



Stream Corridor Development Plan Requirements

PDS

Engineering Services Division

ES Policy # 3-07

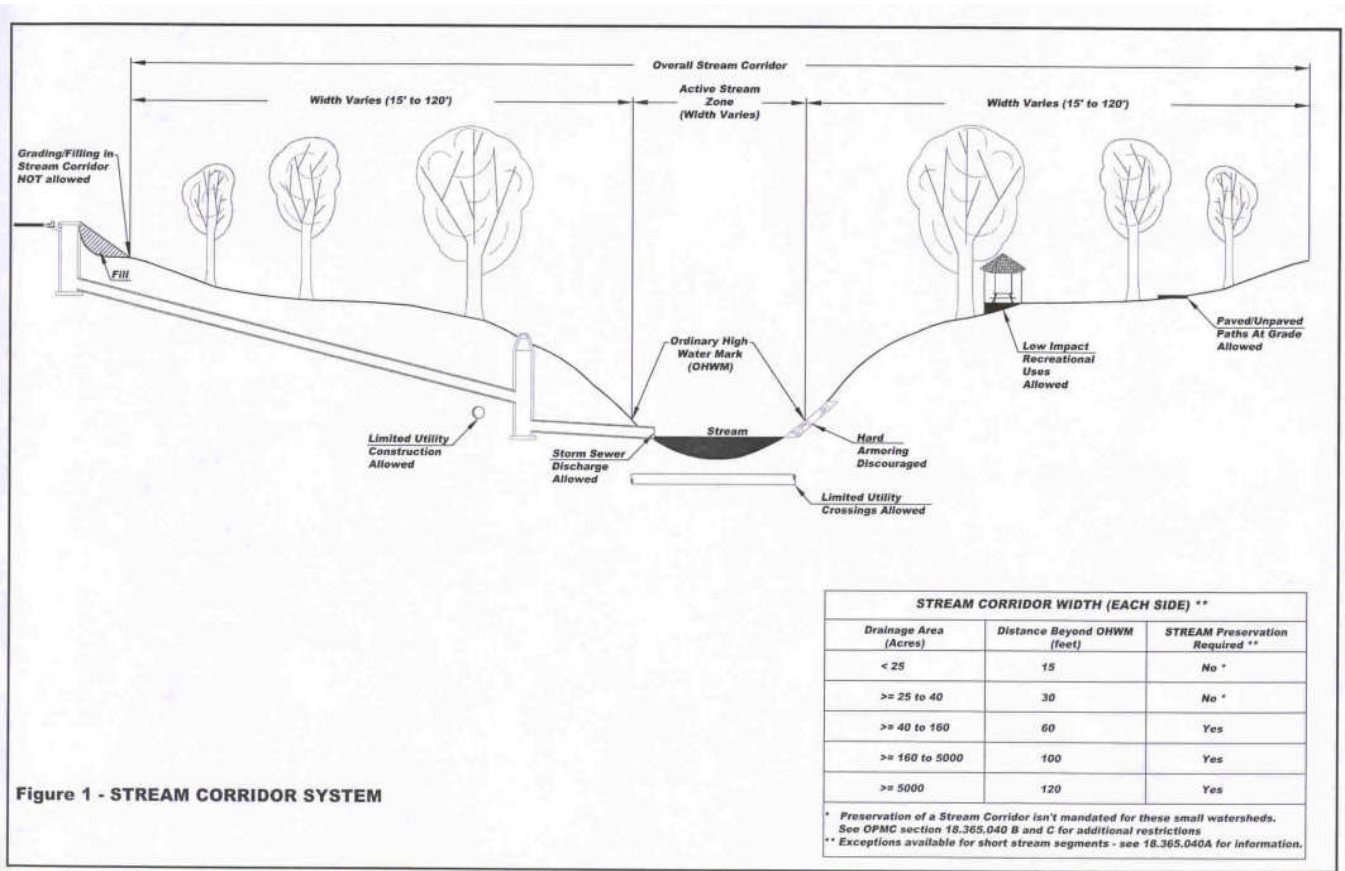
Rev date: 02/04/2004

INTRODUCTION

Preservation of Stream corridors is an important component of the City's overall stormwater management program, and is consistent with the goals and provisions of the Federal Clean Water Act and National Pollutant Discharge Elimination system. In 2002 and 2003, a Watershed Development Task Force was assembled by the Mayor to make recommendations concerning development practices adjacent to natural streams. In October 2003, the City adopted a new Chapter 18.365 in the Unified Development Ordinance (UDO), which was based on the work of the Watershed Development Task Force. Refer to this section of the UDO for detailed requirements about stream corridor requirements. This policy is intended only to supplement the information found in the ordinance to show information required on development plans. The UDO can be accessed online at www.opkansas.org.

Stream Corridor boundaries are established in U.D.O. Section 18.354.040 and it always includes the stream and adjacent land that is substantially preserved in a natural state. The "Active Stream Zone" is the area between the ordinary high water mark (OHWM) on both sides of the stream channel. The overall stream corridor extends a set distance beyond the OHWM in both directions as shown on *Figure 1*.

Preservation of a stream corridor also requires approval of a Stream Corridor Maintenance Agreement. This legal document sets forth usage restrictions and maintenance obligations in the stream corridor, including any site-specific requirements. Unless the stream corridor is to be dedicated to the City as public parkland, the property owner or homes association is responsible for maintenance. See **Attachment A** for a sample Stream Corridor Maintenance Agreement. This sample agreement is adequate for most typical projects, however modifications may be necessary for specific site conditions and proposed uses.



REQUIRED INFORMATION ON DEVELOPMENT PLANS:

Preliminary Plan and Plat

- A. Show and label the stream corridor (easement or tract) on the preliminary plat and on any grading, site dimension, and landscape plans. Show and label the ordinary high water line on both sides of the stream. In cases where the active stream zone is very narrow, showing the stream centerline is acceptable. Also show offsets on both sides of the channel from the ordinary high water line to the edge of the stream corridor at:
- The upstream end of stream corridor
 - The downstream end of stream corridor
 - Each significant change in offset distance
- B. Dedication language isn't necessary on the preliminary plan or preliminary plat. The applicant should indicate who will be responsible for maintaining the stream

corridor and the landscape plan should indicate what types of plantings, if any are planned for the stream corridor.

- C. Developments where a single platted lot is proposed, thereby involving only a single property owner, stream corridor limits should be identified on the plat and restrictive covenants referenced. In these cases, the stream corridor should not be a separate tract from the developable property.
- D. Developments involving multiple platted lots, where a homeowner or business association is established to maintain the stream corridor, should separate the stream corridor as a separate tract with references to the restrictive covenants. Alternately, if an open space tract is being dedicated that includes the entire stream corridor plus additional open space, the stream corridor can be shown as an area within the larger tract.

Final Plats

- A. Show and label stream corridor boundaries similar to that of other tracts and easements. The outer 10 feet of the stream corridor can be dedicated as a utility easement. Specific utilities are allowed within the outer 10 feet of the stream corridor only when the utility can't be moved to another location. In these instances, a specific utility easement area should be dedicated and located as close to the outer limits of the stream corridor as possible. See UDO Section 18.365.080 for more information on utility construction in stream corridors.
- B. Add the following notice and reservation language as required per UDO Section 18.365.090:
 - 1. Notice: *"A protected Stream Corridor lies on the site, as defined and regulated in the City of Overland Park, Kansas Municipal Code. Restrictions on the use or alteration of the Stream Corridor apply. This property is also subject to the obligations and requirements of the Stream Corridor Maintenance Agreement Approved by the City."*
 - 2. Reservation: *["Tract ____" OR "The area as designated on the plat"] is reserved as a "Stream Corridor" for the purposes of open space, natural preservation areas, and management of riparian resources and will be solely maintained by the Property Owner. These areas will also be used for private open space unless later dedicated as Public Parkland.*
- C. Stream Corridor Maintenance Agreements must be submitted with the Final Plat application and must be approved by staff prior to recording the Final Plat. (See UDO Section 18.365.090 for details on Stream Corridor Maintenance Agreements.) The Stream Corridor Maintenance Agreement should be recorded

by the City immediately following recording of the final plat and prior to release of any building permits such as footing and foundation or higher permits. Other permits can be issued prior to actual recording of the Stream Corridor Maintenance Agreement, however the Stream Corridor Maintenance Agreement must be approvable prior to issuance of any permits affecting the stream corridor. All recording costs must be paid by the developer in advance of recording.

Final Development Plan

The Final Development Plan should show and label the limits of the Stream Corridor in similar detail to the Preliminary Development Plan. Additionally, the Final Development Plan should include a detailed metes and bounds description of the Stream Corridor boundary. The Stream Corridor should be shown and labeled on all site plans and landscape plans. In addition, include the following information on site plans and landscape plans in relationship to the Stream Corridor:

- Proposed known utility construction encroachments
- Limits of disturbance (for grading, filling, clearing, grubbing, or other vegetation removal)
- Proposed landscaping within the stream corridor
- Other improvements or uses in the stream corridor (See UDO Section 18.365.080, allowable uses)

Construction Plan Requirements

Construction Plans for developments that include a stream corridor should include the following information:

1. Location of the Stream Corridor.
2. Limits of disturbance with relation to the stream corridor.
3. Existing tree line within the stream corridor adjacent to the proposed development.
4. Proposed utility construction in the stream corridor including limits of disturbance and requirements for restoration.
5. Proposed temporary stream crossings for construction access.

6. If any construction will occur in the active stream zone, a stream profile will be required. The stream profile must show the stream thalweg in both plan and profile and identify all pools and riffles within the zone of influence on the stream. The stream profile must be field surveyed to the nearest 0.1 foot. AIMS maps or other data sources will not be an acceptable for the stream profile.
7. Landscape plan showing any proposed landscaping in the stream corridor. Landscaping of the stream corridor is generally NOT required, however any landscaping should be native species, or other plantings that require little maintenance or irrigation and are compatible with the approved Stream Corridor Maintenance Agreement.
8. The grading plan and/or erosion and sediment control plan should include **construction fencing** or other barriers to prevent construction encroachments within the stream corridor. All construction fencing should be installed prior to disturbance of the site and will be inspected concurrently with the initial perimeter erosion control inspection. The initial perimeter erosion control inspection for residential projects will be completed by the Engineering Services Division and for commercial projects will be completed by the Building Safety Division.
9. Include the following note on the plan:

A protected Stream Corridor lies on the site, as defined and regulated in the City of Overland Park, Kansas Municipal Code Chapter 18.365. Restrictions on the use or alteration of the Stream Corridor apply. Unauthorized disturbances of the Stream Corridor are prohibited. Any disturbance of the Stream Corridor not authorized on this plan is a public offense subject to penalty provisions of the Overland Park Municipal Code.

Attachment A
Stream Corridor Maintenance Agreement

THIS DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS: Maintenance Obligations for Stream Corridor is made this _____ day of _____ 20____, by _____

(hereinafter referred to as "Property Owner")

RECITALS:

WHEREAS, the Property Owner is the owner of the following described real property (hereinafter, the "Property") located in the City of Overland Park, Johnson County, Kansas, to wit:

Final Plat of _____ .

WHEREAS, the Property Owner desires to develop the Property which contains a natural stream; and

WHEREAS, the term "Property Owner" as used in this document shall refer to the current owner of the Property described as the Final Plat of _____, as well as all subsequent owners of any portion of the property contained within said Plat. This shall include, without being limited to, subsequent owners of individual lots developed for single family ownership, a Homes Association that may own any property held in common, or any other owners of land within the Property described in said Plat.

WHEREAS, Chapter 18.365 of the Overland Park Municipal Code allows reservation of a stream corridor through a Restrictive Covenant.

WHEREAS, Chapter 18.365 of the Overland Park Municipal Code requires the Property Owner to place certain restrictions and responsibilities within the stream corridor; and

WHEREAS, the stream corridor is located on Tract _____, FINAL PLAT NAME in the City of Overland Park, Johnson County, Kansas; and

WHEREAS, the City of Overland Park has approved a Final Plat of _____ for the Property subject to the conditions and stipulations hereinafter set forth, including the recordation of this Declaration of Covenants, Easements, Conditions and Restrictions: Maintenance Obligations for the Steam Corridor, and

WHEREAS, the Property Owner desires to utilize the stream corridor in accordance with the Stream Corridor Plan as shown on Exhibit A.

WHEREAS, in order to insure the proper and adequate maintenance of the natural stream preservation corridor in compliance with legal requirements, it is necessary to establish binding covenants, conditions, and restrictions applicable to the Property, and

WHEREAS, the Property Owner does hereby establish the following regulations, stipulations, easements, covenants, conditions and restrictions pursuant to Chapter 18.365 of the Overland Park Municipal Code, on the Property:

- 1) The Property Owner shall provide and is responsible for all maintenance of the designated stream corridor as shown on the Property, including, without being limited to, the stream bed and all existing and future bank stabilization measures, in order to insure that all such facilities remain in proper working condition in accordance with approved design standards and all applicable legal requirements.
- 2) The Property Owner agrees to actively pursue measures to prevent unauthorized activities pursuant to Chapter 18.365 of the Overland Park Municipal Code which interfere with the preservation of the stream corridor.
- 3) The Property Owner will remove obstructions and excessive silt deposits within the stream corridor which might cause flooding of buildings, roadways, or other properties.
- 4) Permanent storm drainage and temporary construction easements, if required by the City in the future, shall be dedicated at no cost to the City.
- 5) The Property Owner shall indemnify and hold the City harmless from any and all damage, loss, claims or liability of any kind whatsoever arising from the installation, maintenance, repair, operation or use of the stream corridor or any facilities related thereto, including, but not limited to, any loss occasioned by reason of damage or injury to persons or property which may occur. In addition, the Petitioner shall pay all costs and expenses involved in defending all actions arising there from.
- 6) It is understood by Property Owner that the City of Overland Park is under no past, present, or future obligation to expend public funds or take any other action whatsoever to maintain or improve the storm drainage system in the stream corridor. The City or Property Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by

the provisions of this Declaration. The City or the Property Owner, shall have the right to include in their claim for relief a reasonable sum to reimburse them for their attorneys' fees and any other expenses reasonably incurred in enforcing their rights hereunder. Failure by the City or by the Property Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither shall failure by the City to enforce the provisions hereof be deemed a waiver of any provision hereof as to any other Owner.

- 7) If, after reasonable notice to the Property Owner, the Property Owner shall fail to maintain the stream corridor as set forth herein and other applicable legal requirements, the City may perform all necessary repair or maintenance work, and the City may assess the Property Owner and the Property, for the cost of the work and any applicable penalties. For the purposes of this document, "reasonable notice" shall consist of 30 days prior written notice sent to the Property Owner, unless there are exigent circumstances requiring either immediate or shorter response than said 30 days would provide, in which case the notice provided shall be whatever is reasonable under those circumstances. The Property Owner does herein grant the City, its agents and contractors, a right of entry on said property for the purpose of inspecting, installing, maintaining or repairing the stream corridor, and shall execute any documents deemed necessary by the City, if any, relating thereto.

The City may record an Affidavit of Nonpayment of Maintenance Charges in the Office of the Register of Deeds of Johnson County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property as last known to the City, and (c) the amount of the Maintenance Charge which is unpaid. The Lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the subject property, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior.

- 8) While other provisions of this document may allow the City to take certain actions to enforce the terms of this document, it should be understood that the City has no duty or obligation to enforce those other provisions by entering the Property and performing maintenance or clearing obstructions within the stream corridor and assessing the Property Owner for reasonable expenses incurred performing this maintenance or taking any other action to enforce the terms and conditions set forth elsewhere in this document.

- 9) The Property Owner understands that the following activities are prohibited within the stream corridor except where to the extent allowed pursuant to Chapter 18.365 of the Overland Park Municipal Code:
 - a. Regular mowing
 - b. Clearing of healthy vegetation
 - c. Disposal of grass clippings, leaves or other yard waste and debris
- 10) The Property Owner agrees to provide, without being limited to, the minimum maintenance within the stream corridor, or any portion thereof, in accordance with applicable provisions of the Overland Park Municipal Code; provided however if the stream corridor is dedicated and accepted by the City for use as public parkland, the corridor shall be maintained in accordance with established parkland maintenance policies, notwithstanding any other provision in this document to the contrary.
- 11) The Property Owner agrees to limit uses of the stream corridor to those as shown on the Stream Corridor Plan shown on Exhibit A.

These covenants and agreements as set forth herein, fully executed, shall be filed with the Register of Deeds in Olathe, Johnson County, Kansas, and the filing of the same shall constitute constructive notice to all heirs, successors, transferees, and assigns of the Property Owner of these covenants and agreements running with the land and notice of all stipulations made thereto. This document may not be amended or modified in any way without the prior written approval of the authorized officials of the City of Overland Park, Kansas, and that approval must be indicated on the face of any subsequently recorded document amending or modifying this document.

Notwithstanding other provisions of this document placing rights, duties, obligations and responsibilities on the Property Owner, as that term is defined herein, those rights, duties, obligations and responsibilities shall only be exercised or enforced in the following manner: when the property is owned by the current owner, or by a succeeding developer, those requirements shall only be exercised or enforced by or against those legal entities. When an approved Homes Association takes over ownership of the Property, those rights, duties, obligations and responsibilities shall succeed to that Association as provided in the legal documents creating the same. It is not the intent of this document to create or impose any rights, duties, obligations and responsibilities directly on subsequent owners of individual lots within the subdivision, unless or until the Homes Association is unwilling or unable to exercise or comply with and enforce the terms of this document and fully meet all the duties, obligations and responsibilities set forth herein, including, without being limited to, payment of any costs imposed by this document by all means specified in the documents creating the Association, including assessment of individual lot owners when necessary. If that Association shall cease to exist or be in default of its duties, obligations or responsibilities as set forth herein, the

City shall have the option of directly enforcing them against individual owners of lots within the subdivision.

The City, at Property owner's cost, shall cause this agreement to be filed with the Register of Deeds of Johnson County, Kansas. Each party hereto shall receive a duly executed copy of this agreement for its official records.

IN WITNESS WHEREOF, the undersigned have caused this maintenance agreement to be duly executed the day and year first written above.

PETITIONER

BY: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

BE IT REMEMBERED, That on this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____ who is personally known to me to be the same persons who executed the foregoing instrument of writing on behalf of _____, and said persons duly acknowledged the execution of the same to be the act and deed of the limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires: _____

Notary Public