

Chapter 17.85
SENSITIVE LANDS--WETLANDS

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17.85.010 Purpose. The purpose of this chapter is to protect and restore significant wetland areas, thereby protecting and restoring the hydrologic, ecological and land conservation functions these areas provide. Specifically, this chapter is intended to protect habitat for fish and other aquatic life, protect habitat for wildlife, protect water quality for human uses and for aquatic life, control erosion and limit sedimentation, and reduce the effects of flooding. This chapter attempts to meet these goals by excluding structures from areas adjacent to significant wetlands, and by prohibiting vegetation removal or other alterations in those areas. In addition, the purpose of this chapter is to ensure implementation of requirements of the Division of State Lands and other appropriate regulatory agencies. (Ord. 736 §1, 2003)

17.85.020 Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

"Alteration" means a use that adversely impacts the condition of a wetland and/or buffer area. Alterations include, but are not limited to, buildings or other structures, grading, filling, dredging, draining, channelizing, mining, paving (including sidewalks, roads and bike paths), surface water management facilities, or other land uses that adversely impact the existing vegetation, hydrology, wildlife or wildlife habitat of the wetland.

"Boardwalk" means a raised wooden walkway.

"Compensatory mitigation" means any of three actions used to replace wetland functions and values resulting from permitted impacts to wetlands, including restoration of former wetlands, creation of new wetlands, enhancement of existing wetlands or other acceptable techniques recognized by the Oregon Division of State Lands and, if required, by the U.S. Army Corps of Engineers.

"Development" means a partition, subdivision, or property line adjustment that may or may not include an alteration.

"Enhancement" means an action that improves one or more specific functions or values of an existing wetland.

"Functions and values." Functions refer to the environmental roles served by wetland and buffer areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, flood storage, nutrient attenuation, and sediment trapping. Values refer to the qualities ascribed to a wetland such as educational and recreational opportunities, open space, and visual aesthetic qualities.

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"Jurisdictional delineation" is a delineation, approved by the Oregon Division of State Lands and, if required, by the U.S. Army Corps of Engineers, that determines a wetland boundary and is accurate to plus or minus two feet using the methodology described in the 1987 Corps of Engineers Wetlands Delineation Manual or current accepted methodology.

"Local wetland" means a significant wetland resource site as determined by the Scappoose Local Wetlands Inventory dated December 1998.

"Mitigation site" is a wetland restored, created or enhanced to compensate for the permitted loss of wetland functions and values (see compensatory mitigation).

"Passive recreational facilities" are low-intensity improvements such as trails, blinds, interpretive kiosks, interpretive signs, low-intensity lights, benches, picnic tables, fences, boardwalks, viewing platforms, gardens, patios and decks.

"Public facilities" are publicly owned above-ground or underground utilities, structures and facilities including, but not limited to, pedestrian/bicycle/road and other transportation facilities, bridge abutments, street lighting systems, traffic signals, utility cabinets, water systems, sanitary sewer systems, power lines, natural gas lines, telephone and communication facilities, cable TV lines, and storm water management facilities.

"Structure" means any building or construction activity or development except that for the purposes of this chapter, the word "structure" shall exclude fences; children's play equipment; picnic tables; sand boxes; grills and similar recreational equipment.

"Wetland boundary" means the boundary of a significant wetland as mapped on the Scappoose Local Wetlands Inventory maps or as established by a jurisdictional delineation approved by the Oregon Division of State Lands and, if required, by the U.S. Army Corps of Engineers. Generally, the boundary is the line, located by a qualified wetland specialist, between wetland and non-wetland area.

"Wetland buffer" means an area around significant wetlands as illustrated within the Scappoose Local Wetlands Inventory. (Ord. 736 §1, 2003)

17.85.030 Applicability of provisions. The sensitive lands - wetlands overlay shall apply to the wetlands as shown on the Scappoose Local Wetlands Inventory dated December 1998 and adopted within the city comprehensive plan, and/or within the most current version of the National Wetland Inventory and within a twenty-five-foot wetland buffer except as follows: where any portion of a significant wetland is included within a riparian corridor per Section 17.89.030(A), the standard distance (fifty feet) to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland. (Ord. 736 §1, 2003)

17.85.040 Activities within a sensitive lands - wetlands overlay.

A. The following uses are outright permitted uses within wetland areas, and do not require a sensitive lands development permit - wetlands overlay:

1. Public and private conservation areas for water, soil, open space, forest and wildlife resources;
2. Removal of non-native vegetation including poison oak, tansy ragwort, blackberry or other noxious vegetation; and

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3. Maintenance or repair of existing structures or improvements (including asphalt or concrete drives) that do not involve a change in size, use or function.

B. The alteration of a significant wetland by grading, excavation, placement of fill, or vegetation removal subject to review under Section 17.85.090. Any proposed alteration outside of a significant wetland but within a wetland buffer requires a sensitive lands development permit - wetlands overlay. An alteration is a change in the topography or vegetation of a wetland area, as regulated by this section, which may affect the functions and values of such features and are subject to the permit procedure and standards of this chapter. An alteration includes the following activities:

1. Dredging, filling, excavation or the placement of riprap or a mooring with rock, trees, wood, etc.;

2. The clearing of any native riparian or wetland vegetation within the wetland area, or the removal of any native tree within the wetland area which has a diameter of six inches or greater at four feet above grade;

3. Streets, including bridges, when part of an approved future street plan, subdivision plan construction, improvement or alteration or city transportation system plan, including the installation of underground utilities and construction of roadway improvements including, but not limited to, sidewalks, curbs, streetlights, and driveway aprons;

4. Utilities such as water, stormwater, and sanitary sewer lines;

5. Bicycle pedestrian paths;

6. Parks and recreational facilities;

7. Driveways or pedestrian paths where necessary to afford access between portions of private property that may be bisected by a wetland area and/or buffer;

8. Water detention, filtration facilities and erosion control improvements such as detention ponds, bio-filtration swales or ponds, or bank stabilization measures;

9. Viewing platforms, boardwalks, and other improvements associated with the provision of public access for observation of natural areas/wetland areas; and,

10. Other development proposals determined by the planner as requiring a sensitive lands development permit - wetlands overlay.

C. Landform alterations or developments other than partitioning and subdividing that are within twenty-five feet of wetland areas that are not identified as "Local Wetlands," and that meet the jurisdictional requirements and permit criteria of the U.S. Army Corps of Engineers and the Division of State Lands, do not require a local sensitive lands development permit - wetlands overlay. However, no building permit will be issued for such activity unless all pertinent state and federal requirements are met, which the planner shall verify. (Ord. 736 §1, 2003)

17.85.050 Wetlands area density adjustment. In order to provide incentive for siting and re-siting residential dwelling units to avoid wetland areas and buffers, any partition, subdivision, or site development review application involving land that is subject to the wetlands overlay may be paired with a sensitive lands development

permit - wetlands overlay application in such a manner as to provide for the development of allowed housing types to the net density that would have existed for the base zone without the restrictions

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provided by the twenty-five-foot wetland buffer. However, said development shall only qualify for such a density bonus if any structures existing previous to the adoption of the wetlands overlay are relocated outside of the wetland buffer area. (Ord. 736 §1, 2003)

17.85.060 Variance provisions. When the wetland area buffer prohibits the development of a lot or parcel legally created before the effective date of this chapter, a property owner may request a variance to the wetland buffer, subject to the requirements of Chapter 17.134 of this title. In addition to the variance criteria listed in Section 17.134.030, granting of a variance to the sensitive lands - wetlands overlay requires further findings that strict adherence to the wetland buffer and other applicable standards would effectively preclude a use of the parcel that could be reasonably expected to occur on similarly zoned parcels. (Ord. 736 §1, 2003)

17.85.070 Administration and approval. A. The planner shall review all sensitive lands development permits - wetlands overlay to determine that all necessary permits shall be obtained from those federal, state, or local governmental agencies from which prior approval is also required.

B. The approval authority shall apply the standards set forth in Section 17.85.090 (Review standards) when reviewing an application for a sensitive lands development permit - wetlands overlay.

C. Applications for a sensitive lands development permit - wetlands overlay shall be processed in accordance with Chapter 17.162, Procedures for Decision Making-- Quasi-Judicial. (Ord. 736 §1, 2003)

17.85.080 Expiration of approval--Standards for extension of time. A. Approval of a sensitive lands development permit - wetlands overlay shall be void if:

1. Substantial construction of the approved development plan has not begun within a one-year period; or

2. Construction on the subject site is a departure from the approved plan.

B. The planner may, upon written request by the applicant, grant an extension of the approval period not to exceed one year, provided that:

1. No changes are made on the original plan as approved by the approval authority;

2. The applicant can show intent of initiating construction of the site within the one-year extension period; and

3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.

C. Notice of the extension shall be provided to the applicant. (Ord. 736 §1, 2003)

17.85.090 Review standards. A. Grading, excavation, placement of fill and vegetation removal within a significant wetland shall only be permitted if the proposed alteration meets the following conditions:

1. The alteration is necessary to allow use of, or access to, a lot or parcel that was in existence on the date this chapter was adopted; and

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2. The proposed alteration is the minimum necessary to provide for the proposed use or access.

B. The following criteria shall be included in review of any application to which the sensitive lands - wetlands overlay is applicable:

1. Activities within a wetland are subject to the permit requirements of the Oregon Division of State Lands (DSL) and the U.S. Army Corps of Engineers. No building permit will be issued for development projects within the wetlands overlay unless all pertinent state and federal requirements are met. DSL and, as necessary, the U.S. Army Corps of Engineers will be notified of any regulated development proposed in a wetland area;

2. Properties that contain wetland areas shall have a wetland determination approved by DSL staff before any development permit is issued. If in making this determination DSL staff indicate that a "jurisdictional delineation" study of the boundary is necessary, the study shall be completed by the applicant and approved by DSL staff before any building permits are issued, including grading permits;

3. A wetland buffer area shall be established between a wetland and a proposed development as condition of development permit approval to achieve the maintenance of vegetative cover and the water quality characteristics of the area;

4. The city will not approve a partition or subdivision in a wetland area that proposes to create a lot that would not have the ability to obtain a building permit without variance approval;

5. Construction sites adjacent to wetlands shall be required to install erosion/sedimentation control devices between the land area to be disturbed and the wetland. All such devices shall conform to the requirements found within the city public works design standards;

6. Developments adjacent to wetlands which have significant impervious surface areas will be required to have stormwater detention and filtration facilities as part of their approved design. The design of such facilities shall conform to the requirements found within the city public works design standards; and

7. All proposed alterations are subject to consultation with ODFW and others potentially affected by the alteration. Agency recommendations to mitigate for the loss of wetland values and functions may be made conditions of approval of a proposed use. (Ord. 736 §1, 2003)

17.85.100 Application submission requirements. A. All applications shall be made on forms provided by the city and shall be accompanied by:

1. One reproducible copy of the development plan(s) and necessary data or narrative which explains how the development conforms to the standards. Sheet size for the development plan(s) and required drawings shall not exceed eighteen inches by twenty-four inches and the scale for all development plans shall be to a standard engineering scale; and,

2. A list of the names and addresses of all property owners of record within two hundred feet of the site.

B. The development plan and narrative shall include the following information (items may be combined on one map):

1. Existing site conditions including vicinity map showing the location of the property in relation to adjacent properties and including parcel boundaries, dimensions and gross area;

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2. As applicable, the location, dimensions and names of all existing and platted streets and other public ways, railroad tracks and crossings, and easements on adjacent property and on the site and proposed streets or other public ways, easements on the site;
3. The location, dimensions and setback distances of all existing structures, improvements, utility and drainage facilities on adjoining properties and existing structures, water, sewer, improvements, utility and drainage facilities to remain on the site; and proposed structures, water, sewer, improvements, utility and drainage facilities on the site;
4. Contour lines at two-foot intervals for slopes from zero to ten percent and five-foot intervals from slopes over ten percent;
5. The drainage patterns and drainage courses on the site and on adjacent lands;
6. Potential natural hazard areas including:
 - a. Floodplain areas;
 - b. Areas having a high seasonal water table within zero to twenty-four inches of the surface for three or more weeks of the year;
 - c. Unstable ground (areas subject to slumping, earth slides or movement). Where the site is subject to landslides or other potential hazard, a soils and engineering geologic study based on the proposed project may be required which shows the area can be made suitable for the proposed development;
 - d. Areas having a severe soil erosion potential; and
 - e. Areas having severe weak foundation soils;
7. The location of trees having a six-inch caliper at four feet. Only those trees that will be affected by the proposed development need to be sited accurately. Where the site is heavily wooded, an aerial photograph at the same scale as the site analysis may be required;
8. Identification information, including the name and address of the owner, developer, and project designer, and the scale and north arrow;
9. A grading and drainage plan at the same scale as the site conditions and including the following:
 - a. The location and extent to which grading will take place indicating general contour lines, slope ratios, and slope stabilization proposals,
 - b. A statement from a registered engineer supported by factual data that all drainage facilities are designed in conformance A.P.W.A. standards and as reviewed and approved by the public works director; and
10. The method for mitigating any adverse impacts upon wetland, riparian or wildlife habitat areas. (Ord. 736 §1, 2003)

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