

§153.035 WATER RESOURCES PROTECTION OVERLAY DISTRICT

1. Purpose. The purpose of the Water Resources Protection Overlay (WRPO) District is to implement the City of Tillamook Significant Wetland and Riparian policies of the City of Tillamook Comprehensive Plan and to guide development and conservation of significant wetlands, streams and riparian corridors identified in the City of Tillamook Significant Riparian/Wetlands Inventory (Local Riparian/Wetlands Inventory) and on the City of Tillamook Significant Wetlands and Riparian Corridor Map (Significant Wetlands and Riparian Corridor Map).
2. Scope.
 - A. To allow use of properties while establishing clear and objective standards to protect and restore water bodies and their associated riparian areas, thereby protecting and restoring the hydrologic, ecological and land conservation functions these areas provide.
 - B. To protect habitat for fish and other aquatic life, protect habitat for wildlife, protect water quality for human uses and for aquatic life, control erosion and limit sedimentation, limit development in significant riparian corridors, and reduce the effects of flooding.
 - C. To exclude structures from areas adjacent to fish bearing lakes and streams, and their associated wetlands, and restrict native vegetation removal or other alterations in those areas.
3. Applicability and Generalized Mapping
 - A. The WRP overlay district applies to all wetlands, streams and riparian corridors, identified as significant in the City of Tillamook Wetlands and Stream Corridors Map contained in the City's Comprehensive Plan. This generalized map is based on the City of Tillamook Wetlands and Riparian Inventory. The Significant Wetlands and Riparian Corridor Map shows the general location of significant resources. However, the edge of the wetlands area cannot be determined, until wetland delineation is completed by a qualified person.

The standards and procedures of this section:

- 1) Apply to all development proposed on a lot or parcel located within, or partially within, the WRPO District;
- 2) Are in addition to the standards of the underlying zone; and
- 3) In cases of conflict, this overlay district supersedes the standards of the underlying zone.

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- B. The City of Tillamook wetlands and stream corridors map identifies the significant water resources designated in subsection 2 of this Section.
- C. Applicable riparian and wetlands setbacks. The applicant shall be responsible for providing a map of the precise location of the top of the stream bank, the wetland edge, and/or the riparian setback at the time of application submittal.
- D. The inventory of significant wetlands and riparian corridors contained in the Comprehensive Plan identifies all significant wetlands, identifies which streams are fish-bearing, and specifies the stream-size category. Based on the classification contained in this inventory, the following significant wetlands and riparian corridor setbacks shall be established:
 - 1) Along all streams identified in the Local Riparian/Wetlands Inventory, the riparian corridor boundary shall be 50 feet from the top of bank. This includes the following water bodies:
 - a) Colby Creek
 - b) Dougherty Slough
 - c) Hall Slough
 - d) Holden Creek
 - e) Hoquarton Slough
 - f) Jack Creek
 - g) Trask River
 - h) Wilson River
 - 2) Along all significant wetlands as designated in the Local Riparian/Wetlands Inventory, the wetlands boundary shall be measured horizontally 50 feet from the line of non-aquatic vegetation.
 - 3) Where the riparian corridor includes all or portions of a significant wetland identified in the Local Riparian/Wetlands Inventory, the distance to the riparian corridor boundary shall be measured from the upland edge of the wetland.
 - 4) The measurement of distance to the riparian corridor boundary shall be from the top of bank. In areas where the top of the bank cannot be clearly determined, the riparian corridor boundary shall be measured from the ordinary high water level, or the line of non-aquatic vegetation, whichever is most landward.
- 4. Activities Permitted and Prohibited within the Riparian Area. This Section outlines the uses and conditions associated with development in the WRPO District as required by OAR 660-230-090 (8) (a - c).
 - A. The permanent alteration of the riparian corridor by grading or by the placement of

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structures or impervious surfaces is prohibited, except for the following uses, provided they are designed to minimize intrusion into the riparian area, and no other options or locations are feasible:

- 1) Streets, roads, and paths;
- 2) Drainage facilities, utilities, and irrigation pumps;
- 3) Water-related and water-dependent uses;
- 4) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area;
- 5) Non-conforming uses existing fully or partially within the riparian corridor may be expanded, provided the expansion does not occur within the riparian corridor. Substantial improvement of a non-conforming structure in the riparian corridor shall comply with the standards of this ordinance;
- 6) Existing lawn within the riparian corridor may be maintained, but not expanded to further intrude into the riparian corridor;
- 7) Shoreline stabilization and flood control structures that legally existed on the effective date of this ordinance may be maintained. Any expansion of existing structures or development of new structures shall be evaluated by the City and appropriate state natural resource agency staff. Such alteration of the riparian corridor shall be approved only if less-invasive or non-structural methods will not adequately meet the stabilization or flood control needs.

B. Removal of riparian vegetation is prohibited, except for:

- 1) Removal of non-native vegetation and replacement with native plant species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, and shall maintain or exceed the density of the removed vegetation;
- 2) Removal of vegetation necessary for the development of approved water-related or water-dependents uses shall be kept to the minimum necessary to allow the water-dependent or water-related use;
- 3) Trees in danger of falling and thereby posing a hazard to life or property may be felled, following consultation and approval from the Public Works Director. The Public Works Director may require these trees, once felled, to be left in place in the riparian corridor.

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- 4) Existing landscaping, established prior to the effective date of this ordinance may be maintained. However, no new encroachment into the riparian corridor shall be allowed. Consultation with the Oregon Department of Fish and Wildlife (ODFW) is required prior to trimming/pruning of riparian/wetland vegetation in order to minimize the adverse effect of the trimming on water quality and aquatic habitat.

C. Exceptions: The following activities are not required to meet the standards of this section:

- 1) Commercial forest practices regulated by the Oregon Forest Practices Act;
- 2) Normal and accepted farming practices other than buildings or structures, existing in the riparian area since prior to the date of adoption of this ordinance.

D. Development proposed within any wetland or stream, in addition to meeting the standards of this Section, shall also be approved by Division of State Lands (DSL) and Army Corps of Engineers (CoE).

E. Exemptions.

- 1) When performed under the direction of the City, and in compliance with the provisions of the City of Tillamook Public Works Improvement Standards and Specifications, as well as Riparian Setbacks in this Ordinance, the following shall be exempt from the provisions of this ordinance:
 - a) Emergency repairs to public facilities; and
 - b) Routine maintenance or replacement of existing facilities.
- 2) When performed under consultation with ODFW and other authorities as appropriate, the following shall be exempt from the provisions of this ordinance:
 - a) Stream and wetlands restoration and enhancement programs; authorized by appropriate permits;
 - b) Non-native vegetation removal;
 - c) Planting of native plant species; and

F. Any permitted crossings of significant riparian corridor waterways shall be conducted in consultation with the ODFW, DSL, and CoE.

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5. Application Requirements. All development applications on lots within, or partially within, the WRPO District shall submit the following information, in addition to other information required by this development code.
 - A. Underlying Zone District Permitted Uses. The applicant shall prepare a plan that demonstrates that the use will be constructed and located so as to minimize grading, native vegetation removal, and the area necessary for the use. The City may require additional information where necessary to determine WRPO District boundaries or to mitigate identified impacts from a proposed development, including but not limited to:
 - 1) Site survey as prescribed in applicable Zoning Clearance Permit application;
 - 2) A map showing the name and location of streams including streambanks and significant riparian corridors including adjacent wetlands;
 - 3) A map showing the location of any wetlands;
 - 4) A map showing the riparian setback area.
 - B. Underlying Zone District Conditional Uses and Land Division Developments. The applicant shall prepare a required site specific survey. If any conditional use permit or Planned Unit Development activity is proposed within significant water resource site setbacks, the applicant shall provide a survey of the entire site that precisely maps and delineates the following:
 - 1) The location of streams and significant riparian corridors, including adjacent wetlands, and the tops of their respective stream banks or wetland boundaries;
 - 2) Significant wetlands;
 - 3) The area enclosed by the riparian setback;
 - 4) Property lines and easements, existing public rights-of- way, structures, roads and utilities;
 - 5) Vegetation, including trees or tree clusters and under-story vegetation;
 - 6) Existing and proposed contours at 2-foot intervals.
6. Development Standards. The following shall apply to all development, including native vegetation removal and excavation, in the WRPO District. No application for uses identified in this section shall be deemed complete until the applicant has addressed each of these standards in writing.
 - A. Alternatives considered. In general, land development is expected to occur outside the

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WRPO District significant water resource setback areas. Therefore, development applications must carefully examine upland alternatives for the proposed use, and explain the reasons why the proposed development cannot reasonably occur outside of the water resource or riparian setback area.

- B. Minimize siting impacts. The proposed use shall be designed, located and constructed to minimize excavation, loss of native vegetation, erosion, and adverse hydrological impacts on significant water resources. Site Analysis shall be provided to the City.
 - 1) For land divisions, the applicants must certify that any adverse water quality impacts of the development proposal will be minimized consistent with best management practices.
 - 2) The development shall intrude into water resource or riparian setbacks as little as possible, recognizing the operational needs of the proposed development.
- C. Construction materials and methods. Where development within the riparian area is unavoidable, construction materials or methods used within the riparian setback area shall minimize damage to water quality and native vegetation.
- D. Alteration Requiring Mitigation. If a use is proposed within a significant resource site or riparian setback area, a mitigation plan shall be prepared and implemented.
 - 1) Permanent alteration of the riparian area by placement of structures or impervious surfaces is allowable under the following procedures, subject to the mitigation requirements of subsection 5 of this section.
 - a) Unless permitted under subsection 4(A), a variance to the riparian setback approved through the procedures of Subsection 7 of this section.
 - b) Proposals for development activities within the riparian area shall be reviewed by ODFW under its Fish and Wildlife Habitat Mitigation Policy. Mitigation recommendations by ODFW may become conditions for approval of a proposed alteration of a wetland or riparian corridor.
 - 2) Conditional uses in the underlying zoning districts , with the criteria listed in Section 27 of this development code, may be approved in the WRPO District where the applicant can demonstrate, through site analysis, that there are no reasonable alternatives and that the proposed use(s) are designed and constructed to minimize intrusion into the significant resource.
- E. Erosion and Vegetation Plan implementation. A schedule of planned erosion control and re-vegetation measures shall be provided, which sets forth the progress of construction activities, and mitigating erosion control measures. The approved Erosion Control or Re-vegetation Plan shall be implemented and maintained as follows:

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- 1) Erosion control measures shall be installed prior to any stripping or excavation work.
- 2) The applicant shall implement the measures and construct facilities contained in the approved Erosion Control Plan in a timely manner. During active construction, the applicant shall inspect erosion control measures daily, and maintain, adjust, repair or replace erosion control measures to ensure that they are functioning properly.
- 3) Eroded sediment shall be removed immediately from pavement surfaces, off-site areas, and from the surface water management system, including storm drainage inlets, ditches and culverts.
- 4) Water containing sediment shall not be flushed into the surface water management system, wetlands or streams without first passing through an approved sediment filtering facility or device.
- 5) In addition, prior to fencing placement and excavation, the applicant shall call for inspection. Prior to the foundation inspection for any building, the applicant shall call for inspection to certify that erosion control measures are installed in accordance with the erosion control plan.

7. Variances

- A. In cases where the riparian corridor unduly restricts the development of a lot or parcel legally created before the effective date of this ordinance, a property owner may request a variance to the riparian setback. As a replacement to §153.075 of this development code, granting of a variance requires findings that:
 - 1) The proposed development represents a reasonable and legal use of the lot or parcel considering the zoning district requirements; and
 - 2) Strict adherence to the riparian setback and other applicable standards would effectively preclude a use of the parcel that could be reasonably expected to occur in similarly zoned parcels; and
 - 3) The property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity and has exhausted all other options available under this ordinance to relieve the hardship; and
 - 4) The variance is the minimum necessary to retain a use of the property and to afford relief, considering the potential for increased flood and erosion hazard, and potential adverse impacts on native vegetation, fish and wildlife habitat, and water quality; and
 - 5) Granting the variance will not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood of the premises and no significant adverse impacts on water quality, erosion or slope stability will result from

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- approval of the variance, or these impacts have been mitigated to the greatest extent possible; and
- 6) The variance will be in general harmony with the intent and purpose of this ordinance, and will not adversely affect any officially adopted comprehensive plan provision.
8. Mandatory Notification of Permitting Agencies. A riparian corridor and isolated wetlands not designated as significant resources, and wetlands that do not qualify as significant in City of Tillamook Local Wetland Inventory may be subject to permitting requirements of the Division of State Lands and the Army Corps of Engineers. To effectively coordinate permitting responsibilities the City of Tillamook will notify the Division of State Lands of all development applications that may impact wetland resources in the City. The applicant shall be responsible for obtaining any applicable development permits from State and Federal agencies.
- A. Notification Procedure:
- 1) The City of Tillamook shall require written application for all Wetland modifications at the time of local permit application.
 - 2) The City shall record the application and forward a copy of the application to the Division of State Lands.
 - 3) The City shall not allow review or approval of any application for permit that includes the intent to modify a wetland or riparian resource until such time as the permitting agencies have approved a modification permit.
 - 4) The City shall report, in writing, a record of modification of the riparian and wetland resources not included on the Significant Riparian Corridor and Wetland List to all permitting agencies with a jurisdictional interest.
- 9 Changes to inventory maps
- A. Claims of an error in the mapped location of a wetland or riparian corridor on the Significant Wetlands and Riparian Corridor Map may be considered as part of an application for a subdivision, partition, lot line adjustment, site plan review, conditional use permit or variance.
 - B. Claims that an identified significant wetland or riparian corridor should be deleted from, or added to, the Significant Wetlands and Riparian Corridor Map shall be considered through the Plan Amendment process.
 - C. All Claims of map errors shall be supported by adequate inventory information and analysis to justify the claim, and shall be verified by the Oregon Division of State Lands.