

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  
JUNE 24, 2008  
AGENDA**

- I. **CALL TO ORDER:** 7:00 PM, Civic Center Council Chambers, 1175 E. Main Street
  
- II. **ANNOUNCEMENTS**
  
- III. **TYPE II PUBLIC HEARINGS**
  1. **PLANNING ACTION: 2008-00766**  
**SUBJECT PROPERTY: 165 Lithia Way & 123 North First Street**  
**APPLICANT: Rogue Valley Growers & Crafters Market**  
**DESCRIPTION: Request for a Conditional Use Permit to allow the operation of an outdoor farmers market on Saturdays from 9:00 a.m. to 1:00 p.m. during the months of May through November. The proposed market would be held in a portion of the existing parking lot for the property located at the Northwest corner of First St. and Lithia Way, and would be limited to 25 vendor booths. COMPREHENSIVE PLAN DESIGNATION: Commercial; ZONING: C-1; ASSESSOR'S MAP #: 39 1E 09 BA; TAX LOTS: 90000, 90001, 90002, 90003, 10100, 11601 & 11701**
  
- IV. **PRESENTATION**
  1. **Ashland Land Use Ordinance - Annexation and Zone Change Amendments**
  
- V. **UNFINISHED BUSINESS**
  1. **Continued Public Hearing - Water Resource Protection Zones Ordinance**
  
- VI. **OTHER BUSINESS**
  1. **Request by staff to re-open the record for Planning Action #2008-00766 – Applicant: Lithia Arts Guild.**
  2. **Sign Code Changes (18.96) – Commission Discussion**
  3. **Factoring Sustainability into the Comprehensive Plan**
  
- VII. **ADJOURNMENT**

**CITY OF  
ASHLAND**



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).



**PLANNING ACTION: #2008-00766**

**SUBJECT PROPERTY: Northwest Corner of First St. and Lithia Way**

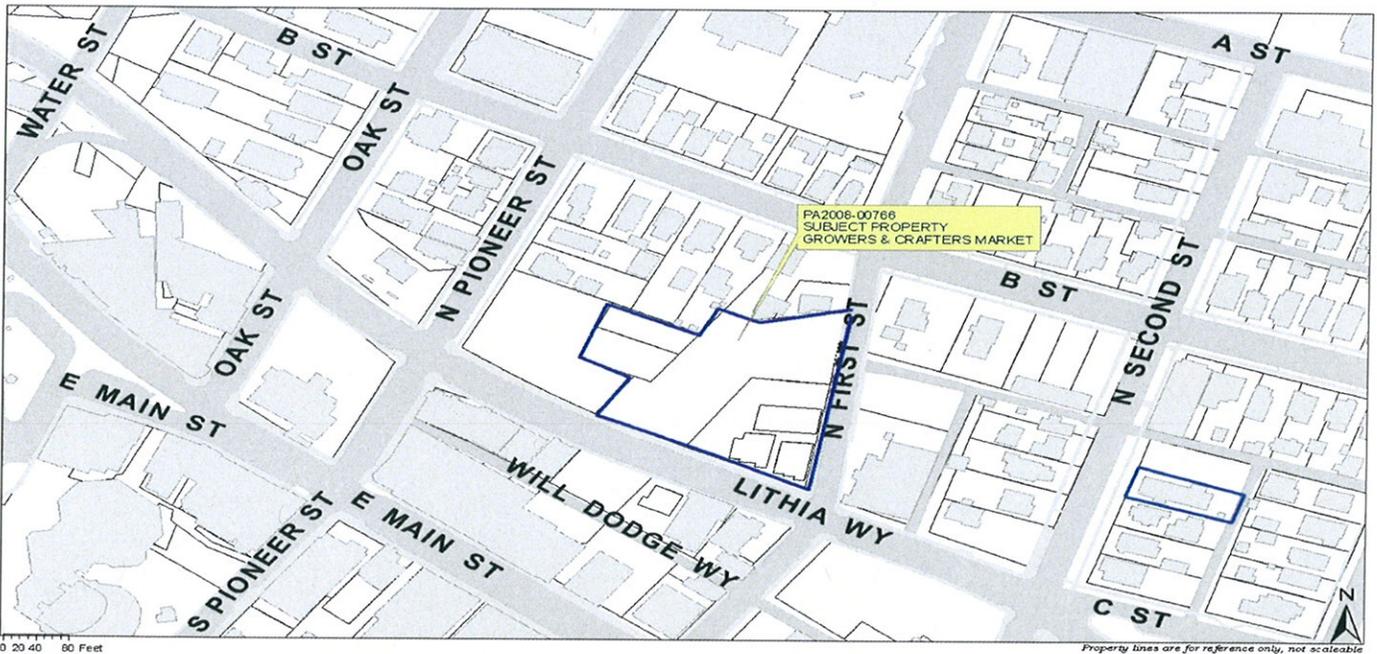
**OWNER/APPLICANT: Rogue Valley Growers & Crafters**

**DESCRIPTION: Request for a Conditional Use Permit to allow the operation of an outdoor farmers market on Saturdays from 9:00 a.m. to 1:00 p.m. during the months of May through November. The proposed market would be held in a portion of the existing parking lot for the property located at the Northwest corner of First St. and Lithia Way, and would be limited to 25 vendor booths. COMPREHENSIVE PLAN DESIGNATION: Commercial; ZONING: C-1; ASSESSOR'S MAP #: 39 1E 09 BA; TAX LOTS: 90000, 90001, 90002, 90003, 10100, 11601 & 11701.**

**NOTE:** The Ashland Historic Commission will also review this Planning Action on **June 4, 2008 at 7:00 PM** in the Community Development and Engineering Services building (Siskiyou Room), located at 51 Winburn Way.

**NOTE:** The Ashland Tree Commission will also review this Planning Action on **June 5, 2008 at 6:00 p.m.** in the Community Development and Engineering Services building (Siskiyou Room) located at 51 Winburn Way.

**ASHLAND PLANNING COMMISSION MEETING: June 10, 2008 at 7:00 PM, Ashland Civic Center**



Notice is hereby given that a PUBLIC HEARING on the following request with respect to the ASHLAND LAND USE ORDINANCE will be held before the ASHLAND PLANNING COMMISSION on meeting date shown above. The meeting will be at the ASHLAND CIVIC CENTER, 1175 East Main Street, Ashland, Oregon.

The ordinance criteria applicable to this application are attached to this notice. Oregon law states that failure to raise an objection concerning this application, either in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Commission to respond to the issue precludes an action for damages in circuit court.

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. A copy of the Staff Report will be available for inspection seven days prior to the hearing and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Department, Community Development and Engineering Services, 51 Winburn Way, Ashland, Oregon 97520.

During the Public Hearing, the Chair shall allow testimony from the applicant and those in attendance concerning this request. The Chair shall have the right to limit the length of testimony and require that comments be restricted to the applicable criteria. Unless there is a continuance, if a participant so requests before the conclusion of the hearing, the record shall remain open for at least seven days after the hearing.

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at 541-488-6002 (TTY phone number 1-800-735-2900). Notification 72 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 I).

If you have questions or comments concerning this request, please feel free to contact the Ashland Planning Department, 541-488-5305.

## **CONDITIONAL USE PERMITS**

### **18.104.050 Approval Criteria**

A conditional use permit shall be granted if the approval authority finds that the proposed use conforms, or can be made to conform through the imposition of conditions, with the following approval criteria.

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.

**ASHLAND PLANNING DEPARTMENT  
STAFF REPORT  
June 10, 2008**

**PLANNING ACTION:** 2008-00766

**APPLICANT:** Rogue Valley Growers & Crafters Market

**LOCATION:** 165 Lithia Way & 123 North First Street (northwest corner of Lithia and First)

**ZONE DESIGNATION:** C-1

**COMPREHENSIVE PLAN DESIGNATION:** Commercial

**APPLICATION DEEMED COMPLETE:** June 2, 2008

**120-DAY TIME LIMIT:** November 5, 2008

**ORDINANCE REFERENCE:**

18.32	C-1 Retail Commercial District
18.92	Off-Street Parking
18.104	Conditional Use Permits

**REQUEST:** Request for a Conditional Use Permit to allow the operation of an outdoor farmers market on Saturdays from 9:00 a.m. to 1:00 p.m. during the months of May through November. The proposed market would be held in a portion of the existing parking lot for the property located at the northwest corner of First Street and Lithia Way, and would be limited to 25 vendor booths.

**I. Relevant Facts**

**A. Background - History of Application**

In January of 2008, the Planning Commission approved a request for Site Review approval to construct a 16,246 square foot, three-story mixed-use building on the site. The application also included requests for the modification of PA 2007-00091 to allow the consolidation of two lots, and an Administrative Variance to the Site Design and Use Standards' Downtown Design Standards VI-B-3 to allow recessed balconies on the front of the proposed building. (PA 2007-01939)

In February of 2007, the Planning Commission approved a request for an eight-lot subdivision consisting of seven lots for future development and an eighth commonly owned lot to accommodate landscaping, parking and circulation. Site Review approval was also granted for the proposed parking lot and associated perimeter landscaping. A Tree Removal Permit was approved to remove four trees six-inches in diameter at breast height and greater in size. (PA2007-00091)

In September of 2005, the Planning Commission denied a request for Site Review approval, an Administrative Variance to Ashland's Site Design and Use Standards, and a Tree Removal Permit for a mixed use commercial and residential development consisting of 14,826 square feet of retail and office space and 41 residential units in two three-story mixed-use buildings and six row houses.

In June 1991, the Planning Commission approved a request for an extension of a previously approved Site Review to allow for modifications to the existing retail lumber sales structure at 165 Lithia Way (PA91-084).

In June 1990, the Planning Commission approved a request for a Site Review to allow for modifications to the existing retail lumber sales structure at 165 Lithia Way (PA90-147).

In May 1989, the Planning Commission approved a request for Conditional Use Permit for outdoor storage for the property located at the corner of Lithia Way and North Pioneer Streets (PA89-082).

There are no other planning actions of record for this site.

## **B. Detailed Description of the Site and Proposal**

### **Site Description**

The project site is located at the northwest corner of Lithia Way and First Street and encompasses approximately 1.44 acres. The subject property is irregularly shaped, with roughly 300 feet of frontage on Lithia Way and 315 feet of frontage on First Street. The property slopes approximately three percent down to the north, and has no significant natural features.

The First Place subdivision was approved for this site in 2007. A concurrent Site Review approval was granted for the landscaping, parking and infrastructure associated with this mixed use subdivision. Installation of the required subdivision improvements is nearing completion as this staff report is being prepared.

An existing City-owned public parking lot adjoins the property to the west, while the historic Railroad District residential neighborhood is situated immediately north of the site. The U.S. Post Office site is located across First Street to the east; and a variety of commercial businesses are situated to the south across Lithia Way. The site is zoned C-1, Commercial and is located within the Detailed Site Review Overlay and the Downtown Design Standards Overlay. The site is also located within the Downtown Historic District.

### **Conditional Use Permit Proposal**

The application is a request for Conditional Use Permit approval to allow the operation of an outdoor farmers market on Saturdays from 9:00 a.m. to 1:00 p.m. during the months of May through November. The proposed market would be held in a portion of the existing First Place subdivision's parking lot, and would be limited to 25 vendor booths.

A site plan detailing the areas proposed for use by the market has been provided along with narrative explaining that the site will allow for 25 ten-foot by ten-foot canopies in the northeast parking area. As proposed, a minimum of 15 of the proposed vendors are to sell fresh fruit, vegetables, flowers, bedding plants, meat and eggs; a maximum of seven will sell value-added products such as cheese, bread, pasta, dog bones, or jam; and a maximum of three vendors will sell agricultural crafts. No cooking is proposed to take place on site.

The submittal materials indicate that vendors will arrive no earlier than 8:00 a.m. to begin off-loading their vehicles, and those vehicles will be off-loaded and parked by 8:30 a.m. Booths will be set up by 9:00 a.m., and the market will operate from 9:00 a.m. until 1:00 p.m. Vendors will take down their booths and clean the site by 2:00 p.m., and the applicants will be responsible for leaving the area clean and disposing of the minimal market waste off-site.

The applicants propose to utilize two of the undeveloped building lots adjacent to the site's First Street frontage, identified as Lot 5 and Lot 6 on the applicants' site plan, for vendor off-loading and parking. The applicants indicate that these lots will accommodate approximately 18 vehicles and that arrangements have been made to utilize an additional 10 vendor parking spaces on the private Elks parking lot located approximately 350 feet to the southeast of the market area. 22 of the parking spaces within the existing parking lot on the subject property are to be provided to accommodate market customer parking.

Vehicular access to the site from First Street is proposed to be restricted during the operation of the market. Vehicles would still be able to access the site via Lithia Way or Pioneer Street through the existing public parking lot adjacent to the subject property, and pedestrian access would be available from the walkway at the northeast corner of the site, the driveway off of First Street, or from the proposed parking area on the west side of the site.

The proposed locations of temporary restroom facilities and temporary signage are identified, and the application materials note that the signs will be in place while the market is in operation, and will be kept clear of the sidewalk pedestrian corridor.

Construction of the first building in the First Place subdivision, on Lot 1, will be ongoing during the market season however no construction work is to take place during market hours. The application materials explain that the construction area is to be fenced for safety, and that construction equipment, vehicles, and materials will be kept within the fenced area on Lots 1, 2, 3 and 4 along Lithia Way. The application also notes that in the event that the building on Lot 1 is to be occupied prior to completion of the market season, the market lay-out would be modified by switching the locations of the customer parking and the vendor booths.

## **II. Project Impact**

The proposal requires Conditional Use Permit approval since it involves a temporary, seasonal use and the associated outdoor display of commodities in the C-1 zoning district. In accordance with Chapter 18.108, Conditional Use Permits for temporary uses may be approved administratively through a "Type I" procedure, however in considering the request Staff believed that given the prominent location within the downtown and the public nature

of the proposed use, a public hearing was the more appropriate route for handling the application.

The Retail Commercial Zoning District is intended to stabilize, improve and protect the characteristics of those areas providing commercial commodities and services. In keeping with that purpose, the subject property was recently approved for subdivision to allow its redevelopment. Site Review approval was also granted for common area site improvements including the sidewalks, parking lot and perimeter landscaping, and infrastructure installation. A significant portion of these improvements have been recently installed, with the remainder anticipated to be completed shortly. The proposed use of a portion of the recently improved parking lot (which will likely be underutilized until the individual building lots are developed) for a Saturday market is in keeping with the purpose of the district and will provide for a retail use, with impacts similar to the target commercial use of that portion of the subject property.

Public facilities have recently been upgraded by the owners of the subject property to serve the six developable lots of the First Place subdivision. These facilities include: available three-phase electrical service; existing four-inch water mains in both Lithia Way and First Streets have been supplemented with a new eight-inch water line extended as part of the subdivision improvements to provide a connection to B Street; sewer lines in First Street were upgraded to eight-inches as part of the subdivision improvements; a new 12-inch public storm drain line was installed in First Street to convey stormwater run-off from the site to the existing storm drain line at B and First Streets as part of the subdivision improvements; and the public sidewalks along the project perimeter on both Lithia Way and First Street have been widened. These facilities were designed to serve service full commercial use of the site, and provide more than adequate capacity to serve the proposed Saturday market use of a portion of the site. The application notes that the property owner has provided water and electrical outlets for use by the market vendor booths.

Conditional Use Permits of this nature are reviewed primarily to ensure that they will have no greater adverse material effect on the livability of the impact area than would development of the subject property according to the target use of the zoning district. Given that the site has recently been improved as part of a Site Review approval and that the proposal is for a seasonal, outdoor Saturday market, the primary areas of concern are with the generation of traffic and parking impacts, air quality, noise, light and glare.

The Off Street Parking Chapter AMC 18.92 does not provide specific parking calculations for outdoor markets; however the parking requirement for general retail usage is one parking space per 350 square feet in retail use. The proposed market will include 25 ten by ten vendor booths, or approximately 2,500 square feet of retail space. If the pedestrian circulation aisles adjacent to these booths are also considered, as circulation areas within a retail building would be, the overall retail space proposed is approximately 5,000 square feet. At one parking space per 350 square feet of retail area, fifteen parking spaces would be required. The applicants propose to provide 22 customer parking spaces on site, seven more than required based on use of the area as general retail. In addition, the applicants have identified the unimproved area on Lots 5 and 6 to accommodate 18 vendor vehicles in a stacked parking configuration, and an additional ten vendor parking spaces are proposed to be provided off site in the Elks parking lot, approximately 350 feet to the southeast. Given

the available vehicular access from Lithia Way and Pioneer Streets, the proximity to public parking lots which are not typically at full capacity during the hours of market operation for a significant portion of the market's season, and the fact that approximately 50 parking spaces have been identified to address the parking demand created by market customer and vendor parking during the limited period of operations, Staff believe that the traffic and parking impacts of the market to surrounding streets, and particularly to the nearby Railroad District residential neighborhood, have been sufficiently addressed.

The application indicates that the property owner is also willing to include deed restrictions on lots within the First Place subdivision that would prioritize market use of the parking area during market operations to minimize parking impacts that might otherwise occur once the lots within the subdivision have been fully developed. Staff believe that the proposed market should be given the opportunity to operate for a full season with the understanding that the Conditional Use Permit will need to be re-evaluated after a full season's operation in order for the neighborhood, applicants, Planning Commission and Staff to fully assess any unanticipated impacts of the proposal including the impacts of the market in light of ongoing development of the site that may occur in the near term and other issues that may be observed once the market operations are established. Staff has made the applicants aware that this second review would be recommended, and the applicants have seemed agreeable and note in their application that they view the first season as a trial period to determine whether the location meets the needs of the market and its customers as well as the neighbors and community.

As proposed, the market will not require any lighting and no generators are to be allowed. There is to be no amplified music, although acoustic music is proposed during market hours. No hot food vendors will be participating in the market, so any odors would be limited to those of plants and flowers.

Neither the Tree Commission nor the Historic Commission has reviewed the application as this report is being prepared. Given the nature of the application, and the location on a site which has been improved as part of a recent Site Review approval, no significant concerns are anticipated by Staff. Conditions have been added to make appropriate recommendations from these Commissions part of the approval.

### **III. Procedural - Required Burden of Proof**

**The criteria for Conditional Use Permit approval are described in section 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.

#### **IV. Conclusions and Recommendations**

Overall, Planning Staff believe that the proposed location is well suited for a Saturday market, and that the market will be beneficial to neighboring downtown businesses and their employees, residents and the community at large by providing convenient access to healthy, fresh locally grown food; by bringing a sense of vitality to what might otherwise be an underutilized space; and by generating “spill-over sales” to neighboring businesses. Project for Public Spaces, a nonprofit organization dedicated to creating and sustaining public places that build stronger communities, notes that “*public markets are an essential building block of great cities -- in the same way as parks, streets, and buildings.... public markets [are] an elemental form of public space-- a source of strength for local economies and the social life of cities.*” Staff believe that the application satisfies the criteria for approval of a Conditional Use Permit, and we recommend approval of the application with the following conditions attached:

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise modified herein. The operational details of the market (including the hours, days and months of operation; number of vendors; number and placement of customer and vendor parking and market signage) shall be in substantial conformance with those approved as part of this application. If the market operations are to be intensified, an application to modify this Conditional Use Permit shall be submitted and approved prior to any intensification.
- 2) That all relevant conditions of the Subdivision and Site Review approvals (PA #2007-00091 & #2007-01939 ) shall remain in effect unless otherwise modified herein.

- 3) That after the first full season of operations (prior to the beginning of the 2010 season) the applicants shall apply for a Conditional Use Permit to operate a permanent Saturday market. The purpose of this application is for the re-evaluation of the market in light of any unanticipated impacts which may be observed once the market is operational on site, and to consider the impacts of the market in light of the on-going development of the site.
- 4) That signage shall be limited to the number, size, type and location specified in the application. No signage shall be placed off site, and no signage shall be placed on the sidewalks or within the street rights-of-way.
- 5) That prior to the first use of the subject property for the proposed Saturday Market:
  - a) “One Way” signage shall be installed on First Street, inspected and approved by the Engineering Division.
  - b) The applicants shall provide specifications on the barriers to be used for the review and approval of the Planning, Building, and Fire Departments.
  - c) That the applicants shall provide written evidence of an agreement allowing for ten spaces of vendor parking on the Elks parking lot as described in the application.
  - d) That the requirements of the Fire Department that fire apparatus access be maintained, that a revised site plan detailing specific vendor booth lay-out be provided, and that a Fire Department special event permits be obtained shall be addressed.
- 6) 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
- 7) 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.



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City of Astoria  
Community Development

Rogue Valley Growers & Crafters Market CUP Application Narrative and Findings  
Submitted May 9, 2008

MAY 9 2008

## 1. Background

COMMUNITY DEVELOPMENT

The Rogue Valley Growers & Crafters Market (RVGCM) is a mutual benefit corporation with a 21-year history of operating a successful seasonal farmers' market in Southern Oregon. The market currently operates from 8:30am-1:30pm at the Oregon National Guard Armory Tuesdays in Ashland and Thursdays in Medford. We do our best to be good neighbors and are proud of our positive five-year history under a conditional use permit at the Armory site.

To meet additional customer demand, the market would like to find an appropriate site for an additional Saturday market in Ashland. A Saturday market will allow working families to purchase fresh local produce.

We believe that the addition of a Saturday farmers' market to Ashland's downtown will be a beautiful and community-building asset for residents, visitors, and a benefit to the commercial viability of the downtown core. Numerous studies have shown that markets have a net positive impact on adjacent businesses by bringing additional customers to the area (see economic and community development section below).

## 2. Lithia & First Location

RVGCM respectfully requests a Conditional Use Permit to operate an outdoor farmers market from 9am-1pm every Saturday from the time of permit approval through mid-November in a portion of the parking area of the development at Lithia and First streets. The market would like to begin operation in June of 2008. If approved for the following year, we would like to begin the market in May.

A downtown location is the favored choice of our customers and potential customers. In a survey of 335 of our customers' and potential customers' households in Ashland this year, 105 households or just over 31 percent reported that a downtown Ashland location would be the most convenient location for them. That response was closely followed by 30 percent who favored the Armory location.

We are limited in our ability to use the current Armory site on weekends due to occasional National Guard activities. Our request to use the Southern Oregon University South Mountain Ave. parking lot was denied by school administration.

We believe the downtown Ashland site is an appropriate location because of its central location and enthusiastic property owner. The proximity of adjacent residential neighborhoods will encourage customer walking and biking. The market will provide spillover customers to nearby downtown shops and restaurants during a lower-use period of office-commercial uses. Some customer parking will be provided on-site and other parking will be available in the three city-owned lots within a one-block radius.

We see this season as a trial period to determine if the location meets the needs of RVGCM and its customers as well as the site's neighbors and the community as a whole.

We will fully cooperate with any requests from the city or neighbors to modify our operations to achieve this goal. In the long term, we continue to look for a permanent location to house our Tuesday and Saturday markets where we can create site improvements and have the security of a long-term lease.

### 3. **Project Overview**

**Site Layout:** The site will allow for 25 ten-by-ten-foot pop-up canopies in the North-East parking sections of the site (see site plan for details). A minimum of 15 vendors will be selling fresh fruit, vegetables, flowers, bedding plants, meat and eggs; a maximum of seven vendors will be selling value-added products such as cheese, breads, pasta, dog bones and jam; a maximum of three vendors will be selling agricultural crafts. No cooking will take place on site.

**Hours of Operation:** Vendors will arrive no earlier than 8am to begin off-loading their vehicles. Vehicles will be off-loaded and parked by 8:30am. Vendor booth set-up will take place from 8-9am. Sales will take place from 9am to 1pm. Vendor take-down will proceed from 1pm to 2pm. The market will be responsible for leaving the area clean and disposing of minimal market waste off-site.

**Vendor Parking:** Vendors will be able to off-load and park in the undeveloped lots labeled 5 & 6 on the site plan. We estimate that this area will accommodate approximately 18 vehicles. Additional vendor parking (10 spaces) is being provided in the private Elks parking lot catty-corner to the site. A total of 28 vendor parking spaces are available which will more than accommodate our anticipated 20 vendors, volunteers and staff. (Some vendors will utilize more than one booth.)

**Customer Parking:** 22 customer parking spots will be available on-site. This consists of 14 compact, six regular and two handicapped in the West of the site and adjacent 64-space city-owned lot at the corner of Lithia and Pioneer. Two additional municipal parking lots (Lithia Way lot, Second Street lot) are located within one block of the proposed market. Bicycle parking exists in the adjacent municipal lot.

Ashland Municipal Code does not specify how many parking spaces are required for a farmers market. 18.92.020 B3 specifies that general retail commercial provide one space for 350 square feet of gross floor area. We estimate our square footage at 2500 square feet, the equivalent of just over seven (7) spaces. We do not want to exceed the maximum allowable number of automobile parking spaces allowed by code; however, because the market is a concentrated use, we believe the number of spaces we plan to provide is appropriate.

**Access:** Pedestrians will enter the site from the walkway off First Street, from the fire lane/alley off First Street and from the customer parking area to the West. Customer vehicles will be blocked from entering the market area at the edge of the parking area and the First Street entrance using cones. Vehicle access will be through the city-owned lot accessed either from Lithia Way or Pioneer Street.

**Restrooms:** One or two porta-potties will be located in a parking space at the SW corner of the customer parking area (see site plan for exact location). This location is screened by the tall landscaping between the city lot and the development.

**Signage:** Two 2x3 foot temporary sandwich boards will be placed on site and off the sidewalk during market hours: one at the NW corner of Lithia and First Streets in the construction area and the second in the landscaping at the NE corner of Lithia

**Construction Activity:** Construction of the first building of the First Place development will be ongoing during the market season; however, no work will take place during market hours. The entire construction zone as well as the pedestrian walkway and landscaping area in the SW section of the site (the entire frontage on Lithia Way) will be fenced off to prevent pedestrians from danger and to prevent damage to the building site. All construction equipment, vehicles and building materials will be stored in this area (lots 1-4 on the site plan). If the building is to be occupied before the completion of the season, we would switch the location of the customer parking and the market booths. This would increase the amount of customer parking available. The property owner is prepared to include a provision in the CCRs that would prioritize market use of the parking area during market operations.

4. **Economic and Community Impact**

Markets are microcosms of their communities. They contribute to economic development, the improvement of health issues, and the creation of community. Studies conducted by the Oregon State University Small Farms Program have shown that markets draw shoppers to the downtown commercial districts of cities across the state. A significant percentage (33-65%) of shoppers at downtown markets say they shop at neighboring businesses. Please reference the attached technical report for details.

A 2002 study conducted by the Project for Public Spaces (PPS) identified six prominent impacts of markets. PPS surveyed customers to learn the greatest benefit of markets to communities. Over 26% of people believed the greatest benefit to be that markets “bring people together.” The other responses show that customers perceive markets as places to buy healthy affordable food and as places that contribute to their communities, economically or socially. The survey results are listed below and can be found at [http://www.pps.org/markets/info/markets\\_program](http://www.pps.org/markets/info/markets_program)

1. **Renews Downtowns and Neighborhoods**

- Act as an anchor for local businesses
- Encourage spin-off development
- Enhance real estate value & tax base
- Keep dollars in the neighborhood

2. **Brings Together Diverse People**

- Create places for people to gather
- Enable mixing of diverse ethnic, cultural, & age groups
- Encourage sense of pride & volunteerism

3. **Creates Active Public Space**

- Bring new life to underused spaces
- Reduce actual crime—and perceived security— by bringing people together
- Create engaging walking environment

4. **Provide Economic Opportunity**

- Low start-up cost
- Small business incubation
- First step for new immigrants
- Opportunity for surrounding businesses

5. **Shape Growth and Minimize Sprawl**

- Support compact, walkable communities

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CITY OF ASTORIA  
Community Development

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City of Portland  
Department

- Help preserve open space and family farms
- 6. Promote Public Health**
- Increase access to fresh, affordable food
- Reduce isolation and depression
- Support community garden and urban agriculture projects

5. **Findings**

The proposed site is zoned C-1, Retail Employment District. Under the conditional uses in the commercial zone, we would classify our market as a “temporary activity” using pop-up canopies. No permanent structures will be erected. The Conditional Use and Site Review conditions follow:

**18.104.050 Approval Criteria**

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.

The proposed market use would result in the temporary erection of canopies for the sale of produce and fruit; and parking for market vendors and customers. The market conforms to all standards of the C-1 Retail Employment District. See previous discussion on parking.

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.

Infrastructure is in place as a component of the development. The property owner has provided water spigots and electrical outlets for the market’s use. Only one vendor will need electricity for a freezer. Minimal greywater from buckets of cut flowers (approximately 10 gallons per market) will be disposed of through the stormwater drain. The market will maintain a minimum 15-foot wide fire lane from First Street to the city parking lot on Pioneer Street. In most locations the width will be 22 feet. Sewer will be provided by appropriately screened porta-potties (see previous discussion and site design for location).

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.

The market use will be similar in scale, bulk and coverage to a high-intensity use of the parking lot.

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.

The proposed site is located between First and Pioneer Streets along Lithia Way, a major arterial. Anticipated traffic will be similar to a high-intensity use of the parking lot. We anticipate that the vast majority of the vehicles coming to park nearby will access the site from Lithia Way and Pioneer Street because of the parking configuration. Those who park to the South will approach the market on foot. The number of trips should be well within the capacity of Lithia Way.

It is our hope that the proximity of residential areas to the downtown will encourage our customers to walk or bike to the market. Unfortunately, RVTD does not run on Saturdays.

3. Architectural compatibility with the impact area.

This criterion is not applicable to the proposal as the proposed use is temporary. Canopies will only be erected for four hours once a week for the summer and early fall.

4. Air quality, including the generation of dust, odors, or other environmental pollutants.

The odors generated by the market will be those of flowers and plants. No hot food vendors will be attending this market due to space limitations.

5. Generation of noise, light, and glare.

Vendors would begin setting up at 8am and be gone by 2pm. Market rules prohibit the use of generators. Noise would be limited to human voices, light truck loading/unloading and acoustic music during market hours. No amplified sound will be allowed. No lights are needed as the market will take place during daylight.

6. The development of adjacent properties as envisioned in the Comprehensive Plan.

The market will be taking place during construction of the first building of First Place (lot 1). The construction area will be secured with fencing to protect customers as well as construction equipment, vehicles and building materials. All of this will take place in lots 2, 3 and 4. See previous discussion.

7. Other factors found to be relevant by the Hearing Authority for review of the proposed use.

Additional issues will be addressed as required.

#### **18.72.070 Criteria for Approval**

The following criteria shall be used to approve or deny an application:

A. All applicable City ordinances have been met or will be met by the proposed development.

B. All requirements of the Site Review Chapter have been met or will be met.

C. The development complies with the Site Design Standards adopted by the City Council for implementation of this Chapter.

D. 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. All improvements in the street right-of-way shall comply with the Street Standards in Chapter 18.88, Performance Standards Options. (Ord. 2655, 1991; Ord 2836 S6, 1999)

All Site Review Criteria have been met as a component of the approved First Place site plans for the development.

#### **18.61.200 Tree Protection**

A. Tree Protection Plan Required.

A tree protection plan has been approved as a component of the approved First Place site plans. Existing landscaping around the parking lot will be protected by the curbs. RVGCM Site Managers will emphasize with the market vendors to not damage any vegetation or trees during market. The Grants Pass market operates in a similar location and has been a good friend to the parking lot's landscaping. In addition, landscaping will be protected from customers by the vendors' canopies.

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Community Development

# Oregon Small Farms Technical Report



## Research Brief: How Do Farmers' Markets Affect Neighboring Businesses?

By Larry Lev, Linda Brewer, and Garry Stephenson  
Oregon State University

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Oregon Small Farms  
Technical Report Number 16

December 2003

Oregon State University Extension Service



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EXTENSION SERVICE

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City of Astoria  
Community Development

**Research Brief:  
How Do Farmers Markets Affect Neighboring Businesses?  
Larry Lev, Linda Brewer, & Garry Stephenson  
Small Farms Extension Program, Oregon State University**

**Introduction**

The overall economic impacts of farmers' markets include:

- The direct impact of market sales;
- The indirect impact of market sales
  - Increases in other farm sales generated by presence in the market
  - Multiplier effect of market sales;
- Spillover sales generated by farmers' market shoppers who also make purchases at neighboring businesses.

This fact sheet focuses on the third of these elements. Since 1998 we have collected information on this issue at a series of markets in the Northwest. Each local situation is unique so it is important not to interpret the results too broadly. Still, the sum of the results do provide some insights.

**Survey Results**

All data discussed in this fact sheet are summarized in Table 1. More complete results are provided in the individual market reports.

**QUESTION: Do farmers markets attract people downtown, or do they merely sell to people who are already there?**

When we started our research in 1998, we viewed this as an unknown and asked this question on multiple occasions in the two towns of Corvallis and Albany, Oregon. The data demonstrated that the markets themselves were the primary draw for shoppers in both Albany (88%) and Corvallis (78%). The question also included a "partial reason" category (5% and 10% respectively) so the drawing power of the markets is clearly the overwhelming reason for people being downtown. As a result, since 1998 we have not asked this question at weekend markets.

Midweek markets are a different story. We asked this question at midday, midweek markets in both Portland and Eugene Oregon. In both instances, market management was surprised by the results. In Eugene, a town of 150,000, 45% of the shoppers were downtown not because they lived or worked there but rather because of the market itself. In the larger town of Portland (more difficult to get there and to find parking) 24% of the shoppers came downtown specifically to attend the market. Both results indicate a higher than anticipated drawing power for the markets.

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**QUESTION: Once there, do farmers market shoppers also shop at neighboring businesses?**

This question was asked in 7 markets, 6 in Oregon and 1 in Idaho. The results indicate that between 33% (Beaverton, OR) and 65% (Grants Pass, OR) of those attending the market also did additional shopping at neighboring businesses on the same trip. While the presence of the market may dissuade some potential shoppers from coming downtown, these data demonstrate that farmers markets are a net draw and provide the opportunity for neighboring businesses to make additional sales. Retailers with complementary products are in the best position to profit from the influx of customers.

Hillsdale market shoppers responded to a slightly different question but provided similar results. Forty percent of the Hillsboro shoppers indicated that they had increased purchases at local shops and restaurants as a result of their shopping at the market.

**QUESTION: How much do farmers' market shoppers spend at neighboring businesses (on the same shopping trip)?**

Table 1 presents data for 7 markets. The dollar figures are based on customer estimates and are more likely to be under- rather than overestimates. The raw dollar figures are given further context for six of the markets by indicating the percent of in-market spending that the spillover spending represents. In the case of the Corvallis market in 1998, the \$11,000 spent at neighboring businesses represented 87% of the money that those same consumers spent in the market. The spending ratios range from a low of 31% to a high of 92%.

The comparison between Corvallis and Albany, two neighboring Oregon towns, is an interesting one. The two markets are of roughly similar size. The spillover spending is much higher in Corvallis for two reasons. First, the Albany market has earlier hours (8 AM to Noon versus 9 AM to 1 PM) and therefore more market shoppers arrive before many of the downtown businesses are open. Secondly, the Corvallis market has more retail stores in close proximity to the market. Other towns that exhibited particularly strong spillover sales were Grants Pass and Moscow, ID. Both have compact downtowns and attract shoppers from the surrounding area.

***Cautions on Interpreting the Data***

- Each market is different.
- For any given market, some retailers may experience a benefit from spillover sales while others find that their sales have been reduced.
- In collecting data in farmers' markets, some shoppers are reporting what they have done; others are reporting what they intend to do. Both can lead to inaccuracies.

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<b>Table 1: Impact of Selected Oregon Farmers' Markets on Neighboring Retailers, per Market Day in Indicated Years</b>					
	<b>% Downtown specifically for market</b>	<b>% Who also shopped outside market</b>	<b>Estimated total spent OUTSIDE market</b>	<b>Estimated total spent INSIDE market</b>	<b>Spending ratio: outside market/ inside market</b>
<b>Weekend Markets</b>					
Corvallis (1998)	78	63	\$11,000	\$12,700	0.87
Albany (1998)	88	38	\$ 4,400	\$11,400	0.39
Hollywood District, Portland (2000)	NA	47	\$16,200	\$30,687	0.53
Grants Pass (2001)	NA	65	\$22,000	\$24,000	0.92
Beaverton (2002)	NA	33	\$38,400	\$125,000	0.31
Hillsdale (2002)	Forty percent of respondents reported more frequent trade with neighborhood shops and restaurants as a result of shopping at the market.				
Moscow ID (2003)	NA	55	\$19,360	\$25,554	0.76
<b>Weekday Markets</b>					
Portland Wed (2000)	24	NA	NA	NA	NA
Eugene Tue (2000)	45	NA	NA	NA	NA
Portland Th (2003)	NA	42	\$10,545	NA	NA

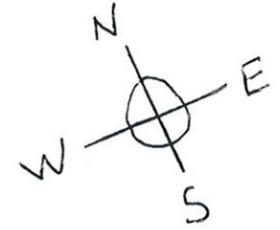
Research conducted by Oregon State University Extension Small Farm Program 1998-2003 and by the University of Idaho and Rural Roots (Moscow Report). Additional information available: <http://smallfarms.oregonstate.edu/techreport.htm>.

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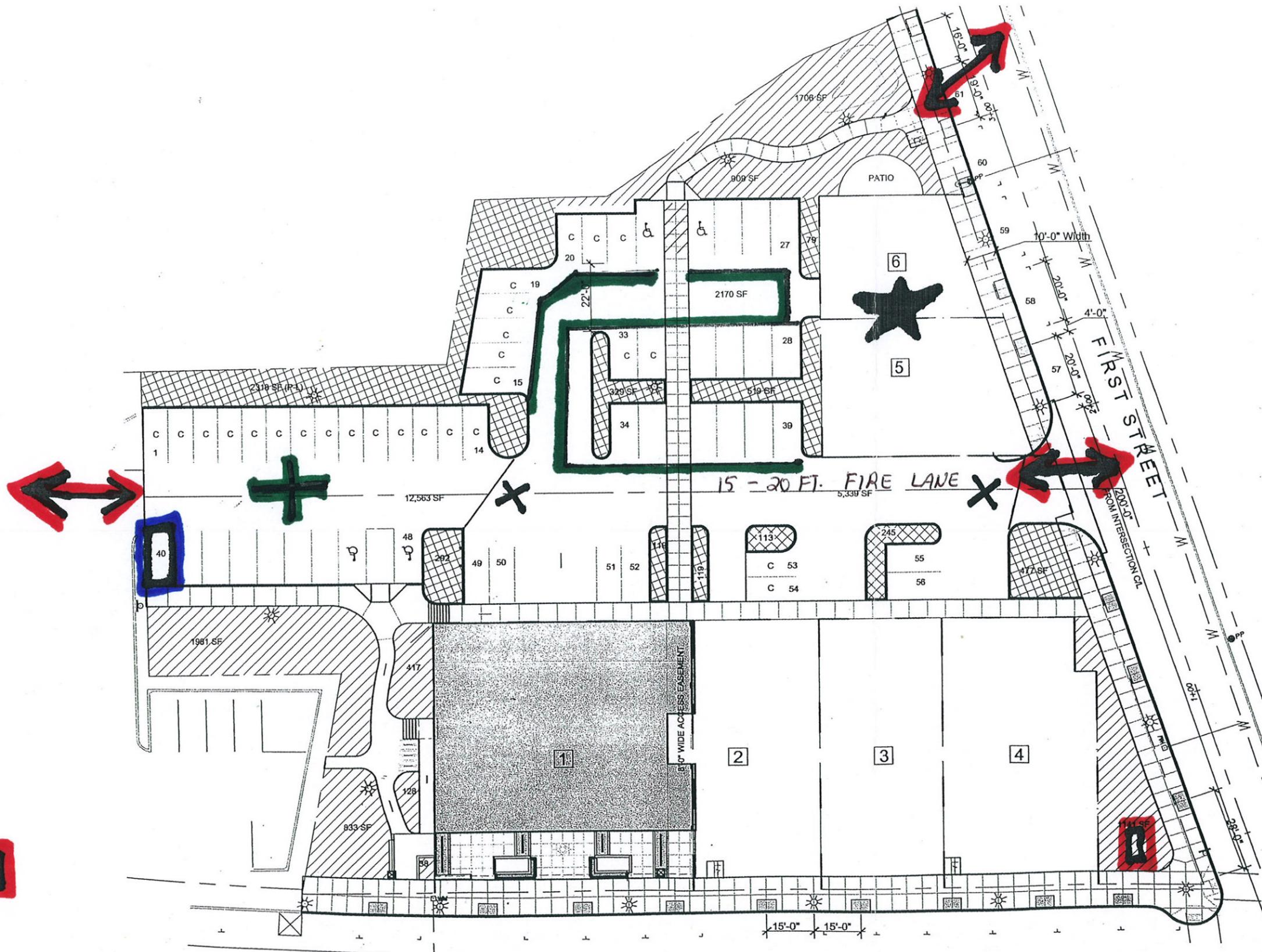
# RUG-CM SITE PLAN



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City of Ashland  
Community Development



-  VENDOR PARKING
-  VENDOR BOOTHS
-  PORTA POTTY
-  CUSTOMER PARKING
-  CUSTOMER ACCESS
-  VEHICLE BARRIER
-  SIGNAGE

**HISTORIC COMMISSION  
Meeting of June 4, 2008**

**PLANNING APPLICATION REVIEW**

**PLANNING ACTION:** *PA2008-00766*

**PROPERTY:** *165 Lithia Way*

**APPLICANT:** *Rogue Valley Growers and Crafters Market*

**DESCRIPTION:** *Request for a Conditional Use Permit to allow the operation of an outdoor farmers market on Saturdays from 9:00 a.m. to 1:00 p.m. during the months of May through November. The proposed market would be held in a portion of the existing parking lot for the property located at the northwest corner of First Street and Lithia Way, and would be limited to 25 vendor booths.*

**Recommendation to Planning Commission:**

Recommend approval of the proposal as presented.



ASHLAND TREE COMMISSION  
PLANNING APPLICATION REVIEW  
June 5, 2008

**PLANNING ACTION:** 2008-00766

**SUBJECT PROPERTY:** 165 Lithia Way & 123 North First Street

**APPLICANT:** Rogue Valley Growers & Crafters Market

**DESCRIPTION:** Request for a Conditional Use Permit to allow the operation of an outdoor farmers market on Saturdays from 9:00 a.m. to 1:00 p.m. during the months of May through November. The proposed market would be held in a portion of the existing parking lot for the property located at the Northwest corner of First St. and Lithia Way, and would be limited to 25 vendor booths. **COMPREHENSIVE PLAN DESIGNATION:** Commercial; **ZONING:** C-1; **ASSESSOR'S MAP #:** 39 1E 09 BA; **TAX LOTS:** 90000, 90001, 90002, 90003, 10100, 11601 & 11701

Recommendation:

- 1) No recommendations.

**Derek Severson - \*For The Record\* PA- 2008-00766**

**From:** "Colin Swales" <colinswales@gmail.com>  
**To:** "Bill Molnar" <bill@ashland.or.us>, "Derek Severson" <seversod@ashland.or.us>  
**Date:** 6/10/2008 9:09 AM  
**Subject:** \*For The Record\* PA- 2008-00766

Bill, Derek,  
(Please forward to the Planning Commission)

**\*For The Record\* PA-2008-00766 RV Growers and Crafters Market CUP at Lithia/First.**

Firstly, let me state that I have long been lobbying for a Downtown venue for a "Farmer Market" and have signed a petition in support of a Saturday market Downtown.

What has to be determined is if this private commercial Parking lot is the best location.

While I am intrigued by the latest proposal to be operated on the former Copeland Parking Lot, I have a number of questions that I would like answered.

- 1) Has the approved "First Place" Subdivision Plat yet been approved by the City and Recorded with the County?
- 2) Is the "Alley"- type access that runs between First Street and the City-owned Parking Lot and Pioneer St. (behind the proposed First Place buildings) the subject of a recorded reciprocal Public ingress/egress *easement* between the Parties - or has the access corridor been *dedicated* to the City for Public Use?
- 3) The subdivision Plan showed a "raised protected pedestrian walkway" as required under our Site Design and Use Standards -joining First Street to the City Parking Lot. Has this been completely installed as shown on the Final plan?

**[ SDUS II-C-2c (2) Parking and On-site Circulation ]**

It would seem that the adjacent Public Parking Lot is non-conforming in that it lacks such a required raised, protected pedestrian path. Is this safe mixing such intensive City Public parking with retail stalls?

Will the promised N-S mid-block pedestrian access path from the parking lot to Lithia Way be installed prior to the operation of the Market?

- 4) Vendor parking is proposed for lots "4 & 5" . Now that lots 1 & 2 have been effectively combined, does the applicant mean the originally proposed lots 6 & 7 ?
- 5) All current vacant lots seem to be unsurfaced dirt. Is parking on these lots advisable and what precautions are the applicants taking to ensure that mud and grit does not enter and wash down the public storm drain system ?
- 6) Experience tells me that even downtown, the parking demands for such a Market are very high. How does this market's parking demands compare to the one currently operating at the Armory ?

7) The downtown Parking lots always seem very full to me. What data is used to back up Staff's assertion that the adjacent Public Parking Lot is "not typically at capacity" during the times and months of proposed operation? RR District and other nearby residents already bear a huge burden of non-residential parking directly outside their homes.

8) The Parking to be provided on the Elks Parking Lot is 350 ft. away. How does this meet the requirement of

***ALUO 18.92.060 Limitations, Location, Use of Facilities***

*A. Location.... required automobile parking facilities may be located on another parcel of land, provided said parcel is **within 200 feet** of the use it is intended to serve....?*

I seem to remember this distant parking was a contentious issue in the Mobius (on 4th) application.

9) How many of the parking spaces are already dedicated to the approved building on lots 1&2? Are these to remain available to the proposed new owners of those lots?

10) If the property owner was to use the existing on-site required 20 ft. Front Yard arterial setback on Lithia Way (i.e. the proposed Public Plaza) for the market, would that not free up the parking lot for...market customer PARKING ?

Colin Swales

RUTH M. MILLER



PHILIP C. LANG, LCSW

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June 10, 2008

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JUN 10 2008

City of Ashland  
Community Development

To: City of Ashland - Planning Department  
Planning Commission

Re.: Planning Action 2008-00766 (Farmers' Market at First & Lithia Way)

I am OPPOSED to granting the CUP for the operation of this market

I am a party at interest since I own 270 N. First St. (between A & B).

Other interests and my bona fides related to this planning action are:

1. I am a member and frequent customer of the Ashland Co-op (member #1909).
2. I am a boxholder and frequent user of the post office at 1st & Lithia Way.
3. I am a patron of the tuesday farmers' market at the armory
4. I support the concept of farmers' markets.

#### BASIC STATEMENT

The request, requiring a CUP (Chapter 18.108) does not meet the requirements for a CUP. This is a very congested area, and, it abuts a residential area, ~~wh~~ich the proposed use would impact even more severely than is currently the case.

Parking at the post office is impossible/inadequate. My partner holds a disabled permit - yet the one space provided is rarely available. Patrons have taken to parking in the post office's own parking-behind the fence. The argument that the market would be conducted on saturday, when the post office is closed is specious. Many patrons have to visit the post office on saturday to do business or check their p.o. boxes. There is also a machine that allows us to do a range of mailing operations even though no staff are available.

While we all are extremely happy for the great success of our Co-op, that success brings with it congestion and inadequate parking. The Co-op lot, shared with Landmart (now Crane) Realty and Umpqua Bank, is inadequate. My tenant across the street never has her presumed parking space. And saturday is a prime, major shopping day at Co-op.

Thirdly, there is OSF. While plays do not begin until the early afternoon, the fact is that tourists come downtown for breakfast, lunch, and to shop at the stores. There are also a variety of lectures and tours that are conducted in the A.M.

Congestion is now so bad that B street is totally parked up during the day all the way down to third street and no doubt will progress further with this proposed additional use - moving down towards sixth street (I live at 758-B street - between 6th and 7th).

Finally, this farmers' market will be like the one on East Main, which means the following: (1) each vendor will require at least 2 parking spaces. Some vendors at East Main require 3 parking spaces (the knife sharpener man and the stone purveyor, for example). This is in addition to parking space for their vehicles.

#### History

Now of course each application is separate, and is to be considered on its own merits. To do otherwise would be unfair, would it not? Well - no - there is a history on this property, briefly summarized as follows. The developers originally envisioned a huge mixed-use (residential/commercial) development which ultimately could not be approved. Its downfall came after an especially "creative" interpretation of the rules over what constituted the project's "front" by the former planning director. This was quite a reach - even for him, and the exposure of this scheme, plus the promise of an administrative audit of his directorship resulted in his departure.

The developers are now faced with a huge commercial property at a time of continuing economic decline, and increasing number of such properties being vacant, and other commercial properties coming on line (viz. Barclay Square, the revamped bowling alley, etc.)

This is an attempt to squeeze out some income from the property while it lies fallow. Whether it would be financially viable for the vendors, who are undoubtedly going to pay a user fee for their occupancy, remains to be seen.

#### Summary

This CUP should not be approved insofar as it is out of conformity with 18.104.50 sections:

- C. The conditional use will have a greater adverse material effect on the area when compared to the development of the subject lot(s) and the target use of the zone (especially parking congestion).
- C.2. - Excess generation of traffic in an already congested zone with inadequate parking, egress and ingress, and worsened quality of life affecting the surrounding (residential as well as business) area.
- C.4. - Air quality, including generation of dust, odors and other environmental pollutants. Part of the lot is paved - most of it is dirt. Can anyone argue that the huge amount of vendor and customer traffic will not result in vehicles traversing the dirt and raising dust and pre-existing pollutants?
- C.5. - Generation of noise - this is an outdoor market and includes the additional noise of generators (for refrigeration) on some vendor vehicles as well as the large volume of traffic.
- C.6 - Development of adjacent properties - the adjacent developed properties both immediately abutting the property and the post office across the street, and in the area extending down towards A street are developed as residential properties in an R-2 zone.

#### The Three Tiered Planning Process

All of the above reasons - and more - should be obvious reasons for denial to anyone who is acquainted with the area, who examines it, who thinks about the negative impacts. Anyone, that is, except our planning staff,

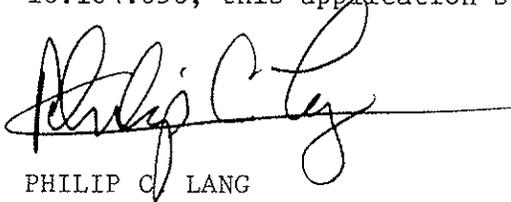
who run a three tiered planning process, as follows:

The highest tier with the second-smallest constituency are citizen/developers/OSF/speculators, for whom any and all ordinances and rules standing in their way must be ignored, violated, "re-interpreted" in outlandish ways to allow for approval, etc.

The second - and largest tier are ordinary citizens who may or may not get approval for their projects according to a (presumably) straightforward application of ordinances and rules.

The third - and smallest tier consists of those who have challenged improper planning actions, who have pointed out the inequalities and disparities in applying ordinances and rules, who have tried to protect the public interest by appealing some appalling decisions to LUBA or the courts. For such people, when and if they want to do some project it is "payback time" and the ordinances and rules are then applied and interpreted prejudicially against them.

On the merits, or lack thereof - on the basis of the requirements of 18.104.050, this application should be DENIED.



PHILIP C. LANG

## Staff Recommended Condition Corrections for 265 N Main Street

- 4) That if the temporary fencing proposed by the applicants as a pedestrian safety measure ~~be in place for all four outdoor events and that 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.
- 5) That, if the City determines it is needed, the applicant may be required to provide additional traffic control assistance, subject to City of Ashland standards for traffic control, which may include but is not limited to temporary fencing, temporary directional signage, or crossing gaurds. Any traffic control measures shall be coordinated with the City prior to implementation.
- 11) 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.

# Commission Communication

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**TO:** Planning Commission  
**Title:** Amendments to the Annexation and Zone Change ordinances  
**Date:** June 24, 2007  
**Submitted By:** Brandon Goldman, Senior Planner

Over the course of the last two years the Housing and Planning Commissions have examined Ashland's current annexation policies specifically as they relate to promoting the development of affordable workforce housing. As drafted the existing ordinance achieves the primary goal in this regard and is seen as a model that other communities in the state have examined in their efforts to address the increasing lack of housing affordability. However, experience in application with any ordinance functions to highlight areas that could be adjusted to better suit the intentions of the community.

Since 2003, with a number of applications for annexation and zone changes processed, potential revisions to the existing ordinances have been identified to ensure the provision of affordable housing is both timely and equitable. These issues are as follows:

- Percentage of affordability
- Land Dedication
- Construction Timing
- Distribution of Affordable Housing
- Construction Standards
- Cash-in-Lieu fees

It is important to note that the purpose behind amending the annexation ordinance at this time has been limited to addressing the provisions specifically relating to affordable housing to better reflect policy objectives for affordable and workforce housing.

The schedule provided below outlines a public review process that is underway to complete this activity.

June	July	August	September	October
Planning Commission Study Session June 24, 2008	<b>Final Draft Ordinance Developed</b>	Planning Commission Public Hearing Ordinance Recommendations August 12, 2008	City Council First Reading September 16, 2008	City Council Second Reading October 7th, 2008
Legal Review	Housing Commission Public Hearing Ordinance Recommendations, July 24, 2008	City Council Study Session August 19, 2008		Adopted Ordinance to DLCD



The attached draft ordinance is the first time the Commission will have seen the changes that have been previously discussed in ordinance format. As presented the proposed ordinance amendments are largely consistent with example language presented to both the Planning Commission, the Housing Commission and to an ad-hoc committee that convened on May 1, 2008, with a few notable exceptions as outlined below.

### **Section 18.106.030 G(1)**

This proposed approval standard establishes an “equivalency value” for affordable housing units as a means of providing greater flexibility in the mix of income levels targeted by a development.

- 1) **The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25% of the base density as calculated using the unit equivalency values set forth herein:**
  - a. **Ownership units restricted to households earning at or below 120% the area median income shall have an equivalency value of 0.75 unit**
  - b. **Ownership units restricted to households earning at or below 100% the area median income shall have an equivalency value of 1.0 unit.**
  - c. **Ownership units (could potentially include “or rental units”) restricted to households earning at or below 80% the area median income shall have an equivalency value of 1.25 unit.**
  - d. **Ownership or rental units restricted to households earning at or below 60% the area median income shall have an equivalency value of 1.5 unit, or;**

There has been general agreement that the concept of applying such equivalency values is an appropriate way to add flexibility to the ordinance and as such promote developments that target various income levels. Within this section however there has been discussion by both the planning commission and the Annexation ad-hoc review committee regarding subsection “c” as it relates to rental housing.

Specifically the question has been raised as to whether any affordable rental housing units targeted to households earning 80% the Area Median Income (AMI) should qualify in meeting this standard. A concern raised is that as rents for households at 80%AMI are essentially equal to today’s market rental rates (a household earning 80%AMI can afford to rent a two bedroom for \$805 per month), it raises the question as to whether meeting this standard provides any additional affordability not otherwise provided by the market. Alternatively, it has been suggested that to include *rental units* within this specific standard would promote the development of dedicated rental units which are not otherwise being developed in our community by the marketplace.

The Rental Needs Analysis (2007) found that rental rates in Ashland are likely to increase substantially in the near future (*Future Market Conditions pg 7*), and as such regulated rental units targeted to 80%AMI are likely to become below market rentals as market rate rents increase. The Rental Needs Analysis expresses the issue as such:

*The lack of rental property production is due to basic market economics. It is simply more profitable to build and sell a multi-family unit as a condominium than it is to rent it as an apartment.*

*The only way for the development community to have a financial incentive to build multi-family rental properties would be for rental rates to increase, which is detrimental to the overall affordability of Ashland’s market.*

*As a result, any solution to the problem will require balancing affordability while maintaining or promoting a market incentive for apartment development.*



**Section 18.106.030 G(2)**

This proposed approval standard allows for a developer to transfer ownership of property to an affordable housing provider as a means of satisfying their obligations under the ordinance. Transfer of property allows housing providers experienced with affordable housing to more readily partner with for-profit developers to complete the affordable housing component required by the annexation or zone change. This provision is similar to the existing ordinances allowance for such a transfer.

**Section 18.106.030 G(3)**

The existing Annexation and Zone Change Ordinances do not provide an alternative for Cash-n-Lieu fees. Such fees are often an option for developers to contribute a set amount into an affordable housing fund, to enable the City to apply those funds to meet its housing goals in another manner or through purchase of another site or support of housing programs.

Should the City wish to examine in-lieu fees as a viable option in the future it seems appropriate to incorporate language in a modified annexation or zone-change code at this time that would maintain that option. However the City in accepting such fees would be essentially allowing a development to be built exclusive of affordable housing. This would then shift the onerous to the City to identify alternative property and coordinate the development of a comparable amount of units to realize the same benefit that would have been achieved were the affordable units originally included in the development.

Staff is concerned that implementation of a Cash-n-Lieu fee program may not be an effective means as distributing affordable units throughout the City as would be the case with their incorporation in each independent annexation or zone-change. Language is provided in this draft ordinance should the Commissions and Council wish to eventually establish such a program. No ordinance or resolution has been enacted for cash-in-lieu fees and the methodology to establishment of actual contribution amounts has not been done. This section of code would allow the City to develop such a program in the future, until then the applicants could not exercise a Cash-in-lieu option.

**Section 18.106.030 G(4)**

This new section is proposed with two purposes in mind;

- 1) Ensuring that affordable units provided by a development are both comparable in terms of number of bedrooms with the market rate units developed;
- 2) Ensuring affordable units provided are not substandard in terms of total square footage.

- 4) **The affordable units shall be comparable in bedroom mix with the market rate units in the development.**
  - a. **The minimum square footage of each affordable unit shall comply with the minimum required floor based as set forth in Table 1.**



**Table 1**

<b><u>Unit Type</u></b>	<b><u>Minimum Required Unit Floor Area (Square Feet)</u></b>
<b>Studio</b>	<b>350</b>
<b>1 Bedroom</b>	<b>500</b>
<b>2 Bedroom</b>	<b>800</b>
<b>3 Bedroom</b>	<b>1,000</b>
<b>4 Bedroom</b>	<b>1,250</b>

The unit sizes in Table 1 were largely derived from using the minimum unit sizes from the State of Oregon’s HOME affordable housing program standards with one notable exception. The minimum unit size for 1 bedroom units under the State program is 600sq.ft. However, as Ashland’ ordinances use 500 square feet as a delimiter for both density calculations and parking requirements by adjusting this down to 500sq.ft. we would allow greater opportunities for site design and potentially allow for an increase in the total number of affordable units (utilizing the 0.75 unit density designation for units 500sq.ft. or less) than could otherwise be provided were the standard to remain at 600sq.ft. This potential change was suggested at the Annexation Ad-Hoc Committee and Staff believes such a change has merit and should be considered for inclusion in the final ordinance.

In the original language presented to the Commissions included the following under this section:

***Interior features of the affordable units shall not be required to be the same as or equivalent to the market rate units, so long as they are of good quality and consistent with current building standards***

Staff is suggesting that we strike this language in its entirety from the final ordinance language Although it is descriptive, it does not actually establish a “standard” of development, other than to note consistency with building standards, which is a given. Removing the section from the proposed draft will not materially effect the interpretation of the section but removes complexity from the draft language.

**Section 18.106.030 G(5)**

Under the existing ordinance there is no established criteria that addresses how a project is to be phased, specifically identifying at which point affordable housing units are constructed relative to the market rate units within the development. The section below is intended to remedy situations where all the market rate units are developed and the affordable housing component remains unbuilt. By phasing the development as follows the City can be assured that all the affordable housing will be made available for occupancy on approximately the same schedule as the projects market rate units.

- 5) A development schedule shall be provided that demonstrates that that the Affordable Housing Units per 18.106.030(G) shall be developed, and made available for occupancy, as follows:**
  - a. That 50% of the affordable units shall have been issued building permits prior to issuance of a certificate of occupancy for the last of the first 50% of the market rate units.**
  - b. Prior to issuance of a building permit for the final 10% of the market rate units, the final 50% of the affordable units shall have been issued certificates of occupancy.**



### **Section 18.106.030 G(6)**

The desire articulated by the Housing Commission and other community members has consistently been to “scatter” affordable housing throughout the community and on individual projects to reduce the potential for stigmatization of a “low-income area” and further to support income integration as a community value.

Concern had been raised by non-profit housing providers that mandating a method of scattered site development may impede funding sources, specifically state funding sources. The State representative from the department of Housing and Community Services has indicated that this is not the case and that scattered site proposals can be funded without compromise. The Rogue Valley Community Development Corporation has indicated that the economy of scale of “clustered” development is beneficial to their application of the Self Help Program and as such did not recommend language that required scattering of units.

Staff believes that given the scale of developments in Ashland the issue of “clustering” is not pronounced in our community. Even in what Ashland considers to be large projects (ie 40-100 units), the number of affordable units provided do not typically appear to create a distinguishable “low-income areas”.

The new code language suggested is as follows:

**That affordable housing units shall be distributed throughout the project**

This language eliminates the numerical limitation previously discussed “*no more than four affordable housing units be located adjacent to one another*”. In further consideration of this potential language staff believes such language would be problematic to housing providers aiming to complete larger scale apartment projects which could include apartment complexes of greater than 4 units.

Additionally, questions of interpretation regarding “adjacency” were discussed at the Ad-Hoc Committee and could further be discussed by outlining what qualifies as a separation between affordable units (including market rate units, common open space, new roads within a development, pre-existing affordable units on adjacent properties). For these reasons staff believes the elimination of the numerical limitation, but retention of the broad standard should be considered by the Commissions and Council. With the standard above the applicant would still have the burden of proof to demonstrate that affordable units are distributed throughout the project, or alternatively apply for an exception under section 18.106.030(H).

### **Section 18.106.030 (H), Exceptions**

This sections outlines the exceptions to the requirements of 18.06.030.G(2), 18.06.030.G(5), and/or 18.06.030G(6) that may be approved by the City Council upon consideration of the alternatives proposed. This flexibility is intended to allow the City to consider proposals that may accomplish additional benefits for the city or provide adequate assurances that the intention of the standards is met. An important point to note is that the language presented states that exceptions “**may be approved by the City Council**” and thus applicants will be unlikely to apply for a discretionary exception when meeting the standard is feasible.



# **DRAFT CHANGES TO THE ANNEXATION ORDINANCE**

Additions are indicated in **Bold Red type**, deletions in ~~strikeout type~~.

## CHAPTER 18.106

- 18.106.010 Procedure.**
- 18.106.020 Application.**
- 18.106.025 Initiation by Council.**
- 18.106.030 Approval Standards.**
- 18.106.040 Boundaries.**
- 18.106.050 Statutory procedure.**

### **SECTION 18.106.010 Procedure.**

All annexations shall be processed under the Type III procedure. (ORD 2791, 1997)

### **SECTION 18.106.020 Application.**

Except for annexations initiated by the council or commission pursuant to section 18.106.025, application for annexation shall include the following information:

- A. Consent to annexation which is non-revok~~able~~**c**able for a period of one year from its date.
- B. Agreement to deposit an amount sufficient to retire any outstanding indebtedness of special districts defined in ORS 222.510.
- C. Boundary description and map prepared in accordance with ORS 308.225. Such description and map shall be prepared by a registered land surveyor. The boundaries shall be surveyed and monumented as required by statute subsequent to Council approval of the proposed annexation.
- D. Written findings addressing the criteria in 18.106.030.
- E. Written request by the property owner for a zone change. Provided, however, no written request shall be necessary if the annexation has been approved by a majority vote in an election meeting the requirements of Section 11g of Article XI of the Oregon Constitution (Ballot Measure No. 47). (ORD 2792, 1997)

### **SECTION 18.106.025 Initiation by Council.**

A proposal for annexation may be initiated by the council or commission on its own motion. The approval standards in section 18.106.030 shall apply. Provided, however, that in the case of annexation pursuant to section 18.106.030.4 (current or probable public health hazard due to lack of full City sanitary sewer or water services) or section 18.106.030.6 (the lot or lots proposed for annexation are an "island" completely surrounded by lands within the city limits), the approval standards in section 18.106.030.E, F and G shall not apply. (ORD 2792, 1997)

### **SECTION 18.106.030 Approval Standards.**

An annexation may be approved if the proposed request for annexation conforms, or can be made to conform through the imposition of conditions, with the following approval criteria:

- A. The land is within the City's Urban Growth Boundary.
- B. The proposed zoning for the annexed area is in conformance with the designation indicated on the Comprehensive Plan Map, and the project, if proposed concurrently with the annexation, is an allowed use within the proposed zoning.

- C. The land is currently contiguous with the present City limits.
- D. Adequate City facilities for the provision of water to the site as determined by the Public Works Department; the transport of sewage from the site to the waste water treatment plant as determined by the Public Works Department; the provision of electricity to the site as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided to and through the subject property. Unless the City has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities.
- E. Adequate transportation can and will be provided to and through the subject property. For the purposes of this section "adequate transportation" for annexations consists of vehicular, bicycle, pedestrian and transit transportation meeting the following standards:
  - 1. For vehicular transportation a 20' wide paved access exists, or can and will be constructed, along the full frontage of the project site to the nearest fully improved collector or arterial street. All streets adjacent to the annexed area shall be improved, at a minimum, to a half-street standard with a minimum 20' driving surface. The City may, after assessing the impact of the development, require the full improvement of streets adjacent to the annexed area. All streets located within annexed areas shall be fully improved to city standards. Where future street dedications are indicated on the City's Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation.
  - 2. For bicycle transportation safe and accessible bicycle facilities exist, or can and will be constructed. Should the annexation be adjacent to an arterial street, bike lanes shall be provided on or adjacent to the arterial street. Likely bicycle destinations from the project site shall be determined and safe and accessible bicycle facilities serving those destinations shall be indicated.
  - 3. For pedestrian transportation safe and accessible pedestrian facilities exist, or can and will be constructed. Full sidewalk improvements shall be provided on one side adjacent to the annexation for all streets adjacent to the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the project site is within a quarter of a mile of an existing sidewalk system, the sidewalks from the project site shall be constructed to extend and connect to the existing system. Likely pedestrian destinations from the project site shall be determined and the safe and accessible pedestrian facilities serving those destinations shall be indicated.
  - 4. For transit transportation, should transit service be available to the site, or be likely to be extended to the site in the future based on information from the local public transit provider, provisions shall be made for the construction of adequate transit facilities, such as bus shelters and bus turn-out lanes. All required transportation improvements shall be constructed and installed prior to the issuance of a certificate of occupancy for any new structures on the annexed property.



- F. For all residential annexations, a plan shall be provided demonstrating that the development of the entire property will ultimately occur at a minimum density of 90% of the base density for the zone, unless reductions in the total number of units is necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the property shall sign an agreement, to be recorded with the county clerk after approval of the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing undevelopable areas such as wetlands, floodplain corridor lands, or slopes greater than 35%, shall not be included.
- G. For all annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or commercial, employment or industrial lands with a Residential Overlay (R-Overlay):
- ~~1. 35% of the base density to qualifying buyers or renters with incomes at or below 120% of median income; or~~
  - ~~2. 25% of the base density to qualifying buyers or renters with incomes at or below 100% of median income; or~~
  - ~~3. 20% of the base density to qualifying buyers or renters with incomes at or below 80% of median income; or~~
  - ~~4. 15% of the base density to qualifying buyers or renters with incomes at or below 60% of median income; or~~
  - ~~5. Title to a sufficient amount of buildable land for development is transferred to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation for the purpose of complying with subsection 2 above. The land shall be located within the project and all needed public facilities shall be extended to the area or areas proposed for transfer. Ownership of the land shall be transferred to the affordable housing developer or Development Corporation prior to commencement of the project.~~
- 1) The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25% of the base density as calculated using the unit equivalency values set forth herein:**
- a. Ownership units restricted to households earning at or below 120% the area median income shall have an equivalency value of 0.75 unit**
  - b. Ownership units restricted to households earning at or below 100% the area median income shall have an equivalency value of 1.0 unit.**
  - c. Ownership units (could potentially include "or rental units" here to promote rentals) restricted to households earning at or below 80% the area median income shall have an equivalency value of 1.25 unit.**
  - d. Ownership or rental units restricted to households earning at or below 60% the area median income shall have an equivalency value of 1.5 unit, or;**



- 2) **As alternative to providing affordable units per section 18.106.030(G)(1) the applicant may provide Title to a sufficient amount of buildable land for development through transfer to a non-profit (IRC 501(3)(c)) affordable housing developer or public corporation created under ORS 456.055 to 456.235 for the purpose of complying with subsection 18.106.030(G)(1)(b).**
  - a. **The land to be transfered shall be located within the project meeting the standards set forth in 18.106.030(G)4, 18.106.030(G)5 and 18.106.030(G)6**
  - b. **All needed public facilities shall be extended to the area or areas proposed for transfer.**
  - c. **Prior to commencement of the project, Title to the land shall be transferred to the City, an affordable housing developer which must either be a unit of government, a non –profit 501(C)(3) organization, or public corporation created under ORS 456.055 to 456.235,**
  - d. **The land to be transfered shall be deed restricted to comply with Ashland’s affordable housing program requirements.**
  
- 3) **A cash-in-lieu equivalent contribution as a alternative to the provision of affordable housing through 18.106.030(G)(1) may be approved at the sole discretion of the City Council, or the provision of land through 18.106.030(G)(2) may satisfy affordable unit obligations by making contributions to the city’s affordable housing fund if authorized by city ordinance or resolution (XX.XX.XXX).**
  - a. **The city administrator is authorized to adjust the cash-in-lieu contribution on an annual basis to reflect changes in the median sale price for detached and attached housing, using information provided by Jackson County Assessor records for the City of Ashland.**
  - b. **The city administrator shall establish an affordable housing fund for the receipt and management of permanently affordable unit cash-in-lieu financial contributions. Monies received into that fund shall be utilized solely for the construction, purchase, maintenance of affordable housing, or for the costs of affordable housing programs.**
  
- 4) **The affordable units shall be comparable in bedroom mix with the market rate units in the development.**
  - a. **The minimum square footage of each affordable unit shall comply with the minimum required floor based as set forth in Table 1.**



**Table 1**

<u>Unit Type</u>	<u>Minimum Required Unit Floor Area (Square Feet)</u>
<b>Studio</b>	<b>350</b>
<b>1 Bedroom</b>	<b>500</b>
<b>2 Bedroom</b>	<b>800</b>
<b>3 Bedroom</b>	<b>1,000</b>
<b>4 Bedroom</b>	<b>1,250</b>

- 5) A development schedule shall be provided that demonstrates that that the Affordable Housing Units per 18.106.030(G) shall be developed, and made available for occupancy, as follows:
  - a. That 50% of the affordable units shall have been issued building permits prior to issuance of a certificate of occupancy for the last of the first 50% of the market rate units.
  - b. Prior to issuance of a building permit for the final 10% of the market rate units, the final 50% of the affordable units shall have been issued certificates of occupancy.
  
- 6) That affordable housing units shall be distributed throughout the project.
  
- H. Exceptions to the requirements of 18.06.030.G(2), 18.06.030.G(5), and/or 18.06.030G(6) may be approved by the City Council upon consideration of one or more of the following:
  - 1) That an alternative land dedication as proposed would accomplish additional benefits for the city, consistent with the purposes of this chapter, than would development meeting the on-site dedication requirement of 18.106.030(G)2, or;
  - 2) That the alternative phasing proposal not meeting 18.106.030(G)5 provided by the applicant provides adequate assurance that the affordable housing units will be provided in a timely fashion, or;
  - 3) That the distribution of affordable units within the development not meeting 18.106.030(G)6 is necessary due to local, State, or Federal Affordable Housing financing limitations that require a clustering of the affordable units or;
  - 4) That the distribution of affordable units within the development not meeting 18.106.030(G)6 is necessary for development of an affordable housing project that provides onsite staff with supportive services or;
  - 5) That the distribution of affordable units within the development as proposed would accomplish additional benefits for the city, consistent with the purposes of this chapter, than would development meeting the distribution requirement of 18.106.030(G)6



The total number of affordable units described in this section G shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years. Properties providing affordable units as part of the annexation process shall qualify for a maximum density bonus of 25 percent.

**H I.** One or more of the following standards are met:

1. The proposed area for annexation is to be residentially zoned, and there is less than a five-year supply of vacant and redevelopable land in the proposed land use classification within the current city limits. "Redevelopable land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the likelihood that existing development will be converted to more intensive residential uses during the planning period. The five-year supply shall be determined from vacant and redevelopable land inventories and by the methodology for land need projections from the Housing Element of the Comprehensive Plan; or
2. The proposed lot or lots will be zoned E-1 or C-1 under the Comprehensive Plan, and that the applicant will obtain Site Review approval for an outright permitted use, or special permitted use concurrent with the annexation request; or
3. A current or probable public health hazard exists due to lack of full City sanitary sewer or water services; or
4. Existing development in the proposed annexation has inadequate water or sanitary sewer service; or the service will become inadequate within one year; or
5. The area proposed for annexation has existing City of Ashland water or sanitary sewer service extended, connected, and in use, and a signed "consent to annexation" agreement has been filed and accepted by the City of Ashland; or
6. The lot or lots proposed for annexation are an "island" completely surrounded by lands within the city limits. (ORD 2792, 1997)

(Ord 2895, Amended, 04/15/2003)

#### **SECTION 18.106.040 Boundaries.**

When an annexation is initiated by a private individual, the Staff Advisor may include other parcels of property in the proposed annexation to make a boundary extension more logical and to avoid parcels of land which are not incorporated but are partially or wholly surrounded by the City of Ashland. The Staff Advisor, in a report to the Commission and Council, shall justify the inclusion of any parcels other than the parcel for which the petition is filed. The purpose of this section is to permit the Planning Commission and Council to make annexations extending the City's boundaries more logical and orderly. (ORD 2792, 1997)

#### **SECTION 18.106.050 Statutory procedure.**

The applicant for the annexation shall also declare which procedure under ORS Chapter 222 the applicant proposes that the Council use, and supply evidence that the approval through this procedure is likely.



Department of Community Development  
51 Winburn Wy, Ashland OR 97520  
541-488-5305

(ORD 2792, 1997)



**DRAFT CHANGES TO THE PROCEDURES SECTION OF THE LAND USE CODE  
RELATING TO ZONE CHANGES**

Additions are indicated in **bold red type**, deletions in ~~strikeout type~~.

**CHAPTER 18.108  
PROCEDURES**

**SECTIONs:**

- 18.108.010 Purpose.**
- 18.108.015 Pre-Application Conference.**
- 18.108.017 Applications.**
- 18.108.020 Types of Procedures.**
- 18.108.022 Ministerial Action Time Limits.**
- 18.108.030 Staff Permit Procedure.**
- 18.108.040 Type I Procedure.**
- 18.108.050 Type II Procedure.**
- 18.108.060 Type III Procedures.**
- 18.108.070 Effective Date of Decision and Appeals.**
- 18.108.080 Public Notice.**
- 18.108.100 Public Hearings Procedure.**
- 18.108.110 Appeal to Council.**
- 18.108.140 Fees.**
- 18.108.150 Council or Commission May Initiate Procedures.**
- 18.108.160 Ordinance Interpretations.**
- 18.108.170 Legislative amendments.**
- 18.108.180 Resubmittal of Applications.**

**SECTION 18.108.010 Purpose.**

The purpose of this chapter is to establish procedures to initiate and make final decisions regarding planning actions.

*Sections 18.108.070-18.108.180 not included as no changes are proposed to those sections, and they do not relate to the changes proposed in 18.108.060*

**SECTION 18.108.060 Type III Procedures.**

A. The following planning actions shall be subject to the Type III Procedure:

1. Zone Changes or Amendments to the Zoning Map or other official maps, except for legislative amendments.
2. Comprehensive Plan Map Changes or changes to other official maps, except for legislative amendments.
3. Annexations.
4. Urban Growth Boundary Amendments

B. Standards for Type III Planning Actions.

1. Zone changes, zoning map amendments and comprehensive plan map changes subject to the Type III procedure as described in subsection A of this section may be approved if in compliance with the comprehensive plan and the application demonstrates that:

- a. The change implements a public need, other than the provision of affordable housing, supported by the Comprehensive Plan; or
- b. A substantial change in circumstances has occurred since the existing zoning or Plan designation was proposed, necessitating the need to adjust to the changed circumstances; or
- c. Circumstances relating to the general public welfare exist that require such an action; or
- d. Proposed increases in residential zoning density resulting from a change from one zoning district to another zoning district, will provide **25% of the proposed base density as affordable housing consistent with the approval standards set forth in 18.106.030(G)** ~~one of the following:~~
  1. ~~35% of the base density to qualifying buyers or renters with incomes at or below 120% of median income; or~~
  2. ~~25% of the base density to qualifying buyers or renters with incomes at or below 100% of median income; or~~
  3. ~~20% of the base density to qualifying buyers or renters with incomes at or below 80% of median income; or~~
  4. ~~15% of the base density to qualifying buyers or renters with incomes at or below 60% of median income; or~~
  5. ~~Title to a sufficient amount of buildable land for development is transferred to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation for the purpose of complying with subsection 2 above. The land shall be located within the project and all needed public facilities shall be extended to the area or areas proposed for transfer. Ownership of the land shall be transferred to the affordable housing developer or Development Corporation prior to commencement of the project; or~~
- e. Increases in residential zoning density of four units or greater on commercial, employment or industrial zoned lands (i.e. Residential Overlay), will not negatively impact the City of Ashland's commercial and industrial land supply as required in the Comprehensive Plan, and will provide **25% of the proposed base density as affordable housing consistent with the approval standards set forth in 18.106.030(G)** ~~one of the following:~~
  1. ~~35% of the base density to qualifying buyers or renters with incomes at or below 120% of median income; or~~
  2. ~~25% of the base density to qualifying buyers or renters with incomes at or below 100% of median income; or~~
  3. ~~20% of the base density to qualifying buyers or renters with incomes at or below 80% of median income; or~~
  4. ~~15% of the base density to qualifying buyers or renters with incomes at or below 60% of median income; or~~
  5. ~~Title to a sufficient amount of buildable land for development is transferred to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation for the purpose of complying with subsection 2 above. The land shall be located within the project and all needed public facilities shall be extended to the area or areas proposed for dedication. Ownership of the land and/or air space shall be transferred to the affordable housing developer or Development Corporation prior to commencement of the project.~~

The total number of affordable units described in sections D or E shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years.

Sections D and E do not apply to council initiated actions.

C. Type III Procedure.

1. Applications subject to the Type III Procedure shall be process as follows:
  - a. Complete applications shall be heard at the first regularly scheduled Commission meeting which is held at least 45 days after the submission of the application.
  - b. Notice of the hearing shall be mailed as provided in section 18.108.080.
  - c. A public hearing shall be held before the Commission as provided in 18.108.100.
2. For planning actions described in section 18.108.060.A. 1 and 2, the Commission shall have the authority to take such action as is necessary to make the amendments to maps and zones as a result of the decision without further action from the Council unless the decision is appealed. The decision of the Commission may be appealed to the Council as provided in section 18.108.110.
3. For planning actions described in section 18.108.060.A. 3 and 2, the Commission shall make a report of its findings and recommendations on the proposed action. Such report shall be forwarded to the City Council within 45 days of the public hearing.
  - a. Upon receipt of the report, or within 60 days of the Commission hearing, the Council shall hold a public hearing as provided in 18.108.100. Public notice of such hearing shall be sent as provided in section 18.108.080.
  - b. The Council may approve, approve with conditions, or deny the application.

(Ord 2895, Amended, 04/15/2003)  
, 1990; Ord. 2775, 1996)

***Sections 18.108.070-18.108.180 not included as no changes are proposed to those sections, and they do not relate to the changes proposed in 18.108.060***

# Memo

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DATE: 6.17.08  
TO: Ashland Planning Commission  
FROM: Maria Harris, Planning Manager  
RE: Draft Chapter 18.63, Water Resource Protection Zones  
June 24 Planning Commission agenda item

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## Question:

1) Does the Planning Commission wish to move forward with the potential modifications of the draft Chapter 18.63, Water Resource Protection Zones ordinance?

## Staff Recommendation:

Staff recommends the Planning Commission review and provide staff direction on the potential modifications included in the attached draft ordinance.

## Background:

This item was continued to June 24 from the June 10, 2008 regular Planning Commission meeting due to a full agenda. The Planning Commission took comments and reviewed the draft Water Resource Protection Zones ordinance at the April 22, 2008 and May 13, 2008 meetings.

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.

**Planning Commission Options:**

Commission may direct staff to move forward with the some or all of the modifications to the draft Chapter 18.63, Water Resource Protection Zones.

Commission may direct staff to move forward with the some or all of the modifications to the draft Chapter 18.63, Water Resource Protection Zones and additional modifications identified by the Commission.

**Attachments:**

Draft Chapter 18.63, Water Resource Protection Zones (with potential modifications)  
Comments and Questions Summary of Oral Testimony and Written Comments to Date





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"

**Deleted:** Non-Power Assisted

**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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**Deleted:** In the absence of physical evidence or where the top of each bank is not clearly defined

**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.

**Deleted:** n existing

**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.

Deleted: existing

Deleted: buildings

#### **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.



## **Comments and Questions Summary of Oral Testimony and Written Comments**

Water Resource Protection Zones Ordinance

April 22, 2008 Planning Commission Workshop

May 13, 2008 Planning Commission Public Hearing

### **Purpose**

- What are buffer areas protecting- questionable what they are doing
- There are so many ways water gets polluted before it gets to Bear Creek – will buffer area really improve water quality given small percentage of Ashland's total area
- Focus on wildlife and aquatic habitat and not on human use – these are never going to be wilderness area
- Need to answer why are the (proposed) changes necessary?

### **Stream Bank – Top of Bank**

- What is natural bank in top of bank definition?
- As a property owner, don't want top of bank definition to be subjective
- Should have staff make a determination in writing
- Told by previous planning director had to be 65' from Paradise Creek, divided lot with this setback, do I have to go another 50' feet now?
- Don't like one size fits all approach – doesn't address when stream is steep on one side and flat on another
- Suggest coordinating floodplain with riparian protection area because on steep side riparian vegetation doesn't go much higher
- Anyone should be able to make the measurement (for the buffer area)
- Difference between the riparian vegetation line and bankfull stage is big different in some places, 50 to 100 feet)
- Suggest use center line for Riparian Corridors, subtract distance for elevation gain
- Existing setback of 10 feet from Roca Creek works fine
- If require another 10 feet from Roca Creek, can't build on 3,600 square feet of property
- What is setback from piped drainage ditch?
- Crucial terms such as top of bank should be specifically and technically worded as to leave no confusion or interpretation
- Flood plain should be used for reference for some degree of protection since over time the creek will find different channels with in the flood plain – if all we do is protect a 100-120 foot wide corridor, at some future time, what is being protected will not include the creek
- Use the center line for non-fish bearing streams because virtually in all cases they are only a few feet across

### **Native Plants and Noxious Vegetation in Protection Zones**

- If people can't use buffer area (e.g. for lawn area, play area), they loose interest in it and won't take care of it

- Against native plant requirement
- Don't like native plant list, shouldn't be told what to plant on the property, but ok with noxious plant list
- Need peer review evidence that local source native plants have a benefit
- Somebody is going to tell you that you can't plant a rhododendron next to the creek, but it is ok if it is already planted
- Need to protect saplings (big leaf maple & Oregon ash), need to protect smaller than 6 inches dbh
- Need to protect a variety of tree sizes to insure that a tree canopy is maintained
- Non-native trees such as the black oak by Ashland pond has survived floods, even though not native helps stream temperature through shading
- It is hard to get herbaceous and non-woody plants that are native, trees and shrubs are easy to do native – have tried last 4 or 5 years in riparian area to establish herbaceous and perennials and have found several non-natives that work well
- Native plant requirement goes from scientific to religious environmentalism
- There are a lot of plants that work in riparian areas whether native or non-native
- Cherry tree grows larger than six inches dbh and is a noxious plant in riparian areas – language should allow for trees over six inches to be removed if the tree is a noxious plant

## **Landscaping Maintenance in Protection Zones**

- Cutting weeds by hand is too cumbersome, more appropriate to have pound requirement targeted at back hoes and tractors
- Agree with weed eaters being prohibited from use because cut off everything including saplings
- Conversely, should be able to remove hazard trees with chain saw
- How you use a weed eater is important, assuming will cut everything, can be used as a selective tool, to trim around bushes that have planted
- Ordinance is not talking about what you do, but how you do it
- I have a tree canopy that blackberries grow under, mulch and keep the blackberry plants down by using a weed eater and a self propelled wheeled mower
- Have taken care of two properties on Tolman Creek Road since late 1960's including blackberry removal, getting resentful because talking about something that is changing what have done for along time
- Takes a lot of management to keep the noxious and invasive plants out
- City recently cut down a large tree in Ashland creek because the roots were getting into the line
- Level of blackberry infestation along some riparian areas is extensive and use of power cutting machines is essential to restore native vegetation
- While fallen trees can be a positive addition to a riparian area, sometimes block culverts leading to road and/or property damage – city crews routinely remove fallen trees using chainsaws and tractor/backhoe to pull the log away – consider the use of machinery where next to road

## **Fish and Wildlife Habitat**

- Focus on wildlife and aquatic habitat and not on human use – these are never going to be wilderness area
- Don't want a dystopia where we think about just human rights, Southern California is an example of that
- Proposed ordinance should limit nutrient and water runoff or soil erosion after the period of construction
- City has not used most recent findings to designate streams as fish bearing or non-fish bearing
- Has city consulted with ODF, USGS, ODFW and FEMA and determined with accuracy approximate cubic flow and fish activity of each stream?

## **Nonconforming Structures and Uses**

- What happens if by a flood or act of God a deck in the flood plain comes out? Can replace it exactly as it is?
- Not sure that nonconforming structures and activities should be able to stay in place, for example lawns and patios
- There needs to be a distinction between a legally permitted deck versus something that had not been put through the process, for those who have gone through the appropriate process and have done it right, it seems almost a penalty to make them go through the process again – if it is legally done and a permitted structure and you can demonstrate that, then you don't have to go through the whole process again
- Thinks it is obvious that need to maintain nonconforming commercial buildings in the historic areas, but think there is a need to bring nonconforming structures into conformance that area outside the historic downtown
- Concerned with ambiguity of the code toward structures with the proposed zone which would be come nonconforming
- Should my house burn down, I would not longer be able to build on my lot because it is too narrow to allow for the same structure under the newly proposed rules – I would appreciate a grandfather clause that would allow me to rebuild
- All buildings on the plaza are nonconforming, and the plaza contributes to what makes the city of Ashland unique and attractive – the new ordinance doesn't allow the reconstruction of the nonconforming structures l the event of fire, earthquake or other disaster – this should be addressed
- Consider language that does not exempt in perpetuity existing non-conforming uses

## **Nonconforming Lots or Previously Approved Building Envelopes**

- By applying buffer areas will make more properties become nonconforming, subject to new fees as make changes to properties
- Larger buffer areas will impact the ability to split off lots which works against infill policy
- What about existing conservation easements?
- Requiring a property with an (undeveloped) approved building envelope and/or driveway location that falls with the newly applied Water Resource Protection zone is unfair

## **Application Process**

- Something new is always popping up, regulations are always changing
- Reduction (of protection zone) requires that property owners still have to hire professionals to prepare materials, the average homeowner can't do it
- Trying to get answers is pretty tough and expensive

## **Property Rights**

- Who owns the resources?
- As property owner, I should be able to do what I want with my property
- Theme that is developing – property rights and personal rights
- Need to look at from perspective of individual homeowner
- New ordinance will affect ability to divide lot or build a 2<sup>nd</sup> dwelling – unfair because creek is in a culvert on either side of property
- New ordinance will almost double the restricted area on our property and will be unusable except as a scenic or wildlife corridor – could limit water resource protection zone to some constant such a no more than 20% of the property, could allow raising food crops in restricted area, make it easier for planners to approve lot splits on properties effected by the ordinance.

## **Stewardship**

- Spent a lot of time cleaning cars and trash out of creek, everyone I know with creek property takes good care of property
- Don't really think Ashlanders want to tear into creeks
- The current 20 foot corridor is being destroyed and no one seems to notice. City is the most significant developer wit the true riparian zone (e.g. recycling center, skateboard park, waste water treatment plant, Guanajuato Way, Lithia Park). Would it perhaps make sense to enforce the current tiny corridor before planning to widen the area of non-enforcement?
- If the City is serious about protecting our water resources, the sewer lines need to be removed from creek corridors
- Sewer systems should not be permitted in Water Resource Protection Zones

## **Legislative Process**

- How is the city going to pay for it – who is going to administer?
- What is the hurry? More important to do well than to get I done and off checklist
- Recommend reconvening Riparian Ordinance Advisory Committee to review draft and give input
- Integrate Flood Damage Prevention Regulations and the Physical and Environmental Constraints portion of the code with the proposed ordinance

## **Public Info/Outreach**

- Guidelines might be better than an ordinance, an education program that raises awareness about the threats to streams, recycling is an examples of a successful education program

- Recommend an educational component to provide affected landowners with information and advice specific to their properties

### **Specific Draft Language Comments**

- Proposed definition approves unlawfully created lots
- Exceptions go far beyond the state-mandated exceptions for private roads, private driveways and private drainage facilities
- Water Resource Protection Zone Reductions should not be allowed, not required by the OAR and a Type 1 is insufficient
- Pervious paving material is unproven, should not allow
- Proposed ordinance should not include hardship variances and reduction of restrictions for newly created lots, limit to existing lots
- allowing staff to waive required information if determined construction activities would not occur within the boundaries of the protection zone is authorizing staff to make a discretionary decision – should be eliminated
- require that all water resources have their respective water table step cascades property maintained and restored by the use of stream sourced boulders and rocks and without concrete are rebar

### **Misc.**

- Redundancy in writing
- People should be able to fence property across creeks with areas for small animal passage
- Lower Paradise Creek is identified on draft map as water feature – what does that mean?
- How will impact properties outside the city limits, but in the UGB
- Everyone understands and accepts existing standards
- Counting wetland and riparian areas as open space in high density developments results in not getting usable open spaces, no safe places for children to play
- Ordinance is an unfunded mandate because protection area is being enlarged, especially in light of cutting code enforcement
- Recommend City enter into IGA with Jackson County to encompass the lands with the UGB into this ordinance
- Hope the Planning Commission will take into consideration the rather subjective factor that land is about people