

Draft Code--Benton County Stream and Riparian Corridor Protection (SRP) Overlay Zone*

* The following DRAFT Policy will be reviewed and edited by the Benton County Riparian and Wetlands Advisory Group project staff, with input received from landowners and other interested parties (i.e. State agency representatives). A final draft will be prepared, followed by public hearings, and final adoption and implementation by Benton County. **Updated text from previous draft versions of code is underlined.**

State and Federal requirements applicable to stream and wetland resources are the responsibility of the landowner. In addition, there may be riparian and wetland resources that may not be mapped/documented subject to State and/or Federal regulations (see Section 12).

(1) Purpose:

The primary purposes of the SRP overlay zone are to protect the riparian and stream-associated wetland resources of the waterways of Benton County, while preserving the ability of property owners to utilize their lands. Components of the common waterway resources and ecosystem services that this code is written to protect, support, and improve include: protection and enhancement of water quality; reduce property damage during floods and storms; protect native plant species; maintain and enhance fish and wildlife habitats; and conserve scenic and recreational values of riparian areas; and to support and improve other diverse natural functions of streams, and associated riparian areas and wetlands. The provisions of this chapter are not intended to prevent pedestrian access to waterbodies and common low-impact activities such as fishing.

(2) Definitions

Fish-bearing water bodies: A natural or human-constructed water body with seasonal or year-round fish-passable connectivity to a fish-bearing stream .

Fish-bearing streams: A stream 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 Act.

NOTE: Determination between using Ordinary High Water Line and Top of Bank was discussed by the Advisory Group many times, including on 5/24/11. Top of Bank definition under Oregon Administrative Rules (OAR 660-023-0090 or OAR 141-085-0010(12). This was decided to provide: 1.) Efficacy and efficiency of determination for riparian corridor boundary 2.) Ability to map this location and review .

Top of bank: The elevation at which water overflows the natural bank and begins to inundate upland areas. In absence of physical evidence, the two-year recurrence interval flood elevation may be used to delineate the top of bank.

Invasive and/or noxious vegetation: Vegetation identified in Oregon Department of Agriculture's Oregon Noxious Weed Policy and Classification System (Appendix 1), including

designations as “A”, “B”, and/or “T”, or vegetation identified in Portland, Oregon’s Nuisance Plant List or Required Eradication List.

Stream: A channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels. “Stream” excludes man-made irrigation and drainage channels where no defined channel would otherwise exist.

Wetland: Area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions (ORS 196.800).

- (3) **Uses Exempt from this Code.** The following uses, structures and activities are exempt from this Code, as specified below:
- (a) **Nonconforming or “grandfathered” uses.** Legally established structures or land uses existing as of [**effective date of the ordinance**] within the SRP Overlay shall be allowed to continue and to be maintained at their current extent, and may be replaced, pursuant to the provisions of BCC 55.305 through 55.340. Expansions of such structures may be allowed through one of the following:
 - (A) Up to a 10% increase from the footprint of the structure within the riparian corridor as it legally existed on [**effective date of this ordinance**];
 - (B) Additions that do not increase the surface area on land designated as the SRP Overlay Zone (for example a second story, or expansion of a structure situated on the edge of the SRP Overlay such that the expansion occurs outside of the SRP Overlay).
 - (C) Other uses as allowed through other provisions of this chapter.
 - (b) Legally established **modifications to natural vegetation and topography** (including, for example, landscaping, gardens, trails, picnic areas) existing as of [**effective date of this ordinance**] within the SRP Overlay shall be allowed to remain and to be maintained at their current extent.
 - (c) **Minor trimming** of native vegetation that does not negatively affect the Desired Condition as defined in (4) below.
 - (d) Normally accepted farming practices allowed by Oregon Department of Agriculture, not including construction of buildings;
 - (e) Any forestry activity that requires a notification to the Oregon Department of Forestry as defined by OAR 629-605-0140(1) and forestry activities that do not require a notification as defined by OAR 629-605-0140(2)(b), routine road maintenance, and OAR 629-605-0140(2)(f), emergency road reconstruction. If the property owner proposes a forestland conversion, “Waiver to Reforestation”, or “Plan for Alternative Practice” following a forestry operation, land within the SRP Overlay shall be considered not incompatible with tree propagation and therefore should be replanted pursuant to the Forest Practices Rules, unless the planned and

implemented use is approved pursuant to Section (9). Construction of buildings is not exempt from this code.

- (f) Felling of a hazardous tree which poses an immediate threat to life or property. The stump and root wad and, if it will not create a hazard, the downed tree, shall remain in place in the riparian area. A felled hazardous tree shall be replaced by the same or similar native tree species.
- (g) **Removal of non-native or invasive vegetation**, provided that such areas are vegetated in other vegetation. Erosion shall be controlled through non-structural means (such as natural mulch). Property owners are encouraged to replace removed vegetation with native species. Replanting of disturbed areas shall not include invasive or noxious vegetation.

(4) “Desired Condition” of Riparian Corridors:

NOTE this section is under development with the goal of developing general guidelines for conditions of riparian corridors and providing education and incentives to landowners.

- (a) **Definition.** The “Desired Condition” means riparian areas and riparian corridors that have adequate vegetation, landform, and stream bank structure present to: provide needed shade to the stream, dissipate stream energy associated with high flows, filter and capture sediment, balance natural stream bank stabilization with channel migration, provide a source of large woody debris to the stream, provide natural and diverse wildlife habitat, support complex instream habitat, aid and improve floodplain soil recruitment and floodwater storage, and improve groundwater recharge. Components of the desired condition include:
 - (A) Vegetative cover that is, whenever possible given site constraints, native and diverse in structure and species;
 - (B) Native soils
 - (C) Natural senescence and decomposition of vegetation
 - (D) Minimal destruction of native vegetation;
- (b) To encourage property owners’ voluntary efforts enhancing their property toward the Desired Condition, the following are available:
 - (A) Reduced application fees. An application for Riparian Area Management Review that demonstrates an improvement toward the Desired Condition may qualify for reduced application fees.
 - (B) Flexibility in standards. See Section (9)(b) below.
 - (C) Special property tax assessment rates may be available for land managed for riparian or wildlife values.
 - (D) Upon request, County staff will assist property owners in connecting to federal and state grants, incentives, and similar programs, as well as information regarding native plants, erosion control, wildlife habitat, and riparian area stewardship.

- (5) **Requirements in the Urban Fringes of Incorporated Cities** Riparian and wetland setbacks and related regulations for properties located in:
- (a) The Corvallis Urban Fringe shall be subject to the provisions of Chapter 88 Natural Features and Hazards and shall not be subject to this chapter.
 - (b) The Monroe, Adair, and Philomath Urban Fringes:
 - (A) A structure which is not related to a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
 - (B) A maximum of twenty-five percent (25%) of existing natural riparian vegetation within twenty-five (25) feet of the ordinary high water line of the Marys River outside of the Corvallis urban growth boundary, by area, may be removed for any reason within the riparian setback area. Additional land may be cleared of riparian vegetation in order to:
 - (i) Remove dead or diseased vegetation, or vegetation which constitutes a hazard to public safety or a threat to existing healthy indigenous vegetation;
 - (ii) Construct pedestrian access (pathways) to the waterway;
 - (iii) Install or maintain an artificial or structural shoreline stabilization, provided that natural erosion control measures or other non-structural solutions are not feasible and applicable state and federal standards are met; or
 - (iv) Remove blackberry vines, Scotch Broom, or other noxious vegetation as defined by the Oregon Department of Agriculture, provided that such vegetation is replaced with other more suitable vegetation.
- (6) **Establishment of the SRP Overlay Zone.**
- (a) The Riparian Protection Overlay shall apply to all streams and adjacent riparian corridors as they exist on the landscape. The current Benton County SRP Overlay Map identifies the approximate location of streams; however, if an actual location is not consistent with the location shown on the map, the actual location shall be used for determining the location and extent of the SRP Overlay.
 - (b) Identification of the Top of Bank : Determined by Planning Official, either in the field or using best available mapping data maintained by Benton County.
- (7) **The components of the SRP Overlay Zone.** The Stream and Riparian Protection overlay consists of the following component areas:
- (a) **Stream Channel.** The area within the channel limits of a perennial or intermittent water area from the top of bank on both sides of a stream.
 - (b) **Riparian Corridor.** The area measured horizontally, upland, from the top of the bank shall be as follows:
 - (A) West of the summit of the Coast Range (Alsea and other coastal basins):

- (i) For all fish-bearing streams and fish-bearing water_bodies: 50 feet;
 - (ii) For all other streams: 25 feet for ground-disturbing activities and structures only; see Section 9(a)(C).
- (B) East of the summit of the Coast Range (Willamette Basin):
- (i) For the Willamette River, including sloughs and side channels: 75 feet;
 - (ii) For all fish-bearing streams and other fish-bearing water_bodies not included in (i): 50 feet;
 - (iii) For all other perennial streams in the Willamette Basin: 50 feet;
 - (iv) For all other streams: 25 feet for ground-disturbing activities and structures only; see Section 9(a)(C).
- (c) **Stream-Associated Wetlands** When a mapped wetland within the SRP Overlay Zone boundary extends beyond the Overlay boundary, Benton County shall:
- (A) Extend the riparian corridor boundary around the mapped wetland boundary.;
 - (B) Complete a wetland use notification form and submit it to Oregon Department of State Lands (DSL) if the proposed activity may impact wetlands or other waters of the State as required under ORS 215.418; and
 - (C) Inform property owner and applicant that a state or federal permit may be required for the proposed activity and encourage native vegetation protection and enhancement through voluntary actions.
- (d) **Steep Slopes.** If the riparian corridor defined in subsection (b) contains a slope greater than or equal to 25%, the SRP Overlay boundary is extended to include the entire area of such slope, out to a maximum of 100 feet from top of bank, measured horizontally.
- (e) **Fish -Bearing Water bodies.** A fish-bearing water body, as defined in Section (2), is subject to the same riparian corridor width measured from top of bank as the associated fish-bearing stream.
- (8) **Map Refinement/Correction Procedure.**
- (a) **Map Refinement.** “Map refinements” are adjustments made through professional analyses to refine the actual boundaries of the SRP overlay zone. Refinements may be done administratively, with no land use process required, through the applicant or property owner demonstrating the refinement standards below have been met. Refinements may or may not be shown on the current Benton County SRP Overlay map, depending on scale and other factors, but at a minimum shall be attached to the Community Development Department records for the property.
 - (b) **Map Correction.** “Map Corrections” are to rectify errors to the mapping of SRP Overlay boundaries where it is found that the map depiction does not reflect the Inventory, as described for each resource type below. These map corrections shall be

made by the Planning Official and do not require Zone Changes or Comprehensive Plan Map Amendments.

- (9) **Options for Property Owner Flexible Management of the Riparian Corridor.** The following are options for property owners with land in the SRP Overlay Zone. Property owners may choose any one of the options in subsections (a) through (d).

(a) Option A: Clear and objective standards.

(A) **Removal of Vegetation:** The removal of vegetation from the SRP Overlay is prohibited, except for the following uses after Planning Official approval:

- (i) Replacement of vegetation with native riparian species as is necessary for restoration activities;
- (ii) On slopes greater than 25% that are included in the SRP Overlay Zone due solely to 7(d), vegetation removal may be authorized:
 - (1) By a site-specific geotechnical site assessment as defined in BCC 88.010 certifying that proposed activities will not increase sediment delivery to the water body and associated wetlands; or
 - (2) By implementing short- and long-term soil stabilization methods designed or certified by the Soil and Water Conservation District or Natural Resources Conservation Service, or appropriate agency approved by the Planning Official.
- (iii) Stream restoration and enhancement activities approved by the Oregon Department of Fish and Wildlife, or other appropriate agency approved by the Planning Official, as improving stream or riparian function, and wetland restoration and enhancement activities allowed by Oregon Department of State Lands or the Oregon Department of Fish and Wildlife.
- (iv) Development of water-related or water-dependent uses that are allowed in the underlying zone, provided they are designed and constructed to minimize impact on existing riparian vegetation.
- (v) The minimum vegetation removal necessary to establish and maintain a fire fuel-break safety zone surrounding a structure, as defined in BCC 88.010(2). Benton County encourages property owners to consult with the Oregon Department of Fish and Wildlife on ways to minimize the negative impact of this vegetation removal and to mitigate the impacts that do occur.
- (vi) Vegetation removal in conjunction with a development activity allowed under Section (B), below.

(B) **Building, Paving, and Ground-Disturbing Activities:** Within the SRP Overlay Zone, the placement of structures or impervious surfaces, including grading, excavation, placement of fill, and other ground-disturbing activities, are prohibited except as stated below. Exceptions to the SRP Overlay Zone restrictions may be made for the following uses, provided they are designed and constructed to minimize adverse impacts to the riparian area:

- (i) Replacement of legally established currently existing structures with structures located on the building footprint legally existing [effective date of this ordinance] or up to a maximum deviation of 10% from that footprint. Vertical additions to these structures are allowed if they do not disturb additional riparian or wetland surface area.
- (ii) The following types of infrastructure, provided they are oriented perpendicular to the riparian corridor or otherwise designed to cause negligible impact to proper riparian or wetland function, and provided any necessary stream crossings meet Oregon Department of Fish and Wildlife fish passage standards and accommodate the 50-year flood event flow:
 - (1) Construction and maintenance of streets, roads, public utilities, and bicycle and pedestrian ways that are included in the Benton County Transportation System Plan, or in other adopted County infrastructure/utility plans. If a street or road is allowed by Benton County to be constructed within the SRP Overlay, the road shall be designed and constructed as narrowly as possible while still meeting safety standards.
 - (2) Construction of streets, roads, and pedestrian ways necessary in order to maintain an acceptable functional classification of roadways adjacent to the property, if no feasible alternative is available outside of the SRP Overlay. If a street or road is allowed by Benton County to be constructed within the SRP Overlay, the road shall be designed and constructed as narrowly as possible while still meeting safety standards.
 - (3) Driveways necessary in that location to provide access to an approved building site, provided the disturbed riparian surface area is minimized and no other location is feasible.
 - (4) Pedestrian trail, which is an unpaved path, four feet or less in width, designed for and used primarily by pedestrians for recreation and access to streams.
- (iii) Routine maintenance or replacement of existing public facilities that adhere to Best Management Practices for riparian vegetation in Benton County ;
- (iv) On slopes greater than 25% that are included in the riparian overlay due solely to 7 (d) building, paving or grading activities may be authorized by a site-specific geotechnical site assessment as defined in BCC 88.010, certifying that proposed activities will not increase sediment delivery to the water body and associated wetlands.
- (v) Development of water-related and water-dependent uses allowed by the underlying zone, and where no other viable locations exist, and that have minimal impact on riparian and wetland surface area;
- (vi) Erosion control or flood control measures that have been approved by the Oregon Department of State Lands (DSL) and/or the U.S. Army Corps of Engineers, and that utilize bio-engineering methods. Streambank hardening (installation of hard-surfaced erosion- or flood-protection structures such as

rip-rap) is prohibited except where necessary to address an imminent hazard to a structure built prior to [effective date of this ordinance]. Where allowed, hard-surface measures shall be designed by a Professional Engineer licensed by the State of Oregon, and shall at a minimum, require backfilling with soil and planting with native vegetation;

(vii) Stream restoration and enhancement activities approved by the Oregon Department of Fish and Wildlife, or other appropriate agency approved by the Planning Official, as improving stream or riparian function, and wetland restoration and enhancement activities allowed by Oregon Department of State Lands or the Oregon Department of Fish and Wildlife.

- (C) **25-Foot-Buffer Streams and Stream-Associated Wetlands.** Within the SRP Overlay on streams and stream-associated wetlands identified in Section (7)(b)(4), building, paving and grading activities shall comply with the provisions of subsection (B) of this section, but the vegetation removal provisions of subsection (A) of this section shall not apply.
- (D) **Invasive vegetation.** The intentional propagation of invasive or noxious vegetation, as defined in Section (2), is prohibited within the SRP Overlay.

NOTE: Options B, C and D are currently incomplete and are being reviewed by the Riparian and Wetlands Advisory Group.

(b) **Alternative Management.**

(A) In conjunction with a building permit or land use application, or as a separate application for Riparian Area Management Review, a property owner may establish an alternative to the management standards of Option A. The Planning Official may require that a plan submitted pursuant to these options be prepared by, or with input from, a natural resource professional, and may require assurances that the plan will be implemented and maintained over the long-term.

(B) **Option B: Maintain and enhance.**

- (i) The applicant shall submit:
- (1) Documentation of the existing conditions of the SRP Overlay area on the property to establish a baseline of conditions relative to the Desired Condition defined in Section (4) above. Note that vegetation removal or ground disturbance within the riparian corridor for purposes of establishing a lower baseline is a violation of this code.
 - (2) A plan for maintaining and enhancing conditions relative to the Desired Condition defined in Section (4) above. The plan may include areas of vegetation removal and development activities within the SRP Overlay area provided the management plan demonstrates a

net positive effect to ecosystem function will result from the management activities.

- (ii) Approval of the plan will result in a binding agreement between the property owner and Benton County. Failure of the property owner to implement and maintain the plan as approved may result in enforcement action.

(C) Option C: Continue to Meet “Desired Condition.” Under this option, a property containing high-quality riparian habitat may incur minor amounts of vegetation removal and building, paving, and ground-disturbing activities within the riparian area, provided the result still meets the “desired condition” for a riparian corridor.

- (i) The applicant shall submit a plan for management of riparian area that:
 - (1) may include areas of vegetation removal and development activities within the SRP Overlay area; and
 - (2) demonstrates that the resulting riparian area will meet the “Desired Condition” defined in Section 4.

(D) Option D: Variable buffer widths.

- (i) The applicant shall submit a detailed site plan showing existing land use and land cover, and proposing a modification to the buffer widths required by Section 7. Under this option:
 - (1) A minimum buffer width of at least 50% of the standard requirement shall be maintained at all points.
 - (2) The width of the protected buffer may vary, as long as the total area (square feet) subject to the buffer is at least 100% of the amount that would be protected under Option A.
 - (3) The maximum buffer width that may count toward the area required by subsection (2) above is 200% of the standard buffer requirement.
 - (4) Land area beyond the standard buffer requirement that is added to the protected buffer pursuant to subsection (2) above shall:
 - (i) be free of structures and impervious surfaces;
 - (ii) be fully vegetated in trees and shrubs which are predominantly native species;
 - (iii) contain at most a negligible amount of invasive or noxious vegetation
- (ii) In areas of reduced buffer width, the property owner shall ensure that stormwater runoff is dispersed so as not to concentrate flow in a way that delivers pollutants to the water body.

- (10) **Land Divisions and Property Line Adjustments.** Subdivisions, partitions, and property line adjustments must be designed so that the resulting lots or parcels can be developed in conformance with SRP Overlay.
- (11) **Hardship Variances.** A property owner who, due to the provisions of the SRP Overlay, is unable to utilize land in a manner that would be reasonably expected given site conditions, the underlying zoning, and other relevant factors, may apply for a variance pursuant to the provisions of BCC Chapter 53. However, in place of the Variance Criteria of BCC 53.410, the decision to approve a variance shall be based on findings that:
- (a) The application of this chapter prevents the reasonable development or use of the lot, and renders the lot not buildable.
 - (b) The proposed activity or use of land would have been permitted prior to the effective date of this ordinance.
 - (c) The applicant has explored all other reasonable options available under this chapter and throughout the Development Code to relieve the hardship.
 - (d) Adverse impacts on the structures, functions or values of the resource, including those described in the definition of Desired Condition, that would result from approval of this Hardship Variance have been minimized and will be mitigated to the greatest extent possible through restoration and enhancement of the SRP Overlay in accordance with a mitigation plan prepared pursuant to the standards and requirements in section (9)(b)(B).
 - (e) Long term conservation, management and maintenance of the SRP Overlay shall be ensured through mechanisms deemed sufficient by the Planning Official.
- (12) **Compliance with State and Federal Regulations. Activities wholly or partially within the Stream and Riparian Overlay Zone** are subject to all applicable federal and state regulations. The following regulations commonly apply within the resource areas. (Note: other regulations not listed may also apply; it is the property owner's responsibility to adhere to all applicable State and Federal regulations):
- (a) Oregon Department of State Lands permit requirements under the Removal-Fill Law.
 - (b) U.S. Army Corps of Engineers permit for fill activities as required under Section 404 of the Clean Water Act.
 - (c) Department of Environmental Quality permit requirements for stormwater under the Clean Water Act and state water quality regulations.
 - (d) Oregon Department of Fish and Wildlife regulations may apply to development activities that could impact one of the sensitive, threatened, critical, or endangered species indigenous to the region.
 - (e) The federal Endangered Species Act prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife.