

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR JOSEPHINE COUNTY

Ordinance No. 2006 – ____

AN ORDINANCE AMENDING THE JOSEPHINE COUNTY RURAL LAND DEVELOPMENT CODE (ORD. 94-4) TO ADD AND REPLACE DEFINITIONS CONTAINED IN ARTICLE 11 REGARDING RIPARIAN TERMS; AND TO AMEND ARTICLE 72.040.B (STREAM SETBACKS) BY ADDING AND REPLACING LANGUAGE TO EXPAND USES ALLOWED WITHIN STREAM SETBACKS, AND ALSO TO SPECIFY PROCEDURES FOR GRANTING VARIANCES FOR CERTAIN USES; AND TO AMEND ARTICLE 42.030 (INITIATION OF SITE PLAN REVIEW) BY REPLACING THE LANGUAGE IN SUBSECTION 5 WITH NEW LANGUAGE REGARDING MITIGATION PLANS.

WHEREAS, in accordance with the procedures of the Josephine County Comprehensive Plan (hereinafter called Plan) at Goal 11, Policy 1, and the Rural Land Development Code (hereinafter called Code) at Article 46, the Board of County Commissioners, as a part of the county's periodic review agreement with the state of Oregon, conducted public hearings regarding revisions to the county's statewide Goal 5 program for the protection of riparian resources; and

WHEREAS, as a result of this public process, the Board of County Commissioners adopted Ordinance 2000-8 to implement the revised program for riparian resources, and submitted this ordinance to the Oregon Department of Land Conservation and Development pursuant to its periodic review responsibilities; and

WHEREAS, on December 31, 2003, the Oregon Department of Land Conservation and Commission advised Josephine County that the riparian components of Ordinance 2000-8 were acknowledged to comply with Oregon Administrative Rule 660-023-0090 (Riparian Corridors); and

WHEREAS, the Department's order specifies the county must address the remand order by submitting products that comply with its requirements by December 31, 2004; and

NOW, THEREFORE, based on the foregoing authority and procedures, the Board of County Commissioners for Josephine County, Oregon, hereby takes the following legislative action to amend the Plan and Code by deleting and replacing certain provisions within the county's Rural Land Development Code as set forth herein.

Section 1. Adoption

I. Section 11.030, *DEFINITIONS*, shall be amended by the inclusion of new definitions and deletion of an existing definition as follows:

NEW DEFINITIONS

RIPARIAN AREA. The area adjacent to a river, lake, stream, or wetland consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

RIPARIAN CORRIDOR. A space that surrounds a riparian area that includes the water areas, fish habitat, adjacent riparian areas, and wetlands that are within the riparian area setback boundary.

RIPARIAN AREA BOUNDARY. A line located a certain distance back from the ordinary high water line for riparian areas in which certain uses or activities are prohibited and/or regulated to protect or enhance beneficial riparian attributes. The area within a riparian area boundary or boundaries is considered the riparian corridor setback area. See Article 72.040.B (*Riparian Corridor Setbacks*).

ORDINARY HIGH WATER LINE (OHWL). A line on the bank or shore of a riparian area to which high water ordinarily rises annually in season. The OHWL excludes exceptionally high water levels caused by large flood events. The OHWL shall be used to designate the upland edge of a riparian area for the purpose of measuring riparian corridor setbacks. The OHWL may be determined in the field by observing the following physical characteristics:

- A. The location of a clear, natural line impressed on the shore;
- B. Changes from riparian to upland vegetation (e.g., from willows to oak or fir trees);
- C. Changes in the texture of sediment deposits or the character of soils (e.g., from sand, sand and cobble, cobble and gravel to upland soils);
- D. The location below which fine debris (such as, needles, seeds, leaves, cones) are no longer present;
- E. The location at which water-carried litter or debris, water stained leaves and water lines on tree trunks become apparent; and/or
- F. Any other appropriate physical or scientific evidence that is credible to show the place where high water ordinarily rises annually in season.

DELETED DEFINITION

~~TOP OF BANK. The elevation at which water overflows the natural banks of streams or other waters of this state and begins to inundate the upland. In the absence of physical evidence, the two-year recurrence interval high water line may be used to approximate the top of bank.~~

II. Replace the existing Subsection B of Article 72 (Heights, Setbacks & Accessory Structures) with the following new Subsection B:

ARTICLE 72 - HEIGHTS, SETBACKS & ACCESSORY STRUCTURES

72.040 - SPECIAL SETBACK REQUIREMENTS

Special use and structure siting restrictions shall apply to development within the following protected areas:

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B. Riparian Corridor Setback Area. Development within riparian corridors shall be limited as follows:

1. **SETBACK DISTANCES.** The riparian corridor setback area shall be 50' wide for Class 1 Streams and 25' wide for Class 2 Streams (based upon stream classifications established and maintained by the Oregon Department of Fish and Wildlife).
2. **RIPARIAN CORRIDOR DEVELOPMENT.** Development within a riparian corridor setback area by fill or excavation, by placement of structures, by construction of impervious surfaces, or by removal of vegetation (with or without other development) is generally prohibited, except as listed in subsections 2.a through 2.j below. Approval of the following activities shall require a pre-application review pursuant to Article 42.030 (*Initiation of Site Plan Review*), and must be authorized by a development permit pursuant to Article 41.020 (*Development Permits*), prior to development. A riparian area mitigation plan may be required.
 - a. Streets, roads, and paths;
 - b. Drainage facilities, utilities, and irrigation pumps;
 - c. Water-related and water-dependent uses, such as boat ramps, landings, docks, platforms for irrigation equipment, push up dams;
 - d. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area;
 - e. Reclamation activities intended to enhance riparian habitat;
 - f. Improvements to fish habitat or fish passage;
 - g. Aggregate mining between the banks of the stream;
 - h. Forest practices in the farm or forest resource zones where the forest practice is authorized by a permit issued under the Oregon Forest Practices Act;
 - i. On-going trimming and/or maintenance programs for the improvement of riparian and non-riparian vegetation; and
 - j. Removal of non-native vegetation when replaced with native plant species.
3. **EXCEPTIONS.** Exceptions may be granted to the general prohibition of uses specified in subsection 2 above. Requests for development shall require pre-application review procedures for site plan review as set forth in Article 42.030, but shall be judged using the following standards only:

- a. The development will result in equal or better protection for the riparian area because the riparian area will be restored, buffered, or enhanced through other special measures; and
- b. The exception will not authorize alterations to occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor; or
- c. The specific use or structure proposed for the property will be rendered undevelopable by application of the riparian setback.
- d. A riparian area mitigation plan shall be required for all circumstances covered by subsections a, b and c above. The requirement for a mitigation plan may be waived if both the county and the Oregon Department of Fish and Wildlife agree a mitigation plan is unnecessary.
- e. Notice of all proposed exceptions, to include copies of proposed mitigation plans, if not waived, shall be given to the Oregon Department of Fish and Wildlife, the Division of State Lands, and the Department of Environmental Quality consistent with the notice requirements contained in Section 32.030 (*Mailed Notice*).

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III. Amend Article 42.030.A (*Initiation of Site Plan Review*), by adding the following underlined language:

42.030 - INITIATION OF SITE PLAN REVIEW

- A. The following requests shall require a pre-application review for site plan review pursuant to Article 42 of this code:
 1. The expansion, alteration or replacement of a use or structure lawfully established prior to being listed as a conditional use, or which was previously approved as a conditional use;
 2. The resumption of conditional use activities within structures that have been destroyed by casualty;
 3. Development permits within any commercial or industrial zone that involve the enlargement of existing structures or the construction of new structures or public facilities;
 4. Permits for the exploration, mining and processing of aggregate or other minerals, including geothermal resources;
 5. Development within a Floodway Hazard Area, or development that requires review of a riparian corridor development mitigation plan required by Article 72 (*Special Setback Standards*), an erosion control plan and/or storm drainage facility pursuant to Article 83 (*Erosion Control & Storm Drainage Facilities*).

or development that requires review of a wildfire hazard mitigation plan pursuant to Article 76 (*Wildfire Safety Standards*) or some other land use approval; and

6. Accessory structures that exceed the cumulative size limits contained in Section 72.060.
7. Any other request when the Director believes the facts and circumstances indicate a more comprehensive review afforded by site plan review is justified.

Section 3. Affirmation

Except as specifically amended by the provisions of this ordinance, the Josephine County Rural Land Development Code (Ord. 94-4), as previously adopted or amended, is hereby affirmed.

Section 4. Effective Date

First reading by the Board of County Commissioners this ____ day of _____, 2006.

Second reading and adoption by the Board of County Commissioners at least thirteen days from the first reading on this ____ day of _____, 2006. This ordinance shall take effect ninety days after its adoption by the Board of County Commissioners.

JOSEPHINE COUNTY BOARD OF COMMISSIONERS

Dwight F. Ellis, Chair

Jim Raffenburg, Vice-Chair

Jim Riddle, Commissioner

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

Steven E. Rich, Legal Counsel