

Memorandum Date: July 20, 2010
LCPC Meeting Date: August 3, 2010



TO: LANE COUNTY PLANNING COMMISSION

CC: LANE COUNTY BOARD OF COMMISSIONERS

FROM: Public Works Department/Land Management Division

PRESENTED BY: Keir Miller, Associate Planner

AGENDA ITEM TITLE: **WORK SESSION** / Proposed Drinking Water Protection Overlay Zone (LC 16.298)

1. **MOTION**

No motion is being proposed at this time. This is a work session discussion item only.

2. **AGENDA ITEM SUMMARY**

Land Management Division (LMD) has drafted a “drinking water protection overlay zone”. If adopted, this new ordinance will codify standards for the protection of drinking water source areas, including both surface waters (rivers and lakes) and certain community ground water systems.

The Planning Commission is being asked to review the proposed overlay zone language prior to deliberations and possible adoption during the upcoming Post Acknowledgement Plan Amendment (PAPA) process.

3. **DISCUSSION**

3.1 Background

Background information concerning this project was outlined to the Planning Commission in an earlier staff memo, dated June 21, 2010. Additional background information regarding the need for the proposed overlay zone was presented at a work session on July 6, 2010, by Karl Morgenstern, Source Water Protection Coordinator for the Eugene Water and Electric Board, and member of the Board of Commissioners’ appointed technical advisory committee (TAC) for this project.

At the July 6th meeting, staff informed the Planning Commission that the draft overlay zone language would be provided for discussion and review at the August 3rd LCPC work session. An initial draft of the proposed overlay zone language has been developed by LMD staff in consultation with the project TAC and is included as Attachment “A” to this memo.

3.2 General Overview of Proposed Water Protection Standards

The draft Drinking Water Protection (DWP) Overlay Zone consists of two regulatory elements, which contain different standards and requirements related to the protection of either *surface water source areas* or *groundwater source areas*. Surface and ground water

source areas in Lane County are based on studies and delineations generated by the Oregon Department of Human Services (DHS) and the Oregon Department of Environmental Quality (DEQ), under the Oregon Administrative Rules that apply to Oregon's EPA-approved Drinking Water Protection Program.

Using data provided by DEQ, County staff have developed a draft DWP Overlay Zone Map, which identifies both surface and ground water protection areas. The draft map may be viewed at:

<ftp://ftp.lanecounty.org/gis/outgoing/DraftSourceWaterProtectionZone/DrinkingWaterSourceAreas.pdf>

Surface Water Protection Area Standards

Adjacent to mapped surface waters that serve as a source of drinking water (or are a tributary to a source of drinking water) protection areas have been established. These protection areas extend 200 feet inland from the "ordinary high water level" (OHWL) of the water source. Similar to the existing riparian ordinance of Lane Code 16.253, the draft DWP ordinance defines the OHWL and includes enabling language to permit staff to conduct site-by-site assessments to determine the actual on the ground location of the OHWL, where necessary. Unlike the existing riparian ordinance, the language in the draft DWP zone is less flexible and does not contain the far reaching modification and alteration provisions found in LC 16.253.

Under the proposed DWP zone most new development and vegetation removal is strictly prohibited within surface water protection areas, except for a number of narrowly defined exceptions including:

- public road and utility improvements
- right-of-way vegetation management
- water dependent uses on public land
- public parks-related improvements
- stormwater management activities carried out by a public agency
- fish passage improvements and other approved habitat enhancement projects
- normal and excepted farming practices
- commercial forest practices regulated by the Oregon Forest Practices Act
- replacement of existing structures, where an alternative site outside of the DWP zone does not exist on the lot or parcel

In addition to these exceptions, variances may also be possible to enable new uses where it can be demonstrated that the application of these standards would render a lot or parcel unbuildable. Any variance sought under this provision would need to comply with the general variance criteria outlined in Lane Code 16.256.

Finally, development occurring within surface water protection areas must also conform to the ground water protection standards contained within the code. This is because inadvertently spilled or dumped hazardous materials used within close proximity to surface waters have the potential to move rapidly through shallow ground waters and impact surface waters.

Ground Water Protection Area Standards

Ground water source protection areas include the surface and subsurface areas surrounding any wells, springs, or well fields supplying a public water system, through

which contaminants have a potential to move toward and impact that water system. Within the mapped ground water protection area two different protection zones have been established: “Zone A” and “Zone B” These zones are based on DEQ/DHS delineated Time of Travel Zones (TOTZ).

Zone A includes areas located within a time-of-travel zones of less than two (<2) years to a well, spring or well field. Because there may not be adequate time to mitigate hazardous material releases within a two year or less TOTZ, potentially hazardous uses within Zone A are severely limited. Many new uses such as automobile wrecking yards, service stations, treatment of hazardous waste, injection wells and disposal of septic sludge are prohibited in Zone A.

Within Zone A, any prohibited uses in existence at the time the DWP zone is enacted would become lawful non-conforming uses. Any proposed alterations or expansions of these non-conforming uses would require the operator to upgrade their facility to meet certain water quality safety performance standards and to develop, maintain and implement a hazardous materials management plan (HMMP).

Zone B includes areas located within a time-of-travel of between 2 and 20 years. Within Zone B some new uses, which are prohibited within Zone A, would be conditionally permitted provided a HMMP is developed and water quality safety performance standards are implemented.

4. FOLLOW UP/NEXT STEPS

If needed, a fourth work session will be held on August 17th to review the proposed DWP zone in more detail.

5. ATTACHMENTS

- A. Proposed Drinking Water Protection Overlay Zone
- B. Planning Commissioners Journal Article: [Overlay Zoning to Protect Surface Waters](#)