



Agenda

Study Session

November 9, 2015

Noon

Lausmann Annex — Room 151-157
200 S. Ivy Street, Medford, Oregon

Subject:

1. Wetland Regulations.



MEMORANDUM

Subject Local Wetland Inventory & Wetland Protection Regulations in the Urban Reserves

To Planning Commission *for November 9th study session*

From Carla Angeli Paladino

Date Wednesday, November 04, 2015

LOCAL WETLAND INVENTORY UPDATE

The City hired SWCA Environmental Consultants earlier this year to conduct a Local Wetland Inventory (LWI) for properties in the Urban Reserve. The final draft report is complete and is available for public review and comment. A postcard was mailed out to the property owners letting them know where they can view the report.

(www.ci.medford.or.us – City Departments > Planning > Planning Projects > Urban Growth Boundary > Scroll down to Nov 2) The Planning Department will accept comments on the report until Monday, November 16, 2015. All comments received will be provided to SWCA for review, change considerations, and ultimately to compile and forward to the Department of State Lands (DSL) along with the final report. It is anticipated the City will have a decision by the DSL by March 2016. The City is required to notify property owners within 120 calendar days when the LWI is approved by the DSL.

The document is important in order to meet Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and Oregon Administrative Rule requirements and to ensure protection of these identified resources prior to development.

Initial discussions with Jackson County Planning Department and representatives from the Department of State Lands and the Department of Land Conservation and Development have begun regarding steps needed to adopt the Local Wetland Inventory and wetland protection regulations in both jurisdictions.

WETLAND PROTECTION REGULATIONS FORTHCOMING

The Local Wetland Inventory provides the approximate location and information to help characterize (significant or not significant) the wetlands identified on the properties. The wetland protection regulations outline the protection measures, activities, criteria, and standards applicable to land containing wetlands.

The Department of State Lands in conjunction with the Department of Land Conservation and Development created an Oregon Wetland Planning Guidebook that provides two model wetland protection regulations for review.

The intent of the study session is to inform the Planning Commission about the Local Wetland Inventory project and begin discussing next steps for drafting wetland protection regulations for land in the Urban Reserve.

Attachment:

- Oregon Wetland Planning Guide, Appendix G, Model Wetland Protection Ordinances

Appendix G

Model Wetland Protection Ordinances

Model 1: Safe Harbor Ordinance for Wetland Protection Areas

(Note: The following model ordinance for wetland protection is designed to serve as a “safe harbor” ordinance consistent with Oregon Statewide Planning Goal 5 and OAR 660-23-100(4)(b). A second model ordinance offers language that may be appropriate for results of the “standard” Goal 5 analysis for significant wetlands (See Model Ordinance 2 in this Appendix).

This safe harbor protection ordinance will meet the requirements for coastal shorelands protection under Goal 17. Goal 17 requires protection of coastal shoreland resources and does not provide for conflicting uses such as may be allowed under a standard Goal 5 ESEE process (see model ordinance #2).

Although Goal 5 requires program decisions for all wetlands that meet the significance criteria, local governments are advised to retain the nonsignificant wetlands on their LWI map, in order to alert property owners and others that DSL and COE fill permits may still be required for actions that affect these wetlands.

Note regarding buffers: As described in the accompanying Guidebook, a local government may establish wetland protection buffer areas in one of three ways: a) via an ESEE analysis and the standard Goal 5 process for wetlands; b) in the Metro area, via Title 3 of the Metro Functional Plan; and c) using protection measures that are established under either Goal 6, Goal 7, or the riparian element of Goal 5. The Goal 5 Safe Harbor process for wetlands does

not otherwise allow for the use of wetland protection buffers.]

Wetland Protection Areas

I. Wetland Protection Areas, Purposes

The purposes of establishing wetland protection areas are:

- A. To implement the goals and policies of the [jurisdiction] Comprehensive Plan;
- B. To satisfy the requirements of Statewide Planning Goal 5;
- C. To protect [jurisdiction’s] wetland areas, thereby protecting the hydrologic and ecologic functions these areas provide for the community;
- D. To protect fish and wildlife habitat;
- E. To protect water quality and natural hydrology, to control erosion and sedimentation, and to reduce the adverse effects of flooding;
- F. To protect the amenity values and educational opportunities of [jurisdiction’s] wetlands as community assets;
- G. To improve and promote coordination among local, state, and federal agencies regarding development activities near wetlands.

II. Wetland Protection Areas, Definitions

The following definitions shall apply to Sections I through X, “Wetland Protection Areas:”

Jurisdictional delineation — A delineation of the wetland boundaries that is approved by the Oregon Division of State Lands (DSL). A delineation is a precise map and documentation of actual wetland boundaries on a parcel, whereas a determination may only be a rough map or a presence/absence finding. [See OAR 141-90-005

et seq. for specifications for wetland delineation or determination reports.]

Locally significant wetland — A wetland that is determined to be significant under the criteria of OAR 141-86-0300 et seq. These criteria include those wetlands that score a high rating for fish or wildlife habitat, hydrologic control, or water quality improvement functions.

Local Wetlands Inventory (LWI) — Maps and report adopted by [jurisdiction] entitled [list report that inventories wetlands] and any subsequent revisions as approved by the Oregon Division of State Lands. The LWI is a comprehensive survey of all wetlands over ½ acre in size within the urbanizing area.

Oregon Freshwater Wetland Assessment Methodology (OFWAM) — A wetland function and quality assessment methodology developed by the Oregon Division of State Lands.

Wetland — An area inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetland protection area — An area subject to the provisions of this chapter that includes all wetlands determined to be locally significant.

Wetland resource map — The locally adopted map used as the basis for this ordinance, which incorporates the DSL-approved LWI map and identifies locally significant wetlands.

III. Determination of Locally Significant Wetlands

The [jurisdiction] determines which wetlands are locally significant in accordance with rules adopted by Division of State Lands (OAR 141-086-3000). Locally significant wetlands are identified on the [jurisdiction] wetland resource map.

IV. Wetland Protection Areas, Applicability, and Application Submittal Requirements

- A. Wetland protection areas consist of locally significant wetlands.
- B. Unless otherwise stated, the [jurisdiction] shall apply the provisions of Sections I through X in conjunction and concurrently with the requirements of any other development permit being sought by an applicant. If no other permit is being sought the [Planning Director or designee] shall serve as the approving authority.
- C. Applications for plan approvals, development permits, building permits, or plans for proposed public facilities on parcels containing a wetland protection area or a portion thereof, shall include the following:
 - 1) A delineation of the wetland boundary completed by a professional wetland scientist, or similar expert, qualified to delineate wetlands in accordance with Oregon Division of State Lands rules. If the proposed project is designed to avoid wetlands, a wetland determination report may be provided in place of the delineation.
 - 2) A scale drawing that clearly depicts the wetland boundary, the surface water source, existing trees and vegetation, property boundaries, and proposed site alterations including proposed excavation, fill, structures, and paved areas.
 - 3) Verification that the application packet has been submitted to the Oregon Department of Fish and Wildlife for review and comment.
- D. No delineation is required under C)1 above if the proposed development is located 25 feet or more from a wetland identified on the LWI map or a determination, but not an approved delineation. (Please note that compliance with state and federal wetland regulations for all

wetlands, mapped or unmapped, remains the legal responsibility of the landowner.)

[Note: This is not a buffer or setback, it is an allowance for LWI map inaccuracy when the expense of a precise delineation may not be warranted.]

V. Approval Criteria

The approving authority shall base its decision on the following criteria in addition to the required criteria for any other permit or approval that is being sought. Approvals shall be based on compliance with all of the following criteria:

- A. The proposed project complies with the provisions of Sections VI through IX of this Chapter.
- B. Except as otherwise allowed in Section VI, the proposed project will not result in excavation or filling of a wetland or reduction of wetland area on a parcel that has been identified as containing a wetland.
- C. Except as otherwise allowed in Section VI, the proposed project will not result in development or filling of land within 25 feet of the boundary of wetland that has been identified only on the LWI map or by a determination, but not an approved delineation.

VI. Allowed Activities within Wetland Protection Areas

- A. Any use, sign, or structure, and the maintenance thereof, that was lawfully existing on the date of adoption of this ordinance [insert date], is allowed to continue within a wetland protection area. Such use, sign, or structure may continue at a similar level and manner as existed on the date of adoption of this ordinance. The maintenance and alteration of preexisting ornamental landscaping is permitted within a wetland protection area so long as no additional native vegetation is disturbed. The provisions of this section shall not be affected by any change in ownership of properties containing a wetland protection area.

- B. The following activities and maintenance thereof are allowed within a wetland protection area, provided that any applicable state or federal permits are secured:
 - 1) Wetland restoration and rehabilitation activities;
 - 2) Restoration and enhancement of native vegetation;
 - 3) Cutting and removal of trees which pose a hazard to life or property due to threat of falling;
 - 4) Removal of nonnative vegetation, if replaced with native plant species at similar coverage or density, so that natives are dominant;
 - 5) Normal farm practices such as grazing, plowing, planting, cultivating and harvesting, that meet the following criteria and limitations:
 - a. The land is zoned for Exclusive Farm Use.
 - b. The farm practices were in existence or occurring on the property on the date of adoption of the provisions herein,
 - c. The farm practices are of no greater scope or intensity than the operations that were in existence on the date of adoption of the provisions herein, and
 - d. Normal farm practices do not include new or expanded structures, roads, or other facilities involving placement of fill material, excavation, or new drainage measures; and
 - e. In designated coastal shoreland areas, normal farm practices, such as propagation and selective harvesting of forest products consistent with the Forest Practices Act, grazing, and harvesting of wild crops, must be consistent with protection of the wetland’s natural values.

- 6) Maintenance of existing drainage ways, ditches, or other structures, to maintain flow at original design capacity and mitigate upstream flooding, provided that management practices avoid sedimentation and impact to native vegetation, and any spoils are placed in uplands;
 - 7) Replacement of a permanent, legal, nonconforming structure in existence on the date of adoption of this ordinance with a structure on the same building footprint, if it does not disturb additional area, and in accordance with the provisions of Sections [list sections of code related to nonconforming uses]; and
 - 8) Expansion of a permanent, legal, nonconforming structure in existence on the date of adoption of this ordinance, if the expansion area is not within and does not disturb the wetland protection area, and in accordance with the provisions of Sections [list sections of code related to nonconforming uses].
 - 9) Emergency stream bank stabilization to remedy immediate threats to life or property.
 - 10) Maintenance and repair of existing roads and streets, including repaving and repair of existing bridges, and culverts, provided that such practices avoid sedimentation and other discharges into the wetland or waterway.
- C. New fencing may be permitted by the [Planning Director or designee] where the applicant demonstrates that the following criteria are satisfied:
- 1) The fencing does not affect the hydrology of the site;
 - 2) The fencing does not present an obstruction that would increase flood velocity or intensity;
 - 3) Fish habitat is not adversely affected by the fencing;

- 4) The fencing is the minimum necessary to achieve the applicant's purpose.

Applications for new fencing within a wetland protection area shall contain a scale drawing that clearly depicts the wetland area boundary.

VII. Prohibited Activities within Wetland Protection Areas

Except as allowed in Sections VI "Allowed Activities Within Wetland Protection Areas", the following activities are prohibited within a wetland protection area.

- A. Placement of new structures or impervious surfaces.
- B. Excavation, drainage, grading, fill, or removal of vegetation except for fire protection purposes or removing hazard trees.
- C. Expansion of areas of landscaping with nonnative species, such as a lawn or garden, into the wetland protection area.
- D. Disposal or temporary storage of refuse, yard debris, or other material.
- E. Discharge or direct runoff of untreated stormwater.
- F. Uses not allowed in the list of permitted uses for the underlying zone.
- G. Any use not specifically allowed in Section VI.

VIII. Conservation and Maintenance of Wetland Protection Areas

[Note: This is an optional section that outlines non-regulatory protection strategies. These provisions are not sufficient protection in themselves. Zoning protection must also be employed.]

When approving applications for Land Divisions, Planned Unit Developments, Conditional Use Permits, and Exceptions, or for development permits for properties containing a wetland protection area or portion thereof, the approving authority shall assure long term conservation and maintenance of the wetland

protection area through one or more of the following methods:

- A. The area shall be protected in perpetuity by a conservation easement recorded on deeds and plats prescribing the conditions and restrictions set forth in Sections I through X, "Wetland Protection Areas," and any imposed by state or federal permits; or
- B. The area shall be protected in perpetuity through ownership and maintenance by a private nonprofit association through a conservation easement or through conditions, covenants, or restrictions (CC&Rs), prescribing the conditions and restrictions set forth in Sections I through X, "Wetland Protection Areas," and any imposed by state or federal permits; or
- C. The area shall be transferred by deed to a willing public agency or private conservation organization with a recorded conservation easement prescribing the conditions and restrictions set forth in Sections I through X, "Wetland Protection Areas," and any imposed by state or federal permits.

[Note: Other mechanisms for long-term protection and maintenance as deemed appropriate and acceptable by the [jurisdiction] attorney, that are clear and objective standards, could be added to this list. Such mechanisms shall be consistent with the purposes and requirements of this ordinance.

IX. Notification and Coordination with State Agencies

- A. The [jurisdiction] shall notify the Oregon Division of State Lands in writing of all applications to the [jurisdiction] for development activities—including development applications, building permits, and other development proposals—that may affect any wetland identified in the Local Wetlands Inventory. This applies for both significant and nonsignificant wetlands. The Division provides a Wetland Land Use Notification form for this purpose. [See OAR 660-23-100(7); ORS

227.350 for cities and ORS 215.418 for counties].

- B. When reviewing wetland development permits authorized under this Chapter, the approving authority shall consider recommendations from the Oregon Department of Fish and Wildlife regarding OAR 635-415 "Fish and Wildlife Habitat Mitigation Policy." [Note: Recommendations from ODFW are advisory only.]

X. Variances

- A. The [Planning Commission or Hearings Officer] shall be the approving authority for applications for variances to the Wetland Protection Area provisions. The procedures of chapter [insert appropriate reference to the variance chapter] shall be followed for approval of a variance except that the variance criteria of this section shall apply.
- B. Mapping Error Variances and Corrections. The [Planning Director or the Director's designee] may correct the location of the wetland protection overlay zone when the applicant has shown that a mapping error has occurred and the error has been verified by the DSL. Delineations verified by DSL shall be used to automatically update and replace LWI mapping. No formal variance application or plan amendment is needed for map corrections where approved delineations are provided.
- C. Hardship Variances. The [Planning Commission or Hearings Officer] may grant a variance to the provisions of this ordinance only when the applicant has shown that all of the following conditions exist:
 - 1) Through application of this ordinance, the property has been rendered not buildable;
 - 2) The applicant has exhausted all other options available under this chapter to relieve the hardship;

- 3) The variance is the minimum necessary to afford relief;
- 4) No significant adverse impacts on water quality, erosion, or slope stability will result from approval of this hardship variance, or these impacts have been mitigated to the greatest extent possible; and
- 5) Loss of vegetative cover shall be minimized.

Model 2: Ordinance for Wetland Protection Areas Resulting from Standard Goal 5 Analysis

[Note: The following model ordinance for wetland protection is designed to carry out the “standard process” requirements under Oregon Statewide Planning Goal 5 and OAR 660-23-100(4)(a). This ordinance implements many typical decisions for that process, but not all. Under the standard process, many decisions are based on a case-by-case analysis, so it is not possible to provide a model ordinance that reflects all possible measures that may result from that process.]

Goal 5 requires an ordinance that implements local government decisions for all wetlands that meet the significance criteria on the Local Wetland Inventory. However, local governments are advised to retain the nonsignificant wetlands on their LWI map, in order to alert property owners and others that DSL and COE fill permits may still be required for actions that affect these wetlands.

This model ordinance has been prepared to meet the requirements of Goal 5 and may not be adequate to meet the requirements of Goal 17. Goal 17 requires protection of coastal shoreland resources and does not provide for decisions based on an ESEE analysis.

Please recheck the referenced section numbers in the resulting ordinance for your jurisdiction,

as several of the later sections in this model ordinance are optional. Additional notes appear in brackets below.]

Wetland Protection Areas

I. Wetland Protection Areas, Purposes

The purposes of establishing wetland protection areas are:

- A. To implement the goals and policies of the [jurisdiction] Comprehensive Plan;
- B. To satisfy the requirements of Statewide Planning Goal 5;
- C. To protect [jurisdiction’s] wetland areas, thereby protecting the hydrologic and ecologic functions these areas provide for the community;
- D. To protect fish and wildlife habitat;
- E. To protect water quality and natural hydrology, to control erosion and sedimentation, and to reduce the adverse effects of flooding;
- F. To protect the amenity values and educational opportunities of [jurisdiction’s] wetland for the community; and
- G. To improve and promote coordination among local, state, and federal agencies regarding development activities near wetlands.

II. Wetland Protection Areas, Definitions

The following definitions shall apply to Sections I through XV, “Wetland Protection Areas:”

Jurisdictional delineation — A delineation of the wetland boundaries that is approved by the Oregon Division of State Lands (DSL). A delineation is a precise map and documentation of actual wetland boundaries on a parcel that are subject to regulation, whereas a determination may be only a rough map or a presence/absence finding. [See OAR 141-90-005 et seq. for specifications for wetland delineation or determination reports.]

Locally significant wetland — A wetland that is determined to be significant under the crite-

ria of OAR 141-86-0300 et seq. These criteria include those wetlands that score a high rating for fish or wildlife habitat, hydrologic control, or water quality improvement functions.

Local Wetlands Inventory (LWI) — Maps and report adopted by [jurisdiction] entitled [list report that inventories wetlands] and any subsequent revisions as approved by the Oregon Division of State Lands. The LWI is a comprehensive survey of all wetlands over ½ acre within the urbanizing area.

Oregon Freshwater Wetland Assessment Methodology (OFWAM) — A wetland function and quality assessment method developed by the Oregon Division of State Lands.

Wetland — An area inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetland buffer area — An area surrounding or adjacent to a locally significant wetland that serves to reduce the adverse effects of adjacent land uses on water quality and habitat functions of the wetland. Sometimes called a “set-back.” [For use with the standard Goal 5 process only, not the wetland safe harbor].

Wetland protection area — An area subject to the provisions of this chapter that includes all wetlands determined to be locally significant plus any wetland buffer areas justified under the ESEE process.

Wetland resource map — The locally adopted map used as a basis for this ordinance, that is based on the DSL-approved LWI map and identifies locally significant wetlands and wetland buffer areas. Any significant wetland or portion of a wetland determined under an ESEE process to be available for conflicting uses should be clearly labeled as such.

III. Determination of Locally Significant Wetlands

The [jurisdiction] determines which wetlands are “locally significant” in accordance with rules adopted by Division of State Lands (OAR 141-086-3000). Locally significant wetlands are identified on the [jurisdiction] wetland resource map.

IV. Wetland Buffer Areas

The [jurisdiction] determines wetland buffer areas through an ESEE decision process described in OAR 660-02-0040. The wetland buffer areas and locally significant wetlands are identified on the [jurisdiction] wetland resource map. The map is available at the [jurisdiction] for reference. The provisions of Sections V through XV of this ordinance apply to all locally significant wetlands and their respective wetland buffer areas, excepting those wetlands or portions of wetlands which have been specifically identified under an ESEE process as available for conflicting uses.

V. Wetland Protection Areas, Applicability, and Application Submittal Requirements

- A. Wetland protection areas consist of locally significant wetlands plus any wetland buffer areas identified on the wetland resource map.
- B. Unless otherwise stated, the [jurisdiction] shall apply the provisions of Sections V through XV in conjunction and concurrently with the requirements of any other development permit being sought by an applicant. If no other permit is being sought, then the [Planning Director or designee] shall serve as the approving authority.
- C. Applications for plan approvals, development permits, building permits, or plans for proposed public facilities on parcels containing a wetland protection area or a portion thereof, shall include the following:
 - 1) A delineation of the wetland boundary completed by a professional wetland scientist, or similar expert, qualified to delineate wetlands in

accordance with Oregon Division of State Lands rules. If the proposed project is designed to avoid wetlands, a wetland determination report may be provided in place of the delineation.

- 2) A scale drawing that clearly depicts the wetland boundary, any wetland buffer area [if applicable], the surface water source, existing trees and vegetation, property boundaries, and proposed site alterations including proposed excavation, fill, structures, and paved areas.
- 3) Verification that the application packet has been submitted to the Oregon Department of Fish and Wildlife for review and comment.

D. No delineation is required under C)1 above if the proposed development is located 25 feet or more from a wetland identified and depicted on the LWI map. (Please note that compliance with state and federal regulations on wetlands, whether they are mapped or unmapped, remains the legal responsibility of the landowner.)

[Note: The LWI and/or determination map, unlike a precise wetland delineation, is generally accurate within approximately 25 +/- feet of the actual wetland. By requiring that no development or fill occur within 25 feet of the boundary, the local government can assure that the actual wetland will likely be avoided. This is NOT to be confused with a buffer. It is an allowance for map error in a situation where the expense of a more accurate delineation is not warranted.]

VI. Approval Criteria

A. Alternative Review Tracks

An applicant for a permit in a wetland protection area may request that the local government use one of two alternative review processes. Track 1 contains clear and objective approval criteria, and track 2 uses discretionary criteria. The two sets of criteria are listed below. The track and

criteria preferred by the applicant shall be noted on the permit application. [Examples of clear and objective and discretionary criteria may be found in the guidebook text in Section 5.3.4. Standards for “clear and objective” may be found at OAR 660-23-050 (2), and for “discretionary” at OAR 660-23-050 (3).]

The approving authority shall base its decision on the approval criteria of this section in addition to the required criteria for any other permit or approval that is being sought.

B. Track 1 — Clear and Objective Approval Criteria.

Approvals require compliance with all of the following criteria:

- 1) The proposed project complies with the provisions of Sections VII through XV of this Chapter.
- 2) Except as otherwise permitted by Section VI.B.4 or Section VII, the proposed project will not result in the filling or excavation of a wetland or reduction of wetland area on a parcel that has been identified as containing a wetland.
- 3) Except as otherwise permitted by Section VI.B.4 or Section VII, the proposed project will not result in the development, excavation, or filling of land within 25 feet of the boundary of wetland that has only been mapped approximately through the wetland inventory or determination, but not an approved delineation.
- 4) The proposed project is consistent with the particular requirements adopted as part of the ESEE decisions set forth in the Comprehensive Plan, as follows. [Note: The requirements adopted as part of the ESEE decision in the plan must be stated in a clear and objective manner. The pertinent requirements adopted as part of ESEE decisions must be included in the plan and may also be included in the

ordinance. If included in the ordinance, this criterion should refer directly to the pertinent section of the plan. Depending on the ESEE analysis, the pertinent requirements may be unique for each use. For example, an ordinance may state that for a particular site, a roadway or pathway is allowed as long as it meets a specific set of requirements. Sample requirements for transportation facilities, utilities, and vegetation management are included in sections XIII, XIV, and XV. These have been written to apply to broad categories of use but could be modified to apply to particular sites.]

C. Track 2 — Discretionary Criteria.

Approvals shall be based on compliance with all of the following criteria. [Note: Examples of discretionary criteria are included below. In preparing discretionary criteria, it will be necessary to refer to the ESEE decision made in the Comprehensive Plan, because the Goal 5 rule states that these requirements will meet or exceed the level of protection specified by the ESEE decision.]

- 1) The proposed project complies with the provisions of Sections VII through XV of this Chapter.
- 2) The proposed project will not degrade the hydrologic, ecologic, or land conservation functions of wetlands in the community, or the sustainability of these functions; or
- 3) The proposed project includes design features that will enhance, protect, or restore fish and wildlife habitat, water quality, and natural hydrologic functions and processes, and will control erosion and sedimentation, and will not increase the effects of flooding.
- 4) The proposed project is consistent with the ESEE decisions set forth in the Comprehensive Plan. [Note: As noted in Section B.4. above, the list of

ESEE decisions and related standards may be included in the ordinance.]

VII. Allowed Activities within Wetland Protection Areas

- A. Any use, sign, or structure, and the maintenance thereof, that was lawfully existing on the date of adoption of this ordinance [insert date], is allowed to continue within a wetland protection area. Such use, sign, or structure may continue at a similar level and manner as existed on the date of adoption of this ordinance. The maintenance and alteration of preexisting ornamental landscaping is allowed within a wetland protection area so long as no additional native vegetation is disturbed. The provisions of this section shall not be affected by any change in ownership of properties containing a wetland protection area.
- B. The following activities and maintenance thereof are allowed within a wetland protection area, provided that any applicable state or federal permits are secured:
 - 1) Wetland restoration and rehabilitation activities.
 - 2) Restoration and enhancement of native vegetation.
 - 3) Cutting and removal of trees that pose a hazard to life or property due to threat of falling.
 - 4) Removal of nonnative vegetation, if replaced with native plant species at a similar coverage or density so that native species dominate.
 - 5) Normal farm practices such as grazing, plowing, planting, cultivating and harvesting, that meet the following criteria and limitations:
 - a. The land is zoned for Exclusive Farm Use.
 - b. The farm practices were in existence or occurring on the property on the date of adoption of the provisions herein,

- c. The farm practices are of no greater scope or intensity than the operations that were in existence on the date of adoption of the provisions herein, and
 - f. Normal farm practices do not include new or expanded structures, roads, or other facilities involving placement of fill material, excavation, or new drainage measures; and
 - g. In designated coastal shoreland areas, normal farm practices, such as propagation and selective harvesting of forest products consistent with the Forest Practices Act, grazing, and harvesting of wild crops, must be consistent with protection of the wetland’s natural values.
- 6) Maintenance of existing drainage ways, ditches, or other structures, to maintain flow at original design capacity and mitigate upstream flooding, provided that management practices avoid sedimentation and impact to native vegetation and any spoils are placed in uplands.
 - 7) Replacement of a permanent, legal, nonconforming structure in existence on the date of adoption of this ordinance with a structure on the same building footprint, if it does not disturb additional area, and in accordance with the provisions of Sections [list sections of code related to nonconforming uses].
 - 8) Expansion of a permanent, legal, nonconforming structure in existence on the date of adoption of this ordinance, if the expansion area is not within and does not disturb the wetland protection area, and in accordance with the provisions of Sections [list sections of code related to nonconforming uses].
 - 9) Emergency stream bank stabilization to remedy immediate threats to life or property. (State or federal emergency authorization may be needed for in-stream work.)
 - 10) Maintenance and repair of existing roads and streets, including repaving and repair of existing bridges, and culverts, provided that such practices avoid sedimentation and other discharges into the wetland or waterway.
- C. New fencing may be allowed by the [Planning Director or designee] where the applicant demonstrates that the following criteria are satisfied:
- 1) The fencing does not affect the hydrology of the site;
 - 2) The fencing does not present an obstruction that would increase flood velocity or intensity;
 - 3) Fish habitat is not adversely affected by the fencing;
 - 4) The fencing is the minimum necessary to achieve the applicant’s purpose;
- Applications for new fencing within a wetland protection area shall contain a scale drawing that clearly depicts the wetland and wetland buffer area boundary.

VIII. Allowed Activities within Wetland Buffer Areas

[Note: As described in the accompanying Guidebook, a local government may establish wetland protection buffer areas in one of three ways: 1) as decisions justified through an ESEE analysis under the standard Goal 5 process for wetlands; 2) in the Metro area, via Title 3 of the Metro Functional Plan; or 3) in programs developed to comply with requirements of either Goal 6, Goal 7, or the riparian element of Goal 5. If a wetland buffer area is established by the first method, and the program decision (and supporting rationale) allows the same uses in the wetland buffer area as in the significant wetland area, then a separate section addressing buffer uses may be unnecessary. If, however, the program decisions (and supporting rationale) allow uses in wetland buffer areas

that are different from those allowed in significant wetlands, then the following section applies. The following uses are examples of the types of uses that a jurisdiction may want to allow within a buffer area.]

Provided any required state or federal permits are secured, the following uses are allowed within the wetland buffers authorized in the Comprehensive Plan:

- A. Docks, boat shelters, piers, boat ramps, and similar water dependent uses;
- B. Utilities or other public improvements;
- C. Streets, roads, or bridges where necessary for access or crossings;
- D. Bioswales or similar water quality improvement projects;
- E. Public multiuse paths, access ways, trails, picnic areas, or interpretive and educational displays and overlooks, including benches and outdoor furniture;
- F. Wetland restoration.

[Note: A community may want to specify how different types of transportation facilities will be addressed. For example, it may be appropriate to allow some minor projects such as trails as an outright use, while requiring major projects such as a new bridge or major road widening to follow the conditional use process.]

IX. Prohibited Activities within Wetland Protection Areas

The following activities are prohibited within a wetland protection area, except as allowed in Sections VII “Allowed Activities Within Wetland Protection Areas” and VIII “Allowed Activities within Wetland Buffer Areas”:

- A. Placement of new structures or impervious surfaces.
- B. Excavation, drainage, grading, fill, or removal of vegetation except for fire protection purposes or removing hazard trees.
- C. Expansion of areas of landscaping with nonnative species, such as a lawn or garden, into the wetland protection area.

- D. Disposal or temporary storage of refuse, yard debris, or other material.
- E. Discharge or direct runoff of untreated stormwater.
- F. Uses not allowed in the list of permitted uses for the underlying zone.
- G. Any other activities not identified in Section VII and VIII.

X. Conservation and Maintenance of Wetland Protection Areas

[Note: This is an optional section that outlines non-regulatory protection strategies. These provisions are not sufficient in themselves. Zoning protection must also be employed.]

When approving applications for Land Divisions, Planned Unit Developments, Conditional Use Permits, and Exceptions, or for development permits for properties containing a wetland protection area or portion thereof, the approving authority shall assure long term conservation and maintenance of the wetland protection area through one or more of the following methods:

- A. The area shall be protected in perpetuity by a conservation easement recorded on deeds and plats prescribing the conditions and restrictions set forth in Sections I through XV, “Wetland Protection Areas,” and any imposed by state or federal permits; or
- B. The area shall be protected in perpetuity through ownership and maintenance by a private nonprofit association and through a conservation easement or through conditions, covenants, or restrictions (CC&Rs), prescribing the conditions and restrictions set forth in Sections I through XV, “Wetland Protection Areas,” and any conditions imposed by state or federal permits; or
- C. The area shall be transferred by deed to a willing public agency or private conservation organization with a recorded conservation easement prescribing the conditions and restrictions set forth in Sections I through XV, “Wetland Protection Areas,”

and any conditions imposed by state or federal permits; or

[Note: Other mechanisms for long-term protection and maintenance as deemed appropriate and acceptable by the [jurisdiction] attorney, that are clear and objective standards, could be added to this list. Such mechanisms should be consistent with the purposes and requirements of this ordinance.]

XI. Notification and Coordination with State Agencies

- A. The [jurisdiction] shall notify the Oregon Division of State Lands in writing of all applications to the [jurisdiction] for development activities—including development applications, building permits, and other development proposals—that may affect any wetland identified in the Local Wetlands Inventory. This applies for both significant and nonsignificant wetlands. The Division provides a Wetland Land Use Notification form for this purpose. [See OAR 660-23-100(7); ORS 227.350 for cities and ORS 215.418 for counties.]
- B. When reviewing wetland development permits authorized under this Chapter, the approving authority shall consider recommendations from the Oregon Department of Fish and Wildlife regarding OAR 635-415 “Fish and Wildlife Habitat Mitigation Policy.” [Note: recommendations from ODFW are advisory only.]

XII. Variances

- A. The [Planning Commission or Hearings Officer] shall be the approving authority for applications for variances to the Wetland Protection Area provisions. The procedures of chapter [insert appropriate reference to the variance chapter] shall be followed for approval of a variance except that the variance criteria of this section shall also apply.
- B. Mapping Error Variances and Corrections. The [Planning Director or the Director’s

designee] may correct the location of the wetland protection overlay zone when the applicant has shown that a mapping error has occurred and the error has been verified by the DSL. Delineations verified by DSL shall be used to automatically update and replace LWI mapping. No formal variance application or plan amendment is needed for map corrections where approved delineations are provided. [If the map correction alters the significance or ESEE findings, a plan amendment may be necessary.]

- C. Hardship Variances. The [Planning Commission or Hearings Officer] may grant a variance to the provisions of this ordinance only when the applicant has shown that all of the following conditions exist:
 - 1) Through application of this ordinance, the property has been rendered not buildable ;
 - 2) The applicant has exhausted all other options available under this chapter to relieve the hardship;
 - 3) The variance is the minimum necessary to afford relief;
 - 4) No significant adverse impacts on water quality, erosion, or slope stability will result from approval of this hardship variance, or these impacts have been mitigated to the greatest extent possible; and
 - 5) Loss of native vegetative cover shall be minimized.

- D. Reduction or Deviation of Wetland Buffer Areas. A request to vary the wetland buffer area, such as averaging of buffer width, may be submitted for consideration by the [Planning Director or designee]. Such a request may be approved only if equal or better protection of the wetland will be ensured through a plan for restoration, enhancement, or similar means. Such a plan shall be submitted to the Oregon Department of Fish and Wildlife for a mitigation recommendation pursuant to OAR 635-415 “Fish and

Wildlife Habitat Mitigation Policy”. In no case shall activities prohibited in Section IX “Prohibited Activities Within Wetland Protection Areas” subsections A through C occupy the wetland or more than [50]% of the wetland buffer area¹. The [same authority as above] shall be the approving authority for applications to alter the buffer area.

To determine the average buffer width, measurements shall be made at no greater than [50 foot] intervals over the distance the property abuts the wetland¹.

[Note: The following sections are optional and should be used only when: 1) an ESEE analysis has been completed; and 2) that analysis demonstrates that the following uses are of such necessity that wetland values must be compromised. All of the standards from this point to the end of the model ordinance are examples.]

XIII. Transportation Facilities and Structures Development Standards

- A. General. The following standards shall apply to transportation facilities and structures within wetland protection areas, including roads and driveways, bridges, bridge crossing support structures, culverts, and pedestrian and bike paths.
- B. Standards for review of conditional uses include the following:
 - 1) Wetland protection areas shall be crossed only where there are no practicable alternatives to avoid the resource [as demonstrated by the ESEE analysis in the comprehensive plan];
 - 2) Transportation facilities and structures crossing wetland protection areas shall be no wider than necessary to serve their intended purposes; and
 - 3) Within buffer areas, new roads, driveways, and pedestrian and bike paths shall be located or constructed so as not to alter the hydrology of the adjacent wetland.

XIV. Utility Development Standards

- A. General. The following standards shall apply to permitted crossing, trenching, or boring for the purpose of developing a corridor for communication, energy, or other utility lines within or crossing parcels in wetland protection areas.
- B. Standards for review of all utility uses include the following:
 - 1) Utility maintenance roads in or crossing protected resources shall meet applicable standards for transportation facilities and structures in protected resources; and
 - 2) For underground utilities, the following additional standards shall apply:
 - a. Boring under the waterway, directional drilling, or aerial crossing is preferable to trenching. If trenching is the only alternative, it shall be conducted in a dry or dewatered area with stream flow diverted around the construction area to prevent turbidity;
 - b. Common trenches, to the extent allowed by the building code, shall be required in order to minimize disturbance of the protected resource;
 - c. Materials removed or excavated during trenching, boring, or drilling shall be deposited away from the protected resource, and either returned to the trench as back-fill, or if other material is to be used as back-fill in the trench, excess materials shall be immediately removed from the protected resource and its associated buffer. Side-casting of removed material into a protected resource shall not be permitted;
 - d. The ground elevation of a protected resource shall not be altered as a result of utility trench construction or maintenance. Finish

- elevation shall be the same as starting elevation; and
- e. Topsoil and sod shall be conserved during trench construction or maintenance, and replaced on top of the trench.

C. In addition to the other conditional use criteria, conditional use approval of utility corridor routes shall be based on evidence that:

- 1) Hydraulic impacts on protected resources are minimized; and
- 2) Removal of native vegetation is minimized.

Where feasible, crossings of wetland protection areas shall be perpendicular to minimize impact area.

XV. Vegetation Management Standards

A. General. The following standards shall apply to vegetation in wetland protection areas:

B. Standards for review of conditional uses include the following:

- 1) Vegetation removal, pruning, or mowing in a significant wetland or riparian corridor shall be the minimum necessary and in no case shall substantially impair any wetland functions and values. Vegetation removal, pruning, or mowing in the wetland buffer shall be the minimum necessary. Removal, pruning, or mowing of vegetation shall be allowed if the applicant demonstrates one of the following:
 - a. The action is necessary for the placement of a structure or other allowed use for which a building permit has been issued;
 - b. The action is necessary for maintenance of an existing structure or transportation facility;

- c. The action is necessary for correction or prevention of a hazardous situation;
 - d. The action is necessary for completion of a land survey;
 - e. The action involves the maintenance of a landscaped area that existed prior to the date of this ordinance;
 - f. The action is part of an approved restoration, enhancement, mitigation, or erosion control plan, including, but not limited to, invasive or noxious species removal and replacement with native species, and wetland area restoration, mitigation, or enhancement;
 - g. The action is part of a landscape plan approved by the City, and any other appropriate agencies, in conjunction with a building permit that minimizes adverse impacts on protected resources; or
- 2) Planting shall be permitted in accordance with the following standards:
- a. The planting is part of an approved restoration, enhancement, mitigation, or erosion control plan;
 - b. The planting is part of a landscape plan using appropriate native plant species, and the plan is approved by the City in conjunction with approval of a building permit; or
 - c. The planting is to replace dead or damaged plants that were either part of a maintained landscape or part of the existing native plant community.

Footnote

¹ The dimensions in these sentences are listed as examples; the actual standards must be determined locally and may depend on the local ESEE analysis.