

Amendments to the Albany Development Code (ADC)

Draft code amendments are written as follows: additions **bold red underlined** and deletions in ~~strike-out~~. Sections not amended are omitted unless needed for context. Omitted sections are indicated by asterisks: ***

ARTICLE 6 NATURAL RESOURCE DISTRICTS

Commentary

Floodplain Overlay District (/FP), Hillside Development Overlay District (/HD), and the Significant Natural Resource Overlay Districts (/RC, /SW, and /HA) have been amended to create a clear and objective track for residential development as required by ORS 197.307(4).

The approach for Willamette River Greenway Overlay District (/WG) is different from that proposed for the other overlay districts. New language has been added to the purpose statement clarifying that the Willamette Greenway statute (which requires consideration of certain discretionary criteria) take precedence over the requirement to provide clear and objective standards.

6.010 Overview. The natural resource districts are intended to protect valuable natural resources within the City of Albany while allowing reasonable economic use of property.

The Open Space zoning district is a base zone that specifies allowed land uses adjacent to some water resources in Albany.

The Natural Resource overlay districts address development activities within specific natural resource areas and are applied over a base zone. The overlay district requirements are in addition to the requirements of the base zone and other City of Albany ordinances.

The following zoning and overlay districts are included in this article:

- Open Space Zoning District (OS)
- Floodplain Overlay District (/FP)
- Hillside Development Overlay District (/HD)
- Significant Natural Resource Overlay Districts
 - o Riparian Corridor Overlay (/RC)
 - o Significant Wetland Overlay (/SW)
 - o Habitat Assessment Overlay (/HA)
- Willamette River Greenway Overlay District (/WG)

[Ord. 5562, 10/10/03; Ord. 5668, 4/11/07; Ord. 5764, 12/1/11]

OPEN SPACE ZONING DISTRICT (OS)

[No changes proposed to Open Space Zoning District (OS)]

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FLOODPLAIN

6.070 Purpose. The Floodplain overlay district (/FP) standards are intended to manage development in the floodplain in a way that promotes public and environmental health and safety and minimizes the economic loss and social disruption caused by impending flood events. [Ord. 5746, 9/29/10]

6.075 Definitions. As used in this Article the following words and phrases have the following meanings: [Ord. 5746, 9/29/10]

Flood Fringe: Those areas on either side of the floodway within the Special Flood Hazard Area (100-year floodplain). This area is subject to inundation by the base flood but conveys little or no velocity flows. Zone designations on Flood Insurance Rate Maps for Albany include A and AE. Note Floodplain Relationships diagram (Figure 6.075-1).

Floodplain: The combined area of the floodway and the flood fringe. Also known as the 100-year floodplain, and the Special Flood Hazard Area. Note Floodplain Relationships diagram in Figure 6.075-1.

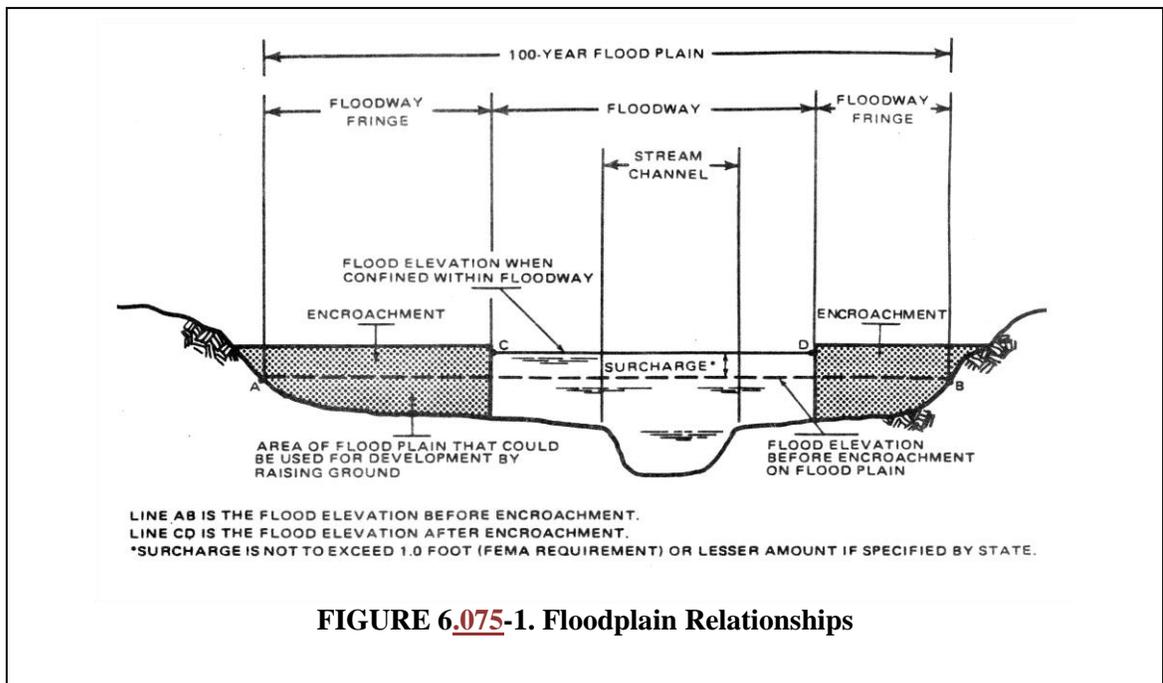


FIGURE 6.075-1. Floodplain Relationships

Floodway: The regulatory floodway is the stream channel plus that portion of the overbanks that must be kept free from encroachment in order to discharge the 1-percent-annual-chance flood without increasing flood levels by more than 1.0 foot. Note Floodplain Relationships diagram in Figure 6.075-1.

GENERAL PROVISIONS

[No changes proposed to General Provisions]

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ADMINISTRATION

6.091 Appeals. Appeals to the interpretations of the Floodplain Administrator shall be reviewed by the Hearings Board as a Type II procedure in accordance with Sections 1.040 and ~~4.520~~**1.410** of this Code. Appeals to the land use decisions (Types I-L, II, and III) resulting from the Floodplain Development Permit applications shall be reviewed in accordance with Section ~~4.520~~**1.410** of this Code. [Ord. 5746, 9/29/10]

6.092 Variances. Variances from the terms of this section shall be granted only, when because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this section deprives such property of privileges enjoyed by other property in vicinity and under identical zoning classifications. Variances as interpreted in the National Flood Insurance Program are based on the physical characteristics of the land and are not dependent upon the occupants, type, or use of a structure. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare. [Ord. 5746, 9/29/10]

No variance will be given to the standards for development in a floodway.

Variances from the floodplain management regulations of this section shall be reviewed as a Type II **using the Major Variance** procedure (**see Article 2**) and shall be approved if the review body finds that all of the following criteria have been met:

[Ord. 5746, 9/29/10]

- (1) The applicant can show good and sufficient cause; and
- (2) Failure to grant the variance would result in exceptional hardship to the applicant; and
- (3) Issuing the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
- (4) The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances from the required lowest floor elevation for new construction and substantial improvements may be granted if the review body find that the request meets criteria (1)-(4) and the parcel is one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.
- (6) Variances may be granted for a water dependent use provided that the structure or other development meets criteria (1)-(4) and is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety
- (7) Variances may be granted for the reconstruction, rehabilitation, or restoration of structures listed on Albany's Local Historic Inventory or the National Register of Historic Places, without regard to the procedures set forth in this section. [Ord. 5875, 10/28/16]
- (8) Variances may be granted for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria and otherwise complies with Building Codes.

Upon issuing the variance, the Floodplain Administrator will notify the applicant in writing that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property. [Ord. 5746, 9/29/10]

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6.093 Floodplain Development Permit Required. A Floodplain Development Permit is required prior to initiating floodplain development activities, as defined in Section 6.075, in the Special Flood Hazard Area. This Article cannot anticipate all development activities that may be located within the Special Flood Hazard Area. The floodplain development permit shall expire 180 days after issuance unless the permitted activity has been substantially begun and thereafter pursued to completion.

[Ord. 5746, 9/29/10]

All development activities that require a Floodplain Development Permit shall be processed in accordance with ADC Section ~~1.200~~**1.100**, Land Use Application Procedures. When ambiguity exists concerning the appropriate classification of a particular activity, the use may be reviewed as a conditional use when the Floodplain Administrator determines that the proposed activity is consistent with other activities allowable within the subject district due to similar characteristics and impacts. When a development proposal involves a combination of activities, the more restrictive provisions of this Code shall apply.

[Ord. 5746, 9/29/10]

A. The following activities will be processed through a Type I procedure as established in ADC ~~1.320~~**1.210**:

- (1) Any structure 200 square feet or more.
- (2) Any substantial improvement to an existing structure as defined in this code.
- (3) Placement of a recreational vehicle more than 180 consecutive days, as described in 6.124(2)-(3).
- (4) Solid fences and walls that require a permit as listed in Section 6.125.
- (5) Any site improvement for development in the floodplain pursuant to Section 6.110 that is not exempt under Section 6.094 and does not already require a permit elsewhere in this Section of the Code.

[Ord. 5875, 10/28/16]

B. The following activities will be processed through a Type I-L procedure as established in ADC ~~1.330~~**1.220**:

- (1) Any development in the floodway allowed by Sections 6.100-6.101.
- (2) Grading, excavation, fill, and paving pursuant to Section 6.111 that cumulatively impacts more than 50 cubic yards of the native elevation and contours of the site or that otherwise requires a permit per this Article, and any associated retaining walls.
- (3) Mining and drilling operations that result in sledge, slag, or other materials remaining in the Special Flood Hazard area will be considered fill for the purposes of this Article, and will be reviewed through the applicable criteria in Section 6.111.
- (4) Additions or expansions of Continuous Storage Operations pursuant to Section 6.112.
- (5) New Continuous Storage Operations pursuant to Section 6.112.
- (6) Land Divisions of 19 lots or less pursuant to Section 6.110.

[Ord. 5767, 12/7/11; Ord. 5875, 10/28/16]

C. The following activities will be processed through a Type II procedure as established in ADC ~~1.350~~**1.230**:

- (1) Any alteration of a Watercourse, pursuant to 6.101 and the applicable criteria in Section 6.111.

D. The following will be processed through a Type III procedure as established in ADC ~~1.360~~**1.240**:

- (1) Land Divisions of 20 or more lots, Cluster Developments and Planned Developments pursuant to Section 6.110.

[Ord. 5875, 10/28/16]

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- (2) Manufactured home parks pursuant to Section 6.110 will be reviewed through the Manufactured Home Park application process.

PROVISIONS FOR FLOOD HAZARD REDUCTION

***Commentary

Section 6.109, below, has been added to create a clear and objective track for residential development as required by ORS 197.307(4). It is intended to clarify that the clear and objective standard is that applicants not develop new dwelling units or create new residential lots or parcels within the Special Flood Hazard Area. Applications for residential development within the Special Flood Hazard Area would be required to comply with the existing standards and criteria as is currently the case.

6.109 Residential Development Standards. Applications proposing new residential dwelling units or the creation of residential lots or parcels on property with Special Flood Hazard Area (100-year floodplain) on it must comply with either the clear and objective standard in subsection (1) or the discretionary standard in subsection (2), below.

- (1) Clear and objective standard. No new dwelling units or new residential lots or parcels are allowed within the floodplain. An application to develop property that has floodplain on it, but where no development is proposed within the boundaries of that floodplain will be processed as otherwise required in this Code. In case of land divisions, “no development” means the floodplain area has been excluded from the land division. This can be done by setting the property aside for some other purpose than later development (for example, as a public drainage right-of-way).**
- (2) Alternative review. Residential development is allowed within the floodplain subject to the provisions of this Floodplain overlay district and the standards in Sections 6.100 through 6.125.**

- 6.110 Site Improvement, Land Division and Manufactured Home Park Standards. Site improvements, land divisions, and manufactured home parks in the Special Flood Hazard Area (100-year floodplain) shall be reviewed by the Planning Division as a part of the land use review process. An application to develop property that has floodplain on it, but where no development is proposed in that floodplain will be processed as otherwise required in this Code. In the case of a land division, “no actual development” means the floodplain area has been excluded from the land division. This can be done by setting the property aside for some other purpose than later development (for example, as a public drainage right-of-way). [Ord. 5746, 9/29/10]

In addition to the general review criteria for site improvements, land divisions and manufactured home parks, applications that propose actual development within the Special Flood Hazard Area shall also be subject to the following standards: [Ord. 5338, 1/28/98; Ord. 5746, 9/29/10]

- (1) All proposed new development and land divisions shall be consistent with the need to minimize flood damage and ensure that building sites will be reasonably safe from flooding.
- (2) All new development and land division proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) On-site waste disposal systems shall be located and constructed to avoid functional impairment, or

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contamination from them, during flooding.

- (4) All development proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (5) Any lot created for development purposes must have adequate area created outside of the floodway to maintain a buildable site area meeting the minimum requirements of this Article.
- (6) Any new public or private street providing access to a residential development shall have a roadway crown elevation not lower than one foot below the 100-year flood elevation.
- (7) All development proposals shall show the location of the 100-year flood contour line followed by the date the flood elevation was established. When elevation data is not available, either through the Flood Insurance Study or from another authoritative source, and the development is four or more acres or results in four or more lots or structures, the elevation shall be determined and certified by a registered engineer. In addition, a statement located on or attached to the recorded map or plat shall read as follows: “Development of property within the Special Flood Hazard Area as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City.” [Ord. 5338, 1/28/98]
- (8) In addition to the general review criteria applicable to manufactured home parks in Article 10, applications that propose actual development within a Special Flood Hazard Area shall include an evacuation plan indicating alternate vehicular access and escape routes.

6.125 **Flood Fringe Fencing and Wall Standards.** Certain types of fences and garden walls may be allowed in the flood fringe of the Special Flood Hazard Area (100-year floodplain). All fences and garden walls constructed within the flood fringe must not obstruct the entry and exit of floodwater, through their design and construction. All fences and walls are prohibited in the floodway. [Ord. 5746, 9/29/10]

Table 6.125-1 below is provided to assist in selecting appropriate fencing in the flood fringe. All fences and walls also must meet the standards in other sections of the Code. [Ord. 5746, 9/29/10]

TABLE 6.125-1. Fence type selection for flood fringe areas.

Fence Type	Flood Fringe Areas
Open barbless wire; Open pipe or rail; Other wire, pipe or rail (e.g. field fence, chicken wire, etc.); Chain link (1)	No permit required
Wood fences (2)	No permit required
Solid fences and freestanding walls, such as masonry (3)	Permit required, must have openings at and below BFE
Other fences (4)	Permit required, must have openings at and below BFE

- (1) Acceptable are materials and installation methods that allow for the entry and exit of floodwater.
- (2) Wood fence boards should be spaced to allow for the entry and exit of floodwater.
- (3) Solid fences and freestanding walls must include a flap or opening in the areas at or below the Base Flood Elevation at least once every three fence panels or 24 feet, whichever is less. Fences less than 24 feet in length shall have at least one flap or opening in the areas at or below the Base Flood elevation. The minimum dimensions of the flap or opening shall not be less than 12"x12" or 8"x18". Openings shall not include any screening of any type or size. If flaps are used, they may be secured to allow closure during normal use, but must be capable of self release and opening to full dimensions when under pressure of no greater than 30 pounds

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per sq. ft. These standards do not apply to retaining walls which shall meet the same standards as other building, paving, and grading activities.

Solid fences and walls constructed within Zone A, where the base flood elevation has not been determined, can use other sources of floodplain and floodway data to determine base flood elevations and boundaries as described in Section 6.080, or the openings can be placed within one foot of the finished grade along the fence alignment.

- (4) Other fence materials and construction that would restrict the flow of floodwaters will require a permit so they can be reviewed and adapted to meet the intent of this section of the Code.

HILLSIDE DEVELOPMENT

6.170 **Purpose.** The Hillside Development overlay district (/HD) is intended to regulate the development of potentially hazardous terrain, minimize public and private losses due to earth movement hazards in specified areas, and minimize erosion and related environmental damage. It is not the intent of Hillside Development standards to transfer density within a development. [Ord. 5668, 4/11/2007]

6.180 **Applicability.** **Except as specified below, the** ~~The~~ Hillside Development standards apply to any property proposed for development that has slopes of 12 percent or greater as shown on Plate 7 of the Albany Comprehensive Plan. Where Plate 7 shows that there are slopes 12 percent or greater on a property, the applicant may choose to submit a topographic survey, prepared and stamped by a licensed surveyor or civil engineer, showing two-foot contour intervals for the entire site. If the applicant chooses to submit survey information, and the survey indicates that the property does not contain slopes 12 percent or greater, the Hillside Development standards will not apply. [Ord. 5668, 4/11/2007]

The interior remodeling of existing buildings, including the creation of additional dwellings units within an existing dwelling, is exempt from the requirements of the Hillside Development overlay District provided there is no increase in the building footprint.

6.190 **Procedure.** Hillside Development is reviewed concurrently with the land use application(s) required for the development and is processed using the same procedure as the primary land use application. ~~Development~~ **Hillside development** that only requires a building permit is reviewed administratively as a Type I procedure. [Ord. 5668, 4/11/2007; Ord. 5886, 1/6/17; Ord. 5923, 2/8/19]

6.200 **Geotechnical Report Required.** For any development subject to the applicability criterion in ADC 6.180, an applicant shall provide a geologic and soils report prepared and stamped by a certified engineering geologist or a licensed civil engineer, licensed in the specialty of geotechnical engineering with the State of Oregon.

The report must identify the following:

- (1) All geologic and soils hazards and certify that the site, and each individual lot if land division is proposed, are suitable for the proposed development.
- (2) Area(s) suitable for building and describe how slopes will be stabilized.
- (3) Suitable building footprint(s) for development on each lot.
- (4) Any requirements that must be met from the time construction begins to the time construction is completed.
- (5) Any requirements that must be met after construction is completed (e.g., maintenance requirements for continued slope stabilization). [Ord. 5668, 4/11/07]

6.210 **Drainage.** In all slope areas, impervious surface drainage from roofs, driveways, and parking areas must be

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directed to a City storm drain or other City-approved drainage system. Development activities must not block the flow of stormwater in natural drainageways without prior approval from the Public Works Director. [Ord. 5265, 12/18/96]

- 6.220 **Street and Driveway Standards**. Street grades shall generally be 12 percent or less. Grades on Arterial or Collector streets must be no more than 6 percent and 10 percent respectively (see Section 12.210). Street grades of up to 15 percent may be permitted for a distance of no more than 200 feet. No intersections are permitted where street grades exceed 12 percent. Where practical, streets must be contoured to hillside areas in order to minimize environmental and scenic disruption. Driveways must have a grade of 15 percent or less, unless the Public Works Director approves a greater slope.
- 6.230 **Modification of Standards**. The following Development Code standards may be modified through the application process, if approved by the review body:
- (1) Front, side and rear yards may be reduced if the geotechnical report explains why the reduction is warranted. The reduction must be approved by the review body. A variance application is not required, but a developer must make a specific written request for the reduction to the City for consideration.
 - (2) Building height limitations may be exceeded on hillside lots, if the geotechnical report explains why the additional height is warranted. The additional height requires approval by the review body, provided it does not exceed 45 feet. [Ord. 5668, 4/11/07]

Commentary

The current approach is to require a geotechnical report; however, basing a permit on a report is not considered a “clear and objective standard.” Section 6.335, below, has been added to create a clear and objective track for residential development as required by ORS 197.307(4). It allows applicants to opt to provide a “certification” rather than a geotechnical report. Certification removes the discretion from the City’s decision -- the City must accept the certification if it is provided as required.

6.235 Applications for Residential Development. For the construction of new residential dwelling units within the Hillside Development overlay district that meet the applicability criteria in ADC 6.180, in lieu of compliance with sections 6.200 through 6.230, applicants may choose to provide a certification from an Oregon licensed Engineering Geologist (CEG) or an Oregon licensed Geotechnical Engineer (GE) stating:

- (1) That the proposed development activity will not impact or be impacted by existing or potential stability problems or any of the following site conditions: springs or seeps, depth of soil bedrock, variations in soil types, or a combination of these conditions; or**
- (2) If proposed development activity will impact or be impacted by any of the conditions listed in (1), the methods for safely addressing the impact of the conditions.**

If a certification is submitted under subsection (2), the certification shall also include a signed and notarized statement from the property owner, and applicant, that all development will occur in accordance with the Engineer’s certification.

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SIGNIFICANT NATURAL RESOURCE OVERLAY DISTRICTS

6.260 Overview. The Significant Natural Resource overlay districts include Riparian Corridors (/RC) and Significant Wetlands (/SW) and fish-bearing waterways throughout the city, and a Habitat Assessment area (/HA) designated specifically for turtle habitat in and around Thornton Lakes in North Albany.

- Purpose and Intent (6.270)
- Land to which these Regulations Apply (6.280)
- Exempt Activities (6.290)
- Activities Subject to Natural Resource Impact Review (6.300)
- Natural Resource Impact Review Standards (6.310)
- Mitigation Standards (6.400)
- Local Mitigation Plans (6.410)
- Albany Native Plant List (6.420)
- District Boundary Corrections and Refinements (6.430)
- District Amendments (6.440)
- ~~Adjustments and~~ **Minor and Major** Variances (6.450)
- Compliance with State and Federal Regulations (6.460)
- Violations (6.470)

Per OAR 660-023-0040, two studies were conducted that analyze the Economic, Social, Environmental, and Energy (ESEE) consequences of allowing, limiting, or prohibiting conflicting uses within the three resource areas. The protection programs for the three significant resources are informed by these two ESEE Analyses.

6.270 Purpose and Intent. The intent of these supplemental Significant Natural Resource overlay districts is to protect significant natural resources within the City of Albany as designated under Statewide Planning Goal 5 and the provisions of the Goal 5 administrative rule (OAR 660, Division 23), while ensuring reasonable economic use of property.

More specifically, the purpose and intent of each Significant Natural Resource overlay district is as follows:

A. Riparian Corridor overlay district (/RC): To protect and enhance Albany's riparian areas, thereby protecting and restoring the hydrologic, ecological, and land conservation functions these areas provide. Significant riparian corridors support valuable fish and wildlife habitat; improve water quality by regulating stream temperatures, trapping sediment, and stabilizing streambanks; and reduce the effects of flooding.

A healthy riparian corridor is comprised of a multi-storied forest of native species of trees, shrubs, and ground cover. Many riparian corridors in Albany have the potential to be restored to higher function and value.

B. Significant Wetland overlay district (/SW): To protect and enhance the integrity, function and value of Albany's significant wetlands and fish-bearing waterways. Wetlands and waterways provide hydrologic and ecologic functions; and reduce adverse effects of flooding. The vast majority of significant wetlands are in riparian areas. There are a small number of isolated significant wetlands.

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The higher quality isolated wetlands will be regulated locally (as identified in the Citywide ESEE Analysis); and the lower quality isolated wetlands will not be regulated locally, but must comply with state and federal wetland regulations.

- C. Habitat Assessment overlay district (/HA): To protect habitat for northwestern pond and western painted turtles in and around Thornton Lakes by reviewing and limiting the impacts of development activities on their habitat. This was the only area in Albany where there is a documented presence of a species listed by either the federal government or the State of Oregon. The State lists the species as "sensitive, critical." The overlay identifies an area of high likelihood of turtle nesting, foraging, or migration routes. The overlay district regulations provide a limited level of protection (as identified in the Thornton Lakes ESEE Analysis). Voluntary methods of turtle habitat protection and enhancement are encouraged and essential.

6.280 Lands to Which These Regulations Apply. The procedures and requirements of this section apply only to property that is within a Significant Natural Resource overlay district.

- A. Riparian Corridor overlay district (/RC): The Riparian Corridor overlay district extends 50 feet upland from the Ordinary High Water mark, measured horizontally.

If the Riparian Corridor overlay district area includes all or portions of a significant wetland, the district extends upland 50 feet, measured horizontally from the edge of the significant wetland. Fish-bearing waterways, and the significant wetlands associated with such waterways, are included in the Significant Wetland overlay district.

- (1) The Riparian Corridor boundary applies to the following Albany water resources (and in-stream lakes):

- o Calapooia River
- o Burkhart Creek
- o Cathey Creek
- o Cox Creek
- o Crocker Creek
- o Horseshoe Creek
- o Oak Creek
- o Periwinkle Creek
- o Thornton Lakes
- o Truax Creek

- (2) The Willamette River Riparian Corridor is located within the Willamette River Greenway District boundary. All development on properties within the Willamette River Greenway District is subject to the regulations beginning in Section 6.500, but is not subject to the riparian corridor overlay regulations.

- B. Significant Wetland overlay district (/SW): The Significant Wetland overlay district is comprised of fish-bearing waterways below the Ordinary High Water Mark, the wetlands associated with riparian corridors, and higher quality isolated significant wetlands, in the City's Local Wetland Inventory (LWI), and as amended through wetland delineations approved by the DSL and the ACE, if applicable. Notice to, and potentially permits from, DSL and ACE are still required for potential impact to all wetlands regulated by DSL or ACE.
- C. Habitat Assessment overlay district (/HA): This overlay district extends 75 feet from the Ordinary

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High Water mark upland from East and West Thornton Lakes.

- 6.290 Exempt Activities. The following activities are exempt from Natural Resource Impact Review as would otherwise be required within the Significant Natural Resource overlay districts. Many of these exemptions are provided in recognition of the Albany ESEE analyses and pre-existing uses. Land use reviews as required by other sections of this Code and compliance with other local (floodplain, fill, encroachment, etc.), state, and federal regulations is still required. As a result, these activities should still be conducted in a manner that minimizes impact to Albany's significant natural resources.
- (1) Emergency procedures necessary for the immediate safety or protection of life or property, including removing hazardous trees and stream bank stabilization.
 - (2) Removal of refuse or any fill that is in violation of local, state or federal regulations or in-channel erosion or flood control measures approved by City of Albany Public Works, DSL, ACE and any other applicable state or federal regulatory agency. Removal or placement of material in waters of the State must be consistent with State of Oregon Removal-Fill regulations (ORS 196.795-990) and the ACE fill regulations.
 - (3) City construction of public infrastructure, such as transportation, stormwater, sewer, and water utilities. This exemption requires unimproved but disturbed areas to be replanted with native vegetation.
 - (4) Private construction of public infrastructure. The location and construction of public transportation and utility facilities and structures as identified in a City-adopted master plan. This exemption requires that unimproved but disturbed areas are replanted with native vegetation.
 - (5) The use of pre-existing right-of-way or easements for public infrastructure, franchise utilities, and railroads. Planting and maintaining native vegetation is encouraged.
 - (6) Implementation of erosion prevention or flood control measures provided the measures have received any required approvals and permits from local, state or federal regulatory agencies with jurisdiction over the proposed activity.
 - (7) Farming practices such as grazing, plowing, planting, cultivating and harvesting, that either existed on the property prior to the date of adoption of these provisions or do not include new or expanded structures, roads, or other facilities involving grading, excavation, fill, native vegetation removal, or new drainage measures.
 - (8) Maintenance of existing structures, impervious surfaces, and landscaped areas as described below:
 - (a) Ongoing maintenance of pre-existing landscaped areas, including perimeter mowing, as long as natural vegetation is not disturbed and there is no excavation, filling or reduction of natural resource area. Use of integrated pest management methods is encouraged.
 - (b) Ongoing maintenance of existing development, such as repair, replacement, and use of existing buildings, roads, paths, utilities, bridges, culverts, fences, flood control structures, drainageways or facilities, detention facilities, water quality facilities, and other structures and impervious surfaces, provided that such practices avoid sedimentation and other discharges into streams, lakes, or wetlands and do not add impervious surface or remove additional vegetation.
 - (9) Removal of live vegetation for the following purposes:
 - (a) Restoration and enhancement projects that have received required approvals from the appropriate local, state, or federal agency.

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- (b) Removal of non-native and invasive plants, including noxious weeds if consistent with local, state, and federal regulations, and replanted with species on the City's native plant list.
 - (c) Planting native vegetation on the City's native plant list.
 - (d) Felling of trees planted as Christmas trees or orchard trees.
- (10) Residential development activities, such as construction of home additions, decks, patios, sheds, gardens, landscaping, etc., that impact no more than 2,000 square feet (cumulatively), or 20 percent of the Habitat Assessment overlay district area within a property, whichever is less. Development activities will be reviewed at the time of application for building permits when applicable.
- Regardless of the exemption to the local Natural Resource Impact Review requirements, protection of the turtle species is regulated by the State of Oregon.
- This exemption only applies to the Habitat Assessment overlay district. If the proposed activity is also located within other Significant Natural Resource overlay districts the requirements of those districts still apply.
- (11) Construction of an approved, vegetated post-construction stormwater quality facility (e.g. swale), located in a portion of the Riparian Corridor that is in Degraded Quality condition and planted with native plants. [Ord. 5842, 1/01/15]

6.300 Activities Subject to Natural Resource Impact Review. A Natural Resource Impact Review will be required for proposed development activities in the Significant Natural Resource overlay districts that are not specifically exempted from review. The review will take place concurrent with any land use application or building permit. In instances when neither is required, the Natural Resource Impact Review will be conducted independently through either a Type I or I-L process as designated below. The standards for reviewing proposed development activities in the Significant Natural Resource overlay districts are found in **Section 6.305 and** Section 6.310.

A. Activities subject to review include:

- (1) Land divisions;
- (2) New structures, or exterior expansion of the footprint of any structure or driveways (Type I);
- (3) Increases in impervious surfaces (Type I-L);
- (4) Site modifications, including grading, excavation, fill or native vegetation removal (Type I-L);
- (5) Private construction of public and privately owned transportation facilities and utilities not exempt through 6.290(4) or 6.290(11) (Type I-L); and
- (6) Activities within the Habitat Assessment overlay district not exempt under ADC 6.290 (Type I).

B. When a proposed use or activity requires a Natural Resource Impact Review, in addition to what is required for any concurrent land use applications or building permits, the applicant shall submit a scaled site plan to the City that that shows:

- (1) Topographic contours at two-foot intervals;
- (2) Ordinary high water (OHW) mark of all lakes, streams, or other waterways;
- (3) Location of Riparian Corridor and Habitat Assessment overlay districts based on OHW;
- (4) Location of Significant Wetland overlay district based on the LWI or DSL-approved delineation or determination;
- (5) The 100-year flood boundary and elevation;
- (6) Existing vegetative cover and species composition;

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- (7) Existing and proposed site improvements;
- (8) How the requirements of the applicable review standards in ADC 6.310 will be met; and
- (9) A mitigation plan if required per ADC 6.400-6.410.

Commentary

Section 6.305, below, has been added to create a clear and objective track for residential development as required by ORS 197.307(4). It is intended to clarify that the clear and objective standard is that applicants not develop new dwelling units or create new residential lots or parcels within the Natural Resource Overlay. Applications for residential development within the overlay would be required to comply with the existing standards and criteria, as is currently the case.

6.305 Residential Development Standards. Applications subject natural resource review that are proposing new residential dwelling units or the creation of residential lots or parcels on properties that include one or more Significant Natural Resource overlay districts must comply with either the clear and objective standard in subsection (1) or the discretionary standard in subsection (2), below. As used in these subsections, the proposed division of land with a Significant Natural Resource overlay district on it is considered development “within a Significant Natural resource overlay district”.

- (1) Clear and objective standard. No development, including creation of lots or parcels, is permitted within a Significant Natural Resource overlay district. An application to develop property that has one or more Significant Natural Resource overlay districts on it, but where no development is proposed within the boundaries of a Natural Resource Overlay will be processed as otherwise required in this Code.**
- (2) Alternative review. Residential development is permitted within a Significant Natural Resource overlay district subject to the provisions of the applicable overlay district(s) and the standards in Sections 6.300 through 6.460.**

6.310 Natural Resource Impact Review Standards

- A. General Requirements for Significant Natural Resource overlay districts. A proposed activity will not be approved unless all of the following are true:
 - (1) The proposed activity is allowed under the requirements of the base zone.
 - (2) There are no other reasonably feasible options or locations outside the Significant Natural Resource overlay districts for the proposed activity on the subject parcel.
 - (3) The proposed activity is designed, located and constructed to minimize excavation, grading, structures, impervious surfaces, loss of native vegetation, erosion, and adverse hydrological impacts on water resources. All activities are located as far from the water resources, and use as little of the surface area of the Significant Natural Resource overlay districts, to the extent reasonably feasible.
 - (4) Any proposed impacts to significant natural resources will be mitigated per the standards in Sections 6.400 and 6.410.
 - (5) Any applicable local, state, and federal permits are secured.
 - (6) The additional requirements of ADC 6.310 (B) will be met.

Amendments to the Albany Development Code (ADC)

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- B. Additional Requirements, Limitations, and Exceptions for Specific Activities in Riparian Corridor and Significant Wetland overlay districts. In addition to the general requirements listed above, the following requirements, limitations, and exceptions apply to development activities within the **Riparian Corridor and Significant Wetland** ~~Significant Natural Resource~~ overlay districts.

Commentary:

Language added to (1), below, addresses land partially situated in one of the overlays. In order to make the standard clear and objective, the use of the word "sufficient" has been defined to mean at least 2,000 square feet of land outside of any Significant Natural Resource overlay district. This is consistent with the assumptions used in the City's recent Buildable Lands Inventory.

- (1) Land Divisions. In addition to the regulations in Article 11, land partially situated in one of the City's natural resource districts can be divided only if there is sufficient land outside of any Significant Natural Resource overlay district to establish a development site area and/or separate a developed area from the natural resource areas. **For the purposes of this section, for residential land divisions, "sufficient land" means a minimum of 2,000 square feet per proposed lot or parcel.** Applicants may also elect to follow the Cluster Development standards for land divisions in Article 11.
- (2) Structures and Land Altering Activities. The placement of structures and other impervious surfaces, as well as grading, excavation, placement of fill, and vegetation removal, are prohibited. Exceptions may be made for the purposes identified in items a-f of this Section, provided they are necessary to accommodate an approved activity and comply with any stated requirements for the activity or use.
- (a) Water-Related and Water-Dependent Uses. Development of water-related and water-dependent uses.
- (b) Permanent Alteration Within the Riparian Corridor. Disturbance or development within the Riparian Corridor overlay district shall be allowed under the following circumstances:
- (i) The resource is characterized as 'marginal' or 'degraded' using the standards found in 6.410(5).
- (ii) Demonstration that equal or better protection will be ensured through riparian corridor restoration and enhancement within the remaining overlay district area per the mitigation requirements in Sections 6.400 and 6.410. If the site is encumbered by easements or rights-of-way that would preclude onsite restoration or enhancement, an "in-lieu of payment" may be made to the City in the amount equal to the cost of onsite mitigation.
- Residentially zoned lots that were created prior to December 1, 2011, that are less than 20,000 square feet and can't be further subdivided are allowed to encroach up to 25 feet into the Riparian Corridor overlay district without the requirement for restoration or enhancement of the remaining 25 feet. The mitigation requirements in Section 6.400 still apply.
- (iii) In no case shall the site improvements be any closer than 25 feet from the Ordinary High Water mark or upland edge of the wetland, unless the improvements are otherwise allowed or exempted per this Section of the Code.
- (c) Vegetation Removal. Removal of live vegetation that is not exempt under 6.290(9) is only

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allowed to accommodate an approved use or development activity under this section of the Code.

(d) Private Construction of Public Non-Master Planned Transportation Facilities and Privately Owned Transportation Facilities. In addition to other City standards, the following standards shall apply to the location and construction of public non-master planned and/or private transportation facilities and structures, such as driveways, local streets, bridges, bridge crossing support structures, culverts, and pedestrian and bike paths. In addition to other City standards, the following standards shall apply to privately constructed transportation facilities and structures:

- (i) The facility is designed to be the minimum width necessary to allow for safe passage of vehicles, bicycles and/or pedestrians, and to meet minimum width requirements.
- (ii) Where reasonably feasible, crossings of significant natural resources shall be aligned to minimize impact area.
- (iii) The number of crossings is the minimum amount necessary to afford safe and efficient access.
- (iv) The number of crossings is minimized where reasonably feasible through use and creation of shared access for abutting lots and access through easements for adjacent lots.
- (v) Crossing structures have a natural bottom or other design that meets ODFW fish passage requirements.

(e) Private Construction of Public Non-Master Planned Utilities and Privately Owned Utilities. In addition to other City standards, the following standards shall apply to permitted crossing, trenching, or boring for the purpose of developing a corridor for public non-master planned utilities and private utilities, within or crossing parcels in Significant Natural Resource overlay districts, as well as any above-ground utility structures.

In addition to other City standards, the following standards shall apply to privately constructed utility projects:

- (i) Boring under the waterway, directional drilling, or aerial crossing is preferable to trenching. If trenching is the only feasible alternative, it shall be conducted in a dry or dewatered area with stream flow diverted around the construction area to prevent turbidity.
- (ii) Common trenches for private utilities, to the extent allowed by the building code, shall be required where reasonably feasible in order to minimize disturbance of the protected resource.
- (iii) Topsoil and sod shall be conserved during trench construction or maintenance, and replaced on top of the trench. Side-casting and storage of excavated material prior to replacement on top of trench is permitted. Any side-cast material not placed back on top of the trench shall be removed and may not be stored in the Significant Natural Resource overlay district after the construction or maintenance work is completed.
- (iv) Hydraulic impacts on protected resources are minimized.
- (v) Where reasonably feasible, crossings of significant natural resources shall be aligned to minimize impact area.
- (vi) Above-ground utilities that cause ground disturbance in the Significant Natural Resource overlay district and are not within an existing right-of-way or easement, and

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are not shown in an approved master plan, will only be allowed in limited circumstances, and if they meet the general requirements in 6.310(A).

- (f) ~~Adjustment~~ **Minor or Major Variance**. Development associated with an approved adjustment **Minor or Major Variance** ~~or variance~~.

Commentary
Minor changes are proposed to improve the clarity of subsection C(2).

C. Activities within Habitat Assessment overlay district. A wildlife habitat assessment is required if proposed development exceeds the minimum thresholds in 6.290(10). If the wildlife habitat assessment finds evidence of habitat for either the northwestern pond turtle or the western painted turtle within the overlay district, the following standards apply:

- (1) New development, expansion of existing development, landscaping and other ground disturbances shall be located outside of the designated turtle habitat areas as determined by the habitat assessment; or
- (2) If impacts are approved, the development/use has been proposed in a manner that will minimize the impact of the development on wildlife habitat. The Oregon Department of Fish and Wildlife (ODFW) ~~will~~ **has reviewed** and **approved** a mitigation plan for **any impacts to the habitat area for** the proposed development. Local mitigation is not required in addition to that required by ODFW or other state and federal agencies.

6.410 Local Mitigation Plan. When a local mitigation plan for impact to a significant natural resource is proposed or required as part of a development application, the applicant shall submit a mitigation plan prepared by a qualified professional with demonstrated experience in developing mitigation plans for the specific impacted resource.

- (5) Table ~~6-2~~ **6.410-1** below summarizes the quality levels, mitigation requirements and expected condition of the significant wetlands and riparian corridor areas after successful completion of the mitigation plan; ODFW will solely determine the requirements for mitigation of significant wildlife habitat.

TABLE 6-2-6.410-1

Quality levels, mitigation requirements and expected condition of the significant wetlands and riparian corridor areas after successful completion of the mitigation plan.

Existing Resource Quality	Mitigation Requirements/ Expected Future Resource Quality
<u>Waterways & Significant Wetlands</u> (riparian and isolated)	
<i>Good Quality</i> : Little enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional. City staff will verify existing condition.	Preserve or enhance per approved mitigation plan; Invasive species are removed and are not persisting.

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<i>Marginal Quality:</i> Moderate enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional. City staff will verify existing condition.	Restore to Good Quality per approved mitigation plan; Invasive species are removed and are not persisting.
<i>Degraded Quality:</i> High enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional; Farmed or otherwise converted. City staff will verify existing condition.	Enhance to at least Marginal Quality; A smaller ratio of 1.0 (impact area) to 0.5 (mitigation area) may be allowed for restoration to Good Quality.
<u>Riparian Corridor Overlay</u>	
<i>Good Quality:</i> Combination of native trees, shrubs, and groundcover are at least 80% of the overlay area, and there will be more than 50% tree canopy coverage at maturity.	Preserve or enhance per approved mitigation plan; Invasive species are removed and are not persisting.
<i>Marginal Quality:</i> Combination of native trees, shrubs, and groundcover are at least 80% of the overlay area, and there will be 25%-50% tree canopy coverage at maturity.	Restore to Good Quality with an approved plan (mature overlay area coverage will be estimated); Invasive species are removed and are not persisting;
<i>Degraded Quality:</i> Less vegetation and canopy coverage than Marginal Quality, and/or greater than 10% coverage of any non-native species.	Enhance to at least Marginal Quality with an approved plan (mature overlay area coverage will be estimated); A smaller ratio of 1.0 (impact area) to 0.5 (mitigation area) may be allowed for restoration to Good Quality.

Commentary
 Minor changes proposed to improve the clarity of Section 6.420.

6.420 Native Plant List. The City shall ~~will maintain~~ **establish** a native plant list, which includes plants that were historically found in the area at the time of European contact. ~~Any modifications to the list will be processed administratively as a Type I process.~~ If a modification is requested, the Director will determine if the modification is warranted based on consultation with knowledgeable people with backgrounds in botany or landscape architecture, as well as scientific documents.

6.430 District Boundary Corrections and Refinements. The boundaries for the Significant Natural overlay districts are approximate.

The boundaries of the Significant Wetland overlay district are based on the locations of the significant wetlands identified in the City's Local Wetland Inventory, as reflected in Plate 6 of the Comprehensive Plan. The Riparian Corridor overlay and Habitat Assessment overlay districts were estimated by measuring from the edge of the water, which is based on an aerial photograph.

District boundary corrections and refinements will be processed administratively. District corrections will be made to correct map errors, such as when the map does not properly reflect the Local Wetland Inventory data. A district boundary refinement is an ~~adjustment~~ **alteration** made, based on professional analyses, to refine the boundary of the Significant Natural Resource overlay districts. District refinements

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must be made in accordance with the provisions in this code to determine the location and extent of the following:

- Riparian Corridor overlay districts as measured from the Ordinary High Water (OHW) mark of rivers, lakes, and streams, and from the upland edge of adjacent significant wetlands. If a DSL-approved wetland delineation or determination results in a change to the boundary of the significant wetland adjacent to the riparian corridor, the Riparian Corridor overlay boundary will be adjusted accordingly.
- Habitat Assessment overlay districts as measured from the OHW mark of East and West Thornton Lakes. If an ODFW-approved habitat assessment results in a change to the boundary of the habitat area, the habitat assessment overlay boundary will be adjusted accordingly.
- Ordinary High Water Mark: Changes to the Riparian Corridor or Habitat Assessment overlay boundaries must be based on the location of the OHW that includes supporting information submitted by a qualified professional hydrologist or professional land surveyor.
- Significant Wetlands overlay district by delineations of significant wetlands that are approved by the DSL or by onsite wetland determinations by DSL when delineations are not needed for other purposes. DSL-approved delineations or determinations shall be required when development is proposed within 30 feet of the overlay district and will supersede the LWI mapping.

Commentary

The Adjustment process referred to below has been renamed “Minor Variance” and “Variances” are now “Major Variances.” Currently, the Adjustments described below are subject to Type I review. However, the criteria involve discretion so Type I-L is appropriate and consistent with the Minor Variance process.

- 6.450 ~~Adjustments~~ **Minor Variances** and **Major Variances**. The City may grant ~~adjustments~~ **Minor Variances** or **Major Variances** ~~variances~~ to the standards in the Significant Natural Resource overlay districts in order to avoid rendering a property not buildable through application of this ordinance. Requests that cannot meet the provisions and review criteria for ~~adjustments~~ **Minor Variances** will be processed as a **Major Variance** ~~variance~~. ~~Adjustment~~ **Minor Variance** applications will be processed through the Type **I-L** land use process using the criteria in Section 6.450(2) below. **Major** Variance applications will be processed through the Type II process using the criteria in Section 2.690. The proposed activity or use must be allowed within the base zoning district in order to be considered for **a Minor or Major Variance**. ~~an adjustment or variance.~~
- (1) ~~General Standard~~. In evaluating any ~~adjustment or variance~~ **Minor or Major Variance** request, the decision maker may require the applicant to incorporate design options to reduce the impact on the protected resource. These may include, without limitation, multi-story construction, alternate siting of structures, limiting the length of impervious driveway and other surfaces, and maximizing the use of native landscape materials.
 - (2) ~~Adjustments~~ **Minor Variances**. In order for the Director to approve an ~~adjustment~~ **Minor Variance** application, the applicant shall demonstrate that all the following criteria are fully satisfied:
 - (a) It is an existing legal lot and there is insufficient space outside the resource area to construct a use permitted in the underlying zoning district.
 - (b) The development site area, including all structures and impervious surfaces, encroaches on the resource area a total of 3,000 square feet or less.

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- (c) The ~~adjustment~~ **Minor Variance** is the minimum necessary to allow a permitted use or achieve the minimum buildable area outlined above, while at the same time minimizing disturbance to the significant natural resources. The Director may require ~~adjustments~~ **modifications** to site development standards to enable avoidance of the resource.
- (d) The encroachment does not result in a new structure or impervious surface being located closer than 25 feet from the Ordinary High Water mark. Bridges are an exception to this requirement.
- (3) **Major Variances**. For any existing lot or parcel whose hardship cannot be alleviated with ~~an Adjustment~~ **a Minor Variance** application, the property owner may apply for a **Major** Variance per Section 2.690.

WILLAMETTE RIVER GREENWAY

Commentary:

The approach for Willamette River Greenway Overlay District (/WG) is different from that proposed for the other overlay districts. New language has been added to the purpose statement clarifying that the Willamette Greenway statute (which requires consideration of certain discretionary criteria) take precedence over the requirement to provide clear and objective standards.

- 6.500 **Purpose**. The Willamette River Greenway district is intended to guide development along the Willamette River so as to preserve the existing scenic, use and natural features. **The procedures and criteria of this district implement the requirements of Goal 15 and ORS 390.314. Pursuant to ORS 174.020(2), the requirements of ORS 390.314 (and by extension Goal 15) take precedence over the requirement for clear and objective standards for housing in ORS 197.307.**
- 6.510 **Applicability**. The area of the City within the Willamette River Greenway District is the area so designated by the boundary shown on Figure-6-2 **6.510-1**.



FIGURE 6-2 **6.510-1**. Willamette River Greenway.

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- 6.540 Criteria. An application for a Willamette River Greenway use development will be granted if the review body finds that the proposal conforms to the following applicable criteria:
- (1) Lands designated on the Comprehensive Plan as Open Space are preserved and maintained in open space use.
 - (2) Significant air, water and land resources including but not limited to natural and scenic areas, viewpoints, vistas, fish and wildlife habitats, etc. in and adjacent to the Willamette River Greenway are protected, preserved, restored, or enhanced to the maximum extent possible.
 - (3) Areas of annual flooding, floodplains, and wetlands are preserved in their natural state to the maximum possible extent to protect water retention, overflow, and other natural functions.
 - (4) The natural vegetative fringe along the river is maintained to the maximum extent that is practical in order to assure scenic quality, protection of wildlife, and protection from erosion.
 - (5) The harvesting of timber will be done in a manner which ensures that wildlife habitat and the natural scenic qualities of the Willamette River Greenway are maintained or will be restored.
 - (6) The proposed development, change, or intensification of use is compatible with existing uses on the site and the surrounding area and provides the maximum possible landscaped area, open space, or vegetation between the activity and the river.
 - (7) Extraction of aggregate deposits shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise and safety, and necessary reclamation will be guaranteed.
 - (8) Any public recreational use of facility will be developed, maintained, and operated in such a way as to minimize adverse effects on adjacent properties.
 - (9) Building setbacks from the floodway line shall be determined by the setback and height plane as defined in Sections 5.200 ~~and 5.205~~ **through 5.207** of this Code.
 - (10) Public access will be provided to and along the Willamette River by appropriate legal means for all development in conformance with plans approved by the City.

CLUSTER DEVELOPMENT

- 6.570 Cluster Development. See Article 11, Land Divisions and Planned Developments, Sections 11.400 to ~~11.510~~ **11.530**, for Cluster Development standards. [Ord. 5668, 4/11/07]