



Oregon

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NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: July 31, 2015
Jurisdiction: City of Fairview
Local file no.: 2015-28-ZC
DLCD file no.: 001-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 07/28/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 41 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
File No.: 001-15 {23800}
Received: 7/28/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Fairview

Local file no.: **2015-27-ZC**

Date of adoption: July 15th

Date sent: 7/28/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 5/13/2015

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

No

Local contact (name and title): Erika Palmer, Senior Planner

Phone: 541-674-6242

E-mail: palmere@ci.fairview.or.us

Street address: 1300 NE Village Street

City: Fairview

Zip: 97024

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

N/A

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- | | | | |
|-------------|----|--------|------------------------------------------------|
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this change. |

Location of affected property (T, R, Sec., TL and address): Land mapped as 40, 55, and 80 ft. Resource Protection Areas

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Fairview Municipal Code Title 19: Development Code Chapter 19.106 Natural Resource Regulations

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts: Metro

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.



ORDINANCE
(10-2015)

AN ORDINANCE OF THE FAIRVIEW CITY COUNCIL AMENDING FAIRVIEW MUNICIPAL CODE CHAPTER 19.106, NATURAL RESOURCE REGULATIONS, TO ALLOW BUFFER AVERAGING IN 40 FT., 55 FT., AND 80 FT. RESOURCE PROTECTION AREAS.

WHEREAS, public hearings were held by the Fairview Planning Commission on June 23, 2015 and the City Council on July 1, 2015; and July 15, 2015;

WHEREAS, the City provided notice of the hearings consistent with Fairview Municipal Code Chapter 19.413 and ORS 227.186; and

WHEREAS, the proposed amendments are consistent with Fairview's Municipal Code Chapter 19.205, 19.413 and Comprehensive Plan Chapter 2; and

WHEREAS, the purpose of these amendments is to add language to Fairview Municipal Code Chapter 19.106, Natural Resource Regulations to allow buffer averaging in 40 ft., 55 ft., and 80 ft. resource protection areas,

NOW, THEREFORE, The City of Fairview ordains as follows:

- Section 1. The City Council adopts the Findings set forth in the Staff Report dated June 16, 2015.
- Section 2. FMC Chapter 19.106 is amended as shown in Exhibit 1.
- Section 3. This ordinance is effective upon and from 30 days after its enactment by the Council.

Ordinance adopted by the City Council of the City of Fairview this 15th day of July 2015.

Mayor, City of Fairview
Ted Tosterud

ATTEST

City Recorder, City of Fairview
Devree Leymaster

7-23-15

Date

**ORD 10-2015 EXHIBIT 1
CODE AMENDMENTS- Chapter 19.106
NATURAL RESOURCES REGULATIONS**

DELETED TEXT = ~~STRIKETHROUGH~~
PROPOSED TEXT = UNDERLINE

19.106.020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

C. Buffer Averaging. ~~Reserved for future use.~~ Buffer averaging means decreasing a portion of the riparian buffer within a proposed development site and increasing the buffer in another portion of the site if the buffer as adjusted will provide equivocal protection or enhance functions of the buffer area for water quality and habitat, provided the total area of the buffer on the development proposal site does not decrease.

19.106.040 Resource protection area requirements.

Table 19.106.040(B) Permitted and Prohibited Uses							
A	Vegetation Management	35-foot RPA	40-foot RPA	55-foot RPA	80-foot RPA	50-foot Wetland Buffer	Upland Habitat
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	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted

	feet or less (per calendar year).						
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	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted

	to the resource area.						
B	Tree Removal and Pruning	35-foot RPA	40-foot RPA	55-foot RPA	80-foot RPA	50-foot Wetland Buffer	Upland Habitat
1	Tree removal for trees that present an emergency situation with immediate danger to persons or property. Emergency situations may include, but are not limited to, situations in which a tree or portion of a tree has been compromised and has damaged or is damaging structures or utilities, or private or public property or where a tree or portion of a tree is prohibiting safe passage in the public right-of-way. Examples include trees that have fallen into or against an occupied building or trees downed across power lines or roadways. The emergency exemption is limited to removal of the trees or portion of the tree as necessary to eliminate the hazard. Damages or impacts to vegetation within the resource area resulting from the tree removal shall be repaired after the emergency has been resolved.	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted
2	Limited tree removal or major pruning of trees	Type I	Type I	Type I	Type I	Type I	Type I

	<p>six 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 six 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>						
C	Maintenance and Repair	35-foot RPA	40-foot RPA	55-foot RPA	80-foot RPA	50-foot Wetland Buffer	Upland Habitat
1	<p>Normal maintenance, repair, alteration, or demolition of existing legal 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</p>	Type I	Type I	Type I	Type I	Type I	Type I

<p>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 19.106.090, Nonconforming uses and structures within resource protection areas.</p>						
<p>2 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 this chapter. 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	Normal maintenance and repair of existing stormwater facilities in accordance with stormwater management plan approved by the city.	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted
4	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.	Type I	Type I	Type I	Type I	Type I	Type I
D	Site Development/Alteration	35-foot RPA	40-foot RPA	55-foot RPA	80-foot RPA	50-foot Wetland Buffer	Upland Habitat
1	Activities prohibited by an easement.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
2	Earth disturbing activities not associated with an approved permit.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
3	Activities prohibited by Chapter 16.05 FMC, 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	Prohibited	Prohibited <u>Type III*</u>	Type III*	Prohibited <u>Type III*</u>	Type III	Type III

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Ordinance 10-2015

	underlying zone within the resource protection area subject to FMC 19.106.040(D), Exception process.						
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 stormwater discharge into waterbodies 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 of FMC 19.106.040(C).	Type II	Type II	Type II	Type II	Type II	Type II
12	Impervious pathways and pathways greater than five 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	Type II	Type II	Type II	Type III	Type III	Type II

	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.						
14	Benches and outdoor furniture and interpretive signage and displays provided such facilities do 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.						

***Type III – Subject to standards 19.106.040.D.(E) Buffer Averaging**

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 intent of the exception process is to allow reasonable development of property while providing protection for water and wildlife resources.**

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.

1. The applicant may utilize the following methods for avoiding or minimizing development within the upland habitat area and riparian resource protection areas. 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 area:~~

(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 on site, 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 FMC 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.

(1) Residential development proposals on lands with upland habitat or riparian resource protection areas may transfer up to 50 percent 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.

(2) In order to accommodate any transferred residential densities, dimensional standards and lot sizes may be adjusted by no more than 20 percent.

(3) 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.

(4) Mixed-Use Zones. The density transfer credit can be factored using subsections (D)(1)(a)(i)(D)(1) and (D)(1)(a)(i)(D)(2) of this section, depending on the type of development proposed.

(5) 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.

(E) Buffer Averaging: Buffer averaging is permitted for new development activities, excluding any existing building footprint area already encroaching into the riparian resource area. Reductions from the standard buffer setback distances shall be accomplished through averaging the buffer distance on a site. Buffer averaging involves decreasing a portion of the riparian buffer within the proposed development site and increasing the buffer in another area. The new buffer area will need to provide equivalent or enhanced protection of the functions of values of the riparian resource area and provided the total area contained in the buffer on the proposed development site does not decrease.

(1) Criteria for buffer averaging include:

(a) The Resource Protection Area may not be reduced more than 60% (or 24 ft.) in the 40 ft. Resource Protection Area, 50% in the 55 ft. Resource Protection Area (or 27.5 ft.) and 40% in the 80 ft. Resource Protection Area (or 32 ft.)

(b) Buffering Averaging is allowed with the following site assessment prepared by a qualified professional. At a minimum the assessment shall contain:

- i. A description of the proposed development, including a site plan and distance to property lines.**
- ii. A description and illustration of the relationship between the proposed development and the Riparian Resource Protection Area.**
- iii. An assessment and illustration of the existing condition of the Riparian Resource Protection Area within and adjacent to the project area. This assessment must include when appropriate, a wetland delineation report approved by DSL and acreage.**
- iv. An analysis, based upon best available science, of how the averaged buffer area will provide protection that is equal to or better than of the current buffer area.**
- v. A discussion of alternatives that would have less impact on the Resource Protection Area and associated buffer.**

(c) Any proposed buffer averaging requires enhancement and mitigation of the remaining Resource Protection Area and the new buffer averaging area. A mitigation plan must be prepared that meets section 19.106.040.E Mitigation.

(d) Wherever practical, reductions in the buffer distance shall occur adjacent to lower value or less sensitive areas within the buffer site and the expansion of the buffer in compensation shall occur within higher value or more sensitive areas.

(e) To the extent practicable, wherever riparian buffers are reduced from the standard setbacks, the buffer shall be increased on the opposite bank of the channel across from the area where the reduction is allowed.

(f) A development permit shall be obtained before construction or development begins within any area of special flood hazard.

Requirements for the permit as well as specific and general standards are outlined in Chapter 19.105 FMC, and 16.05 FMC.

- ~~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 protection area cannot be reduced to less than 40 feet in width.~~
 - ~~(B) No more than 50 percent of the protection area on the parcel in which the development will occur may be reduced to 40 feet measured from centerline of the creek.~~
 - ~~(C) The protection area should only be reduced in degraded areas that provide little to no resource value as demonstrated by a habitat assessment (subsection (D)(2) of this section). Development may occur in less degraded areas after the applicant demonstrates that mitigation of the degraded area will be provided.~~
 - iii **(F)** Disturbance of upland habitat areas cannot exceed 50 percent of the designated upland habitat area.

2.-c. Mitigate Development Impacts. All development approved through the exception process must comply with mitigation requirements of FMC 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.

3. 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 to hire a qualified professional to conduct the habitat assessment.
- c. Application requirements listed in FMC 19.106.070.

