

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Action: An Ordinance Concerning Water Quality Waterway Provisions; Adding Sections 9.4770 through 9.4790 to the Eugene Code, 1971 that Establish a Water Quality Overlay Zone; Amending Sections 9.0500 9.1040, 9.7055, 9.7205, 9.7305, 9.7820, 9.8005, 9.8025 9.8030, 9.8055, 9.8215, 9.8220, 9.8320, 9.8325, 9.8415, 9.8470, 9.8472, 9.8474, 9.8515, 9.8520, 9.8855, and 9.8865 of that Code; Repealing Ordinance No. 20194 and Sections 6.650, 6.655, 6.660, 6.665, and 6.670 of that Code; Adopting the Water Quality Waterways Map; Amending the Eugene Overlay Zone Map; Adopting a Severability Clause; and Providing an Effective Date

Meeting Date: March 9, 2009
Department: Public Works
www.eugene-or.gov

Agenda Item Number: 6
Staff Contact: Therese Walch
Contact Telephone Number: 682-8647

ISSUE STATEMENT

The City Council is scheduled to take action on the proposed amendments to Chapter 9 of the Eugene Code (see Attachment A) implementing Water Quality Protected Waterways.

BACKGROUND

Proposal

The proposed regulations will protect the physical integrity and water quality function within and adjacent to otherwise unprotected waterways identified pursuant to section 303(d) of the federal Clean Water Act, waterways that are tributaries to those waterways, and headwater streams. Many of these waterways benefit from the incidental water quality protections provided by other City regulations, such as the City's Goal 5 Water Resources Program. This proposal fills the gaps to provide water quality protection for waterways that are not currently protected by some other means. If the proposed ordinance is adopted, the result will be a system of protection for those waterways that have a direct relationship to those that are water quality impaired. The system of protected waterways, in and of itself, will help "hold the line" on water quality in our local streams. In combination with other efforts, this proposal will help improve water quality over time in our local waterways.

City Council Action History – Proposed Water Quality Protected Waterways

The Eugene City Council conducted a work session on May 14, 2008, on the proposal to amend Chapter 9 of the Eugene Code with new provisions establishing a /WQ Water Quality Overlay Zone and re-zoning certain properties to apply the overlay zone. The City Council held a public hearing on May 19, 2008, at which three people testified. In addition, 23 written pieces of public testimony were received through the public hearing proceedings. A follow up work session was held on June 18, 2008, at which staff presented revisions to the draft ordinance in response to public testimony. At the June 18 work session, council directed staff to return with an estimate of what it would cost to purchase conservation

easements in the areas designated for protection, as an alternative to taking a regulatory approach. The council considered the conservation easement approach at a work session on January 28, 2009, and decided to move forward with the proposed regulatory approach incorporating staff recommended changes in response to public testimony. The council directed staff to return with the ordinance as proposed for action.

City Council Action History - Open Waterways Ordinance

In April 2000, the Eugene City Council adopted an ordinance into Chapter 6 of the Eugene Code that required certain waterways in the City be left open (no piping or filling). The ordinance was subsequently challenged on the basis that it was a land use decision requiring greater justification and was remanded back to the City by the Land Use Board of Appeals. It ceased to be in effect as of July 2001. The current proposal before the City Council, a regulation protecting specifically identified waterways for their water quality functions and values, essentially replaces the open waterways ordinance and includes the justification required of land use regulations. The Water Quality Protected Waterways ordinance includes repealing Ordinance No. 20194 and Code Sections 6.650, 6.655, 6.660, 6.665, and 6.670, which are no longer in effect but are still in the Code, and amending Chapter 9 of the Eugene Code with new provisions.

Draft Ordinance and Exhibits - Updated

To comply with City Council direction from its October 15, 2008, process session, this AIS includes two sets of materials. Attachment A includes the proposed draft ordinance and exhibits, updated as described below, in clean copy without legislative markups. Attachment B includes the same materials in legislative format (with the exception of the electronic and printed maps, for which there are references to the previously provided materials), reflecting modifications proposed since the January 28, 2009, work session.

The attached ordinance includes two minor modifications made since the January 28 work session:

- Section 9.4780(2)(h)(12), page 9 of Attachment A – Modifications to clarify that the provision enabling the maintenance, repair, replacement, upgrading and expansion of telecommunications facilities applies to *facilities used for the transmission of television and radio signals*. Since the council's last consideration of the ordinance, staff has learned that the term "telecommunications" as defined in the Eugene Code does not include facilities for the transmission of television and radio signals. This modification is consistent with the intent of this provision, in response to testimony received. Mitigation for any impacted water quality functions authorized by this section would be required.
- Ordinance Section 31, page 34 of Attachment A – with respect to the effective date of the ordinance, replace "three months from the date of its adoption by City Council and approval by the Mayor" to a specific date that is three months from adoption ("midnight on June 10, 2009") for clarity. Throughout the ordinance, replace "effective date of this ordinance" with "June 10, 2009."

The list of affected taxlots inside city limits (Ordinance Exhibit B) and the list of affected taxlots outside city limits and within UGB (Ordinance Exhibit C) have been updated to reflect recent changes to the Lane County parcel data layer, as follows:

- Removal of one taxlot number reflecting a recent land survey resulting in property boundary changes that caused the taxlot to no longer be affected by this proposal. The total area of the lot impacted by the proposal was minimal, less than 900 square feet, or about 0.02 acres;

- Removal of one taxlot number due to its incorporation into right-of-way acreage;
- Addition of four taxlot numbers due to a portion of public right-of-way being converted into tax-lotted area, but still owned by the public agency;
- Removal of two taxlot numbers that were already affected by the proposal, and replacement with five new taxlot numbers reflecting the partitioning of two larger taxlots into two- and three-parcel partitions and assignment of new taxlot numbers; and
- Removal of two tax lots due to their consolidation into other existing taxlots already affected.

All of the changes described above have no net practical effect on the regulated area.

The draft Legislative Findings (Ordinance Exhibit D) have been reviewed and updated, given the span of time between the initial discussions regarding this proposal and now, and to reflect modifications to the proposal since the earlier draft. The associated document - “Buildable Lands Impact Analysis Report: Methodology, Results, Conclusions,” has also been updated and is provided for council review in the binder labeled *Water Quality Protected Waterways - Supplemental Information* (Section XV), located in the Council Offices.

RELATED CITY POLICIES

The Comprehensive Stormwater Management Plan (CSWMP, adopted by City Council in 1993) addresses the multiple benefits of waterways in Policy 1.1: *Incorporate the beneficial functions (flood control, stormwater conveyance, water quality treatment) of natural resources [waterways and wetlands] into the City storm drainage system.*¹ One of the Implementation Measures identified to carry out Policy 1.1 is to “Develop and apply waterside protection ordinances.”²

CITY COUNCIL OPTIONS

The council may consider the following options:

1. Adopt the ordinance as provided in Attachment A;
2. Adopt the ordinance with specific modifications as determined by the council;
3. Direct the City Manager to take no further action with respect to this ordinance.

CITY MANAGER’S RECOMMENDATION

The City Manager recommends adoption of the ordinance as presented (Option 1).

SUGGESTED MOTION

Move to adopt the ordinance as proposed.

ATTACHMENTS

- A. Proposed Ordinance and Exhibits (clean version for 3/9/09 Action)
 - Exhibit A-1. Compact Disc / Water Quality Waterways Map
 - Exhibit A-2. Printed Copy of Water Quality Waterways Map

¹ CSWMP, Policy 1.1, p. 3-5.

² CSWMP, Implementation Measure – Other Action, p. 3-5.

- Exhibit B. List of Affected Tax Lots Inside City Limits
- Exhibit C. List of Affected Tax Lots Outside City Limits and Within UGB
- Exhibit D. Legislative Findings

- B. Previously Provided Draft Ordinance and Exhibits (as of January 28, 2009), legislatively updated
 - Exhibit A-1. (Previously provided 1-28-09 Compact Disc / Water Quality Waterways Map available for council review at City Managers Office, Room 105)
 - Exhibit A-2. (Previously provided 1-28-09 Printed Copy of Water Quality Waterways Map available from meeting materials for January 28 worksession)
 - Exhibit B. List of Affected Tax Lots Inside City Limits (legislatively updated)
 - Exhibit C. List of Affected Tax Lots Outside City Limits and Within UGB (legislatively updated)
 - Exhibit D. Draft Legislative Findings (legislatively updated)

FOR MORE INFORMATION

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ORDINANCE NO. _____

AN ORDINANCE ADDING SECTIONS 9.4770 THROUGH 9.4790 TO THE EUGENE CODE, 1971 THAT ESTABLISH A WATER QUALITY OVERLAY ZONE; AMENDING SECTIONS 9.0500 9.1040, 9.7055, 9.7205, 9.7305, 9.7820, 9.8005, 9.8025 9.8030, 9.8055, 9.8215, 9.8220, 9.8320, 9.8325, 9.8415, 9.8470, 9.8472, 9.8474, 9.8515, 9.8520, 9.8855, AND 9.8865 OF THAT CODE; REPEALING ORDINANCE NO. 20194 AND SECTIONS 6.650, 6.655, 6.660, 6.665, AND 6.670 OF THAT CODE; ADOPTING THE WATER QUALITY WATERWAYS MAP; AMENDING THE EUGENE OVERLAY ZONE MAP; ADOPTING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The definition of “Development Permit” set forth in Section 9.0500 of the Eugene Code, 1971, is amended, and a new definition of “City engineer” is added thereto, to provide:

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

City Engineer. The person authorized by the city manager to carry out the duties of city engineer under this code, or the city engineer’s designee(s).

Development Permit. A permit authorized or required by the Oregon Structural Specialty Code and Oregon One and Two Family Dwelling Code, including but not limited to permits for:

- (A) New buildings.
- (B) Additional square footage added to a building.
- (C) Building demolition.
- (D) Foundations.
- (E) Change of occupancy.
- (F) Grading/Fill.
- (G) Site improvements.

Section 2. Section 9.1040 of the Eugene Code, 1971, is amended by adding a Water Quality 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:

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

Section 3. The following caption and Sections 9.4770 through 9.4790 are added to the Eugene Code, 1971, to provide:

/WQ WATER QUALITY OVERLAY ZONE

- 9.4770** **/WQ Water Quality Overlay Zone - Purpose.** The purpose of the /WQ Water Quality Overlay Zone is to protect the health and safety of the public in a manner that complies with federal and state water quality requirements. The Overlay Zone is intended to protect and improve the physical integrity and water quality function within and adjacent to otherwise unprotected waterways consisting of waterways identified pursuant to section 303(d) of the federal Clean Water Act, waterways that are tributaries to those waterways, and headwater streams.
- 9.4772** **/WQ Water Quality Overlay Zone – Applicability.** EC 9.4770 through 9.4790 apply to all property to which the /WQ Water Quality Overlay Zone has been applied through the city’s rezoning process or through automatic rezoning upon annexation.
- 9.4774** **/WQ Water Quality Overlay Zone – Relationship to Other Zones and State and Federal Laws.** When conflicting zoning provisions apply to land within a /WQ Management Area (See EC 9.4778), the /WQ provisions shall control. Consistency with the provisions of EC 9.4780 does not exempt the property owner from state or federal laws or regulations.
- 9.4776** **/WQ Water Quality Overlay Zone - Siting Requirements.** In addition to the criteria at EC 9.8865, when considering an application to add the /WQ Overlay Zone to a lot, the following criteria apply:
- (1) The subject lot Includes:
 - (a) A waterway identified pursuant to section 303(d) of the federal Clean Water Act, a waterway that is a tributary to a 303(d) waterway, or that is a headwater stream; or
 - (b) A portion of the /WQ Management Area, as described in EC 9.4778(1), for a waterway described in (a); and
 - (2) The subject segment of waterway (it may be natural or constructed):
 - (a) Is not already protected by the NR zone or the /WR, /WP or /WB overlay zones;
 - (b) Has a discernable streambed and side banks;
 - (c) Carries water at least part of the year;
 - (d) Provides a drainage function for surface runoff from land areas beyond a roadway; and

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- (e) If a ponded area, has an inlet and outlet drainage function.

9.4778 WQ Water Quality Overlay Zone – WQ Management Area.

- (1) Except as provided in subsections (2), (3) or (4) the WQ Management Area is that area depicted on the city's adopted Water Quality Waterways Map.
 - (a) As depicted on the Water Quality Waterways Map, the WQ Management Area is comprised of both the waterway channel, which for purposes of EC 9.4770 through 9.4790, and 9.8030(25), means the area between the top of high banks on each side of the waterway, and the applicable setback, as described in (b) or (c) below.
 - (b) For a waterway identified on the Water Quality Waterways Map as a waterway identified pursuant to section 303(d) of the federal Clean Water Act, or a tributary to such a waterway, the applicable setback is 25 feet from top of high bank (THB). For purposes of EC 9.4770 through 9.4790 and 9.8030(25), THB is the highest point at which the vertical rise of the waterway bank meets the horizontal grade of the adjoining topography.
 - (c) For waterways identified on the Water Quality Waterways Map as headwater streams, the applicable setback is 40 feet from the waterway's centerline.
 - (d) The procedures used for mapping these setbacks on the Water Quality Waterways Map shall be more particularly described in an administrative rule adopted by the city manager in accordance with EC 2.019 City Manager – Administrative and Rulemaking Authority and Procedures.
- (2) For a lot that is 6,000 square feet in area or less with a WQ Management Area, alone or in combination with a WR Conservation Area, that constitutes more than 33% of the lot, as part of the city's consideration of an application for a development permit or land use approval, the city shall automatically reduce the applicable setback distance described in (1) above, provided:
 - (a) The lot was created pursuant to a planned unit development, subdivision, partition or property line adjustment application described in EC 9.4780(2)(i)2.;
 - (b) Unless precluded by (2)(d) below, the reduction in setback shall result in the WQ Management Area constituting 33% of the lot area, alone or in combination with a WR Conservation Area; and
 - (c) The new boundary shall be located:
 - 1. Parallel to the original boundary (closer to the waterway); or
 - 2. Through the application of setback averaging. Setback averaging shall be accomplished by expanding the WQ Management Area in an undeveloped area of the development site, and reducing it in another area of the development site.
 - (d) In no case shall the setback boundary be located within the waterway channel.
- (3) As part of the city's consideration of an application for a development permit or land use approval, the city shall exclude from the WQ Management Area:
 - (a) Those areas which the applicant has shown to have been developed prior to June 10, 2009. For purposes of this subsection, "developed areas" are those within the physical ground surface footprint of a legally constructed:
 - 1. Structure (including a manufactured dwelling) with a permanent foundation, constructed or sited pursuant to an approved permit;

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2. Utility facility (such as a transmission pole, utility transmission vault box, or pump station), telecommunication tower, telecommunication platform, satellite dish, sign or billboard;
 3. Permanent deck or patio that is attached to a structure listed in subsection 1. above; or
 4. Paved parking area, street, driveway, bike path, or pedestrian path. Fences and landscaping do not cause an area to be “developed” to warrant exclusion from the /WQ Management Area. All other uses and structures that were legally established prior to June 10, 2009 but that do not comply with the allowed uses and standards of the /WQ Overlay Zone are subject to EC 9.1200 through EC 9.1240 Legal Nonconforming Situations; and
- (b) Any land that is included in a:
1. /WP Waterside Protection area as described in EC 9.4720;
 2. /WB Wetland Buffer area as described in EC 9.4820; or
 3. /WR Water Resources Conservation area as described in EC 9.4920.
- (4) Where an existing development under subsection (3)(a)1. or 3. above or an existing developed street or sound wall physically isolates a portion of the /WQ Management Area, as part of the city’s consideration of an application for a development permit or land use approval, the city shall exclude that isolated portion from the /WQ Management Area.

9.4780 **/WQ Water Quality Overlay Zone - Permitted and Prohibited Uses.** Uses are permitted or prohibited within the /WQ Water Quality Overlay Zone based on whether they occur outside or within the /WQ Management Area as follows:

(1) Uses Permitted Outside /WQ Management Area.

- (a) The uses permitted on portions of a lot located outside of the /WQ Management Area are the same as those otherwise permitted on that lot without consideration of the /WQ Water Quality Overlay Zone; and
- (b) Prior to issuance of a development permit, the city shall verify that the /WQ Management Area setback has been accurately demarcated by a prominent and continuous protective feature indicating a “No Disturbance Area.” No site preparation, including but not limited to vegetation removal, may take place within 50 feet of the /WQ Management Area, until such verification has been provided.

(2) Uses Permitted Within /WQ Management Areas. Subject to any applicable development permits, the following uses are the only uses permitted outright within the /WQ Management Area:

(a) Vegetation Planting and Management.

1. Plantings of plants and vegetation provided they are not Invasive, Non-Native Plant species as defined in EC 9.0500 Definitions; and
2. Mowing, replacing and pruning vegetation within lawn and garden landscaped areas existing as of June 10, 2009.

The use of native vegetation in the /WQ Management Area is preferred, in order to reduce the need to apply water, herbicides, pesticides and fertilizers;

(b) Removal of Plants and Vegetation.

1. Other than as permitted pursuant to EC 9.4780(2)(a)2., or approved pursuant to EC 9.4780(3) or EC 9.8030(25), removal of plants and vegetation shall be limited to the following:

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- a. Removal of Invasive, Non-Native plant species;
 - b. A public entity's removal of plants or vegetation from publicly owned property by mechanical or manual means within a strip not to exceed 15 feet in width where that property abuts private property that is not within a /WQ Management Area;
 - c. Removal of plants or 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 plants or 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; and
 - d. Removal of hazardous tree(s), or removal of trees that create an unsafe condition due to proximity to existing structures, proposed construction, or interference with utility services or pedestrian or vehicular safety, so long as prior to removal the property owner is able to produce upon request a written evaluation of any tree proposed for removal prepared by a certified arborist declaring the tree(s) to be hazardous or creating an unsafe condition and recommending removal;
2. Areas of bare soil existing as a result of plant or vegetation removal shall be:
- a. Protected or covered consistent with EC 6.625 through EC 6.645;
 - b. Replanted as soon as practicable, but no later than March 15 of the calendar year following disturbance; and
 - c. If not replanted within 15 days of disturbance, areas of bare soil shall be mulched and seeded with straw mulch and native seed for temporary stabilization within 15 days of disturbance.
- (c) Maintenance, Repair and Reconstruction Activities.
1. Removal of refuse;
 2. Removal of fill in response to a written determination from a regulating agency that the fill is in violation of local, state or federal regulations;
 3. Maintenance, repair and reconstruction of streets, bridges, driveways, parking areas and pathways, including, but not limited to, sweeping, striping, sealing, and resurfacing, provided such activity is not a part of a broader project for which additional incursion into the /WQ Management Area is proposed;
 4. Channel maintenance practices, including mowing and sediment removal necessary to maintain stormwater conveyance and flood control capacity or to protect water quality, as required by local policies, local, state, and federal regulations, and intergovernmental agreements;
 5. Maintenance, repair, and reconstruction of utility facilities such as wastewater and stormwater pipes, culverts, electrical transmission lines, and television and cable systems, provided such activity is not a part of a broader project for which additional incursion into

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- the /WQ Management Area is proposed; and
6. Maintenance, repair, and reconstruction of a fence that was legally established prior to (the effective date of this ordinance) provided that for any reconstruction it occurs in the same location and to the same dimensions as the pre-existing fence;
- (d) Emergency Activities.
1. Emergency repair of utility facilities (such as wastewater and stormwater pipes, electrical transmission lines, and television and cable systems) and transportation facilities (such as roadways, bridges, bikeways and pathways), failing slopes or eroding channel banks or channel beds; provided the city engineer has declared in writing that:
 - a. Immediate repair is necessary to avert an imminent threat to water quality, the environment, public health, public safety, or the structural integrity of the utility facilities, transportation facilities, stream channel banks or stream channel beds, or structural integrity of adjacent structure(s); and
 - b. The method of repair will minimize impacts to water quality and any emergency repairs resulting in bare soil conditions will comply with EC 9.4780(2)(b)2.;
 2. Emergency response to spills of materials that threaten water quality;
 3. Fire suppression and medical emergency response operations;
- (e) Construction and Maintenance of Vegetated Stormwater Management Facilities. Swales, filter strips, constructed wetlands, and other vegetated stormwater management facilities for pollution reduction or flow control are permitted if otherwise approved through the provisions of EC 9.6791 through 9.6797 in accordance with the Stormwater Management Manual adopted by administrative order of the city manager;
- (f) Public Improvement Projects. For purposes of this subsection (f), a public improvement project is defined as any improvement which upon construction and acceptance by a public entity shall become the entity's responsibility to maintain, repair or replace. Public improvement includes, but is not limited to, local improvements or other structures or facilities constructed upon or under public or private property. Provided the city has on file the certification described in (f)4. below, the following public improvement projects, are permitted:
1. Construction of a public water quality improvement project that is identified in an approved city plan (including but not limited to the repair or rehabilitation of stream channels and banks, installation of aeration features, construction of facilities for removing stormwater pollutants, plantings for improving pollutant filtration, channel shading, or erosion control);
 2. Construction or improvement of parks, recreation facilities, open space, and habitat enhancements (including but not limited to footpaths, bike paths, pedestrian and bike bridges, site furniture, boardwalks, kiosks, signs, planting of native species, hydrology and landscape restoration, and barriers for species containment);
 3. Construction of public infrastructure including but not limited to streets, bridges, sidewalks, stormwater facilities, and other public

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utilities provided:

- a. Construction will take place within an existing public way, or at the location shown in a plan adopted by the city or another public entity prior to June 10, 2009;
 - b. The public facility is a water dependent structure or use such as a boat ramp, dock, bridge or an accessway to such a structure or use, which by its nature cannot be located anywhere except within the WQ Management Area; or
 - c. The facility is intended to provide safe public access to the waterway for the purposes of public education or to provide protection of the waterway by managing access;
4. For any public improvement project authorized by (2)(f), the city shall have on file for city projects a certification from the city engineer, and for other public entities a certification from a licensed civil engineer with authority to represent the public entity, that all of the following were addressed in the project's design:
- a. Pervious surface materials have been considered for all pathways, bikeways, driveways and parking areas where well draining soils are present as defined by the requirements of the Stormwater Management Manual adopted by administrative rule of the city manager as authorized by EC 9.6790 Stormwater Management Manual;
 - b. Applicable stormwater development standards contained in EC 9.6791 through 9.6795 and erosion control requirements contained in EC 9.6792 and EC 6.625 through EC 6.645 are met;
 - c. For areas located outside the footprint of construction-related impervious surfaces:
 - (1) Soil permeability rates and sheet-flow drainage patterns are restored to pre-construction conditions or improved from preconstruction conditions by increasing soil permeability or enhancing sheet flow patterns; and
 - (2) Plants and vegetation are planted to the following specifications:
 - (a) 80% of the area is covered;
 - (b) Species planted are not Invasive, Non-Native species as defined in EC 9.0500;
 - (c) Species consist of a balance of trees, shrubs and forbs;
 - d. Bio-engineering methods are used to stabilize stream banks and repair areas of erosion, including but not limited to bank failure, bank sloughing, and channel incision, or the city engineer has provided written approval of alternative methods;
 - e. Based on the city's Water Quality Function Rating System, (see EC 9.4782), the project will result in a water quality function rating equal to or greater than previously existed; and
 - f. For a public improvement project allowed pursuant to (f)2. or (f)3., impervious surfaces are minimized by constructing the facility or infrastructure with as little impervious surface as

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allowed by city standards and the Americans With Disabilities Act;

- (g) Authorized Enhancement and Restoration. Wetland, stream and riparian enhancement and restoration if the proposed activity is authorized:
1. Under a Mitigation Improvement Plan approved by the Oregon Department of State Lands (DSL) and, if required, by the U. S. Army Corps of Engineers (ACOE);
 2. Under a wetland restoration permit or wetland enhancement permit approved by the DSL, and if required by the ACOE; or
 3. By a “Finding of No Significant Impact” or a “Record of Decision” under the federal National Environmental Policy Act (NEPA) that identifies the restoration or enhancement activity as the final selected alternative;
- (h) Other Activities.
1. Construction and maintenance of paths with no impervious surface for pedestrian or bicycle use not to exceed 5 feet in width;
 2. Construction and maintenance of facilities for monitoring water quality and gauging stream flows;
 3. Construction and maintenance of publicly accessible recreational/environmental interpretative signs with a ground disturbance not to exceed 12 square feet in area;
 4. Construction or replacement of fences located at least 20 feet from THB, provided that they are not constructed with continuous footings or other obstructions to surface drainage;
 5. Construction and maintenance of publicly accessible educational/interpretive facilities including concrete pads for benches with a ground disturbance not to exceed 120 square feet in area;
 6. Construction and maintenance of a slatted deck of no more than 120 square feet in area, with no impervious surface, and located at least 20 feet from THB;
 7. Construction and maintenance of accessory structures that do not require a building permit such as a garden shed, playhouse or greenhouse of no more than a total of 120 square feet, located at least 20 feet from THB;
 8. Installation and maintenance of erosion control measures that have been approved pursuant to EC 6.625 through 6.645;
 9. Single family residential composting located outside the channel, and at least 10 feet from THB;
 10. City placement and maintenance of fences or woody debris for purposes of habitat or species protection;
 11. Construction of new underground utilities for providing service to an existing lot of record where there is no other alternative location; or
 12. Maintenance, repair, replacement, upgrading and expansion of telecommunications facilities and facilities used for the transmission of television and radio signals, including towers, satellite dishes and related support structures such as foundations, footings, platforms, and wiring, that were legally established prior to (effective date of this ordinance) provided that for any expansion, the applicant has submitted a certification signed by a

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professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the expansion will result in a water quality function rating equal to or greater than previously existed; and

- (i) **Prior Approved Development.** Uses, structures, streets and utilities that are explicitly authorized, or that are necessary to carry out the uses or development explicitly authorized, by a city approval of:
 - 1. An application for a development permit that was submitted prior to June 10, 2009; or
 - 2. An application for a land use approval that was submitted prior to June 10, 2009 and was deemed by the city to be complete when first submitted or made complete by the submittal of all requested additional information within 180 days of the application's submittal date.
- (3) Uses Subject to Standards Review Within the /WQ Management Area.** Unless prohibited by subsection (4), or permitted outright in subsection (2), the following uses are permitted, subject to the standards review process beginning with EC 9.8460. Consistency with the specific standards provided or referenced for each use below shall be used as the criteria for approval. These uses may require additional development permits pursuant to other provisions of this code.
 - (a) Construction of private water quality improvements, including stabilization or reconfiguration of channels and pond banks to improve stability and installation of aeration features. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3) and (7) through (11);
 - (b) Realignment or reconfiguration of channels and pond banks to accommodate a proposed development:
 - 1. Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources, lot configuration or existing right of way, there is no other feasible option for locating the proposed development outside the /WQ Management Area;
 - 2. Provided the realignment will not cause the /WQ Management Area to:
 - a. Occupy any portion of an adjacent lot not currently having the /WQ overlay zone, unless the standards review application is accompanied by an owner-authorized rezoning application to apply the /WQ overlay zone to the newly affected lot; or
 - b. Increase an existing /WQ Management Area on an adjacent lot, unless the standards review application is accompanied by the written consent of the affected lot owner(s);
 - 3. Provided the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the realignment will result in a water quality function rating equal to or greater than previously existed; and
 - 4. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3) and (7) through (11);

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5. If a realignment under 2. above is approved, necessitating a correction to the Water Quality Waterways Map, the planning director shall update that Map to reflect the correction. If the correction results in the complete removal or relocation of the /WQ Management Area from a lot, or a determination that the /WQ Overlay Zone should be removed or relocated from a lot, the planning director shall update the Eugene Overlay Zone Map to reflect the determination;
- (c) Construction of public improvements not already permitted under subsection (2) above (including but not limited to streets, bridges, boardwalks, paths, flood control structures, and public utilities):
 1. Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources, lot configuration or existing right of way, there is no feasible option for locating the proposed improvements outside the /WQ Management Area;
 2. Provided the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the construction will result in a water quality function rating equal to or greater than previously existed; and
 3. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (11);
 - (d) Construction of a private stream crossing with a culvert or bridge for an access road or pedestrian use:
 1. Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources or lot configuration, no point of access to an adjacent street or road is available within the applicant's real property ownership that is outside the /WQ Management Area;
 2. Where the number of stream crossings is the minimum necessary for the approved use; and
 3. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3), (5), (6), (8), (10) and (11);
 - (e) Construction of a private street and related infrastructure including utilities not already permitted under subsection (2) above:
 1. Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources or lot configuration, or access location restrictions by the city, there is no feasible option for locating the street outside of the /WQ Management Area;
 2. Provided the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the construction will result in a water quality function rating equal to or greater than previously existed; and
 3. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3), (5), (6), (10) and (11);
 - (f) Construction of new underground utility lines not already permitted under subsection (2) above:

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1. Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources, lot configuration or existing right of way, no reasonable alternative route exists outside the /WQ Management Area to provide service to an unserved area or to connect to an existing line; and
 2. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (4) and (10) and (11);
- (g) Construction of water dependent structures and uses not already permitted under subsection (2) above, and access ways to those structures and uses, which, by their nature, cannot be located anywhere except within the /WQ Management Area, such as boat ramps or docks. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3), (5), (10), and (11); and
- (h) Non-emergency repair or stabilization of a failing slope or eroding channel bank that is not already permitted under subsection (2) above:
1. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3), (9) through (11); and
 2. Provided the applicant submits to the planning director a report from a registered engineer or an Oregon licensed engineering geologist that, based on the city's Water Quality Function Rating System, the repair or stabilization will result in a water quality function rating equal to or greater than previously existed.
- (4) Uses Prohibited Within the /WQ Management Area.** Uses that are not specifically allowed under subsections (2) or (3) are prohibited within the /WQ Management Area unless an adjustment is granted pursuant to EC 9.8030(25)(c)1. Such prohibited uses include, but are not limited to the piping of a waterway (other than culverts explicitly permitted), storage of wood, building materials, vehicles, machinery, or other items or materials, and dumping, piling, or disposal of refuse, fill, yard debris, pet waste, or other material.

9.4782 Water Quality Function Rating System.

- (1) When this code requires the use of the city's Water Quality Function Rating System, the applicant shall comply with the requirements contained in the administrative order adopted by the city manager pursuant to EC 2.019 City Manager – Administrative and Rulemaking Authority and Procedures. As more specifically described in that order, the city's Water Quality Function Rating System sets out a process for evaluating a specific /WQ Management Area's water quality function based on the presence or frequency of enumerated characteristics.
- (2) Unless waived by the planning director, that portion of the application utilizing the city's Water Quality Function Rating System shall be prepared by one or more of the following professionals:
 - (a) Oregon licensed architect;
 - (b) Oregon licensed civil or geotechnical engineer;
 - (c) Oregon licensed landscape architect;
 - (d) Oregon licensed geologist;
 - (e) A professionally trained botanist, biologist, ecologist or geomorphologist;or

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- (f) A creek restoration specialist with a bachelor's degree in the subject field and at least 5 years of applied experience in botany, biology, ecology, geomorphology or a closely related field.

9.4784 WQ Water Quality Overlay Zone – Adjustments.

- (1) Adjustments to the provisions of EC 9.4778 WQ Water Quality Overlay Zone – WQ Management Area may be made subject to compliance with the criteria for adjustment in EC 9.8030(25)(a) or (b).
- (2) Adjustments to the provisions of EC 9.4780 WQ Water Quality Overlay Zone – Permitted and Prohibited Uses or 9.4790 WQ Water Quality Overlay Zone – Development Standards may be made subject to compliance with the criteria for adjustment in EC 9.8030(25)(c).

9.4786 WR Water Quality Overlay Zone – Map Correction/Removal of Overlay Zone.

Consistent with the application requirements at EC 9.7010, proposals to correct the Water Quality Waterways Map shall be subject to the procedures and criteria in this section. When considering an application to remove the WQ Water Quality Overlay Zone from a specific lot, the provisions of this section apply instead of the zone change procedures and criteria described at EC 9.8850 through 9.8865.

- (1) **Application Requirements.** Except as provided in EC 9.8005(2), the application shall be processed under the Type II application procedure (EC 9.7200 – 9.7230).
 - (a) If an error on the Water Quality Waterways Map is alleged, the application shall:
 - 1. Identify the waterway or WQ Management Area alleged to have been incorrectly mapped;
 - 2. Identify the tax lots and a description of any right-of-way alleged to have been incorrectly included in the WQ Management Area; and
 - 3. Include a description of the alleged error, the basis of the error, including evidence such as a land survey, ortho-photo and topographic information, and the proposed correction;
 - (b) If the application proposes to remove the WQ Water Quality Overlay Zone from a lot or parcel due to a partition, subdivision or property line adjustment that results in a new or reconfigured lot onto which the WQ Management Area does not extend, the application shall:
 - 1. Include a copy of the proposed or recorded plat for such partition, subdivision or, for a property line adjustment, a copy of the recorded deed and approved map; and
 - 2. Identify the waterway or WQ Management Area that is located on the parent lot.
- (2) **Approval Criteria.** Approval shall be based on consideration of the procedures for mapping described in EC 9.4778(1), the administrative rule referenced therein, and compliance with the following criteria:
 - (a) For an allegation of error on the Water Quality Waterways Map, the evidence submitted demonstrates that:
 - 1. The waterway does not have a discernable streambed and side banks;
 - 2. The waterway does not carry water at least part of the year;

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3. The waterway only provides a drainage function for surface runoff from a roadway;
 4. The waterway is a ponded area with no inlet or outlet drainage feature;
 5. The waterway location or alignment is incorrect; or
 6. The *WQ* Management Area as depicted on the map extends beyond the applicable 25 foot or 40 foot setback as described in EC 9.4778(1);
- (b) For removal of the *WQ* Overlay Zone that is proposed due to a partition, subdivision or property line adjustment:
1. The newly created lot does not include any portion of a *WQ* Management Area; and
 2. In cases where the lot has not yet been recorded, removal of the *WQ* Overlay Zone shall be conditioned upon recordation.
- (3) Update of the Water Quality Waterways Map and the Eugene Overlay Zone Map. If the Type II process described above results in the approval of a correction to the Water Quality Waterways Map, the planning director shall update that Map to reflect the correction. If the correction results in the complete removal or relocation of the *WQ* Management Area from a lot under (2)(a) or a determination that the *WQ* Overlay Zone should be removed or relocated from a lot under (2)(b), the planning director shall update the Eugene Overlay Zone Map to reflect the determination.

9.4790 WQ Water Quality Overlay Zone - Development Standards. The following standards apply only as specifically required by EC 9.4780(3):

- (1) **Vegetation Removal.** Vegetation removal in order to accommodate a use listed in EC 9.4780(3) shall comply with the following standards:
- (a) Vegetation removal in excess of that allowed by EC 9.4780(2)(b) shall be the minimum necessary to accommodate the use; and
 - (b) Any clearing of vegetation that is not within the footprint of uses approved in accordance with EC 9.4780(3), or uses approved through an adjustment approved under EC 9.8030(25), must be followed by replanting in accordance with the requirements of subsection (2) below.
- (2) **Planting and Replanting.** Planting or replanting of areas that are cleared or graded in order to accommodate a use listed in EC 9.4780(3) and that are located outside of the use's footprint shall comply with the following standards:
- (a) Plantings of plants and vegetation provided they are not Invasive, Non-Native Plant species as defined in EC 9.0500 Definitions, including some tree or large shrub species and planted in sufficient quantity and location to provide bank stability and to create substantial shading of the channel during times of peak solar input;
 - (b) Except as required in (d) below, the plant species and plant spacing to be utilized shall further the objective of increasing, to the greatest extent practicable, the capacity of the *WQ* Management Area to filter pollutants from runoff that flows across the *WQ* Management Area;
 - (c) Plant species selected for all plantings shall be appropriate to the site given its topography, hydrology, and soil type;

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- (d) Areas of bare soil existing as a result of vegetation removal shall be protected or covered consistent with EC 6.625 through EC 6.645, and replanted or mulched and seeded with straw mulch and native seed within 15 days of disturbance;
 - (e) Disturbed areas shall be re-planted consistent with this section as soon as practicable, but no later than March 15 of the calendar year following disturbance; and
 - (f) A 70% survival rate of plantings shall be guaranteed for a 3-year period in the form of a financial deposit, bond or other means sufficient to cover the cost to remove dead and dying species, and to purchase and replant with living species. City staff shall be granted access to the planted area by the property owner as a condition of approval for this use in order to monitor the establishment of the plantings during this 3-year period.
- (3) **Construction Practices.** Construction to accommodate a use listed in EC 9.4780(3) shall comply with the following standards:
- (a) Construction, maintenance, repair, reconstruction and restoration activities shall be planned and timed so as to minimize adverse impacts to water quality;
 - (b) 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 WQ Management Area:
 - 1. The 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;
 - 2. The use of heavy machinery within the channel shall be limited to the period between June 15 and September 30 except as allowed by permit from the Army Corps of Engineers or Oregon Department of State Lands; and
 - 3. On sites where soils are severely compacted through the use of heavy machinery, the soils shall be tilled or re-tilled to a depth of 6 inches.Construction may also be subject to construction site management practices such as the erosion prevention provisions of EC chapter 6, which apply to, among other things, clearing, grading, grubbing, excavation and filling.
- (4) **Utility Alignment.** Routing of new utility lines to accommodate a use listed in EC 9.4780(3) shall be designed so as to minimize adverse impacts to water quality within the WQ Management Area to the greatest extent practicable.
- (5) **Paved Surfaces.** Construction of new paved surfaces to accommodate a use listed in EC 9.4780(3) shall comply with the following standards:
- (a) Impervious surfaces shall be minimized by constructing the facility or infrastructure with as little impervious surface as allowed by city standards and the Americans With Disabilities Act;
 - (b) Impervious surfaces shall be located as far from the waterway as practicable; and
 - (c) For paved foot paths, lightly used access roads, or low volume parking areas where soils and flat topography will facilitate infiltration of runoff, pervious pavement systems, or other infiltration devices approved by the

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planning director or city engineer shall be used in lieu of standard impervious paving surfaces to increase infiltration of stormwater where practicable. For the purposes of this subsection, gravel surfaces are considered pervious unless they cover impervious surfaces or are compacted to a degree that causes their rational method runoff coefficient to exceed 0.8, determined in accordance with the city's adopted Public Improvement Design Standards Manual.

- (6) **Stream and Channel Crossings.** Bridges, culverts or other structures that cross waterways permitted under EC 9.4780(3) shall comply with the following standards:
- (a) Crossings shall be designed and constructed in a manner that results in the least physical impact to the waterway, utilizing a minimum width, appropriate invert elevations and slope, and aligned at right angles to the waterway whenever practicable;
 - (b) Culverts and bridges shall not increase or decrease water depth, velocity or flow rate upstream or downstream from the culvert, except as necessary to address conveyance needs identified in the city's adopted Stormwater Management Manual or as otherwise allowed or required by this code;
 - (c) When a culvert 72 inches in diameter or greater would be required, bridges shall be utilized, or box or arch culverts with bottoms filled to a depth of at least 12 inches with stone; and
 - (d) Stream banks and stream beds must be stabilized at crossings, using vegetative bio-engineering methods to the maximum extent practicable.
- (7) **Hydrology.** Existing hydrology shall be maintained unless modification of hydrology is an element of an approved use and/or intended to improve water quality to minimize flow concentration, downcutting, and erosion.
- (8) **Stormwater Discharges.**
- (a) Improvements shall not increase or decrease stormwater conveyance capacity either upstream or downstream of improvements except as necessary to address conveyance needs identified in the city's adopted Stormwater Management Manual, or as otherwise allowed or required by this code;
 - (b) Improvements shall meet the stormwater development standards of EC 9.6790 through EC 9.6797; and
 - (c) Flow spreaders and energy dissipaters shall be utilized to prevent erosive impacts to protected areas from stormwater discharges where practicable to avoid concentrating stormwater discharges.
- (9) **Repair and Reconstruction of Stream Banks and Channels.** Bio-engineering methods are to be used to repair stream bank failures and channel erosion problems and to reconstruct stream banks and channels except where those methods by themselves would be ineffective. Where bio-engineering alone is inadequate, stones and boulders may be used to augment bank repair efforts, dissipate energy or control flows.
- (10) **Removal of Materials Harmful to Water Quality.** All refuse, toxics, fill, unauthorized auto bodies, or similar materials located within the /WQ Management Area that are harmful to water quality or that limit the filtration of pollutants from runoff that flows across the /WQ Management Area shall be removed.
- (11) **Protect Management Area During Construction.** Prior to engaging in the use authorized under EC 9.4780(3), the applicant shall demarcate the /WQ

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Management Area setback area by a prominent and continuous protective feature indicating a “No Disturbance Area.” No site preparation, including but not limited to vegetation removal, may take place within 50 feet of the /WQ Management Area, until the city has verified the required demarcation.

Section 4. Section 9.7055 of the Eugene Code, 1971, is amended by adding an entry for “WQ Water Quality 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 typical review authorities for the decision and the appeal of the decision. To accommodate a request for concurrent review, the city may instead review multiple applications according to the highest applicable type.

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
/WQ Water Quality Overlay Zone - Map or Zone Error (See EC 9.4786)	II	D	A			

Section 5. Table 9.7205 of the Eugene Code, 1971, is amended by adding an entry for “WQ Water Quality Overlay Zone” in alphabetical order therein to provide:

9.7205 Type II Application Requirements and Criteria Reference. The following applications are typically 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. To accommodate a request for concurrent review, the city may instead review multiple applications according to the highest applicable type.

Table 9.7205 Type II Application Requirements and Criteria	
Type II Applications	Beginning Reference
/WQ Water Quality Overlay Zone – Map Correction/Removal of Overlay Zone	EC 9.4786(3)

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Section 6. 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 typically 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. To accommodate a request for concurrent review, the city may instead review multiple applications according to the highest applicable type.

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 the amendment. A zone change to apply the /ND overlay zone shall be processed according to EC 9.4260. Removal of the /WQ overlay zone is controlled by EC 9.4786. Removal of the /WR overlay zone is controlled by EC 9.4960.

Section 7. Subsection (3) of Section 9.7820 of the Eugene Code, 1971, is amended to

provide:

9.7820 Annexation – Procedures.

(3) Land annexed to the city according to the procedures in EC 9.7800 – 9.7835 shall be automatically rezoned as of the effective date of the annexation from Lane County land zones and zoning overlays to equivalent Eugene zones and overlay zones as shown in Table 9.7820 Equivalent Zones and Overlay Zones.

Table 9.7820 Equivalent Zones and Overlay Zones			
Urbanizable Land Zones		Eugene Zones	
AG/UL	Agricultural	AG	Agricultural
PL/UL	Public Land	PL	Public Land
R-1/UL	Low-Density Residential	R-1	Low Density Residential
R-2/UL	Medium-Density Residential	R-2	Medium Density Residential
GO/UL	General Office	GO	General Office
C-1/UL	Neighborhood Commercial	C-1	Neighborhood Commercial
C-2/UL	Community Commercial	C-2	Community Commercial

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Table 9.7820 Equivalent Zones and Overlay Zones			
Urbanizable Land Zones		Eugene Zones	
I-2/UL	Light-Medium Industrial	I-2	Light-Medium Industrial
I-3/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

For purposes of this section, land that is also within an area identified as a Nodal Development Area on the Metro Plan Diagram shall be automatically included in the Eugene /ND Nodal Development Overlay Zone. A parcel that was identified on Exhibit C to Ordinance No. [insert number assigned to this ordinance] as one to which the /WQ Water Quality Overlay Zone should be applied upon annexation, or any portion of such a parcel that contains a /WQ Management Area, will also automatically be changed to include the /WQ Overlay Zone. The official city zoning map shall be amended to reflect the change of zone.

Section 8. Subsection (2) of Section 9.8005 of the Eugene Code, 1971, is amended to provide:

9.8005 Applicability and Effect of Application Requirements, Criteria, and Concurrent Review.

- (2) If an initial proposal also requires an application be submitted for one or more of the following:
- (a) Adjustment review;
 - (b) Site review;
 - (c) Conditional use permit;
 - (d) Planned unit development;
 - (e) Zone change;
 - (e) Willamette Greenway permit; or
 - (f) Standards review,
- the applicant may elect to have the applications reviewed concurrently according to the highest application type. All other provisions of this code would continue to apply to each application, including, but not limited to, the approval criteria.

Section 9. The lead sentence of Subsection (1) of Section 9.8025 of the Eugene Code, 1971, is amended, and a new Subsection (3) added thereto, to provide:

9.8025 Adjustment Review – General Requirements.

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- (1) Except as provided in subsections (2) and (3), the adjustment review application shall be prepared by one or more of the following professionals unless waived by the planning director:

- (3) **Unless waived by the planning director:**
 - (a) An application for adjustment review under EC 9.8030(25)(a) and (b) 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; or
 4. Oregon licensed land surveyor.
 - (b) An application for adjustment review under EC 9.8030(25)(c) shall be prepared by one or more of the following professionals:
 1. Oregon licensed architect;
 2. Oregon licensed civil or geotechnical engineer;
 3. Oregon licensed landscape architect;
 4. Oregon licensed geologist;
 5. A professionally trained botanist, biologist, ecologist or geomorphologist; or
 6. A creek restoration specialist with a bachelor's degree in the subject field and at least 5 years of applied experience in botany, biology, ecology, geomorphology or a closely related field.

Section 10. Section 9.8030 of the Eugene Code, 1971, is amended, by adding a new

Subsection (25) 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.

- (25) **WQ Water Quality Overlay Zone Adjustment.** In accordance with EC 9.4784, a provision of the WQ Water Quality Overlay Zone may be adjusted only upon a finding that the proposed adjustment meets criterion (a), (b), or (c) below:
 - (a) **Adjustment to Applicable Setback to Limit WQ Management Area to 33% of Development Site.** For any parcel greater than 6,000 square feet (not eligible for an automatic setback reduction under EC 9.4778(2)), the city shall make an adjustment to the applicable setback set out at EC 9.4778(1)(b) and (c) if no previous adjustment under this section has been approved for the specific portion of the WQ Management Area and all of the following are met:
 1. More than 33 percent of the development site, as defined in EC 9.0500, is occupied by the WQ Management Area alone or in combination with a WR Conservation Area;
 2. The proposed reduction in the applicable setback will result in the WQ Management Area, alone or in combination with a WR Conservation Area constituting no less than 33 percent of the development site;

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3. The new boundary of the *WQ* Management Area shall be located:
 - a. Parallel to the original boundary (closer to the waterway); or
 - b. Through the application of setback averaging. Setback averaging shall be accomplished by expanding the *WQ* Management Area in an undeveloped area of the development site, and reducing it in another area of the development site;
 4. For either the parallel adjustment in 3.a above or the setback averaging adjustment in 3.b. above, the applicable setback is not reduced by more than 15 feet for a 25 foot setback or more than 20 feet for a 40-foot setback unless further reduction is necessary to achieve the reduction in the *WQ* Management Area to 33%, and in no case shall the setback boundary be located within the waterway channel;
 5. For parcels 13,500 square feet or greater, the water quality function rating when the proposed adjustment is implemented will be equal to or greater than the pre-adjustment water quality function rating for the *WQ* Management Area based on the city's Water Quality Function Rating System; and
 6. Removal of all refuse, toxics, fill, unauthorized auto bodies, or similar materials located within the *WQ* Management Area that are harmful to water quality or that limit the filtration of pollutants from runoff that flows across the *WQ* Management Area shall be a condition of approval.
- (b) Adjustment to Applicable Setback Due to Development Constraints. For a parcel containing a *WQ* Management Area, an adjustment to the applicable setback provisions of EC 9.4778(1)(b) and (c) shall be made if no previous adjustment under this section has been approved for the specific portion of the *WQ* Management Area, consistent with the following:
1. The adjustment is necessary due to development constraints on the lot caused by the unique physical characteristics of the lot, including but not limited to narrow lot dimensions, irregular shape, and the relationship of these characteristics to the location and extent of the *WQ* Management Area;
 2. The adjustment is the minimum necessary to allow the proposed use;
 3. Except as provided under (b)4. below, the new setback boundary shall be located through the application of setback averaging with no overall reduction in the *WQ* Management Area. Setback averaging shall be accomplished by expanding the *WQ* Management Area in an undeveloped area of the development site and reducing it in another area of the development site, provided:
 - a. At any location, the applicable setback is not reduced by more than 15 feet for a 25-foot setback or by more than 20 feet for a 40-foot setback; and
 - b. The water quality function rating when the proposed adjustment is implemented will be equal to or greater than the pre-adjustment water quality function rating for the *WQ* Management Area based on the city's Water Quality Function Rating System;

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4. If, after applying the provisions of (b)3. above, the parcel remains physically constrained as described in (b)1. above, then the overall /WQ Management Area may be reduced. The new setback boundary shall be located:
 - a. Parallel to the original boundary (closer to the waterway); or
 - b. Through the application of setback averaging. Setback averaging shall be accomplished by expanding the /WQ Management Area in an undeveloped area of the development site, and reducing it in another area of the development site.
 - c. For either the parallel adjustment in 4.a. or the setback averaging adjustment in 4.b., the applicable setback is not reduced by more than 15 feet for a 25-foot setback or by more than 20 feet for a 40-foot setback;
 - d. For either the parallel adjustment in 4.a. or the setback averaging adjustment in 4.b., the water quality function rating when the proposed adjustment is implemented will be at least 150% of the pre-adjustment water quality function rating for the /WQ Management Area based on the city's Water Quality Function Rating System.
 5. Removal of all refuse, toxics, fill, unauthorized auto bodies, or similar materials located within the /WQ Management Area that are harmful to water quality or that limit the filtration of pollutants from runoff that flows across the /WQ Management Area shall be a condition of approval.
- (c) Adjustment to Allowed Uses and Development Standards. For property containing a /WQ Management Area, an adjustment to the provisions of EC 9.4780 or EC 9.4790 shall be made consistent with the following:
1. If the proposed adjustment is to allow a use that is otherwise prohibited under EC 9.4780(4), one of the following shall apply:
 - a. General Use Adjustment.
 - (1) The proposed use is of similar nature to a specific use listed in EC 9.4780(2) or (3);
 - (2) The applicant has submitted evidence through a qualified professional that the proposed use will have a water quality impact similar to the specific use identified pursuant to a.(1) above; and
 - (3) The applicant has shown compliance with any standards applicable to the specific use identified pursuant to a.(1), above.
 - b. Public Transportation System Improvements.
 - (1) The use or activity is:
 - (a) Necessary to construct a transportation facility included on a financially constrained or illustrative table in the federally approved Regional Transportation Plan; or
 - (b) Necessary to protect the public safety by ensuring the structural integrity of existing flood control structures; and
 - (2) The applicant has demonstrated that, based on the city's Water Quality Function Rating System (see EC 9.4782),

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the project will result in a water quality function rating equal to or greater than previously existed.

- (3) If the applicant demonstrates that it is not feasible to meet the standards described in (c)1.a.(3) above, the applicant shall, instead, make improvements to another /WQ waterway over which the applicant also has management control. The applicant shall demonstrate that, based on the city's Water Quality Function Rating System (see EC 9.4782), such improvements will result in an increase in the water quality function rating of that waterway by an amount that is equal to or greater than the rating of the subject waterway prior to the approved adjustment.
2. If the proposed adjustment is to a development standard of EC 9.4790, the applicant has provided evidence that the proposed alternative approach for effectively addressing a specific water quality concern is equal to or greater than the standard that would be otherwise required.

Section 11. 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) Within the /WR Water Resources Conservation Overlay Zone or the /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 1. 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; or
 2. The /WQ Management Area;

Section 12. 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

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dimensions and density requirements. Within the *WR* Water Resources Conservation Overlay Zone or the *WQ* Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:

1. 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; or
2. The *WQ* Management Area.

Section 13. 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 or *WQ* Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 1. 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; or
 2. The *WQ* Management Area.

Section 14. 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 or *WQ* Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 1. The combined area of the *WR* conservation setback and any

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- portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
2. The *WQ* Management Area.

Section 15. 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 or *WQ* Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 1. 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; or
 2. The *WQ* Management Area.

Section 16. Subsection (5) of Section 9.8415 of the Eugene Code, 1971, is amended 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 or *WQ* Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 - (a) 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; or
 - (b) The *WQ* Management Area.

Section 17. Section 9.8470 of the Eugene Code, 1971 is amended, to provide:

9.8470 Standards Review Approval Criteria. The decision-maker shall determine

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whether the application is in compliance with the standards set out in the code section that calls for standards review.

Section 18. Section 9.8472 of the Eugene Code, 1971 is amended, to provide:

- 9.8472** **Standards Review – Application Requirements.** In addition to the provisions in EC 9.7010 Application Filing, applications for uses subject to standards review under EC 9.4780(3) or 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) For applications submitted under EC 9.4780(3), a professionally trained botanist, biologist, ecologist, or geomorphologist or creek restoration specialist with a bachelor's degree in the subject field and at least 5 years of applied experience in botany, biology, ecology, geomorphology, or a closely related field, or an Oregon licensed geologist.
 - (e) For applications submitted under EC 9.4930(3), 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 submitted under EC 9.4930(3) 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 narrative 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 have been met therein.

Section 19. Section 9.8474 of the Eugene Code, 1971 is amended, to provide:

- 9.8474** **Standards Review – Modification.** Modification of an approved standards review granted pursuant to EC 9.4780(3) or 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

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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 9.4770-9.4790 or 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 20. 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 or *WQ* Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 1. 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; or
 2. The *WQ* Management Area;

Section 21. 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 or *WQ* Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 1. 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; or
 2. The *WQ* Management Area.

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Section 22. Section 9.8855 of the Eugene Code, 1971, is amended by adding a new Subsection (6) 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:

- (6) The proposed zone change is to remove the *WQ Water Quality Overlay Zone*, in which case the zone change shall be processed as described in EC 9.4786.

Section 23. Subsection (4) of Section 9.8865 of the Eugene Code, 1971 is amended by adding a new subsection (p) thereto, and relettering the current subsections (p), (q) and (r), to (q), (r) and (s) 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 9.4776 *WQ Water Quality Overlay Zone Siting Requirements* (only for the purposes of adding the overlay zone. See EC 9.4786.).
 - (q) EC 9.4915 *WR Water Resources Conservation Overlay Zone Siting Requirements* (only for the purposes of adding the overlay zone. See EC 9.4960.).
 - (r) EC 9.4815 *WB Wetland Buffer Overlay Zone Siting Requirements*.
 - (s) 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 24. Ordinance No. 20194 and Sections 6.650, 6.655, 6.660, 6.665, and 6.670 of the Eugene Code, 1971, are repealed.

Section 25. The Map on the attached compact disc (Exhibit A-1), depicting the location of lot lines, applicable setback measurement points (centerline or top of high bank) and *WQ Water Quality Overlay Zone Management Areas*, is hereby adopted as the City's official Water Quality Waterways Map. The Map, attached hereto as Exhibit

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A-2, is a printed copy of the Water Quality Waterways Map attached only for illustrative purposes. As provided by EC 9.4786(3), future amendments to the Map may be effected by an administrative order of the City Manager adopted pursuant to Section 2.019 of the Eugene Code, 1971.

Section 26. The /WQ Water Quality Overlay Zone is hereby applied to the properties listed on Exhibit B hereto and the Eugene Overlay Zone Map is amended to add the /WQ Overlay Zone to those properties.

Section 27. The City Council adopts Exhibit C hereto as the list of properties to which the /WQ Overlay Zone should be applied upon annexation.

Section 28. 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 29. Although not part of this Ordinance, the City Council adopts the Legislative Findings set forth in the attached Exhibit D in support of this action.

Section 30. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended, or repealed herein.

Section 31. Notwithstanding the effective date of ordinances as provided in the Eugene Charter of 2002, this Ordinance shall become effective at midnight on June 10, 2009.

Passed by the City Council this

Approved by the Mayor this

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____ day of _____, 2009

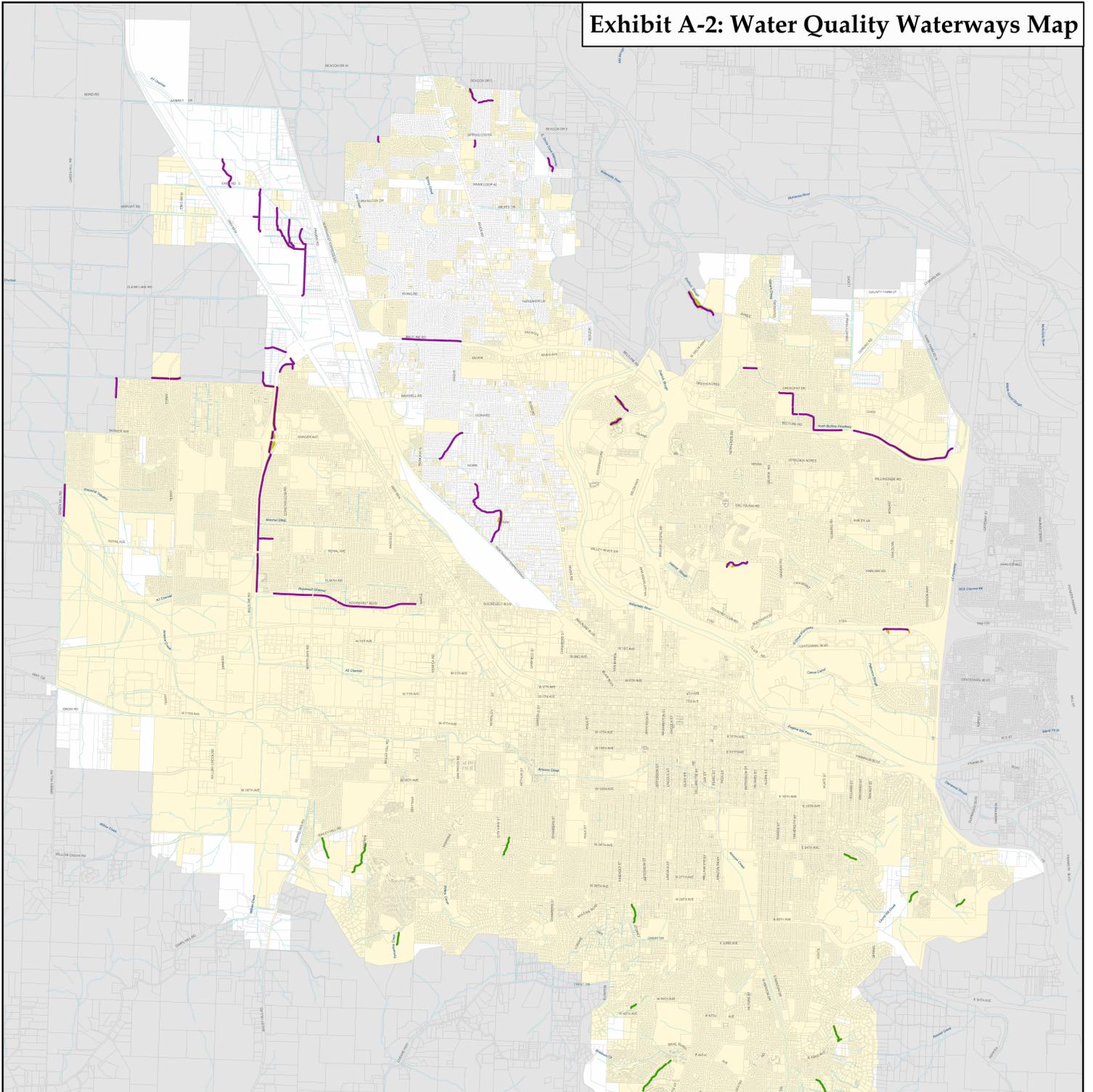
____ day of _____, 2009

City Recorder

Mayor

00221856.DOC;1

Exhibit A-2: Water Quality Waterways Map



Legend

Water Quality Waterways (shown at exaggerated size for visibility on this printed map)

Waterways identified pursuant to Eugene Code Section 9.4770 - 9.4790, and consisting of the following:

-  Tributary to a waterway listed under section 303(d) of the federal Clean Water Act
-  Headwater stream

Applicable Setbacks

-  Top of High Bank Applicable Setback = 25 feet from top of high bank for a waterway that is tributary to a waterway identified pursuant to section 303(d) of the federal Clean Water Act
-  Centerline of Stream Applicable Setback = 40 feet from the waterway's centerline for Headwater Streams

Water Quality Management Areas

-  The /WQ Management Area is comprised of the waterway channel and the applicable setback.

 Other Open Waterways

 Taxlots (2/20/09)

 Eugene City Limits

 Area outside the Eugene Urban Growth Boundary

0 0.5 1 Mile



Map Data Sources:
Open Waterways: City of Eugene Stormwater System
Taxlots: Lane County Parcel File, as of February 20, 2009



Attachment A - Exhibit B (page 1 of 2)
List of Affected Taxlots Inside City Limits
City of Eugene Water Quality Protected Waterways (March 2009)

Number	Taxlot Number								
1	1604354304400	48	1703174105400	95	1704031118700	142	1704164108200	189	1704214404600
2	1604354304500	49	1703174105500	96	1704031118800	143	1704164108300	190	1704214404700
3	1604354314534	50	1703174105600	97	1704131400700	144	1704164108400	191	1704214404800
4	1604354314535	51	1703174105700	98	1704131400900	145	1704164108500	192	1704214404900
5	1604354314536	52	1703174105800	99	1704134100100	146	1704164108900	193	1704214405000
6	1604354314537	53	1703174105900	100	1704134100301	147	1704164109000	194	1704214409000
7	1604354314538	54	1703174106000	101	1704134100311	148	1704164109100	195	1704231300120
8	1703160000302	55	1703174200135	102	1704134100313	149	1704164109200	196	1704231306502
9	1703160001201	56	1703174200136	103	1704134100314	150	1704164114000	197	1704232000111
10	1703163100400	57	1703174200142	104	1704134100327	151	1704164201800	198	1704232000112
11	1703163200400	58	1703174200143	105	1704134100330	152	1704164216200	199	1704232000113
12	1703163200500	59	1703174205001	106	1704134100334	153	1704164216300	200	1704234100204
13	1703163200600	60	1703174205100	107	1704134100335	154	1704164400300	201	1704234103500
14	1703163200601	61	1703174205300	108	1704134100336	155	1704164403801	202	1704262301601
15	1703163403703	62	1703174205400	109	1704134100500	156	1704164403802	203	1704262301621
16	1703163403704	63	1703174207400	110	1704134100600	157	1704164404100	204	1704262301622
17	1703163403800	64	1703174207500	111	1704134100800	158	1704171400100	205	1704262301623
18	1703164300100	65	1703174207600	112	1704134400101	159	1704171400200	206	1704262301624
19	1703164400700	66	1703174207700	113	1704134400103	160	1704171400300	207	1704262301625
20	1703172300301	67	1703174207800	114	1704134400105	161	1704173101000	208	1704262301626
21	1703172300302	68	1703174207900	115	1704152301000	162	1704173101100	209	1704262301801
22	1703172300303	69	1703174208000	116	1704161400201	163	1704173101200	210	1704262301805
23	1703172300304	70	1703174208100	117	1704161400202	164	1704173101201	211	1704262301817
24	1703172300305	71	1703174208200	118	1704161400300	165	1704173101300	212	1704262301818
25	1703172300306	72	1703174208201	119	1704161400400	166	1704173101401	213	1704262301819
26	1703172300307	73	1703174208300	120	1704161400500	167	1704173101500	214	1704271300102
27	1703172300308	74	1703174208400	121	1704161400600	168	1704173101600	215	1704271300126
28	1703172300309	75	1703174208500	122	1704161400700	169	1704173101601	216	1704271300300
29	1703172300310	76	1703174208600	123	1704161403700	170	1704173101702	217	1704271300400
30	1703173100900	77	1703174208700	124	1704161403800	171	1704173101801	218	1704271300500
31	1703173101000	78	1703174208800	125	1704161403900	172	1704174100100	219	1704271302300
32	1703173101100	79	1703174208900	126	1704161404000	173	1704174102700	220	1704271302401
33	1703173101101	80	1703174209000	127	1704164104400	174	1704174102800	221	1704271400111
34	1703173101102	81	1703174209100	128	1704164104500	175	1704174102900	222	1704271400112
35	1703173101300	82	1703174209200	129	1704164104600	176	1704174103000	223	1704271400113
36	1703173101400	83	1703174211200	130	1704164104700	177	1704174103100	224	1704271400114
37	1703173101801	84	1703174211300	131	1704164105400	178	1704200002000	225	1704271400115
38	1703173101802	85	1703174211400	132	1704164105500	179	1704202316100	226	1704271400116
39	1703173102000	86	1703183200422	133	1704164105600	180	1704211101600	227	1704271400132
40	1703173102101	87	1703194401100	134	1704164105700	181	1704211101700	228	1704271401600
41	1703173102201	88	1703203305800	135	1704164106400	182	1704211104200	229	1704271401700
42	1703173102300	89	1703203306300	136	1704164106500	183	1704211104300	230	1704271402100
43	1703173102400	90	1703283001600	137	1704164106600	184	1704211106700		
44	1703173413800	91	1703284000400	138	1704164106700	185	1704211107000		
45	1703174105100	92	1703284000600	139	1704164107900	186	1704214404300		
46	1703174105200	93	1703301001302	140	1704164108000	187	1704214404400		
47	1703174105300	94	1704021300500	141	1704164108100	188	1704214404500		

Attachment A - Exhibit B (page 2 of 2)
List of Affected Taxlots Inside City Limits
City of Eugene Water Quality Protected Waterways (March 2009)

Number	Taxlot Number								
231	1704271402200	260	1704281108500	289	1803072201108	318	1803174021401	347	1804012312806
232	1704271405700	261	1704281108600	290	1803072202101	319	1803174021402	348	1804012312807
233	1704271405701	262	1704281114900	291	1803072202102	320	1803174023500	349	1804012313000
234	1704271406500	263	1704281401000	292	1803072202103	321	1803181302500	350	1804012313306
235	1704271406600	264	1704281401100	293	1803073300807	322	1803181302800	351	1804012313307
236	1704272301002	265	1704281401200	294	1803073300808	323	1803181303400	352	1804012313309
237	1704272301005	266	1704281401901	295	1803073300809	324	1803181303600	353	1804012313310
238	1704272400300	267	1803033303100	296	1803073300810	325	1803182412100	354	1804013202903
239	1704272400301	268	1803033303200	297	1803073300811	326	1803182412200	355	1804013203000
240	1704272401400	269	1803042307300	298	1803162000306	327	1803182412300	356	1804013203100
241	1704272401413	270	1803042308100	299	1803162000500	328	1803182412400	357	1804013203200
242	1704272401414	271	1803042308200	300	1803162000501	329	1803183000200	358	1804013203300
243	1704272402202	272	1803042308300	301	1803162000502	330	1803183103000	359	1804030000700
244	1704272402203	273	1803042308400	302	1803162000503	331	1803183103100	360	1804030000800
245	1704272402204	274	1803042308500	303	1803162000601	332	1803183103200	361	1804030005102
246	1704272402205	275	1803042308600	304	1803162000700	333	1803183103900	362	1804030005700
247	1704272402206	276	1803042308800	305	1803171105700	334	1803183104000	363	1804030006400
248	1704272402222	277	1803042310100	306	1803171106000	335	1803183104100	364	1804030006701
249	1704272402302	278	1803042310200	307	1803171106600	336	1803183150000	365	1804030006703
250	1704272403700	279	1803044300801	308	1803171409800	337	1803183190000	366	1804030006706
251	1704281102900	280	1803044300901	309	1803171411000	338	1803184205400	367	1804110000302
252	1704281103000	281	1803044300902	310	1803174000900	339	1803200000101	368	1804112301200
253	1704281103100	282	1803044301300	311	1803174001002	340	1803202100102		
254	1704281107900	283	1803044301400	312	1803174001100	341	1803202201001		
255	1704281108000	284	1803044301500	313	1803174001400	342	1803202201002		
256	1704281108100	285	1803063310000	314	1803174001401	343	1803202300101		
257	1704281108200	286	1803063310301	315	1803174001500	344	1804012312802		
258	1704281108300	287	1803072201100	316	1803174001600	345	1804012312803		
259	1704281108400	288	1803072201107	317	1803174021300	346	1804012312804		

Attachment A - Exhibit C
List of Affected Taxlots Outside City Limits and Within UGB
City of Eugene Water Quality Protected Waterways (March 2009)

Number	Taxlot Number						
1	1604354305600	47	1704091102500	93	1704142202266	139	1704234100202
2	1604354305700	48	1704091102900	94	1704142202267	140	1704234100300
3	1604354307600	49	1704091103000	95	1704142202268	141	1704234100400
4	1604354307700	50	1704091103001	96	1704142202300	142	1704234100500
5	1604354308600	51	1704091103100	97	1704143402200	143	1704234100501
6	1604354308700	52	1704091103200	98	1704143404400	144	1704234100502
7	1604354308900	53	1704091103201	99	1704143404600	145	1704234101200
8	1604354309300	54	1704091103202	100	1704143410500	146	1704234101300
9	1604354309400	55	1704092000100	101	1704144303401	147	1704234101400
10	1604354309500	56	1704100001700	102	1704144303500	148	1704234101500
11	1604354313100	57	1704102202400	103	1704151002500	149	1704234101600
12	1604354313200	58	1704102202501	104	1704161100100	150	1704234101700
13	1604354313300	59	1704102202600	105	1704161101300	151	1704234101800
14	1604354313400	60	1704102202800	106	1704161101400	152	1704234103000
15	1604354313500	61	1704102202999	107	1704161101500	153	1704234103100
16	1604354313600	62	1704102203000	108	1704161101900	154	1704234103200
17	1703070001000	63	1704102204198	109	1704161102000	155	1704234103300
18	1703070001002	64	1704102204200	110	1704161103300	156	1704234103400
19	1704010008500	65	1704102204300	111	1704161103400	157	1704234103600
20	1704012300800	66	1704102204401	112	1704161103700	158	1704234103700
21	1704013100327	67	1704102204500	113	1704161400100	159	1704234105200
22	1704013100328	68	1704142100101	114	1704161405900	160	1704234105300
23	1704013100329	69	1704142100129	115	1704161406000	161	1704234105400
24	1704021300415	70	1704142100131	116	1704161406100	162	1704234105700
25	1704021300416	71	1704142100132	117	1704161406200	163	1704234105701
26	1704021300417	72	1704142100133	118	1704161406300	164	1704234200300
27	1704021300418	73	1704142100134	119	1704161406400	165	1704234200400
28	1704040001000	74	1704142100135	120	1704161407800	166	1704234200500
29	1704040001002	75	1704142100136	121	1704231300118	167	1704234202401
30	1704040002101	76	1704142100137	122	1704231301900	168	1704234202500
31	1704040002200	77	1704142100138	123	1704231302000	169	1704234202600
32	1704044400400	78	1704142100139	124	1704231302900	170	1704234202700
33	1704044400500	79	1704142100142	125	1704231302905	171	1704234202800
34	1704090000103	80	1704142100143	126	1704231303000	172	1704234402800
35	1704091100200	81	1704142100144	127	1704231303100	173	1704234402900
36	1704091100500	82	1704142100145	128	1704231306600	174	1704234403000
37	1704091100600	83	1704142100146	129	1704231306701	175	1704234403100
38	1704091101000	84	1704142100147	130	1704231306702	176	1704234403200
39	1704091101400	85	1704142202258	131	1704231306800	177	1704234403300
40	1704091101500	86	1704142202259	132	1704231306801	178	1704234403400
41	1704091101600	87	1704142202260	133	1704232000114	179	1804030005103
42	1704091101800	88	1704142202261	134	1704232000115	180	1804030006704
43	1704091101801	89	1704142202262	135	1704232000199	181	1804030006900
44	1704091101802	90	1704142202263	136	1704232002401		
45	1704091101900	91	1704142202264	137	1704234100200		
46	1704091102000	92	1704142202265	138	1704234100201		

Attachment A - Exhibit D
Legislative Findings
to Ordinance No. _____
(Legislatively Updated)

Code Amendments. Eugene Code Section 9.8065 requires that the following criteria (in bold and italic) be applied to a code amendment.

(1) Is consistent with applicable statewide planning goals as adopted by the Land Conservation and Development Commission.

Goal 1 Citizen Involvement: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City of Eugene land use code implements Statewide Planning Goal 1 by requiring that notice of the proposed amendments be given and public hearings be held prior to adoption.

The process leading up to the development of the Water Quality Waterways Ordinance has provided numerous opportunities for citizen involvement. In June 2006, the city hosted an Open House to provide information and receive input on a preliminary proposal for water quality waterway protection. Notice of the open house was sent to all potentially affected property owners, and a list of over 300 interested persons. A news release about the open house was issued and a display ad was placed in the local newspaper. A web site was established to convey information about the proposal, the citizen involvement and adoption process, and staff contact information. Three newspaper articles were published in the local paper between June 2006 and August 2006 regarding the proposal. Subsequent to the open house, between August 2006 and March 2007, four separate postcards were sent to all potentially affected property owners and interested persons to convey the most up-to-date process and timeline, a project web address for additional information, and staff contact information. Site visits were conducted upon request to confirm the accuracy of the City's digital information regarding the existence and location of waterways, and the applicability of the proposed protections to individual sites. Presentations about the proposal were made to interested groups upon request. The citizen input received on the preliminary proposal resulted in significant changes and in November 2007, a notice describing the revised proposal was sent to all potentially affected property owners and interested persons with an updated public hearing and adoption schedule.

The City of Eugene's land use code implements Statewide Planning Goal 1 by requiring that notice of the proposed land use code amendments be given and public hearings be held prior to adoption. Consideration of this ordinance began with a Eugene Planning Commission work session on January 14, 2008. On January 15, 2008, a public hearing was held before the Eugene Planning Commission on the proposed amendments. Department of Land Conservation and Development notice, notice to affected property owners, Planning Commissioners, neighborhood

group leaders and interested persons, as well as a legal notice in the local newspaper were provided for that hearing.

A worksession with the Eugene City Council was held on May 12, 2008, and a City Council public hearing was conducted on May 19, 2008, for which notice to affected property owners, Planning Commissioners, neighborhood group leaders and interested persons, as well as a legal notice in the local newspaper were provided. Three people testified at the public hearing, and 23 pieces of public testimony were received through the public hearing proceedings. A follow up worksession was held on June 18, 2008 and again on January 28, 2009 for purposes of considering purchasing conservation easements as an alternative approach to regulatory protections. The Eugene City Council is scheduled to take action on the proposed ordinance on March 9, 2009.

The project web site is regularly updated to inform interested persons of the status of the proposal, and provides links to City Council materials, a detailed map showing the proposed protected areas, other related information.

The process for adopting these amendments complies with Goal 1 since it complies with, and surpasses the requirements of the State's citizen involvement provisions.

Goal 2 - Land Use Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The Eugene-Springfield Metropolitan Area General Plan (Metro Plan) is a policy tool that provides a basis for decision-making in this area. The Metro Plan was acknowledged by the State in 1982 to be in compliance with statewide planning goals. The Eugene Comprehensive Stormwater Management Plan (CSWMP), a refinement to the Metro Plan specifically related to reducing stormwater pollution, adopted by the City of Eugene only, provides additional policy basis for decision-making in this area. CSWMP was acknowledged by the State to be in compliance with statewide planning goals.

These findings and record show that there is an adequate factual base for decisions to be made concerning the proposed amendments. Goal 2 requires that plans be coordinated with the plans of affected governmental units and that opportunities be provided for review and comment by affected governmental units. The Goal 2 coordination requirement is met when the City engages in an exchange, or invites such an exchange, between the city and any affected governmental unit and when the City uses the information obtained in the exchange to balance the needs of the citizens. To comply with the Goal 2 coordination requirement, the City provided information and sought input on these proposed land use code amendments from all affected governmental units. Specifically, Lane County, Oregon Department of Transportation, Eugene Water & Electric Board and other affected governmental agencies were notified as affected property owners of the June 2006 Open House and subsequent schedule updates and changes to the proposal. City staff communicated with Lane County staff, Oregon Department of Transportation staff, and Eugene Water & Electric Board staff during the development of this

proposal to obtain their input which was subsequently factored into the updated proposal. There are no Goal 2 exceptions required for this ordinance.

Goal 3 - Agricultural Land: To preserve and maintain agricultural lands.

Goal 3 is not applicable to this ordinance as the subject sites and actions do not affect any agricultural plan designation or use. Goal 3 excludes lands inside an acknowledged urban growth boundary from the definition of agricultural lands. Since the ordinance only applies to land entirely within the acknowledged urban growth boundary, Goal 3 is not relevant and the ordinance does not affect the area's compliance with Statewide Planning Goal 3.

Goal 4 - Forest Land: To conserve forest lands.

Goal 4 is not applicable to this ordinance as the subject sites and actions do not affect any forest plan designation or use. Goal 4 does not apply within urban growth boundaries and, therefore, does not apply to the adoption of this ordinance. Goal 4 is not relevant and the ordinance does not affect the area's compliance with Statewide Planning Goal 4.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources: To conserve open space and protect natural and scenic resources.

The following administrative rule (OAR 660-023-0250) is applicable to this post-acknowledgement plan amendment (PAPA) request:

- (3) *Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:*
- (a) *The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;*
 - (b) *The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
 - (c) *The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

The areas regulated by this ordinance do not include Goal 5 resource sites. The proposed amendments do not create or amend a list of Goal 5 resources, do not amend a plan or code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5, do not allow new uses that could be conflicting uses with a particular Goal 5 resource site, and do not amend the acknowledged Urban Growth Boundary.

Therefore, Statewide Planning Goal 5 does not apply to these code amendments.

Goal 6 - Air, Water and Land Resources Quality: To maintain and improve the quality of the air, water, and land resources of the state.

Goal 6 addresses waste and process discharges from development, and is aimed at protecting air, water and land from impacts from those discharges. The proposed regulations are a key aspect of the City's response to federal Clean Water Act regulations, specifically the Upper Willamette Basin Total Maximum Daily Load (TMDL). Several waterways in Eugene do not state water quality standards for certain pollutants. For these waterways, the state of Oregon Department of Environmental Quality, the state agency charge with implementing TMDL regulations, has developed the Upper Willamette TMDL to bring these waterways back into compliance with state standards. The Upper Willamette TMDL allocates pollutant loads to designated management agencies, including the City of Eugene that have the authority to implement water quality improvements within their jurisdictional boundaries. One management strategy identified in the Upper Willamette TMDL for addressing multiple pollutants is the application of streamside buffers.

Therefore, the ordinance is consistent with Statewide Planning Goal 6.

Goal 7 - Areas Subject to Natural Disasters and Hazards: To protect life and property from natural disasters and hazards.

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as land slides. This ordinance does not directly address potential natural disasters and hazards. These hazards are addressed by separate studies and protection measures. However, the /WQ overlay zone prohibits construction within specified setbacks of the identified waterways. As such, the overlay zone provides benefits with relation to flood impacts to real property and thus could provide further protections consistent with Statewide Planning Goal 7.

Goal 8 - Recreational Needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Goal 8 ensures provision of recreation facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The proposed ordinance will not impact provision of recreational facilities, nor will it affect access to existing or future recreational facilities. Therefore, the ordinance is consistent with Goal 8.

Goal 9 - Economic Development: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

The ordinance will not impact the supply of industrial or commercial lands. Therefore, the amendments are consistent with Goal 9. The /WQ overlay zone does not render a property unusable for commercial or industrial uses. In fact, specific provisions in the /WQ overlay zone ensure that the overlay zone does not have such an effect on a property. Some of those provisions are:

1. The use restrictions of the /WQ overlay zone only apply to that portion of a lot, or right-of-way area, that is within the channel of an identified /WQ waterway and the specified setback distance from the waterway based on the associated setback measurement point. The use-restricted area is referred to as the “/WQ setback management area.” Within the portions of the lot that are outside of the /WQ management area, land uses are not restricted by the /WQ overlay zone. EC 9.4780(1). Properties that have a base zoning and designation allowing commercial or industrial uses can still be developed with such uses on those portions of the lot that are not within the /WQ management area.
2. If the regulated area occupies more than 33% of a development site area, upon application of the property owner, and consistent with the other criteria of EC 9.8030(25)(a), the City will reduce the size of the /WQ conservation area to ensure that the area constitutes no more than 33% of the development site area.
3. Upon application of the owner of a lot with the /WQ overlay that shows consistency with the criteria of EC 9.8030(25)(b), the city will reduce the size of the setback distance.
4. Upon application of the owner of a lot with the /WQ overlay that shows consistency with the criteria of EC 9.8030(25)(c), the city will allow uses not otherwise identified in the ordinance, or approve a different means of protecting water quality to allow a proposed development that would not be permissible under the strict application of the ordinance.

Considering these provisions of the /WQ overlay zone, the application of the overlay zone to a property zoned and designated for commercial or industrial use does not result in an unlawful diminution in the area’s supply of commercial or industrial land.

Even supposing the provisions above were not a part of the overlay’s regulations, the overlay is being applied to such a small number of acres included in the area’s inventories of commercial and industrial lands that this ordinance overlay could not diminish the area’s supply of those lands below the projected need.

An analysis of potential impacts to the supply of buildable commercial lands within the Eugene city limits and UGB was conducted using the regional Geographic Information System (GIS) and calculations of supply and demand from the Eugene Commercial Lands Study, 1992. The State-acknowledged Eugene Commercial Lands Study included a surplus of Commercial acreage of 170 acres. This acreage represents those lands that were designated as commercial lands, beyond the acreage needed to accommodate the projected 20-year demand. Since the adoption of that Study, the City has taken various actions through December 2008 that have had a net decrease in the amount of surplus commercial acreage, resulting in a current surplus of 94.29 acres. Even if the provisions described in 1.-4., above, were not included in the ordinance, the /WQ regulations contained in this ordinance could affect, at most, 1.30 acres of commercially designated land all located within the current city limits, leaving a surplus of 92.99 acres.

An analysis of potential impacts to the supply of buildable industrial lands within the Eugene UGB was conducted using the regional Geographic Information System (GIS), data provided by

City of Springfield staff and calculations of supply and demand from the Metropolitan Industrial Lands Inventory Report, 1993. The State-acknowledged Metropolitan Industrial Lands Inventory Report included a surplus of industrial acreage of 2,954.28 acres (considering a low demand assumption) or of 2,432.28 acres (considering a high demand assumption). This acreage represents those lands that were designated as industrial lands, beyond the acreage needed to accommodate the projected 20-year demand. Since the adoption of that Report, Eugene and Springfield have taken various actions that have had a net decrease in the amount of surplus industrial acreage, resulting in a current surplus of either 2,048.37 acres (considering a low demand assumption) or of 1,526.37 acres (considering a high demand assumption). The /WQ regulations will impact 14.28 acres of industrial buildable land within the city limits, leaving a surplus of 2,034.09 acres (considering a low demand) and 1,512.09 acres (considering a high demand). Outside the city limits and within the UGB, /WQ regulations will affect 12.89 industrial acres for a total impact of 27.17 acres when added to impact acres within the city limits. Total /WQ impact acres, within and outside the city limits and within the UGB, will leave a net surplus supply of 2,021.20 acres (considering a low demand) and 1,499.20 acres (considering a high demand). Therefore, even if the provisions described in 1. – 4., above, were not included in the ordinance, the /WQ regulations contained in this ordinance, or an ordinance applying /WQ to acres outside the city limits and within the UGB, do not unlawfully diminish the supply of industrial land.

Based on the forgoing discussion and analysis, it is clear that even if the maximum possible area within the proposed /WQ management area was treated as a subtraction from the buildable lands inventory, and taking into account plan amendments that took land out of commercial and industrial categories, and taking into account legislative zone changes, there would still be a net surplus of buildable lands in the applicable categories for both industrial and commercial land.¹

Therefore, the ordinance is consistent with Goal 9.

Goal 10 - Housing: To provide for the housing needs of the citizens of the state.

The /WQ overlay zone does not render a property unusable for residential uses. In fact, specific provisions in the /WQ overlay zone ensure that the overlay zone does not have such an effect on a property. Some of those provisions are:

1. The use restrictions of the /WQ overlay zone only apply to that portion of a lot, or right-of-way area, that is within the channel of an identified /WQ waterway and the specified setback distance from the waterway based on the associated setback measurement point. The use-restricted area is referred to as the “/WQ setback management area.” Within the portions of the lot that are outside of the /WQ management area, land uses are not restricted by the /WQ overlay zone. EC 9.4780(1). Properties that have a base zoning and designation allowing commercial or

¹ The City’s adoption of the /WQ regulations do not impact land outside of the City limits. If Lane County chooses to adopt similar provisions, it will assess its impact at that time. The land identified to receive the /WQ overlay zone upon annexation includes no commercial buildable land and 12.89 acres of industrial buildable land. However, it is not clear when, if ever these parcels will be annexed or, whether, when they do annex, they will qualify for an exemption under the ordinance. Even if these parcels are considered as debits to the existing surplus, the ordinance is consistent with Goal 9.

industrial uses can still be developed with such uses on those portions of the lot that are not within the /WQ management area.

2. If the regulated area occupies more than 33% of a development site area, upon application of the property owner, and consistent with the other criteria of EC 9.8030(25)(a), the City will reduce the size of the /WQ conservation area to ensure that the area constitutes no more than 33% of the development site area.
3. Upon application of the owner of a lot with the /WQ overlay that shows consistency with the criteria of EC 9.8030(25)(b), the city will reduce the size of the setback distance.
4. Upon application of the owner of a lot with the /WQ overlay that shows consistency with the criteria of EC 9.8030(25)(c), the city will allow uses not otherwise identified in the ordinance, or approve a different means of protecting water quality to allow a proposed development that would not be permissible under the strict application of the ordinance.

Considering these provisions of the /WQ overlay zone, the application of the overlay zone to a property zoned and designated for residential use does not result in an unlawful diminution in the area's supply of residential land.

Even supposing the provisions above were not a part of the overlay's regulations, the overlay is being applied to such a small number of acres included in the area's inventory of residential lands that this ordinance overlay could not deplete the area's supply of those lands below the projected need.

An analysis of potential impacts to the supply of buildable residential lands within the Eugene UGB was conducted using the regional Geographic Information System (GIS), data provided by City of Springfield staff and calculations of supply and demand from the Supply and Demand Technical Analysis of the Eugene- Springfield Metropolitan Area Residential Lands and Housing Study (RLHS), 1999. The State-acknowledged Eugene-Springfield Metropolitan Area Residential Lands and Housing Study included a surplus of residential acreage of 1,862 acres (considering a low demand assumption) or of 790 acres (considering a high demand assumption). This acreage represents those lands that were designated as residential lands, beyond the acreage needed to accommodate the projected 20-year demand. Since the adoption of that Study, Eugene and Springfield have taken various actions that have had a net decrease in the amount of surplus residential acreage, resulting in a current surplus of either 1,250.33 acres (considering a low demand assumption) or of 178.33 acres (considering a high demand assumption). Even if the provisions described above were not included in the ordinance, the /WQ regulations contained in this ordinance could affect, at most, 45.75 acres of residentially designated land within the city limits, leaving a surplus of 1,204.58 acres (considering a low demand assumption) or of 132.58 acres (considering a high demand assumption).

Outside the city limits and within the UGB, /WQ regulations will affect 25.99 residentially designated land acres for a total impact of 71.74 acres when added to impact acres within the city limits. Total /WQ impact acres, within and outside the city limits, will leave a net surplus supply of 1,178.59 acres (considering a low demand) and 106.59 acres (considering a high demand).

Based on the forgoing discussion and analysis, it is clear that even if the maximum possible area within the proposed /WQ management area was treated as a subtraction from the residential buildable lands inventory, and taking into account plan amendments that took land out of residential categories, and taking into account previous legislative zone changes, there would still be a net surplus of buildable lands in the applicable categories for residential land.²

Therefore, the ordinance is consistent with Goal 10.

Goal 11 - Public Facilities and Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The area affected by this ordinance is located inside the city limits and is served by the public facilities in which the existing level of service is adequate to serve the needs of existing and future development. The provisions of this ordinance do not affect the planning or development of future public facilities or services. Therefore, the ordinance is consistent with Goal 11.

Goal 12 - Transportation: To provide and encourage a safe, convenient and economic transportation system.

Goal 12 is implemented through the Transportation Planning Rule (TPR), as defined in Oregon Administrative Rule OAR 660-012-0000, et seq. The Eugene-Springfield Metropolitan Area Transportation Plan (TransPlan) provides the regional policy framework through which the TPR is implemented at the local level. The TPR (OAR 660-012-0060) states that when land use changes, including amendments to acknowledged comprehensive plans, significantly affect an existing or planned transportation facility the local government shall put in place measures to assure that the allowed land uses are consistent with the identified function, capacity and performance standards (level of service, volume to capacity ratio, etc.) of the facility.

Adoption of the ordinance will not significantly affect an existing or planned transportation facility. Therefore, Goal 12 is not implicated by this ordinance.

Goal 13 - Energy Conservation: To conserve energy.

This ordinance does not concern energy conservation. Therefore, Goal 13 does not apply.

Goal 14 - Urbanization: To provide for an orderly and efficient transition from rural to urban land use.

This ordinance does not effect the transition from rural to urban land use. It applies only to property already within the City limits. Therefore, Goal 14 does not apply to this ordinance.

² The City's adoption of the /WQ regulations do not impact land outside of the City limits. If Lane County chooses to adopt similar provisions, it will assess its impact at that time. The land identified to receive the /WQ overlay zone upon annexation includes 25.99 acres of buildable residential land. However, it is not clear when, if ever these acres will be annexed or, whether, when they do annex, they will qualify for an exemption under the ordinance. Even if these parcels are considered as debits to the existing surplus, the ordinance is consistent with Goal 10.

Goal 15 - Willamette River Greenway: To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The Willamette Greenway area within the Eugene Urban Growth Boundary and city limits is governed by existing local provisions which have been acknowledged as complying with Goal 15. Those provisions are unchanged by this ordinance. The proposal does not affect any area within the Willamette Greenway Boundary and, even if it did, the proposed provisions would serve to further implement this goal by providing water quality setback protections along affected waterways.

Goal 16 through 19 (Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources):

There are no coastal, ocean, estuarine, or beach and dune resources related to the property affected by this ordinance. Therefore, these goals are not relevant and the ordinance will not affect compliance with Goals 16 through 19.

(2) Is consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.

The proposed code adds regulations to the Land Use Code with the intent of protecting those waterways that have a significant relationship to waterways identified by the state Department of Environmental Quality as not meeting water quality standards but that are not otherwise regulated in a way that protects water quality. The proposed /WQ Water Quality Overlay Zone designates a regulated “water quality management area” which is comprised of the waterway channel and its applicable setback. The proposed setback distance, applied to both sides of the regulated waterway, is either 25 feet measured from the top of high bank for a tributary to a water quality limited stream –or– 40 feet measured from centerline for a headwater stream.

METRO PLAN POLICIES.

The above described /WQ overlay regulations are consistent with the following Metro Plan Policies:

C. Environmental Resources Element

Air, Water and Land Resources Quality (Goal 6)

C.25 Springfield, Lane County, and Eugene shall consider downstream impacts when planning for urbanization, flood control, urban storm runoff, recreation, and water quality along the Willamette and McKenzie Rivers.

The overlay zone restricts development activities and other uses within and adjacent to certain waterways to protect the quality of stormwater runoff and water quality in receiving waterways including the Willamette River.

C.26 Local governments shall continue to monitor, to plan for, and to enforce applicable air and water quality standards and shall cooperate in meeting applicable federal, state, and local air and water standards.

The overlay zone is one element of a broader pollution reduction strategy in response to federal water quality standards including the Clean Water Act and related Upper Willamette Total Maximum Daily Load (TMDL).

C.33 Eugene shall maintain and improve hillside development regulations.

The overlay zone prevents development immediately adjacent to headwater streams that are otherwise unprotected and which are particularly sensitive to development impacts that are detrimental to receiving water quality. Headwater streams are streams located in hillside areas on slopes greater than 10%, in areas with highly erodible soils, and that drain at least 10 acres.

D. Willamette River Greenway, River Corridors, and Waterways Element

D.2 Land use regulations and acquisition programs along river corridors and waterways shall take into account all the concerns and needs of the community, including recreation, resource, and wildlife protection; enhancement of river corridor and waterway environments; potential for supporting non-automobile transportation; opportunities for residential development; and other compatible uses.

The allowed uses in the /WQ overlay zone are consistent with this policy.

D.5 New development that locates along river corridors and waterways shall be limited to uses that are compatible with the natural, scenic, and environmental qualities of those water features.

The allowed uses in the /WQ overlay zone are consistent with this policy.

E. Environmental Design Element

E.2 Natural vegetation, natural water features, and drainage-ways shall be protected and retained to the maximum extent practical. Landscaping shall be utilized to enhance those natural features. This policy does not preclude increasing their conveyance capacity in an environmentally responsible manner.

Provisions of the /WQ overlay zone explicitly address the protection of natural vegetation, water features, and drainageways and are therefore consistent with this policy.

G. Public Facilities and Services Element

Services to Development Within the Urban Growth Boundary: Stormwater

G.13 Improve surface and ground water quality and quantity in the metropolitan area by developing regulations or instituting programs for stormwater to:

- a. Increase public awareness of techniques and practices private individuals can employ to help correct water quality and quantity problems;*
- b. Improve management of industrial and commercial operations to reduce negative water quality and quantity impacts;*
- c. Regulate site planning for new development and construction to better manage pre- and post-construction storm runoff, including erosion, velocity, pollutant loading, and drainage;*
- d. Increase storage and retention and natural infiltration of storm runoff to lower and delay peak storm flows and to settle out pollutants prior to discharge into regulated waterways;*
- e. Require on-site contracts and development standards, as practical, to reduce off-site impacts from stormwater runoff;*
- f. Use natural and simple mechanical treatment systems to provide treatment for potentially contaminated runoff waters;*
- g. Reduce street-related water quality and quantity problems;*
- h. Regulate use and require containment and/or pretreatment of toxic substances;*
- i. Include containment measures in site review standards to minimize the effects of chemical and petroleum spills; and*
- j. Consider impacts to ground water quality in the design and location of dry well.*

The /WQ overlay zone regulates development uses and activities within a designated water quality management area, retains the natural filtration capabilities of certain waterways, and includes mitigation provisions for when, in certain circumstances, water quality impacts are unavoidable.

G.16 *Manage or enhance waterways and open stormwater systems to reduce water quality impacts from runoff to improve stormwater conveyance.*

The /WQ overlay zone includes allowances for management practices that are beneficial to water quality or that are not harmful to water quality.

G.17 *Include measures in local land development regulations that minimize the amount of impervious surface in new development in a manner that reduces stormwater pollution, reduces the negative effects from increases in runoff, and is compatible with Metro Plan policies.*

The /WQ overlay zone includes measures that prohibit additional impervious surface area adjacent to and within certain streams to reduce additional negative water quality effects of development related activities and uses.

REFINEMENT PLAN POLICIES

The above described /WQ overlay regulations are consistent with the following Refinement Plan Policies:

Comprehensive Stormwater Management Plan Policies

1.1 Incorporate the beneficial functions (flood control, stormwater conveyance, water quality treatment) of natural resources into the City's storm drainage system.

Establishment of a /WQ overlay zone protects certain waterways that have important water quality functional benefits and are vulnerable to impact from development uses and activities. The overlay zone protections signify the importance of these waterways to the City's storm drainage system.

1.2 Maintain flood control, drainage, and water quality treatment capacities along the City's stormwater conveyance corridors while protecting and enhancing the health, diversity and continuity for wildlife habitat, native vegetation, and endangered species.

The overlay zone includes provisions to protect the water quality treatment capacities of certain waterways, while at the same time maintaining the flood control and conveyance functions, and protecting and enhancing native vegetation.

1.4 Amend existing regulations and administrative policies and practices to be consistent with the goals and policies of the Stormwater Plan.

The proposal amends the Eugene Code to add a /WQ Water Quality Overlay Zone, in fulfillment of Stormwater Plan policies.

1.5 Develop new design standards and maintenance practices that meet the multiple objectives of the Stormwater Plan.

The overlay zone includes specific criteria and development standards for certain allowed uses within the /WQ management area which meet the multiple objectives of the Stormwater Plan.

2.1 Meet or exceed federal flood hazard requirements.

The overlay zone includes provisions that enable maintenance of storm drainage channels in accordance with applicable federal guidelines, regulations, and maintenance agreements.

3.1 Meet or exceed federal and state stormwater quality requirements especially where they conform with existing local policy.

The /WQ overlay zone protects waterways which are identified by the state of Oregon Department of Environmental Quality as water quality impaired (on the state's "303(d) List"), waterways that drain directly into a water quality impaired waterway, and

headwater tributaries that are particularly sensitive to erosive effects of increased stormwater runoff from new development and that drain into a water quality impaired waterway –AND- which are not otherwise protected by existing regulations. The Upper Willamette Total Maximum Daily Load lists the City of Eugene as a Designated Management Agency, responsible for developing and implementing a plan to achieve water quality improvement goals for water quality impaired waterways including Amazon Creek, A3 Channel, Amazon Diversion Channel, Willow Creek and the Willamette River. The overlay zone meets federal and state stormwater quality requirements and conforms with existing Stormwater Plan policies.

3.3 Reduce stormwater pollution associated with new construction and development, soil erosion, improper use of stormwater facilities, and city operations and maintenance practices.

The /WQ overlay zone protects certain waterways from adverse water quality impacts from development uses and activities that could be harmful to water quality including new construction, vegetation removal, soil disturbance, and operations and maintenance practices. The overlay zone includes provisions to mitigate for the water quality impact of certain uses and activities for which there is no other alternative.

4.1 Maintain the stormwater system through techniques and practices that balance flood control, drainage services, water quality, and natural resource protection needs.

The /WQ overlay zone insures that channel maintenance practices are protective of the water quality function of specifically identified waterways.

6.1 Encourage and support communication, coordination and cooperative efforts that maximize available resources, reduce duplication of services, and prevent management conflict.

The City collaborated with Oregon Department of Transportation, Lane County and Eugene Water & Electric Board staff during the development of this proposal to obtain their input. The /WQ overlay zone provisions include allowances for routine channel maintenance that do not adversely impact water quality. The overlay zone includes provisions to mitigate for the water quality impact of certain uses and activities for which there is no other alternative.

Bethel Danebo Refinement Plan (as amended, January 13, 2003) Policies

II-D 1. The Royal Avenue Specific Plan shall serve as the basis for development regulations and infrastructure improvements within the Royal Avenue Specific Plan area. Amendments to land use regulations for the Royal Avenue Node shall be consistent with the Land Use Element of the Royal Avenue Specific Plan.

The /WQ overlay zone will not be applied to any properties within the Royal Special Area Zone. The Royal Avenue Specific Plan includes provisions for the protection and utilization of drainage channels for multiple functions including water quality protection.

Bethel Danebo Neighborhood Refinement Plan Phase 2 – West Eugene Industrial Study and Roosevelt Extension and Drainage Facility Policies

West Eugene Industrial Study IV.A.4 Further information on industrial wastewater run-off and water quality should be used as input in revising development regulations affecting drainage and the multiple-use potential of drainage channels in the West Eugene Industrial Area.

The /WQ overlay zone includes provisions to protect specific waterway from the impacts of uses and activities that could impact water quality. The waterways identified for protection include those listed by the state Department of Environmental Quality as water quality impaired (on the state’s “303(d) List”), waterways that drain directly into a water quality impaired waterway, and headwater tributaries that are particularly sensitive to erosive effects of increased stormwater runoff from new development and that drain into a water quality impaired waterway –AND- which are not otherwise protected by existing regulations. The Roosevelt Channel and the West Beltline Floodway are identified for protection by the /WQ Overlay.

Laurel Hill Plan Policies

Laurel Hill Valley Neighborhood

I.C.6. The Laurel Hill Plan supports the South Hills Study standards. In general, alteration of land contours shall be minimized to retain view of natural features and retain as much of the forested atmosphere as possible. Aside from purely aesthetic considerations, these hillsides demand care in development because the topsoil is thin and the water runoff is rapid. Proposed developments shall respect the above considerations. ”

III.C.3. Right-of-way maintenance should be provided for footpaths and natural drainage channels, and channel banks should be closed to construction. ... ”

East Laurel Hill Area

I. Many of the plan provisions that apply to the Laurel Hill Valley also apply to East Laurel Hill. Plans for development should take into account the existing natural conditions, including the topographical features, vegetation, and natural drainage.....”

The /WQ overlay zone would ensure that sensitive headwater streams are protected from the impact of certain uses and activities that would adversely affect the structural integrity of the streams and impair receiving water quality. The headwater streams protected by /WQ, including some in Laurel Hill, are those that are in steeply sloped areas, with shallow, erodible soils, and are not otherwise protected.

River Road – Santa Clara Urban Facilities Plan Policies

3.1 (Storm Sewers/Drainage)

Policy 2. If a large annexation in the River Road – Santa Clara area occurs, enclosed storm drains shall be eventually installed to replace roadside ditches.

The /WQ overlay zone does not apply protections to roadside ditches unless those waterways have a significant relationship to waterways identified by the state Department of Environmental Quality as not meeting water quality standards, are not otherwise protected, and provide a drainage function for a larger area beyond the roadway. Based upon the weight of the other Metro Plan and refinement plan policies in support of the /WQ overlay zone, and given the early date of this policy (1987), the /WQ overlay zone is not inconsistent with Policy 2.

Policy 3. *As annexation or incorporation occurs, a comprehensive drainage plan for the area shall be developed in cooperation with Lane County and other appropriate agencies.*

3.b. *Identify those portions of the open storm drainageways which can be retained and those which should be eliminated and provide sufficient right-of-way or easements for their continued maintenance.*

The /WQ overlay zone applies protections to specific waterways identified due to their significant relationship to waterways on the state DEQ's list as not meeting water quality standards, that currently provide water quality functions, and that are otherwise unprotected from the impact of certain uses and activities detrimental to water quality. The proposal identifies the waterways that should be retained as open storm drainageways.

Policy 6. *In the event of incorporation or annexation, the responsible general purpose government shall:*

a. *Adopt ordinance prohibiting dumping in open drainage channels.*

The ordinance identified (Exhibit C) specific taxlots outside the city limits and inside the urban growth boundary to which the /WQ overlay zone would be applied upon annexation, if and when the properties annex to the city of Eugene.

South Hills Study Recommendations

D (Development Standards) II (Specific Recommendations) 9. *That all developments (planned unit developments or subdivisions) in the south hills area be reviewed to insure maximum preservation of existing vegetation.*

The /WQ overlay zone includes provisions that limit the removal of existing vegetation and require planting of any bare soil resulting from allowed vegetation removal.

West Eugene Wetland Plan Policies

The /WQ overlay zone does not apply to any properties within the West Eugene Wetland Plan Boundary. The West Eugene Wetlands Plan outlines mechanisms for balancing wetland protection with urban development. The Plan calls for the protection of over 1,000 acres of wetlands through a multiple objectives strategy addressing flood control, drainage services, water quality treatment, and natural resources. It addresses the issue of

stormwater and supports the use of management approaches that incorporate natural systems for water quality and other beneficial uses.

Willakenzie Area Policies

Public Facilities and Services Element, Storm Drainage Facilities

1. Encourage development practices that reduce the need for construction of an extensive subsurface storm sewer system.

The ordinance regulates specific waterways determined to be important to water quality and not otherwise protected, thus ensuring their continued function in an open condition as an important part of the city's stormwater system.

2. Encourage growth and development patterns that are compatible with natural features and discourage the alteration of natural features. Relocation of natural drainage features may be considered as an alternative to replacement with a closed pipe system.

The /WQ overlay zone regulates certain waterways including limiting alterations to the waterways. The ordinance includes provisions that allow channel relocation and reconfiguration under certain circumstances, and with water quality mitigation requirements.

3. Encourage measures that will improve the quality of stormwater runoff discharged into local waterways.

The /WQ overlay zone protects existing water quality functions of certain waterways. The ordinance is a compliment to existing adopted stormwater development standards which require on-site pollution reduction and flow control measures.

(3) In the case of establishment of a special area zone, is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone.

The amendments do not establish a special area zone.

Application of the Overlay Zone Eugene Code Section EC 9.8856 requires that the following criteria (in bold and italic) be applied to a proposal to rezone properties:

(1) The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.

See above.

(2) The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.

The overlay zone does not change the base zoning of a parcel, which has already been found to be consistent with any applicable refinement plan.

(3) The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.

The uses and densities of development allowed in the zone are less of a tax on the key urban facilities and services already serving or planned for the effected areas.

(4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone in: [(a) through (l)]

Although not listed in EC 9.8856(4), the siting requirements for the /WQ Water Quality Overlay Zone applicable to the proposed were addressed above.

Language added since 1/28/09 is indicated with double underlined, bold-italic type (***example***).
Language deleted since 1/28/09 is indicated with double-strikethrough (~~example~~).

ORDINANCE NO. _____

AN ORDINANCE ADDING SECTIONS 9.4770 THROUGH 9.4790 TO THE EUGENE CODE, 1971 THAT ESTABLISH A WATER QUALITY OVERLAY ZONE; AMENDING SECTIONS 9.0500 9.1040, 9.7055, 9.7205, 9.7305, 9.7820, 9.8005, 9.8025 9.8030, 9.8055, 9.8215, 9.8220, 9.8320, 9.8325, 9.8415, 9.8470, 9.8472, 9.8474, 9.8515, 9.8520, 9.8855, AND 9.8865 OF THAT CODE; REPEALING ORDINANCE NO. 20194 AND SECTIONS 6.650, 6.655, 6.660, 6.665, AND 6.670 OF THAT CODE; ADOPTING THE WATER QUALITY WATERWAYS MAP; AMENDING THE EUGENE OVERLAY ZONE MAP; ADOPTING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The definition of “Development Permit” set forth in Section 9.0500 of the Eugene Code, 1971, is amended, and a new definition of “City engineer” is added thereto, to provide:

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

City Engineer. The person authorized by the city manager to carry out the duties of city engineer under this code, or the city engineer’s designee(s).

Development Permit.

~~[(A)]~~ A permit authorized or required by the Oregon Structural Specialty Code and Oregon One and Two Family Dwelling Code, including but not limited to permits for:

- ~~1.~~ **(A)** New buildings.
- ~~2.~~ **(B)** Additional square footage added to a building.
- ~~3.~~ **(C)** Building demolition.
- ~~4.~~ **(D)** Foundations.
- ~~5.~~ **(E)** Change of occupancy.
- ~~6.~~ **(F)** Grading/Fill.
- ~~7.~~ **(G)** Site improvements.

~~[(B) Open waterway permits are not development permits.]~~

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Section 2. Section 9.1040 of the Eugene Code, 1971, is amended by adding a Water Quality 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
/WQ	<i>Water Quality Overlay Zone</i>
/WR	Water Resources Conservation Overlay Zone

Section 3. The following caption and Sections 9.4770 through 9.4790 are added to the Eugene Code, 1971, to provide:

/WQ WATER QUALITY OVERLAY ZONE

9.4770 **/WQ Water Quality Overlay Zone - Purpose.** *The purpose of the /WQ Water Quality Overlay Zone is to protect the health and safety of the public in a manner that complies with federal and state water quality requirements. The Overlay Zone is intended to protect and improve the physical integrity and water quality function within and adjacent to otherwise unprotected waterways consisting of waterways identified pursuant to section 303(d) of the federal Clean Water Act, waterways that are tributaries to those waterways, and headwater streams.*

9.4772 **/WQ Water Quality Overlay Zone – Applicability.** *EC 9.4770 through 9.4790 apply to all property to which the /WQ Water Quality Overlay Zone has been applied through the city’s rezoning process or through automatic rezoning upon annexation.*

9.4774 **/WQ Water Quality Overlay Zone – Relationship to Other Zones and State and Federal Laws.** *When conflicting zoning provisions apply to land within a /WQ Management Area (See EC 9.4778), the /WQ provisions shall control. Consistency with the provisions of EC 9.4780 does not exempt the property owner from state or federal laws or regulations.*

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- 9.4776 **/WQ Water Quality Overlay Zone - Siting Requirements.** *In addition to the criteria at EC 9.8865, when considering an application to add the /WQ Overlay Zone to a lot, the following criteria apply:*
- (1) *The subject lot Includes:*
 - (a) *A waterway identified pursuant to section 303(d) of the federal Clean Water Act, a waterway that is a tributary to a 303(d) waterway, or that is a headwater stream; or*
 - (b) *A portion of the /WQ Management Area, as described in EC 9.4778(1), for a waterway described in (a); and*
 - (2) *The subject segment of waterway (it may be natural or constructed):*
 - (a) *Is not already protected by the NR zone or the /WR, /WP or /WB overlay zones;*
 - (b) *Has a discernable streambed and side banks;*
 - (c) *Carries water at least part of the year;*
 - (d) *Provides a drainage function for surface runoff from land areas beyond a roadway; and*
 - (e) *If a ponded area, has an inlet and outlet drainage function.*
- 9.4778 **/WQ Water Quality Overlay Zone – /WQ Management Area.**
- (1) *Except as provided in subsections (2), (3) or (4) the /WQ Management Area is that area depicted on the city’s adopted Water Quality Waterways Map.*
 - (a) *As depicted on the Water Quality Waterways Map, the /WQ Management Area is comprised of both the waterway channel, which for purposes of EC 9.4770 through 9.4790, and 9.8030(25), means the area between the top of high banks on each side of the waterway, and the applicable setback, as described in (b) or (c) below.*
 - (b) *For a waterway identified on the Water Quality Waterways Map as a waterway identified pursuant to section 303(d) of the federal Clean Water Act, or a tributary to such a waterway, the applicable setback is 25 feet from top of high bank (THB). For purposes of EC 9.4770 through 9.4790 and 9.8030(25), THB is the highest point at which the vertical rise of the waterway bank meets the horizontal grade of the adjoining topography.*
 - (c) *For waterways identified on the Water Quality Waterways Map as headwater streams, the applicable setback is 40 feet from the waterway’s centerline.*
 - (d) *The procedures used for mapping these setbacks on the Water Quality Waterways Map shall be more particularly described in an administrative rule adopted by the city manager in accordance with EC 2.019 City Manager – Administrative and Rulemaking Authority and Procedures.*
 - (2) *For a lot that is 6,000 square feet in area or less with a /WQ Management Area, alone or in combination with a /WR Conservation Area, that constitutes more than 33% of the lot, as part of the city’s consideration of an application for a development permit or land use approval, the city shall automatically reduce the applicable setback distance described in (1) above, provided:*

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- (a) *The lot was created pursuant to a planned unit development, subdivision, partition or property line adjustment application described in EC 9.4780(2)(i)2.;*
 - (b) *Unless precluded by (2)(d) below, the reduction in setback shall result in the /WQ Management Area constituting 33% of the lot area, alone or in combination with a /WR Conservation Area; and*
 - (c) *The new boundary shall be located:*
 - 1. *Parallel to the original boundary (closer to the waterway); or*
 - 2. *Through the application of setback averaging. Setback averaging shall be accomplished by expanding the /WQ Management Area in an undeveloped area of the development site, and reducing it in another area of the development site.*
 - (d) *In no case shall the setback boundary be located within the waterway channel.*
- (3) *As part of the city’s consideration of an application for a development permit or land use approval, the city shall exclude from the /WQ Management Area:*
- (a) *Those areas which the applicant has shown to have been developed prior to ~~effective date of this ordinance~~ June 10, 2009. For purposes of this subsection, “developed areas” are those within the physical ground surface footprint of a legally constructed:*
 - 1. *Structure (including a manufactured dwelling) with a permanent foundation, constructed or sited pursuant to an approved permit;*
 - 2. *Utility facility (such as a transmission pole, utility transmission vault box, or pump station), telecommunication tower, telecommunication platform, satellite dish, sign or billboard;*
 - 3. *Permanent deck or patio that is attached to a structure listed in subsection 1. above; or*
 - 4. *Paved parking area, street, driveway, bike path, or pedestrian path.*

Fences and landscaping do not cause an area to be “developed” to warrant exclusion from the /WQ Management Area. All other uses and structures that were legally established prior to ~~effective date of this ordinance~~ June 10, 2009 but that do not comply with the allowed uses and standards of the /WQ Overlay Zone are subject to EC 9.1200 through EC 9.1240 Legal Nonconforming Situations; and
 - (b) *Any land that is included in a:*
 - 1. */WP Waterside Protection area as described in EC 9.4720;*
 - 2. */WB Wetland Buffer area as described in EC 9.4820; or*
 - 3. */WR Water Resources Conservation area as described in EC 9.4920.*
- (4) *Where an existing development under subsection (3)(a)1. or 3. above or an existing developed street or sound wall physically isolates a portion of the /WQ Management Area, as part of the city’s consideration of an application for a development permit or land use approval, the city shall exclude that isolated portion from the /WQ Management Area.*

9.4780 /WQ Water Quality Overlay Zone - Permitted and Prohibited Uses. Uses are permitted or prohibited within the /WQ Water Quality Overlay Zone based on

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whether they occur outside or within the /WQ Management Area as follows:

- (1) **Uses Permitted Outside /WQ Management Area.**
 - (a) *The uses permitted on portions of a lot located outside of the /WQ Management Area are the same as those otherwise permitted on that lot without consideration of the /WQ Water Quality Overlay Zone; and*
 - (b) *Prior to issuance of a development permit, the city shall verify that the /WQ Management Area setback has been accurately demarcated by a prominent and continuous protective feature indicating a “No Disturbance Area.” No site preparation, including but not limited to vegetation removal, may take place within 50 feet of the /WQ Management Area, until such verification has been provided.*
- (2) **Uses Permitted Within /WQ Management Areas. Subject to any applicable development permits, the following uses are the only uses permitted outright within the /WQ Management Area:**
 - (a) **Vegetation Planting and Management.**
 1. *Plantings of plants and vegetation provided they are not Invasive, Non-Native Plant species as defined in EC 9.0500 Definitions; and*
 2. *Mowing, replacing and pruning vegetation within lawn and garden landscaped areas existing as of ~~effective date of this ordinance~~ June 10, 2009.*

The use of native vegetation in the /WQ Management Area is preferred, in order to reduce the need to apply water, herbicides, pesticides and fertilizers;
 - (b) **Removal of Plants and Vegetation.**
 1. *Other than as permitted pursuant to EC 9.4780(2)(a)2., or approved pursuant to EC 9.4780(3) or EC 9.8030(25), removal of plants and vegetation shall be limited to the following:*
 - a. *Removal of Invasive, Non-Native plant species;*
 - b. *A public entity’s removal of plants or vegetation from publicly owned property by mechanical or manual means within a strip not to exceed 15 feet in width where that property abuts private property that is not within a /WQ Management Area;*
 - c. *Removal of plants or 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 plants or 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; and*
 - d. *Removal of hazardous tree(s), or removal of trees that create an unsafe condition due to proximity to existing structures, proposed construction, or interference with utility services or pedestrian or vehicular safety, so long as prior to removal the property owner is able to produce upon request a written evaluation of any tree*

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- proposed for removal prepared by a certified arborist declaring the tree(s) to be hazardous or creating an unsafe condition and recommending removal;*
2. *Areas of bare soil existing as a result of plant or vegetation removal shall be:*
 - a. *Protected or covered consistent with EC 6.625 through EC 6.645;*
 - b. *Replanted as soon as practicable, but no later than March 15 of the calendar year following disturbance; and*
 - c. *If not replanted within 15 days of disturbance, areas of bare soil shall be mulched and seeded with straw mulch and native seed for temporary stabilization within 15 days of disturbance.*
- (c) **Maintenance, Repair and Reconstruction Activities.**
1. *Removal of refuse;*
 2. *Removal of fill in response to a written determination from a regulating agency that the fill is in violation of local, state or federal regulations;*
 3. *Maintenance, repair and reconstruction of streets, bridges, driveways, parking areas and pathways, including, but not limited to, sweeping, striping, sealing, and resurfacing, provided such activity is not a part of a broader project for which additional incursion into the /WQ Management Area is proposed;*
 4. *Channel maintenance practices, including mowing and sediment removal necessary to maintain stormwater conveyance and flood control capacity or to protect water quality, as required by local policies, local, state, and federal regulations, and intergovernmental agreements;*
 5. *Maintenance, repair, and reconstruction of utility facilities such as wastewater and stormwater pipes, culverts, electrical transmission lines, and television and cable systems, provided such activity is not a part of a broader project for which additional incursion into the /WQ Management Area is proposed; and*
 6. *Maintenance, repair, and reconstruction of a fence that was legally established prior to (the effective date of this ordinance) provided that for any reconstruction it occurs in the same location and to the same dimensions as the pre-existing fence;*
- (d) **Emergency Activities.**
1. *Emergency repair of utility facilities (such as wastewater and stormwater pipes, electrical transmission lines, and television and cable systems) and transportation facilities (such as roadways, bridges, bikeways and pathways), failing slopes or eroding channel banks or channel beds; provided the city engineer has declared in writing that:*
 - a. *Immediate repair is necessary to avert an imminent threat to water quality, the environment, public health, public safety, or the structural integrity of the utility*

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- facilities, transportation facilities, stream channel banks or stream channel beds, or structural integrity of adjacent structure(s); and
- b. The method of repair will minimize impacts to water quality and any emergency repairs resulting in bare soil conditions will comply with EC 9.4780(2)(b)2.;
2. Emergency response to spills of materials that threaten water quality;
 3. Fire suppression and medical emergency response operations;
- (e) **Construction and Maintenance of Vegetated Stormwater Management Facilities.** Swales, filter strips, constructed wetlands, and other vegetated stormwater management facilities for pollution reduction or flow control are permitted if otherwise approved through the provisions of EC 9.6791 through 9.6797 in accordance with the Stormwater Management Manual adopted by administrative order of the city manager;
- (f) **Public Improvement Projects.** For purposes of this subsection (f), a public improvement project is defined as any improvement which upon construction and acceptance by a public entity shall become the entity's responsibility to maintain, repair or replace. Public improvement includes, but is not limited to, local improvements or other structures or facilities constructed upon or under public or private property. Provided the city has on file the certification described in (f)4. below, the following public improvement projects, are permitted:
1. Construction of a public water quality improvement project that is identified in an approved city plan (including but not limited to the repair or rehabilitation of stream channels and banks, installation of aeration features, construction of facilities for removing stormwater pollutants, plantings for improving pollutant filtration, channel shading, or erosion control);
 2. Construction or improvement of parks, recreation facilities, open space, and habitat enhancements (including but not limited to footpaths, bike paths, pedestrian and bike bridges, site furniture, boardwalks, kiosks, signs, planting of native species, hydrology and landscape restoration, and barriers for species containment);
 3. Construction of public infrastructure including but not limited to streets, bridges, sidewalks, stormwater facilities, and other public utilities provided:
 - a. Construction will take place within an existing public way, or at the location shown in a plan adopted by the city or another public entity prior to ~~effective date of this ordinance~~ June 10, 2009;
 - b. The public facility is a water dependent structure or use such as a boat ramp, dock, bridge or an accessway to such a structure or use, which by its nature cannot be located anywhere except within the /WQ Management Area; or

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1. ***Under a Mitigation Improvement Plan approved by the Oregon Department of State Lands (DSL) and, if required, by the U. S. Army Corps of Engineers (ACOE);***
 2. ***Under a wetland restoration permit or wetland enhancement permit approved by the DSL, and if required by the ACOE; or***
 3. ***By a “Finding of No Significant Impact” or a “Record of Decision” under the federal National Environmental Policy Act (NEPA) that identifies the restoration or enhancement activity as the final selected alternative;***
- (h) **Other Activities.**
1. ***Construction and maintenance of paths with no impervious surface for pedestrian or bicycle use not to exceed 5 feet in width;***
 2. ***Construction and maintenance of facilities for monitoring water quality and gauging stream flows;***
 3. ***Construction and maintenance of publicly accessible recreational/environmental interpretative signs with a ground disturbance not to exceed 12 square feet in area;***
 4. ***Construction or replacement of fences located at least 20 feet from THB, provided that they are not constructed with continuous footings or other obstructions to surface drainage;***
 5. ***Construction and maintenance of publicly accessible educational/ interpretive facilities including concrete pads for benches with a ground disturbance not to exceed 120 square feet in area;***
 6. ***Construction and maintenance of a slatted deck of no more than 120 square feet in area, with no impervious surface, and located at least 20 feet from THB;***
 7. ***Construction and maintenance of accessory structures that do not require a building permit such as a garden shed, playhouse or greenhouse of no more than a total of 120 square feet, located at least 20 feet from THB;***
 8. ***Installation and maintenance of erosion control measures that have been approved pursuant to EC 6.625 through 6.645;***
 9. ***Single family residential composting located outside the channel, and at least 10 feet from THB;***
 10. ***City placement and maintenance of fences or woody debris for purposes of habitat or species protection;***
 11. ***Construction of new underground utilities for providing service to an existing lot of record where there is no other alternative location; or***
 12. ***Maintenance, repair, replacement, upgrading and expansion of telecommunications facilities and facilities used for the transmission of television and radio signals, including towers, satellite dishes and related support structures such as foundations, footings, platforms, and wiring, that were legally established prior to (effective date of this ordinance) provided that for any expansion, the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city’s Water Quality Function***

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Rating System, the expansion will result in a water quality function rating equal to or greater than previously existed; and

- (i) ***Prior Approved Development. Uses, structures, streets and utilities that are explicitly authorized, or that are necessary to carry out the uses or development explicitly authorized, by a city approval of:***
1. ***An application for a development permit that was submitted prior to ~~the effective date of this ordinance~~ June 10, 2009; or***
 2. ***An application for a land use approval that was submitted prior to ~~the effective date of this ordinance~~ June 10, 2009 and was deemed by the city to be complete when first submitted or made complete by the submittal of all requested additional information within 180 days of the application's submittal date.***
- (3) ***Uses Subject to Standards Review Within the /WQ Management Area. Unless prohibited by subsection (4), or permitted outright in subsection (2), the following uses are permitted, subject to the standards review process beginning with EC 9.8460. Consistency with the specific standards provided or referenced for each use below shall be used as the criteria for approval. These uses may require additional development permits pursuant to other provisions of this code.***
- (a) ***Construction of private water quality improvements, including stabilization or reconfiguration of channels and pond banks to improve stability and installation of aeration features. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3) and (7) through (11);***
- (b) ***Realignment or reconfiguration of channels and pond banks to accommodate a proposed development:***
1. ***Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources, lot configuration or existing right of way, there is no other feasible option for locating the proposed development outside the /WQ Management Area;***
 2. ***Provided the realignment will not cause the /WQ Management Area to:***
 - a. ***Occupy any portion of an adjacent lot not currently having the /WQ overlay zone, unless the standards review application is accompanied by an owner-authorized rezoning application to apply the /WQ overlay zone to the newly affected lot; or***
 - b. ***Increase an existing /WQ Management Area on an adjacent lot, unless the standards review application is accompanied by the written consent of the affected lot owner(s);***
 3. ***Provided the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the realignment will result in a water quality function rating equal to or greater than previously existed; and***
 4. ***Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3) and (7) through (11);***

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5. *If a realignment under 2. above is approved, necessitating a correction to the Water Quality Waterways Map, the planning director shall update that Map to reflect the correction. If the correction results in the complete removal or relocation of the /WQ Management Area from a lot, or a determination that the /WQ Overlay Zone should be removed or relocated from a lot, the planning director shall update the Eugene Overlay Zone Map to reflect the determination.*
- (c) **Construction of public improvements not already permitted under subsection (2) above (including but not limited to streets, bridges, boardwalks, paths, flood control structures, and public utilities):**
1. *Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources, lot configuration or existing right of way, there is no feasible option for locating the proposed improvements outside the /WQ Management Area;*
 2. *Provided the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the construction will result in a water quality function rating equal to or greater than previously existed; and*
 3. **Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (11);**
- (d) **Construction of a private stream crossing with a culvert or bridge for an access road or pedestrian use:**
1. *Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources or lot configuration, no point of access to an adjacent street or road is available within the applicant's real property ownership that is outside the /WQ Management Area;*
 2. *Where the number of stream crossings is the minimum necessary for the approved use; and*
 3. **Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3), (5), (6), (8), (10) and (11);**
- (e) **Construction of a private street and related infrastructure including utilities not already permitted under subsection (2) above:**
1. *Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources or lot configuration, or access location restrictions by the city, there is no feasible option for locating the street outside of the /WQ Management Area;*
 2. *Provided the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the construction will result in a water quality function rating equal to or greater than previously existed; and*
 3. **Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3), (5), (6), (10) and (11);**

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- (f) **Construction of new underground utility lines not already permitted under subsection (2) above:**
 - 1. **Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources, lot configuration or existing right of way, no reasonable alternative route exists outside the /WQ Management Area to provide service to an unserved area or to connect to an existing line; and**
 - 2. **Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (4) and (10) and (11);**
- (g) **Construction of water dependent structures and uses not already permitted under subsection (2) above, and access ways to those structures and uses, which, by their nature, cannot be located anywhere except within the /WQ Management Area, such as boat ramps or docks. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3), (5), (10), and (11); and**
- (h) **Non-emergency repair or stabilization of a failing slope or eroding channel bank that is not already permitted under subsection (2) above:**
 - 1. **Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3), (9) through (11); and**
 - 2. **Provided the applicant submits to the planning director a report from a registered engineer or an Oregon licensed engineering geologist that, based on the city's Water Quality Function Rating System, the repair or stabilization will result in a water quality function rating equal to or greater than previously existed.**
- (4) **Uses Prohibited Within the /WQ Management Area. Uses that are not specifically allowed under subsections (2) or (3) are prohibited within the /WQ Management Area unless an adjustment is granted pursuant to EC 9.8030(25)(c)1. Such prohibited uses include, but are not limited to the piping of a waterway (other than culverts explicitly permitted), storage of wood, building materials, vehicles, machinery, or other items or materials, and dumping, piling, or disposal of refuse, fill, yard debris, pet waste, or other material.**

9.4782 Water Quality Function Rating System.

- (1) **When this code requires the use of the city's Water Quality Function Rating System, the applicant shall comply with the requirements contained in the administrative order adopted by the city manager pursuant to EC 2.019 City Manager – Administrative and Rulemaking Authority and Procedures. As more specifically described in that order, the city's Water Quality Function Rating System sets out a process for evaluating a specific /WQ Management Area's water quality function based on the presence or frequency of enumerated characteristics.**
- (2) **Unless waived by the planning director, that portion of the application utilizing the city's Water Quality Function Rating System shall be prepared by one or more of the following professionals:**
 - (a) **Oregon licensed architect;**
 - (b) **Oregon licensed civil or geotechnical engineer;**

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- (c) Oregon licensed landscape architect;
- (d) Oregon licensed geologist;
- (e) A professionally trained botanist, biologist, ecologist or geomorphologist; or
- (f) A creek restoration specialist with a bachelor's degree in the subject field and at least 5 years of applied experience in botany, biology, ecology, geomorphology or a closely related field.

9.4784 /WQ Water Quality Overlay Zone – Adjustments.

- (1) **Adjustments to the provisions of EC 9.4778 /WQ Water Quality Overlay Zone – /WQ Management Area may be made subject to compliance with the criteria for adjustment in EC 9.8030(25)(a) or (b).**
- (2) **Adjustments to the provisions of EC 9.4780 /WQ Water Quality Overlay Zone – Permitted and Prohibited Uses or 9.4790 /WQ Water Quality Overlay Zone – Development Standards may be made subject to compliance with the criteria for adjustment in EC 9.8030(25)(c).**

9.4786 /WR Water Quality Overlay Zone – Map Correction/Removal of Overlay Zone.

Consistent with the application requirements at EC 9.7010, proposals to correct the Water Quality Waterways Map shall be subject to the procedures and criteria in this section. When considering an application to remove the /WQ Water Quality Overlay Zone from a specific lot, the provisions of this section apply instead of the zone change procedures and criteria described at EC 9.8850 through 9.8865.

- (1) **Application Requirements. Except as provided in EC 9.8005(2), the application shall be processed under the Type II application procedure (EC 9.7200 – 9.7230).**
 - (a) **If an error on the Water Quality Waterways Map is alleged, the application shall:**
 - 1. **Identify the waterway or /WQ Management Area alleged to have been incorrectly mapped;**
 - 2. **Identify the tax lots and a description of any right-of-way alleged to have been incorrectly included in the /WQ Management Area; and**
 - 3. **Include a description of the alleged error, the basis of the error, including evidence such as a land survey, ortho-photo and topographic information, and the proposed correction;**
 - (b) **If the application proposes to remove the /WQ Water Quality Overlay Zone from a lot or parcel due to a partition, subdivision or property line adjustment that results in a new or reconfigured lot onto which the /WQ Management Area does not extend, the application shall:**
 - 1. **Include a copy of the proposed or recorded plat for such partition, subdivision or, for a property line adjustment, a copy of the recorded deed and approved map; and**
 - 2. **Identify the waterway or /WQ Management Area that is located on the parent lot.**

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- (2) **Approval Criteria.** Approval shall be based on consideration of the procedures for mapping described in EC 9.4778(1), the administrative rule referenced therein, and compliance with the following criteria:
- (a) **For an allegation of error on the Water Quality Waterways Map, the evidence submitted demonstrates that:**
1. **The waterway does not have a discernable streambed and side banks;**
 2. **The waterway does not carry water at least part of the year;**
 3. **The waterway only provides a drainage function for surface runoff from a roadway;**
 4. **The waterway is a ponded area with no inlet or outlet drainage feature;**
 5. **The waterway location or alignment is incorrect; or**
 6. **The /WQ Management Area as depicted on the map extends beyond the applicable 25 foot or 40 foot setback as described in EC 9.4778(1);**
- (b) **For removal of the /WQ Overlay Zone that is proposed due to a partition, subdivision or property line adjustment:**
1. **The newly created lot does not include any portion of a /WQ Management Area; and**
 2. **In cases where the lot has not yet been recorded, removal of the /WQ Overlay Zone shall be conditioned upon recordation.**
- (3) **Update of the Water Quality Waterways Map and the Eugene Overlay Zone Map.** If the Type II process described above results in the approval of a correction to the Water Quality Waterways Map, the planning director shall update that Map to reflect the correction. If the correction results in the complete removal or relocation of the /WQ Management Area from a lot under (2)(a) or a determination that the /WQ Overlay Zone should be removed or relocated from a lot under (2)(b), the planning director shall update the Eugene Overlay Zone Map to reflect the determination.

9.4790 /WQ Water Quality Overlay Zone - Development Standards. The following standards apply only as specifically required by EC 9.4780(3):

- (1) **Vegetation Removal.** Vegetation removal in order to accommodate a use listed in EC 9.4780(3) shall comply with the following standards:
- (a) **Vegetation removal in excess of that allowed by EC 9.4780(2)(b) shall be the minimum necessary to accommodate the use; and**
- (b) **Any clearing of vegetation that is not within the footprint of uses approved in accordance with EC 9.4780(3), or uses approved through an adjustment approved under EC 9.8030(25), must be followed by replanting in accordance with the requirements of subsection (2) below.**
- (2) **Planting and Replanting.** Planting or replanting of areas that are cleared or graded in order to accommodate a use listed in EC 9.4780(3) and that are located outside of the use's footprint shall comply with the following standards:
- (a) **Plantings of plants and vegetation provided they are not Invasive, Non-Native Plant species as defined in EC 9.0500**

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- Definitions, including some tree or large shrub species and planted in sufficient quantity and location to provide bank stability and to create substantial shading of the channel during times of peak solar input;***
- (b) Except as required in (d) below, the plant species and plant spacing to be utilized shall further the objective of increasing, to the greatest extent practicable, the capacity of the /WQ Management Area to filter pollutants from runoff that flows across the /WQ Management Area;***
 - (c) Plant species selected for all plantings shall be appropriate to the site given its topography, hydrology, and soil type;***
 - (d) Areas of bare soil existing as a result of vegetation removal shall be protected or covered consistent with EC 6.625 through EC 6.645, and replanted or mulched and seeded with straw mulch and native seed within 15 days of disturbance;***
 - (e) Disturbed areas shall be re-planted consistent with this section as soon as practicable, but no later than March 15 of the calendar year following disturbance; and***
 - (f) A 70% survival rate of plantings shall be guaranteed for a 3-year period in the form of a financial deposit, bond or other means sufficient to cover the cost to remove dead and dying species, and to purchase and replant with living species. City staff shall be granted access to the planted area by the property owner as a condition of approval for this use in order to monitor the establishment of the plantings during this 3-year period.***
- (3) Construction Practices. Construction to accommodate a use listed in EC 9.4780(3) shall comply with the following standards:***
- (a) Construction, maintenance, repair, reconstruction and restoration activities shall be planned and timed so as to minimize adverse impacts to water quality;***
 - (b) 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 /WQ Management Area:***
 - 1. The 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;***
 - 2. The use of heavy machinery within the channel shall be limited to the period between June 15 and September 30 except as allowed by permit from the Army Corps of Engineers or Oregon Department of State Lands; and***
 - 3. On sites where soils are severely compacted through the use of heavy machinery, the soils shall be tilled or re-tilled to a depth of 6 inches.***
- Construction may also be subject to construction site management practices such as the erosion prevention provisions of EC chapter 6, which apply to, among other things, clearing, grading, grubbing, excavation and filling.***
- (4) Utility Alignment. Routing of new utility lines to accommodate a use listed in EC 9.4780(3) shall be designed so as to minimize adverse***

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impacts to water quality within the /WQ Management Area to the greatest extent practicable.

- (5) **Paved Surfaces.** *Construction of new paved surfaces to accommodate a use listed in EC 9.4780(3) shall comply with the following standards:*
 - (a) *Impervious surfaces shall be minimized by constructing the facility or infrastructure with as little impervious surface as allowed by city standards and the Americans With Disabilities Act;*
 - (b) *Impervious surfaces shall be located as far from the waterway as practicable; and*
 - (c) *For paved foot paths, lightly used access roads, or low volume parking areas where soils and flat topography will facilitate infiltration of runoff, pervious pavement systems, or other infiltration devices approved by the planning director or city engineer shall be used in lieu of standard impervious paving surfaces to increase infiltration of stormwater where practicable. For the purposes of this subsection, gravel surfaces are considered pervious unless they cover impervious surfaces or are compacted to a degree that causes their rational method runoff coefficient to exceed 0.8, determined in accordance with the city's adopted Public Improvement Design Standards Manual.*
- (6) **Stream and Channel Crossings.** *Bridges, culverts or other structures that cross waterways permitted under EC 9.4780(3) shall comply with the following standards:*
 - (a) *Crossings shall be designed and constructed in a manner that results in the least physical impact to the waterway, utilizing a minimum width, appropriate invert elevations and slope, and aligned at right angles to the waterway whenever practicable;*
 - (b) *Culverts and bridges shall not increase or decrease water depth, velocity or flow rate upstream or downstream from the culvert, except as necessary to address conveyance needs identified in the city's adopted Stormwater Management Manual or as otherwise allowed or required by this code;*
 - (c) *When a culvert 72 inches in diameter or greater would be required, bridges shall be utilized, or box or arch culverts with bottoms filled to a depth of at least 12 inches with stone; and*
 - (d) *Stream banks and stream beds must be stabilized at crossings, using vegetative bio-engineering methods to the maximum extent practicable.*
- (7) **Hydrology.** *Existing hydrology shall be maintained unless modification of hydrology is an element of an approved use and/or intended to improve water quality to minimize flow concentration, downcutting, and erosion.*
- (8) **Stormwater Discharges.**
 - (a) *Improvements shall not increase or decrease stormwater conveyance capacity either upstream or downstream of improvements except as necessary to address conveyance needs identified in the city's adopted Stormwater Management Manual, or as otherwise allowed or required by this code;*
 - (b) *Improvements shall meet the stormwater development standards of EC 9.6790 through EC 9.6797; and*

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- (c) *Flow spreaders and energy dissipaters shall be utilized to prevent erosive impacts to protected areas from stormwater discharges where practicable to avoid concentrating stormwater discharges.*
- (9) *Repair and Reconstruction of Stream Banks and Channels. Bio-engineering methods are to be used to repair stream bank failures and channel erosion problems and to reconstruct stream banks and channels except where those methods by themselves would be ineffective. Where bio-engineering alone is inadequate, stones and boulders may be used to augment bank repair efforts, dissipate energy or control flows.*
- (10) *Removal of Materials Harmful to Water Quality. All refuse, toxics, fill, unauthorized auto bodies, or similar materials located within the /WQ Management Area that are harmful to water quality or that limit the filtration of pollutants from runoff that flows across the /WQ Management Area shall be removed.*
- (11) *Protect Management Area During Construction. Prior to engaging in the use authorized under EC 9.4780(3), the applicant shall demarcate the /WQ Management Area setback area by a prominent and continuous protective feature indicating a “No Disturbance Area.” No site preparation, including but not limited to vegetation removal, may take place within 50 feet of the /WQ Management Area, until the city has verified the required demarcation.*

Section 4. Section 9.7055 of the Eugene Code, 1971, is amended by adding an

entry for “WQ Water Quality 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 *typical* review authorities for the decision and the appeal of the decision. ***To accommodate a request for concurrent review, the city may instead review multiple applications according to the highest applicable type.***

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
<i>/WQ Water Quality Overlay Zone - Map or Zone Error (See EC 9.4786)</i>	<i>II</i>	<i>D</i>	<i>A</i>			

Section 5. Table 9.7205 of the Eugene Code, 1971, is amended by adding an entry for

“WQ Water Quality Overlay Zone” in alphabetical order therein to provide:

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9.7205 **Type II Application Requirements and Criteria Reference.** The following applications are *typically* 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[?]. ***To accommodate a request for concurrent review, the city may instead review multiple applications according to the highest applicable type.***

Table 9.7205 Type II Application Requirements and Criteria	
Type II Applications	Beginning Reference
/WQ Water Quality Overlay Zone – Map Correction/Removal of Overlay Zone	EC 9.4786(3)

Section 6. 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 *typically* 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[?]. ***To accommodate a request for concurrent review, the city may instead review multiple applications according to the highest applicable type.***

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] **the** amendment. A zone change to apply the /ND overlay zone shall be processed according to EC 9.4260. ***Removal of the /WQ overlay zone is controlled by EC 9.4786.*** Removal of the /WR overlay zone is controlled by EC 9.4960.

Section 7. Subsection (3) of Section 9.7820 of the Eugene Code, 1971, is amended to provide:

9.7820 **Annexation – Procedures.**

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- (3) Land annexed to the city according to the procedures in EC 9.7800 – 9.7835 shall be automatically rezoned as of the effective date of the annexation from Lane County land zones and zoning overlays to equivalent Eugene zones and overlay zones as shown in Table 9.7820 Equivalent Zones and Overlay Zones.

Table 9.7820 Equivalent Zones and Overlay Zones			
Urbanizable Land Zones		Eugene Zones	
AG/UL	Agricultural	AG	Agricultural
PL/UL	Public Land	PL	Public Land
R-1/UL	Low-Density Residential	R-1	Low Density Residential
R-2/UL	Medium-Density Residential	R-2	Medium Density Residential
GO/UL	General Office	GO	General Office
C-1/UL	Neighborhood Commercial	C-1	Neighborhood Commercial
C-2/UL	Community Commercial	C-2	Community Commercial
I-2/UL	Light-Medium Industrial	I-2	Light-Medium Industrial
I-3/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

For purposes of this section, land that is also within an area identified as a Nodal Development Area on the Metro Plan Diagram shall be automatically included in the Eugene /ND Nodal Development Overlay Zone. ***A parcel that was identified on Exhibit C to Ordinance No. [insert number assigned to this ordinance] as one to which the /WQ Water Quality Overlay Zone should be applied upon annexation, or any portion of such a parcel that contains a /WQ Management Area, will also automatically be changed to include the /WQ Overlay Zone.*** The official city zoning map shall be amended to reflect the change of zone.

Section 8. Subsection (2) of Section 9.8005 of the Eugene Code, 1971, is amended to provide:

9.8005 Applicability and Effect of Application Requirements, Criteria, and Concurrent Review.

- (2) If an initial proposal also requires an application be submitted for one or more of the following:
- (a) Adjustment review;
 - (b) Site review;
 - (c) Conditional use permit;
 - (d) Planned unit development;
 - (e) Zone change; [or]
 - (e) Willamette Greenway permit[.]; **or**

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(f) Standards review,

the applicant may elect to have the applications reviewed concurrently according to the highest application type. All other provisions of this code would continue to apply to each application, including, but not limited to, the approval criteria.

Section 9. The lead sentence of Subsection (1) of Section 9.8025 of the Eugene Code, 1971, is amended, and a new Subsection (3) added thereto, to provide:

9.8025 Adjustment Review – General Requirements.

- (1) Except as provided in subsections (2) **and** (3), the adjustment review application shall be prepared by one or more of the following professionals unless waived by the planning director:
- (3) ***Unless waived by the planning director:***
- (a) ***An application for adjustment review under EC 9.8030(25)(a) and (b) 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; or***
 4. ***Oregon licensed land surveyor.***
- (b) ***An application for adjustment review under EC 9.8030(25)(c) shall be prepared by one or more of the following professionals:***
1. ***Oregon licensed architect;***
 2. ***Oregon licensed civil or geotechnical engineer;***
 3. ***Oregon licensed landscape architect;***
 4. ***Oregon licensed geologist;***
 5. ***A professionally trained botanist, biologist, ecologist or geomorphologist; or***
 6. ***A creek restoration specialist with a bachelor's degree in the subject field and at least 5 years of applied experience in botany, biology, ecology, geomorphology or a closely related field.***

Section 10. Section 9.8030 of the Eugene Code, 1971, is amended, by adding a new Subsection (25) 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.

- (25) ***/WQ Water Quality Overlay Zone Adjustment. In accordance with EC 9.4784, a provision of the /WQ Water Quality Overlay Zone may be adjusted only upon a finding that the proposed adjustment meets criterion (a), (b), or (c) below:***
- (a) ***Adjustment to Applicable Setback to Limit /WQ Management Area***

to 33% of Development Site. For any parcel greater than 6,000 square feet (not eligible for an automatic setback reduction under EC 9.4778(2)), the city shall make an adjustment to the applicable setback set out at EC 9.4778(1)(b) and (c) if no previous adjustment under this section has been approved for the specific portion of the /WQ Management Area and all of the following are met:

- 1. More than 33 percent of the development site, as defined in EC 9.0500, is occupied by the /WQ Management Area alone or in combination with a /WR Conservation Area;***
 - 2. The proposed reduction in the applicable setback will result in the /WQ Management Area, alone or in combination with a /WR Conservation Area constituting no less than 33 percent of the development site;***
 - 3. The new boundary of the /WQ Management Area shall be located:***
 - a. Parallel to the original boundary (closer to the waterway); or***
 - b. Through the application of setback averaging. Setback averaging shall be accomplished by expanding the /WQ Management Area in an undeveloped area of the development site, and reducing it in another area of the development site;***
 - 4. For either the parallel adjustment in 3.a above or the setback averaging adjustment in 3.b. above, the applicable setback is not reduced by more than 15 feet for a 25 foot setback or more than 20 feet for a 40-foot setback unless further reduction is necessary to achieve the reduction in the /WQ Management Area to 33%, and in no case shall the setback boundary be located within the waterway channel;***
 - 5. For parcels 13,500 square feet or greater, the water quality function rating when the proposed adjustment is implemented will be equal to or greater than the pre-adjustment water quality function rating for the /WQ Management Area based on the city's Water Quality Function Rating System; and***
 - 6. Removal of all refuse, toxics, fill, unauthorized auto bodies, or similar materials located within the /WQ Management Area that are harmful to water quality or that limit the filtration of pollutants from runoff that flows across the /WQ Management Area shall be a condition of approval.***
- (b) Adjustment to Applicable Setback Due to Development Constraints. For a parcel containing a /WQ Management Area, an adjustment to the applicable setback provisions of EC 9.4778(1)(b) and (c) shall be made if no previous adjustment under this section has been approved for the specific portion of the /WQ Management Area, consistent with the following:***
- 1. The adjustment is necessary due to development constraints on the lot caused by the unique physical characteristics of the lot, including but not limited to narrow lot dimensions, irregular shape, and the relationship of these characteristics to the location and extent of the /WQ Management Area;***

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2. ***The adjustment is the minimum necessary to allow the proposed use;***
 3. ***Except as provided under (b)4. below, the new setback boundary shall be located through the application of setback averaging with no overall reduction in the /WQ Management Area. Setback averaging shall be accomplished by expanding the /WQ Management Area in an undeveloped area of the development site and reducing it in another area of the development site, provided:***
 - a. ***At any location, the applicable setback is not reduced by more than 15 feet for a 25-foot setback or by more than 20 feet for a 40-foot setback; and***
 - b. ***The water quality function rating when the proposed adjustment is implemented will be equal to or greater than the pre-adjustment water quality function rating for the /WQ Management Area based on the city's Water Quality Function Rating System;***
 4. ***If, after applying the provisions of (b)3. above, the parcel remains physically constrained as described in (b)1. above, then the overall /WQ Management Area may be reduced. The new setback boundary shall be located:***
 - a. ***Parallel to the original boundary (closer to the waterway);***
or
 - b. ***Through the application of setback averaging. Setback averaging shall be accomplished by expanding the /WQ Management Area in an undeveloped area of the development site, and reducing it in another area of the development site.***
 - c. ***For either the parallel adjustment in 4.a. or the setback averaging adjustment in 4.b., the applicable setback is not reduced by more than 15 feet for a 25-foot setback or by more than 20 feet for a 40-foot setback;***
 - d. ***For either the parallel adjustment in 4.a. or the setback averaging adjustment in 4.b., the water quality function rating when the proposed adjustment is implemented will be at least 150% of the pre-adjustment water quality function rating for the /WQ Management Area based on the city's Water Quality Function Rating System.***
 5. ***Removal of all refuse, toxics, fill, unauthorized auto bodies, or similar materials located within the /WQ Management Area that are harmful to water quality or that limit the filtration of pollutants from runoff that flows across the /WQ Management Area shall be a condition of approval.***
- (c) **Adjustment to Allowed Uses and Development Standards.** ***For property containing a /WQ Management Area, an adjustment to the provisions of EC 9.4780 or EC 9.4790 shall be made consistent with the following:***
1. ***If the proposed adjustment is to allow a use that is otherwise prohibited under EC 9.4780(4), one of the following shall apply:***
 - a. ***General Use Adjustment.***

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- (1) *The proposed use is of similar nature to a specific use listed in EC 9.4780(2) or (3);*
 - (2) *The applicant has submitted evidence through a qualified professional that the proposed use will have a water quality impact similar to the specific use identified pursuant to a.(1) above; and*
 - (3) *The applicant has shown compliance with any standards applicable to the specific use identified pursuant to a.(1), above.*
- b. **Public Transportation System Improvements.**
 - (1) **The use or activity is:**
 - (a) *Necessary to construct a transportation facility included on a financially constrained or illustrative table in the federally approved Regional Transportation Plan; or*
 - (b) *Necessary to protect the public safety by ensuring the structural integrity of existing flood control structures; and*
 - (2) *The applicant has demonstrated that, based on the city's Water Quality Function Rating System (see EC 9.4782), the project will result in a water quality function rating equal to or greater than previously existed.*
 - (3) *If the applicant demonstrates that it is not feasible to meet the standards described in (c)1.a.(3) above, the applicant shall, instead, make improvements to another /WQ waterway over which the applicant also has management control. The applicant shall demonstrate that, based on the city's Water Quality Function Rating System (see EC 9.4782), such improvements will result in an increase in the water quality function rating of that waterway by an amount that is equal to or greater than the rating of the subject waterway prior to the approved adjustment.*
2. *If the proposed adjustment is to a development standard of EC 9.4790, the applicant has provided evidence that the proposed alternative approach for effectively addressing a specific water quality concern is equal to or greater than the standard that would be otherwise required.*

Section 11. 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:

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- (1) The proposed subdivision complies with:
 - (c) Within the /WR Water Resources Conservation Overlay Zone **or the /WQ Water Quality Overlay Zone**, no new lot may be created if more than 33% of the lot, as created, would be occupied by **either**:
 1. ~~T[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[.]; **or**
 2. **The /WQ Management Area**; ~~[making the lot immediately eligible for an adjustment under EC 9.8030(21)(a)]~~

Section 12. 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 **or the /WQ Water Quality Overlay Zone**, no new lot may be created if more than 33% of the lot, as created, would be occupied by **either**:
 1. ~~T[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[.]; **or**
 2. **The /WQ Management Area** ~~[making the lot immediately eligible for an adjustment under EC 9.8030(21)(a)]~~.

Section 13. 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 **or /WQ Water Quality Overlay Zone**, no

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new lot may be created if more than 33% of the lot, as created, would be occupied by **either**:

1. ~~T[the]~~he combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback[.]; **or**
2. **The /WQ Management Area** [making the lot immediately eligible for an adjustment under EC 9.8030(21)(a)].

Section 14. 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 **or /WQ Water Quality Overlay Zone**, no new lot may be created if more than 33% of the lot, as created, would be occupied by **either**:
 1. ~~T[the]~~he combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback[.]; **or**
 2. **The /WQ Management Area** [making the lot immediately eligible for an adjustment under EC 9.8030(21)(a)].

Section 15. 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 **or /WQ Water Quality Overlay Zone**, no new lot may be created if more than 33% of the lot, as created, would be occupied by **either**:

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1. ~~T[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[.]; **or**
2. **The /WQ Management Area** [~~making the lot immediately eligible for an adjustment under EC 9.8030(21)(a)].~~

Section 16. Subsection (5) of Section 9.8415 of the Eugene Code, 1971, is amended 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 **or /WQ Water Quality Overlay Zone**, no new lot may be created if more than 33% of the lot, as created, would be occupied by **either**:
 - (a) ~~T[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[.]; **or**
 - (b) **The /WQ Management Area** [~~making the lot immediately eligible for an adjustment under EC 9.8030(21)(a)].~~

Section 17. Section 9.8470 of the Eugene Code, 1971 is amended, to provide:

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

Section 18. Section 9.8472 of the Eugene Code, 1971 is amended, to provide:

9.8472 Standards Review – Application Requirements. ***In addition to the provisions in EC 9.7010 Application Filing,*** [A]pplications for uses subject to standards review under **EC 9.4780(3) or 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) ***For applications submitted under EC 9.4780(3), a professionally trained botanist, biologist, ecologist, or geomorphologist or creek restoration specialist with a bachelor's degree in the subject field and at least 5 years of applied experience in botany, biology, ecology, geomorphology, or a closely related field, or an Oregon licensed geologist.***

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- (de) **For applications submitted under EC 9.4930(3), a** [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 **submitted under EC 9.4930(3)** 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 **narrative** 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 have been met therein.

Section 19. Section 9.8474 of the Eugene Code, 1971 is amended, to provide:

9.8474 **Standards Review – Modification.** Modification of an approved standards review granted pursuant to EC **9.4780(3) or** 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 **9.4770-9.4790 or** 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 20. 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 **or** ***WQ* Water Quality Overlay Zone**, no new lot may be created if more than 33% of the lot, as created, would

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be occupied by **either**:

1. ~~T[the]he combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback[;];~~ **or**
2. **The /WQ Management Area** ~~[making the lot immediately eligible for an adjustment under EC 9.8030(21)(a)];~~

Section 21. 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 **or /WQ Water Quality Overlay Zone**, no new lot may be created if more than 33% of the lot, as created, would be occupied by **either**:
 1. ~~T[the]he combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback[;];~~ **or**
 2. **The /WQ Management Area** ~~[making the lot immediately eligible for an adjustment under EC 9.8030(21)(a)].~~

Section 22. Section 9.8855 of the Eugene Code, 1971, is amended by adding a new Subsection (6) 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:

- (6) **The proposed zone change is to remove the /WQ Water Quality Overlay Zone, in which case the zone change shall be processed as described in EC 9.4786.**

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Section 23. Subsection (4) of Section 9.8865 of the Eugene Code, 1971 is amended by adding a new subsection (p) thereto, and relettering the current subsections (p), (q) and (r), to (q), (r) and (s) 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 9.4776 /WQ Water Quality Overlay Zone Siting Requirements (only for the purposes of adding the overlay zone. See EC 9.4786.)**
 - (pq) **EC 9.4915 /WR Water Resources Conservation Overlay Zone Siting Requirements (only for the purposes of adding the overlay zone. See EC 9.4960.)**
 - (qr) **EC 9.4815 /WB Wetland Buffer Overlay Zone Siting Requirements.**
 - (rs) **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 24. Ordinance No. 20194 and Sections 6.650, 6.655, 6.660, 6.665, and 6.670 of the Eugene Code, 1971, are repealed:

~~**[6.650 — Open Waterways - Purpose.** It is the intent of sections 6.650 to 6.670 to establish interim protection for constructed and natural open waterways that provide multiple stormwater benefits to the entire community. The protection established in these sections shall remain in effect until the city completes its Goal 5 process for wildlife habitat values and incorporates the results, along with the stormwater conveyance and water quality treatment functions, into a comprehensive set of open waterway protection measures. Open waterways provide such benefits as storm drainage and flood control, filtration and treatment of stormwater pollutants, and habitat for aquatic and other wildlife species.]~~

~~**[6.655 — Open Waterways - Prohibition.**~~
~~(1) As used in sections 6.650 to 6.670, “open waterways” shall mean a natural or human-made swale, creek, stream, open channel, ditch or other similar water feature, that has a defined and identifiable channel with slopes, that is predominantly of earthen material, and that has the specific function of conveying and/or storing stormwater runoff. Notwithstanding anything in the previous sentence to the contrary,~~

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Amazon channel, including the concrete-lined portions, shall be considered an open waterway.

- ~~(2) Except as provided in section 6.660, open waterways shall remain open for the purposes of conveying and/or filtering stormwater runoff. No foreign materials, including earth, lumber, concrete, asphalt, aggregates, pipes, plastic, yard debris or any other similar material, shall be placed in or over the channel of an open waterway. Except for construction exempt under section 6.660, no construction shall take place in or over the channel.~~
- ~~(3) The prohibitions in subsection 6.655(2) apply to the channel area of all open waterways as measured from top of bank to top of bank. The top of 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/or where natural conditions prevail, by a noticeable change from topography 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 bank. If the top of bank is not identifiable, or if it has been significantly altered through channel reconfiguration or other enhancements consistent with the provisions of sections 6.650 through 6.670, the prohibitions in subsection 6.655(2) apply to the line of ordinary high water, which is the line on a bank to which seasonal high water rises annually.]~~

[6.660] Open Waterways - Exemptions:

- ~~(1) The prohibitions in subsection 6.655(2) shall not apply under the following circumstances:~~
- ~~(a) The piping or filling is pursuant to a land use approval or building permit specifically authorizing the piping or filling if the approval was final at the local level prior to the effective date of sections 6.650 to 6.670, is required by state law, or is in a waterway that is part of a wetland site designated for development by the West Eugene Wetlands Plan; and~~
 - ~~(b) The owner of the property or permittee has submitted to the city, and the city has approved, a plan for minimizing and mitigating negative impacts to the waterway as a result of the filling or piping.~~
- ~~(2) The following uses or activities are exempt from the prohibitions of section 6.655:~~
- ~~(a) Construction of bridges, culverts, and other similar infrastructure needed to cross open waterways in order to provide vehicular, bicycle and/or pedestrian access to existing lots of record and connectivity for new development and regional transportation systems;~~

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- ~~(b) Temporary crossings needed to provide access across open waterways in case of emergencies and/or temporary use conditions;~~
- ~~(c) Repair and/or replacement of:
 - 1. Existing street crossings,
 - 2. Channel and stream bank stability problems,
 - 3. Habitat conditions,
 - 4. Existing utilities such as water mains, wastewater and stormwater pipes, electrical transmission lines, and telephone and cable systems.~~
- ~~(d) Construction of stormwater related private and public projects for purposes of restoring or enhancing natural resource values including riparian and wetland habitat.~~
- ~~(e) Construction of stormwater related facilities for the purpose of correcting existing or anticipated flooding and/or water quality problems, such as:
 - 1. Channel widening, relocation or realignment to increase conveyance capacity,
 - 2. Outfalls that discharge runoff into waterways,
 - 3. Water quality best management practices for filtering and settling out pollutants and for preventing and/or minimizing channel down-cutting and/or streambank erosion, such as: vault filters, check-dams, settling bays, ponds and vegetative filters, and in-stream bio-engineering devices designed to reduce velocity of flow.~~
- ~~(f) Roadside ditches constructed for the specific purpose of providing drainage for the roadway.~~
- (3)** ~~Where the prohibitions of subsection 6.655(2) would result in preventing all viable economic use of the property, or would prohibit the use of more than 33 percent of the property, the city manager may grant a site specific exemption to allow some viable economic use of the property, or the use of not less than 67 percent of the property.~~
- (4)** ~~Where the city manager determines that relocation and/or realignment of an open waterway can be accomplished in a manner that is consistent with the purpose of section 6.650, the city manager may authorize that relocation or realignment. If the city manager does so, the city manager shall impose such conditions as he or she deems necessary to ensure that the relocated or realigned open waterway is comparable in functions to the existing open waterway. The city manager shall not approve such relocation or realignment unless the proposal, in addition to being consistent with the purpose of section 6.650, meets the following criteria:
 - ~~(a) All required state and federal permits have been approved,~~
 - ~~(b) The proposal is consistent with existing local plans and policies,~~~~

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- ~~(c) The proposal is consistent with applicable city stormwater development requirements and design specifications including drainage, flood control, water quality treatment, related natural resources protection and maintenance access needs, and~~
- ~~(d) Any requirements imposed by administrative rules adopted pursuant to section 2.019 of this code.~~
- ~~(5) No use or activity under subsections (2) – (4) of this section shall commence until the proposed use or activity is approved by the city manager.~~
 - ~~(a) Except for decisions based on subsection (2), the city manager shall not issue a decision under this section without first providing public notice and an opportunity for public comment consistent with the requirements to be adopted by administrative rules under section 6.665(3).~~
 - ~~(b) The city manager shall deny approval unless the proposal demonstrates that any potential negative impacts to the waterway have been avoided and minimized to the maximum extent practicable. To the extent there are remaining impacts, they are to be mitigated in accordance with adopted city administrative rules which shall require rehabilitation of the degraded hydrological, ecological, and water quality treatment functions, or alternatively, payment to a mitigation fund at an amount determined by the city manager sufficient to secure rehabilitation of lost functions. As part of the administrative rules to be adopted under section 6.665(3), the city manager also shall provide guidance for making determinations on avoidance and minimization.]~~

[6.665 Open Waterways - Enforcement.

- ~~(1) Failure to comply with the provisions of sections 6.650 to 6.660 of this code or rules issued thereunder may result in:
 - ~~(a) The issuance of a stop work order or compliance order by the city;~~
 - ~~(b) The issuance of a citation into municipal court for violation of this code;~~
 - ~~(c) The imposition of an administrative civil penalty pursuant to the provisions of section 2.018 of this code;~~
 - ~~(d) An order to investigate all of the impacts caused by the violation; and/or~~
 - ~~(e) Abatement of the unlawful actions as a nuisance as provided in sections 6.005 to 6.115 of this code, including complete restoration of all impacts to open waterways resulting from the unlawful actions.~~~~
- ~~(2) For purposes of subsections (1)(b) and (1)(c), each day that the unlawful condition exists shall constitute a separate violation.~~
- ~~(3) The city manager shall adopt administrative rules to implement and assist with enforcement of the provisions of sections 6.650 to 6.670 of~~

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~~this code, including specifying public notice procedures for actions taken pursuant to section 6.660 of this code.]~~

~~[6.670 **Open Waterways – Appeals.**~~

- ~~(1) Any person aggrieved by a decision of the city manager under 6.660 or the rules issued hereunder, may appeal that decision to a hearings official in accordance with the provisions of section 2.021 of this code. If the hearings official concludes that the city manager made an erroneous decision, the hearings official shall remand the decision to the city manager for a new decision.~~
- ~~(2) Any person to whom an order is issued under subsection (1)(a) or (d) of section 6.665 of this code may appeal that order in accordance with the provisions of section 2.021 of this code. The filing of an appeal shall not stay the effect of an order issued under subsection (1)(a).]~~

Section 25. The Map on the attached compact disc (Exhibit A-1), depicting the location of lot lines, applicable setback measurement points (centerline or top of high bank) and *WQ* Water Quality Overlay Zone Management Areas, is hereby adopted as the City's official Water Quality Waterways Map. The Map, attached hereto as Exhibit A-2, is a printed copy of the Water Quality Waterways Map attached only for illustrative purposes. As provided by EC 9.4786(3), future amendments to the Map may be effected by an administrative order of the City Manager adopted pursuant to Section 2.019 of the Eugene Code, 1971.

Section 26. The *WQ* Water Quality Overlay Zone is hereby applied to the properties listed on Exhibit B hereto and the Eugene Overlay Zone Map is amended to add the *WQ* Overlay Zone to those properties.

Section 27. The City Council adopts Exhibit C hereto as the list of properties to which the *WQ* Overlay Zone should be applied upon annexation.

Section 28. 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

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

Section 30. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended, or repealed herein.

Section 31. Notwithstanding the effective date of ordinances as provided in the Eugene Charter of 2002, this Ordinance shall become effective ~~[three months from the date of its adoption by the City Council and approval by the Mayor]~~ at midnight on June 10, 2009.

Passed by the City Council this
____ day of _____, 2009

Approved by the Mayor this
____ day of _____, 2009

City Recorder

Mayor

00151726.DOC;32

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List of Affected Taxlots Inside City Limits (Legislatively Updated)
City of Eugene Water Quality Protected Waterways (March 2009)

Number	Taxlot Number	Number	Taxlot Number	Number	Taxlot Number	Number	Taxlot Number	Number	Taxlot Number
1	1604354304400	47	1703174105300	94	1704021300500	141	1704164108100	188	1704214404500
2	1604354304500	48	1703174105400	95	1704031118700	142	1704164108200	189	1704214404600
3	1604354314534	49	1703174105500	96	1704031118800	143	1704164108300	190	1704214404700
4	1604354314535	50	1703174105600	97	1704131400700	144	1704164108400	191	1704214404800
5	1604354314536	51	1703174105700	98	1704131400900	145	1704164108500	192	1704214404900
6	1604354314537	52	1703174105800	99	1704134100100	146	1704164108900	193	1704214405000
7	1604354314538	53	1703174105900	100	1704134100301	147	1704164109000	194	1704214409000
8	1703160000302	54	1703174106000	101	1704134100311	148	1704164109100	195	1704231300120
9	1703160001201	55	1703174200135	102	1704134100313	149	1704164109200	196	1704231306502
10	1703163100400	56	1703174200136	103	1704134100314	150	1704164114000	197	1704232000111
11	1703163200400	57	1703174200142	104	1704134100327	151	1704164201800	198	1704232000112
12	1703163200500	58	1703174200143	105	1704134100330	152	1704164216200	199	1704232000113
13	1703163200600	59	1703174205001	106	1704134100334	153	1704164216300	200	1704234100204
14	1703163200601	60	1703174205100	107	1704134100335	154	1704164400300	201	1704234103500
15	1703163403703	61	1703174205300	108	1704134100336	155	1704164403801	202	1704262301601
16	1703163403704	62	1703174205400	109	1704134100500	156	1704164403802	203	1704262301621
17	1703163403800	63	1703174207400	110	1704134100600	157	1704164404100	204	1704262301622
18	1703164300100	64	1703174207500	111	1704134100800	158	1704171400100	205	1704262301623
19	1703164400700	65	1703174207600	112	1704134400101	159	1704171400200	206	1704262301624
	1703170002700	66	1703174207700	113	1704134400103	160	1704171400300	207	1704262301625
20	1703172300301	67	1703174207800	114	1704134400105	161	1704173101000	208	1704262301626
21	1703172300302	68	1703174207900	115	1704152301000	162	1704173101100	209	1704262301801
22	1703172300303	69	1703174208000	116	1704161400201	163	1704173101200	210	1704262301805
23	1703172300304	70	1703174208100	117	1704161400202	164	1704173101201	211	1704262301817
24	1703172300305	71	1703174208200	118	1704161400300	165	1704173101300	212	1704262301818
25	1703172300306	72	1703174208201	119	1704161400400	166	1704173101401	213	1704262301819
26	1703172300307	73	1703174208300	120	1704161400500	167	1704173101500	214	1704271300102
27	1703172300308	74	1703174208400	121	1704161400600	168	1704173101600	215	1704271300126
28	1703172300309	75	1703174208500	122	1704161400700	169	1704173101601		1704271300134
29	1703172300310	76	1703174208600	123	1704161403700	170	1704173101702	216	1704271300300
30	1703173100900	77	1703174208700	124	1704161403800	171	1704173101801	217	1704271300400
31	1703173101000	78	1703174208800	125	1704161403900	172	1704174100100	218	1704271300500
32	1703173101100	79	1703174208900	126	1704161404000	173	1704174102700	219	1704271302300
33	1703173101101	80	1703174209000	127	1704164104400	174	1704174102800	220	1704271302401
34	1703173101102	81	1703174209100	128	1704164104500	175	1704174102900	221	1704271400111
35	1703173101300	82	1703174209200	129	1704164104600	176	1704174103000	222	1704271400112
36	1703173101400	83	1703174211200	130	1704164104700	177	1704174103100	223	1704271400113
37	1703173101801	84	1703174211300	131	1704164105400	178	1704200002000	224	1704271400114
38	1703173101802	85	1703174211400	132	1704164105500	179	1704202316100	225	1704271400115
39	1703173102000	86	1703183200422	133	1704164105600	180	1704211101600	226	1704271400116
40	1703173102101	87	1703194401100	134	1704164105700	181	1704211101700	227	1704271400132
41	1703173102201	88	1703203305800	135	1704164106400	182	1704211104200	228	1704271401600
42	1703173102300	89	1703203306300	136	1704164106500	183	1704211104300	229	1704271401700
43	1703173102400	90	1703283001600	137	1704164106600	184	1704211106700	230	1704271402100
44	1703173413800	91	1703284000400	138	1704164106700	185	1704211107000		
45	1703174105100	92	1703284000600	139	1704164107900	186	1704214404300		
46	1703174105200	93	1703301001302	140	1704164108000	187	1704214404400		

Strikethrough means the tax lot was removed from the affected tax lot list. In this case, the lot was removed as a result of a recent land survey causing realignment of a property line.

Red shade with strikethrough means an affected tax lot was assembled into public right of way and is removed from the affected tax lot list. Because the right of way is also affected by the proposed Water Quality Waterways Map, there is no net change in the actual regulated area.

Green shade means a tax lot is now affected that wasn't previously affected. In this case, the change is due to a portion of public right of way that was already affected by the proposed Water Quality Waterways Map being converted into a parcel with a tax lot number but still owned by the public agency. There is no net increase in regulated area.

Attachment B - Exhibit B (page 2 of 2)
List of Affected Taxlots Inside City Limits (Legislatively Updated)
City of Eugene Water Quality Protected Waterways (March 2009)

Number	Taxlot Number	Number	Taxlot Number	Number	Taxlot Number	Number	Taxlot Number	Number	Taxlot Number
231	1704271402200	260	1704281108500		1803072201103	315	1803174001500	344	1804012312802
232	1704271405700	261	1704281108600	288	1803072201107	316	1803174001600	345	1804012312803
233	1704271405701	262	1704281114900	289	1803072201108	317	1803174021300	346	1804012312804
234	1704271406500	263	1704281401000		1803072202109	318	1803174021401	347	1804012312806
235	1704271406600	264	1704281401100	290	1803072202101	319	1803174021402	348	1804012312807
236	1704272301002	265	1704281401200	291	1803072202102	320	1803174023500	349	1804012313000
237	1704272301005	266	1704281401901	292	1803072202103	321	1803181302500	350	1804012313306
238	1704272400300	267	1803033303100	293	1803073300807	322	1803181302800	351	1804012313307
239	1704272400301	268	1803033303200	294	1803073300808	323	1803181303400	352	1804012313309
240	1704272401400	269	1803042307300	295	1803073300809	324	1803181303600	353	1804012313310
241	1704272401413	270	1803042308100	296	1803073300810	325	1803182412100	354	1804013202903
242	1704272401414	271	1803042308200	297	1803073300811	326	1803182412200	355	1804013203000
243	1704272402202	272	1803042308300	298	1803162000306	327	1803182412300	356	1804013203100
244	1704272402203	273	1803042308400	299	1803162000500	328	1803182412400	357	1804013203200
245	1704272402204	274	1803042308500	300	1803162000501	329	1803183000200	358	1804013203300
246	1704272402205	275	1803042308600	301	1803162000502	330	1803183103000	359	1804030000700
247	1704272402206	276	1803042308800	302	1803162000503	331	1803183103100	360	1804030000800
248	1704272402222	277	1803042310100	303	1803162000601	332	1803183103200	361	1804030005102
249	1704272402302	278	1803042310200	304	1803162000700	333	1803183103900	362	1804030005700
250	1704272403700	279	1803044300801	305	1803171105700	334	1803183104000	363	1804030006400
251	1704281102900	280	1803044300901	306	1803171106000	335	1803183104100	364	1804030006701
252	1704281103000	281	1803044300902	307	1803171106600	336	1803183150000	365	1804030006703
253	1704281103100	282	1803044301300	308	1803171409800	337	1803183190000	366	1804030006706
254	1704281107900	283	1803044301400	309	1803171411000	338	1803184205400	367	1804110000302
255	1704281108000	284	1803044301500	310	1803174000900	339	1803200000101	368	1804112301200
256	1704281108100	285	1803063310000	311	1803174001002	340	1803202100102		
257	1704281108200	286	1803063310301	312	1803174001100	341	1803202201001		
258	1704281108300	287	1803072201100	313	1803174001400	342	1803202201002		
259	1704281108400			314	1803174001401	343	1803202300101		

Strikethrough means the specific tax lot number is no longer identified as affected. In both cases, the tax lots were partitioned into multiple lots - see green shade description - causing the previous tax lot numbers to be removed and replaced.

Green shade means new tax lot numbers are now affected. In each case, the new tax lots were created by land partitions that were already part of the proposed Water Quality Waterways Map. The resulting affect is an increase in tax lots affected but no net change in area affected. The double-lined border shows the relationship of the old tax lot number (removed) to the new tax lot numbers (added).

Attachment B - Exhibit C
List of Affected Taxlots Outside City Limits and Within UGB (Legislatively Updated)
City of Eugene Water Quality Protected Waterways (March 2009)

Number	Taxlot Number	Number	Taxlot Number	Number	Taxlot Number	Number	Taxlot Number
1	1604354305600	46	1704091102000	92	1704142202265	138	1704234100201
2	1604354305700	47	1704091102500	93	1704142202266	139	1704234100202
3	1604354307600	48	1704091102900	94	1704142202267	140	1704234100300
4	1604354307700	49	1704091103000	95	1704142202268	141	1704234100400
5	1604354308600	50	1704091103001	96	1704142202300	142	1704234100500
6	1604354308700	51	1704091103100	97	1704143402200	143	1704234100501
7	1604354308900	52	1704091103200	98	1704143404400	144	1704234100502
8	1604354309300	53	1704091103201	99	1704143404600	145	1704234101200
9	1604354309400	54	1704091103202	100	1704143410500	146	1704234101300
10	1604354309500	55	1704092000100	101	1704144303401	147	1704234101400
11	1604354313100	56	1704100001700	102	1704144303500	148	1704234101500
12	1604354313200	57	1704102202400	103	1704151002500	149	1704234101600
13	1604354313300	58	1704102202501	104	1704161100100	150	1704234101700
14	1604354313400	59	1704102202600	105	1704161101300	151	1704234101800
15	1604354313500	60	1704102202800	106	1704161101400	152	1704234103000
16	1604354313600	61	1704102202999	107	1704161101500	153	1704234103100
17	1703070001000	62	1704102203000	108	1704161101900	154	1704234103200
18	1703070001002	63	1704102204198	109	1704161102000	155	1704234103300
19	1704010008500	64	1704102204200	110	1704161103300	156	1704234103400
20	1704012300800	65	1704102204300	111	1704161103400	157	1704234103600
21	1704013100327	66	1704102204401	112	1704161103700	158	1704234103700
22	1704013100328	67	1704102204500	113	1704161400100	159	1704234105200
23	1704013100329	68	1704142100101	114	1704161405900	160	1704234105300
24	1704021300415	69	1704142100129	115	1704161406000	161	1704234105400
25	1704021300416	70	1704142100131	116	1704161406100	162	1704234105700
26	1704021300417	71	1704142100132	117	1704161406200	163	1704234105701
27	1704021300418	72	1704142100133	118	1704161406300	164	1704234200300
28	1704040001000	73	1704142100134	119	1704161406400	165	1704234200400
29	1704040001002	74	1704142100135	120	1704161407800	166	1704234200500
30	1704040002101	75	1704142100136	121	1704231300118	167	1704234202401
	1704040002104	76	1704142100137	122	1704231301900	168	1704234202500
31	1704040002200	77	1704142100138	123	1704231302000	169	1704234202600
32	1704044400400	78	1704142100139	124	1704231302900	170	1704234202700
33	1704044400500	79	1704142100142	125	1704231302905	171	1704234202800
34	1704090000103	80	1704142100143	126	1704231303000	172	1704234402800
35	1704091100200	81	1704142100144	127	1704231303100	173	1704234402900
36	1704091100500	82	1704142100145	128	1704231306600	174	1704234403000
37	1704091100600	83	1704142100146	129	1704231306701	175	1704234403100
38	1704091101000	84	1704142100147	130	1704231306702	176	1704234403200
39	1704091101400	85	1704142202258	131	1704231306800	177	1704234403300
40	1704091101500	86	1704142202259	132	1704231306801	178	1704234403400
41	1704091101600	87	1704142202260	133	1704232000114		1804030005104
42	1704091101800	88	1704142202261	134	1704232000115	179	1804030005103
43	1704091101801	89	1704142202262	135	1704232000199	180	1804030006704
44	1704091101802	90	1704142202263	136	1704232002401	181	1804030006900
45	1704091101900	91	1704142202264	137	1704234100200		

Blue shade with strikethrough means an existing tax lot already affected by the proposed regulated area was consolidated into and became part of another existing tax lot that was already affected by the proposed regulated area. The resulting effect is one less tax lot is affected without changing the location and amount of regulated area.

Green shade means a tax lot is now affected that wasn't previously affected. In this case, the change is due to a portion of public right-of-way that was already affected by the proposed regulated area being converted into a parcel with a tax lot number. There is no net increase in regulated area.

Attachment B - Exhibit D
Legislative Findings
to Ordinance No. _____
(Legislatively Updated)

Code Amendments. Eugene Code Section 9.8065 requires that the following criteria (in bold and italic) be applied to a code amendment.

(1) Is consistent with applicable statewide planning goals as adopted by the Land Conservation and Development Commission.

Goal 1 Citizen Involvement: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City of Eugene land use code implements Statewide Planning Goal 1 by requiring that notice of the proposed amendments be given and public hearings be held prior to adoption.

The process leading up to the development of the Water Quality Waterways Ordinance has provided numerous opportunities for citizen involvement. In June 2006, the city hosted an Open House to provide information and receive input on a preliminary proposal for water quality waterway protection. Notice of the open house was sent to all potentially affected property owners, and a list of over 300 interested persons. A news release about the open house was issued and a display ad was placed in the local newspaper. A web site was established to convey information about the proposal, the citizen involvement and adoption process, and staff contact information. Three newspaper articles were published in the local paper between June 2006 and August 2006 regarding the proposal. Subsequent to the open house, between August 2006 and March 2007, four separate postcards were sent to all potentially affected property owners and interested persons to convey the most up-to-date process and timeline, a project web address for additional information, and staff contact information. Site visits were conducted upon request to confirm the accuracy of the City's digital information regarding the existence and location of waterways, and the applicability of the proposed protections to individual sites. Presentations about the proposal were made to interested groups upon request. The citizen input received on the preliminary proposal resulted in significant changes and in November 2007, a notice describing the revised proposal was sent to all potentially affected property owners and interested persons with an updated public hearing and adoption schedule.

The City of Eugene's land use code implements Statewide Planning Goal 1 by requiring that notice of the proposed land use code amendments be given and public hearings be held prior to adoption. Consideration of this ordinance began with a Eugene Planning Commission work session on January 14, 2008. On January 15, 2008, a public hearing was held before the Eugene Planning Commission on the proposed amendments. Department of Land Conservation and Development notice, notice to affected property owners, Planning Commissioners, neighborhood

group leaders and interested persons, as well as a legal notice in the local newspaper were provided for that hearing.

A worksession with the Eugene City Council ~~is was held on~~~~scheduled for~~ May 12, 2008, and a City Council public hearing ~~scheduled for~~~~was conducted on~~ May 19, 2008, ~~for which~~. ~~No~~ notice to affected property owners, Planning Commissioners, neighborhood group leaders and interested persons, as well as a legal notice in the local newspaper ~~will be~~~~were~~ provided ~~for that hearing~~. Three people testified at the public hearing, and 23 pieces of public testimony were received through the public hearing proceedings. A follow up worksession was held on June 18, 2008 and again on January 28, 2009 for purposes of considering purchasing conservation easements as an alternative approach to regulatory protections. The Eugene City Council is scheduled to take action on the proposed ordinance on March 9, 2009.

The project web site is regularly updated to inform interested persons of the status of the proposal, and provides links to City Council materials, a detailed map showing the proposed protected areas, other related information.

The process for adopting these amendments complies with Goal 1 since it complies with, and surpasses the requirements of the State's citizen involvement provisions.

Goal 2 - Land Use Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The Eugene-Springfield Metropolitan Area General Plan (Metro Plan) is a policy tool that provides a basis for decision-making in this area. The Metro Plan was acknowledged by the State in 1982 to be in compliance with statewide planning goals. The Eugene Comprehensive Stormwater Management Plan (CSWMP), a refinement to the Metro Plan specifically related to reducing stormwater pollution, adopted by the City of Eugene only, provides additional policy basis for decision-making in this area. CSWMP was acknowledged by the State to be in compliance with statewide planning goals.

These findings and record show that there is an adequate factual base for decisions to be made concerning the proposed amendments. Goal 2 requires that plans be coordinated with the plans of affected governmental units and that opportunities be provided for review and comment by affected governmental units. The Goal 2 coordination requirement is met when the City engages in an exchange, or invites such an exchange, between the city and any affected governmental unit and when the City uses the information obtained in the exchange to balance the needs of the citizens. To comply with the Goal 2 coordination requirement, the City provided information and sought input on these proposed land use code amendments from all affected governmental units. Specifically, Lane County, Oregon Department of Transportation, Eugene Water & Electric Board and other affected governmental agencies were notified as affected property owners of the June 2006 Open House and subsequent schedule updates and changes to the proposal. City staff communicated with Lane County staff, Oregon Department of Transportation staff, and Eugene Water & Electric Board staff during the development of this

proposal to obtain their input which was subsequently factored into the updated proposal. There are no Goal 2 exceptions required for this ordinance.

Goal 3 - Agricultural Land: To preserve and maintain agricultural lands.

Goal 3 is not applicable to this ordinance as the subject sites and actions do not affect any agricultural plan designation or use. Goal 3 excludes lands inside an acknowledged urban growth boundary from the definition of agricultural lands. Since the ordinance only applies to land entirely within the acknowledged urban growth boundary, Goal 3 is not relevant and the ordinance does not affect the area's compliance with Statewide Planning Goal 3.

Goal 4 - Forest Land: To conserve forest lands.

Goal 4 is not applicable to this ordinance as the subject sites and actions do not affect any forest plan designation or use. Goal 4 does not apply within urban growth boundaries and, therefore, does not apply to the adoption of this ordinance. Goal 4 is not relevant and the ordinance does not affect the area's compliance with Statewide Planning Goal 4.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources: To conserve open space and protect natural and scenic resources.

The following administrative rule (OAR 660-023-0250) is applicable to this post-acknowledgement plan amendment (PAPA) request:

- (3) *Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:*
 - (a) *The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;*
 - (b) *The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
 - (c) *The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

The areas regulated by this ordinance do not include Goal 5 resource sites. The proposed amendments do not create or amend a list of Goal 5 resources, do not amend a plan or code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5, do not allow new uses that could be conflicting uses with a particular Goal 5 resource site, and do not amend the acknowledged Urban Growth Boundary.

Therefore, Statewide Planning Goal 5 does not apply to these code amendments.

Goal 6 - Air, Water and Land Resources Quality: To maintain and improve the quality of the air, water, and land resources of the state.

Goal 6 addresses waste and process discharges from development, and is aimed at protecting air, water and land from impacts from those discharges. The proposed regulations are a key aspect of the City's response to federal Clean Water Act regulations, specifically the Upper Willamette Basin Total Maximum Daily Load (TMDL). Several waterways in Eugene do not state water quality standards for certain pollutants. For these waterways, the state of Oregon Department of Environmental Quality, the state agency charge with implementing TMDL regulations, has developed the Upper Willamette TMDL to bring these waterways back into compliance with state standards. The Upper Willamette TMDL allocates pollutant loads to designated management agencies, including the City of Eugene that have the authority to implement water quality improvements within their jurisdictional boundaries. One management strategy identified in the Upper Willamette TMDL for addressing multiple pollutants is the application of streamside buffers.

Therefore, the ordinance is consistent with Statewide Planning Goal 6.

Goal 7 - Areas Subject to Natural Disasters and Hazards: To protect life and property from natural disasters and hazards.

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as land slides. This ordinance does not directly address potential natural disasters and hazards. These hazards are addressed by separate studies and protection measures. However, the /WQ overlay zone prohibits construction within specified setbacks of the identified waterways. As such, the overlay zone provides benefits with relation to flood impacts to real property and thus could provide further protections consistent with Statewide Planning Goal 7.

Goal 8 - Recreational Needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Goal 8 ensures provision of recreation facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The proposed ordinance will not impact provision of recreational facilities, nor will it affect access to existing or future recreational facilities. Therefore, the ordinance is consistent with Goal 8.

Goal 9 - Economic Development: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

The ordinance will not impact the supply of industrial or commercial lands. Therefore, the amendments are consistent with Goal 9. The /WQ overlay zone does not render a property unusable for commercial or industrial uses. In fact, specific provisions in the /WQ overlay zone ensure that the overlay zone does not have such an effect on a property. Some of those provisions are:

1. The use restrictions of the /WQ overlay zone only apply to that portion of a lot, or right-of-way area, that is within the channel of an identified /WQ waterway and the specified setback distance from the waterway based on the associated setback measurement point. The use-restricted area is referred to as the “/WQ setback management area.” Within the portions of the lot that are outside of the /WQ management area, land uses are not restricted by the /WQ overlay zone. EC 9.4780(1). Properties that have a base zoning and designation allowing commercial or industrial uses can still be developed with such uses on those portions of the lot that are not within the /WQ management area.

2. If the regulated area occupies more than 33% of a development site area, upon application of the property owner, and consistent with the other criteria of EC 9.8030(25)(a), the City will reduce the size of the ~~AWR-/WQ~~ conservation area to ensure that the area constitutes no more than 33% of the development site area.

3. Upon application of the owner of a lot with the /WQ overlay that shows consistency with the criteria of EC 9.8030(25)(b), the city will reduce the size of the setback distance.

4. Upon application of the owner of a lot with the /WQ overlay that shows consistency with the criteria of EC 9.8030(25)(c), the city will allow uses not otherwise identified in the ordinance, or approve a different means of protecting water quality to allow a proposed development that would not be permissible under the strict application of the ordinance.

Considering these provisions of the /WQ overlay zone, the application of the overlay zone to a property zoned and designated for commercial or industrial use does not result in an unlawful diminution in the area’s supply of commercial or industrial land.

Even supposing the provisions above were not a part of the overlay’s regulations, the overlay is being applied to such a small number of acres included in the area’s inventories of commercial and industrial lands that this ordinance overlay could not diminish the area’s supply of those lands below the projected need.

An analysis of potential impacts to the supply of buildable commercial lands within the Eugene city limits and UGB was conducted using the regional Geographic Information System (GIS) and calculations of supply and demand from the Eugene Commercial Lands Study, 1992. The State-acknowledged Eugene Commercial Lands Study included a surplus of Commercial acreage of 170 acres. This acreage represents those lands that were designated as commercial lands, beyond the acreage needed to accommodate the projected 20-year demand. Since the adoption of that Study, the City has taken various actions [through December 2008](#) that have [had a net decreased in](#) the amount of surplus commercial acreage, resulting in a current surplus of [44.80 94.29](#) acres. Even if the provisions described in [1.-3.4.](#), above, were not included in the ordinance, the /WQ regulations contained in this ordinance could affect, at most, 1.30 acres of commercially designated land all located within the current city limits, leaving a surplus of [92.9943-50](#) acres.

An analysis of potential impacts to the supply of buildable industrial lands within the Eugene UGB was conducted using the regional Geographic Information System (GIS), data provided by City of Springfield staff and calculations of supply and demand from the Metropolitan Industrial Lands Inventory Report, 1993. The State-acknowledged Metropolitan Industrial Lands Inventory Report included a surplus of industrial acreage of 2,954.28 acres (considering a low demand assumption) or of 2,432.28 acres (considering a high demand assumption). This acreage represents those lands that were designated as industrial lands, beyond the acreage needed to accommodate the projected 20-year demand. Since the adoption of that Report, Eugene and Springfield have taken various actions that have had a net decreased in the amount of surplus industrial acreage, resulting in a current surplus of either 2,060.562,048.37 acres (considering a low demand assumption) or of 1,538.561,526.37 acres (considering a high demand assumption). The /WQ regulations will impact 14.28 acres of industrial buildable land within the city limits, leaving a surplus of 2,046.282,034.09 acres (considering a low demand) and 1,524.281,512.09 acres (considering a high demand). Outside the city limits and within the UGB, /WQ regulations will affect 12.89 industrial acres for a total impact of 27.17 acres when added to impact acres within the city limits. Total /WQ impact acres, within and outside the city limits and within the UGB, will leave a net surplus supply of 2,021.20 acres (considering a low demand) and 1,499.20 acres (considering a high demand). Therefore, even if the provisions described in 1. – 34., above, were not included in the ordinance, the /WQ regulations contained in this ordinance, or an ordinance applying /WQ to acres outside the city limits and within the UGB, could do not unlawfully diminish the supply of industrial land.

Based on the forgoing discussion and analysis, it is clear that even if the maximum possible area within the proposed /WQ management area was treated as a subtraction from the buildable lands inventory, and taking into account plan amendments that took land out of commercial and industrial categories, and taking into account legislative zone changes, there would still be a net surplus of buildable lands in the applicable categories for both industrial and commercial land.¹

Therefore, the ordinance is consistent with Goal 9.

Goal 10 - Housing: To provide for the housing needs of the citizens of the state.

The /WQ overlay zone does not render a property unusable for residential uses. In fact, specific provisions in the /WQ overlay zone ensure that the overlay zone does not have such an effect on a property. Some of those provisions are:

1. The use restrictions of the /WQ overlay zone only apply to that portion of a lot, or right-of-way area, that is within the channel of an identified /WQ waterway and the specified setback distance from the waterway based on the associated setback measurement point. The use-restricted area is referred to as the “/WQ setback management area.” Within the portions of the

¹ The City’s adoption of the /WQ regulations do not impact land outside of the City limits. If Lane County chooses to adopt similar provisions, it will assess its impact at that time. The land identified to receive the /WQ overlay zone upon annexation includes no commercial buildable land and 12.89 acres of industrial buildable land. However, it is not clear when, if ever these parcels will be annexed or, whether, when they do annex, they will qualify for an exemption under the ordinance. Even if these parcels are considered as debits to the existing surplus, the ordinance is consistent with Goal 9.

lot that are outside of the /WQ management area, land uses are not restricted by the /WQ overlay zone. EC 9.4780(1). Properties that have a base zoning and designation allowing commercial or industrial uses can still be developed with such uses on those portions of the lot that are not within the /WQ management area.

2. If the regulated area occupies more than 33% of a development site area, upon application of the property owner, and consistent with the other criteria of EC 9.8030(25)(a), the City will reduce the size of the /WQ conservation area to ensure that the area constitutes no more than 33% of the development site area.

3. Upon application of the owner of a lot with the /WQ overlay that shows consistency with the criteria of EC 9.8030(25)(b), the city will reduce the size of the setback distance, ~~allow uses not otherwise identified in the ordinance, or approve a different means of protecting water quality to allow a proposed development that would not be permissible under the strict application of the ordinance.~~

4. Upon application of the owner of a lot with the /WQ overlay that shows consistency with the criteria of EC 9.8030(25)(c), the city will allow uses not otherwise identified in the ordinance, or approve a different means of protecting water quality to allow a proposed development that would not be permissible under the strict application of the ordinance.

Considering these provisions of the /WQ overlay zone, the application of the overlay zone to a property zoned and designated for residential use does not result in an unlawful diminution in the area's supply of residential land.

Even supposing the provisions above were not a part of the overlay's regulations, the overlay is being applied to such a small number of acres included in the area's inventory of residential lands that this ordinance overlay could not deplete the area's supply of those lands below the projected need.

An analysis of potential impacts to the supply of buildable residential lands within the Eugene UGB was conducted using the regional Geographic Information System (GIS), data provided by City of Springfield staff and calculations of supply and demand from the Supply and Demand Technical Analysis of the Eugene- Springfield Metropolitan Area Residential Lands and Housing Study (RLHS), 1999. The State-acknowledged Eugene-Springfield Metropolitan Area Residential Lands and Housing Study included a surplus of residential acreage of 1,862 acres (considering a low demand assumption) or of 790 acres (considering a high demand assumption). This acreage represents those lands that were designated as residential lands, beyond the acreage needed to accommodate the projected 20-year demand. Since the adoption of that Study, Eugene and Springfield have taken various actions that have had a net decreased in the amount of surplus residential acreage, resulting in a current surplus of either 1,250.33 ~~1,256.30~~ acres (considering a low demand assumption) or of 178.33 ~~184.31~~ acres (considering a high demand assumption). Even if the provisions described above were not included in the ordinance, the /WQ regulations contained in this ordinance could affect, at most, 45.7547-12 acres of residentially designated land within the city limits, leaving a surplus of 1,204.58 ~~1,209.18~~ acres (considering a low demand assumption) or of 132.58 ~~137.19~~ acres (considering a high demand assumption).

Outside the city limits and within the UGB, /WQ regulations will affect 25.99 residentially designated land acres for a total impact of 71.74 acres when added to impact acres within the city limits. Total /WQ impact acres, within and outside the city limits, will leave a net surplus supply of 1,178.59 acres (considering a low demand) and 106.59 acres (considering a high demand).

Based on the forgoing discussion and analysis, it is clear that even if the maximum possible area within the proposed /WQ management area was treated as a subtraction from the residential buildable lands inventory, and taking into account plan amendments that took land out of residential categories, and taking into account previous legislative zone changes, there would still be a net surplus of buildable lands in the applicable categories for residential land.²

Therefore, the ordinance is consistent with Goal 10.

Goal 11 - Public Facilities and Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The area affected by this ordinance is located inside the city limits and is served by the public facilities in which the existing level of service is adequate to serve the needs of existing and future development. The provisions of this ordinance do not affect the planning or development of future public facilities or services. Therefore, the ordinance is consistent with Goal 11.

Goal 12 - Transportation: To provide and encourage a safe, convenient and economic transportation system.

Goal 12 is implemented through the Transportation Planning Rule (TPR), as defined in Oregon Administrative Rule OAR 660-012-0000, et seq. The Eugene-Springfield Metropolitan Area Transportation Plan (TransPlan) provides the regional policy framework through which the TPR is implemented at the local level. The TPR (OAR 660-012-0060) states that when land use changes, including amendments to acknowledged comprehensive plans, significantly affect an existing or planned transportation facility the local government shall put in place measures to assure that the allowed land uses are consistent with the identified function, capacity and performance standards (level of service, volume to capacity ratio, etc.) of the facility.

Adoption of the ordinance will not significantly affect an existing or planned transportation facility. Therefore, Goal 12 is not implicated by this ordinance.

Goal 13 - Energy Conservation: To conserve energy.

This ordinance does not concern energy conservation. Therefore, Goal 13 does not apply.

² The City's adoption of the /WQ regulations do not impact land outside of the City limits. If Lane County chooses to adopt similar provisions, it will assess its impact at that time. The land identified to receive the /WQ overlay zone upon annexation includes 25.99 acres of buildable residential land. However, it is not clear when, if ever these acres will be annexed or, whether, when they do annex, they will qualify for an exemption under the ordinance. Even if these parcels are considered as debits to the existing surplus, the ordinance is consistent with Goal 10.

Goal 14 - Urbanization: To provide for an orderly and efficient transition from rural to urban land use.

This ordinance does not effect the transition from rural to urban land use. It applies only to property already within the City limits. Therefore, Goal 14 does not apply to this ordinance.

Goal 15 - Willamette River Greenway: To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The Willamette Greenway area within the Eugene Urban Growth Boundary and city limits is governed by existing local provisions which have been acknowledged as complying with Goal 15. Those provisions are unchanged by this ordinance. The proposal does not affect any area within the Willamette Greenway Boundary and, even if it did, the proposed provisions would serve to further implement this goal by providing water quality setback protections along affected waterways.

Goal 16 through 19 (Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources):

There are no coastal, ocean, estuarine, or beach and dune resources related to the property affected by this ordinance. Therefore, these goals are not relevant and the ordinance will not affect compliance with Goals 16 through 19.

(2) *Is consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.*

The proposed code adds regulations to the Land Use Code with the intent of protecting those waterways that have a significant relationship to waterways identified by the state Department of Environmental Quality as not meeting water quality standards but that are not otherwise regulated in a way that protects water quality. The proposed /WQ Water Quality Overlay Zone designates a regulated “water quality management area” which is comprised of the waterway channel and its applicable setback. The proposed setback distance, applied to both sides of the regulated waterway, is either 25 feet measured from the top of high bank for a tributary to a water quality limited stream –or– 40 feet measured from centerline for a headwater stream.

METRO PLAN POLICIES.

The above described /WQ overlay regulations are consistent with the following Metro Plan Policies:

C. Environmental Resources Element

Air, Water and Land Resources Quality (Goal 6)

C.25 Springfield, Lane County, and Eugene shall consider downstream impacts when planning for urbanization, flood control, urban storm runoff, recreation, and water quality along the Willamette and McKenzie Rivers.

The overlay zone restricts development activities and other uses within and adjacent to certain waterways to protect the quality of stormwater runoff and water quality in receiving waterways including the Willamette River.

C.26 Local governments shall continue to monitor, to plan for, and to enforce applicable air and water quality standards and shall cooperate in meeting applicable federal, state, and local air and water standards.

The overlay zone is one element of a broader pollution reduction strategy in response to federal water quality standards including the Clean Water Act and related Upper Willamette Total Maximum Daily Load (TMDL).

C.33 Eugene shall maintain and improve hillside development regulations.

The overlay zone prevents development immediately adjacent to headwater streams that are otherwise unprotected and which are particularly sensitive to development impacts that are detrimental to receiving water quality. Headwater streams are streams located in hillside areas on slopes greater than 10%, in areas with highly erodible soils, and that drain at least 10 acres.

D. Willamette River Greenway, River Corridors, and Waterways Element

D.2 Land use regulations and acquisition programs along river corridors and waterways shall take into account all the concerns and needs of the community, including recreation, resource, and wildlife protection; enhancement of river corridor and waterway environments; potential for supporting non-automobile transportation; opportunities for residential development; and other compatible uses.

The allowed uses in the /WQ overlay zone are consistent with this policy.

D.5 New development that locates along river corridors and waterways shall be limited to uses that are compatible with the natural, scenic, and environmental qualities of those water features.

The allowed uses in the /WQ overlay zone are consistent with this policy.

E. Environmental Design Element

E.2 Natural vegetation, natural water features, and drainage-ways shall be protected and retained to the maximum extent practical. Landscaping shall be utilized to enhance those natural features. This policy does not preclude increasing their conveyance capacity in an environmentally responsible manner.

Provisions of the /WQ overlay zone explicitly address the protection of natural vegetation, water features, and drainageways and are therefore consistent with this policy.

G. Public Facilities and Services Element

Services to Development Within the Urban Growth Boundary: Stormwater

G.13 *Improve surface and ground water quality and quantity in the metropolitan area by developing regulations or instituting programs for stormwater to:*

- a. Increase public awareness of techniques and practices private individuals can employ to help correct water quality and quantity problems;*
- b. Improve management of industrial and commercial operations to reduce negative water quality and quantity impacts;*
- c. Regulate site planning for new development and construction to better manage pre- and post-construction storm runoff, including erosion, velocity, pollutant loading, and drainage;*
- d. Increase storage and retention and natural infiltration of storm runoff to lower and delay peak storm flows and to settle out pollutants prior to discharge into regulated waterways;*
- e. Require on-site contracts and development standards, as practical, to reduce off-site impacts from stormwater runoff;*
- f. Use natural and simple mechanical treatment systems to provide treatment for potentially contaminated runoff waters;*
- g. Reduce street-related water quality and quantity problems;*
- h. Regulate use and require containment and/or pretreatment of toxic substances;*
- i. Include containment measures in site review standards to minimize the effects of chemical and petroleum spills; and*
- j. Consider impacts to ground water quality in the design and location of dry well.*

The /WQ overlay zone regulates development uses and activities within a designated water quality management area, retains the natural filtration capabilities of certain waterways, and includes mitigation provisions for when, in certain circumstances, water quality impacts are unavoidable.

G.16 *Manage or enhance waterways and open stormwater systems to reduce water quality impacts from runoff to improve stormwater conveyance.*

The /WQ overlay zone includes allowances for management practices that are beneficial to water quality or that are not harmful to water quality.

G.17 *Include measures in local land development regulations that minimize the amount of impervious surface in new development in a manner that reduces stormwater pollution, reduces the negative effects from increases in runoff, and is compatible with Metro Plan policies.*

The /WQ overlay zone includes measures that prohibit additional impervious surface area adjacent to and within certain streams to reduce additional negative water quality effects of development related activities and uses.

REFINEMENT PLAN POLICIES

The above described /WQ overlay regulations are consistent with the following Refinement Plan Policies:

Comprehensive Stormwater Management Plan Policies

1.1 Incorporate the beneficial functions (flood control, stormwater conveyance, water quality treatment) of natural resources into the City's storm drainage system.

Establishment of a /WQ overlay zone protects certain waterways that have important water quality functional benefits and are vulnerable to impact from development uses and activities. The overlay zone protections signify the importance of these waterways to the City's storm drainage system.

1.2 Maintain flood control, drainage, and water quality treatment capacities along the City's stormwater conveyance corridors while protecting and enhancing the health, diversity and continuity for wildlife habitat, native vegetation, and endangered species.

The overlay zone includes provisions to protect the water quality treatment capacities of certain waterways, while at the same time maintaining the flood control and conveyance functions, and protecting and enhancing native vegetation.

1.4 Amend existing regulations and administrative policies and practices to be consistent with the goals and policies of the Stormwater Plan.

The proposal amends the Eugene Code to add a /WQ Water Quality Overlay Zone, in fulfillment of Stormwater Plan policies.

1.5 Develop new design standards and maintenance practices that meet the multiple objectives of the Stormwater Plan.

The overlay zone includes specific criteria and development standards for certain allowed uses within the /WQ management area which meet the multiple objectives of the Stormwater Plan.

2.1 Meet or exceed federal flood hazard requirements.

The overlay zone includes provisions that enable maintenance of storm drainage channels in accordance with applicable federal guidelines, regulations, and maintenance agreements.

3.1 Meet or exceed federal and state stormwater quality requirements especially where they conform with existing local policy.

The /WQ overlay zone protects waterways which are identified by the state of Oregon Department of Environmental Quality as water quality impaired (on the state's "303(d) List"), waterways that drain directly into a water quality impaired waterway, and headwater tributaries that are particularly sensitive to erosive effects of increased stormwater runoff from new development and that drain into a water quality impaired waterway –AND- which are not otherwise protected by existing regulations. The Upper Willamette Total Maximum Daily Load lists the City of Eugene as a Designated Management Agency, responsible for developing and implementing a plan to achieve water quality improvement goals for water quality impaired waterways including Amazon Creek, A3 Channel, Amazon Diversion Channel, Willow Creek and the Willamette River. The overlay zone meets federal and state stormwater quality requirements and conforms with existing Stormwater Plan policies.

3.3 Reduce stormwater pollution associated with new construction and development, soil erosion, improper use of stormwater facilities, and city operations and maintenance practices.

The /WQ overlay zone protects certain waterways from adverse water quality impacts from development uses and activities that could be harmful to water quality including new construction, vegetation removal, soil disturbance, and operations and maintenance practices. The overlay zone includes provisions to mitigate for the water quality impact of certain uses and activities for which there is no other alternative.

4.1 Maintain the stormwater system through techniques and practices that balance flood control, drainage services, water quality, and natural resource protection needs.

The /WQ overlay zone insures that channel maintenance practices are protective of the water quality function of specifically identified waterways.

6.1 Encourage and support communication, coordination and cooperative efforts that maximize available resources, reduce duplication of services, and prevent management conflict.

The City collaborated with Oregon Department of Transportation, Lane County and Eugene Water & Electric Board staff during the development of this proposal to obtain their input. The /WQ overlay zone provisions include allowances for routine channel maintenance that do not adversely impact water quality. The overlay zone includes provisions to mitigate for the water quality impact of certain uses and activities for which there is no other alternative.

Bethel Danebo Refinement Plan (as amended, January 13, 2003) Policies

II-D 1. The Royal Avenue Specific Plan shall serve as the basis for development regulations and infrastructure improvements within the Royal Avenue Specific Plan area. Amendments to land use regulations for the Royal Avenue Node shall be consistent with the Land Use Element of the Royal Avenue Specific Plan.

The /WQ overlay zone will not be applied to any properties within the Royal Special Area Zone. The Royal Avenue Specific Plan includes provisions for the protection and utilization of drainage channels for multiple functions including water quality protection.

Bethel Danebo Neighborhood Refinement Plan Phase 2 – West Eugene Industrial Study and Roosevelt Extension and Drainage Facility Policies

West Eugene Industrial Study IV.A.4 Further information on industrial wastewater run-off and water quality should be used as input in revising development regulations affecting drainage and the multiple-use potential of drainage channels in the West Eugene Industrial Area.

The /WQ overlay zone includes provisions to protect specific waterway from the impacts of uses and activities that could impact water quality. The waterways identified for protection include those listed by the state Department of Environmental Quality as water quality impaired (on the state’s “303(d) List”), waterways that drain directly into a water quality impaired waterway, and headwater tributaries that are particularly sensitive to erosive effects of increased stormwater runoff from new development and that drain into a water quality impaired waterway –AND- which are not otherwise protected by existing regulations. The Roosevelt Channel and the West Beltline Floodway are identified for protection by the /WQ Overlay.

Laurel Hill Plan Policies

Laurel Hill Valley Neighborhood

I.C.6. *The Laurel Hill Plan supports the South Hills Study standards. In general, alteration of land contours shall be minimized to retain view of natural features and retain as much of the forested atmosphere as possible. Aside from purely aesthetic considerations, these hillsides demand care in development because the topsoil is thin and the water runoff is rapid. Proposed developments shall respect the above considerations. ”.*

III.C.3. *Right-of-way maintenance should be provided for footpaths and natural drainage channels, and channel banks should be closed to construction. ... ”*

East Laurel Hill Area

I. *Many of the plan provisions that apply to the Laurel Hill Valley also apply to East Laurel Hill. Plans for development should take into account the existing natural conditions, including the topographical features, vegetation, and natural drainage..... ”*

The /WQ overlay zone would ensure that sensitive headwater streams are protected from the impact of certain uses and activities that would adversely affect the structural integrity of the streams and impair receiving water quality. The headwater streams protected by /WQ, including some in Laurel Hill, are those that are in steeply sloped areas, with shallow, erodible soils, and are not otherwise protected.

River Road – Santa Clara Urban Facilities Plan Policies

3.1 (Storm Sewers/Drainage)

Policy 2. *If a large annexation in the River Road – Santa Clara area occurs, enclosed storm drains shall be eventually installed to replace roadside ditches.*

The /WQ overlay zone does not apply protections to roadside ditches unless those waterways have a significant relationship to waterways identified by the state Department of Environmental Quality as not meeting water quality standards, are not otherwise protected, and provide a drainage function for a larger area beyond the roadway. Based upon the weight of the other Metro Plan and refinement plan policies in support of the /WQ overlay zone, and given the early date of this policy (1987), the /WQ overlay zone is not inconsistent with Policy 2.

Policy 3. *As annexation or incorporation occurs, a comprehensive drainage plan for the area shall be developed in cooperation with Lane County and other appropriate agencies.*

3.b. *Identify those portions of the open storm drainageways which can be retained and those which should be eliminated and provide sufficient right-of-way or easements for their continued maintenance.*

The /WQ overlay zone applies protections to specific waterways identified due to their significant relationship to waterways on the state DEQ's list as not meeting water quality standards, that currently provide water quality functions, and that are otherwise unprotected from the impact of certain uses and activities detrimental to water quality. The proposal identifies the waterways that should be retained as open storm drainageways.

Policy 6. *In the event of incorporation or annexation, the responsible general purpose government shall:*

a. *Adopt ordinance prohibiting dumping in open drainage channels.*

The ordinance identified (Exhibit C) specific taxlots outside the city limits and inside the urban growth boundary to which the /WQ overlay zone would be applied upon annexation, if and when the properties annex to the city of Eugene.

South Hills Study Recommendations

D (Development Standards) II (Specific Recommendations) 9. *That all developments (planned unit developments or subdivisions) in the south hills area be reviewed to insure maximum preservation of existing vegetation.*

The /WQ overlay zone includes provisions that limit the removal of existing vegetation and require planting of any bare soil resulting from allowed vegetation removal.

West Eugene Wetland Plan Policies

The /WQ overlay zone does not apply to any properties within the West Eugene Wetland Plan Boundary. The West Eugene Wetlands Plan outlines mechanisms for balancing

wetland protection with urban development. The Plan calls for the protection of over 1,000 acres of wetlands through a multiple objectives strategy addressing flood control, drainage services, water quality treatment, and natural resources. It addresses the issue of stormwater and supports the use of management approaches that incorporate natural systems for water quality and other beneficial uses.

Willakenzie Area Policies

Public Facilities and Services Element, Storm Drainage Facilities

1. Encourage development practices that reduce the need for construction of an extensive subsurface storm sewer system.

The ordinance regulates specific waterways determined to be important to water quality and not otherwise protected, thus ensuring their continued function in an open condition as an important part of the city's stormwater system.

2. Encourage growth and development patterns that are compatible with natural features and discourage the alteration of natural features. Relocation of natural drainage features may be considered as an alternative to replacement with a closed pipe system.

The /WQ overlay zone regulates certain waterways including limiting alterations to the waterways. The ordinance includes provisions that allow channel relocation and reconfiguration under certain circumstances, and with water quality mitigation requirements.

3. Encourage measures that will improve the quality of stormwater runoff discharged into local waterways.

The /WQ overlay zone protects existing water quality functions of certain waterways. The ordinance is a compliment to existing adopted stormwater development standards which require on-site pollution reduction and flow control measures.

(3) In the case of establishment of a special area zone, is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone.

The amendments do not establish a special area zone.

Application of the Overlay Zone Eugene Code Section EC 9.8856 requires that the following criteria (in bold and italic) be applied to a proposal to rezone properties:

(1) The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.

See above.

(2) The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.

The overlay zone does not change the base zoning of a parcel, which has already been found to be consistent with any applicable refinement plan.

(3) The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.

The uses and densities of development allowed in the zone are less of a tax on the key urban facilities and services already serving or planned for the effected areas.

(4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone in: [(a) through (l)]

Although not listed in EC 9.8856(4), the siting requirements for the /WQ Water Quality Overlay Zone applicable to the proposed were addressed above.