

SECTION 5.0400 HABITAT CONSERVATION AREA (HCA) OVERLAY DISTRICT

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Section 5.0401 Intent

The purpose of this Overlay is to comply with Section 4 of Title 13 of Metro's Urban Growth Management Functional Plan.

- A.** To protect and improve the following functions and values that contribute to fish and wildlife habitat in urban streamside areas:
 - 1. Microclimate and shade;
 - 2. Stream-flow moderation and water storage;
 - 3. Bank stabilization, sediment and pollution control;
 - 4. Large wood recruitment and retention and channel dynamics; and
 - 5. Organic material sources.
- B.** To protect and improve the following functions and values that contribute to upland wildlife habitat in new urban growth boundary expansion areas:
 - 1. Large habitat patches
 - 2. Interior habitat
 - 3. Connectivity and proximity to water; and
 - 4. Connectivity and proximity to other upland habitat areas
- C.** To establish High, Moderate, and Low Habitat Conservation Areas (HCA) to implement the performance standards of Title 13 of the Urban Growth Management Functional Plan.

- D. To provide clear and objective standards and a discretionary review process, applicable to development in Habitat Conservation Areas, in accordance with Statewide Land Use Planning Goal 5.
- E. To allow and encourage habitat-friendly development, while minimizing the impact on fish and wildlife habitat functions.
- F. To provide mitigation standards for the replacement of ecological functions and values lost through development in Habitat Conservation Areas.

Section 5.0402 Applicability

- A. This Overlay applies to all properties containing mapped Habitat Conservation Areas (HCA).
- B. All applicants must provide Construction Management Plans, in accordance with **Section 5.0410** of this Overlay.
- C. Where applicants are proposing development entirely outside of the HCA, but within 50 feet of its boundary, applicants must verify this boundary through the procedures outlined in **Section 5.0414** of this Overlay.
- D. Where applicants are proposing development within the HCA, they must comply with the Development Standards found in **Section 5.0411** and **Section 5.0412** of this Overlay, and the Map Verification procedures found in **Section 5.0414** of this Overlay. Conditioned Uses, and Activities that are exempt from these requirements, may be found in **Section 5.0403** of this Overlay.
- E. Applicants proposing to partition or subdivide properties containing HCA must comply with the partition and subdivision standards found in **Section 5.0411(F)** of this Overlay, or the Discretionary standards in **Section 5.0412** of this Overlay; as well as the Map Verification procedure in **Section 5.0414** of this Overlay.
- F. The Development Standards found in **Sections 5.0411 and 5.0412** of this Overlay do not apply to development that occurs entirely outside of any portion of the HCA.
- G. The requirements of this Overlay apply in addition to other applicable local, state, regional, and federal development requirements, including those for Water Quality Resource Areas and Flood Management Areas; except that:
 1. Applicants using the discretionary review process in **Section 5.0412** of this Overlay or the specific development standards of **Section 5.0411** that apply to “high value” HCAs (regardless of habitat value), do not need to engage in any additional review process for the WQRA, Water Quality Resource Area (Note: The WQRA is defined in **Section 5.0417**); and
 2. This overlay shall not impose additional mitigation requirements for wetlands that exceed the mitigation ratios or functions required by federal and state law.
- H. “Development,” “Partition,” and “Subdivision” are defined in **Article 3** of the Gresham Community Development Code.
- I. A wetland identified during the course of a development permit review that meets the State of Oregon’s definition of a “Locally Significant Wetland” shall be subject to the standards of this overlay. Such wetlands shall be added to the HCA map by the Manager, under the Type 1 procedure, after the development permit becomes final.

Section 5.0403 Exempt Uses and Conditioned Activities

The following uses and activities are exempt from the requirements of this Overlay District:

- A. Change of ownership.
- B. Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005; unless such development required obtaining a land use decision, or a building, erosion control, or grading permit.
- C. A building permit for a phased development project for which the applicant has previously met the application requirements, so long as the site for new construction was identified on the original permit and no new portion of the HCA will be disturbed.
- D. Where a property has been subdivided under **subsection 5.0411(F)** of this overlay, and the mitigation requirements of **subsection 5.0411(E)** (and, if appropriate, **subsections 5.0412(B)** and **(C)**) have been completed for the subdivision, development on the individual lots may proceed without further review under this overlay. Similarly, where a property has been subdivided under **subsection 5.0412(D)** of this overlay, and the mitigation requirements of **subsection 5.0412(D)** have been completed for the subdivision, development on the individual lots may proceed without further review under this overlay.
- E. Limited types of development, redevelopment, operations, and improvements, including the following:
 - 1. Maintenance, alteration, expansion, repair and replacement of existing structures provided that the building footprint is not increased.
 - 2. The alteration, expansion, or replacement of existing structures, provided that:
 - a. The alteration, expansion, or replacement of a structure will not intrude more than 500 sq. ft. into the HCA in addition to the area defined as the building footprint as of January 1, 2006; and
 - b. The new intrusion into the HCA is no closer to the protected water feature than the pre-existing structure or improvement.
 - 3. Minor encroachments not to exceed 120 sq. ft. of impervious surface such as accessory buildings, eave overhangs, exterior building improvements for access and exiting requirements, or other similar features.
 - 4. Temporary and minor clearing not to exceed 200 square feet for the purpose of site investigations and pits for preparing soil profiles, provided that such areas are restored to their original condition when the investigation is complete.
 - 5. Maintenance of existing gardens, pastures, lawns and landscape perimeters, including the installation of new irrigation systems within existing gardens, pastures, lawns, and landscape perimeters.
 - 6. Removal of plants identified as nuisance or prohibited plants on the City of Gresham Native Plant List and the planting or propagation of plants identified as native plants on the City of Gresham Native Plant List. Unless being conducted by City staff or their representatives, handheld tools must be used to remove nuisance or prohibited plants, and after such removal all open soil areas greater than 25 square feet must be replanted.

7. Maintenance, alteration, repair, and replacement of roads and utilities when no additional incursion into the HCA is proposed.
 8. Maintenance and repair of existing streets, railroads, shipping terminals, and utilities within rights-of-way, easements, and access roads.
 9. Existing water-dependent uses that can only be carried out on, in, or adjacent to water because they require access to the water for waterborne transportation or recreation.
 10. Operation, maintenance, and repair of manmade water control facilities such as irrigation and drainage ditches, constructed ponds or lakes, wastewater facilities, and stormwater treatment facilities.
 11. Projects with the sole purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat areas, provided that the project is part of an approved local, state, or federal restoration or enhancement plan.
 12. Low-impact outdoor recreation facilities for public use, outside of Water Quality Resource Areas including, but not limited to, paths and trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture, provided that the facility meets the following requirements:
 - a. It contains less than 500 sq. ft. of new impervious surface; and,
 - b. Its trails shall be constructed using non-hazardous, pervious materials, with a maximum width of four feet.
 - c. Its trails are located outside the WQRA section of the HCA or the Class I riparian habitat area, whichever results in the greatest distance from the stream or wetland.
- F.** Emergency procedures or activities undertaken which are necessary to remove or abate hazards and nuisances or for the protection of public health, safety and welfare; provided that such remedial or preventative action must take place within a timeframe too short to allow for compliance with the requirements of this Overlay. After the emergency, the person or agency undertaking the action shall fully restore any impacts to the HCA resulting from the emergency action. Hazards that may be removed or abated include those required to maintain aircraft safety.
- G.** Multnomah County Drainage District - Within Habitat Conservation Areas located in Multnomah County Drainage District No. 1, Peninsula Drainage District No. 1, Peninsula Drainage District No. 2, and the area managed by the Sandy Drainage Improvement Company, routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing drainage and flood control facilities, and existing related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch clearing within the hydraulic cross-section in existing storm water conveyance drainageways, or other water quality and flood storage projects applicable to existing facilities and required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations, shall be allowed, provided that:
1. The project is consistent with all other applicable local, state, and federal laws and regulations;
 2. The project does not encroach closer to a surface stream or river, wetland, or other body of open water than existing operations and development;
 3. Disturbed areas are replanted with vegetation and no bare soils remain after project

completion; the planting of native vegetation and removal of invasive non-native or noxious vegetation is encouraged; invasive non-native or noxious vegetation shall not be planted; and,

4. Each district submits an annual report, to all local permitting agencies in which the district operates, describing the projects the district completed in the previous year and how those projects complied with all applicable federal and state laws and requirements.
- H. Utility service using a single utility pole or where no more than 100 sq. ft. of ground surface is disturbed outside of the top of bank of water bodies and where the disturbed area is restored to the pre-construction conditions.
- I. Boundary and topographic surveys leaving no cut scars on trees greater than three inches in diameter.
- J. Measures mandated by the City of Gresham to remove or abate a nuisance or hazardous conditions.
- K. Planting of native vegetation and the removal of non-native, invasive vegetation (as identified on the City of Gresham Native Plant List), and the removal of refuse or fill, provided that:
 1. All work is done using hand-held equipment;
 2. No existing native vegetation is disturbed or removed;
 3. All work occurs outside of wetlands and the tops of banks of streams;
 4. The work is pre-approved by the City through the Type 1 development permit procedure.

5.0404 Prohibitions

- A. The planting of any invasive non-native or noxious vegetation is prohibited within the HCA.
- B. Outside storage of materials is prohibited within the HCA, unless such storage began before the effective date of this Overlay; or, unless such storage is approved during development review under either **Section 5.0411** or **Section 5.0412** of this Overlay.
- C. Any new gardens, lawns, structures, development, other than those allowed outright (exempted) or that is part of a regulated use that is approved with an HCA permit. Note: Gardens and lawns within the HCA prior to the effective date of the overlay are allowed to continue but cannot expand further into the HCA.
- D. The dumping of materials of any kind is prohibited.
- E. Unless part of an approved HCA development permit, grading, placement of fill or the removal of native vegetation within the HCA is prohibited.

5.0410 Construction Management Plans

In order to ensure that trees and vegetation within HCAs are not damaged during construction, all applicants, even those not developing within an HCA, shall provide a construction management plan that includes the following information:

- A. Location of site access and egress that construction equipment will use;
- B. Equipment and material staging and stockpile areas;
- C. Erosion and sediment control measures; and
- D. Measures to protect trees and other vegetation located within the HCA, but outside of the disturbance area approved under the provisions of **Section 5.0411** or **Section 5.0412** of this overlay.

Section 5.0410 applies to development on properties with an HCA and on properties within 100 ft. of an

HCA overlay boundary on an adjacent property, including development that will stay outside of the HCA.

5.0411 Specific Development Standards

The development standards described in this section apply to all development and redevelopment that occurs entirely, or partially, within Habitat Conservation Areas, unless such development is exempt under **Section 5.0403**, or, unless the applicant chooses to follow the discretionary process in **Section 5.0412** of this Overlay. This section also applies to subdivisions and partitions of properties that contain HCAs. An applicant may choose to use the mitigation standards of **Section 5.0412** in lieu of the mitigation standards of this section.

Unless otherwise directed, development proposed within the HCA, that is not exempted, will be processed as a Type II development permit application. All applications must include the general development permit application items required by **Section 11.0901** of the Gresham Community Development Code as a discussion of how the proposal meets all of the applicable HCA overlay standards.

- A.** Application Requirements. Applications for a building permit or development permit must provide a development plan and accompanying narrative explanation that includes the following information in addition to any other building permit or development permit requirements. All of the application requirements must be met prior to approval of a building or development permit.
 - 1.** Applicants must verify the HCA on their property as described in **Section 5.0414** of this Overlay. They must also submit a construction management plan as required by **Section 5.0410**.
 - 2.** For the entire subject property (HCA and non-HCA), applicants must submit a scale map of the property that includes:
 - a.** Location of all High, Moderate, and Low HCAs on the property;
 - b.** Outline of any existing disturbance area, including the location of existing adjacent streets and paved areas, utilities, culverts, stormwater management facilities, or bridges;
 - c.** Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area;
 - d.** Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation;
 - e.** Topography shown by contour lines of 2-ft. intervals for slopes less than 15% and by 10 ft. intervals for slopes 15% or greater. On properties that are two acres or larger, such a contour map is required only for the portion of the property to be developed; and
 - f.** If applicable, the Hillside Physical Constraint Overlay and Flood Plain Overlay.
 - 3.** Detailed site plan of proposed development outlining total disturbance area, including, proposed building footprints, site property improvements, utilities and landscaping.
 - 4.** The following additional information shall be provided about the HCA:
 - a.** For properties containing less than one acre of HCA, the location of all trees within the HCA that are greater than six inches diameter at breast height (DBH), shall be identified by size and species. For properties containing one acre or more of HCA, the applicant may approximate the number of trees and the diameter range, and

- provide a listing of the dominant species;
- b.** For proposed disturbance areas containing less than one acre of HCA, all trees with a diameter of six inches or greater that will be removed shall be specifically identified as to diameter at breast height (DBH) and species. For proposed disturbance areas containing one acre or more of HCA an approximation of the number of trees, their diameters and the dominant species;
 - c.** Provide the tree removal/protection data requirements of **Sections 9.1022, 9.1024, 9.1026, 9.1032, 9.1034 and 9.1036.**
 - d.** If grading will occur within the HCA, a grading plan showing the proposed alteration of the ground at 1-ft. vertical contours in areas of slopes less than 5%, and 2-ft. vertical contours in areas of slopes 6-15%, and at 5-ft. vertical contours of slopes 15% or greater.
 - e.** An outline of the disturbance area that identifies the vegetation to 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.
- B.** Methods for avoiding Habitat Conservation Areas. The following habitat-friendly development practices may be used to avoid or minimize development within HCAs by allowing flexible site design.
- 1.** Building setback flexibility to avoid or minimize development within HCAs. The minimum building setback of the base district may be reduced to any distance between the base district minimum and zero, unless this reduction conflicts with applicable fire or life safety requirements.
 - 2.** Flexible landscaping requirements to avoid, or minimize, development within HCAs.
 - a.** Minimum percentage landscaping requirements, apart from those required for parking lots, street trees, buffers (**Section 9.0100**) and required mitigation areas may be met by preserving the HCA.
 - b.** Facilities that infiltrate stormwater onsite, including the associated piping, may be placed within the HCA so long as the forest canopy and the areas within the driplines of the trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strip, and vegetated infiltration basins. Only native vegetation may be planted in these facilities.
 - 3.** Flexible Site Design (On-site Density Transfer) to avoid or minimize development within HCAs.
 - a.** Residential. For residential development proposals on lands with a HCA, a transfer of density of up to 50% of the maximum density permitted on the HCA portion of the site is permitted to be transferred onto the non-HCA portion of the site.

- b. In order to accommodate the transferred density, dimensional standards and lot sizes may be adjusted by no more than 20 percent.
 - c. Commercial and Industrial Districts. For on-site density transfers in Commercial or Industrial districts, the transfer credit is 10,000 sq. ft floor area ratio (FAR) per acre of land within the HCA.
 - d. Mixed-Use Districts. Within mixed-use districts the density transfer credit can be factored using either 3(a) or 3(c) above, depending on the type of development proposed.
 - e. All remaining HCA shall be permanently restricted from development and maintained for habitat functions, such as by making a public dedication or executing a restrictive covenant.
4. Site Capacity Incentives. The following site capacity standards provide flexibility in the design of land divisions in order to allow ways to better protect HCAs.
- a. Density bonus if HCA is protected. In multi-family residential districts, a 25 percent density bonus may be allowed for any development of four (4) or more dwelling units if 75 percent or more of the HCA on a site is permanently preserved, such as by making a public dedication or executing a restrictive covenant. The bonus density shall be in addition to the base density allowed in the applicable zoning district.
 - b. All area within a HCA, or any portion of it, and all areas with slopes of 25% and greater may be subtracted from the calculations of net size for purposes of determining the minimum number of units that must be built on the property, provided that such area is protected, such as by making a public dedication or executing a restrictive covenant. This provision may only be applied to properties that were inside the Metro UGB on January 1, 2002.
- C. Development within HCAs. The following development standards apply to all development that occurs within the HCA except for exempt uses and conditioned activities addressed in **Section 5.0403** of this overlay and utility facilities addressed in **Subsection 5.0411(D)** of this overlay. If all development occurs outside of an HCA on a property, these standards do not apply. These standards also do not apply to development that occurs pursuant to the standards established by the alternative discretionary development standards in **Section 5.0412** of this Overlay. (Note: Applicants seeking to develop within a Water Quality Resource Area must utilize either the discretionary standards located in **Section 5.0412** of this Overlay or the Specific Standards of **Section 5.0411** that apply to “high value” resource areas.
1. Disturbance area limitations to minimize impact to HCA.
- a. Single-family residential districts. The maximum disturbance area (MDA) allowed within HCAs is determined by subtracting the area of the lot or parcel outside of the HCAs from the total disturbance area (TDA) calculated as described in Table 1 below.
- (TDA – Area outside the HCA = MDA)
- i. Moderate and Low HCAs are subject to the same disturbance area limitations.
 - ii. Calculation of maximum disturbance area. If a lot or parcel includes both

High and Moderate/Low HCAs then:

- A. If there is more High HCA than Moderate/Low HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were High, per Table 5.0411(A) below; or
 - B. If there is more Moderate/Low HCA than High HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were Moderate/Low, per **Table 5.0411(A)** below.
- iii. Location of MDA. If a lot or parcel includes different types of HCAs, then:
- A. The amount of development that may occur within the High HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High HCA ($TDA - \text{non-High HCA} = MDA$). If the area of the lot or parcel outside the High HCA is greater than the total disturbance area, then development shall not occur within the High HCA:

(Area outside High HCA > TDA = no development in High HCA);

- B. The amount of development that may occur within the Moderate HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High and Moderate HCA ($TDA - (\text{Low HCA} + \text{non-HCA}) = MDA$). If the area of the lot or parcel outside the Moderate HCA is greater than the total disturbance area, then development shall not occur within the Moderate HCA:

(Area outside Moderate HCA > TDA = no development in Moderate HCA);

and

- C. The amount of development that may occur within the Low HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High, Moderate and Low HCA ($TDA - \text{non-HCA} = MDA$). If the area of the lot or parcel outside the Low HCA is greater than the total disturbance area, then development shall not occur within the Low HCA:

(Area outside Low HCA > TDA = no development in Low HCA).

Table 5.0411(A) -- HCA Total Disturbance Area Limitations for LDR-5 and LDR-7 Districts

HCA type	Total Disturbance Area
High	50 percent of the lot area, up to maximum of 5,000 sq. ft.
Moderate/Low	65 percent of the lot area, up to maximum of 6,000 sq. ft.

- b. All other districts. The maximum disturbance area (MDA) allowed by right within Low, Moderate and High HCAs in these districts is found in **Table 5.0411(B)** below; this MDA is subject to the mitigation requirements described in **subsection**

followed for any mitigation occurring within 70 feet of a stream. At least 70% of the trees planted in this area need to be comprised of the tallest native tree species appropriate for the site, as indicated by an asterisk in **Table 5.0411(D)** or as reflected in the City of Gresham Native Plant Guide.

**Table 5.0411(D)
Recommended Tree and Shrub Species for Planting within
Riparian Shade Zone**

Site Conditions	Typical Soil Series	Recommended Plant Community		
Floodplain and wetlands adjacent to the Columbia Slough	Moag	Trees	Black cottonwood*	Pacific willow
	Rafton	Shrubs	Red-osier dogwood Willow	Snowberry Wild rose
Floodplain and wetlands adjacent to Johnson Creek, Fairview Creek, and Kelly Creek	Delena	Trees	Black cottonwood* Red alder Western redcedar*	Pacific willow Oregon ash
	Wapato Wollent	Shrubs	Douglas spiraea Red-osier dogwood Twinberry Willow	Pacific ninebark Snowberry Wild rose
Moist Riparian	Aloha	Trees	Bigleaf maple* Grand fir* Western redcedar*	Black cottonwood* Red alder
	Cascade Powell	Shrubs	Bitter cherry Hazelnut Oregon grape Salal Snowberry Vine maple	Black hawthorn Indian plum Red elderberry Salmonberry Thimbleberry
Dry Riparian	Cornelius	Trees	Bigleaf maple* Oregon white oak	Douglas fir* Western hemlock*
	Dabney Haploxerolls, steep Haplumbrepts, steep Latourell Multnomah Quafeno	Shrubs	Hazelnut Oceanspray Salal Vine maple	Indian plum Oregon grape Snowberry

6. Location of mitigation area. All vegetation must be planted on the applicant's site within the HCA or in an area contiguous to the HCA; provided, however, that if the vegetation is planted outside of the HCA then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant.

7. Invasive vegetation. Invasive non-native or noxious vegetation must be removed within the mitigation area prior to planting.
8. Tree and shrub survival.
 - a. For Mitigation Option 1: A minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.
 - b. For Mitigation Option 2: A minimum of 500 trees per acre and 650 shrubs per acre shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.
9. Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind by the property owner or designee, as indicated on the mitigation plan. For a period of five years, the property owner/designee must submit an annual report to the Urban Design & Planning Department documenting the survival of the trees and shrubs on the mitigation site. Photos must accompany the annual report that shows the progress of the mitigation.

A financial guarantee, in the form of an instrument approved by the City, shall be submitted before development within the HCA commences. It shall be in an amount adequate to cover the cost of performing the mitigation. The City will release the guarantee at the end of the five year monitoring period, or before, if it determines that the trees and shrubs have been successfully established.

10. To enhance survival of the mitigation plantings, the following practices are required:
 - a. Weed control. Remove, or control, non-native or noxious vegetation throughout maintenance period.
 - b. Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.
11. To enhance survival of the mitigation plantings, the following practices are required for Mitigation Option 1. These are recommended for Mitigation Option 2 if annual survival goals are not being met:
 - a. Mulching. Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
 - b. Irrigation. Water new plantings one inch per week from June 30th to September 15th, for the three years following planting.
12. To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:
 - a. Planting season. Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.

F. Standards for Partitions and Subdivisions. The purpose of this section is to allow for partitions in a manner that limits the total amount of allowable development within HCAs on the partitioned parcels; and to require that new subdivision plats delineate and show the Moderate and High HCAs as a separate unbuildable tract.

1. Standards for Partitions containing HCAs:

- a.** When partitioning a property into parcels, an applicant shall verify the boundaries of the HCA on the property according to **Section 5.0414** of this overlay.
- b.** Applicants who are partitioning, but are not simultaneously developing their property, do not need to comply with **Section 5.0410** of this overlay.
- c.** When partitioning a property into parcels there shall be no more than a 30% percentage point difference in the percentage of HCA on the parcels; for example, a partition that produces two parcels, one that is 55% HCA and the other that is 35% HCA is permissible; whereas a partition that produces two parcels, one that is 75% HCA and the other that is 30% HCA is not permissible. However, an applicant may partition a property such that at least 90% of the original property's High HCA and 80% of its moderate HCA is on a separate unbuildable parcel, protected by a restrictive covenant or a public dedication. The restrictive covenant or public dedication document shall be submitted to the City as part of the final plat application review. After City approval, it shall be recorded with Multnomah County along with the final plat.
- d.** Subsequent development on any parcels containing HCAs shall comply with **Section 5.0410**, and the development standards of either **Section 5.0411** or **Section 5.0412** of this overlay.

2. Standards for Subdivisions containing HCAs:

- a.** Applicants who are subdividing, but not developing, must verify the location of the HCA boundary according to **Section 5.0414** of this Overlay, and comply with this **Subsection 5.0411(F)**; such applicants do not need to comply with **Section 5.0410** of this Overlay. Applicants who are subdividing, but not developing, property may:
 - i.** Complete the mitigation requirements of **Subsection 5.0411(E)** of this Overlay (and, if appropriate, **Subsections 5.0412(B)** and **(C)**) and thereby exempt all subsequent development on lots containing HCA from further review under this Overlay (City will verify that the mitigation requirements have been met when individual lot building permit applications are processed); or
 - ii.** Not complete the mitigation requirements of **Subsections 5.0411(E)**, **5.0412(B)**, or **(C)** of this Overlay, thus requiring that any subsequent development within an HCA be subject to this Overlay.
- b.** Applicants who are subdividing and developing properties must comply with **Sections 5.0410, 5.0411 and 5.0414** of this Overlay.
- c.** When a property containing any HCA is subdivided, this Overlay requires that new subdivision plats delineate and show the Moderate and High HCA as a separate unbuildable tract according to the following process:
 - i.** The applicant must place at least 90% of the High HCA and 80% of the

applicant may chose to use the mitigation standards of **Section 5.0411** in lieu of the mitigation standards of this section.

- A. Discretionary Review for Partitions.** An applicant seeking to partition land in ways that do not accord with the standards established in **Section 5.0411(F)(1)** may seek review under this **Subsection 5.0412(A)**.
 - 1.** The applicant shall verify the boundaries of the HCAs and WQRAs on the property according to **Section 5.0414** of this Overlay.
 - 2.** The applicant shall submit the following application materials:
 - a.** A scale map, using a standard engineering scale, of the entire property that includes:
 - i.** Location of all High, Moderate, and Low HCA on the property;
 - ii.** Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area;
 - iii.** Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation;
 - iv.** A delineation of the proposed partition;
 - v.** Outlines of existing developed areas and proposed disturbance areas;
 - vi.** Areas covered by other overlay (e.g. Hillside Physical Constraint, Flood Plain overlays) and
 - vii.** Other items as required for partition proposals by **Sections 6.0202** or **6.0403**, as appropriate.
 - b.** A written and documented explanation of how and why the proposed partition satisfies the approval criteria in **Subsection 5.0412(A)(3)**. Such written documentation shall include an alternatives analysis of different possible partition plans, based on the characteristics and zoning of the property, and shall be included as part of the partition application narrative.
 - 3.** Approval Criteria. A partition shall be approved under this **Subsection 5.0412(A)** provided that the applicant demonstrates that it is not practicable to comply with the partition standards in **Section 5.0411(F)(1)** of this Overlay, and that the applicant’s partition plan will result in the smallest practicable percentage point difference in the percentage of HCA on the parcels created by the partition (this will minimize the amount of allowable disturbance areas within HCAs on the parcels, assuming that the development standards in this **Section 5.0411** were applied to future development on such parcels).
 - 4.** Subsequent development on any parcels created by the partition and containing HCAs shall comply with all provisions of this Overlay, except that the map verification completed and approved as part of the partition may be used to satisfy the requirements of **Section 5.0414** of this Overlay for any such development.
- B. Discretionary Review to Approve Off-Site Mitigation.** An applicant seeking discretionary approval only for off-site mitigation within the same sub-watershed (6th Field Hydrologic Unit Code), but who will comply with all other provisions of **Section 5.0411** of this Overlay, may seek review under this **Subsection 5.0412(B)**.
 - 1.** The applicant shall submit:

- a. A calculation of the number of trees and shrubs the applicant is required to plant under **Section 5.0411(E)** of this Overlay; and
 - b. A map and accompanying narrative that details the following:
 - i. A plant list that indicates the quantity, botanical name, common name, size and root type (balled, burlaped or bare root) of trees, shrubs and other proposed plantings;
 - ii. A plan that shows where the trees, shrubs and other plants will be planted;
 - iii. An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and
 - iv. The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a HCA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant; and
 - v. Planting details.
2. Approval Criteria. Off-site mitigation shall be approved under this **Subsection 5.0412(B)** provided that the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry out and ensure the success of the off-site mitigation on a property within the same sub-watershed (6th Field Hydrologic Unit Code) as the related disturbed HCA.
3. Mitigation approved under this **Subsection 5.0412(B)** of this Overlay shall be subject to all of the requirements of **Section 5.0411(E)** of this Overlay, except for the requirements of **Section 5.0411(E)(5)** of this overlay.
- C. Discretionary Review to Approve Mitigation That Varies the Number and Size of Trees and Shrubs. An applicant seeking discretionary approval only to proportionally vary the number and size of trees and shrubs required to be planted under **Section 5.0411(E)**, for example to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs, but who will comply with all other provisions of **Section 5.0411** of this Overlay, may seek review under this **Subsection 5.0412(C)**.
- 1. The applicant shall submit:
 - a. A calculation of the number of trees and shrubs the applicant would be required to plant under **Section 5.0411(E)** of this Overlay;
 - b. The numbers, species, root types and sizes of trees and shrubs that the applicant proposes to plant;
 - c. An explanation of why the numbers, species and sizes of trees and shrubs that the applicant proposes to plant will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of **Section 5.0411(E)** of this Overlay. Such explanation shall be prepared and signed by a knowledgeable and qualified natural resources professional or a certified landscape architect and shall include discussion of site preparation including soil additives

Table 5.0412(A) - Ecological Functional Values Of Riparian Corridors

Ecological function	Landscape features providing functional values
Microclimate and shade	Forest canopy or woody vegetation within 100 feet of a stream; a wetland ¹ ; or a flood area ² .
Streamflow moderation and water storage	A wetland or other water body ³ with a hydrologic connection to a stream; or a flood area ² .
Bank stabilization, sediment and pollution control	All sites within 50 feet of a surface stream; Forest canopy, woody vegetation, or low structure vegetation/open soils within 100 feet of a stream or a wetland; or forest canopy, woody vegetation, or low structure vegetation/open soils within a flood area; and, Forest canopy, woody vegetation, or low structure vegetation/open soils within 100-200 feet of a stream if the slope is greater than 25%.
Large wood and channel dynamics	Forest canopy within 150 feet of a stream or wetland; or within a flood area; and The channel migration zone is defined by the floodplain, but where there is no mapped floodplain a default of 50 feet is established to allow for the channel migration zone.
Organic material sources	Forest canopy or woody vegetation within 100 feet of a stream or wetland; or within a flood area.

- 1 Refers to "hydrologically-connected wetlands," which are located partially or wholly within ¼ mile of a surface stream or flood area.
- 2 Developed floodplains are not identified as HCAs because they do not provide primary ecological functional value.
- 3 "Other water body" could include lakes, ponds, reservoirs, or manmade water feature that is not a water quality facility or farm pond.

- iii. Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the HCAs and the ecological functions provided on the property. At a minimum, the following approaches must be considered:
 - A. The techniques described in **Subsection 5.0411(B)** of this Overlay;
 - B. Multi-story construction;
 - C. Minimizing building and development footprint;
 - D. Maximizing the use of native landscaping materials; and
 - E. Minimal excavation foundation systems (e.g., pier, post or piling foundation).
 - F. Minimizing impervious surfaces and using permeable surfaces.

- iv. Determination of the alternative that best meets the applicable approval criteria and identification of significant detrimental impacts that are unavoidable.
- b. **Alternative Mitigation Plan.** The purpose of a mitigation plan is to compensate for unavoidable significant detrimental impacts to ecological functions that result from the chosen development alternative as identified in the impact evaluation. However, when development occurs within delineated wetlands, then the mitigation required under **Subsection 5.0412(D)(2)(d)** shall not impose additional mitigation requirements that exceed the mitigation ratios or functions required by state and federal law for the fill or removal of such wetlands.
- i. An applicant may choose to develop a mitigation plan consistent with the requirements of **Subsection 5.0411(E)** of this Overlay. If an applicant so chooses, then the applicant shall submit a mitigation plan demonstrating such compliance.
 - ii. If an applicant chooses to develop an alternative mitigation plan that would not comply with the requirements of **Subsection 5.0411(E)** of this Overlay, including, for example, a proposal to create an alternative plant community type such as an oak savannah or a low-structure plant community, or where an applicant demonstrates that a portion of identified HCA on its property provides only impaired ecological functions, then the applicant shall submit a mitigation plan that includes all of the following:
 - A. An explanation of how the proposed mitigation will adequately compensate for the impacts to ecological functions described in the impact evaluation required by **Subsection 5.0412(D)(1)(a)**. The applicant may use the mitigation that would be required under **Subsection 5.0411(E)** of this Overlay as the baseline mitigation required to compensate for disturbance to a HCA that provides an average level of ecological functions. Such explanation shall include:
 - 1. If the applicant uses the mitigation that would be required under **Subsection 5.0411(E)** of this Overlay as the baseline mitigation required to compensate for disturbance to a HCA, then the applicant shall submit a calculation of the number of trees and shrubs the applicant would be required to plant under **Subsection 5.0411(E)** of this Overlay;
 - 2. A site plan showing where the specific mitigation activities will occur and the numbers, species, planting details and root types and sizes of trees, shrubs and other plants that the applicant proposes to plant; and
 - 3. A discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity, plant spacing, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control.
 - B. Documentation of coordination with appropriate local, regional,

special district, state, and federal regulatory agencies.

- C. A list of all parties responsible for implementing and monitoring the mitigation plan and, if mitigation will occur off-site, the names of the owners of property where mitigation plantings will occur.
 - D. The applicant's mitigation site monitoring and reporting plan.
 - E. If the proposed mitigation will not be conducted on-site, the applicant shall submit a map and accompanying narrative that details the following:
 - 1. The number, species, sizes and root types of trees, and shrubs, and other plants that can be planted on-site;
 - 2. The on-site location where those trees and shrubs can be planted and planting details of how they will be planted;
 - 3. An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and
 - 4. The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a HCA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.
 - F. If the mitigation area is off-site and not within the same sub-watershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall submit an explanation of why it is not practicable to conduct the mitigation within the same sub-watershed and of why and how, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the sub-watershed.
 - G. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. If the applicant is proposing any in-stream work in fish-bearing streams as part of the mitigation project, then the applicant shall submit documentation that such work will be done in accordance with the Oregon Department of Fish and Wildlife in-stream work timing schedule.
- c. The Impact Evaluation and Alternatives Analysis required by **Subsection 5.0412(D)(1)(a)** and the Mitigation Plan required by **Subsection 5.0412(D)(1)(b)** shall be prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist or (2) other appropriate and knowledgeable discipline or (3) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. The application shall include a description of the qualifications and experience of all persons that contributed to

the Impact Evaluation and Alternatives Analysis and to the Mitigation Plan, and, for each person that contributed, a description of the elements of such reports to which the person contributed.

2. Approval Criteria. The following approval criteria apply to discretionary review applications under **Section 5.0412(D)**:
 - a. All application requirements in **Subsection 5.0412(D)(1)** shall be met.
 - b. Avoid. An applicant shall first avoid the intrusion of development into the HCA to the extent practicable. The development that is proposed must have less detrimental impact to HCAs than other practicable alternatives, including significantly different practicable alternatives that propose less development within HCAs. If there is more than one type of HCA on a property then the applicant shall first avoid the intrusion of development into the higher-valued HCA, to the extent practicable, and the development that is proposed must have less detrimental impact to the higher-valued HCAs than other practicable alternatives. To avoid development in HCAs, and to the extent practicable, applicants shall use the approaches described in **Subsection 5.0412(D)(1)(a)(iii)**.
 - c. Minimize. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then the development proposed by the applicant within the HCA shall minimize detrimental impacts to the extent practicable. If there is more than one type of HCA on a property then the development within higher-valued HCAs shall be considered more detrimental than development within lower-valued HCAs.
 - i. Development must minimize detrimental impacts to ecological functions and loss of habitat consistent with uses allowed by right under the base zone, to the extent practicable;
 - ii. To the extent practicable within the HCA, the proposed development shall be designed, located, and constructed to:
 - A. Minimize grading, removal of native vegetation, and disturbance and removal of native soils by using the approaches described in **subsection 5.0411(C)(2)**, reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post or piling foundation);
 - B. Minimize adverse hydrological impacts on water resources such as by using the techniques described in Part (a) of Table 5, unless their use is prohibited by an applicable and required State or Federal permit issued to a unit of local government having jurisdiction in the area, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;

- C. Minimize impacts on wildlife corridors and fish passage such as by using the techniques described in Part (b) of **Table 5.0412(B)**; and
- D. Consider using the techniques described in Part (c) of **Table 5.0412(B)** to further minimize the impacts of development in the HCA.

Table 5.0412(B) - Habitat-friendly development practices.¹

Part (a): Design and Construction Practices to Minimize Hydrologic Impacts	
1.	Amend disturbed soils to original or higher level of porosity to regain infiltration and stormwater storage capacity.
2.	Use pervious paving materials for residential driveways, parking lots, walkways, and within centers of cul-de-sacs.
3.	Incorporate stormwater management in road right-of-ways.
4.	Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.
5.	Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics.
6.	Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.
7.	Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering.
8.	Use multi-functional open drainage systems in lieu of more conventional curb-and-gutter systems.
9.	Use bioretention cells as rain gardens in landscaped parking lot islands to reduce runoff volume and filter pollutants.
10.	Apply a treatment train approach to provide multiple opportunities for storm water treatment and reduce the possibility of system failure.
11.	Reduce sidewalk width and grade them such that they drain to the front yard of a residential lot or retention area.
12.	Reduce impervious impacts of residential driveways by narrowing widths and moving access to the rear of the site.
13.	Use shared driveways.
14.	Reduce width of residential streets, depending on traffic and parking needs.
15.	Reduce street length, primarily in residential areas, by encouraging clustering and using curvilinear designs.
16.	Reduce cul-de-sac radii and use pervious vegetated islands in center to minimize impervious effects, and allow them to be utilized for truck maneuvering/loading to reduce need for wide loading areas on site.
17.	Eliminate redundant non-ADA sidewalks within a site (i.e., sidewalk to all entryways and/or to truck loading areas may be unnecessary for industrial developments).
18.	Minimize car spaces and stall dimensions, reduce parking ratios, and use shared parking facilities and structured parking.
19.	Minimize the number of stream crossings and place crossing perpendicular to stream channel if possible.
20.	Allow narrow street right-of-ways through stream corridors whenever possible to reduce adverse impacts of transportation corridors.

¹ These development practices represent the state of scientific knowledge at the time of this Overlay's enactment, if more effective habitat-friendly practices become available, they should be used.

Part (b): Design and Construction Practices to Minimize Impacts on Wildlife Corridors and Fish Passage	
1.	Carefully integrate fencing into the landscape to guide animals toward animal crossings under, over, or around transportation corridors.
2.	Use bridge crossings rather than culverts wherever possible.
3.	If culverts are utilized, install slab, arch or box type culverts, preferably using bottomless designs that more closely mimic stream bottom habitat.
4.	Design stream crossings for fish passage with shelves and other design features to facilitate terrestrial wildlife passage.
5.	Extend vegetative cover through the wildlife crossing in the migratory route, along with sheltering areas.
Part (c): Miscellaneous Other Habitat-Friendly Design and Construction Practices	
1.	Use native plants throughout the development (not just in HCA).
2.	Locate landscaping (required by other sections of the code) adjacent to HCA.
3.	Reduce light spill-off into HCAs from development.
4.	Preserve and maintain existing trees and tree canopy coverage, and plant trees, where appropriate, to maximize future tree canopy coverage.

d. Mitigate. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then development must mitigate for adverse impacts to the HCA. All proposed mitigation plans must meet the following standards.

i. The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological functions provided by HCAs, after taking into consideration the applicant’s efforts to minimize such detrimental impacts through the use of the techniques described in **Table 5.0412(B)** and through any additional or innovative techniques. A mitigation plan that requires the amount of planting that would be required under **Subsection 5.0411(E)** of this Overlay based on the amount of proposed disturbance area within the HCA, and that otherwise complies with all of the mitigation requirements in **Subsection 5.0411(E)** of this Overlay, shall be considered to have satisfied the requirements of this **Subsection 5.0412(D)(2)(d)** of this Overlay.

ii. Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry out and ensure the success of the off-site mitigation, as described in **Subsection 5.0412(B)(1)(b)(iv)** of this Overlay. In addition, if the off-site mitigation area is not within the same sub-watershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall demonstrate that it is not practicable to complete the mitigation within the same sub-watershed and that, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the sub-watershed. Mitigation shall not be allowed outside of the impacted 5th Field Hydrologic Unit Code (i.e., an impact within the Johnson Creek watershed needs to be mitigated

within the Johnson Creek watershed.

- iii. All re-vegetation plantings shall be with native plants listed on the *City of Gresham Native Plant List*.
 - iv. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream work-timing schedule.
 - v. A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting, and compliance with the plan shall be a condition of development approval.
- e. Municipal Water Utility Facilities Standards. Except as provided within this subsection, in addition to all other requirements of **Subsection 5.0412(D)(2)** of this Overlay, municipal potable water, storm water (drainage) and wastewater utility facilities may be built, expanded, repaired, maintained, reconfigured, rehabilitated, replaced or upsized if not exempted in **Section 5.0403** of this Overlay. These facilities may include but are not limited to water treatment plants, wastewater treatment plants, raw water intakes, pump stations, transmission mains, conduits or service lines, terminal storage reservoirs, and outfall devices provided that:
- i. Such projects shall not have to comply with the requirements of **Subsection 5.0412(D)(2)(b)** of this Overlay, provided that, where practicable, the project does not encroach closer to a water feature than existing operations and development, or for new projects where there are no existing operations or development, that the project does not encroach closer to a water feature than practicable;
 - ii. Best management practices will be employed that accomplish the following:
 - A. Account for watershed assessment information in project design;
 - B. Minimize the trench area and tree removal within the HCA;
 - C. Utilize and maintain erosion controls until other site stabilization measures are established, post-construction;
 - D. Replant immediately after backfilling or as soon as effective;
 - E. Preserve wetland soils and retain soil profiles;
 - F. Minimize compactions and the duration of the work within the HCA;
 - G. Complete in-water construction during appropriate seasons, or as approved within requisite Federal or State permits;
 - H. Monitor water quality during the construction phases, if applicable; and
 - I. Implement a full inspection and monitoring program during and after project completion, if applicable.

5.0413 Variances

- A. The purpose of this Section is to ensure that compliance with this Overlay does not cause unreasonable hardship. To avoid such instances, the requirements of this Overlay may be varied. Variances are also allowed when strict application of this Overlay would deprive an owner of all economically viable use of land.
- B. This Section applies in addition to the standards governing proposals to vary the requirements of the district.
- C. Notice of variance applications shall be provided:
 - 1. Upon receiving an application to vary the requirements of this overlay, the notice shall be provided to all property owners within 300 feet of the site, as required by **Section 11.0311** of the Gresham Community Development Code to Metro, to any neighborhood association recognized by the City of Gresham and whose boundaries include the property, and to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property and meet all other noticing requirements of **Section 11.0311** of the Gresham Community Development Code.
 - 2. Within seven (7) days of a decision on the variance, notice of the decision shall be provided to Metro, to any neighborhood association recognized by the City of Gresham and whose boundaries include the property, to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property, and to any other person required to receive notice of such a decision in **Section 11.0300** of the City of Gresham Community Development Code.
- D. **Hardship Variance.** Variances to avoid unreasonable hardship caused by the strict application of this Overlay are permitted subject to the criteria set forth in this section. To vary from the requirements of this Overlay, the applicant must demonstrate the following:
 - 1. The variance is the minimum necessary to allow the proposed use or activity;
 - 2. Unless the proposed variance is from mitigation under **Section 5.0411(E)** or mitigation under **Section 5.0412(B), (C), or (D)(1)(b) and D(2)(d)**, the proposed use will comply with those standards, as applicable; and
 - 3. The proposed use complies with the standards of the base zone.
- E. **Buildable Lot Variance.** A variance to avoid the loss of all economically viable use of an existing lot or parcel that is partially or wholly inside a HCA is permitted. Applicants must demonstrate the following:
 - 1. Without the proposed variance, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that:
 - a. The proposed use cannot meet the standards in **Section 5.0413(D)** (hardship variance); and
 - b. No other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.
 - 2. The proposed variance is the minimum necessary to allow for the requested use;
 - 3. The proposed variance will comply with **Section 5.0411(E)** or **5.0412(B), (C), or D(1)(b) and D(2)(d)** (mitigation); and

4. The proposed use complies with the standards of the base zone.
- F. Additional Criteria.** In addition to the above Hardship Variance or Buildable Lot Variance criteria, the following criteria apply:
1. A variance that would result in a reduction of not more than 20% of the HCA boundary width on a site or a 20% decrease/increase of another numerical standard of this overlay shall demonstrate compliance with the Type II Minor Variance criteria of **Section 10.1510** of the Gresham Community Development Code. Such proposals shall be processed under the Type II development permit procedure.
 2. A variance that would result in a reduction of greater than 20% of the HCA width on a site or an increase/decrease of more than 20% of another numerical standard of this overlay shall demonstrate compliance with the Type III Major Variance criteria of **Section 10.1530** of the Gresham Community Development Code. Also, all non-numerical variance proposals shall meet the Type III Major Variance criteria. Both kinds of variances shall be processed under the Type III development permit procedure.
- G. Variance Conditions.** Conditions may be imposed to limit any adverse impacts that may result from granting any variance.

5.0414 Map Administration and HCA Verification

- A.** Exempt development. Development that is outside of any HCA and no closer than 50 feet to the border of an HCA (including all impervious surfaces and landscaping), based on the HCA map, may proceed without having to comply with this section or any other portion of this overlay except for **Section 5.0410**, Construction Management Plan.
- B.** Verification of the location of HCAs as described in this section shall not be considered a comprehensive plan amendment. If developing within an HCA, the location of the HCA boundary on a development site must be marked in the field at the time the applicant requests an HCA permit.
- C.** Map verification is available to correct for mistakes in the location, size or presence of HCAs on properties. Map verification shall not be used to dispute whether identified HCAs provide the ecological functions that they are assumed to provide based on the ecological criteria used by Metro to identify them in the 2002 Metro Goal 5 Technical Report. Nor shall it be used to dispute the Metro methodology for locating Class I and II riparian resource areas that is shown on Table **5.0414(A)** of this overlay.
- D.** The map verification requirements described in this **Section 5.0414** of this Overlay shall be met at the time an applicant requests a building permit, grading permit, tree removal permit, land division approval, or some other land use decision. A property owner, or another person with the property owner's consent, may request to verify the location of HCAs on a real property lot or parcel pursuant to this **Section 5.0414** of this Overlay at other times, but whether the City processes such request shall be at the Planning Director's sole discretion, based on staff availability, funding resources, and policy priorities. If a person receives verification separate from a simultaneous request for a building permit, grading permit, tree removal permit, land division approval, or some other land use decision, then the person may use the verification to satisfy the requirements of this section at any time up until five years after the date the verification was issued.
- E.** Notwithstanding any other provisions of this **Section 5.0414** of this Overlay, for utility projects undertaken by public utilities across property that is not owned by the utility, the utility shall not be required to map or provide any information about the property except for the area within 300 feet

of the location of the proposed disturbance area of the utility's project.

- F.** The City shall incorporate all HCA delineations associated with development permit applications and resource updates on the location of the HCA boundary on an annual basis, or as necessary, through the Type 1 permit procedure by the Planning Director. This shall not be considered a comprehensive plan map amendment.
- G.** Basic Verification Approaches. The basic verification approaches described in **Subsections 5.0414(G)(1)** through **(3)** of this Overlay are available for applicants who believe either (1) that the HCA map is accurate, (2) that there is a simple incongruity between the HCA map and the boundary lot lines of a property, or (3) that the property was developed prior to September 29, 2005.
- 1.** Applicant Believes HCA Map is Accurate. An applicant who believes that the HCA map is accurate may comply with this **Subsection 5.0414(G)(1)** of this Overlay. The applicant shall submit the following information regarding the real property lot or parcel:
 - a.** A detailed property description;
 - b.** A copy of the applicable HCA map;
 - c.** A summer 2005 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 20 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 50 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);
 - d.** The information required to be submitted under **Section 5.0411** or **5.0412** of this Overlay if the applicant proposes development within any HCA under those provisions; and
 - e.** Any other factual information that the applicant wishes to provide to support map verification.
 - 2.** Obvious Misalignment Between Mapped Habitat and Property Lot Lines. In some cases, the mapped vegetative cover layer in the GIS database might not align precisely with the tax lot layer that shows property lines, resulting in a HCA map that is also misaligned with tax lot lines. An applicant who believes that the HCA map is inaccurate based on such an obvious misalignment may comply with this **subsection 5.0414(G)(2)** of this overlay. The applicant shall submit the following information regarding the real property lot or parcel:
 - a.** The information described in **subsections 5.0414(G)(1)(a)** through **(e)** of this Overlay; and
 - b.** A documented demonstration of the misalignment between the HCA map and the property's tax lot boundary lines. For example, an applicant could compare the boundary lot lines shown for roads within 500 feet of a property with the location of such roads as viewed on the aerial photograph of the area surrounding a property to provide evidence of the scale and amount of incongruity between the HCA maps and the property lot lines, and the amount of adjustment that would be appropriate to accurately depict habitat on the property.
 - 3.** Property Developed Between Summer 2002 and September 29, 2005. Where a property was developed between the summer of 2002 (when the aerial photo used to determine the regional habitat inventory was taken) and September 29, 2005 (when Metro Council approved the Title 13 program), the applicant shall submit the following information regarding the real property lot or parcel:

- a. The information described in **Subsection 5.0414(G)(1)(a)** through **(e)** of this Overlay;
 - b. A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);
 - c. Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and September 29, 2005; and
 - d. A clear explanation and documentation, such as supporting maps or drawings or a more recent aerial photograph, indicating the new development that has occurred and where previously identified habitat no longer exists because it is now part of a developed area. Also, submit evidence that shows that the new development was legally approved by the City.
4. Decision Process. The Planning Director’s map verification decision made pursuant to **Subsection 5.0414(G)(1)** of this overlay will be processed under the Type I development permit procedure. Decisions pursuant to **Subsections 5.0414(G)(2)** and **(G)(3)** will be processed under the Type II development permit procedure. The Planning Director’s decision shall be based on consideration of the information submitted by the applicant, any information collected during a site visit to the lot or parcel, any information generated by prior map verifications that have occurred on adjacent properties, and any other objective factual information that has been provided to the Planning Director.
- H. Detailed Verification Approach. All applicants who believe that the HCA map is inaccurate for a reason other than as described in **Subsections 5.0414(G)(2)** and **(3)** may file a verification request consistent with this **Subsection 5.0414(G)** of this Overlay. Detailed verification requests will be processed under the Type II (administrative) development permit procedure.
- 1. Application requirements. The applicant shall submit a report prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. Such report shall include:
 - a. A description of the qualifications and experience of all persons that contributed to the report, and, for each person that contributed, a description of the elements of the analysis to which the person contributed;
 - b. The information described in **Subsections 5.0414(G)(1)(a)** through **(e)** of this Overlay;
 - c. The information described in **Subsections 5.0414(G)(2)(b)** and **(G)(3)(b)** through **(d)** of this Overlay, if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel;
 - d. Additional aerial photographs if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert’s interpretation of the additional information they provide;
 - e. A map showing the topography of the property shown by contour lines of 2 foot

wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.

- A.** Vegetative cover status shall be as identified on the Metro Vegetative Cover Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
- B.** The vegetative cover status of a property may be adjusted only if (1) the property was developed prior to the time the regional program was approved (see **Subsection 5.0414(G)(3)** of this Overlay, above), or (2) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the definitions of the different vegetative cover types provided in **Section 5.0416** of this Overlay.
- iii.** Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25%. At least three slope measurements along the water feature at no more than 100 ft. increments shall be taken, and
- iv.** Identify the riparian habitat classes applicable to all areas on the property using **Table 5.0414(A)** and the data identified in **Subsections 5.014(H)(4)(a)(i)** through **(iii)**.

Table 5.0414(A) - Method for Locating Boundaries of Class I and II Riparian Areas

Distance from Water Feature	Development/Vegetation Status ¹			
	Developed areas not providing vegetative cover	Low structure vegetation or open soils	Woody vegetation (shrub and scattered forest canopy)	Forest Canopy (closed to open forest canopy)
Surface Streams				
0-50'	Class II	Class I ²	Class I	Class I
50'-100'	Not regulated	Class II ³	Class I	Class I
100'-150'	Not regulated	Class II ³ if slope>25%	Class II ³ if slope>25%	Class II ³
150'-200'	Not regulated	Class II ³ if slope>25%	Class II ³ if slope>25%	Class II ³ if slope>25%
Wetlands (Wetland feature itself is a Class I Riparian Area)				
0-100'	Not regulated	Class II ³	Class I	Class I
100'-150'	Not regulated			Class II ²
Flood Areas				
Within 300' of river or surface stream	Not regulated	Class I	Class I	Class I
More than 300' from river or surface stream	⁴ Not regulated	Class II ³	Class II ³	Class I
0-100' from edge of flood area	Not regulated	Not regulated	Class II ^{3,5}	Class II ³

- 1 The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as "forest canopy" the forested area had to be part of a larger patch of forest of at least one acre in size.
- 2 Except that areas within 50 feet of surface streams shall be Class II riparian areas if their vegetation status is "Low structure vegetation or open soils," and if they are high gradient streams. High gradient streams are identified on the Metro Vegetative Cover Map. If a property owner believes the gradient of a stream was incorrectly identified, then the property owner may demonstrate the correct classification by identifying the channel type using the methodology described in the Oregon Watershed Assessment Manual, published by the Oregon Watershed Enhancement Board, and appended to the Metro's Riparian Corridor and Wildlife Habitat Inventories Report, Attachment 1 to Exhibit F to Metro Overlay No. 05-1077C.
- 3 Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro's Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

- 4 If development prior to the effective date of Metro Overlay No. 05-1077C within a contiguous, undeveloped flood area (to include contiguous flood areas on adjacent properties) that was not mapped as having any vegetative cover has reduced the size of that contiguous flood area to less than one half of an acre in size, then the remaining flood area shall also be considered a developed flood area and shall not be identified as habitat.
- 5 Only if within 300 feet of a river or surface stream.

b. Step 2. Verifying boundaries of inventoried upland habitat in future urban growth boundary expansion areas. Upland habitat was identified based on the existence of contiguous patches of forest canopy, with limited canopy openings. The “forest canopy” designation is made based on analysis of aerial photographs, as part of determining the vegetative cover status of land within the region. Upland habitat shall be as identified on the HCA map unless corrected as provided in this subsection.

- i.** Except as provided in **Subsection 5.0414(H)(4)(b)(ii)**, vegetative cover status shall be as identified on the Metro Vegetative Cover Map used to inventory habitat at the time the area was brought within the urban growth boundary (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
- ii.** The only allowed corrections to the vegetative cover status of a property are as follows:
- A.** To correct errors made when the vegetative status of an area was determined based on analysis of the aerial photographs used to inventory the habitat at the time the area was brought within the urban growth boundary. For example, an area may have been identified as “forest canopy” when it can be shown that such area has less than 60% canopy crown closure, and therefore should not have been identified as “forest canopy.” The perimeter of an area delineated as “forest canopy” on the Metro Vegetative Cover Map may be adjusted to more precisely indicate the dripline of the trees within the canopied area provided that no areas providing greater than 60% canopy crown closure are de-classified from the “forest canopy” designation. To assert such errors, applicants shall submit an analysis of the vegetative cover on their property using the aerial photographs that were used to inventory the habitat at the time the area was brought within the urban growth boundary and the definitions of the different vegetative cover types provided in **Section 5.0416** of this Overlay; and
- B.** To remove tree orchards and Christmas tree farms from inventoried habitat; provided, however, that Christmas tree farms where the trees were planted prior to 1975 and have not been harvested for sale as Christmas trees shall not be removed from the habitat inventory.
- iii.** If the vegetative cover status of any area identified as upland habitat is corrected pursuant to **subsection 5.0414(H)(4)(b)(ii)(A)** to change the status of an area originally identified as “forest canopy,” then such area shall not be considered upland habitat unless it remains part of a forest canopy opening less than one acre in area completely surrounding by an area of contiguous

forest canopy.

- c. Step 3. Urban Development Value of the Property. The urban development value of property designated as regionally significant habitat is depicted on the Metro Habitat Urban Development Value Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
 - i. A property’s urban development value designation shall be adjusted upward if the Metro 2040 Design Type designation for the property lot or parcel has changed from a category designated as a lower urban development value category to one designated as a higher urban development value category. 2040 Design Type designations are identified on the Metro 2040 Applied Concept Map (also available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
 - ii. Properties in areas designated on the 2040 Applied Concept Map as the Central City, Regional Centers, Town Centers, and Regionally Significant Industrial Areas are considered to be of high urban development value; properties in areas designated as Main Streets, Station Communities, Other Industrial Areas, and Employment Centers are of medium urban development value; and properties in areas designated as Inner and Outer Neighborhoods and Corridors are of low urban development value.
 - iii. As designated in Title 13 of Metro’s Urban Growth Management Functional Plan, properties owned by a regionally significant educational or medical facility are designated as high urban development value.
- d. Step 4. Cross-Reference Habitat Class With Urban Development Value. City and county verification of the locations of High, Moderate, and Low Habitat Conservation Areas shall be consistent with **Tables 5.0414(B) and (C)**.

Table 5.0414(B) - Method for Identifying Habitat Conservation Areas (“HCA”)

Fish & wildlife habitat classification	High Urban development value¹	Medium Urban development value²	Low Urban development value³	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+ ⁴
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+ ⁴
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA ⁵ / High HCA+ ⁴
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA ⁵ / High HCA+ ⁴

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.

- 1 Primary 2040 design type: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
- 2 Secondary 2040 design type: Main Streets, Station Communities, Other Industrial areas, and Employment Centers
- 3 Tertiary 2040 design type: Inner and outer neighborhoods, Corridors
- 4 Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.
- 5 All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Table 5.0414(C) - Method for Identifying Habitat Conservation Areas (“HCA”) in Future Urban Growth Boundary Expansion Areas

Fish & wildlife habitat classification	High Urban development value¹	Medium Urban development value²	Low Urban development value³	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+ ⁴
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+ ⁴
Class A Upland Wildlife	Low HCA	Moderate HCA	Moderate HCA	High HCA / High HCA ⁵ / High HCA+ ⁴
Class B Upland Wildlife	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA ⁵ / High HCA+ ⁴

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.

- 1 Primary 2040 design types: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
- 2 Secondary 2040 design types: Main Streets, Station Communities, Other Industrial areas, and Employment Centers
- 3 Tertiary 2040 design types: Inner and outer neighborhoods, Corridors
- 4 Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.
- 5 All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Section 5.0415 Consistency and Relationship with Other Regulations

- A.** Where the provisions of this Overlay are less restrictive or conflict with comparable provisions of the Gresham Community Development Code, other City requirements, regional, state or federal law, the provisions that are more restrictive shall govern. Where this Overlay imposes restrictions that are more stringent than regional, state and federal law, the provisions of this Overlay shall govern.
- B.** Proposed development located near certain streams must also comply with the Floodplain Overlay district standards of **Section 5.0100** of the Community Development Code. Streams affected by this overlay are shown on the City’s Special Purpose Districts Map.

- C. Proposed development located on sites with slopes of 15% or greater may also be affected by the Hillside Physical Constraint Overlay district provisions of **Section 5.0200** of the Community Development Code. This district may impose additional development requirements for sites with ravines and other sloped topographic features.
- D. Development in or near wetlands and streams may require permits from the Oregon Department of State Lands (D.S.L.) and the U.S. Army Corps of Engineers. If a federal permit is required, a water quality certification from the Oregon Department of Environmental Quality may also be required. The Manager shall notify the Department of State Lands and the Army Corps of Engineers when an application for development within streams and wetlands is submitted. Because these agencies may have more restrictive regulations than the City, applicants are encouraged to contact them before they prepare their development plans.
- E. Regulated Tree removals within HCA areas shall meet the applicable removal and tree protection standards of **Section 9.1000**. All mitigation and replacement requirements shall comply with applicable provisions of the HCA **Section 5.0400**. Tree removal activities that include disturbance or alteration of undeveloped HCA area exceeding 200 square feet shall be subject to full Type II or Type III provisions of the HCA code as outlined in **Section 5.0400**. HCA areas disturbed during tree removal activities shall be restored to their original condition when the tree removal is complete.

Section 5.0416 Violations

Actions that violate the HCA regulations, such as removing habitat without having a required HCA permit, are subject to the abatement and penalty provisions of **Section 2.0008** of the Gresham Community Development Code.

In addition, for correcting violations regarding unauthorized removal of habitat, the property owner violator must submit a remediation plan that meets all of the applicable standards of the HCA overlay district. The plan must be developed by a professional landscape architect or natural resource specialist. If one or more of these standards cannot be met then the applicant's remediation plan must demonstrate that there will be:

- A. No permanent loss of any type of resource or functional value;
- B. A significant improvement of at least one functional value; and
- C. There will be minimal loss of resources and functional values during the remediation action until it is fully established.

Section 5.0417 WQRA, Water Quality Resource Area

The WQRA, Water Quality Resource Area is an area identified by the City of Gresham in order to comply with Title 3 of Metro's Urban Growth Management Functional Plan, Metro Code sections 3.07.310-3.07.370. These areas are shown on Gresham's Title 3 map. When development is proposed within the WQRA, applicants can use either the specific standards of **Section 5.0411** of the HCA (those that apply to High rated resources, regardless of classification) or the discretionary standards of **Section 5.0412**.

The WQRA consists of the protected water feature, either primary or secondary, and the adjacent vegetative corridor. Primary and secondary protected water features are defined below and the required width of the vegetative corridor is indicated in **Table 5.0417**.

Primary Protected Water Features:

- A. Title 3 wetlands (as defined in Title 3 of Functional Plan)

- B.** Rivers, streams and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow)
- C.** Streams carrying year-round flow
- D.** Springs which feed streams and wetlands and that have year-round flow
- E.** Natural lakes

Secondary Protected Water Features:

These are intermittent streams and seeps downstream of the point at which 50 acres of land area are drained and upstream of the point at which 100 acres of land area are drained to that water feature.

Vegetative Corridor Width:

The required width of the vegetated corridor varies according to the type of protected water feature (primary or secondary) and the degree of slope (less or greater than 25%) adjacent to the water feature. Minimum required vegetated corridor widths are specified in **Table 5.0417**. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the slope of the land adjacent to the water feature, the width of the vegetated corridor will vary.

Table 5.0417 – Water Quality Resource Areas

Protected Water Feature Type (see definitions below)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Vegetated Corridor (Required Setback)
Primary Protected Water Features ¹	< 25%	Edge of bankfull stage (“top of bank”) ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	50 feet
Primary Protected Water Features ¹	≥ 25% for 150 feet or more ⁵	Edge of Bankfull stage ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	200 feet
Primary Protected Water Features ¹	≥ 25% for less than 150 feet ⁵	Edge of bankfull stage ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	Distance from starting point of measurement to top of ravine (break in >25% slope) ³ , plus 50 feet. ⁴
Secondary Protected Water Features ²	< 25%	Edge of bankfull stage ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	15 feet
Secondary Protected Water Features ²	≥ 25% ⁵	Edge of bankfull stage ⁶ or 2-year storm level; Delineated edge of Title 3 wetland	50 feet

- 1 Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural lakes and springs
- 2 Secondary Protected Water Features include intermittent streams draining 50-100 acres.
- 3 Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the > 25% slope.
- 4 A maximum reduction of 25 feet may be permitted in the width of vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).
- 5 Vegetated corridors in excess of 50 feet for primary protected features, or in excess of 15 feet for secondary protected features, apply

on steep slopes only in the uphill direction from the protected water feature.

- 6 “Bankfull Stage” (top of bank) is defined in OAR 141-85-010 (definitions for Removal/Fill Permits) as the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begins to inundate upland areas. In the absence of physical evidence, the two-year recurrent flood elevation may be used to approximate the bankfull stage.

