

## **ARTICLE 3.19 – WETLAND PROTECTION AREAS**

### **SECTION 3.19.001 – PURPOSE**

The purpose of establishing wetland protection areas are:

- A. To implement the goals and policies of the City of La Grande Comprehensive Plan;
- B. To satisfy the requirements of Statewide Planning Goal 5;
- C. To protect and restore the City of La Grande's wetland areas, thereby protecting and restoring the hydrologic and ecologic functions these areas provide for the community;
- D. To protect fish and wildlife habitat;
- E. To enhance and protect water quality and natural hydrology, to control erosion and sedimentation, and to reduce the effects of flooding;
- F. To protect and restore the natural beauty and distinctive character of La Grande's wetlands as community assets;
- G. To enhance the value of properties near wetlands by utilizing the wetland as a visual amenity;  
and
- H. To enhance coordination among local, State and Federal agencies regarding development activities near wetlands.

### **SECTION 3.19.002 – WETLAND PROTECTION AREAS, DEFINITIONS**

The following definitions shall apply to this Article:

- A. JURISDICTIONAL DELINEATION - A delineation of the wetland boundaries that is approved by the Oregon Division of State Lands (DSL).
- B. LOCALLY SIGNIFICANT WETLAND - Locally significant wetlands are as determined by the provisions of OAR 141-86-0300 et seq.
- C. LOCAL WETLANDS INVENTORY (LWI) - Maps and report entitled "City of La Grande Local Wetlands Inventory" and any subsequent revisions as approved by the Oregon Division of State Lands.
- D. OREGON FRESHWATER WETLAND ASSESSMENT METHODOLOGY (OFWAM) - A wetland function and quality assessment methodology developed by the Oregon Division of State Lands.
- E. WETLAND - An area inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
- F. WETLAND PROTECTION AREA -An area that includes any wetland determined to be locally significant subject to the provisions of this Article.

- G. WETLAND RESOURCE MAP -The local map which incorporates the DSL-approved Local Wetland Inventory map and identifies locally significant wetlands.

**SECTION 3.19.003 – DETERMINATION OF LOCALLY SIGNIFICANT WETLANDS**

The determination of locally significant wetlands shall be made by the City of La Grande in accordance with rules adopted by Division of State Lands (OAR 141-086-0300). Locally significant wetlands shall be identified on the City of La Grande Wetland Resource Map.

**SECTION 3.19.004 – WETLAND PROTECTION AREAS, APPLICABILITY, AND APPLICATION SUBMITTAL REQUIREMENTS**

- A. Wetland protection areas consist of locally significant wetlands identified on the Wetlands Resource Map.
- B. The provisions of this Article shall be applied to any property or parcel containing wetlands identified as being locally significant. These provisions do not provide any exemption from State or Federal regulations.
- C. Unless otherwise stated, the approving authority shall apply the provisions of this Article, in conjunction and concurrently with any other Development Permit being sought by an applicant. If no other Permit is being sought the Community Development Director/Planner shall serve as the approving authority.
- D. Applications for Plan approvals, Development Permits, or Building Permits, and plans for proposed public facilities on parcels containing a wetland protection area, or a portion thereof, shall contain the following:
1. A delineation of the wetland boundary completed by a professional wetland scientist or similar expert qualified to delineate wetlands in accordance with Oregon Division of State Lands rules. If the proposed project is designed to avoid wetlands, a wetland determination report may be provided in place of the delineation.
  2. A scale drawing that clearly depicts the wetland boundary, the surface water source, existing trees and vegetation, property boundaries, and proposed site alterations including proposed structures and paved areas.
  3. Verification that the application packet has been submitted to the Oregon Department of Fish and Wildlife for review and comment.

**SECTION 3.19.005 – APPROVAL CRITERIA**

- A. An applicant for a permit in a wetland protection area may request that the approval authority use one of two alternative review processes: Track 1 uses clear and objective criteria, and Track 2 uses discretionary criteria. The two (2) sets of criteria are listed below. The preferred track and criteria shall be noted on the permit application. The approving authority shall base its decision on the following criteria in addition to the required criteria for any other permit or approval that is being sought:
1. Track 1 – Clear and Objective Approval Criteria

- a. The proposed project will not result in the elimination or filling of land that has been delineated as a significant wetland.
  - b. The project will not result in development or filling of land within twenty-five feet (25') of the boundary of wetland that has been identified through the wetland determination process.
  - c. The project satisfies the provisions of Sections 3.19.006 through 3.19.008 of this Article.
2. Track 2 – Discretionary Criteria
- a. The project will not degrade the hydrologic, ecologic, or land conservation functions of wetlands in the community;
  - b. The project includes design features that will protect fish and wildlife habitat, enhance and protect water quality and natural hydrology, control erosion and sedimentation, and will not increase the effects of flooding;
  - c. The project satisfies the provisions of Sections 3.19.006 through 3.19.008 of this Article.
- B. When reviewing Development Permits or other planning applications for properties containing a wetland protection area, or portion thereof, the approving authority shall consider advisory recommendations from the Oregon Department of Fish and Wildlife regarding OAR 635-415 Fish and Wildlife Habitat Mitigation Policy.

**SECTION 3.19.006 – PERMITTED ACTIVITIES WITHIN WETLAND PROTECTION AREAS**

- A. Any use, sign, or structure, and the maintenance thereof, that was lawfully existing on the effective date of this Ordinance, is permitted within a wetland protection area. Such use, sign, or structure may continue at a similar level and manner as existed on the effective date of this Ordinance. The maintenance and alteration of pre-existing ornamental landscaping is permitted within a wetland protection area as long as no additional native vegetation is disturbed. The provisions of this Section shall not be affected by any change in ownership of properties containing a wetland protection area.
- B. The following activities and maintenance thereof are permitted within a wetland protection area:
  1. Wetland restoration and rehabilitation activities;
  2. Restoration and enhancement of native vegetation;
  3. Cutting and removal of trees which pose a hazard to structures or people due to threat of falling;
  4. Removal of non-native vegetation, if replaced with native plant species at the same amount of coverage or density;
  5. Drainage way or ditch maintenance practices, other than structures, to maintain flow at original design capacity and mitigate upstream flooding, provided that management practices minimize sedimentation and impact to native vegetation;

6. Replacement of a permanent, legal, nonconforming structure in existence on the effective date of this Ordinance with a structure on the same building footprint, if it does not disturb additional area, and in accordance with the provisions of Article 3.16 of this Code;
  7. Expansion of a permanent, legal, nonconforming structure in existence on the effective date of this Ordinance, if the expansion area is not within the wetland protection area, and in accordance with the provisions of Article 3.16 of this Code;
  8. Emergency stream bank stabilization; and
  9. Maintenance and repair of existing roads and streets, including repaving and repair of existing bridges, and culverts.
  10. Development of new roads and streets, including the installation of bridges and culverts where a State or Federal permit either has been obtained or is not required.
- C. Applications for new fencing within a wetland protection area shall contain a scale drawing that clearly depicts the wetland area boundary. New fencing may be permitted by the Community Development Director/Planner where the applicant demonstrates that the following criteria are satisfied:
1. The fencing does not impact the hydrology of the site;
  2. The fencing does not present an obstruction that would increase flood velocity or intensity;
  3. Fish habitat is not affected by the fencing; and
  4. The fencing is the minimum necessary to achieve the applicant's purpose.
- D. It is necessary to secure any other State or Federal permits before commencing work in a wetland.

**SECTION 3.19.007 – PROHIBITED ACTIVITIES WITHIN WETLAND PROTECTION AREAS**

- A. The following activities are prohibited within a wetland protection area, except as permitted in Section 3.19.006 - Permitted Activities Within Wetland Protection Areas.
1. Placement of new structures or impervious surfaces;
  2. Excavation, grading, fill, or removal of vegetation, except for fire protection purposes;
  3. Expansion of areas of landscaping with non-native species, such as a lawn or garden, into the wetland protection area;
  4. Dumping, piling, or disposal of refuse, yard debris, or other material;
  5. Discharge or direct runoff of untreated stormwater; and
  6. Uses not allowed in the list of permitted uses for the underlying zone.

**SECTION 3.19.008 – CONSERVATION AND MAINTENANCE OF WETLAND PROTECTION AREAS**

- A. When approving applications for Land Divisions, Planned Unit Developments, Conditional Use Permits, and Variances, or for Development Permits for properties containing a wetland protection area or portion thereof, the approving authority shall assure long term conservation and maintenance of the wetland protection area through one of the following methods:
1. The area shall be protected in perpetuity by a conservation easement recorded on deeds and plats prescribing the conditions and restrictions set forth in this Article and any imposed by State or Federal permits; or
  2. The area shall be protected in perpetuity through ownership and maintenance by a private nonprofit association through a conservation easement or through deed conditions, covenants, or restrictions prescribing the conditions and restrictions set forth in this Article and any imposed by State or Federal permits; or
  3. The area shall be transferred by deed to a willing public agency or private conservation organization with a recorded conservation easement prescribing the conditions and restrictions set forth in this Article and any imposed by State or Federal permits; or
  4. The area shall be protected through other appropriate mechanisms acceptable to the City of La Grande which ensure long-term protection and maintenance.

**SECTION 3.19.0092 – NOTIFICATION AND COORDINATION WITH STATE AGENCIES**

- A. The Oregon Division of State Lands shall be notified in writing of all applications to the City of La Grande for development activities - including development applications, Building Permits, and other development proposals - that may affect any wetland identified in the Local Wetlands Inventory. This applies for both significant and non-significant wetlands. The Division provides a Wetland Land Use Notification form for this purpose.
- B. When reviewing Development Permits authorized under this Article, the approving authority shall consider recommendations from the Oregon Department of Fish and Wildlife regarding OAR 635-415 Fish and Wildlife Habitat Mitigation Policy.

**SECTION 3.19.010 – VARIANCES**

- A. The Planning Commission shall be the approving authority for applications - for Variances to the Wetland Protection Area provisions. The procedures set forth in Article 8.4 shall be followed for approval of a Variance Permit except that the Variance criteria of this section shall apply.
- B. Hardship Variances  
The Planning Commission may grant a Variance Permit to any dimensional provision of this Article only when the applicant has shown that all of the following conditions exist:
1. The Variance is necessary to allow reasonable use of the subject parcel of land, which is owned by the applicant, and provided the subject parcel was not created after the effective date of this Article;

2. Strict application of the provisions of this Article would otherwise result in the loss of an existing buildable site for a use that is permitted outright in the underlying zoning designation, and for which the applicant has submitted a formal application;
3. The applicant has exhausted all other options available under this Article to relieve the hardship;
4. The Variance is the minimum necessary to afford relief, considering the potential for increased flood and erosion hazard, and potential adverse impacts on native vegetation, fish and wildlife habitat, and water quality;
5. No significant adverse impacts on water quality, erosion, or slope stability will result from approval of this Hardship Variance, or these impacts have been mitigated to the greatest extent possible; and
6. Loss of vegetative cover shall be minimized.

C. Mapping Error Variances and Corrections

The Community Development Director/Planner may grant a Variance Permit to any provision of this Article when the applicant has shown that a mapping error has occurred and the error has been verified by the Division of State Lands. Delineations verified by the Division of State Lands shall be used to automatically update and replace Local Wetland Inventory mapping. No formal Variance Permit application or amendment is needed for map corrections where delineations are provided.