

## RESOLUTION 04-38

### A RESOLUTION OF THE LAKE OSWEGO CITY COUNCIL ADOPTING POLICIES DISCOURAGING DESTRUCTION OF NATURAL RESOURCES PRIOR TO ANNEXATION

**WHEREAS** the City of Lake Oswego has adopted regulations protecting environmentally sensitive natural resources and significant trees within the City; and

**WHEREAS** on occasion property owners have removed or degraded natural resources prior to filing a petition to annex property to the City in order to maximize development opportunities; and

**WHEREAS** the Urban Services Boundary defines Lake Oswego's ultimate growth area, within which the City will be the eventual provider of the full range of urban services; and

**WHEREAS** the City Council finds that it is in the public interest to discourage the practice of removing significant trees and degrading sensitive natural areas on properties within the unincorporated portions of the Urban Services Boundary.

**BE IT RESOLVED** by the Lake Oswego City Council that:

**Section 1.** The City Council hereby adopts the "Policies Discouraging Destruction of Natural Resources and Significant Trees Prior to Annexation" attached to this Resolution as Exhibit A and incorporated by this reference;

**Section 2.** This Resolution shall be effective upon passage.

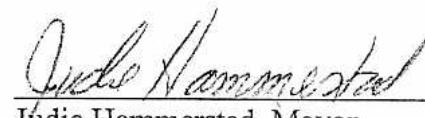
Considered and enacted at the meeting of the City Council of the City of Lake Oswego on the 18<sup>th</sup> day of May, 2004.

AYES: Mayor Hammerstad, Graham, Hoffman, Peterson, Turchi, McPeak, Rohde

NOES: none

EXCUSED: none

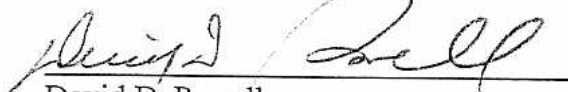
ABSTAIN: none

  
\_\_\_\_\_  
Judie Hammerstad, Mayor

ATTEST:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David D. Powell  
City Attorney

## **POLICIES DISCOURAGING DESTRUCTION OF NATURAL RESOURCES AND SIGNIFICANT TREES PRIOR TO ANNEXATION**

**Purpose:** To encourage property owners interested in petitioning the City for annexation to preserve and protect natural resources and significant trees prior to annexation.

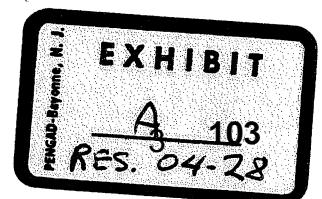
**Background:** The City of Lake Oswego has inventoried, evaluated, mapped and developed a protection program for hundreds of acres of stream corridors, wetlands and tree groves within its planning area (LOC Article 50.16). This planning area includes lands outside the City limits but within the City's Urban Services Boundary. In this unincorporated area, the City and other jurisdictions have agreed that the City is the most logical future provider of urban services and, according to state law, should plan for land use and transportation needs in those areas. It is anticipated that, at some point in the future, properties within the City's Urban Services Boundary will eventually seek annexation, typically for future development purposes or to receive City services.

On several occasions, the City has received petitions to annex properties within the unincorporated areas of the Urban Service Boundary on which trees have been cut, vegetation removed and streams degraded. Although these actions may not have been regulated by the County, in some cases they would violate City natural resource protection requirements.

Removal of natural resources contributes to erosion and water quality issues resulting in degradation of wildlife habitat and siltation buildup in waterways. When such properties are subsequently annexed, the City may become obligated to develop programs and expend funds to mitigate the negative effects of natural resource removal.

These types of actions gain additional importance in light of the listing of salmonid species under the Endangered Species Act in the Tualatin and Willamette Rivers and their tributaries, which receive storm water runoff and other drainage from within the City. In addition, several creeks within the northerly portion of the unincorporated Urban Services Boundary are tributaries of Tryon Creek, which is a fish-bearing stream. The County, the City and private citizens should work together to ensure that their programs and activities are "salmon safe."

Removal of significant trees, whether or not within a protected tree grove, can have a negative effect upon aesthetics and natural processes, and should be discouraged in areas subject to annexation unless the criteria for tree removal under the City Code have been met.



**I. Policy for parcels from which trees of a certain size and species have been removed:**

The City Council declares that it will decline a petition for annexation of a parcel pursuant to ORS 222.125 or 222.170 if a tree of a size and species listed in the procedures below has been removed from the property following the date of this policy under circumstances that, in the determination of the City Manager, would not have warranted issuance of a permit for the removal of the tree under the criteria of the Lake Oswego Tree Code, unless the property owner:

- Mitigates for the removal of the tree to the satisfaction of the City Manager by planting a tree of the same or similar species, 15 to 20 feet tall and with a trunk size of 5 to 12 inch caliper dbh, on the same property in approximately the same location as the removed tree;
- Successfully maintains the replacement tree for at least three years prior to annexation, and commits to maintain the mitigation for at least two years following annexation; and
- Pays a restoration fee into the City of Lake Oswego Tree Fund in the amount of the value of the removed tree.

Compliance with this policy shall not be deemed to assure that the City Council will approve the annexation petition. This policy shall not be construed as preventing the Council from exercising its full discretionary authority in granting or denying petitions for annexation as otherwise permitted by Oregon law.

This policy applies to annexations that are initiated or requested by the owners of the property to be annexed and that require the consent of owners electors under ORS Chapter 222. It does not apply to annexations by election under ORS Chapters 222 or 195 or to non-consensual “island” annexations.

This policy applies notwithstanding the election requirements of Section 57 of the Lake Oswego Charter, which requires a City-wide vote prior to annexation of parcels within certain portions of the Stafford Area. If the owners of a parcel in that area initiate or request annexation contrary to this policy, the City Council will decline to refer the proposed annexation for a vote under Section 57.

**Procedure:**

1. Upon receipt of an annexation petition, the City Manager will determine whether a tree of a species and size greater than or equal to that listed below has been removed from the site following the date of this policy:

<u>Species</u>	<u>Common Name</u>	<u>Size (dbh)</u>
Quercus garryana	Oregon white oak	08"
Pseudotsuga menziesii	Douglas-fir	18"
Thuja plicata	Western red cedar	12"
Pinus Ponderosa	Ponderosa pine	12"
Other Deciduous and horticultural tree species		20"
Other evergreen and conifer trees		18"
Western Yew	Taxus Brevifolius	05"

2. If the City Manager determines that such a tree has been removed, the City Manager shall then allow the property owner an opportunity to establish, to the satisfaction of the City Manager, that the circumstances of the removal would have warranted issuance of a tree removal permit under the criteria of the Lake Oswego Tree Code.
3. If the City Manager determines that the property owner has established that the circumstances of the removal would have warranted issuance of a tree removal permit, the City Manager shall inform the Council that the property owner has complied with this policy.
4. If the City Manager determines that the property owner has failed to establish that the criteria for a tree removal permit would have been met, annexation shall be declined unless the property owner:
  - a. Plants a replacement tree of the same or a similar species (as determined by the City Manager), 15 to 20 feet tall and with a trunk size of 5 to 12 inch caliper dbh, in approximately the same location on the property as the removed tree. The height and trunk size within the above ranges shall be determined by the City Manager, considering the type of tree, its growth rate, availability of replacement trees at various sizes, and the size of the removed tree. The tree shall be planted according to the specifications in the City Tree Planting and Maintenance Guidelines as approved by the City Council;
  - b. Successfully maintains the replacement tree for at least three years prior to annexation (Successful maintenance includes, without limitation, immediate replacement of any

replacement tree that dies or otherwise declines during the maintenance period); and

- c. Pays a restoration fee into the City of Lake Oswego Tree Fund in the amount of the value of the removed tree as determined to the satisfaction of the City Manager in accordance with the methods set forth in the “Guide for Plant Appraisal” published by the International Society of Arboriculture, or such other method as may be deemed appropriate by the City Manager.

In addition to the pre-annexation requirements of Sections 4 a, 4 b and 4 c, above, annexation of the property shall be conditioned upon the following:

- d. The property owner shall execute an agreement with the City requiring the property owner to maintain the required mitigation (tree replacement), at his or her expense, in a manner consistent with this policy and to the satisfaction of the City Manager for a period of at least two years following the effective date of the annexation. The agreement shall also provide that, if the property owner fails to meet this obligation, the City may enter the property to restore and maintain the mitigation at the property owner’s expense;
- e. The property owner shall record a restrictive covenant against the property, in a form approved by the City Attorney, requiring the mitigation to be maintained for at least two years following the effective date of the annexation in a manner consistent with this policy and to the satisfaction of the City Manager, granting the City the right to enforce the restrictive covenant, and allowing recovery of attorney fees and other enforcement expense by the City;
- f. The property owner shall grant and record an easement, in the form approved by the City Attorney, allowing the City access to and use of the property for the purposes of restoring and maintaining the required mitigation during the two-year period; and
- g. The property owner provide the City with a bond, cash deposit or other security acceptable to the City Manager, in a sum deemed by the City Manager to be sufficient to cover

the costs of restoration and maintenance of the required mitigation during the two-year period.

5. Any person who owns property within the unincorporated portion of the City's Urban Services Boundary and who proposes to remove a tree may apply for certification by City staff that the proposed removal would qualify for a Lake Oswego Tree Removal Permit if the property were within the City's boundaries. Upon a subsequent annexation petition, the certification shall satisfy the property owner's burden under paragraph 2 of this policy with relation to the removal of the tree. An applicant for a certification under this paragraph shall pay the same fee as established for the corresponding tree removal permit.
6. The City Council will not approve annexation of property where the requirements of this policy have not been met, unless the City Council elects, in its discretion, to exempt the property from this policy.

**II. Policy for parcels with resources that are inventoried or for which a determination is pending:**

The City Council declares that it will decline a petition for annexation of a parcel pursuant to ORS 222.125 or 222.170 when:

- (1) the parcel has previously been inventoried pursuant to the ESEE analysis performed by the City pursuant to the requirements of Statewide Planning Goal 5 and determined to have natural resources that would have been protected if located within the City, or the parcel is designated on the Lake Oswego Natural Resource Inventory Update Map as having natural resources for which there is a pending determination as to whether the criteria for such protection are met, and
- (2) the natural resources on the parcel have been removed or otherwise degraded beyond that which would have been clearly permitted under the City natural resource regulations,

unless the property owner mitigates the effects of the natural resource removal by restoring the site to the condition which would exist if the site had complied with the City's natural resource regulations from the date of the inventory, or from the date of designation on the Lake Oswego Natural Resource Inventory Update Map, to the date of annexation, and unless the mitigation is successfully maintained by the property owner for a period of at least three years prior to annexation, and the property owner commits to

maintaining the mitigation for at least two years following annexation. If the property owner or other applicant for annexation cannot substantiate to the satisfaction of the City Manager the quality and quantity of natural resources that were on the site prior to the removal or degradation, the property owner must establish or enhance natural resources within the mapped natural resources area to a minimum quality and quantity determined by the City Manager, taking into consideration the data and analysis that resulted in the designation of the mapped natural resources area on the site.

In the case of annexation petitions for parcels with natural resources designated on the Lake Oswego Natural Resource Inventory Update Map, an analysis of the resources under the criteria of LOC 50.15.020 shall be completed by City staff at the applicant's expense prior to the City Council's consideration of the petition. If, in the determination of the City Manager, the resources meet the criteria for protection under the City's natural resources regulations, annexation will be declined pursuant to this policy unless mitigation occurs as provided above. If the City Manager determines that the resources do not meet the criteria for protection, this policy shall not apply.

Compliance with this policy shall not be deemed to assure that the City Council will approve the annexation petition. This policy shall not be construed as preventing the Council from exercising its full discretionary authority in granting or denying petitions for annexation as otherwise permitted by Oregon law.

This policy applies to annexations that are initiated or requested by the owners of the property to be annexed and that require the consent of owners electors under ORS Chapter 222. It does not apply to annexations by election under ORS Chapters 222 or 195 or to non-consensual "island" annexations.

This policy applies notwithstanding the election requirements of Section 57 of the Lake Oswego Charter, which requires a City-wide vote prior to annexation of parcels within certain portions of the Stafford Area.) If the owners of a parcel in that area initiate or request annexation contrary to this policy, the City Council will decline to refer the proposed annexation for a vote under Section 57.

**Procedure:** To identify annexing parcels on which natural resources have been degraded and for which the City has conducted natural resources inventory and mapping, the following procedures shall apply:

1. Upon receipt of an annexation petition, City staff will determine whether the site contains inventoried natural resources or contains



resources designated on the Lake Oswego Natural Resource Inventory Update (NRIU) Map. If so, staff will visit the parcel(s) proposed for annexation and compare existing site conditions to the City's site inventory of natural resources, or to the NRIU Map.

2. If it appears that the functions and values of the natural resources on the site have been compromised since the parcel was inventoried or designated on the NRIU Map beyond that which would be clearly permitted under the City's natural resource regulations:
  - a. For inventoried resources, and for resources designated on the NRIU Map that have been determined to meet the criteria for protection under paragraph 2(b), staff will instruct the property owner to develop a mitigation and restoration plan that restores and protects the functions and values of the resource on-site to the same degree as if the site had been protected under the City's natural resource programs from the date of inventory to the date of annexation. The plan shall be prepared by a certified professional (restoration ecologist, biologist, ecologist, etc.) approved by the City Manager. If the property owner or other applicant for annexation cannot substantiate to the satisfaction of the City Manager the quality and quantity of natural resources that were on the site prior the removal or degradation, the mitigation plan must provide for the establishment or enhancement of natural resources within the mapped natural resources area to a minimum quality and quantity determined by the City Manager, taking into consideration the data and analysis that resulted in the designation of the mapped natural resources area on the site. (A property owner who wishes to establish a natural resource "baseline" following inventory and prior to any development activities which could degrade the natural resources is encouraged to contact the City's Natural Resource Coordinator to obtain an inventory of the quality and quantity of the natural resources existing on the site.) The mitigation plan shall be reviewed and either approved by the City Manager or the City Manager shall make recommendations for improvement to the mitigation plan.
  - b. In the case of parcels with natural resources designated on the NRIU Map, an analysis of the resources under the criteria of LOC 50.15.020 shall be completed by City staff at the applicant's expense. Following the analysis, the City Manager shall determine whether the resources meet the criteria for protection. If so, mitigation under paragraph 2(a) shall be required to the same extent as though the resources had been inventoried prior to the filing of the annexation petition.

3. If the property owner complies with the mitigation plan as approved by the City Manager prior to annexation, and maintains the mitigation for at least three years prior to annexation, the property owner shall be deemed to have restored the natural resources on the parcel sufficient to be eligible for annexation under this policy. Annexation of the property shall be conditioned upon the following:
  - a. The property owner shall execute an agreement with the City requiring the property owner to maintain the required mitigation, at his or her expense, in a manner consistent with this policy and to the satisfaction of the City Manager for a period of at least two years following the effective date of the annexation. The agreement shall also provide that, if the property owner fails to meet this obligation, the City may enter the property to restore and maintain the mitigation at the property owner's expense;
  - b. The property owner shall record a restrictive covenant against the property, in a form approved by the City Attorney, requiring the mitigation to be maintained for at least two years following the effective date of the annexation in a manner consistent with this policy and to the satisfaction of the City Manager, granting the City the right to enforce the restrictive covenant, and allowing recovery of attorney fees and other enforcement expense by the City;
  - c. The property owner shall grant and record an easement, in the form approved by the City Attorney, allowing the City access to and use of the property for the purposes of restoring and maintaining the required mitigation during the two-year period; and
  - d. The property owner provide the City with a bond, cash deposit or other security acceptable to the City Manager, in a sum deemed by the City Manager to be sufficient to cover the costs of restoration and maintenance of the required mitigation during the two-year period.
4. The City Council will not approve annexation of property where the requirements of this policy have not been met, unless the City Council elects, in its discretion, to exempt the property from this policy.

### **III. Policy for parcels where water resources have been degraded in violation of state or federal law.**

The City Council declares that it will decline a petition for annexation of a parcel pursuant to ORS 222.125 or 222.170 if, following the date of this policy, a water resource on the parcel has been filled, or has had material removed, or has otherwise been degraded, in violation of any state or federal law or regulation, unless the property owner:

- Pays in full all fines, civil penalties and other assessments imposed or otherwise required by any state or federal agency;
- Pays in full any damages awarded pursuant to the provisions of ORS Chapter 196 or pursuant to any similar or related statutes or regulations;
- Fully complies with any order of any state or federal agency related to the degradation of the water resource; and
- Complies with all mitigation or restoration requirements imposed or ordered by a state or federal agency, and successfully maintains the mitigation or restoration for at least three years prior to annexation and commits to maintain the mitigation for at least two years following annexation.

For the purposes of this policy, “water resource” shall mean any natural waterway including any bay, stream, lake, wetland or other body of water, whether navigable or non-navigable.

Compliance with this policy shall not be deemed to assure that the City Council will approve the annexation petition. This policy shall not be construed as preventing the Council from exercising its full discretionary authority in granting or denying petitions for annexation as otherwise permitted by Oregon law.

This policy applies to annexations that are initiated or requested by the owners of the property to be annexed and that require the consent of owners electors under ORS Chapter 222. It does not apply to annexations by election under ORS Chapters 222 or 195 or to non-consensual “island” annexations.

This policy applies notwithstanding the election requirements of Section 57 of the Lake Oswego Charter, which requires a City-wide vote prior to annexation of parcels within certain portions of the Stafford Area. If the owners of a parcel in that area initiate or request annexation contrary to this policy, the City Council will decline to refer the proposed annexation for a vote under Section 57.

#### **Procedure:**

1. Upon receipt of an annexation petition, City staff will determine whether the site contained a water resource prior to the date of this policy, and will visit the site to determine the current condition of the resource.

2. If it appears that, following the date of this policy, removal or fill has occurred, or that the functions and values of the water resource have otherwise been compromised, in violation of any state or federal law or regulation, and if the violation has not previously been reported to the appropriate state or federal agency, the violation shall be reported to the appropriate agency by City staff.
3. If it appears to staff that no violation has occurred and no report has been made, or if a report is made but the appropriate state or federal agency determines that no violation has occurred, the City Manager shall inform the City Council that the proposed annexation does not violate this policy.
4. If a report has been made, and the appropriate state or federal agency determines that a violation has occurred, the annexation petition shall be denied unless the property owner:
  - a. Pays in full all fines, civil penalties and other assessments imposed or otherwise required by any state or federal agency;
  - b. Pays in full any damages awarded pursuant to the provisions of ORS Chapter 196, or awarded pursuant to any similar or related statutes or regulations;
  - c. Fully complies, in the determination of the City Manager, with any order of any state or federal agency related to the degradation of the water resource; and
  - d. Fully complies, in the determination of the City Manager, with all mitigation or restoration requirements imposed or ordered by the state or federal agency, and successfully maintains the mitigation or restoration for at least five years prior to annexation.

In addition to the pre-annexation requirements of Sections 4 (a), 4 (b), 4 (c) and 4 (d), above, annexation of the property shall be conditioned upon the following:

- e. The property owner shall execute an agreement with the City requiring the property owner to maintain the required mitigation, at his or her expense, in a manner consistent with this policy and to the satisfaction of the City Manager for a period of at least two years following the effective date of the annexation. The agreement shall also provide that, if the property owner fails to meet this obligation, the City may enter the property to restore and maintain the mitigation at the property owner's expense;

- f. The property owner shall record a restrictive covenant against the property, in a form approved by the City Attorney, requiring the mitigation to be maintained for at least two years following the effective date of the annexation in a manner consistent with this policy and to the satisfaction of the City Manager, granting the City the right to enforce the restrictive covenant, and allowing recovery of attorney fees and other enforcement expense by the City;
  - g. The property owner shall grant and record an easement, in the form approved by the City Attorney, allowing the City access to and use of the property for the purposes of restoring and maintaining the required mitigation during the two-year period; and
  - h. The property owner provide the City with a bond, cash deposit or other security acceptable to the City Manager, in a sum deemed by the City Manager to be sufficient to cover the costs of restoration and maintenance of the required mitigation during the two-year period.
5. The City Council will not approve annexation of property that does not comply with the preceding requirements, unless the Council elects, in its discretion, to exempt the property from this policy.

#### **IV. Obligations Run with the Land.**

Any obligation of the “property owner” under these policies shall “run with the land” and shall be an obligation of the owner of the property at the time required for performance of the obligation, regardless of any prior transfers of title.

#### **V. Public Notice.**

The City Manager shall publicize the adoption of these policies by providing notice to the news media, local realtors, local arborists and foresters, the Home Builders Association of Metropolitan Portland, the Clackamas County Planning Department, and to those Neighborhood Associations and County Planning Organizations whose boundaries include unincorporated areas within the City’s Urban Services Boundary. The City Manager shall encourage the Neighborhood Associations and County Planning Organizations to provide notice of these policies to their membership, and to any realtor that posts signage advertising a property for sale within the unincorporated area. The City Manager shall also provide written notice of these policies to the owners (as listed in the property tax assessment roll) of property within the unincorporated area that have inventoried natural resources, or that have resources designated on the Lake Oswego Natural Resource Inventory Update Map.

**VI. Replacement of previous annexation policy.**

These policies replace the Interim Policy on Annexation adopted by the City Manager on April 5, 2004.