

BEFORE THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 2-12

IN THE MATTER OF AMENDING LANE CODE CHAPTER 16  
BY MODIFYING EXISTING STREAM RIPARIAN  
REGULATIONS TO CONTINUE APPLYING SAFE HARBOR  
SETBACKS TO GOAL 5 RIPARIAN RESOURCES ON LANDS  
REMOVED FROM THE METRO PLAN BY ORDINANCE NO.  
PA 1281 (LC 16.253).

The Board of County Commissioners of Lane County ordains as follows:

Chapter 16 of Lane Code is hereby amended by removing, substituting and adding new sections as follows:

**REMOVE THESE SECTIONS**

16.253  
as located on page 16-507 through 16-513  
(a total of 7 pages)

**INSERT THESE SECTIONS**

16.253  
as located on page 16-507 through 16-513  
(a total of 7 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions and additions is to continue applying the safe harbor setbacks for inventoried Goal 5 riparian resources on lands removed from the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) by Ordinance No. PA 1281.

Although not a part of this Ordinance, the Board of County Commissioners adopts the findings and conclusions in support of this action as set forth in Exhibit "E" to Ordinance No. PA 1281, incorporated here by this reference.

ENACTED this 4<sup>th</sup> day of June 20123



Sid Leiken, Chair,  
Lane County Board of Commissioners



Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date: 2-15-2012 Lane County

  
OFFICE OF LEGAL COUNSEL

**16.253 Riparian Regulations.**

(1) Purpose. The purpose of the Riparian Regulations is to implement the Goal 5 Flora and Fauna policies and the Goal 6 Water Resources policies of the Lane County Rural Comprehensive Plan and the Goal 5 riparian policies of the Eugene-Springfield Metropolitan Area General Plan.

(2) Removal of Vegetation Within the Riparian Setback Area. The following standards shall apply to the maintenance, removal, destruction and replacement of indigenous vegetation within the riparian setback area along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan. For purposes of LC 16.253(2)(b)(i) and (iii) below, Resource Zones shall be: LC 16.210 (F-1); LC 16.211 (F-2); LC 16.212 (EFU); LC 16.213 (NR); LC 16.214 (ML); LC 16.215 (PR); LC 16.216 (QM); LC 16.227 (IWC); and LC 16.232 (DR). For purposes of LC 16.253(2)(b)(i) and (iii) below, Nonresource Zones shall be: LC 16.219 (PF); LC 16.220 (C-1); LC 16.221 (C-2); LC 16.222 (C-3); LC 16.223 (C-R); LC 16.224 (M-1); LC 16.225 (M-2); LC 16.226 (M-3); LC 16.229 (RA); LC 16.230 (RG); LC 16.231 (RR); LC 16.290 (RR); LC 16.291 (RC); LC 16.292 (RI); LC 16.294 (RPF); and LC 16.295 (RPR).

(a) A minimum of seventy-five percent (75%) of the total area within the riparian setback area of any legal lot shall remain in an unaltered, indigenous state except as provided in LC 16.253(2)(b)(i) and LC 16.253(5)(b) below; and

(b) Removal of existing vegetation from within the riparian setback area of any legal lot shall not exceed the shoreline linear frontage and square footage limitations calculated as follows:

(i) The maximum allowable removal for any legal lot having frontage of 200 feet or less in length along a Class I stream shall not exceed 50 linear feet along the shoreline and an area not greater than 2,500 square feet within the riparian setback area of a Nonresource Zone, or 5,000 square feet within the riparian setback area of a Resource Zone.

(ii) The maximum allowable removal for any legal lot having frontage of more than 200 feet but less than 400 feet in length along a Class I stream shall not exceed 25 percent of the total linear footage along the shoreline, and an area not greater than 25 percent of the total square footage of the entire area within the riparian setback area.

(iii) The maximum allowable removal for any legal lot having frontage 400 feet or greater in length along a Class I stream shall not exceed 100 linear feet along the shoreline of the Class I stream and an area not greater than 5,000 square feet within the riparian setback area of a Nonresource Zone, or 10,000 square feet within the riparian setback area of a Resource Zone. Removal of indigenous vegetation from within the riparian setback area in excess of 100 linear feet and the square footage of the applicable zone designation, to provide water access for a water-dependent use or to allow selective thinning of indigenous vegetation to provide viewscapes, may occur subject to compliance with LC 16.253(5)(a)(i) below, prior to removal.

(iv) Removal of vegetation from within the riparian setback area in excess of LC 16.253(2)(a) and (b) above, to allow riparian enhancement projects designed to improve or diversify habitat of designated areas within the riparian setback area may occur subject to compliance with LC 16.253(5)(b) below, prior to removal.

(c) Compliance. Removal of vegetation from within the riparian setback area in excess of the removal provisions in LC 16.253(2)(a) or (b) above, without prior Planning Director approval shall require compliance with the provisions of LC 16.253(4) and LC 16.253(5)(c) below, and may be subject to other remedies available to Lane County for violation of the standards in LC 16.253(2) above.

(d) Exceptions. The following uses and activities are excepted from the riparian setback area removal standards of LC 16.253(2) above and (3) below.

(i) Commercial forest practices regulated by the Oregon Forest Practices Act.

(ii) Removal of dead or diseased vegetation that poses a safety or health hazard, excluding removal of root wads.

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

(iv) Normal and accepted farming practices other than buildings or structures occurring on land zoned for exclusive farm use.

(v) Riparian enhancement projects replanted with indigenous vegetation approved by the Soil and Water Conservation District (SWCD) after consultation with the Oregon Department of Fish and Wildlife.

(vi) In areas that are regulated for aquatic species by the federal Endangered Species Act, construction, maintenance, preservation, repair and replacement of road and ancillary facilities, including bridges, culverts, drainage improvements, embankments, retaining walls, revetments, rip-rap and other slope stabilization structures, conducted under the jurisdiction of Lane County, the Oregon Department of Transportation, or Federal Transportation Authorities, when such activity is a public improvement project within a public right-of-way, or within an area being used for the public improvement project including access easements, areas used for construction staging, areas for storage of materials and temporary detours, and further provided that such work is conducted in compliance with the following:

(aa) In the absence of Routine Road Maintenance Best Management Practices (BMP's) pursuant to Section 4(d) of the Endangered Species Act for Limit 10 of take prohibition specifically developed and recognized by the National Oceanic and Atmospheric Administration (NOAA) Fisheries for Lane County, routine road maintenance is conducted in accordance with the Oregon Department of Transportation (ODOT) Routine Road Maintenance Water Quality and Habitat Guide Best Management Practices (BMP's) as published in the Federal Register; or

(bb) Road work other than routine maintenance is conducted in accordance with the Reasonable and Prudent Measures (RPM's) prescribed in the current "Programmatic Biological Opinion and Magnuson - Stevens Act Essential Fish Habitat Consultation for Standard Local Operating Procedures for Endangered Species (SLOPES) for Certain Regulatory and Operational Activities Carried out by the Department of the Army Permits in Oregon;" or

(cc) The road work is conducted in compliance with the requirements described in a site specific Biological Opinion of the National Marine Fisheries Service; or

(dd) Such work is conducted in compliance with other final rules published in the Federal Register, consultation decision or conference decision by the National Marine Fisheries Service, the United States Fish and Wildlife Service, or a successor agency pursuant to the Endangered Species Act.

(3) Modifications. A modification to the applicable riparian setback standard for a structure may be allowed provided the Oregon Department of Fish and Wildlife (hereafter ODF&W) is consulted by the Planning Director at least 10 working days prior to the initial permit decision and an application for a modification to the setback standard has been submitted pursuant to LC 14.050 and approved by the Planning Director pursuant to the requirements of LC 14.100 with findings of compliance addressing the following criteria:

(a) The location of a structure within the riparian setback area shall not result in the removal or the alteration of vegetation within the riparian setback area in excess of the standards of LC 16.253(2) above. For purposes of LC 16.253, altered means to eliminate, significantly reduce or interrupt the natural growth cycle of indigenous vegetation by removal or destruction of the vegetation caused by a person; and

(b) The riparian vegetation does not actually extend all the way into the riparian setback area to the location of the proposed structure. This determination shall include consideration of any evidence of riparian vegetation existing prior to any removal of indigenous vegetation before or during the application review period; or

(c) It can be demonstrated that an unduly restrictive burden would be placed on the property owner if the structure was not allowed to be located within the riparian setback area.

(4) Restoration of Indigenous Vegetation Within the Riparian Setback Area. Any removal or destruction of indigenous vegetation within the riparian setback area in excess of the provisions of LC 16.253(2) without an approved Riparian Setback Area Alteration Plan shall require an application for a Preliminary Investigation pursuant to LC 16.253(4)(a)-(c) below. Potential impacts identified in LC 16.253(4)(a) below, shall be addressed and/or mitigated through the review, approval and implementation of a Riparian Setback Area Restoration Plan pursuant to LC 16.253(5)(c) below.

(a) Preliminary Investigation. A Preliminary Investigation will provide a basis for identifying the area(s) of vegetation removal, alteration or destruction and the potential impacts of the removal in excess of the standards of LC 16.253(2) above. For the purposes of LC 16.253(2) and (4) above, potential adverse impacts shall include the removal or destruction of vegetation in whole or part, which is detrimental to the functions identified in LC 16.253(4)(a)(i)-(iv) below. This investigation shall identify the approval criteria which must be addressed by the property owner in the Riparian Setback Area Restoration Plan pursuant to LC 16.253(5)(c) below and shall include identification of the removed, altered or destroyed indigenous vegetation in excess of the standards of LC 16.253(2)(a) and (b) above, serving one or more of the following functions:

- (i) Shading of Class I streams.
- (ii) Stabilization of a stream bank or shoreline.
- (iii) Habitat for sensitive aquatic or terrestrial wildlife species.
- (iv) Habitat for rare, endangered or threatened species.

(b) Notification of Preliminary Investigation Determination. The planning Director shall notify the applicant of the determination of the Preliminary Investigation by certified mail within 10 days of completion of the Preliminary Investigation. The notification shall include a map at the appropriate scale detailing the portions of the parcel or parcels subject to the requirements of the riparian setback area, the area of removal in excess of the standard in LC 16.253(2) above, and shall set forth the determination of the potential adverse impacts identified in LC 16.253(4)(a) above.

(c) Fees for a Preliminary Investigation. To partly defray the expense in performing the Preliminary Investigation, a fee shall be charged the applicant. Such fees shall be as established by order of the Board of County Commissioners.

(5) Riparian Setback Area Alteration Plan Submittal. An application for approval of a Riparian Setback Area Alteration Plan as required by LC 16.253(2)(b) or (c) above, shall be submitted pursuant to one of the following applicable classifications and procedures.

(a) Riparian Setback Area Development Plan. The person proposing the development or removal in excess of the linear and square footage standard of LC 16.253(2)(b)(iii) above, shall submit a Riparian Setback Area Development Plan to the Planning Director pursuant to LC 14.050, which sufficiently identifies the location, nature and scope of the proposed development or removal of vegetation in excess of the provisions of LC 16.253(2)(b)(iii) above, prior to removal. The Riparian Setback Area Development Plan shall establish compliance with LC 16.253(2)(a) above and the following approval criteria:

(i) Vegetation removal or thinning in excess of the standard of LC 16.253(2)(b)(iii) above, shall be limited in scope to accommodate the approved Riparian

Setback Area Development Plan only and shall be subject to conditions of approval set by the Planning Director in accordance with LC 16.253(5)(g) below;

(ii) The proposed development or removal shall not have a substantial adverse impact on significant wildlife habitat;

(iii) The proposed development or removal shall not have a substantial adverse impact on stream bank or shoreline stabilization; and

(iv) The removal or alteration of indigenous vegetation from within the riparian setback area of a legal lot shall not exceed 25 percent of the total square footage of the entire riparian setback area and 25 percent of the total linear footage along the shoreline of a Class I stream.

(b) Riparian Setback Area Enhancement Plan. The person proposing the removal of vegetation from within the riparian setback area in excess of LC 16.253(2)(a) and (b) above, to enhance the riparian setback area by replanting with indigenous vegetation, shall submit a Riparian Setback Area Enhancement Plan to the Planning Director pursuant to LC 14.050, which sufficiently identifies the location, nature and scope of the proposed enhancement of indigenous vegetation within the riparian setback area. The Riparian Setback Area Enhancement plan shall establish compliance with the following approval criteria:

(i) Vegetation removal or thinning in excess of LC 16.253(2)(a) and (b) above shall be limited in scope to accommodate the approved Riparian Setback Area Enhancement Plan only and shall be subject to conditions of approval set by the Planning Director in accordance with LC 16.253(5)(g) below;

(ii) The proposed alteration and enhancement activities shall provide for the diversification of the indigenous vegetation; and

(iii) The proposed alteration and enhancement activities shall maintain stream bank and shoreline stability.

(c) Riparian Setback Area Restoration Plan. Where required by the Preliminary Investigation, the property owner and the person responsible for removal or destruction of vegetation from within the riparian setback area in excess of the provisions of LC 16.253(2) above shall submit a Riparian Setback Area Restoration Plan to the Planning Director pursuant to LC 14.050, which includes a complete inventory of the previously existing indigenous vegetation which was removed or destroyed. The vegetation inventory shall identify previous plant community locations and the maturity and densities of the previously existing plant species. The submitted Riparian Setback Area Restoration Plan shall provide a recovery and restoration planting schedule to include successional plantings, seasonal maintenance, and other management activities that provide for the recovery of the removed or destroyed indigenous vegetation. An approved Riparian Setback Area Restoration Plan shall establish compliance with the following criteria and shall be subject to conditions of approval set by the Planning Director in accordance with LC 16.253(5)(g), below:

(i) Restoration of the riparian setback area shall comply with the indigenous vegetation maintenance, removal and replacement standards established in LC 16.253(2)(b) above;

(ii) Mitigation of adversely impacted significant wildlife habitat identified in the Preliminary Investigation required Pursuant to LC 16.253(4)(a), above; and

(iii) Mitigation of adversely impacted stream bank or shoreline stabilization identified in the Preliminary Investigation required pursuant to LC 16.253(4)(a) above.

(d) Riparian Setback Area Plan Receipt and Referral. Upon receipt and acceptance of the applicable Riparian Setback Area Alteration Plan described in LC 16.253(5)(a), (b) or (c) above, the Planning Director shall refer a copy of the Riparian Setback Area Alteration Plan to the ODF&W for review.

(e) ODF&W Review. Within 10 working days of submittal of the Riparian Setback Alteration Plan to the Planning Director as required in LC 16.253(5)(d) above, the property owner shall provide evidence of consultation with ODF&W. Review of the Riparian Setback Area Alteration Plan and any recommendations by ODF&W to the Planning Director shall be consistent with the provisions of OAR 635-405 (May 1991) and OAR 635-415 (November 1991). Any recommendation from ODF&W addressing the proposed Riparian Setback Area Alteration Plan shall be in writing.

(f) Director Action. The Director may approve the Riparian Setback Area Alteration Plan if there are adequate findings of fact supporting compliance with LC 16.253(2) above and the applicable approval criteria for the proposed Riparian Setback Area Alteration Plan. The Director may impose conditions of approval to assure continued compliance with the applicable criteria. Notice of the written decision shall be provided pursuant to LC 14.100.

(g) Conditions of Approval. Reasonable conditions may be placed upon the approval of a Riparian Setback Area Alteration Plan to mitigate impacts and to assure continued compliance with the protection standards as set forth in the Riparian Setback Area Alteration Plan approved under LC 16.253(5)(f) above. Vegetation removed or destroyed in excess of LC 16.253(2) above shall be replaced or restored and maintained within the next replanting season following the removal or alternation. Required subsequent maintenance and successional plantings shall be identified in the Riparian Setback Area Alteration Plan approved by the Planning Director. Conditions may include but are not limited to the following:

(i) The property owner may be required to enter into a performance agreement to pay all costs associated with implementing the Riparian Setback Area Alteration Plan.

(ii) The Planning Director may require the property owner to record notice of the requirements of the Riparian Setback Area Alteration Plan and performance agreements in the Lane County Deed Records.

(iii) All restored or replaced vegetation plantings within the riparian setback area shall be of an indigenous species as identified in the list of indigenous plant species associated with riparian areas adopted by Board Order and incorporated in Lane Manual.

(6) Metro Area Riparian Setback Regulations. For property located west of Interstate 5 between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene Urban Growth Boundary and east of Interstate 5, outside the Springfield Urban Growth Boundary but within the area previously covered under the Eugene-Springfield Metropolitan Area General Plan prior to the enactment of Ordinance No. PA 1281, the following riparian setback regulations shall apply:

(a) Setback Area. The riparian setback area shall be as follows:

(i) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs), as designated for riparian vegetation protections by the Eugene-Springfield Metropolitan Area General Plan on January 1, 2012, the riparian corridor boundary shall be 75 feet upland from the top of each bank.

(ii) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, as designated for riparian vegetation protection by the Eugene-Springfield Metropolitan Area General Plan on January 1, 2012, the riparian corridor boundary shall be 50 feet from the top of bank.

(iii) In areas where the top of each bank is not clearly defined, or where the predominant terrain consists of steep cliffs, the provisions of OAR 660-023-0030 shall apply, rather than the provisions of this section.

(b) Removal of Vegetation Within the Riparian Setback Area. The standards of LC 16.253(2) above, shall apply to the maintenance, removal, destruction and replacement of indigenous vegetation within the riparian setback area along streams

designated for riparian vegetation protection by the Eugene–Springfield Metropolitan Area General Plan on January 1, 2012. The permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces is prohibited, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

- (i) Streets, roads, and paths;
- (ii) Drainage facilities, utilities, and irrigation pumps;
- (iii) Water-related and water-dependent uses; and
- (iv) Replacement of existing structures with structures in the same

location that do not disturb additional riparian surface area.

(c) Compliance. Removal of vegetation from within the riparian setback area in excess of the removal provisions in LC 16.253(6)(b) above, without prior Planning Director approval, shall require compliance with the provisions of LC 16.253(4) and LC 16.253(5)(c) above, and may be subject to other remedies available to Lane County for violation of the standards in LC 16.253(6) above.

(d) Exceptions. The following uses and activities are excepted from the riparian setback area removal standards of LC 16.253(6)(b) above.

(i) Commercial forest practices regulated by the Oregon Forest Practices Act.

(ii) Removal of dead or diseased vegetation that poses a safety or health hazard, excluding removal of root wads.

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

(iv) Normal and accepted farming practices other than buildings or structures occurring on land zoned for exclusive farm use.

(v) Riparian enhancement projects replanted with indigenous vegetation approved by the Soil and Water Conservation District (SWCD) after consultation with the Oregon Department of Fish and Wildlife.

(vi) Removal of non-native vegetation and replacement with native plant species;

(vii) Removal of vegetation necessary for the development of water-related or water-dependent uses.

(ix) Permanent alteration of the riparian area by the placement of structures or impervious surfaces upon a demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor.

(e) Modifications. A modification to the applicable riparian setback standard in LC 16.253(6)(a) for a structure may be allowed provided the ODFW is consulted by the Planning Director at least 10 working days prior to the initial permit decision and an application for a modification to the setback standard has been submitted pursuant to LC 14.050 and approved by the Planning Director pursuant to the requirements of LC 14.100 with findings of compliance addressing the following criteria:

(i) It can be demonstrated that the property was incorrectly identified as meeting the criteria of LC 16.253(6)(a)(i)&(ii), above.

(ii) It can be demonstrated that the lot or parcel has been rendered not developable for the primary use allowed in the base zone, by application of the riparian setback standards of LC 16.253(6)(a) to a lot or parcel that was lawfully created prior to the adoption of LC 16.253(6)(a). Approval of development under this provision must meet the following standards:

(aa) Due to topography, parcel size or configuration, or significant resource limitations, all options for development outside of the setback area are physically impracticable.

(bb) All development shall be located to the greatest degree practicable outside of the riparian setback area. The request shall be the minimum necessary to render the property developable.

(cc) The modification is not the result of a self-created hardship. After the date of adoption of LC 16.253(6), the reconfiguration of a lot or parcel as a result of a lot or property line adjustment, in whole or part within the riparian setback area, shall be determined to be a self-created hardship by the creator and subsequent property owners.

(dd) Mitigation measures shall be taken to minimize to the greatest degree practicable any impact to habitat units or habitat values of the setback area by development actions in the setback area.

(ee) Permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary may be authorized upon demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor. *(Revised by Ordinance No. 10-92, Effective 11.12.92; 5-96, 11.29.96; 1-97, 4.4.97; 10-04, 6.4.04; 5-04, 7.1.04)*



PAGES 16-514 THROUGH 16-530  
ARE RESERVED FOR FUTURE EXPANSION

**16.253 Riparian Regulations.**

(1) Purpose. The purpose of the Riparian Regulations is to implement the Goal 5 Flora and Fauna policies and the Goal 6 Water Resources policies of the Lane County Rural Comprehensive Plan and the Goal 5 riparian policies of the Eugene-Springfield Metropolitan Area General Plan.

(2) Removal of Vegetation Within the Riparian Setback Area. The following standards shall apply to the maintenance, removal, destruction and replacement of indigenous vegetation within the riparian setback area along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan. For purposes of LC 16.253(2)(b)(i) and (iii) below, Resource Zones shall be: LC 16.210 (F-1); LC 16.211 (F-2); LC 16.212 (EFU); LC 16.213 (NR); LC 16.214 (ML); LC 16.215 (PR); LC 16.216 (QM); LC 16.227 (IWC); and LC 16.232 (DR). For purposes of LC 16.253(2)(b)(i) and (iii) below, Nonresource Zones shall be: LC 16.219 (PF); LC 16.220 (C-1); LC 16.221 (C-2); LC 16.222 (C-3); LC 16.223 (C-R); LC 16.224 (M-1); LC 16.225 (M-2); LC 16.226 (M-3); LC 16.229 (RA); LC 16.230 (RG); LC 16.231 (RR); LC 16.290 (RR); LC 16.291 (RC); LC 16.292 (RI); LC 16.294 (RPF); and LC 16.295 (RPR).

(a) A minimum of seventy-five percent (75%) of the total area within the riparian setback area of any legal lot shall remain in an unaltered, indigenous state except as provided in LC 16.253(2)(b)(i) and LC 16.253(5)(b) below; and

(b) Removal of existing vegetation from within the riparian setback area of any legal lot shall not exceed the shoreline linear frontage and square footage limitations calculated as follows:

(i) The maximum allowable removal for any legal lot having frontage of 200 feet or less in length along a Class I stream shall not exceed 50 linear feet along the shoreline and an area not greater than 2,500 square feet within the riparian setback area of a Nonresource Zone, or 5,000 square feet within the riparian setback area of a Resource Zone.

(ii) The maximum allowable removal for any legal lot having frontage of more than 200 feet but less than 400 feet in length along a Class I stream shall not exceed 25 percent of the total linear footage along the shoreline, and an area not greater than 25 percent of the total square footage of the entire area within the riparian setback area.

(iii) The maximum allowable removal for any legal lot having frontage 400 feet or greater in length along a Class I stream shall not exceed 100 linear feet along the shoreline of the Class I stream and an area not greater than 5,000 square feet within the riparian setback area of a Nonresource Zone, or 10,000 square feet within the riparian setback area of a Resource Zone. Removal of indigenous vegetation from within the riparian setback area in excess of 100 linear feet and the square footage of the applicable zone designation, to provide water access for a water-dependent use or to allow selective thinning of indigenous vegetation to provide viewscapes, may occur subject to compliance with LC 16.253(5)(a)(i) below, prior to removal.

(iv) Removal of vegetation from within the riparian setback area in excess of LC 16.253(2)(a) and (b) above, to allow riparian enhancement projects designed to improve or diversify habitat of designated areas within the riparian setback area may occur subject to compliance with LC 16.253(5)(b) below, prior to removal.

(c) Compliance. Removal of vegetation from within the riparian setback area in excess of the removal provisions in LC 16.253(2)(a) or (b) above, without prior Planning Director approval shall require compliance with the provisions of LC 16.253(4)

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Bold indicates material being added  
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and LC 16.253(5)(c) below, and may be subject to other remedies available to Lane County for violation of the standards in LC 16.253(2) above.

(d) Exceptions. The following uses and activities are excepted from the riparian setback area removal standards of LC 16.253(2) above and (3) below.

(i) Commercial forest practices regulated by the Oregon Forest Practices Act.

(ii) Removal of dead or diseased vegetation that poses a safety or health hazard, excluding removal of root wads.

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

(iv) Normal and accepted farming practices other than buildings or structures occurring on land zoned for exclusive farm use.

(v) Riparian enhancement projects replanted with indigenous vegetation approved by the Soil and Water Conservation District (SWCD) after consultation with the Oregon Department of Fish and Wildlife.

(vi) In areas that are regulated for aquatic species by the federal Endangered Species Act, construction, maintenance, preservation, repair and replacement of road and ancillary facilities, including bridges, culverts, drainage improvements, embankments, retaining walls, revetments, rip-rap and other slope stabilization structures, conducted under the jurisdiction of Lane County, the Oregon Department of Transportation, or Federal Transportation Authorities, when such activity is a public improvement project within a public right-of-way, or within an area being used for the public improvement project including access easements, areas used for construction staging, areas for storage of materials and temporary detours, and further provided that such work is conducted in compliance with the following:

(aa) In the absence of Routine Road Maintenance Best Management Practices (BMP's) pursuant to Section 4(d) of the Endangered Species Act for Limit 10 of take prohibition specifically developed and recognized by the National Oceanic and Atmospheric Administration (NOAA) Fisheries for Lane County, routine road maintenance is conducted in accordance with the Oregon Department of Transportation (ODOT) Routine Road Maintenance Water Quality and Habitat Guide Best Management Practices (BMP's) as published in the Federal Register; or

(bb) Road work other than routine maintenance is conducted in accordance with the Reasonable and Prudent Measures (RPM's) prescribed in the current "Programmatic Biological Opinion and Magnuson - Stevens Act Essential Fish Habitat Consultation for Standard Local Operating Procedures for Endangered Species (SLOPES) for Certain Regulatory and Operational Activities Carried out by the Department of the Army Permits in Oregon;" or

(cc) The road work is conducted in compliance with the requirements described in a site specific Biological Opinion of the National Marine Fisheries Service; or

(dd) Such work is conducted in compliance with other final rules published in the Federal Register, consultation decision or conference decision by the National Marine Fisheries Service, the United States Fish and Wildlife Service, or a successor agency pursuant to the Endangered Species Act.

(3) Modifications. A modification to the applicable riparian setback standard for a structure may be allowed provided the Oregon Department of Fish and Wildlife (hereafter ODF&W) is consulted by the Planning Director at least 10 working days prior to the initial permit decision and an application for a modification to the setback standard has been submitted pursuant to LC 14.050 and approved by the Planning Director

pursuant to the requirements of LC 14.100 with findings of compliance addressing the following criteria:

(a) The location of a structure within the riparian setback area shall not result in the removal or the alteration of vegetation within the riparian setback area in excess of the standards of LC 16.253(2) above. For purposes of LC 16.253, altered means to eliminate, significantly reduce or interrupt the natural growth cycle of indigenous vegetation by removal or destruction of the vegetation caused by a person; and

(b) The riparian vegetation does not actually extend all the way into the riparian setback area to the location of the proposed structure. This determination shall include consideration of any evidence of riparian vegetation existing prior to any removal of indigenous vegetation before or during the application review period; or

(c) It can be demonstrated that an unduly restrictive burden would be placed on the property owner if the structure was not allowed to be located within the riparian setback area.

(4) Restoration of Indigenous Vegetation Within the Riparian Setback Area. Any removal or destruction of indigenous vegetation within the riparian setback area in excess of the provisions of LC 16.253(2) without an approved Riparian Setback Area Alteration Plan shall require an application for a Preliminary Investigation pursuant to LC 16.253(4)(a)-(c) below. Potential impacts identified in LC 16.253(4)(a) below, shall be addressed and/or mitigated through the review, approval and implementation of a Riparian Setback Area Restoration Plan pursuant to LC 16.253(5)(c) below.

(a) Preliminary Investigation. A Preliminary Investigation will provide a basis for identifying the area(s) of vegetation removal, alteration or destruction and the potential impacts of the removal in excess of the standards of LC 16.253(2) above. For the purposes of LC 16.253(2) and (4) above, potential adverse impacts shall include the removal or destruction of vegetation in whole or part, which is detrimental to the functions identified in LC 16.253(4)(a)(i)-(iv) below. This investigation shall identify the approval criteria which must be addressed by the property owner in the Riparian Setback Area Restoration Plan pursuant to LC 16.253(5)(c) below and shall include identification of the removed, altered or destroyed indigenous vegetation in excess of the standards of LC 16.253(2)(a) and (b) above, serving one or more of the following functions:

- (i) Shading of Class I streams.
- (ii) Stabilization of a stream bank or shoreline.
- (iii) Habitat for sensitive aquatic or terrestrial wildlife species.
- (iv) Habitat for rare, endangered or threatened species.

(b) Notification of Preliminary Investigation Determination. The planning Director shall notify the applicant of the determination of the Preliminary Investigation by certified mail within 10 days of completion of the Preliminary Investigation. The notification shall include a map at the appropriate scale detailing the portions of the parcel or parcels subject to the requirements of the riparian setback area, the area of removal in excess of the standard in LC 16.253(2) above, and shall set forth the determination of the potential adverse impacts identified in LC 16.253(4)(a) above.

(c) Fees for a Preliminary Investigation. To partly defray the expense in performing the Preliminary Investigation, a fee shall be charged the applicant. Such fees shall be as established by order of the Board of County Commissioners.

(5) Riparian Setback Area Alteration Plan Submittal. An application for approval of a Riparian Setback Area Alteration Plan as required by LC 16.253(2)(b) or (c) above, shall be submitted pursuant to one of the following applicable classifications and procedures.

(a) Riparian Setback Area Development Plan. The person proposing the development or removal in excess of the linear and square footage standard of LC 16.253(2)(b)(iii) above, shall submit a Riparian Setback Area Development Plan to the Planning Director pursuant to LC 14.050, which sufficiently identifies the location, nature and scope of the proposed development or removal of vegetation in excess of the provisions of LC 16.253(2)(b)(iii) above, prior to removal. The Riparian Setback Area Development Plan shall establish compliance with LC 16.253(2)(a) above and the following approval criteria:

(i) Vegetation removal or thinning in excess of the standard of LC 16.253(2)(b)(iii) above, shall be limited in scope to accommodate the approved Riparian Setback Area Development Plan only and shall be subject to conditions of approval set by the Planning Director in accordance with LC 16.253(5)(g) below;

(ii) The proposed development or removal shall not have a substantial adverse impact on significant wildlife habitat;

(iii) The proposed development or removal shall not have a substantial adverse impact on stream bank or shoreline stabilization; and

(iv) The removal or alteration of indigenous vegetation from within the riparian setback area of a legal lot shall not exceed 25 percent of the total square footage of the entire riparian setback area and 25 percent of the total linear footage along the shoreline of a Class I stream.

(b) Riparian Setback Area Enhancement Plan. The person proposing the removal of vegetation from within the riparian setback area in excess of LC 16.253(2)(a) and (b) above, to enhance the riparian setback area by replanting with indigenous vegetation, shall submit a Riparian Setback Area Enhancement Plan to the Planning Director pursuant to LC 14.050, which sufficiently identifies the location, nature and scope of the proposed enhancement of indigenous vegetation within the riparian setback area. The Riparian Setback Area Enhancement plan shall establish compliance with the following approval criteria:

(i) Vegetation removal or thinning in excess of LC 16.253(2)(a) and (b) above shall be limited in scope to accommodate the approved Riparian Setback Area Enhancement Plan only and shall be subject to conditions of approval set by the Planning Director in accordance with LC 16.253(5)(g) below;

(ii) The proposed alteration and enhancement activities shall provide for the diversification of the indigenous vegetation; and

(iii) The proposed alteration and enhancement activities shall maintain stream bank and shoreline stability.

(c) Riparian Setback Area Restoration Plan. Where required by the Preliminary Investigation, the property owner and the person responsible for removal or destruction of vegetation from within the riparian setback area in excess of the provisions of LC 16.253(2) above shall submit a Riparian Setback Area Restoration Plan to the Planning Director pursuant to LC 14.050, which includes a complete inventory of the previously existing indigenous vegetation which was removed or destroyed. The vegetation inventory shall identify previous plant community locations and the maturity and densities of the previously existing plant species. The submitted Riparian Setback Area Restoration Plan shall provide a recovery and restoration planting schedule to include successional plantings, seasonal maintenance, and other management activities that provide for the recovery of the removed or destroyed indigenous vegetation. An approved Riparian Setback Area Restoration Plan shall establish compliance with the following criteria and shall be subject to conditions of approval set by the Planning Director in accordance with LC 16.253(5)(g), below:

(i) Restoration of the riparian setback area shall comply with the indigenous vegetation maintenance, removal and replacement standards established in LC 16.253(2)(b) above;

(ii) Mitigation of adversely impacted significant wildlife habitat identified in the Preliminary Investigation required Pursuant to LC 16.253(4)(a), above; and

(iii) Mitigation of adversely impacted stream bank or shoreline stabilization identified in the Preliminary Investigation required pursuant to LC 16.253(4)(a) above.

(d) Riparian Setback Area Plan Receipt and Referral. Upon receipt and acceptance of the applicable Riparian Setback Area Alteration Plan described in LC 16.253(5)(a), (b) or (c) above, the Planning Director shall refer a copy of the Riparian Setback Area Alteration Plan to the ODF&W for review.

(e) ODF&W Review. Within 10 working days of submittal of the Riparian Setback Alteration Plan to the Planning Director as required in LC 16.253(5)(d) above, the property owner shall provide evidence of consultation with ODF&W. Review of the Riparian Setback Area Alteration Plan and any recommendations by ODF&W to the Planning Director shall be consistent with the provisions of OAR 635-405 (May 1991) and OAR 635-415 (November 1991). Any recommendation from ODF&W addressing the proposed Riparian Setback Area Alteration Plan shall be in writing.

(f) Director Action. The Director may approve the Riparian Setback Area Alteration Plan if there are adequate findings of fact supporting compliance with LC 16.253(2) above and the applicable approval criteria for the proposed Riparian Setback Area Alteration Plan. The Director may impose conditions of approval to assure continued compliance with the applicable criteria. Notice of the written decision shall be provided pursuant to LC 14.100.

(g) Conditions of Approval. Reasonable conditions may be placed upon the approval of a Riparian Setback Area Alteration Plan to mitigate impacts and to assure continued compliance with the protection standards as set forth in the Riparian Setback Area Alteration Plan approved under LC 16.253(5)(f) above. Vegetation removed or destroyed in excess of LC 16.253(2) above shall be replaced or restored and maintained within the next replanting season following the removal or alternation. Required subsequent maintenance and successional plantings shall be identified in the Riparian Setback Area Alteration Plan approved by the Planning Director. Conditions may include but are not limited to the following:

(i) The property owner may be required to enter into a performance agreement to pay all costs associated with implementing the Riparian Setback Area Alteration Plan.

(ii) The Planning Director may require the property owner to record notice of the requirements of the Riparian Setback Area Alteration Plan and performance agreements in the Lane County Deed Records.

(iii) All restored or replaced vegetation plantings within the riparian setback area shall be of an indigenous species as identified in the list of indigenous plant species associated with riparian areas adopted by Board Order and incorporated in Lane Manual.

(6) Metro Area Riparian Setback Regulations. For property located west of Interstate 5 between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries and east of Interstate 5, outside the Springfield Urban Growth Boundary but within the area previously covered

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| under the Eugene-Springfield Metropolitan Area General Plan prior to the enactment of Ordinance No. PA 1281, the following riparian setback regulations shall apply:

(a) ~~Setback Area. For property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, the riparian setback area shall be as follows:~~

(i) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs), as designated for riparian vegetation protections by the Eugene-Springfield Metropolitan Area General Plan on January 1, 2012, the riparian corridor boundary shall be 75 feet upland from the top of each bank.

(ii) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, as designated for riparian vegetation protection by the Eugene-Springfield Metropolitan Area General Plan on January 1, 2012, the riparian corridor boundary shall be 50 feet from the top of bank.

(iii) In areas where the top of each bank is not clearly defined, or where the predominant terrain consists of steep cliffs, the provisions of OAR 660-023-0030 shall apply, rather than the provisions of this section.

(b) ~~Removal of Vegetation Within the Riparian Setback Area. The standards of LC 16.253(2) above, shall apply to the maintenance, removal, destruction and replacement of indigenous vegetation within the riparian setback area along streams designated for riparian vegetation protection by the Eugene-Springfield Metropolitan Area General Plan on January 1, 2012 for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries.~~

—————The permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces is prohibited, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

- (i) Streets, roads, and paths;
- (ii) Drainage facilities, utilities, and irrigation pumps;
- (iii) Water-related and water-dependent uses; and
- (iv) Replacement of existing structures with structures in the same

location that do not disturb additional riparian surface area.

(c) Compliance. Removal of vegetation from within the riparian setback area in excess of the removal provisions in LC 16.253(6)(b) above, without prior Planning Director approval, shall require compliance with the provisions of LC 16.253(4) and LC 16.253(5)(c) above, and may be subject to other remedies available to Lane County for violation of the standards in LC 16.253(6) above.

(d) Exceptions. The following uses and activities are excepted from the riparian setback area removal standards of LC 16.253(6)(b) above.

(i) Commercial forest practices regulated by the Oregon Forest Practices Act.

(ii) Removal of dead or diseased vegetation that poses a safety or health hazard, excluding removal of root wads.

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

(iv) Normal and accepted farming practices other than buildings or structures occurring on land zoned for exclusive farm use.

(v) Riparian enhancement projects replanted with indigenous vegetation approved by the Soil and Water Conservation District (SWCD) after consultation with the Oregon Department of Fish and Wildlife.

(vi) Removal of non-native vegetation and replacement with native plant species;

(vii) Removal of vegetation necessary for the development of water-related or water-dependent uses.

(ix) Permanent alteration of the riparian area by the placement of structures or impervious surfaces upon a demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor.

(e) Modifications. A modification to the applicable riparian setback standard in LC 16.253(6)(a) for a structure may be allowed provided the ODFW is consulted by the Planning Director at least 10 working days prior to the initial permit decision and an application for a modification to the setback standard has been submitted pursuant to LC 14.050 and approved by the Planning Director pursuant to the requirements of LC 14.100 with findings of compliance addressing the following criteria:

(i) It can be demonstrated that the property was incorrectly identified as meeting the criteria of LC 16.253(6)(a)(i)&(ii), above.

(ii) It can be demonstrated that the lot or parcel has been rendered not developable for the primary use allowed in the base zone, by application of the riparian setback standards of LC 16.253(6)(a) to a lot or parcel that was lawfully created prior to the adoption of LC 16.253(6)(a). Approval of development under this provision must meet the following standards:

(aa) Due to topography, parcel size or configuration, or significant resource limitations, all options for development outside of the setback area are physically impracticable.

(bb) All development shall be located to the greatest degree practicable outside of the riparian setback area. The request shall be the minimum necessary to render the property developable.

(cc) The modification is not the result of a self-created hardship. After the date of adoption of LC 16.253(6), the reconfiguration of a lot or parcel as a result of a lot or property line adjustment, in whole or part within the riparian setback area, shall be determined to be a self-created hardship by the creator and subsequent property owners.

(dd) Mitigation measures shall be taken to minimize to the greatest degree practicable any impact to habitat units or habitat values of the setback area by development actions in the setback area.

(ee) Permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary may be authorized upon demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor. *(Revised by Ordinance No. 10-92, Effective 11.12.92; 5-96, 11.29.96; 1-97, 4.4.97; 10-04, 6.4.04; 5-04, 7.1.04)*



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