



EXHIBIT 1. WETLANDS AND RIPARIAN CORRIDORS BACKGROUND INFORMATION

OAR 660-024-0020 addresses applicability of the Statewide Planning Goals related to Adoption or Amendment of a UGB. It specifies:

- (1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows...**(c) Goal 5 and related rules under OAR chapter 660, division 23, apply only in areas added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;**

Goal 5 and the applicable statutes and administrative rules include provisions for inventories, analysis, and protection programs of significant Goal 5 resources. Those protection programs which are regulatory would be implemented through city codes, which won't apply to these properties until urban zoning is applied to property. Under current intergovernmental management agreements, Josephine County's land use regulations will continue to apply as specified in the agreements while the properties retain rural zoning. The city has adopted both UGB expansion areas and Urban Reserve areas. To achieve efficiencies and facilitate future boundary amendments, the City has elected to conduct the necessary work for the Urban Reserve areas in addition to the UGB expansion areas. *Note:* The Local Wetland Inventory will be incorporated into the State Wetland Inventory, which would be the inventory applicable to Josephine County's wetlands protection program.

Further, OAR 660-023-0250(4) provides that local governments are not required to revise acknowledged inventories or other implementing measures for resources sites that are not affected by the amendment, whether such inventories or provisions were acknowledged under OAR 660 Division 23 or OAR 660 Division 16.

Wetlands and Riparian Corridors.

Background. OAR 660-023-0090 doesn't specify which streams and water bodies are subject to riparian corridor provisions under the 'standard process'. However, the 'safe harbor' provisions apply to fish-bearing lakes and streams shown on ODF stream classification maps, USGS quad maps, NWI maps, ODFW maps indicating fish habitat, FEMA flood maps, and aerial photographs. It is reasonable to assume these same sources would provide the basis for streams and lakes subject to the standard inventory and protection process, too. However, this isn't explicitly stated in the rule, and could therefore be subject to interpretation. The principal requirements are to inventory riparian corridors along those streams or stream sections using either the standard method or safe harbor. Wetlands will need to be inventoried using the standard Local Wetland Inventory (LWI) methods.

The City adopted the Development Code, Ordinance 4490 in August 1983, which included riparian and wetland standards in Article 24 of the Development Code. In response to LCDC's review of the City's new Comprehensive Plan and Development Code, the City adopted Ordinance 4518 on August 1, 1984. Ordinance 4518 included revisions to the City's riparian standards, which remain in effect today, as revised at that time. Ordinance 4518 also included revisions to the City's wetlands standards. The City's Comprehensive Plan and implementing ordinances were subsequently acknowledged in 1985 without further amendments to the riparian or wetland standards.

Following acknowledgment of the original comprehensive plan and implementing ordinances in 1985, Grants Pass received notice of Periodic Review dated December 15, 1989, originally noting work was to be completed by June 30, 1990. A new letter was sent to Josephine County (as the coordinating entity) dated November 7, 1990, noting the city's proposed periodic review order and notice of final hearing was due to DLCD on December 30, 1990. The periodic review work plan was subsequently approved by DLCD in October 1993 and included eight work tasks.

One work task pertained to wetlands. The previously acknowledged wetland standards were amended as part of the applicable Periodic Review work task. Wetland inventory work had begun as early as 1992. The City's wetland resource plan was adopted by Ordinance 4919 on January 7, 1998 and it was revised by Ordinance 4991 on November 3, 1999. The City completed remaining work tasks and completed Periodic Review in 2002.

The Wetland Resource Plan was found to comply with OAR 660 Division 16. Per OAR 660-023-0250(8), Division 16 applied rather than Division 23 because the Periodic Review work plan was approved prior to September 1, 1996 (in 1993). The wetland standards remain in effect to date as amended by Ordinances 4919 and 4991. The updated wetland resource plan did not include new work pertaining to creeks (*p. 1-1, "... nor does this plan cover, the several creeks within the urban area.*)

The wetland resource plan area included only a portion of the UGB which was under City land use jurisdiction, based on the earlier City/County management agreements. Newer City/County management agreements now provide for City planning and development review for all lands within the UGB with urban zoning. At the time of the wetland resource planning work, some areas within the UGB were still subject to county review under the county's urban standards, which no longer apply to urban-zoned lands within the UGB, due to the City/County 1998 management agreement. Figure 4-4 of the Wetland Resource Plan showed areas subject to the plan (*See map – mostly the area in the Redwood Sewer District*). The city has subsequently taken over land use management of these areas. The wetlands in the area were designated as 'wetlands not covered by this plan', and were not given classifications as were other wetlands.

The UGB included eight smaller tributaries to the Rogue River: Gilbert Creek, Skunk Creek, Jones Creek, Sand Creek, Allen Creek, Fruitdale Creek, Vannoy Creek, and the Applegate River. With minor exceptions, wetlands within the Sand Creek and Applegate River basins were not covered by the plan, while wetlands within the other basins were covered by the

plan. Wetlands not covered by the plan are still subject to state and federal law administered by the Department of State Lands and US Army Corps of Engineers.

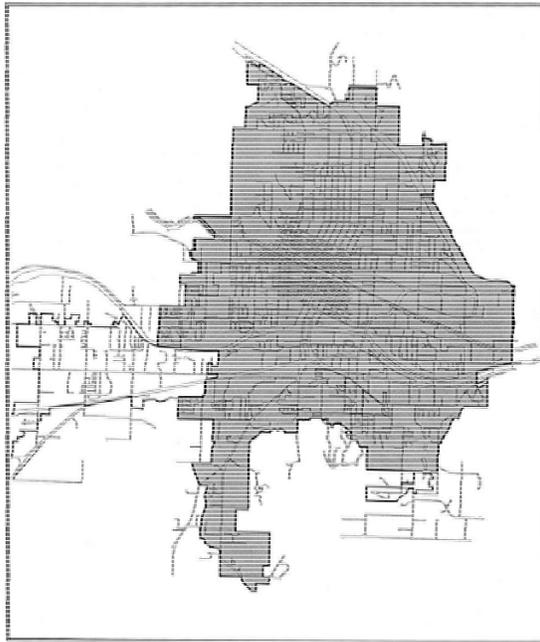


Figure 4-4: Wetland Resource Plan Area

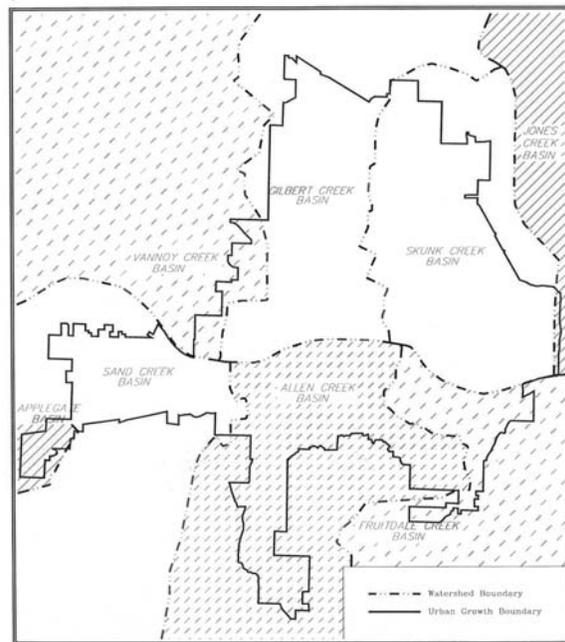


Figure 4-1: Watersheds

Many of the wetlands inventoried in the plan were on lands which have subsequently experienced development, and the boundaries may have changed due to naturally occurring changes, changes in man-made influences such as elimination of seepage from irrigation canals, or through mitigation in accordance with applicable local, state, and federal law.

Findings

Wetlands

- The State Wetland Inventory (SWI) was initially comprised of the National Wetland Inventory (NWI), which was replaced in part with Local Wetland Inventories (LWI) as they were adopted by local jurisdictions.
- The City's wetlands inventory and protection program was adopted by Ordinance 4490 in 1983 and Ordinance 4518 in 1984 and acknowledged in 1985. The inventory and protection program were subsequently amended through Periodic Review with the adoption of the Wetland Resource Plan and code amendments in 1998, revised in 1999.
- The Periodic Review work program was approved by DLCD in 1993. The applicable Goal 5 administrative rule in place at the time was OAR 660 Division 16. DLCD found the City successfully completed Periodic Review in 2002, and the wetland program is acknowledged. This applies to a portion of the UGB, which was under City jurisdiction at the time of adoption (wetlands in the other portion of the UGB

were inventoried but classified as ‘not covered by plan’). The entire UGB with urban zoning has now been under city jurisdiction since adoption of the city/county management agreement in 1998. Those wetlands ‘not covered by plan’ have been subject to applicable state and federal law.

- Josephine County has not conducted a Local Wetland Inventory, so it still utilizes the National Wetland Inventory portion of the State Wetland Inventory for rural lands. Josephine County has not adopted additional wetland protection measures, so those wetlands are subject only to applicable state and federal law.
- The city will need to update the LWI to inventory and classify those wetlands in the portion of the ‘old UGB’ that were previously under county jurisdiction and classified as ‘not covered by plan.’ The city will also need to update the LWI to inventory and classify wetlands in the UGB expansion areas and Urban Reserve areas. These areas will remain under county jurisdiction while they have rural zoning, and the county regulatory provisions will continue to apply until they are rezoned to urban zoning, unless the county adopts the protection program. The Local Wetland Inventory will be incorporated into the State Wetland Inventory, which would be applicable to Josephine County’s wetlands protection program.
- 660-023-0250 applies to the new wetland work for the UGB expansion areas and Urban Reserves. The city is required to update the Goal 5 elements of the Comprehensive Plan for the UGB expansion area. The city is not required to update Goal 5 elements for the Urban Reserve areas, but elects to do so to facilitate decision making and future transition from rural to urban development once those areas are included in the UGB.
- Per OAR 660-024-0020(1)(c) and OAR 660-023-0070 and 0250(4), the City is not required to update the wetland inventory or protection program for wetlands (or other Goal 5 resources) in the portion of the old UGB covered by the City’s wetland resource plan acknowledged under OAR 660 Division 16.

Riparian Corridors

- The City’s riparian corridor protection program was adopted by Ordinance 4490 in 1983 and Ordinance 4518 in 1984 and acknowledged in 1985. The applicable Goal 5 administrative rule in place at the time was OAR 660 Division 16. No further changes to the riparian program were required as part of the City’s Periodic Review work program approved by DLCD in 1993, when OAR 660 Division 16 was still applicable.
- Josephine County Ordinance 2006-001 states that, as part of the County’s Periodic Review agreement, the County adopted Ordinance 2000-8 to implement a revised program for riparian resources, and submitted the revised program to DLCD, which riparian components were acknowledged to comply with OAR 660-023-0090 (Riparian Corridors).

DLCD issued an order that specified the county was to address a remand order by submitting products that complied with its requirements by December 31, 2004. Josephine County amended the Rural Land Development Code in 2006 (Ordinance 2006-001) to amend definitions and regulations related to riparian corridors (riparian terms and stream setback regulations) in its Plan and Code. These provisions were acknowledged in 2006, which would also have been subject to OAR 660 Division 23, under 660-023-0250(4).

- The city's riparian standards apply throughout the 'old UGB' with urban zoning which are administered by the city under city zoning. Since streams weren't classified as were wetlands, the city's regulations for stream corridors applied the same throughout the entirety of the 'old UGB' once under city jurisdiction, including those areas with city urban zoning formerly under county jurisdiction and county urban codes. The county's riparian standards in their Rural Land Development Code presently apply to the UGB expansion areas and urban reserves which still have rural zoning, and they will continue to apply while properties have rural zoning.
- 660-023-0250 provides that 660 Division 023 applies to the new streams and associated riparian corridors for the UGB expansion areas and Urban Reserves. The city is required to update the Goal 5 elements of the Comprehensive Plan for the UGB expansion area. The city is not required to update Goal 5 elements for the Urban Reserve areas, but elects to do so to facilitate decision making and future transition from rural to urban development once those areas are included in the UGB.

OAR 660-023-0250(2) and (3)(c) will require the City to apply Goal 5 provisions to the UGB expansion areas. It is unclear whether the County's current acknowledged riparian protection program can potentially be applied to these areas upon urban rezoning (and incorporated into City codes) or whether these areas would be subject to the provisions of OAR 660-023-0090 for Riparian Corridors, using either the Safe Harbors or standard inventory process. This will need to be resolved early in the process. If the latter is required, as part of the process, there will need to be a determination whether to use the standard or Safe Harbor provisions to designate the riparian corridor areas. If the Safe Harbor isn't used, it will be necessary to obtain early concurrence about which streams are subject to the riparian corridors, since only the Safe Harbor specifies provisions for streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) and fish-bearing streams with average annual stream flow less than 1,000 cfs.

The City's riparian setbacks in pre-expansion UGB areas consist of the floodway for the Rogue River ('subject to Article 13' provisions, which allow for development in the floodway subject to floodway regulations), and 20 feet for streams. Josephine County's riparian setbacks are 50 feet for Class 1 Streams and 25 feet for Class 2 streams. The safe harbor in 660-023-0090 is 75 feet for streams >1,000 cfs average annual flow and 50 feet for streams <1,000 cfs average annual flow; where there are significant riparian wetlands, the corridor includes the wetland and is measured from the upland side of the wetland rather than top of bank. The safe harbor can't be used

where the stream bank isn't clearly defined or where there are predominantly steep cliffs.

- Per OAR 660-024-0020(1)(c) and OAR 660-023-0070 and 0250(4), the City is not required to update the riparian corridor protection program for riparian corridors (or other Goal 5 resources) in the portion of the old UGB covered by the protection program acknowledged under OAR 660 Division 16.
- While not mandatory, it would be desirable to review, clarify, and update some provisions of the City's riparian protection program that already apply in the 'old UGB'. For example, some stream corridor setback provisions and riparian vegetation protection provisions apply within the floodway of the Rogue River, which in a few locations within the 'old UGB' can extend as much as a quarter-mile from the river and also include properties which don't have river frontage. However, many of these areas were already previously developed.

OAR 660-023-0250(4) allows for consideration of amendments regarding a specific provision of a Goal 5 implementing measure without requiring a local government to revise acknowledged inventories or other implementing measures that are not affected by the amendment, so the full Goal 5 riparian program would not be subject to review if that one issue was reviewed and addressed.

Recommendations

- Conduct local wetland inventory and apply classifications and protection program for wetland in new UGB expansion areas, Urban Reserve areas, and 'old UGB' areas which were not covered by the Wetland Resource Plan adopted in 1998.
- Identify and map which streams and stream segments in UGB expansion areas and Urban Reserve areas are subject to requirements for riparian corridors. Determine whether existing county programs can be applied in the new UGB expansion areas and Urban Reserve Areas, or whether new provisions per OAR 660 Division 23 must be applied in these areas. If the latter, evaluate whether to designate corridors using the Safe Harbors or standard method, or some combination for different stream reaches. Apply same protection measures as current program or develop separate set of protection measures for expansion areas.
- Consider reviewing and clarifying current measures that utilize the floodway of the Rogue River as the area subject to setbacks and riparian vegetation protection program.
- No changes to riparian corridor provisions for 'old UGB' other than noted above. Consider mapping areas subject to standards. Currently, these are reviewed on an individual basis when there are specific development applications on properties.
- No changes to wetland program for 'old UGB', other than noted above for Redwood area.