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## MEMO

**DATE:** March 6, 2020  
**TO:** Portland Planning and Sustainability Commission  
**FROM:** Debbie Bischoff, Senior Planner, Jeff Caudill, City Planner II  
**CC:** Sallie Edmunds, Central City, River and Environmental Planning Manager  
**SUBJECT:** **March 10 Work session on River Plan / South Reach**

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The Planning and Sustainability Commission is holding a work session on the River Plan/South Reach on March 10, 2020. The following information is provided based on your stated interests from review of the *River Plan/South Reach Proposed Draft* (January 2020), public testimony received at the February 25, 2020 public hearing, and information that staff would like to convey to you.

Attached to this memo are a series of tables organized by plan topic with suggested amendments to the draft plan for your review, discussion, and action on March 10. Some of these amendments are related to PSC's questions. Other amendments are ones that staff identified from the public testimony and other conversations since publication of the Proposed Draft. You will note that some items of interest are scheduled for discussion at your April 14 work session. Watch for a packet prior to that work session.

Please also note that in addition to these amendments, staff plans to make minor, non-policy amendments to the document. That includes correcting typos, minor edits and grammatical corrections, and consistent use of terms. Please let us know if you have any questions about this.

### A. Watershed Health and Resilience

#### 1. Setback (April 14)

2. **Riparian Vegetation** (see Table A) An issue recognized along the Willamette River is the repeated removal of native vegetation, including trees, along the riverbank. The



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removal of vegetation is most common along the western bank of the river and is generally aimed at preserving views along the Greenway Trail. The existing Greenway overlay zone prohibits the removal of native plant species but enforcement of vegetation removal violations has been a challenge and resulted in drawn out processes to conclusively document the violation. As you know, a number of individuals addressed this issue in their testimony.

Generally, their concerns focused on two items: (1) existing tree removal requirements in the Greenway overlay zones have not been effective in keeping property owners from the pruning and removing riverbank vegetation; and (2) the minimum size of the tree required to be planted is lower than the tree removal allowed for trees on the riverbank, resulting in the ability to remove trees less than 1.5 inches diameter at breast height (dbh) after planting.

#### Tree Removal

The River Environmental overlay zone will be applied to all of the river setback. Exemptions for tree removal are very limited in the River Environmental. Only trees less than 1.5-inches dbh listed on the Nuisance Plants List are exempt from the River Environmental requirements. Even in these cases, the disturbance area associated with removal of these trees still must be planted to meet the applicable requirements of the landscaping standard (33.475.220, Landscaping). Removal of all other tree species must either meet relevant standards or go through River Review.

#### Tree Planting

Similar to requirements in the Environmental overlay zones chapter, the River overlay zones require that trees planted to meet landscaping or tree replacement requirements must be a minimum of ½-inch caliper. As described above, the threshold for exempt nuisance tree removal is 1.5 inches dbh. However, native trees must be planted within river setback and nuisance trees are not allowed to be planted, under any circumstances. Additionally, any trees planted to meet landscaping or tree planting requirements must be maintained permanently. Removal of a City-required tree is not allowed and would be subject to relevant requirements, including a potential violation procedure.

**3. Enforcement** (See Table A) Related to the testimony related to riverbank vegetation identified above, a number of individuals expressed concern about the effectiveness of enforcement of vegetation regulations, especially along the west riverbank. Recommendations in testimony include extending the length of monitoring of plantings and stronger enforcement penalties, especially for repeat offenders.

Requirements in the Greenway and River overlay zones mandate the size of trees to be planted (see above) and that the requirements of 33.248.090, Mitigation and Restoration Planting, must be met.



Requirements of 33.248.090, Mitigation and Restoration Planting, include the following:

- Plants must be native and selected from the *Portland Plant List*. Plants from the *Nuisance Plants List* are prohibited.
- All trees, shrubs and ground covers listed on the *Nuisance Plants List* must be removed.
- At minimum, irrigation is required for the first growing season.
- Written proof must be provided to BDS that all specifications of the section have been met a minimum of one year after the planting is completed.
- Monitoring of the landscape areas is an ongoing property owner responsibility. Any plants that die must be replaced in kind.

Additionally, the Bureau of Environmental Services (BES) proposes a new plan action for BES, BPS and BDS to identify more sustainable and consistent enforcement mechanisms and adequate penalties to ensure the protection of river resources. See Table A, reference #A-5 for more details.

**4. Vegetation and Scenic Views** In a number of locations within the South Reach, including designated public viewpoints, the west riverbank of the river and along the SE Sellwood Boulevard scenic corridor, the somewhat-conflicting goals of the protection of scenic resources and tree protection in the River Environmental overlay zone has been identified.

For City-designated public viewpoints, proposed requirements allow for the pruning and removal of trees to preserve views within the Scenic overlay zone view corridors that extend from designated public viewpoints. The River overlay and Scenic overlay zones aim to allow for the preservation of views through targeted tree removal and vegetation planting while ensuring the planting and establishment of riparian vegetation, including trees, outside of the Scenic overlay zone view.

Scenic corridors, including the existing SE Sellwood Boulevard and SW Macadam Boulevard scenic corridors and those proposed for the Greenway trails on both sides of the river, are intended to maintain the scenic qualities of the corridor itself through tree preservation, limiting the length of buildings, ensuring adequate setbacks and other strategies. A secondary goal is to preserve scenic vistas along the corridor, where possible. The purpose statement, as provided in the Scenic Resource Zone chapter (33.480) is the following:

**“The scenic corridor designation is intended to preserve and enhance the scenic character along corridors, and where possible, scenic vistas from corridors. This is accomplished by limiting the length of buildings, preserving existing trees, providing additional landscaping, preventing**



development inside setbacks, screening mechanical equipment, and restricting signs. Property owners and others are encouraged to make every effort to locate buildings, easements, parking strips, sidewalks, and vehicle areas to preserve the maximum number of trees” (Bold added).

There is often confusion on the role of the scenic corridor designation. Frequently, community members believe that the purpose of the scenic corridor is to preserve views along the scenic corridor. For example, testimony has been submitted related to the hope that the scenic corridor will serve to preserve the views from the Greenway Trail from Willamette Sailing Club north to Cottonwood Bay. Similarly, testimony has been submitted related to preservation of views of Oaks Bottom and the Central City from SE Sellwood Boulevard. As stated in the purpose statement, the focus of the scenic corridor is on tree preservation and enhancement of scenic character along the length of the corridor, with a secondary aim to preserve scenic vistas, where possible. In both of these cases, a number of designated public viewpoints are proposed along the scenic corridor in an effort to preserve their associated scenic vistas. In the view corridors associated with the public viewpoints tree removal will only be allowed, as described above.

City policy is to protect City-designated public views throughout the city. Private views are not given similar protections.

**5. Riverbank Riprap and Trees** (See Table A) PSC members were interested in obtaining additional information on potential issues related to planting of trees in riverbank riprap. BPS staff checked with staff from the Bureau of Development Services and Bureau of Environmental Services on this issue. Both bureaus agree that there are ways to design and engineer riverbanks that allow for trees to be planted in riprap. BDS staff confirmed that trees established in riprap do not necessarily destabilize or compromise the armored bank. BDS staff evaluates the impact of trees within the riprap slope during the project design phase.

The landscaping requirement in the River Overlay Zones chapter currently allows for placement of landscape plantings elsewhere on the site when the riprap bank meets specific criteria, including: (1) the average slope is 30 percent or steeper; or (2) the riprap is at least four feet deep. At this time, it is unclear whether any of the riprap banks in the South Reach meet either of these criteria but, if so, applicants would be able to utilize the alternatives provided in the code.

**6. Floodplains** PSC members were interested in learning more about ways to move development out of the floodplain. The City’s program to do this is the Willing Seller Program. BES is currently evaluating whether to expand its willing seller program, which is currently active in Johnson Creek, to similarly situated properties in the Willamette River.



**7. Non-conforming development** (See Table A) Nonconforming uses and development exist where a site met zoning code requirements at the time the development was established but no longer meets regulations because of subsequent changes to the Portland Zoning Code. For example, development that was built prior to when the City established the Greenway setback and is now located within or partially within the setback is non-conforming.

River overlay zone regulations allow nonconforming uses and development to continue and also expand when the expansion is landward of the river setback. Proposed updates would allow a nonconforming house to be expanded upward to the maximum building height allowed by the base zone or applicable plan district, as long as no expansion of the building coverage is proposed. This update codifies current Bureau of Development Services policy on expansion within the setback.

A second proposal allows a limited amount of reinforcement of existing seawalls to protect the health and safety of structures on those properties. Specific criteria to narrow the amount of reinforcement and allowed expansion of the seawall have been included. If the criteria for seawall reinforcement cannot be met, the project would need to be approved via River Review.

**8. Application of proposed regulations to specific properties** (April 14)

**9. Ross island plans** (April 14)

## **B. Recreation**

**1. Trails** Major public trails like the Springwater Corridor and Willamette Greenway trails are considered river-related development and can locate within the river setback. Trail gap sections are generally constructed with (re)development projects but there is a plan action R3A (Pt. 2, page 354), to identify funding to complete trail gaps at places where (re)development may not happen in the foreseeable future.

The City uses a proportionate share formula to determine a proposed development's impact on the trail system. Depending on the project's anticipated impacts to the trail system, the City may require the developer to dedicate a trail easement to the City, and possibly construct a section of the trail.

The trail design is determined by Portland Parks and Recreation (PPR). PPR uses its Trail Design Guidelines (2009) to help determine an appropriate trail section design. A required new trail section can locate anywhere on the site of a development project and its alignment is typically determined through negotiation with the property owner. PPR looks at connectivity of new trail sections to existing adjacent trail sections and prefers the riverfront trail sections to be closer to the river.



The proposed draft identifies the need to make improvements on the Springwater Corridor and the Willamette Greenway trails.

- Actions R3C and R3D (Pt. 2, page 354) seek to identify funding to make trail improvements and reduce conflicts and pinch points between users, along with trail-related amenities and trail access maps/wayfinding.
- Action R3E, seeks funding and partners to study design options for trail extensions/connections to Lake Oswego.

**2. River use / Boating Conflicts** (See Local Boating Regulations attachment.) The Oregon State Marine Board (OSMB) prepared a handout for the PSC about regulating boats in the Willamette River and information about the rulemaking process for the Lower Willamette (that includes the South Reach area). Josh Mulhollem, OSMB staff, will be present at the work session to answer any questions you might have on this topic. Overall, the State of Oregon - OSMB and the Department of State Lands (DSL) have jurisdictional authority over boating rules and leases for activities on the river. The OSMB welcomes the Planning and Sustainability's comments on proposed boating rules for the Lower Willamette, when they are available for public comment this summer.

**3. Brooklyn Access** The *2035 Portland Transportation System Plan* includes a study to determine the feasibility of access from the Brooklyn neighborhood to the river. This study is not funded, and currently is not a priority for the Portland Bureau of Transportation (PBOT). Any future study will include an alternatives analysis, which could indicate that a project in the area is not feasible or too costly to complete. The study, and any possible projects recommended from the study, must have collaboration and cooperation with ODOT, Ross Island Sand and Gravel, the railroad, community members, and other city bureaus.

PBOT has a TSP project and program prioritization criteria system. If a Brooklyn to the river access study includes a recommendation for a new project(s) to be added to the TSP, it will go through this project prioritization process to determine its priority, if the project fits into our programs or major projects, and if it fits into our constrained or unconstrained project list. PBOT will work with the community and city bureaus to update the project list during the next TSP update. Once a project is on the TSP list, funding and project development must occur through PBOT's CIP and budget process, which has adopted criteria and a public engagement component.

SE Center Street Vacation - Ordinance No 147394, was adopted by Portland City Council on March 14, 1979, vacating SE Center street east of SE McLoughlin to the river. No conditions of approval related to additional access were required as part of the street vacation.

Portland Parks and Recreation (PPR) notes that it has a Capital Improvements Program (CIP) project - SE Boise Street to the Springwater Corridor Trail going through Ross





Island Sand & Gravel's property. However, this project is not funded. PPR is also uncertain about being able to secure right-of-way through Ross Island Sand & Gravel's property. PPR does not have a CIP project for a Brooklyn riverfront park by the Springwater Corridor Trail. These projects are not a priority for PPR at this time.

**4. Waverley Golf Course** (See Table B, Item B1) Several testifiers at the public hearing on the *River Plan/South Reach Proposed Draft* suggested that the City of Portland annex the Waverley Country Club, which is adjacent to the Portland city limits on the east side of the Willamette River.

Waverley Country Club has a Milwaukie address but is within unincorporated Clackamas County. This private country club is subject to Clackamas County's comprehensive plan and land use regulations. The site adjoins both Portland's and Milwaukie's city limits. State planning law requires that adjoining cities coordinate the provision of future urban services within the urban growth boundary. A 2016 ordinance (#188179) between the cities of Portland and Milwaukie and Metro, authorized an intergovernmental agreement to revise the urban service boundary for this property to be served by the City of Portland.

The Waverley Country Club property was officially brought into the City's urban services boundary as a part of adoption of the *2035 Comprehensive Plan* (2018). A Portland comprehensive plan map designation of Open Space was applied to the Waverley Country Club property at that time as a "shadow" designation that would be applied upon annexation. Annexation of the property into the City of Portland was not pursued as a part of the *2035 Comprehensive Plan*.

The City of Portland does not have an agreement with Clackamas County (like it does with Multnomah County) where the County adopts Portland's plan and land use regulations for its unincorporated areas within the City's urban services boundary. The primary approach to annexation of the Waverley Country Club is through property owner consent. The known opportunity for the City to require annexation into Portland with City plan and land use regulations applied would be if/when the club requires upgraded City services.

The *River Plan/South Reach Proposed Draft* has an Action R5B that provides land use and regulatory guidance upon the property's annexation into the City. It recommends applying the Open Space zone designation along with the River General and River Environmental overlay zones to the property. BPS staff is offering to propose a new Action R5C that investigates and pursues approaches and incentives for annexation of this property into the city of Portland in the next five years. See Recreation table, Ref # B1.



**C. Tribal Engagement and Collaboration (April 14)**

**D. Riverfront Communities (See Table D for amendments)**

1. Homelessness (April 14)
2. Macadam Character Statement (April 14)

Attachments

1. Local Boating Regulations
2. Table A: Watershed Health and Resilience Amendments
3. Table B: Recreation Amendments
4. Table D: Riverfront Communities' Amendments





# LOCAL BOATING REGULATIONS IN OREGON AND ON THE LOWER WILLAMETTE



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## Current rulemaking for the lower Willamette

Citing safety concerns and issues with congestion, the Marine Board opened rulemaking for the lower Willamette River (Willamette Falls to the mouth) at their quarterly meeting in October, 2019. OSMB staff were directed to convene a Rule Advisory Committee (RAC) to provide input on any proposed rules. As of March, 2020, the RAC has met twice and members continue to provide input to OSMB staff regarding potential regulations. Staff are currently working on proposals to bring to the Marine Board at their next meetings in April and July of this year, with regulatory changes not expected to be adopted until 2021. Marine Board members have indicated that they would like staff to balance safety with opportunity in these proposals.

Once a proposal is endorsed by the Board, most likely in July, then staff will solicit public comments on draft rules implementing that proposal. However, government management agencies, including the Portland Planning and Sustainability Commission may provide comments at that time.

## Existing Boating Regulations on the Lower Willamette



In addition to statewide boating regulations (see OAR 250 Division 10), several local regulations have been established for the Willamette River in the South Portland area. These include:

- A slow-no wake zone in the Ross Island lagoon and in the Holgate Channel south of the mouth of the lagoon.
- A 5 mph limit within 100 feet of the Landing Boat Club.
- A 5 mph limit between the southern boundary of Willamette Park Launch Ramp and the northern boundary of the Willamette Sailing Club.
- A 5 mph limit within 200 feet of the Oregon Yacht Club floating home moorage as buoyed (a distance of approximately 1,500 feet).
- Per statewide rule OAR 250-010-0025, "No person shall operate a boat on the waters of this state in excess of a "slow-no wake" speed within 200 feet of a boat launch ramp, marina with a capacity for six or more moored vessels, floating home/boathouse moorage with six or more contiguous structures." This rule provides a 200-foot slow-no wake buffer around the Riverplace Marina, Macadam Bay Club Marina, Waverly Marina, Sellwood Riverfront Park, and the Staff Jennings access area.

# Boating Rule Development Process

Per ORS 830.175 and 830.195, the Marine Board has statutory authority to make statewide boating regulations as well as local and special area rules. No political subdivision may make boating regulations contrary to those of the Marine Board (ORS 830.040). The Board has the authority to restrict boating based on safety, property rights, congestion, user conflict, or to protect traditional boating uses.

Administrative rules can be changed by the agency at any time by following a formal rulemaking process. The five-member Marine Board is the governing body for the agency, so they must vote to adopt, amend, or repeal all rules. Many parts of rulemaking are standardized for all agencies, and the Marine Board's typical process is laid out below.

1. The Board opens rulemaking to address an issue or to improve existing regulations. This typically occurs because of one of two different circumstances:
  - a. Staff identifies an issue and requests permission from the Board to open rulemaking, or
  - b. The Board receives a petition from an external agency, local government, group, or individual to change a rule. If the Board accepts the petition, rulemaking begins.
2. Staff drafts a new rule, an amendment to a rule, or proposes the repeal of the rule to address the issue. Staff may convene a Rule Advisory Committee to assist in determining the impact of proposed rules to various stakeholders.
3. The agency makes public notice of this action to legislators, individuals who have requested to be on the interested parties list, state and federal agencies, port and park and recreation districts, and city and county officials in the area affected.
4. The agency accepts public comments on the proposed rules for a minimum of 30 days. If the proposed rules are likely to have opposition, one or more public hearings will be held.
5. Based on input received during the public comment period and other factors, OSMB staff makes a final recommendation to the Board and the Board votes to adopt, amend, or repeal the rule. The Board may also decide to direct staff to draft new proposed rules and re-notice, or may choose to close the rulemaking process without making any rule changes.
6. If the Board votes to adopt, amend, or repeal a rule, the Board's action is filed with the Secretary of State with an effective date.

Questions regarding the Marine Board's rulemaking processes can be directed to:

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