



River Plan / North Reach
Draft Amendment—Restoration Regulation
December 9, 2008

Replace the proposed zoning code requirement to make a contribution equal to one percent of total project value to the River Restoration Fund (i.e., 1% fee) with a regulation that requires on-site riverbank restoration according to a standard or off-site restoration through a payment to the River Restoration Fund.

The “1% fee” proposal is discussed in Volume 1A on pages 32 and 33 and in Volume 1B on pages 11 and 12. The rest of this memo outlines the conceptual foundations of the proposed restoration regulation.

Problem Statement

State Goal 15 requires protection, conservation, enhancement and maintenance of the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River. Title 13 of Metro’s Urban Growth Management Functional Plan (also referred to as “Nature in Neighborhoods”) requires protection, conservation and restoration of significant riparian corridors and wildlife habitat throughout the region.

Currently, the City complies with Goal 15 through a series of greenway overlay zones, standards, approval criteria and design guidelines. The purpose of protecting, conserving and enhancing the natural and scenic qualities of the land along the river is achieved through application of a setback standard, a landscaping standard, and greenway review approval criteria that direct protection of existing natural areas and enhancement of the riverbank.

Under the existing regulatory approach, most development proposals in the greenway require a land use review. Many River Plan stakeholders view the existing regulations and review requirement as out-dated and ineffective. Over the years since the Willamette Greenway Plan was adopted by City Council, the City has moved away from a mandatory land use review system to a system where some development can be approved without a time consuming land use review. The greenway code has not kept up with this shift in approach.

As part of the River Plan / North Reach, staff has proposed a new set of regulations that are intended to be flexible and clear, consistent with the rest of the zoning code, reduce the number of land use reviews that are required in the North Reach, and be consistent with Goal 15 and Title 13.

The initial staff proposal includes recommendations to:

- Apply an environmental overlay zone to significant natural resource areas in the North Reach and implement regulations similar to the regulations that apply in the environmental conservation zone. This includes a two-track system that will allow some development in

the river environmental overlay zone without a land use review as long as the development meets a set of standards that are intended to minimize impacts on the natural resource area. Mitigation is required for development in the river environmental overlay zone. If the proposal does not or cannot meet the standards then a land use review is required. In certain situations, mitigation will be allowed off site.

- Eliminate the existing landscaping/planting standard throughout the North Reach and the setback requirement in the river industrial overlay zone, in exchange for imposing a fee on development. The fee would be used to acquire, restore and manage approximately 20 resource sites in the North Reach. The goal of this recommendation is to ensure that riverbank enhancement occurs where it does not conflict with river-dependent uses and where the dollars spent on enhancement have the most effect.

Since the proposed draft was released on October 28th, staff has learned that the restoration fee as proposed is an excise tax. Because of a new state law the City can not impose this type of excise tax. Staff has been working with the Bureau of Environmental Services, the Bureau of Development Services and North Reach stakeholders to develop an alternative proposal that achieves the enhancement goals of Goal 15 and Title 13, provides flexibility, and results in meaningful restoration in the North Reach.

Proposed Solution

Apply a riverbank restoration regulation to riverfront properties in the North Reach

Staff proposes to apply a riverbank restoration regulation to sites in the North Reach that have river frontage. The regulation will require that the applicant either:

- Restore a portion of the riverbank on their site to a more natural condition by complying with a **standardized bank restoration and planting requirement**; or
- **Make a contribution to the River Restoration Fund.** The amount of the contribution will be based on the cost to conduct the riverbank restoration at an off-site location, plus the cost for acquisition and long-term management of the off-site location.

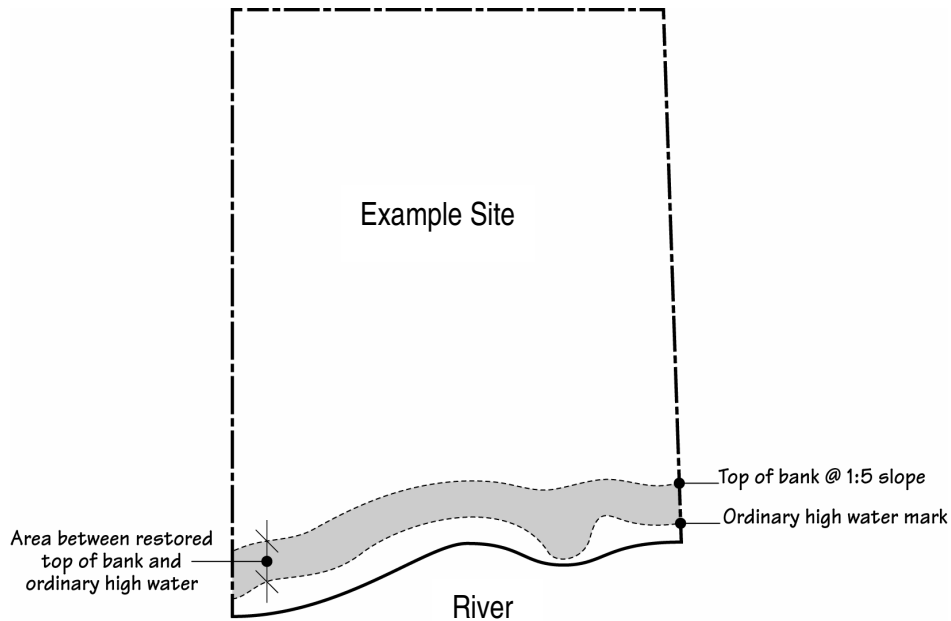
Staff intends to design the regulation to accommodate situations where a site can partially meet the standardized requirement. In this case, we envision that the remainder of compliance will be in the form of a payment to the restoration fund. If the site does not have river frontage then the restoration regulation will not apply. There will likely be other exemptions from the regulation including for changes that are completely inside of a building, and for actions to remove or remediate hazardous substances (contaminated site clean up).

Riverbank restoration standard

The purpose of the riverbank restoration standard is to restore some of the riverbank in the North Reach to a more natural condition. The City supports the working harbor and therefore

the standard will reflect the fact that development on the riverbank is expected to continue to occur.

The riverbank restoration standard will require that the applicant restore 80 percent of the area between the top of bank and the ordinary high water mark (the proposed regulation assumes that at least 20 percent of the area riverward of the top of bank will be developed with river-dependent or river-related development). For this regulation, the location of top of bank will not be the actual top of bank, but will instead be based on a restored bank with a slope of 1:5 (rise over run ratio).



In this example, the area between the ordinary high water mark and the top of the bank when laid back to a 1:5 slope is 40,000 square feet (the area is highlighted in grey on the drawing above). According to the proposed regulation, 80 percent of the total area is required to be restored, therefore:

$$40,000 \times .80 = \mathbf{32,000 \text{ square feet required to be restored}}$$

The area to be restored must meet a set of development standards aimed at achieving the functional equivalent of a natural bank including:

- Laying back the bank to a slope that is not greater than 20% (rise to run ratio of 1:5). There will likely be exceptions to this slope requirement in order to encourage the protection of existing trees, and to allow the restored bank to transition to an adjacent bank that is not yet at the desired slope;
- Removing all prohibited and nuisance plants from the restoration area;
- Removing structures and debris from the area;

- Amending the soil except where existing native vegetation will remain;
- Installing one tree, three shrubs and four other plants for every 100 square feet of restoration area. Existing plants will count toward meeting this standard as long as they are protected and maintained;
- Irrigating and maintaining the restored area and providing periodic reports to ensure that the restoration plantings thrive.

The standards will not require restoration below the ordinary high water mark because conducting work in that area would trigger review by the United States Army Corps of Engineers and the Oregon Department of State Lands. Staff supports and encourages voluntary restoration below ordinary high water, but acknowledges that required restoration below ordinary high water does not make sense given the current state and federal permitting requirements.

Contribute to the River Restoration Fund

As an alternative to meeting the on-site riverbank restoration standards described above, the applicant will have the option of making a contribution to the River Restoration Fund. The money will be used for off-site restoration and enhancement. Staff proposes that the contribution be based on the average cost to restore the bank to a more natural condition including the cost to lay back the bank, dispose of the material, remove existing structures and debris, and install plantings, plus the cost for acquisition, maintenance and long-term management. Staff estimates that these costs generally are:

\$20-60 per square foot of bank for restoration (staff is in the process of determining the specific dollar amount) ;
 \$7 per square foot for acquisition; and
 20% for maintenance and long term management.

Using the example site from above, the cost of the contribution would be derived based on the cost to restore 32,000 square feet of riverbank.

Capping the cost of compliance over time

The recommended restoration regulation has an ambitious goal—return a substantial portion of the riverbank to a more natural condition. The regulation takes into account the fact that not every site in the North Reach will be able to accommodate riverbank restoration by incorporating a fee-in-lieu option. In order to reduce the financial impact of meeting this goal, staff recommends capping the cost of compliance on a permit by permit basis so that the total cost of restoration can be absorbed over time.

Staff recommends implementing a cap on the amount applicants are required to spend at one time to meet their required restoration obligation. The recommended cap is one percent of the total project value for the permit that the applicant is obtaining at the time. This means that if

the applicant chooses to restore the bank on their site, they will be required to spend at least one percent of the total project value on activities that bring them closer to compliance with the restoration standards. If the applicant chooses to make a contribution to the River Restoration Fund rather than conduct the restoration on-site, the total contribution will be calculated based on the cost shown above and then the amount required to be paid at the time will be capped at one percent of total project value.

Project costs associated with normal maintenance and repair, stormwater management systems, pollution control equipment, voluntary restoration, and contaminated site clean up will not count toward the total project value that is used to calculate the one percent cap.

Eventually, the site will either be in compliance with the riverbank restoration standards or the applicant will have paid an amount equivalent to the cost of bank restoration to the City for off-site restoration.

Interaction with the river environmental overlay zone

On some sites, the proposed restoration requirement will apply in combination with the river environmental overlay zone. If a site does not have the river environmental overlay zone, then the restoration requirement will be the only requirement related to vegetation and landscaping. With the river environmental overlay zone there are additional standards and approval criteria that ensure the applicant avoids, minimizes and mitigates detrimental impacts to existing natural resources. The proposed standards for development in the river environmental overlay zone allow some bank restoration projects to occur without a discretionary review (Volume 1B, page 45). As staff continues to develop this proposal, issues related to the intersection between the restoration regulation and the river environmental overlay zone will be fleshed out and refined.