

IN THE COUNTY COURT OF THE STATE OF OREGON

FILED  
WASCO COUNTY

IN AND FOR THE COUNTY OF WASCO

2004 DEC 16 A 8:50

IN THE MATTER OF THE WASCO COUNTY COURT'S )  
DECISION OF THE WASCO COUNTY PLANNING )  
COMMISSION'S RECOMMENDATION TO APPROVE THE )  
PROPOSED POST-ACKNOWLEDGEMENT LEGISLATIVE )  
AMENDMENTS TO THE TEXT AND MAP OF THE )  
COMPREHENSIVE PLAN TO ADD INVENTORY )  
INFORMATION OF SIGNIFICANT RIPARIAN AREAS AT THE )  
PINE HOLLOW AND ROCK CREEK RESERVOIRS AND )  
SURROUNDING INLETS TO THE GOAL 5 SECTION, AND TO )  
AMEND THE ZONING ORDINANCE TEXT AND MAP TO )  
INCLUDE PROVISIONS FOR PROTECTION IN THE EPD-6 )  
SECTION OF THE ORDINANCE. (FILE NUMBERS CPA-04- )  
104/LUA-04-105/ZNC-04-104/REC-04-103) )

KAREN LEBRETON COATS  
COUNTY CLERK

ORDINANCE

1 NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day  
2 being one duly set in term for the transaction of public business and a majority of the Court being present;  
3 and  
4

5 IT APPEARING TO THE COURT: That the Wasco County Planning Department has requested a  
6 Post-Acknowledgement Plan Amendment for legislative amendments to the text and map of the  
7 comprehensive plan to add inventory information of significant riparian areas at the Pine Hollow and Rock  
8 Creek reservoirs, and surrounding inlets, to the goal 5 section, and to amend the zoning ordinance text and  
9 map to include provisions for protection in the EPD-6 section of the ordinance; and pursuant to Measure 56,  
10 Wasco County sent notification to all affected landowners on October 12, 2004; and  
11

12 IT FURTHER APPEARING TO THE COURT: That on Friday, November 5, 2004, the Wasco  
13 County Planning Commission postponed the hearing due to the lack of a quorum and rescheduled the  
14 hearing for Tuesday, November 16, 2004; and  
15

16 IT FURTHER APPEARING TO THE COURT: That on Tuesday, November 16, 2004, the Wasco  
17 County Planning Commission met to conduct a legally notified public hearing on the above matter. Following  
18 receipt and review of evidence, the Commission deliberated and, on a vote of 5 to 0, voted to recommend

2004-0433 (23)

1 approval of the request by the Wasco County Planning Office, for a Post-Acknowledgement Plan  
2 Amendment for legislative amendments to the text and map of the comprehensive plan to add inventory  
3 information of significant riparian areas at the Pine Hollow and Rock Creek reservoirs, and surrounding inlets,  
4 to the goal 5 section, and to amend the zoning ordinance text and map to include provisions for protection in  
5 the EPD-6 section of the ordinance, via Recommendation 04-103; and  
6

7 IT FURTHER APPEARING TO THE COURT: That the Wasco County Planning Commission  
8 recommends, to the Wasco County Court, approval of the request by the Wasco County Planning  
9 Department, for a Post-Acknowledgement Plan Amendment for legislative amendments to the text and map  
10 of the comprehensive plan to add inventory information of significant riparian areas at the Pine Hollow and  
11 Rock Creek reservoirs, and surrounding inlets, to the goal 5 section, and to amend the zoning ordinance text  
12 and map to include provisions for protection in the EPD-6 section of the ordinance, via Recommendation 04-  
13 103; and  
14

15 IT FURTHER APPEARING TO THE COURT: That the Wasco County Court met at the hour of  
16 10:30 a.m. on Wednesday, December 8, 2004, in the Wasco County Courtroom, Room 202, of the Wasco  
17 County Courthouse, in The Dalles, Oregon, to review the Wasco County Planning Commission's  
18 Recommendation to approve the request by the Wasco County Planning Office, for a Post-Acknowledgement  
19 Plan Amendment for legislative amendments to the text and map of the comprehensive plan to add inventory  
20 information of significant riparian areas at the Pine Hollow and Rock Creek reservoirs, and surrounding inlets,  
21 to the goal 5 section, and to amend the zoning ordinance text and map to include provisions for protection in  
22 the EPD-6 section of the ordinance; and  
23

24 IT FURTHER APPEARING TO THE COURT: That the Court reviewed the record, heard the Staff  
25 recommendation and all relevant comments from the parties. The Court considered the matter, and based  
26 upon the testimony present, the Court, being fully apprised in the premises, voted 3 to 0 to approve the  
27 request by the Wasco County Planning Office, for a Post-Acknowledgement Plan Amendment for  
28 legislative amendments to the text and map of the comprehensive plan to add inventory information of

Ordinance #ORD-04-101 (Goal 5, Reservoir Buffers -EPD 6-CPA-04-104/LUA-04-105/ZNC-04-104/REC-04-103)

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December 15, 2004

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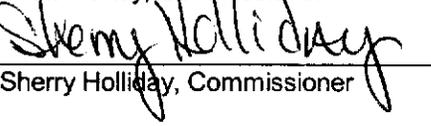
1 significant riparian areas at the Pine Hollow and Rock Creek reservoirs, and surrounding inlets, to the  
2 goal 5 section, and to amend the zoning ordinance text and map to include provisions for protection in the  
3 EPD-6 section of the ordinance, as laid out in **Attachment A**; and  
4

5 NOW THEREFORE IT IS HEREBY ORDERED: That the request by the Wasco County Planning  
6 Office, for a Post-Acknowledgement Plan Amendment for legislative amendments to the text and map of  
7 the comprehensive plan to add inventory information of significant riparian areas at the Pine Hollow and  
8 Rock Creek reservoirs, and surrounding inlets, to the goal 5 section, and to amend the zoning ordinance  
9 text and map to include provisions for protection in the EPD-6 section of the ordinance is approved.

10  
11 SIGNED this 15th day of December, 2004  
12

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16  
17 Approved as to Form:

18  
19  
20  
21   
22 Eric J. Nisley  
23 Wasco County District Attorney

WASCO COUNTY COURT  
  
Dan Ericksen, Judge  
  
Scott McKay, Commissioner  
  
Sherry Holliday, Commissioner

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12004-0423 (23)

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# Wasco County Reservoir Project

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## Amendment of Structural Set Backs and Goal 5 Buffer Proposal

DeVaney Consulting

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503.970.9430 Phone, 509.493.1472 Fax

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# Adjustment of Structural Setbacks

Proposed alteration of definition of structure and setbacks in AR zone

## I. Definition of Structure

Chapter 3- Wasco County Land Use and Development Ordinance  
SECTION 1.090 Definitions

For the purpose of this Ordinance, certain words and terms are defined as follows: Words used in the present tense include the future; words in the singular number include the plural, and words in the plural include the singular; the word "Building" includes the word "Structure"; the word "Shall" is mandatory and not directory.

Building - Any structure built for the support, shelter, or enclosure of any persons, animals, chattels, or property of any kind.

Operational High Pool Elevation (EPD 6): The high pool elevation for Pine Hollow and Rock Creek Reservoirs shall be considered to be the approved operational outfall elevation determined by Oregon Water Resources Department.

Structure - Anything constructed, erected or air inflated, permanent or temporary, which requires location on the ground. Among other things, structure includes buildings, walls, fences, billboards, poster panels and parking lots. Retaining walls less than four (4) feet in height are not considered structures for the sake of general property line setbacks.

Water Dependent Uses - Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water dependent uses include but are not limited to: docks, wharfs, piers, certain fish and wildlife structures, boat launch facilities and marinas. Dwellings, parking lots, spoil and dump sites, restaurants, trailer parks, resorts, and motels are not water dependent.

Water Related Uses - Uses not directly dependent upon access to a water body, but whose presence facilitates public and private access to and enjoyment of a water body. Water related uses include but are not limited to: boardwalks, trails, observatories, decks, and interpretive aids. Dwellings, parking lots, spoil and dump sites, restaurants, trailer parks, resorts, and motels are not water related.

## II. Setbacks in Agricultural Recreation (AR) Zones

### Chapter 3- Wasco County Land Use and Development Ordinance SECTION 3.230 "A-R" AGRICULTURAL-RECREATIONAL ZONE

#### B. Permitted Uses

7. Public parks, recreation areas and facilities, preserves and community or neighborhood centers in accordance with Chapter 20, Site Plan Review.

#### D. Property Development Standards

##### 2. Setbacks

- a. Front Yard - No structure other than a fence or retaining wall less than forty-eight (48) inches, or sign shall be located closer than twenty-five (25) feet from the right-of-way of a public road except where forty percent (40%) of the frontage is developed with buildings having front yards with a variation of not more than ten (10) feet in depth, the average of such depth shall establish the front yard depth of the entire frontage. (REVISION DATE)
  - b. Side Yard - No structure other than a fence or retaining wall less than forty-eight (48) inches shall be located closer than seven (7) feet from side property lines for interior lots and ten (10) feet from exterior side property lines for corner building sites. (REVISION DATE)
  - c. Rear Yard -
    - i) For properties not located along the reservoir edge at Pine Hollow or Rock Creek reservoirs - No structure other than a fence or retaining wall less than forty-eight (48) inches shall be located closer than seven (7) feet from the rear property line
    - ii) For properties located along the reservoir edge at Pine Hollow or Rock Creek reservoirs - No structure other than a retaining wall less than forty-eight (48) inches shall be located closer than twenty (25) feet from the rear yard property line.
5. Stream or Lake Buffers -
- a. Pine Hollow and Rock Creek Reservoirs are both subject to the Environmental Protection District (EPD) provisions of EPD-6.
  - b. All structures, or similar permanent fixtures (except hydroelectric facilities and docks), proposed in areas not mapped in the EPD-6, shall be set back from the high water line or mark along all any streams or lakes a minimum distance of fifty (50) feet when measured horizontally at a right angle.

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## Adoption of New Goal 5 Program

Application of current Goal 5 Rule to wetlands, water bodies and riparian areas around Pine Hollow Reservoir and Rock Creek Reservoir

### III. Proposed Safe Harbor Buffer Language

Chapter 3- Wasco County Land Use and Development Ordinance  
SECTIONS 3.900, EPD-6, RESERVOIR OVERLAY ZONE (REVISION DATE)  
Land located in the Reservoir Overlay Zone (EPD-6), is subject to the requirements and standards of this Chapter in addition to those specified in the underlying zone. If a conflict in regulation or standards occurs, the provisions of this Section shall apply.

- A. Purpose - The purpose of this overlay district is two fold:
1. To conserve important riparian areas by providing supplementary development standards; to protect existing riparian values and permit development compatible with protection of riparian resources within the mapped fifty (50) foot riparian corridor surrounding the reservoirs and selected streams or rivers.
  2. To require notification of Oregon Department of State Lands concerning applications for development permits or other land use decisions affecting wetlands on the adopted wetland inventory.
- B. Application of Provisions
1. This overlay district shall be applied to all potential riparian areas identified in the Comprehensive Plan within the fifty (50) foot safe harbor riparian corridor. The fifty (50) foot safe harbor riparian corridor shall be measured perpendicular to the operational high pool elevation of each reservoir and from ordinary high water for other selected streams, ponds, or rivers.
  2. Those areas of the 50 foot safe harbor riparian corridor not identified as potential riparian areas on the riparian corridor map are not subject to sensitive area review.
  3. If an applicant can successfully demonstrate that the inventory map documenting the presence of the riparian area is shown to be in error and that the on site conditions are determined by a qualified professional not to provide riparian values, the area demonstrated to provide no riparian values will not be subject to sensitive area review. ODFW will be consulted to determine the adequacy of information submitted by the applicant.

4. The notification requirements are applied to all wetlands on the current version of the National Wetland Inventory as it may be modified by the State Wetland Inventory as adopted by reference and made part of the County's Comprehensive Plan.

## **IV. Proposed Riparian Area Protection Language**

Chapter 3- Wasco County Land Use and Development Ordinance

### SECTIONS 3.900, EPD-6, RESERVOIR OVERLAY ZONE (REVISION DATE)

- A. **Procedure for Applying the Overlay Zone.** Development or ground disturbance resulting in permanent alteration of the identified potential riparian areas shown on the safe harbor riparian corridor map is restricted. Only the following uses may be permitted provided the applicant is able to demonstrate, through the sensitive resource plan review process, that intrusion into the riparian area has been minimized and mitigated where deemed necessary.
- 1) Streets, roads and paths.
  - 2) Drainage facilities, utilities, and irrigation pumps.
  - 3) **Water-related and water dependent uses, and**
  - 4) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.
  - 5) Removal of vegetation only when it is either
    - a) non native vegetation removed for the purpose of replacing non native with native vegetation, or
    - b) vegetation that must be removed for the development, redevelopment, or maintenance of water related or water dependent uses
    - c) vegetation that is removed to accommodate farm or forest practices permitted pursuant to statewide planning Goals 3 or 4 on land zoned for farm or forest use.
- B. **Sensitive Resource Plan and Plan Review Process.**
1. Completed plot plan and sensitive resource plan review requests shall be submitted by the County to ODFW for comment. ODFW shall have 20 days from the date that the sensitive resource plan is mailed, to submit written comments to the County. If the County does not receive a response from ODFW within this time period, the County shall proceed to process the applicant's request. A completed sensitive resource plan shall contain the following elements:

- a. A plot plan drawn to scale showing the location of all existing and proposed development including existing and proposed roads, driveways and structures.
  - b. Description of the general slope and aspect of the ground within the potential riparian area.
  - c. Description of the operating characteristics of the proposed use including times when activity within the potential riparian area would disturb surface soil, generate vibration, or deter wildlife use of the area.
  - d. Description of steps taken to avoid impacts to sensitive areas where possible and to minimize and mitigate for impacts in sensitive areas where impacts cannot be avoided.
  - e. Timing of construction activities including grading or filling land, hauling materials and building.
  - f. Description of existing vegetation and vegetation to be removed for the proposed development or ground disturbing activity.
2. Based upon the record and evaluation of the proposal, the Planning Director or designee shall approve or reject the sensitive resource plan and protection measures. If a sensitive resource plan review request is rejected the applicant may alter the sensitive resource plan and protection measures to achieve compliance with the applicable criteria.
  3. Submittal of an altered sensitive resource review request will be considered a new application and will not be subject to limitations on re submittal of similar applications.
  4. Once deemed complete, the County will proceed to process altered sensitive resource plan review requests as a new land use application.
- C. **Review Considerations.** The following factors shall be considered when sensitive resource plans and proposed protection measures are reviewed:
1. Where possible new ground disturbances will be located to avoid impact to potential riparian areas. If location of a new ground disturbance is necessary within potential riparian areas the County will work with ODFW and the applicant to identify necessary steps to minimize potential impacts to riparian values. Mitigation may be required. If required, the applicant shall create, restore or enhance an area to provide equal or greater riparian value to that being disturbed.
  2. Existing vegetation or other landscape features within the riparian area, which are confirmed to provide critical habitat values, shall be preserved and maintained. A restrictive covenant to preserve and maintain vegetation shall be required when specified through the sensitive resource plan review.
  3. No partitions or subdivisions shall be permitted which would force location of a dwelling structure or other ground disturbing activity, not otherwise permitted on the site to be allowed within the sensitive habitat area.
- D. **Hardship variance** from the provisions limiting permanent alteration of identified riparian areas shown on the safe harbor riparian corridor map may be permitted upon a demonstration that the following conditions exists: (Chapter 6 and 7 do not apply)

- 1) A legally created lot or parcel can be demonstrated to be rendered un developable by strict adherence to the restrictions to development or ground disturbance resulting in permanent alteration of the identified riparian areas shown on the safe harbor riparian corridor map..
- 2) The need for the variance can be determined not to be the result of a self created hardship.
- 3) Approval of the variance would not be materially detrimental to property in the same zone or vicinity in which the property is located.
- 4) In any case the variance shall be the minimum necessary to alleviate the hardship.

## V. Comprehensive Plan Amendment

### COMPREHENSIVE PLAN GOAL #5 POLICY 7

Encourage land use and land management practices which contribute to the preservation and enhancement of fish and wildlife resources, with consideration for private agricultural operations.

- A. Identify and protect all wildlife habitats by:
  1. Implementation of an Environmental Protection District overlay for sensitive fish and wildlife habitats.
  2. Regulation of setback requirements and conditional uses on riparian habitats.
  3. Develop and adopt a map showing the safe harbor riparian corridor and potential riparian areas located within the corridor around Pine Hollow and Rock Creek Reservoirs and implement limitations on development and land disturbing activities that would result in permanent alteration of potential riparian areas within the safe harbor corridor.
  4. Maintaining large minimum lot sizes in forest and agricultural zones to reduce residential densities.
- B. Adopt by reference the current National Wetland Inventory (NWI) maps as they may be modified by the State Wetland Inventory (SWI) maps for the purpose of identifying when notice of pending land use action to Oregon Department of State Lands (DSL) is required. The County will also:
  1. Coordinate with DSL in accordance with notification requirements for activities likely to impact inventoried wetland areas.
  2. Provide site specific information to DSL for Pine Hollow and Rock Creek Reservoirs that clarify the actual location of probable resource areas.

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# **Applicable Goals, Standards, and Criteria With Proposed Findings and Conclusions**

Discussion of proposed findings of fact and conclusions responding to applicable criteria in Statewide Planning Goal 5, Other applicable Statewide Planning Goals, County Land Use Development Ordinance, and County Comprehensive Plan

## **VI. Statewide Planning Goal 5**

### **A. Inventory Process**

DIVISION 23

PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

660-023-0030

Inventory Process

(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

(a) Notify state and federal resource management agencies and request current resource information; and

(b) Consider other information submitted in the local process.

### **Findings of Fact**

The presence of relatively intensive residential development on small lots with some community services and facilities on the edge of two manmade and artificially manipulated water bodies (Pine Hollow Reservoir and Rock Creek Reservoir) has prompted the County to collect information and pursue adoption of specific protective measures around these certain sites without pursuing compliance with the current Goal 5 Rule countywide.

Existing resource maps were consulted. The County's consultant made phone contact and met with representatives from Department of Land Conservation and Development (DLCD), Department of State Lands (DSL), and Department of Fish and Wildlife (ODFW) to review available resource maps, aerial photography and photos illustrating typical resource and non resource areas around the perimeter of both reservoirs. The Consultant and County Staff also met and walked the resource sites

with Natural Resource Conservation Service (NRCS) and Oregon Water Resources Department (OWRD) to confirm design intent and regulatory parameters under which the reservoirs are allowed to function in order to determine an appropriate high water mark to use for both reservoirs.

Two informal workshops were held in a location near both communities and an additional publicly notified workshop for Planning Commission and County Court was held in The Dalles on 10/19/2004. Available inventory data was shown and explained to participants. The proposal will also proceed through a legislative hearing process and any additional public input regarding site specific information that will further refine proposed resource map information will be accepted and incorporated as appropriate prior to adoption of maps, regulations and comprehensive plan language.

### **Conclusion**

Appropriate agencies have been consulted and public input provided for in the consideration of the proposed amendments. The identification of specific resource areas to be mapped and considered in this legislative process is appropriate. The need to evaluate Pine Hollow and Rock Creek Reservoirs is based on the unique nature of the identified resources considering the zoning and development patterns at the reservoir edge as well as the nature of the reservoirs as they typically function to meet irrigation and recreational demands.

### **B. Inventory Sources**

660-023-0090

#### Riparian Corridors

(4) When following the standard inventory process in OAR 660-023-0030, local governments shall collect information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors. Local governments may postpone determination of the precise location of the riparian area on lands designated for farm or forest use until receipt of applications for local permits for uses that would conflict with these resources. Local governments are encouraged, but not required, to conduct field investigations to verify the location, quality, and quantity of resources within the riparian corridor. At a minimum, local governments shall consult the following sources, where available, in order to inventory riparian corridors along rivers, lakes, and streams within the jurisdiction:

- (a) Oregon Department of Forestry stream classification maps;
- (b) United States Geological Service (USGS) 7.5 minute quadrangle maps;
- (c) National Wetlands Inventory maps;
- (d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;
- (e) Federal Emergency Management Agency (FEMA) flood maps; and
- (f) Aerial photographs.

### **Findings of Fact**

Working base maps were compiled using the USGS quadrangle maps, National Wetland Inventory Maps, FEMA Flood Insurance Rating Maps, Aerial photographs, Tax lot maps, and NRCS soils maps.

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ODFW was consulted regarding fish habitat and to confirm the presence of resident fish populations and anadromous fish. ODFW and NRCS were also consulted regarding the type and quantity of flow to and through the reservoirs.

Field investigations were done to document the typical types of edge conditions and where they occur around the reservoirs.

### **Conclusion**

Appropriate inventory source materials were relied on to develop the proposed amendments to the County's Ordinance and Comprehensive Plan. Because the proposal is for an application of the safe harbor provisions an assessment of location, quality and quantity of resources within the riparian corridor is not required. Identification of riparian areas within the riparian corridors established under the safe harbor provisions, however, does require field investigation to ensure that mapping is as accurate as possible. Field investigations were made and photographs are sufficient to document and locate typical reservoir edge conditions at both reservoirs.

### **C. Applicable Safe Harbor Riparian Corridor Width**

660-023-0090

Riparian Corridors

(5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

(a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.

(b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.

(c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

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

### **Findings of Fact**

Both reservoirs are inventoried as lakes and the 50 foot riparian corridor width is currently proposed.

Two streams feeding into Pine Hollow Reservoir are also proposed for protection as significant resources under the safe harbor provisions. Pine Hollow Creek and Highland Ditch both are mapped from Pine Hollow Reservoir out to the edge of the Rural Community. Average annual stream flow in these two streams is less than 1,000 cfs and the 50 foot riparian corridor width is currently proposed.

**Conclusion**

Required riparian corridor widths are proposed in accordance with 660-023-0090 (5).

**D. Safe Harbor Riparian Corridor or ESEE Process**

660-023-0090

Riparian Corridors

(6) Local governments shall develop a program to achieve Goal 5 using either the safe harbor described in section (8) of this rule or the standard Goal 5 ESEE process in OAR 660-023-0040 and 660-023-0050 as modified by section (7) of this rule.

**Findings of Fact**

The County considered both these options and the opportunities and constraints presented by opting to pursue compliance with Goal 5 through the ESEE analysis and through the safe harbor provisions.

These options were presented to some local residents prior to preparing this proposal.

Pros and cons considered in selecting the most appropriate route to Goal 5 compliance for Pine Hollow and Rock Creek Reservoirs are documented and included in the record.

**Conclusion**

Compliance with 660-023-0090 (6) is achieved by the selection of the safe harbor route to compliance with Goal 5.

**E. Safe Harbor Requirements**

660-023-0090

Riparian Corridors

(8) As a safe harbor in lieu of following the ESEE process requirements of OAR 660-023-0040 and 660-023-0050, a local government may adopt an ordinance to protect a significant riparian corridor as follows:

(a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

- (A) Streets, roads, and paths;
- (B) Drainage facilities, utilities, and irrigation pumps;
- (C) Water-related and water-dependent uses; and

(D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

(b) The ordinance shall contain provisions to control the removal of riparian vegetation, except that the ordinance shall allow:

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

(B) Removal of vegetation necessary for the development of water-related or water-dependent uses;

(c) Notwithstanding subsection (b) of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4;

(d) The ordinance shall include a procedure to consider hardship variances, claims of map error, and reduction or removal of the restrictions under subsections (a) and (b) of this section for any existing lot or parcel demonstrated to have been rendered not buildable by application of the ordinance; and

(e) The ordinance may authorize the permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary established under subsection (5)(a) of this rule 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.

### **Findings of Fact**

Adoption of safe harbor in lieu of following the ESEE process does not include an evaluation of significance based on location, quantity and quality of an inventoried resource. Rather it presumes the significance of the resource and allows the local government to adopt an ordinance to protect the significant riparian corridor.

To protect the riparian corridor that is presumed to be significant in seeking compliance with Goal 5 under the safe harbor provisions the local government must protect riparian areas from permanent alteration in accordance with the protection measures spelled out in 660-023-0090 (8) (a), (b), and (d) above. The local government may elect to include additional flexibility in the regulations in accordance with 660-023-0090 (8) (c) and (e).

660-023-0090 (8) (e) is not applicable to this process since no 75 foot riparian corridors are applied because the average annual stream flow of inventoried streams do not warrant this corridor width. Sub section (e) is only applicable to 75 foot riparian corridors along streams having an average annual stream flow greater than 1,000 cfs.

The County is proposing to adopt a riparian corridor in accordance with the safe harbor requirements. The County is also proposing to map the limited riparian areas (around all of Pine Hollow Reservoir and along the developed edge of Rock Creek Reservoir) within the applicable riparian corridors.

The County proposes this approach to provide more clarity in the day to day administration of the ordinance and less uncertainty for local residents subject to the safe harbor provisions requiring the uniform establishment of a riparian corridor around the full perimeter.

The recommended safe harbor regulation is included in whole under the sections titled Proposed Safe Harbor Buffer Language and Proposed Riparian Area Protection Language in this document.

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## Conclusion

The proposed approach is consistent with both the intent and the literal wording of the safe harbor provisions. Nothing precludes the local government from identifying the riparian areas within a riparian corridor and doing so only facilitates protection of the riparian resources. Proposed ordinance language applies the required safe harbor protections allowing the required hardship relief directly to riparian areas as required by 660-023-0090 (8) (a), (b), and (d) and allowed by 660-023-0090 (8) (c). Proposed ordinance language is consistent with the safe harbor provisions of Goal 5.

## F. Wetland Notification Requirements

660-023-0100

### Wetlands

(5) For areas outside UGBs and UUCs, local governments shall either adopt the statewide wetland inventory (SWI; see ORS 196.674) as part of the local comprehensive plan or as a land use regulation, or shall use a current version for the purpose of section (7) of this rule.

(6) For areas outside UGBs and UUCs, local governments are not required to amend acknowledged plans and land use regulations in order to determine significant wetlands and complete the Goal 5 process. Local governments that choose to amend acknowledged plans for areas outside UGBs and UUCs in order to inventory and protect significant wetlands shall follow the requirements of sections (3) and (4) of this rule.

(7) All local governments shall adopt land use regulations that require notification of DSL concerning applications for development permits or other land use decisions affecting wetlands on the inventory, as per ORS 227.350 and 215.418, or on the SWI as provided in section (5) of this rule.

## Findings of Fact

The language requiring notification of DSL is included in whole under the section titled Proposed Safe Harbor Buffer Language in this document.

Adoption of the NWI maps is included in whole under the sections titled Proposed Safe Harbor Buffer Language and Comprehensive Plan Amendment in this document.

The County has not chosen to pursue a local wetland inventory (LWI) to amend the NWI maps.

The County will provide specific information regarding the actual location of the reservoir maximum operational pool elevation relative to tax lot boundaries on an aerial photograph to facilitate their interpretation of the ordinary high water mark for purposes of their regulatory efforts.

None of the ground affected by the proposed regulations is located within an Urban Growth Boundary (UGB) or Urban Unincorporated Community (UUC).

## Conclusion

Adoption of the current NWI by reference and amending the Ordinance to explicitly require notification of DSL concerning applications for development permits or other land use decisions affecting wetlands on the inventory is consistent with the requirements for areas outside UGBs and UUCs.

## VII. Other Applicable Statewide Planning Goals

### A. Goal 1 Citizens Involvement

OAR 660-015-0000(1)

Citizen Involvement

Goal 1 requires public involvement in all stages of planning program development and implementation.

### Discussion

Two local meetings were held at the Barlow Grange in Wamic between Pine Hollow and Sportsmans Park and an additional publicly notified workshop for Planning Commission and County Court was held in The Dalles on 10/19/2004. State and local law applicable to the reservoir edges was reviewed. Available inventory data were reviewed and regulatory alternatives and the pros and cons of these alternatives were presented. Presentation materials were made available to local residents and once the proposal being considered for adoption through the legislative process represents the preferred alternative.

The legislative process its self will involve individual notice to all affected landowners and hearings will be held before the Planning Commission and County Court.

### B. Goal 4 Forest Lands

660-006-0000

Forest Lands

Purpose

The purpose of the Forest Lands Goal is to conserve forest lands and to carry out the legislative policy of ORS 215.700. 660-006-0003

Applicability

OAR Chapter 660, Division 6 applies to all forest lands defined by Goal 4.

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12004-0433 (23)

## Discussion

The majority of the edge of Rock Creek Reservoir is zoned for Forest use and is protected as Goal 4 Forestland. Proposed Goal 5 language is applied in a manner that is consistent with Goal 4 Forestland protection. Removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goal 3 or 4 is allowed within the proposed safe harbor riparian corridor. Application of the safe harbor riparian corridor protection measures does not preclude management of forest lands for forest management purposes.

### C. Goal 11 and 14 Urbanization

660-022-0000

Unincorporated Communities

Purpose

(1) The purpose of this division is to establish a statewide policy for the planning and zoning of unincorporated communities that recognizes the importance of communities in rural Oregon. It is intended to expedite the planning process for counties by reducing their need to take exceptions to statewide planning goals when planning and zoning unincorporated communities.

(2) This division interprets Goals 11 and 14 concerning urban and rural development outside urban growth boundaries and applies only to unincorporated communities defined in OAR 660-022-0010.

## Discussion

The County has not concluded its Rural Community Planning process in accordance with the Rural Communities Rule in Pine Hollow and Sportsman's Park. It is anticipated that the County will designate Pine Hollow as a rural community and that Sportsman's Park will remain a residential exception area. Nothing in the adoption of the proposed Goal 5 program increases or decreases the likelihood of urbanization of either of these rural areas. The proposed Goal 5 provisions do explicitly address and allow provision of public facilities and infrastructure within the riparian corridor but nothing requires or allows these services to exceed a permissible rural level of services within the community or exception area.

### D. Goal 2 Exceptions Process

660-004-0018

Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning

provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

### **Discussion**

Sportsman's Park is a rural residential exception area that fronts on a portion of the Rock Creek Reservoir. Revision of the comp plan and zoning provisions to adopt the safe harbor riparian corridor provisions of Goal 5 in this area allows the continuation of existing types of development in the exception area. The proposed riparian corridor map is based on existing development patterns and natural resource values. The proposed amendments do not allow changes in the types or densities of uses or increase or decrease the demands for services within the exception area.

## **VIII. Land Use Development Ordinance**

### **Zone Change and Ordinance Amendment Criteria**

#### CHAPTER 9 ZONE CHANGE AND ORDINANCE AMENDMENT

##### SECTION 9.020 Criteria for Decision

The Approving Authority may grant a zone change only if the following circumstances are found to exist:

- A. The original zoning was the product of a mistake; or
- B. It is established that:
  - 1. The rezoning will conform with the Comprehensive Plan; and,
  - 2. The site is suitable to the proposed zone;
  - 3. There has been a conscious consideration of the public health, safety and welfare in applying the specific zoning regulations.

##### SECTION 9.030 Conditions Relative to the Approval of a Zone Change

Reasonable conditions may be imposed, pursuant to Section 2.110(D) as are necessary to insure the compatibility of a zone change to surrounding uses and as are necessary to fulfill the general and specific purposes of this Ordinance. Such conditions may include, but are not limited to, the following:

- A. Special yards and spaces;
- B. Fences and walls;
- C. Special parking and/or loading provisions;
- D. Street dedication and improvements or bonds in lieu of improvements;
- E. Control of points of vehicular ingress and egress;

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- F. Special provisions for signs;
- G. Lighting, landscaping and maintenance of grounds;
- H. Control of noise, vibration, odors, or other similar nuisances.

**Findings of Fact**

The applicable land use zone is not proposed to be amended. All base zones will remain the same.

Certain provisions are proposed to be added or amended in the County's development ordinance that will apply or overlay an environmental protection district to certain areas with out altering the base zoning of these areas.

The proposed amendments to the ordinance include a proposed amendment of the Comprehensive Plan, adopting the resource inventories upon which the environmental protection district provisions will be applied.

The land affected is already subject to a resource protection buffer and the proposed text amendments are intended to clarify the applicability of these buffer areas under current Goal 5 rule provisions. Compatibility with underlying zoning and specific site conditions are considered by the proposal and are the basis for the proposed new text and text amendments.

**Conclusion**

With adoption of the proposed Comprehensive Plan amendments, the proposed change to the County's ordinance is consistent with the Comprehensive Plan. The affected sites are more suitably regulated by the proposed safe harbor riparian corridor than they are by the existing 50 foot resource buffer that precludes any and all development. Public health, safety and welfare have been considered in drafting of the proposed regulations and the regulations do not adversely impact the health, safety and welfare of the public.

**IX. Comprehensive Plan**

**A. Comprehensive Plan Goal #1 Policy 3**

- C. When revising or adopting the Comprehensive Plan there shall be a minimum of two public hearings held within the affected planning area.

**Findings of Fact**

Two public workshops were held in the immediate vicinity of the project and an additional publicly notified workshop for Planning Commission and County Court was held in The Dalles on 10/19/2004

At least two additional public hearings will be held prior to adoption and implementation of the proposed or any ordinance amendment.

The County sought and responded to public input resulting from the workshops prior to recommending ordinance amendments to the Planning Commission.

**Conclusion**

The intent of Goal 1 related Comprehensive Plan policies have been met.

**B. Comprehensive Plan Goal #5 Policy 7**

Encourage land use and land management practices which contribute to the preservation and enhancement of fish and wildlife resources, with consideration for private agricultural operations.

- A. Identify and protect all wildlife habitats by:
- B. Implementation of an Environmental Protection District overlay for sensitive fish and wildlife habitats.
- C. Regulation of setback requirements and conditional uses on riparian habitats.
- D. Maintaining large minimum lot sizes in forest and agricultural zones to reduce residential densities

**Findings of Fact**

Recommended changes to the existing Goal 5 Comprehensive Plan policies are discussed earlier in this report.

This section considers consistency with the existing provisions not proposed to be changed.

Though no significant fish resources were identified by ODFW a limited amount of riparian area offering some habitat values was identified and inventoried through this process. These are then proposed for protection through the EPD 6 provisions.

The proposal recognizes the presence of small lots in the community of Pine Hollow and the Sportsman's Park exception area. Nothing in this proposal impacts or increases residential densities in forest or agricultural zones.

**Conclusion**

The proposed amendments are consistent with existing Comprehensive Plan Policies related to Goal 5 protection and proposed amendments to the Comprehensive Plan only clarify the appropriate measures to be taken to provide protection in two specific areas of the County.