

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note that the public testimony may be limited by the Chair and normally is not allowed after the Public Hearing is closed.

**ASHLAND PLANNING COMMISSION
SPECIAL MEETING
JULY 22, 2008
AGENDA**

- I. **CALL TO ORDER:** 7:00 PM, Civic Center Council Chambers, 1175 E. Main Street

- II. **ANNOUNCEMENTS**

- III. **PUBLIC HEARINGS**
 - 1. **Water Resource Protection Zones Ordinance**
(Continued from June 24, 2008 Planning Commission meeting)

- IV. **UNFINISHED BUSINESS**
 - 1. **Adoption of Findings – PA 2008-00359, Lithia Arts Guild**

- V. **OTHER BUSINESS**
 - 1. **Factoring Sustainability into the Comprehensive Plan**

- VI. **ADJOURNMENT**



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development office at 541-488-5305 (TTY phone is 1-800-735-2900). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).

Memo

DATE: July 15, 2008

TO: Ashland Planning Commission

FROM: Maria Harris, Planning Manager

RE: Draft Chapter 18.63, Water Resource Protection Zones
July 22, 2008 Planning Commission agenda item

Question:

- 1) What specific issues and concerns does the Planning Commission have regarding the draft Chapter 18.63, Water Resource Protection Zones ordinance?
- 2) What specific changes to the draft ordinance might the Planning Commission suggest that Staff consider?

Staff Recommendation:

Staff recommends the Planning Commission close the public hearing and use the July 22 meeting for Planning Commission deliberations regarding the draft Water Resources Protection Ordinance. The specific issues and concerns of the Planning Commission, and the type and scope of changes the majority of the Planning Commission would like to see need to be identified for the project to move forward.

Background:

This item was continued to July 22, 2008 from the June 24, 2008 Planning Commission meeting. The Planning Commission took comments on the draft Water Resource Protection Zones ordinance at the April 22, 2008, May 13, 2008 and June 24, 2008 meetings.

Staff recommends the Planning Commission use the July 22 meeting for Planning Commission deliberations regarding the draft Water Resources Protection Ordinance. While some Planning Commissioners have expressed concern with moving forward with the draft ordinance, the Commission as a group has not had an opportunity to discuss the specific issues. Staff needs an understanding of the Planning Commission issues and concerns to proceed with the project.

The Planning Commission has spent a considerable amount of time over the course of three meetings and a series of site visits listening to comments and concerns of interested parties. However, the Planning Commission has not to this date had deliberations regarding the proposed draft ordinance. The Planning Commission has the ability to dedicate a specific time for Commission deliberations without public testimony for a legislative matter. As the project moves forward and new material is presented, the Planning Commission can reopen the public hearing and take further public testimony.

A matrix that compares the requirements of Statewide Planning Goal 5, the current Physical and Environmental chapter in the Ashland Land Use Ordinance (ALUO) and the draft Water Resource Protection Zones ordinance is attached. The matrix is broken into seven areas covered by the regulations – Water Resources Protected, Outright Permitted Activities, Regulated Activities, Prohibited Activities, Exceptions/Variations, Native Landscaping and Nonconforming Situations. The seven areas in the matrix may be a good approach for the Planning Commission deliberations.

Also attached is the draft Chapter 18.63, Water Resource Protection Zones with potential modifications that was included in the June 24, 2008 Planning Commission Special Meeting packet. At the May 13, 2008 meeting, Staff identified five key issues raised in comments on the draft Water Resource Protection Zones ordinance that can be addressed by modifications. The attached draft ordinance includes potential modifications to address the key issues. Each of the modifications is identified in the attached draft with a notation in the right-hand margin. In summary, the potential modifications include the following.

- **Top of Bank Definition** - making the definition of the top of bank more measurable.
- **Non-Native Plants**
 - Percentage of Non-Native Plants - Permitting the planting of non-native plants in a percentage of the lot area in the Stream Bank Protection Zone.
 - Outdoor Use Area – Permitting the use of 150 square feet of the lot area in the Stream Bank Protection Zone for yard and garden areas.
- **Landscape Maintenance in Water Resource Protection Zone** - permitting the use of some power equipment such as push lawn mowers and brush mowers for non-native, noxious and invasive plant removal (e.g. weeds and blackberries).
- **Nonconforming Structures** – permitting the replacement of legally established nonconforming “primary” structures that are destroyed by a fire or natural hazard.
- **Previously Approved Building Envelopes and Driveways** – permits previously approved building envelopes and driveways that would be nonconforming to be built as approved.

Project Recap

During the June 24, 2008 Planning Commission discussion, several questions and comments were raised regarding the purpose and history of the project. The following summary is provided for background information on the project.

Why are wetlands and riparian corridors valuable natural resources?

Wetland functions include water quality improvement, floodwater storage, and fish and wildlife habitat. Wetlands function like natural tubs or sponges, storing water and slowly releasing it. This process slows the water’s momentum and erosive potential, reduces flood heights and allows for ground water recharge. After being slowed by a wetland, water moves around plants, allowing the suspended sediment to drop out and settle to the wetland floor. Pollutants that are dissolved in the water are often absorbed by plant roots



and microorganisms in the soil. Abundant vegetation and shallow water provide diverse habitats for fish and wildlife.¹

A riparian area is the area of land adjacent to a stream. Healthy riparian areas reduce the chance of damaging floods, improve water quality and provide habitat and food for fish and wildlife. Plants in healthy riparian areas perform numerous functions: 1) provide wood to streams, creating fish habitat and slowing the stream current during and after storms, 2) shade streams in summer for fish health and minimize evaporation loss of water, 3) reduce erosion by holding soil in place with roots, 4) filter sediment out of muddy runoff, keeping sediment from smothering fish habitat, 5) allow heavy winter rains to soak into the soil instead of running into the stream – this reduces flooding and allows water to be released slowly to the stream during the dry season, 6) filter out pollutants, such as fertilizers, pesticides and animal wastes and 7) provide important food sources, homes, shelter and travel corridors for wildlife, fish and other aquatic organisms. Healthy riparian areas include a variety of types and ages of plants including trees, shrubs, grasses and groundcovers. Plants adapted to local rainfall, climate, insects and soil conditions tend to be easier to care for because they need less water and pesticides.²

Wetlands and riparian areas are now largely appreciated for the myriad of functions they provided to society as well as for their aesthetic and intrinsic values. Cities are increasingly finding the conservation of wetlands and riparian areas enhances community character and is an important quality of life measure. The preservation and restoration of water resources and incorporation of wetlands and riparian corridors in open spaces generally is considered a positive aspect of property, whether it is privately held or a public open space.

Why revise existing local regulations regarding the protection of wetlands, streams and riparian corridors?

- **To further protect wetlands, streams and riparian corridors.**

Wetlands and riparian corridors currently have limited protection under the Ashland Land Use Ordinance (ALUO). The Physical and Environmental Constraints chapter of the ALUO is the primary set of local regulations addressing protection of water resources. While extensive revisions were made to the ALUO in the late 1980's and early 1990's to address needed changes to the City's flood management program, only modest modifications have been undertaken since the mid 1980's to protect the functions and values associated with wetlands and riparian areas.

The primary protection of wetlands is through the Performance Standards Options chapter which requires identification and protection of significant natural resources. Wetlands are not addressed in the Physical and Environmental Constraints chapter.

¹ "Functions and Values of Wetlands", United States Environmental Protection Agency, September 2001

² "Taking Care of Streams in Washington, Oregon, Idaho and Alaska", October 2002, Pacific Northwest Extension publication



Standard protection measures for wetlands such as a buffer area, a building setback from wetlands and mitigation measures are not addressed in the ALUO. Similarly, of the more than 20 streams in Ashland, only six of those are protected by delineated floodplains (Ashland, Bear, Clay, Emigrant, Hamilton and Kitchen). Fish-bearing streams such as Kitchen and Tolman creeks under state regulations require a 50-foot wide while existing ALUO requirements require a 20-foot setback from the creek. Noxious and invasive plants are not addressed in existing local regulations. Native plants are addressed only in the Site Design and Use Standards for commercial, industrial and employment development, and the existing local regulations do not address plant materials in the buffer area for water resources in residential developments.

The majority of creeks that do not include mapped floodplains have setbacks ranging 10 to 20 feet from the creek. Over the past decade and a half since the Physical and Environmental Constraints chapter was revised, it has become apparent to Staff that structures placed within 10 feet of the creek typically result in impacts within the 10-foot wide buffer (e.g. construction impacts, structure maintenance impacts and construction of prohibited structures).

- **To make the ALUO consistent with the Ashland Comprehensive Plan.**

The Environmental Resources Element of Ashland's Comprehensive Plan (Chapter IV) includes a variety of goals and policies related to the preservation and protection of Ashland's wetlands and riparian areas. The Environmental Resources Element of Ashland's Comprehensive Plan was revised, approved and adopted in 1991. The 1991 revisions included several goals and policies related to Ashland's wetlands and riparian areas that were not implemented in the ALUO. The following goals and policies are from the Environmental Resources Element of the Ashland Comprehensive Plan.

Protect the quality of riparian resource lands, and preserve their wildlife habitats.

To preserve and protect significant wetlands, and to mitigate potential impacts on these areas due to development and conflicting uses.

Evaluate the quantity and quality of wetland resources inside the City Limits and within the Urban Growth Boundary through the compilation of an inventory of significant wetlands.

Develop site review procedures and performance standards, using buffering techniques, setbacks and mitigation measures, to reduce the impacts of development on significant wetland areas.

Examine the Physical and Environmental Constraints chapter of Ashland's Land Ordinance concerning wetland and riparian areas, and insure that existing zoning regulations maintain these valuable areas in a natural state.



Utilize local resources to form a technical advisory committee to identify potential plants and animals which rely on wetland habitat for their continued existence. Retaining these area [in] a natural state should be of high priority , and development should consider and accommodate the habitat utilized by these plants and animals.

To preserve existing wildlife habitats and natural areas within the city wherever possible.

- **City Council Goal**

The completion of the riparian ordinance is a City Council goal. The Physical and Environmental Constraints chapter of the ALUO was last revised with respect to riparian areas in 1989. Since then, the important functions and values of wetlands and riparian areas, and connection to a community’s quality of life have become much more apparent, as reflected in the goal of the City Council.

- **Riparian protection has become part of Ashland’s storm water management plan.**

The City of Ashland 2000 Storm Water and Drainage Master Plan advocates non-traditional storm water management techniques that include protection and restoration of Ashland’s stream corridors. One of the recommended regulatory tools identified for achieving the goals of the plan is the adoption of riparian corridor protection measures.

- **To comply with Statewide Planning Goal 5.**

Statewide Planning Goal 5 requires local communities to inventory and adopt land use protections for significant natural resources such as wetlands and riparian areas. Adoption of a Local Wetland Inventory and an updated ordinance that regulates activities within and adjacent to significant wetlands and fish-bearing streams is intended to fulfill this State requirement.

What is the history of the project?

The following summarizes the time line of the water resources project to date, as well as the schedule planned through the end of this year.

Statewide Planning Goal 5 Administrative Rule Revised (Oregon Administrative Rule 660-23-000)	Sept 1996
City Council Identifies “Developing an Updated Riparian Area Protection Ordinance” as Council Goal	April 2001
Wetlands and Riparian Corridor Inventory Work	2003-2005
Wetlands and Riparian Technical Advisory Committee	2004 - 2005



Technical Review of Draft Ordinance by Fishman Consulting	Nov 2005
City Council Identifies “Complete Riparian Ordinance” as Council Goal	2005-2007 Goals
Wetlands and Riparian Corridor Inventory Finalized	Feb 2007
Oregon Division of State Lands Inventory Approval	March 2007
Planning Commission Study Sessions	Aug and Nov 2007
Planning Commission Public Workshop with Measure 56 Notice	April 2008
Planning Commission Public Hearings	April 2008 – present
Project Update to City Council by Staff	Aug 2008
Planning Commission Recommendation to City Council	Sept 2008
City Council Public Hearings and Decision	Oct 2008 – Dec 2008

Planning Commission Options:

The Planning Commission may identify specific issues and concerns, and the type and scope of changes the majority of the Commission would like to see to the draft Chapter 18.63, Water Resource Protection Zones.

Attachments:

Draft Chapter 18.63, Water Resource Protection Zones (with potential modifications), June 24, 2008

Water Resources Regulation Comparison Matrix

Excerpt from “Protection Water Resources with Smart Growth”, United States Environmental Protection Agency

Written comments received since June 24, 2008 Planning Commission meeting





Chapter 18.63
WATER RESOURCE PROTECTION ZONES

SECTIONS:

- 18.63.010 Purpose and Intent**
- 18.63.020 Applicability**
- 18.63.030 Definitions**
- 18.63.040 Establishment of Ashland's Water Resources**
- 18.63.050 Location of Water Resource Protection Zones**
- 18.63.060 Exempt Activities and Uses within Water Resource Protection Zones**
- 18.63.070 Limited Activities and Uses within Water Resource Protection Zones**
- 18.63.080 Additional Requirements for Land Divisions and Property Line Adjustments within Water Resource Protection Zones**
- 18.63.090 Map Errors and Adjustments, Water Resource Protection Zone Reductions and Hardship Variances**
- 18.63.100 Approval Process**
- 18.63.110 Mitigation Requirements**

18.63.010 Purpose and Intent

The purpose and intent of this chapter are:

- A. To implement federal and state law with respect to the protection of clean water, pollution control and preservation of endangered species.
- B. To protect Ashland's Goal 5 significant wetlands and riparian areas, thereby protecting and restoring the hydrologic, ecologic and land conservation functions these areas provide for the community.
- C. To implement the provisions of Statewide Planning Goals 6 and 7, which require the buffering and separation of those land uses and activities that lead to or may create impacts on water quality, as well as to reduce the risk to people and property resulting from the inappropriate management of wetland and riparian areas.
- D. To implement the goals and policies of the Environmental Resources chapter of Ashland's Comprehensive Plan with respect to water resources, wetlands, floodplains and stream flooding.
- E. To reduce flood damage and potential loss of life in areas subject to periodic flooding.



F. To better manage storm water drainage, minimize maintenance costs, protect properties adjacent to drainage ways, improve water quality, protect riparian and aquatic fish and wildlife habitat and provide opportunities for trail connections.

G. To protect water associated with Ashland's hydrology for human uses, fish and wildlife and their habitats.

H. To control erosion and limit sedimentation.

I. To protect the amenity values and educational opportunities of Ashland's wetlands, water bodies and associated riparian areas as community assets.

J. To improve public appreciation and understanding of wetlands and riparian areas for their unique ecosystem structures and functions and for the human-nature interactions they provide.

K. To improve and promote coordination among local, state, and federal agencies regarding development activities near Ashland's wetlands, water bodies and associated riparian areas.

L. In cases of hardship, to provide a procedure to alter wetlands and riparian areas only when offset by appropriate mitigation, as stipulated in the ordinance and other applicable state and federal requirements.

18.63.020 Applicability

A. The provisions of this Chapter apply to all lands containing Water Resources and Water Resource Protection Zones. Water Resources include all streams and wetlands. Water Resource Protection Zones are buffer areas of varying widths surrounding Water Resources and include Stream Bank Protection Zones and Wetland Protection Zones. Water Resources and Water Resource Protection Zones are defined, established and protected in this Chapter.

B. Federal and state wetland and riparian regulations will continue to apply within the City of Ashland, regardless of whether or not these areas are mapped on the Ashland Water Resources Map. Nothing in this chapter shall be interpreted as superseding or nullifying federal or state requirements. Additionally, the City of Ashland shall provide notification to the Oregon Department of State Lands (DSL), as required by Division 23 Administrative Rules, for all applications concerning development permits or other land use decisions affecting wetlands on the inventory.

C. The burden is on the property owner to demonstrate that the requirements of this Chapter are met or are not applicable to development activity or other proposed use or alteration of land. The Staff Advisor may make a determination based on the Ashland Water Resources Map, field check, and any other relevant maps, site plans and information that a Water Resource or Water Resource Protection Zone is not located on a particular site or is not impacted by proposed development, activities or uses. In cases where the location of the Water Resource or Water



Resource Protection Zone is unclear or disputed, the Staff Advisor may require a survey, delineation prepared by a natural resource professional, or a sworn statement from a natural resource professional that no Water Resources or Water Resource Protection Zones exist on the site.

D. All Water Resources and Water Resource Protection Zones shall be protected from alteration and development, except as specifically provided in this Chapter. No person or entity shall alter or allow, or permit or cause to be altered any real property designated as a Water Resource or Water Resource Protection Zone, except as set forth in an exemption, planning action or permit authorized in this Chapter. No person or entity shall use or allow, or permit or cause to be used, property designated as a Water Resource or Water Resource Protection Zone, except as set forth in an exemption, planning action or permit authorized in this Chapter.

18.63.030 Definitions

Alter or Alteration - means any human-induced physical change to the existing condition of land or improvements thereon including but not limited to clearing, grubbing, draining, removal of vegetation (chemical or otherwise), excavation, grading, placement of fill material, placement of structures or impervious surfaces or other construction. **"Permit to be altered"** means allowing or failing to prevent the alteration.

Approval Authority – The Staff Advisor, Planning Commission or its Hearings Board, Hearings Officer, or City Council as determined by the applicable procedural requirements.

Ashland Water Resources Map – The adopted City of Ashland map which identifies the approximate locations of Water Resources in Ashland including officially recognized streams and wetlands identified on Ashland's Local Wetland Inventory.

Bank Full Stage - means the two-year recurrence interval flood elevation.

Clearing - means the removal, redistribution or disturbance of vegetation, soil or substrate that may include trees, brush, grass, ground cover, or other vegetative matter from a site.

Drainage Ditch or Channels include:

1. Roadside ditches that carry only storm water runoff from the adjacent road and the immediate surrounding area. (Drainage ditches do not include historically altered streams or channels that convey surface water flows. These features are still classified as streams for the purpose of this ordinance.)
2. Constructed channels designed as part of the storm water infrastructure and drain directly from storm water facilities or storm pipe systems.



Enhancement - means actions performed to improve the condition or functions and values of a Water Resource and its associated Protection Zone. Enhancement actions include but are not limited to increasing plant diversity, increasing fish and wildlife habitat, installing environmentally compatible erosion controls, and removing invasive plant species.

Fill Material - means a deposit of earth or other natural or manmade material placed by artificial means.

Filling - means the act of placing fill material in any amount, including the temporary stockpiling of fill material.

Fish Use - means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts. Fish use is determined from Oregon Department of Forestry Stream Classification, Oregon Department of Fish and Wildlife and Oregon Department of State Lands maps for salmonid fish distribution.

Hand-Held Equipment or Machinery - means equipment or machinery held in and operated by hand. Hand-held equipment or machinery includes but is not limited to manual tools, weed eaters, chainsaws, and equipment or machinery with wheels and a weight of 100 pounds or less (e.g. push lawn mowers, brush mowers). For the purposes of this ordinance, equipment or machinery with wheels and a weight in excess of 100 pounds are not considered hand-held equipment.

Comment [u1]: Replaces “non-power assisted equipment” definition.

Impervious Surface – means surface materials which prevent the normal infiltration of storm water into the ground.

Lawn - means grass or similar materials maintained as a ground cover of less than 6 inches in height. For purposes of this ordinance, lawn is not considered native vegetation regardless of the species used.

Local Native Plant Species – means those plant species appropriate to planting in or adjacent to a Water Resource that are native species indigenous to Jackson County. Local native plant species are adapted to the elevation, weather, soils and hydrology of the area; will support the desired structures, functions, and values of the water resource; and once established require significantly less maintenance than non-native species. The City of Ashland Planning Division maintains a list of recognized site-appropriate native plant species for both wetland and stream bank water resource applications, along with a list of known local suppliers.

Comment [u2]: Moved below in alphabetical order.

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Legally Created Lot or Parcel of Record - for purposes of this chapter includes a lot or parcel that was legally created and recorded prior to the adoption of land division ordinances or a lot or parcel shown on a final plat approved and recorded prior to the effective date of the ordinance codified in this chapter. A “legally created lot or parcel of record” also includes a lot or parcel recorded after the effective date of the ordinance codified in this chapter, but only if the lot or



parcel was approved on a preliminary plat approved prior to the effective date of the ordinance codified in this chapter and the final plat recordation is in compliance with the original approved timetable of development.

Legally Established Nonconforming Activities, Uses and Structures - Nonconforming activities, uses and structures that were legally established prior to the effective date of this ordinance.

Comment [u3]: Moved definition from text of ordinance to definitions section.

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Local Native Plant Species – means those plant species appropriate to planting in or adjacent to a Water Resource that are native species indigenous to Jackson County. Local native plant species are adapted to the elevation, weather, soils and hydrology of the area; will support the desired structures, functions, and values of the water resource; and once established require significantly less maintenance than non-native species. The City of Ashland Planning Division maintains a list of recognized site-appropriate native plant species for both wetland and stream bank water resource applications, along with a list of known local suppliers.

Mitigation - means taking one or more of the following actions listed in order of priority:

1. Avoiding the impact altogether by not taking a certain development action or parts of that action.
2. Minimizing impacts by limiting the degree or magnitude of the development action and its implementation.
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development action by monitoring and taking appropriate corrective measures.
5. Compensating for the impact by replacing or providing comparable substitute resources or environments.

Mitigation Plan - means a plan that outlines the activities that will be undertaken to alleviate project impacts to sensitive areas.

Natural Resources Professional – A “natural resources professional” includes individuals who have a Bachelors degree, or the equivalent or greater, in the field of natural resources, biology, ecology, or related fields, and at least four (4) years of relevant post graduate experience.

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Non-native Species - means a plant species which is not indigenous to the local area.

Noxious, Invasive and/or Non-native Vegetation – means plant species which are recognized as having a significant potential to disrupt the functions and values of local Water Resource ecosystems. The City of Ashland Planning Division maintains a list of recognized noxious, invasive and non-native plants.



Other Possible Wetland – means an area that appears to meet wetland criteria but is too small (less than 0.5 acre according to Oregon Department of State Lands (DSL) rules) to require its inclusion in the Local Wetland Inventory. The Ashland Water Resources Map notes areas that are in the Other Possible Wetland designation. However, there may be additional existing areas that meet the Other Possible Wetland designation, but are not included on the Ashland Water Resources Map.

Power Assisted Equipment or Machinery

~~l- means equipment or machinery other than Hand-Held Equipment. For the purposes of this ordinance, equipment or machinery with wheels is considered power assisted equipment.~~

~~**Primary Structure** – A building in which the principal use of the zoning district in which it is located is conducted.~~

Protection Zone – An area subject to the provisions of this chapter which includes a Water Resource and an associated buffer area of varying width, as established herein, located adjacent to the Water Resource and in which certain human activities are regulated in order to protect the structures and functions of the resource.

Restoration - means efforts performed to re-establish the functional values and characteristics of a critical area that have been destroyed or degraded by past alterations (e.g., filling, grading or draining).

Riparian Area – means the area adjacent to a Stream Bank Water Resource, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem, which affects or is directly affected by the Water Resource.

Riparian Buffer – An area adjacent to the riparian area that preserves and protects the riparian area and its environmental functions.

Riparian Corridor - "Riparian corridor" is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary. A Riparian Corridor is a type of Stream Bank Protection Zone.

Stream – A stream means a channel such as a river or creek that carries flowing surface water, including perennial, intermittent and ephemeral streams with defined channels, and excluding man-made irrigation and drainage channels. Drainage channels do not include historically altered streams or channels that convey surface water flows. A stream is a type of Water Resource.

Stream, Ephemeral - An ephemeral stream generally flows only during and following a rain event. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow. Intermittent and Ephemeral Streams is a type of Stream Bank Protection

Comment [u4]: Replaced with hand-held equipment or machinery definition.

Deleted: 1. "Non-power Assisted Equipment" means equipment or machinery operated by hand or operated by electricity or battery power.

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2. "Power Assisted Equipment"

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Comment [u5]: Limits rebuilding of nonconforming structures damaged by fire or natural hazard to the primary structure.

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Zone. An ephemeral stream can also be called an arroyo in Latin America, a winterbourne in Britain, or a wadi in the Arabic-speaking world.

Stream, Intermittent - An intermittent stream generally flows only during part of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow. Intermittent and Ephemeral Streams is a type of Stream Bank Protection Zone.

Stream, Perennial - A perennial stream has flowing water year-round during a typical year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Stream, Local - Local Streams is a type of Stream Bank Protection Zone.

Stream Bank Protection Zone - An area subject to the provisions of this chapter which includes a stream and an associated buffer area of varying width, as established herein, located adjacent to the stream, and in which certain human activities are regulated in order to protect the structures and functions of the stream. A Stream Bank Protection Zone is a type of Water Resource Protection Zone. There are three types of Stream Bank Protection Zones defined, established and protected in this Chapter - Riparian Corridor, Local Streams and Intermittent and Ephemeral Streams.

Stream Bank Protection Zone Boundary - An imaginary line that is a standard distance upland from the top of bank.

Stream Corridor Functions - include providing shade for the stream, stream bank and channel stability, woody debris for the stream, sediment retention, litter for aquatic organisms in the stream, water filtration, aquatic and riparian fish and wildlife habitat.

Top of Bank - means ~~the stage or elevation at which water overflows the natural banks of streams or other waters of the state and begins to inundate upland areas~~ the first major change in the slope of the incline from the ordinary high water level of a water body. A major change is a change in slope of 20 percent or more. If there is no major change within a distance of 50 feet from the ordinary high water level, the two-year recurrence interval flood elevation may be used to approximate the top of bank, or the line of non-aquatic vegetation, whichever is most landward.

Comment [u6]: Addresses concerns about making the top of bank location clear and measurable.

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Upland - Land not characterized by the presence of riparian area, water bodies or wetlands.

Water Resource - means a riparian, local, intermittent, or ephemeral stream corridor or a wetland, as distinguished from a Protection Zone, which extends upland from the Water Resource.

Water Resource Protection Zone - An area subject to the provisions of this chapter which includes a Water Resource and an associated buffer area of varying width, as established herein,



located adjacent to the Water Resource and in which certain human activities are regulated in order to protect the structures, functions and values of the resource. Water Resource Protection Zone is a category including Stream Bank Protection Zones and Wetland Protection Zones, and is used throughout this title to refer to Stream Bank Protection Zones and Wetland Protection Zones.

Wetlands - means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are a type of Water Resource.

Wetlands, Locally Significant – means those wetlands identified on the Ashland Water Resources Map and determined “significant wetlands” using the criteria adopted the Oregon Department of State Lands (DSL). Locally Significant Wetlands is a type of Wetland Protection Zone.

Wetlands, Other Possible – Other Possible Wetlands is a type of Wetland Protection Zone.

Wetland Boundary - means a line marked on a map or flagged in the field that identifies the approximate wetland/non-wetland boundary.

Wetland Buffer – means an area extending away from the outer delineated wetland boundary or upland edge that is preserved for the purpose of protecting the functions and values of the wetland by serving to reduce the adverse effects of adjacent land uses on water quality and habitat functions of the wetland.

Wetland Delineation - means a determination of wetland presence that includes marking the wetland boundaries on the ground and/or on a detailed map prepared by professional land survey or similar accurate methods.

Wetland Functions – include wildlife habitat, fish habitat, water quality and hydrological control.

Wetland Protection Zone – An area subject to the provisions of this chapter that includes all wetlands determined to be locally significant and other possible wetlands with confirmed jurisdictional wetland presence, and an associated buffer area of varying width, as established herein, located adjacent to the wetland, and in which certain human activities are regulated in order to protect the structures and functions of the wetland. A Wetland Protection Zone is a type of Water Resource Protection Zone. There are two types of Wetland Protection Zones defined, established and protected in this Chapter – Locally Significant Wetlands and Other Possible Wetlands.

Wetland Specialist – means an individual who has the appropriate credentials verifying proven expertise and vocational experience conducting wetland delineations.



18.63.040 Establishment of Ashland's Water Resources

The approximate locations of Ashland's Water Resources are identified on official maps adopted by the City of Ashland and added to the Comprehensive Plan through ordinance 2419 (May 1987), ordinance 2528 (July 1989) and ordinance _____ (June 2008). Because the Comprehensive Plan maps are acknowledged to be approximate, the more precise wetland boundaries can be mapped, staked and used for development review purposes without a modification of the Comprehensive Plan maps.

18.63.050 Location of Water Resource Protection Zones

A Water Resource Protection Zone is hereby established adjacent to all Water Resources to protect their integrity, function and value. The boundaries of the following Water Resource Protection Zones shall be established by an on-site survey based upon the following standards.

A. Stream Bank Protection Zones. The following types of Water Resource Protection Zones are hereby established to protect streams and their associated riparian resources. The approximate locations of streams are identified on the Ashland Water Resources Map.

1. **Riparian Corridor** - The required protection zone for Riparian Corridor fish-bearing streams with an annual average stream flow less than 1,000 cubic feet per second shall extend 50-feet upland from the top of bank. Streams subject to this classification are: *Ashland Creek, Bear Creek, Emigrant Creek, Kitchen Creek, Neil Creek, and Tolman Creek.*
2. **Local Streams** - The required protection zone for non-fish-bearing Local Streams shall extend 30-feet upland from the top of bank or 40-feet from the centerline of the stream, whichever is greater. Streams subject to this classification are: *Ashland Creek, Cemetery Creek, Clay Creek, Hamilton Creek, Hamilton Creek Tributaries 1 and 2, Wrights Creek, Wrights Creek Tributary 5.* [Note: Different sections of the same creek may be listed in more than one Stream Bank Protection Zone classification. Consult Ashland Water Resources Map to determine Stream Bank Protection Zone classification by location.]
3. **Intermittent and Ephemeral Streams** - The required protection zone for intermittent and ephemeral streams shall extend 20-feet upland from the top of bank or 30-feet from the centerline of the stream, whichever is greater. Streams subject to this classification are: *Ashland Creek Tributary 1, Beach Creek, Cemetery Creek, Fordyce Creek, Golf Course Creek, Hamilton Creek, Hamilton Creek Tributary 1, Knoll Creek, Mook (Clear) Creek, Mountain Creek, Paradise Creek, Pinecrest Creek, Roca Creek, Strawberry Creek, Twin Creek, West Fork Wrights Creek, Wrights Creek Tributaries 1, 2, 3 and 5.* [Note: Different sections of the same creek may be listed in more than one Stream Bank Protection Zone classification. Consult Ashland Water Resources Map to determine Stream Bank Protection Zone classification by location.]
4. **Significant Wetland Presence** - Where a Stream Bank Protection Zone includes all or part of a significant wetland as identified on official maps adopted by the City of Ashland, the



distance to the Stream Bank Protection Zone boundary shall be measured from, and include, the upland edge of the wetland.

5. Determination of Protection Zone - The measurement of the Stream Bank Protection Zones shall be a horizontal distance. In areas where the top of each bank is not clearly defined, the boundary of the Stream Bank Protection Zone shall be determined by measuring from the ordinary high water level based upon a two-year flood interval occurrence, or the line of non-aquatic vegetation (edge of riparian area boundary), whichever is most landward.

B. Wetland Protection Zones. The following types of Water Resource Protection Zones are hereby established to protect wetland resources. The approximate locations of Locally Significant Wetlands and Other Wetlands are identified on the Ashland Water Resources Map. The precise boundary of a Wetland Protection Zone shall be established through conducting an on-site wetland delineation and survey based upon the following standards.

1. Locally Significant Wetlands – For wetlands classified as locally significant on the Ashland Water Resources Map, the Wetland Protection Zone shall consist of all lands identified to have a wetland presence on the wetland delineation, plus a wetland buffer consisting of all lands within 50-feet of the upland-wetland edge. The measurement shall be a horizontal distance. A wetland delineation prepared by a qualified wetland specialist shall be submitted to the City of Ashland that graphically represents the location of wetlands on a site plan map in accordance with section 18.63.100.A.3. An average buffer width of 50-feet may be utilized around the perimeter of a significant wetland upon submission of evidence and a detailed plan by a natural resources professional demonstrating that equal or better protection of the functions and values of the resource will be ensured, and that there will be an enhanced buffer treatment through the implementation and maintenance of a restoration and enhancement plan within the buffer area.

2. Other Possible Wetlands – For wetlands not classified as locally significant on the Ashland Water Resources Map, the Wetland Protection Zone shall consist of all lands identified to have a wetland presence on the wetland delineation, plus all lands within 20-feet of the upland-wetland edge. Other Possible Wetlands includes all areas designated as such on the Ashland Water Resources Map and any unmapped wetlands discovered on site. The measurement shall be a horizontal distance. A wetland delineation prepared by a qualified wetland specialist shall be submitted to the City of Ashland that graphically represents the location of wetlands on a site plan map in accordance with section 18.63.100.A.3. An average buffer width of 20-feet may be utilized around the perimeter of a possible wetland upon submission of evidence and a detailed plan by a natural resources professional demonstrating that equal or better protection of the functions and values of the resource will be ensured.

18.63.060 Exempt Activities and Uses within Stream Bank and Wetland Protection Zones



A. Exempt Activities Within Stream Bank Protection Zones. The following activities and uses do not require a permit or authorization from the City to be conducted in a Stream Bank Protection Zone. All disturbed areas shall be re-planted using local native plant species, erosion control material shall be applied (e.g. mulch, hay, jute-netting, or comparable) and temporary irrigation facilities unless expressly authorized. Re-planting, erosion control and temporary irrigation shall be installed within 90 days of authorized land disturbances. Similarly, using herbicides, pesticides or chemical fertilizers in the Stream Bank Protection Zone shall not be permitted as part of the exempt activities below unless expressly authorized.

1. Non-native, Noxious and Invasive Vegetation Removal - Removal of non-native vegetation, and noxious and invasive vegetation listed on the City of Ashland's Noxious and Invasive Plant List with hand-held equipment. The act of removing non-native, noxious and invasive vegetation shall not result in the removal of native vegetation including native trees of all sizes (e.g. tree saplings, mature trees), removal of non-native trees greater than six inches diameter at breast height, or disturbance of the soil surface area.

2. Routine Planting - The planting of local native plant species or the replacement of non-native plants with local native plant species without the use of power-assisted machinery or equipment.

3. Non-native Planting - The planting of non-native vegetation with hand-held equipment not exceeding 15 percent of the total lot area in the Stream Bank Protection Zone where all of the following are met.

a. The total area of non-native planting shall be calculated by including existing and new non-native plant areas.

b. Non-native plants shall be planted upland of the top of bank.

c. Noxious and invasive plants on the City of Ashland's Noxious and Invasive Plant List shall not be used.

d. Using herbicides, pesticides or chemical fertilizers within the Stream Bank Protection Zone is not permitted in conjunction with non-native plantings.

e. New lawn is not permitted within the Stream Bank Protection Zone.

4. Fuel Reduction - Cutting or thinning of vegetation with hand-held equipment or machinery, or power-assisted equipment or machinery weighing 100 pounds or less (e.g. push lawn mowers, brush mowers) consistent with City standards for Wildfire Lands described in the Physical and Environmental Constraints Chapter 18.62 and determined to be necessary as part of an approved fire hazard prevention/fuel reduction plan, provided that the cutting/thinning is the minimum necessary to alleviate the potential hazard.

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Deleted: with non-power assisted equipment (i.e. hand operated or electric or battery powered equipment)

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Comment [u7]: Addresses concerns regarding the difficulty in removing invasive plants such as weeds and blackberries, especially in large areas, with hand-held equipment and machinery. The definition of hand-held equipment and machinery has been expanded to include power-assisted equipment with wheels weighing 100 pounds or less such as push lawn mowers and brush mowers. Rather than regulating weed eater use and creating different zones for different types of machinery (e.g. weed eaters only upland of top of bank), focus of regulation is preserving native vegetation, trees and bank stability.

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Comment [u8]: To address concerns regarding the ability to use non-native vegetation in a stream bank protection zone.

Comment [u9]: Needs further research on the appropriate percentage of non-native plants.

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5. **Testing** – Site investigative work with minimal surface area disturbance conducted by or required by a City, County, State, or Federal agency, such as but not limited to surveys, percolation tests, soil borings or other similar tests.

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6. **Landscaping, Lawn and Tree Maintenance** - The limitations imposed by this chapter do not include the routine maintenance of existing vegetation within a Stream Bank Protection Zone, provided that the following requirements are met.

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a. Using herbicides, pesticides or chemical fertilizers in the Stream Bank Protection Zone shall not be permitted as part landscaping, lawn and tree maintenance activities.

b. Existing lawn within the riparian corridor may be maintained, but not expanded within the Stream Bank Protection Zone.

c. Maintenance pruning of existing trees shall be kept to a minimum and shall be in accordance with the Tree Preservation and Protection Chapter 18.61 and with the American National Standards Institute (ANSI) standards for Tree Care Operations. Under no circumstances shall the maintenance pruning be so severe that it compromises the tree's health, longevity, or resource functions (i.e. shade, soil stability, erosion control, etc.)

7. **Outdoor Uses** – The establishment of outdoor uses such as yards and gardens where the outdoor use area meets all of the following.

Comment [u10]: To address concerns regarding the ability to use non-native vegetation in a stream bank protection zone and concerns regarding the usability of a stream bank protection zone as yard area.

a. The total outdoor use area in the Stream Bank Protection Zone, including existing and new outdoor use areas in the Stream Bank Protection Zone, does not exceed 150 square feet per lot.

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b. The outdoor use area is located at least ten feet from the top of bank of a stream.

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c. The permanent alteration of the Stream Bank Protection Zone by grading or by the placement of structures, fill or impervious surfaces is prohibited.

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Comment [u11]: An allowance for patios, perhaps limited to porous paving, flagstones, etc. could be added.

c. No trees six inches diameter at breast height (dbh) are removed.

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d. Plantings do not include plants on the City of Ashland's Noxious and Invasive Plant List. Non-native vegetation may be used in the exempt outdoor use areas except as outlined below.

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i. Using herbicides, pesticides or chemical fertilizers within the Stream Bank Protection Zone is not permitted in conjunction with outdoor uses.

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ii. New lawn is not permitted within the Stream Bank Protection Zone.



8. City Emergency Activities - Emergency repair authorized by the City Administrator or his/her designee which must be undertaken immediately, or for which there is insufficient time for full compliance with this chapter, in order to address at least one of the following.

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- a. Prevent an imminent threat to public health or safety.
- b. Prevent imminent danger to public or private property.
- c. Prevent an imminent threat of serious environment degradation.

9. Drainage Facility Maintenance – Maintenance of intentionally created wetlands or surface water systems in accordance with agency-approved management plans.

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10. Legally Established Nonconforming Activities, Uses and Structures – Legally established nonconforming activities, uses and structures may continue subject to the following provisions.

Comment [u12]: Moved to definitions section.

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Deleted: An existing use, activity or structure located within or partially within a Stream Bank Protection Zone, which was legally established prior to the effective date of this ordinance and which would be prohibited by this chapter or subject to the limitations and controls imposed by this Chapter,

a. **Structure Maintenance and Expansion.** Existing legally established nonconforming structures within or partially within a Stream Bank Protection Zone may be continued, used and maintained, but shall not have the existing building footprint or impervious surface expanded or enlarged unless the expansion or enlargement occurs outside the Stream Bank Protection Zone. Additional stories may be added to existing structures in the Stream Bank Protection Zone if the existing building footprint does not change in size or shape and additional surface area in the Stream Bank Protection Zone is not disturbed.

b. **Fire and Natural Hazards.** A primary structure that is legally established nonconforming may be rebuilt if damaged or destroyed by a fire or a natural hazard (e.g. flood).

Comment [u13]: Addresses concerns about ability to reconstruct primary buildings if damaged or destroyed by a fire or natural hazard (e.g. commercial buildings on plaza).

c. **Previously Approved Building Envelopes** – A previously approved building envelope within or partially within a Stream Bank Protection Zone, which would be prohibited by this chapter or subject to the limitations and controls imposed by this Chapter, may be built upon as originally approved and does not have to meet the requirements of this Chapter if the following conditions are met:

Comment [u14]: Addresses concerns about the ability to construct new homes on vacant lots with previously approved building envelopes that are made nonconforming by the proposed ordinance.

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- i. The building envelope was established and received Ashland Planning Division approval prior to the effective date of this ordinance.
- ii. The building envelope is located on a vacant lot.
- iii. The building envelope is located on a legally created lot of record which was created prior to the effective date of this ordinance.



d. **Previously Approved Driveways** – An approved driveway within or partially within a Stream Bank Protection Zone, which would be prohibited by this chapter or subject to the limitations and controls imposed by this Chapter, may be built as originally approved and does not have to meet the requirements of this Chapter if the following conditions are met.

Comment [u15]: Addresses concerns about the ability to construct new driveways on vacant lots with previously approved building envelopes that are made nonconforming by the proposed ordinance.

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i. The driveway location was established and received Ashland Planning Division approval prior to the effective date of this ordinance.

ii. The driveway location is identified on a vacant lot.

iii. The driveway location is identified on a legally created lot of record which was created prior to the effective date of this ordinance.

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e. **Activities and Uses.** Existing legally established nonconforming activities or uses within or partially within a Stream Bank Protection Zone may be continued but shall not have the activity or use increased, expanded, enlarged or intensified, unless the increase, expansion, enlargement or intensification occurs outside of the Stream Bank Protection Zone.

f. **City Facility Maintenance.** Routine maintenance of City piped drainage facilities, utilities and irrigation pumps, which were created or developed as part of a drainage or utility system, and which does not disturb additional riparian surface area.

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g. **Private Facility Maintenance.** Routine maintenance of existing private drainage facilities, utilities and irrigation pumps that do not disturb additional riparian surface area.

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h. **Access Maintenance.** Maintenance of existing public and private roads, streets, driveways and utility lines when located in city right-of-way or public easement.

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i. **Discontinuance.** Discontinued nonconforming activities or uses are deemed abandoned after six months and may not be resumed except in full conformity with this Chapter. Discontinued nonconforming activities or uses may be resumed within six months from such discontinuance, but not thereafter, when demonstrating clear evidence of non-abandonment. No change or resumption of a nonconforming activity or use of land shall be permitted that will result in a greater adverse impact as measured against impacts associated with the former nonconforming activity or use of land. Impacts on the Water Resource's values and functions such as water quality, fish and wildlife habitat, flood control capacity, and slope stability shall be considered when evaluating a request to change or resume a former nonconforming use.

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Comment [u16]: For consistency with existing discontinuance language in 18.68.090.

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B. Wetland Protection Zones. The following activities and uses do not require a permit or authorization from the City to be conducted or to continue in a Wetland Protection Zone. All



disturbed areas shall be re-planted using local native plant species, erosion control material shall be applied (e.g. mulch, hay, jute-netting, or comparable) and temporary irrigation facilities installed. Re-planting, erosion control and temporary irrigation shall be installed within 90 days of authorized land disturbances. Similarly, using herbicides, pesticides or chemical fertilizers in the Wetland Protection Zone shall not be permitted as part of the exempt activities below unless expressly authorized.

1. **Routine Planting** - The planting of local native plant species or the replacement of non-native plants with local native plant species without the use of power-assisted machinery or equipment.

2. **Landscaping and Tree Maintenance** - The limitations imposed by this chapter do not include the routine maintenance of existing vegetation within a Wetland Protection Zone, provided that the following requirements are met.

a. Using herbicides, pesticides or chemical fertilizers in the Wetlands Protection Zone shall not be permitted as part landscaping, lawn and tree maintenance activities.

b. Maintenance pruning of existing trees shall be kept to a minimum and shall be in accordance with the Tree Preservation and Protection Chapter 18.61 and with the American National Standards Institute (ANSI) standards for Tree Care Operations. Under no circumstances shall the maintenance pruning be so severe that it compromises the tree's health, longevity, or resource functions (i.e. shade, soil stability, erosion control, etc.)

3. **City Emergency Activities** - Emergency repair authorized by the City Administrator or his/her designee which must be undertaken immediately, or for which there is insufficient time for full compliance with this chapter, in order to address at least one of the following.

a. Prevent an imminent threat to public health or safety.

b. Prevent imminent danger to public or private property.

c. Prevent an imminent threat of serious environment degradation.

4. **Legally Established Nonconforming Activities, Uses and Structures** – Legally established nonconforming activities, uses and structures may continue subject to the following provisions.

a. **Structure Maintenance** - Existing legally established nonconforming structures within or partially within a Wetland Protection Zone may be continued, used and maintained, but shall not have the existing building footprint or impervious surface expanded or enlarged unless the expansion or enlargement occurs outside the

Comment [u17]: Moved to definitions section.

Deleted: An existing use, activity or structure located within or partially within Wetland Protection Zone, which was legally established prior to the effective date of this ordinance and which would be prohibited by this chapter or subject to the limitations and controls imposed by this Chapter,



Wetland Protection Zone. Additional stories may be added to existing structures in the Wetland Protection Zone if the existing building footprint does not change in size or shape and additional surface area in the Wetland Protection Zone is not disturbed.

b. **Activities and Uses.** Existing legally established nonconforming activities or uses within or partially within a Wetland Protection Zone may be continued but shall not have the activity or use increased, expanded, enlarged or intensified, unless the increase, expansion, enlargement or intensification occurs outside of the Wetland Protection Zone.

c. **Discontinuance.** Discontinued nonconforming activities or uses are deemed abandoned after one year and may not be resumed except in full conformity with this Chapter. Discontinued nonconforming activities or uses may be resumed within one year from such discontinuance, but not thereafter, when demonstrating clear evidence of non-abandonment. No change or resumption of a nonconforming activity or use of land shall be permitted that will result in a greater adverse impact as measured against impacts associated with the former nonconforming activity or use of land. Impacts on the Water Resource's values and functions such as water quality, fish and wildlife habitat, flood control capacity, and slope stability shall be considered when evaluating a request to change or resume a former nonconforming use.

18.63.070 Limited Activities and Uses within Water Resource Protection Zones

The following activities and uses in Water Resource Protection Zones are allowed under a Type I land use procedure provided the activities or uses comply with the standards set forth in section 18.63.100.B.

A. Limited Activities and Uses within Stream Bank Protection Zones.

1. **Channel and Riparian Enhancement Activities** – Stream channel repair and enhancement as well as riparian habitat restoration and enhancement resulting in a net gain in ecological function. Channel and riparian enhancement activities not otherwise associated with development involving building, grading or paving are encouraged, and fees associated with reviewing these activities for compliance with applicable land use standards may be waived, at the discretion of the Staff Advisor.

2. **Removal of Vegetation** – Removal of vegetation from within a Stream Bank Protection Zone is prohibited, except when authorized with the following limited activities and uses.

a. Removal of non-native, invasive and/or noxious vegetation with power-assisted machinery or equipment.

b. Removal of emergent in-channel vegetation that is likely to cause flooding using non-invasive methods such as mowing or weed-whacking that do not disturb the



underlying substrate. Mechanized removal of emergent in-channel vegetation that would involve associated removal of soil below the ordinary high water line is not allowed and would otherwise be subject to state and federal wetland permitting requirements. [Note: The removal of any material from streams mapped as Essential Salmon Habitat by the Oregon Department of State Lands requires a wetland permit. Bear Creek, Ashland Creek, Neil Creek and Emigrant Creek are mapped as Essential Salmon Habitat.]

c. Hazardous Tree Removal. A hazard tree is a tree that is physically damaged to the degree that it is likely to fall and injure persons or property. In addition to the standards described in 18.63.100.B, the application shall also address the standards for a Tree Removal Permit for hazard trees found in the Tree Preservation & Protection Chapter 18.61.080.A.

d. Routine maintenance of City utilities and transportation facilities located within a Stream Bank Protection Zone that do not disturb additional surface area within the Protection Zone, provided the proposed maintenance complies with any applicable state and federal permitting requirements.

3. Building, Paving, and Grading Activities - The permanent alteration of the Stream Bank Protection Zone by grading or by the placement of structures, fill or impervious surfaces is prohibited, except when authorized with the following limited activities and uses.

a. The location and construction of public streets, bridges, utilities, pedestrian and multi-use path connections deemed necessary to maintain a functional system. This title, the Comprehensive Plan, Transportation System Plan, Utility Master Plans and other adopted documents shall guide this determination.

b. Replacement of existing public and private roads, streets and driveways. Public roads, streets and driveways shall be located in city right-of-way or public easement.

c. Installation or replacement of city and private drainage facilities, utilities, and irrigation pumps.

d. Replacement of a legally established nonconforming structure with a structure in the same location that does not disturb additional riparian surface area except those legally established nonconforming structures exempted in 18.63.060.A.9.b.

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Comment [u18]: Nonconforming primary structures are exempt from the permit process if destroyed by fire or natural hazard. All other nonconforming structures require Type I approval for replacement.

e. Erosion control and stream bank stabilization measures that have been approved by the Oregon Department of State Lands (DSL), the U.S. Army Corps of Engineers, or other state or federal regulatory agencies, and that utilize non-structural bio-engineering methods.



f. Construction of a storm water outfall discharging treated storm water from an adjacent developed area provided that the discharge meets local, state and federal water quality regulations.

g. The installation of a bridge or similar, bottomless crossing structure for the purpose of constructing a public street, bicycle or pedestrian crossing, as well as to provide a means of access to an otherwise inaccessible or landlocked property.

h. Installation or expansion of structural flood control measures, including but not limited to concrete retaining walls, gabions, gravity blocks, etc., shall generally be prohibited, but approved only if demonstrated that less-invasive, non-structural methods will not adequately meet the stabilization or flood control needs.

B. Limited Activities and Uses Within Wetland Protection Zones

1. Wetland Restoration and Enhancement Activities - Wetland restoration and enhancement activities resulting in a net gain in ecological function. Wetland restoration and enhancement activities not otherwise associated with development involving building, grading or paving are encouraged, and fees associated with reviewing these activities for compliance with applicable land use standards may be waived, at the discretion of the Staff Advisor.

2. Removal of Vegetation – Removal of vegetation from within a Wetland Protection Zone is prohibited, except when authorized with the following limited activities and uses.

a. Removal of non-native, invasive and/or noxious vegetation with power-assisted machinery or equipment.

b. Perimeter mowing and other cutting necessary for hazard prevention.

c. Hazardous Tree Removal. A hazard tree is a tree that is physically damaged to the degree that it is likely to fall and injure persons or property, and such hazard or danger cannot reasonably be alleviated by treatment or pruning. In addition to the standards described in 18.63.100.B, the application shall also address the standards for a Tree Removal Permit for hazard trees found in the Tree Preservation & Protection Chapter 18.61.080.A.

d. Routine maintenance of City utilities and transportation facilities located within a Wetland Protection Area that do not disturb additional wetland surface area, provided the proposed maintenance complies with any applicable State and Federal wetland permitting requirements.

3. Building, Paving and Grading Activities – The erection of structures, installation of impervious surfaces, grading, excavation, and placement fill within Wetland Protection Zones is prohibited, except when authorized with the following limited activities and uses.



a. The location and construction of public streets, bridges, utilities, pedestrian and multi-use path connections deemed necessary to maintain a functional system and upon finding that no other another reasonable, alternate location outside the Wetland Protection Zone exists. This chapter, the Comprehensive Plan, Transportation System Plan (TSP), adopted utility master plans and other adopted documents shall guide this determination.

b. Replacement of existing public and private roads, streets and driveways. Public roads, streets and driveways shall be located in city right-of-way or public easement.

c. Installation or replacement of public and private drainage facilities, utilities, and irrigation pumps.

d. Routine maintenance of existing drainage facilities and utilities that disturbs lands within the Wetland Protection Zone provided that the applicant complies with applicable State and Federal permitting requirements.

e. Replacement of legally established nonconforming structures located within the original footprint, provided replacement does not disturb additional surface area within the Wetland Protection Zone.

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18.63.080 Additional Requirements for Land Divisions and Property Line Adjustments Within Water Resource Protection Zones

Planning applications and procedures containing Water Resource Protection Zones and involving the division of land or lot line adjustments shall comply with the following provisions.

A. Building Envelope Established. Each lot shall contain a building envelope outside the Water Resource Protection Zone of sufficient size to permit the establishment of the use and associated accessory uses.

B. Conservation Area. Performance Standards Option, Subdivision and Partition applications shall include the Water Resource Protection Zone within a conservation easement or recorded development restriction, which stipulates that the use or activity within the Water Resource Protection Zone shall be consistent with the provisions of this chapter. The approval authority may require that the Water Resource Protection Zone be included in a separate tract of land managed by a homeowners' association or other common ownership entity responsible for preservation.

C. Density Transfer. Density calculated from the land area contained within the Water Resource Protection Zone may be transferred to lands outside the Water Resource Protection Zone provided the following standards are met.

1. Partitions and subdivisions involving density transfer shall be processed under the Performance Standards Options Chapter 18.88 of the Ashland Municipal Code.



2. A map shall be submitted showing the land area not within the Water Resource Protection Zone to which the density will be transferred.
3. The Water Resource Protection Zone shall be included in a separate preservation tract to be managed by a homeowner's association or other common ownership entity responsible for management of the area.
4. Density may only be transferred within the subject property or to a lot or lots contiguous to the subject property and within the same ownership.
5. The density transferred to lands not within the Water Resource Protection Zone may not be increased to more than one and a half (1.5) times the base density of the underlying zoning district. Fractional units are to be rounded down to the nearest whole number.

D. Management Plan. Long term conservation, management and maintenance of the Water Resource Protection Zone consistent with the requirements of this chapter shall be ensured through preparation and recordation of a management plan as described in 18.63.110.B.2.e.

E. Exemptions for a Public Purpose. An exemption to the requirements described above shall be granted for lots created for public park purposes, or privately-owned tracts created for the sole purpose of conserving in perpetuity the natural functions and values of the lands contained within the Water Resource Protection Zone.

18.63.090 Map Errors and Adjustments, Water Resource Protection Zone Reductions, and Hardship Variances

A. Map Errors and Adjustments. The Staff Advisor may authorize a correction to a wetland on the Ashland Water Resources Map when the applicant has shown that a mapping error has occurred and the error has been verified by the Oregon Department of State Lands (DSL). Delineations verified by DSL shall be used to automatically update the Ashland Water Resources Map and record the wetland delineation document. No formal variance application or plan amendment is required for map corrections where an approved delineation with a DSL letter of concurrence is provided. Approved delineations shall be subject to the terms of expiration set forth in the DSL approval.

B. Water Resource Protection Zone Reductions. A Water Resource Protection Zone may be reduced by the approval authority through a Type I land use procedure to allow alteration within the Water Resource Protection Zone where it is demonstrated that equal or better protection for identified resources will be ensured through restoration, enhancement and mitigation measures. The approval authority may approve or approve with conditions a request for a Water Resource Protection Zone Reduction based upon findings that the approval criteria in 18.63.100.C and the following standards have been satisfied.



1. Pre-existing Undeveloped Lots - For pre-existing undeveloped lots, legally created prior to the implementation of this ordinance, a Water Resource Protection Zone may be reduced by up to 50 percent when the applicant demonstrates that equal or better protection for identified resources will be ensured through restoration, enhancement and mitigation measures, and that the approval criteria in 18.63.100.C and the following standards have been satisfied.

- a. The application of the full Water Resource Protection Zone to the lot or parcel renders it not buildable.
- b. The proposed development shall minimize disturbance to the Water Resource Protection Zone by utilizing design options to minimize or reduce impacts of development.
 - i. Multi-story construction shall be used.
 - ii. Parking spaces shall be minimized to no more than that required as a minimum for the use.
 - iii. Pavement shall be minimized, and all pavement used shall be installed and maintained in a pervious paving material.
 - iv. Engineering solutions shall be used to minimize additional grading and/or fill.
- c. The proposed use or activity is designed to minimize intrusion into the Water Resource Protection Zone through the use of up to a 50 percent reduction of any dimensional standards (e.g. required front, side and rear yard setbacks; required distance between buildings; or maximum building height) to permit development as far outside or upland of the Water Resource Protection Zone as possible. Such adjustment to any applicable dimensional standards shall be reviewed as part of the requested reduction, and shall not be subject to a separate Variance application under Chapter 18.100. Reductions to dimensional standards may not be used to reduce required Solar Access setbacks without evidence of agreement by the effected property owner(s) to the north through a concurrent Solar Access Variance application as described in section 18.70.060.

2. Lots Proposed for Creation - Lots proposed for creation through a land division must demonstrate the existence of a sufficient buildable area outside the Water Resource Protection Zone. A Water Resource Protection Zone Reduction may be proposed for newly created lots only when it can be demonstrated that the alterations proposed are to be offset by appropriate mitigation; that superior protection for the Water Resource will be ensured through restoration, enhancement and mitigation measures; and that the approval criteria in 18.63.100.C and the following standards have been satisfied.

- a. The extent and nature of the proposed alteration or development will not create site disturbances to an extent greater than the minimum required for the use;



- b. The proposal will result in no loss in area or function of the Water Resource:
 - i. Any alteration permitted through a Water Resource Protection Zone Reduction shall be mitigated to ensure that there is no net loss of functions and no reduction in the area or spatial extent of Stream Bank or Wetland Protection Zones within the City of Ashland.
 - ii. Any encroachment or change in on-site or off-site drainage characteristics which would adversely impact the Water Resource has been considered and mitigated.
- c. Where natural vegetation has been removed due to alteration or development, erosion control provisions consistent with those described in the Land Use Ordinance and the Engineering Design Standards for Public Improvements shall be implemented;

3. For all Water Resource Protection Zone Reductions in Sections 1 and 2 above.

- a. Required plans and information shall be the same as listed in section 18.63.100.A.
- b. Copies of all state and federal permit applications shall be submitted with development applications requiring compliance with this chapter.
- c. The applicant shall enter into a two-year contract for installation and maintenance of local native plant species with the city. Financial security in an amount not less than 110 percent of the cost estimate for installation shall be provided.
- d. Restoration and enhancement shall be on a 1:1.5 area basis or such greater ratios as specified in this chapter for the requested activity. Thus, at a minimum, for every 100 square feet of Water Resource Protection Zone that is altered or used for development purposes, at least 150 square feet of the available remaining Water Resource Protection Zone shall be enhanced or restored. Priority shall be given to removal of noxious vegetation and planting of local native plant species, including ground cover, under-story and canopy, in non-vegetated areas or areas where noxious plant species are removed. The number and type of plant materials shall be specified in the contract but shall at a minimum comply with the following requirements:
 - i. No noxious or invasive plants shall be installed and existing noxious or invasive plant materials shall be removed.
 - ii. Plant materials shall be located in such a manner to maximize enhancement and restoration of the Water Resource Protection Zone, with particular emphasis



on temperature reduction of watercourses, erosion control, bank stabilization, and wildlife habitat enhancement.

iii. Installation standards within the required enhancement area are as follows:

- Ground cover shall be hydro-seeded or planted at two-foot intervals or such other interval established by the approval authority as sufficient to attain coverage of the required area within the two-year contract period.
- Under-story shall be minimum one-gallon materials planted at six-foot intervals or such other interval approved by the approval authority as sufficient to attain adequate coverage within the two-year contract period.
- Canopy trees shall be planted at 20-foot intervals or such other interval as required to install all materials required for tree mitigation pursuant to the tree mitigation requirements of the Ashland Land Use Ordinance.
- Additional materials or other habitat enhancements are encouraged.

e. A Water Resource Protection Zone reduction agreement shall be recorded in the public records to give notice of the restrictions and maintenance obligations and to ensure no further encroachment into the Water Resource Protection Zone occurs.

f. The applicant may dedicate a conservation easement or equivalent protection instrument to the city, homeowners association or a conservation organization, provided the form of the instrument is approved by the City Attorney and accepted by the council, if offered. Applicants should consult with their legal counsel or tax professionals about the tax advantages of conservation easements.

g. The approval authority may impose such additional reasonable conditions to mitigate other identified impacts resulting from development on the site.

C. Hardship Variances. In cases where the limitations on activities within a Water Resource Protection Zone unduly restrict the development or use of a lot or parcel legally created before the effective date of this ordinance, and the proposal cannot meet the standards for a Water Resource Protection Zone Reduction found in sections 18.63.090.B and 18.63.100.C, a property owner may request a Hardship Variance. Hardship Variances to the provisions of this chapter shall be processed under a Type II land use procedure, shall meet the approval criteria in 18.63.100.D, and are not subject to the Variance requirements of Chapter 18.100.

18.63.100 Approval Process – Determination of Compliance

A. Application – Required Plans and Information. The following plans and information shall be submitted with the application for activities and uses in a Water Resource Protection Zone which



are required to be processed under a Type I or Type II land use procedure including Limited Activities and Uses, Water Resource Protection Zone Reductions and Hardship Variances.

1. A narrative description of all proposed activities and uses including the extent to which any Water Resource Protection Zone is proposed to be altered or affected as a result of the proposed development activity or use (in terms both of square footage of surface disturbance and cubic yards of overall disturbance).
2. Written findings of fact addressing all applicable approval standards and criteria.
3. Site development plan map, drawn to scale.

a. For Applications Involving Only a Single-Family Residence on a Pre-existing Lot – For applications involving only a single-family residence located on a legally created lot of record which was created prior to the effective date of this ordinance, the application shall include a site map of the subject property that includes the information described below. The Staff Advisor may require additional information based upon the character of the site or the specific nature of the proposal.

- i. All watercourses identified (including any drainage ways, ponds, etc).
- ii. Surveyed location of the Water Resource Protection Zone, as described in section 18.63.050. In lieu of a surveyed location, the Staff Advisor may approve a field determination of the Water Resource Protection Zone by the Staff Advisor or his/her designee – the applicant shall be required to stake the top-of-bank or the upland-wetland edge and the boundary of the Water Resource Protection Zone.
- iii. For activities and use proposed within a Stream Bank Protection Zone: identification of the stream as being either fish-bearing or non-fish-bearing; identification of the top-of-bank; and location of the stream's floodway and floodplain, if applicable. In lieu of a surveyed location, the Staff Advisor may approve a field determination of the top-of-bank location by the Staff Advisor or his/her designee – the applicant shall be required to stake the top-of-bank and the boundary of the Stream Bank Protection Zone.
- iv. For activities and uses proposed within a Wetland Protection Zone: a wetland delineation (with an accompanying site map) prepared by a natural resource professional and that has been concurred with by the Oregon Department of State Lands (DSL); and an aerial photo with the wetland boundaries identified.
- v. Applications involving Wetland Protection Zone Reductions shall include a design and detailed plan prepared by a natural resource professional for the



construction of a vegetated swale or comparable natural system within the buffer area for the purpose of treating storm water.

vi. Topographic information at 2-foot contour increments identifying both existing grades and proposed grade changes.

vii. Locations of all trees six-inches in diameter at breast height (d.b.h.) or greater located on the property and upon adjacent properties within 15-feet of the property line, identified by edge of canopy, diameter at breast height and species;

viii. The outlines of non-tree vegetation, with a dominant species and any occurrence of non-native, invasive species identified.

ix. Location of existing and proposed development, including all existing and proposed structures, any areas of fill or excavation, stream or wetland crossings, alterations to vegetation, or other alterations to the site's natural state.

x. The location of natural features, structures, and other improvements associated with lands within 150-feet of the proposal.

xi. Land uses within 100-feet of the water resource's edge.

xii. The location of temporary fencing and erosion control measures installed to prevent encroachment and flow of material into the Water Resource Protection Zone, such as sediment fencing and hay bales, etc.

xiii. North arrow and scale.

xiv. Sources of information (federal, state and local).

b. For All Other Applications – For all other applications not covered in section a above, the application shall include a site map of the subject property prepared by a licensed surveyor, civil engineer or other design professional that includes the information described below. The Staff Advisor may request additional information based upon the character of the site or the specific nature of the proposal.

i. All watercourses identified (including any drainage ways, ponds, etc).

ii. Surveyed location of the Water Resource Protection Zone, as described in section 18.63.050.

iii. For activities and use proposed within a Stream Bank Protection Zone: identification of the stream as being either fish-bearing or non-fish-bearing;



identification of the top-of-bank; and surveyed location of the stream's floodway and floodplain, if applicable.

iv. For activities and uses proposed within a Wetland Protection Zone: a wetland delineation (with an accompanying site map) prepared by a natural resource professional and that has been concurred with by the Oregon Department of State Lands (DSL); and an aerial photo with the wetland boundaries identified.

v. Applications involving Wetland Protection Zone Reductions shall include a design and detailed plan prepared by a natural resource professional for the construction of a vegetated swale or comparable natural system within the buffer area for the purpose of treating storm water.

vi. Topographic information at 2-foot contour increments identifying both existing grades and proposed grade changes.

vii. Surveyed locations of all trees six-inches in diameter at breast height (d.b.h.) or greater located on the property and upon adjacent properties within 15-feet of the property line, identified by edge of canopy, diameter at breast height and species;

viii. The outlines of non-tree vegetation, with a dominant species and any occurrence of non-native, invasive species identified.

ix. Location of existing and proposed development, including all existing and proposed structures, any areas of fill or excavation, stream or wetland crossings, alterations to vegetation, or other alterations to the site's natural state.

x. The location of natural features, structures, and other improvements associated with lands within 150-feet of the proposal.

xi. Land uses within 100-feet of the water resource's edge.

xii. The location of temporary fencing and erosion control measures installed to prevent encroachment and flow of material into the Water Resource Protection Zone, such as sediment fencing and hay bales, etc.

xiii. North arrow and scale.

xiv. Sources of information (federal, state and local).

4. Mitigation Plan prepared in accordance with the requirements described in section 18.63.110.B.



B. Approval Standards for Limited Activities and Uses in Water Resource Protection Zones.

All Limited Activities and Uses within Water Resource Protection Zones described in section 18.63.070 shall be reviewed and a decision made through a Type I land use procedure. The approval authority may approve or approve with conditions a request to conduct Limited Activities and Uses in a Water Resource Protection Zone based upon findings that the following standards have been satisfied.

1. The proposed activity shall be designed, located and constructed to minimize excavation, grading, the placement of structures and impervious surfaces, loss of native vegetation, erosion, and adverse hydrological impacts on Water Resources. All activities shall be located as far from streams and wetlands, designed to minimize intrusion into the Water Resources Protection Zone and use as little of the surface area of the Water Resource Protection Zone, as practicable.
2. Excavation, grading and vegetation removal shall be avoided within the Stream Bank Protection Zone on stream beds or banks within the bank full stage, in wetlands, and on slopes of 25 percent or greater, except where no practicable alternative exists, or where necessary to construct public facilities or to ensure slope stability.
3. The following standards shall apply when construction activity is proposed in areas where vegetation is to be preserved within a Water Resources Protection Zone.
 - a. Work areas on the immediate site shall be carefully identified and marked to reduce potential damage to trees and vegetation. Temporary construction fencing shall be placed at the drip line of trees bordering the work area. No equipment maneuvering, staging or stockpiling shall occur outside of designated work areas.
 - b. Trees shall not be used as anchors for stabilizing equipment.
 - c. Stockpiling of soil, or soil mixed with vegetation, shall not be permitted in Water Resource Protection Areas on a permanent basis. Temporary storage shall employ erosion control measures to ensure sediments are not transported to adjacent surface waters.
4. Erosion control measures shall be employed to ensure sediments are not transported to the Water Resource. Erosion control measures shall be installed prior to site preparation or ground-disturbing activities, where applicable. Access roads, staging areas, storage areas and other areas of temporary disturbance necessary to complete the proposed activity shall be restored as soon as possible, but not more than 90 days after authorized land disturbance. Erosion control measures shall be in place concurrently with construction or establishment of the proposed activity. Temporary measures used for initial erosion control shall not be left in place permanently. Guidance on appropriate erosion control measures is contained in the



Department of Environmental Quality publication Best Management Practices for Storm Water Discharges Associated With Construction Activities (DEQ Northwest Region 2006, or current upgrade). A copy of this document is available for review at the City of Ashland Planning Division.

5. Plans for stream channel repair and enhancement, riparian habitat restoration and enhancement plans and wetland restoration and enhancement are required and shall be submitted with the land use application. The plans shall be designed by a natural resource professional, comply with all federal and state regulations and permitting requirements and conform to all local regulations and permit requirements related to flood areas.

6. The removal of vegetation in a Water Resource Protection Zone is limited to the minimum amount necessary to accommodate the activity.

7. Disturbed areas shall be re-planted and an additional area restored and enhanced with local native plant species at a 1:1.5 ratio.

8. Re-planting activities shall follow these standards:

a. Re-planting shall include ground cover, under story and tree canopy layers unless the site soils or substrate do not typically support the growth of one or more vegetation layers.

b. Re-planting shall be with local native plant species.

c. Planting densities and species composition shall be consistent with native riparian area plant communities in the immediate vicinity. Use of a reference site (a nearby site with an intact native riparian plant community) as guidance for developing a re-vegetation plan is recommended.

d. Erosion control material shall be applied (e.g. mulch, hay, jute-netting, or comparable) to disturbed, re-planted areas.

e. Temporary irrigation facilities shall be installed.

f. A re-planting project shall include a planting plan map and description of the proposed plant species, size of plant materials, number of plants, spacing and installation methods.

g. Native plant species that do not survive the first two years after planting shall be replaced.

h. Re-planting shall occur within 90 days of removal.



9. Water, drainage and sewer systems shall be designed, located and constructed to avoid the infiltration of floodwaters into the system, and to avoid accidental discharges to rivers, streams and wetlands.

10. Bridges or similar, bottomless crossing structures located in Stream Bank Protection Zones for the purpose of constructing a public street, bicycle or pedestrian crossings shall employ the least invasive installation methods possible and conform to all local regulations and permit requirements related to flood areas.

11. Public streets, bridges, utilities, pedestrian and multi-use path connections shall be located in Wetland Protection Zones only based upon a finding that no other reasonable, alternate location outside the Wetland Protection Zone exists.

C. Approval Criteria for Water Resource Protection Zone Reductions. All Water Resource Protection Zone Reductions described in 18.63.090.B shall be reviewed and a decision made through a Type I land use procedure. The approval authority may approve or approve with conditions a request for a Water Resource Protection Zone Reduction based upon findings that the standards in 18.63.090.B and the following approval criteria have been satisfied.

1. The alteration of the Water Resource Protection Zone is the minimum necessary to efficiently perform the proposed activity and/or use.

2. No significant adverse impacts to the structures, functions or values of the Water Resource, including but not limited to water quality, fish and wildlife habitat, flood control capacity, or slope stability will result from approval of the limited activity and/or use, and the application demonstrates that equal or better protection for the identified Water Resource will be ensured through restoration of disturbed areas within the Water Resource Protection Zone, enhancement of the Water Resource Protection Zone, or similar measures.

3. The structures, functions and values of the Water Resource will be restored through the implementation of an enhancement and restoration strategy set forth in a mitigation plan prepared in accordance with the standards and requirements described in section 18.63.110.B.

4. All applicable state and federal wetland permits have been obtained or will be obtained prior to commencement of the activity or use.

D. Approval Criteria for Hardship Variances. All Hardship Variances described in section 18.63.090.C shall be reviewed and a decision made through a Type II land use procedure. Hardship Variances are not subject to the Variance requirements of Chapter 18.100. The approval authority may approve or approve with conditions a request for a Hardship Variance based upon findings that the following approval criteria have been satisfied.



1. Strict adherence to the provisions described in this chapter would effectively preclude use of the property that could reasonably be expected to occur on similarly zoned parcels, and the property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity.
2. The proposed activity or use of land would have been permitted prior to the effective date of this ordinance.
3. The applicant has explored all other reasonable options available under this chapter and throughout the Land Use Ordinance to relieve the hardship.
4. The Variance is the minimum necessary to permit use of the property in a manner that could reasonably be expected to occur on similarly zoned parcels in the vicinity.
5. Adverse impacts on the structures, functions or values of the resource including water quality, erosion, or slope stability that would result from approval of this hardship variance have been minimized and will be mitigated to the greatest extent possible through restoration and enhancement of the Water Resource Protection Zone in accordance with an approved mitigation plan.
6. The applicant has agreed to implement a mitigation and management plan.
7. All applicable state and federal permit approvals have been or will be obtained.

E. Building Permits and Development Activities. When approval of a planning application is not required, other permit applications for the construction of structures or other development activities on properties containing Water Resource Protection Zones shall be reviewed by the Staff Advisor, or his or her designee, to assure that Water Resource Protection Zones are accurately identified on a site plan and that Limited Activities and Uses or other site disturbances will not be conducted within the Water Resource Protection Zone. Temporary fencing and erosion control measures may be required to be installed to prevent encroachment and flow of material or other debris into the Water Resource Protection Zone and to otherwise prevent impacts to the Water Resource Protection Zone by clearly identifying its boundaries. When required, these measures shall be installed and site-verified by the Staff Advisor before any permits are issued and prior to the commencement of excavation, grading, site clearing, construction or similar site work resulting in changes to the land.

F. Required Information Waived – Determination. Applications for Limited Activities and Uses, building permit and other development activities involving properties containing a Water Resource Protection Zone shall accurately indicate the locations of these features and all other information as described and required above. The Staff Advisor may waive one or more of the required submittals if evidence is provided conclusively demonstrating that proposed excavation, grading,



site clearing, construction or similar actions resulting in changes to the property are not located within the boundaries of the Water Resource Protection Zone.

18.63.110 Mitigation Requirements

A. When a Mitigation Plan is Required. A mitigation plan is required for applications that involve: Limited Activities and Uses within a Water Resource Protection Zone, Water Resource Protection Zone Reductions, Hardship Variances, or as otherwise stipulated by the approval authority as a condition of approval.

B. Mitigation Plan Requirements.

1. For Applications Involving Only a Single-Family Residence on a Pre-existing Lot. For applications involving only a single-family residence located on a legally created lot of record which was created prior to the effective date of this ordinance, the applicant may follow a prescriptive mitigation plan available separately from the City of Ashland Planning Division, or meet the mitigation plan requirements in section 2 below.

2. For All Other Applications – For all other applications not covered in section 1 above, the mitigation plan shall contain at a minimum the following components.

a. Objectives and Standards of Mitigation. A mitigation plan shall state specific plan objectives and establish clear and measurable standards for determining if stated objectives have been accomplished. For example, the objective might be to restore or enhance the shade canopy within a Stream Bank Protection Zone to benefit fish and reduce water temperature, while the standard might be a certain percentage of shade canopy coverage at the end of one year and 100 percent shade canopy coverage after three years.

b. Assessment of Water Resource Protection Zone Structures, Functions and Values. A mitigation plan shall include an assessment of the structures, functions and values (i.e. water quality, flood control, habitat, etc.) that will be adversely impacted by the proposed alterations of the Water Resource Protection Zone and a clear explanation of how these impacts are to be mitigated.

c. Mitigation Site/Grading Plan. A statement and detailed plan of the location, elevation, and hydrology of the mitigation area, including a grading plan at two-foot contour intervals. For applications involving Wetland Protection Zones, the application shall demonstrate that plants have adequate access to site hydrology. For applications involving Stream Bank Protection Zones, the grading plan shall identify newly planted areas and include slope stabilizing measures to prevent erosion, ensure vegetative coverage and limit plant mortality.



d. **Landscape Plan.** The landscape plan shall be size- and species-specific, with details addressing the timing of plantings, proposed plant placement and plant spacing. Priority shall be given local native plant species. Plant sources and suppliers shall be identified. Plants identified as noxious, invasive, or non-native are prohibited.

e. **Management Plan.** As a condition of approval, except in the case of an existing lot containing only a single family home, the applicant shall implement a management plan for the Water Resource Protection Zone and resource areas under the applicant's ownership or control, including the areas restored and enhanced to assure long term conservation and maintenance. The management plan shall detail proposed monitoring and maintenance, and shall include a schedule delineating how completed projects will be monitored and reported to the Staff Advisor. The management plan shall contain the following requirements.

- i. The approved mitigation plan.
- ii. Identification of Water Resources and Water Resource Protection Zone management practices to be conducted and proposed intervals.
- iii. Provisions for the ongoing removal and management of noxious or invasive vegetation and debris.
- iv. Provisions for the protection of protected plant and animal species in accordance with recommendations from applicable state and federal agencies.
- v. Specific provisions for city enforcement of the management plan.
- vi. Any additional measures deemed necessary to protect and maintain the structures, functions and values of the Water Resource Protection Zone (e.g., signage delineating preservation boundaries).
- vii. Provisions for the perpetual protection and maintenance of the Water Resource and Water Resource Protection Zone including but not limited to the following.
- viii. Recordation of a conservation easement or Conditions, Covenants, and Restrictions (CC&Rs) which prescribe the conditions and restrictions set forth in the approved land use application, development permit, building permit, or proposed public facilities plans, and any imposed by state or federal permits.
- ix. Transfer of the ownership and maintenance responsibilities for the area to a willing public agency, non-profit association or private conservation organization



with a recorded conservation easement prescribing the conditions and restrictions set forth in the approved land use application, development permit, building permit, or proposed public facilities plans, and any imposed by state or federal permits.

x. Other mechanisms addressing long-term protection, maintenance and mitigation consistent with the purposes and requirements of this ordinance as deemed appropriate and acceptable by the approval authority.

xi. The following statements.

- “There shall be no alteration of the Water Resource Protection Zones as delineated and shown on the attached plan” (attach reduced plan).
- “There shall be no alteration of the size, shape or design of an approved Water Resource Protection Zone without prior approval by the City of Ashland”.
- “There shall be no amendment or change to this Management Plan without prior approval of the City of Ashland”.

f. **A Contingency Plan.** Restored and enhanced Water Resource Protection Zones generally require periodic adjustments, especially during the first year. The contingency plan shall specify what procedures will be followed should stated plan objectives and established standards not be met, and include a timeline for addressing any deficiencies through actions of additional restoration and enhancement.

g. **A Performance Guarantee.** In general, mitigation shall be implemented prior to or concurrently with the project. The approval authority may require a performance bond or similar monetary insurance of up to 110 percent of the proposal’s cost to guarantee that the mitigation proposal will be carried out as approved, and to ensure that the objectives are met through demonstration of compliance with measurable standards and that the site will be maintained to keep the Water Resource functioning properly.



WATER RESOURCES REGULATION COMPARISON

Water Resource Protected	Goal 5 "Safe Harbor"	Current P & E	Proposed WRPZ
Significant Riparian Corridors on fish-bearing streams with flows greater than 1000 cfs	75 feet upland from top of bank	N/A. <i>No streams with these flows in Ashland.</i>	N/A. <i>No streams with these flows in Ashland.</i>
Significant Riparian Corridors on fish-bearing streams with flows less than 1000 cfs	50 feet upland from top of bank	20 feet from top of bank <i>(Riparian Preservation Creeks)</i>	50 feet upland from top of bank
Riparian Preservation Creek Local Stream	<i>Local jurisdictions may determine significance</i>	20 feet from top of bank	30 feet upland from TOB or 40 feet from centerline
Riparian Land Drainage Intermittent & Ephemeral Stream	<i>Local jurisdictions may determine significance</i>	10 feet from top of bank	20 feet upland from TOB or 30 feet from centerline
Locally Significant Wetlands	Safe Harbor requirement is delineated wetland boundary	Not currently regulated in P & E Chapter	50 feet from upland edge
Other Possible Wetlands	<i>Local jurisdictions may determine significance</i>	Not currently regulated in P & E Chapter	20 feet from upland edge
Outright Permitted Activities	Goal 5 "Safe Harbor"	Current P & E	Proposed WRPZ
Riparian	* Alterations for water-dependent or water-related uses designed and constructed to minimize intrusion into the riparian area * Removal of vegetation as necessary for the development of water-related or water-dependent uses	Activities not classified as development: * Less than 20 c.y. or 1000 s.f. of disturbance on any lot. * Additions < 300 s.f. to existing buildings.	Outdoor uses.
	Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.		Legally established non-conforming uses/activities/structures.
	Removal of vegetation as necessary for restoration, as in replacement of vegetation with native species.	Removal of 1 or 2 trees over 6" d.b.h., or less than 5% of total trees on lot, (whichever is greater) in a 5 year period. (Also subject to 18.61). Regulated if conifers > 2' dbh or broadleaf > 1' dbh.	Removal of non-native, noxious, invasive plants. Routine planting - local/native plants. Fire fuel reduction. Landscape maintenance.
	Installation of streets, roads and paths designed and constructed to minimize intrusion into the riparian area		
	Drainage facilities, utilities and irrigation pumps designed and constructed to minimize intrusion into the riparian area		City emergency activities. Drainage Facility Maintenance.
			Testing – Required investigate site work (i.e. surveying, etc.)
Wetland	Perimeter mowing and other cutting necessary for hazard prevention in a wetland protection zone.	Does not contain specific standards for wetland protection.	Routine planting. Landscape maintenance. City emergency activities. Legally established non-conforming uses/activities/structures.
Regulated Activities	Goal 5 "Safe Harbor"	Current P & E	Proposed WRPZ
Riparian	* Requires conservation and protection of identified significant resources. * Also subject to state and/or federal permitting in some instances.	*Development, subject to Development Standards for Flood Plain Corridor Lands. * Tree Removal. Any tree over 6" d.b.h. to be preserved to greatest extent feasible. * Commercial Logging. * Fill and culverting (permitted only for streets, access or utilities) *General topography is to be preserved.	* Restoration & enhancement * Vegetation removal * Building, paving & grading when authorized as a limited activity.
	Wetland	* Requires conservation and protection of identified significant resources. * Fill or Removal may be allowed under Federal and State permitting with mitigation, pursuant to ORS 196.668. * Requires city to notify DSL of all development or land use decisions affecting inventoried wetlands.	* Does not contain specific standards for wetland protection. * Wetlands are considered in terms of the natural features required to be protected under the Performance Standards Options Chapter 18.88.

Prohibited Activities	Goal 5 “Safe Harbor”	Current P & E	Proposed WRPZ
Riparian	Permanent alteration of riparian corridor by grading, placement of structures or impervious surfaces (<i>except as allowed in permitted activities</i>)	* Fill or culverting other than for streets, access or utilities. * Habitable basements not permitted. * Storage of petroleum products, pesticides, other hazardous or toxic chemicals. * Fencing across a creek.	Erection of structures, installation of impervious surfaces, grading, excavation, and placement fill within riparian area, except as regulated above.
	Removal of vegetation from riparian corridor (<i>except as allowed in permitted activities</i>)	* Creation of new building envelopes in residential zones.	* Removal of vegetation, except as regulated above. * Expansion of lawn areas.
Wetland	Restricts grading, excavation, placement of fill and vegetation removal in a wetland protection area other than perimeter mowing and other cutting necessary for hazard prevention.	Does not contain specific standards for wetland protection.	Erection of structures, installation of impervious surfaces, grading, excavation, and placement fill within Wetland Protection Zones is prohibited, except as regulated above. * Removal of vegetation, except as regulated above. * Use of pesticides, herbicides or chemical fertilizers.
Exceptions/Variances	Goal 5 “Safe Harbor”	Current P & E	Proposed WRPZ
Riparian	Requires ordinances to include provisions for hardship variances, claims of map error, and reduction or removal of regulations for existing lots rendered unbuildable by these regulations.	There are no specific Variance or Exception provisions for riparian areas, and as such would be subject to standard 18.100 Variance.	Ordinance includes provisions for hardship variances and reduction or removal of regulations for existing lots rendered unbuildable by these regulations <u>as required by Goal 5.</u>
	Allows for authorization of alteration of riparian areas upon demonstration of equal or better protection through restoration and enhancement. Prohibits such alterations from occupying more than 50 percent of the riparian area.	There are no specific Variance or Exception provisions for riparian areas, and as such would be subject to standard 18.100 Variance.	Provides for reductions up to 50 percent as allowed by Goal 5.
Wetland	Requires ordinances to include provisions for hardship variances, claims of map error verified by DSL, and reduction or removal of regulations for existing lots rendered unbuildable by these regulations.	Does not contain specific standards for wetland protection.	Ordinance includes provisions for hardship variances, claims of map error verified by DSL, and reduction or removal of regulations for existing lots rendered unbuildable by these regulations AS REQUIRED IN O.A.R.
Native Landscaping	Goal 5 “Safe Harbor”	Current P & E	Proposed WRPZ
Riparian	Removal of vegetation as necessary for restoration is permitted. The OAR references this in terms of replacement of vegetation with native species.	* Native riparian plantings are not specifically addressed. * The Site Design & Use Standards for commercial developments require that creek protection be incorporated into overall site design and that <i>“Native riparian plant materials shall be planted in and adjacent to the creek to enhance the creek habitat”</i> where Site Review approval is occurring adjacent to a creek.	Replanting of areas disturbed by regulated activities must be with local native plant species as part of an approved mitigation plan.
Wetland	DSL - approved Wetland Conservation Plan required to protect wetland function.	Does not contain specific standards relating to wetlands.	Replanting of areas disturbed by regulated activities must be with local native plant species as part of an approved mitigation plan.
Nonconforming Situations	Goal 5 “Safe Harbor”	Current P & E	Proposed WRPZ
Riparian	Provides for replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.	* Dependent on whether proposal triggers “development.” * Additions < 300 s.f. to existing buildings are not regulated, provided other ordinances are addressed. * <i>Non-conforming situations potentially addressed through AMC 18.68...</i>	Existing legal nonconforming structures may be used and maintained, but shall not have the building footprint or impervious surface expanded or enlarged unless the expansion or enlargement occurs outside the protection zone.
Wetland	No provisions specifically addressing non-conforming situations.	Does not contain specific standards for wetland protection.	Existing legal nonconforming structures may be used and maintained, but shall not have the building footprint or impervious surface expanded or enlarged unless the expansion or enlargement occurs outside the protection zone.



United States
Environmental Protection
Agency



Photo courtesy of USDA NRCS.

Protecting Water Resources with Smart Growth

WANT MORE INFORMATION?

American Forests developed a software package called "CITYgreen," which can help establish a baseline tree canopy and estimate the dollar value of the services provided to a community by its tree cover. Garland, Texas, used CITYgreen to measure the cost savings associated with its tree canopy and learned that its trees provide 19 million cubic feet in avoided stormwater storage space, saving the city an estimated \$2.8 million annually in construction costs for a stormwater facility. This tool is available at: <www.americanforests.org/graytogreen/stormwater>.

Issues to Consider: Different trees have different absorption rates, growing condition needs, growth rates, and lifespans. Policymakers should consult an expert to determine which trees will provide the most water quality benefits for the community. In addition, planners should ensure that the trees' future needs are met by ensuring that tree planters are large enough to support tree growth in the coming years.

Policy 67. Implement ordinances and standards to better manage development along waterways

Waterbodies are particularly sensitive to the uses that surround them. Polluted runoff, construction sediment, and the elimination of natural features that filter water can have a dramatic effect on the quantity and quality of water resources. Communities can develop and implement riparian standards and buffer ordinances to protect zones along and around waterbodies. Furthermore, by preserving and maintaining the land surrounding waterbodies, the community's character can be enhanced.

Riparian standards can help minimize the impact development has on riparian zone functions by better directing and managing development. To be effective, standards should consider the particular characteristics of the riparian zone and waterbody being protected. For example, a small spring-fed creek will have different requirements for protection and accommodate different nearby uses than will a man-made lake. Riparian areas have high ecological value, and standards designed to protect them are critical to ensure that future development does not pose further threats.

Buffer ordinances, which protect water quality and aquatic habitat, regulate activity in the strips of native vegetation along streams and other water resources. These areas provide wildlife habitat, protect water quality, and serve as natural boundaries between local waterways and existing development. Buffers help protect water resources from the impacts of development by filtering pollutants, sediment, and nutrients from runoff. Other benefits of buffers include flood control, stream bank stabilization, stream temperature control, and room for lateral movement of the stream channel. Ordinances can specify the size and management of the stream buffer.

Issues to Consider: To provide the functions necessary to protect water resources from the impacts of development, buffer ordinances should require that buffer boundaries be clearly marked on local planning maps. In addition, language should restrict vegetation and soil disturbance during maintenance, tables should illustrate buffer width adjustment by percent slope and type of stream, and direction should be provided on allowable uses and public education.

From: Rick Landt <landtifam@opendoor.com>
To: Maria Harris <maria@ashland.or.us>
Date: 6/26/2008 9:44 PM
Subject: Fwd: Riparian Ordinance
Attachments: Part.001

Hi Maria,

>

- > Chad Robert's recommendations listed below inform my support for using
- > the flood plain, instead of some arbitrary distance for determining
- > the riparian protection zone.

If you could share with the PC, I would appreciate it.

Rick

>

- > Planning Considerations for Urban Streams
- > adapted from R. Chad Roberts, Ph.D.'s "Factors Determining Biological
- > and Physical Integrity in Urbanizing Stream Basins: Planning
- > Considerations"
- >
- > • The best kind of mitigation for development impacts is impact
- > avoidance
- >
- > • The entire floodplain (not just the FEMA floodway or a drainage
- > corridor) should be maintained in undeveloped conditions to the
- > maximum feasible extent, in order to support all of the
- > characteristics of biological integrity. No additional development
- > should occur within the floodplain
- >
- > • Infiltration of precipitation within the catchment is necessary for
- > maintaining base flows and avoiding impacts associated with increased
- > runoff. Infiltrating precipitation near the location at which it
- > falls should be a primary goal in urban stream planning
- >
- > • Stream power, the ability of a stream to modify its channel and
- > banks (Stream power increases resulting from development are
- > relatively greater for smaller and more frequent runoff events,
- > producing an increased probability of channel changes in developed
- > reaches from relatively small storms), is a more important factor in
- > urban stream management than is increased runoff per se, especially
- > for more frequent events. Stream power increases are directly related
- > to runoff intensification. Managing basins to reduce the rapid
- > concentration of runoff is necessary in order to avoid or reduce
- > channel erosion and destabilization
- >
- > • The effects of residential development are no less a concern
- > [editor's note: due to their cumulative effect] than are the effects
- > of commercial or industrial development, and must receive the same
- > level of scrutiny regarding impacts on streams
- >
- > • Preventing sedimentation and NPS pollution requires that small
- > projects (even single residences) provide onsite infiltration, runoff
- > intensity reduction, and runoff treatment. A five acre threshold for
- > requiring "best management practices" be implemented (the California
- > standard for storm water pollution prevention plans) is too high to

> avert impacts

>

> • Both runoff reduction and the prevention of sedimentation require
> management actions in the uplands of the catchment, where potential
> impacts are generated, rather than primarily on the floodplain or in
> the channel itself

>

> • Attention to the ecological details of aquatic and riparian habitat
> relationships (such as maximizing riparian corridor width and
> structure, minimizing corridor intrusion, and maintaining instream
> heterogeneity and the presence of coarse woody debris) is required in
> order to maintain or restore the biological and physical integrity of
> urbanizing basins

>

>

Maria Harris - RE: Water Resources Protection Ordinance, June 24 Planning meeting

From: Royce Duncan <rduncan3@charter.net>
To: Pam Marsh <pam.marsh@gmail.com>, Melanie Minklin <sassetta@mind.net>, Dave Dotterer <thedotts@charter.net>, Michael Morris <msquared@mind.net>, Deborah Miller <hmiller@jeffnet.org>, Michael Dawkins <michaeldawkins@yahoo.com>, Michael Church <mickchurch@gmail.com>, Thomas Dimitre <dimitre@mind.net>, John Stromberg <pcstromberg@opendoor.com>, Maria Harris <harrism@ashland.or.us>, Bill Molnar <molnarb@ashland.or.us>
Date: 6/25/2008 1:15 PM
Subject: RE: Water Resources Protection Ordinance, June 24 Planning meeting
CC: Royce Duncan <rduncan3@charter.net>

From: Royce Duncan

1065 Paradise Lane, Ashland

488-4101

June 25, 2008

RE: Water Resources Protection Ordinance, June 24 Planning meeting
SOME ADDITIONAL THOUGHTS:

After the discussion at last evenings Planning meeting, I was pleased to see the interest of some of the commissioners to consider taking on the water resource ordinance at a more comprehensive level. My suggestion regarding referring the draft to an advisory committee was an attempt to be considerate of the many issues the commission has on it's agenda and the time commitment that might be required for detailed involvement in the drafting process. In my view there are certainly advantages to direct commission involvement if that time can be committed.

PROS:

1. The commission has a broader viewpoint and is more likely to see how this ordinance can integrate with other codes and ordinances.
2. The process of the commission is more public and all interest groups can follow the procedure.
3. If an advisory committee is not balanced representing all interest groups then the unrepresented opinions may only resurface again when the draft reaches the commission.
4. An advisory committee may not have the mechanism to resolve conflicting opinions and could become deadlocked.
5. The commission has the authority to consider alternate philosophical approaches to issues.

CONS:

1. Time commitment.

As commissioner Dotterrer pointed out this would be a commitment to not just proceed with business as usual. I know this is only one of many ordinances that the commission must deal with and do not think it should be elevated out of context. I would however like to see it become an example of a more invigorated approach to governance that would be an enhancement to our community

On another matter, after thinking about my comments last evening, I believe I may owe an apology to the planning staff for the tone of my comments. My intent, within the limited speaking time, was to convey that I did not believe this draft was ready to be considered for adoption. I in no way meant to demean the diligent hard work of the staff in getting us to this point. As Maria said, a draft is to put alternate ideas out for commission consideration and direction. I do find a flaw in the process that often the draft becomes the base DNA that is only modified and adjusted and not critiqued at a more directional level.

Again I wish to say to Maria and Bill that their work and diligent efforts are well appreciated and in the future I will attempt to temper my comments so they are clearly directed at the issues and not at the work efforts of our valued planners.

BEFORE THE PLANNING COMMISSION

July 22, 2008

IN THE MATTER OF PLANNING ACTION #2008-00359, REQUEST FOR A)
CONDITIONAL USE PERMIT TO ALLOW A PORTION OF THE FORMER) FINDINGS,
BRISCOE ELEMENTARY SCHOOL BUILDING AND THE SURROUNDING) CONCLUSIONS,
GROUNDS TO BE USED FOR INDIVIDUAL ARTISTS' WORKSPACES) AND ORDERS
AND COMMUNITY EVENTS. THE APPLICATION REQUESTS)
PERMANENT APPROVAL FOR A YEARLY EVENT THAT WAS)
PREVIOUSLY APPROVED ON A TEMPORARY BASIS. THE APPLICANT)
IS REQUESTING TO HOST 3 ADDITIONAL OUTDOOR EVENTS PER)
YEAR IN ADDITION TO THE PREVIOUSLY APPROVED EVENT. THE)
APPLICATION ALSO INCLUDES A TYPE II VARIANCE TO PARKING TO)
ALLOW THE PARKING FOR EVENTS TO BE OFF-SITE IN THE)
ADJACENT NEIGHBORHOOD FOR A PROPERTY LOCATED AT 265 N)
MAIN STREET.

APPLICANT: LITHIA ARTS GUILD

RECITALS:

- 1) Tax lot 2500 of 39 1E 05 DD is located at 265 North Main Street and is zoned R-2. The applicant is requesting a Conditional Use Permit to allow a portion of the former Briscoe Elementary School building and the surrounding grounds to be used for individual artists' workspaces and community events. The application requests permanent approval for a yearly event that was previously approved on a temporary basis. The applicant is requesting to host 3 additional outdoor events per year in addition to the previously approved event. The application also includes a Type II Variance to parking to allow the parking for events to be off-site in the adjacent neighborhood for a property located at 265 North Main Street.
- 2) The criteria for a Conditional Use Permit are described in AMC Chapter 18.104.050, as follows:
 - A. That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.
 - B. That adequate capacity of City facilities for water, sewer, paved access to and through the development, electricity, urban storm drainage, and adequate transportation can and will be provided to and through the subject property.
 - C. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone:
 1. Similarity in scale, bulk, and coverage.
 2. Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.
 3. Architectural compatibility with the impact area.
 4. Air quality, including the generation of dust, odors, or other environmental pollutants.

5. Generation of noise, light, and glare.
 6. The development of adjacent properties as envisioned in the Comprehensive Plan.
 7. Other factors found to be relevant by the Hearing Authority for review of the proposed use.
- 3) The criteria for a Variance are described in AMC Chapter 18.72.090, as follows:
- A. That there are unique or unusual circumstances which apply to this site which do not typically apply elsewhere.
 - B. That the proposal's benefits will be greater than any negative impacts on the development of the adjacent uses; and will further the purpose and intent of this ordinance and the Comprehensive Plan of the City. (Ord.2425 S1, 1987).
 - C. That the circumstances or conditions have not been willfully or purposely self-imposed.
- 4) The Planning Commission, following proper public notice, held a Public Hearing on July 8, 2008 at which time testimony was received and exhibits were presented. The Planning Commission approved the application, subject to conditions pertaining to the appropriate development of the site.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes, and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits, lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, Miscellaneous Exhibits, lettered with an "M"

SECTION 2. CONCLUSORY FINDINGS

2.1 The Planning Commission finds that it has received all information necessary to make a decision based on the Staff Report, public hearing testimony and the exhibits received.

2.2 The Planning Commission finds that Pam Marsh is not biased and is able to make an impartial decision and has not prejudged the application based on the participation of Art Bullock. Pam Marsh stated that she would judge the application based on relevant criteria.

2.3 The Planning Commission finds that the public facilities have capacity to serve the development. Water, sewer, paved access to and through the development site, electricity, and urban storm drainage are currently in place.

2.4 The Planning Commission finds that finds that trade school uses are a Conditional Use in the E-1 zoning district and that the Art Guild school and associated events meet the approval criteria for a Conditional Use Permit. The Art Wing Conditional Use will have no greater adverse material effect on the livability of the impact area than the target use of the zone, 46 multi-family dwelling units. Additionally, the Commission finds that the limits on decibels, hours, number of attendees, and number

of events listed in the attached conditions meets addresses the potential impacts of noise and traffic for the proposed public events related to the use.

2.5 The Planning Commission finds that the request for a Variance to the required number of parking spaces is supported by the evidence in the record. The existence of the historic Briscoe School building and associated park are existing circumstances and are not willfully self-imposed. Additionally, the Planning Commission finds that the benefits of the proposal will be greater than the negative impacts.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearing on this matter, the Planning Commission concludes that the applications for a Conditional Use Permit to allow a portion of the former Briscoe Elementary School building and the surrounding grounds to be used for individual artists' workspaces and community events and to host 4 outdoor events per year and for a Type II Variance to parking to allow the parking for events to be off-site in the adjacent neighborhood have satisfied all relative substantive standards and criteria and are supported by evidence in the record.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, we approve Planning Action #2008-00359. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #2008-00359 is denied. The following are the conditions and they are attached to the approval:

- 1) That annual outdoor events are limited to the two-day Midsummers Dream event in June, the 2 ½ day First Nations event in September and a maximum of two on-day events, one in July and one in August for a total of four outdoor events per year.
- 2) That the Midsummers Dream event will be permitted between the hours of 10a.m. and 8 p.m. on Saturday and between 11 a.m. and 5 p.m. on Sunday. Sound amplification for Midsummers Dream at the sound booth will not exceed a maximum peak level of 95 decibels between 10 a.m. and 6 p.m. and 75 decibels between 6 p.m. and 8 p.m. The Guild will require performers to comply with the foregoing decibel limits and will only permit performances that comply with foregoing decibel limits. A sound technician is required to be present at each event with sound amplification to conduct sound measurements and confirm and record compliance with these standards.
- 3) The First Nations Day event will be permitted between the hours of 10 a.m. and 8 p.m. on Friday and Saturday and between 11 a.m. and 5 p.m. on Sunday. Sound amplification will be limited to a single speaker to allow attendees to be addressed and will not be audible more than 250 feet from the site. There will be no amplification of music or drumming. Drumming will be done softly, to honor speakers and guests, and will not be continuous.
- 4) The two one-day events are limited to a maximum of 350 attendees and will end by 6 p.m., and no sound amplification or drumming will be permitted at these two one-day events.
- 5) Indoor events open to the public will be limited to a maximum of five weekend events and twelve evening events per year.
- 6) The Guild will deliver a notice to each residence within the parking impact area, at least 30 days prior to the Midsummers Dream event and at least 30 days prior to the First Nations Day event, of the days and hours of such event, together with a notice that the Guild will provide traffic barricades, upon request, to residents within two blocks of the site who wish to protect their driveway entrances. Barricades shall not be used to block on-street parking.

- 7) The Guild will arrange for traffic and parking direction during the Midsummers Dream event and First Nations Day Event to direct traffic to be done safely and legally in the two-block area surrounding the site. The Guild will provide signs, cones, and personnel, as required, to direct traffic and parking to be done in a safe and legal manner. Shuttles from outside public parking facilities and other creative approaches may be also considered to reduce the amount of on-street parking on neighboring streets. The applicant shall submit a traffic control plan for review and approval by the Ashland Engineering Department prior to implementing any traffic control measures on City of Ashland public right-of-ways. All traffic control measures are subject to City of Ashland standards and must be according to the approved traffic control plan.
- 8) That all proposals of the applicant shall be conditions of approval unless otherwise modified here. If the Briscoe ArtWing operations are to be intensified, an application to modify this Conditional Use Permit shall be submitted and approved prior to any intensification.
- 9) That if the Methodist Church revokes its agreement to cooperate with the Guild to share the Church's parking area, the application shall be subject to re-review.
- 10) That if the temporary fencing proposed by the applicants as a pedestrian safety measure is used, it shall be installed along the property boundary and not within the Main Street right-of-way and it shall be installed not more than 24 hours prior to the event and be removed within 24 hours of the end of the event.
- 11) That the main stage be oriented away from the neighborhood and toward the school building to reduce the noise impact on the surrounding residences.
- 12) That a sign permit shall be obtained prior to installation of any new signage. Signage shall meet the requirements of Chapter 18.96, shall be no larger than 15 square feet and shall not exceed 5 feet in height, shall be at least 10 feet from property lines, and shall meet the requirements of 18.72.120.C if located in a vision clearance area.
- 13) That the murals and banners proposed in the application cannot be approved as part of this Conditional Use Permit.
- 14) That off-site signage is not permitted.
- 15) That the following conditions of the Ashland Fire Department shall be met:
 - a) That Fire Department special event permits be obtained for all outdoor events.
 - b) That a floor plan be submitted to Ashland Fire and Rescue for approval of each unique setup for any events that utilize the indoor hallway as a display area.
 - c) That a special permit is required from Ashland Fire and Rescue for any event or activity, indoors or outdoors, that utilizes open flame.
- 16) That the recommendations of the Tree Commission, where consistent with the applicable approval standards and with final approval by the Staff Advisor, shall be conditions of approval
- 17) That the recommendations of the Historic Commission, where consistent with the applicable approval standards and with final approval by the Staff Advisor, shall be conditions of approval.

Planning Commission Approval

Date