



PLANNING COMMISSION MEETING

Tuesday, May 22, 2012

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 – May 8, 2012**
4. **WORK SESSION**
 - a) Minor Sign Code Amendment: Electronic Message Centers
5. **PUBLIC HEARING**
File 9-32-ZC
Natural Resource Code Amendments: Title 13
Ordinance 3-2012
6. **STAFF UPDATES**
7. **TENTATIVE AGENDA – June 12, 2012**
8. **ADJOURNMENT**

NEXT PLANNING COMMISSION MEETING IS JUNE 12, 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, May 8, 2012

PRESENT: Steve Kaufman, Vice-Chair
Keith Kudrna
Jack Mc Giffin
Jan Shearer
Ed Jones

ABSENT: Gary Stonewall, Chair
Julius Arceo

STAFF: Lindsey Nesbitt, Senior Planner
Erika Fitzgerald, Associate Planner
Devree Leymaster, Admin. Program Coordinator

1. CALL TO ORDER

Vice-Chair Kaufman called the meeting to order at 6:30pm.

2. CITIZENS WISHING TO SPEAK ON NON-AGENDA ITEMS

Vice-Chair Kaufman 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

April 10, 2012 minutes approved as written by consensus.

4. WORK SESSION

a) Minor Sign Code Amendment: Electronic Message Centers

Associate Planner Fitzgerald stated staff had received a request to re-examine sign code policy options for electronic message centers. Currently, electronic message centers could be a maximum of eight square feet and were allowed in all zones except for single family multi-family residential zones. Staff was requesting Commission direction as to whether different zones should have different regulations i.e. school zones may need larger readers to list text in different languages. Should regulations for wall signs and free standing signs differ due to distance from sign to reader?

Chair Stonewall via a written statement recommended adopting City of Gresham's policy which made allowances for schools. Vice-Chair Kaufman concurred with Chair Stonewall. Commissioner Shearer recommended re-evaluating the allowed square footage for electronic message signs in commercial areas so the code could be fine-tuned and changed at one time. Commissioner Jones commented on habitability and the potential negative impact increasing the allowed size of electronic message boards could have.

Garth Everhart, 1549 NE Market Drive, Fairview, Oregon commented as a business owner and resident that the unique livability of Fairview was important but so was business growth and prosperity. Impeding business development through strict regulations wasn't good for the habitability of Fairview; there needed to be a balanced approach that fostered both.

Associate Planner Fitzgerald summarized Commission direction was to draft code language for an increase in allowed area for electronic message centers on both wall and freestanding signs in Community Service/Park and Commercial zones. The Commission agreed.

Senior Planner Nesbitt reviewed the staff report background information regarding code amendments to extend final plat filing deadlines. Prior to 2010 applicants had one-year to file from the date of an approved preliminary plat with Multnomah County and a one-year extension could be granted. In 2010, primarily due to the economy, an additional one-year extension was granted for all preliminary plat approvals and in 2011 another one-year extension was granted for only those preliminary plats approved in 2007 or 2008. Three preliminary plats would expire in 2012 if not filed with Multnomah County. Staff inquired what direction the Commission would like to proceed in: allow the preliminary plat's to expire if not filed by the expiration date or consider allowing a fourth one-year extension.

During discussion Commissioner McGiffin stated most economic forecasting did not indicate significant recovery in areas that would make the expiring applications less risky in one-year and would most likely be revisiting the same issue next year. Chair Stonewall provided a written statement that he was not in favor of an additional one-year extension. Vice-Chair Kaufman concurred. Commissioner Shearer requested allowing the one-year extension with the understanding it would be made clear to the applicants there would be no further extensions.

Following additional discussion the Commission agreed to recommend approval to City Council for allowing a fourth one-year extension to the three outstanding applications from 2007 and 2008. They also directed Staff to include language that would revert code language to the original granting of a single one-year extension.

c) Natural Resource Code Project Update

Senior Planner Nesbitt stated the primary feedback from public outreach was 'how does the revised code affect my ability to develop?' Staff was expecting public attendance at the May 22 Natural Resource Code adoption public hearing.

5. STAFF UPDATES

a) Economic Development

Associate Planner Fitzgerald provided an update on EDAC activities: Mayor's Roundtable and new business welcome packet and committee.

6. TENTATIVE AGENDA

- a) Work Session: Electronic Message Center Policy Options
- b) Public Hearing: Natural Resource Code Adoption

7. ADJOURNMENT

Meeting adjourned by consensus at 7:05pm.

Steve Kaufman, Vice-Chair

Devree A. Leymaster
Administrative Program Coordinator
Public Works Department

Date: _____



Planning Commission Staff Report

To: Fairview Planning Commission

From: Erika Fitzgerald, Associate Planner

Date: May 22, 2012

Subject: Work Session - Policy Options for Electronic Message Centers

Action Requested

Provide direction to staff on policy options for regulating electronic message centers.

Background

At the May 8th Planning Commission work session, staff presented preliminary policy options for amendments to the maximum allowed area of electronic message centers. Planning Commissioners requested that staff bring more detailed policy options to the next work session for increased allowed area for electronic message centers on school sites and within commercial and industrial zones.

This proposed amendment came in response to a request for the City to examine:

- The maximum allowed area standard of electronic message centers (currently 8 square feet)
- If the current size limitation is reasonable and appropriate for the intended use of the sign.

Current Regulations

Electronic message centers are currently permitted in all zones except single family and multi-family residential zones and are subject to the following standards from FMC 19.170:

An electronic message center may be incorporated into either a freestanding sign or wall sign, but not both. The electronic message center shall be an integral part of the sign design and **shall not exceed eight square feet.**¹

The display of messages shall conform to the following standards:

- i. Messages may scroll across the electronic message center.

¹ The eight square foot requirement was carried over from the original sign code and was not changed with the recent sign code project: Ordinance 02-2010.

ii. Flashing messages are prohibited.

Electronic message centers incorporated into a wall sign may be up to 24 inches in thickness.

Discussion of Policy Options

One of the purposes of the sign code is to provide business owners and community institutions ample opportunities and alternatives to communicate messages through signage. Given the evolving technology of signs and the necessity of institutions to use electronic message centers to convey frequently changing messages, staff recommends that Planning Commission reexamine maximum area requirements for this type of sign.

Policy Option #1:

Similar to regulations in the City of Gresham, an option is to allow larger electronic message centers on both wall and freestanding signs on sites with schools² due to the need to communicate frequently changing messages to students, faculty, and parents. Staff has examined similar signs at Reynolds High School in Troutdale and the proposed sign for the Reynolds Middle School. Each is approximately 18 square feet in area.

Proposed Code Language:

For school sites located on arterial streets³:

The maximum allowed area of an electronic message center incorporated into a wall sign is 18 square feet at schools that front an arterial street. Electronic message centers shall be located no less than 150 feet from an abutting residential use and shall be oriented towards the arterial street.

Discussion:

Staff is proposing an 18 square foot maximum for electronic message centers incorporated into a wall sign on school sites located on arterial streets based on what seems to be a standard size for electronic message centers used at other educational facilities. Staff is recommending that the maximum allowed area be larger due to:

- Higher speeds of traffic.
- The need to clearly communicate frequently changing messages to students, faculty, and parents.
- The distance at which school buildings are setback from the arterial.

For example, the entrance to Reynolds Middle School is setback 150 feet from 201st Avenue and the entrance to Woodland Elementary is setback 300 feet from Glisan Street. A 150 foot distance from abutting residential properties is proposed to provide a buffer and to reduce the potential negative impact of electronic message centers.

² All schools in the City of Fairview (except MLA which is in the TCC zone) are located in the Community Services/Parks zone. This zone also includes parks.

³ Arterial streets include: Glisan Street, Halsey Street, Sandy Boulevard, Marine Drive, 201st Avenue, Fairview Parkway, and 223rd Avenue.

Proposed Code Language:

For school sites located on arterial streets:

The maximum allowed area of an electronic message center incorporated into a freestanding sign is limited to no more than 25% of the total allowed area per sign face with a minimum entitlement of 8 square feet.

An electronic message center may be incorporated into a wall sign or a freestanding sign but not both.

Discussion:

Staff is proposing a 25% limit on electronic message centers incorporated into a freestanding sign as this allows the electronic message center to be an integral part of the sign design while also taking into account the aesthetics of the sign. Using a percentage of total sign area as a standard regulates the size of the electronic message center relative to the total area of the sign. Current sign regulations for freestanding signs allow a minimum allowed area entitlement of 40 square feet and maximum allowed area of 100 square feet.

A 25% limit on electronic message centers seems to be a reasonable compromise between recognizing a school's need to communicate a message and the overall aesthetics of the community. The proposed minimum entitlement of 8 square feet will accommodate schools that wish to have a freestanding sign less than 32 square feet in area by ensuring that the revised regulations are not more restrictive than what is currently allowed.

Proposed Code Language:

For school sites located on local streets:

The maximum allowed area for an electronic message center is 8 square feet. An electronic message center may be incorporated into a wall sign or a freestanding sign but not both. (No change from current regulations.)

Discussion:

Staff is proposing no change to the current area standard for electronic message centers at schools not located on arterial streets. The City of Fairview has one school not located on an arterial street, Fairview Elementary. Fairview Elementary is located on a local street, which has a slower speed limit, and is situated less than 100 feet from nearby residences. Therefore, staff believes that the current standard of 8 square feet is a reasonable size for an electronic message center incorporated into either a wall or a freestanding sign.

Policy Option #2:

Allow larger electronic message centers on school sites located along arterial streets as described above and allow larger electronic message centers in commercial and industrial zones⁴. This policy option acknowledges the needs of businesses to communicate messages to prospective customers and reflects changing technologies in signs. This option supports

⁴ Commercial and industrial zones include: Corridor Commercial (CC), Town Center Commercial (TCC), General Industrial (GI), and Light Industrial (LI). Electronic message centers are not permitted in the Village Commercial (VC), Village Mixed Use (VMU), and Village Office (VO) zones.

the purpose of the sign code to balance the need to easily and safely communicate messages and consider the aesthetic impacts of signs on the community.

Proposed code language:

For Commercial/Industrial Zones:

The area of an electronic message center is limited to no more than 25% of the total allowed area per sign face with a minimum entitlement of 8 square feet. An electronic message center may be incorporated into a wall sign or a freestanding sign but not both.

Discussion:

Staff is proposing a 25% limit on electronic message centers as this allows the electronic message center to be an integral part of the sign design while also taking into account the aesthetics of the sign. Using a percentage of total sign area as a standard regulates the size of the electronic message center relative to the total area of the sign. Current sign regulations for freestanding signs allow a minimum allowed area entitlement of 40 square feet and maximum allowed area of 100 square feet. The maximum allowed area of wall signs in commercial and industrial zones is 10% of the area of the wall on which the sign is located.

A 25% limit on electronic message centers seems to be a reasonable compromise between recognizing a business's need to communicate a message and the overall aesthetics of the community. The proposed minimum entitlement of 8 square feet will accommodate businesses that wish to have a wall or freestanding sign less than 32 square feet in area by ensuring that the revised regulations are not more restrictive than what is currently allowed.

Staff is looking to the Planning Commission for direction on the above policy options:

Policy Options

1. Direct staff to move forward with the process to revise code language for maximum allowed area for electronic message centers on school sites using the proposed code language provided above.
2. Direct staff to move forward with the process to revise code language for maximum allowed area for electronic message centers on school sites and for signs in commercial and industrial zones using the proposed code language provided above.
3. Direct staff to draft code language different than the options provided above.

Next Steps

Based on direction and feedback from the Commission, staff will draft revised code language for a public hearing in June.



PLANNING COMMISSION STAFF REPORT

TO: Fairview Planning Commission
FROM: Lindsey Nesbitt, Senior Planner
DATE: May 11, 2012
SUBJECT: Adoption of Ordinance 3-2012 Natural Resource Regulation Amendments

Action Requested

Forward a recommendation to the City Council of approval of Ordinance 3-2012, amending the City of Fairview's Municipal Code Natural Resource Regulations, Comprehensive Plan Chapter 5 Open Spaces, Scenic and Historic Areas, and Natural Resources, and Natural Resources Map.

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 the draft Ordinance 3-2012 which includes the draft Natural Resource Amendments and 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 2 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-foot 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.

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.

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.

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.

Decision Making Alternatives

1. Forward a recommendation for City Council adoption of Ordinance 03-2012 amending the City of Fairview's natural Resource Regulations.
2. Modify proposed code amendments, and forward a recommendation for City Council adoption of Ordinance 03-2012.
3. Take no action.

Attachments

Attachment 1- Summary of Concerns from the Public Outreach Process

Attachment 2- Ordinance 3-2012

Attachment 1
Comments from Public Outreach Process

Concern 1. In areas where the buffers are highly degraded or non-existent, why wouldn't development or redevelopment be entitled to the existing conditions.

Response:

The Commission understands that the site is highly degraded in its current state. However, the Chinook Landing property and adjacent mitigation site are not currently degraded. The Metro Fort James property located one parcel to the east of the sand pit site is also not degraded and a very significant resource. The site adjacent to Chinook Landing, as you know, is a mitigation site for development of the Chinook Landing facility. The site includes high value resources, such as the two large wetlands, and the Columbia River.

The intent of the 50 foot buffer has always been if and when the property is developed or redeveloped, some of the resource value is regained and the 50-foot buffer is re-established. The Commission does not want to remove resources from the map because they are currently degraded, but they have provided direction to maintain mapping resources that are degraded in areas where they are adjacent to non-degraded and high value resources. The objective of mapping these areas is to establish improvements to the resource at time of site development (or redevelopment).

As, I mentioned in my May 1 email, there is the possibility for development within the buffer through the exception process, and further options for development through a variance process with options such as buffer averaging. Code language is also proposed for development and density transfer in lieu of preserving the buffer area. So the area designated for the buffer is not discounted as useable area, but the non protected area can be developed more in exchange for buffer protection. Also, if developing Roy's property at the same time as the mitigation site, re-establishing a buffer along the Columbia could potentially be part of the proposal to develop on the mitigation site, meaning, improvement to the Columbia River may arguably offset some mitigation requirements for the mitigation site.

As for the establishing the upland habitat layer on the mitigation site, I understand your concerns. The difficulty with removing this lies in convincing Metro that it should not be classified as a significant resource, as you can see on the map I sent, Metro has it mapped as a high value habitat area, as well as the Columbia River.

Concern 2: What are the fiscal ramifications if the city does not comply with Metro's Title 13 requirements?

Response:

Title 8 of the Urban Growth Management Functional Plan, section 3.07.850 authorizes Metro to take enforcement action.

http://library.oregonmetro.gov/files//3.07_maps_-_title_4_6_14_eff_011812.clean.pdf

Also, the remedies that are referenced in that section are from ORS 268.390(7). The summary of this section is:

(7) Enforcement remedies ordered under subsection (6) of this section may include, but are not limited to:

(a) Direct application of specified requirements of functional plans to land use decisions by the city or county;

(b) Withholding by the district of discretionary funds from the city or county; and

(c) Requesting an enforcement action pursuant to ORS 197.319 to 197.335 and withholding moneys pursuant to an enforcement order resulting from the enforcement action.

(b) means that Metro can withhold all monies that they directly have control over in Fairview. This includes Regional Flexible Fund dollars for transportation projects and anything related to our Parks and Greenspace programs (the \$2.2 million grant for the 40-mile loop project and the Nature in Neighborhood Grant of \$312,512).

(c) is a bigger amount of \$ as it references anything the State collects and distributes such as gas tax, cigarette tax, etc.

Samantha Nelson pulled these numbers from the budget.

General Fund:

Liquor Tax \$116,584

Metro Recycling Program Dollars \$4,319 (I am not sure they can or would impact this)

Street Fund:

Gas Tax \$500,590.

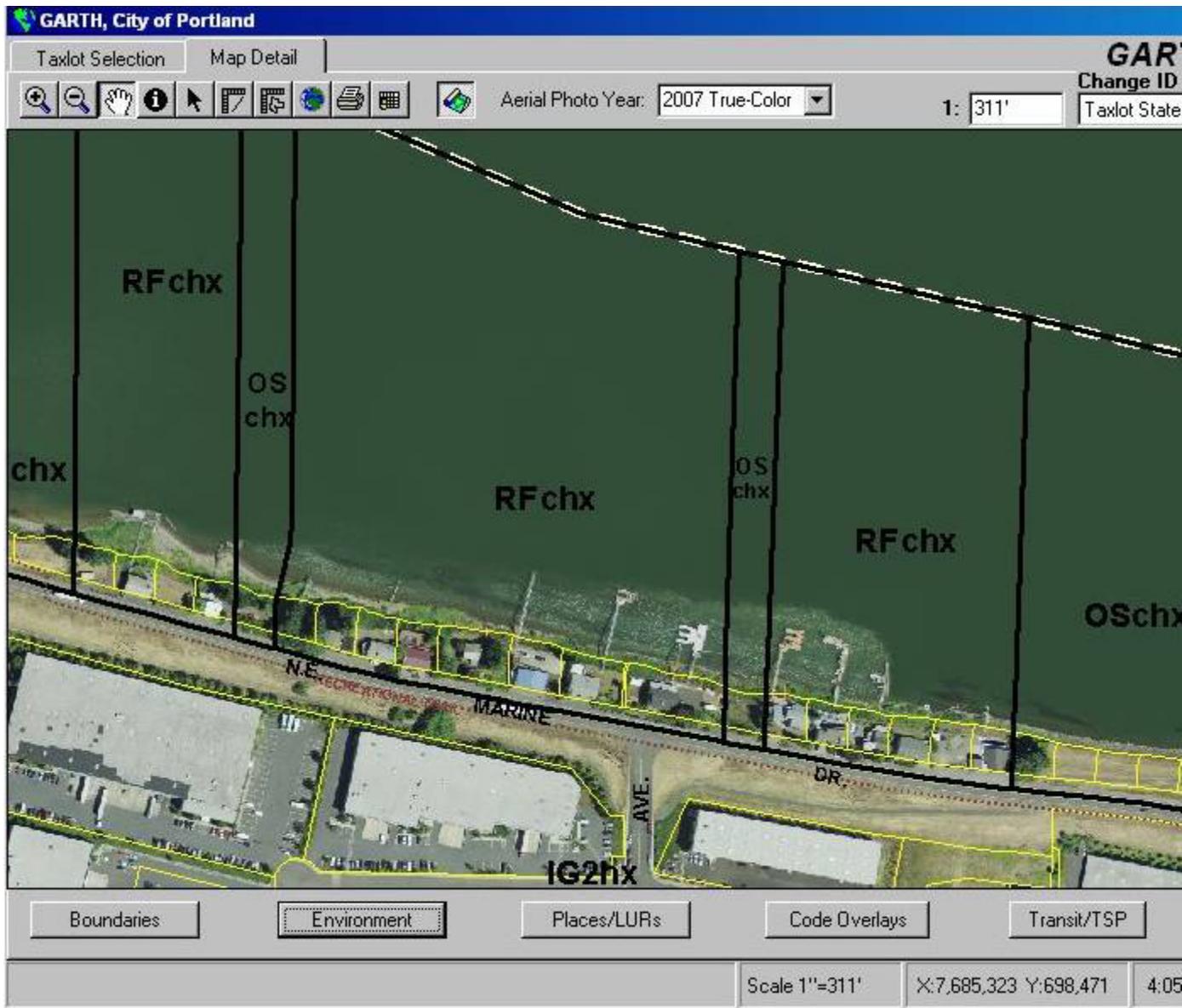
Concern 3: How does the City of Portland map the Columbia River? Why is the habitat conservation area shown as being mapped into the Columbia River? How does this mapping support the City's Comprehensive Plan?

Response: The City is not proposing to map resources into the river. The 50-foot protection begins at top of bank for the Columbia River and goes in toward the land, it does not project out into the water, so attachment to the bank and within 50-feet of top of bank are subject to City of Fairview Land Use review. The map I sent to you in my May 1 email includes Metro's Title 13 overlay, which shows a layer of HCA into the River. The city is proposing to maintain our current mapping of the resource as previously describe.

City of Portland environmental requirements: From I-205 eastward, nearly all waterfront is mapped with a conservation overlay zone that typically starts 50-150 feet from the water's edge and extends well into the river. There is only one little segment to the far east that is not mapped that way.

Typically, the boundary is mapped on the City's zone maps and the buffer setback in most areas is 50 feet inward from the zone line. Development is not strictly limited in the buffer setback. But outside the buffer in the protected resource there is little that can be done besides planting, utilities, and trails. Even a lot of work within the 50 foot buffer requires an environmental review.

Here is an example - the c zone line starts in the middle of NE Marine Dr. All the docks were installed pre-code adoption.



Concern4: Does the 50' buffer around wetlands come from Fairview code or some other code? If Fairview's code then was it done to match any other code, I.e. Metro?

Response: The City has mapped a 50-foot buffer around most of its wetland resources since 2001 and has required wetland protection and protection of the vegetative fringe adjacent to wetlands prior to establishment of the numerical buffer requirement in 2001. The 50-foot wetland buffer requirement matches other codes throughout the region.

The title 13 Model Ordinance also calls for a 50-foot buffer around wetlands.

A number of State and Federal agencies require wetland protection, as well as State Land Use Goals 5 and 17. Most state and federal requirements only address the wetland, and not necessarily a buffer. Local jurisdiction adopt the 50-foot buffer to reduce negative impacts

(such as stormwater run off and disturbances to the wildlife and habitat) associated with the development adjacent to the wetland.

Concern: It is important to recognize the impacts of buffers on development and to determine if the riparian set back matches existing conditions.

Response: This is why the exception process and density/development transfer language has been developed. In areas where it makes sense to reduce the buffer, an exception application may be submitted.

If this is not possible and the wetland must be filled to accommodate development, the fill and mitigation requirements established by the state and federal requirements must be followed.

Concern 5: In the face of the Comprehensive Plan by the City to see development within Fairview, why would the City of Fairview voluntarily add any buffers or overlays in the few areas of Fairview that have development potential? Given the dwindling tax base and affects on City revenues, why isn't the City trying to reduce the impediments to development, not add layers.

Response: Below is a small section from Chapter 5 of the Comprehensive Plan. Also as outlined in the goals and objectives of the current code and proposed changes, the intent of the regulations are to provide resource protection while at the same time accommodating reasonable development of properties containing natural resources. Items such as the exception process and building and density transfers have been included in the code language in order to help facilitate development of properties containing resources. And in unique situations where additional assistance for development is needed, the code provides the variance process. The regulations pull from a variety of regulating bodies such as Army Corp of Engineers, Department of State Lands, LCDC, Statewide Planning Goals 5 and 17, and Metro. The Planning Commission worked to develop the proposed code, and closely look at resources, the values of resources, and their functions to develop appropriate buffer widths. As you can see on the Proposed Natural Resource Map, in some areas, where it makes sense, the buffers have been reduced from 50- feet to 35-feet. The Planning Commission believes the proposed draft language is consistent with the Comprehensive Plan.

CHAPTER 5

OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

GOAL

To conserve open space and protect natural and scenic resources.

INTRODUCTION

An important issue that faces many communities is the declining environmental quality that accompanies urban growth. Rapid growth in the Portland metro area has forced surrounding cities such as Fairview to face the challenge of balancing natural resource protection with the needs and rights of property owners and the requirements of efficient urbanization. The

policies and strategies of this section and Chapter 6 provide the guiding direction to protect the natural environment and ensure that long-term growth does not adversely affect the natural resources that contribute to Fairview's livability. The policies and programs described here emphasize the importance of developing and maintaining an integrated open space system that incorporates parks and recreation, wildlife, wetlands and waterways.

Attachment 2

ORDINANCE

(3-2012)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAIRVIEW, FAIRVIEW, OREGON AMENDING FAIRVIEW MUNICIPAL CODE SECTION 19.100 SIGNIFICANT ENVIRONMENTAL CONCERN OVERLAY, SECTION 19.106 WETLANDS AND RIPARIAN BUFFER OVERLAY, 19.140.080 FAIRVIEW CREEK AND CLEAR CREEK CONSERVATION EASEMENTS, THE FAIRVIEW NATURAL RESOURCES MAP, AND THE FAIRVIEW COMPREHENSIVE PLAN CHAPTER 5 OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES TO COMPLY WITH METRO TITLE 13 REQUIREMENTS.

WHEREAS, a public hearing was held by the Planning Commission on May 22, 2012 and by the City Council on June 6, 2012, and

WHEREAS, public notice was provided in accordance with Fairview Municipal Code and ORS 227.186, and

WHERE AS, Metro Title 13 Nature in Neighborhoods establishes a model ordinance to conserve, protect and restore a continuous ecologically viable streamside corridor system that is integrated with upland wildlife habitat and the surrounding urban landscape.

WHEREAS, Fairview may adopt the Metro Model Title 13 Ordinance or demonstrate substantial compliance with Title 13 requirements by amending the existing Municipal Code, and

WHEREAS, the Fairview Planning Commission worked to revise the Natural Resource Regulations to comply with Title 13 requirements, and

WHEREAS, the Metro has reviewed the proposed amendments and determined the Municipal Code, Map, and Comprehensive Plan amendments comply with Metro title 13 requirements, and

NOW, THEREFORE THE CITY OF FAIRVIEW ORDAINS AS FOLLOWS; the Fairview Municipal Code is amended as follows:

Section 1 The following Sections are repealed
 19.140.080
 19.100 Significant Concern Environmental Overlay
 19.106 Wetland and Riparian Buffer Overlay

- Section 2 Chapter 19.100 et seq., Significant Environmental Concern Overlay is amended as shown in Attachment 1.
- Section 3 Chapter 19.106 et seq., Wetlands and Riparian Buffer Overlay is amended as shown in Attachment 2.
- Section 4 The Fairview Comprehensive Plan Chapter 5- Open Spaces, Scenic and Historic Areas and Natural Resources is amended as shown in Attachment 3.
- Section 5 The Fairview Natural Resources Map (October 16, 2007) is repealed and replaced with the City of Fairview Natural Resource Inventory Map (May 2012) as shown in Attachment 4.
- Section 6 References to Chapter 100 and 106 throughout the Fairview Municipal Code are amended to reflect changes in Attachment 1 and 2.
- Section 7 This ordinance is effective thirty days from its passage.

Motion adopted by the City Council of the City of Fairview this 6th day of June 2012.

Mayor, City of Fairview
Mike Weatherby

ATTEST

Acting City Manager, City of Fairview
Samantha Nelson

Ordinance 3-2012 (Attachment 1)

Chapter 19.100

Culturally Sensitive Areas

Sections:

- 19.100.010 Purpose.
- 19.100.020 Area affected.
- 19.100.030 Permit required.
- 19.100.040 Exceptions.
- 19.100.050 Application for SEC permit.
- 19.100.060 SEC permit – Required findings.
- 19.100.070 Decision by planning commission.
- 19.100.080 Scope of conditions.
- 19.100.090 Criteria for approval of SEC permit.

19.100.010 Purpose.

It is the purpose of the culturally sensitive areas is to protect and conserve valuable cultural areas while permitting appropriate development activities when carried out in a sensitive manner with minimal impacts on identified areas.

19.100.020 Area affected.

This section shall apply to those lands designated Culturally Sensitive Areas map in the Fairview Comprehensive Plan.

19.100.030 SEC permit required.

All uses permitted under the provision of the underlying zone are permitted on lands designated as a culturally significant site; provided, however, that the location and design of any use, or charge or alteration of a use, shall be subject to an SEC permit.

Where an activity requires a permit or other approval from the state or other government entity, the applicant is encouraged to obtain final approval prior to submitting an application for an cultural sensitivity permit.

19.100.040 Exceptions.

An SEC permit shall not be required for the following:

- A. Existing farm use, including accessory buildings and structures.
- B. Activities to protect, conserve, enhance and maintain public recreational, scenic, historical and natural uses on public lands.
- C. The expansion of capacity or the replacement of existing communication or energy distribution and transmission systems, except substations.
- D. The maintenance and repair of existing flood control facilities.
- E. Uses legally existing on the effective date of the ordinance codified in this title; provided, however, that any change or alteration of such use shall require an SEC permit as provided herein.

19.100.050 Application for Cultural Sensitivity Permit.

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated culturally sensitive shall address the applicable criteria for approval and

shall be filed with the city with the appropriate fees to be heard by the Fairview planning commission.

Applications for extraction of aggregates and minerals, depositing of dredge spoils and similar activities must, where applicable, include a copy of any necessary approval(s) from the Department of Environmental Quality regarding any applicable standards for water quality, noise, vibration and toxic or noxious matter as well as a copy of any necessary approval(s) from the Oregon Department of Geology and Mineral Industries for surface mining operations. Where such approvals are subject to conditions, the applicant shall provide a statement regarding compliance with those conditions. Where final approval is not obtained prior to submitting the application, the applicant will provide a statement from the relevant jurisdiction or other evidence that such approval is feasible.

19.100.060 Cultural Sensitivity permit – Required findings.

A decision on an application for a Cultural Sensitivity Permit shall be based upon findings of consistency with the purposes of the culturally sensitive zone and with the criteria for approval specified in FMC 19.100.090.

19.100.070 Decision by planning commission.

A. A decision on a Cultural Sensitivity Permit application shall be made by the planning commission.

B. The planning commission may approve or deny the proposal or approve it with such modifications and conditions as may be consistent with the Comprehensive Plan and necessary to assure compatibility with FMC 19.100.090.

19.100.080 Scope of conditions.

A. Conditions of approval of a Cultural Sensitivity Permit, if any, shall be designed to bring the application into conformance with the applicable policies of the Comprehensive Plan. Said conditions may relate to the locations, design and maintenance of existing and proposed improvements, including but not limited to buildings, structures and use areas, parking, pedestrian and vehicular circulation and access, natural vegetation and landscaped areas, fencing, screening and buffering, excavations, cuts and fills, signs, graphics, and lighting.

B. Approval of an SEC permit shall be deemed to authorize associated public utilities, including energy and communication facilities.

C. Buildings, structures and sites of historic significance shall be preserved, protected, enhanced, restored, and/or maintained with issuance of the Cultural Sensitivity Permit.

D. Archeological sites shall be preserved for their historic, scientific and cultural value and protected from vandalism or unauthorized entry or, where preservation is not practical, inventoried.

Ordinance 3-2012 (Attachment 2)

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

19.106.080 Map Amendments and Administration

19.106.090 Floodplain Ordinance

19.106.100 Emergency Exemption

19.106.110 Drainage District Exemptions

19.106.120 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, and upland habitat 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 storm 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, or (3) 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 "normal maintenance and repair."
- 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. "Buffer Averaging"
- D. "Canopy" means area of the tree above the ground, measured in mass or volume including the trunk and branches.
- E. "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.
- F. "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.
- G. "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.
- H. "Dead tree" means the tree is lifeless.
- I. "Disturbance" means to make changes to the existing physical status of the land that are made in connection with development.
- J. "Disturbed Areas" Areas within natural resources and associated protection areas lack significant values and functions associated with the resource.
- K. "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.
- L. "Erosion" means the detachment of solid particles by water, wind, ice, or other physical activity.
- M. "Excessive Tree Trimming or Cutting" means any act which causes, or may reasonably be expected to cause, the tree to die by cutting or removing of crown, trunk, or root system of a plant; the uprooting or severing of the main trunk of the

tree 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.

- N. “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

- O. “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.
- P. “Map” means the adopted City of Fairview Natural Resource Map
- Q. “Normal Maintenance and Repair” includes maintenance, repair, or demolition of existing legal structures and facilities provided 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, no other site changes are proposed that could result in the increased direct stormwater discharge to the natural resource area.
- R. “Qualified Professional” means an individual who is professionally qualified and has proven expertise and experience in a given natural resource field.
- S. “Resource Protection Area” means the actual mapped resource 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 area. All identified on the Fairview Natural Resource Map
- T. “Riparian” means the environment (soil, plants, animals) adjacent to a river or lake which affects the waterbody and which is affected by it.
- U “Storm water” means surface water that washes off land, including impervious surfaces such as roofs and pavement, during periods of precipitation.
- V. “Stream” means a body of moving water including creeks, brooks, and rivers, which moves in a definite channel.
- W. “Top of Bank” First significant break in the slope between the toe at the bank of the water line and the surrounding landscape.
- X. “Upland Habitat Area”
“Viable/Healthy Tree”
- Y. “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.

- Z. “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 includes the mapped resource and the area of land immediately adjacent to the edges of banks located along the Columbia River and Fairview Creek, 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 at the property line between 55 Bridge Street and 65 Bridge Street, 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 wetland or the 50-foot wetland buffer. However, development within 15 feet of a wetland buffer is subject to a Type I wetland boundary verification process (19.106.070(A)). Mitigation shall be required if development is within 15 feet of the required wetland buffer (FMC 19.106.040(F)(2)(b)).

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 within 25 feet of a mapped upland habitat area is subject to a Type I Boundary verification process.

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, excessive 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>**Tree removal associated with a development permit or land use application 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	Type I Boundary Verification Process to demonstrate proposed development is not located with in a designated natural resource area or required protection area (FMC 19.106.070(A)).	Type I	Type I	Type I	Type I	Type I
7	Alteration of a stream bank, bed, or water flow without approved permits.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
8	Alteration of stream bank, bed or water flow.	Type III	Type III	Type III		
9	Direct storm water discharge into water bodies.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
10	Installation of required storm management facilities.	Type III	Type III	Type III	Type III	Type III
11	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
12	Impervious pathways and pathways greater than 5 feet in width.	Type III	Type II	Type III	Type III	Type II
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. Encroachments may be subject to buffer averaging where feasible.	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.					
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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 and as permitted in table 19.106.040(B)). 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. Minor encroachments in Commercial areas for outdoor seating or resource viewing may not exceed 300 square feet in area per 100 feet of resource buffer. Encroachments are subject to mitigation requirements and resource protection area buffer averaging.
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 may also require 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, upland habitat areas, or the required 50-foot buffer for wetland 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; or

Properties abutting Fairview Lake;

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 development, reasonable, legal use 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 or riparian resource protection 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 or upland habitat 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 (19.106.040(D)(4).
- 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 and designated protection area as a result of development activity. A mitigation plan must be submitted when any one of the following occur (Table 19.106.040(B) provides application type):

1. Tree Removal within a resource protection area

a. Dead, Diseased or Dying Trees

Each dead, diseased, or dying tree that is removed shall be replaced with one new tree of at least 2 inch caliper or at least 6 feet overall height after planting. An arborist report will be required if the tree does not display any signs that the tree is dead, diseased, or dying. 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.)

Trees and large wood debris that is cut down shall remain within the buffer area to provide wildlife habitat. All hazardous trees to be removed, shall only remove the portion necessary to alleviate the hazard.

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 in Table 19.106.040(F)(1). This does not apply to tree removal that is associated with development approved through the Exception Process FMC 19.106.030(E). Tree removal in conjunction with the Exception Process will be mitigated in accordance with Exception Process Mitigation FMC 19.106.040(F)(2).

Trees and large wood debris that is cut down shall remain within the buffer area to provide wildlife habitat

Table 19.106.040(F)(1)

Size of Viable/Healthy Tree Removed	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. Mitigation Requirements

a. Upland Habitat Mitigation

Upland habitat mitigation is based on the number of trees removed to accommodate site development within the mapped area. Healthy/viable trees removed must be mitigated per Table 19.106.040(F)(1). Dead, diseased, or hazardous trees removed to accommodate development must be mitigated per Section 19.106.040(F)(1)(a).

A tree removal plan showing all trees to be removed must be submitted with the land use application. The tree removal plan must clearly label healthy/viable trees, and dead, diseased, or hazardous trees.

A mitigation plan including a calculation demonstrating compliance with vegetation mitigation requirements must be submitted with the land use application and consistent with Section 19.106.040(F)(4).

b. 50 Foot Resource Protection Area Mitigation

Development within the 50 foot resource protection area approved through the exception process is subject to compliance with Shade Model Criteria. Water features within Fairview have been studied and classified based on the existing vegetation coverage. Figure 19.106.040(F)(1) demonstrates the classifications for each resource.

If development is permitted within the 50 foot resource protection area per the exception process, the vegetation within the entire protection area shall be brought into compliance with shade model criteria. Table 19.106.040(F)(2) provides required shrub and tree mitigation per shade category.

The area of the resource protection area (length times width) shall be used for the mitigation calculation. Figure 19.106.040(F)(2) provides an example of how to calculate mitigation.

c. 35 foot resource protection area mitigation

Permitted development within the 35 foot resource protection area is subject to compliance with Shade Model Criteria. Permitted development within the underlying zone that occurs within 15 feet of the outer boundary of the 35 foot resource protection area is subject to compliance with shade model criteria.

Water features within Fairview have been studied and classified based on the existing vegetation coverage. Figure 19.106.040(F)(1) demonstrates the shade classifications for each resource.

If development is permitted within the 35 foot resource protection area per Table 19.106.040(B), the vegetation within the entire protection area shall be brought into compliance with shade model criteria. Table 19.106.040(F)(2) provides required shrub and tree mitigation per shade category.

The size of the resource protection area (length times width) shall be used for the mitigation calculation. Figure 19.106.040(F)(2) provides an example of how to calculate mitigation.

d. Wetland Mitigation Requirements

Mitigation for development within the 50 foot wetland buffer or within 15 feet of the outer boundary of the 50 foot buffer is required.

Vegetation mitigation is required for all development within a delineated wetland buffer and for development located within 15 feet of the outer boundary of the 50foot buffer in order to reduce negative effects of the development on the protection area.

Type II Shade category mitigation requirements shall be used by calculating the number of required trees and shrubs based on the area of disturbance within the 50 foot buffer or within 15 feet of the outer boundary of the 50-foot buffer.

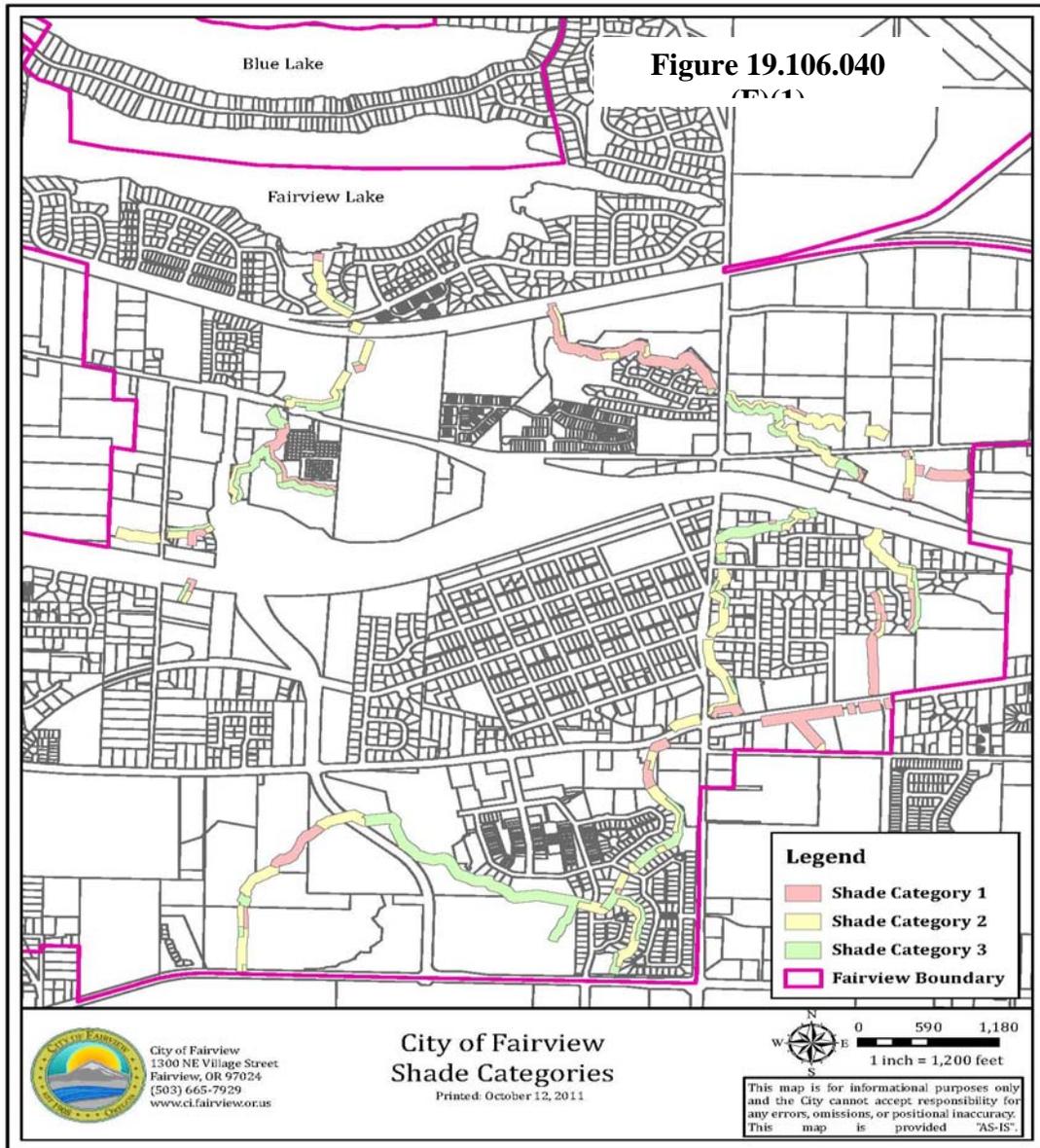


Table 19.106.040(F)(2)

Shade Category	Required Trees Per Acre	Required Shrubs Per Acre (43,560 square feet)
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.

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

- a. Plant size- Replacement trees must be at least two inches in caliper measured at 6 inches above the ground level for field grown trees or above the soil 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 planted, no more than 50% of the trees may be of the same genus.
- d. Native Plants- Only resource specific native plants identified on the most updated version of the Metro native Plant list are permitted.
- e. 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. 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.
- f. Invasive vegetation- Invasive, non-native or noxious vegetation must be removed within the mitigation area prior to planting mitigation vegetation.
- g. 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.
- h. 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 5 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.
- i. To enhance survival of mitigation plantings the following practices are recommended:
 - 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.

4. 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 19.106.040(F) but who will comply with all other provisions of Section 19.106.040(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 19.106.040(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 19.106.040(F) 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 19.106.040(F) 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 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. Boundary Verification

To determine whether the standards of Section 19.106 apply to a proposed development activity at any given location, the boundaries of any designated natural resources on or near the site shall be verified.

The Type I boundary verification process is required for activities proposed within:

Table 19.106.070(A)

Resource Type	Location of Development	Application Required
35 foot resource protection	Within 15 feet or less of the	Type I, II, or III application

area and associated water feature	required 35 resource protection area.	required per Table 19.106.040(B).
	Greater than 15 feet from the outer limits of the 35 foot resource protection area.	Type I boundary verification required prior to site development or earth disturbing activity.
50 foot and 75 foot resource protection area and associated water feature.	Development or earth disturbing activities within the designated resource or resource protection area	Type I, II, or III application per Table 19.106.040(B)
	Development or earth disturbing activities outside of the designated resource or resource protection area	Type I Boundary Verification Process.
Wetlands	Development or earth disturbing activities within the delineated wetland or 50 foot resource protection area	Type I, II, or III application per Table 19.106.040(B)
	Development or earth disturbing activities outside the delineated wetland or 50 foot resource protection area when located within 15 feet of the outer boundary of the 50 foot buffer.	Type I Boundary Verification Process.
Upland Habitat	Development or earth disturbing activities within the designated upland habitat area	Type I, II, or III application per Table 19.106.040(B)
	Development or earth disturbing activities located within 25 feet of the outer boundary of the upland habitat.	Type I Boundary Verification Process.
Clear Creek and Fairview Creek within Fairview Village (Special Standards on the Map)	Development within the buffer is strictly limited per Section 19.106.050.	Subject to Section 19.106.050
	Development outside the designated conservation area	Type I Boundary Verification

Fairview Lake	Within the 50 foot buffer	Per Section 19.106.060
	On the same parcel, but outside the 50 foot buffer	Type I Boundary Verification Process

B. Boundary Verification Process

A Type I Boundary Verification process is required as defined in Table 19.106.070(A) in order to verify the proximity of the proposed development to a mapped resource or associated protection area and to identify the required land use application type. The applicant shall submit the following:

1. Detailed property description and site plan of the property that includes all existing conditions on site.
2. A copy of the applicable natural resource map section.
3. The latest available aerial photo of the property with property lines shown to scale (at least 1 inch = 50 feet for properties 20,000 square feet or less and at least 1 inch = 100 feet for properties larger than 20,000 square feet).
4. A site plan demonstrating the location and boundary of the natural resource and designated protection area in relation to the proposed development. The site plan must be drawn to an architect or engineer scale.
5. Any other factual information that the applicant wished to provide to support the boundary verification.
6. The Public Works Director may require a wetland delineation be conducted based on the proximity of the development to the mapped wetland.

C. Land Use Application Requirements

Before a permit is issued for an alteration or development within or adjacent to a mapped natural resource or protection area, an application must be submitted to the City of Fairview by the person or entity requesting the alteration or development. The application shall include:

1. All proposed developments on parcels with a designated natural resource protection area require a site plan to demonstrate the proximity of a development to the mapped resource areas. The site plan shall include:
 - a. Verification of boundaries of the designated resource protection areas (19.106.070(A)).
 - b. Identification of existing disturbed areas within the applicable resource protection buffer. Required mitigation will focus on restoring 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:
 - a. The proposed alteration or development.
 - b. Materials to be used.
 - c. The purpose or reasons for the alteration or development.
 - d. Alterations considered to determine no practicable alternatives exist to the proposed encroachment, alteration, or development.
 - e. 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. Proposed erosion control measures.
 6. Vegetation mitigation plan and monitoring plan. 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.

- 7. Habitat assessment form and narrative as required by FMC 19.106.040 (E) Exception Process.
 - 8. 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.
- D. 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 applicable criteria provided in FMC Chapter 19.106.

19.106.080 Map Amendments and Administration

- A. The Natural Resources Map (Map) shows the locations of riparian resources, wetlands, upland habitat and other special resource features. The Natural Resources Map (Map) is a general indicator of protected resources and their associated vegetated corridors; the location of actual resource protection areas is determined according to the parameters established in Table 19.106.080(A).

Table 19.106.080(A) Riparian Resources		
Resource Type	Protected Feature	Width of Resource Protection Area
75-foot resource protection area	Fairview Creek from Glisan Street to the eastern portion of Community Park. ¹	75 feet measured from the top of bank.
50-foot resource protection area	Fairview Creek from property addressed 65 Bridge Street north to Fairview Lake	50 feet measured from top of bank.

¹ The platted conservation easement within the Fairview Village development shall apply 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 the 75-foot resource protection area.

	Osburn Creek Salmon Creek Columbia River	
35- foot resource protection area	Fairview Creek from Halsey Street to northern property line of 55 Bridge Street No Name Creek Rain Tree Creek	35 feet measured from top of bank.
Fairview Lake	Shoreline of Fairview Lake	50 feet measured from top of the bank, or 50 feet from the annual mean high water level (11.4 feet NGVD) of the lake in those areas where there is no bank or significant break of slope along the shoreline. Includes the submerged lake bottom within city limits.
Wetlands	All mapped wetlands on the Natural Resources Map	50 foot buffer measured from the outer wetland boundary.
Upland Habitat	All mapped upland habitat areas on the Natural Resources Map.	Areas as shown as Upland Habitat on the Map.
Special Standards for Fairview Village	Protected Feature	Width of Resource Protection Area
Fairview Creek	Conservation Easement	100 feet, 50 feet on each side measured from centerline of the stream.
Clear Creek	Conservation Easement	75 feet, 37.5 feet on each side measured from centerline of the stream.

B. Boundary Amendments

In come cases changes and corrections may need to be made to the Map. Changes to resource boundaries shall be reviewed through the Type II Land Use process. To propose a correction or change to the Map, the applicant shall submit the following information depending on the resource type.

1. Water Bodies (rivers, streams, springs, and lakes)

An applicant who believes that water body as shown on the Map should be corrected may submit a map amendment request that includes the following:

- a. A hydrology report prepared by a professional engineer, demonstrating whether or not the drainage meets the definition of a protected water feature.
- b. A topographic map of the site with contour intervals of 5 feet or less that shows the specific location on the subject property.
- c. A report prepared by a qualified professional that gives a detailed reasoning for the proposed map amendment. The report must also include a description of the qualifications and experience of all persons that contributed to the report.
- d. A description of the incorrect mapping and reasoning supporting the proposed amendments. A map shall also be submitted showing the mapped boundaries and the proposed boundary changes. The map shall be drawn to an engineer or architect scale.
- e. Any additional information necessary to address each of the detailed verification criteria provided in this section.

2. Wetlands

An applicant who believes that a wetland area shown on the Map should be corrected may submit a map amendment request that includes the following:

- a. A wetland delineation report, prepared by a professional wetland specialist in accordance with the 1996 Oregon Freshwater Wetland Assessment Methodology and following the wetland delineation process established by Department of State Lands (DSL), demonstrating the location of any wetlands on the site.
- b. The delineation report will be accepted by the City only after approval by DSL.
- c. A description of the incorrect mapping and reasoning supporting the proposed amendments. A map shall also be submitted showing the mapped boundaries and the proposed boundary changes. The map shall be drawn to an engineer or architect scale.
- d. A topographic map of the site with contour intervals of 5 feet or less, that shows the specific location of the wetland on the subject property.
- e. The Public Works Director shall confer with DSL and Metro to confirm delineation and the hydrology report, as may be needed, prior to issuing a notice of decision on a requested map correction.

- f. A report prepared by a qualified professional that gives a detailed reasoning for the proposed map amendment. The report must also include a description of the qualifications and experience of all persons that contributed to the report.
- g. Any additional information necessary to address each of the detailed verification criteria provided in this section.

3. Upland Habitat Areas

An applicant who believes that an upland habitat area shown on the Map should be corrected may submit a map amendment request that includes the following:

- a. A City of Fairview Habitat Assessment form demonstrating the values and functions of the upland habitat area.
- b. A report prepared by a qualified professional that gives a detailed reasoning for the proposed map amendment. The report must also include a description of the qualifications and experience of all persons that contributed to the report.
- c. A description of the incorrect mapping and reasoning supporting the proposed amendments. A map shall also be submitted showing the mapped boundaries and the proposed boundary changes. The map shall be drawn to an engineer or architect scale.
- d. Any additional information necessary to address each of the detailed verification criteria provided in this section.

4. Boundary Modification Approval Criteria- The city shall update the Map if the wetland or hydrology report submitted demonstrates the following:

- a. That there was an error in the original mapping
- b. That the boundaries of the resource have changed since the most recent update to the Map
- c. That a protected water feature or resource no longer exists because that area has been legally filled, culverted, or developed prior to the effective date of this ordinance.

C. Map Administration

1. Updates to the Map

When a boundary verification, conducted in accordance with the standards of Subsection 19.106.070(B) demonstrate an error in the location of a resource area shown on the Map, the City shall update the Map to incorporate the corrected information as soon as practicable . Changes to the Map are not considered amendments to the City’s Comprehensive Plan, the applicable Comprehensive Plan Map, or to the zoning map.

2. Mapping Implications of Allowed Disturbances

Riparian Resources- permanent disturbances within a riparian resource, whether they legally occurred prior to the adoption of this section or are allowed according to the standards of Section 19.106.040, do not affect the way related riparian resources are shown on the Map.

Upland Habitat Areas- When disturbances are allowed within the upland Habitat area, in accordance with the applicable standards of Section 19.106-040, the City may update the Map to show that the permanently disturbed area is no longer considered an upland habitat area

19.106.090 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.

19.106.100 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

19.106.110 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.

19.106.120 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.

CHAPTER 5

OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

GOAL

To conserve open space and protect natural and scenic resources.

INTRODUCTION

An important issue that faces many communities is the declining environmental quality that accompanies urban growth. Rapid growth in the Portland metro area has forced surrounding cities such as Fairview to face the challenge of balancing natural resource protection with the needs and rights of property owners and the requirements of efficient urbanization. The policies and strategies of this section and Chapter 6 provide the guiding direction to protect the natural environment and ensure that long-term growth does not adversely affect the natural resources that contribute to Fairview's livability. The policies and programs described here emphasize the importance of developing and maintaining an integrated open space system that incorporates parks and recreation, wildlife, wetlands and waterways.

This chapter is primarily guided by the provisions of Statewide Planning Goal 5, which outline policies and objectives for local land use planning to better protect and restore natural resources.

Goal 5 is a broad goal that covers riparian corridors, wetlands, wildlife and fish habitat, mineral and aggregate resources, energy sources, natural areas, scenic views and sites, open space, ground water resources, wilderness areas, historic resources, cultural areas, adopted Oregon recreation trails and federal wild and scenic waterways.

A more recent concept directing resource planning in urban areas such as Fairview entails reclaiming existing streams, drainage ways, wetlands and waterways to serve a number of urban functions. These may include stormwater filtration, flood-control, preservation of fish and wildlife, and greenways with paths to link land uses and provide recreation. Preservation of waterways assists in fostering sustainable urban growth, in satisfying the requirements of Goal 5, and in attaining state and federal environmental quality standards.

Implementing these state and federal standards, Fairview has placed an increasingly high value on the conservation of open spaces and the protection of natural and scenic areas. Now that the City is approaching build-out, much of the vacant land that was previously considered open space is now developed. However, approximately 23% of the total area of the City is protected open space or parks and will remain green. (See Figure 5-C, Natural Resource Inventory Map Areas Protected by the Significant Environmental Concern Overlay, and Figure 5-D, Natural Areas Protected by the Riparian Buffer Overlay)

In addition to natural resources, archaeological and historic resources are required to be addressed and inventoried. State law defines archaeological areas as those "characterized with evidence of an ethnic, religious, or social group with distinctive traits, beliefs, and

social forms”; and defines historic areas as “lands with sites, structures, and objects that have local, regional, statewide, or national historical significance.” The state has shown a strong commitment to preservation of archaeological and historical sites by the incorporation of the following findings in ORS 358.605:

- The Legislative Assembly declares that the cultural heritage of Oregon is one of the state’s most valuable and important assets, that the public has an interest in the preservation and management of all antiquities, historic and prehistoric ruins, sites, structures, objects, districts, buildings and similar places, and things, for their scientific and historic information, and cultural and economic value, and that the neglect, desecration, and destruction of cultural sites, structures, places and objects results in an irreplaceable loss to the public.
- The Legislative Assembly finds that the preservation and rehabilitation of historic resources are important as a prime attraction for visitors; that they help attract new industry by being an influence in business relocation decisions; and that rehabilitation projects are labor intensive, with subsequent benefits of payroll and energy savings, and are important to the revitalization of deteriorating neighborhoods and downtowns.
- It is therefore, the purpose of this state to identify, foster, encourage, and develop the preservation, management, and enhancement of structures, sites, and objects of cultural significance within the state in a manner conforming with, but not limited by, the provisions of the National Historic Preservation Act of 1966.”

There are sites in Fairview that were home to early Native American inhabitants, although there have been no specific site surveys of archaeological sites in the urban area. Development has occurred near many of these culturally sensitive areas and future urban development could cause permanent loss of evidence of the area’s early inhabitants. According to Goal 5, if there is inadequate inventory information, the City must express its intent, through plan policies, to address such resources in the future, including a time frame for this review. Pursuant to state law, a person may not knowingly and intentionally excavate, injure, destroy, or alter a prehistoric site or object, or remove an archaeological object from private lands, unless a state permit authorizes that activity. State guidelines strongly recommend that those considering development on previously undisturbed private lands contact the Oregon State Historic Preservation Office (SHPO) and the appropriate Native American tribes to determine whether sites or objects are likely to be present.

Under Statewide Planning Goal 5, comprehensive plans must also foster and encourage the preservation, management and enhancement of significant historic resources. State law requires that cities designate significant historic resources, and protect them through local review of proposed exterior alterations and demolitions. Historic resources can be buildings, structures, objects, districts or sites. Designation is a decision by the city declaring that a historic resource is significant. A historic resource listed on the National Register of Historic Places or located within a National Register historic district is considered to have “statewide significance.” The City must protect historic resources having statewide significance whether or not they have been officially “designated” by the City. In addition, the state, counties, cities, school districts and other governmental

units owning historic resources are required to conserve such resources, and assure that they are not inadvertently transferred, sold, substantially altered, or allowed to deteriorate. (See Figure 5-A, Culturally Sensitive Areas)

FACTUAL INFORMATION

Mineral and Energy Resources

The planning area has no mineral or fossil fuel resource deposits threatened by urban development. The Salish Ponds are the site of old rock quarries. However, the City has no significant mineral or energy resource deposits. The City is the location of two companies that sell sand and rock resources excavated elsewhere but sold within the city limits.

Natural Resource Inventory

The natural resources in the planning area consist primarily of upland forests, riparian forest and associated streams and wetlands. The City’s major water features that enter the Columbia River and Fairview Creek Watershed are: Fairview Creek, Osburn Creek, Clear Creek, No Name Creek, Salmon Creek, Fairview Lake, Blue Lake and the Columbia Slough. The associated riparian and wetland areas adjacent to these water features provide the most important wildlife habitats within the City for both migratory and indigenous wildlife. Riparian corridors provide links to natural resource sites and are important for fish habitat. Riparian vegetation provides shade and food for fish species. Wildlife habitats in the area warrant concern, because many of the upland forest and riparian corridors have been heavily disturbed. Although Fairview Creek and Fairview Lake are not significant fish habitats, the riparian habitat and wetland areas throughout the City, are becoming increasingly important as urban development eliminates similar habitats. Most of the identified wetlands have remained intact due to regulations of the Division of State Lands. The City of Fairview has strengthened its relationship to rivers, streams, and lakes. For instance, the requirement to plant native vegetation along Fairview Lake, the Columbia River, Fairview Creek, and other creeks in the Fairview Creek Watershed will help to provide food and cover for migrating waterfowl and wildlife as well as create visual amenities to the community. Table 5-A lists the protected open spaces with the City of Fairview.

TABLE FIGURE 5-A

Protected Open Spaces

Area	Acreage
Blue Lake Park	190 acres
Salish Ponds Wetlands Park	70 acres
Chinook Landing Marine Park	46 acres
Columbia River Open Space	42 acres

Woodland Elementary School Wetland	27 acres
James River Mitigation Area	22 acres
Pelfrey South Shore Conservation Area 14 acres	14 acres
Heron Pointe Wetland	10 acres
Fairview Woods Park	8 acres
Blue Heron Open	3 acres
Lakeshore Park Mitigation Area	2.5 acres
Schatz Property Open Space	2 acres
Pettijohn Park	1 acre
TOTAL PROTECTED AREA	437.5 acres

As part of the state required Goal 5 analysis, the natural resources in the City of Fairview were inventoried in 1989, and updated in 1992, 1996, and 2000 and 2012. The Fairview “impact area” for the analysis is the entire City. This is due to the fact that the majority of the city is in the Fairview Creek Watershed.

~~Seventy one natural resource sites were inventoried, evaluated and determined to be of significance. The sites were categorized either as wetland (WD), water feature (WF), or other natural resource (NR).~~

~~These sites are identified in Figure 5-B: Natural Resource Sites inventory and depicted in Figure 5-C, Natural Areas Protected by the Significant Environmental Concern Overlay and Figure 5-D, Natural Areas Protected by the Riparian Buffer Overlay. Updates to the inventoried sites appear in Figure 5-B. More specific information is contained in the site data sheets. The Goal 5 requirements for a generalized inventory of natural areas have been met. The Division of State Lands (DSL) (ORS 541.605-541.695) regulates Removal/fill in wetlands. Because wetlands identification procedures can change over time, the exact boundaries on maps may not be accurate. Consultation with the Division of State Lands or a wetlands delineation expert should occur before development.~~

The 2004 update to Chapter 5 created two sets of natural resource maps and regulated resources in two different code sections of the Fairview Municipal Code. This approach was problematic in that it regulated similar resources, such as wetlands in two different methods.

The Fairview City Council updated the natural resource regulations in 2012 to comply with Metro’s Title 13, Nature in Neighborhood requirements, to correct mapping inconsistencies, and improve the code language.

The revised regulations protect riparian resources, wetlands, and upland habitat areas. The riparian resource protection area includes the mapped resources and the area of land immediately adjacent to the edges of banks located along the Columbia River and Fairview Creek, Osburn Creek, No Name Creek, Salmon Creek, Rain Tree Creek, and Clear Creek. 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. Upland habitat areas provide valuable functions to the city's riparian and wetland areas and to fish and wildlife. The regulations pertaining to the upland habitat areas encourages habitat friendly development while minimizing impact on the water quality and fish and wildlife habitat functions.

No rare or endangered fish, wildlife, or plants have been observed in the planning area. There were reported observations of a western pond turtle (*Clemmys marmorata*) in the City in August 1992. It was concluded, as part of the Goal 5 analysis, that not enough information was known to enable a decision on the impact of the reported observation of a western pond turtle. If, in the future, the turtle is found, a turtle management plan will be required to attempt to protect the habitat.

ESEE Analysis

The state requires local governments to identify conflicting consequences of the protection of natural resource sites. An analysis of the Economic, Social, Environmental, and Energy Consequences of Resource Protection (ESEE) was completed in 1992. In order to comply with the state's periodic review requirements, the ESEE analysis was amended in 1996 and again in 2000.

Overall, resource protection was determined to be positive. However, protecting resources fully was not merited because it would limit Fairview's ability to meet its housing density obligations, would limit needed infrastructure, would remove the development potential of entire parcels, and would limit the social benefit of using the resource for recreational use, no matter how passive.

Limiting conflicting uses in a manner that protects the resource was chosen as the most acceptable means to balance ESEE needs. It is the City's intent to allow development to occur and also protect its resources. The needs of the community for housing and jobs are to be balanced with protection of resources for social and environmental benefit. These goals will be accomplished using land use regulations, such as the ~~Riparian Buffer and Significant Environmental Concern Overlay Zones~~ Natural Resource Protection Areas, which protect riparian corridors and identified natural resource sites.

Riparian Buffer Education and Exception Process

As stated above, there is a history of riparian protection of lakes and streams within the City. Fairview was one of the first smaller jurisdictions in the Portland metro area to adopt a riparian buffer on its lakes and streams. The City has worked at enforcing the riparian regulations since they were first adopted in 1993.

Prior and during development of the lands bordering Fairview Lake, the City provided education and notification of the location of riparian areas. Between July 2001 and June 2002 the City made an additional effort to educate homeowners around Fairview Lake about the riparian regulations. The City formed a citizen committee of lakeside property owners who worked with City staff to develop guidelines and an exception process to allow more flexibility to the riparian regulations without compromising the value of the riparian buffer. ~~The City Council approved the guidelines and exception process in June 2002.~~ Within the riparian buffer, the exception allows for an area of lawn when additional

plant densities are provided and prohibits chemicals and fertilizers, other than those expressly permitted by the City.

However, the exception process was never formally adopted by the City Council by Ordinance.

Parks and Recreation/Open Space Master Plan

The Fairview Parks and Recreation/Open Space Master Plan (“Master Plan”) was last updated in May 2001. The 2001 Master Plan replaces the 1994 Parks Master Plan and is the guiding document for all future park system development in Fairview. (See Chapter 8: Recreational Needs for a more complete discussion on the Master Plan.)

The Master Plan addresses both active recreational spaces as well as passive natural open space areas. There are approximately 83 acres of protected open space in City ownership. The majority (70 acres) is part of the Salish Ponds Wetlands Park. The Master Plan includes an action plan, which details projects and policies supportive of a system that best serves the needs of the community.

Scenic and Historic Areas

Scenic views of Mount Hood, the Columbia River and area lakes and streams are available at locations throughout the City. In 1993 during periodic review of the Comprehensive Plan, the City declared that topography and urban development patterns limited outstanding scenic views and sites, and that they are not unique or important enough to warrant being included in the Goal 5 inventory. As a result there are no scenic view protection measures such as view corridor regulations in the development review process. This changed in 2002 with the creation of the Visioning Document 2022, which identifies interest in protecting scenic views as an important goal.

Fairview is located in an area with a long history of attracting explorers and settlers. Before European explorers sailed up the Columbia River as far as the Corbett area, Indian tribes had been settled near Blue Lake for generations. The Lewis and Clark expedition denoted the Sandy River and the Fairview area in 1805 –1806. Then came the fur trappers, followed by the missionaries and land claim settlers who eventually started farming the area in the mid 1800’s. By 1908 the City of Fairview incorporated, including a post office, commercial services and homes.

Archaeological sites are known to exist near the Columbia River and the lakes in the area, although few site-specific surveys have been done. In 1992 the City prepared the Fairview Historic Resource Inventory and Historic Context and provides a list of 35 historic properties deemed worthy for local protection. In 1990 the City adopted provisions for protection of historic properties found in Title 18 of the Fairview Municipal Code. The Fairview Municipal Code provides for the establishment of a Historic Review Board, a process for designating historic sites, and historic building alteration standards and procedures. Actual designation of the sites will include hearings before the Historic Review Board.

(See Figure 5-F: Historical Registration Index at the end of this chapter.)

(See Chapter 6: Resource Quality for surface and ground water quality protection policies.)

POLICIES

1. Where a property contains a wetland, the Division of State Lands and/or a wetlands delineation expert shall be consulted prior to development.
2. Within identified resource areas conflicting uses shall be avoided or limited to better provide habitat for wildlife, visual diversity, maintain water quality and enhance the attractiveness and livability of the city. Where conflicting uses do affect the resource area, their impacts shall be reasonably mitigated.
3. Allow Transfer of Development Rights and other mechanisms as necessary to protect land with highly valuable natural resources.
4. Enforce compliance with provisions of the Riparian Buffer Overlay Zone, as part of the Fairview Municipal Code.
5. Bolster the Significant Environmental Concern Overlay Zone provisions in the Fairview Municipal Code to protect natural resources.
6. Public access to highly sensitive habitats shall be limited either seasonally or permanently to reduce serious impacts on wildlife.
7. All new lands protected by riparian buffers, conservation easements and mitigation shall allow public access wherever practical and according to the sensitivity of the natural resource.

ACTIONS

1. Appoint the Fairview Planning Commission to consider designation and preservation of historic buildings.
2. Develop a program for the protection of important scenic views in the planning area, such as view protection corridors.
3. Preserve the existing wetlands on 207th near Salish Ponds.

SOURCES USED- listed in Appendices A & B

Parks and Recreation/Open Space Master Plan

Visioning Document 2022

Cultural Resources Inventory and Historic Context

Oregon Land Use Goals & Guidelines

FIGURE 5-A

CULTURALLY SENSITIVE AREAS

FIGURE 5-B

NATURAL RESOURCE SITE INVENTORY

Wetlands		Upland Habitat		Water Features
1	1.84	1	52.28	
2	1.34	2		
3	1.75	3	6.01	
4	4.7	4		
5	3.60	5		
6	1.0	6		
7	.50	7		
8	1.74	8	3.14	
9	.83	9	14.30	
		10	4.37	
10	3.81			
11	22.22	11	7.66	
12	9.9	12	2.01	
13	1.75			
14	1.1	13		
		14		
15	.92			
16	1.02	15		
17	4.20			
18	11.56			
19	2.65			
20	1.04			
21	0.36			
22	2.71			
23	6.88			
24	.38			
25	.10			
26	.05			
27	1.26			
28	1.00			
Total:				

A total of about 415 acres were inventoried as wetlands, water bodies, and upland natural area for purposes of Statewide Planning Goal 5, the Natural Resources Element of the Comprehensive Plan of the City of Fairview. This represents about 18.5 percent of the approximately 2,243 acres within the City of Fairview.

FIGURE 5-C

~~NATURAL AREAS PROTECTED BY~~

~~THE SIGNIFICANT ENVIRONMENTAL CONCERN OVERLAY~~

Replaced with Revised Natural Resource Inventory Map

FIGURE 5-D

~~NATURAL AREAS PROTECTED BY~~

~~THE RIPARIAN BUFFER OVERLAY~~

FIGURE 5-E-D

FAIRVIEW CREEK WATERSHED MAP

FIGURE 5-F E

HISTORICAL REGISTRATION INDEX

Based on a two-phase survey of the historic resources of the City of Fairview (Fairview Cultural Resource Inventory and

Historic Context, 1992), the following list was generated of properties deemed worthy for local protection under

Ordinance 3-1990 of the City of Fairview.

#	Name	Address	
1	Snover Store and Residence John M.	55 Depot Street	
2	Loser House Heslin House	60 Depot Street	
3	Smith Memorial Church Manse	60 Main Street	
4	Fairview School	200 Main Street	
5	Fairview Methodist Episc. Church	225 Main Street	
6	Richard S. "Babe" Anderson House	240 Main Street	
7	Henry & Laura Fuller House 440	610 Main Street	
8	Cedar Street	440 Cedar Street	
9	R.W. & Anna Wilcox House Henry	550 Cedar Street	
10	Brooks House	620 Cedar Street	
11	Charles & Marceil Taber House	635 Cedar Street	
12	Cree/Cady House Street	155 Harrison	
13	C.N. & Josie Buckner House Melvin	210 Harrison Street	
14	K. Moller House Fairview Grange	240 Harrison Street	
15	Hall	300 Harrison Street	
16	Esther Mohr House	320 Harrison Street	
17	Fairview City Jail	Ne-cha-co-kee Park	

18	John & Dora Peterson House	385 Second Street	(pre-1943 only)
19	William Brooks House	35 Third Street	
20	A. McGill & Son Nursery Co.	Fourth Street, N. of RR tracks	
21	Whse.	405 Fourth Street	
22	Marion & Laura Burlingame House	21745 NE Halsey	
23	Donald W. McKay House H.J. &	1930 NE 201st (Birdsdale Rd.)	
24	Margaret Stirling House	2240 NE 205th (Osburn Rd.)	
25	S.P. Osburn House	2246 NE 205th (Osburn Rd.)	
26	B.E. Davis House William Morrison	1919 NE 223rd (Fairview)	
27	House	Ave.	
28	Smith Memorial Presbyterian	2420 NE 223rd (Fairview)	
29	Church Daniel Sherman Dunbar	Ave.	
30	House	2425 NE 223rd (Fairview)	
31	Otis Jackson House	Ave.	
32	John Jonas House	50 Bridge Street	
33	A.R. Fisher House	105 Bridge Street	
34	Joshua Ledbury House	20575 NE Sandy Road	
35	Jacob Luscher House	20800 NE Sandy Road	
	Barn, Fairview Holstein Farm	22020 NE Sandy Road	
36	Union Pacific Railroad Bridge	NE Sandy Road	
	Fairview Ave.	Graham Line at NE 223rd	
	Underpass/Stonework.	(Fairview)	
		NE 223rd (Fairview) Ave	

Ordinance 3-2012 (Attachment
4)

