

# ARTICLE 14-22B

## DESERT LANDS CONSERVATION OVERLAY

(Ord. No. 04-201)

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### SECTION 14-22B-1 INTENT

The purpose of the Desert Lands Conservation Overlay (DLCO) is to identify and protect the unique and environmentally sensitive Sonoran Desert lands in the City and to promote the public health, safety and welfare by providing appropriate and reasonable controls for the development of such lands. Specifically the lands are located north of Pinnacle Peak Road. The DLCO is intended to:

- A. Identify sensitive desert conservation features and resources.
- B. Protect and preserve Peoria's distinctive desert landscapes and wildlife habitats for the enjoyment of current and future generations.
- C. Protect people and property from hazardous conditions characteristic of environmentally sensitive lands and their development.
- D. Integrate conservation design into the development of sensitive desert lands and employ development standards and guidelines that equitably balance conservation and development objectives.

In addition, the DLCO is intended to implement the goal, policies and objectives of the Desert Lands Conservation Master Plan (DLCMP). The overlay establishes a holistic approach to evaluating the environmental conditions of each site that allows both City staff and the development community a better basis for determining conservation areas. The overlay also establishes criteria for determining conservation priorities based on the potential to expand or extend a regional open space corridor, the opportunity to provide a link to an existing or future trail system, the possibility of expanding an existing open space, or the possibility of creating a buffer zone between different intensities of uses.

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The DLCO not only preserves sensitive and unique desert features, but also native plants and plant communities in order to enhance the City's aesthetic appeal by conserving distinctive scenic character. Native plant communities are also preserved because they thrive in the local desert environment and provide soil stabilization to fragile desert soils, stabilization that is lost after development activity that disturbs plants and top soil layers. Canopied plants such as mesquite provide nurturing shade and protection for lower level plants. Native plants identified for preservation are chosen on the basis of their slow growth habit, the fact that the plant alone or in combination with others provides unique wildlife habitat and soil stabilization support, its rarity in this environment, and its proven success rate for salvage in this region.

Finally, the DLCO establishes standards and design guidelines for development within desert areas and adjacent to conservation areas. These regulations and guidelines vary by landform type in order to address the three distinctive types of geography (Desert Floor, Bajada and Hillside) found in the Peoria desert areas. The classification system assumes a single vegetation type in Peoria, Lower Sonoran, consisting of creosote, bursage, and saltbush associations. The DLCO is to be applied in conjunction with the 2003 International Urban-Wildland Interface Code (IUWIC). In cases where there is conflicting provisions, the IUWIC will take precedence.

### **SECTION 14-22B-2 APPLICABILITY**

- A. The Desert Lands Conservation Overlay (DLCO) establishes a special overlay zoning district, which applies to specific resources and environmental conditions north of Pinnacle Peak Road. In order to accomplish the purpose of this district, the City of Peoria shall apply these provisions to these lands that contain any of the following special conservation features and resources:
- B. Conservation Features:
1. **Cultural Resource:** Prehistoric and historic sites identified according to standards established by the State Historic Preservation Office. Includes artifacts such as rock walls, etc.
  2. **Isolated Peak:** The prominent peaks which jut out of a typically flatland area. These are landmark features whose rugged vertical form contrasts sharply with the horizontal ground plain.
  3. **Mountainous Area:** Areas such as the Hieroglyphic Mountain Range which include numerous peaks, rugged topography, steep slopes and small v-bottomed washes flowing out of the area. The limits of a mountainous area is established when more than 60% of the area has slopes of 25% or greater.
  4. **Plateau:** An extensive land area characterized by slopes leading to a relatively level surface and situated at a uniformly higher elevation than adjacent land on at least one side.
  5. **Primary Peak:** Prominent peaks that are visual landmarks from various

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points of view and rise at least 400 feet above the surrounding base elevation.

6. **Riparian Vegetation:** Native vegetation that grows where there is a concentration of sustainable drainage water resulting in larger plants, greater species diversity and greater density. Generally lines washes, rivers, tanks and springs.
7. **Riverine Area:** Environmentally diverse riparian areas associated with the New River and Aqua Fria Rivers and Major Washes.
8. **Rock/Boulder Formation:** Formations including escarpments, cliffs or pinnacles which consist of exposed rock faces with limited vegetative cover.
9. **Significant Vegetation Area:** A stand of Sonoran Desert vegetation that is thirty percent more concentrated than the general aspect of the immediate context area and difficult to salvage due to slope, rocky soil conditions or exposed roots due to an adjacent wash. Generally located adjacent to a wash or other source of water and maintains the character of the site best when protected in place.
10. **Significant Vegetation Specimen:** A native tree with an 8" or greater caliper trunk and multi-trunk in good health, a saguaro over 20 feet in height and/or multiple arms or crest or other unusual configuration in good health, or other mature protected species, such as Ocotillo.
11. **Skyline Ridge:** Ridge lines and ridge line complexes which are visible from existing and/or planned collector and arterial roads, have an elevation difference of a maximum of three hundred (300) vertical feet from the property line of the subject parcel, have a vertical height increase of more than three hundred (300) feet as measured from the point of the ten percent (10%) slope line of the ridge or ridge complex, are composed primarily of a cliff face with a total height of at least 50 feet measured from the base of the cliff, or are determined by Staff to be significant during the site analysis process.
12. **Spring:** A permanent small stream or source of water coming out of the ground.
13. **Talus Slope:** A slope strewn with a layer of loose rock debris, usually over unconsolidated soils.
14. **Unstable Slope:** A slope that exhibits one or more of the following conditions: boulder collapse, boulder rolling, rock falls, slope collapse and talus slopes.
15. **Wash, Major:** Washes that by their size are more riverine in character than washes. They are characterized by extraordinary depth and width,

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strewn rock and vegetative rubble, diversity, density and sizes of vegetation and volumes of water that they can accommodate. Major washes include Morgan City Wash, Big Spring Wash and Twin Buttes Wash. Maximum flow capacity exceeds 500 cubic feet per second.

16. **Wash, Primary:** Wide, sand bottom washes that carry drainage from a relatively broad watershed and are fed by a number of smaller tributary washes. These washes generally have dense thickets of tree and shrub vegetation along their edges and are easily identified from aerial photographs. Maximum flow capacities are between 20 and 500 cubic feet per second.
17. **Wash, Secondary:** Tributaries to the significant washes and the rivers. The majority of these washes are the finger washes, which occur between slopes in the rugged areas. They have narrow sand bottoms or are V-shaped. There is increased vegetation density along these washes but the vegetation is more in the large shrub category. Maximum flow capacities are up to 20 cubic feet per second.
18. **Wildlife Corridor:** Pathways or habitat linkages that connect discrete areas of natural open space otherwise separated or fragmented by topography, changes in vegetation, and other natural factors in combination with urbanization, and which 1) permit animals to move between remaining habitats allowing depleted populations to be replenished and promoting genetic exchange; 2) provide escape routes from fire, predators, and human disturbances, thus reducing the risk that catastrophic events, such as fire or disease, will result in population or species extinction; 3) serve as travel paths for individual animals as they wander throughout their home ranges in search of food, water, mates, and other needs, or for dispersing juveniles in search of new home ranges.
19. **Wildlife Habitat:** Locations where native wildlife has a tendency to congregate due to provision of food, shelter and/or water.

### **SECTION 14-22B-3 DEFINITIONS**

- A. **Archaeologist:** A person engaged in the study of human activity, primarily through the study of its material remains, which includes structures still standing, and has received certification from the Register of Professional Archaeologists.
- B. **Alter:** Change or modify natural vegetation an/or topography by removal, cuts, fills, grading or the building of structures.
- C. **Conservation Features or Areas:** Individual conservation features, defined above, and/or areas of the highest significance and preservation priority.
- D. **Cut:** A land surface, which is shaped through the removal of soil, rock, or other materials.

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- E. ***Desert Lands Conservation Report (DLCR)***: A submittal required with any development application to the City for property within the Desert Lands Conservation Overlay, and which contains the following individual documents: Project Identification and Descriptive Data, Project Narrative and Overview, and Existing Conditions Data Report.
- F. ***Destroy***: To kill, or cause the death of any protected native plant by any means.
- G. ***Developer***: the property owner or his representative that is undertaking the development of land subject to the Desert Lands Conservation Overlay District.
- H. ***Disturbed Area***: That area of natural ground that has been or is proposed to be altered through grading, construction, cut and fill, removal of natural vegetation, placement of material, trenching, or by any means that causes a change in the undisturbed natural surface of the land or natural vegetation. The Disturbed Area is coterminous with the Disturbed Area identified in the Hillside Development Overlay District of this code and shall be subject to the same requirements of that Article.
- I. ***Disturbed Area, Reclaimed***: Disturbed areas that have been restored to their natural contours, vegetation and colors to the satisfaction of the City of Peoria.
- J. ***Fill***: The deposition of soil, rock or other materials place by man.
- K. ***Finished Grade***: The final grade and elevation of the ground surface after grading is completed.
- L. ***Grade, Natural***: The elevation through any section of a site on an undisturbed lot at the time of adoption of this overlay by City Council. On lots that have been disturbed previously, the natural grade is the pre-existing grade if it can be determined; otherwise it shall be determined by an average of off-site elevations at points taken around the boundary of the site. All determinations shall have been made by an engineer or land surveyor licensed to practice in the state of Arizona.
- M. ***Grading***: Any excavating, or filling or combination thereof, including the conditions resulting from an excavation or fill.
- N. ***Habitat Value***: the suitability of the landscape to support wildlife, considering site conditions. Suitability shall be ascertained by comparing similar sites and conditions and may require returning the habitat as closely to its original condition as possible when natural conditions have been changed.
- O. ***Landform Type***:
  - 1. ***Bajada Landform Type***: Characterized as the irregular terrain near or at the base of mountain ridges or isolated mountain outcrops. This area is located in the transition zone between the Desert Floor and the Hillside

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landform types and exhibits relatively high vegetation density and diversity. The lower portions of alluvial fans dominated by palo verde and mixed cacti vegetation typify this area, such as the bases of low mountain ranges. Saguaro is a visually dominant and important component of this area. Higher density and diversity of vegetation results in higher wildlife density and diversity that is dispersed between both wash and upland areas. It is comprised primarily of bedrock materials with land slopes generally in the range of ten (10) to fifteen (15) percent. Drainage courses are typically well incised. Typical hazards include boulder rolling, rock falls, debris movement and general slope instability. The surface movement of materials occurs as a result of both gravity and water transport. The surface material size includes large boulders, rocks and gravel, as well as grainy soil materials.

2. ***Desert Floor Landform Type:*** Characterized in general by level plains and expanses that typically occupy the broad lowlands floodplains between desert mountain ranges. The area is dominated by low growing shrubs, such as creosote and bursage, and supports larger shrubs and trees, such as palo verde and ironwood, and cacti, such as saguaro. Because the uplands support a greater diversity and density of plants, wildlife density and diversity are higher and important wildlife resources occur in both wash and upland areas. The terrain is relatively flat, with typical slopes of less than five (5) percent, although the slope of this landform classification extends up to ten (10) percent. Soils are generally deep and alluvial. The more numerous smaller washes that are found in more sloped areas are consolidated into fewer, but larger washes. Because of the flatter terrain, streambeds are typically sandy bottomed, wide braided channels that carry high volumes of floodwaters.
  3. ***Hillside Landform Type:*** Consists of the higher elevation rugged areas, with relatively steep slope and high vegetation density and diversity. These areas include mountains, hills, buttes, or escarpments predominantly composed of bedrock materials. The slope is greater than fifteen (15) percent, and in many cases is greater than thirty-five (35) percent. Upper portions of alluvial fans and the foothills of low mountains dominated by palo verde and mixed cacti vegetation typify this area. The saguaro is a visually dominant and important component of this area and higher density and diversity of vegetation results in higher wildlife density and diversity. Streambeds are typically narrow, rocky and incised. Drainage courses are relatively poorly defined on the slopes, but collect into deep canyon bottom courses strewn with large-sized rubble. Typical hazards include boulder rolling, rock falls, debris movement and general slope instability. Soils are generally shallow and rocky. Cultural resource sites are smaller and more scattered. There are a greater number of petroglyphs and few sites related to prehistoric agricultural uses.
- P. ***Landscape Character Zone:*** An association of plants that create an identifiable landscape character, and further defined by specific plant palettes found in the Desert Lands Conservation Guide.

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1. ***Native Sonoran Zone:*** Landscape character zone that represents indigenous plants typically found in the desert of the northern Phoenix metropolitan areas.
  2. ***Sonoran Character Zone:*** Landscape character zone with an associated plant list which represents plants that are generally native to the southwest deserts or have the appearance of being native to those deserts.
  3. ***Arid Character Zone:*** Landscape character zone where plants are generally compatible with the look of an arid landscape. The associated plant list is a broader representation of drought tolerant plants and includes non-natives that are considered appropriate for the area.
  4. ***Exotic Zone:*** Landscape character zone where plants are permitted which are not included on the other landscape character zone lists, as long as they are not on the prohibited plants list. The use of these plants is limited to Oasis Landscape Development Areas and areas included in the Disturbed Area.
- Q. ***Landscape Development Areas:*** Areas within a site with different recommended plant palettes based on their proximity to natural open space, soil stabilization attributes and the desired visual character for the area.
1. ***Oasis Area:*** A landscaped area consisting of enclosed courtyards, similar semi-private areas and other areas located within the Disturbed Area where the use of Native Sonoran, Sonoran Character and Arid Zone plants are strongly encouraged, but where Exotic Zone plants are also allowed.
  2. ***Transitional Areas:*** A landscaped area consisting of open backyards, commercial and public areas, streetscapes and common areas where use of Arid Zone plants is limited to 30% by area and where a buffer of Native Sonoran Zone plants is required at the perimeter of the lot or parcel or between the Disturbed Area and Natural Open Space.
  3. ***Buffer Area:*** A landscaped area consisting of open areas adjacent to preserved wash corridors and natural open space areas where the use of plants is limited to the Native Sonoran Zone palette.
- R. ***Master Conservation Plan (MCP):*** A submittal required with any site plan or subdivision plat application to the City for property within the Desert Lands Conservation Overlay, and which contains the identification of conservation features, native plants to be preserved, development areas, and conservation areas.
- S. ***Mature Trees:*** Healthy, full-bodied trees with a shape characteristic of the species and of the following minimum sizes: Ten (10) feet-twelve (12) feet height

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- times six (6) inches-eight (8) inches wide or two-inch single trunk caliper or one-inch average trunk caliper for a multiple trunk tree.
- T. **Mutilate:** To deface, maim, damage or disfigure any protected native plant by shooting, chopping, pushing over, burning, cutting or any other means.
- U. **Native Plant Permit:** A permit issued by the city pursuant to the provisions of this Article for the purpose of removing from the premises, relocating on the premises, or destroying any protected native plant.
- V. **Native Plant Preservation Plan:** A development plan specifying the proposed treatment of plants with Protected Plant Status for which a native plant permit is required.
- W. **Natural Open Space:** Areas dedicated for public ownership or retained in private ownership containing naturally occurring conservation features and accreted Sonoran Desert that have not been altered except to allow decomposed granite trails (private or public) in accordance with ADA guidelines, roadways and utility easements as necessary.
- X. **Plant Protection:** Any project which affects any indigenous plant from the specified Protected Native Plant List is required to submit a Native Plant Preservation Plan detailing the existing location and proposed treatment of each protected plant. Protected plants should, at the most optimal situation, remain in place.
- Y. **Plant Salvaging:** Those plants which must be disturbed due to construction are required to be salvaged unless the applicant can demonstrate how conditions such as poor health or orientation make successful relocation impossible. Salvaged plants are to be replanted within the project.
- Z. **Private Buffer:** An area located adjacent to a public or private preserve open space edge that is used as an undisturbed or enhanced landscape setback. The buffer may be platted as common open space for the development or as individual lots. The area shall contain no improvements or be used for any purpose other than a landscaped setback.
- AA. **Protected Plant Status:** Native cacti which are three (3) feet or greater in height and native trees which are four (4) inches or greater in caliper.
- BB. **Relocate:** To transplant a protected native plant to another location on the premises.
- CC. **Remove:** To transport a protected native plant from the premises on which it has been growing.
- DD. **Restore:** To replant areas of burned, damaged or disturbed naturally occurring Sonoran Desert vegetation and topographical features with trees and plants of the same species, size, density and placement as the surrounding area; and re-

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- contour, if necessary, to appear similar to nearby slopes.
- EE. **Retaining Wall:** A wall used solely to retain more than eighteen inches (18") of material but not to support or to provide a foundation or wall for a building.
- FF. **Ridge Line:** That line running along the highest elevation between mountain peaks.
- GG. **Rip Rap:** A bank protection measure composed of fractured rock of differing sizes. Undisturbed natural desert: Naturally occurring Sonoran Desert vegetation and topographical features, including washes, are not altered except to allow decomposed granite natural trails or as necessary for utility easements. Vegetation is not pruned or removed and allows natural habitat for native animal species. Dead trees or cacti also form an integral part of the wildlife habitat.
- HH. **Spill:** To cause or allow earth or other material to fall, flow or run down a slope, thereby creating a change in the natural appearance and topography.
- II. **Unique Feature:** A unique and identifiable feature that varies from the immediate surroundings, such as springs, tanks, saddles, expansive saguaro or cholla forests, etc.
- JJ. **Unsalvageable Plant:** means a protected native plant that cannot be successfully relocated due to any of the following:
1. Deteriorated health from disease, infestation, or natural causes; or
  2. Physical constraints related to plant location, orientation, or general condition which obstruct and/or prevent the application of approved relocation techniques.

### **SECTION 14-22B-4 REVIEW AND APPROVAL PROCESS**

A. Exemption for Single Lot Construction

The development of a single-family custom home shall not require a Desert Lands Conservation Report or Master Conservation Plan. The developer of a single-family custom home shall indicate on the site plan the location of conservation features to be preserved.

B. Properties Located North of Pinnacle Peak Road without Conservation Features (Ord. No. 05-44)

Owners of properties containing no conservation features shall submit a statement and aerial photo confirming this information.

C. Pre-Application Conference; Timing of Submittals (Ord. No. 05-44)

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1. A pre-application conference is required prior to submittal of any application for development approval for property containing Conservation Features or Natural Open Space to discuss environmental characteristics of the site. Developments of 10 acres or less shall be exempt from the pre-application meeting requirement but shall be subject to all other applicable requirements in this Article.
2. Submittal of the reports listed below are subject to the type of planning action involved as shown in Table 1. Submittals for one type of action need not be duplicated for another type of action.

<b>Table 1</b>					
<b>Type of Permitting Action</b>	<b>DLCR</b>	<b>MCP</b>	<b>Native Plant Inventory</b>	<b>Archaeological Site Review and/or Survey</b>	<b>Native Plant Preservation Plan</b>
<b>Rezoning</b>	<b>X</b>	<b>X</b>		<b>X</b>	
<b>Rezoning (PCD or PAD greater than 100 acres, more than one plat)</b>		<b>X</b> (Location of Conservation Areas and Habitat Only)		<b>X</b>	
<b>Minor Land Division</b>		<b>X</b>	<b>X</b>	<b>X</b>	
<b>Preliminary Plat</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	
<b>Preliminary Plat (10 acres or less)</b>		<b>X</b>	<b>X</b>	<b>X</b>	
<b>Final Plat</b>		<b>X</b>	<b>X</b>	<b>X</b>	
<b>Grading Permit</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Site Plan</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	
<b>Building Permit</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>

**D. Desert Lands Conservation Report**

A comprehensive report shall be submitted as part of a rezoning, platting site plan or building permit request that reviews existing conditions and site and project characteristics. For projects larger than 10 acres, this shall be the Desert Lands Conservation Report (DLCR). Projects of 10 acres or less may submit a Master Conservation Plan (MCP), as specified in this Section in order to meet this requirement. If a development request is being proposed on a property for

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which an existing DLCR is on file with the City, the Planning Manager shall determine what information, if any, needs to be updated.

A request to modify some or all of the submittal requirements listed in this Section may be submitted to and approved by the Planning Manager based upon a finding that sufficient information will be provided to make a determination as to compliance with the provisions of the DLCO.

A narrative description of the proposed development and information included on exhibits shall be submitted as the essential document of the report. The DLCR shall contain information specified in the Desert Lands Conservation Guide. (Ord. No. 05-44)

### **E. Master Conservation Plan**

In addition to the DLCR, a Master Conservation Plan (MCP) shall be submitted at the time of site plan or preliminary subdivision plat review and shall consist of the following items. For phased projects, submittal requirements shall correspond to the areas included in each phase. For projects of 10 acres or less submitting only the MCP, identification and descriptive data required for the DLCR and Projective Narrative and Overview shall also be included. Submittal requirements for the MCP are found in the Desert Lands Conservation Guide. (Ord. No. 05-44)

### **F. Site Inspection**

For those sites with particularly complex conditions, the City may arrange for a site inspection of the property by the City. The applicant shall distribute copies of the Existing Conditions Data Report for the on-site meeting. Applicants, their site designers, and the landowner will participate in the site inspection. The purpose of this visit is to review the property's existing conditions and special features, to identify potential site design issues, and to provide an informal opportunity to discuss site design concepts, including the prioritization of conservation features, and possible locations for buildings and street alignments.

### **G. Approval Process**

The Planning and Zoning Commission or the City Council shall review and either approve or disapprove any DLCR and/or MCP that is submitted as part of a development request requiring approval by the Planning and Zoning Commission or the City Council. The Planning Manager or his/her designee shall review and either approve or disapprove a DLCR and/or MCP for development request requiring building permit, site plan or subdivision plat approval. Appeals of the decision(s) regarding a DLCR and/or MCP will be addressed in the same manner as the development request which it accompanies. Approvals of the DLCR shall be valid for the same period of time accorded to the accompanying development request. After a period of one year from the submittal date of the MCP the Planning Manager shall determine the continued sufficiency of the MCP for future development planning applications. The Planning Manager shall not approve or

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recommend approval of any DLCR and/or MCP unless the Planning Manager has received a Waiver of Proposition 207 from the Owner or Owners of the property that is the subject of the DLCR and/or MCP or has determined that the absence of such a Waiver of Proposition 207 is consistent with the City's General Plan and Zoning goals and regulations.

(Section 14-22B-4 amended by Ordinance No. 07-14, enacted April 17, 2007 and effective May 17, 2007.)

**SECTION 14-22B-5 CONSERVATION STANDARDS**

In order to protect the public health, safety and welfare, preserve sensitive environmental conditions, retain and protect meaningful desert open space, and conserve ecological and aesthetic resources, all development within the DLCO shall be subject to requirements for the preservation of Natural Open Space and native plants. In Hillside Areas, requirements of the Hillside Overlay District and the DLCO shall be coordinated as specified below. Individual residential lot developments not part of any subdivision, or part of a subdivision with final plat approval prior to September 14, 2004, shall be exempt from the requirements of the following NOS Slope/Landform Matrix. The NOS area shall not exceed the percentages shown in the following NOS Slope/Landform Matrix.

A. Natural Open Space

1. Natural Open Space (NOS) within each development shall be preserved according to slope and landform type as provided in the following NOS Slope/Landform Matrix:

<b>Table 2 (Ord. No. 05-44)</b>			
<b>NOS SLOPE/LANDFORM MATRIX</b>			
<b>LANDFORM TYPE</b>	<b>SLOPE RANGE</b>	<b>MAXIMUM REQUIRED NOS</b>	<b>MINIMUM REQUIRED NOS</b>
Desert Floor	0% - 10%	25%	Minimum NOS requirements for all zoning districts shall be 15%.
Bajada	10% - 15%	45%	
Hillside	15% - 20%	55%	
	20% - 25%	60%	
	25% - 30%	70%	
	30% - 35%	80%	
	35%+	85%	
NOTE: Usable Open Space requirements of this ordinance may be satisfied by NOS containing dedicated trails, floodway areas or reserved or dedicated steep slope areas.			

2. The required NOS shall be comprised of the conservation features listed and defined in this Article. If the total acreage of these elements does not

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meet the minimum NOS requirements, then areas with 25% or greater slope shall be added in such a manner as to expand or extend the NOS until the required percentage is achieved. If after incorporating all areas with slopes of 25% or greater and the minimum NOS requirement is still not met, then additional open space shall be provided in the following priority:

- a. expands or extends a regional open space corridor,
  - b. increases the size of an existing or adjacent open space area,
  - c. creates a linkage to an existing or planned trail, or
  - d. provides a public access point to existing or planned natural open space.
3. In the event that the combined area of all required NOS exceeds the maximum required acreage, the following criteria listed in priority order shall be used to guide the determination of which features shall be preserved:
- a. Conservation Features;
  - b. Land that expands or extends a regional open space or drainage corridor;
  - c. Land that abuts existing and/or planned open space;
  - d. Land that allows opportunity to provide a link to existing or future trail systems; and
  - e. Land that provides a non-motorized access route from the nearest public right-of-way to an open space area.
4. The minimum contiguous area for NOS is 7,500 square feet, provided that not more than 15% of the required NOS shall be included in areas less than 10,000 square feet.
5. The minimum horizontal dimension for NOS is seventy-five (75) feet.
6. Where the minimum finished lot size is twenty-four thousand (24,000) square feet or less, NOS shall not be allowed on individual lots and must be placed in common tracts.
7. If land designated as NOS is located in a common tract owned by a homeowners association, the property shall be maintained through a common maintenance agreement.
8. Any NOS being considered for dedication to the City of Peoria, regardless

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of size and location, will be reviewed by the Community Services Director and staff for a recommendation as to the acceptance or rejection of the dedication.

9. Whether the NOS is located on individual lots or in common tracts, the boundaries of Disturbed Areas shall be delineated in the field with permanent markers in order to prevent encroachment into NOS areas.
10. Areas not specifically identified as Disturbed Area or NOS shall be considered Transition Areas.
11. Identification of NOS shall be coordinated with the Peoria Hillside Overlay District, Article 14-22A, and the planning of NOS shall specifically consider transfer of density and disturbed area. For Hillside Areas, NOS shall be located in areas planned to be undisturbed.
12. Within areas identified as NOS, no grading or other disturbance shall occur except the minimum grading required for trails, roadways and utility easements. No walls are permitted within the NOS. Restoration of the Disturbed Area not used to support buildings or Oasis or Transitional Landscape Areas is mandatory and shall follow plans reviewed and approved by the City.
13. For residential lots, the area between the buildings and the street and, for lots in excess of 24,000 square feet in size, side yard setback areas not utilized for driveways or parking areas shall be improved with landscaping using indigenous plant materials and groundcovers in addition to the NOS. In addition:
  - a. Perimeter walls or privacy walls shall be allowed in accordance with the provisions of Article 14-22A, and
  - b. The location of all buildings shall be within the delineated boundaries of the Disturbed Area.
14. Developments abutting any public NOS shall provide an access plan for public entry onto the NOS. The plan may take into consideration all points of visual and physical access to the NOS from any public or private property. A minimum of 40% of the linear distance along the edge of any public NOS shall consist of one or a combination of the following:
  - a. a public or private street;
  - b. a public or private improved open space having public access with minimum dimensions of 100 feet in length and 75 feet in depth along the NOS;
  - c. a minimum length of 100 feet along the frontage of a public or private street directly connecting the NOS to the street;

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- d. a termination of a public or private street in a configuration that provides on-street parking for four (4) vehicles and sufficient width for maneuvering; or
  - e. an equivalent creative alternative as approved by the City that provides visual and physical access and results in diversity of the edge treatment.
15. The total length of lots backing up to the NOS shall not exceed 1,000 feet without incorporating one of the edge treatments described in this Article or providing a trail access point to the NOS.

### **B. Rivers and Washes**

- 1. All Washes shall be preserved in an undisturbed condition and the habitat value preserved in its original condition. Secondary Washes having no vegetation or plants being preserved in place may be altered or eliminated. (Ord. No. 05-44)
- 2. An undisturbed area of twenty-five (25) feet measured from the edge of riparian vegetation or the floodplain, whichever is greater, shall be preserved on both sides of a Wash that has a one hundred-year peak flow greater than seven hundred (700) cfs.
- 3. If a Wash has a one hundred-year peak flow of less than seven hundred (700) cfs, the area to remain undisturbed should be determined by a width sufficient to allow for wildlife passage outside of the incised wash.
- 4. No major structural changes or improvements shall be allowed in preserved Washes. Protected plants shall be left in place except as follows: (Ord. No. 05-44)
  - a. to prevent erosion from channelization or combination of smaller washes;
  - b. to allow wash crossings of roadways, trails and utility easements. Trails and utilities may cross washes, but in no way shall they be placed in the wash bed running within and parallel to the wash bottom. Public utility easements shall be restored when construction is completed;
  - c. to prevent wash migration, where structures are placed behind the required wash setback; and
  - d. to allow discharge from adjacent retention or drainage facilities, as approved by the City Engineer as part of a drainage system improvement plan resulting from a drainage study performed by an engineer registered in the state of Arizona.

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### C. Wildlife Habitat

1. Corridors shall be established along both sides of washes identified for conservation which include the estimated 100-year floodplain and an additional upland buffer of 25 feet or the outer edge of the erosion hazard zone, if identified in a map as part of a drainage system improvement plan resulting from a drainage study performed by an engineer registered in the state of Arizona, whichever is greater. Non-motorized trails shall be permitted within the upland buffer.
2. Linear utility lines shall be placed parallel to, but just outside, the conserved wash and associated upland buffer to provide a more gradual transition to developed areas. Utility lines shall be buried in accordance with the City of Peoria Infrastructure Development Guidelines and restored using indigenous plants so that there is no net loss of habitat function or value.

### D. Scenic Resources

1. A scenic corridor of 100 feet, measured from the edge of floodplain, shall be established along both sides of the Agua Fria River within which the immediate foreground is kept intact with native or enhanced desert vegetation and no structures are permitted, except for those associated with utilities, stormwater management, and roadways.
2. Scenic corridor buffers, measured from edge of right-of-way, of 50 feet within the Rural Section, 30 feet within the Suburban Section, and 15 feet within the Urban Section, shall be established along both sides of the Lake Pleasant Parkway Corridor within which the immediate foreground is kept intact with native or enhanced desert vegetation and no structures are permitted, except those associated with utilities, stormwater management, and roadways. The limits of the Rural, Suburban, and Urban Sections are shown on Figure 4, Development Section Map, of The Lake Pleasant Parkway Corridor Specific Area Plan dated March 6, 2000, as may be amended.

### E. Cultural Resources

1. Preliminary Archaeological Site Review

Provide a letter report, to be submitted with the Existing Conditions Data Report, from the Arizona State Museum, the State Historic Preservation Office (SHPO), or an Archaeologist that reviews all of the available archaeological information for the site. This record check shall: determine whether the site has been field surveyed for cultural resources; identify any previously-recorded archaeological or historic resources known to exist on the property; state the probability that buried archaeological resources not visible from the surface would be discovered on the site; and make a recommendation as to whether an archaeological survey of

## **ARTICLE 14-22B DESERT LANDS CONSERVATION OVERLAY**

the site is needed.

### 2. Archaeological Survey; Duties of the Archaeologist

If an archaeological survey of the site is recommended then the following tasks shall be completed by an Archaeologist.

- a. Complete a field survey and submit the results with the Existing Conditions Data Report. Any cultural resources identified shall be entered by the Archaeologist making the discovery into the Arizona State Museum site file system.
- b. Describe and map archaeological and historic sites identified on the property in either the records check or the field survey. Detailed location maps of such sites should not be included in the site analysis, but should be available from the Archaeologist for staff review as necessary.
- c. The Archaeologist shall complete an archaeological report that:
  - i. Determines the significance of the reported cultural resource(s);
  - ii. Assesses the impact of the proposed development on the cultural resource(s). If the resource cannot be preserved in place or protected by acceptable means, it must be mitigated;
  - iii. Makes a determination that the cultural resource must be either preserved/ protected or mitigated;
  - iv. Identifies mitigation measures and a mitigation plan that have been reviewed and approved by the City and/or SHPO.

3. Any proposed mitigation measures shall be reviewed and approved by SHPO, having primary responsibility, and/or the City, as the Certified Local Government with jurisdiction, prior to the commencement of any activity on the site.

### F. Native Plants

1. No person shall destroy, mutilate, remove from the premises, or relocate to another place on the premises any protected native plant on land that is subject to the provisions of this Article without first obtaining a Native Plant Permit.
2. Minimum size requirements necessary to establish Protected Plant Status include 4 inch caliper or greater for trees, 5 feet diameter or greater

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branch reach for shrubs, and 3 feet tall or greater for cacti. Creosote (larea tridentada) shall be exempt from designation as a Protected Plant. (Ord. No. 05-44)

3. Protected Native Plant List

The rationale for inclusion on the Protected Plant List includes one or more of the following:

- a. Preservation of the plant enhances the City’s aesthetic appeal by conserving unique scenic character;
- b. The plant is slow growing and therefore it is difficult and cost prohibitive to find comparable nursery-grown stock for replacement;
- c. The plant alone or in combination with others provides unique wildlife habitat; and
- b. The proven success rate in the region of salvaging plants of a certain size.

<b>PROTECTED NATIVE PLANT LIST</b>	
<b><i>Botanical Name</i></b>	<b><i>Common Name</i></b>
<b><i>TREES</i></b>	
Cercidium floridum	Blue Palo Verde
Cercidium microphyllum	Foothills Palo Verde
Chilopsis linearis	Desert Willow
Juniperus mono sperma	One-Seeded Juniper
Olneya tesota	Ironwood
Populus fremontii	Fremont Cottonwood
Prosopis velutina	Velvet Mesquite
<b><i>SHRUBS</i></b>	
Acacia constricta	Whitethorn Acacia
Acacia greggii	Catclaw Acacia
Celtis pallida	Desert Hackberry
<b><i>CACTI/SUCCULENTS/ACCENTS</i></b>	
Carnegiea gigantean	Saguaro
Ferocactus species	Barrel Cactus
Fouquieria splendens	Ocotillo
Peniocereus greggii	Desert Night-Blooming Cereus
Yucca baccata	Banana Yucca/Blue Yucca/Datil Yucca

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<b>PROTECTED NATIVE PLANT LIST</b>	
<b><i>Botanical Name</i></b>	<b><i>Common Name</i></b>
Yucca elata	Soaptree Yucca

4. Native Sonoran Desert vegetation should not be pruned or removed from areas identified as Natural Open Space unless demonstrated to the City that a health, safety or welfare issue exists. This includes removal of dead trees or cacti.
5. Plants specified on the prohibited plant species list shall not be allowed. Certain plants that do well in this region present a distinctly non-desert appearance and/or pose potential hazards to the native vegetation, wildlife and landscape due to their invasive nature. The following plants exhibit these characteristics:

<b>PROHIBITED PLANT SPECIES LIST</b>	
<b><i>Botanical Name</i></b>	<b><i>Common Name</i></b>
<b><i>TREES</i></b>	
Brachychiton populneus	Bottle Tree
Eucalyptus sp. (except those specifically identified in Arid Character Zone – see Desert Lands Conservation Guide)	Eucalyptus
Olea sp.	Olive Tree
Parkinsonia aculeata	Jerusalem Thorn/Mexican Palo Verde
Pinus sp.	All species of Pine
Prosopis chilensis (prohibited in parking areas only)	Chilean Mesquite
Rhus lancea	African Sumac
Washingtonia sp.	Fan Palm
<b><i>SHRUBS</i></b>	
Oleander sp. (except petite varieties)	Oleander
Thevetia peruviana	Yellow Oleander
<b><i>GROUNDCOVERS, ANNUALS, PERENNIALS, VINES, ETC.</i></b>	
Cenchrus ciliaris or Pennisetum cileare	Buffel Grass
Cynodon dactylon (except in private backyards, enclosed courtyards, and public use areas buffered from Native Sonoran Zones by Sonoran Character Zones - see Desert Lands Conservation	Common Bermuda Grass

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<b>PROHIBITED PLANT SPECIES LIST</b>	
<b><i>Botanical Name</i></b>	<b><i>Common Name</i></b>
Guide)	
Eragrostis lehmanniana	Lehmann's Lovegrass
Gutierrezia sarothrae	Snakeweed
Hordeum jubatum	Foxtail Barley
Pennisetum sp.	Fountain Grass

- 6. The prohibited plant species list shall be provided by the Developer to all purchasers of property within the development. Exceptions to the Prohibited Plant Species List may be approved by the Planning Manager or designee subject to a report from a registered landscape architect and a satisfactory recommendation from the Community Services Department.
  
- 7. In areas designated as NOS, where a portion has been burned or previously damaged, the area shall be restored by the property owner. Restoration shall be typical of the surrounding area, i.e., tree-lined washes shall be restored with trees of the same species, size, density and placement; graded slopes shall be re-contoured similar to nearby slopes, etc. The property owner shall be responsible for the management of private restored areas. Where this occurs at the edge between public and private development, the public open space shall be restored by the owner of property immediately adjacent to the public open space at the same time as the private open space.

**SECTION 14-22B-6 NATIVE PLANT PERMIT**

The process of preparing a site for development that contains native plants is authorized by a Native Plant Permit and guided by a Native Plant Preservation Plan (NPPP). The entire site development process shall be managed by the person that prepares the NPPP. The builder of a single family dwelling on an individual lot not part of a subdivision or part of a subdivision plat approved prior to September 14, 2004 shall not be required to prepare a NPPP, but shall be required to perform plant salvaging and transplanting tasks for Protected Plants.

- A. The Native Plant Preservation Plan shall be prepared by a botanist that has received a formal education in Botany, Biology or Ecology, a Licensed Landscape Architect or other professional with similar training and that has experience working with plants and ecosystems of the Sonoran Desert. The plan shall contain information and procedures regarding the following tasks:
  - 1. Plant Inventory,
  - 2. Plant tagging,
  - 3. Plant salvaging,

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4. Establishing and managing the temporary salvage plant nursery, and
  5. Transplanting the salvaged plants.
- B. The Native Plant Permit authorizes a process for preservation and salvaging of native plants. The process includes the following activities:
1. Preparation of a Native Plant Preservation Plan,
  2. Plant Inventory,
  3. Acquisition of a Native Plant Permit,
  4. Tagging of all native plants as to disposition,
  5. Establish the temporary native plant nursery,
  6. Move native plants to be salvaged to the nursery,
  7. Transplant the salvaged plants, and
  8. Termination of the temporary native plant nursery and restoration of the nursery site.
- C. Submittal Requirements

Any submittals made for a Native Plant Permit shall comply with the requirements contained in this section. The developer of a single family custom home shall not require a Native Plant Permit. Submittals must be complete and submitted to the Community Development Department with the appropriate fee.

1. Native Plant Preservation Plan containing:
  - a. Project name and address
  - b. Owner name, address & phone number
  - c. Proposed salvage contractor, cacti salvage contractor, and tax license number
  - d. Quarter Section Number
  - e. Prior Peoria case numbers
  - f. Number of protected plants to be relocated
  - g. Number of protected plants to be destroyed

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- h. Total number of protected plants disturbed
      - i. Brief description of your project including estimated timing of salvaging and relocation of plants, plant nursery location, transplanting activities and any other relevant information.
  - 2. Three (3) copies of the site plan aerial with plat overlay indicating the location by tag number each plant which is required to be protected per the Protected Native Plant List (from the NPPP).
  - 3. Three (3) copies of the plant inventory performed by a City of Peoria Approved Salvage Contractor (which corresponds to the tag number on the site plan) indicating the following (from the NPPP):
    - a. Plant type
    - b. Plant size in caliper inches
    - c. Plant salvageability (Any plant that is determined to be unsalvageable must have an explanation of the present status of the plant material.)
    - d. Whether the plant will remain in place, be moved to another location or be destroyed (Any plant that is destroyed must have an explanation detailing why the plant cannot remain in place or be moved.)
    - e. Current market value by species and size for all plants identified for salvage.
  - 4. Temporary project nursery location shown on a map, in a written description or as an address (from the NPPP). Notice of when plant materials have been tagged in the field for City Staff review.
  - 5. Letter of Authorization from the property owner identifying the city-approved salvage contractor for the project and verifying that all plants are to be replanted on site (from the NPPP).
  - 6. A copy of the form notifying the Arizona Department of Agriculture, Native Plant Section, of the intent to destroy plant materials protected by state statutes (from the NPPP).

### **D. Responsibility for obtaining permit.**

A Native Plant Permit may be obtained by the property owner of record or by another party acting as agent upon presentation of written authorization by the property owner of record.

### **E. Action on applications.**

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Applications may be approved, approved conditionally, or denied. Where the Planning Manager or designee determines that the application is in conformance with the provisions of this Article, a permit shall be issued, with such conditions attached as necessary to insure that the Native Plant Preservation Plan is successfully accomplished. Where it is determined that the application is not in conformance with the provisions of this Article, the application shall be denied. Action taken on applications may be appealed to the hearing officer appointed by the City Manager according to the procedures specified in this Article.

### **F. Timing of Permit approval**

No Native Plant Permit shall be issued unless an application is submitted in conjunction with an existing or proposed development that requires administrative approval, Planning and Zoning Commission approval, City Council approval, Board of Adjustment approval, or approval of a plat as determined by the City Manager or designee. For proposed development, the Native Plant Permit shall not be issued until the necessary development approvals have been secured.

### **G. Modification**

It shall be unlawful to modify, alter, or amend an approved Native Plant Permit or an accompanying Native Plant Preservation Plan without reapplication for a Native Plant Permit according to the provisions of this Article.

### **H. Expiration**

1. Every permit issued by the City under the provisions of this Article shall expire and become null and void if the work authorized under the provisions of this Article is not commenced within ninety (180) days from the date of issuance, unless otherwise specified as a condition of the permit approval or if the work authorized under the provisions of this Article is suspended or abandoned for a period of ninety (90) days. Before such work can be recommenced, a new permit shall be obtained to do so pursuant to the provisions of this Article.
2. Work shall be completed within the time period specified on the Native Plant Permit. The Planning Manager or designee shall have the authority to grant a ninety (90) day extension of the time limit for completion of the work upon written request of the applicant. Failure to comply with the time limitation without an extension authorized by the city shall require application for a new permit pursuant to the provisions of this Article.

### **I. Exemptions**

Governmental agencies shall be exempted from the payment of fees herein required, provided that only such property occupied, operated, and maintained

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for government purposes by the above-mentioned agencies shall be so exempted. All other provisions of this Article shall apply to these agencies.

### J. Plants to be tagged; requirements.

1. All plants with Protected Plant Status scheduled to remain in place or authorized for destruction or relocation by the approved Native Plant Permit must be tagged and numbered prior to permit submittal. Tags shall be color-coded according to the following schedule so that the status of each plant affected by the development proposal may be easily identified:
  - a. Plants proposed for destruction shall be tagged with blue plastic tape
  - b. Plants proposed for relocation shall be tagged with red plastic tape
  - c. Plants proposed to remain shall be tagged with white plastic tape.
2. Tags required by this Article shall be affixed in a visible and uniform location (preferably the north side) on the plant. Once affixed, the tags shall not be removed until the plants are removed, relocated, or destroyed in compliance with the Native Plant Permit and a final inspection has been made.
3. Tag numbers shall correspond to the site plan and the plant inventory.
4. Tag numbers shall be transferred to the side of the box when site boxing is completed.

### K. Timing of work authorized by this chapter.

Time periods shall commence on the date of permit issuance. This requirement shall not apply to those native plants deemed to be unsalvageable by the City and noted as such on the permit.

1. Plants with Protected Plant Status authorized for destruction under the provisions of this Article shall not be destroyed within a time period specified as follows:
  - a. One (1) to five (5) plants with Protected Plant Status to be destroyed, fifteen (15) days.
  - b. Six (6) to fifteen (15) plants with Protected Plant Status to be destroyed, thirty (30) days.
  - c. Sixteen (16) or more plants with Protected Plant Status to be destroyed, sixty (60) days.

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2. In no instance shall destruction of plants with Protected Plant Status occur prior to issuance of a Native Plant Permit by the City unless the Planning Manager or his/her designee agrees to allow preliminary at-risk grading. Such decision will be based on a report by a registered landscape architect providing an assessment of the salvageability given the time of year, and concurrence from the Community Services Department.

L. Compliance with approved permit; revocation.

All work authorized by a permit issued in conformance with the terms of this Article shall be completed as authorized. Failure to comply with the conditions of permit approval or the approved Native Plant Preservation Plan shall constitute a violation of the Native Plant Permit and may be punishable by permit revocation and/or citation under the authority of this Article.

M. Inspections.

All aspects of the work performed as a result of a Native Plant Permit issued under the provisions of this Article shall be subject to inspection by the City. Specific Inspections shall be performed 1) following completion of tagging, 2) following completion of relocation of plants to the plant nursery, and 3) following completion of all transplanting and removal of the nursery. Inspections may be performed by City personnel or may be required of the developer. Developer's inspections shall be signed and certified by one of the professionals listed as responsible for preparation or assisting in the preparation of the Native Plant Preservation Plan.

N. Penalties.

1. Generally. Any violation of this Article is a Class 1 misdemeanor which, upon conviction, may be punishable by a fine not exceeding two thousand five hundred dollars (\$2,500.00), or by imprisonment for a term not to exceed six (6) months, or by both such fine and imprisonment, at the discretion of the city magistrate. Each day this violation continues shall constitute a separate offense.
2. A Native Plant Permit shall not be issued after a violation resulting in destruction, removal, or relocation of plants with Protected Plant Status has been discovered until such time as a restoration program has been approved and the property has been restored with plants included on the Protected Native Plant List of equivalent type, size, density, distribution, and condition as existed on the property prior to the violation. A program for restoration of the site shall be approved by the Planning Manager or designee and shall be based on the expected type, size, density, distribution, and condition of plants with Protected Plant Status within the vegetation communities in which the violation occurred. Appeal of a decision made by the Planning Manager or designee regarding a restoration program shall be heard by the Hearing Officer appointed by

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the City Manager. Appeal of a decision made by the Hearing Officer regarding a restoration program may be made to the City Council in accordance with the rules and procedures established in this Article.

### 3. Waiver of restoration requirement generally.

The City Manager or designee may waive the restoration requirement in this Article when it will further the purpose of this Article and be in the best interest of the community, and when it is demonstrated that development of the property is imminent as determined by the following criteria:

- a. A development proposal is submitted for approval by a development review board within ten (10) days of the notice of violation.
- b. The general plan designation of the property is consistent with the proposed development.
- c. The zoning of the property is consistent with the proposed development.
- d. Infrastructure improvements are in place, which can support the proposed development.

### 4. Granting of waiver; cost of replacing and maintaining native plant materials.

- a. If a waiver is granted, a sum of money shall be paid to the city for the purpose of replacing and maintaining native plant materials. The development review board shall determine the sum of money to be paid to the city from the following schedule:
  - i. Protected native trees. Three hundred dollars (\$300.00) per caliper inch (measured one (1) foot above ground level).
  - ii. Protected native cacti. Two hundred dollars (\$200.00) per foot.
  - iii. Maximum per plant. Ten thousand dollars (\$10,000.00).
- b. Determination of the sum of money to be paid to the City pursuant to this Section shall be based upon the type, size, density, distribution, and condition of plant materials that existed on the property prior to the violation, or upon inspection of the remains of plant materials or other physical evidence as may be available. Appeal of a decision of the Hearing Officer regarding this determination may be made to City Council in accordance with the rules and procedures established in this Article.

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- c. The sum of money required by this subsection shall be used to replace removed or damaged plant materials whose retention is required by a Native Plant Preservation Plan approved in conjunction with the development proposal specified in this Article and to maintain replacement plant materials for a period of three (3) years. Additionally, fifteen (15) percent of the total amount payable shall be kept by the City as payment for the enforcement of these regulations and administration of the agreement specified in this Article.
- d. Prior to issuance of any permits for construction on or development of the property, the property owner shall provide a mechanism acceptable to the City for replacement of plant materials for a period of three (3) years.

### **SECTION 14-22B-7 INSPECTIONS**

- A. In order to ensure compliance with this Article, inspections may be made by the Planning Manager or his or her duly authorized representative consistent with law.
- B. If such inspection reveals that any property or portion of a project is not in compliance with the requirements of this Article, the Planning Manager or his or her duly authorized representative shall report the discrepancy to the property owner, developer or their representative and shall order work on the project stopped or corrective action taken as appropriate.

### **SECTION 14-22B-8 DESERT LANDS CONSERVATION GUIDE**

The City Manager or his designee shall promulgate a Desert Lands Conservation Guide containing the principles and guidelines used for the implementing of desert lands conservation within the Desert Lands Conservation Overlay district. Considerations contained within the Desert Lands Conservation Guide may be used in design of methods used in desert development projects.

### **SECTION 14-22B-9 ENFORCEMENT**

- A. Enforcement Authority

The DLCO shall be enforced by the Community Development Director of the City of Peoria, or his or her duly authorized representative.

- B. Interference with Enforcement Personnel

It shall be unlawful for any person to willfully interfere with, hinder or obstruct enforcement personnel in the discharge of their duties pursuant to this Article.

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### C. Penalties

A violation of any provision of this Article shall be subject to the violation and penalty provisions of the Zoning Ordinance.

### D. Notices (Ord. No. 05-44)

Notices to adjacent property owners shall be sent prior to a hearing or determination on an application for a waiver. Letters containing information regarding the waiver application shall be mailed to property owners within 300 feet of the property that is subject to the waiver request not less than ten (10) days prior to the day scheduled for the waiver decision. The applicant for the waiver shall supply the City a list of all property owners within 300 feet of the property and stamped addressed envelopes for each address.

## **SECTION 14-22B-10 APPEALS**

### A. Appeals to the Hearing Officer

1. Decisions of the Community Development Department Staff arising from the administration of the requirements contained in this Article may be appealed to the hearing officer, which shall be appointed by the City Manager to hear such appeals. The appeals shall be in writing and set forth the specific decision of the Community Development Department staff that is being appealed. The appeal shall be filed with the Community Development Director.
2. A copy of the appeal and complete file shall be transmitted to the hearing officer. The hearing officer shall hold a hearing and provide the applicant and Community Development staff an opportunity to present their position. Such hearings shall be informal and the rules of evidence and civil procedure shall not apply. Such hearings shall be noticed in accordance with the following provisions.
3. The hearing officer shall act upon an appeal within ten (10) days after filing and shall submit his or her decision in writing to the applicant and the Community Development Director.

### B. Appeals to the City Council

1. An applicant or the City may appeal the decision of the hearing officer to the City Council. The appeal shall be in writing and shall specifically set forth the decision of the hearing officer which is being appealed. The appeal shall be filed with the Community Development Director.
2. A notice of the appeal shall be mailed at least ten (10) days prior to the council meeting in which the appeal is heard to each property owner

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situated wholly or partially within three hundred (300) feet of the property to which the plan relates. The applicant shall provide the Community Development staff with the names and addresses and addressed and stamped envelopes for all property owners within three hundred (300) feet of the property. The Community Development staff shall be responsible for mailing such notices.

3. A copy of the appeal letter, decision of the hearing officer and supporting material shall be transmitted to the City Council. At a regularly scheduled Council meeting the applicant and the hearing officer shall present their positions.
4. The City Council shall act upon the appeal within thirty (30) days after the appeal is filed with the Community Development Director, or at the next regularly scheduled City Council meeting, whichever date is later.