

## **CHAPTER 182**

### **SIGNIFICANT RESOURCE AREAS OVERLAY ZONE**

- 182.010. Provisions
- 182.020. Purpose
- 182.030. Application
- 182.035. Definitions
- 182.040. Review Procedure and Management Plan Requirements
- 182.050. Specific Property Development Standards
- 182.060. State or Federal Threatened and Endangered Species
- 182.070. List of Conflicting Uses
- 182.080. State and Federal Managing Agencies

**182.010. PROVISIONS.** The provisions of this Chapter shall apply to significant (1-C) resources designated 3-A or 3-C in the following categories: A) Fish and Wildlife; B) Riparian areas and wetlands; and C) Ecologically and Scientifically Significant Natural Areas.

**182.020. PURPOSE.** The purpose of the Significant Resource Overlay is to conserve significant fish and wildlife habitat, riparian and natural areas identified on the Significant Resource Areas Map and to permit development where it can be shown that such development is compatible with the protection of these resources.

**182.030. APPLICATION.** The provisions of this Chapter shall apply to the establishment of conflicting uses (see Section 182.070) within a "Significant Resource Area" indicated on the Polk County Significant Resource Area (SRA) Map and within designated buffer areas pertaining to specific resources. Activities regulated under the Forest Practices Act (FPA) are excluded from the provisions of this Chapter.

**182.035. DEFINITIONS.**

"1-C": Refers to resources which, based on information regarding location, quality and quantity, are considered to be significant and identified on the County's Significant Resource Areas (SRA) Map.

"3-A": Resources so designated are considered to be of great significance and shall be preserved, notwithstanding affects of such preservation to identified conflicting uses.

"3-C": Resources so designated are considered to be significant and shall be protected by limiting conflicting uses.

Significant Resource Areas (SRA) Map: Official adopted Map which depicts all inventoried significant (1-C) resources in Polk County.

Inventory Sheets: Official adopted listings of all inventoried significant (1-C) resources in Polk County.

**182.040. REVIEW PROCEDURE AND MANAGEMENT PLAN REQUIREMENTS.**

(A) PERMITTED USES IDENTIFIED AS CONFLICTING USES.

If a permitted use in the underlying zone is listed as a conflicting use in Section 182.070, the applicant shall comply with the applicable review procedure and management plan requirements outlined in Section 182.040. This type of review is ministerial and shall be decided by the Planning Director. Appeals are made to the Board of County Commissioners.

(B) CONDITIONAL USES IDENTIFIED AS CONFLICTING USES.

- (1) If a conditionally permitted use in the underlying zone is listed as a conflicting use in Section 182.070, it shall be subject to the following:
  - (a) Chapter 119 - Conditional Uses;
  - (b) Review procedures and Management Plan requirements contained in Section 182.040; and
  - (c) Other specifically applicable criteria (e.g., non-farm dwelling, etc.)This type of review shall be quasi-judicial and decided by the Hearings Officer. Decisions of the Hearings Officer on conditional use applications under shall be subject to the appeal provisions in Section 111.280 and the call of the Board of Commissioners as provided in Section 111.290.
- (2) The Hearings Officer may limit changes in the natural grade of land, or the alteration, removal, or destruction of natural vegetation in order to prevent or minimize erosion, pollution, or degradation of a significant resource.

- (3) An application for a conditional use shall be denied if, in the opinion of the Hearings Officer, the proposed use would be detrimental to the identified resource.

(C) PROTECT THE RESOURCE DECISION (3-A).

- (1) The Management Plan: When a "3-A" decision has been made for a particular resource, as indicated on the Goal 5 inventory sheets, the applicant, in coordination with the County and State or federal managing agency (s), shall develop a management plan which comprises the following elements:
  - (a) A description of the type and extent of resources involved;
  - (b) A map showing the exact location of the resource;
  - (c) A print-out indicating ownership within designated buffer strips; and
  - (d) A written statement detailing a proposed strategy to protect the identified significant resources. Such strategy may include, but shall not be limited to the following:
    - (1) Restriction of conflicting activities during critical periods (e.g., sensitive nesting periods);
    - (2) Protecting the resource with buffer strips;
    - (3) A Monitoring Plan for the site, i.e., determine the long-range affects;
    - (4) Permanent or seasonal road closures to protect the resource site; and
    - (5) Conservation easements, tax incentives or land donations.

If the County and applicant concur on provisions of the management plan, and other applicable criteria are satisfied, approval of the administrative action or conditional use request shall be subject to fulfillment of the management plan objectives.

- (2) If the County and applicant cannot agree on a Management Plan which would allow for the proposed development, while protecting the resource, the County shall deny the land use request.

(D) ALLOW CONFLICTING USES DECISION (3-B).

- (1) When a "3-B" decision has been made for a particular resource (as indicated on the adopted Goal 5 inventory sheets), the request shall not be subject to the standards of this Chapter.

(E) LIMIT CONFLICTING USES (3-C).

- (1) The Management Plan: When a "3-C" decision has been made for a particular resource, as indicated on the Goal 5 inventory sheets, the applicant, in coordination with the County and State or federal managing agency (s), shall develop a Management Plan which comprises the following elements:
  - (a) A description of the type and extent of resources involved;
  - (b) A map showing the exact location of the resource;
  - (c) A print-out from the County Assessor's Office indicating ownership within designated buffer strips; and
  - (d) A written statement detailing a proposed strategy to protect the identified significant resources. Such strategy may include, but shall not be limited to the following:
    - (1) Restriction of conflicting activities during critical periods (e.g., sensitive nesting periods);
    - (2) Protecting the resource with buffer strips

- (3) A Monitoring plan for the site, i.e., determine the long-range affects;
- (4) Permanent or seasonal road closures to protect the resource site; and
- (5) Conservation easements, tax incentives or land donations.

If the County and applicant concur on provisions of the Management Plan and other applicable criteria are satisfied, approval of the administrative action or conditional use request shall be subject to fulfillment of the management plan objectives.

- (2) Alternative to the Management Plan: If the County and the applicant cannot agree on a management plan which would allow for both resource conservation and development, the applicant must make the following findings of fact:
  - (a) The proposed development would not result in the loss of a rare, irretrievable, or irreplaceable natural feature or scientific opportunity, or the disturbance of a substantially unaltered natural feature or area in or adjacent to the proposed site;
  - (b) There are no feasible alternative locations on the site where the development can occur without adverse impacts to the resource; and
  - (c) In consultation with the Oregon Department of Fish and Wildlife and/or other managing agencies, a mitigation plan shall be developed that will minimize impacts to the maximum extent feasible. The process for developing the mitigation plan shall consist of the following steps:
    - (1) Identify wildlife uses and habitat categories to be affected by the proposed development action and identify potential impacts upon wildlife habitat;
    - (2) Identify habitat mitigation opportunities provided by environmental laws and regulatory processes specifically applicable to the proposed action;
    - (3) Identify evaluation species for the purposes of comparing pre and post-development wildlife habitat conditions; and
    - (4) Develop a habitat mitigation plan which considers alternatives to the proposed development action and includes standards for post-development monitoring of the effectiveness of the mitigation measures and will provide for future modification of mitigation as required to meet the goal of the plan.

The property owner is responsible for the expense of planning and implementing the wildlife habitat mitigation plan and for the expense of collecting and analyzing any information needed to develop or evaluate the plan described above.

- (3) If the County, State or federal managing agency (s) finds the resource is not located on the applicant's property, and the development proposal will not impact the resource, the standards in this Chapter shall not apply.

#### **SECTION 182.050. SPECIFIC PROPERTY DEVELOPMENT STANDARDS.**

The following specific development standards apply to the establishment of identified conflicting uses (see Section 182.070) within deer and elk winter range, riparian areas and significant wetlands identified on the Significant Resource Areas (SRA) Map.

- (A) Deer and Elk Winter Range - To minimize impacts to deer and elk populations, the following standards apply (Note: Properties within the Rural Community Centers and areas zoned AR-5 and F/F are exempted from these requirements):

- (1) Dwelling units are limited to a maximum of 1 unit per 40 acres;
  - (2) Dwelling units, roads, utility corridors and other development shall be sited on the least productive habitat land and away from sensitive slopes and soils;
  - (3) Development shall be clustered and located as close as possible to existing development and services, with only essential roads provided;
  - (4) Nonessential roads shall be closed and off-road vehicle use curtailed during the winter and spring.
- (B) Riparian and Wetland Setbacks - In order to protect, maintain and enhance the water quality and biological productivity of waterways and wetlands indicated on the Significant Resources Areas map, the following setback requirements shall apply:

- (1) Development, along streams and rivers with significant (1-C) riparian habitat as depicted on the Significant Resource Areas Map, shall be subject to a riparian setback. Within the riparian area, all structural development shall be prohibited. In addition, all trees and at least 50 percent of the understory shall be retained, with the following exceptions:
  - (a) Removal of dead, diseased or dying trees, or leaning trees which pose an erosion or safety hazard;
  - (b) The mowing, planting or maintenance of lawn and farm use, as defined in Section 110.223, existing on the effective date of this Ordinance, including the control of noxious weeds (this provision is not intended to restrict the selection of crop/commodity types in those existing farm use areas within the riparian setback);
  - (c) Vegetation removal necessary to provide direct access for water dependent use, or an otherwise approved use;
  - (d) Structural shoreline stabilization; and,
  - (e) Vegetation removal necessary in conjunction with an approved in-water project, such as a bridge.
- (2) Determining the Setback Area: The riparian setback shall be measured from the banktop on a straight line perpendicular to the flow of the waterway. The following requirements apply to determining the width of various types of riparian management areas:

Streams identified on the SRA Map: The width of the riparian management area shall average three times the stream width, but shall not average less than 25 feet or more than 100 feet. Stream width is the average of the main channel width of the stream during its high water level flow.

Lakes and significant wetlands identified on the SRA Map: The width of the riparian management area for lakes and significant wetlands less than 1 acre in size shall average 25 feet; for lakes and wetlands between 1 and 5 acres in size, the width shall average 50 feet; for lakes and wetlands between 5 and 10 acres in size shall average 75 feet in width; and, for lakes and wetlands over 10 acres in size, the width shall average 100 feet.

Note: The provisions of subsection (1) above do not apply to forest activities regulated under the Forest Practices Act.

- (3) Septic drainfields are subject to a 100 foot riparian setback along all rivers and streams.
- (4) The riparian setback requirement may be reduced if the Planning Director or his designee finds, after consultation with the Oregon Department of Fish and Wildlife, the character and size of the proposed development and its potential

for adverse impacts on the water resource, fish or wildlife habitat area, or other riparian values is minimal. However, the riparian buffer shall not be reduced below 25 feet, nor shall loss of vegetation exceed 25 percent.

- (5) Water dependent commercial and industrial uses and private boat docks, marinas and boat ramps, which are proposed in waters solely under County jurisdiction shall be subject to the approval of the Planning Director or his designee after consultation with the Oregon Department of Fish and Wildlife and other agencies with statutory jurisdiction who must concur that such a use will not negatively impact the resource.
- (6) Exceptions to Riparian Setback Requirements - The following are excepted from the strict application of the riparian setback provisions for development:
  - (a) Residential lots of record or approved subdivision lots granted an exception which have a lot depth which precludes compliance with the setback standards of this section. Such structures shall be setback the maximum practicable distance.
  - (b) Additions to existing non-conforming structures shall, at a minimum, meet the same setback of the existing structure.
  - (c) Public uses, such as bridges for public roads, shall be allowed within the setbacks set forth in this section provided that adverse impacts are mitigated as recommended by the Oregon Department of Fish and Wildlife.
  - (d) Structures necessary to make use of a water right.
  - (e) Approved erosion control - structural or nonstructural. Note: nonstructural solutions to erosion and flooding are preferred to structural solutions.

#### **182.060. STATE OR FEDERAL THREATENED AND ENDANGERED SPECIES.**

Development which may disturb species (plant or animal) listed by the State of Oregon or the U.S. Fish and Wildlife Service as threatened or endangered shall comply with appropriate State and Federal Laws and regulations. In addition, the review procedure and management plan requirements outlined in Section 182.040 shall apply.

#### **182.070. LIST OF CONFLICTING USES.**

- (A) FISH AND WILDLIFE AREAS AND HABITATS (Designated on the SRA Map)
  - (1) Fish Habitat
    - (a) Loss of streamside vegetation
    - (b) Road construction
    - (c) Development along lake/reservoir shorelines
    - (d) Dam construction
    - (e) Aggregate removal
  - (2) Black-tailed Deer and Roosevelt Elk Winter Habitat
    - (a) Residential development
    - (b) Roads
    - (c) Landfills
    - (d) Commercial feedlots
    - (e) Airports
    - (f) Open concrete canals

- (3) Sensitive Bird Sites
  - (a) Any activity which results in the destruction of Mineral Springs
  - (b) Development within 1/4 mile of an Osprey or Bald Eagle nest during critical nesting periods (specified by the ODFW or USFW)
  - (c) Development within 600 feet of a Great Blue Heron Rookery during critical nesting periods (specified by the ODFW)
  - (d) Harvest of trees utilized for nesting by Osprey or Bald Eagle
- (4) Upland Game and Waterfowl
  - (a) Riparian vegetation removal, except as provided under Section 182.050.
  - (b) Filling, diking and drainage of ponds and wetland areas
  - (c) Disturbance and destruction of mineral springs
  - (d) Development on or adjacent to sensitive waterfowl habitat
- (B) ECOLOGICALLY AND SCIENTIFICALLY SIGNIFICANT NATURAL AREAS.
  - (1) Encroachment of agricultural activities (including seasonal grazing) onto the resource site
  - (2) Timber harvest or tree planting on the resource site or within a designated buffer zone, excepting those operations conducted under provisions of the Forest Practices Act (FPA).
  - (3) Fill or removal at the resource site
  - (4) Stream alteration
  - (5) Mineral or aggregate extraction on the resource site
  - (6) Off-road vehicle use
  - (7) Residential, commercial or industrial development
  - (8) Road construction on the resource site (except by a managing public agency).
- (C) WATER AREAS, WETLANDS, WATERSHEDS AND GROUNDWATER RESOURCES.
  - (1) Riparian Areas
    - (a) Vegetation removal
    - (b) Road Construction
    - (c) Timber harvest (excepting those operations conducted under provisions of the FPA)

**182.080. STATE AND FEDERAL MANAGING AGENCIES.**

- (A) Fish and Wildlife Habitat Areas
  - (1) Oregon Department of Fish and Wildlife
  - (2) U.S. Department of Fish and Wildlife
- (B) Water Areas and Resources
  - (1) Oregon Department of Fish and Wildlife (ODFW)
  - (2) Oregon Division of State Lands (DSL)
  - (3) Oregon Water Resources Department (DWR)
  - (4) Oregon Department of Environmental Quality (DEQ)