

RESPONSE TO PROPOSED DESIGN AND CONSTRUCTION STANDARDS (R&O 07-20) AMENDMENT

Summary

On July 10, 2008, the District announced proposed changes to the current Design and Construction Standards (R&O 07-20). Information on the changes was sent via email to approximately 175 people. The three proposed changes highlighted in the July 10th email are outlined below:

1. Defining the edge of the Sensitive Area (Section 1.03.20).
Proposed changes would use Ordinary High Water Mark as the edge of Sensitive Area for streams instead of Top of Bank.
2. Wetland Fill Policy (Section 3.11)
Proposed revisions are to clarify language to be more consistent with DSL and the Corps regulations and to eliminate double mitigation for wetland creation.
3. Site Assessment requirements for wetland delineation documentation (Section 3.13.3.b)
Change site assessment requirements to allow for consistency with Department of State Lands (DSL) and the Army Corp of Engineers (Corps) new Supplement for wetland delineations.

Public Comments

The District received responses via email correspondence, and from attendees at the Washington County Developer Liaison Committee meeting on July 16, 2008, a public meeting on July 17, 2008, and the City Technical Committee meeting on July 18, 2008. Comments were generally categorized into three topic areas.

1. Reduction or expansion of the Vegetated Corridor for streams.

Based on the feedback, there appears to be a general consensus that enhancement of the area closest to the stream's edge is important and would help to improve water quality. However, there were concerns that defining the "Edge of Sensitive Area" for streams as the Ordinary High Water Mark (OHWM) rather than the Top of Bank, would significantly reduce or increase the overall width of the Vegetated Corridor.

In response to the comments received, the District proposes to require enhancement of the area between the Top of Bank and OHWM for all streams where the OHWM is below Top of Bank. To limit unintended extensive widening or narrowing of the Vegetated Corridor, the District proposes to include a maximum adjustment width dependent on the required width of the Vegetated Corridor (Section 3.03, Table 3-1). No change is proposed for the definition of

“Edge of Sensitive Area.” The enhancement and adjustment requirement is proposed to be included within Section 3.03.2 shown below:

3.03.2 Vegetated Corridor Width Reductions and Adjustments

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. Consistency with DSL and the COE.

The District received several comments in support of amending the Natural Resource Assessment requirements to be consistent with Corps and DSL requirements. Two comments were received that stated that the ACOE 1987 Wetland Delineation Manual Supplement will not supersede the existing 1987 manual and that CWS should delay the proposed changes until DSL finalizes the changes within the supplement. Based on these comments, the District reviewed the Public Notice sent out on June 4, 2008 from DSL/COE. The Notice states:

“The interim document will be tested for one year prior to finalization;” and “Effective 30 days from the date of this public notice, the supplement, including data forms, must be used for any wetland delineation data collection in the applicable region.”

Therefore, the District assumes that the supplement will be finalized and accepted as the new guidance for delineations by July 2009 and all delineations conducted after July 4, 2008 (without substantial data collection prior to deadline) must use the supplement and corresponding data forms. Comments from consultants familiar with the process confirm this understanding.

The proposed changes continue the District’s goal of complementing and coordinating with and avoiding direct conflict with other sensitive area and riparian corridor regulators. The language maintains the protections the District currently has and reduces potential errors in processing applications.

3. Protecting water quality in the Tualatin Basin

One commenter expressed concern about determining the consequences of the proposed changes for protecting water quality and aquatic habitat in the Tualatin Basin. The District understands and appreciates the concern that these changes might negatively impact water quality in the basin, but firmly believes that the changes are necessary and will actually result in improved protections.

Protecting and enhancing the area closest to the stream provides an improved water quality benefit, especially since our enhancement standards would now require this area to be planted with native trees and shrubs which provide shading of the stream and overall increased water quality benefits of the urban environment within the Tualatin Basin.