

BEFORE THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 9-10

IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO CODIFY DRINKING WATER PROTECTION OVERLAY ZONE REGULATIONS. (LC 16.012 and LC 16.298) (Department File No. PA 10-5659)

The Board of County Commissioners of Lane County ordains as follows

Chapter 16 of Lane Code are hereby amended by removing, substituting and adding new sections as follows:

REMOVE THESE SECTIONS

16.012
located on pages 16-5 through 16-6
(a total of pages)

NONE

INSERT THESE SECTIONS

16.012
located on pages 16-5 through 16-6
(a total of 2 pages)

16.298
located on pages 16-674 through 16-681
(a total of 8 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions and additions is to codify drinking water protection overlay zone regulations. (LC 16.012 and LC 16.298)

ENACTED this _____ day of _____ 2010.

Chair, Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date _____ Lane County

OFFICE OF LEGAL COUNSEL

16.007 Compliance With Rural Comprehensive Plan.

In the event of any conflict between any provision of this chapter and provisions of the Rural Comprehensive Plan of Lane County, or duly adopted portions, elements or amendments of such Plan, the more restrictive Provisions shall prevail. *(Revised by Ordinance No. 7-87, Effective 6.17.87)*

16.008 Interpretation.

When in the administration of this chapter there is doubt regarding the intent of the chapter or the suitability of uses not specified, the Director shall request an interpretation of the provision by the Board of County Commissioners. The Board shall issue an interpretation to resolve the doubt, but such interpretation shall not have the effect of amending the provisions of this chapter. Any interpretation of the chapter shall be deemed an administrative action and shall be based on the following considerations:

- (1) The Lane County Comprehensive Plan.
- (2) The purpose and intent of the chapter as applied to the particular section in question.
- (3) The opinion of the County Counsel. Copies of such interpretations shall be indexed and kept on file in the Department and may be reviewed by the public upon request. *(Revised by Ordinance No. 7-87, Effective 6.17.87)*

16.009 Restrictiveness.

Where the conditions imposed by a provision of this chapter overlap, the provisions which are more restrictive shall govern. *(Revised by Ordinance No. 7-87, Effective 6.17.87)*

16.010 Severability.

If any section, paragraph, subsection, clause, sentence or provision of this chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate or nullify the remainder of this chapter, and the effect thereof shall be confined to the section, paragraph, subsection, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered, it being the intent of the governing body to enact the remainder of this chapter notwithstanding the parts so declared unconstitutional or invalid. Further, should any section, paragraph, subsection, clause, sentence or provision of this chapter be judicially declared unreasonable or inapplicable to a particular premises or to a particular use at any particular location, such declaration or judgment shall not affect, impair, invalidate or nullify such section, paragraph, subsection, clause, sentence or provision as to any other premises or use. *(Revised by Ordinance No. 7-87, Effective 6.17.87)*

16.011 Introductory Provisions.

In order to achieve the purposes outlined in LC 16.003, and to assure that the development and use of land in Lane County conforms to the Rural Comprehensive Plan, zone classifications have been established for all unincorporated areas outside of adopted urban growth boundaries and within Lane County. These zones specify regulations for the use of land and property development standards, and use applied by boundaries indicated on the Lane County Rural Comprehensive Plan Zoning Maps. *(Revised by Ordinance No. 7-87, Effective 6.17.87)*

16.012 Zone Classifications.

For the purpose of this chapter of Lane Code, the following zones are hereby established:

<u>Zone Classification</u>	<u>Abbreviation</u>	<u>Section No.</u>
Nonimpacted Forest Lands	F-1, RCP	16.210
Impacted Forest Lands	F-2, RCP	16.211
Exclusive Farm Use	E-RCP	16.212
Natural Resource	NR-RCP	16.213
Marginal Lands	ML RCP	16.214
Park and Recreation	PR-RCP	16.215
Quarry and Mining Operations	QM-RCP	16.216
Sand, Gravel and Rock Products	SG-RCP	16.217
Sand, Gravel and Rock Products Combining Processing	SG-CP-RCP	16.218
Public Facility	PF-RCP	16.219
Limited Commercial	C-1, RCP	16.220
Neighborhood Commercial	C-2, RCP	16.221
Commercial	C-3, RCP	16.222
Rural Commercial	C-R, RCP	16.223
Limited Industrial	M-1, RCP	16.224
Light Industrial	M-2, RCP	16.225
Heavy Industrial	M-3, RCP	16.226
Inmate Work Camp	IWC, RCP	16.227
Suburban Residential	RA-RCP	16.229
Garden Apartment Residential	RG-RCP	16.230
Rural Residential	RR-RCP	16.231
Destination Resort	DR-RCP	16.232
Historic Structures or Sites Combining	/H-RCP	16.233
Natural Estuary	/NE-RCP	16.234
Conservation Estuary	/CE-RCP	16.235
Development Estuary	DE-RCP	16.236
Significant Natural Shorelands Combining	/SN-RCP	16.237
Prime Wildlife Shorelands Combining	/PW-RCP	16.238
Natural Resources Conservation Combining	/NRC-RCP	16.239
Residential Development Shorelands Combining	/RD-RCP	16.240
Shorelands Mixed Development Combining	/MD-RCP	16.241
Dredge Material/Mitigation Site Combining	/DMS-RCP	16.242
Beaches and Dunes Combining	/BD-RCP	16.243
Floodplain Combining	/FP-RCP	16.244
Commercial Airport Safety District	/CAS-RCP	16.245
Airport Safety District	/AS-RCP	16.246
Airport Operation	AO-RCP	16.247
Clear Lake Watershed Protection	CLWP-RCP	16.258
Rural Residential	RR, RCP	16.290
Rural Commercial	RC, RLP	16.291
Rural Industrial	RI, RCP	16.292
Rural Public Facility	RPF, RCP	16.294
Rural Park and Recreation	RPR, RCP	16.295
Private Use Airport Overlay	/PUAO-RCP	16.296
Drinking Water Protection Overlay	/DWP-RCP	16.298

(Revised by Ordinance No. 7-87, Effective 6.17.87; 17-87, 12.25.87; 12-90, 10.11.90; 11-91A, 8.30.91; 6-98, 12.2.98; 6-02, 5.16.02; 15-07, 2.1.08)

16.013 Location of Zones.

The boundaries of the zones indicated on the Lane County Zoning Maps are hereby adopted by reference. *(Revised by Ordinance No. 7-87, Effective 6.17.87)*

At left margin indicates changes
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16.007

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16.012

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16.012 Lane Code 16.012

16.012 Zone Classifications.

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16.013 Location of Zones.

The boundaries of the zones indicated on the Lane County Zoning Maps are hereby adopted by reference. *(Revised by Ordinance No. 7-87, Effective 6.17.87)*

**DRINKING WATER PROTECTION OVERLAY ZONE (/DWP-RCP)
RURAL COMPREHENSIVE PLAN**

16.298 Drinking Water Protection Overlay Zone (/DWP-RCP).

(1) **General.** The regulations that apply to property subject to this Drinking Water Protection (DWP) Overlay Zone are in addition to those of the underlying zoning districts and regulations of Lane Code. Where the regulations and permitted uses of an underlying zone conflict with those of this overlay zone, the more restrictive standards shall apply.

(2) **Purpose.** It is the purpose of this overlay zoning to promote the public health, safety, and general welfare of the residents of Lane County by minimizing public and private losses due to the contamination of drinking water sources. The specific goals of LC 16.298 are to:

- (a) **Protect surface and ground waters that provide drinking water to Lane County residents.**
- (b) **Protect human life and health.**
- (c) **Ensure that the public is provided with sustainable sources of safe potable water.**
- (d) **Minimize expenditure of public money for pollution remediation projects.**
- (e) **Minimize interruptions to business and commerce.**

(3) **Definitions.** Unless specifically defined in LC 16.298(3), words or phrases used in LC 16.298 shall have the meanings provided in Lane Code 16.090.

Dense Non-Aqueous Phase Liquid (DNAPL). A dense non-aqueous phase liquid is an organic liquid that is denser than water and does not dissolve or mix easily in water (it is immiscible). In the presence of water it forms a separate phase from the water.

Development. For the purposes of LC 16.298, development shall mean the carrying out of any construction, reconstruction or alteration of a structure, installation of a new septic system or grading of land.

Hazardous Materials. Substances defined as such in any of the following:

- (a) **Hazardous waste as defined in ORS 466.005(7).**
- (b) **Toxic substances as defined in ORS 465.003(9).**
- (c) **Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended.**
- (d) **Oil as defined in ORS 465.200(19).**
- (e) **Any substance that meets the criteria established pursuant to ORS 465.400.**

Ordinary High Water Level. The high water level is defined as that high level of a river, stream, lake or reservoir, which is attained during mean annual flood. It does not include levels attained during exceptional or catastrophic floods. It is often identifiable by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in character in the soil, destruction or absence of vegetation not adapted for life in saturated soils or the presence of flotsam and debris. In the absence of identifying physical characteristics, ordinary high water may be determined by step backwater analysis using a two-year frequency flood as determined by the US Army Corps of Engineers.

Primary Containment. A tank, pit, container or vessel of first containment of liquid or chemical.

Removal of Vegetation. The act of removing or fact of being removed by a person: i.e., to cut, thin or trim vegetation or to chemically treat vegetation which results in the loss of growth or health or the death of vegetation; to mechanically or manually disrupt or dislodge the root structure of vegetation resulting in loss of growth or health or causing the death of vegetation.

Secondary Containment. A second tank, catchment pit or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery are required.

Time-of-Travel Zone. A mapped area that geographically delineates the amount of time it takes groundwater to flow within an aquifer to a given well.

(4) **Designation of Drinking Water Source Areas.** This Drinking Water Protection Overlay Zone is comprised of two separate regulatory elements, which contain different standards and requirements related to the protection of either surface water source areas or groundwater source areas. The location of the protected surface and groundwater source areas are generally depicted on the Official Drinking Water Protection Overlay Zone Map for Lane County and are further described below:

(a) **Surface Water Source Protection Areas:** Include the areas adjacent to rivers, streams, lakes or reservoirs that serve as a source of public drinking water, or which are tributaries to a source of public drinking water. These areas extend inland 200 feet, measured perpendicularly, from the ordinary high water level of the source of public drinking water and from any tributary to a source of public drinking water. The Official Drinking Water Protection Overlay Zone Map identifies the surface waters to which these protection areas apply but does not depict the precise location of the ordinary high water level. Where development or vegetation removal is proposed near a surface water protection area, Lane County may require that a site visit be conducted by staff to delineate and monument the location of the ordinary high water level and the boundary of the surface water protection area on a property by property basis.

(b) **Groundwater Source Protection Areas:** Include the surface and subsurface area surrounding any water well, spring, or well field supplying a public water system through which contaminants have a potential to move toward and reach that water well, spring, or well field. Groundwater source areas include two separate protection zones:

Zone A: Include areas located within a time-of-travel zones of less than two (<2) years.

Zone B: Include areas within a time of travel zone between 2 and 20 years.

The locations of Zone A and Zone B for each wellhead are shown on the Official Drinking Water Protection Overlay Zone Map for Lane County. Where the scale of the Official Drinking Water Protection Overlay Zone Map is insufficient to determine the precise boundary locations of Zone A or Zone B in relation to parcel boundaries, the digital ground water source protection area data contained in the Lane County Geographic Information System may be used in conjunction with the county maintained digital parcel data and considered an authoritative source.

(5) **Request for Groundwater Source Protection Area Boundary Rezonings.** A property owner may request that the boundaries of the mapped

Groundwater Source Protection Areas (Zone A and/or Zone B) be modified if those boundaries are believed to be incorrectly mapped. Such modifications would constitute a rezoning of the property and shall;

(a) Be processed in accordance with Lane Code 16.252.

(b) Be accompanied by a letter and recertified source water assessment report from the Oregon Department of Human Services - Drinking Water Program (DHS), which clearly indicates that the boundaries of the source water area in question have been modified and officially recertified by DHS under the Administrative Rules that apply to Oregon's EPA-approved Drinking Water Protection Program.

(6) Surface Water Protection Requirements. The following standards shall apply within Surface Water Protections Areas:

(a) New development is prohibited except for the following uses provided alteration and disturbances are kept to a minimum and native vegetation is used to replant disturbed areas after construction:

(i) Development that is appurtenant to the production, supply, distribution, treatment, or storage of water by a public water supplier.

(ii) Public roads, main-line utilities and trails.

(iii) Private roads and driveways necessary to access buildable portions of a parcel where no alternative location is feasible.

(iv) Culverts, ditches and other stormwater management improvements carried out as a component of Lane County's stormwater management program.

(v) Wells and irrigation pumps, which may be housed in structures no larger than 25 square feet.

(vi) Replacement of existing structures provided a replacement location outside of the Surface Water Protections Area does not exist on the lot or parcel and the replaced structure is set back as far away as possible from the drinking water source or tributary to the drinking water source based on a consideration of site characteristics, including but not limited to topography, road and property line setback. Applications for replacement of existing structures within Surface Water Protection Areas shall be reviewed as ministerial land use decisions.

(vii) Water dependent uses on publically owned land.

(viii) Development on public land carried out as part of an approved parks and open space plan.

(ix) Additions or alterations of existing lawfully established structures, including decks, stairs and landings attached to the structure, which do not cumulatively expand the footprint of the structure beyond 25% of its size on the date LC 16.298 becomes effective.

(x) Fish passage channels, culverts and other similar structural ecological enhancement improvements conducted by a watershed council or soil and water conservation district (SWCD), or conducted by a land trust or private land owner working in consultation with a watershed council or SWCD.

(b) Vegetation removal within Surface Water Protection Areas is prohibited except for the following uses and activities:

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

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(ii) **Removal of dead or diseased vegetation that poses a safety or health hazard, excluding removal of root wads, provided a certified arborist or licensed forester provides a statement to the Land Management Division documenting the need for such removals.**

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

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

(v) **Ecological enhancement projects replanted with native vegetation and conducted by a watershed council or soil and water conservation district (SWCD), or conducted by a land trust or private land owner working in consultation with a watershed council or SWCD.**

(vi) **Vegetation removal necessary to carry out development as permitted pursuant to LC 16.298(6)(a)**

(vii) **Maintenance of existing primary fuel breaks required by Lane Code. New fuel breaks are not permitted within Surface Water Protections Areas.**

(viii) **Right-of-way vegetation management conducted in conformance with LC 15.510.**

(c) **In addition to the development and vegetation removal standards of LC 16.298(6)(a) and (b), all new development within a Surface Water Protections Area shall also be subject to the Ground Water Protection requirements of LC 16.298(7)(a) and (b) for Zone A.**

(d) **Variances. For any existing lot or parcel that can be demonstrated to have been rendered not developable for a dwelling or for the primary use allowed in the base zone, by application of the LC 16.298(a) through (c), a variance to waive the applicable development restrictions may be applied for. Variances will be processed following the procedures outlined in LC 16.256(1)(a) and (b) and meeting the criteria of LC 16.256(2)(a) and (d) through (f) with additional findings of compliance addressing all of the following criteria:**

(i) **It can be demonstrated that the lot or parcel has been rendered undevelopable for a dwelling or for the primary use allowed in the base zone by the application of the LC 16.298(a) through (c). It shall be the burden of the property owner to demonstrate how application of LC 16.298(a) through (c) has rendered the lot or parcel undevelopable.**

(ii) **It can be demonstrated that the lot or parcel was lawfully created prior to the effective date of LC 16.298.**

(iii) **Approval of development under this provision must meet the following standards:**

(aa) **All development shall be located to the greatest degree possible outside of surface water protection areas.**

(bb) **The request shall be the minimum necessary to render the property developable.**

(cc) **Due to topography, parcel size or configuration, options for development outside of the surface water protection area are physically impossible.**

(dd) **The variance is not the result of a self-created hardship. After the effective date of LC 16.298, the reconfiguration of a lot or parcel as a result of a lot or property line adjustment, in whole or part within the setback**

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area, shall be determined to be a self-created hardship by the creator and shall extend to subsequent property owners.

(ee) Vegetation disturbances shall be minimized and native vegetation shall be used to replant disturbed areas after construction.

(7) Ground Water Protection Requirements.

(a) **Zone A Prohibited Uses.** The following new uses shall be prohibited within Zone A of the DWP Overlay Zone:

(i) Storage, use, or production of hazardous materials, except as provided in LC 16.298 (7)(d).

(ii) Fueling facilities and automobile service stations, except as provided in LC 16.298 (7)(d).

(iii) Injection wells/dry wells/sumps except drywells for roof drainage.

(iv) Underground hazardous material storage facilities except those with spill, overflow, and corrosion protections in place.

(v) Disposal of hazardous materials.

(vi) Treatment of hazardous material, except remediation programs authorized by a government agency.

(vii) Disposal of septic sludge.

(viii) Automobile wrecking yards or activities, commercial or otherwise, that result in the accumulation of four or more non-operating vehicles.

(ix) Outside storage of eight or more nonfunctioning appliances.

(b) Any increases or alterations of non-conforming uses within Zone A as permitted under LC 16.251, must meet the requirements of LC 16.298(8). Non-conforming uses are uses otherwise prohibited by LC 16.298(7)(a)(i) that were in lawful existence on the date that LC 16.298 took effect.

(c) **Zone B Requirements.** New uses prohibited under LC 16.298(7)(a)(i) and LC 16.298(7)(a)(ii) may be conditionally permitted within Zone B provided the requirements of LC 16.298(8) are met. New uses identified in LC 16.298(7)(a)(iii) through (ix) are also prohibited within Zone B.

(d) **Exemptions.** The provisions of LC 16.298 do not exempt any material or use from requirements under the Oregon Fire Code. Except as otherwise provided by this section, the following activities and/or materials are exempt from LC 16.298(7):

(i) Use, storage and handling of specific hazardous materials that do not present a risk to the drinking water source, as determined and listed by the Planning Director. These materials may still need to be included on a Hazardous Material Inventory Statement as required by Fire Code. A Hazardous Material Exemption Request may be submitted to the Planning Director for hazardous materials that can be demonstrated to pose no threat to the drinking water source. These materials may be exempt from this regulation and added to the list of materials that do not pose a threat to the drinking water source. The demonstration of no threat is the responsibility of the applicant seeking the exemption and will be subject to a ministerial review by the Planning Director. The Planning Director shall notify and consult with the Department of Environmental Quality, the Oregon Department of Human Services - Drinking Water Program, the applicable water utility or water service supplier in the area and the Lane Pollution

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Prevention Coalition (P2C) prior to making a hazardous material exemption determination.

(ii) **Hazardous materials offered for sale in their original containers of five (5) gallons or less. A Hazardous Material Exemption Request for original containers of greater than 5-gallons in size may be submitted to the Planning Director. These materials may be exempt from this regulation if an applicant can demonstrate that a larger size container does not pose a threat to the drinking water source. The Hazardous Material Exemption Request shall be reviewed by the Planning Director in the manner described in LC 16.298(7)(d)(i).**

(iii) **Hazardous materials in fuel tanks and fluid reservoirs attached to a private or commercial motor vehicle and used directly in the operation of that vehicle.**

(iv) **Hazardous materials in fuel tanks and fluid reservoirs attached to machinery, including but not limited to fuel, engine oil and coolant.**

(v) **Fuel oil used in existing heating systems.**

(vi) **Emergency use, storage and handling of hazardous materials by governmental organizations or non-governmental disaster relief organizations in the public interest.**

(vii) **Hazardous materials used and stored specifically for water treatment processes of public and private water systems**

(viii) **Hazardous materials contained in properly operating sealed units (transformers, refrigeration units, etc.) that are not opened as part of routine use.**

(ix) **Natural gas distribution lines.**

(x) **Any commonly used office supply, such as toner or cleaning supplies, where supplies are purchased off-site for use onsite.**

(xi) **Hazardous materials not already listed in this section used in association with Farm Practices as defined in ORS 30.930 in an Exclusive Farm Use Zone and Confined Animal Feeding Operations (CAFOs) as defined OAR 603-074-0010.**

(xii) **Pesticide use and storage specifically addressed by state preemption of local pesticide regulation under ORS 634.055 through 634.065.**

(xiii) **Hazardous material use in association with Forest activities conducted under the Forest Practices Act.**

(xiv) **Aggregate quantities equal to or less than 110 gallons of non-exempt hazardous materials, which are not dense non-aqueous phase liquids (DNAPLs).**

(xv) **Aggregate quantities greater than 110 gallons of non-exempt hazardous materials, for residential uses, rural home businesses or home occupations provided:**

(aa) **The hazardous materials are not dense non-aqueous phase liquids (DNAPLs).**

(bb) **The applicant submits a signed statement to Lane County asserting that all hazardous materials stored on site in excess of 110 gallons will be kept in a primary containment vessel and further protected within a secondary containment vessel and that the secondary containment vessel will be monitored regularly for leaks or other failures.**

(8) **Hazardous Material Special Use Permit – Director Review.** Increases or alterations of non-conforming uses pursuant to LC 16.298(7)(b) and new uses pursuant to 16.298(7)(c) may be conditionally permitted provided a land use application is submitted pursuant to LC 14.050, processed according to LC 14.100, and approved by the Planning Director upon determination that the criteria of 16.298(8)(a)(i) through (viii) are met. The Planning Director shall condition any such approvals to ensure that the hazardous material management strategies identified LC 16.289(9) are carried out. Prior to issuing a hazardous material special use permit decision the Planning director shall notify and consult with the Department of Environmental Quality, the Oregon Department of Human Services - Drinking Water Program and the applicable water utility or water service supplier in the area.

(a) A hazardous material special use permit application must contain:

(i) A hazardous material inventory statement and, upon request from the Planning Director, a Material Safety Data Sheet (MSDS) for any hazardous materials to be used, stored or produced on site. Hazardous material weights shall be converted to volume measurement for purposes of determining amounts - 10 pounds shall be considered equal to 1 gallon.

(ii) A detailed description of the activities conducted at the facility that involve the storage, handling, treatment, use or production of hazardous materials.

(iii) A description of the primary and secondary containment devices proposed.

(iv) Spill reporting procedures, including a list of affected agencies and affected public water system(s) to be contacted in the event of a spill with current contact information for each agency.

(v) A description of procedures for inspection and maintenance of containment devices and emergency equipment; and

(vi) A description of procedures for disposition of unused hazardous materials or hazardous material waste products including the type of transport and proposed route.

(vii) A list of the chemicals to be monitored through the analysis of groundwater samples and a monitoring schedule if ground water monitoring is anticipated to be required under state or local government water quality permit, cleanup agreements, or other requirements.

(viii) The location of all operating, unused and abandoned wells on the property with documentation that all abandoned wells have been properly capped or sealed.

(b) Hazardous material special use permits shall expire five years after the date of issuance but may be renewed indefinitely. Renewal applications shall include updated information required pursuant to LC 16.298(8)(a)(i) through (viii).

(9) **Hazardous Material Management Standards.** Uses permitted pursuant to LC 16.298(8) shall meet the following standards:

(a) Storage, handling, treatment, use, production or otherwise keeping on premises hazardous materials shall be in compliance with containment and safety standards set by the Oregon Fire Code.

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Bold indicates material being added
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(b) All hazardous materials that pose a risk to a surface or ground water source shall be stored in areas with approved secondary containment in place (Oregon Fire Code Section 2704.2).

(c) Requirements found in the Oregon Fire Code Section 2704.2.2.5 for a monitoring program to detect hazardous materials in the secondary containment system shall be met for all amounts of non-exempt hazardous materials that pose a risk to a surface or ground water source.

(d) All spill reporting procedures and contact information described in LC 16.298(8)(iv) shall be updated annually and kept on premises.

(10) Agency Review. Decisions made by Lane County under LC 16.298 do not supersede the authority of the state or federal agencies which may regulate or have an interest in the activity in question. It is the responsibility of the landowner to ensure that any other necessary state or federal permits or clearances are obtained.

(11) Warning and Disclaimer of Liability. The degree of drinking water protection required by LC 16.298 is based on scientific and engineering considerations. These considerations include drinking water source area assessments certified by Oregon Department of Human Services, under the Oregon Administrative Rules that apply to Oregon's EPA-approved Drinking Water Protection Program, which inherently carry associated uncertainties. Any conclusions based on the exact boundaries of the surface or groundwater source areas shall therefore be considered estimates. Under no conditions should LC 16.298 be construed to guarantee the purity of the surface or ground waters or guarantee the prevention of contamination. Therefore, LC 16.298 shall not create liability on the part of the Lane County, or any Lane County personnel, for any contamination that may result from reliance on LC 16.298 or any administrative decision made under LC 16.298.

**DRINKING WATER PROTECTION OVERLAY ZONE (/DWP-RCP)
RURAL COMPREHENSIVE PLAN**

16.298 Drinking Water Protection Overlay Zone (/DWP-RCP).

(1) General. The regulations that apply to property subject to this Drinking Water Protection (DWP) Overlay Zone are in addition to those of the underlying zoning districts and regulations of Lane Code. Where the regulations and permitted uses of an underlying zone conflict with those of this overlay zone, the more restrictive standards shall apply.

(2) Purpose. It is the purpose of this overlay zoning to promote the public health, safety, and general welfare of the residents of Lane County by minimizing public and private losses due to the contamination of drinking water sources. The specific goals of LC 16.298 are to:

- (a) Protect surface and ground waters that provide drinking water to Lane County residents.
- (b) Protect human life and health.
- (c) Ensure that the public is provided with sustainable sources of safe potable water.
- (d) Minimize expenditure of public money for pollution remediation projects.
- (e) Minimize interruptions to business and commerce.

(3) Definitions. Unless specifically defined in LC 16.298(3), words or phrases used in LC 16.298 shall have the meanings provided in Lane Code 16.090.

Dense Non-Aqueous Phase Liquid (DNAPL). A dense non-aqueous phase liquid is an organic liquid that is denser than water and does not dissolve or mix easily in water (it is immiscible). In the presence of water it forms a separate phase from the water.

Development. For the purposes of LC 16.298, development shall mean the carrying out of any construction, reconstruction or alteration of a structure, installation of a new septic system or grading of land.

Hazardous Materials. Substances defined as such in any of the following:

- (a) Hazardous waste as defined in ORS 466.005(7).
- (b) Toxic substances as defined in ORS 465.003(9).
- (c) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended.
- (d) Oil as defined in ORS 465.200(19).
- (e) Any substance that meets the criteria established pursuant to ORS 465.400.

Ordinary High Water Level. The high water level is defined as that high level of a river, stream, lake or reservoir, which is attained during mean annual flood. It does not include levels attained during exceptional or catastrophic floods. It is often identifiable by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in character in the soil, destruction or absence of vegetation not adapted for life in saturated soils or the presence of flotsam and debris. In the absence of identifying physical characteristics, ordinary high water may be determined by step backwater analysis using a two-year frequency flood as determined by the US Army Corps of Engineers.

Primary Containment. A tank, pit, container or vessel of first containment of liquid or chemical.

Removal of Vegetation. The act of removing or fact of being removed by a person: i.e., to cut, thin or trim vegetation or to chemically treat vegetation which results in the loss of growth or health or the death of vegetation; to mechanically or manually disrupt or dislodge the root structure of vegetation resulting in loss of growth or health or causing the death of vegetation.

Secondary Containment. A second tank, catchment pit or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery are required.

Time-of-Travel Zone. A mapped area that geographically delineates the amount of time it takes groundwater to flow within an aquifer to a given well.

(4) Designation of Drinking Water Source Areas. This Drinking Water Protection Overlay Zone is comprised of two separate regulatory elements, which contain different standards and requirements related to the protection of either surface water source areas or groundwater source areas. The location of the protected surface and groundwater source areas are generally depicted on the Official Drinking Water Protection Overlay Zone Map for Lane County and are further described below:

(a) Surface Water Source Protection Areas: Include the areas adjacent to rivers, streams, lakes or reservoirs that serve as a source of public drinking water, or which are tributaries to a source of public drinking water. These areas extend inland 200 feet, measured perpendicularly, from the ordinary high water level of the source of public drinking water and from any tributary to a source of public drinking water. The Official Drinking Water Protection Overlay Zone Map identifies the surface waters to which these protection areas apply but does not depict the precise location of the ordinary high water level. Where development or vegetation removal is proposed near a surface water protection area, Lane County may require that a site visit be conducted by staff to delineate and monument the location of the ordinary high water level and the boundary of the surface water protection area on a property by property basis.

(b) Groundwater Source Protection Areas: Include the surface and subsurface area surrounding any water well, spring, or well field supplying a public water system through which contaminants have a potential to move toward and reach that water well, spring, or well field. Groundwater source areas include two separate protection zones:

Zone A: Include areas located within a time-of-travel zones of less than two (<2) years.

Zone B: Include areas within a time of travel zone between 2 and 20 years.

The locations of Zone A and Zone B for each wellhead are shown on the Official Drinking Water Protection Overlay Zone Map for Lane County. Where the scale of the Official Drinking Water Protection Overlay Zone Map is insufficient to determine the precise boundary locations of Zone A or Zone B in relation to parcel boundaries, the digital ground water source protection area data contained in the Lane County Geographic Information System may be used in conjunction with the county maintained digital parcel data and considered an authoritative source.

(5) Request for Groundwater Source Protection Area Boundary Rezonings. A property owner may request that the boundaries of the mapped Groundwater Source Protection Areas (Zone A and/or Zone B) be modified if those boundaries are believed to be incorrectly mapped. Such modifications would constitute a rezoning of the property and shall;

(a) Be processed in accordance with Lane Code 16.252.

(b) Be accompanied by a letter and recertified source water assessment report from the Oregon Department of Human Services - Drinking Water

Program (DHS), which clearly indicates that the boundaries of the source water area in question have been modified and officially recertified by DHS under the Administrative Rules that apply to Oregon's EPA-approved Drinking Water Protection Program.

(6) Surface Water Protection Requirements. The following standards shall apply within Surface Water Protections Areas:

(a) New development is prohibited except for the following uses provided alteration and disturbances are kept to a minimum and native vegetation is used to replant disturbed areas after construction:

(i) Development that is appurtenant to the production, supply, distribution, treatment, or storage of water by a public water supplier.

(ii) Public roads, main-line utilities and trails.

(iii) Private roads and driveways necessary to access buildable portions of a parcel where no alternative location is feasible.

(iv) Culverts, ditches and other stormwater management improvements carried out as a component of Lane County's stormwater management program.

(v) Wells and irrigation pumps, which may be housed in structures no larger than 25 square feet.

(vi) Replacement of existing structures provided a replacement location outside of the Surface Water Protections Area does not exist on the lot or parcel and the replaced structure is set back as far away as possible from the drinking water source or tributary to the drinking water source based on a consideration of site characteristics, including but not limited to topography, road and property line setback. Applications for replacement of existing structures within Surface Water Protection Areas shall be reviewed as ministerial land use decisions.

(vii) Water dependent uses on publically owned land.

(viii) Development on public land carried out as part of an approved parks and open space plan.

(ix) Additions or alterations of existing lawfully established structures, including decks, stairs and landings attached to the structure, which do not cumulatively expand the footprint of the structure beyond 25% of its size on the date LC 16.298 becomes effective.

(x) Fish passage channels, culverts and other similar structural ecological enhancement improvements conducted by a watershed council or soil and water conservation district (SWCD), or conducted by a land trust or private land owner working in consultation with a watershed council or SWCD.

(b) Vegetation removal within Surface Water Protection Areas is prohibited except for the following uses and activities:

(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, provided a certified arborist or licensed forester provides a statement to the Land Management Division documenting the need for such removals.

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

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

(v) Ecological enhancement projects replanted with native vegetation and conducted by a watershed council or soil and water conservation district

(SWCD), or conducted by a land trust or private land owner working in consultation with a watershed council or SWCD.

(vi) Vegetation removal necessary to carry out development as permitted pursuant to LC 16.298(6)(a)

(vii) Maintenance of existing primary fuel breaks required by Lane Code. New fuel breaks are not permitted within Surface Water Protections Areas.

(viii) Right-of-way vegetation management conducted in conformance with LC 15.510.

(c) In addition to the development and vegetation removal standards of LC 16.298(6)(a) and (b), all new development within a Surface Water Protections Area shall also be subject to the Ground Water Protection requirements of LC 16.298(7)(a) and (b) for Zone A.

(d) Variances. For any existing lot or parcel that can be demonstrated to have been rendered not developable for a dwelling or for the primary use allowed in the base zone, by application of the LC 16.298(a) through (c), a variance to waive the applicable development restrictions may be applied for. Variances will be processed following the procedures outlined in LC 16.256(1)(a) and (b) and meeting the criteria of LC 16.256(2)(a) and (d) through (f) with additional findings of compliance addressing all of the following criteria:

(i) It can be demonstrated that the lot or parcel has been rendered undevelopable for a dwelling or for the primary use allowed in the base zone by the application of the LC 16.298(a) through (c). It shall be the burden of the property owner to demonstrate how application of LC 16.298(a) through (c) has rendered the lot or parcel undevelopable.

(ii) It can be demonstrated that the lot or parcel was lawfully created prior to the effective date of LC 16.298.

(iii) Approval of development under this provision must meet the following standards:

(aa) All development shall be located to the greatest degree possible outside of surface water protection areas.

(bb) The request shall be the minimum necessary to render the property developable.

(cc) Due to topography, parcel size or configuration, options for development outside of the surface water protection area are physically impossible.

(dd) The variance is not the result of a self-created hardship. After the effective date of LC 16.298, the reconfiguration of a lot or parcel as a result of a lot or property line adjustment, in whole or part within the setback area, shall be determined to be a self-created hardship by the creator and shall extend to subsequent property owners.

(ee) Vegetation disturbances shall be minimized and native vegetation shall be used to replant disturbed areas after construction.

(7) Ground Water Protection Requirements.

(a) Zone A Prohibited Uses. The following new uses shall be prohibited within Zone A of the DWP Overlay Zone:

(i) Storage, use, or production of hazardous materials, except as provided in LC 16.298 (7)(d).

(ii) Fueling facilities and automobile service stations, except as provided in LC 16.298 (7)(d).

(iii) Injection wells/dry wells/sumps except drywells for roof drainage.

(iv) Underground hazardous material storage facilities except those with spill, overflow, and corrosion protections in place.

(v) Disposal of hazardous materials.

(vi) Treatment of hazardous material, except remediation programs authorized by a government agency.

(vii) Disposal of septic sludge.

(viii) Automobile wrecking yards or activities, commercial or otherwise, that result in the accumulation of four or more non-operating vehicles.

(ix) Outside storage of eight or more nonfunctioning appliances.

(b) Any increases or alterations of non-conforming uses within Zone A as permitted under LC 16.251, must meet the requirements of LC 16.298(8). Non-conforming uses are uses otherwise prohibited by LC 16.298(7)(a)(i) that were in lawful existence on the date that LC 16.298 took effect.

(c) Zone B Requirements. New uses prohibited under LC 16.298(7)(a)(i) and LC 16.298(7)(a)(ii) may be conditionally permitted within Zone B provided the requirements of LC 16.298(8) are met. New uses identified in LC 16.298(7)(a)(iii) through (ix) are also prohibited within Zone B.

(d) Exemptions. The provisions of LC 16.298 do not exempt any material or use from requirements under the Oregon Fire Code. Except as otherwise provided by this section, the following activities and/or materials are exempt from LC 16.298(7):

(i) Use, storage and handling of specific hazardous materials that do not present a risk to the drinking water source, as determined and listed by the Planning Director. These materials may still need to be included on a Hazardous Material Inventory Statement as required by Fire Code. A Hazardous Material Exemption Request may be submitted to the Planning Director for hazardous materials that can be demonstrated to pose no threat to the drinking water source. These materials may be exempt from this regulation and added to the list of materials that do not pose a threat to the drinking water source. The demonstration of no threat is the responsibility of the applicant seeking the exemption and will be subject to a ministerial review by the Planning Director. The Planning Director shall notify and consult with the Department of Environmental Quality, the Oregon Department of Human Services - Drinking Water Program, the applicable water utility or water service supplier in the area and the Lane Pollution Prevention Coalition (P2C) prior to making a hazardous material exemption determination.

(ii) Hazardous materials offered for sale in their original containers of five (5) gallons or less. A Hazardous Material Exemption Request for original containers of greater than 5-gallons in size may be submitted to the Planning Director. These materials may be exempt from this regulation if an applicant can demonstrate that a larger size container does not pose a threat to the drinking water source. The Hazardous Material Exemption Request shall be reviewed by the Planning Director in the manner described in LC 16.298(7)(d)(i).

(iii) Hazardous materials in fuel tanks and fluid reservoirs attached to a private or commercial motor vehicle and used directly in the operation of that vehicle.

(iv) Hazardous materials in fuel tanks and fluid reservoirs attached to machinery, including but not limited to fuel, engine oil and coolant.

(v) Fuel oil used in existing heating systems.

(vi) Emergency use, storage and handling of hazardous materials by governmental organizations or non-governmental disaster relief organizations in the public interest.

(vii) Hazardous materials used and stored specifically for water treatment processes of public and private water systems

(viii) Hazardous materials contained in properly operating sealed units (transformers, refrigeration units, etc.) that are not opened as part of routine use.

(ix) Natural gas distribution lines.

(x) Any commonly used office supply, such as toner or cleaning supplies, where supplies are purchased off-site for use onsite.

(xi) Hazardous materials not already listed in this section used in association with Farm Practices as defined in ORS 30.930 in an Exclusive Farm Use Zone and Confined Animal Feeding Operations (CAFOs) as defined OAR 603-074-0010.

(xii) Pesticide use and storage specifically addressed by state preemption of local pesticide regulation under ORS 634.055 through 634.065.

(xiii) Hazardous material use in association with Forest activities conducted under the Forest Practices Act.

(xiv) Aggregate quantities equal to or less than 110 gallons of non-exempt hazardous materials, which are not dense non-aqueous phase liquids (DNAPLs).

(xv) Aggregate quantities greater than 110 gallons of non-exempt hazardous materials, for residential uses, rural home businesses or home occupations provided:

(aa) The hazardous materials are not dense non-aqueous phase liquids (DNAPLs).

(bb) The applicant submits a signed statement to Lane County asserting that all hazardous materials stored on site in excess of 110 gallons will be kept in a primary containment vessel and further protected within a secondary containment vessel and that the secondary containment vessel will be monitored regularly for leaks or other failures.

(8) Hazardous Material Special Use Permit – Director Review. Increases or alterations of non-conforming uses pursuant to LC 16.298(7)(b) and new uses pursuant to 16.298(7)(c) may be conditionally permitted provided a land use application is submitted pursuant to LC 14.050, processed according to LC 14.100, and approved by the Planning Director upon determination that the criteria of 16.298(8)(a)(i) through (viii) are met. The Planning Director shall condition any such approvals to ensure that the hazardous material management strategies identified LC 16.289(9) are carried out. Prior to issuing a hazardous material special use permit decision the Planning director shall notify and consult with the Department of Environmental Quality, the Oregon Department of Human Services - Drinking Water Program and the applicable water utility or water service supplier in the area.

(a) A hazardous material special use permit application must contain:

(i) A hazardous material inventory statement and, upon request from the Planning Director, a Material Safety Data Sheet (MSDS) for any hazardous materials to be used, stored or produced on site. Hazardous material weights shall be converted to volume measurement for purposes of determining amounts - 10 pounds shall be considered equal to 1 gallon.

(ii) A detailed description of the activities conducted at the facility that involve the storage, handling, treatment, use or production of hazardous materials.

(iii) A description of the primary and secondary containment devices proposed.

(iv) Spill reporting procedures, including a list of affected agencies and affected public water system(s) to be contacted in the event of a spill with current contact information for each agency.

(v) A description of procedures for inspection and maintenance of containment devices and emergency equipment; and

(vi) A description of procedures for disposition of unused hazardous materials or hazardous material waste products including the type of transport and proposed route.

(vii) A list of the chemicals to be monitored through the analysis of groundwater samples and a monitoring schedule if ground water monitoring is anticipated to be required under state or local government water quality permit, cleanup agreements, or other requirements.

(viii) The location of all operating, unused and abandoned wells on the property with documentation that all abandoned wells have been properly capped or sealed.

(b) Hazardous material special use permits shall expire five years after the date of issuance but may be renewed indefinitely. Renewal applications shall include updated information required pursuant to LC 16.298(8)(a)(i) through (viii).

(9) Hazardous Material Management Standards. Uses permitted pursuant to LC 16.298(8) shall meet the following standards:

(a) Storage, handling, treatment, use, production or otherwise keeping on premises hazardous materials shall be in compliance with containment and safety standards set by the Oregon Fire Code.

(b) All hazardous materials that pose a risk to a surface or ground water source shall be stored in areas with approved secondary containment in place (Oregon Fire Code Section 2704.2).

(c) Requirements found in the Oregon Fire Code Section 2704.2.2.5 for a monitoring program to detect hazardous materials in the secondary containment system shall be met for all amounts of non-exempt hazardous materials that pose a risk to a surface or ground water source.

(d) All spill reporting procedures and contact information described in LC 16.298(8)(iv) shall be updated annually and kept on premises.

(10) Agency Review. Decisions made by Lane County under LC 16.298 do not supersede the authority of the state or federal agencies which may regulate or have an interest in the activity in question. It is the responsibility of the landowner to ensure that any other necessary state or federal permits or clearances are obtained.

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contamination that may result from reliance on LC 16.298 or any administrative decision made under LC 16.298.