

Chapter 17.89

SENSITIVE LANDS--FISH AND RIPARIAN CORRIDOR OVERLAY

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17.89.010 Purpose. The purpose of this chapter is 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. Specifically, this chapter is intended 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, and reduce the effects of flooding. This chapter attempts to meet these goals by excluding structures from areas adjacent to fish-bearing lakes and streams, and their associated wetlands, and by prohibiting vegetation removal or other alterations in those areas. (Ord. 736 §1, 2003)

17.89.020 Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

"Fish use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts. Fish use is determined from Oregon Department of Forestry Stream Classification maps.

"Impervious surface" means any material that reduces and prevents absorption of storm water into previously undeveloped land.

"Lawn" is grass or similar materials maintained as a ground cover of less than six inches in height, and generally managed to restrict the growth of shrubs and trees that inhibit the growth of grasses and forbs. For purposes of this chapter, lawn is not considered native vegetation regardless of the species used.

"Mitigation" means restoration of riparian areas, enhanced buffer treatment or similar measures.

"Net loss" means a permanent loss of riparian functions provided by native riparian structure and vegetation that results from a development action despite mitigation measures having been taken.

"Off-site mitigation" means mitigation undertaken in areas distant from or coterminous with a development site.

"On-site mitigation" means mitigation undertaken within the lot or parcel affected by a development action.

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"Riparian area" is the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

"Riparian corridor" is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian corridor boundary.

"Stream" is a channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

"Structure" is a building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components, that are not customarily regulated through zoning ordinances.

"Top of bank" means the stage or elevation at which water overflows the natural banks of streams or other waters of the state and begins to inundate upland areas. In the absence of physical evidence, the two-year recurrence interval flood elevation may be used to approximate the top of bank. (Ord. 736 §1, 2003)

17.89.030 Applicability of provisions. The sensitive lands - fish and riparian corridor overlay shall apply to the following riparian corridors as shown on the Scappoose Riparian Inventory dated December 1998 and adopted within the city comprehensive plan. The riparian corridor boundary is fifty feet from the top of the bank except as follows:

A. Where the riparian corridor includes all or portions of a significant wetland as identified in the Scappoose Riparian Inventory, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland; and

B. Except as provided for in subsection A of this section, the measurement of distance to the riparian corridor boundary shall be from the top of bank. The measurement shall be a slope distance. In areas where the top of each bank is not clearly defined, the riparian corridor boundary shall be measured from the ordinary high water level, or the line of nonaquatic vegetation, whichever is most landward. (Ord. 736 §1, 2003)

17.89.040 Activities allowed within the fish and riparian corridor. A. The permanent alteration of the riparian corridor by grading or by the placement of structures or impervious surfaces is prohibited. However, certain activities may be allowed within the fifty-foot fish and riparian corridor boundary, provided that any intrusion into the riparian corridor is minimized, and no other options or locations are feasible. A sensitive lands development permit - fish and riparian corridor overlay is necessary to approve the following activities:

1. Streets, roads, and paths;
2. Drainage facilities, utilities, and irrigation pumps;
3. Water-related and water-dependent uses; and
4. The expansion of existing, or creation of new bank stabilization and flood control structures, shall be evaluated by the director and appropriate state natural resource agency staff. Such alteration of the riparian corridor shall be approved only if less-invasive or nonstructural methods will not adequately meet the stabilization or flood control needs.

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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;
2. Removal of vegetation necessary for the development of approved water-related or water-dependent uses. Vegetation removal shall be kept to the minimum necessary to allow the water-dependent or water-related use; and
3. Trees in danger of falling and thereby posing a hazard to life or property may be felled, following consultation and approval from the community development director (director). The director may require these trees, once felled, to be left in place in the riparian corridor.

C. Exceptions. The following activities are not required to meet the standards of this section, and do not require a sensitive lands development permit - fish and riparian corridor overlay:

1. Commercial forest practices regulated by the Oregon Forest Practices Act;
2. Normal and accepted farming practices other than buildings or structures, occurring on land used for farm use and existing in the riparian area since prior to the date of adoption of this chapter;
3. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area;
4. Maintenance, planting, and replanting of existing

lawn and landscape areas containing non-native vegetation. However, such areas may not be expanded to further intrude into the riparian corridor;

5. Maintenance of existing bank stabilization and flood control structures; and

6. Maintenance or repair of existing structures or improvements (including asphalt or concrete drives) that do not involve a change in size, use or function. (Ord. 736 §1, 2003)

17.89.050 Fish and riparian corridor density adjustment. A. In order to provide incentive for siting and re-siting residential dwelling units to avoid the fish and riparian corridor, any partition, subdivision, or site development review application involving land subject to the fish and riparian corridor overlay may be paired with a sensitive lands development permit - fish and riparian corridor overlay application in such a manner as to provide for the development of allowed housing types to the net density that would have existed for the base zone without the restrictions provided by the fifty-foot fish and riparian corridor boundary. However, said development shall only qualify for such a density bonus if any structures existing previous to the adoption of the fish and riparian corridor overlay are relocated outside of the fish and riparian corridor overlay area. (Ord. 736 §1, 2003)

17.89.060 Variance provisions. When the riparian corridor prohibits the development of a lot or parcel legally created before the effective date of this chapter, a property owner may request a variance to the riparian setback, subject to the requirements of Chapter 17.134 of this title. In addition to the variance criteria listed in Section 17.134.030, granting of a variance to the fish and riparian corridor overlay requires further findings that strict adherence to the riparian setback and other applicable standards

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would effectively preclude a use of the parcel that could be reasonably expected to occur in similarly zoned parcels. (Ord. 736 §1, 2003)

17.89.070 Administration and approval. A. The planner shall review all sensitive lands development permit - fish and riparian corridor overlay applications to determine that all necessary permits shall be obtained from those federal, state, or local governmental agencies from which prior approval is also required.

B. The approval authority shall apply the standards set forth in Section 17.89.090 (Review standards) when reviewing an application for a sensitive lands development permit - fish and riparian corridor overlay.

C. Applications for a sensitive lands development permit

- fish and riparian corridor overlay shall be processed in accordance with Chapter 17.162, Procedures for Decision Making--Quasi-Judicial. (Ord. 736 §1, 2003)

17.89.080 Expiration of approval--Standards for extension of time. A. Approval of a sensitive lands development permit - fish and riparian corridor overlay shall be void if:

1. Substantial construction of the approved development plan has not begun within a one-year period; or
2. Construction on the subject site is a departure from the approved plan.

B. The planner may, upon written request by the applicant, grant an extension of the approval period not to exceed one year, provided that:

1. No changes are made on the original plan as approved by the approval authority;
2. The applicant can show intent of initiating construction of the site within the one-year extension period; and
3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.

C. Notice of the extension shall be provided to the applicant. (Ord. 736 §1, 2003)

17.89.090 Review standards. The following criteria shall be included in review of any application to which the fish and riparian corridor overlay is applicable:

A. In consultation with a representative of the Oregon Department of Fish and Wildlife, the planner shall identify which areas of the site are the most sensitive and susceptible to destruction, and which are the most significant;

B. After consultation with a representative of the Oregon Department of Fish and Wildlife, the planner shall analyze what the effect of proposed development will have on the fish and wildlife, hydrology, water quality, and riparian functions; determine if there will be a significantly adverse impact on the fish and wildlife resource; and, if the fish and wildlife habitat will be adversely impacted, the planner shall investigate if other development proposals could protect the fish and riparian corridor and still reasonably allow permitted activities;

C. The planner may condition the approval of an application to require protection of the habitat, or if the project is unable to mitigate habitat degradation, the planner may deny the application. (Ord. 736 §1, 2003)

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17.89.100 Application submission requirements. A. All applications shall be made on forms provided by the City of

Scappoose and shall be accompanied by:

1. One reproducible copy of the development plan(s) and necessary data or narrative which explains how the development conforms to the standards. Sheet size for the development plan(s) and required drawings shall not exceed eighteen inches by twenty-four inches and the scale for all development plans shall be to a standard engineering scale; and

2. A list of the names and addresses of all property owners of record within two hundred feet of the site.

B. The development plan and narrative shall include the following information (items may be combined on one map):

1. Existing site conditions including vicinity map showing the location of the property in relation to adjacent properties and including parcel boundaries, dimensions and gross area;

2. As applicable, the location, dimensions and names of all existing and platted streets and other public ways, railroad tracks and crossings, and easements on adjacent property and on the site and proposed streets or other public ways, easements on the site;

3. The location, dimensions and setback distances of all existing structures, improvements, utility and drainage facilities on adjoining properties and existing structures, water, sewer, improvements, utility and drainage facilities to remain on the site; and proposed structures, water, sewer, improvements, utility and drainage facilities on the site;

4. Contour lines at two-foot intervals for slopes from zero to ten percent and five-foot intervals from slopes over ten percent;

5. The drainage patterns and drainage courses on the site and on adjacent lands;

6. Potential natural hazard areas including:

- a. Floodplain areas;

- b. Areas having a high seasonal water table within zero to twenty-four inches of the surface for three or more weeks of the year;

- c. Unstable ground (areas subject to slumping, earth slides or movement). Where the site is subject to landslides or other potential hazard, a soils and engineering geologic study based on the proposed project may be required which shows the area can be made suitable for the proposed development;

- d. Areas having a severe soil erosion potential;

and

- e. Areas having severe weak foundation soils;

7. The location of trees having a six-inch caliper at four feet. Only those trees that will be affected by the proposed development need to be sited accurately. Where the site is heavily wooded, an aerial photograph at the same scale as the site analysis may be required;

8. Identification information, including the name and address of the owner, developer, and project designer, and the scale and north arrow;

9. A grading and drainage plan at the same scale as the site conditions and including the following:

a. The location and extent to which grading will take place indicating general contour lines, slope ratios, and slope stabilization proposals;

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b. A statement from a registered engineer supported by factual data that all drainage facilities are designed in conformance A.P.W.A. standards and as reviewed and approved by the public works director; and

10. The method for mitigating any adverse impacts upon wetland, riparian or wildlife habitat areas. (Ord. 736 §1, 2003)

