

**Chapter 16.75**  
**Significant Natural Resources Overlay District (SNR)**

**16.75.000**    **Purpose**

The Significant Natural Resources Overlay District provides protection for identified significant natural resources within the City of North Plains as designated under Statewide Planning Goal 5. For the purpose of this overlay zone, significant natural resources are designated as Significant Wetlands and Riparian Corridors. These resources have been inventoried within the City of North Plains according to procedures, standards and definitions established under Goal 5 and are identified on the Significant Natural Resources Map as adopted in the Comprehensive Plan.

The Significant Natural Resources Overlay Zone District is intended to:

- A.**    Protect valuable natural resources within the City of North Plains Urban Growth Boundary, while ensuring reasonable economic use of property;
- B.**    Augment existing regulations of water quality sensitive areas, vegetated corridors wetlands and water resources, including Clean Water Services Design and Construction Standards, the Division of State Lands Removal Fill Law (ORS 196.800-196.990), and by the US Army Corps of Engineers' administration of Section 404 of the Clean Water Act;
- C.**    Encourage public knowledge, understanding and appreciation of the City's natural resources;
- D.**    Provide protection of wetlands and riparian corridors to maintain salmonid habitat, water quality, thermal regulation, sediment trapping, hydrologic control of flood waters; stream bank stabilization and other important functions and conditions;
- E.**    Encourage restoration of wetlands and riparian corridors; and
- F.**    Carry out the provisions of Statewide Planning Goal 5.

**16.75.005**    **Definitions**

For the purposes of this Section, the following definitions apply:

- A.**    **Alteration:** The addition to, removal of or from, or physical modification of any exterior part or portion of a landmark, or identified building.
- B.**    **Bank full Stage:** The elevation at which water overflows the natural banks of the stream.

- C. Bioengineering:** A method of erosion control and landscape restoration using live plants, such as willows.
- D. Building Envelope:** The land area, outside of all required setbacks, which is available for construction of a primary structure on a particular property.
- E. Delineation:** An analysis of a resource by a qualified professional that determines its boundary according to an approved methodology.
- F. Excavation:** Removal of organic or inorganic material (e.g. soil, sand, sediment, muck) by human action.
- G. Fill:** Deposition of organic or inorganic material (e.g. soil, sand, sediment, muck, debris) by human action.
- H. Impervious surface:** Any material (e.g. rooftops, asphalt, concrete) which reduces or prevents absorption of water into soil.
- I. Lawn:** Grass or similar materials usually 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.
- J. Mitigation:** A means of compensating for impacts to a Significant Natural Resource or its buffer including: restoration, creation, or enhancement. Some examples of mitigation actions are construction of new wetlands to replace an existing wetland that has been filled, replanting trees, removal of nuisance plants, and restoring stream-side vegetation where it is disturbed.
- K. Native Vegetation:** Plants identified as naturally occurring and historically found within the City of North Plains.
- L. Natural Resource Enhancement:** A modification of a natural resource to improve its quality.
- M. Natural Resource Overlay:** Designation given to all Significant Wetlands and Riparian Corridors delineated on the Significant Natural Resources Map.
- N. Non-conforming:** 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, although expansion, re-construction, or substantial improvements are regulated.

- O. Qualified Professional:** An individual who has proven expertise and vocational experience in a given natural resource field. A qualified professional conducting a wetland delineation must appear on the Oregon Division of State Lands Consultants List.
- P. Review Authority:** The City of North Plains.
- Q. Riparian Corridor:** A Goal 5 resource that includes the water areas, fish habitat, riparian areas, and wetlands within the riparian corridor boundary. In the City of North Plains, Riparian Corridor boundaries are measured as follows:
- a. The unnamed tributary of McKay Creek: 50 feet from the top of bank or from the edge of a delineated significant wetland, whichever is further landward, and;
  - b. McKay Creek: 75 feet from the top of bank or from the edge of a delineated significant wetland, whichever is further landward.
- R. Significant Natural Resource:** Significant Wetlands and Riparian Corridors within the City of North Plains Urban Growth Boundary and designated on the Significant Natural Resources Map.
- S. Significant Wetland:** A wetland mapped on the City of North Plains Local Wetlands Inventory which meets the primary criteria of the Oregon Division of State Lands Administrative Rules for Identifying Significant Wetlands (July, 1996). The final boundary of a significant wetland is established through a wetland delineation using the required methodology and suggested methodologies of the 1987 US Army Corps of Engineers Wetland Delineation Manual;
- T. State and Federal Natural Resource Agency:** Oregon Division of State Lands, Oregon Department of Fish and Wildlife, U.S. Army Corps of Engineers, U.S. Department of Agriculture Natural Resources Conservation Service, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency.
- U. Stream:** A channel, such as McKay Creek or the unnamed tributary of McKay Creek, that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.
- V. Structure:** 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.

- W. Substantial Improvement:** 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.
  - c. The term does not, however, include either:
  - d. 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
  - e. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
- X. Top of Bank:** A distinct break in slope between the stream bottom and the surrounding terrain, which corresponds with the bankfull stage of the stream.
- Y. Variance:** A grant of relief from the requirements of this ordinance, which permits activity in a manner that would otherwise be prohibited by this ordinance.
- Z. Wetland:** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are generally regulated by the Oregon Division of State Lands and the US Army Corps of Engineers.

#### **16.75.010 General Provisions**

- A. Affected Property:** The procedures and requirements of the Significant Natural Resources Overlay Zone District (SNR):
1. apply to any parcel designated as having a Significant Natural Resource on any portion of the tax lot;

2. apply in addition to the standards of the property's underlying zone;
3. supercede the property's underlying zone where the underlying zone does not provide the level of Significant Natural Resource protection afforded by the Significant Natural Resources Overlay Zone District.

**B. Activities Subject to Review:** Activities subject to the review shall include all development on properties outlined in 16.16.030 A and not specifically exempted from review as outlined in 16.16.030 C, including:

1. Partitioning and subdividing of land.
2. New structural development.
3. Exterior expansion of any building or structure, or increases in impervious surfaces or storage areas.
4. Site modifications including grading, excavation or fill, installation of new above or below ground utilities, construction of roads, driveways, or paths.
5. Removal of trees or the clearing of native vegetation within a Significant Natural Resource.

**C. Exemptions:** Activities exempt from this ordinance include:

1. The sale of property.
2. Temporary emergency procedures necessary for the safety or protection of property.
3. Commercial forest practices regulated by the Oregon Forest Practices Act.
4. Normal and accepted farming practices other than the construction of buildings, structures, or paved roads.

**D. Agency Review:** Decisions made by the City of North Plains under this ordinance do not supercede the authority of the state or federal agencies which may regulate or have an interest in the activity in question. It is the responsibility of the applicant to determine which agencies, if any, have regulatory jurisdiction, and make the appropriate contacts.

**E. Map as Reference:** The Significant Natural Resources Overlay Zone map shall be a reference for identifying areas subject to the provisions of

this ordinance. An applicant with any parcel designated as having a Significant Natural Resource on any portion of the tax lot(s) is required to:

1. Delineate wetland boundaries using the methods described in the 1987 US Army Corps of Engineers Wetland Delineation Manual;
2. Provide the City with a delineation of the significant natural resources on the subject property as part of their application. An application shall not be complete until this delineation is submitted to the City;
3. Obtain concurrence of the wetland delineation from the Oregon Division of State Lands.

#### **F. Development Permit Required**

A development permit, pursuant to Chapter 16.170, shall be obtained before construction or development. The permit shall be required for all structures including manufactured homes, as set forth in the Definitions, and for all other development including fill and other activities, also as set forth in the Definitions.

#### **16.75.0154 General Development Standards**

- A. The permanent alteration of the Significant Natural Resource by grading, by excavation or fill, by the placement of structures or impervious surfaces, or by the removal of native vegetation is prohibited, except for the following uses provided they are designed to minimize intrusion into the significant natural resource, and no other options or locations are feasible:
  1. Streets, roads, paths, and driveways;  
Public or private streets, driveways, or paths may be placed within a Significant Natural Resource to access development activities if it is shown to the satisfaction of the reviewing authority that no other practicable method of access exists. If allowed, the applicant shall comply with the following requirements:
    - a. Demonstrate to the reviewing authority that no other practicable access to the build able area exists or access from an off-site location through the use of easements is not possible;
    - b. Design roads, driveways, and paths to be the minimum width necessary and for the minimum intrusion into the Significant Natural Resource while also allowing for safe passage of

vehicles and/or pedestrians;

- c. Use bridges, arched culverts, or box culverts with a natural bottom for crossing of a Significant Natural Resource if the crossing is found unavoidable. The lower lip of any culvert must meet the channel bed at or below grade. The number of channel crossings shall be minimized through use of shared access for abutting lots and access through easements for adjacent lots;
- d. Consider the need for future extensions of shared access, access easements, or private streets to access potential new building sites at the time of this application in order to avoid subsequent encroachments into the Significant Natural Resource;
- e. Prior to construction, the Significant Natural Resource area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as allowed by the provisions of this ordinance. Such markings shall be maintained until construction is complete;
- f. During construction, no stockpiling of fill materials, parking, or storage of equipment shall be allowed within the Significant Natural Resource;
- g. Erosion control measures, such as silt fences and bio-filter bags, shall be used to reduce the likelihood of sediment and untreated storm water entering the Significant Natural Resource.
- h. Permanent alteration of the Significant Natural Resource by the placement of public or private streets, driveways, or paths is subject to the mitigation requirements of Section VII.

## 2. Utilities and drainage facilities;

Public and private utilities or drainage facilities may be placed within a significant natural resource when it is shown to the satisfaction of the review body that no other practicable alternative location exists. If a utility or drainage facility is allowed within a Significant Natural Resource the following standards shall apply:

- a. Demonstrate to the reviewing authority that no other practicable access exists or access from an off-site location through the use of easements is not possible;

- b. The corridor necessary to construct utilities shall be the minimum width practical so as to minimize intrusion into the Significant Natural Resource. Removal of trees and native vegetation shall be avoided unless absolutely necessary. The existing grade of the land shall be restored after construction. Native vegetation shall be used to restore the vegetative character of the construction corridor.
  - c. Prior to construction, the Significant Natural Resource area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as allowed by the provisions of this ordinance. Such markings shall be maintained until construction is complete;
  - d. During construction, no stockpiling of fill materials, parking, or storage of equipment shall be allowed within the Significant Natural Resource.
  - e. Erosion control measures, such as silt fences and bio-filter bags, shall be used to reduce the likelihood of sediment and untreated storm water entering the Significant Natural Resource.
3. Replacement of existing structures with structures in the same location that do not disturb additional surface area;
4. Structures or other non-conforming alterations existing fully or partially within the Significant Natural Resource may be expanded provided the expansion occurs outside of the Significant Natural Resource. Substantial improvement of a non-conforming structure in the Significant Natural Resource shall require compliance with the standards of this ordinance.
5. Existing lawn within the Significant Natural Resource may be maintained, but not expanded within the limits of the Significant Natural Resource. Development activities shall not justify replacement of native vegetation, especially native riparian vegetation, with lawn.
6. Existing bank stabilization and flood control structures may be maintained. Any expansion of existing structures or development of new structures shall be evaluated by the Planning Department and appropriate state or federal natural

resource agency. Such alteration of Significant Natural Resources shall be approved only if less-invasive or non-structural methods, such as bioengineering, will not adequately meet stabilization or flood control needs.

7. The types, sizes, and intensities of lights must be placed so that they do not shine directly into the Significant Natural Resource.

**B.** Removal of vegetation from the Significant Natural Resource 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, shall maintain or exceed the density of the removed vegetation, and shall maintain or improve the shade provided by the vegetation.

2. Removal of vegetation necessary for the continued maintenance of dikes, drainage ditches, or other storm water or flood control facilities. Vegetation removal shall be kept to the minimum necessary.

3. Trees in danger of falling and thereby posing a hazard to life or property may be removed, following consultation from a certified arborist and approval from the Planning Department. If no hazard will be created, the department may require these trees, if felled, to be left in place in the Significant Natural Resource.

4. The control or removal of nuisance plants should primarily be by mechanical means (e.g. hand-pulling). If mechanical means fail to adequately control nuisance plant populations, a glyphosate-based herbicide is the only type of herbicide that can be used in a significant natural resource area. No pre-emergent herbicides or auxin herbicides that pose a risk of contaminating water should be used. A herbicide application is preferred to be made early in the morning or during windless periods at least 4 hours before probable rainfall.

#### **16.75.020 NATURAL RESOURCE ENHANCEMENT AND RESTORATION**

The City strongly encourages the enhancement or restoration of natural resources, such as riparian corridors along the unnamed tributary of McKay Creek and McKay Creek, in-channel habitat improvements, non-native plant control, and similar projects

which propose to improve the quality of a Significant Natural Resource. However, no enhancement activity requiring the excavation or filling of material in a wetland shall be allowed unless all applicable State and Federal wetland permits have been granted.

#### **16.75.025 Variances to Chapter 16.75**

A variance to the provisions of Chapter 16.75 is permitted only as a last resort and is only considered necessary to allow reasonable economic use of the subject property, pursuant to Chapter 16.185. The property must be owned by the applicant and not created after the effective date of this Section. Approval of a variance is based on meeting the requirements of both subsections A and B, below.

**A.** A variance shall only apply to:

1. Lots on which the location of a Significant Natural Resource results in a building area depth for a single-family dwelling of 25 feet or less or a building envelope of 800 square feet or less;
2. Lots where strict adherence to the standards and conditions of Chapter 16.75 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.

**B.** Permanent alteration of the Significant Natural Resources by an action requiring a variance is subject to the procedures and criteria of Article and the mitigation requirements of Section VII.

#### **16.75.30 Mitigation Standards**

When approved impacts to any identified Significant Natural Resource occurs, mitigation will be required. For impacts to Significant Wetlands, the standards and criteria of Section 16.75.030 (A) shall apply. For impacts to Riparian Corridors, the standards and criteria of Section 16.75.030 (B) shall apply.

- A.** When mitigation for impacts to a Significant Wetland is proposed, the mitigation plan shall comply with all Oregon Division of State Lands and U.S. Army Corps of Engineers wetland regulations. The City may approve a development but shall not issue a building permit until all applicable State and Federal wetland permit approvals have been granted and copies of those approvals have been submitted to the City.
- B.** When mitigation for impacts to a non-wetland riparian area is proposed, a mitigation plan prepared by a qualified professional shall

be submitted to the review authority. The mitigation plan shall meet the following criteria:

1. Mitigation for negative impacts to a Riparian Corridor shall follow all of the requirements of Clean Water Services - Design and Construction Standards - Resolution and Order 00-7;
2. Mitigation shall occur on-site and as close to the impact area as possible. If this is not feasible, mitigation shall occur within the same drainage basin as the impact;
3. All vegetation planted within the mitigation area shall be native to the region. Species to be planted in the mitigation area shall replace those impacted by the development activity;