be reviewed by a consulting arborist. The number of replacement trees required on a development site shall be calculated separately from, and in addition to, any public or street trees in the public right-of-way required under [section 12.08](#)—Community Forest and Street Trees.

B. The applicant shall determine the number of trees to be mitigated on the site by counting all of the trees six inch DBH (minimum four and one-half feet from the ground) or larger on the entire site and either:

- 1. Trees that are removed outside of the construction area, shall be replanted with the number of trees specified in Column 1 of Table 17.41.060-1. Trees that are removed within the construction area shall be replanted with the number of replacement trees required in Column 2; or*
- 2. Diseased or hazardous trees, when the condition is verified by a certified arborist to be consistent with the definition in [Section 17.04.1360](#), may be removed from the tree replacement calculation. Regulated healthy trees that are removed outside of the construction area, shall be replanted with the number of trees specified in Column 1 of Table 17.41.060-1. Regulated healthy trees that are removed within the construction area shall be replanted with the number of replacement trees required in Column 2.*

Table 17.41.060-1

Tree Replacement Requirements

All replacement trees shall be either:

Two-inch caliper deciduous, or

Six-foot high conifer

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

Steps for calculating the number of replacement trees:

1. Count all trees measuring six inches DBH (minimum four and one-half feet from the ground) or larger on the entire development site.
2. Designate (in certified arborists report) the condition and size (DBH) of all trees pursuant to accepted industry standards.
3. Document any trees that are currently diseased or hazardous.
4. Subtract the number of diseased or hazardous trees in step 3. from the total number of trees on the development site in step 1. The remaining number is the number of healthy trees on the site. Use this number to determine the number of replacement trees in steps 5. through 8.
5. Define the construction area (as defined in [Chapter 17.04](#)).
6. Determine the number and diameter of trees to be removed within the construction area. Based on the size of each tree, use Column 2 to determine the number of replacement trees required.
7. Determine the number and diameter of trees to be removed outside of the construction area. Based on the size of each tree, use Column 1 to determine the number of replacement trees required.
8. Determine the total number of replacement trees from steps 6. and 7.

Applicant's Response: The proposed project does not include tree removal.

17.41.070 - Planting area priority for mitigation (Option 1).

Development applications which opt for removal of trees with subsequent replanting pursuant to section 17.41.050A. shall be required to mitigate for tree cutting by complying with the following priority for replanting standards below:

A. First Priority. Replanting on the development site.

B. Second Priority. Off-site replacement tree planting locations. If the community development director determines that it is not practicable to plant the total number of replacement trees on-site, a suitable off-site planting location for the remainder of the trees may be approved that will reasonably satisfy the objectives of this section. Such locations may include either publicly owned or private land and must be approved by the community development director.

Applicant's Response: The proposed project does not include tree removal.

17.41.075 - Alternative mitigation plan.

The community development director may, subject to a Type II procedure, approve an alternative mitigation plan that adequately protects habitat pursuant to the standards for the natural resource overlay district alternative mitigation plan, [Section 17.49.190](#).

Applicant's Response: The proposed project does not include tree removal.

17.41.080 - Tree preservation within subdivisions and partitions—Dedicated tract (Option 2).

A. Applicants for new subdivision and partition plats may delineate and show the regulated trees or groves as either a separate tract or part of a larger tract that meets the requirements of subsection D. of this section.

B. The standards for land divisions subject to this section shall apply in addition to the requirements of the city land division ordinance and zoning ordinance, provided that the minimum lot area, minimum average lot width, and

minimum average lot depth standards of the base zone may be superseded in order to allow for a reduction of dimensional standards pursuant to Section 17.41.100 below.

C. Prior to preliminary plat approval, the regulated tree or grove area shall be shown either as a separate tract or part of a larger tract that meets the requirements of subsection D. of this section, which shall not be a part of any parcel used for construction of a structure. The size of the tract shall be the minimum necessary as recommended by a consulting arborist to adequately encompass the dripline of the tree, protect the critical root zone and ensure long term survival of the tree or grove.

D. Prior to final plat approval, ownership of the regulated tree or grove tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:

1. Private open space held by the owner or a homeowners association; or
2. 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
3. At the owners option, public open space where the tract has been dedicated to the city or other governmental unit; or
4. Any other ownership proposed by the owner and approved by the community development director.

Applicant's Response: The proposed project does not include tree removal.

17.41.090 - Density transfers incentive for tree protection tracts (Option 2).

A. The purpose of this section is to allow dimensional adjustments within a regulated tree protection tract to be transferred outside said tract to the remainder of the site. This provision applies on-site and density shall not be transferred beyond the boundaries of the development site.

B. Development applications for subdivisions and minor partitions that request a density transfer shall:

1. Provide a map showing the net buildable area of the tree protection tract;
2. Provide calculations justifying the requested dimensional adjustments;
3. Demonstrate that the minimum lot size requirements can be met based on an average of all lots created, including the tree protection tract created pursuant to [Section 17.41.080](#);
4. Demonstrate that, with the exception of the tree protection tract created pursuant to [Section 17.41.080](#), no parcels have been created which would be unbuildable in terms of minimum yard setbacks;
5. Meet all other standards of the base zone except as modified in [section 17.41.100](#).

C. The area of land contained in a tree protection tract may be excluded from the calculations for determining compliance with minimum density requirements of the zoning code.

Applicant's Response: The proposed project does not include tree removal.

17.41.100 - Permitted modifications to dimensional standards (Option 2 only).

A. An applicant proposing to protect trees in a dedicated tract pursuant to [section 17.41.080](#) may request, and the community development director, pursuant to a Type II procedure, may grant a reduction to, the lot size, width, depth, and setbacks of the underlying zone district in approving a subdivision or partition if necessary to retain a regulated tree or grove in a tract, as long as the calculation of average lot size, including tree protection tracts, meet the minimum lot size for the zone. 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 area of the tree tract.

Table 17.41.100 A
Lot Size Reduction

ZONE	Min. Lot Size [sq. feet]	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 17.41.100 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 17.41.100 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

Applicant's Response: The proposed project does not include tree removal.

17.41.110 - Tree protection by restrictive covenant (Option 3).

Any regulated tree or grove which cannot be protected in a tract pursuant to [Section 17.41.080](#) above shall be protected with a restrictive covenant in a format to be approved by the community development director. Such covenant shall be recorded against the property deed and shall contain provisions to permanently protect the regulated tree or grove unless such tree or grove, as determined by a certified arborist and approved by the community development director, are determined to be diseased or hazardous.

Applicant's Response: The proposed project does not include tree removal.

17.41.120 - Permitted adjustments (Option 3 Only).

A. The community development director, pursuant to a Type II procedure, may grant an adjustment to the side, front and rear yard setback standards by up to 50 percent if necessary to retain a Regulated Tree or Grove through a restrictive covenant pursuant to this section. In no case may the side yard setback be reduce less than three feet. The adjustment shall be the minimum necessary to accomplish preservation of trees on the lot and shall not conflict with other conditions imposed on the property.

B. The community development director, pursuant to a Type II procedure, may grant an adjustment to street standards, pursuant to adopted public works standards, in order to preserve a tree. This may include flexibility to redesign sidewalk and planter strip sizes and locations and allow placement of sidewalks and planter strips in an easement within private lots.

C. The community development director, pursuant to a Type II procedure, may allow other adjustments in order to preserve any healthy tree that cannot be moved due to its size, but will contribute to the landscape character of the area and will not present a foreseeable hazard if retained.

Applicant's Response: The proposed project does not include tree removal.

17.41.1[25] - Cash-in-lieu of planting (tree bank/fund) (Option 4).

The applicant may choose this option in-lieu-of or in addition to Compliance Options 1 through 3. In this case, the community development director may approve the payment of cash-in-lieu into a dedicated fund for the remainder of trees that cannot be replanted in the manner described above.

A. The cash-in-lieu payment per tree shall be as listed on the adopted fee schedule and shall be adjusted annually based on the Consumer Price Index (Index). The price shall include the cost of materials, transportation and planting.

B. The amount of the cash-in-lieu payment into the tree bank shall be calculated as the difference between the value of the total number of trees an applicant is required to plant, including cost of installation and adjusted for Consumer Price Index, minus the value of the trees actually planted. The value of the trees shall be based on the adopted fee schedule.

Applicant's Response: The proposed project does not include tree removal.

17.41.130 - Regulated tree protection procedures during construction.

A. No permit for any grading or construction of public or private improvements may be released prior to verification by the community development director that regulated trees designated for protection or conservation have been protected according to the following standards. No trees designated for removal shall be removed without prior written approval from the community development director.

B. Tree protection shall be as recommended by a qualified arborist or, as a minimum, to include the following protective measures:

1. Except as otherwise determined by the community development director, all required tree protection measures set forth in this section shall be instituted prior to any development activities, including, but not limited to clearing, grading, excavation or demolition work, and such measures shall be removed only after completion of all construction activity, including necessary landscaping and irrigation installation, and any required plat, tract, conservation easement or restrictive covenant has been recorded.

2. Approved construction fencing, a minimum of four feet tall with steel posts placed no farther than ten feet apart, shall be installed at the edge of the tree protection zone or dripline, whichever is greater. An alternative may be used with the approval of the community development director.

3. Approved signs shall be attached to the fencing stating that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the community development director.

4. No construction activity shall occur within the tree protection zone, including, but not limited to; dumping or storage of materials such as building supplies, soil, waste items; nor passage or parking of vehicles or equipment.

5. The tree protection zone shall remain free of chemically injurious materials and liquids such as paints, thinners, cleaning solutions, petroleum products, and concrete or dry wall excess, construction debris, or run-off.

6. No excavation, trenching, grading, root pruning or other activity shall occur within the tree protection zone unless directed by an arborist present on site and approved by the community development director.

7. No machinery repair or cleaning shall be performed within ten feet of the dripline of any trees identified for protection.

8. Digging a trench for placement of public or private utilities or other structure within the critical root zone of a tree to be protected is prohibited. Boring under or through the tree protection zone may be permitted if approved by the community development director and pursuant to the approved written recommendations and on-site guidance and supervision of a certified arborist.

9. The city may require that a certified arborist be present during any construction or grading activities that may affect the dripline of trees to be protected.

10. The community development director may impose conditions to avoid disturbance to tree roots from grading activities and to protect trees and other significant vegetation identified for retention from harm. Such conditions may include, if necessary, the advisory expertise of a qualified consulting arborist or horticulturist both during and after site preparation, and a special maintenance/management program to provide protection to the resource as recommended by the arborist or horticulturist.

C. Changes in soil hydrology due to soil compaction and site drainage within tree protection areas shall be avoided. Drainage and grading plans shall include provision to ensure that drainage of the site does not conflict with the standards of this section. Excessive site run-off shall be directed to appropriate storm drainage facilities and away from trees designated for conservation or protection.

Applicant's Response: The proposed project does not include tree removal.

Chapter 17.58 - LAWFUL NONCONFORMING USES, STRUCTURES AND LOTS

Applicant's Response: The proposed improvements do not exacerbate existing nonconforming site conditions.

CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES

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.

Applicant's Response: A Pre-Application Conference for the proposed project was held on March 10, 2016, and notes from the meeting are attached to this application.

17.50.055 Neighborhood Association Meeting

A. Neighborhood Association Meeting. The purpose of the meeting with the recognized neighborhood association is to inform the affected neighborhood association about the proposed development and to receive the preliminary responses and suggestions from the neighborhood association and the member residents.

1. Applicants applying for annexations, zone change, comprehensive plan amendments, conditional use, planning commission variances, subdivision, or site plan and design review (excluding minor site plan and design review), general development master plans or detailed development plans applications shall schedule and attend a meeting with the city-recognized neighborhood association in whose territory the application is proposed. Although not required for other projects than those identified above, a meeting with the neighborhood association is highly recommended.

2. The applicant shall send, by certified mail, return receipt requested letter to the chairperson of the neighborhood association and the citizen involvement committee describing the proposed project. Other communication methods may be used if approved by the neighborhood association.

3. A meeting shall be scheduled within thirty days of the notice. A meeting may be scheduled later than thirty days if by mutual agreement of the applicant and the neighborhood association. If the neighborhood association does not want to, or cannot meet within thirty days, the applicant shall hold their own meeting after six p.m. or on the weekend, with notice to the neighborhood association, citizen involvement committee, and all property owners within three hundred feet. If the applicant holds their own meeting, a copy of the certified letter requesting a neighborhood association meeting shall be required for a complete application. The meeting held by the applicant shall be held within the boundaries of the neighborhood association or in a city facility.

4. If the neighborhood association is not currently recognized by the city, is inactive, or does not exist, the applicant shall request a meeting with the citizen involvement committee.

5. To show compliance with this section, the applicant shall submit a sign-in sheet of meeting attendees, a summary of issues discussed, and letter from the neighborhood association or citizen involvement committee indicating that a neighborhood meeting was held. If the applicant held a separately noticed meeting, the applicant shall submit a copy of the meeting flyer, a sign in sheet of attendees and a summary of issues discussed.

Applicant's Response: Neighborhood association meetings was attended and documented as required. Shannon & Wilson, Inc. attend the Hillendale Neighborhood Association meeting on April 5, 2016 at the Living Hope Church, 19691 Meyers Road, Oregon City. A sign-in sheet, letter from the Hillendale Neighborhood Association, and summary letter describing the retaining wall presentation is attached to this application package.

17.50.060 Application Requirements.

A permit application may only be initiated by the record property owner or contract purchaser, the city commission or planning commission. If there is more than one record owner, then the city will not accept an application without signed authorization from all record owners. All permit applications must be submitted on the form provided by the city, along with the appropriate fee and all necessary supporting documentation and information, sufficient to demonstrate compliance with all applicable approval criteria. The applicant has the burden of demonstrating, with evidence, that all applicable approval criteria are, or can be, met.

Applicant's Response: Acknowledged.

CHAPTER 17.54.100 - FENCES

Fence, Setback and Height Limitations.

A fence may be located on the property or in a yard setback area subject to the following:

A. Generally. Fence, hedge, or wall.

1. Fences and walls—Fences and walls over forty-two inches shall not be located in front of the front façade or within forty feet of the public right-of-way, whichever is less. All other fences (including fences along the side and rear of a property) shall not exceed six feet in total height unless as permitted [in] Section 17.54.100.B.

2. Hedges shall not be more than forty-two inches in the underlying front yard setback. Individual plants and trees taller than forty-two inches tall may be permitted provided there is at least one foot clearance between each plant.

3. Property owners shall ensure compliance with the traffic sight obstruction requirements in Chapter 10.32 of the Oregon City Municipal Code.

4. It is unlawful for any person to erect any electric fence or any fence constructed in whole or in part of barbed wire or to use barbed wire, except as erected in connection with security installations at a minimum height of six feet, providing further that prior written approval has been granted by the city manager.

B. Exception. Fence, hedge, wall, or other obstructing vegetation on retaining wall. When a fence, hedge, wall, or other obstructing vegetation is built on a retaining wall or an artificial berm that is not adjacent to or abutting a public right-of-way, the following standards shall apply:

1. When the retaining wall or artificial berm is thirty inches or less in height from the finished grade, the maximum fence or wall height on top of the retaining wall shall be six feet.

2. When the retaining wall or earth berm is greater than thirty inches in height, the combined height of the retaining wall and fence or, wall from finished grade shall not exceed eight and one-half feet.

3. Fences, hedges or walls located on top of retaining walls or earth berms in excess of eight and one-half feet in height shall be set back a minimum of two feet from the edge of the retaining wall or earth berm below and shall not exceed a combined height of eight and one-half feet.

4. An alternative height or location requirement may be approved within a land use process for all non-single-family and two-family residential properties. The fence, hedge or wall shall be compatible with the adjacent neighborhood and achieve the same intent of the zoning designation and applicable site plan and design review process. In no case may the fence, hedge or wall exceed eight feet in height without approval of a variance.

Applicant's Response: For safety, an approximately 6-foot tall cedar fence will be constructed along the top of the proposed retaining wall. The fence will be set back a distance of two feet from the face of the wall. The combined height of the wall and fence will exceed 8.5 feet, but this application include a

request for this variance.

CHAPTER 17.60 - VARIANCE

17.60.030 – Variance - Grounds.

A variance may be granted only in the event that all of the following conditions exist:

A. That the variance from the requirements is not likely to cause substantial damage to adjacent properties by reducing light, air, safe access or other desirable or necessary qualities otherwise protected by this title;

Applicant's Response: The proposed retaining wall is designed to mitigate potential landslide movements at the Berryhill Apartments duplex and eightplex. The project will, to some extent, *prevent* damage to the property down slope because it will support the duplex and eightplex, which at present could potentially slide down into the adjoining parcel. Some soil will also be removed at the top of the slide which in addition to the retaining wall will decrease driving force. The proposed improvements will not reduce existing light, air, safe access, or other desirable qualities of the area.

B. That the request is the minimum variance that would alleviate the hardship;

Applicant's Response: Based on geotechnical borings and inclinometer data, the landslide failure plane is approximately 33 feet below the existing ground surface at the location of the proposed wall. To adequately support the ground upslope, based on the landslide geometry and depths of the geologic units present, the steel soldier piles for the wall will have to extend to depths of 50 feet, the wall will need to be continuous below the duplex and eightplex, and tieback anchors will be required at depths of approximately 11 feet below the tops of the piles. The location and height of the wall is controlled by the geometry of the landslide and the existing topography. The proposed wall height of up to 12 feet (not including the fence at the top) is only as high as it needs to be to allow installation of the tieback anchors which are critical to the wall's performance. Fill cannot be placed back against the wall to lower its height after construction, because ground on the downhill side of the wall will continue to move as the Forest Edge Apartments landslide blocks continue to slide. Loading this unstable ground would only serve to exacerbate its ongoing movement.

C. Granting the variance will equal or exceed the purpose of the regulation to be modified.

Applicant's Response: The purpose of the wall height regulation is presumably to maintain safe wall heights and to prevent extensive areas of disrupted view that would block light, air flow, access, etc. The top of the proposed wall will be made safe by a cedar fence, installed at a 2-foot offset from the wall face. The finished topography, with the wall in place, will not substantially change the field of view from the top or bottom of the slope. Because it's on a steep slope, it will not affect significantly light, air flow, or access.

D. Any impacts resulting from the adjustment are mitigated.

Applicant's Response: The wall itself is designed to mitigate unsafe site conditions that currently exist. No negative impacts from the proposed improvements are anticipated. The wood lagging, which makes up the majority of the exposed wall surface area, will blend into the surrounding forest environment. The proposed wall location is in a relatively low-visibility area, partially screened by existing trees at the base of the slope. These trees will remain during construction.

E. No practical alternatives have been identified which would accomplish the same purpose and not require a variance.

Applicant's Response: Alternatives to the proposed variance were given extensive consideration and no practical alternatives were identified.

F. The variance conforms to the comprehensive plan and the intent of the ordinance being varied.

Applicant's Response: The proposed wall height is only as high as it needs to be to allow installation of the tieback anchors which are critical to the wall's performance. Fill cannot be placed back against the

wall to lower its height after construction, because ground on the downhill side of the wall will continue to move as the Forest Edge Apartments landslide blocks continue to slide. Loading this unstable ground would only serve to exacerbate its ongoing movement. Safety from falls will be maintained by a 6-foot tall cedar fence which will be constructed along the top of the wall, offset two feet from the wall face.

The proposed retaining wall complies with Comprehensive Plan Goal 7.1 Natural Hazards – Protect life and reduce property loss from the destruction associated with natural hazards. The retaining wall as designed with the proposed wall height will protect the upslope Berryhill Park Apartments property from destruction and protect the life of occupants of existing upslope buildings from the landslide hazard.

CHAPTER 17.58 LAWFUL NONCONFORMING USES, STRUCTURES AND LOTS

Applicant's Response: The proposed improvements do not exacerbate existing nonconforming site conditions.