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Revisions in response to Public Workshop on May 5, 2004 – 05/06/04 lp

Changes have been italicized

SECTION 4.085: RESOURCE AREA RIPARIAN OVERLAY ZONE

(A) Applicability: This Section applies only to those lands zoned Farm (F-1), *Small Farm Woodlot 20 (SFW-20)* or Forest (F) and only for those activities that are not associated with normal farm practices as identified for exclusive farm use *and the North Coast Basin Agricultural Water Quality Management Area Plan (SB1010)* or forest practices as regulated by the Northwest Forest Management Plan or the Oregon Forest Practices Act. Section 4.080 applies to all other lands.

(B) Purpose: To develop and implement a program promoting landowner stewardship for the Preservation, Conservation, and Enhancement of riparian areas along our rivers and streams. To protect and preserve the riparian areas for fish and wildlife, reduce natural hazards to public and private property, minimize erosion, provide for economic viability, and allow for human enjoyment while contributing to the overall water quality.

(C) For the purposes of this Section, the following definitions shall apply:

Conservation: the planned management of a natural resource to prevent *overuse*, destruction, or neglect.

Department: The Tillamook County Department of Community Development.

Drainage Ditch: a legally constructed man-made channel that does not contain fish.

Enhancement: to make greater or to improve.

Estuary: a body of water semi-enclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater.

Fish habitat: Those areas upon which fish are dependent to meet their requirements for spawning, rearing, food supply, and migration.

Habitat Mitigation: the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
(d) Reducing or eliminating the impact over time by preservation and maintenance operations through monitoring and taking appropriate corrective measures; and
(e) Compensating for the impact by replacing or providing comparable riparian resources.

Healthy Riparian Condition: characterized by a diverse plant community dominated by native species, significant vegetative cover, shade, connected floodplain, and stable banks which fulfill the riparian functions of the riparian area.

Impervious Surface: surfaces constructed of natural or artificial materials that substantially prevent the capture and storage of rainwater within the underlying native substrate. (i.e. concrete, asphalt, plastic sheeting, etc.).

Intermittent Stream: for the purposes of this ordinance, an inventoried natural waterway with a defined channel shown to have fish present that flows during a portion of every year and which provides spawning, rearing, off-channel habitat, or food-producing areas for fish or other wildlife and is connected to a perennial body of water during that time period.

Invasive Plant Species: those plants not native to a region which, when introduced either accidentally or intentionally, out-compete native species for available resources, reproduce prolifically, and dominate regions and ecosystems.

Inventoried Streams: *those streams that have been inventoried for cutthroat and/or salmonids utilizing the protocol established by the Oregon Department of Fish and Wildlife.*

Maintenance: Means the repair, rehabilitation or reconstruction of a structure pursuant to the provisions of ORS 196.905(6) which requires that the structure was serviceable within the past five years; and such maintenance or reconstruction would not significantly impact wetlands or other jurisdictional waters to a greater extent than the wetlands or waters were affected as a result of the original construction of those structures. Repair, rehabilitation, or reconstruction of a structure must occur within the original footprint.

Native Vegetation: vegetation that originated in a particular place not introduced from elsewhere. As identified *in* Hitchcock, C.L., and A. Cronquist. 1973. Flora of the Pacific Northwest. University of Washington Press. Seattle. *or* United States Department of Agriculture, Natural Resource Conservation Service native plant lists.

Natural Waterways: waterways created naturally by geological and hydrological processes and waterways that would be natural but for human-caused disturbances (e.g., channelized, diked, or culverted streams, impounded waters, partially drained wetlands or ponds created in wetlands). This does not include drainage or irrigation ditches where fish are not present.

Ordinary High Water Line: a line on the bank or shore to which the high water ordinarily rises each year and is the waterward limit of upland vegetation and soil.

Preserve: to keep safe from injury harm or destruction; an area identified for the protection and preservation of animals, trees, or other natural resources.

Preservation: the act of preserving.

Resource Areas: as used in this ordinance, resource areas refer to all lands zoned Farm (F-1), *Small Farm Woodlot–20 (SFW-20),* or Forest (F).

Riparian Areas: Adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

Riparian Corridors: A Goal 5 resource that includes water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.

Riparian corridor boundary: the setback established through this ordinance measured from the ordinary high water line.

Stream: A channel such as a river or creek that carries flowing surface water, including perennial streams and inventoried intermittent streams with defined channels shown to have fish present; excluding man-made irrigation and drainage ditches.

Stream Associated Wetlands: wetland areas that are contiguous with riparian corridors.

Structures: Include, but are not limited to the following: farm or stock ponds, groins, riprap, gabions, tidegates, drainage ditches, docks, pilings, weirs, culverts, bridge abutments, dams, dikes, levees, retaining walls, roads, causeways, bridge approaches, dwellings and accessory structures that require a building permit or other permit authority. This does not include minor improvements, such as fences, utility poles, flagpoles, or irrigation system components that are not customarily regulated through zoning ordinances.

Trees: A woody plant species, coniferous or deciduous, whose size at maturity can be anticipated to exceed 6 inches DBH (Diameter @ Breast Height) or any individual plant whose current diameter exceeds 6 inches DBH.

Understory Vegetation: All vegetation whose size is less than or equal to 6 inches DBH (Diameter @ Breast Height), and may consist of woody, herbaceous, perennially or annually occurring plants.

Water area: The area between the banks of a lake, pond, river, perennial or fish-bearing intermittent stream, excluding man-made farm ponds.

Water Dependent Use: uses and activities which can be carried out only on, in, or adjacent to water because the water location or access is needed for one of the following: a) water-borne transportation (navigation, moorage, fueling and servicing of ships or boats, terminal and transfer facilities resource and material receiving and shipping), b) recreation (active or passive recreation such as viewing, walking, fishing or boating), c) a source of water (energy production, cooling of industrial equipment or wastewater, other industrial processes, aquaculture operations, domestic and agricultural water rights, or d) marine research or education (viewing, sampling, recording information, conducting experiments, teaching).

Wetlands: those land areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. See also Stream Associated Wetlands. Wetlands are determined by the presence of hydric soils, *hydric* vegetation, and standing water for at least three months a year.

(D) The following riparian corridors on Farm and Forest Zoned lands are established along the waterbodies of the County for the purposes of preservation, conservation, enhancement and protection:

(1) Along the entire length of the Nehalem River within Tillamook County and the Nestucca River to its confluence with Three Rivers, where the average annual flow is equal to or greater than 1000 cubic feet per second (cfs), the riparian corridor boundary shall be 75 feet upland from the ordinary high water line.

(2) Along all lakes and inventoried streams shown to have fish present with an average annual stream flow of less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the ordinary high water line.

(3) Where the riparian corridor includes all or portions of a significant wetland as determined by the Department of State Lands, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

(4) In areas where the ordinary high water line is not clearly defined, or where the predominant terrain consists of steep cliffs, the two year recurrence interval flood elevation shall be established.

(E) Vegetation removal shall be allowed outright in the following circumstances:

(1) for maintenance of clear vision areas along roadways and the removal of roadside hazards. Chemical spraying will meet ODOT guidelines;

(2) for construction of a minor roadway improvement within an existing right-of-way;

(3) on lands designated for agricultural or forest use *under County jurisdiction*;

(4) *mowing or maintenance of existing lawns; and*

(5) for routine repair, operation, or maintenance of bridges and roadways.

(F) Vegetation removal for the following circumstances shall be allowed only upon consultation with Staff:

(1) removal of invasive vegetation and replacement with native plant species;

(2) removal of trees that pose an erosion, safety, or fire hazard to existing uses allowed by the underlying zone upon consultation with Department staff. *A letter from a qualified professional may be required indicating that the subject trees constitute a hazard.* Preference shall be given to tree topping and side limbing where and when appropriate;

(3) removal of trees for maintenance of utility lines; and

(4) pruning and limbing of riparian vegetation to retain views and vistas.

(G) Only the following uses are allowed in the riparian corridor subject to a Development Permit:

(1) the permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces shall only be allowed for the following uses:

(a) Streets, roads, and paths;

(b) Drainage facilities, utilities, and irrigation pumps; and

(c) Water-related and water-dependent uses *subject to any applicable standards in Section 3.140.*

(H) A Development Permit shall be required for all activities described in section (G) and (I) prior to any development in the riparian corridor. Proposed projects shall be designed to minimize intrusion into the riparian area. The Development Permit shall address all other relevant criteria as outlined in the Tillamook County Land Use Ordinance and shall include, but not be limited to, the following information:

1) the area to be affected by development and shown on a site plan drawn to scale of no less than 1" = 20 feet;
2) the plot plan shall identify the location of the parcel and its boundaries and the location of existing uses on the property;
3) the plot plan shall identify the proposed location of the development and use;
4) the plot plan shall identify the location of any waterbodies, watercourses and wetlands in the vicinity of the proposed development;
5) a detailed written description of the activity as well as design drawings, cross sections, or other information that clarifies materials, design and similar elements of the proposed activity;
6) a written statement addressing all applicable review criteria and standards;
7) evidence showing that the use requires proximity to the water body;
8) no reasonable alternative location exists outside of the riparian corridor;
9) existing riparian habitat on subject site and areas within the vicinity;
10) area to be used for mitigation;
11) description of mitigation plan; and
12) a three (3) year maintenance plan which may include, but is not limited to photo-documentation on an annual basis, an eighty (80) percent plant material survival rate, and removal of non-native species.

(I) All dwellings and accessory structures shall maintain the riparian corridors established in section (D) unless a demonstration can be made that equal or better protection for identified

resources will be ensured through restoration, enhanced buffer treatments or similar measures. *Such a demonstration may result in permanent alterations that result in no less than a 37.5' riparian area measured from the upland edge of the riparian corridor for section (D)(1) and (2) and subject to the following requirements:*

1) the Development Permit as described above;
2) a soils evaluation;
3) a site-specific stormwater analysis and drainage plan;
4) a detailed erosion control plan;
5) a detailed drawing identifying the drainfield replacement area (if applicable); and
6) the area to be disrupted during the construction phase and restoration.

(J) Hardship variances may be granted subject to Article VIII and only if the findings determine that:

(1) the proposed development requires a deviation *from* the riparian standards; and

(2) strict adherence to the riparian setback and applicable standards would effectively preclude a use of the parcel that could be reasonably expected to occur in the zone and that the property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity.

(K) Replacement, expansion, and alteration of all non-conforming uses and structures shall be reviewed under the criteria set forth in Article VII, Non-Conforming Uses. *However, the replacement of existing structures with structures in the same location that do not disturb additional riparian surface area shall be allowed outright.*

(L) All development activities shall comply with the standards in Section 3.060, Flood Hazard Overlay Zone when applicable. Where the standards of the Riparian Overlay Zone and the Flood Hazard Zone conflict, the more restrictive provisions shall apply.

(M) *All development activities shall comply with the standards in Section 3.090, Shorelands Overlay Zone when applicable.* Where the standards of the Shorelands Overlay Zone and the Riparian Overlay Zone conflict, the more restrictive provisions shall apply.

(N) Administrative Provisions:

(1) All applications for development in the Riparian Overlay Zone shall be reviewed for compliance with the requirements of the underlying zone, other overlay zones, and the Riparian Overlay Zone.

(2) The appropriate public agencies shall be notified of development within the Riparian Overlay Zone upon receipt of a complete application. If additional information is required, the property owner shall be notified. The property owner may also submit additional information prior to the decision.

(3) Failure to comply with the requirements of this ordinance shall result in code enforcement action.