

709 WATER QUALITY RESOURCE AREA DISTRICT (WQRAD)

709.01 PURPOSE

Section 709 is adopted to implement the policies of the Comprehensive Plan for Water Quality Resource Areas.

709.02 AREA OF APPLICATION

- A. Section 709 applies in the Water Quality Resource Area District (WQRAD). The WQRAD applies to all parcels containing a Water Quality Resource Area (WQRA), provided that such parcels are inside the Metropolitan Service District Boundary or the Portland Metropolitan Urban Growth Boundary and outside the boundaries of both Clackamas County Service District No. 1 and Surface Water Management Agency of Clackamas County. WQRAs are protected water resources and adjacent vegetated corridors as established by Section 709. Protected water resources are classified as primary or secondary.
- B. A wetland shall be a primary protected water resource if the wetland meets any one of the following criteria and is not a constructed wetland:
 - 1. The wetland is fed by surface flows, sheet flows, or precipitation, has evidence of flooding during the growing season, has 60 percent or greater vegetative cover, and is over one-half acre in size;
 - 2. The wetland qualifies as having “intact water quality function” under the 1996 Oregon Freshwater Wetland Assessment Methodology;
 - 3. The wetland is in the Flood Management District, has evidence of flooding during the growing season, is five acres or more in size, and has a restricted outlet or no outlet;
 - 4. The wetland qualifies as having “intact hydrologic control function” under the 1996 Oregon Freshwater Wetland Assessment Methodology; or
 - 5. The wetland or a portion of it is within a horizontal distance of less than one-fourth mile from a water body that meets the Oregon Department of Environmental Quality’s definition of a “water quality limited water body.”
- C. Rivers, perennial streams, intermittent streams draining more than 100 acres, natural lakes, and springs that feed streams and wetlands and have year-round flow are primary protected water resources.
- D. Intermittent streams draining 100 acres or less are secondary protected water resources.

- E. The width of the vegetated corridor included within a WQRA is specified in Table 709-1. However, if an improved, public road right-of-way runs parallel to and—based on Table 709-1—would be included within a WQRA, the WQRA shall not extend beyond the improved, public road right-of-way.

Table 709-1: Width of WQRA Vegetated Corridor

Protected Water Resource Type	Slope Adjacent to Protected Water Resource¹	Starting Point for Measurements from Water Resource	Width of Vegetated Corridor²
Primary Protected Water Resource	< 25 percent	•Edge of bankfull stage •Delineated edge of protected wetland	50 feet
Primary Protected Water Resource	≥ 25 percent for 150 feet or more	•Edge of bankfull stage •Delineated edge of protected wetland	200 feet ³
Primary Protected Water Resource	≥ 25 percent for less than 150 feet	•Edge of bankfull stage •Delineated edge of protected wetland	Distance from starting point of measurement to break in 25 percent slope plus 50 feet ^{3,4}
Secondary Protected Water Resource	< 25 percent	•Edge of bankfull stage	15 feet
Secondary Protected Water Resource	≥ 25 percent	•Edge of bankfull stage	50 feet ³

¹ At least three slope measurements along the water resource, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the slope measurements, the width of the vegetated corridor may vary. Slope shall be measured in 25-foot increments away from the water resource until slope is less than 25 percent or a point 150 feet from the starting point of measurement is reached, whichever occurs first. The 25-foot increments shall be measured horizontally. Where the protected water resource is confined by a ravine or gully, the top of ravine is the break in the greater-than-25-percent slope.

² The width of the vegetated corridor shall be measured horizontally.

³ Vegetated corridors in excess of 50 feet for primary protected resources, or in excess of 15 feet for secondary protected resources, apply on steep slopes only in the uphill direction from the protected water resource.

⁴ A maximum reduction of 25 feet may be permitted in the width of the vegetated corridor beyond the slope break if a geotechnical report demonstrates that the slope is stable.

- F. The text of Section 709 shall determine the boundaries of a WQRA.

1. Certain protected water resources are identified on maps adopted by reference in Chapter 3 of the Comprehensive Plan (hereinafter referred to as the WQRA Map). The WQRA Map shall be a reference for identifying areas likely to be regulated by Section 709, but the WQRA Map is not intended to provide field-verified locations of the protected resources or delineate the edge of the vegetated corridors.

2. In addition, there may be WQRAs not shown on the WQRA Map. If credible evidence (e.g. aerial photographs, topographic maps, expert studies) indicates that the subject property may contain a WQRA that is not identified on the WQRA map, the provisions of Section 709 shall apply.

709.03 DEFINITIONS

Unless specifically defined in Subsection 709.03, words or phrases used in Section 709 shall be interpreted to give them the same meaning as they have in common usage and to give Section 709 its most reasonable application.

- A. Bankfull Stage: The stage or elevation at which water overflows the natural banks of streams or other waters of the state and begins to inundate the upland. The bankfull stage may be approximated using either the two-year recurrence interval flood elevation or one foot measured vertically above the ordinary mean high water line.
- B. Created Wetlands: Wetlands developed in an area previously identified as a non-wetland to replace, or mitigate, wetland destruction or displacement. A created wetland shall be regulated and managed the same as an existing wetland.
- C. Constructed Wetlands: Wetlands developed as a water quality or quantity facility, subject to change and maintenance as such. These areas must be clearly defined and separated from naturally occurring or created wetlands.
- D. Debris: Discarded manmade objects that would not occur in an undeveloped stream corridor or wetland. Debris includes, but is not limited to, tires, vehicles, litter, scrap metal, construction waste, lumber, plastic, or Styrofoam. Debris does not include objects necessary to a use allowed by Section 709, or ornamental and recreational structures. Debris does not include existing natural plant materials or natural plant materials that are left after flooding, downed or standing dead trees, or trees that have fallen into protected water resources.
- E. Development: Any manmade change defined as structures, roads, utilities, mining, dredging, paving, vegetation removal, filling, or grading in amounts greater than 10 cubic yards. In addition, “development” is any other activity that results in the removal of more than 10 percent of the Water Quality Resource Area vegetation on a lot of record. The calculation of the amount of vegetative cover removed shall be done separately for each lot of record and shall include all vegetative cover removed after January 5, 2009, regardless of whether the removal is done as one project or a series of projects. When individual trees are removed, the area contained within the tree’s drip line shall be the basis for calculating the square footage of vegetation removed.
- F. Disturb: Manmade changes to the existing physical status of the land, which are made in connection with development.

- G. Drip Line: The outermost edge of a tree's canopy; when delineating the drip line on the ground, it will appear as an irregularly shaped circle defining the canopy's perimeter.
- H. Emergency: Any manmade or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.
- I. Enhancement: The process of improving upon the natural functions and/or values of an area or resource that has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate beneficial processes and resources that occur naturally.
- J. Erosion: The movement of soil particles resulting from actions of water or wind.
- K. Fill: Any material such as, but not limited to, sand, soil, rock, or gravel that is placed in a wetland or flood area for the purposes of development.
- L. Invasive Non-Native or Noxious Vegetation: Plant species that are listed in the Oregon Department of Agriculture's Noxious Weed Policy and Classification System.
- M. Mitigation: The reduction of adverse effects of a proposed project by considering, in the following order:
1. Avoiding the impact altogether by not taking a certain action or parts of an action;
 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
 3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and
 5. Compensating for the impact by replacing or providing comparable substitute Water Quality Resource Areas.
- N. Native Vegetation: Vegetation native to the Portland metropolitan area provided that it is not invasive non-native or noxious vegetation.
- O. Ordinary Mean High Water Line: The line on the bank or shore to which water ordinarily rises in season.

- P. Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.
- Q. Restoration: The process of returning a disturbed or altered area or water resource to a previously existing natural condition. Restoration activities re-establish the structure, function, or diversity to that which existed prior to impacts caused by human activity.
- R. Riparian: Those areas associated with streams, lakes, and wetlands where vegetation communities are predominately influenced by their association with water.
- S. Stormwater: The surface water runoff that results from all natural forms of precipitation.
- T. Stormwater Pretreatment Facility: Any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement.
- U. Stream: A body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet, or river. A stream flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.
- V. Stream, Intermittent: A stream that flows only part of the year, or seasonally, during years of normal precipitation.
- W. Stream, Perennial: A stream that flows year-round during years of normal precipitation.
- X. 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 codes.
- Y. Utility Facilities: Buildings, structures, or any constructed portion of a system that provides for the production, transmission, conveyance, delivery, or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone, and cable television. Utility facilities do not include stormwater pretreatment facilities.
- Z. Vegetated Corridor: The area between bankfull stage of a protected water resource and the delineated edge of the Water Quality Resource Area as defined in Table 709-1.
- AA. Wetlands: Areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support and under normal circumstances

do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

709.04 EXEMPT USES

The following uses and activities are exempt from the requirements of Section 709, except that if the use or activity requires a building or grading permit, a Construction Management Plan shall be required pursuant to Subsection 709.06(A):

- A. Uses and activities that do not constitute development, except if the use or activity is prohibited by Subsection 709.05;
- B. Farming practices, as defined in Oregon Revised Statutes (ORS) 30.930, and farm uses, as defined in ORS 215.203, in zoning districts where agricultural uses are a primary use, except that this exemption does not apply to buildings associated with farm practices or farm uses;
- C. Forest practices, as defined in ORS 30.930, on forestlands, as defined in ORS 30.930, outside the Portland Metropolitan Urban Growth Boundary;
- D. Installation of erosion prevention and sediment control (EPSC) measures pursuant to an EPSC plan approved by the EPSC regulatory authority.
- E. Projects with the sole purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat areas, provided that the project is part of an approved local, regional, state, or federal restoration or enhancement plan;
- F. Placement of structures that do not require a grading or building permit;
- G. Maintenance of existing structures, roadways, driveways, utility facilities, accessory uses, and other development;
- H. Removal of invasive non-native or noxious vegetation and the planting or propagation of native vegetation, provided that:
 - 1. Handheld tools are used to remove invasive non-native or noxious vegetation; and
 - 2. After such removal, all open soil areas greater than 25 square feet are replanted with native vegetation;
- I. Removal of dead or diseased trees or trees that pose an imminent hazard to persons or property, provided that a consulting arborist's report, or other credible evidence, is provided by the owner of the subject property and verifies the dead, diseased, or hazardous condition of the trees proposed for removal;

- J. Removal of vegetation, except trees of 1.5 inches or greater caliper, provided such removal shall not result in more than 10 percent of the area of the vegetated corridor being devoid of vegetation;
- K. Repair, replacement, or improvement of utility facilities where the disturbed portion of the Water Quality Resource Area (WQRA) is restored and vegetation is replaced with native vegetation;
- L. Additions, alterations, rehabilitation, or replacement of existing structures, roadways, driveways, accessory uses, and other development that do not increase existing structural footprints in the WQRA where the disturbed portion of the WQRA is restored and vegetation is replaced with native vegetation;
- M. Measures to remove or abate nuisances, or any other violation of statute, administrative rule, or ordinance, where such measures are required by government order and the disturbed portion of the WQRA is restored and vegetation is replaced with native vegetation; and
- N. Work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses, and exterior improvements in response to emergencies, provided that after the emergency has passed, adverse impacts are mitigated in accordance with Table 709-2.

709.05 PROHIBITED USES

The following uses and activities are prohibited within a Water Quality Resource Area:

- A. The planting of invasive non-native or noxious vegetation; and
- B. Uncontained areas of hazardous materials as defined by the Oregon Department of Environmental Quality.

709.06 DEVELOPMENT REVIEW REQUIREMENTS

The following review requirements are applicable to development in the Water Quality Resource Area District (WQRAD) unless such development is exempt pursuant to Subsection 709.04.

- A. A Construction Management Plan, consistent with Subsection 709.08, shall be required prior to development in the WQRAD, regardless of whether development will occur within a Water Quality Resource Area (WQRA). A Construction Management Plan shall be reviewed:
 - 1. As part of a WQRA Development Permit; or
 - 2. In conjunction with review of a building or grading permit, if no WQRA Development Permit is required.

- B. In order to confirm the location of a WQRA, WQRA Boundary Verification, consistent with Subsection 709.09, shall be required or allowed as follows:
 - 1. WQRA Boundary Verification shall be required for:
 - a. Development that is proposed to be in the WQRAD; or
 - b. A parcel that:
 - i. Is in the WQRAD; and
 - ii. Is the subject of a land use application for a partition, subdivision, or any other land use application the approval of which would authorize new development on the subject parcel.
 - 2. Notwithstanding Subsection 709.06(B)(1)(a), if credible evidence (e.g. aerial photographs, topographic maps, expert studies) indicates that the proposed development is clearly outside a WQRA, the requirement for WQRA Boundary Verification may be waived.
 - 3. An application for WQRA Boundary Verification may be submitted even if one is not required pursuant to Subsection 709.06(B)(1).
 - 4. If a parcel is subject to Subsection 709.06(B)(1)(b), an application for WQRA Boundary Verification shall be filed concurrently with the other land use application referenced in Subsection 709.06(B)(1)(b)(ii) unless a previously approved WQRA Boundary Verification for the subject property remains valid.
 - 5. An application for WQRA Boundary Verification shall be reviewed as a Type II application pursuant to Section 1307 unless the application is filed concurrently with another land use application that requires review as a Type III application, in which case the applications will be consolidated and reviewed as a Type III application pursuant to Section 1307.

- C. A WQRA Development Permit, consistent with Subsection 709.10, shall be required for development in a WQRA. However, if the proposed development is in a Habitat Conservation Area (HCA) regulated pursuant to Section 706, it shall comply with either Subsection 706.10 or 709.10. An application for a WQRA Development Permit shall be reviewed as a Type II application pursuant to Section 1307 unless the application is filed concurrently with another land use application that requires review as a Type III application, in which case the applications will be consolidated and reviewed as a Type III application pursuant to Section 1307.
- D. Property that contains a WQRA and is the subject of a land use application for a partition or subdivision shall comply with Subsection 709.11, except that if the subject parcel contains a WQRA and an HCA, the partition or subdivision shall comply with the requirements of Subsections 706.10 and 709.11, and if the provisions conflict, the most restrictive standard shall apply.
- E. Approval of WQRA Boundary Verification or a WQRA Development Permit shall be valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
1. For a WQRA Development Permit directly related to an application for a partition or subdivision, "implemented" means that the final plat of the partition or subdivision shall be recorded with the County Clerk.
 2. For any other WQRA Development Permit, "implemented" means all major development permits shall be obtained and maintained, or if no major development permits are required to complete the development contemplated by the approved WQRA Development Permit, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
 - a. A building or manufactured dwelling placement permit for a new primary structure that was part of the WQRA Development Permit approval; or
 - b. A permit issued by the County Engineering Division for parking lot or road improvements that were part of the WQRA Development Permit approval.
 3. For WQRA Boundary Verification, "implemented" has the meaning set forth in Subsection 709.06(E)(1) and (2), except that under Subsection 709.06(E)(2), if the approval did not contemplate a specific development proposal, "implemented" means at least one County development permit shall be obtained and maintained.

- F. If the approval of WQRA Boundary Verification or a WQRA Development Permit is not implemented within the initial approval period established by Subsection 709.06(E), a two-year time extension may be approved pursuant to Section 1310.
- G. WQRA Boundary Verification that was valid on the date when the final plat for a subdivision or partition was recorded with the County Clerk shall remain valid for subsequent development on the lots or parcels created by the subdivision or partition.

709.07 SUBMITTAL REQUIREMENTS

Construction Management Plans and applications filed pursuant to Section 709 shall comply with the following submittal requirements:

- A. A Construction Management Plan shall include:
 - 1. A site plan of the subject property, drawn to scale and identifying the following:
 - a. Location and type of existing and proposed development, including but not limited to, building footprints, roads, driveways, parking areas, utilities, onsite sewage disposal systems, wells, landscaping, and filling or grading in an amount greater than 10 cubic yards, with each element labeled as existing or proposed;
 - b. Location and width of existing adjacent roads and road rights-of-way;
 - c. Location of the Water Quality Resource Area (WQRA) as identified pursuant to Subsection 709.09;
 - d. Drip lines outside the WQRA of trees that are inside the WQRA;
 - e. Distance between the WQRA boundary and proposed development outside the WQRA;
 - f. The site ingress and egress proposed to be used by construction vehicles;
 - g. Proposed equipment and material staging and stockpile areas; and
 - h. Proposed orange construction fencing required pursuant to Subsection 709.08(B);
 - 2. An Erosion Prevention and Sediment Control (EPSC) plan, which may be included on the site plan if acceptable to the EPSC regulatory authority; and
 - 3. If a modification or waiver of the construction fencing requirement of Subsection 709.08(B) is proposed, a narrative demonstrating compliance with Subsection 709.08(B)(1) or (2).
- B. An application for WQRA Boundary Verification shall include:

1. The submittal requirements identified in Subsection 1307.07(C);
 2. A site plan that complies with the following requirements:
 - a. The site plan shall be drawn at a scale of no less than one inch equaling 20 feet.
 - b. The site plan shall show the location of the proposed development and the lot lines of the property on which development is proposed.
 - c. The site plan shall show the location of the protected water resource. If the protected water resource is a wetland, the delineation shall be made by a qualified wetlands specialist pursuant to the Division of State Lands' recommended wetlands delineation process. For all other protected water resources, the location shall be established by a registered professional engineer or surveyor licensed by the State of Oregon.
 - d. The site plan shall show the location of the WQRA, including slope and drainage information sufficient to classify the protected water resource under Table 709-1.
- C. An application for a WQRA Development Permit shall include:
1. The submittal requirements identified in Subsection 1307.07(C);
 2. The following information in a report stamped by a registered professional engineer or surveyor licensed by the State of Oregon
 - a. A topographic map of the site at contour intervals of five feet or less showing a delineation of the WQRA;
 - b. The location of all existing natural features including, but not limited to, all trees of a caliper greater than six inches diameter at a height of four feet, natural or historic drainages on the site, springs, seeps, outcroppings of rocks and boulders within the WQRA;
 - c. Location of wetlands that qualify as primary protected water resources. Where such wetlands are identified, a delineation shall be made by a qualified wetlands specialist pursuant to the Division of State Lands' recommended wetlands delineation process;
 - d. An inventory and location of existing debris, nuisance vegetation, and any noxious or hazardous materials;
 - e. An assessment of the existing condition of the WQRA in accordance with Table 709-2;

- f. An inventory of vegetation, including percentage ground and canopy coverage;
 - g. An Impact Evaluation and Alternatives Analysis that addresses the requirements of Subsections 709.10(A) and (B); and
 - h. A mitigation plan containing the following information:
 - i. A description of adverse impacts that will be caused as a result of development;
 - ii. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not necessarily limited to, Table 709-2;
 - iii. A list of all responsible parties including, but not necessarily limited to, the owner, applicant, contractor or other persons responsible for work on the subject property;
 - iv. A map showing where the specific mitigation activities will occur; and
 - v. An implementation schedule, including a timeline for construction, mitigation, mitigation maintenance, monitoring, and reporting and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule; and
- D. Data from sources other than a field-verified delineation of the protected water resource may be used to satisfy the submittal requirements only if the protected water resource is not located on the subject property and access to the water resource is denied for the purposes of supplying the required delineation. In order to use alternate data, an applicant shall submit the following:
- 1. A copy of a letter addressed to the owner of the property on which the protected water resource exists requesting access to the property for the purpose of completing a delineation of the protected water resource; and
 - 2. A copy of a return receipt from the US Postal Service verifying that the letter was mailed certified and was received or refused.

709.08 CONSTRUCTION MANAGEMENT PLANS

A Construction Management Plan (CMP) shall comply with the following criteria.

- A. Erosion prevention and sediment control (EPSC) measures shall be required and shall comply with the standards of the EPSC regulatory authority.
- B. Orange construction fencing (i.e. safety fencing, snow fencing, or a comparable product) shall be installed on or outside the boundary of the Water Quality Resource Area (WQRA), except where the drip line of a protected tree extends

outside the WQRA, in which case the drip line shall be included inside the fencing. This requirement may be modified or waived if:

1. Disturbance of the WQRA is authorized pursuant to Subsection 709.04 or 709.10, in which case the fencing shall be installed in such a manner as to protect the area of the WQRA not authorized for disturbance; or
 2. The WQRA is already lawfully developed, in which case the fencing shall be installed in such a manner as to protect any water resource that is the basis for the WQRA designation and any area of the WQRA where naturalized vegetative cover exists.
- C. Trees in the WQRA shall not be used as anchors for stabilizing construction equipment.
- D. Native soils disturbed during development shall be conserved on the subject property.
- E. Development shall not commence until the EPSC measures and fencing required pursuant to Subsections 709.08(A) and (B) are in place.
- F. Compliance with the CMP shall be maintained until the development is complete.

709.09 WATER QUALITY RESOURCE AREA BOUNDARY VERIFICATION

The standards of Subsection 709.02 shall be applied to an application for Water Quality Resource Area Boundary Verification and shall determine the boundary of any WQRA on the subject property.

709.10 WATER QUALITY RESOURCE AREA DEVELOPMENT PERMITS

A Water Quality Resource Area (WQRA) Development Permit shall be approved if the applicant provides evidence substantiating compliance with the following criteria. However, if the proposed development is in a Habitat Conservation Area (HCA) regulated pursuant to Section 706, it shall comply with either Subsection 706.10 or 709.10, except that if the subject parcel contains an HCA and a WQRA and is the subject of a land use application for a partition or subdivision, the partition or subdivision shall comply with the requirements of Subsections 706.10 and 709.10, and if the provisions conflict, the most restrictive standard shall apply.

- A. No practicable alternative locations exist for the requested development that will not disturb the WQRA;
- B. No reasonably practicable alternative design or method of development exists that would have a lesser impact on the WQRA than the one proposed. If no such reasonably practicable alternative design or method of development exists, the development shall be conditioned to:

1. Limit its disturbance and impact on the WQRA to the minimum extent necessary to achieve the proposed development; and
 2. Ensure that impacts to the functions and values of the water quality resource area will be mitigated or impacted areas restored to the extent practicable.
- C. The WQRA shall be restored and maintained as required by Table 709-2.
- D. To the greatest extent practicable, existing native vegetation shall be retained and protected;
- E. Walkways and bike paths shall be subject to the following standards:
1. Where it is not practicable to maintain a setback of greater than 30 feet from a protected water resource, a maximum of 10 percent of the total area of a gravel, earthen, tree bark product or equivalent walkway or bike path may be within 30 feet of the protected water resource.
 2. For any paved walkway or bike path, the width of the water quality resource area on the subject property shall be increased by a distance equal to the width of the paved path. Where it is not practicable to maintain a setback of greater than 30 feet from a protected water resource, a maximum of 10 percent of the total area of the walkway or bike path may be within 30 feet of the protected water resource.
 3. A walkway or bike path approved under Subsection 709.10(E)(1) or (2) shall not exceed 10 feet in width, shall not be constructed closer than 10 feet from the boundary of the protected water resource, and shall be constructed so as to minimize disturbance to existing vegetation.
- F. Stormwater pretreatment facilities shall be subject to the following standards:
1. A stormwater pretreatment facility may encroach a maximum of 25 feet into the outside boundary of the WQRA of a primary protected water resource.
 2. A stormwater pretreatment facility may encroach a maximum of five feet into the outside boundary of the WQRA of a secondary protected water resource.
 3. The area of encroachment shall be replaced by adding an equal area to the WQRA on the subject property.
 4. All stormwater shall be collected on-site and passed through a treatment facility, such as a detention/composting facility or filter as approved by the surface water management regulatory authority, prior to being discharged into the WQRA.

Table 709-2: Water Quality Resource Area Mitigation Requirements

Existing Condition of Water Quality Resource Area	Mitigation Requirements
<p><u>Good Existing Corridor:</u></p> <p>Combination of trees, shrubs and groundcover are 80 percent present, and there is more than 50 percent tree canopy coverage in the vegetated corridor.</p>	<p><u>If area is disturbed during construction:</u></p> <ol style="list-style-type: none"> 1. Restore and mitigate according to approved plan using native vegetation. 2. Remove debris. 3. Prior to construction, a qualified professional shall prepare and submit a plan for mitigating water quality impacts related to the development, including: sediments, temperature nutrients, sediment control, temperature control, or any other condition that may have caused the protected water resource to be listed on DEQ's 303(d) list. 4. Re-vegetation must occur during the next planting season following site disturbance. Seeding may be required prior to establishing plants for site stabilization. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site. <p><u>If area is undisturbed during construction:</u></p> <ol style="list-style-type: none"> 1. Remove debris.

Table 709-2: Water Quality Resource Area Mitigation Requirements

<p><u>Marginal Existing Corridor:</u></p> <p>Combination of trees, shrubs and groundcover are 80 percent present, and there is 25 to 50 percent tree canopy coverage in the vegetated corridor.</p>	<p><u>If area is disturbed during construction:</u></p> <ol style="list-style-type: none"> 1. Restore and mitigate according to approved mitigation plan using native vegetation that would reasonably represent the vegetative composition that would naturally occur on the site. 2. Remove debris. 3. Re-vegetate during the next planting season following site disturbance. Seeding may be required prior to establishing plants for site stabilization. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site. <p><u>If area is undisturbed during construction:</u></p> <ol style="list-style-type: none"> 1. Remove debris.
<p><u>Degraded Existing Corridor:</u></p> <p>Less vegetation and canopy coverage than marginal vegetated corridors, and/or greater than 10-percent surface coverage of any non-native vegetation.</p>	<p><u>If area is disturbed during construction:</u></p> <ol style="list-style-type: none"> 1. Restore and mitigate according to approved mitigation plan using native vegetation that would reasonably represent the vegetative composition that would naturally occur on the site. 2. Remove debris. 3. Re-vegetate during the next planting season following site disturbance. Seeding may be required prior to establishing plants for site stabilization. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site. <p><u>If area is undisturbed during construction:</u></p> <ol style="list-style-type: none"> 1. Vegetate bare areas with native vegetation. 2. Remove non-native vegetation and re-vegetate with native vegetation. 3. Remove debris.

709.11 PARTITIONS AND SUBDIVISIONS

- A. A partition or subdivision of property that contains a WQRA shall require that the WQRA shall be platted as a tract or restricted development area (RDA).
- B. A WQRA tract shall be designated on the final plat as one of the following where development is prohibited:
 - 1. A private natural area owned by a homeowners association or a private non-profit with the mission of land conservation; or
 - 2. A public natural area where the tract has been dedicated to a public entity.
- C. A WQRA RDA shall be designated on the final plat as a private natural area where development is prohibited.
- D. Notwithstanding Subsections 709.11(B) and (C), the tract or RDA may be subject to an easement conveying storm and surface water management rights to the surface water management authority.

[Amended by Ord. ZDO-230, 9/26/11; Amended by Ord. ZDO-248, 10/13/14; Amended by Ord. ZDO-283, 9/5/23]