

**EXHIBIT A:**  
**FINDINGS OF FACT FOR CITY OF FLORENCE ORDINANCE NO. 2, SERIES 2013**  
**LANE COUNTY ORDINANCE NO. PA 1299**

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**Public Hearing Date:** August 6, 2013  
**Date of Report:** July 18, 2013

**City Planning Consultant:** Carol Heinkel  
**City:** Mike Miller, Public Works Director  
Kelli Weese, Interim Planning Director  
**Lane County:** Keir Miller, Senior Planner

**Application:** PC 13 03 CPA 01, PC 13 04 TA 01, PC 13 05 ZC 01 (City)  
PA13-0582 (LC)

## **I. PROPOSAL DESCRIPTION**

### **PROPOSALS:**

#### **EXHIBIT B:**

*Proposed Legislative Amendments to the Florence Realization 2020 Comprehensive Plan for Aquifer Protection and Wetlands and Riparian Corridors, August 6, 2013*

#### **1. Aquifer Protection**

- a. Amend Florence Comprehensive Plan Chapter 5 to protect groundwater resources for consistency with state law and to adopt the Aquifer Protection Plan.
- b. Consistency Amendments: Amend Comprehensive Plan Chapter 11, Utilities, Facilities, and Services for consistency with the proposed amendments.

#### **2. Wetlands and Riparian Corridors**

- a. Amend Florence Comprehensive Plan Chapter 5: Open Spaces and Scenic, Historic, and Natural Resources for consistency with Statewide Planning Goal 5, including adoption of the 2013 Florence Area Wetlands and Riparian Inventory (2013 Inventory) and 2013 City of Florence Significant Wetlands and Riparian Corridors Plan (2013 Plan).
- b. Consistency Amendments: Amend Florence Comprehensive Plan Chapter 1, Definitions and Chapter 11, Utilities, Facilities, and Services for consistency with the proposed amendments.

#### **3. Housekeeping Amendment**

- a. Amend Comprehensive Plan Chapter 1, Introduction, to make the Comprehensive Plan consistent with state law which changed the DLCD notice requirement from 45 to 35 days.

#### **EXHIBIT C:**

*Proposed Amendments to the Florence City Code for Aquifer Protection and Wetlands and Riparian Corridors, August 6, 2013*

### 1. Aquifer Protection (Quasi-judicial Amendments)

- a. Adopt a new Drinking Water Protection Overlay Zone (Overlay Zone) Map, attached to Exhibit C.
- b. Amend Florence City Code Title 10: Zoning Regulations to insert a new Chapter 32: Drinking Water Protection Overlay District

### 2. Wetlands and Riparian Corridors (Legislative Amendments)

- a. Amend Florence City Code Title 10 Chapter 7: Special Development Standards to add a new section 10-7-4: Development Standards for Wetlands and Riparian Areas, and renumber sections sequentially.
- b. Consistency Amendments: Amend FCC Title 9 Chapter 5 stormwater management definitions and buffer zone provisions; Title 10 Chapter 1 Definitions, and Title 10 Chapter 19, Prime Wildlife District, for internal Code consistency and for consistency with state law.

### 3. Housekeeping Amendment (Legislative Amendment)

- a. Adopt an amendment to FCC Title 10 Chapter 19 to make the Code consistent with Statewide Planning Goal 16.

**APPLICANT:** City of Florence: Mike Miller, Public Works Director, Project Manager; Planning Consultant: Carol Heinkel

**PROPERTY OWNERS:** See table below.

#### LOCATION:

- **Legislative amendments to Comprehensive Plan (Exhibit B):** Florence urban growth boundary (UGB)
- **Legislative amendments to City Code (Exhibit C):** Florence city limits
- **Quasi-judicial Code amendments (Overlay Zone):** At north end of city limits, east and west of Highway 101; specific properties listed below and shown in Overlay Zone Map (Exhibit C)

#### Quasi-judicial Code amendments (Overlay Zone):

##### Map & Taxlot

Number:	Address:	Owners:
1812142001102	4701 HWY 101	Fred Meyer Stores
1812142001500	5055 HWY 101	Marvin and Neal Ryall
1812142001600	5071 HWY 101	Marvin and Neal Ryall
1812142001700	N/A Munsel Lake LLC	Munsel Lake LLC
1812142001900	5231 HWY 101	Johanna Pratte
1812142001201	4969 Hwy 101	James & Susan Genereaux
1812142001204	N/A	James & Susan Genereaux
1812142001205	N/A	Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

### Quasi-judicial Code amendments (Overlay Zone):

Map & Taxlot Number:	Address:	Owners:
1812142001206	N/A	Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians
1812142002000	N/A	John Sherman
1812142002100	5351 HWY 101	Dell Matthews
1812142001400	5045 HWY 101	Ocean Pacific Co. Inc
1812142001301	N/A	Sand Ranch Prop. LLC
1812142001303	4981 HWY 101	Dennis Fleming
1812142001302	N/A	Dennis Fleming
1812142001203	N/A	Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians
1812113301700	5491 HWY 101	Terrace Investments LLC II
1812113301603	N/A	Terrace Investments LLC II
1812142002200	5371 HWY 101	Erin Trebolo
1812113301602	5405 HWY 101	Twombly Investments LLC
1812113301600	N/A	Terrace Investments LLC II
1812113302000	N/A	Terrace Investments LLC II
1812142000500	N/A	Ohran Joint Revocable Trust
1812142000400	N/A	Ohran Joint Revocable Trust
1812142000600	N/A	Sunnyside McGill LLC
1812142000300	5240 HWY 101	Glen & Ellona Seifert
1812142000201	N/A	Luis Hector Morales Decedents Trust
1812142001800	N/A	Johanna Pratte

### COMPREHENSIVE PLAN MAP DESIGNATIONS:

- **Legislative amendments to Comprehensive Plan (Exhibit B):** All Plan designations
- **Legislative amendments to City Code (Exhibit C):** All Plan designations
- **Quasi-judicial Code amendments (Overlay Zone) (Exhibit C):** North Commercial Node, Service Industrial

### ZONE MAP CLASSIFICATIONS:

- **Legislative amendments to Comprehensive Plan (Exhibit B): City:** All Zoning Classifications in City; **Lane County:** Natural Resource (NR), Impacted Forest (F2); and Suburban Residential (RA)
- **Legislative amendments to City Code (Exhibit C):** All Zoning Classifications in City
- **Quasi-judicial Code amendments (Overlay Zone) (Exhibit C):** North Commercial; Service Industrial

## **SURROUNDING LAND USE/ZONING:**

- **Legislative amendments to Comprehensive Plan (Exhibit B):** N/A
- **Legislative amendments to City Code (Exhibit C):** N/A
- **Quasi-judicial Code amendments (Overlay Zone) (Exhibit C):** north: mixed residential, industrial, vacant; west: vacant; east: vacant/residential; south: commercial.

## **II. NARRATIVE**

### **Purpose and Objectives:**

The purpose of this proposal is to protect and improve water quality and fish and wildlife habitat in the lower Siuslaw Watershed. Specific objectives are as follows:

1. Meet the requirements of EPA Cooperative Agreement #WC-00J04801-0 to submit for local adoption plans and Comprehensive Plan and Code amendments for Aquifer Protection and Wetlands and Riparian Corridors;
2. Bring the Florence Comprehensive Plan into compliance with Statewide Planning Goals for wetlands, riparian corridors, and groundwater resources;
3. Bring the Florence City Code into compliance with Statewide Planning Goals for wetlands, riparian corridors, and groundwater resources;
4. Make additional Comprehensive Plan and Code amendments for internal consistency and housekeeping.

### **Background**

These Exhibits are products of the Siuslaw Estuary Partnership, funded by the US Environmental Protection Agency (EPA Cooperative Agreement #WC-00J04801-0), a grant awarded to the City of Florence by EPA on October 1, 2009. The mission of the Partnership is to protect and improve water quality and fish and wildlife habitat in the lower Siuslaw watershed. Submission to the City and County for adoption of Comprehensive Plan amendments, and to the City for adoption of Code amendments, to protect the North Florence Sole Source Dunal Aquifer and for Wetlands and Riparian Corridors satisfies the City's commitment to the EPA for these grant products.

Community concern for the Siuslaw estuary, the North Florence Sole Source Dunal Aquifer and the area's streams, lakes, and wetlands is well-documented in Comprehensive Plan policies and Code provisions. In response to this concern, in October, 2009, the City and its partners from 19 federal, state, tribal, and local agencies embarked on the multi-year Siuslaw Estuary Partnership project. This project is funded by project partners and the US Environmental Protection Agency (EPA). The Siuslaw Estuary Partnership Guiding Principles, endorsed by the City and its partners, provided guidance for these products. For more information about the Partnership, visit the web site at: [www.SiuslawWaters.org](http://www.SiuslawWaters.org).

Over the past three and a half years, there has been extensive public involvement in the project, including public open houses, stakeholder group meetings, study area-wide distribution of newsletters, newspaper articles, and targeted outreach to interest groups, property owners, and businesses. The public outreach process is documented in detail

in in Section V of this report (Findings for attached City Planning Commission Resolution PC 13 03 CPA 01, PC 13 04 TA 01, PC 13 05 ZC 01 and Lane County Ordinance No. PA 1299).

### **III. NOTICE AND REFERRALS**

1. **NOTICE:** Notice of the proposed Comprehensive Plan Amendments was sent to DLCD on March 21, not less than 45 days prior to the first (Planning Commission) evidentiary hearing as required by the Comprehensive Plan and not less than 35 days prior to the hearing as required by state law.

The August 6 public hearing was noticed in the Siuslaw News on July 27 and 31, 2013 and in the Eugene Register-Guard on July 16, 2013, as required by state law, and Florence and/or Lane County Codes. All those who submitted written or oral testimony at the Planning Commission hearing were sent notice of the August 6<sup>th</sup> hearing on May 20, 2013 in accordance with Florence City Code.

In accordance with Florence City Code, on July 17, 2013, property owners within the proposed Drinking Water Protection Overlay Zone and within 300 feet of the zone were also sent notice and notice was posted on properties within the proposed overlay zone.

2. **REFERRALS:** Referrals were sent to the Oregon Department of Transportation, Florence Police Department, Central Lincoln Public Utility District, Qwest, Charter Communications, Florence Public Works Department, Florence U.S. Postal Service, the Siuslaw Valley Fire and Rescue District, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, Lane County Land Management, Lane County Transportation, Heceta Water District, Land Watch, and the staff representatives of the federal, state, and local agencies serving on the Siuslaw Estuary Partnership Inter-disciplinary Team. Notice was also sent to William Sherlock, who requested notice on behalf of this client.

### **IV. APPLICABLE CRITERIA**

1. **Florence Realization 2020 Comprehensive Plan**
2. **Florence City Code (FCC) Title 10: Zoning Regulations**  
Chapter 1: Zoning Administration, Sections: 10-1-1-5 Land Use Hearings;  
Section 10-1-2-2, Change of Boundaries on Zoning Map; 10-1-3 Amendments and Changes
3. **Oregon Revised Statutes:** ORS: 196.674; 197.175; 197.250; 197.251; 197.279(3)(b); 197.253; 197.610; 197.615; 215.418; 227.175; 227.186; 227.350

- 4. Statewide Land Use Planning Goals and Associated Administrative Rules:**  
**Statewide Goals:** 1: Citizen Involvement; 2: Land Use; 5: Natural Resources, Scenic and Historic Areas, and Open Spaces; 6: Air, Water and Land Resources Quality; 7: Areas Subject to Natural Hazards; 9: Economic Development; 10: Housing; 11: Public Facilities and Services; 12: Transportation; 16: Estuarine Resources; 17: Coastal Shorelands  
**Administrative Rules:** OAR Chapter 660: Division 23 pertaining to wetlands, riparian, and groundwater resources and related provisions; Division 12; Division 15; Division 16; OAR Chapter 141 Division 86; OAR Chapter 333 Division 61; OAR Chapter 340 Division 40 and 71
- 5. Lane County Rural Comprehensive Plan Policies – Part 1, Section D; and Lane Code:** 12.005, 12.050, 14.300, 16.400

## **V. FINDINGS**

Applicable criteria are shown in bold and findings are in plain text below.

### **FLORENCE REALIZATION 2020 COMPREHENSIVE PLAN**

#### **Introduction:**

#### **Plan Adoption, Amendments, Review and Implementation**

**Amendments to the Plan may be initiated by citizens, citizen groups, the Citizen Advisory Committee, the Planning Commission or the City Council. In any amendment proceedings, the City Council shall obtain the recommendation of the Planning Commission and the Citizen Advisory Committee before taking action on a proposed major amendment. Minor changes which do not have significant effects beyond the immediate area of the change require the recommendation of the Planning Commission. Minor changes may be initiated at any time. Notice of a public hearing for a proposed plan amendment shall be required at least 45 days prior to the first Planning Commission hearing.**

The proposal is consistent with this Comprehensive Plan text because:

- The proposal was initiated by City Council Resolution 3 Series 2013 on April 15, 2013;
- The Planning Commission made a recommendation to the City Council; and
- Notice of the public hearing was sent to DLCD at least 45 days prior to the date of the first Planning Commission hearing.

### **FLORENCE CITY CODE (FCC) TITLE 10: ZONING REGULATIONS**

#### **CHAPTER 1: ZONING ADMINISTRATION**

#### **SECTION 3: AMENDMENTS AND CHANGES**

### **FCC 10-1-3-C: LEGISLATIVE CHANGES**

- 1. Initiation: A legislative change in zoning district boundaries, in the text of this Title, Title 11 or in the Comprehensive Plan may be initiated by resolution of the Planning Commission or by a request of the Council to the Planning Commission that proposes changes be considered by the Commission and its recommendation returned to the Council.**
- 2. Notice and Public Hearing: Such notice and hearing as prescribed by state law and the Comprehensive Plan then in effect. (Amd. by Ord. 30, Series 1990).**

The proposal is consistent with the criteria in FCC 10-3-C because:

- Exhibits B and C, except for the Drinking Water Protection Overlay Zone Map and Text, are legislative changes to the Comprehensive Plan and Code, affecting a large number of properties with broad policy application;
- The City Council initiated the process by Resolution and set a date of May 7 for Planning Commission public hearing and recommendation;
- Notice of the public hearing was sent to DLCD at least 45 days prior to the first Planning Commission hearing; Ballot Measure 56 notice was sent, consistent with the Comprehensive Plan and state law.

### **FCC 10-1-3-B: QUASI-JUDICIAL CHANGES**

- 1. Initiation: A quasi-judicial zoning change and related Comprehensive Plan changes may be initiated by application of a property owner within the affected area, by a person having substantial ownership interest in the property, by resolution of the Planning Commission or motion of the City Council, and also by individual citizens or citizen groups during Plan update as provided in The Comprehensive Plan.**
- 3. Notice and Public Hearing: Notice and public hearing for quasi-judicial changes to this Code and the Comprehensive Plan shall be in accordance with Code Section 10-1-1-5.**

The proposal is consistent with the criteria in FCC 10-3-B, subsections #1 and #3 because:

- The Drinking Water Protection Overlay Zone is a quasi-judicial zone change initiated by the City Council;
- Notice of the proposed change was provided in accordance with Code Section 10-1-1-5:

## **FCC 10-1-1-5: LAND USE HEARINGS:**

**A. Hearings are required for quasi-judicial land use matters requiring Planning Commission review.**

### **B. Notification of Hearing:**

- 1. At least twenty (20) days prior to a quasi-judicial hearing, notice of hearing shall be posted on the subject property and shall be provided to the applicant and to all owners of record of property within 100 feet of the subject property, except in the case of hearings for Conditional Use Permits, Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record of property within 300 feet of the subject property.**
  - a. Notice shall also be provided to the airport as required by ORS 227.175 and FCC 10-21-2-4 and any governmental agency that is entitled to notice under an intergovernmental agreement with the City or that is potentially affected by the proposal. For proposals located adjacent to a state roadway or where proposals are expected to have an impact on a state transportation facility, notice of the hearing shall be sent to the Oregon Department of Transportation.**
  - b. For a zone change application with two or more evidentiary hearings, notice of hearing shall be mailed no less than ten (10) days prior to the date of the Planning Commission hearing and no less than ten (10) days prior to the date of the City Council hearing.**
  - c. For an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and ORS 227.175(8).**
- 2. Prior to a quasi-judicial hearing, notice shall be published one (1) time in a newspaper of general circulation.**

### **C. Notice Mailed to Surrounding Property Owners - Information provided:**

- 1. The notice shall:**
  - a. Explain the nature of the application and the proposed use or uses which could be authorized;**
  - b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;**
  - c. Set forth the street address or other easily understood geographical reference to the subject property;**
  - d. State the date, time and location of the hearing;**
  - e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes further appeal based on that issue;**
  - f. State that application and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;**



- g. State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost;
  - h. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
  - i. Include the name of a local government representative to contact and the telephone number where additional information may be obtained.
- F. Notice of Decision by the Planning Commission: A notice of the action or decision of the Planning Commission, and right of appeal shall be given in writing to the applicant. Any party who testified either in writing or verbally at the hearing must provide a mailing address in order to be noticed. The notice may be served personally, or sent by mail. The notice shall be deemed served at the time it is deposited in the United States mail.**

The proposal is consistent with these criteria because:

- the Planning Commission and City Council and Lane County Board held a public hearing on the request;
- notice was posted on the subject property (Drinking Water Protection Overlay Zone) and sent to all owners of record of property within 300 feet of the subject property on April 11, more than 20 days before the public hearing on May 7; and on July 17, more than 20 days before the public hearing on August 6.
- on April 27 and May 1, notice of the Planning Commission hearing was published and on July 27 and 31 notice of the elected officials hearing was published in the Siuslaw News, a newspaper of general circulation, the last not more than ten (10) days prior to the date of the hearing;
- On May 20, 2013, notice of the Planning Commission's decision and the date of the Joint Elected Officials' public hearing was mailed to all those who provided comment, either orally or in writing, for the public hearing before the Planning Commissions.
- The notices met all of the above requirements for content and timing; and
- Notice consistent with ORS 227.186 was sent to the owners of property with a wetland or riparian area or within a Drinking Water Protection Overlay Zone, as follows:

**ORS 227.186 NOTICE TO PROPERTY OWNERS OF HEARING ON CERTAIN ZONE CHANGE; FORM OF NOTICE; EXCEPTIONS; REIMBURSEMENT OF COST.**

**(2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by a city shall be by ordinance.**

**(3) Except as provided in subsection (6) of this section, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof, or to adopt a new comprehensive plan, a city shall cause a written individual notice of a land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.**

**(4) At least 20 days but not more than 40 days before the date of the first hearing**

on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(5) An additional individual notice of land use change required by subsection (3) or (4) of this section shall be approved by the city and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall:...

The proposal is consistent with ORS 227.186 because:

- The Comprehensive Plan and Zoning Code amendments were adopted by Ordinance.
- On April 11, at least 20 days but not more than 40 days before the date of the Planning Commission hearing (first hearing) on the adopting ordinance to amend the Comprehensive Plan and Code, the City mailed a written individual notice to the owners of each of the properties potentially affected by the proposal;
- the notice described in detail how the proposed ordinance would affect the use of the properties;
- the notice contained the text required in ORS 227.186; and
- the proposal is to adopt an ordinance that will limit or prohibit land uses previously allowed in the affected zone.

**FCC 10-1-2-2: CHANGE OF BOUNDARIES ON ZONING MAP: ...Amendments to the map (zone boundary changes) shall be indicated on subsequent maps, dated and filed with the map originally adopted. Each map shall bear the signature of the Planning Commission chairman who shall testify to their authenticity. (Amd. by Ord. 30, 1990).**

The proposal is consistent with this provision because the Drinking Water Protection Overlay Zone map will be dated, filed with the City Zoning Map, and signed by the Planning Commission chairman.

## **OREGON REVISED STATUTES**

**ORS 197.610: LOCAL GOVERNMENT NOTICE OF PROPOSED AMENDMENT OR NEW REGULATION; EXCEPTIONS; REPORT TO COMMISSION.**

(1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 35 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing.

The proposal is consistent with ORS 197.610 because notice to DLCD was sent on March 21, 2013, at least 35 days prior to the March 7, 2013 (first) Planning Commission

public hearing and the notice contained the information required in this statute.

**ORS 197.175: CITIES' AND COUNTIES' PLANNING RESPONSIBILITIES; RULES ON INCORPORATIONS; COMPLIANCE WITH GOALS.**

**(2) Pursuant to ORS Chapters 195, 196 and 197, each city and county in this state shall: (a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;**

The proposal is consistent with ORS 197.175 because this staff report contains findings to conclude that the proposed comprehensive plan revisions are in compliance with the goals approved by the commission. A finding of "Not Applicable to this Proposal" is incorporated into these findings for all Statewide Planning Goals not specifically cited below.

**ORS 197.615: SUBMISSION OF ADOPTED COMPREHENSIVE PLAN OR LAND USE REGULATION CHANGES TO DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**(1) When a local government adopts a proposed change to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the decision to the Director of the Department of Land Conservation and Development within 20 days after making the decision.**

**(2) The submission must contain the following materials:**

**(a) A copy of the signed decision, the findings and the text of the change to the comprehensive plan or land use regulation;**

**(b) If a comprehensive plan map or zoning map is created or altered by the proposed change, a copy of the map that is created or altered;**

**(c) A brief narrative summary of the decision, including a summary of substantive differences from the proposed change submitted under ORS 197.610 (Submission of proposed comprehensive plan or land use regulation changes to Department of Land Conservation and Development) and any supplemental information that the local government believes may be useful to inform the director or members of the public of the effect of the actual change; and**

**(d) A statement by the individual transmitting the submission, identifying the date of the decision and the date of the submission.**

The proposal is consistent with ORS 197.615 because when the city and county adopt the proposed change to an acknowledged comprehensive plan and the city adopts the proposed change to the FCC, the local governments shall submit the decision to the Director of the Department of Land Conservation and Development within 20 days after making the decision; and the submission shall contain the required materials.

**ORS 197.253: PARTICIPATION IN LOCAL PROCEEDINGS REQUIRED FOR SUBMITTING COMMENTS AND OBJECTIONS**

**Notwithstanding the provisions of ORS 197.251 (Compliance acknowledgment)**

**(2)(a), a person may not submit written comments and objections to the acknowl-**

**edgment request of any city or county that submits its plan or regulations to the Land Conservation and Development Commission for acknowledgment for the first time after August 9, 1983, unless the person participated either orally or in writing in the local government proceedings leading to the adoption of the plan and regulations.**

The proposal is consistent with ORS 197.253 because only persons participating either orally or in writing in the city and county proceedings leading to the adoption of the plan and regulations shall be eligible to submit written comments and objections to the approval of the amendments by the Department of Land Conservation and Development.

## **ORS 197.250 COMPLIANCE WITH GOALS REQUIRED**

**Except as otherwise provided in ORS 197.245 (Commission amendment of initial goals), all comprehensive plans and land use regulations adopted by a local government to carry out those comprehensive plans and all plans, programs, rules or regulations affecting land use adopted by a state agency or special district shall be in compliance with the goals within one year after the date those goals are approved by the Land Conservation and Development Commission.**

The proposal is consistent with ORS 197.250 because it is consistent with applicable statewide planning goals, as demonstrated in the findings below.

## **STATEWIDE PLANNING GOALS AND ADMINISTRATIVE RULES**

### **GOAL 1: CITIZEN INVOLVEMENT**

- 3. Citizen Influence -- To provide the opportunity for citizens to be involved in all phases of the planning process.**

**Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.**

The proposals are consistent with this Goal because citizens were provided the opportunity to be involved in all phases of the planning process as set out below.

- The Public Involvement Plan (PIP) for the Siuslaw Estuary Partnership was approved by the Florence Planning Commission on January 12, 2010 and is included as Appendix B of the Aquifer Protection Plan. Public involvement involved Technical Advisory Committees, Stakeholder Groups, and Public Education and Outreach.
- Technical Advisory Committees: The Siuslaw Estuary Partnership Inter-disciplinary Team served as the Technical Advisory Committee (TAC) for the plans and Trail Vision with additional agency staff added for specific products. These staff commit-

tees met regularly throughout the course of the project and recommended draft products to the Stakeholder Groups.

- Stakeholder Groups: The Florence City Council approved the use of two Stakeholder Groups for the Partnership: a Community Stakeholder Group and an Elected Official Stakeholder Group. The Community Stakeholder Group was expanded in order to include representative interests in the Drinking Water Protection Areas on the Group. Specifically, these interests were: Ocean Dunes Golf Links, Coast Village, Sand Ranch, Florentine Estates, Koning and Cooper business owners, and Recycling and Garbage. The Community Stakeholder Group met most recently on February 28, 2013 to review and comment on the draft products. The Elected Official Stakeholder Group met on March 14 and agreed by consensus with the products, as revised.
- Public Education and Outreach: In the fall of 2012, a targeted public outreach effort commenced on the draft Comprehensive Plan and Code amendments. This outreach included presentations, response to questions, and submission of comments on the draft proposals with the following groups:
  - Coast Village Homeowners Association: 10/29/12
  - Central Oregon Coast Board of Realtors: 11/29/12
  - Florence Area Chamber of Commerce: 2/21/13
  - Golf Course Owners/Managers: 2/25/13
  - Property owners within Drinking Water Protection Areas (DWPAs): 2/25/13
  - Property owners with wetlands or riparian areas: 2/27/13
- Letters were sent to the owners in DWPAs and with wetlands or riparian areas on February 8<sup>th</sup> inviting them to the meeting, informing them of the draft products, and instructing them on ways they can be involved. Revisions to the draft were made based on feedback from meetings with property owners and Stakeholders in February and March 2013 and further changes may be made as needed to respond to comments raised during the public adoption process.
- Public Education and Outreach also involved three Open Houses and three newsletters, "Waters in Common," which were distributed throughout the UGB to residents, property owners, or both. Each of these newsletters provided information about the aquifer, wetlands and riparian areas, and the trail vision and the need to protect water quality. The third newsletter, distributed in April 2012, provided information about the draft plans and inventories and ways to provide comment. That newsletter was included in water bills and mailed directly to all owners of property in the DWPAs. At the third Open House, the elements of the plans were presented in detail in the power point presentation and in hard copies available for the public. Comment forms were available, although no one submitted a completed form. Over 50 members of the public attended the April 30, 2012 Open House and heard the presentation.
- In addition, public involvement efforts were conducted specifically for wetlands and riparian areas. Prior to beginning the inventory field work, selected landowners (i.e. those suspected of having wetlands or waters of the state on their property) were mailed notices describing the project and asking permission to enter their property. Right of access was granted by landowner permission only. The properties of those not responding were not accessed. Access information was collected in a database

and then transferred to a base map for use in the field. At the May 5, 2010 Open House, the public was informed about the wetland inventory process and staff answered questions from property owners deciding whether or not to grant access to their property. Following completion of initial fieldwork, a public meeting was held on September 22, 2010 to allow citizens to observe the location of mapped wetlands and comment as appropriate.

- On March 6, 2012, the Wetlands and Riparian Area Team concurred with criteria and application of the criteria for determining the significance of, and measures to protect, wetlands and riparian corridors in the Florence urban growth boundary (UGB). On January 31, 2013, the Wetland and Riparian Team reviewed and commented on the revised 2013 Plan and forwarded it for public review and adoption.
- At their meetings in March and April, the Stakeholder Groups forwarded this proposal to the public for comment. Then, the proposal was presented to the public at the April 30, 2012 Open House.
- All products and Stakeholder meeting packets have been posted to the project web site: [www.SiuslawWaters.org](http://www.SiuslawWaters.org) and the public has been encouraged to review and comment.

## **GOAL 2: LAND USE**

**City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.**

**All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents. The plans, supporting documents and implementation ordinances shall be filed in a public office or other place easily accessible to the public. The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans. Each plan and related implementation measure shall be coordinated with the plans of affected governmental units.**

**All land-use plans and implementation ordinances shall be adopted by the governing body after public hearing and shall be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances, in accord with a schedule set forth in the plan. Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.**

The proposals are consistent with Goal 2 because:

- The amendments to the Florence City Code for aquifer protection and wetlands and riparian areas, and the Drinking Water Protection Overlay Zone to protect the City's



proposed wellfield, are consistent with the Comprehensive Plan for the City of Florence, as amended in this proposal;

- The proposed Comprehensive Plan amendments include identification of issues and problems related to aquifer protection and wetlands and riparian areas, inventories and other factual information for each applicable statewide planning goal, and evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs;
- The proposal amends the Comprehensive Plan to include the Aquifer Protection Plan, Florence Area Wetlands and Riparian Inventory, City of Florence Significant Wetlands and Riparian Corridors Plan in the plan document or in supporting documents. The plans, supporting documents and implementation ordinances shall be filed in the City of Florence Planning Office easily accessible to the public;
- These plans are the basis for the proposed City Code amendments, which are consistent with and adequate to carry out the plans, including the Drinking Water Protection Overlay Zone, which is consistent with the Drinking Water Protection Area for the proposed wellfield which is incorporated as part of the Comprehensive Plan through these amendments;
- The amendments to the Comprehensive Plan have been coordinated with and co-adopted by Lane County, the affected governmental unit; and
- The Comprehensive Plan amendments were adopted by the by the City and County and the Code amendments by the City after public hearings; after a review and with revisions that take into account changing public policies and circumstances; opportunities were provided for review and comment by citizens and affected governmental units during preparation, review and revision of the plans and implementation ordinances.
- The Consistency Code amendment to FCC 10-19-9 Prime Wildlife District make the Code consistent with the proposed Comprehensive Plan and Code amendments as well as Statewide Planning Goal 2 (Land Use) by relying on the most recent inventory and assessment data for determining the boundaries and assessment of the management unit.

## **GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES**

**To protect natural resources and conserve scenic and historic areas and open spaces. Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability. The following resources shall be inventoried: a. Riparian corridors, including water and riparian areas and fish habitat; b. Wetlands;... f. Groundwater Resources;...**

The proposal is consistent with Goal 5 requirements for wetlands, riparian corridors, and groundwater resources as demonstrated in the following findings of consistency with the Goal 5 Administrative Rule (OAR Chapter 60 Division 23).

### **OAR 660-023-0250: APPLICABILITY**

**(2) The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996. OAR 660, Division 16 applies to PAPAs initiated prior to September 1, 1996. For purposes of this section "initiated" means that the local government has deemed the PAPA application to be complete.**

**(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if: (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;...**

The proposals are consistent with this Rule, as follows:

- The Goal 5 Rule applies to this PAPA (Post Acknowledgment Plan Amendment) because the City and County have updated inventories for wetlands, riparian, and groundwater resources.
- The proposed Comprehensive Plan amendments bring the Comprehensive Plan into compliance with Goal 5 for the updated inventories that the City and County have updated and adopted.
- The proposed Comprehensive Plan amendments bring the City and the County into compliance with Goal 5 for significant groundwater resources.
- The proposed City Code amendments bring the City Code into compliance with Goal 5 for significant wetlands, riparian, and groundwater resources in order to protect these significant Goal 5 resources and address specific requirements of Goal 5.

The City of Florence Significant Wetlands and Riparian Corridors Plan adopted in this proposal as part of the Comprehensive Plan will be implemented in stages. This initial proposal includes adoption of the wetland and riparian inventory for the entire UGB and adoption of Code provisions by the City to protect riparian and wetland areas, pursuant to Statewide Goal 5. Ultimately, the County is required to adopt measures to protect wetland and riparian areas, comparable to the Goal 5 Rule requirements for safe harbor, and that will be accomplished in a separate future action.

In the interim, there is not an imminent threat to significant wetlands and riparian areas in the Florence UGB. Current regulations prohibit new subdivisions and land partitioning prior to annexation, so that major development within the UGB in the future will occur under the City's Code; and the County's Beaches and Dunes Overlay, which covers all the County lands in the UGB through the /U Combining District in Lane Code Chapter 10, requires a case-by-case Preliminary Investigation (LC 10.270-45) to identify, among other issues, "critical fish or wildlife habitat." As an interim measure, this development review process is available to the County to protect wetlands and riparian areas. The existing Lane County Code Chapter 10 requirements that prohibit land divisions prior to annexation and apply the Lane County Beaches and Dunes Overlay which applies specific protections for "critical fish and wildlife habitat is as follows:"



## **Lane Code Chapter 10: Florence Urban Growth Boundary**

### **10.122-25 Location.**

**The /U Combining District is for the purpose of reviewing land within those areas that are considered transitional and/or marginal; conditions which could either restrict and/or limit urban and semi-urban uses.**

**10.122-30 Lot Area. (1) For land within the Florence UGB that is within the North Florence Dunal Aquifer boundary, as designated by the US Environmental Protection Agency in September 1987, no land divisions shall be allowed prior to annexation to the City.**

### **OAR 660-023-0020**

#### **STANDARD AND SPECIFIC RULES AND SAFE HARBORS**

- (2) A "safe harbor" consists of an optional course of action that satisfies certain requirements under the standard process. Local governments may follow safe harbor requirements rather than addressing certain requirements in the standard Goal 5 process. For example, a jurisdiction may choose to identify "significant" riparian corridors using the safe harbor criteria under OAR 660-023-0090(5) rather than follow the general requirements for determining "significance" in the standard Goal 5 process under OAR 660-023-0030(4). Similarly, a jurisdiction may adopt a wetlands ordinance that meets the requirements of OAR 660-023-0100(4)(b) in lieu of following the ESEE decision process in OAR 660-023-0040.**

The City Code amendments for wetlands and riparian areas are consistent with this Rule because the Limited Protection Program adopted by the City:

- uses the safe harbor process for the riparian inventory for Munsel Creek, the only fish-bearing stream in the inventory, and the standard Goal 5 process under OAR 660-023-0030(4) for determining other significant riparian reaches;
- applies the safe harbor protections in Goal 5 to all significant riparian reaches in the city except the Munsel Creek side channel;
- applies the safe harbor protections to all significant wetlands in the City except where protection of the wetland conflicts with provision of public infrastructure in accordance with the City's adopted Public Facilities Plan;
- uses the ESEE decision process in OAR 660-023-0040 to address conflicts between significant wetlands and public infrastructure and between the significant riparian corridor and existing development along the Munsel Creek side channel

#### **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT (DLCD) STATEWIDE PLANNING GOAL 5 AND DEPARTMENT OF STATE LANDS (DSL) ADMINISTRATIVE RULES: WETLANDS**

#### **DLCD: OAR 660-023-0100**

**(2) ....The standard inventory process requirements in OAR 660-023-0030 do not apply to wetlands. Instead, local governments shall follow the requirements of section (3) of this rule in order to inventory and determine significant wetlands.**

**(3) For areas inside urban growth boundaries (UGBs) and urban unincorporated communities (UUCs), local governments shall:**

**(a) Conduct a local wetlands inventory (LWI) using the standards and procedures of OAR 141-086-0110 through 141-086-0240 and adopt the LWI as part of the comprehensive plan or as a land use regulation; and**

**(b) Determine which wetlands on the LWI are "significant wetlands" using the criteria adopted by the Division of State Lands (DSL) pursuant to ORS 197.279(3)(b) and adopt the list of significant wetlands as part of the comprehensive plan or as a land use regulation.**

#### **ORS 197.279**

**Approved wetland conservation plans comply with goals; exception; rules. (1) Wetland conservation plans approved by the Director of the Department of State Lands pursuant to ORS chapter 196 shall be deemed to comply with the requirements of statewide planning goals relating to other than estuarine wetlands for those areas, uses and activities which are regulated by the wetland conservation plans.**

**(3) The department shall adopt by rule:**

**(b) Criteria for cities and counties to use to determine when a wetland is a significant wetland. [1989 c.837 §25; 1995 c.472 §2]**

**DSL:**

#### **OAR 141-086-0180: PURPOSE**

**Pursuant to ORS 196.674 pertaining to the Statewide Wetlands Inventory (SWI), these rules establish a system for uniform wetland identification and comprehensive mapping. These rules also establish wetlands inventory standards for cities or counties developing a wetland conservation plan (WCP) pursuant to ORS 196.678. A Local Wetlands Inventory (LWI) is developed for all or a portion of a city or county according to the standards and guidelines contained in these rules (OAR 141-086-0180 through 141-086-0240).**

#### **OAR 141-086-0185: APPLICABILITY**

**(1) Once approved by the Department of State Lands (Department), the LWI must be used in place of the National Wetlands Inventory (NWI) and is incorporated into the SWI.**

**(2) The approved LWI must be used by cities and counties in lieu of the NWI for notifying the Department of land use applications affecting mapped wetlands and other waters (ORS 215.418 and 227.350).**

**(3) An LWI fulfills the wetlands inventory requirements for Goal 5 and Goal 17 (OAR 660-015 and 660-023). An LWI that meets the additional WCP require-**

ments specified in these rules must be used as the wetlands inventory basis for a WCP.

(4) A wetland function and condition assessment of mapped wetlands must be conducted as part of the LWI using the Oregon Freshwater Wetland Assessment Methodology (OFWAM) published by the Department in 1996. An equivalent functional assessment methodology may be used or adjustments may be made to OFWAM upon written approval by the Director. The assessment results are used to determine the relative quality (functions, values, and condition) of the mapped wetlands and to designate significant wetlands (OAR 141-086-0300 through 141-086-0350) as required for Goal 5, or to assess wetland functions and values for a WCP.

(5) An LWI is used by the Department, other agencies and the public to help determine if wetlands or other waters are present on particular land parcels.

(6) An LWI provides information for planning purposes on the location of potentially regulated wetlands and other waters such as lakes and streams, but is not of sufficient detail for permitting purposes under the state Removal-Fill Law (ORS 196.800 through 196.990)....

(7) All wetlands inventory procedures and products are subject to review and approval by the Department before the products:

- (a) Are incorporated into the SWI;
- (b) Can be used in lieu of the NWI for Wetland Land Use Notification purposes; or
- (c) Can be used by a city or county for Goal 5, Goal 17 or WCP purposes.

#### **OAR 141-086-0350: LOCALLY SIGNIFICANT WETLAND CRITERIA**

2) Mandatory LSW Criteria. A local government shall identify a wetland as locally significant if it meets one or more of the following criteria:

(a) The wetland performs any of the following functions at the levels indicated below using the Oregon Freshwater Wetland Assessment Methodology:

- (A) "Diverse" wildlife habitat; or
- (B) "Intact" fish habitat; or
- (C) "Intact" water quality function; or
- (D) "Intact" hydrologic control function.

(b) The wetland or a portion of the wetland occurs within a horizontal distance less than one-fourth mile from a water body listed by the Department of Environmental Quality as a water quality limited water body (303 (d) list), and the wetland's water quality function is described as "intact" or "impacted or degraded" using OFWAM. The 303(d) list specifies which parameters (e.g., temperature, pH) do not meet state water quality standards for each water body. A local government may determine that a wetland is not significant under this subsection upon documentation that the wetland does not provide water quality improvements for the specified parameter(s).

(c) The wetland contains one or more rare plant communities, as defined in this rule.

(d) The wetland is inhabited by any species listed by the federal government as threatened or endangered, or listed by the state as sensitive, threatened or endangered, unless the appropriate state or federal agency indicates that the wetland is not important for the maintenance of the species.

(A) The use of the site by listed species must be documented, not anecdotal. Acceptable sources of documentation may include but are not limited to: field observations at the wetland sites during the local wetlands inventory and functional assessments, and existing information on rare species occurrences at agencies such as the Oregon Natural Heritage Program, Oregon Department of Fish and Wildlife, Oregon Department of Agriculture and the U.S. Fish and Wildlife Service.

(B) Input originating from other locally knowledgeable sources constitutes "documentation" if verified by one of the above agencies or a university or college reference collection.

(e) The wetland has a direct surface water connection to a stream segment mapped by the Oregon Department of Fish and Wildlife as habitat for indigenous anadromous salmonids, and the wetland is determined to have "intact" or "impacted or degraded" fish habitat function using OFWAM.

**(3) Optional LSW Criteria.** At the discretion of the local government, wetlands that meet one or more of the following criteria may be identified as locally significant wetlands:

(a) The wetland represents a locally unique native plant community: wetland is or contains the only representative of a particular native wetland plant community in the UGB/UUC, which is only applicable if the entire UGB/UUC is inventoried. To be identified as a LSW, such a wetland must also have been assessed to perform at least one of the following functions at the levels indicated below using OFWAM:

(A) Its wildlife habitat descriptor is either "provides diverse habitat", or "provides habitat for some wildlife species"; or

(B) Its fish habitat descriptor is either "intact", or "impacted or degraded"; or

(C) Its water quality function descriptor is either "intact", or "impacted or degraded"; or

(D) Its hydrologic control function descriptor is either "intact", or "impacted or degraded".

(b) The wetland is publicly owned and determined to "have educational uses" using OFWAM, and such use by a school or organization is documented for that site.

The proposed Comprehensive Plan amendments for wetlands are consistent with Administrative Rules for DLCD and DSL because the amendments and the process:

- Amended the acknowledged plan for the area inside the Florence UGB to address the requirements of the OAR following the requirements of section (3) of the rule in order to inventory and determine significant wetlands;

- Conducted a local wetlands inventory (LWI) using the standards and procedures of OAR 141-086-0110 through 141-086-0240 pursuant to ORS 197.279(3)(b);
- Used the Oregon Rapid Wetlands Assessment Protocol (ORWAP), an equivalent functional assessment methodology, in accordance with written approval by the Director of DSL;
- Used the assessment results to determine the relative quality (functions, values, and condition) of the mapped wetlands and to designate significant wetlands (OAR 141-086-0300 through 141-086-0350) as required for Goal 5;
- Will use the DSL-approved LWI for Goal 5 and Goal 17 purposes;
- Adopted the LWI as part of the Comprehensive Plan;
- Determined which wetlands on the LWI are "significant wetlands" using the criteria approved by the Department of State Lands;
- Through adoption of proposed Plan policy, the City and County will use the DSL-approved LWI in lieu of the NWI for notifying the Department of land use applications affecting mapped wetlands and other waters in accordance with ORS 215.418 and 227.350; and
- Through adoption of Code amendments, including consistency Code amendments, the LWI will fulfill the wetlands inventory requirements for Goal 5 and Goal 17, consistent with OAR 660-015 and 660-023.

#### **DLCD: OAR 660-023-0100**

- (4) For significant wetlands inside UGBs and UUCs, a local government shall:**
- (a) Complete the Goal 5 process and adopt a program to achieve the goal following the requirements of OAR 660-023-0040 and 660-023-0050; or**
  - (b) Adopt a safe harbor ordinance to protect significant wetlands consistent with this subsection, as follows:**
    - (A) The protection ordinance shall place restrictions on grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and**
    - (B) The ordinance shall include a variance procedure to consider hardship variances, claims of map error verified by DSL, and reduction or removal of the restrictions under paragraph (A) of this subsection for any lands demonstrated to have been rendered not buildable by application of the ordinance.**

The proposed City Code amendments for significant wetlands are consistent with this Goal 5 requirement because the City completed the Goal 5 process and adopted a program to achieve the Goal following both the safe harbor requirements and the requirements of OAR 660-023-0040 and 660-023-0050 (see finding of consistency with these OAR below), by:

- adopting a Limited Protection Program that applies the safe harbor Goal 5 provisions except where there are conflicts with public infrastructure, and, consistent with OAR 660-023-0040 and 660-023-0050 addresses conflicts, through an ESEE analysis, between public infrastructure and full protection of significant wetlands;

- including standards that place restrictions on grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and
- including variance procedures to consider hardship variances, claims of map error verified by DSL, and reduction or removal of the restrictions for any lands demonstrated to have been rendered not buildable by application of the standards.

**(7) All local governments shall adopt land use regulations that require notification of DSL concerning applications for development permits or other land use decisions affecting wetlands on the inventory, as per ORS 227 .350 and 215.418, or on the SWI as provided in section (5) of this rule.**

The proposed Comprehensive Plan amendments are consistent with this administrative rule because the City and County will adopt plan policy to require notification of DSL concerning applications for development permits or other land use decisions affecting wetlands on the inventory.

## **Goal 5 Administrative Rule for Riparian Areas**

### **OAR 660-023-0090 Riparian Corridors**

- (3) Local governments shall inventory and determine significant riparian corridors by following either the safe harbor methodology described in section (5) of this rule or the standard inventory process described in OAR 660-023-0030 as modified by the requirements in section (4) of this rule. The local government may divide the riparian corridor into a series of stream sections (or reaches) and regard these as individual resource sites.**
- (4) When following the standard inventory process in OAR 660-023-0030, local governments shall collect information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors. .. Local governments are encouraged, but not required, to conduct field investigations to verify the location, quality, and quantity of resources within the riparian corridor. At a minimum, local governments shall consult the following sources, where available, in order to inventory riparian corridors along rivers, lakes, and streams within the jurisdiction:**
- (a) Oregon Department of Forestry stream classification maps;**
  - (b) United States Geological Service (USGS) 7.5-minute quadrangle maps;**
  - (c) National Wetlands Inventory maps;**
  - (d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;**
  - (e) Federal Emergency Management Agency (FEMA) flood maps; and**
  - (f) Aerial photographs.**

The Comprehensive Plan and Code amendments are consistent with this Rule because:

- The City and County have inventoried and determined significant riparian corridors by following a combined safe harbor methodology and the standard inventory process described in the Rule, divided the riparian corridor into a series of stream sections (or reaches), and regarded these as individual resource sites.
  - In using the standard inventory process in OAR 660-023-0030, the local governments collected information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors; conducted field investigations to verify the location, quality, and quantity of resources within the riparian corridor; and consulted the sources listed in the Rule as well as information provided by ODFW and the US National Marine Fisheries Service.
- (5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:..**
- (b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.**
- (c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.**
- As a safe harbor in order to address the requirements under OAR 660-023-0030, the City and County determined the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance of 50 foot from top of bank from Munsel Creek, the only fish-bearing stream in the inventory which has an average annual stream flow less than 1,000 cfs;
  - where the Munsel Creek riparian corridor includes portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.
- (6) Local governments shall develop a program to achieve Goal 5 using either the safe harbor described in section (8) of this rule or the standard Goal 5 ESEE process in OAR 660-023-0040 and 660-023-0050 as modified by section (7) of this rule.**
- (7) When following the standard ESEE process in OAR 660-023-0040 and 660-023-0050, a local government shall comply with Goal 5 if it identifies at least the following activities as conflicting uses in riparian corridors:**
- (a) The permanent alteration of the riparian corridor by placement of structures or impervious surfaces, except for:**
- (A) Water-dependent or water-related uses; and**



- (B) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area; and
- (b) Removal of vegetation in the riparian area, except:
  - (A) As necessary for restoration activities, such as replacement of vegetation with native riparian species;
  - (B) As necessary for the development of water-related or water-dependent uses;...

The Code amendments are consistent with this Rule because the City developed a program to achieve Goal 5 using both the safe harbor and the standard Goal 5 ESEE process that includes the provisions related to the permanent alteration of the riparian corridor by placement of structures or impervious surfaces, except for the uses specified in the Rule.

- (8) As a safe harbor in lieu of following the ESEE process requirements of OAR 660-023-0040 and 660-023-0050, a local government may adopt an ordinance to protect a significant riparian corridor as follows:
  - (a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:
    - (A) Streets, roads, and paths;
    - (B) Drainage facilities, utilities, and irrigation pumps;
    - (C) Water-related and water-dependent uses; and
    - (D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.
  - (b) The ordinance shall contain provisions to control the removal of riparian vegetation, except that the ordinance shall allow:
    - (A) Removal of non-native vegetation and replacement with native plant species; and
    - (B) Removal of vegetation necessary for the development of water-related or water-dependent uses;
  - (d) The ordinance shall include a procedure to consider hardship variances, claims of map error, and reduction or removal of the restrictions under subsections (a) and (b) of this section for any existing lot or parcel demonstrated to have been rendered not buildable by application of the ordinance; ...

The Code amendments and Limited Protection Program comply with this Rule because the Code standards contain all of the required provisions.

## **Goal 5 Administrative Rules: ESEE Analysis**

### **660-023-0040 ESEE DECISION PROCESS**



**(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:**

- (a) Identify conflicting uses;**
- (b) Determine the impact area;**
- (c) Analyze the ESEE consequences; and**
- (d) Develop a program to achieve Goal 5.**

**(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:**

- (a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)**
- (b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).**

**(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.**

**(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct**

a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

**(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:**

**(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.**

**(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.**

**(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.**

The City Code Amendments, ESEE Analysis, and Limited Protection Program in the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan (2013 Plan) are consistent with this Rule because:

- The 2013 Plan documents the procedures used to complete the Goal 5 process and the 2013 Plan is adopted as part of the Comprehensive Plan.
- The City Code amendments, ESEE, and Limited Protection Program described in the 2013 Plan followed the steps in the Rule, i.e., identified conflicting uses; determined the impact area; analyzed the ESEE consequences; and developed a program to achieve Goal 5.
- The City developed a program to achieve Goal 5 by limiting conflicting uses for significant resource sites; and this decision is based upon and supported by the ESEE analysis in Chapter 3 of the 2013 Plan: ESEE Analysis for Public Facilities and the Munsel Creek Side Channel.

- The decision to limit conflicting uses protects significant wetlands and riparian corridors and is supported by the ESEE analysis.
- The determination was reached that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

#### **OAR 660-023-0050: PROGRAMS TO ACHIEVE GOAL 5**

**(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).**

**(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:**

- (a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;**
- (b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or**
- (c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).**

**(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:**

- (a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and**
- (b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040 (5) and 660-023-0050(1).**

The proposals are in compliance with this Rule because the City will adopt City Code amendments that:

- implement the Limited Protection Program in the 2013 Plan;
- describe the degree of protection intended for each significant resource site;
- clearly identify those conflicting uses that are allowed (public infrastructure in the adopted Public Facilities Plan in significant wetlands and a 50% setback reduction along the Munsel Creek side channel) and the specific standards or limitations that apply to the allowed uses; and the standards are included in zoning measures that allow the conflicting uses. In the case of the side channel, specific criteria for replanting displaced native plants apply.
- contain clear and objective standards (i.e., a 50% setback reduction for the side channel; and to allow public infrastructure in significant wetlands)
- include incentives to encourage preservation, maintenance and restoration of significant wetlands and riparian areas.
- allow for landowners to choose proceeding under either the clear and objective approval process through Administrative Review; or through a Plan Amendment Option or Variance process with a required level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040 (5) and 660-023-0050(1).

#### **OAR 660-023-0140: GROUNDWATER RESOURCES**

**(2) Local governments shall amend acknowledged plans prior to or at each periodic review in order to inventory and protect significant groundwater resources under Goal 5 only as provided in sections (3) through (5) of this rule. Goal 5 does not apply to other groundwater areas, although other statewide Goals, especially Goals 2, 6, and 11, apply to land use decisions concerning such groundwater areas. Significant groundwater resources are limited to:**

**(b) Wellhead protection areas, subject to the requirements in sections (4) and (5) of this rule instead of the requirements in OAR 660-023-0030 through 660-023-0050.**

The adoption of the 2013 Aquifer Protection Plan and Comprehensive Plan amendments by the City and the County bring these local governments into compliance with Goal 5 for groundwater resources because:

- The local governments will amend the acknowledged plan to inventory and protect the Wellhead Protection Area, aka Drinking Water Protection Area (DWPA), for the existing wellfield, which is a significant groundwater resource under Goal 5;
- The DWPA for the proposed wellfield is protected under Goals 2, 6, and 11, as demonstrated in these Findings;
- The DWPA for the existing wellfield is a significant groundwater resource subject to the requirements in sections (4) and (5) of this rule instead of the requirements in OAR 660-023-0030 through 660-023-0050.

**(4) A local government or water provider may delineate a wellhead protection area for wells or wellfields that serve lands within its jurisdiction. For the delineation of wellhead protection areas, the standards and procedures in OAR chapter 333, division 61 (Oregon Health Division rules) shall apply rather than the standards and procedures of OAR 660-023-0030.**

**(5) A wellhead protection area is a significant groundwater resource only if the area has been so delineated and either:**

**(a) The public water system served by the wellhead area has a service population greater than 10,000 or has more than 3,000 service connections and relies on groundwater from the wellhead area as the primary or secondary source of drinking water; or...**

**(6) Local governments shall develop programs to resolve conflicts with wellhead protection areas described under section (5) of this rule. In order to resolve conflicts with wellhead protection areas, local governments shall adopt comprehensive plan provisions and land use regulations, consistent with all applicable statewide goals, that:**

**(a) Reduce the risk of contamination of groundwater, following the standards and requirements of OAR Chapter 340, Division 40; and**

**(b) Implement wellhead protection plans certified by the Oregon Department of Environmental Quality (DEQ) under OAR 340-040-0180.**

## **DEQ WELLHEAD PROTECTION ADMINISTRATIVE RULES**

### **OAR 340-040-0170**

#### **Required Elements of A Wellhead Protection Plan**

**(1) A Wellhead Protection Plan shall contain and address the following seven elements:**

**(a) Specification of Duties:**

**(A) The Plan shall identify all the Responsible Management Authorities within a Wellhead Protection Area. The jurisdictional boundaries of each Responsible Management Authority shall be shown on a map;**

**(B) For each Responsible Management Authority identified, the expectations, their respective responsibilities, and the duties they will perform with regards to implementing the Plan must be identified;**

**(C) The Plan shall either:**

**(i) Have all Responsible Management Authorities in the Wellhead Protection Area sign the Wellhead Protection Plan indicating that they will implement the actions outlined for their jurisdiction in the Plan; or**

**(ii) Describe the procedure used to notify and attempt to involve those Responsible Management Authorities not willing to sign the Plan.**

**(b) Delineation of Wellhead Protection Areas:** Delineation of Wellhead Protection Areas shall occur as described under Health Division's rules under OAR 333-061-0057(1)(i).

**(c) Inventory of Potential Contaminant Sources:** After delineation of the Wellhead Protection Area, an inventory identifying the potential sources of contamination within the Wellhead Protection Area shall be completed. The inventory shall be designed to identify:

**(A) Past practices** which may have resulted in a potential threat to the groundwater;

**(B) Those potential sources of contamination** presently existing; and

**(C) Those potential sources** which may exist in the future.

**(d) Management of Potential Sources of Contamination:**

**(A) For those potential sources of contamination** identified under the inventory element of paragraphs (1)(A)(B)(C) of this rule, the Plan shall identify the management action to be employed to reduce the risk of contamination to the groundwater from those source(s) and justification for the proposed management actions and level of protection provided;

**(B) The Plan must identify the process** used to address unanticipated potential sources of contamination that may locate within the Wellhead Protection Area, how the source will be evaluated for acceptability within the area, and how the management actions identified in the Plan for reducing the risk of contamination will be implemented;

**(C) Any management plans** that directly regulate farming practices for the purpose of protecting water quality on agricultural lands within a Wellhead Protection Area shall be developed and implemented by the Oregon Department of Agriculture in accordance with Oregon Department of Agriculture authorities.

**(e) Contingency Plan:** Development of contingency plans for Wellhead Protection Areas shall be in accordance with Health Division rules under OAR 333-061-0057(3);

**(f) Siting of New Public Water System Wells or Springs:** Siting of new public water system wells or springs shall be in accordance with Health Division rules under OAR 333-061-0057(2);

**(g) Public Participation:** A description of the public participation efforts shall be included in the Plan, including:

**(A) Documentation** that property owners and residents within the Wellhead Protection Area were notified of the development of a Wellhead Protection Plan. Notification at a minimum shall include publication of the intent to develop a Wellhead Protection Plan in a local newspaper, and a description of the process for developing and participating in the development of the Wellhead Protection Plan;

**(B) Formation of a Team** to develop the Plan. The Team can either be a new group formed for the specific purpose of developing a Plan or it can be an existing group that is assigned the additional duty of developing a Plan;

- (C) Description of steps taken to provide opportunity for various interests within the affected area to participate;
- (D) Documentation that all local public hearing procedures were followed in developing and adopting the Plan.

#### **340-040-0180: CERTIFICATION PROCEDURE**

- (1) For a Wellhead Protection Plan to be certified by the Department, the Plan must meet requirements specified in OAR 340-040-0170.
- (2) The Department shall act as the contact point for development and approval of Wellhead Protection Plans. The Department shall coordinate with other governmental entities so that the Plan is consistent with the requirements of those governmental entities before Department certification of the Plan is granted.
- (3) The Health Division shall be responsible for certifying the delineation, and reviewing contingency plans and the new wells elements of the Plan as provided for under OAR 333-061-0020 through OAR 333-061-0065. The Department shall accept the Health Division's recommendations and certification.
- (4) After consultation with the Department of Agriculture on agricultural issues, the Department of Land Conservation and Development on land use issues, the Health Division, and other governmental entities as appropriate, the Department shall be responsible for reviewing the remaining elements and giving the overall certification for each local Wellhead Protection Plan if each element is found to be adequately addressed.
- (5) Within 60 days of the receipt of a request for certification of a Wellhead Protection Plan, the Department will send a written acknowledgment of receipt of the request and an estimated date for Department review and certification of the Plan.
- (6) After certification of the plan, the Department will provide a written certification of completion to all signatories to the Plan.

The proposal is consistent with these rules as demonstrated in the findings below and the text of the proposed Aquifer Protection Plan for the North Florence Sole Source Dunal Aquifer (incorporated into these findings) because:

- The proposal amends the acknowledged plan in order to inventory and protect the Drinking Water Protection Area (DWPA) for the City's existing wellfield, which is a significant groundwater resource under Statewide Planning Goal 5.
- The City delineated the wellhead protection area for the wellfields that serve lands within its jurisdiction in accordance with the standards and procedures in OAR Chapter 333, Division 61; and the Oregon Health Authority certified the delineations as follows:

"The delineation of the capture zones for the current City of Florence wellfield meets the above requirements and is therefore certified collectively as Oregon Health Authority Drinking Water Program (OHA DWP) Delineation Certificate #0016. The delineation of capture zones for the proposed wellfield by OHA definition is a provisional delineations and cannot be included as part of this certifica-



tion. Instead, OHA approves of the use of the provisional delineation for protection of possible future drinking water resources.”

- The DWPA for the proposed wellfield is protected under Goals 2, 6, and 11, in accordance with Goal 5.
- The DWPA for the existing wellfield is a significant groundwater resources because:
  - the DWPA was certified by the Oregon Health Authority consistent with the requirements in sections (4) and (5) of this rule;
  - the City’s water system served by the wellhead area has more than 3,000 service connections, and relies on groundwater from the wellhead area as the primary (sole) source of drinking water.
- The City and County have jointly adopted the Aquifer Protection Plan for the North Florence Sole Source Dunal Aquifer and Comprehensive Plan policies and the City has adopted a Drinking Water Protection Overlay Zone, consistent with all applicable statewide goals, that reduce the risk of contamination of groundwater, following the standards and requirements of OAR chapter 340, division 40; and implement wellhead protection plans certified by the Oregon Department of Environmental Quality (DEQ) under OAR 340-040-0180.

## **GOAL 6: AIR, WATER, AND LAND RESOURCES QUALITY**

**To maintain and improve the quality of the air, water and land resources of the state.**

**All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources.**

**Waste and Process Discharges -- refers to solid waste, thermal, noise, atmospheric or water pollutants, contaminants, or products therefrom. Included here also are indirect sources of air pollution which result in emissions of air contaminants for which the state has established standards.**

The proposed Aquifer Protection Plan (Plan), Comprehensive Plan policies, and City Drinking Water Protection Overlay Zone (Overlay) are consistent with and implement this Goal because they maintain and improve the quality of the groundwater resources in the North Florence Sole Source Dunal Aquifer, the sole source of drinking water in Florence, as follows:

- The North Florence Dunal Aquifer was designated a sole source aquifer by the EPA in September 1987. In designating the aquifer sole source, the September 1987 EPA Resource Document states:



“Potential for Contamination: Rapid infiltration rates into the sand cover combined with a shallow water table make the North Florence Dunal Aquifer highly susceptible to contamination from surface activity. Despite the relatively rapid flow of groundwater through the aquifer, water soluble contaminants introduced near the surface may remain in the ground water system for nearly 60 years.<sup>1</sup> Immiscible contaminants, such as petroleum distillates, would spread rapidly if spilled onto the permeable sand cover but would resist flushing by natural ground water flow.

Possible sources of aquifer contamination include fuel storage tank failure, accidental spills of hazardous material transported across the aquifer, septic tank effluent, storm runoff, pesticides, and chemical fertilizers. The lakes located along the eastern margin of the dunal area would suffer from any contaminants introduced into that portion of the aquifer which recharges the lakes. Direct leaching from septic tanks located in sand-covered areas adjacent to the lakes could seriously downgrade the quality of Clear Lake – the only surface source of drinking water presently used in the area.<sup>2</sup> Localized over-pumping of the aquifer near the ocean could result in saltwater intrusion. However, population projects by the Lane County Planning Staff suggest that such overdrafts are unlikely.”

- The Aquifer Protection Plan contains management strategies such as public education, technical assistance, Comprehensive Plan and City Code amendments, and other management strategies that represent community-based approaches to protect the aquifer from identified existing and future Potential Contaminant Sources, consistent with the Oregon Department of Environmental Quality (DEQ) and Oregon Health Authority Rules for Source Water Protection Plans.
- Proposed Comprehensive Plan policies 6 and 7 address contamination threats from on site septic systems by specifically implementing OAR 340-071-0160 requirements for municipal wastewater systems to serve development within a UGB when the service is physically and legally available as those terms are defined in the OAR:

**“DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION 71  
ONSITE WASTEWATER TREATMENT SYSTEMS**

**OAR 340-071-0160: Permit Application Procedures -- Construction, Installation, Alteration, and Repair Permits**

**(2) Application. A completed application for a (septic) construction, installation, alteration, or repair permit must be submitted to the appropriate agent on approved forms with all required exhibits the applicable permit application fee in OAR 340-071-0140(3). Applications that are not completed**

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<sup>1</sup> Christensen, R. and Rosenthal, G., 1982, North Florence Dunal Aquifer Study: Lane Council of Governments, Eugene, Oregon, 174 p.

<sup>2</sup> Christensen, R., 1985, Phosphorous Accumulation in the Clear Lake Watershed: Lane County Land Management Division of the Department of Public Works, 81 p.

in accordance with this section will not be accepted for filing. Except as otherwise allowed in this division, the exhibits must include:...

(b) A land use compatibility statement from the appropriate land use authority signifying that the proposed land use is compatible with the Land Conservation and Development Commission-acknowledged comprehensive plan or complies with the statewide planning goals....

(4) Permit denial. The agent must deny a (septic) permit if any of the following occurs.

(f) A sewerage system that can serve the proposed sewage flow is both legally and physically available, as described in paragraphs (A) and (B) of this subsection.

(A) Physical availability.

(i) A sewerage system is considered available if topographic or man-made features do not make connection physically impractical and one of the following applies.

(I) For a single family dwelling or other establishment with a maximum projected daily sewage flow not exceeding 899 gallons, the nearest sewerage connection point from the property to be served is within 300 feet.

(II) For a proposed subdivision or group of two to five single family dwellings or other establishment with the equivalent projected daily sewage flow, the nearest sewerage connection point from the property to be served is not further than 200 feet multiplied by the number of dwellings or dwelling equivalents.

(III) For proposed subdivisions or other developments with more than five single family dwellings or equivalent flows the agent will determine sewerage availability.

(B) Legal availability. A sewerage system is deemed legally available if the system is not under a department connection permit moratorium and the sewerage system owner is willing or obligated to provide sewer service.”

- The Drinking Water Protection Overlay Zone protects the City’s proposed well-field from hazardous materials that could degrade the resource and threaten the availability of the resource to meet the drinking water needs of the City in the future.
- Comprehensive Plan policy 8 provides a process for the City and County to coordinate to help prevent contamination of the proposed wellfield from Dense Non-aqueous Phase Liquids (DNPLs) which can cause the City to abandon the well-field.

## **GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS**

**To protect people and property from natural hazards.**

## **A. NATURAL HAZARD PLANNING**

- 1. Local governments shall adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property from natural hazards.**
- 2. Natural hazards for purposes of this goal are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires. Local governments may identify and plan for other natural hazards.**

The Code amendments for wetlands and riparian areas amend portions of Chapter 7 of the Code – Special Development Standards – that implement the requirements of Goal 7. The amendments are consistent with this Goal because they protect the flood control functions and values of significant wetlands and riparian areas and they do not affect provisions for other natural hazards.

## **GOAL 9: ECONOMIC DEVELOPMENT**

**To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.**

**Comprehensive plans for urban areas shall:**

- 1. Include an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends;**
- 2. Contain policies concerning the economic development opportunities in the community;**
- 3. Provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies;**
- 4. Limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses.**

The proposals are consistent with this Goal because they do not affect the supply of industrial or commercial sites in the UGB as specifically stated below.

The proposed City Code amendments for wetlands and riparian areas are consistent with Goal 9 because they enhance the economic development potential of employment lands by applying the City's existing Stormwater Buffer Zone to significant wetlands over ½ acre (instead of all wetlands) and to significant riparian areas (instead of all riparian areas); by providing for setback adjustments and Variances when properties are rendered unbuildable; and providing a Plan Amendment Option to address conflicts with the economic development potential of properties.

The proposed Aquifer Protection Plan is consistent with this Goal because it provides for public education and technical assistance to businesses to help them protect the aquifer; and protection of the aquifer, the City's sole drinking water source, is essential for

all economic activity in the city. The Overlay Zone does not prohibit specific economic activity; it regulates the use and storage of hazardous materials through future land use permit application processes. No land uses are prohibited by the Overlay and the City's business assistance program (in the Aquifer Protection Plan) is designed so that the City will assist businesses in complying with the requirements of the Overlay.

## **GOAL 10: HOUSING**

**To provide for the housing needs of citizens of the state.**

**Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.**

The proposal is also consistent with Goal 10 because it does not affect the supply of buildable residential lands: the 2013 Wetland and Riparian Inventory replaces the existing adopted 1997 Inventory and the two are nearly identical in the area covered by the regulations; and the Overlay Zone does not apply to residential land uses.

The proposed City Code amendments for wetlands and riparian areas are consistent with Goal 10 because they enhance development potential of residential lands by applying the City's existing Stormwater Buffer Zone to significant wetlands over ½ acre (instead of all wetlands) and to significant riparian areas (instead of all riparian areas); by providing for setback adjustments and Variances when properties are rendered unbuildable; and providing a Plan Amendment Option to address conflicts with the residential development potential of properties.

## **GOAL 11: PUBLIC FACILITIES AND SERVICES**

**To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.**

The proposals are consistent with Goal 11 because they result in a timely, orderly, and efficient arrangement of public facilities and services for urban development as follows:

- The Limited Protection Program results in an allowance for public facilities that are part of the adopted Public Facilities Plan to be constructed in significant wetlands.
- Public and private facilities are allowed by Goal 5 in significant riparian areas and this is reflected in the proposed Code.
- The proposed wellfield is adopted as part of the Public Facility Plan and the Comprehensive Plan policies, Aquifer Protection Plan, and Overlay Zone protect the proposed wellfield for use by future residents and businesses of Florence.

## **Goal 12: Transportation**

To provide and encourage a safe, convenient and economic transportation system.

OAR 660-012-0060

### **Plan and Land Use Regulation Amendments**

**(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:**

**(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**

**(b) Change standards implementing a functional classification system; or**

**(c) As measured at the end of the planning period identified in the adopted transportation system plan:**

**(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**

**(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or**

**(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.**

The proposals are consistent with Goal 12 and these provisions in the Transportation Planning Rule because the proposals do not significantly affect a transportation facility, as follows:

(a) They will not cause a change in the functional classification of an existing or planned transportation facility;

(b) they do not change standards implementing a functional classification system; or

(c) as measured at the end of the planning period identified in the adopted transportation system plan:

(A) they do not allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) they do not reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) they do not worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

## **GOAL 16: ESTUARINE RESOURCES**

**To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.**

The housekeeping amendment to FCC Title 10 Chapter 19 makes the Code consistent with Statewide Planning Goal 16 by replacing the phrase “and it is not possible to locate the use on an upland site” with “In approving these uses, the City shall consider the potential for using upland sites to reduce or limit the commitment of the estuarine surface area for surface uses.” The amendment is consistent with the direction in Goal 16:

**“Oregon’s Statewide Planning Goals & Guidelines, GOAL 16: ESTUARINE RESOURCES, OAR 660-015-0010(1) Management Units As a minimum, the following kinds of management units shall be established:... 3. Development: ... As appropriate the following uses shall also be permissible in development management units: ... Where consistent with the purposes of this management unit and adjacent shorelands designated especially suited for water-dependent uses or designated for waterfront redevelopment, water-related and nondependent, nonrelated uses not requiring dredge or fill; mining and mineral extraction; and activities identified in (1) and (2) above shall also be appropriate. In designating areas for these uses, local governments shall consider the potential for using upland sites to reduce or limit the commitment of the estuarine surface area for surface uses.”**

## **GOAL 17: COASTAL SHORELANDS**

**To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon’s coastal shorelands.**

The proposals are consistent with Goal 17 as follows:

- The proposals do not affect Goal 17 management units, except that the consistency Code amendment to FCC 10-19-9 Prime Wildlife District makes the Code consistent with the proposed Comprehensive Plan and Code amendments as well as Statewide

Planning Goal 2 (Land Use) and Goal 17 (Coastal Shorelands) by relying on the most recent inventory and assessment data for determining the boundaries and assessment of the management unit.

- The 2013 Plan addresses the significance of wetlands and riparian areas under Statewide Planning Goal 5. Wetlands that are regulated under Statewide Planning Goal 17, Coastal Shorelands, are not subject to Goal 5 significance or protection. In the Florence UGB, Goal 17 resources are identified in the Lane County Coastal Resources Inventory, the Management Unit descriptions in the Florence Comprehensive Plan, and in the Coastal Shorelands standards in Florence City Code Title 10 Chapter 19.
- As provided in Goal 5, the local wetland inventory and assessment (2013 LWI) will be used to update the general location and assessment of the South Heceta Junction Seasonal Lakes Goal 17 wetlands. This is necessary because the 2013 LWI is more current and precise and the general location of these wetlands in the 1978 Management Unit does not align with the general wetland location in the 2013 LWI, as described in detail in the "Statewide Planning Goals 5 and 17" section of Chapter 2 and "Consistency Code Amendments" in Chapter 4 of the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan, proposed for adoption as part of the Comprehensive Plan.

## **LANE COUNTY RURAL COMPREHENSIVE PLAN – PART 1, SECTION D**

### **D. CITIES, COMMUNITIES AND RURAL LANDS**

**While the Policies in this document are directed at Lane County government, it is clearly recognized that the County has a responsibility to, and must coordinate efforts closely with, the incorporated cities within its boundaries. Statewide planning law requires that each incorporated city develop and adopt its own land use plan which must itself comply with LCDG Goals. The plan must contain essentially the same elements as the County General Plan, with an additional element of an identified Urban Growth Boundary (required by Goal 14). Future urban growth for each city is to take place within that Boundary. In the case of the Eugene-Springfield Metropolitan Area Plan, a mutual Boundary is adopted by both cities and the County. For all other cities, the County must ratify the cities UGBs by independent evaluation of, and adoption of, appropriate city plan provisions.**

**Through this method, the County becomes responsible for administering the provisions of city plans within the city UGBs but outside of the corporate city limits. "Joint Agreements for Planning Coordination" drawn up between the County and each city lay the framework for cooperative action in the effort. Policies concerning Goal 14 in this document further indicate County" posture toward city plans. County adoption of city plans--or amendments thereto--ensures that conflicts between city plans and County Plan do not readily occur.**

The proposal is consistent with the Lane County Rural Comprehensive Plan because Lane County will co-adopt the Comprehensive Plan amendments in Exhibit B.

## **LANE CODE**

### **Comprehensive Plan**

#### **12.050 Method of Adoption and Amendment.**

**(1) The adoption of the comprehensive plan or an amendment to such plan shall be by an ordinance. (2) The Board may amend or supplement the comprehensive plan upon a finding of:**

- (a) an error in the plan; or**
- (b) changed circumstances affecting or pertaining to the plan; or**
- (c) a change in public policy; or**
- (d) a change in public need based on a reevaluation of factors affecting the plan; provided, the amendment or supplement does not impair the purpose of the plan as established by LC 12.005 above.**

The proposal is consistent with this Lane Code section because the adoption of the amendments to the Florence Comprehensive Plan are by ordinance based on findings of changed circumstances, change in public policy, change in public need related to aquifer protection and wetlands and riparian resources, and housekeeping and consistency amendments.

#### **14.300 De Novo Hearing Procedure.**

**All applications or appeals, unless otherwise specified, subject to this Section shall be reviewed as follows:**

##### **(1) Hearing Deadlines.**

**(c) An application for review by the Planning Commission and a subsequent action by the Board, if accepted by the Director, shall be scheduled as follows:**

- (i) The Planning Commission hearing shall be no sooner than 45 days from the date of application acceptance and no later than 60 days from the date of application acceptance.**
- (ii) The Board hearing shall be no sooner than 60 days from the date of application acceptance and no later than 75 days from the date of application acceptance.**

**(2) Publication of Notice. For a zone change application and/or plan amendment application, the Department shall cause to be published in a newspaper of general circulation, at least 21 days in advance of the hearing, a notice of the hearing which contains the information required by LC 14.070(2) above.**

The proposal is consistent with this Lane Code section because the adoption of the amendments to the Florence Comprehensive Plan were subject to public hearings before the Planning Commission and Board in accordance with the above schedule; and notice of the plan amendment was published in the Siuslaw News and Eugene Register-Guard at least 21 days in advance of the hearings, as stated in these findings. The proposed Comprehensive Plan amendments are legislative and therefore not subject to the quasi-judicial notice requirements of state law otherwise referenced in this Code.



**(7) Order of Procedure. In the conduct of a public hearing, and unless otherwise specified by the Approval Authority, the Approval Authority shall:...**

The proposal is consistent with this Lane Code section because the adoption of the amendments to the Florence Comprehensive Plan followed the procedures in this section.

**(8) Decision and Findings Mailing. Within two days of the date that the written decision adopting findings is signed by the Approval Authority, the Director shall mail to the applicant, and all parties of record, a copy of the decision and findings; or if the decision and findings exceed five pages, the Director shall mail notice of the decision.**

The proposal is consistent with this Lane Code section because the adoption of the amendments to the Florence Comprehensive Plan will include notice to the applicant, the City of Florence.

## **RURAL COMPREHENSIVE PLAN AMENDMENTS**

### **RURAL COMPREHENSIVE PLAN**

**(6) Plan Adoption or Amendment - General Procedures. The Rural Comprehensive Plan, or any component of such Plan, shall be adopted or amended in accordance with the following procedures:**

**(a) Referral to Planning Commission. Before the Board takes any action on a Rural Comprehensive Plan component, or an amendment to such Plan component, a report and recommendation thereon shall be requested from the County Planning Commission and a reasonable time allowed for the submission of such report and recommendation. In the event the Rural Comprehensive Plan component, or amendment applies to a limited geographic area, only the Planning Commission having jurisdiction of that area need receive such referral.**

The proposal is consistent with this Lane Code section because the adoption of the amendments was referred to the Planning Commission for public hearing.

**(b) Planning Commission - Hearing and Notice.**

**(i) The Planning Commission shall hold at least one public hearing before making a recommendation to the Board on a Rural Comprehensive Plan component, or an amendment to such Plan component, and the hearing shall be conducted pursuant to LC 14.300.**

The proposal is consistent with this Lane Code section because the Planning Commission held at least one hearing on adoption of the amendments to the Florence Comprehensive Plan before making a recommendation to the Board and the hearing was conducted pursuant to LC 14.300.

**(ii) Notice of the time and place of hearing shall be given, pursuant to LC 14.300.**

**(iv) The proposed Rural Comprehensive Plan component, or an amendment to such Plan component, shall be on file with the Director and available for public examination for at least 10 days prior to the time set for hearing thereon.**

**(c) Planning Commission - Consideration With Other Agencies.**

**(i) In considering a Rural Comprehensive Plan component, or an amendment to such Plan component, the Planning Commission shall take account of and seek to harmonize, within the framework of the needs of the County, the Plans of cities, and the Plans and planning activities of local, state, federal and other public agencies, organizations and bodies within the County and adjacent to it.**

**(ii) The Planning Commission, during consideration of a Rural Comprehensive Plan component or an amendment to such Plan component, shall consult and advise with public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens generally to the end that maximum coordination of Plans may be secured.**

**(iii) Whenever the Planning Commission is considering a Rural Comprehensive Plan component, or an amendment to such Plan component, it shall be referred to the planning agency of every city and county affected to inform them and solicit their comments.**

**(iv) The provisions of this subsection are directory, not mandatory, and the failure to refer such Plan, or an amendment to such Plan, shall not in any manner affect its validity.**

The proposal is consistent with this Lane Code section because the notice and referrals for adoption of the amendments to the Florence Comprehensive Plan were conducted in accordance with this section.

**(d) Planning Commission - Recommendation and Record.**

**(i) Recommendation of the Planning Commission on a Rural Comprehensive Plan component, or an amendment to a Plan component, shall be by resolution of the Commission and carried by the affirmative vote of not less than a majority of its total voting members.**

**(ii) The record made at the Planning Commission hearings on a Rural Comprehensive Plan component, or an amendment to such Plan component and all materials submitted to or gathered by the Planning Commission for its consideration, shall be forwarded to the Board along with the recommendation.**

**(e) Board Action - Hearing and Notice.**

**(i) After a recommendation has been submitted to the Board by the Planning Commission on the Rural Comprehensive Plan component, or an amendment to such Plan component, all interested persons shall have an opportunity to be heard thereon at a public hearing before the Board conducted pursuant to LC 14.300.**

(ii) Notice of the time and place of the hearing shall be given pursuant to LC 14.300.

**(h) Method of Adoption and Amendment.**

(i) The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.

(iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings:

(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

(bb) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:

(i-i) necessary to correct an identified error in the application of the Plan; or

(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or

(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or

(iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; or

(v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.

**(8) Additional Amendment Provisions.** In addition to the general procedures set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components.

**(b) Amendment proposals, either minor or major, may be initiated by the County or by individual application. Individual applications shall be subject to a fee established by the Board and submitted pursuant to LC 14.050.**

The proposal is consistent with this Lane Code section because adoption of the amendments to the Florence Comprehensive Plan was supported by a majority of the Lane County Planning Commission. Further, the proposal was adopted by ordinance by the Lane County Board of Commissioners based on findings of changed circumstances, change in public policy, change in public need related to aquifer protection and wetlands and riparian resources, and housekeeping and consistency amendments.

## **VI. CONCLUSIONS**

City of Florence Ordinance No. 2, Series 2013 and Lane County Ordinance No. PA 1299 and the proposed legislative amendments to the Comprehensive Plan in **Exhibit B** are consistent with the Florence Realization 2020 Comprehensive Plan, Florence City Code, Lane County Rural Comprehensive Plan, Lane Code, Oregon Revised Statutes, and Statewide Planning Goals and associated Administrative Rules.

City of Florence Ordinance No. 2, Series 2013 and Lane County Ordinance No. PA 1299 and the proposed legislative and quasi-judicial amendments to the City Code in **Exhibit C** are consistent with the Florence Realization 2020 Comprehensive Plan, Florence City Code, Oregon Revised Statutes, and Statewide Planning Goals and associated Administrative Rules.

**EXHIBIT B**  
**TO CITY OF FLORENCE ORDINANCE NO. 2 SERIES 2013**  
**AND LANE COUNTY ORDINANCE NO. PA 1299**  
**Proposed Amendments to the Florence Realization 2020 Comprehensive Plan for**  
**Aquifer Protection and Wetlands and Riparian Corridors**  
**August 6, 2013**

Unless noted otherwise, proposed additions are shown in double underline and deletions in strike-out.

**1. AQUIFER PROTECTION**

- a. **Amend Florence Comprehensive Plan Chapter 5 to protect groundwater resources for consistency with state law and to adopt the Aquifer Protection Plan.**

**Florence Comprehensive Plan**  
**Chapter 5: Open Spaces and Scenic, Historic, and Natural Resources**

**Groundwater Resources**

**Goal**

To protect the quality and quantity of the North Florence Dunal Aquifer, which has been designated a sole source aquifer by the Federal Environmental Protection Agency and which serves as a drinking water source for the City of Florence.

**Objectives**

1. To maintain recharge of the aquifer.
2. To protect the quality of water that recharges the aquifer.
3. To provide watershed/wellhead protection measures to protect water quality in the aquifer.
4. To protect the drinking water of the City of Florence.

**Policies**

1. The City shall implement the recommendations of the Stormwater management Plan regarding protection of the aquifer for the City's wellfield(s).

~~The City shall prepare and adopt a Wellhead Protection Program to protect the aquifers for the existing and potential wellfields, that supply drinking water for the residents of the City.~~

2. The City shall implement the 2013 *Aquifer Protection Plan for the North Florence Sole Source Dunal Aquifer (Aquifer Protection Plan)*, as amended and certified by the Oregon Department of Environmental Quality (DEQ) and the Oregon Health Authority (OHA). The Aquifer Protection Plan shall be implemented by: the policies in this Comprehensive Plan; Florence City Code provisions, including a Drinking Water Protection Overlay Zone; and City programs, as resources allow.
3. All portions of the *Aquifer Protection Plan*, except the Contingency Plan, are adopted as a supporting document to this Comprehensive Plan; and the Plan will be located in Appendix 5 of the Comprehensive Plan.
4. The "Certified Wellhead Delineations Report," (Delineations Report) February 2012, prepared by GSI Water Solutions, Inc. and certified by the Oregon Health Authority, is adopted into this Comprehensive Plan and is physically located in Appendix 5. The Delineations, including all Time of Travel Zones (TOTZ), shall serve as the drinking water source inventory for the City of Florence. The maps in the Delineations Report of Drinking Water Protection Areas (DWPAs) for the existing and proposed wellfield are adopted as part of this Comprehensive Plan. The City shall use the map of the delineated DWPA for the proposed wellfield as the reference map for the Drinking Water Protection Overlay Zone.
5. The DWPA, including all delineated TOTZ, for the existing wellfield is a significant groundwater resource as that term is defined by Statewide Planning Goal 5. The DWPA, including all delineated TOTZ, for the proposed wellfield shall be protected through application of Statewide Planning Goal 2, Land Use; Goal 6, Air, Water and Land Resources Quality; and Goal 11, Public Facilities and Services.
6. Prior to issuing new or replacement septic permits, Lane County shall request the City to inform the County in writing whether municipal wastewater service is "physically and legally available," as those terms are defined in OAR 340-071-0160.
7. Consistent with policies in this Comprehensive Plan, the City shall implement state law that requires the City to provide municipal wastewater services at the time a new or replacement septic system permit is applied for, if the municipal service is physically and legally available, as prescribed in Comprehensive Plan policies and OAR 340-071-0160.
8. As part of the land use referral process under the existing Joint Agreement for Planning Coordination between the City of Florence and Lane County, the County and the City will work cooperatively to discourage the use of Dense Non-aqueous Phase Liquids (DNAPLs) by commercial and industrial busi-

nesses in the 20 year Time of Travel Zone for the proposed wellfield. The City will respond to the referral response for permits in this area by providing information on the effects of DNAPLs in wellfields and on alternative chemicals that may be appropriate for the proposed land use.

## **Recommendations**

~~The City should explore funding sources for delineation of the aquifer for the current wellfield, as well as a more precise estimation of the extent of the aquifers for the potential wellfields identified by Brown and Caldwell.~~

2.1. The City should continue to support attempts by Heceta Water District and Lane County to protect the water quality of Clear and Collard Lakes.

~~The City should identify possible contaminants in the areas of the aquifers, and identify alternative sites for those businesses, if possible, and/or work with the County and those businesses to reduce the use of and to provide for safe disposal of potential contaminants.~~

2. The City should continue to work with the Lane County and the Oregon Department of Environmental Quality Health to identify areas of failing onsite sewage disposal systems in the UGB, and pursue annexation and provision of municipal sewer to those areas, with the areas having the potential for contamination of the aquifer having the highest priority.

3. The City and Lane County should consider amending their Joint Agreement for Planning Services to provide a process for ensuring that DNAPLs are not used in the DWPA for the proposed wellfield.

5.4. The City should investigate the issue of dry wells and sumps for stormwater disposal relative to its potential for contamination of groundwater and attempt to reconcile the State Plumbing Code requirements with Federal prohibitions on discharge of stormwater to surface waters.

5. The City should investigate whether Transfer of Development Rights is a feasible tool for Florence; and, if feasible, work with Lane County to determine applicability in area outside city within UGB.

## **Background**

Florence's groundwater resource has been designated by the Federal Environmental Protection Agency as a sole-source aquifer, the only sole source aquifer in Oregon, one of the few in the State. Protecting the aquifer's ~~its~~ present quality and quantity is ~~are~~ critical to Florence's future, and sound management is essential to avoidance of irreparable harm to that important natural resource. To this end, in 2013, the City and Lane County jointly adopted the 2013 Aquifer Protection Plan



for the North Florence Sole Source Dunal Aquifer (Aquifer Protection Plan), in Appendix 5 of this Comprehensive Plan. The source water components of the Aquifer Protection Plan have been certified by the Oregon Department of Environmental Quality (DEQ) and the Oregon Health Authority (OHA) and are adopted as part of this Comprehensive Plan.. In addition, tThe documents titled North Florence Dunal Aquifer – Modeling and Analysis by Ott Water Engineers, 1982 and the August 1987 EPA Resource Document for Consideration of the North Florence Dunal Aquifer as a Sole Source Aquifer, are included in Appendix 5-G as supporting documentation for the North Florence Dunal Aquifer and the "Certified Well-head Delineations Report," (Delineations Report) February 2012, prepared by GSI Water Solutions, Inc. and certified by the Oregon Health Authority, is adopted into this Comprehensive Plan and is physically located in Appendix 5.

The DWPA for the existing wellfield is a "significant groundwater resource," as that term is defined in Oregon Administrative Rules for Goal 5 (Chapter 660 Division 23). The DWPA for the proposed wellfield is adopted as part of this Comprehensive Plan and protected by Plan policies and Code in order to protect this resource to meet the City's future needs for drinking water, consistent with Statewide Planning Goal 11; in order to protect water quality, consistent with Goal 6; and the delineation is based on the best available data, consistent with Goal 2.

The Aquifer Protection Plan was one of the products of the multi-year Siuslaw Estuary Partnership project funded by the Environmental Protection Agency to protect water quality and fish and wildlife habitat in the lower Siuslaw Watershed. The Comprehensive Plan and Florence City Code were amended to implement the Aquifer Protection Plan, including adoption of Comprehensive Plan policies and a new City Code Section 10-32: Drinking Water Protection Overlay District. This District regulates, within city limits, the use and storage of hazardous materials within the Drinking Water Protection Areas (DWPAs) of the City's proposed wellfield. Prohibition on the use of DNPLs is a key requirement of this overlay zone and the applicable Comprehensive Plan policy, above. DNAPLs do not break down in water as other contaminants do; and they are therefore extremely detrimental to a water source. Remediation of DNAPLs, if feasible, comes at a very high price and can be cause for abandoning a source. For this reason, prevention is the best and most effective protection strategy from this type of contaminant.

The Aquifer Protection Plan also contains Management Strategies such as inter-governmental coordination and education. These Management Strategies are prioritized in the Aquifer Protection Plan and high priority strategies are already being implemented or will be implemented in the immediate future. Other strategies will be implemented over time as resources allow. Through these efforts, Florence and its partners will ensure that the sole source aquifer is protected for current and future inhabitants of the Florence city limits and UGB.

- The City's municipal wellfield is located on 80 acres adjacent to the Ocean Dunes golf course. The wellfield consists of seven production wells for which

the water source is the North Florence Dunal Aquifer. These wells were constructed beginning in the mid-60's with the last four wells constructed in 1994, and range in depth from 120 feet to 182 feet. The untreated water has high levels of iron and some manganese, and is treated to reduce these levels to acceptable concentrations to meet drinking water standards.

- 
- Clear Lake is one of a series of fresh water lakes located north of Florence which may serve as future water sources. The City has received water from Clear Lake through an agreement with the Heceta Water District. The City, Lane County and the Water District have, until recently, been negotiating on the construction of a filtration plant on Clear Lake. This is necessary to meet federal drinking water standards for surface water sources. However, homeowners on Clear Lake challenged this effort, and the City has decided not to pursue this effort at this time. An agreement between the District, Lane County and a Clear Lake landowner limits withdrawals from Clear Lake to 1 mgd after March 2002.
- 
- In the absence of an agreement for future water supply from Clear Lake, the City's Water Facilities Plan, (Brown & Caldwell, September 1998) was updated (see Chapter 11, and Appendix 11) to provide for up to five new wells near the existing wellfield, with future well locations identified north and south of Heceta Beach Road. The City may work with Heceta Water District to obtain future withdrawals from Clear Lake up to sustainable levels.
- 
- The Water Facilities Plan recommends that, "to preserve groundwater quality, the potential wellfield capture zones should be protected from industrial development or other activities that may release contaminants to the subsurface." In another section of the City's Water Facilities Plan, Brown and Caldwell recommends that, "given the potentially rapid recharge and the highly transmissive sands in the study area, a wellhead protection program is recommended for Florence's existing wellfield and any future wellfields."
- 
- Protection of Oregon's groundwater resources is the primary goal of the Oregon Wellhead Protection Program. This is a voluntary program administered jointly by the Department of Environmental Quality and the Health Division. Under this program, a community:
  - 
  - identifies the recharge area for its groundwater supplies,
  - determines the potential sources of contamination,
  - makes decisions about how the groundwater resource will be managed.
- 
- DEQ is responsible for:
  - 
  - certifying a community's Wellhead Protection Plan,
  - assisting in the inventory of possible contaminant sources,

- ~~assisting in development of management strategies.~~
- ~~\_\_\_\_\_~~
- ~~The Health Division is responsible for:~~
- ~~\_\_\_\_\_~~
- ~~certifying the delineation of Wellhead Protections Areas,~~
- ~~providing assistance in developing a Water Contingency Plan,~~
- ~~planning for new groundwater sources.~~
- ~~\_\_\_\_\_~~
- ~~Oregon's voluntary Wellhead Protection Program was approved in 1996, following defeat in the Legislature in 1993 of a proposal for a mandatory Wellhead Protection Program. Since it is a relatively new program, only a few communities have certified wellhead protection programs. Among them are Junction City and Coburg, both small cities, and the City of Springfield.~~
- ~~\_\_\_\_\_~~
- ~~Applicable rules and regulations include:~~
- ~~\_\_\_\_\_~~
- ~~(Wellhead Protection Plans) ORS 468.035, 468B.015(2), 468B.150-180 and implementing OAR Sections 340-40-140—340-40-210,~~
- ~~(Voluntary Wellhead Protection Program, delineation of Wellhead Protection Areas) ORS 448.123(1)(a), 448.131(2)(a)(b), 448.160, 672.525 and implementing OAR Sections 333-61-020, 333-61-050, 333-61-057, 333-61-065.~~

**b. Consistency Amendments: Amend Comprehensive Plan Chapter 11, Utilities, Facilities, and Services for consistency with the proposed amendments.**

**Comprehensive Plan Chapter 11: Utilities, Facilities, and Services**

**Water System Supplies and Needs**

**Policies**

2. The City shall develop ~~identify~~ new sources of water identified in the 2013 Aquifer Protection Plan to meet anticipated demands during the 2010-2030 period, and will provide treatment as appropriate for those sources.
3. The City will pursue strategies in the 2013 Aquifer Protection Plan to protect domestic water sources.

**Recommendations**

1. The City should implement the management strategies in the 2013 Aquifer Protection Plan, including adoption of a Drinking Water Protection Overlay Zone.

4. ~~The City should pursue ownership of private lands containing the proposed future wellfields.~~

5. ~~The City should initiate development of a wellhead/aquifer protection plan in order to assure that the aquifer, and the area around the wellheads is managed with a goal of maintaining the aquifer as a source of domestic water meeting state and federal standards for potability.~~

## **2. WETLANDS AND RIPARIAN CORRIDORS**

- a. **Amend Florence Comprehensive Plan Chapter 5: Open Spaces and Scenic, Historic, and Natural Resources for consistency with Statewide Planning Goal 5.**

### **Florence Comprehensive Plan**

#### **Chapter 5: Open Spaces and Scenic, Historic, and Natural Resources**

Florence's 20-year plan focuses on existing natural resources and their protection, which Oregon law now requires. This plan presents inventories of those selected resources, an understanding of each resource's environmental role in defining Florence's future, the identification of ways in which to protect those resources and to develop a local implementation program.

This chapter provides policy direction for the following specific resources:

- Wetlands and Riparian Areas
- Groundwater Resources
- Rare, Threatened, Endangered, and Sensitive Species
- Native Vegetation
- Mineral and Aggregate Resources
- Scenic Resources and Visual Quality
- Historic Resources

#### **Goal**

To conserve natural resources such as wetlands, riparian areas, groundwater supplies, air and water, and fish and wildlife habitat in recognition of their important environmental, social, cultural, historic and economic value to the Florence area and the central Oregon Coast.

#### **Wetlands and Riparian Areas**

##### **Objectives**

(Note: the following combine the objectives in the adopted Comprehensive Plan for wetlands and riparian areas and propose no changes.)

1. To maintain an accurate inventory of significant wetlands and riparian areas for use in land use planning and development review.
2. To protect significant wetlands and riparian areas for their critical functions and values in protecting surface and groundwater quality, flood control, habitat for fish, and terrestrial creatures, and for enhancing the visual character of the Florence community.

## **Policies**

*(Note: the following edits combine redundant policies in the adopted Comprehensive Plan for wetlands and riparian areas and propose amendments.)*

1. For the purpose of land planning and initial wetland and riparian identification within the Florence Urban Growth Boundary (UGB), the City and Lane County shall rely on the 2013 ~~1997~~ Florence Area Local Wetland and Riparian Area Inventory (2013 Inventory), approved by the Oregon Department of State Lands, and as amended hereafter. The 2013 Inventory within the Florence UGB, as amended, is adopted as part of this Comprehensive Plan and is physically located in Appendix 5.
2. Disturbance of significant<sup>1</sup> wetlands for land development activities shall be permitted within the Florence UGB only as determined by the permitted provisions of permits issued by the Department ~~Division~~ of State Lands (DSL) and/or the Army Corps of Engineers.
3. In accordance with ORS 215.418, the City and County shall notify DSL when wetlands are present on a property that is subject to a local land use or building permit approval. The City shall notify DSL when riparian areas are present on a property that is subject to a local land use or building permit approval.
4. The City and County shall consider formal wetland delineation reports approved by the Oregon ~~Division~~ Department of State Lands as a valid source of wetland information specific to a land use action or limited land use action. Such reports, if approved by DSL, will be incorporated by reference into the City's ~~1997~~ 2013 Florence Area Local Wetlands and Riparian ~~Area~~ Inventory.
5. No significant wetland or riparian corridor as defined by the ~~2013~~ 1997 Florence Area Local Wetlands and Riparian Inventory shall be drained by re-routing of natural drainage ways.
6. The City shall protect the functions and values of significant<sup>2</sup> Goal 5 riparian

<sup>1</sup> Significant wetlands and riparian corridors as identified by the ~~1997~~ 2013 Florence Area Local Wetlands and Riparian ~~Area~~ Inventory, Pacific Habitat Service, Inc. Comprehensive Plan Appendix 5.

<sup>2</sup> "Significant" means wetlands that meet the definition of significant in Statewide Planning Goal 5.

corridors and wetlands for flood control, water quality, and fish and wildlife habitat through Code provisions that protect these resources from development in accordance with Statewide Planning Goal 5 administrative rules (OAR 660 Division 23) and the Economic, Social, Environmental, and Energy (ESEE) Analysis and Limited Protection Program.

The ESEE Analysis is included, and significant wetlands and riparian corridors are listed and mapped, in the <sup>3</sup> “2013 City of Florence Significant Wetlands and Riparian Corridors Plan” adopted by reference into this Comprehensive Plan. The Program exempts public infrastructure, as defined in the ESEE Analysis, from local wetland protection measures, and allows special setback reductions and other allowances for development along the Munsel Creek Side Channel (Reach RMC-Cs in the 2013 Riparian Inventory).

- ~~2. Riparian areas shall be prevented from permanent alteration by grading or the placement of structures or impervious surfaces, except for the following uses provided they are designed to minimize intrusion into the riparian area:~~

~~streets, roads and paths,  
drainage facilities,  
utilities and irrigation pumps,  
water-related (outside of coastal shoreland areas) and water-dependent uses,  
replacement of existing structures in the same location that do not disturb additional riparian surface area.~~

7. The City shall include a procedure in the Code to consider hardship variances, claims of map error, and reduction or removal of the restrictions for any existing lot or parcel demonstrated to have been rendered unbuildable<sup>4</sup> by application of the significant wetlands and riparian areas standards in the Code.
8. The City shall encourage restoration and protection of privately-owned wetlands and riparian areas through Code incentives, and, as resources allow, through education in partnership with the Siuslaw Watershed Council and the Siuslaw Soil and Water Conservation District.

~~3. While not required to adopt safe harbor policies and ordinances under the requirement of this periodic review, the City has chosen to modify the riparian setback on Munsel Creek to require a 50 foot minimum setback from the thread of the creek, which must include at least 15 feet from the top of the bank. The minimum must be increased as necessary to meet the 15 foot requirement.~~

<sup>3</sup> The ESEE and Limited Protection Program are contained in the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan in Appendix 5 of the Comprehensive Plan.

<sup>4</sup> The term “unbuildable” is defined in the definitions section of Chapter 1 of the Comprehensive Plan and in FCC 10-1. See Consistency Amendments, below.

4. ~~The riparian setback from the Siuslaw River shall be 50 feet from the top of the cut bank.~~
5. ~~The retention of native vegetation in riparian areas is critical to their function. Therefore, the City shall adopt effective regulations ensuring the retention, or if necessary, the replanting of native species in riparian areas and may include conditions regarding fertilizer and pesticide runoff. The regulations will address the following:~~
  - A. ~~Control the removal of riparian vegetation, except for:~~
    - (1) ~~removal of non-native vegetation and replacement with native plant species; and~~
    - (2) ~~removal of vegetation necessary for the development of water-related or water-dependent uses;~~

9. Plan Amendment Option: Any owner of property affected by the Significant Wetlands and Riparian Areas Standards in City Code may apply for a quasi-judicial comprehensive plan amendment. This amendment must be based on a specific development proposal. The effect of the amendment would be to remove the requirement to comply with these standards from all or a portion of the property. The applicant shall demonstrate that such an amendment is justified by completing an Environmental, Social, Economic and Energy (ESEE) consequences analysis prepared in accordance with OAR 660-23-040. If the application is approved, then the ESEE analysis shall be incorporated by reference into the Florence Comprehensive Plan, and the Florence Significant Goal 5 Wetlands and Riparian Areas Maps shall be amended to remove the wetland or riparian area from the inventory.

The ESEE analysis shall adhere to the following requirements:

- A. The ESEE analysis must demonstrate to the ultimate satisfaction of the Florence City Council that the adverse economic consequences of not allowing the conflicting use are sufficient to justify the loss, or partial loss, of the resource. The City will confer with the Department of Land Conservation and Development (DLCD) prior to making their ultimate decision.
- B. The ESEE analysis must demonstrate why the use cannot be located on buildable land outside of the significant wetland or riparian area and that there are no other sites within the City that can meet the specific needs of the proposed use.
- C. The ESEE analysis shall be prepared by a qualified professional experienced in the preparation of Goal 5 ESEE analyses, with review by DLCD.

## **Recommendations**



~~As the City's buildable lands begin to fill-in and prior to moving the UGB limit outward, the City should consider conducting an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use for each of the locally identified significant wetlands. From this analysis, lesser quality wetlands may be found eligible for partial or full development.~~

~~The City should coordinate with the Oregon Division of State Lands (DSL), the U.S. Army Corps of Engineers (ACE), and other appropriate state and federal agencies in the identification, protection and, where appropriate, mitigation of impacts to local wetland resources.~~

1. The City should consider restoring and protecting City-owned wetlands and riparian areas, using the preliminary assessment in the 2013 *City of Florence Significant Wetlands and Riparian Corridors Plan* in Comprehensive Plan Appendix 5.

## **Background**

*Note: Replace the separate Background sections for wetlands and riparian areas in the adopted Comprehensive Plan (shown in strike out below) with the following Background section:*

The Wetland and Riparian Areas section of Chapter 5 of the Comprehensive Plan is based on the inventories, assessments, significance, and protection measures set out in the 2013 Florence Area Local Wetlands and Riparian Inventory (2013 Inventory) and the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan (2013 Plan), both located in Appendix 5 of the Comprehensive Plan. The 2013 Inventory and the 2013 Plan and ESEE Analysis and Limited Protection Program are adopted as part of this Comprehensive Plan.

Community concern for the Siuslaw estuary, the North Florence Sole Source Dunal Aquifer, and the area's streams, lakes, and wetlands is well-documented in Comprehensive Plan policies and Code provisions. In response to this concern, in October, 2009, the City and its partners from 19 federal, state, tribal, and local agencies embarked on a multi-year project called the Siuslaw Estuary Partnership (EPA Cooperative Agreement #WC-00J04801-0). The mission of the Partnership is to protect and improve water quality and fish and wildlife habitat in the lower Siuslaw watershed. This project is funded by project partners and the US Environmental Protection Agency (EPA). The Siuslaw Estuary Partnership Guiding Principles, endorsed by the City and its partners, provided guidance for the policies in this chapter of the Comprehensive Plan.

The 2013 Local Wetlands and Riparian Inventory updated the "City of Florence Local Wetlands and Riparian Area Inventory," prepared on December 30, 1996 by

Pacific Habitat Services, Inc. and approved by DSL in 1997 (1997 Inventory). That inventory used the Oregon Freshwater Wetland Assessment Methodology (OF-WAM). For the 2013 Inventory, an alternative wetland assessment, the Oregon Rapid Wetland Assessment Protocol (ORWAP; 2009), was used. The ORWAP provides much more detailed data on wetland functions, values and condition. The 1997 Inventory identified 270 wetlands, totaling 572 acres, and about 315 acres of riparian area. In the 2013 Plan, all of the 16 wetlands that are not subject to Goal 17 within the UGB were considered “significant” under Goal 5.

The improved inventories and assessment information in the 2013 Inventory assist the City in complying with Statewide Land Use Planning Goal 5 and will help the City and the County to make more informed land use decisions within the city and unincorporated lands within the study area.

On September 1, 1996, the Land Conservation and Development Commission adopted a revised Statewide Planning Goal 5. The Goal requires local jurisdictions to inventory the natural resources covered under the Goal, determine the significance of these resources, and develop plans to achieve the Goal. In other words, local jurisdictions must adopt land use ordinances regulating development in and around significant resource areas.

The purpose of the 2013 Inventory and Plan was to update the 1997 Inventory and to adopt protection measures, as required by state law. This inventory involves only freshwater wetland and riparian areas; it does not include the estuary or estuarine wetlands. Specific objectives were to:

- update the 1997 biological and functional assessment;
- assess omitted wetlands;
- include delineations made since 1997;
- adopt policies and measures to protect the unique functions and values of the resources; and
- conduct preliminary work to assess the potential for restoration of riparian areas and wetlands on City-owned property. This preliminary work is set out in Chapter 5 of the 2013 Plan in Appendix 5.

The 2013 Inventory provides a comprehensive functional assessment of wetlands and riparian areas. This is especially important in this watershed because this 2013 Plan, once adopted, will ensure: retention of the capacity of existing natural wetlands and riparian areas to store and slow the velocity of stormwater prior to discharge to area creeks and the estuary; critical water quality benefits for the North Florence Sole Source Dunal Aquifer, the source of the City’s drinking water; and protection of the quality of area surface waters, habitat to numerous fish and wildlife. The protection measures in this 2013 Plan will enhance the carrying capacity of the land to fully address the anticipated impacts from planned urbanization. The functional assessment thus provides critical information to help guide future urbanization policy and stormwater management policy and capital programs.

Public involvement for the Wetlands and Riparian Areas project consisted of three annual open houses; three annual newsletters distributed to all residents and/or property owners in the study area; targeted outreach; a Stakeholder process; media outreach; and public hearings before the Planning Commission and City Council. In addition, public involvement efforts were conducted specifically for wetlands and riparian areas. Prior to beginning the inventory field work, selected landowners (i.e. those suspected of having wetlands or waters of the state on their property) were mailed notices describing the project and asking permission to enter their property. Right of access was granted by landowner permission only. The properties of those not responding were not accessed. Access information was collected in a database and then transferred to a base map for use in the field.

The City of Florence held an open house meeting May 5, 2010 to inform the public and property owners about the wetland inventory process and answer questions from property owners deciding whether or not to grant access to their property. Following completion of initial fieldwork, a second public meeting was held on September 22, 2010 to allow property owners to observe the location of mapped wetlands and comment as appropriate. A third meeting with property owners was held on February 27, 2013 to present the draft Comprehensive Plan and Code amendments and to address comments and concerns.

The Wetlands and Riparian Area Team met from 2010 through January 2013 and concurred with the proposal for determining the significance of, and measures to protect, wetlands and riparian areas in the Florence urban growth boundary (UGB). At their meetings in March, April, and July 2012 and February and March 2013, the Stakeholder Groups reviewed and commented on the draft products and amendments. The draft products were also presented to the public at Open Houses in 2011 and 2012 and summarized in newsletters distributed throughout the study area in 2011 and 2012. The proposal, and all updates to the proposal, have been consistently posted to the project web site at [www.SiuslawWaters.org](http://www.SiuslawWaters.org) with an invitation for public comment on the home page.

## **Background**

~~In 1996, Florence's local wetland inventory was conducted and included all UGB land and some land outside where UGB expansion was anticipated. In January 1997, the Division of State Lands officially accepted the Florence Local Wetland Inventory (LWI), replacing the National Wetlands Inventory (NWI) prepared many years ago for identifying such resources in the Florence area. The Florence inventory is helpful for at least two reasons:~~

~~It helps determine for planning purposes what land is "buildable" and what was not due to the anticipated presence of wetlands.~~

~~It will help the City and County review development proposals and identify when a wetland might possibly be impacted as a result of such development.~~

The LWI will also help the City's and County's required DSL notification when a land use action is proposed near an identified wetland.

After the City's Periodic Review work program was approved in November 1995, the State adopted amendments to Statewide Planning Goal 5. Goal 5 requires conservation of a variety of natural resources, including wetlands and riparian areas. The amendments included the LWI requirement, a requirement for the City to make determinations of local significance for identified wetland resources, and a requirement that the City and County protect those significant wetland resources.

The analysis and results of the City's determination of local significance for Florence's wetlands are included in Appendix 5, City of Florence Local Wetlands and Riparian Area Inventory, 1997.

Once local wetlands are identified and evaluated as to their significance, the Statewide Planning Goal 5 provides local jurisdictions with two planning options for mandated protection of wetlands. This protection must occur in addition to that protection provided by current State and federal regulations.

Under option one, Florence can use the "safe harbors" provisions of Oregon law. By adopting a safe harbors ordinance, restrictions are placed on grading, excavation, placement of fill and removal of vegetation within all locally significant wetlands within the Florence UGB.

Or, under option two, by conducting an economic, social, environmental and energy (ESEE) analysis, Florence may further refine its wetland protection program by allowing, limiting, or prohibiting conflicting uses of wetland resources depending on that analysis. The ESEE process is relatively intensive, especially in Florence's case, where 270 wetlands totaling 572.25 acres are identified by the LWI.

While it may be desirable for Florence to conduct an ESEE analysis for its significant wetland resources in the future, staff has identified sufficient "buildable lands" within the existing UGB to meet the City's residential, commercial, and industrial land needs. As such, the most expedient and effective path at this point to comply with Goal 5 and protect significant wetlands is adoption of a safe harbor ordinance by the City and Lane County.

However, since adoption of a safe harbor ordinance is not required of this periodic review, the City has chosen not to adopt such an ordinance at this time, but to continue to rely on DSL/AGE permits for wetland protection.

## **Background**

The City's LWI also included a riparian area inventory. A riparian area can be best defined as a buffer of variable width between an aquatic resource and an upland area. The

~~buffer is typically vegetated, and provides several beneficial functions to the lake or stream.~~

~~These functions are:~~

~~Acts as a natural filter of stormwater, limiting pollution of streams and waterways.  
Cools stream temperatures in summer and traps heat in winter when canopy is sufficient to screen all or part of the stream channel.~~

~~Holds the stream bank in place and therefore reduces erosion.~~

~~Adds controls to flood velocities of streams and drainage ways.~~

~~Provides valuable wildlife habitat.~~

~~When properly integrated into a development design or recreational greenway, riparian buffers yield aesthetic benefits as well.~~

~~To some extent, Florence has been protecting its riparian areas within City limits prior to 1988, through the Munsel Creek and drainage way setback restrictions found in Florence City Code, Title 10, Chapter 7, Special Development Standards.~~

~~While not required by periodic review, the City realizes the importance of riparian buffers and has chosen to increase the protection of the riparian area on Munsel Creek which has been classified as a salmon stream and which is a teaching/management area for the Salmon and Trout Enhancement Program (STEP).~~

~~On the Siuslaw River, the riparian setback will remain at 50 feet from the top of the bank. Existing development is grandfathered. Expansions of existing development and new development must provide for the required setback, or request a variance and include provisions to mitigate the proposed intrusion into the setback.~~

**b. Consistency Amendments: Amend Florence Comprehensive Plan Chapter 1, Definitions and Chapter 11, Utilities, Facilities, and Services for consistency with the proposed amendments.**

**Definitions**

*Note: Delete the following definition from the Comprehensive Plan because this term is not used in the Comprehensive Plan.*

**~~SENSITIVE AREA.~~** ~~Natural streams (perennial or intermittent), rivers (including the estuary portion of the river), lakes, or wetlands hydraulically connected by surface water to streams, rivers, or lakes and areas defined by the City of Florence's Local Wetlands and Riparian Inventory. Also, includes all areas that are protected for species as per areas designated by Oregon Department of Fish and Wildlife, Oregon Division of State Lands, National Marine Fisheries Service, United States Fish and Wildlife Service and Oregon Department of Transportation.~~

*Note: Add this definition of unbuildable to the Comprehensive Plan definitions:*

UNBUILDABLE. Lots that are rendered “unbuildable” by the required setback for significant wetlands and riparian areas.

- a) For single family housing, lots are considered unbuildable if the required setback for the significant wetland or riparian area is such that no contiguous space exists outside the setback that allows for a dwelling unit at least 50 feet by 27 feet.<sup>5</sup>
- b) For all affected properties, lots are deemed unbuildable if strict adherence to the applicable setback standards and conditions would effectively preclude a use of the parcel that could be reasonably expected to occur in the zone and that the property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity.
- c) For the Munsel Creek side channel (Reach RMC-Cs in the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan in Appendix 5 of the Comprehensive Plan), the “required setback” for the purpose of the unbuildable definition, is the reduced setback allowed through the ESEE Analysis adopted into this Comprehensive Plan Appendix 5.

## **Florence Comprehensive Plan**

### **Chapter 11: Utilities, Facilities, and Services**

*Note: The following amendment makes this policy consistent with the Limited Protection Program.*

#### **Stormwater Management**

##### **Policies**

##### **Water Quality**

- 2. Protect the quality of water in surface waters, i.e., the estuary, significant wetlands and riparian corridors, ~~creeks, lakes, wetlands,~~ and ocean/beach, from contamination threats that could impair the quality of the water for fish and wildlife habitat and human recreation.

### **3. Housekeeping Amendment: Amend Comprehensive Plan Chapter 1, Introduction, to make the Comprehensive Plan consistent with state law which changed the DLCD notice requirement from 45 to 35 days.**

*Note: The following amendment makes the Comprehensive Plan consistent with state law which changed from 45 to 35 days.*

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<sup>5</sup> Note: A 50 foot by 27 foot area allows the siting of a typical double-wide manufactured home, a form of affordable housing.

## **Florence Comprehensive Plan**

### **Chapter 1: Introduction**

Amendments to the Plan may be initiated by citizens, citizen groups, the Citizen Advisory Committee, the Planning Commission or the City Council. In any amendment proceedings, the City Council shall obtain the recommendation of the Planning Commission and the Citizen Advisory Committee before taking action on a proposed major amendment. Minor changes which do not have significant effects beyond the immediate area of the change require the recommendation of the Planning Commission. Minor changes may be initiated at any time. Notice to the Oregon Department of Land Conservation and Development (DLCD) of a public hearing for a proposed plan amendment shall be required at least 4535 days prior to the first Planning Commission hearing.



**EXHIBIT C**  
**TO CITY OF FLORENCE ORDINANCE NO. 2, SERIES 2003**  
**Proposed Amendments to the Florence City Code for**  
**Aquifer Protection and Wetlands and Riparian Corridors**  
**August 6, 2013**

**1. AQUIFER PROTECTION**

- a. Adopt a new Drinking Water Protection Overlay Zone Map, attached.**
- b. Amend Florence City Code Title 10: Zoning Regulations to insert a new Chapter 32:**

**Chapter 32 Drinking Water Protection Overlay District**

**SECTION**

- 10-32-1 Purpose
- 10-32-2 Applicability
- 10-32-3 Warning and Waiver of Liability
- 10-32-4 Time of Travel Zones (TOTZ)
- 10-32-5 Review
- 10-32-6 Exemptions
- 10-32-7 Standards for Hazardous Materials within TOTZ
- 10-32-8 Conditions
- 10-32-9 Appeals

**10-32-1: PURPOSE:**

- A. The Drinking Water Protection (DWP) Overlay District is established to protect from contamination the North Florence Sole Source Dunal Aquifer, used as the sole potable water supply source by the City. This Section establishes procedures and standards for the physical use of hazardous or other materials harmful to groundwater within TOTZ by new and existing land uses requiring development approval. The provisions of this Section are designed to:
  - 1. Protect the City's drinking water supply, which is obtained from groundwater resources, from impacts by facilities that store, handle, treat, use, produce, or otherwise have on premises substances that pose a hazard to groundwater quality; and
  - 2. Provide standards for hazardous or other materials that pose a risk to groundwater within the TOTZ.

- B. In order to accomplish this purpose, the DWP Overlay District includes methods and provisions to:
1. Restrict or prohibit the use of hazardous or other materials which are potential groundwater contaminants;
  2. Set standards for the storage, use, handling, treatment, and production of hazardous or other materials that pose a risk to groundwater within TOTZ; and
  3. Review new or expanded uses of hazardous or other materials that pose a risk to groundwater.

**10-32-2: APPLICABILITY:**

This DWP Overlay District applies to industrial and commercial land uses within the Drinking Water Protection Area (DWPA) for the proposed wellfield. As of (DATE OF ORDINANCE ADOPTION), 2013, all areas in an industrial or commercial zoning district within the specified wellhead TOTZ are automatically are rezoned to add the DWP Overlay District to the underlying zoning district. The areas to which the DWP Overlay District is applied are shown on the Drinking Water Protection Overlay Map, on file in the Community Development Department and incorporated in this Section by reference.

**10-32-3: WARNING AND WAIVER OF LIABILITY:**

The degree of aquifer protection required by this Section in the areas designated in Section 10-32-2 is based on scientific and engineering considerations. The nature of these considerations is that the exact boundaries of Time of Travel Zones (TOTZ) have an associated uncertainty that renders conclusions based on them to be estimates. Under no conditions should this Section be construed to guarantee the purity of the ambient ground water or guarantee the prevention of ground water contamination. Therefore, this Section shall not create liability on the part of the City, or any City personnel, for any contamination that may result from reliance on this Section or any administrative decision made under this Section.

**10-32-4: TIME OF TRAVEL ZONES (TOTZ):**

- A. The DWP Overlay District includes 3 TOTZ for the proposed wellfield: 5-10 years; 10-20 years; and 20-30 years. The Overlay District does not include the 0-5 year TOTZ because there are no industrial or commercial properties or zones in that TOTZ. The locations of the TOTZ for the proposed wellfield are shown on the Drinking Water Protection Area Map for the Proposed Wellfield on file with the City's Planning Department; Public Works Department; the Siuslaw Valley Fire and Rescue Agency; and Heceta Water District (HWD).

- B. The areas within specified wellhead TOTZ are those drinking water protection areas for which the Oregon Health Authority issued a “provisional delineation,” stating, “OHA approves the use of this delineation for protection of possible future drinking water sources,” under the Oregon Administrative Rules that apply to Oregon’s EPA-approved Drinking Water Protection Program, in Oregon Health Authority Delineation Certification #0016, March 16, 2012.
- C. In determining the location of a property within a TOTZ, the following criteria apply:
  - 1. The Lane County Department of Assessment and Taxation maps shall be used as a base map with the addition of TOTZ boundaries.
  - 2. That portion of a tax lot that lies within a TOTZ is governed by the restrictions applicable to that TOTZ.
  - 3. Tax lots having parts lying within more than one TOTZ are governed by the standards of the more restrictive TOTZ.
  - 4. EXCEPTION: The Public Works Director (Director) may waive the requirement that the more restrictive standards apply when all of the following apply:
    - a. Storage, use, handling, treatment, and/or production of hazardous or other materials that pose a risk to groundwater will not take place within the portion of the tax lot having the more restrictive TOTZ standards; and
    - b. Storage, use, handling, treatment, and/or production of hazardous or other materials that pose a risk to groundwater will not take place within 50 feet of the portion of the tax lot having more restrictive TOTZ standards; and
    - c. The tax lot is 20,000 square feet or larger.
  - 5. A property owner may request the TOTZ be modified by submitting a Zone Change application to the City. Any request for modification of the TOTZ shall be accompanied by certification of the TOTZ as proposed to be modified by the Oregon Health Authority, under the Administrative Rules that apply to Oregon’s EPA-approved Drinking Water Protection Program.

**10-32-5: REVIEW:**

- A. A DWP Overlay District Development Application is required when all of the following criteria are met:

1. Industrial and commercial land uses that are affected by one or more of the following: a land use permit application or building permit application;
  2. The action in Subsection A.1., above will:
    - a. Affect the storage, use, and/or production of hazardous or other materials that pose a risk to groundwater; or
    - b. Increase the quantity of hazardous or other materials that pose a risk to groundwater that are stored, used and/or produced.
- B. Prior to the submittal of a DWP Overlay District Development Application, an exemption request may be submitted to the Director as specified in Section 10-32-6-B-1.
- C. DWP Overlay District applications shall be reviewed under Administrative Review procedures in 10-1-1-6.
- D. Prior to undertaking an activity covered by Section 10-32-5-A, the owner or tenant shall submit a DWP Overlay District Application to the City for review and approval. Applications shall include the following information:
1. A Hazardous Material Inventory Statement and a Material Safety Data Sheet for any or all materials entered in the Statement unless exempted under Section 10-32-6. Hazardous material weights shall be converted to volume measurement for purposes of determining amounts; 10 pounds shall be considered equal to one gallon as specified in Florence Fire Code;
  2. A list of the chemicals to be monitored through the analysis of groundwater samples and a monitoring schedule if ground water monitoring is anticipated to be required;
  3. A detailed description of the activities conducted at the facility that involve the storage, handling, treatment, use or production of hazardous materials in quantities greater than the maximum allowable amounts as stated in Section 10-32-7-A;
  4. A description of the primary and any secondary containment devices proposed, and, if applicable, clearly identified as to whether the devices will drain to the storm or sanitary sewer;
  5. A proposed Hazardous Material Management Plan for the facility that indicates procedures to be followed to prevent, control, collect and dispose of any unauthorized release of a hazardous material;

6. A description of the procedures for inspection and maintenance of containment devices and emergency equipment;
  7. A description of the plan for disposition of unused hazardous materials or hazardous material waste products over the maximum allowable amounts including the type of transportation, and proposed routes.
- E. The Director shall review the application and make a decision based on the standards contained in Section 10-32-7, after consulting with the Building Official, Fire Marshall, Planning Director, and the manager of HWD, as appropriate.

#### **10-32-6: EXEMPTIONS:**

This Section does not exempt any material or use from Fire Code regulations adopted by the City.

- A. Exemptions are as specified in this Section unless the Director, in consultation with the Fire Marshall, determines that a hazardous material, activity, and/or facility that is exempt pursuant to this Section has a significant or substantial potential to degrade groundwater quality. Then the Director may require compliance with the requirements of this Section related to that hazardous material, activity or facility. This determination will be based upon site and/or chemical-specific data and are eligible for appeal to the Planning Commission, as specified in Section 10-32-9.
- B. Unless otherwise provided herein, the following materials are exempt from regulation hereunder:
1. Use, storage and handling of specific hazardous materials that do not present a risk to the aquifer, as determined and listed by the Director, are exempt from all regulation under this Section with the exception of the potential requirement to list these hazardous materials on the Hazardous Material Inventory Statement as found in the most recent Fire Code regulations adopted by the City. A Hazardous Materials Exemption Request may be submitted to the Director for Hazardous Materials that can be demonstrated to pose no threat to the aquifer. These materials may be exempted from regulation and added to the list. The demonstration of no threat is the responsibility of the applicant seeking the exemption and will be subject to review by technical experts.
  2. Hazardous materials offered for sale in their original sealed containers of 5 gallons or less are exempt from the 500-gallon storage limit specified in Section 10-32-7-A-1.

3. Hazardous materials in fuel tanks and fluid reservoirs attached to a private or commercial motor vehicle and used directly in the motoring operation of that vehicle, or machinery, including, but not limited to: fuel, engine oil and coolant.
4. Fuel oil used in existing heating systems.
5. Emergency use, storage, and handling of hazardous materials by governmental organizations in the public interest.
6. Hazardous materials used and stored specifically for water treatment processes of public water systems and private systems for the same purposes when approved by the Director.
7. Hazardous materials contained in properly operating sealed units (including, but not limited to: transformers, refrigeration units) that are not opened as part of routine use.
8. Local natural gas distribution lines, when available.
9. Fuel for emergency generators located at facilities that provide essential community services (including, but not limited to: hospitals, fire/life safety, police, public shelters, and telephone systems).
10. Any commonly used office supply—including, but not limited to: correcting fluid for typewriters, toner for computer printers or cleaners for windows and bathrooms—where the supplies are purchased off-site for use on-site.
11. Aggregate quantities equal to or less than 20 gallons of hazardous materials that do not contain DNAPLs.<sup>1</sup>

#### **10-32-7: STANDARDS FOR HAZARDOUS MATERIALS WITHIN TOTZ**

Applications shall comply with the following standards. Where the following standards are more restrictive than the standards of the Florence Fire Code, the following standards shall apply:

##### **A. Five to Ten Year TOTZ Standards.**

1. The storage, handling, treatment, use, application, or production or otherwise keeping on premises of more than 20 gallons of hazardous materials

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<sup>1</sup> DNAPLs are organic substances that are relatively insoluble in water and more dense than water. DNAPLs tend to sink vertically through sand and gravel aquifers to the underlying layer. The most common are chlorinated solvents. Significant amounts of DNAPLs are present at chlorinated solvent-contaminated sites, such as manufacturing and degreasing facilities, dry cleaners, wood treaters, and former manufacturing gas plants.

that pose a risk to groundwater in aggregate quantities not containing DNAPLs are allowed only upon compliance with containment and safety standards specified by the most recent applicable Fire Code.

2. Unless exempted, all hazardous or other materials that pose a risk to groundwater shall be stored in areas with approved secondary containment in place (Fire Code).
3. All new use of DNAPLs are prohibited.
4. Any change in the type of use or an increase in maximum daily inventory quantity of any DNAPL is considered a new use and is prohibited.
5. The following certain types of facilities or changes in chemical use and/or storage of hazardous or other materials that pose a risk to groundwater are prohibited:
  - a. Hazardous material product pipelines used to transport the hazardous material off of the tax lot where it is produced or used;
  - b. Injection wells, except for dry wells for roof drainage;
  - c. Solid waste landfills and transfer stations;
  - d. Fill materials containing hazardous materials;
  - e. Land uses and new facilities that will use, store, treat handle, and/or produce DNAPLs.
6. Requirements found in the Fire Code for a monitoring program and monitoring methods to detect hazardous or other materials in the secondary containment system shall be met for all amounts of hazardous materials that pose a risk to groundwater unless exempted.
7. The following requirements for inspection and record keeping procedures for monthly in-house inspection and maintenance of containment and emergency equipment for all amounts of hazardous or other materials that pose a risk to groundwater shall be met unless exempted: Schedules and procedures for inspecting safety and monitoring and emergency equipment. The applicant shall develop and follow a written inspection procedure acceptable to the Director for inspecting the facility for events or practices which could lead to unauthorized discharges or hazardous materials. An inspection check sheet shall be developed to be used in conjunction with routine inspections. The check sheet shall provide for the date, time, and location of inspection; note problems and dates and times of corrective ac-



tions taken; and include the name of the inspector and the countersignature of the designated safety manager for the facility.

**B. Ten to Twenty Year TOTZ Standards.**

1. The storage, handling, treatment, use, production or otherwise keeping on premises of more than 20 gallons of hazardous materials that pose a risk to groundwater in aggregate quantities not containing DNAPLs is allowed upon compliance with containment and safety standards specified by the most recent Fire Code adopted by the City
2. All hazardous or other materials that pose a risk to groundwater shall be stored in areas with approved secondary containment in place (Fire Code).
3. All new use of DNAPLs are prohibited.
4. Any change in type of use or an increase in the maximum daily inventory quantity of any DNAPL is considered a new use and is prohibited.
5. The following requirements for inspection and record keeping procedures for monthly in-house inspection and maintenance of containment and emergency equipment for all amounts of hazardous or other materials that pose a risk to groundwater shall be met unless exempted: Schedules and procedures for inspecting safety and monitoring and emergency equipment. The applicant shall develop and follow a written inspection procedure acceptable to the Director for inspecting the facility for events or practices which could lead to unauthorized discharges or hazardous materials. An inspection check sheet shall be developed to be used in conjunction with routine inspections. The check sheet shall provide for the date, time, and location of inspection; note problems and dates and times of corrective actions taken; and include the name of the inspector and the countersignature of the designated safety manager for the facility.

**C. Twenty to Thirty Year TOTZ Standards.** The storage, handling, treatment, use, production or keeping on premises of more than 20 gallons of hazardous materials that pose a risk to groundwater in aggregate quantities is allowed only upon compliance with containment and safety standards specified by the most recent Fire Code adopted by the City.

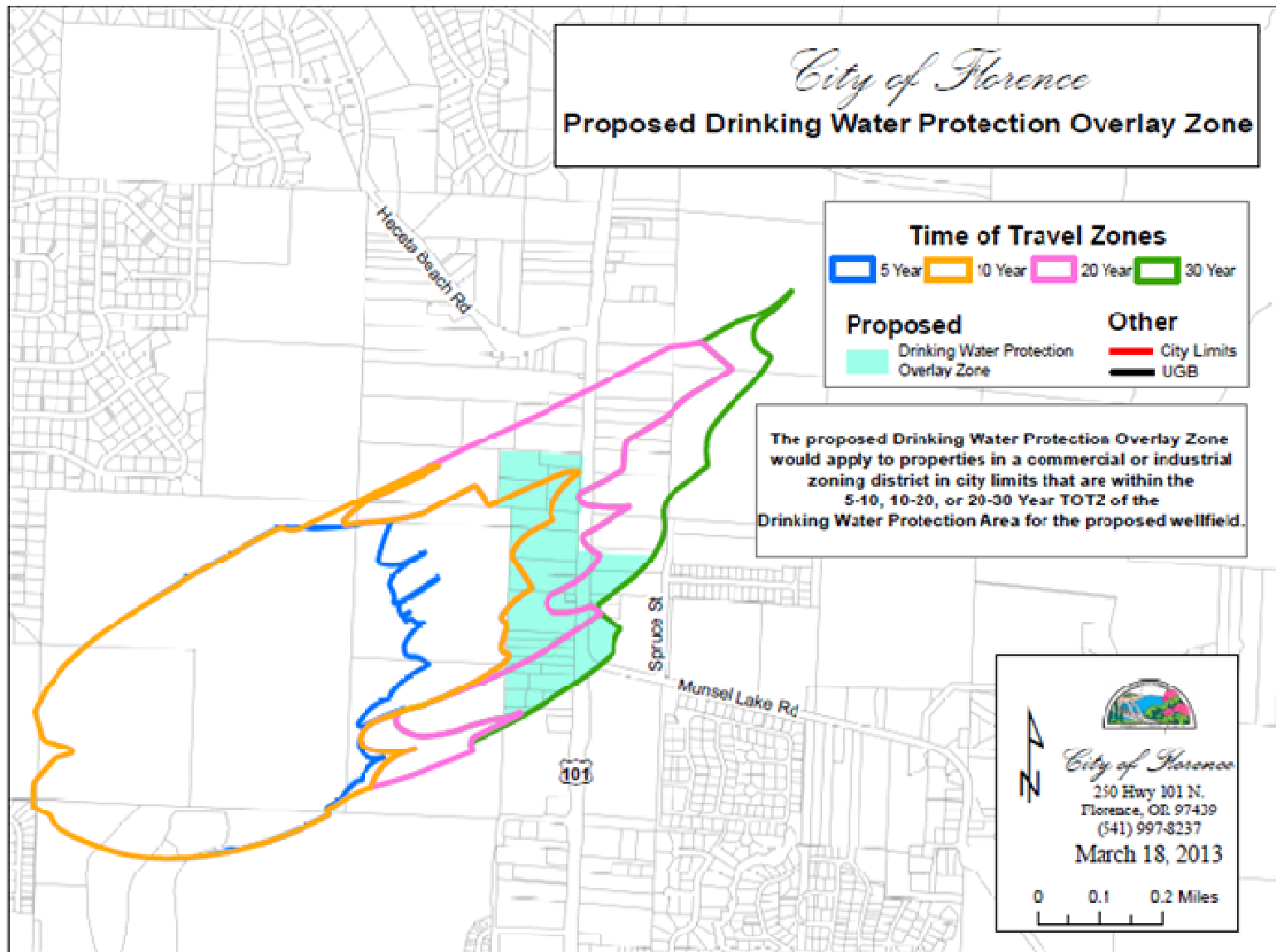
**10-32-8: CONDITIONS:**

The Director may attach conditions of approval that will minimize negative impacts of regulated substances on groundwater and ensure that the facility or the proposed development can fully meet the standards specified in Section 10-32-7. These conditions may include, but are not limited to: on-site monitoring wells,

Wellhead Protection Area signs, special storm water facilities or other conditions to address specific risks associated with the proposed development.

**10-32-9: APPEALS:**

The only portions of this Section that are subject to appeal are: Section 10-32-5-E, the Director's decision on a DWP application, Section 10-32-6, Exemptions, and Section 10-32-7-A-1, Waiver. The decision of the Director may be appealed as specified in Section 10-1-1-7.



## 2. WETLANDS AND RIPARIAN CORRIDORS

- a. Amend Florence City Code Title 10 Chapter 7: Special Development Standards to add a new section 10-7-4: Development Standards for Wetlands and Riparian Areas, and renumber sections sequentially. Unless noted otherwise, additions are shown in double underline and deletions in strike-out.

### SECTION:

10-7-1: Purpose

10-7-2: Identification of Wetlands and Riparian Areas and Potential Problem Areas

10-7-3: Development Standards for Potential Problem Areas

10-7-4: Development Standards for Wetlands and Riparian Areas

~~10-7-45~~ Site Investigation

~~10-7-56~~: Review and Use of Site Investigation Reports (Amended Ord. 10, Series 2009)

**10-7-1: PURPOSE:** The purpose of this Chapter is to apply additional development standards to areas with wetlands or riparian areas and potential problem areas, such as natural hazards or soils which are particularly subject to erosion, landslide or seasonal surface water. Compliance with these standards is required in order to obtain a Special Use Permit. The standards are intended to: eliminate the danger to the health, safety or property of those who would live in potential problem areas and the general public; and to protect areas of critical environmental concern; areas having scenic, scientific, cultural, or biological importance; and significant fish and wildlife habitat as identified through Goal 5: Open Spaces and Scenic, Historic, and Natural Resources, and Goal 17: Coastal Shorelands. (Amended Ord. No. 10, Series 2009).

**10-7-2: IDENTIFICATION OF WETLANDS AND RIPARIAN AREAS AND POTENTIAL PROBLEM AREAS:** At minimum, the following maps shall be used to identify wetlands and riparian areas and potential problem areas:

A. "Hazards Map", Florence Comprehensive Plan Appendix 7.

B. "Soils Map", Florence Comprehensive Plan Appendix 7. (Ord. 625, 6-30-80)

C. "Beaches and Dunes Overlay Zone." See Chapter 19 for overlay zone requirements. Where conflicts exist between that chapter and this one, the more restrictive requirements shall apply.

D. 2013 City of Florence Significant Wetlands Map and 2013 City of Florence Significant Riparian Reaches Map in Appendix A of the 2013 Florence Area Local Wetlands and Riparian Inventory (2013 Inventory) and in the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan (2013 Plan), in Comprehensive Plan Appendix 5.

~~D.~~ E. Other information contained in the plan or adopted by reference into the plan, or more detailed inventory data made available after adoption of the plan

may also be used to identify potential problem areas. (Amended Ord. No. 10, Series 2009)

*NOTE: Delete 10-7-3 B, below, and renumber sequentially; and amend section H, as shown.*

**10-7-3: DEVELOPMENT STANDARDS FOR POTENTIAL PROBLEM AREAS:**

The following standards shall be applied to development in potential problem areas unless an approved Phase I Site Investigation Report or an on-site examination shows that the condition which was identified in the Comprehensive Plan or Overlay Zoning Map does not in fact exist on the subject property. These standards shall be applied in addition to any standards required in the Zoning Districts, Comprehensive Plan, and to any requirements shown to be necessary as a result of site investigation. Where conflicts or inconsistencies exist between these Development Standards, City Code, and the Comprehensive Plan, the strictest provisions shall apply unless stated otherwise.

A. Special Flood Hazard Area: All uses proposed in the flood area shall conform to the provisions of the National Flood Insurance Programs.

~~B. Munsel Creek and Other Drainageways: A fifty foot (50') setback shall be required for all buildings from the creek channel, except by Planning Commission approval where it can be shown by accepted engineering practices or treatment that no erosion hazards, slide potential, or possible flood damage are likely to occur, and that riparian vegetation will be protected.~~

H. Yaquina Soils and Wet Areas(except significant wetlands and riparian areas identified in the 2013 Wetland and Riparian Inventory, as amended): In areas with seasonal standing water, construction of a drainage system and/or placement of fill material shall be required according to plans prepared by a registered engineer and approved by the City. (Ord. 625, 6-30-80; amd. Ord. 669, 5-17-82) (Amended Ord. 10, Series 2009)

*NOTE: Insert new code section 10-7-4:*

**10-7-4: DEVELOPMENT STANDARDS FOR WETLANDS AND RIPARIAN AREAS**

**A. Purpose:** Significant wetlands, and their related wetland buffer zones, and significant riparian corridors provide hydrologic control of floodwaters; protect groundwater and surface water quality; provide valuable fish and wildlife habitat, including habitat for anadromous salmonids; improve water quality by regulating stream temperatures, trapping sediment, and stabilizing streambanks and shorelines; and provide educational and recreational opportunities. It is recognized that not all resources will exhibit all of these functions and conditions.

The purpose of this Subsection (FCC 10-7-4) is to protect significant wetlands, wetland buffer zones, and significant riparian corridors in order to:

1. Implement the goals and policies of the Comprehensive Plan;
2. Satisfy the requirements of Statewide Planning Goal 5 and ensure consistency with adopted City Stormwater requirements in Florence City Code Title 9 Chapter 5;
3. Safeguard the City's locally significant wetland and riparian areas, especially the flood control and water quality functions these areas provide for the community;
4. Safeguard fish and wildlife habitat;
5. Safeguard water quality and natural hydrology, to control erosion and sedimentation, and to reduce the adverse effects of flooding;
6. Safeguard the amenity values and educational opportunities for City's wetlands and riparian areas for the community; and
7. Improve and promote coordination among Federal, State, and local agencies regarding development activities near wetlands and riparian areas.

#### **B. Applicability.**

1. Affected Property: The procedures and requirements of the Significant Wetland and Riparian Area Standards:
  - a. Apply to any parcel designated as having a Significant Goal 5 Wetland or Significant Goal 5 Riparian Corridor, and Significant Wetland Buffer Zones, as defined in FCC Title 9 Chapter 5 and FCC Title 10 Chapter 1. Significant Goal 5 wetlands and significant riparian corridors are mapped in Appendix A of the 2013 Inventory and Tables 2.1 and 2.2 and the Significant Wetland and Riparian Reaches Maps in the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan (2013 Plan), as amended, in Comprehensive Plan Appendix 5, which is adopted into this Code by reference.
  - b. Apply in addition to the stormwater standards in FCC 9-5-3-3-F (incorporated herein) and the standards of the property's zoning district, except that the required setbacks in this subsection are not in addition to the required setbacks in the underlying zone. Where conflicts exist between this subsection and the underlying zoning district, this subsection shall apply.
2. Applicability to properties adjacent to the side channel of Munsel Creek (Reach RMC-Cs in the 2013 Inventory). These properties are subject to special setback reductions and provisions, as set out below, due to the unique development patterns and history of the area. These special provisions are supported by, and explained in, the Economic, Social, Environmental, and Energy (ESEE) Analysis and Limited Protection Program (ESEE Analysis) in Chapter 3 of the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan in Appendix 5 of the Comprehensive

Plan. The ESEE Analysis is adopted as part of the Comprehensive Plan and is incorporated herein by reference.

3. Applicability to public facilities in significant wetlands. Public facilities (transportation, water, wastewater, and stormwater) that are included in the City's Public Facility Plan, as amended, are exempt from the requirements of this subsection provided that permitted uses are designed and constructed to minimize intrusion into the riparian area; disturbed areas are replanted with native vegetation; and all required federal and state permits are obtained. This exemption is authorized by the ESEE Analysis in Appendix 5 of the Comprehensive Plan. See Section, "Exemptions," below.

**C. Activities Subject to Standards and Requirements:** Activities subject to the Special Development Standards in this subsection shall include the following, unless specifically exempted by Code:

1. Partitioning and subdividing of land;
2. New structural development;
3. Exterior expansion of any building or structure, or increase in impervious surfaces or storage areas;
4. Site modifications including grading, excavation or fill (as regulated by the Oregon Department of State Lands and the Army Corps of Engineers), installation of new above or below ground utilities, construction of roads, driveways, or paths, except as specifically exempted in the section "exemptions" below;
5. The cutting of trees and the clearing of any native vegetation within a Significant Wetland, Wetland Buffer Zone, or Riparian Corridor beyond that required to maintain landscaping on individual lots existing on the effective date of this title.

**D. Exemptions:**

1. Only the following uses and activities in significant riparian corridors or wetland buffer zones are exempt from these Significant Wetland and Riparian Area Standards, provided: the uses and activities are designed and constructed to minimize intrusion into the buffer zone; disturbed areas are replanted with native vegetation; and all required federal and state permits are obtained:
  - a) Replacement of lawfully created existing structures with structures in the same location that do not disturb additional wetland buffer zone or significant riparian surface area. All Coast Village structures existing on (insert date ordinance is adopted) are grandfathered and qualify as "lawfully created existing structures" for purposes of this subsection. This provision supersedes the provisions for non-conforming structures in FCC 10-8.

- b) Installation or maintenance of public and private facilities and utilities (such as transportation, water, wastewater, and stormwater, electric, gas, etc.) in riparian areas.
- c) The sale of property.
- d) Temporary emergency procedures necessary for the safety or protection of property.
- e) All water-related and water-dependent uses as defined in the Definitions in the Florence Code Title 10.
- f) Removal of non-native vegetation and replacement with native plant species.
- g) Removal of vegetation necessary for the development of water-related or water-dependent uses.
- h) Public facilities identified in the City's Public Facility Plan, in Appendix 11 of the Comprehensive Plan, as amended, that are installed in significant wetlands, provided that the facilities are designed and constructed to minimize intrusion into the wetland; disturbed areas are replanted with native vegetation; and all required federal and state permits are obtained.

**E. Agency Review:** Decisions made by the City of Florence under this title do not supersede the authority of the state or federal agencies which may regulate or have an interest in the activity in question. It is the responsibility of the land-owner to ensure that any other necessary state or federal permits or clearances are obtained. In particular, state and federal mitigation requirements for impacts associated with approved water-related or water-dependent uses may still be required.

**F. General Development Standards and Requirements:** When development is proposed that is subject to these standards, the property owner is responsible for the following. Figure 1 below is a cross section illustrating terms used in the discussion of wetland and riparian setbacks as defined by Oregon Statewide Planning Goal 5.

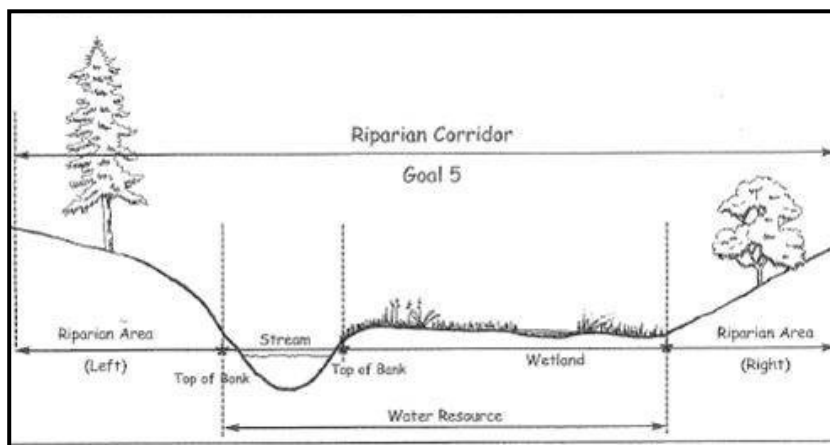


Figure 1: Downstream cross section illustrating terms used in Statewide Planning Goal 5. Source: *Urban Riparian Inventory and Assessment Guide*, Oregon Department of State Lands, 1998.



1. Determination of Significant Wetland and Riparian Area Boundaries.
  - a. For the purpose of showing the boundary of a significant wetland on a site plan, property owners may choose one of the following options:
    - 1) hire a Qualified Professional to do the delineation and have the delineation approved by the Oregon Department of State Lands (DSL); or
    - 2) hire a Qualified Professional to do the delineation but do not request DSL approval of the delineation. The Qualified Professional must have performed prior wetland delineations that were approved by DSL; or
    - 3) If the site plan shows the proposed development is outside the 50 foot Stormwater Buffer Zone, the wetland boundaries shown on the adopted Local Wetland Inventory (LWI) Map can be used to determine the wetland boundary for this purpose.
  - b. For significant riparian corridors, the width of the corridor boundary is the “significant riparian width” in Table 2.2 of the 2013 City of Florence Significant Wetlands and Riparian Corridor Plan in Comprehensive Appendix 5.
  - c. For significant riparian corridors, the boundaries of the riparian corridor will be measured and shown on an approved site plan. The City shall maintain maps of regulated riparian areas, and make them available to the public. These maps will be used to identify the extent of the riparian area unless the applicant can demonstrate through detailed inventory information (including maps, photos, and Lane County aerial photos showing the location and species of vegetation growing in the disputed area) that the city’s maps are in error. For purposes of making these measurements, the following shall apply:
    - 1) Riparian buffer zones are measured horizontally from the top of bank. The top of the bank is the highest point at which the bank meets the grade of the surrounding topography, characterized by an abrupt or noticeable change from a steeper grade to a less steep grade, and, where natural conditions prevail, by a noticeable change from topography or vegetation primarily shaped by the presence and/or movement of the water to topography not primarily shaped by the presence of water. Where there is more than one such break in the grade, the uppermost shall be considered the top of bank.
    - 2) If the top of the bank is not identifiable, the riparian buffer zones are measured horizontally from the line of ordinary high water. In a given stream, the line of ordinary high water is the line on the bank or shore to which seasonal high water rises annually and identified in the field by physical characteristics that include one or more of the following:
      1. A clear, natural line impressed on the bank
      2. Changes in the characteristics of soils
      3. The presence of water-borne litter and debris

#### 4. Destruction of terrestrial vegetation

If reliable water level data are available for 3 or more consecutive previous years, the line of ordinary high water can be considered the mean of the highest water level for all years for which data are available.

2. Preparation and submission of a site plan (vegetation clearing permits are also subject to the submission requirements in FCC Title 4 Chapter 6) that shows:
    - a. the wetland boundary or the top of bank of the riparian corridor,
    - b. the significant riparian corridor width or the wetland buffer zone,
    - c. the footprint of the proposed structure measured from the riparian corridor boundary or wetland buffer zone edges,
    - d. any requested setback adjustments as measured from the edge of the wetland or riparian corridor boundary,
    - e. the type and location of dominant existing native plants that would be displaced, and
    - f. the type of native plants to be planted and the location where they will be replanted.
  3. It is prohibited to permanently alter a significant wetland by: the placement of structures or impervious surfaces; or by the removal of native vegetation; or by grading, excavation, placement of fill, or vegetation removal (other than perimeter mowing and other cutting necessary for hazard prevention), except as follows:
    - a) where full protection of the Significant Wetland renders a property unbuildable, as defined in the definitions in Title 10 Chapter 1 of this Code; or
    - b) public facilities identified in the City's Public Facility Plan, Appendix 11 of the Comprehensive Plan, as amended, may be installed in significant wetlands or riparian areas, provided that the facilities are designed and constructed to minimize intrusion into the wetland or riparian area; disturbed areas are replanted with native vegetation; and all required federal and state permits are obtained.
- G. Stormwater Quality:** As provided in FCC 9-5-5-3-F and the Code Definitions in FCC-10-1, significant wetlands over ½ acre and significant streams are "sensitive areas" that shall be protected by a buffer zone of native, undisturbed vegetation. The outer boundary of the buffer shall be determined by a minimum 50-foot setback from the edge of the significant wetland; for significant riparian areas, the buffer zone shall be the significant riparian width identified in the 2013 Inventory and 2013 City of Florence Significant Wetlands and Riparian Corridors Plan. The width and nature of protection required within the buffer may change as the Endangered Species Act and other state and federal regu-

lations are promulgated. The City requires that the buffer width meet all state and federal requirements.

No land disturbing activities, structures, development and construction activities, gardens, lawns, application of chemicals, pet wastes, dumping of any kind of materials shall be permitted within the buffer zone, except as noted below:

1. Roads, pedestrian, or bike paths crossing the buffer from one side to the other in order to provide access to or across the sensitive area.
2. A pedestrian or bike path constructed within a buffer and parallel to a sensitive area shall have the buffer widened by the width of the path if the path is constructed of impervious material.
3. Pedestrian or bike paths shall not exceed 10-feet in width.
4. Utility/service infrastructure construction (i.e., storm, sanitary sewer, water, phone, gas, cable, etc.) If approved by the City Manager or his/her designee.
5. Measures to remove or abate hazards, nuisance, or fire and life safety violations as approved by the City.
6. Enhancement of the riparian corridor for water quality or quantity benefits, fish, or wildlife habitat as approved by the City and other appropriate regulatory authorities.
7. Water quality facilities planted with appropriate native vegetation may encroach into the buffer area as approved by the City and other appropriate authorities.

**H. Additional Statewide Planning Goal 5 exceptions:** The following exceptions are in addition to the exceptions in G, above. Consistent with Statewide Planning Goal 5 [OAR 660-023-0090 (8) (a)], the permanent alteration of significant riparian areas by grading or the placement of structures or impervious surfaces is prohibited, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

1. Water-related and water-dependent uses and removal of vegetation necessary for the development of water-related or water-dependent uses;
2. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area; and
3. Removal of non-native vegetation and replacement with native plant species.

**I. Removal of native vegetation:** In accordance with Goal 5, removal of vegetation from a significant riparian corridor is prohibited, except as otherwise provided in these Wetland and Riparian Standards and in FCC 4-6-3 and for the following:

1. Removal of non-native vegetation and replacement with native plant species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, shall maintain or exceed the density of the

removed vegetation, and shall maintain or improve the shade provided by the vegetation.

2. Removal of vegetation necessary for the development of approved water-related or water-dependent uses or for the continued maintenance of dikes, drainage ditches, or other stormwater or flood control facilities. Vegetation removal shall be kept to the minimum necessary.
3. Trees in danger of falling and thereby posing a hazard to life or property may be removed, following consultation and approval from the Planning Director. If no hazard will be created, the Planning Department may require these trees, once felled, to be left in place in the Significant Wetland or Riparian Area.
4. The control or removal of nuisance plants should primarily be by mechanical means (e.g. hand-pulling). If mechanical means fail to adequately control nuisance plant populations, a federally approved herbicide technology for use in or near open water is the only type of herbicide that can be used in a Significant Riparian Corridor. Pre-emergent herbicides or auxin herbicides that pose a risk of contaminating water shall not be used. Herbicide applications are preferred to be made early in the morning or during windless periods at least 4 hours before probable rainfall. Any herbicide use must follow the label restrictions, especially the cautions against use in or near open water.

**J. Special provisions for the Munsel Creek Side Channel:** The following special provisions apply to properties in the significant riparian corridor of the Munsel Creek side channel (Reach RMC-Cs in Table 2.2 of the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan). These provisions are in addition to, or provide relief from, the other standards in this subsection, and, where conflicts exist, this section shall prevail.

1. In addition to the other setback adjustments and Variances allowed by this subsection, a 50% setback adjustment to the required 50-foot significant riparian width for properties along the Munsel Creek side channel will be permitted in order to allow new or expanded development to build up to 25 feet from the top of bank of the creek, as long as any native plants disturbed by the development are replaced elsewhere in the buffer zone, subject to the following exceptions and procedures:
  - a. Properties in Florentine Estates PUD that were granted a reduced setback by the Planning Commission prior to the (inset date of this ordinance) are deemed to comply with the standards in this subsection and do not need to apply for this setback adjustment.
  - b. The setback adjustment for other affected properties shall be granted through the Administrative Review process in 10-1-1-6.
  - c. The applicant shall be granted the setback reduction upon demonstration that any native vegetation displaced by the development shall be replanted in the remaining buffer zone (shrub for shrub, tree for tree, etc.).

- d. The applicant is not required to retain a professional for this application but a qualified professional may help a property owner identify displaced native plants and show how they will be replanted. To provide technical assistance, the City will provide the applicant with a native plant guide. Staff from the Siuslaw Watershed Council and Soil and Water Conservation District are available to provide property owners with technical assistance with native plant identification and guidance on replanting.

**K. Setback Adjustments:** The following reductions in setbacks shall be allowed for properties affected by the significant wetland and riparian area standards as set out below.

1. Eligibility for setback adjustment. Property owners affected by these significant wetland and riparian corridor standards shall be eligible for setback adjustments as follows:
  - a. Single family dwellings: when the significant wetland or significant riparian corridor standard or requirement is such that no contiguous space exists outside the setback that allows for a dwelling unit at least 50 feet by 27 feet.
  - b. For the Munsel Creek side channel: the “required setback” for the purpose of eligibility for the setback adjustment is the reduced setback allowed in subsection “J” above.
2. If the required setback or standard for the significant wetland or riparian corridor is such that no contiguous space exists outside the setback that allows for a dwelling unit at least 50 feet by 27 feet, then a primary dwelling, this size or less, shall be permitted to intrude into the setback area in accordance with the standards of this subsection. Any Code requirements of the applicable zoning district (such as required garages) that would necessitate intrusion into additional riparian area shall not apply.
3. If the proposed primary dwelling will be more than 20 feet from a significant or wetland or stream, the adjustment application shall use the Administrative Review process in FCC 10-1-1-6.
4. If a proposed primary dwelling will be built within 20 feet of a significant wetland or stream, a Hardship Variance from the Planning Commission shall be required in accordance with Florence City Code Title 10 Chapter 4.

**L. Hardship Variances:** A variance to the provisions of this subsection shall be granted by the Planning Commission in accordance with the procedures in Florence City Code Title 10 Chapter 4 only as a last resort and is only considered necessary to allow reasonable economic use of the subject property. The property must be owned by the applicant and not created after the effective date of this title.

1. Eligibility. An application for a hardship variance from the provisions of this subsection shall be available upon demonstration of the following conditions:

- a. Siting of a primary dwelling 50 feet by 27 feet or less requires intrusion into the significant wetland buffer zone or significant riparian corridor within 20 feet of a significant wetland or stream; or
  - b. Strict adherence to the applicable standards or requirements of this subsection would effectively preclude a use of the parcel that could be reasonably expected to occur in the zone and that the property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity.
  - c. Due to unique circumstances and historic development patterns outside the control of the property owners, the Variance fee for this application shall be waived for affected Coast Village properties.
2. The following additional standards shall apply:
- a. Demonstration that the intrusion into the setback must be the minimum necessary;
  - b. Demonstration that any native vegetation displaced by the development will be replanted in the remaining significant wetland buffer zone or riparian corridor. The applicant is not required to retain a professional for this application but a qualified professional may help a property owner identify displaced native plants and show how they will be replanted. To provide technical assistance, the City will provide the applicant with a native plant guide; staff from the Siuslaw Watershed Council and Soil and Water Conservation Service are available to provide property owners with technical assistance with native plant identification and guidance on replanting.
  - c. Permanent alteration of the Significant Wetland or Riparian Area by an action requiring a variance is subject any mitigation requirements imposed by federal and state permitting authorities.
  - d. In granting a Variance, the Planning Commission shall impose conditions of approval that address all of the following criteria:
    - 1) The site plan and application shall document the location of the impact, the existing conditions of the resource prior to the impact, a detailed planting plan for the approved setback area with dominant native plant species and density, and a narrative describing how the impacted resource will be replaced and approved setback area restored.
    - 2) Invasive vegetation shall be removed from, and native vegetation planted in, the approved setback area, with a minimum replacement ratio of 1:1 for the impacted area.
    - 3) Herbicides and pesticides not approved for use in buffer zones or riparian areas is prohibited in the approved setback area.
    - 4) All vegetation planted within the approved setback area shall be native to the region. In general, species to be planted shall replace those impacted by the development activity, i.e., trees must replace trees, brush must replace brush, and, within reason, like plants must replace like plants (i.e., dominant plant species).

- 5) Trees shall be planted at a density not less than the density in place prior to development.
- 6) The property owners will work with available federal, state, and local agencies, such as the Siuslaw Watershed Council, the Siuslaw Soil and Water Conservation District, ODFW, DSL, STEP to implement practices and programs to restore and protect the riparian area.

**M. Significant wetland and riparian corridor enhancement incentives:**

1. Enhancement of Significant Wetland Buffer Zones or Riparian Corridors is encouraged, including: riparian or in-channel habitat improvements, non-native plant control, and similar projects which propose to improve or maintain the quality of a Significant Wetland or Riparian Area; however, no enhancement activity requiring the excavation or filling of material in a wetland or jurisdictional stream shall be allowed unless all applicable State and Federal permits have been granted.
2. Incentives shall be provided to improve the continuity of Significant Riparian Corridors in situations where lots would be rendered unbuildable by the setback, as defined in the Definitions in FCC Title 10 Chapter 1. Such incentives may include: reducing the required front yard setback, alternative access, vacating right-of-way, property line adjustments, re-orientation of lots, transfer of development rights (if feasible), and density bonuses, among others. The resulting development will conform, to the maximum extent practical, to the general development patterns in the vicinity of the affected lot.
3. These incentives may also be provided to properties that are severely impacted by the setback when doing so will result in enhancement of the significant wetland, wetland buffer zone, or significant riparian corridor.

**L. Inventory map corrections:** The Planning Director may correct the location of a wetland or riparian boundary shown on the Local Wetland and Riparian Areas Inventory Maps when it has been demonstrated by a property owner or applicant that a mapping error has occurred and the error has been verified by DSL. Wetland delineations verified by DSL shall be used to automatically update and replace the City's Local Wetland Inventory mapping. No variance application shall be required for map corrections where approved delineations are provided.

**b. Consistency Amendments: Amend FCC Title 9 Chapter 5 stormwater management definitions and buffer zone provisions; Title 10 Chapter 1 Definitions, and Title 10 Chapter 19, Prime Wildlife District; and Title 4 Chapter 6 Vegetation Clearing Permit requirements, for internal Code consistency.**

*The following Code amendments are proposed for consistency with the proposed Comprehensive Plan and Code amendments or are otherwise for consistency with state law. Unless noted otherwise, deletions are in strike out and additions in double underline.*

## FCC TITLE 9, CHAPTER 5

### STORMWATER MANAGEMENT UTILITY, USER FEE SYSTEM AND STORM-WATER MANAGEMENT REQUIREMENTS

#### 9-5-1-2: DEFINITIONS

**SENSITIVE AREAS** Significant wetlands greater than ½ acre and significant streams identified in the 2013 Florence Area Local Wetlands and Riparian Inventory, as amended. Natural streams (perennial or intermittent), rivers, including the estuary, and lakes, or wetlands hydraulically connected by surface water to streams, rivers, or lakes and areas defined by the City of Florence's Local Wetlands and Riparian Inventory. Also, includes all areas that are protected for species as per areas designated by Oregon Department of Fish and Wildlife, Oregon ~~Division~~Department of State Lands, National Marine Fisheries Service, United States Fish and Wildlife Service and Oregon Department of Transportation.

#### 9-5-3-3: STORM WATER QUALITY

- F. Sensitive areas shall be protected by a buffer zone of native, undisturbed vegetation. The outer boundary of the buffer shall be determined by a minimum 50-foot setback from the edge of the sensitive area, or as wider if required by other City ~~Code provisions~~requirements. -(See additional standards and requirements for significant wetlands and significant riparian corridors in Florence City Code Title 10, Chapter 7; and for the Estuary, Coastal Shorelands, and Beaches and Dunes in Title 10 Chapter 19.) The width and nature of protection required within the buffer may change as the Endangered Species Act and other state and federal regulations are promulgated. The City requires that the buffer width meet all state and federal requirements. No land disturbing activities, structures, development and construction activities, gardens, lawns, application of chemicals, pet wastes, dumping of any kind of materials shall be permitted within the buffer zone, except as noted below:
1. Roads, pedestrian, or bike paths crossing the buffer from one side to the other in order to provide access to or across the sensitive area.
  2. A pedestrian or bike path constructed within a buffer and parallel to a sensitive area shall have the buffer widened by the width of the path if the path is constructed of impervious material.
  3. Pedestrian or bike paths shall not exceed 10-feet in width.
  4. Utility/service infrastructure construction (i.e., storm, sanitary sewer, water, phone, gas, cable, etc.) If approved by the City Manager or his/her designee.
  5. Measures to remove or abate hazards, nuisance, or fire and life safety violations as approved by the City.



6. Enhancement of the riparian corridor for water quality or quantity benefits, fish, or wildlife habitat as approved by the City and other appropriate regulatory authorities.
7. Water quality facilities planted with appropriate native vegetation may encroach into the buffer area as approved by the City and other appropriate authorities.

## **FCC Title 10, Chapter 1: Zoning Administration**

### **FCC 10-1-4: DEFINITIONS**

*Insert the following definitions in alphabetical order into FCC 10-1-4. Where an existing definition is proposed to be modified, additions are shown in double underline and deletions in strike-out.*

BANKFULL STAGE	Means the elevation at which water overflows the natural banks of the stream.
BIOENGINEERING	Means a method of erosion control and landscape restoration using live plants, such as willows.
BUFFER ZONE	A physical setback from a sensitive area used to protect the <u>flood storage capacity</u> , water quality, the aquatic and riparian wildlife communities, and the habitat value within the sensitive area. <del>The start of the buffer starts at the edge of the defined channel (bank full stage) for streams/rivers, delineated wetland boundary, delineated spring boundary, or average high water for lakes.</del>
BUILDING	Any temporary or permanent structure constructed and maintained for the support, shelter, or enclosure of people, motor vehicles, animals, chattels or personal or real property of any kind. <del>The words "building" and "structure" shall be synonymous.</del>
DELINEATION	Means a wetland delineation report that contains the methods, data, conclusions and maps used to determine if wetlands and/or other waters of the state are present on a land parcel and, if so, describes and maps their location and geographic extent. A wetland determination report documenting wetland presence or absence is included within this definition.
ENHANCEMENT	An action which results in a long-term improvement of existing functional characteristics and processes that is not the result of a creation or restoration action. <u>Enhancement is a modification of a wetland or riparian area to improve its condition. Enhancement is</u>

	<u>conducted only on degraded features, results in a net gain in functions and values, and does not replace or diminish existing functions and values with different ones unless justified as ecologically preferable.</u>
EXCAVATION	Means removal of organic or inorganic material (e.g. soil, sand, sediment, muck) by human action.
IMPERVIOUS SURFACE	Means any material (e.g. rooftops, asphalt, concrete) which reduces or prevents absorption of water into soil.
INVASIVE VEGETATION	Includes plants that appear on the current Oregon Department of Agriculture Noxious Weed List, plus known problem species including <i>Phalaris arundinacea</i> , <i>Holcus lanatus</i> , and <i>Anthoxanthum odoratum</i> . In addition, any non-native plant species may be considered invasive if it comprises more than 15% of the total plant cover and appears to be increasing in cover or frequency over time.
LAWN	Means grass or similar materials usually maintained as a ground cover of less than 6 inches in height. For purposes of this title, lawn is not considered native vegetation regardless of the species used.
MITIGATION	The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, and species diversity, unique features and water quality. <u>For wetlands and riparian areas, "mitigation" is a means of compensating for impacts to a Wetland or and Riparian Area or its buffer including: restoration, creation, or enhancement. Some examples of mitigation actions are construction of new wetlands to replace an existing wetland that has been filled, replanting trees, removal of nuisance plants, and restoring streamside vegetation where it is disturbed.</u>
NATIVE VEGETATION	Means plants identified as naturally occurring and historically found within the City of Florence.
QUALIFIED PROFESSIONAL	Means an individual who has proven expertise and vocational experience in a given natural resource field. A qualified professional conducting a wetland delineation must have had a delineation approved by the Oregon Department of State Lands.
REVIEW AUTHORITY	Means the City of Florence.
RIPARIAN AREA	Means the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem. For purposes of this title, riparian areas are identified on the Significant

	Wetlands and Riparian Areas Map in the Comprehensive Plan.
RIPARIAN CORRIDOR	Means a Goal 5 Resource that includes the water areas, adjacent riparian areas, and wetlands within the riparian area boundary. For purposes of this title, riparian corridors are identified on the Significant Wetlands and Riparian Areas Map in the Comprehensive Plan.
SENSITIVE AREA	<u>Significant wetlands greater than ½ acre and significant streams identified in the 2013 Florence Area Local Wetlands and Riparian Inventory, as amended.</u> <del>Natural streams (perennial or intermittent), rivers, including the estuary, and lakes, or wetlands hydraulically connected by surface water to streams, rivers, or lakes and areas defined by the City of Florence's Local Wetlands and Riparian Inventory.</del> Also, includes all areas that are protected for species as per areas designated by Oregon Department of Fish and Wildlife, Oregon <del>Division</del> <u>Department</u> of State Lands, National Marine Fisheries Service, United States Fish and Wildlife Service and Oregon Department of Transportation.
SHRUBS	Consists of woody plants less than 3 inches in diameter at breast height, regardless of height.
SIGNIFICANT WETLANDS AND RIPARIAN AREAS	Wetlands and riparian corridors identified as significant by the 2013 Florence Area Local Wetlands and Riparian Inventory and the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan, as amended, and designated significant by the local government.
SIGNIFICANT WETLAND BUFFER ZONE	The 50 foot buffer zone required by the stormwater management requirements of FCC 9-5-3-3-F, measured on accordance with the boundary determinations in FCC 10-7 standards and requirements for wetlands and riparian corridors.
STATE AND FEDERAL NATURAL RESOURCE AGENCY	The Oregon Department of State Lands, Oregon Department of Fish and Wildlife, U.S. Army Corps of Engineers, U.S. Department of Agriculture Natural Resources Conservation Service, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and Department of Environmental Quality.
STREAM	A channel such as a river or creek that carries flowing surface water, including perennial streams and inter-

mittent streams with defined channels, and excluding man-made irrigation and drainage channels. A perennial stream is one that flows continuously. An intermittent or seasonal stream is one that flows only at certain times of the year.<sup>2</sup>

STRUCTURE	<del>See "Building." For the purposes of administering Code Chapters 7, 18, 19, and 24, the definition shall also mean</del> Anything constructed, installed, or portable, and the use of which requires a location on <u>a parcel of land or</u> on the ground, either above or below water.
SUBSTANTIAL IMPROVEMENT	Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceed 50 percent of the market value of the structure either: (a) Before the improvement or repair is started, or (b) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: (1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
TREE	Consists of woody plants 3 inches or more in diameter at breast height, regardless of height.
TOP OF BANK	Refers to the location where the rising ground bordering a stream intersects the side of the stream channel. The stream channel is typically non-vegetated, and the top of bank normally corresponds with the bankfull stage. In the absence of physical evidence, the two-year recurrence interval flood elevation may be used to delineate the top of bank.
UNBUILDABLE.	Lots that are rendered "unbuildable" by the required setback for significant wetlands and riparian areas. a) For single family housing, lots are considered unbuildable if the required setback for the significant wetland or riparian area is such that no contiguous space exists outside

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<sup>2</sup> Department of State Lands (DSL) and U.S. Geological Survey (USGS) definitions.

the setback that allows for a dwelling unit at least 50 feet by 27 feet.<sup>3</sup>

- b) For all properties, lots are deemed unbuildable if strict adherence to the applicable setback standards and conditions would effectively preclude a use of the parcel that could be reasonably expected to occur in the zone and that the property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity.
- c) For the Munsel Creek side channel (Reach RMC-Cs in the 2013 City of Florence Significant Wetlands and Riparian Corridors Plan in Appendix 5 of the Comprehensive Plan), the “required setback” for the purpose of the unbuildable definition, is the reduced setback allowed in FCC Title 10 Chapter 7.

#### WETLANDS

~~Land areas where water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands. Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Based on the above definition, three major factors characterize a wetland: hydrology, soils, and plants.~~

#### WETLAND BOUNDARY

The edges of a wetland as delineated by a qualified professional or as determined through the standards in FCC Title 10 Chapter 7.

### FCC 10-19-9: PRIME WILDLIFE OVERLAY DISTRICT /PW

*Note: The following Code amendments make the Code consistent with the proposed Comprehensive Plan and Code amendments as well as Statewide Planning Goal 2 (Land Use) and Goal 17 (Coastal Shorelands).*

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<sup>3</sup> Note: A 50 foot by 27 foot area allows the siting of a typical double-wide manufactured home, a form of affordable housing.

## **A. Purpose and Application:**

**Purpose:** The purpose of the /PW District is to protect areas in and adjacent to the North Jetty Lake and the South Heceta Junction Seasonal Lakes that have native vegetation and habitats of specific species of concern and to protect wildlife habitat, water quality, bank stability and provide flood control. The requirements imposed by the /PW District shall be in addition to those imposed by the base zoning district. Where the requirements of the /PW District conflict with the requirements of the base zoning district or the Comprehensive Plan, the more restrictive requirements shall apply.

**Application:** The Prime Wildlife Overlay District (/PW) is applied within the Florence city limits to Coastal Lake Shorelands identified in inventory information and designated in the Comprehensive Plan as possessing areas of unique biological assemblages, habitats of rare or endangered species, or a diversity of wildlife species. The /PW Overlay applies to the North Jetty Lake Shorelands as shown on the Florence Coastal Overlay Zoning Map. The extent of the /PW Overlay application for the South Heceta Junction Seasonal Lakes shall be determined through a Preliminary Investigation as specified below.

**Preliminary Investigation:** Any land use or building permit application within the /PW District as it applies to the South Heceta Junction Seasonal Lakes shall require a preliminary investigation by the Planning Director to determine the specific area to which the requirements of the district shall apply. The requirements of the district shall apply in an area generally identified on the Florence Coastal Overlay Zoning Map and the 2013 Local Wetland Inventory, as amended, and, specifically, in the site-specific information submitted by an applicant to determine whether the site possesses areas of unique biological assemblages, habitats of rare or endangered species, or a diversity of wildlife species ~~identified in the Coastal Resources Inventory,~~ or function to provide or affect water quality, bank stability or flood control, as identified in the Lane County Coastal Resources Inventory or the wetland functions and values in the 2013 Florence Area Local Wetlands and Riparian Inventory, as amended.

## **FCC 4-6-3: VEGETATION CLEARING PERMIT REQUIRED:**

A. A vegetation clearing permit shall be required in any of the following circumstances:...

1. Clearing native vegetation from... areas which have been designated by the City as a significant riparian corridor, significant wetland buffer zone, greenbelt, or view corridor.

## **FCC 4-6-4: PROCEDURE FOR OBTAINING A VEGETATION CLEARING PERMIT:**

- A. ~~A~~ No vegetation clearing permit application is required will be accepted unless the application also includes a concurrent application for a building permit or Conditional Use Permit, except that the criteria in FCC 4-6-4 C shall also apply to any removal of native vegetation from a significant riparian or wetland buffer zone requested as part of a setback adjustment granted under FCC 10-7-4..
- B. All requests for a Vegetation Clearing Permit shall be submitted to the ~~Community Development~~ Planning Department on a form available from that department, and containing the following minimum information. (See FCC 10-7-4 for additional submission requirements for areas within significant wetland or riparian buffer zones):...
- C. The ~~Planning~~ Community Development Department shall process the Vegetation Removal Permit application through the Administrative Review procedures in FCC Title 10 Chapter 1 and forward a report to the Design Review Board within thirty (30) days of filing a complete application. Review and approval ~~by the Design Review Board~~ shall be based on the following criteria, as applicable to the request:
1. The necessity to remove native vegetation in order to construct proposed improvements or otherwise utilize the property in a reasonable manner consistent with the City Code and policies;
  2. The environmental and physical impacts such clearing may have, including visual drainage, wind erosion, protection of adjoining property and structures, and impacts on significant riparian corridors or wetland buffer zones. , and impacts on any affected significant wetland or riparian buffer zones shall be supported by a qualified professional or through consultation with staff from the Soil and Water Conservation District, Siuslaw Watershed Council, ODFW, OSU, or another person or agency with knowledge or experience with the affected resource;
  3. The adequacy of the applicant's proposed landscaping or revegetation plan, including plant selection, staking, irrigation, and other maintenance provisions.

**3. Housekeeping Amendment: Adopt an amendment to FCC Title 10 Chapter 19 to make the Code consistent with Statewide Planning Goal 16. See discussion, below, for rationale.**

**FCC 10-19-4: DEVELOPMENT ESTUARY DISTRICT (DE):**

- F. Conditional Uses: Outside of Areas Managed for Water Dependent Activities, the following uses and activities are allowed in the estuary with a Conditional Use Permit, subject to the applicable criteria....
10. Water-related uses, non-water-dependent uses, and non-water-related uses, provided no dredge or fill is involved, ~~and it is not possible to locate the use on an upland site.~~ In approving these uses, the City shall consider the poten-

tial for using upland sites to reduce or limit the commitment of the estuarine surface area for surface uses. Nonwater-dependent and non-water-related uses that existed as of July 7, 2009 will retain their non-conforming status for five years from the date the use is abandoned or the structure is destroyed; and the existing structure for the same use may be replaced; the provisions of non-conforming uses in the Florence City Code notwithstanding.

*Discussion:*

*The amendment is consistent with the direction in Goal 16:*

**“Oregon’s Statewide Planning Goals & Guidelines, GOAL 16: ESTUARINE RESOURCES, OAR 660-015-0010(1) Management Units** As a minimum, the following kinds of management units shall be established:... 3. Development: ... As appropriate the following uses shall also be permissible in development management units: ... Where consistent with the purposes of this management unit and adjacent shorelands designated especially suited for water-dependent uses or designated for waterfront redevelopment, water-related and nondependent, nonrelated uses not requiring dredge or fill; mining and mineral extraction; and activities identified in (1) and (2) above shall also be appropriate. In designating areas for these uses, local governments shall consider the potential for using upland sites to reduce or limit the commitment of the estuarine surface area for surface uses.”