

**FILED**

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

MAR 06 1997

COUNTY CLERK

BY Ann DeWille

ORDINANCE NO. 1-97

) IN THE MATTER OF AMENDING CHAPTER 16 OF  
) LANE CODE TO ALLOW AN EXCEPTION TO THE  
) REMOVAL STANDARDS WITHIN THE RIPARIAN  
) SETBACK AREA OF A CLASS I STREAM  
) (LC 16.253(2)(d))

The Board of County Commissioners of Lane County ordains as follows:

Chapter 16 of Lane Code is hereby amended by removing and substituting the following pages:

**REMOVE THESE PAGES**

**INSERT THESE PAGES**

16.253(2) - 16.253(3) to  
16.253(3) - 16.253(4),  
i.e. 16-305 to 306  
(a total of two pages)

16.253(2) - 16.253(3) to  
16.253(3) - 16.253(4),  
i.e. 16.305 to 30679  
(a total of two pages)

Said pages are attached hereto and incorporated herein by reference. The purpose of these substitutions is to allow an exception to the removal standards within the riparian setback area of a Class I Stream (LC 16.253(2)(d)).

While not part of this Ordinance, findings attached as Exhibit "A" and incorporated herein by this reference are adopted in support of this decision.

Enacted this 5 of March, 1997.

*Frank ...*  
Vice-Chair, Lane County Board of  
Commissioners

*Wayne ...*  
Recording Secretary for this  
Meeting of the Board

APPROVED AS TO FORM  
DATE 2-4-97  
*Stephen ...*  
CLERK OF LEGAL COUNSEL

riparian setback area of a Resource Zone. Removal of indigenous vegetation from within the riparian setback area in excess of 100 linear feet and the square footage of the applicable zone designation, to provide water access for a water-dependent use or to allow selective thinning of indigenous vegetation to provide viewscales, may occur subject to compliance with LC 16.253(5)(a)(i) below, prior to removal.

(iv) Removal of vegetation from within the riparian setback area in excess of LC 16.253(2)(a) and (b) above, to allow riparian enhancement projects designed to improve or diversify habitat of designated areas within the riparian setback area may occur subject to compliance with LC 16.253(5)(b) below, prior to removal.

(c) Compliance. Removal of vegetation from within the riparian setback area in excess of the removal provisions in LC 16.253(2)(a) or (b) above, without prior Planning Director approval shall require compliance with the provisions of LC 16.253(4) and LC 16.253(5)(c) below, and may be subject to other remedies available to Lane County for violation of the standards in LC 16.253(2) above.

(d) Exceptions. The following uses and activities are excepted from the riparian setback area removal standards of LC 16.253(2) above and (3) below.

(i) Commercial forest practices regulated by the Oregon Forest Practices Act.

(ii) Removal of dead or diseased vegetation that poses a safety or health hazard, excluding removal of root wads.

(iii) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(iv) Normal and accepted farming practices other than buildings or structures occurring on land zoned for exclusive farm use.

(v) Riparian enhancement projects replanted with indigenous vegetation approved by the Soil and Water Conservation District (SWCD) after consultation with the Oregon Department of Fish and Wildlife.

(3) Modifications. A modification to the applicable riparian setback standard for a structure may be allowed provided the Oregon Department of Fish and Wildlife (hereafter ODF&W) is consulted by the Planning Director at least 10 working days prior to the initial permit decision and an application for a modification to the setback standard has been submitted pursuant to LC 14.050 and approved by the Planning Director pursuant to the requirements of LC 14.100 with findings of compliance addressing the following criteria:

(a) The location of a structure within the riparian setback area shall not result in the removal or the alteration of vegetation within the riparian setback area in excess of the standards of LC 16.253(2) above. For purposes of LC 16.253, altered means to eliminate, significantly reduce or interrupt the natural growth cycle of indigenous vegetation by removal or destruction of the vegetation caused by a person; and

(b) The riparian vegetation does not actually extend all the way into the riparian setback area to the location of the proposed structure. This determination shall include consideration of any evidence of riparian vegetation existing prior to any removal of indigenous vegetation before or during the application review period; or

(c) It can be demonstrated that an unduly restrictive burden would be placed on the property owner if the structure was not allowed to be located within the riparian setback area.

(4) Restoration of Indigenous Vegetation Within the Riparian Setback Area. Any removal or destruction of indigenous vegetation within the riparian setback area in excess of the provisions of LC 16.253(2) without an approved Riparian Setback Area Alteration Plan shall require an application for a Preliminary Investigation pursuant to LC 16.253(4)(a)-(c) below. Potential impacts identified in LC 16.253(4)(a) below, shall be addressed and/or mitigated through the review, approval and implementation of a Riparian Setback Area Restoration Plan pursuant to LC 16.253(5)(c) below.

(a) Preliminary Investigation. A Preliminary Investigation will provide a basis for identifying the area(s) of vegetation removal, alteration or destruction and the potential impacts of the removal in excess of the standards of LC 16.253(2) above. For the purposes of LC 16.253(2) and (4) above, potential adverse impacts shall include the removal or destruction of vegetation in whole or part, which is detrimental to the functions identified in LC 16.253(4)(a)(i)-(iv) below. This investigation shall identify the approval criteria which must be addressed by the property owner in the Riparian Setback Area Restoration Plan pursuant to LC 16.253(5)(c) below and shall include identification of the removed, altered or destroyed indigenous vegetation in excess of the standards of LC 16.253(2)(a) and (b) above, serving one or more of the following functions:

- (i) Shading of Class I streams.
- (ii) Stabilization of a stream bank or shoreline.
- (iii) Habitat for sensitive aquatic or terrestrial wildlife species.
- (iv) Habitat for rare, endangered or threatened species.

**Exhibit "A" -- Findings.  
Ordinance No. 1-97**

Findings in support of Ordinance No. 1-97 adopting an amendment to Exceptions subsection of the Class I Stream Riparian Regulations of Lane Code 16.253(2)(d).

1. Pursuant to Lane Code 16.252(2) the changes in the requirements of this Chapter are consistent with the applicable Rural Comprehensive Plan elements and components, and Statewide Planning Goals based on the record of these proceedings and the Findings below.
2. The following findings identify applicable Rural Comprehensive Plan Policies and show the amendment to the (2)(d) Exceptions subsection of Lane Code 16.253, is in compliance with the acknowledged Rural Comprehensive Plan.

**A. RCP Goal Two: Land Use Planning**

**Policy 22.** "Sites considered 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal #5 ESEE consequences analysis process be delayed (the "1B" option) shall be protected by Lane County through the application of interim protective measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the 'significant' sites and after sufficient information is available regarding the location, quality and quantity of the 'significant' sites."

The Addendum to Work Paper. Flora & Fauna, November, 1983, includes a detail listing of "sensitive fish habitats" by river basin and water ways in "Revisions to 'Flora and Fauna Working Paper", II. B.

The LC 16.253 riparian setback regulations are consistent with OAR 635-415, Fish and Wildlife Mitigation Policies of the Oregon Department of Fish and Wildlife.

The proposed exception amendment, LC 16.253(2)(d)(v), is consistent with the County's intent to encourage and protect Class I stream habitat through facilitating conservation and enhancement programs in the public and private sectors.

**B. RCP Goal Five: Flora and Fauna Policies**

**Policy 1.** "Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas."

This policy is implemented through the review standards and approval criteria of Lane Code 16.253(3), (4) and (5) which require evaluation of the potential impacts of the proposed construction and development on wildlife habitat, natural systems and the aquatic area prior to the approval of modification, development, enhancement, and restoration plans.

The proposed exception amendment, ("amendment", hereafter), acknowledges the Soil and Water Conservation District's (SWCD, hereinafter) mission of financial and educational support of enhancement projects within Lane County. Coordination between the Oregon Department of Fish & Wildlife (ODF&W, hereinafter) and SWCD will provide an opportunity for the agencies to resolve mutual concerns on a site specific basis. The process is anticipated to be essentially the same as required under LC 16.253(5)(b) criteria.

**Policy 3.** "Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification)."

Lane Code 16.253 requirements for the riparian setback area are designed to protect the indigenous vegetation along Class I Streams and minimize the adverse impacts of land use developments on sensitive species within the riparian setback area by preserving a minimum of 75% of the riparian setback area in an unaltered state. The regulations also include clear and objective standards which allows limited alteration of the riparian setback area.

Enhancement projects approved through SWCD/ODFW coordination under the amendment will acknowledge the allowable removal standards of LC 16.253(2) and ensure restoration to those standards as an end result of the enhancement plantings.

**Policy 6.** "Riparian vegetation along Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams and shall be considered "Significant" "1C" areas (in the language of OAR 660-16-000/025); "3C" protection of the riparian resource shall be achieved through development setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available for review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner or that riparian vegetation does actually extend all the way into the 50 foot or 100 foot setback to the location of the proposed improvements."

The protection provisions of LC 16.253 currently strengthens Lane County's resolve to monitor and protect the unique values of the riparian areas along Class I streams.

The amendment will provide an opportunity for the private citizen to coordinate directly with the funding resources and expertise of SWCD personnel, and the educational and wildlife resource management practices of ODF&W staff. Any approved enhancement plans under the amendment provision would acknowledge the riparian setback boundaries and allowable alteration and removal standard of LC 16.253. Enhancement Plans under the amendment would not allow the placement of any "structures" as defined in LC 16.090, within a riparian setback area without prior approval by the Planning Director for a Modification pursuant to LC 16.253(3) criteria and standards.

**"Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife."**

LC 16.253 protection regulations require consultation with ODF&W prior to approval of a modification to the riparian setback area regulations. Any proposed enhancement activities in excess of the permitted removal limitations of LC 16.253(2) also require consultation with ODF&W prior to either a Planning Director or SWCD decision. The amendment clearly acknowledges this policy requirement.

**Policy 8. "Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statement."**

The adopted Rural Comprehensive Plan "significant" and "sensitive" site inventories identified in the Flora & Fauna Working Paper (March 1982) are currently protected through the identification and evaluation process of OAR 635-415 Fish and Wildlife Habitat Mitigation Policy on a site-by-site basis as the situation warrants. The amendment will require coordination between SWCD and the ODF&W to ensure protection of sensitive fisheries, wetlands and waterfowl habitat as a component of any approved enhancement plan.

**Policy 13. "In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met."**

Greater protection standards afforded specific sites by the Willamette Greenway and Coastal Resource Combining Zone overlays are not duplicated in the implementation of LC 16.253. LC 16.253 provides for greater county-wide riparian habitat protection within the base zone designations for all resource and nonresource lands. The amendment does not dilute the protection standards of other applicable Lane Code regulations. Where conflicts between base and combining zone regulations are identified, the more restrictive provisions shall prevail. Conflicts would be resolved through consultation between SWCD, ODF&W and Lane County Land Management Division staff.

**Policy 18. "Owners of property designated as a sensitive bird habitat and as identified in LM 11.400 shall be encouraged to develop a management plan in conjunction with the Oregon Department of Fish and Wildlife prior to beginning any development which may adversely affect the habitat. Such management plans shall consider nesting trees, perch trees, critical nesting period, roosting sites, flight pathways and buffer zones, and shall demonstrate how the proposed development will not adversely affect the sensitive bird habitat site. The policy shall not apply to forest practices covered by the above Flora and Fauna Policy 17."**

LC 16.253 referral procedures, site evaluation and mitigation requirements pursuant to subsection (5)(b) are coordinated through consultation with ODF&W in accordance with OAR 635-415 Fish and Wildlife Habitat Mitigation Policy. The amendment would require consultation between SWCD and ODF&W prior to a decision on any enhancement project by SWCD and the consultation would provide for a discovery process and the resolution of mutual concerns by the agencies to assist private property owners in conserving and enhancing sensitive habitats.

**C. Goal 4: Forest Lands**

**Policy 13.** "Encourage the development of assistance programs, tax laws, educational programs and research that will assist small woodland owners with the management of their forest land."

The amendment recognizes the mission and expertise of SWCD in assisting small woodlot owners in diversifying the management of their lands to include enhancing wildlife habitat, protecting fisheries and encouraging recreational opportunities in the forest land zones.

The purpose of Goal 4 is to conserve forest lands for forest uses. The goal requires protection of forest lands from uses which would preclude or hinder economically efficient forest management and protects other forest resource values such as wildlife habitat. The amendment is consistent with Goal 4 and would not affect forest uses or forest management activities subject to the Oregon Forest Practices Act. If anything, the implementation of an enhancement plan within riparian setback areas on forest lands would be a desirable if not essential component of any forest management plan.

**D. Goal 6: Air, Water and Land Resources.**

**Policy 1.** "Avoidance and/or control of soil erosion shall be a major criterion to be addressed in all applicable County review procedures and County construction activity."

The review standards for Enhancement Plans pursuant to LC 16.253(5)(b) require that no significant adverse impact will occur on streambank or shoreline stability. This objective is inherent in the SWCD and ODF&W missions and implementing programs.

**Policy 2.** "The re-establishment of vegetative cover by standard erosion control practices shall be required as part of the land development process."

The amendment requires replanting of disturbed areas with "indigenous plant species". Enhancement Plans approved by SWCD are restricted to re-vegetation of riparian setback areas and do not have any authority to permit development on properties regulated by the Rural Comprehensive Plan.

3. The following findings show that the amendment, which is consistent with the Rural Comprehensive Plan, is also consistent with applicable Statewide Planning Goals.

- A. **Goal 1 - Citizen Involvement:** The amendment to the Class I Stream Riparian regulations was processed according to the Rural Comprehensive Plan amendment procedures which

included two public hearings held in February, 1997, before the Lane County and West Lane Planning Commissions.. All public hearings were the subject of prior notice in local newspapers that are in general circulation. All meetings were open to the public. Staff also met with individual interest groups and citizens on request. A public hearing was held before the Lane County Board of Commissioners on March 5, 1997.

- B. **Goal 2 - Land Use Planning:** The amendment to the riparian setback and management regulations were processed according to the plan amendment process which requires an integrated plan interrelating all the Rural Comprehensive Plan Policies with the Statewide Goals. Consistent with Goal 2 and the plan amendment process specified in Lane Code Chapter 16.400, the amendment to Lane Code 16.253(2)(d) is supported by and consistent with applicable Statewide Goals, Rural Comprehensive Plan Policies, written and public testimony, and were developed with input from Oregon Department of Fish and Wildlife.
- C. **Goal 3 - Agricultural Lands:** The purpose of Goal 3 is to preserve and maintain agricultural lands. The revision will not affect agricultural activities or uses within the exclusive farm use zone pursuant to ORS 215.253(1). Accepted farming practices within the exclusive farm use zone are exempt from the riparian setback area regulation of Lane Code Chapter 16.253. The amendment to the riparian setback and management regulations of LC 16.253 is consistent with Goal 3. An exception to Goal 3 is not required since implementation of the riparian vegetation setback and management regulations is consistent with Goal 3.
- D. **Goal 4 - Forest Lands:** The purpose of Goal 4 is to conserve forest lands for forest uses. The goal requires protection of forest lands from uses which would preclude or hinder economically efficient forest management and protects other forest resource values such as wildlife habitat, recreation, agriculture, soil, water, and air. The amendment to the riparian setback and management regulations of LC 16.253(2)(d) is consistent with Goal 4. An exception to Goal 4 is not required since implementation of the riparian vegetation setback and management regulations is consistent with Goal 4 and the Rural Comprehensive Plan and also exempts forest uses and forest management activities that are subject solely to the Oregon Forest Practices Act.
- E. **Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources:** Goal 5 and its administrative rule outline a process for balancing development and natural resource protection. The enhancement projects approvable under LC 16.253(2)(d)(v) or LC 16.253(5)(b) encourage and support activities which will improve the quality of open spaces and natural resources along Class I streams. ^
- F. **Goal 6 - Air, Water and Land Resources Quality:** Goal 6 directs governments to plan and implement programs to maintain and improve the quality of the air, water and land resources of the state. The LC 16.253 riparian protection provisions require compliance with objective standards which conserve and improve the quality of the air, water and land resources along Class I streams. The enhancement projects approvable under LC 16.253(2)(d)(v) or LC 16.253(5)(b) encourage and support activities which will further enhance the quality of the air, water and land resources along Class I streams.

- G. **Goal 7 - Areas Subject to Natural Disasters and Hazards:** The amendment to the riparian setback regulations of LC 16.253(2)(d) does not change policies or plans relating to the areas subject to natural disasters and hazards.
- H. **Goal 8 - Recreational Needs:** The amendment to the riparian setback regulations of LC 16.253(2)(d) does not change policies or plans relating to the County's recreational needs.
- I. **Goal 9 - Economic Development:** The amendment to the riparian setback regulations of LC 16.253(2)(d) does not change policies or plans relating to the County's economic development needs.
- J. **Goal 10 - Housing:** The amendment to the riparian setback regulations of LC 16.253(2)(d) will not restrict property owners from developing property for housing.
- K. **Goal 11 - Public Facilities and Services:** This goal calls for a timely, orderly and efficient arrangement of public services and facilities to serve rural development. The amendment to the riparian setback regulations of LC 16.253(2)(d) will not impede the timing, order, and arrangement of public services as future needs dictate.
- L. **Goal 12 - Transportation:** Goal 12 directs local governments to provide and encourage a safe, convenient and economic transportation system. The amendment to the riparian setback regulations of LC 16.253(2)(d) will not adversely affect the safe, convenient and economic transportation systems.
- M. **Goal 13 - Energy Conservation:** This goal requires that land uses conserve of all forms of energy based on sound economic principles. The amendment to the riparian setback regulations of LC 16.253(2)(d) will not diminish conservation efforts and efficient use of all types of energy.
- N. **Goal 14 - Urbanization:** This goal requires that urban growth boundaries be established to identify and separate urbanizable land from rural land. The riparian setback area regulations are applicable only to rural properties governed by the Rural Comprehensive Plan and outside of adopted and acknowledged urban growth boundaries.
- O. **Goal 15 - Willamette River Greenway:** Goal 15 directs local governments to protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River. The riparian setback area regulations of LC 16.253 are consistent with the protection, conservation, enhancement and maintenance of the qualities of the lands along the Willamette River Greenway. The enhancement projects subject to approval by SWCD do not include permitting development as defined by LC 16.090 within the Willamette River Greenway. Willamette River Greenway pursuant to LC 16.254 zoning regulations require that development of all sites within the Willamette River Greenway must be approved through the conditional use permit procedure approved by the Planning director to ensure protection from incompatible uses.
- P. **Goals 16 through 18 - Coastal Resource Goals:** These goals address estuaries, coastal lands and features, or ocean resources. The riparian setback area regulations are consistent with and secondary to the coastal lakes, rivers, and streams protection

provisions of the coastal shorelands, beaches and dunes, and estuarine goals as implemented by the Coastal Resources Management Plan and the provisions of the Rural Comprehensive Plan.