

ARTICLE 3.9 – RIPARIAN PROTECTION AREA

SECTION 3.9.001 - PURPOSE AND INTENT

The primary purpose for the creation of the Riparian Corridor Protection regulations along the Grande Ronde River is to: protect and enhance water quality; minimize property damage during floods and storms; protect native plant species; maintain and enhance fish and wildlife habitats; and conserve scenic and recreational values of riparian corridors.

SECTION 3.9.002 - DEFINITIONS

For the purpose of this Article, the terms below have the following meaning:

- A. FISH USE -Inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the Federal or State Endangered Species Acts. Fish use is determined from Oregon Department of Forestry Stream Classification maps.
- B. IMPERVIOUS SURFACE -Any material which reduces and prevents absorption of storm water into previously undeveloped land.
- C. LAWN -Grass or similar materials maintained as a ground cover of less than six inches (6") in height. For purposes of this Article, lawn is not considered native vegetation regardless of the species used.
- D. MITIGATION -Taking one or more of the following actions listed in order of priority:
 - 1. Avoiding the impact altogether by not taking a certain development action or parts of that action.
 - 2. Minimizing impacts by limiting the degree or magnitude of the development action and its implementation.
 - 3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment.
 - 4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development action by monitoring and taking appropriate corrective measures.
 - 5. Compensating for the impact by replacing or providing comparable substitute resources or environments.
- E. NET LOSS -A permanent loss of habitat units or habitat value resulting from a development action despite mitigation measures having been taken.
- F. NON-CONFORMING -A structure or use that does not conform to the standards of this Article but has been in continuous existence from prior to the date of adoption of this Article up to the present. Non-Conforming Uses are not considered violations and are generally allowed to continue, though expansion, re-construction, or substantial improvement may be regulated.
- G. OFF-SITE MITIGATION -Habitat mitigation measures undertaken in areas distant from a development action and which are intended to benefit fish and wildlife populations other than those directly affected by that action.

- H. ON-SITE MITIGATION -Habitat mitigation measures undertaken within or in proximity to areas affected by a development action and which are intended to benefit fish and wildlife populations directly affected by that action.
- I. RIPARIAN CORRIDOR -The area adjacent to a river, lake or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem. A Goal 5 resource that includes the water areas, fish habitat, adjacent riparian corridors and wetlands within the riparian corridor boundary. In La Grande, one (1) riparian corridor exists, along the Grande Ronde River.
- J. RIPARIAN CORRIDOR BOUNDARY -An imaginary line that is a defined distance upland from the TOP OF BANK of a given waterway.
- K. STREAM -A channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with. defined channels, and excluding man-made irrigation and drainage channels.
- L. STRUCTURE -A building or other major improvement that is built constructed or installed, not including minor improvements such as fences, utility poles, flagpoles or irrigation system components that are not customarily regulated through Zoning Ordinances.
- M. SUBSTANTIAL IMPROVEMENT -Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:
 - 1. Before the improvement or repair is started, or
 - 2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, SUBSTANTIAL IMPROVEMENT is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences whether or not the alteration affects the external dimensions of the structure.

The term does not, however, include either:

 - a. Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or
 - b. Any alteration of a structure listed on the national Register of Historic Places or a State Inventory of Historic Places.
- N. TOP OF BANK -The stage or elevation at which water overflows the natural banks of streams or other waters of the State and begins to inundate upland areas. In the absence of physical evidence, the two (2) year recurrence interval flood elevation may be used to approximate the "bank full stage" or delineate the top of bank.

SECTION 3.9.003 – RIPARIAN CORRIDOR

The following riparian corridor shall be established:

- A. Along the Grande Ronde River, the riparian corridor boundary shall be one hundred feet (100') from the top of bank.
- B. Where the riparian corridor includes all or portions of a significant wetland as identified in the Local Wetland Inventory, the standard distance to the riparian corridor boundary shall be measured from, and include the upland edge of the wetland.
- C. Except as provided for in Subsection B above, the measurement of distance to the riparian corridor boundary shall be from the top of bank. The measurement shall be a slope distance. In areas where the top of each bank is not clearly defined, the riparian corridor boundary shall be measured from the ordinary high water level, or the line of non-aquatic vegetation, whichever is most landward. In areas where the predominant terrain consists of steep cliffs the distance to the corridor boundary shall be measured as a horizontal distance until the top of the cliff is reached, and as a slope distance on from that point.

SECTION 3.9.004 – ACTIVITIES WITHIN THE RIPARIAN CORRIDOR

- A. The permanent alteration of the riparian corridor by grading or by the placement of structures or impervious surfaces is prohibited, except for the following uses provided that the Community Development Director/Planner finds that they are designed to minimize intrusion into the riparian corridor and no other options or locations are feasible:
 1. Streets, roads, and paths;
 2. Water related and water dependent uses, such as, but not limited to, drainage facilities, water and sewer utilities, erosion or flood control facilities and drainage pumps;
 3. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area;
 4. Structures or other non-conforming alterations existing fully or partially within the riparian corridor may be expanded provided the expansion does not occur within the riparian corridor. Substantial improvement of a non-conforming structure in the riparian corridor shall require compliance with the standards of this Article.
 5. Existing lawn within the riparian corridor may be maintained, but not expanded within the riparian corridor. The use of herbicides and pesticides in these areas shall be avoided. Development activities on the property shall not justify replacement of riparian corridor with lawn.
 6. Existing shoreline stabilization and flood control structures may be maintained. Any expansion of existing structures or development of new structures shall be evaluated by the Community Development Director/Planner and the appropriate natural resource agency staff. Such alteration of the riparian corridor shall be approved only if less invasive or non-structural methods will not adequately meet the stabilization or flood control needs.

B. Removal of riparian vegetation is prohibited, except for:

1. Removal of non-native vegetation and replacement with native plant species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, and shall maintain or exceed the density of the removed vegetation.
2. Removal of vegetation necessary for the development of approved water related or water dependent uses or for development of uses authorized under Subsection A above. Vegetation removal shall be kept to the minimum necessary to allow the approved use.
3. Trees in danger of falling and thereby posing a hazard to life or property may be removed following consultation and approval from the Community Development Director/Planner. If no hazard will be created, the Community Development Director/Planner may require these trees, once felled, to be left in place in the riparian corridor. Any trees removed are required to be replaced by like native species or alternate approved native species.

C. Exceptions

The following activities are not required to meet the standards of this Section.

1. Commercial forest practices regulated by the Oregon Forest Practices Act.
2. Normal and accepted farming practices other than buildings or structures, occurring on land zoned for exclusive farm use and existing in the riparian corridor prior to the date of adoption of this Article. Ongoing agricultural practices existing in the riparian corridor prior to the date of adoption of this Ordinance on land not zoned for exclusive farm use are allowed in the riparian corridor subject to the definition and requirements of non-conforming uses.

D. Land Division and Property Line Adjustments

Land Divisions and Property Line Adjustments that would create parcels that cannot be developed in conformance with this Article are prohibited.

SECTION 3.9.005 – ALTERATION REQUIRING MITIGATION

- A. Permanent alteration of the riparian corridor by placement of structures or impervious surfaces is allowable under the following procedures, subject to the mitigation requirements of Subsection B of this Section.
 1. A Variance to the riparian setback approved through the procedures of Subsection C of this Section.
 2. Along the Grande Ronde River riparian corridor, the riparian setback may be reduced as allowed under Subsection D of this Section.
- B. Proposals for development activities within the riparian corridor allowed in Subsection A of this Section shall be reviewed by the Oregon Department of Fish and Wildlife (ODFW) as per OAR 635-415 Fish and Wildlife Habitat Mitigation Policy and a mitigation recommendation shall be obtained. For purposes of implementing Goal 5, the goal is no net loss of protected resources; correspondingly, for purposes of designing appropriate mitigation, sites should be considered at least in "Habitat Category 2" (OAR 635-415-030), which strives for no net loss of habitat values.

C. Administrative Variance

1. A property owner may request an Administrative Variance to the riparian setback. Granting of an Administrative Variance requires findings that:
 - a. The proposed development requires deviation from the riparian standards; and
 - b. Strict adherence to the riparian setback and other 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; and
2. Administrative Variances shall be processed in accordance with Article 9.2 of this Code.

D. Large Stream Riparian Reduction

Along the Grande Ronde River riparian corridor, where a one hundred foot (100') riparian buffer is established, structures and impervious surfaces may be placed within the riparian setback as follows:

1. The removal of vegetation shall be limited to the minimum amount necessary to accommodate the use. Any vegetation removed in excess of this standard shall be non-native species and the proposal shall specify replacement of that vegetation with native species.
2. The applicant shall provide sufficient information regarding the proposed development and potential impacts to riparian resources to allow the Community Development Director/Planner, in consultation with the ODFW, to determine that the proposal will provide equal or better protection of riparian resources. information includes but is not necessarily limited to:
 - a. A plot plan showing the top of the stream or water body bank;
 - b. The extent of development within the riparian setback;
 - c. Uses that will occur within the riparian setback and potential impacts (for example: chemical runoff, noise, etc.);
 - d. The extent of vegetation removal;
 - e. Proposed characteristics of the existing vegetation (types, density);
 - f. Any proposed alterations of topography or drainage patterns; and
 - g. Existing uses on the property and any potential impacts they could have on riparian resources.
3. In no case shall such alterations occupy more than fifty percent (50%) of the width of the riparian corridor measured from the upland edge of the corridor.