



PLANNING COMMISSION MEETING

Tuesday, December 13, 2011

6:30 p.m.

Council Chambers

2nd Floor City Hall

1300 NE Village Street

MEETING AGENDA

1. **CALL TO ORDER:** 6:30 p.m.
2. **CITIZENS WISHING TO SPEAK ON NON-AGENDA ITEMS**
3. **REVIEW AND ADOPT MINUTES** – November 8, 2011
4. **WORK SESSION**
Natural Resource Improvement Project (L. Nesbitt)
5. **STAFF UPDATES**
 - a) Economic Development
 - b) Parks
6. **TENTATIVE AGENDA** – January 10, 2012
7. **ADJOURNMENT**

NEXT PLANNING COMMISSION MEETING IS JANUARY 10, 2012

Planning Commission hearings are broadcast live on Cable Channel 22. Replays of the hearing are shown on Cable Channel 22, Saturday at 12:00pm and Monday at 2:00pm, and Cable Channel 30 Wednesday at 7:00pm. Further information is available on our web page at www.fairvieworegon.gov or by calling Devree Leymaster, Administrative Program Coordinator, 503-674-6202.

The meeting location is wheelchair accessible. A request for an interpreter for the hearing impaired or for other accommodations for person with disabilities should be made at least 48 hours before the meeting to: Devree Leymaster, 503-674-6202.



MINUTES
PLANNING COMMISSION MEETING
1300 NE Village Street
Fairview, OR 97024
Tuesday, November 8, 2011

PRESENT: Keith Kudrna, Chair
Jack Mc Giffin, Vice-Chair
Gary Stonewall
Jan Shearer
Steve Kaufman
Julius Arceo

ABSENT: Ed Jones

STAFF: Allan Berry, Public Works Director
Lindsey Nesbitt, Senior Planner
Erika Fitzgerald, Associate Planner
Devree Leymaster, Admin. Program Coordinator

1. CALL TO ORDER

Chair Kudrna called the meeting to order at 6:30pm.

2. CITIZENS WISHING TO SPEAK ON NON-AGENDA ITEMS

Chair Kudrna inquired if any person would like to speak on a non-agenda item, hearing none moved to review of minutes.

3. REVIEW AND ADOPT MINUTES

October 25, 2011 were approved as written by consensus.

4. PUBLIC HEARING

Application 11-6-ZA/Ordinance 15-2011
Fairview Lake Docks Standards

Chair Kudrna read the legislative hearing statement and Associate Planner Fitzgerald cited the applicable criteria. Commissioner Stonewall disclosed he lived along Fairview Lake. No objection was noted. Associate Planner Fitzgerald presented the staff report reviewing initiation of process, proposed language, and additional proposed language for non-conforming, lawfully reviewed and approved docks as recommended by the city attorney. Commission requested language for routine maintenance be added. Staff agreed and recommended approval to City Council for adoption of ordinance 15-2011.

Chair Kudrna inquired if any person would like to speak in favor, opposition, or neutrally of the application. Lynna Woods, 20135 NE Sandy Blvd., Fairview, Oregon spoke in opposition of the application. Ms. Woods was concerned about the impact of the new regulations on an existing riparian buffer permit that included approval for a yet to be built boat house and dock. The approval was part of a subdivision application and notice of decision. The Commission inquired if the non-conforming language would protect the approval. Staff responded if the application had

not expired the non-conforming language would protect the approval. Staff had conducted a preliminary search and the FMC did not have a limit on time deadlines. The city attorney was researching the ORS statutes for time limits. Staff would research options in the event the permit had expired i.e. resubmit for land use approval or an extension per FMC.

Regarding the same riparian buffer permit referred to by Ms. Woods, Henry Pelfrey, 20905 NE Sandy Blvd., Fairview, Oregon, requested the permit and approval be grandfathered in and not subject to proposed regulations. Mr. Pelfrey stated he had understood there was no expiration date on the permit, he had incurred costs for riparian buffer mitigation, and development had begun.

George Altman, Fairview, Oregon spoke in opposition of the application. Mr. Altman had concerns for dock size options and the 20% of lot width maximum. Mr. Altman believed he had a prior approval for a dock that had not yet been built that would not be approved under the proposed amendments. The Commission stated if Mr. Altman had a lawfully reviewed and approved application the notice of decision would be grandfathered in. If not, there was a variance process for difficult properties and unusual circumstances such as Mr. Altman's property. Staff would research Mr. Altman's application.

No person spoke neutrally or in favor of the application. Commissioner Kaufman moved to close the public hearing and Commissioner Shearer seconded.

Commissioner Stonewall moved to approve application 11-6-ZA and forward a recommendation for approval to City Council with the additional language for routine maintenance and grandfathering in legally reviewed non-conforming docks and approvals; Commissioner Kaufman seconded, and Chair Kudrna requested a vote. .

AYES: 6
NOES: 0
ABSTAINED: 0

Application 11-6-ZA, with additions, was approved for recommendation to the City Council for adoption.

5. WORK SESSION

a) Natural Resource Improvement Project
Senior Planner Nesbitt stated the city attorney was reviewing the second draft.

6. TENTATIVE AGENDA – December 13, 2011

a) Work Session: Natural Resource Regulations

7. ADJOURNMENT

Meeting adjourned by consensus at 7:20pm.

Keith Kudrna, Chair

Devree A. Leymaster
Administrative Program Coordinator
Public Works Department.

Date: _____



PLANNING COMMISSION STAFF REPORT

TO: Fairview Planning Commission
FROM: Lindsey Nesbitt, Senior Planner
DATE: December 13, 2011
SUBJECT: Natural Resource Regulations

Action Requested

Review draft natural resource regulations and draft map and provide feedback to staff.

Background Information

Over the past year staff has been working with the Planning Commission to revise the city's natural resource regulations. The project originated because of Metro's requirement for each city within the metro area to comply with Title 13. Title 13 creates standards to find a balance between protecting riparian and upland wildlife natural resources and preserving development value of urban land.

The city has two options to demonstrate compliance with Title 13:

1. Adopt the model ordinance developed by metro.
2. Amend the city's existing code to substantially comply with Title 13 requirements.

Staff and the Planning Commission audited Fairview's Wetland and Riparian Buffer and Significant Environmental Concern Overlay code sections and determined the current regulations are in substantial compliance with Title 13 requirements; however amendments to the natural resource code are required to fully comply. For example, some Title 13 requirements, such as habitat friendly development practices and map administration, are not addressed in the existing code.

The Title 13 compliance requirement was timely because staff and the Commission had already identified a number of areas in which the natural resource code can be improved.

The list below provides area of concern expressed by the Planning Commission:

- a. Strict buffer requirements offer no flexibility in site design. An absolute buffer width does not take into account existing site conditions. In some cases portions of a buffer may be highly functioning, while other areas are low functioning. It may make sense to allow development to encroach in the already degraded portion of the buffer and mitigate encroachments in a better functioning portion of the buffer.
- c. Mitigation standards are inadequate to meet the stated purposes and goals of the regulations. The minimum planting requirements of FMC 19.106 do not adequately provide the planting quantities needed to accomplish the goals listed below:
 - Provide plant and animal habitat.
 - Support riparian ecosystems.

- Maintain lower water temperatures by maintaining or enhancing the vegetative cover.
- d. All resources are regulated in a uniform manner; existing conditions, adjacent parcels, and permitted land uses are not taken into consideration. The draft code attempts to balance resource protection with development potential.
- e. In some instances the development code does not provide clear direction and is ambiguous. The draft code attempts to provide clear direction and clarify ambiguous code language.

Summary of Draft Natural Resources Code

Attachment 2 provides a revised copy of the draft Natural Resources Map. The map depicts designated resource protection areas for Fairview's riparian resources as follows:

- Apply a 75-foot resource protection area along Fairview Creek from Salish Ponds to Community Park. Limit development within the protection area to recreational uses such as trails.
- Apply a 50-foot resource protection area to Fairview Creek (from the area around Smith Memorial Church north to Fairview Lake), Salmon Creek, and Osburn Creek.
- Apply a 35-foot resource protection area for Fairview Creek (from Halsey north to the area near Smith memorial Church, as shown on the Natural Resources Map), No Name Creek, and Rain Tree Creek.
- Maintain existing protection areas for Clear Creek and Fairview Creek within the Fairview Village area.

Table 19.106.040(B) in Attachment 1 provides a list of all permitted and prohibited uses within each designated resource. The following provides a brief summary of Table 19.106.040(B)

Summary of 75-foot Resource Protection Area

Salish Ponds Park and Community Park are significant natural resources and open space areas for the City and are likely to remain public parkland. Therefore the draft code provides the highest and best protection of these resources by mapping a 75 foot resource protection area.

Strict limitation of development within the 75-foot protection area is recommended by allowing only the installation of items such as trails and benches. All other development such as buildings or parking areas is prohibited within the 75 foot protection area.

Summary of 50-foot Resource Protection Area

A 50-foot resource protection area shall be established from the top of bank for the resources identified on the Natural Resource Map with a 50- resource protection area designation.

Development is restricted within the 50 foot resource protection area. However, when flexibility in development and site design is determined to be reasonable by the Planning

Commission, an exception process has been created. All exception applications will be decided by the Planning Commission at a public hearing. Development will be permitted within the protection area only after the applicant demonstrates the following:

1. Avoid

The applicant must demonstrate that development within the resource area cannot be avoided without allowing reasonable development of the property. Submission of a habitat assessment form will be required to identify the resource value. Development will be directed to the areas most degraded. This section also provides a variety of “development friendly” practices that allow density transfers or reduced setback requirements in order to avoid development within the resource area.

2. Minimize

The applicant must demonstrate that the development is the minimum necessary to allow reasonable development of the property. To further limit development, the 50 foot buffer cannot be reduced below 35 feet and no more than 50% of the buffer width can be reduced to a maximum of 35 feet.

3. Mitigate

Section 19.106.040(F) provides draft regulations for mitigation. The draft mitigation is based on previous discussions with the Commission and examples from other codes. Staff will provide graphics and discuss the proposed mitigation at the December work session.

35-foot Resource Protection Area

Legally existing structures located within the 35 foot protection area may remain, but cannot be enlarged or moved elsewhere in the resource area.

The draft code is written to permit minor encroachments, such as accessory structures, patios, non pervious walkways, lawns, or retaining walls in residential zones up to 150 square feet.

The draft code is written to permit viewing or sitting areas up to 300 square feet within the 35 foot protection area for parcels with commercial and public uses.

All development that occurs within 15 feet of the 35 foot resource protection area is subject to mitigation per Section 19.106.040(F). The mitigation must be completed within the resource protection area.

Fairview Creek and Clear Creek within Fairview Village to Halsey Street

No changes are proposed to the way Fairview Creek and Clear Creek are regulated within the Fairview Village area.¹ The following summarizes how these resources are currently regulated:

There are existing conservation easements of 75 feet (37.5 feet from centerline) for Clear Creek and 100 feet (50 feet from center line) for Fairview Creek.

¹ The draft code applies a 75-foot resource protection area and limits development where Fairview Creek abuts City owned property within the Village area. However, the north side of Fairview creek where it abuts the Town Center Commercial, Village Commercial, Village Apartment, and Village Townhouse zones, the existing conservation easement restriction shall continue to apply.

Development and resource alteration, other than mitigation or enhancement, is prohibited within the 70 feet of Fairview Creek and within 45 feet of Clear Creek. In the remaining portion of the easement, only wooden fences up to six feet in height and plantings using only materials shown on the Fairview Village plant list are permitted.

Wetlands

Previously wetlands were not mapped uniformly. Some wetlands within the city were regulated through the Significant Environmental Concern Overlay and others were regulated through the Wetland and Riparian Buffer Overlay sections.

Wetlands will all be mapped with a 50-foot wetland buffer. Development will continue to be prohibited within the buffer unless the applicant demonstrates that development within the resource area cannot be avoided without allowing reasonable development of the property. The code will continue to require the applicant to obtain approval from the Department of State Lands and Oregon Department of Fish and Wildlife prior to any development within the buffer area. Development will be subject to mitigation requirements and must also be reviewed by the Planning Commission at a public hearing.

Upland Habitat

The Draft Natural Resource Map in Attachment 2 shows areas with an upland habitat designation. These are areas that provide valuable functions to the city's riparian and wetland areas and to fish and wildlife. The purpose of this section is to encourage habitat friendly development while minimizing impact on water quality and fish and wildlife habitat functions.

Developments are permitted as listed in Table 19.106.040(B) subject to the exception process. To achieve the goals of re-establishing forest canopy that meets the ecological values and functions when development intrudes into an upland habitat area, tree replacement and vegetation planting are required subject to mitigation requirements shown in Table 19.106.040(A)

Fairview Lake

Changes to the way the riparian resources adjacent to Fairview Lake are regulated are not proposed with this code amendment. Staff will work with the Commission and Fairview Lake residents after adoption of this code project.

Drainage District Exemptions

Dave Hendricks with Multnomah County Drainage District attended the January 12, 2011 Commission work session to discuss exemptions from the natural resource regulations. The Commission supported adopting code language allowing the District to be exempt from certain regulation, subject to preliminary city review and submission of a yearly report. Section 19.106.100 provides the code language previously reviewed by the Planning Commission.

Next Steps

Based on feedback from the December Commission work session staff will revised draft regulations and Natural Resource map accordingly. Staff will then begin the public notice and outreach process and work with affected property owners. Staff will report back to the Commission throughout the public outreach process.

Attachments

Attachment 1- Draft Natural Resource Code

Attachment 2- Draft Natural Resource Map

Attachment 1

DRAFT Natural Resource Regulations

Fairview Municipal Code Section 19.106 Natural Resource Regulations

19.106.010 Purpose and Objectives

19.106.020 Definitions

19.106.030 Coordination with other Regulations

19.106.040 Resource Protection Area Requirements

19.106.050 Fairview Creek and Clear Creek within Fairview Village

19.106.060 Fairview Lake

19.106.070 Application Process for Permitted Uses

19.106.180 Floodplain Ordinance

19.106.090 Emergency Exemption

19.106.100 Drainage District Exemptions

19.106.110 Penalty

19.106.010 Purpose

- A. The city has determined through review, investigation and development of appropriate regulation and guidelines to promote the application and utilization of the city's Comprehensive Plan, that the city's major water features the Columbia River, Fairview Creek, Osburn Creek, No Name Creek, Raintree Creek, Salmon Creek, Clear Creek, Fairview Lake, Columbia Slough, and associated wetlands and riparian areas, as defined herein, are a valuable and irreplaceable natural resource to the community. It is the intention of the Fairview city council to protect and regulate the city's natural resources with the following purposes:
1. To protect the natural functions of the city's natural resources, including its soil structure and vegetation, to maintain water quantity and quality, store recharge and discharge groundwater, and reduce needs for future water treatment, collection and control facilities.
 2. To prevent property damage and degradation from storms and floods and to promote bank stabilization.
 3. To protect and enhance valuable fisheries and wildlife habitat.
 4. To provide an aesthetically pleasing and healthy environment.
 5. To implement the city's Comprehensive Plan.

6. To allow for the storage and conveyance of stream flows through existing and natural flood conveyance systems.
 7. To minimize flood impacts, flood peak flows and wind and wave impacts.
 8. To maintain water quality by reducing and sorting sediment loads, processing chemical and organic wastes and reducing nutrients.
 9. To protect and enhance wildlife habitat.
 10. To maintain water quality through the implementation of Total Maximum Daily Load (TMDL) requirements.
 11. To provide recreational and education opportunities and public access to open spaces and natural resources.
 12. Find the appropriate balance between resource protection and enhancement and reasonable development. Variable riparian resource protection areas of 35 feet, 50 feet and 75 feet are established as shown on the City's adopted Natural Resources Inventory Map.
- B. The purpose of the upland habitat areas is to protect habitat and wildlife areas while permitting appropriate development when carried out in a sensitive manner with minimal impacts on identified natural resource values.
- C. The objectives of the natural resource code provisions are:
1. To protect waterbodies from chemical pollution and siltation by maintaining the vegetative cover and stability of the land surrounding them.
 2. To maintain lower water temperatures by maintaining or enhancing vegetative cover.
 3. To maintain an appropriate quantity, quality and rate of runoff from sites during and after any alteration, including construction, excavation, filling, earth removal, dredging, et al.
 4. To reduce adverse impacts to wetland functions and values from adjacent development.
 5. To slow the rate of storm water runoff, thereby reducing flooding and erosion, and to improve summer water release, by maintaining healthy floodplains and wetlands.
 6. To enhance in-stream habitat by protecting and enhancing silt-free rock and gravel bottoms, by maintaining in-stream boulders and woody debris that does not create or foster hazardous conditions.
 7. To provide clear and objective standards and a discretionary review process, applicable to development in natural resource areas.
 8. To allow and encourage habitat friendly development, while minimizing the impacts on fish and wildlife habitat functions.
 9. To provide mitigation standards for the replacement of ecological functions and values lost through development in or adjacent to the city's designated natural resource areas.

19.106.020 Definitions

For the purposes of this chapter, the following definitions shall apply:

- A. “Alteration” means any change, addition, or modification to any existing structure or improvement on the site, including changes to site access, when such changes result in any one of the following: (1) intensification of the use(s) on the site, (2) intensification of the improvements on the site, (3) changes to the exterior appearance of significant historic resources or buildings in the downtown zones, or (4) changes that may have a detrimental effect on surrounding properties or a natural resource area. Alteration may or may not involve an increase in gross floor area. Alteration does not include “routine maintenance and repair.” See also “improvements.”
- B. “Bank” means the land area bordering and/or confining a waterbody. The bank has a steeper slope than the bed, and usually has steeper slope than the surrounding landscape. The top of the bank is the first significant break in the slope between the toe of the bank at waterline and the surrounding landscape.
- C. “Canopy” means area of the tree above the ground, including the trunk and branches, measured in mass or volume.
- D. “Channelize” means to change the location of a drainage way by digging a new channel and diverting the water from the old channel into the new one.
- E. “Cutting” means the falling or removal of a tree, or any procedure that naturally results in the death or substantial destruction of a tree. “Cutting” does not include normal trimming or pruning, but does include topping of trees.
- F. “Dangerous tree” means the condition or location of the tree presents a clear public safety hazard or an imminent danger of property damage, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.
- G. “Dead tree” means the tree is lifeless.
- H. “Disturbance” means to make changes to the existing physical status of the land that are made in connection with development.
- I. “Disturbed Areas”
- J. “Dying tree” means the tree is diseased, infested by insects, deteriorating, or rotting, and cannot be saved by reasonable treatment or pruning, or must be removed to prevent the spread of infestation or disease to other trees.
- K. “Erosion” means the detachment of solid particles by water, wind, ice, gravity or organisms.
- L. “Habitat Assessment” means an approach for identifying and assessing the elements of a resources habitat. It is based on a simple protocol using observations of water and upland resource habitat characteristics and major physical attributes. A habitat assessment is useful as: 1) a screening tool to identify habitat stressors and 2) a method for learning about water ecosystems and environmental stewardship.

A habitat assessment includes, a general description of the site, a physical characterization and water quality assessment, and a visual assessment of in stream and riparian habitat quality

- M. “Major pruning” means removal of over 20% of the tree’s canopy, or injury to, or cutting of over 10% of the root system, during any 12-month period.
- N. “Map” means the adopted City of Fairview Natural Resource Map
- O. “Qualified Professional” means an individual who has proven expertise and vocational experience in a given natural resource field. A qualified professional conducting a wetland delineation must have the delineation approved by the Oregon Division of State Lands.
- P. “Resource Protection Area” means and includes any of the following: 35, 50, or 75 foot riparian resource protection area, 50-foot wetland buffer, 50-foot Fairview Lake buffer, or upland habitat. All identified on the Fairview Natural Resource Map
- Q. “Riparian” means the environment (soil, plants, animals) adjacent to a river or lake which affects the waterbody and which is affected by it.
- R. “Storm water” means surface water that washes off land, especially impervious surfaces such as roofs and pavement, during periods of precipitation.
- S. “Stream” means a body of moving water including creeks, brooks, and rivers, which moves in a definite channel.
- T. “Tree Removal” means the cutting or removing of 50% or more of the crown, trunk, or root system of a plant; the uprooting or severing of the main trunk of the tree; or any act which causes, or may reasonably be expected to cause, the tree to die, including without limitation damage inflicted upon the root system by machinery, storage materials, or soil compaction; substantially changing the natural grade above the root system or around the trunk; excessive pruning; or paving with concrete, asphalt, or other impervious materials in a manner which may result in the loss of aesthetic or physiological viability.
- U. “Waterbody” means an area, which is covered by surface or near-surface groundwater, either continually or for sufficiently long periods to become the primary factor determining the landscape and the vegetative community. The term shall include rivers, streams, other drainage ways, lakes, ponds, and wetlands.
- V. “Wetland” means land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted to life in saturated soil conditions.

19.106.030 Coordination with Other Regulations

- A. Implementation of Chapter 19.106 is in addition to, and shall be coordinated with Title 19 Zoning, and Title 16 Flood Hazard Overlay Regulations, and Chapter 16.15 Erosion Control.
- B. When applicable Chapter 19.106 conflict with other sections of the Fairview Municipal Code, the more restrictive provision shall apply.
- C. The requirements of Chapter 19.106 apply in addition to all applicable local, regional, state, and federal regulations, including those for wetlands and flood management areas. Where Chapter 19.106 imposes restrictions that are more stringent than regional, state, and federal regulations, the requirements of Chapter 19.106 shall govern.

- D. Development in or near wetlands and streams may require permits from the Oregon Department of State lands (DSL) and the US Army Corps of Engineers (Corps). If a federal permit is required, a water quality certification from the Oregon Department of Environmental Quality (DEQ) may also be required. The Public Works Director shall notify DSL and the Corps when an application for development within streams and wetlands is submitted. Applicants are encouraged to contact the above-mentioned agencies first before preparing development plans.

19.106.040 Resource Protection Area Requirements

- A. Standards outlined in this section apply to the city's riparian resources and upland habitats as shown on the adopted City of Fairview Natural Resource Map (hereon referred to as "the map") which includes the Columbia River and Fairview Creek, Osburn Creek, No Name Creek, Salmon Creek, Rain Tree Creek, and Clear Creek, and mapped wetlands and upland habitat.
- B. Each resource has been designated with a specific protection area as show on the Map. The Map shows Fairview's riparian resources that are subject to either a 35, 50, or 75 foot riparian buffer resource protection area.

Other water resources that appear on the Map, but are enclosed in pipes, culverts, or similar structures are not subject to the provisions of this chapter, except where a proposed activity such as an excavation will expose or directly disturb the protected water feature. Site development on properties containing unexposed mapped water quality features shall not prevent the future possibility of day lighting the water feature.

1. Riparian Resource Protection Areas

The riparian resource protection area is the area of land immediately adjacent to the edges of banks located along the Columbia River and Osburn Creek, No Name Creek, Salmon Creek, Rain Tree Creek, and Clear Creek.

Each resource protection area has a specific required buffer of either 35, 50 or 75 feet as set forth below and as shown on the adopted Map.

- a. The 75-foot resource protection area applies to:

Fairview Creek from the city's southern boundary of Glisan Street to the eastern portion of Fairview Community Park. However, the platted buffer designated with the development of the Fairview Village shall apply to the northern portion of Fairview Creek where it abuts the Village Commercial and Village Townhouse zones as shown on the adopted Map. The southern side of Fairview Creek where it abuts City of Fairview property is subject to a 75 foot resource protection area as shown on the Map.

- b. The 50-foot resource protection area applies to:

Fairview Creek around the location of Smith Memorial Church as shown on the adopted Map, running northward to Fairview Lake.

Osburn Creek

Salmon Creek

Columbia River

- c. The 35-foot resource protection area applies to:

Fairview Creek from Halsey Street north toward Smith Memorial Church, as shown on the adopted Map.

No Name Creek

Rain Tree Creek

2. Wetland Resource Protection Areas

A buffer area which measures at least 50 feet shall be established between any mapped wetland areas identified on the Map and any proposed development. Permitted uses within the underlying zone are allowed to be constructed on properties with mapped wetlands when the development is not located within the 50-foot wetland buffer. However, development within 25 feet of a wetland buffer is subject to a type II wetland boundary verification process.

Development within the 50-foot buffer may be permitted subject to a type III land use application and when the applicant demonstrates:

- There are no feasible alternatives to the development;
- The development is the minimum necessary to allow legal use of the property; and
- The development complies with US Army Corps of Engineer and Division of State Land permit requirements.

3. Upland Habitat Resource Protection Areas

Upland habitat areas provide valuable functions to the city's riparian and wetland areas and to fish and wildlife. The purpose of this section is to encourage habitat friendly development while minimizing impact on water quality and fish and wildlife habitat functions.

Development of uses listed in Table 19.106.040(B) are permitted on areas mapped with an upland habitat designation subject to the exception process in Section 19.106.040(E). To achieve the goals of re-establishing forest canopy that meets the ecological values and functions when development intrudes into an upland habitat area, tree replacement and vegetation planting are required subject to Shade 3 Category mitigation shown on Table 19.106.040(A).

Table 19.106.040(B) Permitted and Prohibited Uses		35 foot RPA	50 foot RPA	75 foot RPA	50 foot Wetland Buffer	Upland Habitat
A	Vegetation Management					
1	Vegetation removal, tree trimming or cutting, or disturbance of ground cover or removal of forest debris without an approved permit.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
2	Planting of vegetation listed as nuisance on the Metro Native Plant List.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
3	Invasive vegetation removal of 100 square feet or less (Per calendar year).	Permitted	Permitted	Permitted	Permitted	Permitted
4	Removal of more than 100 square feet of plants categorized as a nuisance or invasive species on the Metro Native Plant list. After removal all open soils shall be replanted with native vegetation and/or protected from erosion. (Per calendar year)	Type I	Type I	Type I	Type I	Type I
5	Native Plantings and vegetation management plans.	Type I	Type I	Type I	Type I	Type I
6	Maintenance of existing landscaping and gardens. This exemption extends to the installation of new irrigation and drainage facilities and/or erosion control features as well as to landscaping activities that do not involve: a. Removal of native plants or required mitigation. b. Planting of any vegetation identified as a nuisance or invasive species on the Metro Native Plant List. c. Anything that produces an increase in impervious area. d. Other changes that could result in increased direct stormwater discharges to the resource area.	Permitted	Permitted	Permitted	Permitted	Permitted
B	Tree Removal and Pruning	35 foot RPA	50 foot RPA	75 foot RPA	50 foot Wetland Buffer	Upland Habitat
1	Tree removal for trees that present an emergency situation with immediate danger to persons or property. Emergency situations may include, but are not limited to situations in which a tree or portion of a tree has been compromised and has damaged or is damaging structures or utilities, or private or public property or where a tree or portion of a tree is prohibiting safe passage in the public right-of-way. Examples include trees that have fallen into or against an occupied building or trees downed across power lines or roadways. The emergency exemption is limited to removal of the trees or portion of the tree as necessary to eliminate the hazard. Damages or impacts to the resource area resulting from the tree removal shall be repaired after the emergency has been resolved.	Permitted	Permitted	Permitted	Permitted	Permitted

2	<p>Limited tree removal or major pruning of trees 6 inches or greater in diameter under the following circumstances:</p> <p>a. The tree is dead diseased or dying and cannot be saved as determined by a certified arborist.</p> <p>b. For major pruning, as defined in Section 19.106.030, a certified arborist has determined, and documented in a report, that the tree will survive the proposed pruning.</p> <p>c. Tree removal associated with a development permit or land use application that will be reviewed through the applicable application process.</p>	Type I	Type I	Type I	Type I	Type I
C	Maintenance and Repair	35 foot RPA	50 foot RPA	75 foot RPA	50 foot Wetland Buffer	Upland Habitat
1	<p>Normal maintenance, repair, alteration, or demolition of <u>existing legal</u> structures and facilities provided that the following criteria are met:</p> <p>a. There is no change in the location or increase in the footprint of any building, impervious surface, or outdoor storage within the resource protection area.</p> <p>b. No other site changes are proposed that could result in the increased direct stormwater discharge to the natural resource area.</p> <p>c. Legally nonconforming structures within resource protection areas are subject to FMC Section 19.530 Nonconforming Uses and Developments.</p>	Type I	Type I	Type I	Type I	Type I
2	<p>Emergency procedures or activities that are necessary to remove or abate hazards to person or property, provided that the time frame for such remedial or preventative action is too short to allow for compliance with the requirements of Section 19.106. After the emergency, the person or agency undertaking the action shall repair any impacts to the designated natural resource resulting from the emergency action; example, remove any temporary flood protection such as sandbags, restore hydrologic connections, or replant disturbed areas with native vegetation.</p>	Permitted	Permitted	Permitted	Permitted	Permitted
3	<p>Normal maintenance and repair of existing stormwater facilities in accordance with stormwater management plan approved by the City.</p>	Permitted	Permitted	Permitted	Permitted	Permitted
4	<p>Routine maintenance of existing public recreation, utility facilities, access, streets, driveways, and or parking improvements that disturbed a resource area provided such activities provide a mitigation plan for restoration of the disturbed area.</p>	Type I	Type I	Type I	Type I	Type I

D	Site Development/ Alteration	35 foot RPA	50 foot RPA	75 foot RPA	50 foot Wetland Buffer	Upland Habitat
1	Activities prohibited by an easement.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
2	Earth disturbing activities not associated with an approved permit.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
3	Activities prohibited by FMC 16.05 Flood Hazard Overlay Zone.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
4	Receiving areas for toxic or hazardous or sanitary waste fills and uncontained hazardous materials, as defined by DEQ.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
5	Development of permitted structures allowed in the underlying zone within the resource protection area subject to FMC 19.106.040(E) Exception process.	Prohibited	Type III	Prohibited	Type III	Type III
6	Alteration of a stream bank, bed, or water flow without approved permits.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
7	Alteration of stream bank, bed or water flow.	Type III	Type III	Type III		
8	Direct storm water discharge into water bodies.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
9	Installation of required storm management facilities.	Type III	Type III	Type III	Type III	Type III
10	Public and private pathways, trail systems, and boardwalks, subject to construction standards 19.106.040(D).	Type II	Type II	Type II	Type III	Type II
11	Impervious pathways and pathways greater than 5 feet in width.	Type III	Type II	Type III	Type III	type II
12	Minor encroachments in residential zones less than 150 square feet such as accessory buildings, patios, non pervious walkways, or retaining walls. Mitigation requirements FMC 19.106.040(F) apply for all trees greater than 6 inches in diameter that are removed for the minor development.	Type I	Type I	Type I	Type III	Type I
13	Viewing areas on parcels zoned for commercial and public use provided no more than 300 square feet of impervious surface is disturbed per 100 feet by 100 feet of resource protection area. For properties with commercial zoning, outdoor patio or seating areas utilizing the aesthetics associated with the adjacent natural resource may occupy no more than 300 square feet of the resource protection area.	Type III	Type II	Type III	Type III	Type II
14	Benches and outdoor furniture and interpretive signage and displays provided such facilities no not disturb more than 20 square feet of impervious surface within the designated natural resource area.	Type I	Type I	Type I	Type I	Type I
	Uses listed as "Permitted" means they are permitted outright and a land use permit is not required. Uses not listed in the table above are subject to FMC 19.106.080 Permit Process for Unlisted Uses.					

- C. Development and Construction Standards** – The following standards apply to development and construction in the resource protection areas identified in this section (19.106.040). These standards do not apply to Fairview Lake or natural resources located within Fairview Village.
1. All plantings installed must be native plantings approved on the Metro Native Plant List and be deemed compatible with the environment in which they are to be planted. Plantings shall be in compliance with FMC 19.106.040(F) Mitigation.
 2. Benches may not exceed 8 feet in length and may be no larger than the average industry standards for bench width.
 3. Areas disturbed for seating and viewing cannot exceed 300 square feet of applicable resource protection area. Only one seating or viewing area may be installed per 100 feet by 100 feet of applicable resource protection area. Mitigation shall be provided consistent with FMC 19.106.040(F).
 4. Private natural pathways or trails shall be no wider than 30 inches. Where trails or paths include stairs, the stair width shall not exceed 50 inches. Trails and pathways shall be constructed using nonhazardous, pervious materials where applicable. Raised boardwalks may be considered by the Public Works Director only when needed to lessen impacts to resource areas. Trails shall provide the most direct access to the resource area and shall not excessively meander.
 5. Public pathways on public property or easements shall be no wider than 5 feet and shall be constructed using nonhazardous, pervious materials where applicable. Pathways may be larger than 5 feet if necessary to comply with ADA requirements or if the Public Works Director deems necessary. Trails shall be constructed using nonhazardous, pervious materials where applicable. Raised boardwalks may be considered only when the applicant demonstrates they are needed to lessen negative impacts to the resource area.
 6. Stream bank, bed, or water alteration proposals and applications shall be prepared by a qualified professional and must include submission of a City of Fairview Habitat Assessment form.
 7. Type I minor encroachments in resource protection areas with residential zoning designations may not exceed 150 square feet in area. Permitted encroachments include nonpermanent structures, natural rock retaining walls, patios, or lawn areas. Walking trails or pathways are not included in the 150 square feet calculation, but are subject to limitations listed above in FMC Table 19.106.040(D) Permitted and Prohibited Uses.
 8. Use of heavy machinery or herbicides for invasive and nonnative plant removal is not permitted unless special exception is granted by the Public Works Director.
 9. Erosion/sedimentation control devices shall be installed between the area to be disturbed by the proposed development and construction and the adjacent water feature; these devices shall comply with specifications and procedures outlined in the soil erosion control ordinance, (Chapter 16.15) must be installed prior to any soil disturbance, and remain in place during construction and afterwards until the soil has stabilized.

10. Stormwater detention and filtration facilities which are designed according to the best management practices described in the standard specifications ordinance and related ordinances and technical guidance manuals shall be provided when applicable.
11. Bridges, culverts and similar structures shall be designed and constructed to facilitate fish passage during periods of low stream flow.
12. Roads, bridges, culverts, and utility crossings of a waterbody or associated riparian buffer area shall conform with Oregon Department of Fish and Wildlife (ODFW) requirements for such crossings or obtain ODFW approval for any deviation from them; however, such crossings shall be avoided when practical alternative routing exists, and roads shall be constructed away from waterbodies and riparian areas, except at crossings, which shall be aligned perpendicular to the resource site.
13. Temporary disturbances may not exceed more than 25% of the area of the applicable resource protection area. Temporary disturbances are those that occur during an allowed or approved development activity but will not persist beyond completion of the project. Temporary disturbances include, but are not limited to, construction access ways, material staging and stockpile areas, and excavation areas for building foundations, utilities, storm water facilities, etc.
14. Protection of Resource Protection Area During Site Development
During development of any site containing an applicable resource protection area identified in 19.106.040, the following standards apply:
 - a. Work areas shall be marked to reduce potential damage to resource areas.
 - b. Trees within applicable resource protection areas shall not be used as anchors for stabilizing construction equipment.
 - c. Native soils disturbed during development shall be conserved on the property.
 - d. An erosion and sediment control plan is required and shall be prepared in compliance with requirements set forth by the city's public works standards.
 - e. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to any applicable resource protection area adjacent to the project area.
 - f. Stormwater flows that result from proposed development within and to a natural drainage course shall not exceed predevelopment flows.
15. Additional Development Standards for Mapped Wetlands – The following standards apply to all wetland areas identified on the Map:
 - a. A buffer area which measures at least 50 feet shall be established between the wetland areas and the proposed development as a condition of development permit approval. The required buffer area width as well as its treatment or enhancement shall be established during the land use review process, after consultation with DSL or ODFW staff.

- b. Properties which contain wetland areas shall have a preliminary delineation of the wetland boundary approved by Division of State Land (DSL) or Department of Fish and Wildlife (ODFW) staff before any development permit is issued. If the preliminary delineation requires an additional “jurisdictional delineation” study of the boundary, this must be completed by the applicant’s biologist and approved by DSL staff before building permits are issued. If the preliminary delineation demonstrates that the development will occur outside of the 50-foot buffer, a Type I Land Use Permit is required to demonstrate and document that the development is in fact outside the 50-foot buffer of the delineated wetland.
- c. Wetland areas shall be protected in their natural state to preserve water quality and maintain water retention, overflow and natural functions as follows:
 - i. Activity within wetland areas is subject to the permit requirements of the Division of State Lands (DSL) and the U.S. Army Corps of Engineers. No building permit will be issued for such activity unless all pertinent state and federal requirements are met. The Division of State Lands will be notified of any regulated development proposed in a wetland area. Proposed activities within the wetland area is subject to a Type III Land Use Application and mitigation requirements outlined in FMC 19.106.040(F)(3).
 - ii. Any proposed dredging or filling of a wetland area will require issuance of a DSL permit or a finding by the agency that a permit is not necessary, before building permits are issued by the city. All such activity (which requires a DSL permit) will require the applicant to demonstrate, as part of a Type III land use application, that the activity is necessary to develop on that part of the property outside of the wetland, that there is no practical alternative to impacting the wetland, and that measures (described in the application) will be taken to minimize the fill area and other negative impacts. These findings may be waived if, in the opinion of DSL or ODFW, the applicant proposes to create a replacement wetland area on the property that will be of superior value to wildlife compared to the impacted area. Any approved work within the designated wetland buffer is subject to mitigation requirements of FMC 19.106.430(F)(3).
 - iii. The city will not approve a partition or subdivision in a wetland area that proposes to create a lot, which because more than 50 percent of its area is a designated wetland, would be unbuildable without variance approval.
 - iv. Construction sites adjacent to wetland areas shall be required to install erosion/sedimentation control devices between the land area to be disturbed and the wetland area. All such devices shall conform with the specifications and procedure outlined in the city’s erosion control ordinance.
 - v. Developments adjacent to wetland areas which have significant impervious surface areas must have storm water detention and filtration

facilities as part of their approved design. The design of such facilities shall conform to the best management practices (BMPs) described in the city's standard specifications ordinance and related ordinances and technical/guidance manuals.

- vi. The city will also consider the use of tools such as dedication and conservation easements as a means to fully protect wetland areas during the development review process.

D. Exception Process

Any proposed development within a designated 50-foot riparian resource protection area or in upland habitat areas must file an exception application with the City of Fairview.

The Exception Process does not apply to:

Areas designated with a 75 foot riparian resource protection area;

35 foot riparian resource protection area;

Mapped buffers within the Fairview Village,

Properties abutting Fairview Lake;

The required 50-foot buffer for wetland areas.

The intent of the exception process is to allow reasonable development of property while providing protection for water and wildlife resources. All exception applications must demonstrate compliance with the following criteria:

1. Avoid development within the riparian resource protection area or the upland habitat area to the maximum extent practicable.
 - a. The applicant must demonstrate that development within the riparian resource protection area or upland habitat cannot be avoided and that without the encroachment, reasonable, legal development of the property (as allowed by the underlying zone) cannot be achieved. The applicant must also demonstrate that the proposed development cannot occur elsewhere on the property (or adjacent property if under the same ownership).
 - b. The applicant must also demonstrate the following methods for avoiding or minimizing development within the upland habitat area and riparian resource protection areas are not feasible:
 - i. Building setback flexibility to avoid or minimize development within the upland habitat or riparian resource protection area. The minimum building setback of the base zone may be reduced to any distance between the base zone minimum and zero, unless the reduction conflicts with fire or life safety requirements.
 - ii. Flexible landscaping requirements to avoid or minimize development within the habitat or resource protection area. Minimum percentage landscaping requirements, apart from those required for parking lots, street trees, buffers, and required mitigation areas may be met by preserving the upland habitat area.

- iii. Facilities that infiltrate stormwater onsite, including the associated piping, may be placed within the upland habitat or riparian resource protection area so long as the forest canopy and areas within the drip lines of trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strip, and vegetated infiltration basins. Only native vegetation may be planted in these facilities.
- iv. Flexible site design (on-site density transfer) to avoid or minimize development within the upland habitat or riparian resource protection area.
 - a. Residential development proposals on lands with upland habitat areas may transfer up to 50% of the maximum density permitted on the mapped upland habitat portion of the site onto the portion of the site that is not designated as upland habitat area when the proposal completely avoids development within the resource protection area.
 - b. In order to accommodate any transferred residential densities, dimensional standards and lot sizes may be adjusted by no more than 20%.
 - c. Density transfers on Commercial and Industrial zoned land. The transfer credit of 10,000 square feet floor area ratio (FAR) per acre of land with an upland habitat or riparian resource protection designation on the project site is permitted when development is not proposed in the protected area.
 - d. Mixed-use zones. The density transfer credit can be factored using a or c above, depending on the type of development proposed.
 - e. All remaining upland habitat or riparian resource protection areas shall be permanently restricted from development and maintained for habitat functions by making a public dedication or executing a restrictive covenant.
- 2. Minimize impacts to the upland habitat and riparian resource protection area.
 - a. The applicant must demonstrate that the encroachment is the minimum necessary to allow reasonable development of the property.
 - b. The following limitations apply to the riparian resource protection area:
 - i. The 50-foot buffer cannot be reduced to less than 35 feet in width.
 - ii. No more than 50% of the buffer width on the parcel in which the development will occur may be reduced to 35 feet.
 - iii. The buffer may only be reduced in degraded areas that provide little to no resource value as demonstrated by a Habitat Assessment.
 - c. Disturbance of upland habitat areas cannot exceed 40% of the designated upland habitat area up to a maximum of 4,000 square feet.

3. Mitigate development impacts.

All development approved through the exception process must comply with mitigation requirements of FMC Section 19.106.040(F). Mitigation must be targeted to the most degraded portions, as identified by the resource habitat assessment process, of the resource protection area first. Remaining mitigation requirements shall be spread throughout the resource protection area.

4. Exception application procedures and requirements

All exception applications must be approved by the Planning Commission at a public hearing.

The applicant must submit a written narrative, site plan, and Fairview Habitat Assessment Form that demonstrates the following:

- a. Narrative description and associated site plan demonstrating how the proposal complies with exception requirements as set forth in this section.
- b. Completed City of Fairview Habitat Assessment form. The Public Works director may require the applicant hire a qualified professional to conduct the habitat assessment.
- c. Application requirements listed in FMC Section 19.106.070.

F. Mitigation

The purpose of a mitigation plan is to compensate for impacts that occur to the natural resource protection area as a result of development activity. A mitigation plan must be submitted when any one of the following occur:

1. Removal of any trees within a resource protection area

a. Dead, Diseased or Dying Trees

Dead diseased or dying trees shall be replaced with a new tree of at least 2 inch caliper or at least 6 feet overall height after planting. An exception to the requirement may be granted by the Public Works Director when the applicant demonstrates that a replacement tree has already been planted in anticipation of tree removal, or if the existing site conditions otherwise preclude tree replacement (due to existing dense canopy coverage or other ecological reasons.)

b. Removal of Viable Trees

Removal of any healthy, viable trees greater than 6 inches in diameter within a resource protection area are subject to the mitigation requirements listed below in Table 19.106.040(A). An arborist report will be required if the tree does not display any signs that the tree is dead, diseased, or dying. This does not apply to tree removal that is associated with the Exception Process FMC 19.106.030(E). Tree removal in conjunction with the Exception Process will be mitigated with Exception Process Mitigation FMC 19.106.040(F)(2).

Table 19.106.040(A)

Size of Removed Tree	Mitigation Required Per Tree Removed
6 to 12 inch diameter	2 trees and 3 shrubs
13 to 18 inch diameter	3 trees and 6 shrubs
19 to 24 inch diameter	5 trees and 12 shrubs
25 to 30 inch diameter	7 trees and 18 shrubs
Over 30 inch diameter	10 trees and 30 shrubs

2. Exception Process Mitigation Required

- a. Mitigation for development within an upland habitat area is based on the number of trees removed and is subject to tree replacement standards listed above in Section 19.106.040(F)(1)(B) and Table 19.106.040 (A).
- b. Mitigation requirements for development within a 50 foot riparian resource protection area through the exception process is based on the City of Fairview Shade Management Model criteria as set forth in the map in Figure 19.106.040(A) and Table 19.106.040(B). The following process must be followed to determine the applicable mitigation requirements:

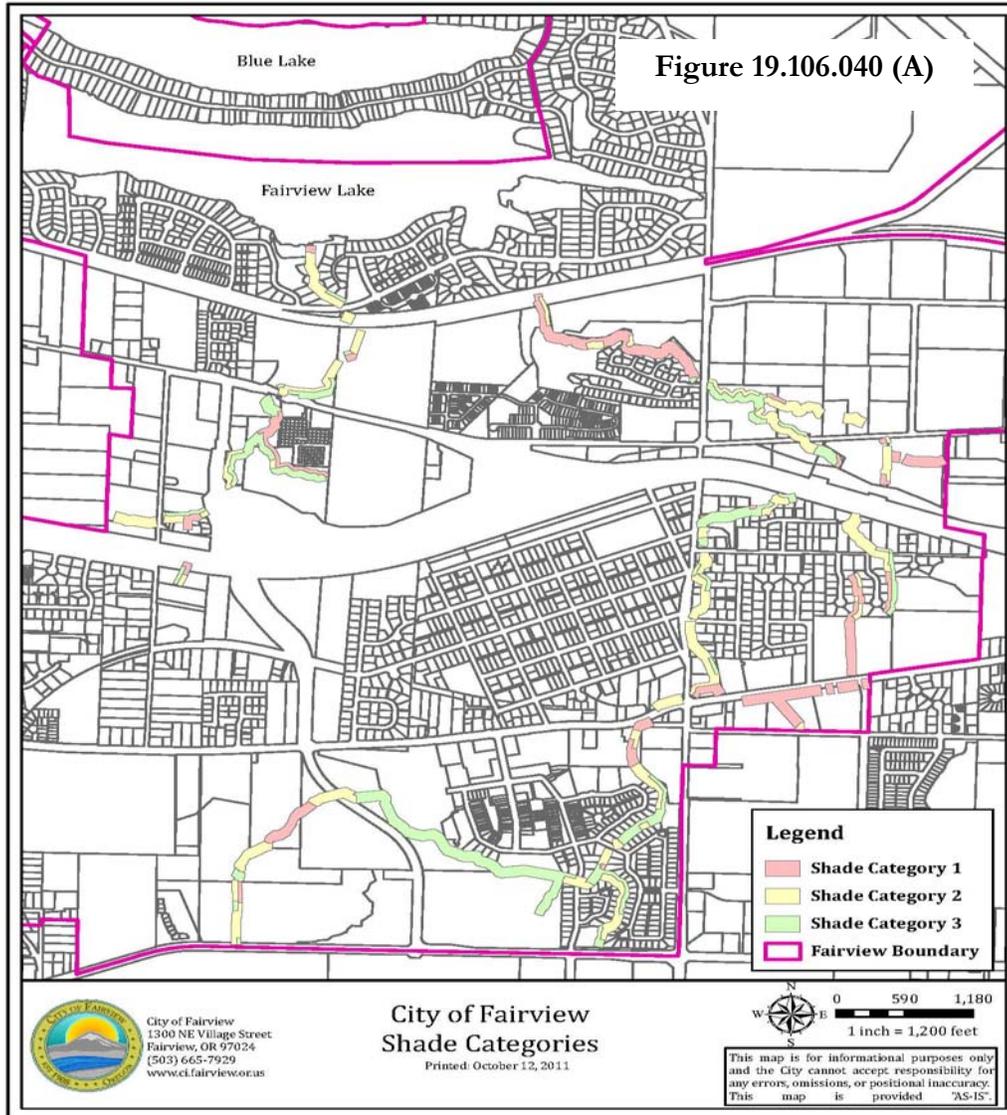


Table 19.106.040(B)

Shade Category	Trees per acre	Shrubs per acre
1. Less than 25% shade	327 to 436	1,634 to 2,178
2. 25 to 75% shade	110 to 326	545 to 1,633
3. Greater than 75% shade	0 to 109	n/a

The above vegetation numbers are based on acres.

Example of how to Calculate Shade Management Mitigation Requirements.

- i. Step 1 Determine the size of the resource protection area.

Mitigation calculations in Table 19.106.040(B) are based on the entire area of the 50-foot riparian resource protection area. For example, the graphic below in figure 19.106.040(B) shows a parcel that is 120 feet wide. To calculate the size of the resource protection area multiply the width of the resource (in this case 120 feet) times the protection area width of 50 feet. 120 feet x 50 feet = 6000 square feet. The planning requirements in the shade category table are based on acres, and convert the 6,000 square foot resource protection area to acres, by dividing by 43,560.

6,000 divided by 43,560 = .14 acres.

- ii. Step 2.

Determine the shade category by using the map in Figure 19.106.040 (A) Determine the range of tree and shrubs plants required using the calculations performed in Step 1.

2. 25 to 75% shade	Trees	Shrubs
	110 x .14= 15.4	545 x .14=76.3
	326 x .14= 45.64	1,633 x .14=228.62

- iii. Step 3. Subtract the number of required mitigation shrubs and trees from existing vegetation. In this example

Existing Vegetation	Mitigation Requirements	Vegetation Needed to Meet Mitigation Requirements
Trees= 9	Trees= 15 to 46	9 to 37 Trees
Shrubs= 17	Shrubs= 76 to 229	59 to 212

The required trees and shrubs shall be spread throughout the entire buffer area after focusing on degraded areas first.

*****insert Figure 19.106.0409B**** here**

3. Development adjacent to the 35 Foot Riparian Resource Protection Area and Within the 50 Foot Wetland Buffers

- a. Vegetation mitigation is required for all development within wetland areas and for developments located within 15 feet of a designated 35 foot riparian resource protection area in order to reduce potential negative effects of the development on the protection area, except for minor encroachments that are permitted within the 35 foot riparian resource protection area per Table 19.106.040(C). If encroachments into the riparian resource protection area are approved, the area of encroachment shall be added to the calculations for mitigation as described below.
- b. The applicable shade category type mitigation requirements shown in Table 19.106.040(B) and listed in 19.106.040(E)(3) shall be applied to all required mitigation for development within 15 feet of the 35-foot riparian resource protection area and approved developments within the 35-foot riparian resource protection area and wetland areas as Permitted in Table 19.106.040 Permitted and Prohibited Uses as follows:
 - i. For all development within 15 feet of the riparian resource protection area, the following mitigation applies.
 - a. Step 1. Calculate the total area of the development that is located within 15 feet of the riparian resource protection area.
 - b. Step 2. Convert the area calculated in step 1 into acres. There are 43,560 square feet in 1 acre.
 - c. Step 3. Apply the applicable shade category mitigation requirements. The map in Figure 19.106.040(A) demonstrates shade categories for Fairview’s resources.
 - d. Step 4. Calculate the required mitigation.

Example:

A 2,000 square foot building is proposed to be constructed. 850 square feet of the proposed building is located within 15 feet of the riparian resource protection area. In this example, the resource is categorized as a Shade Category 1.

850 square feet equals .02 acres

Shade category 1 requires:

1. Less than 25% shade	Trees	Shrubs
	327x .02= 6.54 436 x .02= 8.72	1,634 x .14=32.6 2,178 x .14=43.5

Therefore when rounding up 7 to 9 trees are required for mitigation and 33 to 44 shrubs.

- ii. For permitted uses within a 35-foot riparian resource protection area and within the 50-foot wetland buffer area.

- a. Using the same development example above, the development has a 200 square foot encroachment within the 35-foot riparian resource protection, the 200 square foot encroachment would be added to the 850 square foot building encroachment, for a total of 1050 square feet. Mitigation would be required for the 1,050 square feet of encroachment.

Mitigation for encroachments into a 50-foot wetland buffer area are based on using shade category 2 requirements and applying them to the area of disturbance within the delineated wetland. For example if 1,000 square feet is disturbed within a wetland, the mitigation requirements would be as follows:

Convert 1,000 square feet to acres by dividing by 43,560 (which is .02 acres) and apply the Shade 3 mitigation.

2. 25 to 75% shade	Trees	Shrubs
	110 x .02= 2.2	545 x .02=10.9
	326 x .02= 6.52	1,633 x .02=32.6

Therefore when rounding up 2 to 7 trees are required for mitigation and 11 to 33 shrubs.

4. Mitigation Planting Requirements (for all types of required mitigation)

- a. Plant size- Replacement trees must be at least one half inch in caliper measured at 6 inches above the ground level for field grown trees or above the soil such as for container grown trees. Oak or madrone trees shall be a minimum one gallon size. Shrubs must be in at least a 1 gallon container or equivalent ball and burlap and must be at least 12 inches in height.
- b. Plant Spacing- Trees shall be planted between 8 and 12 feet on plant center and shrubs shall be planted between 4 and 5 feet on center or clustered in single species groups of no more than four plants, with each cluster planted between 8 and 10 feet on center.
- c. Plant diversity- Shrubs must consist of at least two different species. If 10 trees or more are plants, then no more than 50% of the trees may be of the same genus.
- d. Location of mitigation area- All vegetation must be planted on the applicant's site within the resource protection area first. If there is not sufficient room within the resource protection area, planting may occur contiguous to the resource protection area; provided that if the vegetation is planted outside the resource protection area then the applicant shall preserve the contiguous area by executing a deed restriction such as a restrictive covenant.
- e. Invasive vegetation- Invasive, non-native or noxious vegetation must be removed within the mitigation area prior to planting mitigation vegetation.
- f. Tree and shrub survival- A minimum of 80% of the trees and shrubs planted shall remain alive on the fourth anniversary of the date that the mitigation planting is complete.

- g. Monitoring and reporting- Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind. For a period of 3 years, the property owner must submit an annual report to the City of Fairview Public Works Director documenting the survival of the trees and shrubs on the mitigation site.
 - h. To enhance survival of mitigation plantings the following practices are required-
 - i. Mulching. Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
 - ii. Irrigation. Water new plantings one inch per week between June 15 to October 15 for the three years following planting.
 - iii. Weed control- Remove or control non-native or noxious vegetation throughout maintenance period.
 - iv. Trees and large wood debris that is cut down shall remain within the buffer area to provide wildlife habitat.
 - v. All hazardous trees to be removed, shall only remove the portion necessary to alleviate the hazard.
- 5. Mitigation That Varies the Required Number and Size of Trees and Shrubs**
- An applicant seeking to vary the number and size of trees and shrubs required to be planted under subsection 19.106.030(F) but who will comply with all other provisions of Section 19.106.030(F) of this chapter may seek approval by discretionary review under this subsection as follows.
- a. The applicant shall submit:
 - i. A calculation of the number of trees and shrubs the applicant would be required to plant under Section 19.106.030(F) (1, 2, or 3) of this chapter.
 - ii. The number and size of trees and shrubs that the applicant proposes to plant.
 - iii. An explanation of why the proposed number and size of trees and shrubs to be planted will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results than the number and size required under Section 19.106.030(I) of this chapter. Such explanation shall be prepared and signed by a knowledgeable and qualified natural resource professional or a certified landscape architect and shall include discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity plant spacing, planting season, and immediate post planting care including mulching, irrigation, wildlife protection, and weed control.
 - iv. The applicant's mitigation site monitoring and reporting plan.
 - b. Approval criteria- a request to vary the number and size of trees and shrubs to be planted shall be approved if the applicant demonstrates that the proposed planting will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results than the number and size required under section 19.106.030(B) of this chapter.

19.106.050 Fairview Creek and Clear Creek Conservation Easements within Fairview Village.

- A. Concurrent with development of any site containing Fairview Creek or Clear Creek, a conservation easement shall be granted to the city. The conservation easement of approximately 100 feet for Fairview Creek and 75 feet for Clear Creek will provide a control mechanism for these creek corridors. The easements, which shall extend not less than 50 feet from Fairview Creek centerline and not less than 37.5 feet from Clear Creek centerline in either direction, will protect water quality, provide for wildlife movement and enhance the neighborhood aesthetics by providing a greenbelt through the single-family residential area.
- B. Within the 100-foot protected area along Fairview Creek, development and resource alteration, other than mitigation or enhancement, will be prohibited within 70 feet of the corridor centered on the creek. The other 15 feet remaining on either side may allow wooden fences up to six feet in height and plantings using only materials shown on the Fairview Village plant list. Trees existing within the 100-foot corridor shall be nurtured and protected. Plantings that appear on the approved list are encouraged especially where they would provide shade to the creek from direct sun.
- C. Within the 75-foot protected area along Clear Creek, development and resource alteration, other than mitigation or enhancement, will be prohibited within 45 feet of the corridor centered on the creek. The other 15 feet remaining on either side may allow wooden fences up to six feet in height with plantings using only materials shown on the Fairview plant list (Fairview uses the Metro Plant List). Trees existing within the 75-foot corridor shall be nurtured and protected. Plantings that appear on the approved list are encouraged especially where they would provide shade to the creek from direct sun.
- D. Variance. An applicant may apply for a Class C variance to the conservation easement standards provided in subsections A through C above.

19.106.060 Fairview Lake

The provisions of this Section only apply to Fairview Lake. A protected riparian buffer of 50 feet from top of the of Fairview Lake's bank, or 50 feet from the annual mean high water level (11.4 feet NGVD) of Fairview Lake in those areas where there is no bank or significant break in slope along the shoreline is required. These requirements also apply to the portion of the submerged lake bottom that is within City of Fairview limits.

- A. Riparian Vegetation. A major purpose and goal of the riparian buffer is to preserve, to the maximum extent possible, riparian vegetation within the buffer area. Trimming of vegetation to alleviate a hazard is allowed. Removal of riparian vegetation, as defined in "Alteration" (subsection B of this section), is allowed only after a permit has been granted by the City of Fairview. Replacement vegetation must be riparian species as approved in the permit.
- B. Alteration. An alteration is a change in the topography or vegetation of a waterbody or its riparian environment, as regulated by this section, which may affect the functions and values of Fairview Lake. Alteration of the riparian buffer area is subject to the permit procedure and standards of this chapter. No alteration will be allowed which would appreciably diminish the values or functions of Fairview Lake, as set forth in FMC 19.106.010. For the purposes of this Section 19.106.060,

1. Alteration includes the following in the riparian buffer area of Fairview Lake :
 - a. Dredging, filling, excavating or placing riprap or a mooring with rock, trees, wood, etc.
 - b. The clearing of any native riparian vegetation or the removal of any native tree which has a diameter of six inches or greater at four feet above grade.
 - c. Construction of buildings and other structures, including the installation of a bridge, culvert, pipeline, retaining wall, dock, boathouse or deck or any other development as defined by this code.
 - d. Changing the course or banks..
 - e. Construction of public streets, including bridges, when part of an approved future street plan, subdivision plan construction, improvement or alteration consistent with the city transportation plan.
 - f. Construction of public bicycle pedestrian paths.
 - g. Construction of public parks and recreational facilities.
 - h. Construction of private driveways or pedestrian paths where necessary to afford access between portions of private property that may be bisected by a riparian buffer.
 - i. Construction of public utilities such as water, storm water and sanitary sewer lines.
 - j. Water detention, filtration facilities and erosion control improvements. Such projects include detention ponds, biofiltration swales or ponds check dams and bank stabilization measures.
 - k. Installation and construction of docks are subject to standards of section 19.490.300
2. The following applications will be required for alterations in the Fairview Lake buffer area:
 - a. Planting vegetation shall be a Type I application (FMC 19.413.010).
 - b. Placement of docks, rock buffers, pathways or other activities that may negatively impact the values and/or purposes of this section shall be a Type II application (FMC 19.413.020).
 - c. Alterations involving the installation and construction of Applications with structures or other more intrusive activities shall be processed as a Type III application (FMC 19.413.030).
3. Applications for an alteration permit must demonstrate compliance with the following standards:
 - a. A development site plan must be submitted with the alteration permit which identifies the areas where construction activity will occur. Construction activity may not occur on more than 25 percent of the Fairview Lake buffer area.

- b. Erosion/sedimentation control devices must be installed between the area where alterations will occur and Fairview Lake; these devices shall comply with specifications and procedures outlined in the soil erosion control ordinance (Chapter 16.15 FMC) and must be installed prior to any soil disturbance and must remain in place during construction and until the soil has stabilized.
 - c. Stormwater detention and filtration facilities, must be designed according to the best management practices described in the standard specifications ordinance and related ordinances and technical guidance manuals.
 - d. Any alterations that require/involve planting riparian type trees, shrubs and ground cover to supplement existing vegetation or to replace removed vegetation must be installed in accord with the following standards:
 - i. A minimum of six trees, 12 shrubs and ground cover plantings per hundred lineal feet of riparian buffer area.
 - ii. Plant materials shall be guyed and staked to nursery industry standards.
 - iii. Deciduous trees shall be fully branched and have a minimum caliper of one and one-half inches at the time of planting.
 - iv. Evergreen trees shall be fully branched and have a minimum height of six feet at the time of planting.
 - v. Shrubs shall be supplied in one-gallon containers or eight-inch burlap balls with a minimum spread of 12 inches.
 - vi. Ground cover plantings shall be planted at a maximum of 30 inches on center and 30 inches between rows. Rows of plants shall be staggered for a more effective covering. Ground cover planting shall be supplied in a minimum four-inch size container.
 - e. Bridges, culverts and similar structures must be designed to facilitate fish passage during periods of low stream flow.
 - f. Roads, bridges, culverts, and utility crossings on or adjacent to Fairview Lake or associated Fairview Lake riparian buffer area must conform with Oregon Department of Fish and Wildlife (ODFW) requirements for such crossings or ODFW approval must be obtained for any deviation; however, such crossings shall be avoided when practical alternative routing exists, and roads shall be constructed away from Fairview Lake and its riparian areas, except at crossings, which shall be aligned perpendicular to the resource site.
- C. Application Requirements for develop adjacent to Fairview Lake are subject to FMC 19.106.070 Permit Process for Permitted Uses.

19.106.070 Permit Process for Permitted Uses

- A. Before a permit is issued for an alteration or development within or adjacent to a riparian resource protection area, Fairview Lake, upland habitat, or wetland buffer, an application must be submitted to the City of Fairview by the person or entity requesting the alteration or development as permitted by FMC 19.106.030 and the responsible property owner. The application shall include:

1. All developments on parcels with a designated natural resource protection area must submit a site plan to demonstrate the proximity of a development to the regulated resource areas. The site plan shall include:
 - a. Verification of boundaries of the designated resource protection areas.
 - b. Identification of existing disturbed areas within applicable resource protection buffer. Required mitigation will focus on improving the existing disturbed areas.
 - c. Location of the 100 year flood plain and floodway boundaries as defined by the Federal Emergency Management Agency.
 - d. Topography shown by contour lines of 2 foot intervals for slopes less than 15% and by 10 foot intervals for slopes 15% or greater.
 - e. Identification of the proposed development including all building footprints, site property improvements, utilities and landscaping.
 - f. If grading will occur within 15 feet of the resource protection area, a grading plan showing the proposed alteration of the ground.
2. A completed land use application form with legal description and address of the concerned property, owner's authorization, and the information requested thereon.
3. Application fee as set forth by resolution.
4. A written narrative which describes the proposed alteration or development materials to be used, the purpose or reasons for the alteration or development, alterations considered to determine no practicable alternatives exist to the proposed encroachment, alteration, or development, how the impacts have been minimized and or mitigated.
5. Scaled drawing or drawings of the proposed alteration showing:
 - a. Overall specifications and dimensions for the proposed alterations or development.
 - b. The location of any wetlands or water bodies on the property including the delineation of the designated natural resource protection area.
 - c. Location of the:
 - i. 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA).
 - ii. Distance from the development to the resource protection areas
 - iii. Resource features such as water bodies or wetlands.
 - d. Degraded resource areas as identified through the habitat assessment process.
 - e. Depth of cuts and fills, final slopes, descriptions of fill material, etc.

- f. Description of any vegetation that will be removed and of vegetation to be planted, including a landscaping plan showing plant types, location, size and quantities.
 - g. Proposed erosion control measures.
 - h. Vegetation mitigation plan and monitoring plan.
- 6. Habitat assessment form and narrative as required by FMC 19.106.040 (E) Exception Process.
 - 7. Written documentation that all required or pertinent state and federal permits have been submitted. Permits may be required from the State Division of Lands, the Oregon Department of Fish and Wildlife, the United States Army Corps of Engineers, the Environmental Protection Agency, the Federal Emergency Management Agency and/or other agencies.
- B. Expiration of approved applications.

The approval of a land use application shall be valid for two years. Approved land use applications and plans may be renewed through the Type I review process for an additional 2 years upon demonstrating that the original approved plan still meets the criteria provided in FMC Chapter 19.106.

19.106.080 Floodplain Ordinance.

Areas adjacent to any of the City of Fairview's water resources are also regulated by the city's floodplain overlay district. All riparian buffer alterations must be in compliance with the applicable standards of the floodplain overlay zone before permit issuance. Where regulations of the natural resource overlay zone differ from those found in the floodplain overlay zone, the more restrictive standards shall apply.

19.106.090 Emergency Exemption.

The City of Fairview shall be exempt from the permit requirements of this chapter if, during a flooding event, the city administrator determines that a portion of the creek channel must be immediately altered in some manner in order to avoid substantial property damage

19.106.100 Drainage District Exemption.

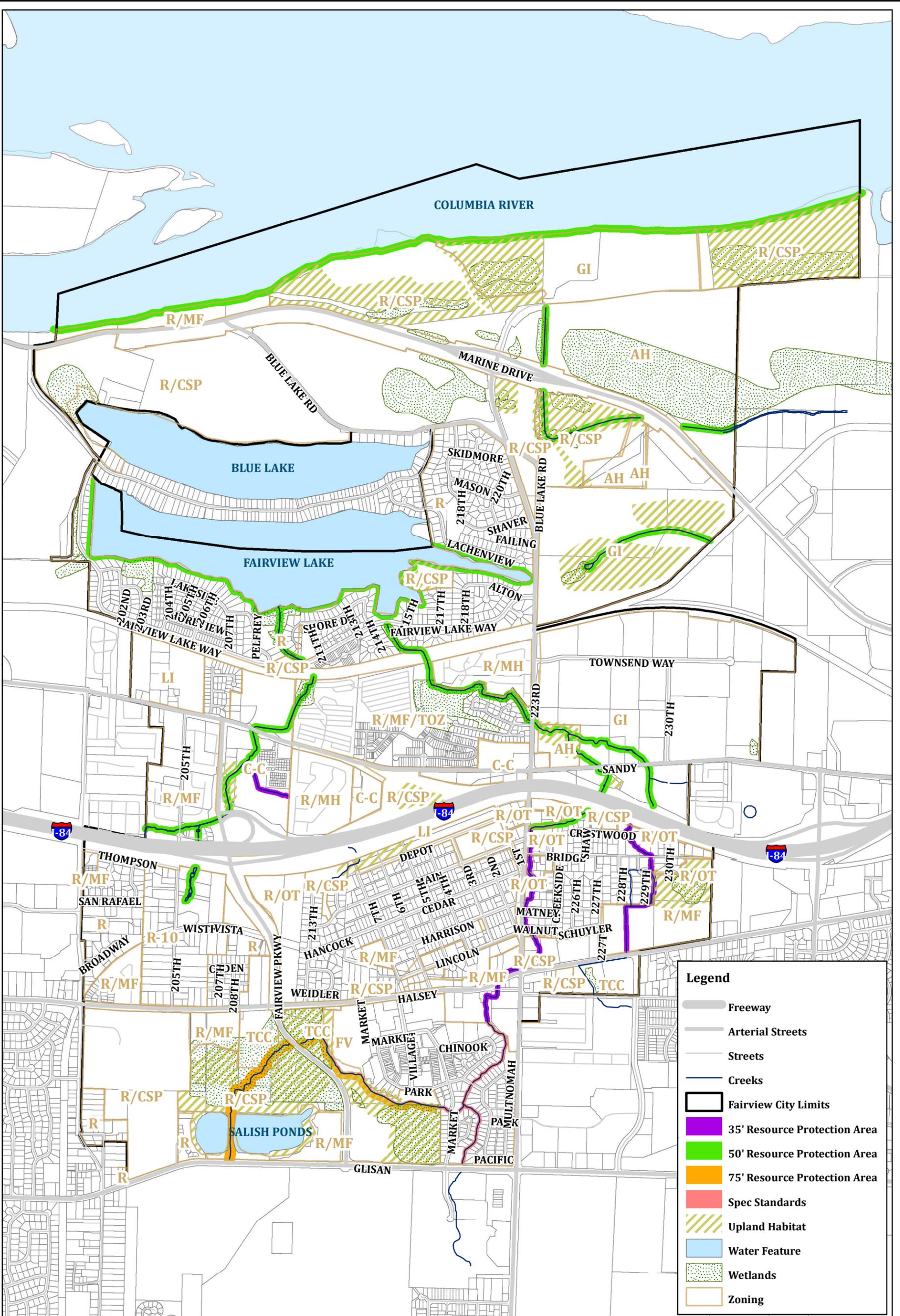
- A. For resource protection areas located within Multnomah County Drainage District No. 1 and the area managed by the Sandy Drainage Improvement Company the following will be allowed without obtaining a permit: routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing drainage and flood control facilities; facilities, and existing related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance); erosion control projects, levees, soil and bank stabilization projects; dredging and ditch clearing within the hydraulic cross section in existing storm water conveyance drainage ways; or other water quality and flood storage projects applicable to existing facilities shall be allowed without obtaining a permit provided the all of the following are met:
- 1. The project is consistent with all other applicable local, state, and federal laws and regulations.

2. The project does not encroach closer to a surface stream or river, wetland or other body of open water than existing operations and development.
 3. Disturbed areas are replanted with vegetation and no bare soils remain after project completion; the planting of native vegetation and removal of invasive non-native or noxious vegetation is encouraged; invasive non-native vegetation shall not be planted.
 4. Each district submits an annual report to all local permitting agencies in which the district operates, describing the projects the district completed in the previous year and how those projects complied with all applicable federal and state laws and requirements. The report also includes a list of proposed projects for the upcoming year for the City of Fairview to review in advance.
- B. Activities that are not consistent with the criteria listed above, as determined by the Public Works Director after reviewing the annual proposed project report, shall be subject to applicable procedures for Type I, Type II, Type II, or Type IV permits.

19.106.110 Penalty.

Property owners are responsible for maintaining natural resource protection areas on their property. Unauthorized removal of native vegetation, or purposeful neglect of native vegetation is subject to penalty.

Any person, group, corporation or association violating the terms or provisions of this chapter, upon conviction thereof, shall be punished by a fine not exceeding \$500.00. Each day the violation continues shall be considered a separate offense.



Legend

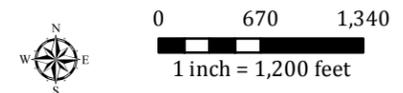
- Freeway
- Arterial Streets
- Streets
- Creeks
- Fairview City Limits
- 35' Resource Protection Area
- 50' Resource Protection Area
- 75' Resource Protection Area
- Spec Standards
- Upland Habitat
- Water Feature
- Wetlands
- Zoning



City of Fairview
 1300 NE Village Street
 Fairview, OR 97024
 (503) 665-7929
 www.fairvieworegon.gov

City of Fairview Natural Resources

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 Designed By: L.Nesbitt
 Created By: J.Miles



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