

ORDINANCE NO. 20351

AN ORDINANCE UPDATING THE GOAL 5 INVENTORY WITHIN THE EUGENE CITY LIMITS; ADOPTING THE GOAL 5 WATER RESOURCES CONSERVATION PLAN WITHIN THE EUGENE CITY LIMITS; REPEALING ORDINANCE NO. 20296; AMENDING SECTIONS 9.0500, 9.1040, 9.2751, 9.6885 9.7025, 9.7055, 9.7105, 9.7205, 9.7230, 9.7305, 9.7810, 9.8025, 9.8030, 9.8055, 9.8215, 9.8220, 9.8320, 9.8325, 9.8415, 9.8460, 9.8465, 9.8470, 9.8515, 9.8520, 9.8855, AND 9.8865 OF THE EUGENE CODE, 1971; ADDING NEW SECTIONS 9.8472 AND 9.8474; AND ADDING NEW SECTIONS 9.4900 THROUGH 9.4980 TO THAT CODE TO ESTABLISH A WATER RESOURCES CONSERVATION OVERLAY ZONE; AMENDING THE EUGENE OVERLAY ZONE MAP; ADOPTING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

The City Council of the City of Eugene finds that:

A. Statewide Planning Goal Five requires local governments to protect significant riparian corridors, upland wildlife habitat and wetlands. In order to conserve these resources and the biological systems they contain and support, this Ordinance adopts provisions to conserve the physical resources and also protect the water quality within the resource areas as a fundamental and essential requirement for continued survival of these biological systems.

B. Ordinance No. 20296, adopted by the Council and approved by the Mayor on July 28, 2003, adopted as Exhibit A to that Ordinance, a list of criteria for use in determining the significance of riparian corridor sites and upland wildlife habitat sites for purposes of updating the Goal 5 inventory within the Eugene city limits. The list of criteria is now more appropriately located in the Goal 5 Water Resources Conservation Plan.

C. Exhibit B to Ordinance No. 20296 is a list and a map, both entitled "Goal 5 Riparian and Upland Wildlife Habitat Sites Within the Eugene Urban Growth Boundary." The list and map, which updated the inventory of significant riparian corridor sites and upland wildlife habitat sites based on the criteria listed in Exhibit A to Ordinance No. 20296, are now more appropriately included in the Goal 5 Water Resource Conservation Plan. Further, updates to the list and map are needed to more accurately depict the location and/or acreage of some of the riparian corridor and upland wildlife habitat sites and to remove from the inventory a portion of site E-76, which an order of the Land Conservation and Development Commission determined had not been demonstrated to meet the definition of a riparian area under Oregon Administrative Rules.

D. The City has conducted, and the Oregon Department of State Lands (DSL) has approved, a local wetlands inventory (LWI) using the standards and procedures of OAR 141-086-0110 et seq. The City has determined which wetlands on the LWI are "significant wetlands" for purposes of Statewide Planning Goal 5 using the criteria adopted by DSL for that purpose (OAR 141-086-0350). The City is required to adopt an inventory of these significant wetlands.

E. In addition to the inventories of riparian, upland wildlife habitat and wetland sites referred to above, the following inventories make up the entire inventory of significant Goal 5 resources within the City of Eugene: the April 12, 1978 Sand and Gravel Working Paper, the April 12, 1978 Scenic Sites Working Paper, the April 12, 1978 Willamette River Greenway Working Paper, the April 12, 1978 Archeological Sites Working Paper, the December 1, 1976 list of historic land marks, and the West Eugene Wetlands Plan.

NOW, THEREFORE,

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Ordinance No. 20296 is repealed, as of the effective date of this Ordinance. This repeal, however, does not affect the validity of any actions taken pursuant to the provisions of that Ordinance.

Section 2. The Goal 5 Water Resources Conservation Plan attached as Exhibit A hereto, is hereby adopted as a refinement of the Eugene-Springfield Area Metropolitan Area General Plan for those areas that, as of the date this Ordinance is passed by the City Council, are located within the city limits of the City of Eugene.

Section 3. As they pertain to the areas within the city limits of Eugene, the following Exhibits are adopted as findings in support of this Ordinance: (a) Conflicting Uses and ESEE analysis attached as Exhibit B, and (b) the Eugene Local Wetland Inventory, attached as Exhibit C.

Section 4. Section 9.0500 of the Eugene Code, 1971, is amended by amending the definition for "Native Plants, Native Vegetation," and adding definitions of "Goal 5 Water Resource Site" and "Invasive, Non-Native Plants" in alphabetical order therein, to provide:

9.0500 **Definitions.** As used in this land use code, unless the context requires otherwise, the following words and phrases mean:

Goal 5 Water Resource Site. As used in EC 9.4900 to 9.4980 and 9.8030(21), the resource site as identified in the Goal 5 Water Resources Conservation Plan. For riparian corridor and upland wildlife habitat sites, the Goal 5 Water Resource Site includes the stream and riparian areas that may extend beyond applicable conservation setbacks. Wetland sites include only the wetland, itself.

Invasive, Non-Native Plants. Plant species included in Part 4 of the list adopted as Exhibit F to Ordinance 20351, or as subsequently amended by administrative order of the City Manager pursuant to EC 2.019.

Native Plants, Native Vegetation, (including native trees and native shrubs). Plant species identified as "Native Plants" or "Native Vegetation" in accordance with the lists adopted as Exhibit F to Ordinance No. 20351, or as subsequently amended by administrative order of the City Manager pursuant to EC 2.019.

Section 5. Section 9.1040 of the Eugene Code, 1971, is amended by adding a Water Resources Conservation Overlay Zone in alphabetical order to the Table, to provide as follows:

9.1040 Establishment and List of Overlay Zones. The overlay zones listed in Table 9.1040 Overlay Zones are established as follows:

Table 9.1040 Overlay Zones	
Overlay	Description
/WP	Waterside Protection Overlay Zone
/WR	Water Resources Conservation Overlay Zone

Section 6. Subsection (1)(c) of Section 9.2751 of the Eugene Code, 1971, is amended to provide:

9.2751 Special Development Standards for Table 9.2750.
(1) Density.

- (c) For purposes of calculating net density, the acreage of land considered part of the residential use shall exclude public property, including streets, parks, and other public facilities. In calculating the minimum net density required for a specific lot or development site, the planning director shall round down to the previous whole number. In calculating the maximum net density allowed for a specific lot or development site, the planning director shall round up to the next whole number. At the request of the developer, the acreage also may exclude natural or historic resources. For purposes of this section, natural resources include those designated for protection in an adopted plan and the area within natural resources protection or conservation setbacks that have been applied to the development site. For purposes of this section, historic resources include historic property and resources identified in an official local inventory as "primary" or "secondary." It may also include additional natural or historic resources upon approval of the planning director.

Section 8. The following caption and Sections 9.4900, 9.4910, 9.4913, 9.4915, 9.4920, 9.4930, 9.4940, 9.4950, 9.4960, 9.4970, and 9.4980 are added to the Eugene Code, 1971, to provide:

/WR WATER RESOURCES CONSERVATION OVERLAY ZONE

- 9.4900 /WR Water Resources Conservation Overlay Zone - Purpose.** The purpose of the /WR Water Resources Conservation overlay zone is to provide conservation of significant riparian areas, wetlands and other water-related wildlife habitat areas included on the city's adopted Goal 5 inventory. In order to conserve these resources and the biological systems they contain and support, the overlay zone not only conserves the physical resources but also protects the water quality within the resource areas as a fundamental and essential requirement for continued survival of these biological systems.
- 9.4910 /WR Water Resources Conservation Overlay Zone - Applicability.** The /WR Water Resources Conservation Overlay Zone applies to all property to which the /WR Water Resources Conservation Overlay Zone has been applied through the city's rezoning process or through automatic rezoning upon annexation.
- 9.4913 /WR Water Resources Conservation Overlay Zone – Relationship to Other Zones.** The provisions of the /WR Water Resources Conservation Overlay Zone shall control over other zoning provisions on all property to which the /WR Water Resources Conservation Overlay Zone has been applied except as provided in EC 9.4930(1).
- 9.4915 /WR Water Resources Conservation Overlay Zone - Siting Requirements.** The /WR overlay zone shall be applied to property that:
- (1) Is not already designated for protection or restoration by the West Eugene Wetlands Plan;
 - (2) Meets the other approval criteria of EC 9.8865; and
 - (3) Includes a Goal 5 Water Resource Site identified for conservation in the Goal 5 Water Resources Conservation Plan or includes land within the /WR Water Resources Conservation Area as described in EC 9.4920.
- 9.4920 /WR Water Resources Conservation Overlay Zone – Components of /WR Conservation Area.**
- (1) Except as provided in Subsections (5) and (6), the component areas of the /WR conservation area for Goal 5 Water Resource Sites are described and defined as follows:
 - (a) For riparian corridor and upland wildlife habitat sites E35, E37, E38, E81, E86, and E88, the /WR conservation area consists of the area between the top of high bank on both sides of the stream and the area within the applicable conservation setback.

- (b) For riparian corridor sites not listed in subsection (a), the /WR conservation area consists of the area within the Goal 5 Water Resource Site and the area within the applicable conservation setback.
- (c) The conservation setback for a particular riparian corridor or upland wildlife habitat site is determined based on whether it is a Category A, B, C, D or E stream in the Goal 5 Water Resources Conservation Plan. Conservation setbacks are measured horizontally from the top of the high bank as set out in 1., below, or, only when the top of high bank is not identifiable, from the line of ordinary high water, as set out in 2., below.

1. For conservation setback distances measured from the top of the high bank, the top of high bank is the highest point at which the bank meets the grade of the surrounding topography, characterized by an abrupt or noticeable change from a steeper grade to a less steep grade, and, where natural conditions prevail, by a noticeable change from topography or vegetation primarily shaped by the presence and/or movement of the water to topography not primarily shaped by the presence of water. Where there is more than one such break in the grade, the uppermost shall be considered the top of the high bank.

<u>Resource</u>	<u>Conservation Setback</u>
Category A Streams	100 feet
Category B Streams	60 feet
Category C Streams	40 feet
Category D Streams	20 feet
Category E Streams	no conservation setback

2. For conservation setback distances measured horizontally from the line of ordinary high water, top of high bank shall be considered not identifiable when both of the following are lacking: an abrupt or noticeable change from a steeper grade to a less steep grade, and a noticeable change from topography or vegetation primarily shaped by the presence and/or movement of the water to topography not primarily shaped by the presence of water. In a given stream, pond, or other water body, the line of ordinary high water is the line on the bank or shore to which seasonal high water rises annually identified in the field by physical characteristics that include one or more of the following:

- a. A clear, natural line impressed on the bank by the presence of water, flowing water or waves.
- b. Changes in the characteristics of soils.
- c. The presence of water-borne litter and debris.
- d. The uppermost limit of destruction of terrestrial vegetation by the presence of water, flowing water or waves.

If reliable water level data are available for 3 or more consecutive previous years, the line of ordinary high water can be considered the mean of the highest water level for all years for which data is available. Conservation setback distances measured from the line of ordinary high water are as follows:

<u>Resource</u>	<u>Conservation Setback</u>
Category A Streams	120 feet
Category B Streams	75 feet
Category C Streams	50 feet

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|--|--------------------|-------------------------|
| | Category D Streams | 25 feet |
| | Category E Streams | no conservation setback |
- (2) Except as provided in Subsections (5) and (6), the 2 components areas of the /WR conservation area for water features identified as wetlands to be protected in the Goal 5 Water Resources Conservation Plan are described and defined as follows:
- The Goal 5 Water Resource Site.
 - The area within the applicable conservation setback. The conservation setback for a particular site is determined based on whether it is a Category A, B or C wetland in the Goal 5 Water Resources Conservation Plan. Conservation setback distances for wetlands are measured horizontally from wetland boundaries established under the "Goal 5 Locally Significant Wetland Sites Within the Eugene Urban Growth Boundary" map or if provided by the property owner, from the jurisdictional wetland boundary accepted by the Oregon Department of State Lands. Conservation setback distances are as follows:
- | | |
|--------------------|-----------------------------|
| <u>Resource</u> | <u>Conservation Setback</u> |
| Category A Wetland | 50 feet |
| Category B Wetland | 25 feet |
| Category C Wetland | no conservation setback |
- To determine the /WR conservation area for sites in which wetlands exist along with either an upland wildlife habitat site or a riparian site, the /WR conservation area for each of the individual water features shall be calculated and mapped separately, and the total footprint of all the individual /WR conservation areas combined shall be the /WR conservation area for that site.
 - The /WR conservation area for properties having the S-RN Royal Node Special Area Zone and the /WR Water Resources Conservation Overlay Zone shall be limited to that area designated "drainage corridor" on Map 9.3805 S-RN Royal Node Special Area Zone and Subareas of this Land Use Code.
 - Areas which the applicant has shown to have been developed prior to November 14, 2005, are excluded from /WR conservation areas. For purposes of this subsection, "developed" means within the footprint of a legally constructed:
 - Building, or other substantial structure constructed on a concrete foundation;
 - Permanent dwelling (including manufactured dwelling) constructed without a concrete foundation;
 - Permanent deck or patio that is attached to a structure listed in subsection (a) or (b) above; or
 - Paved or gravel parking area, road, or driveway that serves uses in an adjacent building or structure listed in subsection (a) or (b) above.
 Fences and landscaping do not cause an area to be "developed" to warrant exclusion from the /WR conservation area.
 - Where an existing development under subsection (5) above or an existing developed street physically isolates a portion of the conservation setback area from the resource site, that isolated portion of the conservation area shall be excluded from the conservation area.

9.4930 /WR Water Resources Conservation Overlay Zone - Permitted and Prohibited Uses and Exceptions. Uses are permitted or prohibited within the /WR Resources

Conservation Overlay Zone based on whether they occur inside or outside the /WR Conservation Area as defined in EC 9.4920, as follows:

- (1) **Uses Permitted Outside the /WR Conservation Area.** The uses permitted on portions of properties located outside of the /WR conservation area are the same as those otherwise permitted without consideration of the /WR Water Resources Conservation Overlay Zone.
- (2) **Uses Permitted Within the /WR Conservation Area.** Subject to subsections (3) and (4) and any applicable development permits, the following uses are permitted within the /WR conservation area:
 - (a) Removal of refuse.
 - (b) Removal of any fill that is in response to a written determination from a regulating agency that the fill is in violation of local, state or federal regulations.
 - (c) Removal of plants that are non-native and invasive, provided that any significant tree within 25 feet of a Category B, C or D stream that is removed under this subsection must be replaced within 6 months by a native tree that will grow to similar (or greater) size, height and canopy spread as the one removed. Trees with large canopy spread or height may be replaced by multiple trees that, in combination, will provide similar height and canopy spread.
 - (d) Planting or replanting with native plants.
 - (e) Maintenance of access roads or pathways and channel maintenance practices used to maintain stormwater conveyance and flood control capacity as required by local policies, local, state and federal regulations, and intergovernmental agreements.
 - (f) A public entity's removal of vegetation by mechanical or manual means within a strip not to exceed 15 feet wide from publicly owned property within the /WR conservation area where that property abuts private property that is not within a /WR conservation area.
 - (g) Repair or replacement of a privately-owned, culverted stream crossing within the same total footprint as the original culvert and crossing.
 - (h) Construction of low impact trails with no impervious surface, not to exceed 3 feet in width.
 - (i) Planting or removal of plants within an area that, prior to November 14, 2005, was cleared of native vegetation and intentionally planted with ornamental landscape plants. Expansion of the landscaped area through additional clearing of naturally established native plants within the /WR conservation area is prohibited.
 - (j) Removal of vegetation that the city fire marshal has declared poses a potential fire hazard to existing structures. Written documentation of the fire marshal's declaration, including a description of the location of the structure and the location of the vegetation to be removed, shall be provided to the planning director prior to the removal. The removal shall be limited to the extent specified by the fire marshal's declaration.
 - (k) Removal of hazardous tree(s), so long as prior to removal the property owner submits to the planning director a written evaluation of each tree proposed for removal prepared by a certified arborist declaring the tree(s) to be hazardous and recommending immediate removal. The written evaluation shall be on a form prescribed by the city manager pursuant to section 2.019 City Manager – Administrative and Rulemaking Authority and Procedures.

- (l) Removal of trees or shrubs that are neither native plants nor non-native, invasive plants, provided that each tree and shrub over 5 feet in height that is removed within 25 feet of a Category B, C or D stream is replaced within 6 months by a native tree or shrub. Replacement of a tree must be with a tree that will grow to similar (or greater), size, height and canopy spread as the one removed. Trees with large canopy spread or height may be replaced by multiple trees that, in combination, will provide similar height and canopy spread.
 - (m) Construction of a stream crossing with a culvert or bridge for a private access road over a Category E stream, where no other point of access to an adjacent street or road is available.
 - (n) Maintenance, repair, and reconstruction of utility facilities existing as of November 14, 2005 where such action will involve excavation or ground disturbance within the conservation area of 500 square feet or less, and where such action is necessary to maintain access, maintain or improve safety, maintain proper functioning or is required by local policies, local, state or federal regulations, or intergovernmental agreements. See subsection (3)(d) of this section for maintenance, repair and reconstruction activities that are subject to the standards review process.
 - (o) Emergency repair of a failing slope or eroding channel bank, provided that, within one week of commencing the repair work, the owner of the subject property submits to the planning director a written evaluation of the bank failure prepared by a certified engineer that includes:
 - 1. A description of the location, extent and probable cause of the slope or bank failure,
 - 2. A determination that the slope or bank failure constitutes an emergency and threatens public safety or the structural integrity of an adjacent or downstream legally constructed structure,
 - 3. A declaration that immediate repair of the slope or bank failure is necessary to protect public safety or the structural integrity of structure(s) described under subsection 2.
 - 4. A statement that the method of repair will minimize impacts to riparian and in-stream habitat to the greatest extent practicable.

Consistency with the provisions of this subsection do not exempt the property owner from state or federal laws or regulations that protect wetlands, waterways or other natural resources.
- (3) Uses Subject to Standards Review Within /WR Conservation Areas.**
 Except as prohibited by subsection (4), or as excepted under subsection (5), within /WR conservation areas, the following uses are permitted, subject to the standards review process beginning with EC 9.8460 in which consistency with the specific standards referenced for each use below shall be used as the criteria for approval.
- (a) Realignment and reconfiguration of channels and pond banks. Subject to EC 9.4980 /WR Water Resources Conservation Overlay Zone Development Standards (2) through (5).
 - (b) Construction of public improvements (including but not limited to streets, bridges, paved bikeways and pedestrian paths, and public utilities) required by this land use code or specified in adopted plans. Subject to EC 9.4980 /WR Water Resources Conservation Overlay Zone Development Standards (1) through (11).

- (c) Construction of public access facilities and information and interpretation facilities on public lands where it is demonstrated that public access must be controlled in order to protect the resource. Subject to EC 9.4980 WR Water Resources Conservation Overlay Zone Development Standards (1) through (11).
- (d) Maintenance, repair, and reconstruction of utility facilities existing as of November 14, 2005 within WR conservation areas of Category A, B, C, or D streams or Category A, B, or C wetlands, where such action will involve excavation or ground disturbance within the WR conservation area of more than 500 square feet, and where the footprint of above-ground facilities will not be expanded. For purposes of this subsection, agencies or entities that manage and maintain utility facilities may make application for individual actions or may submit an application for approval of a maintenance, repair and reconstruction program, such that all activities consistent with the approved program would be deemed consistent with this subsection, and applications for individual actions would not be required. Subject to EC 9.4980 WR Water Resources Conservation Overlay Zone Development Standards (2) through (5) and to the following additional standards:
 - 1. The action is necessary in order to maintain access, maintain or improve safety, maintain proper functioning, or is required by local policies, local, state or federal regulations, or intergovernmental agreements.
 - 2. Excavated areas shall be backfilled to the previous grade with existing native soil used for the uppermost 3 feet of backfill whenever possible and in no case less than the uppermost 2 feet of backfill.
 - 3. Except for emergency repairs, maintenance, repair and reconstruction of utility facilities shall be planned and timed to minimize adverse impacts to wildlife and habitat within a WR conservation area. Emergency repairs shall meet the requirements of 9.4930(2)(o).
 - 4. Utility agencies and their agents shall use the best feasible technology to pinpoint the location of needed repairs to underground utilities prior to excavation in order to limit the area of impact.
- (e) Construction of new underground utility lines within WR conservation areas of Category A, B, C, or D streams or Category A, B, or C wetlands. Subject to EC 9.4980 WR Water Resources Conservation Overlay Zone Development Standards (2) through (5) and to the following additional standards:
 - 1. No reasonable alternative routes exist to provide service to an unserved area or to connect to an existing line.
 - 2. Routing of new utility lines shall be designed so as to minimize adverse impacts to habitat within the WR conservation area to the greatest extent practicable.
 - 3. Excavated areas shall be backfilled to the previous grade with existing native soil used for the uppermost 3 feet of backfill whenever possible and in no case less than the uppermost 2 feet of backfill.

4. Construction of new utility facilities shall be planned and timed to minimize adverse impacts to wildlife and habitat within a /WR conservation area.
 5. Impacts to plant species listed as threatened or endangered by the Oregon Department of Agriculture or the U.S. Fish and Wildlife Service shall be avoided.
- (f) Wetland or riparian area enhancement, restoration or creation activities. Subject to EC 9.4980 /WR Water Resources Conservation Overlay Zone Development Standards (2) through (5).
- (g) Construction of stormwater quality treatment facilities that do not discharge into a stream or wetland within the /WR conservation area and that do not include adding impervious surfaces. Subject to EC 9.4980 /WR Water Resources Conservation Overlay Zone Development Standards (2) though (5).
- (h) Discharge of stormwater collected from impervious surfaces into a wetland or stream within the /WR conservation area, if the following standards 1. through 4. are met:
1. No other gravity-based stormwater discharge options are available for the site.
 2. All of the stormwater runoff from the development site that will result from the water quality design storm will be treated by a privately constructed and maintained stormwater management facility prior to discharge. For purposes of this subsection, the term "water quality design storm" means a theoretical storm for estimating the amount of stormwater runoff to be treated, and is different for volume based facilities and flow-through facilities as follows:
 - a. Facilities designed to store and treat a volume of stormwater shall be sized using a water quality design storm of 1.4 inches of rainfall in 24-hours using Soil Conservation Service (SCS now the Natural Resources Conservation Service) methodology.
 - b. Facilities designed to treat a rate of flow draining through them shall be sized using a rainfall intensity of 0.12 inches per hour for facilities off-line from the conveyance system, or 0.21 inches per hour for on-line facilities, and using the rational equation.
 3. The stormwater is treated prior to discharge utilizing one or more of the following stormwater management facilities: eco-roof, stormwater planter, swale, filter, infiltration basin, and manufactured treatment facility.
 4. Design and construction of the stormwater management facility is subject to EC 9.4980 /WR Water Resources Conservation Overlay Zone Development Standards (2) through (5).
- (i) Construction of paved pathways of no more than 6 feet in width for passive recreation within the conservation area for Category A, B, or C streams or Category A wetlands, and no more than 12 feet for bike paths identified in TransPlan. Subject to EC 9.4980 /WR Water Resources Conservation Overlay Zone Development Standards (2) through (6) and (11).
- (j) Construction of a private access road where no other point of access is available except through the /WR conservation area of a Category A, B,

C or D stream or a Category A, B, or C wetland, and where the number of stream or wetland crossings is the minimum necessary for the approved use. Subject to EC 9.4980 WR Water Resources Conservation Overlay Zone Development Standards (2) through (6) and (10).

- (k) Non-emergency repair or stabilization of a failing slope or eroding channel bank. Subject to EC 9.4980 WR Water Resources Conservation Overlay Zone Development Standards (2) through (6), and provided the applicant submits to the planning director a report from a certified engineer that includes the following:
1. A description of the location, extent and probable cause of the slope or bank failure,
 2. A determination that the slope or bank failure threatens public safety or the structural integrity of an adjacent or downstream legally constructed structure,
 3. A declaration that repair of the slope or bank failure is necessary to protect public safety or the structural integrity of structure(s) described under subsection 2. above,
 4. A statement that the method of repair is necessary to protect public safety of the structural integrity of structure(s) described under subsection 2. above and will minimize impacts to riparian and in-stream habitat to the greatest extent practicable.

Consistency with the provisions of this subsection do not exempt the property owner from state or federal laws or regulations that protect wetlands, waterways or other natural resources.

- (4) **Uses Prohibited Within the WR Conservation Area.** Uses that are not specifically allowed under subsections (2), (3) or (5) are prohibited within WR conservation areas. Prohibited uses include, but are not limited to, the following:

- (a) Storage of hazardous or toxic materials.
- (b) Depositing, dumping, piling or disposal of refuse, or dumping, piling, disposing or composting of yard debris, fill, or other material except for single family residential composting, which must be kept at least 10 feet from the top of the bank of any water feature, and soils or soil amendments used for replanting in accordance with provisions of this section.
- (c) Construction of new septic drainfields.
- (d) Channelizing or straightening natural drainageways.
- (e) Removal or destruction of a plant species listed as threatened or endangered by the Oregon Department of Agriculture or the U.S. Fish and Wildlife Service unless written notice of the removal or destruction is provided to the city's Planning and Development Department, the Plant Division of the Oregon Department of Agriculture, and the U.S. Fish and Wildlife Service 30 days prior to the removal or destruction. Such notice shall include the location, the names of the plant species to be affected, how many plants are to be affected and the reason for the removal or destruction.
- (f) Filling, grading and excavating.
- (g) Storage of wood, other building materials, vehicles or machinery.

- (5) **Exceptions.** Activities that are explicitly authorized by a city land use approval issued prior to November 14, 2005 or that are necessary to carry out uses or development explicitly authorized by such an approval are exempt from the

restrictions of the provisions of subsections (2), (3) and (4) of this section if the authorization is part of one of the following:

- (a) A site review plan;
- (b) A conditional use permit;
- (c) A tentative subdivision or tentative cluster subdivision submitted and approved after August 1, 2001;
- (d) A greenway permit; or
- (e) A planned unit development.

9.4940 /WR Water Resources Conservation Overlay Zone - Conveyance of Stormwater Maintenance Easement. Within the /WR conservation area, the city shall have the authority to require conveyance of a maintenance access easement for any natural or human made stormwater facility as a condition of approval for a land use permit. Maintenance access easements within the conservation area shall be only for the purpose of allowing access to the stormwater facility for city maintenance staff and equipment and shall be no more than 15 feet wide.

9.4950 /WR Water Resources Conservation Overlay Zone – Adjustments.

- (1) Adjustments to the provisions of EC 9.4920 may be made subject to compliance with the criteria for adjustment in EC 9.8030(21)(a), (b) or (c).
- (2) Adjustments to the provisions of EC 9.4930 or 9.4980 may be made subject to compliance with the criteria for adjustment in EC 9.8030(21)(d).

9.4960 /WR Water Resources Conservation Overlay Zone – Map or Zone Error. The provisions of this section apply in the case of an alleged error in the mapping of a Goal 5 resource site on the Goal 5 Water Resources Conservation Plan Map and/or in the case of an alleged error in the application of the /WR Water Resources Overlay Zone to a specific lot. With respect to alleged errors in the application of the overlay zone, the provisions of this section apply instead of the zone change procedures and criteria described at EC 9.8850 through 9.8865. This section provides the only basis for removal of the /WR Water Resources Overlay Zone or corrections to the Goal 5 Water Resources Conservation Plan Map.

- (1) **Initial Consultation.** An applicant may request an initial consultation with city staff to assist the applicant in determining whether an application under subsection (2) or (3) of this section is the most appropriate application for the specific error alleged.
- (2) **Correction Based Solely on Aerial Photography or Geographic Information System Data.** An application submitted pursuant to this subsection shall be processed under the Type I application procedure (EC 9.7100 – 9.7120).
 - (a) Application Requirements.
 - 1. A form provided by the city and a fee established pursuant to EC chapter 2.
 - 2. For allegations of error on the Goal 5 Water Resources Conservation Plan Map: identification of the Goal 5 Water Resource Site alleged to have been incorrectly mapped on the Goal 5 Water Resources Conservation Plan Map.

3. For allegations of error on the Eugene Overlay Zone Map: a list of the tax lots and a description of any right-of-way alleged to have been incorrectly included in the /WR Water Resources Conservation Overlay Zone.
 4. A description of the alleged error and the proposed correction.
- (b) Approval Criteria Based Solely on Aerial Photography and Geographic Information System Data.
1. For allegations of error on the Goal 5 Water Resources Conservation Plan Map: it is clear that, at the time the city adopted the Goal 5 Water Resources Conservation Plan Map, that Map showed an incorrect location of the identified Goal 5 Water Resource Site.
 2. For allegations of error on the Eugene Overlay Zone map: it is clear that, at the time the city applied the /WR Water Resources Conservation Overlay Zone to the subject lot(s), the city was incorrect in its determination that the lot(s) contained a Goal 5 Water Resource Site or a /WR Water Resources Conservation Area.
- (3) Correction Based on Additional Information.** An application submitted pursuant to this subsection (3) shall be processed under the Type II application procedure (EC 9.7200 – 9.7230).
- (a) Application requirements.
1. The materials required under subsection (2)(a).
 2. If the alleged error is in the city's measurement of the conservation setback (as opposed to the location of the resource itself), a site plan drawn to scale, showing all of the following:
 - a. The location of the boundary of the resource as mapped by the city in the Goal 5 Water Resources Conservation Plan;
 - b. The alleged correct location of the boundary of the /WR conservation area for the resource in question based on EC 9.4920;
 - c. The distance in feet from the nearest point of the alleged correct location of the boundary of the /WR conservation area of the resource in question to the subject property.
 3. If the alleged error is in the mapping of an upland wildlife habitat site or a riparian site (as opposed to the measurement of the site's conservation setback):
 - a. A detailed written description of the mapped area claimed to be incorrectly included within the resource site in question, including an inventory list of plant species and the relative frequency of plant species listed;
 - b. The location of the boundary of the resource as mapped by the city in the Goal 5 Water Resources Conservation Plan;
 - c. The alleged correct location of the boundary of the /WR conservation area for the resource in question; and\
 - d. Color photographs of the area claimed to be incorrectly included within the resource site in question.
 4. If the alleged error is in the mapping of a wetland site (as opposed to the measurement of the conservation setback area), a wetland determination or a wetland delineation report and map, and a signed concurrence letter from the Oregon Department of State Lands, indicating that the determination or report is consistent with

Oregon Administrative Rules pertaining to mapping of jurisdictional wetlands. The map must show all pertinent tax lot lines and rights-of-way boundaries.

(b) Approval Criteria.

1. For allegations of error on the Goal 5 Water Resources Conservation Plan Map: at the time the city adopted the Goal 5 Water Resources Conservation Plan Map, that Map showed an incorrect location of the identified Goal 5 Water Resource Site.
2. For allegations of error on the Eugene Overlay Zone Map: at the time the city applied the /WR Water Resources Conservation Overlay Zone to the subject lot(s), the city was incorrect in its determination that the lot(s) contained a Goal 5 Water Resource Site or a /WR Water Resources Conservation Area.

(4) **Amendment of the Goal 5 Water Resources Conservation Plan Map or the Eugene Overlay Zone Map.** As a result of the Type I or Type II processes described above, if the city determines that there is an error in the Goal 5 Water Resources Conservation Plan Map or the Eugene Overlay Zone Map, the planning director shall issue an order amending the applicable map(s) to correct the error.

9.4970 /WR Water Resources Conservation Overlay Zone - State Wetland Notification.

The city shall notify the Oregon Department of State Lands (DSL) concerning land use and building permit applications within wetland sites consistent with state law.

9.4980 /WR Water Resources Conservation Overlay Zone - Development Standards.

The following standards apply only as specifically required by EC 9.4930(3) or EC 9.8030(21):

- (1) **Enhancement.** Where the /WR conservation area is reduced, or uses are approved within the /WR conservation area, the remaining /WR conservation area shall be enhanced consistent with this subsection and by removing non-native plant species and planting native plant species consistent with subsections (2) and (3) below.
 - (a) All refuse, toxic materials and any fill that limits or decreases the capacity of the conservation setback area to filter pollutants from runoff that flows across the conservation setback area shall be removed (not including stormwater collected and discharged from impervious surfaces).
 - (b) Where practicable, finished grades shall encourage sheet flow of runoff across conservation setback areas to maximize filtering and infiltration of precipitation and runoff within conservation setback areas (not including stormwater collected and discharged from impervious surfaces).
 - (c) On sites where the slope within the conservation setback area exceeds 15 percent, measures (e.g., planting and contouring) shall be taken to slow the flow of runoff to the maximum extent practicable (not including stormwater collected and discharged from impervious surfaces).
 - (d) Non-native plants shall be permanently removed to the maximum extent practicable and replaced with native plant species in accordance with subsection (3) below.
 - (e) Except as required by EC 9.4980(2)(c), EC 9.4980(3)(d) and EC 9.4980(3)(e), site work to enhance the conservation setback area shall be

completed prior to or concurrent with other site development, unless appropriate native plant species are not available within that time frame.

- (2) **Vegetation Removal.** Vegetation removal within the /WR conservation area and within areas removed from the /WR conservation area shall comply with the following standards:

- (a) Vegetation removal shall be limited to:
 - 1. Plant species that are non-native and invasive;
 - 2. Dead or dried native plants or grasses only when they constitute an imminent fire hazard;
 - 3. Living native or non-native vegetation, when its removal is necessary to facilitate or encourage the growth of other native species (e.g., native wet prairie plant species) consistent with adopted plans or policies; or
 - 4. The minimum area of native vegetation removal necessary to accommodate uses approved in accordance with EC 9.4930(3)(a) through EC 9.4930(3)(h), and uses approved through an adjustment approved in accordance with EC 9.8030(21).
- (b) Clearing of more than 500 square feet of vegetation must comply with Erosion Prevention regulations for sensitive areas in EC 6.645.
- (c) Any clearing of vegetation that is not within the footprint of uses approved in accordance with EC 9.4930(3)(a) through EC 9.4930(3)(h), or uses approved through an adjustment approved under EC 9.8030(21), must be followed by replanting in accordance with the requirements of subsection (3) below.

- (3) **Planting and Replanting.** Planting or replanting within the /WR conservation area shall comply with the following standards:

- (a) Areas of existing bare soil and areas which have been cleared or graded in accordance with subsection EC 9.4980(2) or EC 9.4980(5) shall be planted with native plant species. Except as required in (b) and (c) below, plant species and plant spacing used for such plantings shall be appropriate to increasing to the greatest extent practicable the capacity of the conservation setback area to filter pollutants from runoff that flows across the conservation setback area (not including stormwater collected and discharged from impervious surfaces). Where existing native vegetation already serves this function to some extent, additional native plants shall be planted in order to augment native vegetation already existing. Plant species selected for all plantings shall be appropriate to the site given its topography, hydrology, soil, and existing native plant species.
- (b) Planting or replanting within 25 feet of a Category B, C, or D stream within the /WR conservation area shall include native tree or large shrub species and located so as to provide substantial shading of the channel during times of peak solar input.
- (c) Where non-native or damaged trees are removed within 25 feet of a Category B, C, or D stream within the /WR conservation area, they shall be replaced with native tree or large shrub species and located so as to achieve equal or greater shading of the channel during times of peak solar input as the trees removed.
- (d) Replanting of areas cleared of existing vegetation must be completed within 90 days following the removal or clearing, unless otherwise approved by the planning director.

- (e) Plantings shall not adversely affect adjacent protected water resources or existing native vegetation through shading or invasion by plant species introduced into the setback.
- (4) **Construction Practices.** Construction within the /WR conservation area, and within areas removed from the /WR conservation area shall comply with the following standards:
 - (a) For purposes of this subsection, heavy machinery is defined as motorized or mechanized machinery or equipment capable of deliberately or inadvertently damaging vegetation, or damaging or compacting soil. The following standards shall apply to use of heavy machinery within the /WR conservation area:
 - 1. On sites where soils are susceptible to severe compaction or structural damage when wet or saturated, use of heavy machinery shall be limited to the period between June 15 and September 30, unless otherwise approved by the planning director.
 - 2. Use of heavy machinery shall be the minimum necessary for the use or activity and shall be restricted to those areas where its use is necessary.
 - (b) Petroleum products, chemicals, or other deleterious materials used in the construction process shall not be allowed to enter a stream or wetland that is within a /WR conservation area.
- (5) **Filling, Grading and Excavating.** Filling, grading and excavating within the /WR conservation area and within areas removed from the /WR conservation area shall comply with the following standards:
 - (a) Filling, grading or excavating of more than 500 square feet must comply with Erosion Prevention regulations for sensitive areas in EC 6.645.
 - (b) Grading and excavating conducted as part of restoration or enhancement projects, and bank and channel reconfiguration shall result in topography that resembles landscapes shaped only by natural processes, for example, incorporating the undulations, meanders and slopes found in such landscapes. For purposes of this standard, straight lines and geometric or angular shapes are not acceptable. Channel and stream bank slopes shall not exceed 25 percent at elevations of 500 feet or less.
- (6) **Impervious Surfaces.** Within the /WR conservation area, construction of new impervious surfaces shall comply with the following standards:
 - (a) Impervious surfaces are prohibited within the /WR conservation area unless they are part of a use approved in accordance with EC 9.4930(3).
 - (b) Impervious surfaces that are part of a use approved in accordance with EC 9.4930(3) shall be no larger than the minimum necessary for the approved use. For sites with wetlands, impervious surfaces shall be located as far from the boundaries of locally significant wetlands as practicable. For riparian and upland wildlife habitat sites, impervious surfaces shall be located as far from the line of ordinary high water as practicable.
 - (c) Durable porous paving treatments or other infiltration devices approved by the planning director or decision-maker shall be used in lieu of standard impervious paving surfaces to increase infiltration of stormwater where practicable. This standard shall apply only to low volume parking areas, foot paths or lightly used access roads, where porous soils and flat topography will facilitate infiltration of runoff. For the purposes of this

subsection, gravel surfaces are not acceptable as porous paving or as an infiltration device.

- (7) **Site Layout.** On sites where the /WR conservation area is reduced, high intensity uses within the entire development site, including high volume traffic lanes and truck loading docks, shall be designed and located so that adverse impacts to wetland and riparian habitats within the /WR conservation area are minimized to the greatest extent practicable.
- (8) **Lighting.** Within the /WR conservation area, and within areas removed from the /WR conservation area, outdoor area lighting shall be prohibited, except to illuminate walkways, bike paths, pedestrian gathering areas, and parking areas, where these facilities are intended to be used after dark. Outdoor area lighting is lighting designed to illuminate an outdoor activity area, trail or bicycle path. Where lighting is to be provided within the /WR conservation area and within areas removed from the /WR conservation area, the following standards shall apply:
 - (a) Illumination for walkways, pathways or pedestrian gathering areas shall be no more than an average maintained luminance of 0.5 foot-candle at grade.
 - (b) Output from all other light sources shall be no more than an average maintained luminance of 0.9 foot-candle at grade.
 - (c) All lighting fixtures shall be designed to direct light downward to areas intended for human use after dark, and shall be shielded such that light shining toward /WR conservation areas is minimized to the maximum extent practicable.
- (9) **Trails.** Within the /WR conservation area, trails shall be constructed of gravel, wood chips or other pervious material, unless otherwise approved by the city manager or decision-maker. Trail construction shall involve the least removal of native vegetation practicable for the area and the minimum amount of fill or excavation practicable.
- (10) **Stream and Channel Crossings.** Bridges or other structures that cross streams or wetlands within the /WR conservation area or areas removed from the /WR conservation area shall be constructed so that water flow, vegetation growth and movement of aquatic animals and water dependent wildlife are impeded to the least extent practicable. To meet this standard, bridges and crossings shall include, but are not limited to, applicable items from the following list:
 - (a) Bridges across Category A or Category B streams as identified in the Goal 5 Water Resources Conservation Plan shall, where practicable, be designed to avoid channel constriction when flows reach the top of high bank. Where practicable, bridges shall span a distance 1.2 times the width of the stream channel from top of high bank to top of high bank to help prevent scouring within the structure or at the outlet during less frequent floods.
 - (b) Crossings over Category A or Category B streams as identified in the Goal 5 Water Resources Conservation Plan shall utilize bridges or natural substrate culverts where possible. Where practicable, the lower lip of any natural substrate culvert shall be embedded at least 1 foot for box culverts and pipe arches, and at least 25% of the pipe diameter for pipe culverts. The substrate within the structure shall match the composition of the substrate in the natural stream channel at the time of construction. The substrate shall either resist displacement during flood

events or the structure shall be designed to maintain an appropriate bottom through natural bed load transport.

- (c) Bridges and culverts on Category A or Category B streams as identified in the Goal 5 Water Resources Conservation Plan shall be constructed so that the "openness ratio" of the structure is equal to or greater than 0.25. The "openness ratio" is the cross-sectional area of the passage area under or within the structure divided by the length of the stream segment it crosses over. For a box culvert, the openness ratio shall be (height x width)/length.
 - (d) Culverts shall not substantially increase or decrease water depth or flow rate conditions upstream or downstream from the culvert.
 - (e) The lower lip of all culverts shall meet the stream or channel bed at or below grade.
 - (f) Culverts shall be the minimum length practicable, and fill on top of the culvert shall have the minimum footprint practicable.
- (11) **Interpretive Facilities.** Within the WWR conservation area, boardwalks, viewing platforms, interpretive information kiosks, trail and interpretive signs shall be constructed in a manner that involves the least removal of native vegetation practicable. Signs shall be no more than 5 feet tall, and 16 square feet per face in surface area, except for signs intended to be read from moving automobiles, such as site entrance signs, which shall be no more than 8 feet tall and 32 square feet per face in surface area. Kiosks shall be no more than 8 feet tall and 16 square feet per face in surface area. The number of signs shall be the minimum necessary to accomplish project objectives.

Section 7. The portion of sentence preceding the colon in Subsection (1) of Section

9.6885 of the Eugene Code, 1971, is amended to provide:

9.6885 Tree Preservation and Removal Standards.

- (1) **Exemption from Standards.** The standards in this section do not apply to activities regulated under EC 9.4900 through 9.4980, or an application for development activity that includes or will result in:

Section 9. Subsection (1) of Section 9.7025 of the Eugene Code, 1971, is amended by adding a new subparagraph (f) thereto, to provide:

9.7025 Performance Agreements.

- (1) **Applicability.** The city shall require execution of a performance agreement by the applicant for all of the following types of applications:
- (a) Conditional use permit and any modifications.
 - (b) Historic property alteration and any modifications.
 - (c) Planned unit development, final plan and any modifications.
 - (d) Site review and any modifications.
 - (e) Subdivisions final plat and any modifications.
 - (f) Standards review and any modifications.

Section 10. Table 9.7055 of the Eugene Code, 1971, is amended by adding entries for

“/WR Water Resources Conservation Overlay Zone” in alphabetical order therein to provide:

9.7055 Applications and Review Authorities. Table 9.7055 Applications and Review Authorities, lists applications and the review authorities for the decision and the appeal of the decision.

Table 9.7055 Applications and Review Authorities						
R = Recommendation, D = Decision Maker, A = Appeal Review Authority						
Application	Type	Planning Director	Hearings Official	Historic Review Board	Planning Commission	City Council
Variance	II	D	A			
/WR Water Resources Conservation Overlay Zone - Map or Zone Error (See EC 9.4960)	I or II	D	A			
Willamette Greenway Permit	III		D		A	

Section 11. Table 9.7105 of the Eugene Code, 1971, is amended by adding an entry for

“/WR Water Resources Conservation Overlay Zone” in alphabetical order therein to provide:

9.7105 Type II Application Requirements and Criteria Reference. The following applications are reviewed under the Type II review process according to the requirements and criteria set forth for each application as reflected in the beginning reference column in Table 9.7105:

Table 9.7105 Type I Application Requirements and Criteria	
Type II Applications	Beginning Reference
/WR Water Resources Conservation Overlay Zone – Map or Zone Error	EC 9.4960(2)

Section 12. Table 9.7205 of the Eugene Code, 1971, is amended by adding an entry for

“/WR Water Resources Conservation Overlay Zone” in alphabetical order therein to provide:

9.7205 Type II Application Requirements and Criteria Reference. The following applications are reviewed under the Type II review process according to the requirements and criteria set forth for each application as reflected in the beginning reference column in Table 9.7205:

Table 9.7205 Type II Application Requirements and Criteria	
Type II Applications	Beginning Reference
Variance	EC 9.8750
/WR Water Resources Conservation Overlay Zone - Map or Zone Error	EC 9.4960(3)
Willamette Greenway Permit, Modification	EC 9.8825

Section 13. Section 9.7230 of the Eugene Code, 1971, is amended by adding entries for “Standards Review” and “Standards Review, Modification” in alphabetical order to Table 9.7230, and amending Subsection (6), to provide:

9.7230 Expiration.

Table 9.7230 Expiration of Type II Application Approvals			
Application	12 months	18 months	36 months
Site Review, Modification		X	
Standards Review		X	
Standards Review, Modification		X	

- (6) Site review and standards review approvals and modifications of such approvals shall be effective for 18 months after the effective date of approval. Within that time, the applicant shall submit a final plan and an application for a development permit. Prior to the expiration date, the applicant may submit a modification requesting a change to the commencement or expiration time period.

Section 14. The paragraph following Table 9.7305 of the Eugene Code, 1971, is amended to provide:

9.7305 Type III Application Requirements and Criteria Reference. The following applications are reviewed under the Type III review process according to the requirements and criteria set forth for each application as reflected in the beginning reference column in Table 9.7305:

Table 9.7305 Type III Application Requirements and Criteria	
Type III Applications	Beginning Reference
Adjustment Review (when part of a Type III Application)	EC 9.8015
Conditional Use Permits (CUP)	EC 9.8075
Historic Landmark Designation	EC 9.8150
Planned Unit Development, Tentative Plan	EC 9.8300
Willamette Greenway Permit	EC 9.8800
Zone Changes*	EC 9.8850

*Zone changes processed concurrently with a Metro Plan amendment, the adoption or amendment of a refinement plan, or a land use code amendment shall follow the applicable procedure for each type of amendment. A zone change to apply the /ND overlay zone shall be processed according to EC 9.4260. Removal of the /WR overlay zone is controlled by EC 9.4960.

Section 15. Table 9.7810 of the Eugene Code, 1971, is amended by adding an entry for “/WR Water Resources Conservation Overlay Zone” in alphabetical order therein to provide:

Table 9.7810 Equivalent Zones and Overlay Zones			
Urbanizable Land Zones		Eugene Zones	
AG/UL	Agricultural	AG	Agricultural
PL/UL	Public Land	PL	Public Land
LDR/UL	Low-Density Residential	R-1	Low Density Residential
MDR	Medium-Density Residential	R-2	Medium Density Residential
GO/UL	General Office	GO	General Office
C/UL	Neighborhood Commercial	C-1	Neighborhood Commercial
CC/UL	Community Commercial	C-2	Community Commercial
LMI/UL	Light-Medium Industrial	I-2	Light-Medium Industrial
HI/UL	Heavy Industrial	I-3	Heavy Industrial
Urbanizable Land Zoning Overlay		Eugene Overlay Zones	
/SR	Site Review	/SR	Site Review
/CAS	Commercial Airport Safety	/CAS	Commercial Airport Safety
/WR	Water Resources Conservation Overlay Zone	/WR	Water Resources Conservation Overlay Zone

Section 16. Section 9.8025 of the Eugene Code, 1971, is amended, to provide:

9.8025 Adjustment Review - General Requirements.

- (1) Except as provided in subsection (2), the adjustment review application shall be prepared by one or more of the following professionals unless waived by the planning director:
 - (a) Oregon licensed architect.
 - (b) Oregon licensed civil engineer.
 - (c) Oregon licensed landscape architect.
 - (d) Oregon licensed land surveyor.
- (2) An application for adjustment review under EC 9.8030(21) shall comply with the following:
 - (a) Unless waived by the planning director, the application shall be prepared by one or more of the following professionals:
 1. Oregon licensed architect.
 2. Oregon licensed civil engineer.
 3. Oregon licensed landscape architect.
 4. A professionally trained botanist or biologist, with sufficient training and experience in planning and design to evaluate consistency of the application with all applicable standards.
 - (b) Unless waived by the planning director, if the application is not prepared by a professionally trained botanist or biologist, one or more of the professionals preparing the application shall have sufficient professional expertise and training in field botany or related biological sciences to evaluate consistency of the application with application standards.
 - (c) The application shall include a site plan that shows sufficient detail and supporting information to demonstrate compliance with applicable standards. Unless waived by the planning director, the site plan shall be prepared by an Oregon licensed civil engineer or an Oregon licensed surveyor.
 - (d) The site plan and application shall be signed by each of the professionals preparing the application, certifying that the application is true and correct

to the best of his or her professional ability, and that, if applicable, the professional standards of his or her profession have been met therein.

Section 17. Subsection (14) of Section 9.8030 of the Eugene Code, 1971, is amended, and a new Subsection (21) is added thereto, to provide:

9.8030 Adjustment Review - Approval Criteria. The planning director shall approve, conditionally approve, or deny an adjustment review application. Approval or conditional approval shall be based on compliance with the following applicable criteria.

(14) Overlay Zone Development Standards Adjustment. Unless a subsection of EC 9.8030 sets out adjustment review criteria for a specific overlay zone, where this land use code provides that overlay zone standards may be adjusted, the standards may be adjusted upon a finding that the adjustment of the standards will result in a development that is consistent with the purpose of the overlay.

(21) WR Water Resources Conservation Overlay Zone Adjustment. Where this land use code provides that a provision of the WR Water Resources Conservation Overlay Zone may be adjusted, approval may be given only upon a finding that the proposed adjustment meets criterion (a), (b), (c) or (d) below:

- (a) For any property containing a WR conservation area due to a resource identified as a wetland, upland wildlife habitat or riparian site in the Goal 5 Water Resources Conservation Plan, an adjustment to the provisions of EC 9.4920 may be made if no previous adjustment under this section has been approved for the specific portion of the conservation area and all of the following are met:
 - 1. More than 33 percent of the development site is occupied by the combined area of the WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback;
 - 2. The proposed reduction in the WR conservation area will result in the combined area described above constituting at least 33 percent of the development site;
 - 3. The parcel is not already developed with a building suitable for occupancy;
 - 4. The area of the subject parcel is 10,000 square feet or less;
 - 5. The portion of the development site removed from the WR conservation area complies with EC 9.4980(2)(a)4., (4)(b), (5)(a), (8), and (10);
 - 6. The portion of the development site outside the WR conservation area, including the area removed, complies with EC 9.4980(7);
 - 7. The portion of the development site that remains in a WR conservation setback area complies with EC 9.4980(1) through (5);
 - 8. The reduction occurs first by reducing the area of any portion of the resource site that extends landward beyond the conservation

setback. If additional reduction in the /WR conservation area is needed to reduce the combined area to 33% of the development site area, the conservation setback area described in EC 9.4920(1)(b) may be reduced the minimum necessary to meet the standard in subsection 2.; and

9. The proposed adjustment is consistent with EC 9.8030(21)(e).
- (b) For property containing a /WR conservation area due to a resource identified in the Goal 5 Water Resources Conservation Plan as a Category A, B or C stream or as a Category A wetland, an adjustment to the provisions of EC 9.4920 may be made if no previous adjustment under this section has been approved for the specific portion of the conservation area and all of the following are met:
 1. The proposed reduction in the conservation setback distance is no more than 20%;
 2. The portion of the development site removed from the /WR conservation area complies with EC 9.4980(2)(a)4., (4)(b), (5)(a), (8), and (10);
 3. The portion of the development site outside the /WR conservation area, including the area removed, complies with EC 9.4980(7);
 4. The remaining /WR conservation setback area complies with EC 9.4980(1) through (5);
 5. For Category A wetland sites, reduction in the width of the /WR conservation area shall occur first in areas where the adjacent wetland is of lower quality or is more disturbed by human activities and expansion of the width of the /WR conservation area shall occur first in areas where the adjacent wetland is of higher quality or is less disturbed by human activities;
 6. For riparian or upland wildlife habitat sites where a reduction in the width of the /WR conservation area is allowed, the conservation setback area may be reduced, to the extent practicable, according to the following priority order:
 - a. Where the reduction area does not include a mapped Goal 5 resource site designated for protection in the Goal 5 Water Resources Conservation Plan,
 - b. Where the adjacent habitat quality is lower; and
 7. The proposed adjustment is consistent with EC 9.8030(21)(e).
- (c) For property containing a /WR conservation area due to a resource identified in the Goal 5 Water Resources Conservation Plan as a Category A or B stream or as a Category A wetland, an adjustment to the provisions of EC 9.4920 may be made if no previous adjustment under this section has been approved for the specific portion of the conservation area and all of the following are met:
 1. Conservation setback averaging is employed to maintain the same total area within the /WR conservation area within the development site that would have existed without the reduction in the conservation setback distance. Conservation setback averaging shall be accomplished by expanding the /WR conservation area in an undeveloped area of the development site in compensation for reducing it in another area of the site, such that the total area of the /WR conservation area on the development site remains constant;

2. The conservation setback distance may be reduced in one or more locations by up to 30%.
 3. The portion of the development site removed from the /WR conservation area complies with EC 9.4980(2)(a)4., (4)(b), (5)(a), (8), and (10);
 4. The portion of the development site outside the /WR conservation area, including the area removed, complies with EC 9.4980(7);
 5. The portion of the development site remaining in the /WR conservation area complies with EC 9.4980(2) through (5);
 6. For Category A wetland sites, reduction in the width of the /WR conservation area shall occur first in areas where the adjacent wetland is of lower quality or is more disturbed by human activities and expansion of the width of the /WR conservation area shall occur first in areas where the adjacent wetland is of higher quality or is less disturbed by human activities;
 7. For Category A or B streams, reduction in the width of the conservation setback area shall occur to the extent practicable, according to the following priority order:
 - a. Where the reduction area does not include an adjacent Goal 5 resource site designated for protection in the Goal 5 Water Resources Conservation Plan,
 - b. Where the adjacent habitat quality is lower,
 - c. Where the setback area can be expanded in compensation on the opposite bank of the stream from the reduction area if it is within the same development site. If the development site does not include the opposite bank for the stream, the expansion of the conservation setback shall occur elsewhere on the development site; and
 8. The proposed adjustment is consistent with EC 9.8030(21)(e).
- (d) For property containing a /WR conservation area due to a resource identified in the Goal 5 Water Resources Conservation Plan as a wetland, upland wildlife habitat or riparian site, an adjustment to the provisions of EC 9.4930 and EC 9.4980 may be approved if all of the following are met:
1. The applicant has shown that:
 - a. The parcel is not already developed with a building suitable for occupancy;
 - b. The strict application of the provisions of EC 9.4930 and 9.4980 would prohibit construction of a building suitable for occupancy on any portion of the parcel due to special circumstances that apply to the property, including location, shape, size, surroundings, and topography and the relationship of the characteristics to the resource site or applicable conservation area.
 2. The applicant has demonstrated that the adjustments described under subsections (a), (b) and (c) above would not allow the use or uses specified under 1.;
 3. The adjustment allowed is the minimum necessary to allow the use or uses specified under 1.;
 4. The portion of the development site removed from the /WR conservation area complies with EC 9.4980(2)(a)4., (4)(b), (5)(a),

- (8), and (10) except to the extent that a standard in one of those subsections is the subject of the adjustment application;
5. The portion of the development site outside the /WR conservation area, including the area removed, complies with EC 9.4980(7);
 6. The portion of the development site that remains in a /WR conservation area complies with EC 9.4980(1) through (5); and
 7. The proposed adjustment is consistent with EC 9.8030(21)(e).
- (e) The applicant demonstrates that restoration or habitat enhancement activities within the remaining conservation area will result in a net increase in overall natural functions and values proportional to the requested adjustment, and will specifically result in a net increase in two or more of the following functions and values of the conservation area as applicable to the site:
1. For streams and wetlands within stream channels:
 - a. Effective shade of stream channel during peak solar input;
 - b. Species diversity, structural diversity, density, and percent cover of native riparian vegetation;
 - c. Bank stability due to native riparian plant roots;
 - d. Absence of non-native invasive plant species;
 - e. Effective filtering of overland stormwater flow to the stream;
 - f. Presence of soils and hydrology appropriate to the site and appropriate to support native plants;
 - g. Habitat characteristics required by any state or federally listed threatened or endangered species that have been documented on the site.
 2. For wetlands not within stream channels:
 - a. Species diversity, density, and coverage of native vegetation within the wetland and setback area;
 - b. Bank stability due to native plant roots;
 - c. Absence of non-native invasive plant species;
 - d. Effective filtering of overland stormwater flow to the wetland;
 - e. Presence of soils and hydrology appropriate to the site and appropriate to support native plants;
 - f. Habitat characteristics required by any state or federally listed threatened or endangered species that have been documented on the site.

For purposes of this subsection, the demonstration of the increase in functions and values shall be based upon a comparison between the functions and values of the /WR conservation area as it existed on the date of application for an adjustment under this subsection and the functions and values of the proposed reduced /WR conservation area with proposed enhancements and restoration.

Section 18. Subsection (1)(c) of Section 9.8055 of the Eugene Code, 1971, is amended to provide:

9.8055 Cluster Subdivision- Approval Criteria - General. The planning director shall

approve, approve with conditions, or deny a proposed cluster subdivision. Approval or approval with conditions shall be based on the following:

- (1) The proposed subdivision complies with:
 - (c) EC 9.2000 through 9.3915 regarding lot dimensions, solar standards, and density requirements for the subject zone. Within the *WR* Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the *WR* conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a);

Section 19. Subsection (1)(a) of Section 9.8215 of the Eugene Code, 1971, is amended to provide:

9.8215 Partition, Tentative Plan Approval Criteria- General. The planning director shall approve, approve with conditions, or deny a partition, with findings and conclusions. Approval, or approval with conditions, shall be based on compliance with the following criteria:

- (1) The proposed partition complies with all of the following:
 - (a) Lot standards of EC 9.2000 through 9.3915 regarding applicable parcel dimensions and density requirements. Within the *WR* Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the *WR* conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).

Section 20. Subsection (2)(a) of Section 9.8220 of the Eugene Code, 1971, is amended to provide:

9.8220 Partition, Tentative Plan Approval Criteria- Needed Housing. The planning director shall approve, conditionally approve, or deny the partition application. Unless the applicant elects to use the general criteria contained in EC 9.8215 Partition, Tentative Plan Approval Criteria- General, where the applicant proposes needed housing, as defined by the State statutes, the planning director shall approve or approve with conditions a partition based on compliance with the following criteria:

- (2) The proposed partition complies with all of the following:
 - (a) Lot standards of EC 9.2000 through 9.3915 regarding applicable parcel dimensions and density requirements. Within the *WR* Water Resources Conservation Overlay Zone, no new lot may be created if more than 33%

of the lot, as created, would be occupied by the combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).

Section 21. Subsection (11)(a) of Section 9.8320 of the Eugene Code, 1971, is amended to provide:

9.8320 Tentative Planned Unit Development Approval Criteria- General. The hearings official shall approve, approve with conditions, or deny a tentative PUD application with findings and conclusions. Decisions approving an application, or approving with conditions shall be based on compliance with the following criteria:

- (11) The PUD complies with all of the following:
 - (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).

Section 22. Subsection (7)(a) of Section 9.8325 of the Eugene Code, 1971 is amended to provide:

9.8325 Tentative Planned Unit Development Approval Criteria - Needed Housing. The hearings official shall approve, conditionally approve, or deny the PUD application with findings and conclusions. Unless the applicant elects to use the general criteria contained in EC 9.8320 Tentative Planned Unit Development Approval Criteria - General, where the applicant proposes needed housing, as defined by the State statutes, the hearings official shall approve or approve with conditions a PUD based on compliance with the following criteria:

- (7) The PUD complies with all of the following:
 - (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).

Section 23. A new Subsection (5) is added to Section 9.8415 of the Eugene Code, 1971, to provide:

9.8415 **Property Line Adjustment Approval Criteria.** The planning director shall approve, approve with conditions, or deny the property line adjustment application. Approval or approval with conditions shall be based on compliance with the following criteria:

- (5) Within the /WR Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).

Section 24. Sections 9.8460, 9.8465, and 9.8470 of the Eugene Code, 1971, are amended and new Sections 9.8472 and 9.8474 are added thereto, to provide:

9.8460 **Purpose of Standards Review.** The standards review process is intended to provide a way to effectively review specific types of proposed development with standards outlined in this land use code.

9.8465 **Applicability.** Where this land use code allows a specific use, subject to standards review, the application for review shall be considered under a Type II process, unless the subject land use application is being considered under a Type III application process. If the review requested is a part of a Type III application, the review of standards shall be considered concurrently under a Type III application process. No development permit shall be issued by the city prior to completion of the standards review.

9.8470 **Standards Review Approval Criteria.** The planning director shall determine whether the application is in compliance with the standards set out in the code section that calls for standards review.

9.8472 **Standards Review – Application Requirements.** Applications for uses subject to standards review under EC 9.4930(3) shall be subject to the following requirements:

- (1) Unless waived by the planning director, the application shall be prepared by one or more of the following professionals:
 - (a) Oregon licensed architect.
 - (b) Oregon licensed civil engineer.
 - (c) Oregon licensed landscape architect.
 - (d) A professionally trained botanist or biologist, with sufficient training and experience in planning and design to evaluate consistency of the application with all applicable standards.
- (2) Unless waived by the planning director, if the application is not prepared by a professionally trained botanist or biologist, one or more of the professionals preparing the application shall have sufficient professional expertise and training in field botany or related biological sciences to evaluate consistency of the application with application standards.

- (3) The application shall include a site plan that shows sufficient detail and supporting information to demonstrate compliance with applicable standards. Unless waived by the planning director, the site plan shall be prepared by an Oregon licensed civil engineer or Oregon licensed surveyor.
- (4) The site plan and application shall be signed by each of the professionals preparing the application, certifying that the application is true and correct to the best of his or her professional ability, and that, if applicable, the professional standards of his or her profession[al] have been met therein.

9.8474 **Standards Review – Modification.** Modification of an approved standards review granted pursuant to EC 9.4930(3) may be requested following the Type II process. The planning director shall approve the request if it complies with the following criteria:

- (1) The proposed modification is consistent with the conditions of the original approval.
- (2) The proposed modification will not result in a greater impact to the resource than permitted by the initial approval.

If the planning director determines that the modification is not consistent with the above criteria, the proposed modification may not occur until a new standards review application is submitted and reviewed based on the Type II application procedures in section 9.7200 and the requirements and criteria in sections 9.4900-9.4980. Nothing in this section shall preclude the applicant from initially submitting the requested modification as a new standards review application.

Section 25. Subsection (1)(a) of Section 9.8515 of the Eugene Code, 1971, is amended to provide:

9.8515 **Subdivision, Tentative Plan Approval Criteria - General.** The planning director shall approve, approve with conditions, or deny a proposed subdivision. Approval, or approval with conditions shall be based on compliance with the following criteria:

- (1) The proposed subdivision complies with the following:
 - (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the *WR* Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the *WR* conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a);

Section 26. Subsection (3)(a) of Section 9.8520 of the Eugene Code, 1971, is amended to provide:

9.8520 **Subdivision, Tentative Plan Approval Criteria- Needed Housing.** The planning director shall approve, conditionally approve, or deny the subdivision application. Unless the applicant elects to use the general criteria contained in EC 9.8515

Subdivision, Tentative Plan Approval Criteria- General, where the applicant proposes needed housing, as defined by the State statutes, the planning director shall approve or approve with conditions a subdivision based on compliance with the following criteria:

- (3) The proposed subdivision complies with all of the following:
 - (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the *WR* Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the *WR* conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).

Section 27. Section 9.8855 of the Eugene Code, 1971, is amended by adding a new Subsection (5) thereto, to provide:

9.8855 **Applicability.** Changes in zoning, including the application of or change of an overlay zone or special area zone shall be processed as a Type III application as provided in EC 9.7300 through EC 9.7340 Type III Application Procedures, with the following exceptions:

- (5) The proposed zone change is to remove the *WR* Water Resources Conservation Overlay Zone, in which case the zone change shall be processed as described in EC 9.4960.

Section 28. Subsection (4) of Section 9.8865 of the Eugene Code, 1971 is amended by adding a new subsection (p) thereto, and relettering the current subsection (p) to (q), to provide:

9.8865 **Zone Change Approval Criteria.** Approval of a zone change application, including the designation of an overlay zone, shall not be approved unless it meets all of the following criteria:

- (4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone in:
 - (p) EC 9.4915 *WR* Water Resources Conservation Overlay Zone Siting Requirements (only for the purposes of adding the overlay zone. See EC 9.4960.).
 - (q) An uncodified ordinance establishing a site specific S-H Historic Special Area Zone, a copy of which is maintained at the city's planning and development department.

Section 29. The Eugene Overlay Zone Map is amended to add the /WR overlay zone to the properties as reflected on Exhibit D hereto.

Section 30. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and that holding shall not affect the validity of the remaining portions of this Ordinance.

Section 31. Although not part of this Ordinance, the City Council adopts the Legislative Findings set forth in the attached Exhibit E in support of this action.

Section 32. The Plant List attached as Exhibit F is adopted, and amendments may be effected by administrative order of the City Manager pursuant to Section 2.019 of the Eugene Code, 1971.

Section 33. Notwithstanding the effective date of ordinances as provided in the Eugene Charter of 2002, this Ordinance shall become effective upon January 1, 2006.

Passed by the City Council this

14th day of November, 2005



City Recorder

Approved by the Mayor this

18 **day of November, 2005**



Mayor