



TYPE III NATURAL RESOURCE OVERLAY DISTRICT AND GEOLOGIC HAZARDS REVIEW

Staff report and Recommendation

Applicant's Submittal

November 19, 2018

FILE NUMBER: NR 18-08/US 18-02: Natural Resources Overlay
District Review and Geologic Hazard Overlay Review

APPLICANT: Brant and Carolyn Popma
510 1st Avenue
Oregon City, OR 97045

OWNER: Canemah Club Inc.
516 1st Avenue
Oregon City, OR 97045

REQUEST: Natural Resources Overlay District Review and Geologic Hazard Overlay Review
for existing boat dock, patio, and access stairs.

LOCATION: 1st Avenue between Miller and Jerome Streets
Clackamas County Map 2-1E-36DD, Tax Lot 200
Oregon City, OR 97045

REVIEWER: Kelly Reid, Planner, AICP

RECOMMENDATION: Approval with Conditions.

Submitted: 9/6/2018
Complete: 10/5/2018
120 Day Deadline: 2/2/2019

PROCESS: Type III Quasi-Judicial Public Hearing. Pursuant to OCMC 17.50. C. Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. In the event that any decision is not classified, it shall be treated as a Type III decision. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission or the historic review board hearing is published and mailed to the applicant, recognized neighborhood association(s) and property owners within three hundred feet. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission or the historic review board, all issues are addressed. The decision of the planning commission or historic review board is appealable to the city commission, on the record. The city commission decision on appeal from the historic review board or the planning commission is the city's final decision and is appealable to LUBA within twenty-one days of when it becomes final.



Conditions of Approval Planning File NR 18-08/US 18-02

(P) = Verify that condition of approval has been met with the Planning Division.

(DS) = Verify that condition of approval has been met with the Development Services Division.

(B) = Verify that condition of approval has been met with the Building Division.

(F) = Verify that condition of approval has been met with Clackamas Fire Department.

The following conditions of approval shall be completed within 6 months of the date of this land use decision.

1. The applicant shall submit documentation stating if the development requires the approval of the Division of State Lands or the U.S. Army Corps of Engineers, and any required approval. (P)
2. The applicant shall include the existing Maple and Ash in the protective covenant or conservation easement recorded for the mitigation planting. (P)
3. Prior to planting, the applicant shall submit a final mitigation plan indicating the final species selected. All trees, shrubs, and herbaceous (groundcover) selected for the mitigation plan shall be from the Oregon City Native Plant List. (P)
4. The applicant's planting plan must be revised to include 8 trees and 42 shrubs; existing plants may not be counted. Additional plants may be planted on the applicant's site or offsite as required by other conditions of approval. (P)
5. The final mitigation plan shall include at least three different shrub species. (P)
6. The applicant shall revise the species in the planting plan to: (P)
 - Remove serviceberry from the list of tree options; serviceberry is a shrub and may not be counted as a tree.
 - Re-label oxalis oregana as "Redwood sorrel" if it is retained in the final mitigation plan.
 - Remove rush from the list of shrub options; rush is a ground cover.
7. The applicant shall revise the mitigation plan to meet plant spacing requirements; however, spacing may be reduced to accommodate additional plants if necessary. (P)
8. If off-site mitigation is required, it should be located within the Willamette River basin, above Willamette Falls and within the NROD or equivalent overlay in another jurisdiction. (P)
9. The applicant shall comply with the standards for monitoring and maintenance within the NROD per OCMC 17.49.180.F. (P)



10. The property owner shall provide the City with a copy of a recorded covenant or conservation easement per OCMC 17.49.180.G. (P)
11. The applicant shall provide the City with a financial guarantee per OCMC 17.49.180.H. (P)
12. Compliance with the standards in 17.49.200, 17.49.230, and 17.49.265 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. The mitigation plan shall be part of the written report. (P)
13. The applicant shall complete the proposed mitigation with full planting quantities plus one of the following, in order to meet the mitigation area size requirement or to otherwise provide equivalent mitigation: (P)
 - a. Add additional area of mitigation that will meet the 1,696 square feet minimum. This will require an additional 232 square feet of mitigation area. The applicant may plant some of the required trees and shrubs in this additional area.
 - b. Remove invasive plants in additional areas outside of the applicant's easement on the subject property. The area of invasive removal shall be larger than the required mitigation area to make up for the lack of mitigation planting area. The invasive removal area shall be double the mitigation area requirement: $1696 \times 2 = 3392$ square feet. The applicant proposes a mitigation area of 1464 sf on the applicant's easement area. $3392 - 1464 = 1928$. Therefore, applicant shall add invasive removal of 1928 square feet on the subject property.
 - c. Provide off-site mitigation of 232 square feet. The applicant may propose mitigation on private or public land with the permission of the property owner. A covenant compliant with this Chapter shall be required, if the mitigation is located on private property. The applicant may plant some of the required trees and shrubs in this additional area.
 - d. Provide enhanced mitigation planting within the 1,464 square feet proposed. This may come in the form of additional plants and highly functional/valuable/rare plant species. The applicant's mitigation report should explain how the enhanced plantings provide an improved outcome over the minimum required native plantings, and how they achieve the functional values in 17.49.010.
14. The applicant shall submit documentation from an engineer certifying that the project will not result in net fill within the floodplain. An elevation certificate completed by a licensed surveyor is required to be submitted as part of the Floodplain Development permit. Prior to issuance of permits, the applicant shall submit adequate documentation to the building official to comply with OCMC 17.42.160.E.2. The applicant may utilize cut on other properties within the Willamette River 100-year floodplain, if that cut has not already been used to balance a fill. Any excavation used to balance the fill for the development must not be below bankfull stage. Such



excavation may require review by the City for compliance with grading standards and with Title 17. (P, B)

15. The applicant shall submit a grading plan to balance cut and fill within the flood management areas per section 17.42.160 of the Oregon City Municipal Code. (DS)
16. The applicant shall obtain an Erosion control permit prior to commencement of any construction activities. The applicant shall also obtain all permits required by other regulatory agencies. (DS)
17. The applicant shall provide an Erosion Prevention and Sedimentation Control Plan prior to issuance of an erosion control permit. (DS)The applicant shall provide an Erosion Prevention and Sedimentation Control Plan prior to issuance of an erosion control permit.
18. Owner(s) of the property associated with the development shall execute a waiver of damages and an indemnity and hold harmless agreement which releases the City from all liability for any damages resulting from the development approved by the City's decision. The applicant share pay associated processing and recording fees. (DS)
19. Nothing contained in this report 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. (DS)
20. If determined necessary by the Building Official, the applicant shall obtain a Floodplain development permit to verify that applicant has proved adequate anchoring of any construction completed within a floodplain, by submitting registered professional engineer report determining that the aforementioned items are properly anchored and will not become dislodged during an event. (B)
21. The applicant shall obtain a certificate of appropriateness from the Historic Review Board for the concrete block wall, or shall modify the wall in order to obtain a certificate of appropriateness. (P)

I. STAFF EXECUTIVE SUMMARY

According to the applicant, the previous owners of the property located between the Willamette River and 510 1st Avenue in Canemah constructed a dock, concrete block stairway, concrete block retaining walls, a rock retaining wall, a graded gravel patio with a concrete block fire pit, and a concrete patio in 2013. The applicant is requesting approval for the aforementioned development which has occurred onsite for compliance with applicable standards in the Natural Resource Overlay, Geologic Hazard Overlay, and Floodplain overlay without permits or land use approval. While the dock was approved by the Department of State Lands, the grading, patio, stairs, and a retaining wall were not reviewed by the City.



The applicant estimates that 12.1 cubic yards of fill was brought in during the construction of the patio. However, because the site is within the floodplain, no net fill is permitted. Staff recommends a condition of approval to excavate an equal amount of material within the floodplain.

Stormwater treatment and Geologic Hazard review are waived by the City because the impervious surfaces, heights, and amounts of cuts and fills fall under the City's thresholds.

The development created 848 square feet of disturbance area within the Natural Resource Overlay District. It is not clear how much of the area was previously impervious, but the applicant is erring on the side of caution and considering all of the development as new disturbance area. The applicant has proposed mitigation on the portion of the property that is controlled by the applicant through an easement, and the small site area does not allow for the full 2:1 ratio of mitigation. Thus, the applicant requests an adjustment to allow a smaller area and has requested to count the existing native plants on the site towards the required mitigation.

Staff recommends conditions of approval to meet the full planting quantity requirements, not counting existing plants, and has provided four options for the applicant to increase mitigation area to meet the standard.

The following report provides additional conditions of approval pertain to flood regulations, grading, and mitigation plan details.

II. BACKGROUND:

1. Existing Conditions

According to the applicant, the previous owners of the property constructed two patio improvements on the river bank in 2013.

The Applicant has river access through an easement on the subject site. The easement contains a permitted dock, and development of a concrete "Manor Stone" type block stairway for pedestrian access, low "Manor Stone" concrete block retaining walls, a rock retaining wall, a graded fine gravel patio with 356 square feet, grading, a Manor Stone block fire pit, and an approximately 259 square foot concrete patio.

The site is a rocky bank of the railroad grade. The rocky bank consists of rocks and fine gravel with some soil. Existing vegetation is a mixture of native plants, noxious plants, naturalized plants and ornamental plants. The site area from the top of bank to the water is approximately 2,312 square feet. The disturbance area enclosed by the back of walls, stairway, concrete and gravel is approximately 930 square feet, or 40% of the site.



Figure 1. Aerial photo



Figure 2: Vicinity Map



2. Project Description

The applicant is requesting approval for existing dock easement improvements including a concrete block stairway for pedestrian access, low concrete block retaining walls, a rock retaining wall, a graded gravel patio with a concrete block fire pit, and a concrete patio.

The site area from the top of bank to the water is approximately 2,312 square feet. The disturbance area enclosed by the back of walls, stairway, concrete and gravel is approximately 930 square feet, or 40% of the site.

The applicant has proposed to provide mitigation for disturbance to the NROD. Due to the limited size of the subject site, the applicant is requesting that the mitigation requirements be interpreted to apply only to the site under the applicant's control.

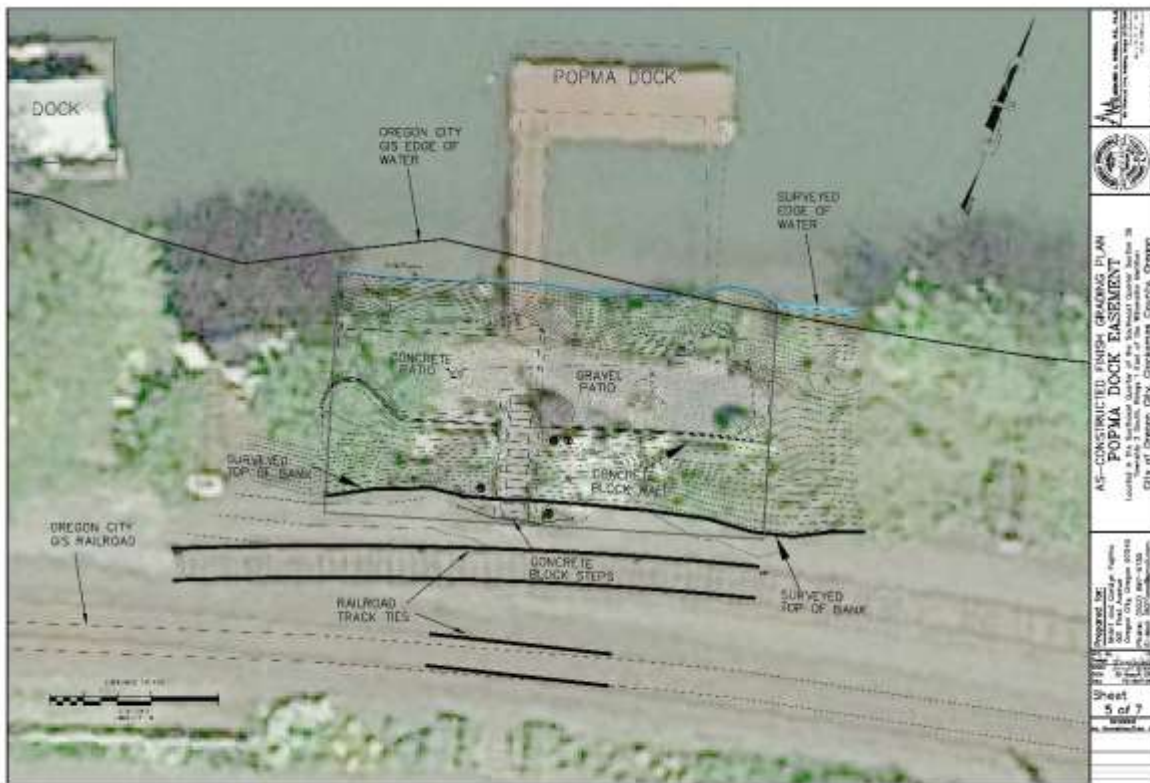


Figure 3. Existing Site Development



Figure 4. Photograph of Site Development, looking upstream

- 3. Municipal Code Standards and Requirements:** The following sections of the Oregon City Municipal Code are applicable to this land use approval:
 - 13.12 - Stormwater Management
 - 15.48 - Grading, Filling and Excavating
 - 17.12 – R-6 Single Family Dwelling District
 - 17.41 – Tree Protection
 - 17.42 – Flood Management Overlay District
 - 17.44 – Geologic Hazards
 - 17.48 – Willamette River Greenway
 - 17.49 – Natural Resources Overlay District
 - 17.50 - Administration and Procedures
 - 17.54 – Supplemental Zoning Regulations and Exceptions

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

- 5. Notice and Public Comment**



Notice of the proposal was sent to various City departments, affected agencies, property owners within 300 feet, and the Neighborhood Association. Additionally, the subject property was posted with signs identifying that a land use action was occurring on the property.

The Natural Resources Committee discussed this application at their November 14, 2018 meeting. The video of the meeting is part of the record for this application.

Public comments submitted include (Exhibit 3):

A letter from the applicant's representative to the Natural Resources Committee explaining the history of the property and that the current owners did not construct the development, but that they are now seeking to correct the work done by the previous owner. The letter requests the support of the NRC in limiting the required improvements to landscaping only.

A letter from Carl Koontz and Joanne Dutra, neighbors of the applicant, regarding the unnatural condition of the land due to road and railroad work. They also state that the riverfront was entirely covered in blackberries in 1992 when they purchased their property.

A comment from ODOT was received regarding railroad crossing at this location.

Comments of the Public Works Department and Development Services Division are incorporated into this report and Conditions of Approval. Comments from ODOT are not within the scope of this land use review.

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

III. RESPONSES TO THE OREGON CITY MUNICIPAL CODE:

Chapter 17.12 - "R-6" Single-Family Dwelling District

17.12.020 Permitted Uses

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



Finding: Complies as Proposed. The development on the property includes a patio and fire pit, which are typical yard/landscaping elements found in the residential zoning districts.

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

17.12.040.B. Minimum lot width, fifty feet;

17.12.040.C. Minimum lot depth, seventy feet;

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

17.12.040.E

1. Front yard: ten feet minimum depth.

2. Front porch, five feet minimum setback,

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

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

5. Corner side yard, fifteen feet minimum setback,

6. Rear yard, twenty-foot minimum setback

7. Rear porch, fifteen-foot minimum setback.

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

Finding: Not Applicable. No buildings or other improvements other than landscaping enhancement is being proposed as part of this application. This application is being submitted by City request to obtain approval of the existing patio, low manor stone walls and manor stone steps installed by a previous owner prior to the applicant acquiring the property.

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

Finding: Not Applicable. There are no existing structures on or being proposed as part of this application.

Chapter 17.54.100 – Fences, Hedges And Walls

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.

Finding: Complies as proposed. The retaining wall height is less than 3.5 feet.

CHAPTER 13.12 - STORMWATER MANAGEMENT

13.12.050 - Applicability and exemptions.

This chapter establishes performance standards for stormwater conveyance, quantity and quality. Additional performance standards for erosion prevention and sediment control are established in OCMC 17.47.

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.

Finding: Applicable. The stormwater from the site will leave private property and will discharge into the right of way.

B. **Water Quality and Flow Control.** *The water quality and flow control requirements of this chapter shall apply to the following proposed uses or developments, unless exempted under subsection C:*

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 five-year period; or*
2. *Activities that create or replace more than five thousand square feet of impervious surface per parcel or lot, cumulated over any given five-year period.*

Finding: Not Applicable. The site improvements did not meet thresholds for requiring stormwater management improvements. The concrete patio is 316 square feet, and the stairs and wall are 180 square feet, totaling 496 square feet. The gravel is not counted as impervious surface for the purposes of this Chapter.

C. **Exemptions.** *The following exemptions to subsection B of this section apply:*

1. *An exemption to the flow control requirements of this chapter will be granted when the development site discharges to the 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, provided that the following conditions are met:

- a. The project site is drained by a conveyance system that is comprised entirely of manmade elements (e.g. pipes, ditches, culverts outfalls, outfall protection, etc.) and extends to the ordinary high water line of the exempt receiving water; and*
 - b. The conveyance system between the project site and the exempt receiving water has sufficient hydraulic capacity and erosion stabilization measures to convey discharges from the proposed conditions of the project site and the existing conditions from non-project areas from which runoff is collected.*
- 2. Projects in the following categories are generally exempt from the water quality and flow control requirements:*
- a. Stream enhancement or restoration projects approved by the city.*
 - b. Farming practices as defined by ORS 30.960 and farm use as defined in ORS 214.000; except that buildings associated with farm practices and farm use are subject to the requirements of this chapter.*
 - c. Actions by a public utility or any other governmental agency to remove or alleviate an emergency condition.*
 - d. Road and parking area preservation/maintenance projects such as pothole and square cut patching, surface sealing, replacing or overlaying of existing asphalt or concrete pavement, provided the preservation/maintenance activity does not expand the existing area of impervious coverage above the thresholds in subsection B of this section.*
 - e. Pedestrian and bicycle improvements (sidewalks, trails, pathways, and bicycle paths/lands) where no other impervious surfaces are created or replaced, built to direct stormwater runoff to adjacent vegetated areas.*
 - f. Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics.*
 - g. Maintenance or repair of existing utilities.*

Finding: Applicable. Existing roadway grind and inlay required of the development is exempt from the standards per subsection 2.d of section 13.12.050 of this report.

- D. 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 defined in the Public Works Stormwater and Grading Design Standards:*
- 1. Bulk petroleum storage facilities;*
 - 2. Above ground storage of liquid materials;*
 - 3. Solid waste storage areas, containers, and trash compactors for commercial, industrial, or multi-family uses;*
 - 4. Exterior storage of bulk construction materials;*
 - 5. Material transfer areas and loading docks;*
 - 6. Equipment and/or vehicle washing facilities;*
 - 7. Development on land with suspected or known contamination;*
 - 8. Covered vehicle parking for commercial or industrial uses;*
 - 9. Industrial or commercial uses locating in high traffic areas, defined as average daily count trip of two thousand five hundred or more trips per day; and*
 - 10. Land uses subject to DEQ 1200-Z Industrial Stormwater Permit Requirements.*

Finding: Not Applicable. The proposal does not contain elements requiring additional stormwater management practices.



13.12.080 - Submittal requirements.

- A. Applications subject to stormwater conveyance, water quality, and/or flow control requirements of this chapter shall prepare engineered drainage plans, drainage reports, and design flow calculation reports in compliance with the submittal requirements of the Public Works Stormwater and Grading Design Standards.
- B. Each project site, which may be composed of one or more contiguous parcels of land, shall have a separate valid city approved plan and report before proceeding with construction.

Finding: Not applicable. The development did not meet the threshold to require water quality, and/or flow control requirements of this chapter.

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 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. 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.
- D. Streambank erosion protection is provided where stormwater, directly or indirectly, discharges to open channels or streams.
- E. Specific operation and maintenance measures are proposed that ensure that the proposed stormwater quantity control facilities will be properly operated and maintained.

Finding: Not applicable. The development did not meet the threshold to require water quality, and/or flow control requirements of this chapter.

13.12.100 - Alternative materials, alternative design and methods of construction.

The provisions of this chapter are not intended to prevent the use of any material, alternate design or method of construction not specifically prescribed by this chapter or the Public Works Stormwater and Grading Design Standards, provided any alternate has been approved and its use authorized by the city engineer. The city engineer may approve any such alternate, provided that the city engineer finds that the proposed design is satisfactory and complies with the intent of this chapter and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed by this chapter in effectiveness, suitability, strength, durability and safety. The city engineer shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details of any action granting approval of an alternate shall be recorded and entered in the city files.

Finding: Not Applicable. The applicant has not proposed alternative design methods requiring special approval by the City Engineer.

13.12.120 - Standard construction specifications.

The workmanship and materials shall be in accordance with the edition of the "Standard Specifications for Public Works Construction," as prepared by the Oregon Chapter of American Public Works Association (APWA) and as modified and adopted by the city, in effect at the time of application. The exception to this requirement is where this chapter and the Public Works Stormwater and Grading Design Standards provide other design details, in which case the requirements of this chapter and the Public Works Stormwater and Grading Design Standards shall be complied with.



Finding: Not applicable. The development did not meet the threshold to require water quality, and/or flow control requirements of this chapter.

CHAPTER 15.48 - GRADING, FILLING AND EXCAVATING

15.48.030 Applicability—Grading permit required.

A. A city-issued grading permit shall be required before the commencement of any of the following filling or grading activities:

- 1. Grading activities in excess of ten cubic yards of earth;*
- 2. Grading activities which may result in the diversion of existing drainage courses, both natural and man-made, from their natural point of entry or exit from the grading site;*
- 3. Grading and paving activities resulting in the creation of impervious surfaces greater than two thousand square feet or more in area;*
- 4. Any excavation beyond the limits of a basement or footing excavation, having an unsupported soil height greater than five feet after the completion of such a structure; or*
- 5. Grading activities involving the clearing or disturbance of one-half acres (twenty-one thousand seven hundred eighty square feet) or more of land.*

Finding: Applicable. The application indicated that previous construction activities may have imported fill to the site of approximately 12 cubic yards.

15.48.090 Submittal requirements.

An engineered grading plan or an abbreviated grading plan shall be prepared in compliance with the submittal requirements of the Public Works Stormwater and Grading Design Standards whenever a city approved grading permit is required. In addition, a geotechnical engineering report and/or residential lot grading plan may be required pursuant to the criteria listed below.

A. Abbreviated Grading Plan. The city shall allow the applicant to submit an abbreviated grading plan in compliance with the submittal requirements of the Public Works Stormwater and Grading Design Standards if the following criteria are met:

- 1. No portion of the proposed site is within the flood management area overlay district pursuant to [Chapter 17.42](#), the unstable soils and hillside constraints overlay district pursuant to [Chapter 17.44](#), or a water quality resource area pursuant to [Chapter 17.49](#); and*
- 2. The proposed filling or grading activity does not involve more than fifty cubic yards of earth.*

B. Engineered Grading Plan. The city shall require an engineered grading plan in compliance with the submittal requirements of the Public Works Stormwater and Grading Design Standards to be prepared by a professional engineer if the proposed activities do not qualify for abbreviated grading plan.

C. Geotechnical Engineering Report. The city shall require a geotechnical engineering report in compliance with the minimum report requirements of the Public Works Stormwater and Grading Design Standards to be prepared by a professional engineer who specializes in geotechnical work when any of the following site conditions may exist in the development area:

- 1. When any publicly maintained facility (structure, street, pond, utility, park, etc.) will be supported by any engineered fill;*
- 2. When an embankment for a stormwater pond is created by the placement of fill;*
- 3. When, by excavation, the soils remaining in place are greater than three feet high and less than twenty feet wide.*

D. Residential Lot Grading Plan. The city shall require a residential lot grading plan in compliance with the minimum report requirements of the Public Works Stormwater and Grading Design Standards to be prepared by a



professional engineer for all land divisions creating new residential building lots or where a public improvement project is required to provide access to an existing residential lot.

Finding: Complies with Conditions. Portion of the proposed site is within the flood management area overlay district. The applicant shall submit a grading plan to balance cut and fill within the flood management areas per section 17.42.160 of the Oregon City Municipal Code. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

CHAPTER 17.47 - EROSION AND SEDIMENT CONTROL

17.47.030 - Applicability.

A. This chapter, which may also be referred to as "erosion control" in this Code, applies to development that may cause visible or measurable erosion on any property within the city limits of Oregon City.

B. This chapter does 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, provided that after the emergency has passed, adverse impacts are mitigated in accordance with applicable standards.

Finding: Not applicable. The applicant does not proposed any construction activities at this time.

17.47.060 - Permit required.

The applicant must obtain an erosion and sediment control permit prior to, or contemporaneous with, the approval of an application for any building, land use or other city-issued permit that may cause visible or measurable erosion.

Finding: Complies with Condition. The applicant will likely perform construction activities that may cause visible or measurable erosion. The applicant shall obtain an Erosion control permit prior to commencement of any construction activities. The applicant shall also obtain all permits required by other regulatory agencies. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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.

B. Approval Standards. An erosion and sediment control plan shall be approved only upon making the following findings:

- 1. The erosion and sediment control plan meets the requirements of the City of Oregon City public works standards for erosion and sediment control incorporated by reference as part of this chapter;*
- 2. The erosion and sediment control plan indicates that erosion and sediment control measures will be managed and maintained during and following development. The erosion and sediment control plan indicates that erosion and sediment control measures will remain in place until disturbed soil areas are permanently stabilized by landscaping, grass, approved mulch or other permanent soil stabilizing measures.*



C. The erosion and sediment control plan shall be reviewed in conjunction with the requested development approval. If the development does not require additional review, the manager may approve or deny the permit with notice of the decision to the applicant.

D. The city may inspect the development site to determine compliance with the erosion and sediment control plan and permit.

E. Erosion that occurs on a development site that does not have an erosion and sediment control permit, or that results from a failure to comply with the terms of such a permit, constitutes a violation of this chapter.

F. If the manager finds that the facilities and techniques approved in an erosion and sediment control plan and permit are not sufficient to prevent erosion, the manager shall notify the owner or his/her designated representative. Upon receiving notice, the owner or his/her designated representative shall immediately install interim erosion and sediment control measures as specified in the City of Oregon City public works standards for erosion and sediment control. Within three days from the date of notice, the owner or his/her designated representative shall submit a revised erosion and sediment control plan to the city. Upon approval of the revised plan and issuance of an amended permit, the owner or his/her designated representative shall immediately implement the revised plan.

G. Approval of an erosion and sediment control plan does not constitute an approval of permanent road or drainage design (e.g., size and location of roads, pipes, restrictors, channels, retention facilities, utilities, etc.).

Finding: Complies with Condition. The applicant shall provide an Erosion Prevention and Sedimentation Control Plan prior to issuance of an erosion control permit. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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.

Finding: Not applicable. City staff have determined that the work associated with the applicant does not require geologic hazard review or permitting. City staff determination is concurrent with the recommendation provided in a memo (Exhibit 5) written on February 14, 2018 by Timothy Pfeiffer of Foundation Engineering Inc. (Oregon City's Geotechnical Consultant).

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.

Finding: Complies as proposed. The application has been reviewed by the city and is found to be compliant with the requirements of chapter 17.44 of the Oregon City Municipal Code. This is concurrent with the recommendation provided in a memo written on February 14, 2018 by Timothy Pfeiffer of Foundation Engineering Inc. (Oregon City's Geotechnical Consultant). The application is approved as submitted.

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.

Finding: Applicable. The application meets exemptions identified in section 17.44.035 and the evaluation to exempt the application is consistent with the recommendation provided in a memo written on February 14, 2018 by Timothy Pfeiffer of Foundation Engineering Inc. (Oregon City's Geotechnical Consultant).

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.*



Finding: Complies as proposed. See findings from section 17.44.050.C of this report.

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.

Finding: Complies as proposed. See findings from section 17.44.050.C of this report.

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.

Finding: Complies as proposed. See findings from section 17.44.050.C of this report.

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.

Finding: Complies as proposed. See findings from section 17.44.050.C of this report.

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.

Finding: Complies as proposed. The city engineer has waived requirements of subsections A and B of section 17.44.050 of the Oregon City Municipal Code. The waiver is concurrent with the recommendation provided in a memo written on February 14, 2018 by Timothy Pfeiffer of Foundation Engineering Inc. (Oregon City's Geotechnical Consultant).

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.

Finding: Not applicable: The property is not proposed for development which will increase density based on the underlying zone classification of the property.

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.

Finding: Complies as proposed. City staff have determined that the development has adequately avoided disturbance of natural topography, vegetation and soils.



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.

Finding: Not applicable. Grading or other land disturbance are not proposed at this time.

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

Finding: Complies as proposed. City staff have determined that the development has adequately minimized the number and size of cuts and fills. The assessment is concurrent with recommendation provided in a memo written on February 14, 2018 by Timothy Pfeiffer of Foundation Engineering Inc. (Oregon City's Geotechnical Consultant).

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.

Finding: Complies as proposed. Cuts and fill slopes do not exceed threshold set forth in section 17.44.060 subsection D of the Oregon City Municipal Code.

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.

Finding: Not applicable. No structural fill is proposed.

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

Finding: Complies with condition. The applicant shall obtain (retroactively) all permits necessary for the construction of retaining walls as determined by the Oregon City Building department. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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.

Finding: Not applicable. No roads proposed.

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.

Finding: Not applicable. No dwelling is proposed by the applicant.

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.

Finding: Not applicable. No dwelling is proposed by the applicant.

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.

Finding: Complies as proposed. The applicant's geotechnical engineer has reviewed the application for compliance with city requirements and has provided recommendations. The recommendation provided in a memo written on February 14, 2018 by Timothy Pfeiffer of Foundation Engineering Inc. (Oregon City's Geotechnical Consultant) concurs with the recommendations provided by the applicant's geotechnical consultant.

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.



Finding: Complies as proposed. The city has utilized Timothy Pfeiffer of Foundation Engineering Inc. to provide peer review for the application. The city's consultant had no comments to be addressed by the applicant's geotechnical consultant.

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.*

Finding: Complies as proposed. The city, in consultation with the city's geotechnical consultant, has determined that 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 applicant has paid costs associated with the geologic hazard review of the application by paying the pre-application fee. Since the project has been waived of geologic hazard review, there are no additional costs to be borne by the applicant.

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.*

Finding: Not applicable. No driveways are proposed.

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.

Finding: Not applicable. No utilities are proposed.

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.



Finding: Not applicable. The level of site disturbance does not trigger requirements for stormwater management.

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.

Finding: Not applicable. Vegetation removal and soil disturbance is not proposed.

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.

Finding: Not applicable. No grading, clearing or excavation of any land is proposed.

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).

Finding: Not applicable. The applicant has not proposed work which will cause measurable erosion. The existing conditions have not been identified to cause landslides, mudflows, soil slump and erosion.

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

Finding: Complies with condition. The work performed to construct the existing dock area likely caused disturbance of vegetation along the bank of the Willamette River. The applicant shall adhere to requirements from Section 17.49.180 regarding any requirements for planting of vegetation. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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.

Finding: Complies as proposed. No reduction in vegetative cover is proposed at this time.

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.

Finding: Complies as proposed. The applicant has not proposed to disturb any watercourses.

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.



Finding: Not applicable. The applicant has not proposed work which will cause measurable erosion.

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

Finding: Not applicable. No new lots are proposed.

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.*

Finding: Not applicable. No construction is proposed at this time.

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.*

Finding: Complies as proposed. The applicant's geotechnical engineer has reviewed the application for compliance with city requirements and has confirmed that it is in compliance. The recommendation provided in a memo written on February 14, 2018 by Timothy Pfeiffer of Foundation Engineering Inc. (Oregon City's Geotechnical Consultant) concurs with the applicant's geotechnical consultant.

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.

Finding: Complies as proposed. The city has determined that the proposal does not pose hazard to life, property, natural resources or public facilities. This determination is concurrent with the recommendation provided in a memo written on February 14, 2018 by Timothy Pfeiffer of Foundation Engineering Inc. (Oregon City's Geotechnical Consultant).

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.

Finding: Complies with condition. Owner(s) of the property associated with the development shall execute a waiver of damages and an indemnity and hold harmless agreement which releases the City from all liability for any damages resulting from the development approved by the City's decision. The applicant share pay associated processing and recording fees. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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.



Finding: Complies with condition. Nothing contained in this report 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. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.44.140 Appeal.

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

Finding: Not applicable. The applicant does not seek to appeal the City's decision.

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.

Finding: Not applicable. There is no emergency related to this application.

17.49.060 Consistency and Relationship to Other Regulations

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

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

17.49.060.B. Compliance with Federal and State Requirements.

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

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

Finding: Complies with condition. The applicant stated that "A permit for the dock has been obtained from the Dept of State Lands and is effective through 2023 at which time a permit renewal will be required." The dock is not the subject of this land use application. In 2013, the City signed off on the



dock registration for dock under 1000 sf, noting that “No planning review required as long as no improvements are built on land.”

Work within the Ordinary High Water (OHW) is required to obtain permits from DSL and the US Army Corps of Engineers. The subject site is located at approximately river mile 27. The applicant stated that the “Ordinary High Water Line” at the site at River Mile 27 per Sheet 9 of 57 of the Willamette River Public Lands Under Jurisdiction of Oregon State Land Board is approximately 58 feet, and provided Sheet 9, dated 1975.

The City does not keep records of Ordinary High Water and cannot confirm the information provided by the applicant.

The applicant shall submit documentation stating if the development requires the approval of the Division of State Lands or the U.S. Army Corps of Engineers, and any required approval. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.[0]70 - Prohibited uses.

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

- A. Any new gardens, lawns, structures, development, other than those allowed outright (exempted) by the NROD or that is part of a regulated use that is approved under prescribed conditions. Note: Gardens and lawns within the NROD that existed prior to the time the overlay district was applied to a subject property are allowed to continue but cannot expand further into the overlay district.*
- B. New lots that would have their buildable areas for new development within the NROD are prohibited.*
- C. The dumping of materials of any kind is prohibited except for placement of fill as provided in (D) below. The outside storage of materials of any kind is prohibited unless they existed before the overlay district was applied to a subject property. Uncontained areas of hazardous materials as defined by the Oregon Department of Environmental Quality (ORS 466.005) are also prohibited.*
- D. Grading, the placement of fill in amounts greater than ten cubic yards, or any other activity that results in the removal of more than ten percent of the existing native vegetation on any lot within the NROD is prohibited, unless part of an approved development activity.*

Finding: Not applicable. The purpose of this application is to obtain approval of the existing improvements as “an approved development activity”. No prohibited uses are proposed. No additional or new development is planned for this area.

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

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

- A. Stream, wetland, riparian, and upland restoration or enhancement projects as authorized by the City.*
- B. Farming practices as defined in ORS 215.203 and farm uses, excluding buildings and structures, as defined in ORS 215.203.*
- C. Utility service using a single utility pole.*
- D. Boundary and topographic surveys leaving no cut scars greater than three inches in diameter on live parts of native plants listed in the Oregon City Native Plant List.*
- E. Soil tests, borings, test pits, monitor well installations, and other minor excavations necessary for geotechnical, geological or environmental investigation, provided that disturbed areas are restored to pre-existing conditions as approved by the Community Development Director.*
- F. Trails meeting all of the following:*
 - 1. Construction shall take place between May 1 and October 30 with hand held equipment;*



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

Finding: Not applicable. The proposed development includes activities allowed under prescribed conditions (17.49.090) and therefore requires issuance of an NROD permit. The purpose of this application is to obtain approval of the existing improvements as "an approved development activity".

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.

Finding: Applicable. The proposed development includes activities allowed under prescribed conditions and therefore requires issuance of an NROD permit. The patio and stairs are considered accessory to the residence. The purpose of this application is to obtain approval of the existing improvements as “an approved development activity”.

17.49.100 General Development Standards

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

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

Finding: Complies as proposed. The applicant indicated that no trees have been removed. The plans show a Big Leaf Maple and an Oregon Ash that are proposed to remain. Two other existing trees are ornamental. The applicant shall include the existing Maple and Ash in the protective covenant recorded for the mitigation planting. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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

Finding: Not applicable. The applicant is not proposing to meet base zone landscaping requirements within the NROD.

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

Finding: Complies with condition. The applicant’s planting plan contains multiple options for species. All plants identified in the mitigation plan are on the Oregon City Native Plant List. The applicant has also proposed to retain some existing non-native, non-nuisance ornamental species. Prior to planting, applicant shall submit a final mitigation plan indicating the final species selected. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**



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

Finding: Please refer to the analysis within chapter 15.48 of this report.

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

Finding: Not applicable. This section is not applicable; there are no structures existing or proposed.

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

Finding: Not applicable. This section is not applicable; there are no structures existing or proposed.

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

Finding: Not applicable. The applicant has not proposed a fence within the vegetated corridor. Retaining walls are not subject to this standard.

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

Finding: Not Applicable. This section is not applicable as no lighting exceeding 200 watts is proposed.

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

Finding: The development is located in the 100 year flood plain and since 12 cubic yards (more than 10 cubic yards) is involved, it classifies as a “Development” under Section 17.04.300. Please refer to the analysis in Chapter 17.42 of this report.

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

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

17.49.110 Width of Vegetated Corridor.

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

Table 17.49.110

Protected Water Feature Type (see definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Vegetated Corridor (see Note 1)
Anadromous fish-bearing streams	Any slope	• Edge of bankfull flow	200 feet



Intermittent streams with slopes less than 25 percent and which drain less than 100 acres	< 25 percent	• Edge of bankfull flow	15 feet
All other protected water features	< 25 percent	• Edge of bankfull flow • Delineated edge of Title 3 wetland	50 feet
	≥ 25 percent for 150 feet or more (see Note 2)		200 feet
	≥ 25 percent for less than 150 feet (see Note 2)		Distance from starting point of measurement to top of ravine (break in ≥25 percent slope) (See Note 3) plus 50 feet.

Notes:

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

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

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

Finding: Complies as proposed. The Natural Resource Overlay District associated with this development extends on to the subject site due to the nearby anadromous Willamette River; therefore, the required width of the Vegetated Corridor is 200 feet from the edge of bankfull flow.

17.49.120 Maximum Disturbance Allowance for Highly Constrained Lots of Record

In addition to the General Development Standards of Section 17.49.100, the following standards apply to a vacant lot of record that is highly constrained by the NROD, per subsections 17.49.90(B) and 17.49.90(F):

- A. **Standard for Residential Development.** In the NROD where the underlying zone district is zoned Residential (R-10, R-8, R-6, R-5, R-3.5): the maximum disturbance area allowed for new residential development within the NROD area of the lot is 3,000 square feet.
- B. **Standard for all developments not located in R-10, R-8, R-6, R-5, and R-3.5.** For all other underlying zone districts, including R-2 multifamily, the maximum disturbance area allowed for a vacant, constrained lot of record development within the NROD is that square footage which when added to the square footage of the lot



lying outside the NROD portion equals 25% of the total lot area.

[1] Lots that are entirely covered by the NROD will be allowed to develop 25% of their area.

[1] Note: This can be determined by (1) Multiplying the total square footage of the lot by .25; (2) Subtracting from that amount the square footage of the lot that is located outside the NROD; (3) The result is the maximum square footage of disturbance to be allowed in the NROD portion of the lot. If the result is < or = to 0, no disturbance is permitted and the building shall be located outside of the boundary.

- C. *In all areas of Oregon City, the disturbance area of a vacant, highly constrained lot of record within the NROD shall be set back at least 50 feet from the top of bank on Abernethy Creek, Newell Creek, or Livesay Creek or 25 feet from the top of bank of any tributary of the afore-mentioned Creeks, other water body, or from the delineated edge of a wetland located within the NROD area.*
- D. *If the highly constrained lot of record cannot comply with the above standards, a maximum 1500 square foot disturbance within the NROD area may be allowed*

Finding: Not applicable. This property is not a vacant lot of record.

17.49.130 Existing Development Standards

In addition to the General Development Standards of Section 17.49.100, the following standards apply to alterations and additions to existing development within the NROD, except for trails, rights of way, utility lines, land divisions and mitigation projects. Replacement, additions, alterations and rehabilitation of existing structures, roadways, utilities, etc., where the ground level impervious surface area is not increased are exempt from review pursuant to Section 17.49.080(J). As of June 1, 2010, applicants for alterations and additions to existing development that are not exempt pursuant to Section 17.49.080(J) shall submit a Type II or Type III application pursuant to this section. The application shall include a site plan which delineates a permanent disturbance area that includes all existing buildings, parking and loading areas, paved or graveled areas, patios and decks. The same delineated disturbance area shall be shown on every subsequent proposal for alterations and additions meeting this standard.

A. The following alterations and additions to existing development are permitted subject to the following standards.

- 1. Alterations or additions that cumulatively total up to a maximum of five-hundred (500) square feet of additional disturbance area after June 1, 2010 shall be processed as a Type II permit pursuant to this Chapter. The new disturbance area shall not encroach closer than 1/2 of the distance of the regulated NROD buffer.*
- 2. Alterations or additions that cumulatively exceed five-hundred (500) square feet of additional disturbance area or which propose encroachment closer than 1/2 of the distance of the regulated NROD buffer after June 1, 2010 shall be processed as a Type III permit pursuant to Section 17.49.200, Adjustment from Standards.*

Finding: Complies as proposed. The application is for alternations that exceed 500 square feet. A Site Plan showing the general location of the existing improvements is included as part of this application. The developed area is 848 square feet. The applicant has proposed a Type III application.

17.49.130.B. Mitigation is required, subject to Section 17.49.180 or 17.49.190.

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

17.49.140 Standards for Utility Lines

Finding: Not applicable. No utility lines are proposed.

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.

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;*

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;*

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;*

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*

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

Finding: Complies with Condition. No vehicular roads are proposed, but the staircase is considered a pedestrian path and therefore must meet this standard. No stream crossings are included in the development. The applicant is obligated to comply with DSL and USACE requirements. Mitigation is proposed to address the development; see findings in 17.49.180. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.155 Standards for Stormwater Facilities

Finding: Not applicable. No stormwater facilities are proposed.

17.49.160 Standards for Land Divisions

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

17.49.170 Standards for Trails

The following standards apply to trails within the NROD:

A. All trails that are not exempt pursuant to Section 17.49.80(F), , except as designated in the Oregon City Parks, Open Space and Trails Master Plans; and

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

Finding: Not applicable. There are no trails on or near the site, nor is there public access.

17.49.180. Mitigation Standards

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

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

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

Finding: Complies with Condition. It is not clear how much of the area was previously impervious, but the applicant is erring on the side of caution and considering all of the development as new disturbance area. The disturbance area is 848 square feet, which requires 1,696 square feet of mitigation area. The applicant has proposed an adjustment per 17.49.200. See findings in 17.49.200. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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



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

Finding: Complies with Condition. The proposed mitigation is located on the same site as the disturbance. The applicant has proposed an adjustment per 17.49.200. Staff recommends that additional mitigation be provided to meet the minimum mitigation planting area requirements. Some of the additional mitigation may be provided off site, due to limited space on the subject site. If off-site mitigation is required, it should be located within the Willamette River basin, above Willamette Falls and within the NROD or equivalent overlay in another jurisdiction. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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

Finding: Complies with condition. The proposed mitigation is located within the NROD area of the site. Staff recommends that additional mitigation be provided to meet the minimum mitigation planting area requirements. Some of the additional mitigation may be provided off site, due to limited space on the subject site.

The applicant proposes that only the easement area should be required for mitigation rather than the overall property, which is approximately 84,000 square feet or 1.9 acres. The reason for this requested adjustment is due to the ownership of the parcel; the applicant only controls the easement area, not the remainder of the overall parcel.

If off-site mitigation is required, it should be located within the Willamette River basin, above Willamette Falls and within the NROD. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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

Finding: Complies as proposed. Invasive vegetation listed on the Oregon City Nuisance Plant List is proposed to be removed within the mitigation area.

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

Mitigation Planting Option 1.

Finding: Complies with Condition. Mitigation Planting Option 2 will be used as it results in more tree plantings. All trees, shrubs, and herbaceous (groundcover) selected for the mitigation plan shall be from the Oregon City Native Plant List. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.180.E.2. Mitigation Planting Option 2.



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

Finding: Complies with condition. 848 square feet of disturbed area requires 8 trees and 42 shrubs. The applicant's planting plan shows only 7 trees and 35 shrubs. Existing vegetation cannot be counted toward the mitigation planting. The applicant's plan must be revised to include the full amount of new required trees and shrubs. It appears there is room on the applicant's site to accommodate the additional plants. Additional plants may be planted on the applicant's site or offsite as required by other conditions of approval.

The applicant shall revise the planting plan to:

- remove serviceberry from the list of tree options; serviceberry is a shrub and may not be counted as a tree.
- re-label oxalis oregana as "Redwood sorrel" if it is retained in the final mitigation plan.
- remove rush from the list of shrub options; rush is a ground cover.

Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.

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

Finding: Complies as proposed. The Planting Plan indicated compliance with this standard.

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

Finding: Complies with condition. The Planting Plan included this language, but the spacing in the plan does not meet this standard. The applicant shall revise the mitigation plan to meet plant spacing requirements; however, spacing may be reduced to accommodate additional plants if necessary. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.180.E.2.d Option 2 – Mulching and Irrigation shall be applied in the amounts necessary to ensure 80% survival at the end of the required 5-year monitoring period.

Finding: Complies as Proposed. Proposed Irrigation is hand watering by carrying water from the river. The applicant stated that the bank is very steep, and access is difficult due to loose rock. While hand watering is time consuming, the planting area is fairly small and the water source is nearby, reducing the challenge of hand watering. The applicant will be subject to the monitoring and maintenance requirements of this Chapter, including ensuring 80% survival of the plants. Tree water bags and soil amendments for water retention are recommended during the dry months.



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

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

Finding: Complies with condition. The applicant indicated compliance with this standard but did not identify final plant selection, instead providing a range of species. There is good diversity in the plant selection shown. Less than 20 trees will be planted. The final mitigation plan shall include at least three different shrub species. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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

Finding: Complies with condition. The application indicated that the proposed mitigation will be monitored and maintained.

The applicant shall comply with the standards for monitoring and maintenance within the NROD per OCMC 17.49.180.F. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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

Finding: Complies with condition. The applicant indicated that the applicant cannot grant an easement as they are not the property owners. However, the property owner is part of the land use application and this standard applies. The property owner shall provide the City with a copy of a recorded covenant or conservation easement per OCMC 17.49.180.G. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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

Finding: Complies with condition. The applicant indicated that a financial guarantee will be provided to the City. The applicant shall provide the City with a financial guarantee per OCMC 17.49.180.H. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**



17.49.190 Alternative Mitigation Standards

In lieu of the above mitigation standards of Section 17.49.180, the following standards may be used. Compliance with these standards shall be demonstrated in a mitigation plan report prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry. At the applicant's expense, the City may require the report to be reviewed by an environmental consultant.

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

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

- 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.*

Finding: Not applicable. The applicant does not propose alternative mitigation in lieu of the standards in 17.49.180.

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:

Finding: Complies with Condition. The applicant has not met the standard for planting quantities, and has not met the standard for minimum size of mitigation area. The applicant has proposed an adjustment to these standards. The disturbance area is 848 square feet, which requires 1,696 square feet of mitigation area. The applicant proposes a smaller mitigation area due to the small size of the easement area controlled by the applicant. The proposed number of new trees and shrubs is fewer than required in Mitigation Option B, and the mitigation area is proposed as 1,464 square feet, which is less than the 1,696 square feet required.

The applicant proposes that only the easement area should be required for mitigation rather than the overall property, which is approximately 84,000 square feet or 1.9 acres. The reason for this requested



adjustment is due to the ownership of the parcel; the applicant only controls the easement area, not the remainder of the overall parcel.

The applicant must demonstrate compliance with the standards below in a report by an environmental professional – the applicant's plans were prepared by Leonard Rydell, a Civil Engineer and Land Surveyor. It does not appear that the plans were not prepared by an environmental professional.

Staff also recommends that the applicant provide the full planting quantities required by Mitigation Option B, and that the applicant provide additional mitigation area as discussed in 17.49.200.B. below.

Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.

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

Finding: Complies with Condition. The development on site is existing and is a violation of the NROD Chapter. The applicant is proposing to correct the violation through mitigation. The applicant is proposing an adjustment to the size of the mitigation area. Staff finds that the applicant has not sufficiently demonstrated the lack of feasible alternatives. In staff's opinion, there are alternatives that can meet the standard for the mitigation area size. Thus, staff proposes conditions of approval in 17.49.200.B below. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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

Finding: Complies with Condition. The applicant did not sufficiently respond to this section.

Because the development is existing, this standard requires that the overall combined development plus mitigation would have fewer adverse impacts than if the applicant proposed the development today and met the mitigation standards in this Chapter.

The disturbance area is 848 square feet. The standards require a mitigation area of 1696 square feet, with planting requirements of 8 trees and 42 shrubs. The applicant has proposed only 1,464 square feet of mitigation planting, and fewer trees and shrubs. Mitigation of a smaller area than what is required cannot be found to have fewer adverse impacts; thus, the applicant's proposal does not meet this standard. The applicant shall complete the proposed mitigation with full planting quantities plus one of the following, in order to meet the mitigation area size requirement or to otherwise provide equivalent mitigation:

1. Add additional area of mitigation that will meet the 1,696 square feet minimum. This will require an additional 232 square feet of mitigation area. The applicant may plant some of the required trees and shrubs in this additional area.
2. Remove invasive plants in additional areas outside of the applicant's easement on the subject property. The area of invasive removal shall be larger than the required mitigation area to make up for the lack of mitigation planting area. The invasive removal area shall be double the mitigation area requirement: $1696 \times 2 = 3392$ square feet. The applicant proposes a mitigation area of 1464 sf on the applicant's easement area. $3392 - 1464 = 1928$. Therefore, applicant shall add invasive removal of 1928 square feet on the subject property.



3. Provide off-site mitigation of 232 square feet. The applicant may propose mitigation on private or public land with the permission of the property owner. A covenant compliant with this Chapter shall be required, if the mitigation is located on private property. The applicant may plant some of the required trees and shrubs in this additional area.
4. Provide enhanced mitigation planting within the 1,464 square feet proposed. This may come in the form of additional plants and highly functional/valuable/rare plant species. The applicant's mitigation report should explain how the enhanced plantings provide an improved outcome over the minimum required native plantings, and how they achieve the functional values in 17.49.010.

Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.

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

Finding: Not applicable. The applicant is submitting this application to gain approval for existing patio improvements installed by a previous owner.

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

Finding: Complies as proposed. The applicant is submitting this application to gain approval for existing patio improvements installed by a previous owner. The development does not cause additional wildlife passage impacts within the NROD other than those already present from the existing developments within the project vicinity.

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

Finding: Complies as proposed. The applicant proposes to meet the planting requirements. Only the size of the mitigation area is proposed for the adjustment.

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

Finding: Complies with condition. Please refer to the analysis in Section 17.49.200.B.

17.49.210 *Type II Development Permit Application*

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

17.49.220 *Required Site Plans*

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

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

1. *The NROD district boundary. This may be scaled in relation to property lines from the NROD Map;*
2. *100 year floodplain and floodway boundary (if determined by FEMA);*
3. *Creeks and other waterbodies;*
4. *Any wetlands, with the boundary of the wetland that will be adjacent to the proposed development determined in a wetlands delineation report prepared by a professional wetland specialist and following the Oregon Division of State Lands wetlands delineation procedures;*



5. Topography shown by contour lines of 2 or 1 foot intervals for slopes less than 15% and by 10 foot intervals for slopes 15% or greater;
 6. Existing improvements such as structures or buildings, utility lines, fences, driveways, parking areas, etc.
 7. Extent of the required Vegetated Corridor required by Table 17.49.110.
- B. Within the NROD area of the subject property:
1. The distribution outline of shrubs and ground covers, with a list of most abundant species;
 2. Trees 6 inches or greater in diameter, identified by species. When trees are located in clusters they may be described by the approximate number of trees, the diameter range, and a listing of dominant species;
 3. An outline of the disturbance area that identifies the vegetation that will be removed. All trees to be removed with a diameter of 6 inches or greater shall be specifically identified as to number, trunk diameters and species;
 4. If grading will occur within the NROD, a grading plan showing the proposed alteration of the ground at 2 foot vertical contours in areas of slopes less than 15% and at 5 foot vertical contours of slopes 15% or greater.
- C. A construction management plan including:
1. Location of site access and egress that construction equipment will use;
 2. Equipment and material staging and stockpile areas;
 3. Erosion control measures that conform to City of Oregon City erosion control standards;
 4. Measures to protect trees and other vegetation located outside the disturbance area.
- D. A mitigation site plan demonstrating compliance with Section 17.49.180 or 17.49.190, including:
1. Dams, weirs or other in-water features;
 2. Distribution, species composition, and percent cover of ground covers to be planted or seeded;
 3. Distribution, species composition, size, and spacing of shrubs to be planted;
 4. Location, species and size of each tree to be planted;
 5. Stormwater management features, including retention, infiltration, detention, discharges and outfalls;
 6. Water bodies or wetlands to be created, including depth;
 7. Water sources to be used for irrigation of plantings or for a water source for a proposed wetland.

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

17.49.230 Mitigation Plan Report

A mitigation plan report that accompanies the above mitigation site plan is also required. The report shall be prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry. The mitigation plan report shall, at a minimum, discuss:

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

Finding: Complies with condition. The applicant's mitigation plan was stamped by a civil engineer, and it does not appear that the report was prepared by an environmental professional. Also, the submittal materials do not address letters B, C, and E above. The applicant shall provide a report prepared by an



environmental professional that fully addresses the requirements in Chapter 17.49.230. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.49.240 Density Transfer

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

17.49.250 Verification of NROD Boundary

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

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

17.49.260. Type II Verification

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

17.49.265 - Corrections to violations.

For correcting violations, the violator shall submit a remediation plan that meets all of the applicable standards of the NROD. The remediation plan shall be prepared by one or more qualified professionals with experience and credentials in natural resource areas, including wildlife biology, ecology, hydrology and forestry. If one or more of these standards cannot be met then the applicant's remediation plan shall demonstrate that there will be:

- A. *No permanent loss of any type of resource or functional value listed in Section 17.49.10, as determined by a qualified environmental professional;*
- B. *A significant improvement of at least one functional value listed in section 17.49.10, as determined by a qualified environmental professional; and*
- C. *There will be minimal loss of resources and functional values during the remediation action until it is fully established.*

Finding: Complies with condition. The applicant's mitigation plan was stamped by a civil engineer, and it does not appear that the report was prepared by an environmental professional. The applicant proposes adjustments to the standards in this chapter; therefore, the plan must demonstrate compliance with A, B, and C above. The applicant has not addressed this code section in the mitigation plan. The applicant shall provide a report prepared by an environmental professional that fully addresses the requirements in Chapter 17.49.230 and 17.49.265. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

CHAPTER 17.48 WILLAMETTE RIVER GREENWAY

17.48.010 - Designated.



This chapter shall apply to all development, changes of use or intensification of use in that area designated WRG Willamette River Greenway on a special city zoning map.

Finding: Applicable. The purpose of this application is to obtain approval of the existing development on the Willamette River.

17.48.020 - Purpose.

The purpose of this chapter is to:

- A. Protect, conserve, enhance and maintain the natural scenic, historical, agricultural, economic and recreational qualities of land along the Willamette River;
- B. Maintain the integrity of the Willamette River by minimizing erosion, promoting bank stability and maintaining and enhancing water quality and fish and wildlife habitats;
- C. Implement the Willamette River Greenway goal and the Willamette River Greenway portions of the city comprehensive plan.

Finding: Complies with Condition. The applicant has submitted this applicant to correct actions done without permits in the past. The action includes development of a patio and stairs and may have involved grading and addition of fill material. The applicant shall meet the conditions of approval of this staff report. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.48.040 - Uses allowed.

All uses permitted pursuant to the provisions of the underlying zoning district are permitted on lands designated WRG; provided, however, that any development, change of use or intensification of use shall be subject, in addition to the provisions of the underlying district, to the provisions of this chapter.

Finding: Complies as Proposed. The site is within the R-6 Single Family Dwelling District. The development on the property includes a patio and fire pit, which are typical yard/landscaping elements found in the residential zoning districts.

17.48.050 - Permit required—Exceptions.

A Willamette River Greenway permit shall be required for all developments and changes or intensification of uses, except the following:

- A. The propagation of timber or the cutting of timber for public safety or personal use, except the cutting of timber along the natural vegetative fringe along the river;
- B. Gravel removal from the bed of the Willamette River when conducted under a permit from the state;
- C. Customary dredging and channel maintenance;
- D. Placing by a public agency of signs, markers, aids and similar structures to serve the public;
- E. Activities to protect, conserve, enhance and maintain public recreation, scenic, historical and natural uses on public lands;
- F. Acquisition and maintenance of scenic easements by the Oregon Department of Transportation;
- G. Partial harvesting of timber shall be permitted beyond the natural vegetative fringe and those areas not covered by a scenic easement and when the harvest is consistent with an approved plan under the Oregon Forest Practices Act. Commercial forest activities and harvesting practices providing for vegetative buffers, shading, soil stabilization, and water filtering effects required under the Oregon Forest Practices Act;
- H. The use of a small cluster of logs for erosion control;
- I. The expansion of capacity or the replacement of existing communication or energy distribution and transmission systems, except utility sub-stations;
- J. The maintenance and repair of existing flood control facilities;



- K. Uses lawfully existing on the effective date of the provisions codified in this chapter; provided, however, that any change or intensification of use or new development shall require a Willamette River Greenway permit.

Finding: Not Applicable. The development is not an exception to this Chapter.

17.48.060 - Administrative procedure.

Except as specifically provided for in Section 17.48.090, the procedure for action on a Willamette River Greenway permit shall be as provided for under the administrative action provisions in Chapter 17.50. In addition to those provisions, however, notice of a pending Willamette River Greenway permit under Sections 17.48.070 through 17.48.090 or of a compatibility review hearing under Section 17.48.100, shall be given to all persons requesting the same and paying a reasonable fee therefore, as determined by the community development director.

Finding: Complies as Proposed. The application is being processed pursuant to Chapter 17.50.

17.48.070 - Development standards—Specific use.

In approving any development or change or intensification of use, the approving officer or body shall apply the following standards:

Considerations for Specific Uses.

- A. With respect to recreational uses only: the considerations set forth in section C.3.b of Goal 15.

Finding: Complies as Proposed. Section C.3.b of Goal 15 states: *“(1) Local, regional and state recreational needs shall be provided for consistent with the carrying capacity of the land; (2) Zoning provisions shall allow recreational uses on lands to the extent that such use would not substantially interfere with the long-term capacity of the land for farm use as defined in ORS 215.203 (3) The possibility that public recreation use might disturb adjacent property shall be considered and minimized to the greatest extent practicable; (4) The public parks established by section 8a of Chapter 558, 1973 Oregon Laws, shall be set forth in Oregon Laws, shall be set forth on the appropriate comprehensive plans and zoning established which will permit their development, use and maintenance;”*

The recreational use of this property is private and is not a public park nor is it utilized for public recreation. The use does not interfere with farm uses.

- B. With respect to those fish and wildlife habitats identified in the city comprehensive plan only: the considerations set forth in section C.3.d. of Goal 15.

Finding: Complies with Condition. Section C.3.d of Goal 15 states: *“Significant fish and wildlife habitats shall be protected;”*. Fish and wildlife habitats are protected by the City’s Natural Resource Overlay District and the Department of State Lands. The applicant shall meet the conditions of approval in Chapter 17.49 of this staff report. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

- C. With respect to those scenic qualities and views identified in the city comprehensive plan only: the considerations set forth in section C.3.e. of Goal 15.

Finding: Complies as Proposed. Section C.3.d of Goal 15 states *“identified scenic qualities and viewpoints shall be preserved;”* The development is located in an urban, developed area. It is not a viewpoint identified in the City Comprehensive Plan. The development does not disturb any scenic qualities.



D. With respect to timber resources only: the considerations set forth in section C.3.h. of Goal 15.

Finding: Not Applicable. The development is not timber resource.

E. With respect to aggregate extraction only: the considerations set forth in section C.3.i. of Goal 15.

Finding: Not Applicable. The development is not an aggregate extraction.

17.48.080 - Development standards—General considerations.

The following considerations shall be applicable to all Willamette River Greenway permits.

- A. Access. Adequate public access to the Willamette River shall be considered and provided for.
- B. Protection and Safety. Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided for to the maximum extent practicable.
- C. Vegetative Fringe. The natural vegetative fringe along the Willamette River shall be protected and enhanced to the maximum extent practicable.
- D. Directing Development Away from the River. Development shall be directed away from the Willamette River to the greatest possible degree, provided that lands committed to urban uses within the Greenway may continue as urban uses, subject to the nonconforming use provisions of Chapter 17.58 of this title.
- E. A Greenway Setback. In each application, the approving officer or body shall establish a setback to keep structures separated from the Willamette River in order to protect, maintain, preserve and enhance the natural scenic, historic and recreational qualities of the Willamette River Greenway, as set forth in the city comprehensive plan; provided, however, that the requirement to establish such setbacks shall not apply to water-related or water-dependent uses.
- F. Other Applicable Standards. The Oregon Department of Transportation Greenway Plan, the Greenway portions of the city comprehensive plan, the Willamette River Greenway statutes and the provisions of Statewide Planning Goal 15, shall also be considered in actions involving Willamette River Greenway permits.

Finding: Complies with Condition. The applicant has submitted this applicant to correct actions done without permits in the past. The action includes development of a patio and stairs and may have involved grading and addition of fill material. The subject property is privately owned and no public recreation use takes place on the site. The development does not impact public access. The development is a dock and patio; a water related use. No structures are proposed. In order to protect the vegetative fringe, staff recommends the conditions of approval found in Chapter 17.49 of this staff report. The applicant shall meet the conditions of approval of this staff report. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.48.090 - Procedure.

The planning director shall make findings, and may impose reasonable conditions to carry out this chapter, regarding all general, and any applicable specific, considerations of this section. The community development director shall then give notice of a pending Willamette River Greenway permit application, and proposed action thereon, in the manner provided for, and to those persons for whom notice shall be given, under Chapter 17.50 of this Code, and to all other interested persons who wish to be notified and who pay a reasonable fee for such notification. If no interested person requests a hearing on such permit application within ten days of giving notice, the application shall be approved, either with or without conditions, or denied, as proposed by the community development director and in accordance with the findings required by this subsection. If there be objection, the matter shall be heard by the planning commission as an administrative action.

Finding: Complies as Proposed. The application is being processed pursuant to Chapter 17.50.



17.48.100 - Compatibility review.

- A. In all areas within one hundred fifty feet of the ordinary low-water line of the Willamette River, hereinafter referred to as the "compatibility boundary," the provisions of this subsection shall be applicable to all developments and changes or intensification of uses, so as to ensure their compatibility with Oregon's Greenway statutes, and to assure that the best possible appearance, landscaping and public access be provided.
- B. All development or changes or intensifications of uses in the compatibility area shall be approved only if the following findings be made by the planning commission.
 - 1. That to the greatest extent possible, the development or change or intensification of use provides for the maximum possible landscaped area, open space or vegetation between the activity and the river.
 - 2. That to the greatest degree possible, necessary public access is provided to and along the Willamette River by appropriate legal means.
- C. Procedure for action on compatibility review shall be as set forth in Section 17.48.060 and shall include application of the relevant use management considerations and requirements provided in Sections 17.48.070 and 17.48.080. The planning commission, after notice and public hearing held pursuant to Chapter 17.50 shall approve issuance, approve issuance with conditions or disapprove issuance of the Willamette River Greenway conditional use permit. The application shall be accompanied by the fee listed in Chapter 17.52 to defray the costs of publication, investigation and processing.

Finding: Complies with Condition. The property is within the compatibility boundary. The applicant has submitted this applicant to correct actions done without permits in the past. The action includes development of a patio and stairs and may have involved grading and addition of fill material. The subject property is privately owned and no public recreation use takes place on the site. The development does not impact public access. The development is a dock and patio; a water related use. The applicant proposes to plant all undeveloped portions of the easement area with vegetation. No structures are proposed. In order to provide the maximum possible landscaped area, staff recommends the conditions of approval found in Chapter 17.49 of this staff report. The applicant shall meet the conditions of approval of this staff report. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.48.110 - Prohibited activities.

The following are prohibited within the Willamette River Greenway:

- A. Any main or accessory residential structure exceeding a height of thirty-five feet, except for areas located within the Willamette Falls Downtown District;
- B. Structural bank protection, except rip rap or a channelization used as an emergency measure only to protect existing structures. Any such rip rap or channelization to stabilize undeveloped sites shall be prohibited as well;
- C. Subsurface sewage disposal drainfields within one hundred feet of the ordinary mean low-water line of the Willamette River.

Finding: Not Applicable. The development is not one of the above listed prohibited activities.

17.48.120 - Additional procedural requirements.

In addition to the requirements of Chapter 17.50, the following procedural requirements shall be applicable to all matters arising out of Sections 17.48.070 through 17.48.100:



- A. Applications submitted for review under Sections 17.48.070 through 17.48.100 shall be accompanied by such materials as are reasonably necessary for adequate review, including, as necessary:
 - 1. A site and landscaping plan showing existing vegetation and development and location of proposed development for activities;
 - 2. Elevations of any proposed structures;
 - 3. Materials list for any proposed structures, including type and colors of siding and roofing; and
 - 4. Cross-sections of any area within the vegetative fringe where grading, filling, timber harvesting or excavating will occur.
- B.
 - 1. Written notice, including a copy of the application, shall be sent immediately upon receipt to the Oregon Department of Transportation by certified mail, return receipt requested. The Oregon Department of Transportation shall have seven working days from the date of mailing to respond before a decision be rendered.
 - 2. Written notice shall be given to the Oregon Department of Transportation by certified mail, return receipt requested, within seven days of the entry of a final order on the disposition of all applications made under Sections 17.48.070 through 17.48.100.

Finding: Complies as Proposed. The application is being processed pursuant to Chapter 17.50. The applicant provided the necessary materials for review. No structures are proposed.

CHAPTER 17.42 FLOOD MANAGEMENT OVERLAY DISTRICT

17.42.020 - Applicability.

A. This chapter shall apply to development in the flood management overlay district, which may also be referred to as the "floodplain overlay district" in this code. The flood management overlay district includes all areas of special flood hazards and all flood management areas within the city. The overlay district restricts the uses that are allowed in the base zone by right, with limitations, or as provisional uses.

B. The flood management areas which have been mapped include the following locations:

- 1. Land contained within the one hundred-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency flood insurance maps dated June 17, 2008, including areas of special flood hazard pursuant to Section 17.42.040 and the area of inundation for the February 1996 flood; and*
- 2. Lands that have physical or documented evidence of flooding within recorded history based on aerial photographs of the 1996 flooding and/or the water quality and flood management areas maps.*

C. The standards that apply to the flood management areas apply in addition to state or federal restrictions governing floodplains or flood management areas.

Finding: Applicable. The subject site is within the Flood Management Overlay District; compliance is required.

17.42.040 - Compliance.

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of these floodplain regulations and other applicable regulations. Violations of the provisions of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a civil infraction. Any person who violates this Chapter or fails to comply with any of its requirements shall be subject to the enforcement procedures of this code per OCMC 1.20 Civil Infractions and 1.24 Code Enforcement. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy.

Finding: Applicable. The subject site is within the 100 year floodplain and the 1996 flood inundation. Compliance with this Chapter is required.



17.42.040.A Development Permit.

1. A development permit shall be obtained before construction or development begins within any portion of the flood management overlay district. The permit shall be for all structures, including manufactured homes and all other development, including fill and other activities, as set forth in Chapter 17.04 (Definitions).
2. Application for a development permit shall be made on forms furnished by the community development department. Requirements may include, but are not limited to: plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage materials, drainage facilities; and the location of the foregoing.
3. The following information is specifically required:
 - a. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
 - b. Elevation in relation to mean sea level to which any structure has been floodproofed;
 - c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 17.42.170E.5.; and
 - d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

Finding: Applicable. The subject site is within the 100 year floodplain and the 1996 flood inundation. The applicant submitted this application to determine compliance with this chapter.

17.42.110 - Information to be obtained and maintained.

The building official shall:

- A. Where base flood elevation data is provided through the flood insurance study, FIRM or required as in Section 17.42.100, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- B. For all new or substantially improved floodproofed structures where base flood elevation data is provided through the flood insurance study, FIRM, or as required in Section 17.42.080:
 1. Verify and record the actual elevation (in relation to mean sea level); and
 2. Maintain the floodproofing certifications required in Section 17.42.080C.3.;
 3. Maintain for public inspection all records pertinent to the provisions of this Chapter.

Finding: Complies with condition. A building permit is not required for the construction of a patio slab or the stairs built on grade or for the landscaping walls based on Oregon Residential Specialty Code Section R105.2 exception #5 and interpretation from Oregon Building Codes Division 14-03. However, a Floodplain development permit is required to verify that applicant has proved adequate anchoring of any construction completed within a floodplain. A registered professional engineer report is required to determine that the aforementioned items are properly anchored and will not become dislodged during an event. An elevation certificate completed by a licensed surveyor is required to be submitted as part of the Floodplain Development permit. Prior to issuance of permits, the applicant shall submit adequate documentation to the building official to comply with OCMC 17.42.110. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.42.120 - Alteration of watercourses.

- A. Notify adjacent communities and the department of land conservation and development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.



B. Require that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.

Finding: Not Applicable. The applicant has not proposed to alter a watercourse with this development.

17.42.130 - Map administration.

Finding: Not applicable. The applicant has not proposed a map correction with this development application.

17.42.140 - Appeals and variance procedure.

Finding: Not applicable. The applicant has not proposed an appeal or variance.

17.42.150 - Conditions for variances.

Finding: Not applicable. The applicant has not proposed a variance to the floodplain.

17.42.160.A - Flood management area standards.

Uses Permitted Outright:

1. *Excavation and fill required to plant any new trees or vegetation.*
2. *Restoration or enhancement of floodplains, riparian areas, wetland, upland and streams that meet federal and state standards provided that any restoration project which encroaches on the floodway complies with the requirements of Section 17.42.190 (Floodways).*

Finding: Not applicable. The development included grading and construction of stairs and a patio within the floodplain. The development is not permitted outright.

17.42.160.B Provisional Uses.

1. *All uses allowed in the base zone or existing flood hazard overlay zone are allowed in the flood management overlay district subject to compliance with the development standards of this section.*

Finding: Complies as proposed. No change of use is proposed. This application is being submitted to obtain approval for existing facilities that have been in place for five years. The patio and dock are permitted within the flood plain.

17.42.160.C Prohibited Uses.

1. *Any use prohibited in the base zone;*
2. *Uncontained areas of hazardous materials as defined by the Department of Environmental Quality.*

Finding: Not applicable. The applicant did not propose prohibited uses.

17.42.160.D.1 Site Development Standards. *All development in the floodplain shall conform to the following balanced cut and fill standards:*

This subsection does 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 provided that, after the emergency has passed, adverse impacts are mitigated in accordance with applicable standards.

Finding: Not applicable. The proposed improvements are not in response to an emergency situation.

17.42.160.D.2 *No net fill in any floodplain is allowed. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removed. For the purpose of calculating net fill, fill shall include any structure below the design flood elevation that has been floodproofed pursuant to subsection (E)(5) of this section.*



Finding: Complies with condition. The applicant states:

“The purpose of this application is to obtain City approval for improvements installed by others prior to 22 July 2013 and prior to the applicant’s purchase of the property and dock use easement in December 2014. No new work is proposed.

Based on a site survey and testimony of the contractor, cuts and fills on the site in 2013 were less than 25 cubic yards. The applicant is not requesting any new cuts or fills. The applicant is requesting approval of the existing improvements installed prior to 22 July 2013. The patio area is located on fill placed decades ago as part of constructing the railroad grade. The only imported materials were concrete blocks, fine gravel and concrete which totaled approximately 12 cubic yards.

The cross section area of the added material is approximately five square feet. Since the cross sectional area of the Willamette River at this point is in the range of 68,000 square feet, the impact of the added material is basically un-measurable.

The placement of a concrete block retaining wall on a previously unsupported loose rock fill may improve the stability of the existing bank and railroad grade and reduce erosion during the higher flood events.”

Because the work was performed five years ago, it is not certain exactly how much fill was added to the site. The applicant has estimated that 12.1 cubic yards were brought in. The City provided LIDAR maps before and after the development that suggest a larger amount of fill, however, the applicant has identified potential inaccuracies and limitations of that data. In the absence of any better data sources, staff concurs with the applicant’s estimate of the amount of fill.

The applicant has not proposed cut to balance the 12.1 cubic yards of fill that was added to the floodplain.

The applicant shall submit documentation from an engineer certifying that the project will not result in net fill within the floodplain. The applicant may utilize cut on other properties within the Willamette River 100-year floodplain, if that cut has not already been used to balance a fill. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.42.160.D.3 Any excavation below bankfull stage shall not count toward compensating for fill.

Finding: Complies with Condition. The applicant has not proposed excavation below bankfull stage. Any excavation used to balance the fill for the development must not be below bankfull stage. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.42.160.D.4 Excavation to balance a fill shall be located on the same parcel as the fill unless it is not practicable to do so. In such cases, the excavation shall be located in the same Oregon City floodplain, so long as the proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis.

Finding: Complies with condition. The applicant has not proposed cut to balance the 12.1 cubic yards of fill that was added to the floodplain. Excavation on the subject property would be at or near bankfull



stage, and much of the property supports the railroad embankment, so it may not be practicable to balance on the subject property.

The applicant shall submit documentation from an engineer certifying that the project will not result in net fill within the floodplain. The applicant may utilize cut on other properties within the Willamette River 100-year floodplain, if that cut has not already been used to balance a fill. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.42.160.D.5 *For excavated areas identified by the city to remain dry in the summer, such as parks or mowed areas, the lowest elevation of the excavated area shall be at least six inches above the winter "low water" elevation, and sloped at a minimum of two percent towards the protected water feature pursuant to Chapter 17.49. One percent slopes will be allowed in smaller areas.*

17.42.160.D.6 *For excavated areas identified by the city to remain wet in the summer, such as a constructed wetland, the grade shall be designed not to drain into the protected water feature pursuant to Chapter 17.49.*

Finding: Not applicable. The property is not specifically identified by the City to remain dry or set during the summer.

17.42.160.D.7 *Parking areas in the floodplain shall be accompanied by signs that inform the public that the parking area is located in a flood management area and that care should be taken when the potential for flooding exists.*

Finding: Not applicable. The property does not contain a parking area.

17.42.160.D.8 *Temporary fills permitted during construction shall be removed at the end of construction, thirty days after subdivision acceptance or completion of the final inspection.*

Finding: Not applicable. No temporary fills are proposed.

17.42.160.D.9 *New culverts, stream crossings and transportation projects shall be designed as balanced cut and fill projects or designed not to significantly raise the design flood elevation. Such projects shall be designed to minimize the area of fill in flood management areas and to minimize erosive velocities. Stream crossings shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.*

Finding: Not applicable. The development is not a culvert, stream crossing, or transportation project.

17.42.160.D.10 *Excavation and fill required for the construction of detention facilities or structures, and other facilities, such as levees, specifically shall be designed to reduce or mitigate flood impacts and improve water quality. Levees shall not be used to create vacant buildable lands.*

Finding: Not applicable. The development is not a detention facility or levee.

17.42.160.E.1 Construction Standards.

1. Anchoring.

- a. *All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.*
- b. *All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movements and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebooks for additional techniques).*



Finding: Complies with condition. A building permit is not required for the construction of a patio slab or the stairs built on grade or for the landscaping walls based on Oregon Residential Specialty Code Section R105.2 exception #5 and interpretation from Oregon Building Codes Division 14-03. However, a Floodplain development permit is required to verify that applicant has proved adequate anchoring of any construction completed within a floodplain. A registered professional engineer report is required to determine that the aforementioned items are properly anchored and will not become dislodged during an event. An elevation certificate completed by a licensed surveyor is required to be submitted as part of the Floodplain Development permit. Prior to issuance of permits, the applicant shall submit adequate documentation to the building official to comply with OCMC 17.42.160.E.1. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.42.160.E.2 Construction Materials and Methods.

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.*
- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.*
- c. Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.*

Finding: Complies with condition. A building permit is not required for the construction of a patio slab or the stairs built on grade or for the landscaping walls based on Oregon Residential Specialty Code Section R105.2 exception #5 and interpretation from Oregon Building Codes Division 14-03. However, a Floodplain development permit is required to verify that applicant has proved adequate anchoring of any construction completed within a floodplain. A registered professional engineer report is required to determine that the aforementioned items are properly anchored and will not become dislodged during an event. An elevation certificate completed by a licensed surveyor is required to be submitted as part of the Floodplain Development permit. Prior to issuance of permits, the applicant shall submit adequate documentation to the building official to comply with OCMC 17.42.160.E.2. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

17.42.160.E.3 Utilities.

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.*
- b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.*
- c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.*

Finding: Not applicable. No utilities are proposed.

17.42.160.E.4 Residential Construction

- a. New construction and substantial improvements of any residential structure shall have the lowest floor, including basement, elevated to at least one foot above the design flood elevation.*



b. Full enclosed areas below the lowest floor that are subject to flooding are prohibited unless they are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria.

- i. A minimum of two openings have a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.*
- ii. The bottom of all openings shall be no higher than one foot above grade.*
- iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.*

Finding: Not applicable. The development is not a residential structure.

17.42.160.E.5 Nonresidential Construction.

- a. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to at least one foot above base flood elevation; or, together with attendant utility and sanitary facilities, shall:*
 - i. Be floodproofed so that below the design flood level the structure is watertight with walls substantially impermeable to the passage of water provided that the requirements of subsection D.2. of this section are met;*
 - ii. Have structured components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;*
 - iii. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 17.42.110B.;*
 - iv. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection E.4.b. of this section; and*
 - v. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the design flood level will be rated as one foot below that level).*
 - vi. Manufactured Homes. The following standards apply to all manufactured homes to be placed or substantially improved on sites within Flood Hazard Areas.*

When manufactured dwellings are installed in flood hazard areas, they shall be elevated and anchored according to the Oregon Residential Specialty Code.

Finding: Not applicable. The development is not a considered a structure for the purposes of this code section.

17.42.160.F Recreational Vehicles.

Finding: Not applicable. The development proposal did not include placement of recreational vehicles within the floodway.

17.42.160.G Below Grade Crawlspace.

Finding: Not applicable. The development is not a structure with crawlspaces.

17.42.170 - Review of building permits.

Where elevation data is not available either through the flood insurance study, FIRM or from another authoritative source (Section 17.42.110), application for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness shall be made by the building official, considering



use of historical data, high water marks, photographs of past floodings, etc., where available, and the provisions of this title. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

Finding: Not Applicable. A building permit is not required for the construction of a patio slab or the stairs built on grade or for the landscaping walls based on Oregon Residential Specialty Code Section R105.2 exception #5 and interpretation from Oregon Building Codes Division 14-03.

17.42.180 - Subdivision standards.

Finding: Not applicable. The applicant has not proposed a subdivision with this proposal.

17.42.190 - Floodways.

Located within areas of special flood hazard established in Section 17.42.030 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

- A. *Encroachments, including fill, new construction, substantial improvements and other development shall be prohibited unless certification by a registered professional engineer or architect is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.*
- B. *If subsection A of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood management area standards of Sections 17.42.160 through 17.42.190.*
- C. *Below-grade crawlspace construction is allowed in the floodplain in accordance with the Oregon Residential Specialty Code and the Oregon State Structural Specialty Code as adopted by local building code.*
- D. *In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.*

Finding: Complies with condition. The applicant indicates that the project is outside of the floodway. An elevation certificate completed by a licensed surveyor is required to be submitted as part of the Floodplain Development permit. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES

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

Finding: Complies with Condition. The application is being reviewed pursuant to the Type III process. Notice was posted onsite, online and mailed to property owners within 300 feet of the proposed development site and posted in the paper. The site is within the Historic Overlay District. Walls and fences are regulated within the historic overlay. The applicant shall obtain a certificate of appropriateness from the Historic Review Board for the concrete block wall, or shall modify the wall in order to obtain a certificate of appropriateness. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**



17.50.050 Preapplication Conference

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

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

Finding: Complies as Proposed. The applicant held a pre-application conference (file PA 18-21) on May 29, 2018. The land use application was submitted within 6 months of the pre-application conference on September 6, 2018. The application was deemed complete on October 6, 2018.

17.50.055 Neighborhood Association Meeting

Finding: Not Applicable. A neighborhood meeting is not required for NROD or Geologic Hazard applications.

17.50.060 Application Requirements.

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

17.50.070 Completeness Review and 120-day Rule.

Finding: Complies as Proposed. The land use application was submitted within 6 months of the pre-application conference on September 6, 2018. The application was deemed complete on October 6, 2018. The City has until February 2, 2019 to make a final determination.

17.50.080 Complete Application--Required Information.

Finding: Complies as Proposed. The land use application was submitted within 6 months of the pre-application conference on September 6, 2018. The application was deemed complete on October 6, 2018.

17.50.090 Public Notices.

Finding: Complies as Proposed. Staff provided public notice within 300 feet of the site via mail, the site was posted with multiple Land Use Notices, posted on the Oregon City website and in a general



circulation newspaper. Staff provided email transmittal or the application and notice to affected agencies, the Natural Resource Committee and to all Neighborhood Associations requesting comment.

17.50.100 Notice Posting Requirements.

Finding: Complies as Proposed. The site was posted with a sign at least 20 days prior to the public hearing.

CONCLUSION AND RECOMMENDATION:

Based on the analysis and findings as described above, Staff concludes that development at the site located at 1st Avenue between Miller and Jerome Streets, Clackamas County Map 2-1E-36DD, Tax Lot 200, can meet the requirements as described in the Oregon City Municipal Code by complying with the Conditions of Approval provided in this report. Staff recommends approval with conditions.

EXHIBITS:

1. Vicinity Map
2. Applicant's Narrative and Plans (On File)
3. Public Comments
4. Geologic Hazard Memo from Tim Pfeiffer