

## AGENDA COVER MEMORANDUM



Memorandum Date: September 17, 2010  
First Reading Date: October 5, 2010  
Second Reading/ Public Hearing Date: October 26, 2010

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**TO:** LANE COUNTY BOARD OF COMMISSIONERS &  
LANE COUNTY PLANNING COMMISSION

**DEPARTMENT:** Public Works, Land Management Division – Long Range Planning

**PRESENTED BY:** Keir Miller, Associate Planner

**AGENDA ITEM TITLE:**

- 1) ORDINANCE 8-10 – IN THE MATTER OF AMENDING CHAPTERS 10 AND 16 OF LANE CODE TO MODIFY EXISTING FLOODPLAIN REGULATIONS IN ORDER TO CORRECT DEFICIENCIES; ACHIEVE CONFORMITY WITH OREGON BUILDING CODES AND TO INCORPORATE CERTAIN BEST MANAGEMENT PRACTICES AND HIGHER REGULATORY STANDARDS. (LC10.271 AND LC16.244) (Department File No. PA 10-5658)
  
- 2) ORDINANCE NO PA 1276 – IN THE MATTER OF AMENDING THE LANE COUNTY RURAL COMPREHENSIVE PLAN (RCP) BY REVISING GOAL-2, POLICY 25, TO ESTABLISH PROVISIONS FOR A DRINKING WATER PROTECTION OVERLAY ZONE; BY ADOPTING AN OFFICIAL DRINKING WATER PROTECTION OVERLAY ZONE MAP; BY APPLYING THE OVERLAY ZONE TO PROPERTIES WITHIN IDENTIFIED GROUNDWATER AND SURFACE WATER PROTECTION AREAS AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES. (Department File No. PA 10-5659)
  
- 3) ORDINANCE 9-10 – IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO CODIFY DRINKING WATER PROTECTION OVERLAY ZONE REGULATIONS. (LC16.298) (Department File No. PA 10-5659)

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### 1. MOTIONS:

**For October 5, 2010:** Move approval of the first reading and setting the second reading and public hearing on Ordinance No. 8-10, Ordinance No. PA 1276 and Ordinance No. 9-10 for October 26, 2010, at 6:30 p.m. in Harris Hall of the Lane County Public Service Building.

**For October 26, 2010:**

1. Move approval of Ordinance No. 8-10
2. Move approval of Ordinance No. PA 1276 and Ordinance No. 9-10.

Note on the motions: Ordinance No. PA 1276 and Ordinance No. 9-10 are companion pieces and must be adopted together.

## **2. AGENDA ITEM SUMMARY:**

Ordinance No.8-10, consists of a series of amendments to Lane County's existing floodplain regulations (Lane Code Chapters 10.271, Floodplain Combining District (/FP) and 16.244 Floodplain Combining Zone (FP/RCP)). The proposed amendments have been drafted in order to: 1) correct errors and other deficiencies with existing code language, 2) update regulations to maintain consistency with current Oregon Specialty Building Codes, and 3) codify best management practices and higher regulatory standards to help reduce threats to public health and safety and achieve other related benefits.

If adopted, Ordinance No. PA 1276 and Ordinance No. 9-10 will:

- Amend the Rural Comprehensive Plan (RCP) and Lane Code Chapter 16.012 to establish provisions for a new drinking water protection overlay zone
- Enact a new overlay zone - Lane Code 16.298, Drinking Water Protection Overlay Zone (/DWP-RCP)
- Enact an Official Drinking Water Protection Overlay Zone Map and apply the provisions of LC16.298 to all designated surface and groundwater protection areas identified on the official map

The Lane County Planning Commission (LCPC) is being asked to make recommendations to the Board of Commissioners as whether to adopt, modify or not adopt the proposed ordinances. The Board is being asked to deliberate and make final determinations on the proposed ordinances.

## **3. BACKGROUND/IMPLICATIONS OF ACTION**

### **3.1 Board Action and Other History**

The following is a summary of the seminal events that have brought the proposed ordinances before the LCPC and the Board. More detailed background information regarding this effort can be found in the work session packet materials, included as Attachments 8-11, to this memo.

In 2008, at the request of local utility providers and public water system operators, the Land Management Division (LMD) added several projects to its long range work program, which were intended to address land use related threats to drinking water quality. However, due to other pressing regional issues including the need to develop coordinated population forecasts, these projects were not prioritized by the Board.

On June 2, 2009, representatives from the Eugene Water and Electric Board (EWEB), Lane Council of Governments (LCOG) and the University of Oregon's Community Planning Workshop (CPW) presented information to the Planning Commission regarding land use related threats to water quality. That presentation focused on a recent review of the Lane County Development Code and land use permitting practices in riparian and flood hazard areas. The presenters opined that existing county codes and permitting practices enabled ongoing development in sensitive areas causing adverse impacts to water quality and creating possible health and safety issues.

On August 25, 2009, representatives from EWEB and local watershed councils shared a similar presentation with the Board of Commissioners and urged the County to address these issues by making floodplain and water quality planning work a priority for the Land Management Division.

On November 10, 2009, the Board approved LMD's 2010 work program. As part of that program the Board directed LMD to work with a Technical Advisory Committee (TAC) to develop amendments to existing floodplain regulations with the goal of mitigating flood-related threats to residents and reducing costs associated with flood damages and flood insurance. In addition, staff resources were allocated to address land use related threats to surface and groundwater sources. Finally, LMD was tasked with analyzing Lane Code 16.253 (Stream Riparian Regulations) to determine what improvements could be made to those regulations that would improve their effectiveness at protecting water quality.

In January 2010, LMD began preliminary work on these projects and an initial update was provided to the Board on March 17. During that update, staff notified the Board that any substantial revisions to the existing riparian regulations would likely compel Lane County to address the 1996 revised Oregon Administrative Rules (OAR 660-23-000), which outline procedures and requirements for complying with Statewide Planning Goal 5. Further, the Board was informed that conducting such a Goal 5 program would be a lengthy and involved process and would exceed staffing resources for the current year.

The Board directed staff to continue to investigate the feasibility of revising the riparian regulations but also instructed staff to focus efforts on amending existing floodplain regulations and the development a Drinking Water Protection Overlay Zone, with input and direction from the TAC.

Additional status updates were provided to the Board on April 27 and July 27, 2010.

### **3.2 Proposed Code Amendments**

Throughout the spring and summer of 2010 staff worked closely with the Technical Advisory Committee to develop proposed floodplain regulation amendments and drinking water protection standards. At the direction of the Board, the TAC included representatives from the following agencies and organizations:

- Oregon Department of Environmental Quality
- Lane Council of Governments
- Springfield Utility Board
- Eugene Water and Electric Board
- University of Oregon – Community Planning Workshop
- The McKenzie Watershed Council
- The Middle Fork Willamette Watershed Council
- The McKenzie River Trust

It should be noted that the TAC was not established as a stakeholder group, nor did its composition represent a true cross-section of stakeholder interests. Rather, the TAC's role has been to provide technical expertise, ideas and recommendations for LMD staff to use and consider while developing the proposed code amendments.

In addition to input provided by the TAC, the other key sources of information that were drawn upon in drafting the proposed amendments included:

- Language provided in the 2010 Department of Land Conservation and Development Oregon Model Flood Ordinance

- Language found in the Oregon Department of Environmental Quality’s Drinking Water Protection Overlay District Model Code
- Comments provided during a stakeholder issue identification process conducted by Oregon Consensus Group in January and February of 2010
- Issues, threats and identified ordinance deficiencies related to floodplains and riparian areas compiled by staff and listed in the table provided an attachment to the July 6, 2010, work session materials included as Attachment 8 to this memo
- Guidance found within the FEMA technical bulletin: CRS Credit for Higher Regulatory Standards
- Research developed by EWEB and the University of Oregon’s Community Planning Workshop and presented in their report: EWEB Source Water Protection Project: Best Management Practices and Model Ordinance Review

**AMENDMENTS TO LANE CODE 10.271 AND 16.244**

Proposed amendments to Lane County’s existing floodplain regulations are shown in Table 1, below. These changes can be grouped into 3 general categories:

1. Required house keeping changes needed to correct existing code deficiencies, errors or outdated language (referenced as “Intent – HK” )
2. Updates necessary to maintain consistency between Lane Code and Oregon Specialty Building Codes (referenced as “Intent– BC”)
3. Updates to incorporate identified floodplain best management practices and higher regulatory standards (referenced as “Intent– BMP/HRS”)

The text of all changes shown in both legislative and final formats have been included as Attachment 1 to this memo.

Table 1.

Revision Number:	Modified Code Sections:		Proposed Changes
	Chapter 10	Chapter 16	
1	10.271-05	16.244(1)	Language added to the Purpose section of the ordinances to reflect the importance of protecting the beneficial functions of the floodplain. (Intent – BMP/HRS)
2	10.271-12	16.244(3)	Code section reorganized and definitions section inserted. The following definitions have been added or modified: Area of Special Flood Hazard, Bankfull Stage, Breakaway Wall, Development, Critical Facility, Datum, Digital FIRM, Encroachment, Flood Hazard Determination, Floodway, Flood Protection Elevation, Freeboard, Hazardous Materials, Highest Adjacent Grade, Letter of Map Change, Lowest Floor, Manufactured Dwelling, Market Value, Mean Sea Level, Natural Elevation, New Construction, Primary Containment, Secondary Containment, Start of Construction, Substantial Damage. (Intent– BMP/HRS)
3	10.271-12	16.244(3)	Definitions of the terms: “Existing Manufactured Home Park or Subdivision” and “Expansion to an Existing Manufactured Home Park or Subdivision” have been deleted. (Intent - BC)

Revision Number:	Modified Code Sections		Proposed Changes (Table 1, continued)
	Chapter 10	Chapter 16	
4	10.271-15(1)	16.244(4)(a)	New language added to clarify that the FIS and FIRM are on file in the Land Management Division. (Intent –HK)
5	10.271-25	16.244(6)	Code section reorganized and language added to specify the designation of a Floodplain Administrator. (Intent - HK)
6	10.271-30	16.244(7)	Code section reorganized. New language inserted clarifying the duties and responsibilities of the Floodplain Administrator. (Intent – HK and BMP/HRS)
7	10.271-40	16.244(8)	Existing practice of how floodplain permits and floodway permits are to be processed have been clarified. (Intent - HK)
8	10.271-45(1)	16.244(9)(a)	Outdated references to AH and Numbered A Zones have been deleted. Requirements for missing AO Zone have been added. (Intent - HK)
9	10.271-45(1)(d)	16.244(9)(a)(iv)	Language added to codify existing requirement that agricultural structures, which are exempt from building permits, are prohibited in the SFHA. (Intent - HK)
10	10.271-45(3)	16.244(9)(c)	Section added requiring critical facilities to be sited outside the 500 year floodplain. (Intent – BMP/HRS)
11	10.271-45(4)(a)	16.244(9)(d)(i)	Floodway requirements substantially modified to prohibit most new development in the floodway unless the proposed use is a specified exception or this standard would deny any reasonable use of the property. (Intent – BMP/HRS)
12	10.271-45(4)(b)	16.244(9)(d)(ii)	Language added to codify floodway development exceptions. (Intent – BMP/HRS)
13	10.271-45(4)(c)	16.244(9)(d)(iii)	Language added to provide relief from floodway standards if proposed regulations would render a lot not developable. (Intent – BMP/HRS)
14	10.271-45(4)(d)	16.244(9)(d)(iv)	Language added to require temporary encroachments in floodway to meet standards specified in referenced FEMA guidance materials. (Intent – BMP/HRS)
15	10.271-45(4)(f)	16.244(9)(d)(vi)	Language added to prohibit land divisions and property line adjustments in the floodway unless a development site is identified outside of the floodway on the newly proposed / reconfigured parcels. (Intent – BMP/HRS)
16	10.271-45(4)(g)	16.244(9)(d)(vii)	Language added to prohibit new solid board fencing in the floodway unless it is built to breakaway or pass through standards. (Intent – BMP/HRS)
17	10.271-45(5) Table 1	16.244(9)(e) Table 1	Foundations and Anchoring: Criteria updated for mobile home foundations to maintain consistency with Oregon Building codes. (Intent - BC)

Revision Number:	Modified Code Sections Chapter 10 Chapter 16	Proposed Changes (Table 1, continued)
18	10.271-45(5) Table 1	16.244(9) (e) Table 1 Foundations and Anchoring: Criteria updated for mobile home foundations and references eliminated to manufactured homes in existing manufactured home parks. Also, soil pressure foundation requirement updated from 1000 psf to 1500 psf. (Intent - BC)
19	10.271-45(5) Table 1	16.244(9) (e) Table 1 Utilities: Language added to require new or replacement septic systems to be setback from the floodplain a minimum of 25 feet when there is a suitable location on the property outside of the floodplain. (Intent – BMP/HRS)
20	10.271-45(5) Table 1	16.244(9) (e) Table 1 Elevation: New standards added to increase the lowest floor elevation requirement for any new or substantially improved structures to 3 feet above Highest Adjacent Grade (HAG) in zone A or AO and 2 feet above Base Flood Elevation (BFE) in Zone AE. In addition, requirements for elevation of manufactured homes modified to be consistent with Oregon Building codes. (Intent – BMP/HRS)
21	10.271-45(5) Table 1	16.244(9) (e) Table 1 Elevation of Recreational Vehicles: Criteria reformatted. (Intent - HK)
22	10.271-45(5) Table 1	16.244(9) (e) Table 1 Enclosed Areas: Language added to require flood vents to be located on separate walls within fully enclosed areas below the lowest floor. (Intent - HK)
23	10.271-45(5) Table 1	16.244(9) (e) Table 1 Subdivisions and Partitions: Language amended to clarify that the provisions of this section apply to both subdivisions and partitions. Language added to require that any new residential lots have an adequately sized building site outside of the Floodway. (Intent – HK & BMP/HRS)
24	10.271-45(5) Table 1	16.244(9) (e) Table 1 Wet Flood Proofing of Accessory Structures: Language added to codify standards needed to obtain a wet flood proofing permit in order to eliminate the need to obtain a variance to wet flood proof a structure. (Intent - HK)
25	10.271-45(5) Table 1	16.244(9) (e) Table 1 Fill Material: Language added to codify currently enforced requirements for the placement of fill within the floodplain and to prohibit new landfills and dumps within the floodplain. (Intent – HK & BMP/HRS)
26	10.271-45(5) Table 1	16.244(9) (e) Table 1 Alteration of a Watercourse: Language added to codify submittal and notification requirements that must be addressed when the alteration of a watercourse is proposed. (Intent – BMP/HRS)
27	10.271-55(2)	16.244(11) (b) Variance criteria language added to provide relief when application of the proposed floodway standards would render a lot unbuildable for a dwelling or for the primary use allowed in the base zone. (Intent –BMP/HRS)

All proposed housekeeping revisions and those needed to maintain consistency with building codes are relatively minor in nature and are not anticipated to be controversial. However, some of the amendments intended to incorporate floodplain best management practices and higher regulatory standards do have the potential to be controversial. These include:

- **Change in substantial improvement definition / threshold** - This change would require that existing structures located in the floodplain, which are structurally improved or repaired beyond 25% of their current value, meet floodplain requirements.
- **Addition of cumulative improvement clause** - This addition would require Lane County to track improvements to structures in the floodplain from year-to-year in order to determine when substantial improvements occur.
- **Requirement that critical facilities be sited outside of the 500 year floodplain** – This change will mean that new critical facilities, such as fire and law enforcement stations, hospitals and waste treatment facilities, be located outside of the 500 year floodplain.
- **Modification of Floodway development requirements** - These changes would reduce the amount of development that could potentially occur within the regulatory floodway. The proposed amendments would not limit all development and certain exceptions for public projects, utilities, etc., are provided. In addition, there are options included in the proposed language that could enable uses allowed within the underlying base zone, if the proposed changes would deny any reasonable use of the property. However, the size, location and foundation design of proposed structures would be regulated.
- **Septic systems setback requirement** - This amendment will require that new and replacement septic systems must be setback 25 feet from the regulated floodplain when there is a suitable location on the lot or parcel to do so.
- **Limits on land divisions in the floodway unless a building location is available** - This change would require that any newly proposed land divisions must result in lots which have a demonstrable building envelope entirely outside of the floodway.
- **Structural Elevation requirements** - These changes would increase the lowest floor elevation requirements by one foot for new or substantially improved structures within the floodplain.

These changes were developed to better position Lane County to mitigate flood risks and preserve human life, health and property. In addition, it is anticipated that these changes will improve Lane County's Community Rating System score, which will result in lowered flood insurance premiums for residents. A more comprehensive rationale and justification for the proposed floodplain regulation changes has been authored by the Technical Advisory Committees and provided as Attachment 6.

## **PROPOSED DRINKING WATER PROTECTION OVERLAY ZONE - RCP & LANE CODE AMENDMENTS**

A drinking water protection ordinance is a regulatory tool implemented by city or county governments to address proposed and/or existing development and its potential impact on water quality. These ordinances typically define the resource (as a mapped overlay area) and enact specific requirements for land uses and development within these boundaries. Ordinances applying to sites that pose a risk to water quality within the overlay area may include some or all of the following:

- a prohibition on various land uses (such as landfills or underground fuel storage tanks)

- requirements that buildings and septic systems be setback from sensitive areas
- rules preserving the bank stability and filtering functions provided by a healthy vegetated streamside area
- special permitting or siting requirements (i.e. placing limitations on the use of toxic and hazardous materials, pesticides, salts)
- performance standards (i.e. requiring secondary containment for petroleum or chemical storage over a certain volume)

Lane County's proposed Drinking Water Protection Overlay Zone is designed to protect sources of public drinking water – both groundwater and surface water. The 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

Surface Water 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.

Groundwater 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 well, spring or well field within a given time period. The Groundwater Protection Areas are further divided into two zones:

- Zone A: Include areas located within a time-of-travel zone of less than two (<2) years
- Zone B: Include areas within a time of travel zone between 2 and 20 years.

A map of proposed surface and groundwater protection areas is included as Exhibit B to Attachment 4 of this memo.

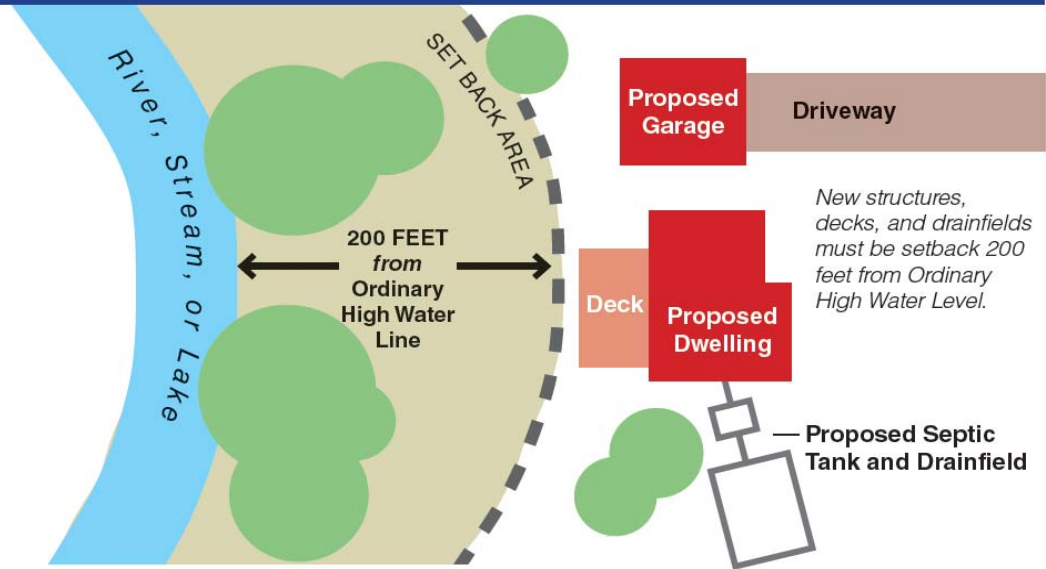
The boundaries of the mapped ground and surface water protection areas and time of travel zones are based directly from source water assessments conducted by the Oregon Department of Environmental Quality (DEQ). The specific source water assessment methodology used by DEQ in delineating these areas is described in Attachment 5.

### OVERVIEW SURFACE WATER STANDARDS

With some notable exceptions, the proposed surface water protection regulations would prohibit vegetation removal and certain new development such as the placement of a dwelling, garage or septic system within surface water protection areas. This requirement would mean that new development must be setback a minimum of 200 feet from the ordinary high water level of a protected river, stream, lake or reservoir. Refer to the Scenario 1 diagram, below.

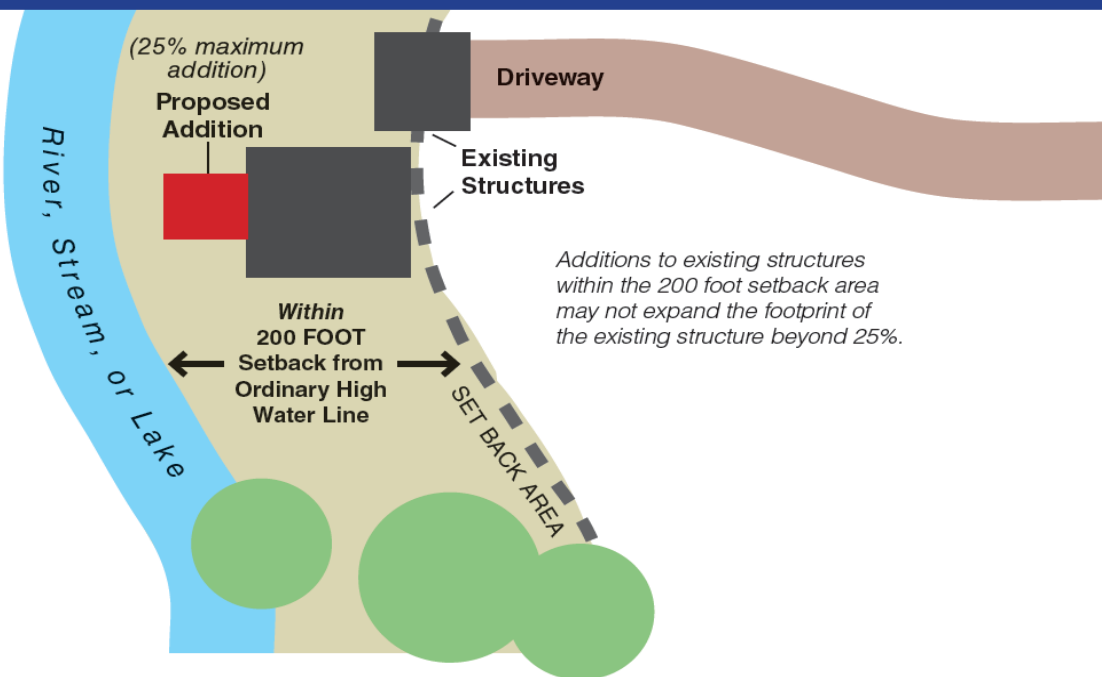
Exceptions for vegetation removal (i.e. thinning, cutting, applying herbicides, etc.) are provided for a variety of uses including; exempt farm and forestry practices, removal of dead or diseased vegetation that poses a safety hazard, maintenance of required fire safety "fuel breaks", ecological enhancement projects, and others. A complete list can be found in Section (6)(b)(i)-(viii).

## Scenario 1: New Development



The proposed regulations also allow for additions to existing structures within setback areas, including the addition of decks and similar expansions to the “footprint” of a structure. These expansions are limited to 25% of the total footprint size of the structure being expanded. For example, if the footprint of an existing structure is 2,000 square feet, then an addition of up to 500 square feet would be permissible. There is no limitation to vertical (second story) additions that do not expand a structure’s footprint. Refer to the Scenario 1 diagram, below.

## Scenario 2: Addition to Existing Structure



Replacement dwellings would also be permissible within surface water setback areas if a suitable replacement location was not available elsewhere on the property. Finally, variance exceptions have been provided where the application of the proposed setback standards would render a lawfully created lot unbuildable.

**OVERVIEW OF GROUNDWATER PROTECTION STANDARDS**

Inside of proposed Zone A and Zone B protection areas, new high-risk land uses such as injection wells, disposal and treatment of hazardous materials and automobile wrecking yards would be prohibited. Within Zone B other new uses such as automobile fueling/service stations or new facilities that use, store or handle hazardous materials could be conditionally permitted through a Director level review process.

In addition, the storage of hazardous chemicals for residential, rural home business or rural home occupation use would be limited to 110 gallons per household in both Zone A and B. In instances where higher quantities are needed, property owners would have the option to submit a statement to Lane County certifying that any hazardous materials kept in excess of 110 gallons would be stored in some type of secondary containment vessel, such as a watertight tub or barrel. The purpose of a secondary containment vessel is to capture any hazardous materials that may leak out of their original (primary) container.

Lastly, due to the possible contamination of drinking water sources from hazardous materials spilled or released into the ground near protected rivers, lakes or streams, the groundwater protections standards for Zone A are also applicable within all surface water protection (setback) areas.

Scientific justification and rationale for the proposed drinking water protection standards has been formulated by the Technical Advisory Committee and provided as Attachment 7.

**AFFECTED AREAS**

Table 2, below, shows the total number of impacted tax lots and the total acreage affected (by zone designation) of the proposed surface and ground water protection regulations. In addition, the table shows the extent of potentially affected tax lots and acreage for a number of surface water setbacks scenarios, other than the proposed 200 foot setback.

Table 2

Surface Water Protection Areas Setbacks		Number of Affected Taxlots				Totals
		Residential	Farm/Forest	Commercial/Industrial	Other	
300		4,233	4,098	273	457	9,061
Proposed - 200		3,312	3,666	194	388	7,560
150		2,992	3,455	174	364	6,985
100		2,565	3,264	135	342	6,306

Surface Water Protection Area Setbacks		Acreage				Totals
		Residential	Farm/Forest	Commercial/Industrial	Other	
300		6,123	210,102	362	2,462	219,049
Proposed - 200		3,536	107,586	211	1,609	112,942
150		2,664	80,825	156	1,258	84,903
100		1,782	54,004	101	871	56,758

Table 2, continued

Ground Water Protection Areas	Number of Affected Taxlots				Totals
	Residential	Farm/Forest	Commercial/Industrial	Other	
Completely within Zone A	583	27	20	26	656
Completely within Zone B	1,991	258	252	55	2,556
Partially within Zone A	576	195	64	148	983
Partially within Zone B	1,280	626	92	201	2,199

Ground Water Protection Areas	Acreage				Totals
	Residential	Farm/Forest	Commercial/Industrial	Other	
Completely within Zone A	613	217	29	57	916
Completely within Zone B	2,979	3,412	381	234	7,006

### REQUIRED AMENDMENTS

Adoption of a drinking water protection overlay zone will require several actions including:

1. Amending Lane Code Chapter 16.012 (Zone Classifications) to include a Drinking Water Protection Overlay Zone in the list of established zones.
2. Amending the Rural Comprehensive Plan, Goal 2, Policy 25 to include provisions for a Drinking Water Protection Overlay Zone.
3. Amending Lane Code Chapter 16 to include section 16.298 (Drinking Water Protection Overlay Zone, DWP-RCP)
4. Adopting an Official Drinking Water Protection Overlay Zone Map
5. Applying the Private Use Airport Overlay Zone to the properties within the groundwater and surface water protection areas identified on the overlay zone.

### **3.3 Policy Issues**

As discussed throughout this memo, updates to existing floodplain regulations and the development of a drinking water protection overlay zone have been proposed to achieve related objectives. Floodplain regulation updates are designed to enhance and preserve the natural and beneficial functions of floodplains, to help protect and maintain water quality and to reduce threats to public health and safety. The Drinking Water Protection Overlay Zone is intended to promote public health and safety by protecting critical sources of public drinking water.

To the extent possible, staff has attempted to craft regulations which are flexible and balanced and which would not deny land owners all reasonable use of their properties. However, in determining whether or not to adopt these ordinances, the Board will need to determine if the recommended regulation changes go too far in restricting the rights of individual property owners, or if the proposed regulations are in fact prudent and reasonable and adequately serve the public's interest.

In this regard a few key policy issues and questions that may arise during the public hearing include:

- Should new development be prohibited within the entire extent of the 100-year floodplain or just within the regulatory floodway, or neither
- Are the proposed 200 foot surface water protection setbacks too much or not enough to adequately protect sources of drinking water

- Should replacement dwellings in the same footprint be allowed within surface water protection areas
- Should some percentage vegetation removal within surface water protection areas be allowed

Due to the truncated timelines of this effort, staff was not able to conduct a comprehensive polling of citizens to determine attitudes regarding these or other specific changes being proposed. However, relevant research was conducted a decade ago during watershed level Periodic Review work and as a precursor to the proposed Critical Habitat Conservation Zone (CHCZ), developed by the Land Management Division in consultation with the Upper Willamette Chinook Workgroup.

In 1999, LMD, with the assistance of the University of Oregon's Community Planning Workshop, conducted a survey of 6,800 property owners in the McKenzie and Mohawk Valleys. Approximately 1,050 addresses responded. Some of the questions in the survey involved issues related to floodplain and riparian development. Survey responses on these issues were:

**Issue: Protecting floodplains, wetlands and riparian areas from development is**

Very Important	Important	Neutral	Unimportant	Very Unimportant
56.9%	20.5%	12%	5.2%	2.6%

Note: 2.8% unaccounted for

**Issue: Maintaining and protecting local water quality is**

Very Important	Important	Neutral	Unimportant	Very Unimportant
71%	25.5%	2%	1%	0.5%

**Issue: More development should be allowed in the 100-year floodplain**

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
30.9%	30.5%	20.8%	11.6%	6.2%

**Issue: The fifty-foot riparian setback (for non-resource lands) is too restrictive**

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
28.7%	31.5%	20.6%	10.5%	8.7%

Source: Lane County Draft RCP Working Paper on LC16.253 - Class I Stream Riparian Regulations June, 20, 1999

These responses are over a decade old and limited to property owners in the McKenzie and Mohawk valleys, however, it is clear that at the time this survey was conducted, approximately two-thirds of respondents felt that development near floodplains, wetlands and riparian areas should be limited and that the functions of those resources should be protected. Based on the growing awareness of the threats posed by natural hazards such as floods and the increasing demand for clean and reliable sources of drinking water, it is unlikely that these views have declined in the last decade.

### 3.4. Board Goals

Efforts to protect water quality and natural floodplain functions relate to the following goal, which can be found on page 13 of the Strategic Plan:

- *Maintain a healthy environment with regard to air quality, water quality, waste management, land use and parks*

Code amendments of this nature would also seem to support the 2008-2010 economic development goal to “*Focus on what we do best and take advantage of our unique strengths and image.*” Lane County is recognized as an area with high-quality environmental assets. These assets contribute to Lane County’s image as a highly livable community and play an important role in attracting both businesses and employees to the region.

In addition, taking responsible steps to maintain and improve the County’s CRS rating reflects a commitment to enhance public safety, promote the County’s economic resiliency to flood events and protect the natural and beneficial functions of floodplains.

Finally adoption of the proposed ordinances, after conducting a public hearing, supports the following Lane County Strategic Goal:

- *Provide opportunities for citizen participation in decision making, voting, volunteerism and civic and community involvement.*

### **3.5. Financial and/or Resource Considerations**

There are no direct or immediate financial and/or resource considerations regarding the proposed amendments to the existing floodplain regulations. These changes can be administered by staff under the existing LMD permit processing workflow and fee structure.

Administration of the land use review components of the proposed Drinking Water Protection Overlay Zone can also be carried out and funded through the current permit application process. However, education to landowners regarding any adopted drinking water standards and proper enforcement of such standards would benefit greatly from additional funding/resources.

Regulations can be an effective tool to help achieve desired outcomes but education and dedicated enforcement of adopted regulations is also highly important. Fortunately, Lane County can benefit from the expertise and resources of other agencies and partners in the region. For example, some members of the TAC have already dedicated a significant amount of time assisting with the development of land owner guidance documents and other products. In addition, on October 5, 2010, the Eugene Water and Electric Board will be evaluating various water quality protection initiatives and funding options. One such option under consideration will be the development of a dedicated funding stream to, among other things, provide financial assistance to Lane County for proper riparian, floodplain and drinking water quality-related land use planning and enforcement within the McKenzie Watershed. Currently, EWEB staff is evaluating a possible funding range between \$75,000 - \$150,000 per year.

#### Measure 49 / Regulatory Takings Liability & Considerations

As previously described the proposed floodplain amendments and drinking water protection regulations were written in such a manner so as to prevent possible claims of inverse condemnation by property owners. Where necessary, exceptions and variance options have been written into the proposed amendments, which would prevent the regulations from denying property owners all reasonable use of their land. Because of this, it is highly unlikely that a legitimate regulatory takings argument could be made in opposition of the proposed regulations.

Further, ORS 195.305 (Compensation for restriction of use of real property due to land use regulation) states:

Just compensation under ORS 195.310 to 195.314 shall be based on the reduction in the fair market value of the property resulting from the land use regulation... this section shall not apply to land use regulations that were enacted prior to the claimant's acquisition date or to land use regulations:

(a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;

(b) Restricting or prohibiting activities for the protection of public health and safety [emphasis added]

Protection of public health and safety is defined by ORS 195.300 as:

A law, rule, ordinance, order, policy, permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, **flood**, storm, **pollution**, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, **health and sanitation regulations**, **solid or hazardous waste regulations** and **pollution control regulations** [emphasis added]

These amendments are being proposed to reduce the possible health and safety risks associated with flooding and contamination of sources public drinking water, therefore they appear to be exempt from possible claims pursuant to Ballot Measure 49.

### 3.6 Analysis

The Board is being asked to adopt Ordinance No. 8-10 to amend Lane Code Chapters 10.271 and 16.244. Throughout the findings analysis below, these amendments shall be referred to as the "floodplain amendments". The Board is also being asked to adopt Ordinance No. PA 1276 and Ordinance No. 9-10 to amend the Rural Comprehensive Plan and establish a Drinking Water Protection Overlay Zone. These changes will be referred to as the "drinking water amendments" throughout these findings. Furthermore, when references are made simply to "the(se) amendments" such references shall be understood to include both the floodplain and drinking water amendments.

#### Applicable Criteria

The proposed amendments are subject to the applicable criteria identified in Lane Code 12.005, 12.050, 16.252(2), 16.400.

#### ***LC 12.005 Purpose.***

***(1) The board shall adopt a comprehensive plan. The general purpose of the comprehensive plan is the guiding of the social, economic, and physical development of the County to best promote public health, safety, order, convenience, prosperity and general welfare.***

#### Finding

These amendments do not impair the purpose of the Rural Comprehensive Plan as the guiding document for Lane County. Adoption of these amendments will promote public health, safety, order, convenience, prosperity and general welfare of the citizens of Lane County by amending existing floodplain regulations and enacting additional regulations to reduce possible contamination of sources of public drinking water. Further explanation of how the proposed amendments have been designed to promote public health and safety are outlined in

Attachment 6, Rational and Scientific Justification for proposed Floodplain Regulation Amendments, and Attachment 7, Rational and Scientific Justification for Proposed Drinking Water Protection Overlay Zone, and incorporate herein by reference. Further the adoption of the floodplain amendments will promote consistency at the local level with applicable Oregon Specialty (building) Codes. Finally, the amendments will not affect compliance of the Rural Comprehensive Plan and implementing regulations with the Statewide Planning Goals or other applicable state law.

**LC 12.050 Method of Adoption and Amendment**

**(1) The adoption of the comprehensive plan or an amendment to such plan shall be by an ordinance.**

Finding

The amendments to the Rural Comprehensive Plan and Lane Code will be adopted by ordinance when enacted by the Board.

**(2) The Board may amend or supplement the comprehensive plan upon a finding of:**

- (a) an error in the plan; or**
- (b) changed circumstances affecting or pertaining to the plan; or**
- (c) a change in public policy; or**
- (d) a change in public need based on a reevaluation of factors affecting the plan; provided, the amendment or supplement does not impair the purpose of the plan as established by LC 12.005 above.**

Finding

As described throughout this memo and also described in Attachment 6 to this memo, the proposed floodplain amendments have been developed to:

- 1. Address identified errors within the codes
- 2. Respond to public concern regarding the adequacy of existing floodplain regulations to protect life, health and property
- 3. In response to direction from the elected policy makers within Lane County

For these reasons the floodplain amendments meet the requirements of (a), (b), (c) and (d), above

As described throughout this memo and also described in Attachment 7 to this memo, the proposed drinking water amendments have been developed to:

- 1. Respond to a public need for county level actions to address threats to drinking water
- 2. In response to direction from the elected policy makers within Lane County

For these reasons the drinking water amendments meet the requirements of (b), (c) and (d), above

**LC 16.252 Procedures for Zoning, Re-zoning, and Amendments to Requirements.**

**(2) Amendments shall comply with this section and shall achieve the general purpose of this chapter and shall not be contrary to the public interest.**

Finding

The amendments have been promulgated by a need to properly manage development within Lane County so that risks associated floodplain development are minimized and that possible contamination of public water, resulting from adverse land uses or land use development patterns, is minimized. For these reasons and for reasons outlined in Attachments 6 and 7 to

this memo, these amendments achieve the general purpose of this chapter and shall not be contrary to the public interest.

**LC 16.400 Rural Comprehensive Plan Amendments.**

**(6) Plan Adoption or Amendment - General Procedures. The Rural Comprehensive Plan, or any component of such Plan, shall be adopted or amended in accordance with the following procedures:**

**(h) Method of Adoption and Amendment.**

**(i) The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.**

Finding

The amendments shall be adopted by ordinance when enacted by the Board.

**(iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings:**

**(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.**

Finding

The proposed amendments will not affect compliance of the Rural Comprehensive Plan and implementing regulations with the Statewide Planning Goals or other applicable state law.

**(bb) For Major and Minor Amendments as defined in LC16.400(8)(a) below, the Plan amendment or component is:**

**(i-i) necessary to correct an identified error in the application of the Plan; or**

**(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or**

**(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or**

**(iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; or**

**(v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.**

Finding

As described throughout this memo and also described in Attachment 6 to this memo, the proposed floodplain amendments have been developed to:

1. Address identified errors within the codes
2. Respond to public concern regarding the adequacy of existing floodplain regulations to protect life, health and property
3. In response to direction from the elected policy makers within Lane County

For these reasons the floodplain amendments meet the requirements of (i-i), (ii-ii), and (v-v), above

As described throughout this memo and also described in Attachment 7 to this memo, the proposed drinking water amendments have been developed to:

1. Respond to a public need for county level actions to address threats to drinking water
2. In response to direction from the elected policy makers within Lane County

For these reasons the drinking water amendments meet the requirements of (ii-ii), and (v-v), above

Finally, additional findings of support specific to the drinking water amendments have been made and are provided as Exhibit C to Ordinance No, PA 1276, included as Attachment 3.

### **3.7 Alternatives / Options**

- Option 1:** Approve the ordinances as presented.
- Option 2:** Direct staff to revise the ordinances and return for approval on a date certain set by the Board.
- Option 3:** Do not approve the ordinances.

## **4. TIMING / IMPLEMENTATION**

On September 7, 2010, the Department of Land Conservation and Development was sent notice of the proposed floodplain and drinking water ordinances.

On September 28, 2010, 8,930 property owners were mailed a Ballot Measure 56 notice informing them of the proposed changes to LC 10.271 and LC 16.244. On this same date, 8,992 property owners were mailed a Ballot Measure 56 notice informing them of the proposed drinking water protection ordinances.

On October 5, 2010, a legal ad was published in the Register Guard and referral was sent to interested parties and agencies announcing the joint Lane County Board of Commissioners and Planning Commission Public Hearing for the proposed amendments.

On October 26, 2010, the Lane County Board of Commissioners and Planning Commission will conduct a second reading and public hearing prior to issuing a decision. If enacted by the Board of Commissioners, the proposed amendments will become effective 30 days following enactment of the ordinances.

## **5. RECOMMENDATION**

Staff recommends Option 1.

## **6. FOLLOW-UP**

Should the Board choose Option 2, staff would modify the language as directed and return for a third reading on November 9, 2010, or on another date certain determined by the Board.

Notice of Board action will be provided to the Department of Land Conservation and Development and all interested parties upon decision as required by law.

## **7. ATTACHMENTS:**

1. Ordinance No. 8-10 w/ revisions to LC 10.271 and LC16.244 in legislative format
2. Ordinance No. 9-10 w/ proposed text of LC16.012 and LC16.298 in legislative format

3. Ordinance No. PA 1276
  - Exhibit A – Amended RCP Policy 25
  - Exhibit B – Official Drinking Water Protection Overlay Zone Map
  - Exhibit C – Additional Findings in Support of Ordinance No. PA 1276
4. Official Drinking Water Protection Overlay Zone Map (proposed)
5. DEQ Source Water Assessment Methodology Factsheet
6. Rational and Scientific Justification for proposed Floodplain Regulation Amendments
7. Rational and Scientific Justification for Proposed Drinking Water Protection Overlay Zone
8. July 6, 2010, Work Session Materials
9. July 20, 2010, Work Session Materials
10. August 3, 2010, Work Session Materials
11. August 17, 2010, Work Session Materials