



PLANNING COMMISSION MEETING

Tuesday, July 24, 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 – June 26, 2012**
4. **PUBLIC HEARING**
 - a) **File 12-17-ZC**
Final Plat Filing Extension
Ordinance 5-2012

 - b) **File 9-32-ZC**
Natural Resource Code Amendments: Title 13
Ordinance 3-2012
Continued from June 26, 2012
5. **STAFF UPDATES**
 - a) **Hannah's Tract Design Review**
 - b) **Parks Update**
6. **TENTATIVE AGENDA – TBD**
7. **ADJOURNMENT**

NEXT PLANNING COMMISSION MEETING IS *TBD*.

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, June 26, 2012

PRESENT: Gary Stonewall, Chair
Steve Kaufman, Vice-Chair
Julius Arceo
Keith Kudrna
Ed Jones
Jack McGiffin
Jan Shearer

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

1. CALL TO ORDER

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

2. CITIZENS WISHING TO SPEAK ON NON-AGENDA ITEMS

Dawn Greenwell, 183 Crestwood St., Fairview, Oregon inquired if the research and review had been completed for the Hannah's Tract development. Senior Planner Nesbitt responded it had not been completed and anticipated having an update at the next meeting. Staff was working with the developer to ensure all conditions of approval were completed and occupancy would not be issued until all conditions of approval were satisfied. Ms. Greenwell and Kate Muenchew, Crestwood St. resident, requested permits were not issued for the final home until the review had been completed. Senior Planner Nesbitt stated the Public Works Director would be informed of the request.

3. REVIEW AND ADOPT MINUTES

June 12, 2012 minutes approved as written by consensus.

4. PUBLIC HEARING

a) File 9-32-ZC

Natural Resource Code Amendments: Title 13

Ordinance 3-2012

Continued from June 12

Senior Planner Nesbitt summarized proposed changes in response to the June 12 Planning Commission public hearing. Following discussion of each item the Commission agreed:

- Buffer measurement from center line of creek and add 5 feet to accommodate for the shift in measurement.
- Requested Staff research the Oregon Revised Statutes regarding the protected time allowance for non-conforming rights.
- Commission supported creating a mitigation bank. Applicant could request where to plant, the Public Works Director would have the final decision, and the applicant would have the right to appeal to the planning commission at no cost. .
- Commission opposed buffer averaging for development within the 35 feet mapped, 35 and 50 foot buffers; a Type III process. Commissioner Shearer and Kudrna opposed buffer averaging. Commissioner Jones stated there would have to be scientific support

demonstrating the effectiveness of the buffer was not compromised to consider and approve of buffer averaging.

- Approved the two mitigation options and the option 2 requirement when no there was no tree removal.

Chair Stonewall inquired if any person would like to speak in favor of, neutrally, or in opposition of the application. Garth Everhart, 954 NE Clear Creek Way, Fairview, Oregon spoke as a representative of the Fairview Business Association. Mr. Everhart commented the River Development Plan should be based off the comp plan and the city should defer to the Corp of Engineers and Department of State Lands for river front development; location of mitigation bank plants should be the applicant/developers choice; the map amendment process should be a Type I process when the applicant was able to provide scientific data documenting the error; and the value to rebuild in a foot print should not be compromised and restricted by a predetermined length of time in which a property owners non-conforming rights would be lost if not complied with.

Lonnie Dicus, Senior Advisor, USS Ranger Foundation, 1560 S Beechum Dr., Oregon City, Oregon requested flexible standards for development along the river front, not only for the potential placement of the USS Ranger, but for the commercial property development next to the Ranger site. Developing the river front was a win for everyone and one which could be achieved with a balanced approach for all considerations.

Dawn Greenwell, 183 Crestwood St., Fairview, Oregon stated riparian buffers protect clean water and should not be compromised. She requested decks not be allowed within the buffer due to potential chemical, i.e. deck cleaner, run off into the creeks. Ms. Greenwell objected to reducing the buffer along Fairview Creek for benefit of a business and giving money as an option for the mitigation bank due to the overhead to run and manage the program. She requested the Commission reconsider measurement from center line as creek channels would be better protected using the high bank measurement method.

Jeff Hanson, 20315 NE Sandy Blvd., Fairview, Oregon representing Lynnia Woods, commented they had no recollection of Brian Harper of Metro stating an additional 5 feet of buffer would be required if measuring from center of stream. Mr. Hanson requested the 35 foot buffer along Osburn Creek not be increased if measuring from center line.

Henry Pelfrey, 3600 Pelfrey Ave., Fairview, Oregon, owner of a business along Osburn Creek stated he had been a good environmental steward. Over time the buffer had been increased from 26 feet to 35 feet; increasing it another 5 feet to accommodate for center line measuring would result in loss of land value and money.

Commissioner Shearer inquired if Osburn and No Name creeks could have 35 foot buffers measuring from center line and Fairview Creek a 40 foot buffer measuring from center line. Staff responded yes, and the Commission agreed.

Other Commission discussion included agreeing Columbia River development should be exempted and regulated under state codes and deferred to appropriate state agencies; if codes conflict the most reasonable language should be applied; and the land use application process should not be such that it deterred applicants from daylighting a culvert.

Commission Shearer moved to continue the hearing until July 24, 2012 and Vice Chair Kaufman seconded. The motion was approved unanimously.

6. STAFF UPDATES

Friday, June 29, was the last day for 3 staff positions. Beginning Monday, July 2, the newly created position would provide 1/2 time planning services.

7. TENTATIVE AGENDA - July 24, 2012

a) File 12-17-ZC
Final Plat Filing Extension
Ordinance 5-2012

b) File 9-32-ZC
Natural Resource Code Amendments: Title 13
Ordinance 3-2012
Continued from June 26

8. ADJOURNMENT

Meeting adjourned by consensus at 8:25 PM.

Gary Stonewall, Chair

Devree A. Leymaster
Administrative Program Coordinator
Public Works Department

Date: _____



PLANNING COMMISSION STAFF REPORT

TO: Fairview Planning Commission
FROM: Lindsey Nesbitt, Development Analyst
DATE: July 24, 2012
SUBJECT: Adoption of Ordinance 5-2012 Final plat recording extension and amendments to Section 19.413.040-Type IV Procedures.

ACTION REQUESTED

Forward a recommendation for the City Council adoption of Ordinance 5-2012.

BACKGROUND INFORMATION

Final Plat Extension

The Fairview Municipal Code (FMC) Section 19.430 requires that a final plat be filed with Multnomah County within one year from the date of preliminary plat approval.

In 2010 and 2011, because of the state of the economy, the City Council approved two code amendments allowing applicants to request additional extensions to the final plat filing deadline.

The following three final plats have not been filed and are set to expire during 2012.

1. Vision Development - 10 lot planned unit development on Depot Street. Current filing deadline is May 31, 2012.
2. Spencer Rogers - 7 lot development on Oregon Street (just off 201st). Current filing deadline is September 18, 2012.
3. Blue Lake Manufactured Home Park - creation of 93 lots in existing manufactured home park. Current filing deadline is December 28, 2012.

The applicants listed above have indicated they are still not ready to file the final plat for their project. The amended code language below will allow for an additional one year extension for the above mentioned plat applications.¹

The proposed changes are shown in underline.

FMC 19.430.130 E. Extensions.

The city administrator or his or her designee shall, upon written request by the applicant and payment of the required fee, grant up to two one-year extensions of the approval period not to exceed one year each. For a preliminary plat approved in 2007 or 2008, the city administrator or the administrator's designee may approve a ~~third~~ fourth one-year extension.

¹ The additional 1 year extension will only apply to preliminary plats that received an approval in the years 2007 and 2008 and have not already expired. The additional year extension will not apply to any other plat applications.

Amendments to Section 19.413.040- Type IV Procedures

In 2009, Section 19.413 was amended, however review criteria for Type IV procedures was accidentally omitted from this section. The Ordinance 5-2012 will add the following omitted language back into Section 19.413.040 :

G. Decision making consideration.

The recommendation by the planning commission and the decision by the city council shall be based on consideration of the following factors:

A. State wide planning goals and guidelines

B. Comments from applicable federal or state agencies.

c. Applicable intergovernmental agencies

D Applicable Comprehensive Plan policies.

DECISION MAKING ALTERNATIVES

1. Forward a recommendation for City Council adoption of Ordinance 5-2012.
2. Modify proposed code amendments, and forward a recommendation for City Council adoption of Ordinance 5-2012.
3. Take no action.

ATTACHMENTS

Ordinance 5-2012 – Final Plat Extension and Type IV Review Criteria

Attachment 1

ORDINANCE
(5-2012)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAIRVIEW,
FAIRVIEW, OREGON AMENDING THE FAIRVIEW MUNICIPAL CODE SECTIONS
19.430.130(D) MODIFICATIONS AND EXTENSIONS AND 19.413.040(G) TYPE IV
PROCEDURES DECISION MAKING CONSIDERATIONS**

WHEREAS, a public hearing was held by the Planning Commission on July 24, 2012 and by the City Council on August 1, 2012, and

WHEREAS, public notice was provided in accordance with Fairview Municipal Code 19.413.040 and ORS 227.186, and

WHEREAS, amendments were made to 19.430.130(D) in 2010 authorizing an additional 1 year extension for the filing of the final plat, and

WHEREAS, amendments were made to 19.430.130(D) authorizing the City Administrator to grant an additional one year extension for the filing of a final plat for preliminary plats approved in 2007 and 2008, and

WHEREAS, amendments are approved to allow a final one year extension for the filing of a final plat for preliminary plats approved in 2007 and 2008 that have not yet expired, and

WHEREAS, code amendments approved in 2009 through Ordinance 6-2009 accidentally omitted decision making criteria for Type IV Land Use decisions, and

WHEREAS, the code amendment reestablished the omitted code language, and

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

Insert underlined words. Delete words in ~~striketrough~~

Section 1

FMC 19.430.130 D. Modifications.

The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 19.415 FMC, Modifications.

FMC 19.430.130 E. Extensions.

The city administrator or his or her designee shall, upon written request by the applicant and payment of the required fee, grant up to two one-year extensions of the approval period not to exceed one year each. For a preliminary plat approved in 2007 or 2008, the city administrator or the administrator's designee may approve a ~~third~~ fourth one-year extension.

All extensions are subject to the following:

1. Any changes to the preliminary plat follow the procedures in Chapter 19.415 FMC;
2. The applicant has submitted written intent to file a final plat within the one-year extension period;
3. An extension of time will not prevent the lawful development of abutting properties;
4. There have been no changes to the applicable code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application shall be required; and
5. The extension request is made before expiration of the original approved plan.
6. The fee shall be paid for each extension request.

Section 2

19.413.040 Type IV procedures (legislative).

A. Type IV matters are considered initially by the planning commission with final decisions made by the city council. Type IV procedures apply to legislative matters and involve the following:

1. Zoning map amendments.
2. Development code text amendments.
3. Comprehensive plan text amendments.
4. Comprehensive plan map amendments.
5. Planned developments.
6. Park master plans.
7. Master plan adoption.
8. Annexations.

B. Required Hearings. A minimum of two hearings, one before the planning commission, and one before the city council, are required for all Type IV applications, except annexations where only a hearing by the city council is required.

C. Public Notification Requirements. Notice of public hearings shall be given by the city in the following manner:

1. At least 30 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.175 and mailed to:

- a. Each owner whose property would be rezoned in order to implement the ordinance.
- b. Any affected governmental agency.
- c. Recognized neighborhood groups or associations affected by the ordinance.
- d. Any person who requests notice in writing.
- e. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
- f. Any property owner affected by the zone changes where the change in regulations becomes more restrictive than the current regulations shall be notified.

2. At least 10 days before the scheduled planning commission public hearing date, and 10 days before the city council hearing date, notice shall be published in a newspaper of general circulation in the city.

3. Metro and the Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed Comprehensive Plan and development code amendments at least 45 days before the first public hearing at which public testimony or evidence will be received.

4. Notifications for annexation shall follow the provisions of this chapter.

D. Content of Notices. The mailed and published notices shall be consistent with ORS 227.186 and 197.610 and include the following information:

1. The file number and city contact information.
2. A description of the location of the proposal that effectively and clearly describes the location of the geographic area.
3. A detailed description of the proposed changes/modifications, and the place where all relevant materials and information may be obtained or reviewed.
4. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the council and available at City Hall.

E. Failure to Receive Notice. The failure of any person to receive notice shall not invalidate the action, providing:

1. Personal notice is deemed given where the notice is deposited with the United States Postal Service.

2. Published notice is deemed given on the date it is published.

F. Process.

1. The planning commission shall:

a. After notice and a public hearing, vote on and prepare a recommendation to the city council to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative; and

b. Within 10 business days of determining a recommendation, the presiding officer of the planning commission shall sign the written recommendation, and it shall be filed with the city recorder.

2. Any member of the planning commission who votes in opposition to the planning commission's majority recommendation may file a written statement of opposition with the city before the council public hearing on the proposal. The community development director shall send a copy to each council member and place a copy in the record.

3. If the planning commission fails to adopt a recommendation to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative proposal, within 60 days of its first public hearing on the proposed change, the community development director shall:

a. Report the failure together with the proposed change to the city council; and

b. Provide notice and put the matter on the city council's agenda, a public hearing to be held, and a decision to be made by the council. No further action shall be taken by the commission.

4. The city council shall:

a. Approve, approve with modifications, approve with conditions, deny, or adopt an alternative to an application for legislative change, or remand the application to the planning commission for rehearing and reconsideration on all or part of the application.

b. Consider the recommendation of the planning commission; however, it is not bound by the commission's recommendation.

c. Adopt ordinances, which shall be signed by the mayor after the council's adoption of the ordinance.

G. Decision making consideration.

The recommendation by the planning commission and the decision by the city council shall be based on consideration of the following factors:

A. State wide planning goals and guidelines

B. Comments from applicable federal or state agencies.

c. Applicable intergovernmental agencies
D Applicable Comprehensive Plan policies.

H. Notice of Decision. Notice of a Type IV decision shall be mailed to the applicant, all participants of record, Metro, and the Department of Land Conservation and Development, within five business days after the city council decision is filed with the city administrator or designate. The city shall also provide notice to all persons as required by other applicable laws.

I. Final Decision and Effective Date. A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting ordinance or, if not approved, upon mailing of the notice of decision to the applicant.

This ordinance is effective thirty days from its passage.

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

Mayor, City of Fairview
Mike Weatherby

ATTEST

Interim City Administrator, City of Fairview
Samantha Nelson



PLANNING COMMISSION STAFF REPORT

TO: Fairview Planning Commission
FROM: Lindsey Nesbitt, Development Analyst
DATE: July 24, 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 Section 19.106 Natural Resource Regulations, Comprehensive Plan Chapter 5 Open Spaces, Scenic and Historic Areas, and Natural Resources, and Natural Resources Map.

Summary of Proposed Changes

At the June 26, 1012 public hearing, the Planning Commission directed staff to research and make the following changes to the proposed Natural Resource Code:

1. Research the State Statutes regarding time limit to reestablish nonconforming rights.

The draft code has been revised to include the following nonconforming language for uses and structures within a mapped resource protection area:

Should a nonconforming structure, development footprint, or nonconforming portion of structure be destroyed by any means to an extent more than 75 percent of its current value as assessed by the Multnomah County assessor, it shall be reconstructed only in conformity with the current development code.

Rebuilding of nonconforming structures and development footprints destroyed less than 75% of the current value assessed by the Multnomah County Assessor shall be rebuilt within 5 years from the date the structure was destroyed/damaged.

Public Comment: Comments were received requesting the time limit for allowing the re-establishment of nonconforming rights be increased to 12 years and that the 75% limitation be removed. By removing the 75% limitation all structures or development footprints would be allowed to be rebuilt.

The state statues require:

Restoration or replacement of any (nonconforming) use may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster.

Summary: The Statutes require replacement or reestablishment of the nonconforming use within 12 months of damage. However, the degree of

disturbance is not limited; therefore nonconforming uses and structures completely destroyed may be reestablished.

Fairview Code limits damage to 75%, any damage that is greater than 75% may be rebuilt, but comply with the current codes.

2. Vegetation Mitigation Bank

Establishment of a process to utilize a vegetation mitigation bank has been written into the draft code. An applicant may decide to utilize the mitigation bank after demonstrating required vegetation cannot be planted on site. Three mitigation bank options have been written into the code:

Public Comment: Comments were received expressing concern that the Public Works Director is authorized to determine where mitigation would occur.

The code has been amended to provide an appeal process to the Planning Commission if the applicant does not agree with the decision made by the Public Works Director.

3. Changes to Osburn Creek

The draft code and map have been amended to provide a 35 foot buffer, measured in each direction from the centerline of the creek, for Osburn Creek.

Additional Discussion Items

1. Vegetation Mitigation Amendments

Two mitigation options are provided in the code language, one is based on tree removal and the other is based on area of disturbance. The applicant may select one of the two options. However, in the event an applicant proposes development within a protection area, but does not remove any trees, the applicant must comply with Option 2 mitigation based on the area of disturbance.

Public Comment: Support was not expressed for requiring an applicant to comply with Option 2 when no trees are proposed for removal within the protection areas.

2. Riverside Development- New Code Language

Draft language was received at the June 26, 2012 Commission meeting for consideration for riverfront development. The following language was provided:

Riverside Redevelopment. The development of industrial properties along the Columbia River consistent with the goals of providing river-oriented recreational, residential, and commercial development as described in the 2004 Comprehensive Plan.

The activities under this definition would include, but not be limited to: roadway construction, utility extensions, recreational facilities, residential and commercial developments, tourist facilities, parking facilities, bike paths, walkways, promenades, docks, wharves, piers, science view points, marinas and related boating services; and any other improvements related to recreational, residential, and commercial uses along the Columbia River.

Exceptions- Riverside Redevelopment is exempt from requirements of Section 19.106 Natural Resource Overlay.

Staff is concerned with completely eliminating resource protection and mitigation requirements for development adjacent to the Columbia River. At previous hearings, the Commission expressed interest in reviewing an alternative approach to protection at time of the proposed development and rezone application. Staff has not proposed changes to the development code based on feedback from the Commission.

3. Wetland Regulations

Comments were received questioning why the City regulates wetlands and does not defer to other state and federal agencies.

The existing code language refers to other agencies such as Department of State Lands or Oregon Department of Fish & Wildlife for development within a delineated wetland. These agencies do not regulate wetland buffers, but defer this to the local jurisdiction.

Maintaining the existing 50-foot buffer for wetland is consistent with Title 13 requirements and is consistent with other jurisdictions within the region.

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 Ordinance 3-2012

Attachment 1

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, June 12, 2012, and June 26, 2012 and by the City Council on July 18, 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

DRAFT Natural Resource Regulations Updated July 17, 2012

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 Nonconforming Use and Structures within Resource Protection Areas

19.106.100 Floodplain Ordinance

19.106.110 Emergency Exemption

19.106.120 Drainage District Exemptions

19.106.130 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 promote 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 healthy trees. Topping of hazard trees to alleviate the hazard is not considered cutting.
- 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 healthy 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. This definition does not apply to dying or hazardous trees.

- 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: 40, 55, or 80 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. The riparian resource areas shall be measured from center line of the water feature in each direction to create a 160 foot corridor (8-feet in each direction from creek centerline), 110 foot corridor (55 feet in each direction from creek centerline), and 80 foot corridor (40 feet in each direction from creek centerline)
- 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, it shall not be assumed that the more stringent code section applies. The applicant shall work with the Public Works Director to apply a common sense approach to ensure the development meets the intent of the code.
- 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 City of Fairview Natural Resource Map adopted by the City Council on August 1, 2012, (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 shown on the Map or as noted on a plat map. The Map shows Fairview’s riparian resources that

are subject to either a 40, 55, or 80 foot riparian buffer resource protection area. The protection areas are measure from the center line of the creek in each direction either, 40, 55, or 80 feet as shown on the Map. Where there are multiple reaches of water bodies the protection area shall be measured from the centerline of each reach.

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. If an applicant chooses to daylight a water feature, in order to provide incentive to daylight a water feature the maximum buffer width of the underlying designation may not apply. However, a minimum buffer width of 25 feet from center line shall be applied.

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 80 feet (160 foot total width), 55 feet (110 foot total width), and 40 feet (80 foot total width) as set forth below and as shown on the adopted Map. The resource protection area shall be measured from the centerline of the creek.

a. The 80-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, Village Apartment 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 80foot resource protection area as shown on the Map.

b. The 55-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, the Columbia River protection area shall be measured from the mean high water line.

c. The 40-foot resource protection area applies to:

Fairview Creek from the city detention pond located just north of Fairview Village north toward Smith Memorial Church, as shown on the adopted Map.

No Name Creek

Rain Tree Creek

Osburn Creek from Sandy Boulevard north to Fairview Lake Way

- d. Previously Platted Protection Areas: Previous subdivision developments set aside resource areas for Fairview Creek and Osburn Creek (and associated wetlands) in easements and tracts. Development was permitted around the resource and the buffer was reviewed at time of development. The Map shows the protection area as the mapped tract or easement and no further development is permitted within the mapped areas per plat restrictions and conditions of the development approval.
 - i. Lakeshore Estates 2
 - ii. Heron Point
 - iii. Pelfrey South Shore Estates 1 and 2

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 for all development within the required wetland buffer (FMC 19.106.040(E)(2)(b)).

Minor development is permitted through the Type I and Type II land use process as shown in Table 19.106.040(B).

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

- 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 15 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(D). 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 per section 19.106.404(E) Mitigation..

Table 19.106.040(B) Permitted and Prohibited Uses		40 foot RPA	55 foot RPA	80 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 300 square feet or less (Per calendar year).	Permitted	Permitted	Permitted	Permitted	Permitted
4	Removal of more than 300 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	40 foot RPA	55 foot RPA	80 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 vegetation within 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. The tree should be topped to alleviate the hazard.</p> <p>b. For major pruning, If a tree is pruned in excess causing it do die, three trees 6 inches in diameter or greater must be planted as mitigation.</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	40foot RPA	55 foot RPA	80 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 19.106.090 Nonconforming Uses and Developments Within Resource Protection Areas.</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	40 foot RPA	55 foot RPA	80 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(D) 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 without obtaining a permit.	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(C).	Type II	Type II	Type II	Type II	Type II
12	Impervious pathways and pathways greater than 5 feet in width.	Type III	Type II	Type III	Type II	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 500 square feet of the resource protection area. Encroachments may be subject to buffer averaging where feasible.	Type II	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.					
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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. An applicant wishing to deviate from these standards to increase the allowable development footprint may make a request to the Planning Commission through the Type III review process and the Exception Process listed in 19.106.040(D). The request may only be made for permitted uses listed in Table 19.106.404(B).
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(E) 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(E).
 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 non-hazardous, 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 non-hazardous, 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 non-hazardous, 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 500 square feet in area per 100 lineal feet of 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.

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(E)(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 19.106.040(E)(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 un-buildable 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 55-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 80-foot riparian resource protection area;

40-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
 - a. The applicant may utilize the following methods for avoiding or minimizing development within the upland habitat area and riparian resource protection areas:
 - 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. However, if disturbance cannot be avoided, then the disturbed areas shall be mitigated per Section 19.106.040(E)(2)- Option 2. 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 permitted density permitted on the mapped upland habitat portion or riparian resource protection area 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 55-foot buffer cannot be reduced to less than 40 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 40 feet measured from center line of the creek.
 - iii. The buffer should only be reduced in degraded areas that provide little to no resource value as demonstrated by a Habitat Assessment (19.106.040(D)(4)). Development may occur in less degraded areas after that applicant demonstrates the that mitigation of the degraded area will be provided.
 - c. Disturbance of upland habitat areas cannot exceed 50% of the designated upland habitat area.
- 3. Mitigate development impacts.

All development approved through the exception process must comply with mitigation requirements of FMC Section 19.106.040(E). 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.

E. 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 demonstrating the following must be submitted:

A tree removal plan showing all trees greater than 6 inches in diameter 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(E).

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

Regardless if associated with development or not, all dead, diseased, or dying trees that are removed from a designated protection area shall be replaced with one new tree of at least 2 inch caliper or at least 6 feet overall height after planting. Tree replacement is not required for diseased trees that may spread the disease to adjacent trees.

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 mitigation 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 are cut down shall remain within the buffer area to the greatest extent feasible 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 when not associated with a development within a resource protection area are subject to the mitigation requirements listed in Table 19.106.040(E)(1).

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

2. Mitigation Requirements Associated with Development

Mitigation is required for all development:

- Within a designated resource protection area (riparian areas, wetlands, and upland habitat areas)
- Within 10 feet of the outer boundary of the 40 foot riparian resource protection area.

An applicant may chose between Option 1 and Option 2 listed below. However, if development is proposed that does not include removal of trees, that applicant must comply with Option 2.

Option 1- Mitigation is based on the number of trees removed. Dead, diseased, or dying trees must be mitigation per Section 19.106.040(E)(1)(a).

Table 19.106.040(E)(1)

Size of Viable/Healthy Tree	Mitigation Required Per
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Removed	Tree Removed
6 to 12 inch diameter	1 trees and 1 shrubs
13 to 18 inch diameter	2 trees and 3 shrubs
19 to 24 inch diameter	3 trees and 6 shrubs
25 to 30 inch diameter	4 trees and 9shrubs
Over 30 inch diameter	5 trees and 15 shrubs

Option 2 The mitigation option shall be calculated based on the size of disturbance area within the mapped protection area. Native trees and shrubs are required to be planted at a rate of 1 tree and 5 shrubs for every 100 square feet of disturbance area. All fractions shall be rounded to the nearest whole number of trees and shrubs. Bare ground must be planted or seeded with native grasses or herbs.

3. Mitigation Plan and 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- When feasible, 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 fifth 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, but not required:
 - i. Mulching. Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
 - ii. Irrigation. Water new plantings one inch per week between June 15 to October 15 for the three years following planting.
 - iii. Weed control. Remove or control non-native or noxious vegetation throughout maintenance period.

4. Vegetation Mitigation Bank

An applicant seeking to vary the number and size of trees and shrubs required to be planted on site under subsection 19.106.040(E) but who will comply with all other provisions of Section 19.106.040(E) of this chapter may seek approval by to utilize the vegetation mitigation bank.

- 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(E) (1, 2, or 3) of this chapter.
 - ii. The number and size of trees and shrubs that the applicant proposes to plant on the development site within designated protection areas.
 - iii. 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.
- c. Upon demonstration that require vegetation mitigation cannot be planted within the protection area, the applicant may request the Public Works Director determine which of the following mitigation bank methods will be used. The applicant may appeal the Public Works Directors decision to the Planning Commission
 - 1. Require the applicant to plant the vegetation on a City owned property.
 - 2. Require the applicant to plant the vegetation on a private property within the designated natural resource protection area. If vegetation is planted outside of the resource protection area, the planted vegetation shall be placed in a conservation easement.

3. Pay a fee in lieu of for the required vegetation for the City to use on other restoration projects.
- d. Application Process- The request to utilize the mitigation bank shall be reviewed with the applicable land use application submitted for the proposed development. Mitigation bank requests for Type III activities shall be review along with the Type III application. Mitigation bank requests for Type II activities shall be reviewed along with the Type II application.

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. In the Fairview Lake Area. Docks, decks, piers, boathouses and similar structures; provided, that no more than 20 percent of the lot width within the buffer setback area be occupied by such a structure or structures. However, a shared (communal) dock(s) or similar structures may exceed

- this limit if it results in a lesser number of such structures begin located on the adjacent shoreline.
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. A Type I Boundary Verification application is not required when the applicant demonstrates that the development will be greater than 40 feet from the estimated outer boundary of the mapped resource protection area. This shall be shown on the applicants site plan submitted with the development (building permit) application.

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

Table 19.106.070(A)

Resource Type	Location of Development	Application Required
40 foot resource protection area.	Greater than 15 feet from the outer limits of the 40 foot resource protection area.	Type I boundary verification required prior to site development or earth disturbing activity.
55 foot and 80 foot resource protection area	Development or earth disturbing activities outside of the designated resource or resource protection area.	Type I Boundary Verification Process. Boundary verification is not required if the proposed development is greater than 40 feet from the estimated

		mapped resource.
Wetlands	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 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		
	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 scaled 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.
4. A scaled 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 or building/development envelope, site property improvements, utilities and landscaping.
 - f. Show the proposed limits of grading any required for the project.
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
80-foot resource protection area	Fairview Creek from Glisan Street to the eastern portion	80 feet in each direction measured from the centerline

	of Community Park. ¹	of creek. Total width 160 feet.
55-foot resource protection area	Fairview Creek from property addressed 65 Bridge Street north to Fairview Lake Osburn Creek Salmon Creek Columbia River	55 feet measured in each direction from the centerline of the creek. Total width 110 feet.
40-foot resource protection area	Fairview Creek from Halsey Street to northern property line of 55 Bridge Street No Name Creek Rain Tree Creek	Total resource width 80 feet, measured 40 feet in each direction from centerline of creek.
35-foot Resource Protection Area	Osburn Creek	Total resource width 70 feet, measured 35 feet in each direction from centerline of creek.
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 Resource 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	Protected Feature	Width of Resource

¹ The platted conservation easement within the Fairview Village development shall apply where it abuts the Village Commercial, Village Apartments, 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.

Fairview Village		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.
Previously Platted Resource Areas	Conservation easement, or plat language	Lakeshore Estates 2 Heron Point Pelfrey South Shore Estates 1 and 2

B. Boundary Amendments

In some 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 Nonconforming Uses and Structures within Resource Protection Areas

Should a nonconforming structure, development footprint, or nonconforming portion of structure be destroyed by any means to an extent more than 75 percent of its current value as assessed by the Multnomah County assessor, it shall be reconstructed only in conformity with the current development code

Rebuilding of nonconforming structures and development footprints destroyed less than 75% of the current value assessed by the Multnomah County Assessor shall be rebuilt within 5 years from the date the structure was destroyed/damaged.

19.106.100 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.

19.106.110 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

19.106.120 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.

19.106.130 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

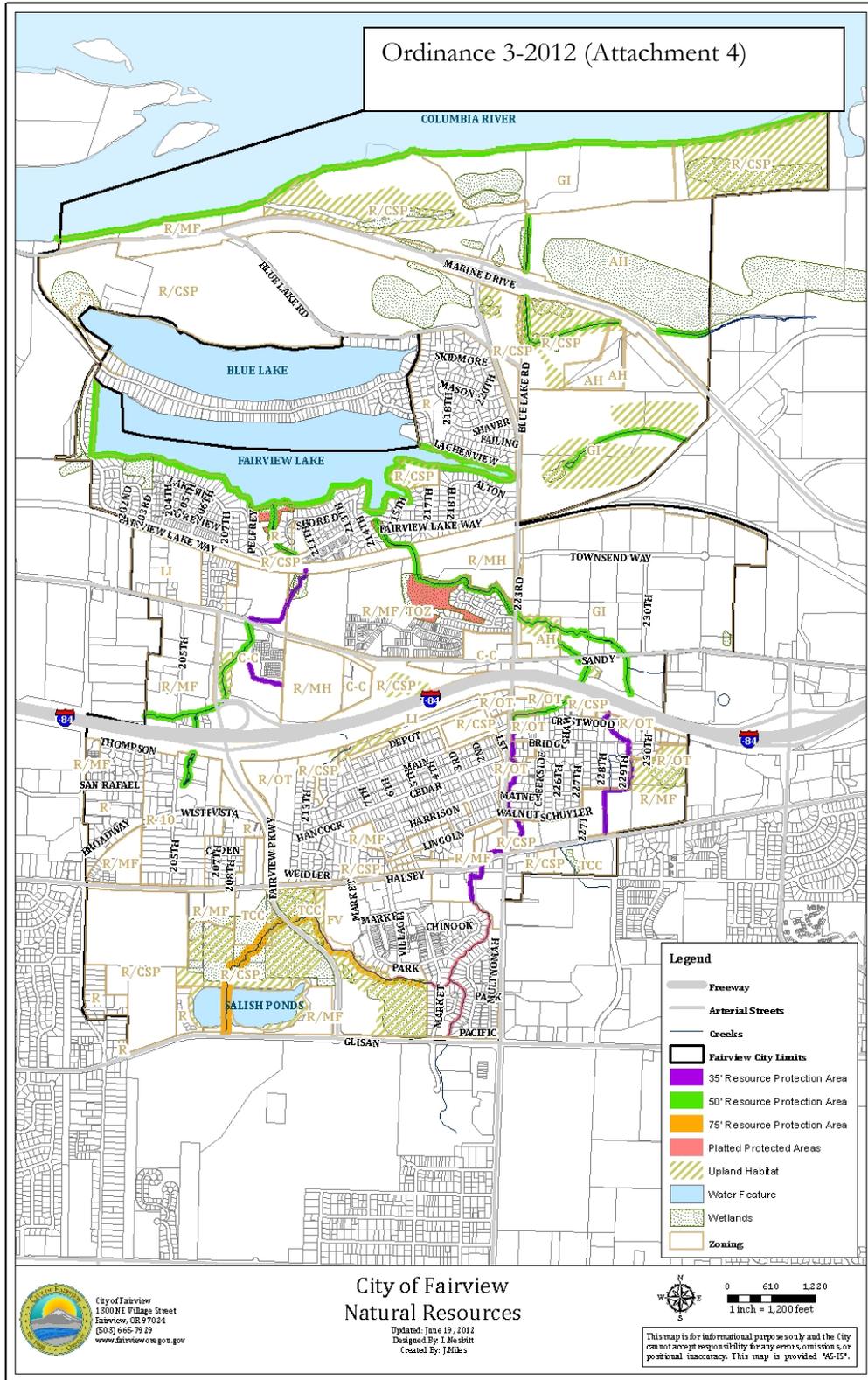
Historic Context, 1992), the following list was generated of properties deemed worthy for local protection under

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)



4)



PLANNING COMMISSION STAFF REPORT

TO: Fairview Planning Commission
FROM: Lindsey Nesbitt, Development Analyst
DATE: July 24, 2012
SUBJECT: Hannah's Tract Subdivision Update

Background Information

At the June 12 and June 26, 2012 Planning Commission meeting concerns were raised regarding construction of the Hannah's Tract development. The Commission requested staff look into the adopted conditions of approval to ensure the development is consistent with the Planning Commission's decision.

The July 28, 2003 Planning Commission Notice of Decision is attached. The decision also includes a project description. Staff has reviewed the file and conducted numerous site visits and believes the development of the 4-lot subdivision is consistent with the Planning Commission approval.

The following Conditions of Approval have not been completed, but will be satisfied prior to issuance of final occupancy of the final single family home.

#19. A fence shall be constructed on the south side of the riparian buffer boundary prior to final plat.

A wire fence was installed prior to issuance of a final plat, but over the years became overgrown with blackberries and was removed during construction of the single family homes. A new fence will be constructed prior to issuance of occupancy of the final single family home. The fence has not been installed yet, because construction of the final house would have required the fence to be removed and then reinstalled. Orange construction fencing/erosion control fencing has been installed along the resource boundary area to identify to workers on site the boundary location.

The following conditions of approval were not required as follows:

#6. A minimum of 3 species of native grasses, sedges, and/or rushes shall be planted in the bio-swale to better filter contaminants.

It was demonstrated by the applicant that the bio-swale was not needed. The bio-swale was originally proposed by the applicant to handle storm water run off. The applicant could have proposed a different method to handle storm water run off. The applicant later on decided to handle storm water in a different manner, eliminating the need for the bioswale. The only reason the Commission reviewed the bioswale was because it was proposed to be located within the riparian area.

#12. A vehicular access gate shall be constructed at Bridge Street according to Fire Marshal standards.

The plan originally called for a fire access drive to provide emergency ingress and egress from Bridge Street. The drive would have been a minimum of 20 feet in width and about 280 feet in length. The applicant worked with the Fire Marshal and it was determined the location of the third house on the private drive met fire access standards and could be accessed from Crestwood. Therefore, the drive from Bridge Street was not required. Because of the significant amount of reduction in pavement, the applicant demonstrated there was no longer a need to construct the bioswale within the riparian area.

CITY
OF

FAIRVIEW

COMMUNITY DEVELOPMENT
1300 NE VILLAGE ST., P.O. BOX 337
FAIRVIEW, OREGON 97024
(503) 674-6206 FAX 667-7866

NOTICE OF FINAL DECISION

Date: July 28, 2003

CITY OF FAIRVIEW DEVELOPMENT APPLICATION

PROJECT NUMBER: 03-14-S/RBR

APPLICANT: Dave Moir, Builder
PO Box 63
Corbett, OR 97019

OWNER: Bridge Trust – Spencer Rogers
PO Box 128
Corbett, OR 97019

LOCATION: West End of Crestwood Street, or Approx. 75 Bridge Street

MAP & TAX LOT: 1N 3E 27CB #2600

PERMITS REQUESTED: Subdivision and Riparian Buffer Permit

The above referenced application has been:

- Approved
 Approved with conditions (attached)
 Denied

The decision was based on findings developed in accordance with the provisions of Title 19 of the Fairview Municipal Code. (You may request a copy of the findings.) The decision will become final on August 11, 2003, unless appealed on or before that date. An appeal may be filed by you, your representative, or any other property owner impacted by the decision. Unless the appellant (the person who files the appeal) is the applicant, the hearing on the appeal shall be limited to the specific issues identified in the written comments submitted during the comment period or oral comments at the public hearing. The appeal must be filed in writing with this office and must be accompanied by the appropriate filing fee. The written appeal must state how the decision is in error. If an appeal is filed, you and the adjacent property owners will be advised of the date, time, and place of the hearing.



PLANNING COMMISSION FINAL DECISION

PROJECT NUMBER: 03-14-S/RBR

SUBJECT: Four Lot Subdivision and Riparian Buffer Permit

DATE: July 22, 2003

LOCATION: West End of Crestwood Street, or Approx. 75 Bridge Street

LEGAL DESCRIPTION: Tax Map 1N 3E 27CB #2600

SITE SIZE: 1.10 Acres

PROPERTY OWNER: Bridge Trust – Spencer Rogers
PO Box 128
Corbett, OR 97019

APPLICANT: Dave Moir, Builder
PO Box 63
Corbett, OR 97019

ZONING: Residential (R)

**COMPREHENSIVE
PLAN DESIGNATION:** Low Density Residential

APPLICABLE CRITERIA:

1. Subdivision Approval Criteria (Section 19.430.150 of the Fairview Municipal Code)
2. Riparian Buffer Overlay Zone (Section 19.106 of the Fairview Municipal Code)

ATTACHED EXHIBITS:

- A. Applicant's Narrative Submittal & Maps
- B. Written Testimony
- C. Letter from Wood Village re: Sewer Connection

DECISION: Approval with Conditions



Steve Kaufman, Chairman
Fairview Planning Commission

Date: July 22, 2003

CONCLUSION:

Approval, subject to conditions, of the Subdivision and Riparian Buffer Permit based on:

The project will satisfy the requirements of the Preliminary Plat Approval Criteria (Section 19.430.150) and Riparian Buffer Overlay Zone (Section 19.106) of the Fairview Municipal Code if the following conditions are met:

CONDITIONS:

Preliminary Plat

1. Paving surfaces shall be subject to review and approval by the Public Works Director.
 - 2a. The driveway approaches of the private accessway to Bridge and Crestwood Streets shall be designed to the "Standard Specifications for Public Works Construction". The private drive used by all lots shall be paved.
 - 2b. The applicant shall record a private joint maintenance agreement to provide for maintenance of the private drive under private regulations reviewed and approved by the City Attorney's office.
 3. A tree removal and preservation plan for trees outside of the Riparian Buffer Zone shall be submitted for review and approval by the City prior to final plat approval.
 4. The development shall connect to the City of Wood Village Sanitary Sewer line and comply with Wood Village requirements.
 5. If additional water services are needed, the City will tap the line and provide the services. This cost to the City shall be reimbursed by the developer.
 6. A minimum of 3 species of native grasses, sedges, and/or rushes shall be planted in the bio-swale to better filter contaminants.
 7. All utility lines, except for surface mounted transformers, surface mounted connection boxes and meter cabinets, which may be placed above ground, shall be placed underground.
 8. The plat name shall not already be recorded for another subdivision, and shall satisfy the provisions of ORS Chapter 92.
- Fire Department
9. Both sides of the private drive shall be properly marked as No Parking Fire Lane. This can be done by signs in posts or painting the curbs red and stencil No Parking Fire Lane on the vertical face of the red curbs.
 10. A fire hydrant shall be provided according to City of Fairview standards.
 11. Fire flow shall be provided at not less than 1,000 gpm for houses with total fire area not over 3,600 square feet.
 12. A vehicular access gate shall be constructed at Bridge Street according to Fire Marshal standards.

Riparian Buffer Permit

13. In those areas where invasive plant species are removed, sufficient understory shrubs shall be planted to compete with the invasives. Willow, Vine-Maple, Red Elderberry, and Indian-plum are suggestions for plant species. A revised planting plan shall be required with additional detail prior to final plat approval.
14. If the proposed Rhododendrons are planted within the 50' buffer, they shall be a native species.
15. No heavy equipment shall be permitted within the buffer for either the construction of the bio-swale or the removal of invasive vegetation.
16. An erosion-control permit shall be obtained prior to any earth-work activity on site.
17. The applicant will complete a wetlands delineation and a determination by the Division of State Lands prior to final plat.
18. If the wetlands determination results in a lot configuration with a lot less than 80% of the minimum lot size (as required by 19.430.120.D) or a lot with greater than the maximum lot coverage (as required by 19.30.070.A), then this approval shall be for three lots.
19. A fence shall be constructed on the south side of the riparian buffer boundary prior to final plat.
20. A Conservation Easement to the City of Fairview shall be provided over the entire 50' Riparian Buffer Overlay Zone.

FINDINGS:

1. SITE AND VICINITY INFORMATION

The subject property is a 1.10 acre parcel which includes a 20' wide flag pole to Bridge Street and frontage on the west end of Crestwood Street. Fairview Creek runs through the northern portion of the site. There is a 50' wide Riparian Buffer Overlay Zone along Fairview Creek, which is measured from the first break in the bank at the edge of the creek channel, or from the mean high water mark. The northern portion of the site along the creek, is well vegetated but also has problems with non-native invasive vegetation (blackberry, bamboo, etc.). The southern portion of the property has been maintained as mowed lawn with fruit trees. A 20' wide Wood Village Sanitary Sewer easement runs through the southern portion of the site, connecting into Crestwood Street.

Adjacent development and zoning consists of the following:

North: Smith Memorial Church, zoned "Residential / Community Service Parks" (R/CSP)
West: Single Family homes on flag-lots, zoned Residential (R)
South: Single Family homes along Bridge Street, zoned Residential (R)
East: Single Family homes, the "Brandon Estates" subdivision, zoned Residential (R)

2. APPLICANT'S PROPOSAL

(See applicant's submittal for the entire proposal)

SUBDIVISION PROPOSAL

Description

Fairview Creek runs through the northern portion of the property. The parcel slopes north at an increasing rate; from 4% on the southern edge to 25% near the creek. The Riparian Buffer reduces the developable land to less than half. The area within the Riparian Buffer is wooded with approximately 40 trees. The trees are Alder, ranging from 6" to 24" girth. There is a Cottonwood near the eastern property line at 24" and a Big Leaf Maple at about 20" girth. The remainder of the property is open with 2 Alder and 5 non-native fruit trees.

Proposed Improvements

Private Drive A 20 ft. wide asphalt drive shall run northward from Bridge Street approximately 280 ft., turning East 90 degrees and proceeding approximately 180 ft. to connect to Crestwood Street. The drive will be sloped and curbed in such away to collect storm water and deliver it to a bio-Swale. The curve shall have an outside radius of 50'. The drive shall be marked as a "Fire Lane No Parking" in compliance with Fire Regulations.

Easements There shall be a 20 ft. private ingress/egress easement and public utility easement covering the drive to benefit lots 1 through 4

Lots The lots shall be labeled 1 through 4.

Lot 1 19,424 square feet
Lot 2 11,274 square feet.
Lot 3 11,840 square feet
Lot 4 5,106 square feet

Proposed use of property 4 single family homes

Proposed improvements (by timing)

- Construct Bio-Swale for storm water runoff. Silt fencing, bio-bags in place.
- Revegetate
- Grade and base rock for drive. Silt fence, bio-bags and 50 ft. of gravel on approach to street.
- Trench and install utilities to general location of homes
- Final grade of private drive
- Pave drive
- Build homes
- Landscape around homes

Proposed source of domestic water Public water system. 2 water services have already been installed on Crestwood Street in anticipation of development of this parcel. We plan to request 2 additional meters at the same location.

Proposed method of sewage disposal The City of Wood Village, who owns the sewer crossing the parcel will allow the proposed homes to hook up to their sewer.

RIPARIAN BUFFER PERMIT PROPOSAL

Proposed development Create a Bio-Swale for the purpose of treating water runoff from road, parking and roof surfaces of the proposed development. The swale will be approx. 12 ft. wide and 200 ft. long at the southern edge of the Riparian Buffer. A catch basin at the low point of the swale will collect the treated water and empty it into Fairview Creek via a buried pipe.

Reason for development in the Riparian Area In recent years the Riparian Buffer has been created, then expanded to 50 ft. wide encompassing approximately one half of this one acre parcel. In addition storm water runoff that went into storm sewers must now be treated before release. Requiring a Bio-Swale outside the Riparian area would significantly reduce the remaining available space. The slope of the property toward the Riparian area makes this the logical place to locate the Bio-Swale.

How the impact will be mitigated We will locate the Bio-Swale as close to the boundary of the Riparian Buffer as practical. This should eliminate the removal of any trees. We will hand dig the trench for the buried outlet pipe to the creek. Silt fencing down slope will be in place until the disturbed area has sufficiently recovered. As soon as grading is complete we will plant grasses in the swale and re-vegetate the surrounding area. Timing is important. We plan to create the Bio-Swale during dry weather before other construction begins to allow sufficient time for the grasses to mature before runoff is introduced.

Removal of invasive plants Currently there are 2 large clumps of Bamboo, Ivy and a large area covered by Blackberry. We will work to eradicate these plants.

Plantings There are at least 40 Alder trees, one Maple and one Cottonwood tree in the Riparian Buffer area. This meets the requirements but I feel the addition of Conifers in the upland area will "crowd out" the Blackberries. We will plant Douglas Fir trees in the upland area and Willow or Red-Osier Dogwood in the wetland area. We plan to plant Rhododendron close together at the buffer boundary near the proposed Northeast home to create a boundary between yard and Riparian Buffer.

3. PUBLIC HEARING AND PUBLIC COMMENT

Public Hearing

The proposed subdivision is 10 lots or less and the riparian buffer permit does not include any structural alterations, therefore the proposal may be decided at the Type II Administrative level (Section 19.430.130.A), which does not require a public hearing. However, under Section 19.412.010.B, city staff may determine that a public hearing is appropriate and needed due to the complexity or need for discretionary review for a proposed Type II level project. During the first notice period, numerous written comments were received from the neighborhood with concerns about the proposed subdivision. In addition, the lot size standards have just recently increased for this property from 6000 average minimum lot size, to 7,500 average minimum lot size. The applicant did submit under the old standards, however discretionary review is needed to determine if the smaller lot size is appropriate in this instance.

Public Comment Received

The City initially received five comment letters from the adjacent neighbors to the project, a letter from the Watershed Council, and a petition signed by approximately 20 different property owners in the neighborhood. Additional comments and concerns were brought before the Commission at the first public hearing. The following is a summary of their concern about the project and a response.

Driveway connection from Bridge Street to Crestwood Street – The neighbors are concerned that a through driveway will invite more cars into the neighborhood, and that drivers and pedestrians will cut through the project. The proposed driveway will be a narrow private driveway and it is intended for private use only. No street signs will be posted to invite people to cut through the property instead of driving down Shaw Street. Private driveway and no trespassing signs could be posted by the property owners, which may discourage through traffic if it becomes a problem. The issue of a gate to block traffic from one end was also addressed. The police department approved of the idea to block traffic from one end to keep people from cutting through the property. The Fire Marshall also approved of a gate adjacent to Bridge Street, built according to the Gresham Fire Marshall standards. The applicant agreed to this requirement and it is a condition of approval.

Current use of property as open space and access to Fairview Creek – The neighbors expressed concern that the development of the property will prohibit the current use as open space and access that exists to the creek. The current owner has apparently allowed, whether or not they were aware of it, access to the creek through their vacant property. While this stretch of the creek is to be protected by the Riparian Buffer Overlay Zone code, there is no intention for the City to provide or require public access to the creek through this property. There was discussion at the public hearings about the accessibility and maintenance of the riparian area. It was determined that in order to keep vehicles and people out of the protected area, a fence shall be required on the south side of the Riparian Buffer Zone. This is a condition of approval.

Lot Size – The proposed lot sizes range from approximately 5100 square feet to 19,000 square feet. The neighbors are most concerned with the 5100 sq. ft. lot. The applicant submitted their application to the City prior to the zone change, which now requires a 7500 sq. ft. minimum lot size. The applicant submitted under the 6000 sq. ft. minimum lot size standard. There is also a code provision that allows for lot size averaging which allows some lots to be only 80% of the minimum lot size. (See discussion below under Preliminary Plat Approval Criteria 19.430.120 D.) Therefore the 5100 sq. ft. lot is technically feasible for

this project. However, it is also a concern that all lots created by this subdivision are appropriate for new construction in the City and that the purpose of the Residential Zone (19.30.010) is upheld. As discussed below, Lot 3 has an odd-shaped buildable area due to the riparian buffer and sewer easement constraints on the property. By removing one of the lots, the proposed development would be more consistent with the existing lot sizes of the neighborhood, and with the current 7500 sq. ft. zoning.

Property Values – The neighbors have expressed concern that the proposed homes will be of poor quality and insufficient size and therefore will have a negative impact on property values. There is nothing in the existing proposal that indicates what quality of materials will be used for the new homes and there are no City standards that require a specific level of quality to be obtained for new development, other than of course meeting building code requirements. In addition, there are no studies which indicate that providing smaller or more affordable housing adjacent to an existing neighborhood will drive property values down. The applicant submitted additional information showing the size of the homes and consistency with the property values of the neighborhood.

Riparian Buffer Zone – The neighbors were concerned that the riparian buffer regulations will not be upheld or enforced on this property. There was also mention of a past violation on the property. As further discussed below, the riparian regulations will be required to be met in their entirety. Certain conditions of approval must also be met. The past violation on the property has been dealt with and the applicant has expressed the desire to maintain and enhance the native plants on site. A fence will also be required as will a Conservation Easement to help with easier enforcement of the buffer zone.

Bio-Swale – There was a concern that the provision of a bio-swale will attract mosquitos to the site. The bio-swale is designed to allow for infiltration of the water and will be built at a slope to prevent stagnant water. Native vegetation will be planted in the swale for consistency with the riparian area. The Fairview Creek Watershed Council has not objected to the bio-swale or the location and the goal for the bio-swale is to treat the water from this project, so that contaminants will be removed before entering into the creek. The water from the existing storm system for the neighboring development is not treated, but rather enters directly into Fairview Creek. The stormwater from this new development will not enter the existing storm system.

4. PRELIMINARY PLAT APPROVAL CRITERIA

19.430.150 Approval Criteria: Preliminary Plat

A. General Approval Criteria. The City may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:

- 1. The proposed preliminary plat complies with all of the applicable Development Code sections and other applicable ordinances and regulations. At a minimum, the provisions of this Chapter, and the applicable sections of Article 2 (Land Use Districts) and Article 3 (Design Standards) shall apply. Where a variance is necessary to receive preliminary plat approval, the application shall also comply with the relevant sections of Article 5 (Exceptions);**

Chapter 19.3.0 Residential District

Lot Area and Dimensions- 19.30.040

The minimum lot area permitted is 6,000. However, the following section applies:

19.430.120 D. Lot Size Averaging. Single-family residential lot size may be averaged to allow lots less than the minimum lot size in the Residential district, as long as the average area for all lots is not less than allowed by the district. No lot created under this provision shall be less than 80% of the minimum lot size allowed in the underlying district. For example, if the minimum lot size is 10,000 square feet, the following three lots could be created: 10,000 square feet, 9,000 square feet, and 8,000 square feet.

Therefore, the average minimum lot size is 6000, but an individual lot may be as small as 80% of 6000 square feet, or 4,800 square feet. The proposed lot sizes are Lot 1= 19,424, Lot 2= 11,274, Lot 3= 11,840, and Lot 4= 5,106. The average lot size equals $47,644/4 = 11,911$ square feet.

Due to the Riparian Buffer Overlay Zone and the Wood Village sewer line easement, one lot, Lot 3, has a small and awkward buildable area. In addition, Lot 4, at 5106 square feet, is almost the smallest sized lot that would be permitted in the old code, and is smaller than what is permitted today. The average lot size in the subdivision to the east, Brandon Estates, is approximately 7500 – 8000 square feet. Several neighbors, as described in their written comments, were concerned that the proposed lots and resulting homes are not compatible with their neighborhood and requested that the smaller lots not be permitted. The applicant has shown that with the proposed lot layout, houses could be placed on the properties, and while the resulting homes will be placed on small buildable areas, they will be fairly consistent in size and design as with the existing neighborhood.

Planning Commission Determination

The Planning Commission determined that the applicant illustrated that four lots are appropriate for the site. The applicant designed the lots in a clustered manner to avoid the environmentally sensitive area of the site. The resulting smaller buildable area for the homes is in large part due to the stormwater easement running through the center of the property and the riparian buffer zone on the north half of the property.

Lot Width/Depth 19.30.040

The following standards apply to this project:

Minimum width: 30 feet, except for flag lots

Maximum depth: Three times the lot width; except as may be required by this code (e.g., to protect sensitive lands, etc.)

All of the proposed lots meet the minimum width requirements. Lots 3 and 4 meet the maximum depth requirement. Lots 1 and 2 exceed the maximum depth requirements, however this is due to the riparian buffer zone and therefore is permitted.

Flag Lots 19.30.050

A minimum width for all shared drives and lanes shall be 12 feet; the maximum width is 20 feet. The owner is also required to record an easement for vehicle access. This standard has been met with the 20' wide shared driveway and easement as shown on the preliminary plat.

Minimum Density 19.30.060

The minimum density is typically calculated by multiplying the total (gross) site area by .80 to obtain total net site area. The divide the total net site area by the maximum density (6,000 square feet) and multiply that figure by .80 to determine the minimum density or the minimum number of required units. Given that more than half of this site is unbuildable, .40 is used as the ratio instead of .80 to determine the net site area.

Net site area = Total site area (47,644 sq. ft.) multiplied by .40 (for the riparian buffer and sewer easement) = 19,058

Density = Net site area (19,058 sq. ft.) divided by 6,000 sq. ft. (minimum lot area) = 3.18

Minimum Density = 3.18 multiplied by .80 = 2.5. Therefore, **2 units** is the minimum number of units, which must be placed on the site.

By providing either 3 or 4 units, this requirement is met.

Setbacks 19.30.030 and Maximum Lot Coverage 19.30.070

Setbacks and lot coverage will be reviewed at the time of building permits.

No other design standards apply to the proposed single-family residential homes. There are no building size standards or restrictions on materials that apply to this zone.

The following code sections apply within Article Three, Design Standards:

19.162 – Access and Circulation

19.162.020 Vehicular Access and Circulation

F. Access Options

Access is from a private street or driveway connected to an adjoining property that has direct access to a public street (i.e., "shared driveway"). A public access easement covering the driveway shall be recorded in this case to assure access to the closest public street for all users of the private street/drive.

The proposed private shared accessway meets the above requirements. A shared access easement for all lots will be established over the entire accessway. This criterion is met.

G. Access Spacing. Access spacing ensures safe connections to local and arterial streets. Driveway accesses shall be separated from other driveways and street intersections.

The proposed accessway uses the two access points available to the property at Crestwood and Bridge Streets, no other access options exist for the property. This criterion is met.

H. Number of Access Points

I. Shared Driveways

Both of these code sections encourage a small number of access points and the use of shared driveways where feasible. The proposed shared driveway meets these criteria.

P. Construction. The following development and maintenance standards shall apply to all driveways and private streets, except that the standards do not apply to driveways serving one single-family detached dwelling:

1. **Surface Options.** Driveways, parking areas, aisles, and turn-arounds may be paved with asphalt, concrete or comparable surfacing, or a durable non-paving material may be used to reduce surface water runoff and protect water quality. Paving surfaces shall be subject to review and approval by the city engineer.

The proposed shared driveway shall be paved. Paving surfaces shall be subject to review and approval by the Public Works Director as a condition of approval.

2. **Surface Water Management.** When a paved surface is used, all driveways, parking areas, aisles and turn-arounds shall have on-site collection or infiltration of surface waters to eliminate sheet flow of such waters onto public rights-of-way and abutting property. Surface water facilities shall be constructed in conformance with City standards.

The applicant has provided a bio-swale to treat all of the run-off from the new development before it enters Fairview Creek. The location and design of the bio-swale meets the City standards. Due to the proximity of being within the Fairview Creek Riparian Buffer zone, a minimum of 3 native grasses, sedges, and/or rushes shall be planted within the swale to better filter contaminants.

3. **Driveway Aprons.** When driveway approaches or “aprons” are required to connect driveways to the public right-of-way, they shall be paved with concrete surfacing. (See also, subsection L.)

The driveway approaches of the private accessway to Bridge and Crestwood Streets shall be designed to the “Standard Specifications for Public Works Construction” as a condition of approval.

19.163 – Landscaping, Street Trees, Fences and Walls

19.163.20 Landscape Conservation

This code section requires conservation of “Significant Vegetation”, *any trees or shrubs with a trunk diameter of 6 inches or greater, as measured 4 feet above the ground (DBH), and all plants within the drip line of such trees and shrubs.* The majority of the “significant vegetation” on site is within the Riparian Buffer Zone and will be preserved. The trees on the southern portion of the property are primarily fruit trees and the majority will need to be removed to reasonably develop the property. A tree removal and preservation plan for trees outside of the Riparian Buffer Zone shall be submitted for review and approval by the City prior to final plat approval. This section is met with a condition of approval.

19.163.030- 19.163.040 New Landscaping and Street Trees

New landscaping is not required for single-family residential developments. Street Trees are not required for this project since there are no right-of-way improvements necessary, other than the driveway approaches. These code sections do not apply.

19.163.50 Fences and Walls

A fence on the south side of the riparian buffer zone is required as a condition of approval.

19.164 – Vehicle and Bicycle Parking

Each single-family home is required to have one off-street parking space. The applicant has provided a two car garage on each property as well as additional visitor parking adjacent to the private driveway, but outside of the 20' fire lane. The parking will again be reviewed during the building permit submittal. This section is met.

19.165 – Public Facilities Standards

19.165.025 Transportation Improvements

The proposed private driveway and shared access easement meets the requirements for an approved access. This section is met.

19.165.040 Sanitary Sewer and Water Service Improvements

The Wood Village Sanitary Sewer Main Trunk Interceptor runs through the project, under the 20' sewer easement. The applicant proposes to connect to this sewer line. The City of Wood Village Public Works Director has submitted requirements for installation and connection to the line. It shall be a condition of approval that the development connect to the City of Wood Village Sanitary Sewer line and meet all Wood Village requirements.

Fairview's Public Works Director has reviewed the proposed water service connection. The connection to the 8 inch line in Crestwood Street has been installed for the development. If additional services are needed, it shall be a condition of approval that the City will tap the line and provide the services, and this cost to the City shall be reimbursed by the developer.

19.165.050 Storm Drainage

As stated above, under Section 19.162.020, bio-filtration is required for the treatment of the stormwater, but water detention is not necessary. The applicant's proposed bio-swale is designed according to Public Works standards. It shall be a condition of approval that a minimum of 3 species of native grasses, sedges, and/or rushes be planted in the bio-swale to better filter contaminants.

19.165.060 Utilities

A. Underground utilities

All utility lines, except for surface mounted transformers, surface mounted connection boxes and meter cabinets, which may be placed above ground, shall be placed underground. This shall be a condition of approval.

B. Easements

A Public Utility Easement (PUE) has been provided along the entire 20' shared driveway. This criterion is met.

As demonstrated above, the standards within Articles 2 and 3 are met with conditions of approval.

2. **The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;**

There is no proposed plat name at this time. This standard shall be met with a condition of approval.

3. **The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat;**

The proposed 15' right-of-way dedication at Bridge Street is shown on the preliminary plat. The proposed private driveway, because it is private, is not required to be extended at the same width as Crestwood Street. All improvements on the property are required to meet the standards for a private driveway and private utilities. This criterion is met.

4. **All proposed private common areas and improvements (e.g., home owner association property) are identified on the preliminary plat.**

There are no private common areas or home owner association property proposed. This criterion does not apply.

- B. **Housing Density. The subdivision meets the City's housing standards of Article 2.**

As discussed under Section 19.30.060 above, the proposed development, whether three or four lots, will meet the development standards for the Residential (R) zoning district. This criterion is met.

- C. **Block and Lot Standards. All proposed blocks (i.e., one or more lots bound by public streets), lots and parcels conform to the specific requirements below:**

1. **All lots shall comply with the lot area, setback, and dimensional requirements of the applicable land use district (Article 2), and the standards for Street Connectivity and Formation of Blocks.**
2. **Setbacks shall be as required by the applicable land use district.**
3. **Each lot shall conform to the standards for Access and Circulation.**
4. **Landscape or other screening may be required to maintain privacy for abutting uses. See also, Article 2 – Land Use Districts, and Article 3 – Landscaping.**

The requirements 1-4 above are addressed previously in the staff report. See other sections for discussion and conditions of approval.

5. **In conformance with the Uniform Fire Code, a 20-foot width fire apparatus access drive shall be provided to serve all portions of a building that are located more than 150 feet from a public right-of-way or approved access drive. See also, Article 3 – Access and Circulation.**

The Gresham Fire Department has reviewed the preliminary plat and finds the plan to be adequate for emergency response purposes with the following conditions of approval:

1. Both sides of the private drive shall be properly marked as No Parking Fire Lane. This can be done by signs in posts or painting the curbs red and stencil No Parking Fire Lane on the vertical face of the red curbs.
2. A fire hydrant shall be provided according to City of Fairview standards.
3. Fire flow shall be provided at not less than 1,000 gpm for houses with total fire area not over 3,600 square feet.
4. If a gate is required to block access on one end of the driveway, it shall be at the Bridge Street end and shall be built to Fire Marshal standards.

6. **Where a common drive is to be provided to serve more than one lot, a reciprocal easement, which will ensure access and maintenance rights, shall be recorded with the approved subdivision or partition plat.**

A private access easement and public utility easement is provided on the plat. This criterion is met.

- D. **Conditions of Approval. The City may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations, and may require reserve strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties. See also, Article 3 – Public Facilities.**

No other conditions of approval are required.

5. RIPARIAN BUFFER OVERLAY ZONE

19.106.030 Riparian Buffer

- A. The area that is required to be protected on this property is the area that is ***“50 feet from the top of the banks or the mean high water level in locations where no distinctive bank can be determined. The area within the bank will be protected as well.”*** The boundary of the 50’ riparian buffer is shown on the preliminary plat.
- B. **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 D of this section), is allowed only after a permit has been granted. Replacement vegetation must be riparian species as approved in the permit.**
- D. **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 such features listed in FMC 19.106.010. 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 the water body or wetland, as set forth in FMC 19.106.010.**

The applicant proposes to install a bio-swale on the southern side of the Riparian Buffer Zone. No trees are proposed to be removed within the buffer area. Additional alterations on site include removal by hand of invasive bamboo, ivy, and blackberry plants. The areas that will be disturbed will be replanted with 40 alder trees, one maple, one cottonwood, Douglas fir in the upland area, and willow or red-osier dogwood in the wetland area. The applicant has also proposed to plant Rhododendron close together at

the buffer boundary to create a boundary between the northeast home and the riparian zone.

The following conditions of approval shall be required in order for the proposed alteration to not "appreciably diminish the value or function of the water body."

1. In those areas where invasive plant species are removed, sufficient understory shrubs shall be planted to compete with the invasives. Willow, Vine-Maple, Red Elderberry, and Indian-plum are suggestions for plant species. A revised planting plan shall be required with additional detail prior to final plat approval.
2. If the proposed Rhododendrons are planted within the 50' buffer, they shall be a native species.
3. No heavy equipment shall be permitted within the buffer for either the construction of the bio-swale or the removal of invasive vegetation.
4. An erosion-control permit shall be obtained prior to any earth-work activity on site.
5. If the wetlands determination results in a lot configuration with a lot less than 80% of the minimum lot size (as required by 19.430.120.D) or a lot with greater than the maximum lot coverage (as required by 19.30.070.A), then this approval shall be for three lots.
6. A fence shall be constructed on the south side of the riparian buffer boundary prior to final plat.
7. A Conservation Easement to the City of Fairview shall be provided over the entire 50' Riparian Buffer Overlay Zone.

6. CONCLUSIONS:

Approval, subject to conditions, of the Subdivision and Riparian Buffer Permit based on:

The project will satisfy the requirements of the Preliminary Plat Approval Criteria (Section 19.430.150) and Riparian Buffer Overlay Zone (Section 19.106) of the Fairview Municipal Code if the following conditions are met:

CONDITIONS:

Preliminary Plat

1. Paving surfaces shall be subject to review and approval by the Public Works Director.
- 2a. The driveway approaches of the private accessway to Bridge and Crestwood Streets shall be designed to the "Standard Specifications for Public Works Construction". The private drive used by all lots shall be paved.
- 2b. The applicant shall record a private joint maintenance agreement to provide for maintenance of the private drive under private regulations reviewed and approved by the City Attorney's office.
3. A tree removal and preservation plan for trees outside of the Riparian Buffer Zone shall be submitted for review and approval by the City prior to final plat approval.
4. The development shall connect to the City of Wood Village Sanitary Sewer line and comply with Wood Village requirements.
5. If additional water services are needed, the City will tap the line and provide the services. This cost to the City shall be reimbursed by the developer.
6. A minimum of 3 species of native grasses, sedges, and/or rushes shall be planted in the bio-swale to better filter contaminants.
7. All utility lines, except for surface mounted transformers, surface mounted connection boxes and meter cabinets, which may be placed above ground, shall be placed underground.
8. The plat name shall not already be recorded for another subdivision, and shall satisfy the provisions of ORS Chapter 92.

Fire Department

9. Both sides of the private drive shall be properly marked as No Parking Fire Lane. This can be done by signs in posts or painting the curbs red and stencil No Parking Fire Lane on the vertical face of the red curbs.
10. A fire hydrant shall be provided according to City of Fairview standards.
11. Fire flow shall be provided at not less than 1,000 gpm for houses with total fire area not over 3,600 square feet.
12. A vehicular access gate shall be constructed at Bridge Street according to Fire Marshal standards.

Riparian Buffer Permit

13. In those areas where invasive plant species are removed, sufficient understory shrubs shall be planted to compete with the invasives. Willow, Vine-Maple, Red Elderberry, and Indian-plum are suggestions for plant species. A revised planting plan shall be required with additional detail prior to final plat approval.
14. If the proposed Rhododendrons are planted within the 50' buffer, they shall be a native species.
15. No heavy equipment shall be permitted within the buffer for either the construction of the bio-swale or the removal of invasive vegetation.
16. An erosion-control permit shall be obtained prior to any earth-work activity on site.
17. The applicant will complete a wetlands delineation and a determination by the Division of State Lands prior to final plat.
18. If the wetlands determination results in a lot configuration with a lot less than 80% of the minimum lot size (as required by 19.430.120.D) or a lot with greater than the maximum lot coverage (as required by 19.30.070.A), then this approval shall be for three lots.
19. A fence shall be constructed on the south side of the riparian buffer boundary prior to final plat.
20. A Conservation Easement to the City of Fairview shall be provided over the entire 50' Riparian Buffer Overlay Zone.