

Article 42 – Stream Protection Overlay (SPO)

ARTICLE 42 – STREAM PROTECTION OVERLAY ZONE – SPO

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Section 42.00 – Purpose and Intent

The purposes and intent of the Stream Protection Overlay Zone are:

- A. To implement the goals and policies of the Hood River County Comprehensive Plan for the protection and conservation of fish and wildlife areas and habitat, and rivers, streams and riparian areas.
- B. To protect and restore Hood River County’s water areas, streams and riparian areas, thereby protecting and restoring the hydrologic, ecologic and land conservation functions these areas provide.
- C. To accommodate the historical lateral migration of stream channels due to natural processes.
- D. To protect water areas, fish habitat, adjacent riparian areas and to control erosion, limit sedimentation, and reduce the effects of flooding.
- E. To establish clear and objective standards that allow reasonable economic use of property while protecting fish-bearing streams and their riparian areas.

- F. The Stream Protection Overlay Zone is intended to meet the requirements of Statewide Planning Goal 5 (Natural Resources) and the provisions of the Goal 5 administrative rule (OAR 660, Division 23) for riparian corridors. These provisions require that significant riparian corridors be protected. The requirements in this Article are based on the “safe harbor ordinance” approach as defined in Oregon Administrative Rules 660-23-0090(5) and (8).

Section 42.02 – Definitions

- A. Agricultural Activities and Farming Practices: The raising or production of livestock or livestock products, poultry or poultry products, milk or milk products, fur-bearing animals; or for the production of crops such as, but not limited to, grains, small grains, fruit, vegetables, forage grains, nursery stock, Christmas trees; or any other agricultural or horticultural use or animal husbandry or any combination thereof whether for profit or not. These practices are regulated to protect water quality under ORS 561.191, ORS 568.900 through 568.933, and OAR 603 Division 95.
- B. Bankfull Stage / Ordinary High Water Mark: The elevation at which water overflows the natural banks of rivers and streams and begins to inundate upland areas. In the absence of physical evidence, the two-year recurrence interval flood elevation may be used to approximate the bankfull stage. Physical characteristics that indicate the elevation include a clear, natural line impressed on the shore, a change from upland vegetation (e.g. oak, Douglas fir) to bare soil or substrate, a change in vegetation from upland (e.g. oak, fir) to aquatic (e.g. willows, rushes), a textural change of depositional sediment or changes in the character of the soil (e.g. from upland soils to sand, sand and cobble, cobble and gravel), absence of fine debris (needles, leaves, cones, seeds), or the presence of water-borne litter and debris, water-stained leaves or water lines on tree trunks.
- C. Base Zone: One of the categories of land use into which the land area of the county is divided, such as residential, farm or forest use.
- D. Fish Bearing: Waterways upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.
- E. Forest Practice: Any commercial operation conducted on or pertaining to forestland that is regulated by the Oregon Forest Practices Act (ORS Chapter 527), including but not limited to:
1. Reforestation of forestland;
 2. Road construction and maintenance;
 3. Harvesting of forest tree species;
 4. Application of chemicals; and
 5. Disposal of slash.
- F. Impervious Surface: Any surface where material is applied which prevents absorption of water into the ground.

- G. Lawn: Grass or similar materials generally 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.
- H. Maintenance: Periodic repair or upkeep of a structure in order to maintain its function. Maintenance does not include any modification that changes the footprint of the structure, or increases the adverse impact to the riparian corridor.
- I. Native Vegetation: Plant species indigenous to Hood River County. The County will maintain a list of native plants.
- J. Non-conforming Structure or Use: A lawful existing structure or use at the time this ordinance or any amendment thereto becomes effective which does not conform to the requirements of the zone in which it is located. Non-conforming uses are not considered violations and are generally allowed to continue, though expansion or re-construction may be regulated.
- K. Overlay Zone: A zoning designation that includes allowances and/or requirements for activities in addition to those of the underlying base zone.
- L. Riparian Area: The area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem, beginning at the bankfull stage of the river, lake, or stream and extending upland.
- M. Riparian Corridor: A Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.
- N. Significant Riparian Corridor: A riparian corridor that has been identified by Hood River County as meeting Goal 5 significance criteria.
- O. Significant Wetland: A wetland that has been identified by Hood River County as meeting the Goal 5 significance criteria in Oregon Administrative Rules 141-86-0300 to 0350.
- P. Stream: A channel that carries flowing surface water and was created naturally by geological and hydrological processes, including channels that would be natural but for human-caused disturbances (e.g., channelized, rerouted or culverted streams, or impounded waters), including perennial streams and intermittent streams with defined channels, and excluding irrigation and drainage channels that are human-created.
- Q. Stream Protection Overlay Zone: Has the same meaning as “significant riparian corridor”.
- R. Structure: That which is built or constructed. An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite

manner and which requires location on the ground or which is attached to something having a location on the ground.

- S. Wetland: An 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.

Section 42.05 – Applicability

The Hood River County Stream Protection Overlay Zone shall be implemented as reflected in the Hood River County Comprehensive Plan, Article 42 of the Hood River County Zoning Ordinance and County zoning maps.

- A. This Article applies to all streams, or portions thereof, identified on the Hood River County Fish-Bearing Streams Maps.
- B. This Article does not apply to streams or lakes within the Mount Hood National Forest, the Columbia River Gorge National Scenic Area (CRGNSA), or the Hood River and Cascade Locks urban growth areas.
- C. Structures or uses that do not conform to the standards of this ordinance which have been in continuous existence from prior to the date of adoption of this ordinance up to the present are not considered violations and are generally allowed to continue. Expansion of non-conforming structures or uses in Stream Protection Overlay Zones is subject to the requirements of this Article.
- D. The Stream Protection Overlay Zone requirements are in addition to the requirements of the base zone and other Hood River County ordinances. In cases of conflicting or overlapping requirements, the more restrictive requirements shall apply.

Section 42.10 – Exempt Activities

The following activities within Stream Protection Overlay Zones are not required to meet the standards of this section:

- A. Forest practices regulated by the Oregon Forest Practices Act.
- B. Agricultural activities and farming practices, not including the construction of buildings, structures or impervious surfaces, that are regulated by the Oregon Department of Agriculture to protect water quality and are on lands zoned for farm or forest use.

Section 42.20 - Stream Protection Overlay Zone Locations

The Hood River County Fish-Bearing Streams Inventory contains information on stream locations, stream flows, and fish presence and maps of fish-bearing streams. Based on the information contained in the inventory and maps, Stream Protection Overlay Zones are

established as follows and as depicted in Figure 1:

- A. Along all streams with average annual stream flow of 1,000 cubic feet per second (cfs) or greater the Stream Protection Overlay Zone shall extend 75 feet upland from the bankfull stage, measured horizontally, except as specified in paragraph C of this section.
- B. Along all fish-bearing streams with an average annual stream flow less than 1,000 cubic feet per second (cfs), the Stream Protection Overlay Zone shall extend 50 feet upland from the bankfull stage, measured horizontally, except as specified in paragraph C of this section.
- C. If the Stream Protection Overlay Zone identified in paragraph A or B of this section includes all or portions of a significant wetland identified in the Comprehensive Plan, the Stream Protection Overlay Zone shall include the significant wetland and extend upland the distance specified in paragraphs A or B of this section, measured horizontally from the edge of the significant wetland.
- D. General locations of Stream Protection Overlay Zones are shown on the Hood River County Fish-Bearing Streams Maps.
 - 1. Property owners can request site inspections by county planning staff to determine more precisely the location of Stream Protection Overlay Zone boundaries for land use applications and for assistance in complying with the provisions of this Article.
 - 2. Land use applications for properties in Stream Protection Overlay Zones shall include scaled maps showing the locations of rivers and streams, their bankfull stage locations and the boundaries of the Stream Protection Overlay Zone(s). The County may require that supporting information be submitted by qualified professionals such as a hydrologist or professional land surveyor.
 - 3. Property owners who believe that errors in mapping have resulted in the location of a Stream Protection Overlay Zone on their property may request a map correction. Requests shall be in writing and shall include scaled maps showing the locations of rivers and streams, their bankfull stage locations, the boundaries of Stream Protection Overlay Zone and property boundaries and other information necessary to support findings that the mapping is in error. The County may require that information be submitted by qualified professionals such as a hydrologist or professional land surveyor.
- E. The Hood River County Fish-Bearing Streams Maps may be updated to incorporate new information on fish presence and use of waters from the Oregon Department of Fish and Wildlife.

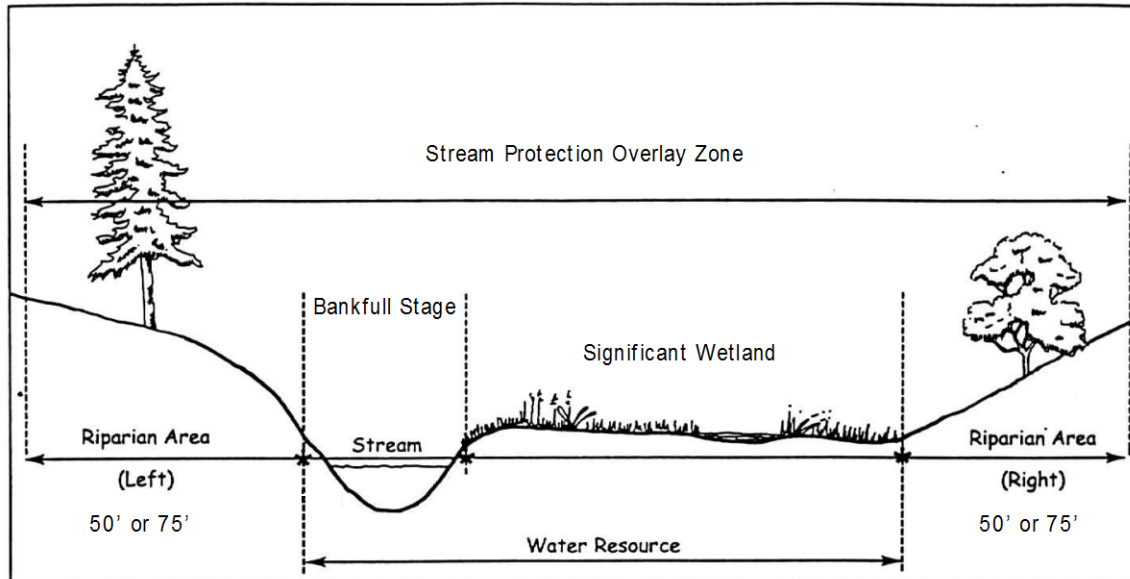


Figure 1. Stream Protection Overlay Zone cross-section

Section 42.25 – Allowed Activities

The following activities in Stream Protection Overlay Zones are allowed provided they are conducted in accordance with the standards in Section 42.30:

- A. Continued maintenance and use of areas developed at the date of adoption of this Article or its amendments, although such use does not conform to these provisions. However, if such a use is discontinued for a period of one year, any such future use of such areas shall comply with the provisions of this Article. “Developed” means areas such as lawns, ornamental plantings, gardens, orchards, crop land and improved pastures or hayfields that are no longer dominated by native vegetation. Expansion of existing developed areas is not permitted within the Stream Protection Overlay Zone. New development activities shall not justify replacement of native vegetation with lawn or other non-native vegetation in Stream Protection Overlay Zones.
- B. Maintenance and use of buildings, roads, fences, shoreline stabilization and flood control structures, and other structures that existed prior to the date of adoption of this ordinance or that were previously approved under this Article.
- C. Replacement or improvement of existing structures with structures in the same location that do not disturb additional Stream Protection Overlay Zone surface area.
- D. Structures or other alterations existing fully or partially within the Stream Protection Overlay Zone may be expanded provided the expansion can occur outside the Stream Protection Overlay Zone.
- E. Planting of native vegetation.

- F. Removal of non-native vegetation and replacement with native plant species.
- G. Removal of noxious weeds and plants (including poison oak) consistent with County or State regulations.
- H. Vegetation mowing or management consistent with County or State regulations for the prevention of fire hazards.
- I. Cutting of individual trees in danger of falling and posing a hazard to life or property. Landowners and operators are encouraged to leave trees, once felled, in the riparian area to improve fish and wildlife habitat, if no hazard will be created.
- J. Incidental removal of understory vegetation associated with temporary activities including recreation, education, scientific research, environmental restoration and land survey.
- K. Paths. The use of permeable surfaces is encouraged.
- L. Fence construction that does not include mechanized land clearing.
- M. Installation, operation and maintenance of irrigation pumps regulated by the Oregon Water Resources Department.
- N. Drainage facilities and utilities.
- O. Water-related and water-dependent uses.
- P. Streets, roads, driveways and bridges where no other locations outside the Stream Protection Overlay Zone exist and that are designed to minimize intrusion into the Stream Protection Overlay Zone.

Section 42.30 – Standards for Activities in Stream Protection Overlay Zones

The following standards apply to proposed land uses and activities in Stream Protection Overlay Zones:

- A. The proposed activity is allowed under the requirements of the base zone.
- B. No other practicable options or locations outside the Stream Protection Overlay Zone are feasible for the proposed activity on the subject parcel.
- C. The proposed activity shall be 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 shall be located as far from rivers and streams, and use as little of the surface area of the Stream Protection Overlay Zone,

as practicable.

- D. Excavation, grading and vegetation removal shall be avoided within the Stream Protection Overlay Zone on stream beds or banks within the bankfull stage, in wetlands, and on slopes of 25 percent or greater, except where no practicable alternative exists, or where necessary to construct public facilities or to ensure slope stability.
- E. The removal of vegetation in the Stream Protection Overlay Zone is limited to the minimum amount necessary to accommodate the activity.
- F. The following standards shall apply when construction activity is proposed in areas where vegetation is to be preserved within the Stream Protection Overlay Zone.
 - 1. Work areas on the immediate site shall be carefully identified and marked to reduce potential damage to trees and vegetation. Temporary construction fencing should be placed at the drip line of trees bordering the work area. No equipment maneuvering, staging or stockpiling shall occur outside of designated work areas.
 - 2. Trees shall not be used as anchors for stabilizing equipment.
 - 3. Stockpiling of soil, or soil mixed with vegetation, shall not be permitted on a permanent basis. Temporary storage shall employ erosion control measures to ensure sediments are not transported to adjacent surface waters (see section X.30.H for guidance).
- G. Water, drainage and sewer systems shall be designed, located and constructed to avoid the infiltration of floodwaters into the system, and to avoid accidental discharges to rivers, streams and wetlands.
- H. Erosion control measures shall be employed to ensure sediments are not transported to adjacent surface waters. Erosion control measures shall be installed prior to site preparation or ground-disturbing activities, where applicable. Access roads, staging areas, storage areas and other areas of temporary disturbance necessary to complete the proposed activity shall be restored as soon as possible. Erosion control measures shall be in place concurrently with construction or establishment of the proposed activity. Temporary measures used for initial erosion control shall not be left in place permanently. Guidance on appropriate erosion control measures is contained in the Department of Environmental Publication Best Management Practices for Storm Water Discharges Associated With Construction Activities (DEQ Northwest Region 2003, or current upgrade). A copy of this document is available for review at the Hood River County Planning Department .
- I. Revegetation activities should follow these guidelines:
 - 1. Revegetation should include ground cover, understory and tree canopy layers unless the site soils or substrate do not typically support the growth of one or

more vegetation layers.

2. Native plant species indigenous to Hood River County should be used. A list of native plant species and native plant material sources is maintained by Hood River County.
3. Planting densities and species composition should be consistent with native riparian area plant communities in the immediate vicinity. Use of a reference site (a nearby site with an intact native riparian plant community) as guidance for developing a revegetation plan is recommended.
4. A large revegetation project should include a planting plan map and description of the proposed plant species, size of plant materials, number of plants, spacing and installation methods.
5. Native plant species that do not survive the first two years after planting should be replaced.

Section 42.40 – Prohibited Activities Within Stream Protection Overlay Zones

Except for those activities listed in this Article as exempt or allowed, the following activities are prohibited within Stream Protection Overlay Zones:

- A. Cutting, clearing or removal of live native vegetation.
- B. Ground alteration, grading, excavation, or the placement of fill material in riparian areas.
- C. Construction, installation or placement of new structures or impervious surfaces in riparian areas.
- D. Dumping, disposal or storage of materials, including but not limited to, garbage, yard debris, construction debris, vehicles or hazardous materials.
- E. Construction activity or creation of temporary roads in riparian areas.
- F. Creation of a parcel that would be wholly within the Stream Protection Overlay Zone and would result in an unbuildable parcel due to the stream protection overlay zone setback requirements of this Article, unless the parcel is included in a conservation easement that prohibits development on the site.
- G. Creation of a parcel that would be partially within the Stream Protection Overlay Zone and would result in an unbuildable parcel due to the combination of the stream protection overlay zone setback requirements of this Article, other requirements of the Zoning Ordinance and natural constraints of the site, unless the parcel is included in a conservation easement that prohibits development on the site.

Section 42.50 – Exceptions

In cases where a property owner believes the application of this Article renders an existing lot or parcel unbuildable, a property owner may apply for an Exception. Applications for Exceptions shall be reviewed under the procedures in Article 72 (Planning Director’s Review Procedure). Granting of an Exception requires findings that satisfy the following criteria:

- A. The proposed development requires deviation from the Stream Protection Overlay Zone requirements and can not reasonably be located on the property entirely outside the Stream Protection Overlay Zone; and
- B. The application of the requirements of this Article without an Exception, would prevent reasonable economic use of the property consistent with the base zone requirement; and
- C. The Exception shall allow only the minimum deviation from the Stream Protection Overlay Zone requirements necessary to render the existing lot or parcel buildable, as allowed in the base zone; and
- D. The Exception shall be conditioned to meet the standards in Section 42.30 to the extent possible.

Section 42.55 - Hardship Variances

In cases where a property owner believes the application of this Article imposes a hardship by precluding an expansion of a lawfully established building or structure, a property owner may apply for a Hardship Variance. Applications for a Hardship Variance shall be reviewed under the procedures in Article 72 (Planning Director’s Review Procedure). Granting of a Hardship Variance requires findings that satisfy the following criteria:

- A. The existing building or structure is located partially or entirely within the Stream Protection Overlay Zone; and
- B. The proposed expansion requires deviation from the Stream Protection Overlay Zone requirements and can not reasonably be located on the property entirely outside the Stream Protection Overlay Zone; and
- C. The expansion may occur only on the side of the structure away from the stream unless impracticable; and
- D. The Hardship Variance shall be conditioned to meet the standards in Section 42.30 to the extent possible.

Section 42.60 – Compliance With State and Federal Regulations

Activities wholly or partially within Stream Protection Overlay Zones are subject to all applicable federal and state regulations, including, but not limited to, Division of State Lands

permit requirements under the Removal-Fill Law, U.S. Army Corps of Engineers permit requirements under Section 404 of the Clean Water Act and Department of Environmental Quality permit requirements for stormwater under the Clean Water Act and state water quality regulations. Where there is a difference between local, state or federal regulations, the more restrictive regulations shall apply.

Section 42.70 – Violations

Activities within Stream Protection Overlay Zones not authorized under this Article are a violation. The County shall seek compliance with the requirements of this Article and the resolution of violations through the following procedures:

- A. Voluntary cooperation to resolve violations is the preferred enforcement procedure when appropriate to the circumstances. Violations causing ongoing degradation of natural resources or repeated violations by the same individual, firm or corporation are generally not appropriate for voluntary cooperation enforcement procedures.
- B. Natural resource restoration shall be required for violations that result in unauthorized construction, grading, excavation, placement of fill material, or removal of native vegetation in a Stream Protection Overlay Zone. The purpose of the restoration requirements shall be to mitigate impacts to vegetation, soils and hydrology and may include vegetation planting, fill removal, backfilling of excavated areas, restoration of ground surface contours, restoration of hydrological processes or other actions. Restoration recommendations shall be solicited from the Oregon Department of Fish and Wildlife and the Hood River County Soil and Water Conservation District.
- C. Violations involving placement of fill material, excavation, grading or alteration of material within the bankfull stage of a stream or in a wetland shall be reported to the Oregon Division of State Lands.
- D. Failure of an individual, firm, or corporation to remedy a documented violation shall be processed in accordance with the provisions of Article 70 (Enforcement).