

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

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

(1) General. The regulations that apply 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 ordinance to promote the public health, safety, and general welfare of the residents of Lane County by minimizing public and private losses due to contamination of drinking water sources.

(a) The specific goals of this ordinance are to:

(i) Protect surface and ground waters, which provide drinking water to Lane County residents.

(ii) Protect human life and health.

(iii) Ensure that the public is provided with sustainable sources of safe potable water.

(iv) Minimize expenditure of public money for pollution remediation projects.

(v) Minimize interruptions to business and commerce.

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

Dense Non-Aqueous Phase Liquid (DNAPL). A dense non-aqueous phase liquid is a 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 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 Comprehensive section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499.

(d) Oil as defined in ORS 465.200(19).

(e) Any substance designated by the Environmental Quality Commission under 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 upon a two-year frequency flood as determined by the US Army Corps of Engineers.

Primary Containment. A tank, pit, container, pipe 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, pipe, 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, or 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 be processed in accordance with Lane Code 16.252. In addition, such rezoning requests must be accompanied by a report from a qualified hydrogeologist, which clearly documents and extent of the aquifer and the time of travel zones relative to the property in question.

(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 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 and approved by the Planning Director through a Land Use Compatibility Statement (LUCS) review process.

(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 50 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 practicable from the drinking water source or tributary to the drinking water source. Applications for replacement of existing structures within Surface Water Protections 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) Culvert replacements or other fish passage improvements carried out in consultation with the Oregon Department of Fish and Wildlife.

(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, excluding removal of root wads, that pose a safety or health hazard as certified by a licensed forester or arborist and approved by the Planning Director through a LUCS review process.

(iii) Removal of vegetation necessary for the maintenance or placement of permitted structural shoreline stabilization and approved by the Planning Director through a LUCS review process.

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

(v) Riparian enhancement projects permitted under LC 16.253(2)(d)(v)

(vi) Vegetation removal that is the minimum necessary to carry out development as permitted pursuant to LC16.298(6)(a)

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

(viii) Right-of-way vegetation management conducted by a public agency or or a contractor employed by a public agency.

(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 LC16 298(7)(a) and (b) for Zone A.

(d) For any existing lot or parcel demonstrated to have been rendered not buildable by application of LC 16298(a)-(c), the property owner may apply for a variance to waive the applicable land development restrictions and prohibitions. A decision regarding variances will follow the procedures and standards outlined in LC 16.256. Demonstration of the inability to build on a lot or parcel due to the application of LC 16298(a)-(c) shall be the burden of the property owner and shall be reviewed by the Planning Director through a LUCS review process prior to the submittal of a variance request.

(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 storage tanks except those with spill, overflow, and corrosion protections in place.

(v) Disposal of hazardous materials.

Attachment A

(vi) Treatment of hazardous material, except remediation programs authorized by a government agency to treat hazardous material present at a site prior to the adoption of this ordinance.

(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 conform to the requirements of LC 16.298(7)(e). Non-conforming uses are uses otherwise prohibited by LC 16.298(7)(a)(i) that were in existence on the date that LC 16.298 took effect.

(c) Zone B Requirements. Used prohibited under LC 16.298(7)(a)(i) may be permitted within Zone B provided the requirements of LC 16.298(7)(e) are met.

(d) Exemptions LC 16.298(7)(a) Exemptions. This ordinance does not exempt any material or use from requirements under the Uniform Fire Code. Except as otherwise provided by this ordinance, the following activities and/or materials are exempt from this regulation:

(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 after consultation with the applicable water utility or water service supplier in the area. In making a determination the Planning Director may also seek and use information provided by the Lane Pollution Prevention Coalition (P2C), the Oregon Department of Human Services - Drinking Water Program (DHS), or other technical experts.

(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 motoring 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 OAR 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 20 gallons of non-exempt hazardous materials, which are not dense non-aqueous phase liquids (DNAPLs).

(e) Hazardous Material Management Plan Requirements. 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 permitted provided a Hazardous Material Management Plan is submitted with a land use application pursuant to LC 14.050 and approved by the Planning Director pursuant to LC 14.100 upon determination that the criteria of 16.298(7)(f)-(h) are met. The Planning Director shall condition any such approvals to ensure that the hazardous material management strategies identified in the approved plan are carried out and that the performance standards of LC 16.298(8) are satisfied.

(f) A Hazardous Material Management Plan must contain:

(i) A hazardous material inventory statement and, upon request from the Planning Director, a Material Safety Data Sheet for any hazardous materials to be used, stored or produced on site that are not exempt under LC 16.298(7)(d) Hazardous material weights shall be converted to volume measurement for purposes of determining amounts - 10 pounds shall be considered equal to 1 gallon in conformance with Uniform Fire Code 80001.15.1.

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

(iii) A description of the primary and secondary containment devices proposed and an explanation of whether such containment devices will drain to sanitary or storm sewer.

(iv) A proposed Hazardous Material Management Plan for the facility that describes procedures to be followed to prevent, control, collect and dispose of any accidental release of hazardous material including a list of available equipment.

(v) Spill reporting procedures, including a list of affected agencies to be contacted in the event of a spill with current contact information for each agency.

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

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

(viii) 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.

(ix) Location of all operating, unused and abandoned wells on the property.

(g) The Planning Director shall refer the application to the applicable water district(s) or water system manager(s) with a request for comments and recommendations. The water districts or water system manager(s) shall be provided 10 working days to submit written comments for inclusion in the Planning Director's decision and conditions, if approved.

(h) Water districts and water systems with Drinking Water Protection Areas certified by the Oregon Department of Human Services may appeal a Planning Director decision to allow the storage, use, or production of hazardous materials within a Surface or Groundwater Source Protection Area, without having to pay the initial appeal fee normally required in Lane Manual 60.851.

(8) Performance Standards. New commercial activities located in the DWP Overlay Zone including businesses that have received approval for an increase or alteration of a non-conforming use as provided for in LC 16.298(7)(b), that involve the storage or use of more than 20 gallons of non-exempt hazardous materials shall be allowed upon compliance with the following conditions:

(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 most recent Fire Code adopted by Lane County.

(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 (Uniform Fire Code Articles 2 and 8003.1.3.3).

(c) Requirements found in Uniform Fire Code Appendix II-E 3.2.6 for a monitoring program and in Article 8003.1.3.3 for monitoring methods 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) Requirements found in Uniform Fire Code Appendix II-E Section 3.2.7 for monthly in-house inspection and maintenance of containment and emergency equipment for all amounts of non-exempt hazardous materials that pose a risk to a surface or ground water source shall be met.

(e) A Hazardous Material Management Plan shall be prepared by the applicant in accordance with LC 16.298(7)(e) and a copy submitted to the local water district(s) or water system manager(s). This plan must be updated annually and kept on the premises.

(9) Agency Review. Decisions made by Lane County under this ordinance 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.

(10) Warning and Disclaimer of Liability. The degree of drinking water protection required by this ordinance 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 this ordinance be construed to guarantee the purity of the surface or ground waters or guarantee the prevention of contamination. Therefore, this ordinance 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 this ordinance or any administrative decision made under this ordinance.