

## Division XII. – RIPARIAN PRESERVATION

### Chapter 16.130

#### GENERAL PROVISIONS

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#### **16.130.010 Purpose**

Riparian land regulations contained in this chapter are intended to implement the policies of the Canby Comprehensive Plan, and are intended to resolve conflicts between development and conservation of riparian areas. Specifically, this chapter allows reasonable economic use of property while establishing clear and objective standards to protect and maintain the integrity of the rivers and streams in Canby by minimizing erosion, promoting bank stability, maintaining and enhancing water quality, and fish and wildlife habitats, and preserving scenic quality and recreation potential.

#### **16.130.020 Definitions**

1. "Building Envelope" means the land area, outside of all required setbacks, which is available for construction of a primary structure on a particular property.
2. "Fish Use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts. Fish use is determined from Oregon Department of Forestry Stream Classification maps.
3. "Impervious surface" means any material which reduces and prevents absorption of storm water into previously undeveloped land.

- 4.** “Lawn”: is grass or similar materials maintained as a ground cover of less than 6 inches in height. For purposes of this ordinance, lawn is not considered native vegetation regardless of the species used.
- 5.** “Mitigation” means taking one or more of the following actions listed in order of priority:
  - a.** Avoiding the impact altogether by not taking a certain development action or parts of that action;
  - b.** Minimizing impacts by limiting the degree or magnitude of the development action and its implementation;
  - c.** Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
  - d.** Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development action by monitoring and taking appropriate corrective measures;
  - e.** Compensating for the impact by replacing or providing comparable substitute resources or environments.
- 6.** “Net Loss” means a permanent loss of habitat units or habitat value resulting from a development action despite mitigation measures having been taken.
- 7.** “Non-conforming” is a structure or use that does not conform to the standards of this ordinance but has been in continuous existence from prior to the date of adoption of this ordinance up to the present. Non-conforming uses are not considered violations and are generally allowed to continue, though expansion, re-construction, or substantial improvement may be regulated.
- 8.** “Off-Site Mitigation” means habitat mitigation measures undertaken in areas distant from a development action, and which are intended to benefit fish and wildlife populations other than those directly affected by that action.
- 9.** “On-Site Mitigation” means habitat mitigation measures undertaken within or in proximity to areas affected by a development action, and which are intended to benefit fish and wildlife populations directly affected by that action.
- 10.** “Riparian corridor ” includes a river or major stream, associated wetlands, and the “riparian setback” area:
- 11.** The “riparian setback area” is a slope distance measured from the Molalla River top-of-bank, mean high water line, or the edge of an associated wetland, whichever is greater. The riparian setback is the same as the “riparian corridor boundary” in OAR 660-23-090 (1) (d).

a. Within the City Limits of Canby, the standard Molalla River riparian setback is 75 feet, unless modified in accordance with this chapter;

b. Clackamas County 100 foot riparian setbacks for the Molalla River apply to lands currently outside the City Limits but within the Urban Growth Boundary (Section 704 of Clackamas County Zoning and Development Ordinance).

c. Isolated wetlands and minor streams (including adjacent wetlands) have no riparian setback;

**12.** “Structure” is a building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components, that are not customarily regulated through zoning ordinances.

**13.** “Substantial Improvement” is any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

a. Before the improvement or repair is started, or

b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition Substantial Improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

c. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

d. Any alteration of a structure listed on the National register of Historic Places or a State Inventory of Historic Places.

**14.** “Top of Bank” means the stage or elevation at which water overflows the natural banks of streams or the waters of the state and begins to inundate upland areas. It has the same meaning as “bankfull stage” as defined in OAR 141-85-0101 (2): In the absence of physical evidence aerials may be used to approximate the bankfull stage or delineate the top of bank.

### **16.130.030 Applicability and generalized mapping**

The inventory of riparian areas contained in the Canby Wetlands and Riparian Inventory specifies which streams and lakes are fish-bearing, and the stream –size category. Based on the classification contained in this inventory, the following riparian corridors shall be established:

1. Along the Molalla River within the City Limits, with average annual stream flows greater than 1,000 cubic feet per second (2760 cfs ), the riparian corridor boundary shall be 75 feet upland from the top of each bank.
2. Clackamas County 100 foot riparian setbacks for the Molalla River apply to lands currently outside the City Limits but within the Urban Growth Boundary (See Section 704 of Clackamas County Zoning and Development Ordinance).
3. Where the riparian corridor includes all or portions of a significant wetland as identified in the Local Wetland and Riparian Inventory, and mapped on the Canby Wetland and Riparian Inventory Map, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.
4. Except as provided for in 16.130.030(2), the measurement of distances to the riparian corridor boundary shall be from the top of bank. The measurement shall be a slope distance. In areas where the top of each bank is not clearly defined, the riparian corridor boundary shall be measured from the ordinary high water level, or the line of non-aquatic vegetation, whichever is most land ward. In areas where the predominant terrain consists of steep cliff, the distance to the corridor boundary shall be measured as a horizontal distance until the top of the cliff is reached, and as a slope distances from that point.

#### **16.130.040 Permitted and prohibited activities**

**A.** The permanent alteration of the riparian area by grading or by the placement of structures of impervious surfaces is prohibited, except for the following uses provided they are designed to minimize intrusion into the riparian area and no other option or location area feasible:

1. Streets, roads, and paths;
2. Drainage facilities, utilities, and irrigation pumps;
3. Water related and water-dependent uses;
4. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area;
5. Structures or other non-conforming alterations existing fully or partially within the riparian area may be expanded provided the expansion does not occur within the riparian area. Substantial improvement of a non-conforming structure in the riparian area shall require compliance with the standards of this ordinance.
6. Existing lawn within the riparian area may be maintained, but not expanded within the riparian area. Development activities on the property shall not justify replacement of riparian area with lawn.
7. Existing shoreline stabilization and flood control structures may be maintained. Any expansion of existing structures or development of new structures shall be

evaluated by the Director and appropriate natural resource agency staff. Such alteration of the riparian area shall be approved only if less-invasive or non-structural methods will not adequately meet the stabilization or flood control needs.

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

1. Removal of non-native vegetation and replacement with native plant species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, and shall maintain or exceed the density of the removed vegetation.

2. Removal of vegetation necessary for the development of approved water-related or water-dependents uses. Vegetation removal shall be kept to the minimum necessary to allow the water –dependent or water –related use.

Trees in danger of falling and thereby posing a hazard to life or property may be removed, following consultation and approval from this department . if no hazard will be created, the department may require these trees, once felled, to be left in place in the riparian area.

**16.130.050 Alteration requiring mitigation**

**A.** Permanent alteration of the riparian area by placement of structures or impervious surfaces is allowable under the following procedures, subject to the mitigation requirements of 16.130.050 (B).

1. A setback adjustment as allowed under 16.130.060.

2. A Variance to the riparian setback approved through the procedures of 16.130.070.

3. On the Molalla River, having average annual stream flow exceeding 1,000 cubic feet per second and having a 75-100-ft. riparian buffer established under this ordinance, the riparian setback may be reduced as allowed under 160.130.080.

**B.** Proposals for development activities within the riparian area allowed in 16.130.050 shall be reviewed by the Oregon Department of Fish and Wildlife (ODFW), as per OAR 635-415 Fish and Wildlife Habitat Mitigation Policy. A mitigation recommendation shall be obtained from ODFW. For purposes of implementing Goal 5, the goal is no net loss of protected resources; correspondingly, for purposes of designing appropriate mitigation , site should be considered at least in “Habitat Category 2” (OAR 635-415-030), which strives for no net loss of habitat values. Approval of the development proposal shall be conditional, requiring compliance with the mitigation recommendation of ODFW.

**16.130.060 Setback adjustment**

1. Qualifying lots: Lots on which the riparian setback required by this ordinance exceeds any other setback in a particular yard, and which, when combined with other

required yard setbacks, results in a building area depth of 25 ft. or less or a building envelope of 800 sq ft or less.

**2. Setback reduction procedure.** Setback reduction shall be the minimum necessary to create a building envelope 25-foot deep or a building envelope of 800 sq ft (whichever requires a lesser reduction of the setback). The yard setback opposite the riparian area may be reduced of to ½ the standard setback. If this does not create a sufficient building envelope, the riparian setback may be reduced up to ½ the required setback. Additional reduction of setbacks require a variance. Removal of vegetation within the original riparian setback shall be the minimum necessary to allow development of the use, and shall otherwise conform with the standards of Section IIB of this ordinance.

#### **16.130.070 Variances**

1. In cases where the provision for a Setback Adjustment under Section 16.130.060 are not sufficient, a property owner may request a Variance to the riparian setback. Granting of a Variance requires finding that:

- a. the proposed development requires deviation from the riparian standards; and
- b. strict adherence to the riparian setback and other applicable standards would effectively preclude a use of the parcel that could be reasonably expected to occur in the zone, and that the property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity; and
- c. the provisions of Section 16.130.060 are insufficient to remedy the hardship.

#### **16.130.080 Molalla river riparian reduction**

**A. Molalla River Riparian Reduction :** Structures and impervious surfaces may be placed within the 75-100 foot riparian setback as follows:

1. The removal of vegetation shall be limited to the minimum amount necessary to accommodate the use. Any vegetation removed in excess of this standard shall be non-native species, and the proposal shall specify replacement of that vegetation with native species.
2. The applicant shall provide sufficient information regarding the proposed development and potential impacts to riparian resources to allow the staff, in consultation with the Oregon Department of Fish and Wildlife, to determine whether the proposal will provide equal or better protection of riparian resources. This information includes, but is not necessarily limited to: a plot plan showing the top of the stream or water body bank, the extent of development within the riparian setback, uses that will occur within the riparian setback and potential impacts (for example: chemical runoff, noise, etc.), the extent of vegetation removal proposed, characteristics of the existing vegetation (types, density), any proposed alterations of topography or drainage patterns, existing uses on the property and any potential impacts they could have on riparian resources.

3. In no case shall such alterations occupy more than 50% of the width of the riparian area measured from the upland edge of the corridor.

**16.130.090 Appeals**

Any decision by the City of Canby on a land use application concerning the riparian protection requirements herein may be appealed to the Planning Commission and City Council pursuant to Canby's Land Development and Planning Ordinance.

**16.130.105 Conflicts**

To best protect important values of riparian areas in the event that the requirements of this section conflict with other ordinance requirements, the City shall apply the requirements that best provide for the protection of the resource.

**16.130.110 Findings of facts**

The City Council adopts the above findings of fact as a basis for adoption of this land use ordinance.

**16.130.120 Amendments**

All amendments made to this ordinance shall be in accordance with the amendment procedures set forth in Canby's Land Development and Planning Ordinance.

**16.130.130 Severability**

The sections and subsections of this ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections, or permit approvals and prosecutions brought pursuant to this section.