



**AGENDA
CLEAN WATER SERVICES
BOARD OF DIRECTORS**

Agenda Category: Public Hearing All CPOs

Agenda Title: CONDUCT A PUBLIC HEARING AND ADOPT AN AMENDMENT TO THE DESIGN AND CONSTRUCTION STANDARDS

Presented by: Bill Gaffi (nmc)

SUMMARY (Attach Supporting Documents if Necessary)

Clean Water Services' (District) Design and Construction Standards (Standards) set the minimum standards for construction of components of the sanitary sewer and storm and surface water management systems within the District boundary and are adopted pursuant to Ordinance 27. The District's last full update to the Standards occurred in April 2007. The current Standards are contained in Resolution and Order No. 07-20 (R&O 07-20), adopted by the District Board of Directors (Board) on April 17, 2007.

As part of the water quality and water quantity regulations, the Standards also include requirements for protection and enhancement of Vegetated Corridors adjacent to Water Quality Sensitive Areas like streams and wetlands. The Water Quality Sensitive Areas themselves are often regulated by the Oregon Department of State Lands (DSL) and U.S. Army Corps of Engineers (COE). It is therefore important that the District Standards are compatible with DSL and COE regulations.

(CONTINUED)

FISCAL IMPACT: N/A

REQUESTED ACTION: Hold a Public Hearing on the proposed amendment to the Design and Construction Standards and, after receiving testimony, adopt the amendment.

Agenda Item No. _____

Date: 08/05/08

As of July 4, 2008, DSL and COE are implementing changes to their wetland delineation/permitting protocol. Staff has reviewed the proposed changes and recommends amending the District Standards to ensure the vegetated corridor requirements for wetlands and streams compliment/coordinate with the DSL and COE practices and procedures. Revisions to three sections of the standards are necessary:

1. Vegetated Corridor Adjustment (Section 3.03.2).
2. Wetland Fill Policy (Section 3.11)
3. Site Assessment requirements for wetland delineation documentation (Section 3.13.3.b)

1. Vegetated Corridor Adjustment

The proposed change would not reduce the width of the required Vegetated Corridor, but allow an adjustment so that Vegetated Corridor could be shifted closer to the resource for incised urban streams.

The Edge of the Sensitive Area defines the starting point for measuring and applying the District's Vegetated Corridor requirements. The Standards define the Edge of the Sensitive Area for streams as the Top of Bank (TOB). Current Army Corps of Engineers (COE) regulations define the edge of stream by the Ordinary High Water Mark (OHWM). In most streams, the OHWM is essentially the same as TOB. However, for some channelized creeks in highly developed areas, the OHWM is below the TOB, leaving a non-jurisdictional area between the OHWM and the TOB which is not regulated by the DSL or COE and is not required to be enhanced under the District's standards.

The recommended revision would require enhancement of the non-jurisdictional area between the OHWM and TOB and allow for a limited adjustment of the outside boundary of the corridor. To prevent unintended extensive widening or narrowing of the overall area being enhanced and protected, the outside edge adjustment is limited to 3 feet for Vegetated Corridors less than or equal to 25 feet wide and to 5 feet for Vegetated Corridors greater than 25 feet.

This change allows the District jurisdiction of the area closest to the Sensitive Area. Requiring enhancement of this area will improve the ecological functions and values of the Sensitive Area and Vegetated Corridor, provide increased protection for the resource, and improve surface water quality.

2. Wetland Fill Policy

R&O 07-20 significantly revised the mitigation requirements for wetland fills and a distinction was made in how partial and total wetland fills were treated. Current DSL/COE mitigation standards for wetlands allow creation, restoration, and enhancement of a Sensitive Area for mitigation for filling wetlands. These mitigation requirements are similar for partial wetland fills and total wetland fills.

The recommended revisions will remove major distinctions between partial and total wetland fills and align Vegetated Corridor requirements to be consistent with the DSL and COE mitigation standards.

3. Site Assessment Requirements for wetland delineation documentation

DSL and the COE have published a new guidance supplement for delineations to be used throughout western Oregon and effective July 2008. The supplement is in effect for a one-year period on a trial basis and will supersede the previous delineation guidelines in the COE 1987

Wetland Delineation Manual. The 1987 manual is specifically referenced in the Standards. The proposed revision will require that delineation fieldwork conducted after July 4, 2008 be conducted using the new DSL/COE supplement, as well as the corresponding data forms. Delineations that were conducted prior to July 4, 2008 and are substantially complete will be grandfathered at the discretion of the agencies. Site assessments that are submitted without the appropriate DSL and COE procedures for wetland delineations will be denied for completeness.

EXHIBIT A

AMENDMENT OF RESOLUTION AND ORDER 07-20

Sections of Resolution and Order No. 07-20, to be amended by this Resolution and Order are set forth below. Text to be deleted is shown in strikethrough; text to be added is underlined.

1. Amend subsection 3.03.2 as follows:

3.03.2 Vegetated Corridor Width Reductions and Adjustments

In addition to the requirements in Sections 3.03.1, Vegetated Corridor width shall be based on the following considerations.

a. Pre-Existing Conditions

The Vegetated Corridor shall not extend beyond an existing building or improved roadway separating the proposed development from the Sensitive Area. For the purposes of this section, an “improved roadway” shall be gravel or paved, a minimum of 12-feet in width, and actively used for vehicular traffic. The building or roadway must remain as part of the proposed development and not planned for future demolition.

b. Reduction for Very Wide Corridors

If a Vegetated Corridor in marginal or degraded condition extends 125 feet or more from the boundary of the Sensitive Area, and averaging is not practicable in the opinion of the District, the required width of the Vegetated Corridor shall be reduced by 20%. A stamped geotechnical report confirming that slope stability can be maintained with the reduced setback may be required by the District. This reduction shall not be used in combination with minor averaging or with the encroachment allowed through a Tier 1 or Tier 2 Alternatives Analysis.

c. Reduction for Corridors with Steep Slopes

When the slope is greater than 25% and the Vegetated Corridor extends 35 feet from break in slope and the Vegetated Corridor is in marginal or degraded condition, the outer boundary of the Vegetated Corridor may be reduced from 35 feet beyond the break in slope, as long as the resulting vegetated corridor is no less than 50 feet beyond the edge of the sensitive area. This reduction is allowed only if a stamped geotechnical report confirms that slope stability can be maintained with the reduced setback from the break in slope. This reduction shall not be used in combination with minor encroachment or with the encroachment allowed through a Tier 1 or Tier 2 Alternatives Analysis.

d. Adjustment for Ordinary High Water Mark (OHWM) on Streams

On streams where OHWM is below the Top of Bank (TOB) resulting in a horizontal offset between the OHWM and the TOB, the District shall require enhancement of the offset between OHWM and TOB and allow the outside edge of the Vegetated Corridor to be adjusted the lesser of the width of the offset or:

1. up to 3 feet for Vegetated Corridors <25 feet
2. up to 5 feet for Vegetated Corridors >25 feet

2. Delete Section 3.11.1 “Partial Wetland Fills”.

3. Amend subsections 3.11.2-3.11.3 as follows and renumber.

3.11.2 ~~Total~~ Wetland Fills

a. For Wetland Fills Where Physical Sensitive Area Mitigation is Required
Where Department of State Lands and/or Corps of Engineers permits ~~the~~ filling of an ~~entire~~ wetland and requires ~~that the loss of the wetland be mitigated~~ mitigation through Sensitive Area creation, restoration, or enhancement, a Vegetated Corridor meeting the requirements of this Chapter shall be provided adjacent to the Sensitive Area mitigation site and the Vegetated Corridor shall meet the following conditions:

1. The Vegetated Corridor adjacent to the Sensitive Area mitigation site shall meet the width requirements in Table 3-1 and shall be restored to Good condition.
2. If the Sensitive Area mitigation site is located in an area where the full required Vegetated Corridor width cannot be obtained, then the difference shall be considered an encroachment and be reviewed and mitigated in accordance with Sections 3.07 and 3.08.
- ~~3. If the Sensitive Area creation results in encroachment to existing Vegetated Corridor then the square footage of the existing Vegetated Corridor shall be mitigated in accordance with section 3.08~~
3. Mitigation shall occur on-site where possible. If the square footage of the replacement Vegetated Corridor cannot be mitigated on-site, off-site mitigation shall be allowed and the square footage adjusted in accordance with Table 3-2.
4. All remaining on-site Vegetated Corridor shall be enhanced to Good Corridor Condition in accordance with Section 3.14.2, Table 3-2.
5. A Vegetated Corridor of zero (0) feet in width shall be allowed along the edge of a partial wetland fill.

b. For Wetland Fills with Marginal or Degraded Vegetated Corridors and Not Requiring DSL/COE Permits

The District shall not require mitigation for the Vegetated Corridor associated with total wetland fills if all of the following conditions are met:

1. The Vegetated Corridor associated with the total wetland fill is in Marginal or Degraded condition per Table 3-3.
2. The wetland to be filled is isolated.
3. The wetland requires less than 50 cubic yards of material to be filled entirely and will be filled entirely as a result of the proposed project.
4. No permits are required from the Department of State Lands and the Army Corps of Engineers.

c. Payment to Provide For Total Wetland Fills with Good Condition Vegetated Corridors

The District shall allow Payment to Provide for Vegetated Corridor mitigation on total wetland fills when the associated vegetated corridor is in good condition if the following conditions are met:

1. The wetland to be filled is isolated.
2. The wetland requires less than 50 cubic yards of material to be filled entirely and will be filled entirely as a result of the proposed project.
3. No permits are required from the Department of State Lands and the Army Corps of Engineers.

3.11.3

d. If the wetland fill is to be mitigated through payment to provide for the Sensitive Area then the Vegetated Corridor shall be mitigated in accordance with Section 3.08.3, Payment to Provide Vegetated Corridor mitigation.

e. Other Situations

Where a wetland fill situation is not covered under Sections 3.11.1.a-d and 3.11.2, the District shall have the discretion to regulate the Vegetated Corridor related to the fill in a manner consistent with Sections 3.11.1.a-d and 3.11.2 and the other parts of this Chapter.

4. Amend subsection 3.13.3.b as follows:

3.13.3.b Standard Site Assessment

1. Written description of the existing site and adjacent property, Sensitive Area, Vegetated Corridor condition, proposed development, and off-site improvements
2. Description of each plant community within the vegetated corridor
3. ~~Wetland and Vegetated Corridor Sample Points (Prepared in accordance with 1987 Army Corps of Engineers Wetland Delineation Manual and Section 3.11.4).~~ Wetland and Vegetated Corridor Sample Points (Prepared in accordance with DSL and Corps Procedures for wetland delineation and Section 3.14)
4. Project Vicinity Map showing entire tax lots for project site and any off-site improvements
5. Existing Condition Figure in accordance with 3.13.3(c)(1)
6. Proposed Development Figure in accordance with 3.13.3(c)(2)
7. Final Conditions Site Plan Figure in accordance with 3.13.3(c)(3)