

**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 zone 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 ~~the exterior~~ alteration of ~~any~~ structure ~~that results in the enlargement of that structure's footprint;~~ installation of a new septic system or ~~the removal of vegetation-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 (SWPA): 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 ~~at a horizontal right angle~~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 ~~shown on the Official Drinking Water Protection Overlay Zone Map.~~ 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 ~~SWPA 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 ~~SWPA surface water protection area~~ on a property by property basis.

(b) Groundwater ~~Source~~-Protection Areas (GWPA): 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 ~~GWPA ground-water source protection area~~ data contained

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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 ~~GWPA 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~~**GWPA** 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 ~~SWPA~~ Requirements. The following standards shall apply within Surface Water Protections Areas:

(a) New development, ~~excluding removal of vegetation covered under LC 16.298(6)(b),~~ 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 ~~and associated infrastructure.~~ ,~~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 ~~adopted 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.~~

(ix) Fish passage channels, culverts and other similar structural ecological enhancement improvements conducted by a **any state agency**

watershed council or soil and water conservation district (SWCD), or conducted by a land trust or private land owner working in consultation with **any state agency, watershed council or SWCD.**

(b) **Removal of ~~New—vegetation—removal—within~~ non-indigenous vegetation 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 **fire safety or health hazard, excluding the removal of root wads, provided a certified arborist, Oregon Department of Forestry forester, registered consulting forester, OSU extension forester, State Fire Marshall representative or Lane County Firewise Incentive Program staff ~~—or licensed forester provides~~member provides** a statement to the Land Management Division documenting the need for such removals. **Such statements must be provided at least 24 hours prior to the removal unless an immediate safety concern necessitates immediate removal. In such instances the Land Management Division shall be notified of the removal within 5 business days,**

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

(iv) Normal and accepted farming uses other than buildings or structures.

(v) Ecological enhancement projects replanted with native vegetation and conducted by **any state agency, watershed council or soil and water conservation district (SWCD), or conducted by a land trust or private land owner working in consultation with any state agency, watershed council or SWCD provided written notice is provided to the Land Management Division at least 7 days before work commences. ~~watershed council or SWCD.~~**

(vi) ~~Vegetation removal~~Removal of vegetation 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) ~~Development and maintenance of new primary fuel breaks required by Lane Code. Secondary Fuel Breaks are not required or permitted within designated a SWPA as consistent with established Land Management Division practices regarding the treatment of secondary fuel breaks within Riparian Setback areas.~~

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

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

(x) Trimming, pruning, mowing, weeding and maintenance of existing lawns, beds, gardens, fields, trails, roads, driveways and other landscaped or manicured areas in existence at the time LC 16.298 took effect.

(xi) Development and maintenance of fuel breaks necessary to acquire and retain certification under the Oregon Forestland Urban Interface Fire Protection Act. Fuel break development and maintenance shall:

(aa) Follow the Default, Optional or Alternate guidelines outlined in OAR 629-044-100 to OAR629-044-1110.

(bb) Be the minimum size necessary to achieve certification under the Oregon Forestland Urban Interface Fire Protection Act.

(cc) Extend no more than 30 feet away from a permanently sited structure that is 500 square feet or larger unless a secondary fuel breaks is necessary within a High Fire Risk Classification area. In such cases an additional 20 foot secondary fuel break may be established.

(xii) Those National Fire Plan fuels reduction projects that are approved by the State Forester or the Supervisor’s Office of the USFS and/or BLM in support of the Healthy Forests Restoration Act 2003 (HFRA) and the Lane County Community Wildfire Protection Plan. These activities are conducted within the guidance of the Oregon Forest Practices Act to protect water quality. Projects are prescribed to enhance structure survivability and personal safety for emergency services personnel during wildfires to include but not limited to; wildland fuels modification/reduction, reduction of fuel loadings, development of defensible space around structures, shaded fuel breaks and modifications to property access and egress.

(c) In addition to the development and vegetation removal standards of LC 16.298(6)(a) and (b), all new development within a ~~SWPA 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) ~~Exception Requests~~~~Variancees~~. For any existing lot or parcel that can be demonstrated to have been rendered ~~not undevelopable~~ for a dwelling or for the primary use allowed in the base zone, by application of the LC 16.298(6)(a) through (c), ~~an exception variance~~ to waive the applicable development restrictions may be applied for. ~~Applications for such Variancees exceptions will be processed as ministerial land use decisions 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). ~~For the purposes of LC16.298, a lot or parcel shall be considered undevelopable when either of the following applies:~~

(aa) The lot or parcel is located entirely within a SWPA; or

(bb) The lot or parcel is located partially within a SWPA but within those areas outside of the SWPA any of the constraints listed in LC 16.298(6)(d)(i)(bb)(A)-(H) exist the lot or parcel to the extent that an area in which a perfectly square ¼ acre (10,890 square foot) development envelop could not fit without being overlaid or impacted by any listed constraints.

(A) Roads, driveways, easements or lawfully established structures in existence at the date LC16.298 took effect.

(B) Septic Systems or septic system replacement areas as designated on a plot plan approved by Lane County prior to the date LC16.298 took effect.

(C) Any road or property line or other setbacks required by Lane Code.

(D) Special Flood Hazard Areas as designated on a current Flood Rate Insurance Map.

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~~(E) Any natural lakes, ponds, channels, marshes or other wetlands.~~

~~(F) Any manmade ponds, reservoirs or other water features in existence on the date LC16.298 took effect.~~

~~(G) Slopes in excess of 25%.~~

~~(H) Any other combining or overlay zone restrictions that would prohibit development of the portion of the lot or parcel located outside of the SWPA.~~

~~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) The necessity of the SWPA Exception Request is not the result of a self-created hardship. A self-created hardship shall be deemed to have occurred when a reconfiguration of a lot or parcel occurs after the date LC16.298 takes effect and which reduces options for development outside of the SWPA on the lot or parcel that the exception is sought.~~

~~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.

(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

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**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.**