

ARTICLE 28

GOAL V and VI RESOURCE OVERLAY

SECTION 28.010, PURPOSE: The Goal V and VI Resource Overlay Zone is applied to those areas as designated on the Goal V and VI Resource Maps of the Wallowa County Land Use Plan for the purpose of protection of identified Goal V and VI Resources.

SECTION 28.015, REVIEW PROCEDURE: Application for any permit authorized by this ordinance shall be subject to Administrative Review for compliance with the protection standards of Section 28.020. If, in the opinion of the administrative review authority, the proposed use may be in conflict with the protection standards, the application will be referred to the public hearing review process.

SECTION 28.020, PROTECTION STANDARDS: The following standards shall apply to all applications authorized under this ordinance.

01. RIPARIAN MANAGEMENT CORRIDORS: Except as provided under Residential zoning Articles 18, 19, 21, 38, and 42, and except in the R-1 and UG-R zones where the setback shall be 25 feet, there shall be a 100 foot setback for structures, from the top of each bank (synonymous with normal high water, see definitions, Article 1), from fish bearing streams for the purpose of preserving habitat and water quality for game birds, fur bearers, fish, and non-game wildlife. This setback may be varied to the minimums listed below in accordance with Article 36 upon recommendation by the WCNRTAC.

The following provisions shall apply to ensure that riparian corridors identified in the County's Goal 5 riparian corridor inventory as critical for the survival of fish species and wildlife are protected from the effects of conflicting uses or activities which are not subject to the Forest Practices Act:

A. Definition of Riparian Area and Management corridors: The riparian area is the area adjacent to a river, lake or stream, consisting of the area of transition from aquatic ecosystem to a terrestrial ecosystem (OAR 660-023-0090(1)(b)).

The riparian management corridor to be protected by the provisions of this section is defined as follows:

1. Along all streams with an average stream flow greater than 1,000 cubic feet per second (cfs) (Snake and Grande Ronde

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Rivers), the riparian management corridor boundary shall be 75 feet from the top of each bank.

2. Along all lakes, and fish bearing streams with an average annual stream flow less than 1,000 cfs (All other streams within Wallowa County), the riparian management corridor boundary shall be 50 feet from the top of each bank.
3. Where the riparian management corridor includes all or a portion of an identified significant wetland as determined during the County assessment process, the distance to the riparian management corridor boundary shall include the wetland.

B. Limitations and Uses Permitted: Uses permitted or conditionally permitted in the underlying zone(s) are permitted or conditionally permitted in a riparian management corridor subject to the additional procedure and requirements of subsection C, below. The provisions of subsection C, below, do not regulate forest practices subject to ORS 527.610 to 527.770 and the rules adopted pursuant thereto or to farm practices defined by ORS 30.947(2).

C. Procedures and Requirements: The following regulations apply within the riparian management corridor as defined in subsection A, above:

1. Permanent alteration of the riparian area by placement of structures, grading or impervious surfaces is prohibited.
2. Removal of vegetation in the riparian area is prohibited, except:
 - a. As necessary for restoration activities, such as replacement of vegetation with native or WCNRTAC approved riparian species; or
 - b. As necessary for the development of water-related or water-dependent uses; or
 - c. As necessary for uses and activities involving forest practices subject to ORS 527.610 to 527.770 and involving farm practices defined in ORS 30.947(2).
 - d. As necessary to comply with A10/10 regulations (ORS 468)

If authorized in the underlying zone(s), the following uses are permitted in the riparian management corridor subject to Site Plan Review under Article 36 and provided they are designed to minimize intrusion into the riparian area;

- a. Streets, roads, and paths;
- b. Drainage facilities, utilities, and irrigation pumps;
- c. Water-related or water-dependent uses; and

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- d. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

D. Hardship Variance: If a property owner of a lawfully created lot or parcel, preexisting as of January 21, 2003, can show that the application of these provisions render that lot or parcel un-buildable, a hardship variance may be allowed.

E. Hardship Variance Criteria:

1. By application of subsection C, above, the applicant shall demonstrate that the lot or parcel has been rendered un-buildable;
2. If, a lot or parcel is determined to be rendered un-buildable, then a plan showing how much riparian vegetation is to be removed shall be provided. In no case shall more than 50% of the width of the riparian area as measured from the upland edge of the corridor be altered; and
3. The plan shall demonstrate that a re-vegetation plan will equal or better the protection of the identified resources through restoration of riparian areas, enhanced buffer treatment or similar measures;
4. An alternative management plan, per Article 36, applying recommendations for mitigation offered by the Wallowa County Natural Resources Technical Advisory Committee and approved by the Wallowa County Planning Commission, shall govern permitted development.

02. WETLAND AREAS: A wetland is the area that is “inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions” (OAR 660-023-0100) and which includes all or a portion of a wetland as defined during the Division of State Lands (DSL) Fill and Removal Permit process or as identified by the WCNRTAC, which ever includes the larger area.

Should the DSL require that a Fill and Removal permit be issued, their determination shall be “ground truthed” and the boundaries of the wetland interpreted consistent with recommendations by the WCNRTAC, on a case by case basis, based on assessment by an individual properly certified in wetlands delineation. Documented evidence shall be supplied to Wallowa County which details the ecological criteria met and the location of the wetland.

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Except as provided under Residential zoning Articles 18, 19, 21, 38, and 42, where the setbacks for wetlands shall be the same as for streams, and except in the R-1 and UG-R zones where the setback shall be 25 feet, there shall be a 100 foot setback for structures from wetlands, as identified during the D S L permit process or as identified by the WCNRTAC which ever includes the larger area, based on assessment by an individual properly certified in wetlands delineation, for the purpose of preserving habitat and water quality for game birds, fur bearers, fish, and non-game wildlife. The proposed development shall meet the requirements of the County or the Division of State Lands, whichever is more restrictive.

The following provisions shall apply to ensure that identified wetlands are protected from the effects of conflicting uses or activities which are not subject to the Forest Practices Act:

With regard to the DSL Permit process (Fill and Removal Permits):

A. The County shall notify the Division of State Lands, the applicant, and the owner of record, within 5 working days of the acceptance of any complete application for development that are wholly or partially within areas identified as wetlands on the State Wetlands Inventory Maps. Competent local wetlands experts, via the County Natural Resources Technical Advisory Committee, may advise and make recommendations to the Division of State Lands, with regard to State Lands permits which may be required.

B. Permits involving wetlands may also be subject to review by the Wallowa County Natural Resources Technical Advisory Committee (see below).

C. Approval of any activity described above shall include one of the following statements

a. Issuance of a permit from the Division of State Lands under ORS 196.665 and 196.800 to 196.900 for the development before any physical alteration takes place within the wetlands.

b. Notice from the Division of State Lands that no permit is required.

c. Notice from the Division of State Lands that no permit is required until specific proposals to remove, fill, or alter the wetlands are submitted.

D. If the Division of State Lands fails to respond within 30 days of notice, County approval may be issued with written notice to the applicant and owner of record that the proposed development may require State or federal permits.

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E. The County may issue local approval for development on parcels identified as or including wetlands on the State Wetlands Inventory Maps upon providing the applicant and the owner of record written notice of the possible presence of wetlands and the potential need for State and federal permits and providing the Division of State Lands with a copy of the notification of comprehensive plan map or zoning map amendments for specific properties, if applicable.

F. Failure by the County to provide notice as required above will not invalidate County approval.

With regard to the County Zone Permit process:

G. Limitations and Uses Permitted: Uses permitted or conditionally permitted in the underlying zone(s) are permitted or conditionally permitted in a wetland subject to the additional procedure and requirements of subsection C, below. The provisions of subsection C, below, does not regulate forest practices subject to ORS 527.610 to 527.770 and the rules adopted pursuant thereto or to farm practices defined by ORS 30.947(2).

H. Procedures and Requirements:

1. Notice to the Division of State Lands (DSL) is required for all development permits affecting wetlands identified in the adopted wetland map of the land use plan (National Wetland Inventory) per OAR 660-22-100(7) (see above) and no permit for development affecting an identified wetland shall be issued by Wallowa County over the objection of the Division of State Lands.
2. For development that may be wholly or partially within areas identified as wetlands on the State Wetlands Inventory Maps, the Planning Department will do an initial evaluation of a wetland, which may be impacted by development. The Department will report its findings to the WCNRTAC and the committee will decide if the development takes place on a parcel which includes a wetland and, therefore, requires a “management plan”. The WCNRTAC may ask for additional evaluation.
- 3.
4. Development of a parcel including an identified wetland shall be subject to approval of a “management plan” detailing the impacts of proposed development on the wetland and any proposed mitigation which has been reviewed and recommended by the Wallowa County Natural Resources_Technical Advisory Committee pursuant to the procedures outlined in Article 36. County setbacks from identified

wetlands may be varied via the Hardship Variance procedure (see below). WCNRTAC recommendations may become Conditions of Approval as part of the County Zone Permit process and shall be forwarded to the DSL.

- 5.
4. If the applicant does not agree with the recommendations of the WCNRTAC, the applicant may, at his or her own expense, arrange for an independent evaluation of the wetland by an individual properly certified in wetlands delineation and will be entitled to an additional hearing before the WCNRTAC.
5. The following uses are prohibited within a wetland area as defined in subsection A, above:
 - a. The permanent alteration of the wetland area by placement of structures, grading or impervious surfaces.
 - b. Removal of vegetation in the wetland area, except:
 1. As necessary for restoration activities, such as replacement of vegetation with native wetland species; or
 2. As necessary for the development of water-related or water-dependent uses; or
 3. As necessary for uses and activities involving forest practices subject to ORS 527.610 to 527.770 and involving farm practices defined in ORS 30.947(2).
 4. As necessary to comply with "10/10" regulations (ORS 468)
6. If authorized in the underlying zone(s), the following uses are permitted in identified wetlands, and County setbacks from wetlands do not apply, subject to Site Plan Review under Article 36 and provided they are designed to minimize intrusion into the wetland area;
 - a. Streets, roads, and paths;
 - b. Drainage facilities, utilities, and irrigation pumps;
 - c. Water-related or water-dependent uses; and
 - d. Replacement of existing structures with structures in the same location that do not disturb additional wetland surface area.

- I. Hardship Variance:** If a property owner of a lawfully created lot or parcel, preexisting as of [date these provisions are adopted], can show that the application of these provisions render that lot or parcel un-buildable, a hardship variance may be allowed.

J. Hardship Variance Criteria:

1. By application of subsection C, above, the applicant shall demonstrate that the lot or parcel has been rendered un-buildable;
2. If, a lot or parcel is determined to be rendered un-buildable, then a plan showing how much wetland vegetation is to be removed or disturbed shall be provided. In no case shall more than 50% of the of the wetland area as measured from the upland edge be altered; and
3. The plan shall demonstrate that a re-vegetation plan will equal or better the protection of the identified resources through restoration of wetland areas, enhanced buffer treatment or similar measures.
4. An alternative management plan, per Article 36, applying recommendations for mitigation offered by the Wallowa County Natural Resources Technical Advisory Committee and approved by the Wallowa County Planning Commission shall govern permitted development.

03. WILDLIFE HABITAT: Fish habitat is addressed by Article 36 and the Wallowa County/Nez Perce Tribe Salmon Habitat Plan and not by this Article. Only those areas inventoried and mapped by the Oregon Department of Fish and Wildlife as habitat for a wildlife species of concern and/or habitat of concern are subject to the provisions of this article.

A. Big Game: If a structure is proposed for siting within an area identified as elk/deer habitat on the habitat map of the land use plan, the permit will not be considered to conflict with the habitat if located on a parcel of at least 160 acres.

If a structure is located on a lesser size parcel, the applicant must supply a plan, acceptable to the review authority, for the mitigation of adverse effect on wildlife habitat. The review authority shall solicit the Wallowa County office of the Oregon Department of Fish and Wildlife or other competent local review authority , including but not limited to the WCNRTAC, for comment on potential conflict with wildlife habitat.

Comment by ODFW or other competent local wildlife authority that a plan is not satisfactory may be sufficient cause for rejection of the proposed use if the review authority determines the adverse impacts cannot be adequately mitigated.

B. Migration Corridors, Bird and Small Mammal Habitat, and Big Game Release Sites: If a structure is proposed for siting within an area identified as a Migration Corridor on the sensitive migration corridor area habitat map of the land use plan, or bird or small mammal habitat, within 500 feet of a rookery or nesting site or , within 100 feet of a big game release site on the habitat map of the land use plan, the applicant must supply a plan, acceptable to the review authority, for the mitigation of adverse effect on the corridor or habitat. The review authority shall solicit the

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Wallowa County office of the Oregon Department of Fish and Wildlife or other competent local wildlife authority for comment on potential conflicts with migration corridors or wildlife habitat.

At the time of adoption, Migration Corridor and Small Mammal Habitat Maps have not yet been supplied by ODF&W. Until these maps are supplied and adopted, the discussion supplied here is for information purposes only. Additional Goal V Wildlife Maps and additions to the Goal V Comprehensive Wildlife Habitat Map may be adopted via the Post Acknowledgment Plan Amendment procedure.

Said mitigation plan shall include setbacks as follows:

1. In resource zones there shall be a 100 foot minimum setback for structures from small mammal habitat, rookeries, nesting sites, big game release sites, and migration corridors for the purpose of preserving habitat for game birds, fur bearers, fish, and non-game wildlife.

2. In non-resource zones there shall be a 25 foot minimum setback for structures from small mammal habitat, rookeries, nesting sites, big game release sites, and migration corridors for the purpose of preserving habitat for game birds, fur bearers, fish, and non-game wildlife.

Comment by ODFW or other local competent authority that a plan is not satisfactory may be sufficient cause for rejection of the proposed use if the review authority determines the adverse impacts cannot be adequately mitigated.

04. HYDRO-ELECTRIC SITES: If a site is proposed for hydro-electric development on a river that is considered to be a potential scenic waterway in the Oregon State System Plan 1975-1985, a hearing shall be held to assess whether the river is still a scenic waterway. If it can be determined that the river no longer is potentially scenic, the application shall be approved.

05. AGGREGATE SITES: If a dwelling is proposed for siting on a parcel adjacent to a tax lot identified as an aggregate site in the Comprehensive Land Use Plan, the owner of the aggregate site shall be notified for comment on potential conflict. There will be a 300 foot setback requirement from the aggregate site.

06. SCENIC RIVERS: Fish habitat is addressed by Article 36 and the Wallowa County/Nez Perce Tribe Salmon Habitat Recovery Plan and not by this Article.

A. Wallowa County has, within its boundaries, a number of rivers designated as Federal Wild and Scenic Rivers and State Scenic Waterways. These designated rivers are listed in Appendix 5-7 of the County's Comprehensive Land Use Plan, along with

a list of applicable management plans, and a description of the management of private lands within the boundaries of the designated areas. All development within these designated areas will conform to the regulations of the underlying zone within this Land Development Ordinance, except as regulated by the Forest Practices Act, and the applicable regulations of the State and/or Federal Management Plans, whichever is more restrictive. All development, except as regulated by the Forest Practices Act, within these designated areas will require a County land use permit. The Wallowa County Planning Department and the applicable State or Federal agency will mutually coordinate the processing of all permit applications within these designated areas, per MOUs, when available.

B. If a hydro-electric project is proposed for development within the boundaries of a designated area, a public hearing shall be held in order to assess the impact of the proposal on current and future scenic designations. By Federal law, all hydro-electric projects are prohibited on Federal Wild and Scenic Rivers and diversions on the Grande Ronde are also not allowed.

07. **ARCHEOLOGICAL SITES:** Development permits for known archeological sites will not be approved without proof of an applicant's compliance with applicable State and Federal requirements protecting known and suspected sites.
08. **GROUND WATER:** New uses which could significantly deplete groundwater resources or contaminate groundwater shall be subject to public review.
