



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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NOTICE OF ADOPTED AMENDMENT

09/17/2012

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Fairview Plan Amendment
DLCD File Number 002-12

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, October 02, 2012

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Lindsay Nesbitt, City of Fairview
Gordon Howard, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative
Amanda Punton, DLCD Natural Resources Specialist

<paa> YA



FORM **2**

DLCD

Notice of Adoption

In person electronic mailed

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DEPT OF

SEP 12 2012

**LAND CONSERVATION
AND DEVELOPMENT**

For Office Use Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **Fairview**

Local file number: **12-12-ZC**

Date of Adoption: **9/5/2012**

Date Mailed: **9/11/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: **4/15/2012**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amendments to the Fairview Municipal Code Section 19.105 Significant Environmental Concern Overlay and 19.106 Wetlands and Riparian Buffer Overlay, the Comprehensive Plan Chapter 5 Open Spaces, Scenice and Historic Areas, and Natural Resources, and the Natural Resources Map. The code ammendments will bring the City of Fairview into complinace with Metro's Title 13 requirements.

Does the Adoption differ from proposal? Yes, Please explain below:

Edits were made to the original text submitted for review. A River Oriented Uses Excepmtion was added to the code language consistent with langue in Metro's Model Ordinance.

Plan Map Changed from: **NA**

to:

Zone Map Changed from: **NA**

to:

Location: **NA**

Acres Involved:

Specify Density: Previous: **NA**

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
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Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **Lindsey Nesbitt**

Phone: (503) 674-6230 Extension:

Address: **1300 NE Village Street**

Fax Number: **503-667-7866**

City: **Fairview**

Zip: **97024-**

E-mail Address: **nesbittl@ci.fairview.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS [197.615](#) and [OAR Chapter 660, Division 18](#)

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on **light green paper if available**.
3. Send this Form 2 and **one complete paper copy** (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information ([ORS 197.615](#)).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption ([ORS 197.830 to 197.845](#)).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. ([ORS 197.615](#)).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

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, June 26, 2012, and July 24 and by the City Council September 5, 2012; and

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

WHEREAS, 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; and

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

NOW, THEREFORE THE CITY OF FAIRVIEW ORDAINS AS FOLLOWS;

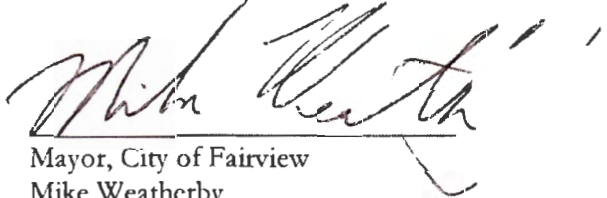
The Fairview Municipal Code is amended as follows:

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.

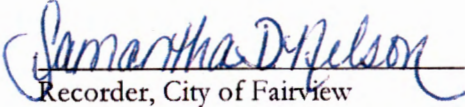
- Section 3 Chapter 19.106 et seq., Wetlands and Riparian Buffer Overlay is amended as shown in Attachment 2.
- Section 4 The Fairview Comprehensive Plan Chapter 5- Open Spaces, Scenic and Historic Areas and Natural Resources is amended as shown in Attachment 3.
- Section 5 The Fairview Natural Resources 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 5th day of September 2012.



Mayor, City of Fairview
Mike Weatherby

ATTEST:



Recorder, City of Fairview
Samantha Nelson

Ordinance 03-2012- Attachment 1

FMC 19.106 Natural Resource Regulations

As amended by the Fairview City Council on September 5, 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

19.106.035 Columbia Riverside Redevelopment Exceptions

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 stormwater 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.

- I. “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: 35, 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), and 70 foot corridor (35 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” vegetated areas adjacent to or near water features that provide valuable functions to the City’s riparian and wetland areas for fish and wildlife.
- 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 Development Code, and Title 16 Environmental Regulations.
- B. When applicable Chapter 19.106 conflict with other sections of the Fairview Municipal Code, the more restrictive provision shall apply.
- C. The requirements of Chapter 19.106 apply in addition to all applicable local, regional, state, and federal regulations, including those for wetlands and flood management areas. Where Chapter 19.106 imposes restrictions that are more stringent than regional, state, and federal regulations, the more stringent regulation shall apply.
- 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.

19.106.035 Columbia Riverfront Redevelopment Exceptions

The redevelopment of parcels with map and tax lots 1N3E2200504, 1N3E2200503, and 1N3E2100100 to River Oriented Uses as defined below, shall be exempt from the requirements of FMC 19.106 Natural Resource Regulations. The exemption shall be from the mapped riparian resource of the Columbia River. However, all applicable state and federal requirements relating to natural resource protection shall apply. The applicant shall submit demonstration of state and federal approvals with the applicable City of Fairview applications for redevelopment in order to demonstrate the proposal complies with state and federal requirements and conditions of approval. Continuation of and improvements to the existing on-site development (at time of the code adoption-September 1, 2012) and redevelopment to uses other than River Oriented Uses as described below will be subject to the 50-foot riparian buffer requirements of Section 19.106.

River Oriented Redevelopment – The redevelopment 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 exempt from the City’s Natural Resource review process as described above include: roadway construction, utility extensions, recreational facilities, residential and commercial developments, tourist facilities, parking facilities, bike paths, walkways, promenades, docks, wharfs, piers, scenic view points, marinas, and related boating services along the Columbia River.

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~~ September 5, 2012, (hereon referred to as “the ~~m~~Map”) which includes the Columbia River and Fairview Creek, Osburn Creek, No Name Creek, Salmon Creek, Rain Tree Creek, and Clear Creek, and mapped wetlands and upland habitat.
- B. Each resource has been designated with a specific protection area as show on the Map. The Map shows Fairview’s riparian resources that are subject to either a 35, 40, 55, or 80 foot riparian buffer resource protection area. The protection areas are measured from the center line of the creek in each direction either, 35, 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, the maximum buffer width of the underlying designation may not apply to the portion that will be day lighted/exposed. 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), and 35 feet (70 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 the northern property line of 15 Matney Street and the southern property line of 2010 Fairview Avenue, as shown on the adopted Map, running northward to Fairview Lake.
 - 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
- d. The 35-foot resource protection area applies to:
 - Osburn Creek
- e. 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 only permitted within the mapped areas as provided on the per plat restrictions and/or 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

(FMC 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		35 foot RPA	40 foot RPA	55 foot RPA	80 foot RPA	50 foot Wetland Buffer	Upl 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	Prohibited
2	Planting of vegetation listed as nuisance on the Metro Native Plant List.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
3	Invasive vegetation removal of 300 square feet or less (Per calendar year).	Permitted	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	Type I
5	Native Plantings and vegetation management plans.	Type I	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	Permitted
B Tree Removal and Pruning							
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	Permitted

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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 to 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	Type I
C	Maintenance and Repair	35 foot RPA	40 foot RPA	55 foot RPA	80 foot RPA	50 foot Wetland Buffer	Up 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	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	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	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	Type I

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D Site Development/ Alteration	35 foot RPA	40 foot RPA	55 foot RPA	80 foot RPA	50 foot Wetland Buffer	Upl Habitat
1 Activities prohibited by an easement.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
2 Earth disturbing activities not associated with an approved permit.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
3 Activities prohibited by FMC 16.05 Flood Hazard Overlay Zone.	Prohibited	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	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	Prohibited	Type III	Prohibited	Type III	Type III
6 Type I Boundary Verification Process to demonstrate proposed development is not located within a designated natural resource area or required protection area (FMC 19.106.070(A)).	Type I	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	Prohibited
8 Alteration of stream bank, bed or water flow.	Type III	Type III	Type III	Type III		
9 Direct storm water discharge into water bodies without obtaining a permit.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
10 Installation of required storm management facilities.	Type III	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	Type II
12 Impervious pathways and pathways greater than 5 feet in width.	Type III	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 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	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 buffer. Encroachments are subject to mitigation requirements and resource protection area buffer averaging.
 8. Use of heavy machinery or herbicides for invasive and nonnative plant removal is not permitted unless special exception is granted by the Public Works Director.
 9. Erosion/sedimentation control devices shall be installed between the area to be disturbed by the proposed development and construction and the adjacent water feature; these devices shall comply with specifications and procedures outlined in the soil erosion control ordinance, (Chapter 16.15) must be installed prior to any

soil disturbance, and remain in place during construction and afterwards until the soil has stabilized.

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

- b. Properties which contain wetland areas shall have a preliminary delineation of the wetland boundary approved by Division of State Land (DSL) or Department of Fish and Wildlife (ODFW) staff before any development permit is issued. If the preliminary delineation requires an additional “jurisdictional delineation” study of the boundary, this must be completed by the applicant’s biologist and approved by DSL staff before building permits are issued. If the preliminary delineation demonstrates that the development will occur outside of the 50-foot buffer, a Type I Land Use Permit is required to demonstrate and document that the development is in fact outside the 50-foot buffer of the delineated wetland.
- c. Wetland areas shall be protected in their natural state to preserve water quality and maintain water retention, overflow and natural functions as follows:
 - i. Activity within wetland areas is subject to the permit requirements of the Division of State Lands (DSL) and the U.S. Army Corps of Engineers. No building permit will be issued for such activity unless all pertinent state and federal requirements are met. The Division of State Lands will be notified of any regulated development proposed in a wetland area. Proposed activities within the wetland area is subject to a Type III Land Use Application and mitigation requirements outlined in FMC 19.106.040(F)(3).
 - ii. Any proposed dredging or filling of a wetland area will require issuance of a DSL permit or a finding by the agency that a permit is not necessary, before building permits are issued by the city. All such activity (which requires a DSL permit) will require the applicant to demonstrate, as part of a Type III land use application, that the activity is necessary to develop on that part of the property outside of the wetland, that there is no practical alternative to impacting the wetland, and that measures (described in the application) will be taken to minimize the fill area and other negative impacts. These findings may be waived if, in the opinion of DSL or ODFW, the applicant proposes to create a replacement wetland area on the property that will be of superior value to wildlife compared to the impacted area. Any approved work within the designated wetland buffer is subject to mitigation requirements of FMC 19.106.040(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;
- 35-foot and 40-foot riparian resource protection areas;
- 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.

1. All exception applications must demonstrate compliance with the following criteria:
 - a. Avoid development within the designated protection area
 - i. The applicant may utilize the following methods for avoiding or minimizing development within the upland habitat area and riparian resource protection areas:
 - A. 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.
 - B. 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.
 - C. 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.

D. Flexible site design (on-site density transfer) to avoid or minimize development within the upland habitat or riparian resource protection area.

I. 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.

II. In order to accommodate any transferred residential densities, dimensional standards and lot sizes may be adjusted by no more than 20%.III. 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.

IV. Mixed-use zones. The density transfer credit can be factored using a or c above, depending on the type of development proposed.

V. 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.

b. Minimize impacts to the upland habitat and riparian resource protection area.

i. The applicant must demonstrate that the encroachment is the minimum necessary to allow reasonable development of the property.

ii. The following limitations apply to the riparian resource protection area:

A. The 55-foot buffer cannot be reduced to less than 40 feet in width.

B. 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.

C. 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.

iii. Disturbance of upland habitat areas cannot exceed 50% of the designated upland habitat area.

c. . 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.

2. 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 mitigation is to compensate for negative impacts that occur to the natural resource and designated protection area as a result of development activity. Vegetation mitigation is required for the following activities and development:

1. Tree Removal within a resource protection area, not associated with a development.

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 mitigated per Section 19.106.040(E)(1)(a).

Table 19.106.040(E)(1)

Size of Viable/Healthy Tree Removed	Mitigation Required Per 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 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) and shall include the following:

- a. 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.
- b. 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.
- c. 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.
- d. 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.
- e. Native Plants- Only resource specific native plants identified on the most updated version of the Metro native Plant list are permitted.
- f. 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.
- g. Invasive vegetation- Invasive, non-native or noxious vegetation must be removed within the mitigation area prior to planting mitigation vegetation.
- h. 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.
- i. 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.
- j. 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 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 required 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 Director's 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
35 foot and 40 foot resource protection area.	Greater than 15 feet from the outer limits of the 35 or 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 of Community Park. ¹	80 feet in each direction measured from the centerline of creek. Total width 160 feet.
55-foot resource protection area	Fairview Creek from property addressed 65 Bridge Street north to Fairview Lake 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 15 Matney 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.

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 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 Fairview Village	Protected Feature	Width of Resource Protection Area
Fairview Creek	Conservation Easement	100 feet, 50 feet on each side measured from centerline of the stream.
Clear Creek	Conservation Easement	75 feet, 37.5 feet on each side measured from centerline of the stream.
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:				
<p>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.</p>				

~~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

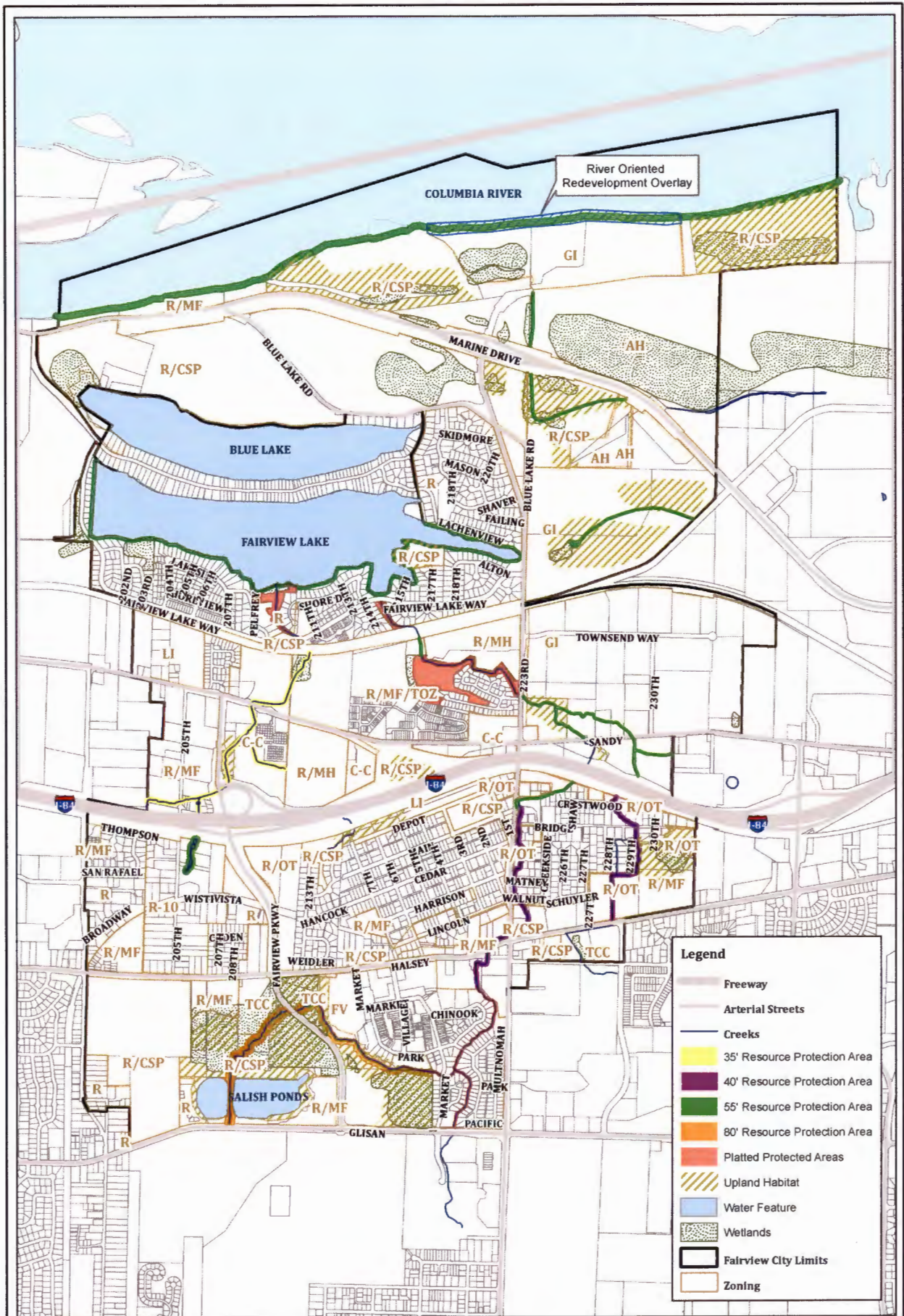
Based on a two-phase survey of the historic resources of the City of Fairview (Fairview Cultural Resource Inventory and

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 (Fairview)	
	Underpass/Stonework.	NE 223rd (Fairview) Ave	



Legend

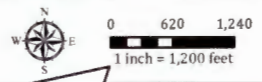
- Freeway
- Arterial Streets
- Creeks
- 35' Resource Protection Area
- 40' Resource Protection Area
- 55' Resource Protection Area
- 80' Resource Protection Area
- Platted Protected Areas
- Upland Habitat
- Water Feature
- Wetlands
- Fairview City Limits
- Zoning



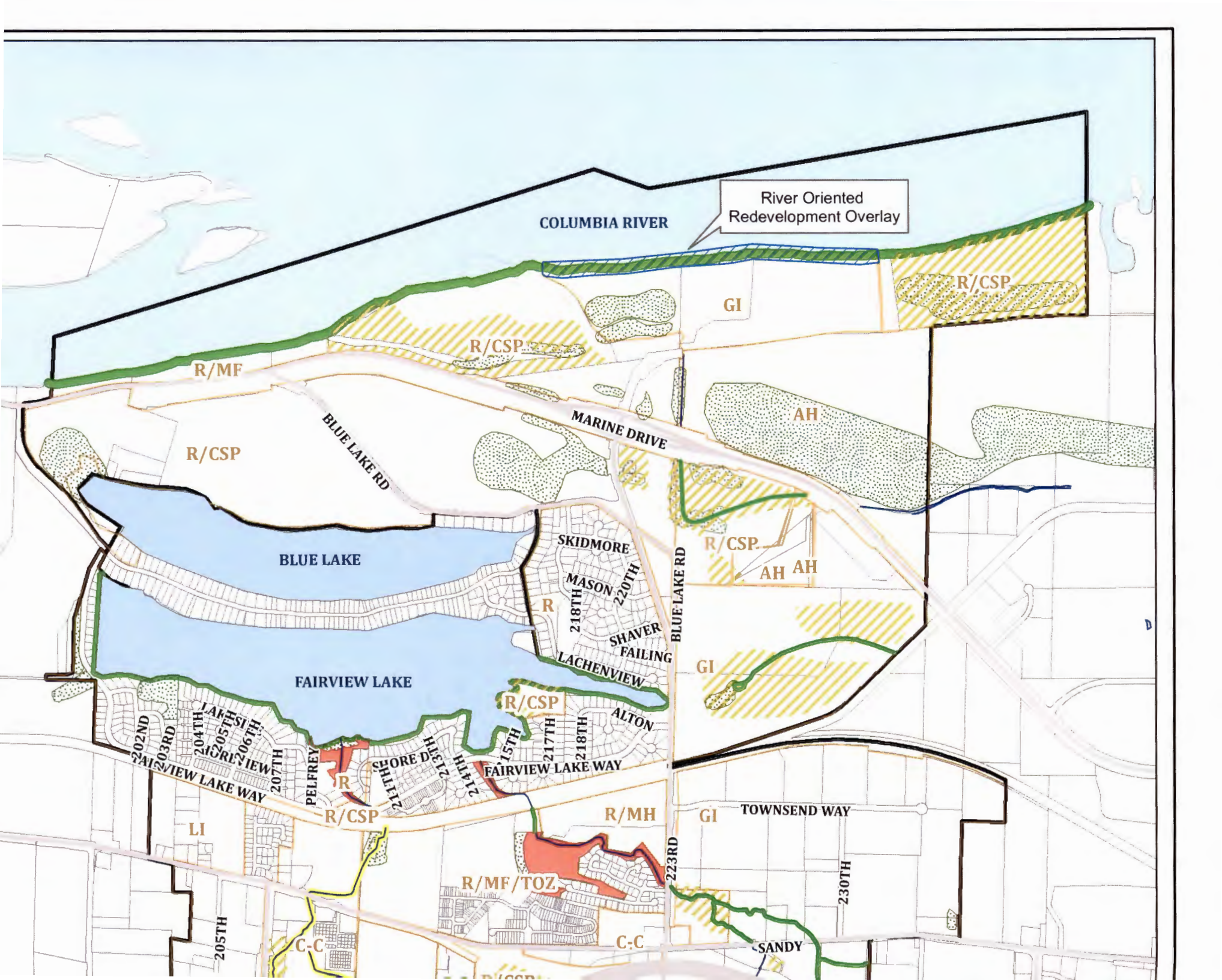
City of Fairview
 1300 NE Village Street
 Fairview, OR 97024
 (503) 665-7929
 www.fairvieworegon.gov

City of Fairview Natural Resources

Adopted: September 5, 2012
 Designed By: L.Nesbitt
 Created By: J.Miles



This map is for informational purposes only and the City cannot accept responsibility for any errors, omissions, or positional inaccuracy. This map is provided "AS-IS".



COLUMBIA RIVER

River Oriented
Redevelopment Overlay

R/CSP

GI

R/CSP

R/MF

R/CSP

BLUE LAKE RD

MARINE DRIVE

AH

BLUE LAKE

SKIDMORE

R/CSP

AH AH

MASON

218TH

220TH

SHAYER

FAILING

LACHENVIEW

BLUE LAKE RD

GI

FAIRVIEW LAKE

R/CSP

15TH

217TH

218TH

ALTON

FAIRVIEW LAKE WAY

R/CSP

R/MH

GI

TOWNSEND WAY

LI

R/MF/TOZ

C-C

223RD

230TH

205TH

C-C

R/CSP

C-C

SANDY

687

CERTIFIED MAIL™



7011 2970 0003 6016 0269

City of Fairview
1300 NE Village St
PO Box 337
Fairview, OR 97024



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MAILED F

DEPT OF

SEP 12 2012

LAND CONSERVATION
AND DEVELOPMENT

ATTN: Pland Amendment Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540