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Memo Date: February 26, 2010
Board Meeting Date: March 17, 2010

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Public Works Department/Land Management Division

PRESENTED BY: Keir Miller, Associate Planner

AGENDA ITEM TITLE: REPORT BACK / STATUS OF FLOODPLAIN AND RIPARIAN ORDINANCE UPDATES

1. ISSUE

Report back to the Board regarding the status of the Lane Code Floodplain and Riparian Ordinance Update effort.

2. AGENDA ITEM SUMMARY

As a component of the Land Management Division's 2009-2010 Long-Range Planning Work Program (LRPWP) staff was directed to initiate a process to develop proposed amendments to the floodplain and riparian protection standards of Lane Code Chapters 10.271, 16.244 and 16.253. As outlined within the LRPWP the process is indented to:

1. Explore best management practices and identify/develop higher regulatory standards to help protect public health and safety within the floodplain, while reducing costs associated with flood damages, flood insurance premiums and treatment of possible flood-related water contamination, and
2. Explore and craft possible amendments to the riparian protection ordinance. These amendments shall be focused on simplifying/clarifying the existing ordinance and where possible, increasing protection for riparian areas from development.

The Board of Commissioners has instructed staff to provide periodic updates on the status of this work. This memo summarizes the background/context of this effort, provides an overview of process and progress to-date and details timelines for completion of the work.

3. DISCUSSION

3.1 Board Action and Other History

A. History of regulatory framework for floodplain areas in Lane County:

In 1968, Congress passed the National Flood Insurance Act based on findings that: "(1) a program of flood insurance can promote the public interest by providing appropriate protection against the perils of flood losses and encouraging sound land use by minimizing exposure of property to flood losses; and (2) the objectives of a flood insurance program should be integrally related to a unified national program for floodplain management."

The Flood Insurance Act is administered through the National Flood Insurance Program, (NFIP). The NFIP is a voluntary program that is based upon cooperative agreements between the federal government and local participating communities. The NFIP enables property owners within participating communities to purchase flood insurance at a reasonable cost and helps to provide an insurance alternative to the rising costs of federal flood disaster relief. In return, participating communities must properly manage their floodplains by adopting and enforcing floodplain ordinances aimed at reducing the likelihood of future flood damage to new construction.

Since 1970, Lane County has regulated development within known flood hazard areas -and in doing so participated on a limited basis in the National Flood Insurance Program. On December 18, 1985, the County became a fully participating member the NFIP by adopting a countywide Flood Insurance Study and associated set of official Flood Rate Insurance Maps (FIRMs) . The County's flood insurance study and FIRMs went through a major revision and update process in the late 1990s and on June 2, 1999, a new study and set of FIRMs was issued. These documents were adopted under Order No. 99-6-30-7 and are referenced in Lane Manual 11.020. They remain in effect today.

Corresponding floodplain management ordinances have been adopted by the county and are updated periodically over the years to reflect changes required through the NFIP and to ensure consistency with Oregon specialty building codes. These regulations are based primarily off of template language found in the Department of Land Conservation and Development's (DLCD) Oregon Model Flood Damage Prevention Ordinance and also contain language found in United States Code Title 44, Chapter 1, Part 59. These regulations are contained in Lane Code 16.244 (applicable to areas outside of an urban growth boundary and governed by the Rural Comprehensive Plan) and also in Lane Code Chapter 10.271 (applicable within the urban growth areas of small cities).

B. History of regulatory framework for riparian areas in Lane County:

Riparian protection standards were first enacted in Lane County through Ordinance 8-84 on February 29, 1984. These early regulations were brief and were developed to address the basic requirements of Statewide Planning Goal 5, which was a mandatory step in achieving acknowledgment of the Rural Comprehensive Plan. The regulations set specific stream setback standards within certain zone designations and attempted to limit removal of vegetation along riparian corridors adjacent to fish bearing Class 1 streams¹ to a maximum of 25% of the setback area on a lot or parcel. Class 1 streams were inventoried on a series of maps developed by the Oregon Department of Forestry in 1980 and referenced within the Flora and Fauna policies of the Rural Comprehensive Plan.

In 1992, under Ordinance 10-92, the county's riparian protection standards were significantly expanded with the adoption of Lane Code Chapter 16.253 (Stream Riparian Regulations). Within LC 16.253 fairly complex formulaic criteria was codified to establish limits for the removal of vegetation within riparian corridors. The ordinance also contained language specifying standards for granting variances (referred to as modifications) to structural siting requirements and exhaustive language detailing requirements for riparian area alteration plans and mechanisms for compliance-related restoration plans.

¹ Class 1 streams have been defined as 'waters which are valuable for domestic use, are important for angling or other recreation, and/or used by significant numbers of fish for spawning, rearing, or migration routes.' (Oregon Forest Practices Act FPA Rule 629-24-101)

At the time of its enactment LC 16.253 was one of the first and most comprehensive riparian protection ordinances in the state. However, shortly after its adoption, problems with the code became apparent, including its complexity, the difficulty in administering and enforcing the code and the perception by some that the code was ineffective at preventing the loss of significant riparian habitat.

In October of 1999, the Upper Willamette Spring Chinook Workgroup (SCWG), an ad-hoc advisory committee comprised of local fisheries managers and biologists, initiated a review of LC16.253. The review was prompted by deficiencies in the code identified by Land Management staff, in addition to the listing of Spring Chinook as threatened under the Federal Endangered Species Act. The purpose of the review was to evaluate the riparian ordinance using the most current fisheries science available at the time to provide technical information to decision-makers interested in improving the ordinance to address recovery of endangered salmonids.

The SCWG produced the report: Riparian Area Technical Report: A Review of Lane County's Riparian Ordinance; and presented that information to the Board at a work session on October 31, 2000. Based upon the findings in the technical report, an ordinance subcommittee of County staff, land owners and agency biologists developed a draft Critical Habitat Conservation Zone (CHCZ) ordinance. The CHCZ ordinance incorporated nearly all of the recommendations of the SCWG, which were based on contemporary riparian-floodplain ecology and sought to restore or maintain "Properly Functioning Condition" – a benchmark that the National Marine Fisheries Service used to evaluate the impacts of development and management activities in riparian-floodplain ecosystems.

On April 10, 2001, after a lengthy public review process the Board of Commissioners tabled the CHCZ by voting 4-1 to reject a recommendation of the Lane County Planning Commission to move the proposed ordinance forward.

LC 16.253 remains in effect today in substantially the same form as when it was adopted in 1992.

C. Lane County's Participation in the NFIP Community Rating System:

In 1990, the National Flood Insurance Program's Community Rating System (CRS) was implemented. The CRS is sub-program within the NFIP that recognizes and encourages community floodplain management practices that exceed the minimum NFIP standards.

Under the CRS, flood insurance premium rates are lowered to reflect the reduced flood risk resulting from community activities that meet the objectives of the CRS: Those objectives are:

- (1) Reduce flood losses, i.e.;
 - protect public health and safety,
 - reduce damage to buildings and contents,
 - prevent increases in flood damage from new construction,
 - reduce the risk of erosion damage, and
 - protect natural and beneficial floodplain functions.
- (2) Facilitate accurate insurance rating; and
- (3) Promote the awareness of flood insurance.

In September of 2006, the Board of Commissioners adopted Lane County's Natural Hazards Mitigation Plan (NHMP) under Resolution & Order No.06-9-20-3. The NHMP is a broad, non-regulatory, document that: (1) provides a foundation for collaboration around hazard mitigation measures; (2) serves as a prioritization tool for future mitigation activities; and (3) helps meet necessary federal planning requirements to enable Lane County to qualify for certain disaster assistance programs.

As a component of the NHMP, a series of specific "action items" were developed. These action items are organized around each of the different types of hazards that Lane County is susceptible to, and if carried out, they are intended to improve the county's overall disaster resiliency. Under Flood Mitigation Action Item #6, the Land Management Division was identified as the coordinating division tasked with bringing Lane County into the Community Rating System.

As part of the Land Management Division's 2007 Long Range Planning Work Program, LMD was formally directed to take actions necessary for the county to gain admittance into the CRS.

On March 3, 2008, LMD submitted a CRS application and accompanying documentation to FEMA² for formal review and on July 2, 2009, Lane County received official notification of admission into the CRS.

D. Board Direction to Develop Proposed Amendments to the Floodplain and Riparian Protection Standards of Lane Code:

Board direction to pursue updates to the riparian floodplain ordinances has been provided on several occasions.

Proposals to updates both of the ordinances were included on LMD's approved list of long range projects for 2008-2009. However, due to other pressing Board priorities, including the Coordinated Population Forecast Project, the updates were not undertaken.

On August 25, 2009, the ordinances were discussed at length during a work session that the Board held with representatives from local watershed councils and EWEB. During that discussion the Board expressed a desire to see code updates acted upon as quickly as possible. Commissioner Sorenson (then in the role of Board Chair) indicated that he was not interested in seeing staff recreate a protracted review of the riparian ordinance as was done a decade ago during the CHCZ effort. The Board also discussed the need for staff to identify a diverse group of potentially affected interests early on and to engage them in some sort of collaborative process similar to the successful effort conducted by the West Eugene Collaborative.

At a meeting of the Board of Commissioners on August 26, 2009, the County was formally recognized by FEMA for admittance into the Community Rating System. During this meeting the Board reiterated its interest in seeing the county explore additional steps to maintain and improve the County's CRS standing, including updates to the county's floodplain ordinance.

² The Federal Emergency Management Agency (FEMA), under the auspices of the Department of Homeland Security, is the agency responsible for overseeing the NFIP and the CRS. Lane County works with both the FEMA Region X office and also with the Oregon Department of Land Conservation and Development's Hazard Mitigation Program, which serves as the NFIP coordinating agency for Oregon communities.

On November 10, 2009, the Board approved LMD's 2009-2010 LRPWP. Updates to the flood ordinance were included on the approved work program as a component of Item 3: FEMA -Community Rating System. Updates to the riparian ordinance were included under Item 5: Analysis of Riparian Ordinance.

3.2 Process Overview

Updates to both the floodplain and riparian ordinances have been proposed to help achieve related objectives - including the enhancement and preservation of floodplain/riparian areas to help protect and maintain water quality and to help protect public health and safety. Furthermore, for the past several years, the primary proponents of updates to the riparian ordinance are the same individuals who have been advocating for revisions to the floodplain ordinance. For these reasons staff has determined that taking a combined approach to floodplain and riparian code updates is logical. Staff has designed an integrated process to develop and review proposed amendments, which is outlined in Section 3.3, below. As designed, the Post Acknowledgment Plan Amendment (PAPA) processes for both floodplain and riparian updates would occur along a parallel public hearing process.

The basic process is comprised of three phases:

Phase 1 is an intensive issue identification and consensus feasibility analysis. To carry out this phase of the project the Eugene Water and Electric Board (EWEB) agreed to contract the services of Oregon Consensus (OC). OC is Oregon's official program for public policy consensus building. OC provides assessments, consensus building facilitation, mediation and other alternative dispute resolution services to public entities and their stakeholders throughout Oregon. OC is a program of the National Policy Consensus Center in Portland State University's Hatfield School of Government, which also houses the Oregon Solutions Program. OC's mission is to promote effective and collaborative approaches for public decision-making in the state. OC offers state agencies, local governments and the public a neutral forum and neutral services in support of collaborative governance.

OC was the primary facilitator involved in the West Eugene Collaborative (WEC) process. As discussed above, the Board directed staff to look at the WEC process as a possible model for structuring the riparian and flood ordinance process.

OC's Phase 1 assessment was completed in late February. At the drafting of this memo staff was waiting to receive a summary report of that process. It is anticipated that the report will: 1) articulate key stakeholder concerns regarding possible updates to the floodplain and riparian codes 2) conclude if consensus on code amendments can likely be achieved and 3) if possible, describe how a process achieve consensus could best be designed.

A list of stakeholders interviewed by OC is included as Attachment "A" to this memo. Staff will provide the Board the complete OC report when it becomes available.

Phase 2 is the "heavy lifting" portion of the project. This phase will involve the actual review and development of potential code language. During this phase staff will work closely with a Technical Advisory Committee (TAC), comprised of a key subset of interested stakeholders. TAC members will be drawn from the stakeholders identified in the OC

Phase 1 assessment but could include other individuals if necessary. Ideally, the TAC will consist of no more than 8-10 members.

The work of the TAC will draw heavily upon the extensive research and resources regarding model code ordinances developed by EWEB and the University of Oregon's Community Planning Workshop. The TAC will also use the FEMA technical guidance document: CRS Credit for Higher Regulatory Standards and the new DLCD 2009 Oregon Model Flood Ordinance.

Phase 2 of the project could be conducted and facilitated by LMD staff as described above. Alternately, there is the possibility that facilitation of this phase could be conducted by Oregon Consensus. Specific details on an OC process and timelines to conduct the work were unavailable to staff at the writing of this memo. Staff will provide further updates to the Board on this option on March 17.

Phase 3 of this effort encompasses the Post Acknowledgment Plan Amendment process including; Ballot Measure 56 notification to landowners, 45 day notice to DLCD, work sessions with the LCPC and Board and public hearings before the LCPC and Board.

3.3 Implementation Timeline

A tentative implementation timeline for the ordinance update process is provided below. A more detailed project calendar, including proposed meeting dates, is included as Attachment "B" to this memo.

Phase 1 - Oregon Consensus Stakeholder Issue Identification Process

January 2010

Week 1-2	Project scoping meeting and additional correspondence with Oregon Consensus and EWEB
Week 3	EWEB formalizes contract with Oregon Consensus
Week 4	Oregon Consensus begins stakeholder interviews

February 2010

Week 1-3	Oregon Consensus conducts stakeholder interviews
	Staff begins preliminary analysis of model code language and BMPs
Week 4	Oregon Consensus and County staff review summary report of issue identification and consensus feasibility study

Phase 2 - Ordinance Development and Review Process

March 2010

Week 1-2	Staff conducts background analysis of applicable Goal 5, 6, and 7 OARs and begins developing matrix of known issues and possible code revisions
Week 3	Update on project status to BCC
Week 4	Tentative – Technical Advisory Committee (TAC) meeting #1

April 2010

Weeks 1-4	Code language development and review process continues
	TAC meeting # 2 (date TBD)
Week 4	Second update on project status to BCC

May 2010

Weeks 1-4	Code language development and review process continues
	TAC meeting # 3 (date TBD)

June 2010

Weeks 1-4	Code language development and review process continues
	TAC meeting # 4 (date TBD)
	Staff begins developing preliminary PAPA materials

July 2010

Week 2	Code development process concludes
Week 2-4	Staff finalizes materials for 1 st evidentiary hearing including; draft ordinance language, 45 DLCD and Ballot Measure 56 notices, staff reports, and findings

Phase 3 – Post Acknowledgment Plan Amendment Process

August 2010

Week 3	Work session with Planning Commission - project overview and draft code language review (8/17)
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September 2010

Week 3	Public Hearing with Planning Commission (9/21)
	1 st Reading and setting public hearing with BCC (9/22)

October 2010

Week 1	Continuation of public hearing with LCPC, if necessary (10/5)
Week 2	2nd Reading and Public Hearing with Board of Commissioners (10/12)
Week 4	3 rd Reading and Continued Public Hearing w/ BCC, if necessary (10/26)

3.4 Possible Challenges and Obstacles

Compliance with Goal 5 Rule

The Oregon Administrative Rules (OAR 660-23-000) which outline the procedures and requirements for complying with Statewide Planning Goal 5 was revised in September 1996. Under the revised rules, cities and counties throughout Oregon are obligated to compile inventories of "significant" wetlands and riparian corridors. As a second step, cities and counties are required to examine existing local ordinances and adopt or update their regulatory programs to address protection of significant wetlands and riparian corridors. Cities and counties are required to address the revised Statewide Planning Goal 5 rules when conducting periodic review and when amending comprehensive plans and related Goal 5 land use regulations. As with any local revision to land use regulations, DLCD must approve the proposed revisions.

The revised rules for complying with Statewide Planning Goal 5 include a "Safe Harbor" approach which is a prescribed course of action that satisfies the rule requirements. The Safe Harbor approach includes requirements such as requiring a riparian corridor boundary of 50 feet from top of bank for fish-bearing streams with a flow less than 1,000 cfs, the protection of significant wetlands and placing restrictions on grading, excavation, fill and vegetation removal in protected riparian corridors and wetlands. Cities and counties have the option of using the Safe Harbor approach in revising regulations for wetlands and

riparian corridors. The benefit of using the Safe Harbor approach is that the approval process through DLCD is somewhat streamlined, and a fairly complex and costly "ESEE" (economic, social, environmental and energy) analysis is not required.

Lane County's existing riparian regulations were developed prior to the 1996 rule and therefore, significant amendments to the regulations would trigger compliance with the revised rule. Existing regulations already require riparian area setbacks in excess of those required by the Safe Harbor approach. Considering this fact, if the Board is interested in maintaining or expanding the current setback protections, then the Safe Harbor approach would not be an advisable course of action.

It cannot be overstated that achieving compliance with Goal 5 (even through the Safe Harbor process) is generally a time-consuming, expensive, and controversial process for local governments. In fact, a 2001 evaluation by the Committee on the Oregon Planning Experience (COPE) found that the complexity of the Goal 5 process was one of the major frustrations with the overall statewide planning program.³ Moreover, due to the extensive range of Lane County's wetland and riverine resources, any program to achieve Goal 5 compliance here would be further complicated and costly – and well outside the scope of the proposed amendment process.

At this time staff is investigating what specific amendments to the riparian ordinance might be possible that fit within the scope of this project and not trigger the complete and onerous Goal 5 process. For example, many of the problems currently identified with the code are related to its complexity and lack of clarity. It is possible that some minor amendments to clarify the code may be exempt from the Goal 5 rule, which would go a long way in improving the code's overall effectiveness. Additionally, there are likely other avenues for enhancing the code's efficacy beyond amending it. Such as reevaluating how the code is currently interpreted and enforced.

3.5 Policy Considerations

At this time it is necessary for the Board of Commissioners to specify if the proposed course of action and timelines for updates to the floodplain and riparian ordinances are acceptable.

3.6 Board Goals

Efforts to protect water quality by enhancing riparian and floodplain protections relate to the following goal, which can be found on page 13 of the Strategic Plan:

- *Maintain a healthy environment with regard to air quality, water quality, waste management, land use and parks.*

Code amendments of this nature would also seem to support the 2008-2010 economic development goal to: "*Focus on what we do best and take advantage of our unique strengths and image*". Lane County is recognized as an area with high-quality environmental assets. These assets contribute to Lane County's image as a highly livable community and play an important role in attracting both businesses and employees to the region.

³ Planning for Natural Resources: The Policies and Challenges of Oregon's Land Use Program in Protecting Natural Resources, J. Baxter, 2004

In addition, taking responsible steps to maintain and improve the County's CRS rating reflects a commitment to enhance public safety, promote the County's economic resiliency to flood events and protect the natural and beneficial functions of floodplains.

3.7 Financial and/or Resource Considerations

At this time it appears that adequate staff resources have been allocated to carry out the ordinance amendment process (as it is currently designed). However, if the Board wishes to modify the scope of the project or significantly modify the project timetable additional resources will need to be identified.

Resources are not available to undertake a program to achieve compliance with the 1996 Goal 5 Rule.

Also, use of Oregon Consensus for facilitation of the 2nd phase of the project is contingent upon the tentative offer of EWEB to contract OC for those services.

4. TIMING/IMPLEMENTATION

Unless otherwise directed by the Board, LMD will continue to implement the project following the timelines outlined in Section 3.3, above. However, it should be emphasized that those timelines are variable and largely dependent upon the independent process of the Oregon Consensus group, should their services be employed for Phase 2 of the project.

5. ATTACHMENTS

- A. Oregon Consensus Stakeholder Interview List
- B. Project Calendar
- C. Oregon Consensus Phase 1 report (this report will be provided upon availability)

Lane County Floodplain and Riparian Ordinance Update Project
Phase 1: Oregon Consensus – Stakeholder Interview List

Watershed Councils

Middle Fork Willamette WSC

Eve Montanaro, Executive Director

Coast Fork Willamette WSC

Pam Reber, Executive Director

McKenzie WSC

Larry Six, Coordinator for WSC & Executive Director, McKenzie Watershed Alliance

Siuslaw WSC

Liz Vollmer-Buhl, Executive Director

Septic Installers:

Leisure Excavating, L.L.C. (Coast)

Gary Rose

Government Agencies:

Soil & Water Conservation District, Upper Willamette

Paul Reed

DEQ

Randy Trox

City of Cottage Grove

Amanda Ferguson, Planner

Lane County Sanitarian

George Ehlers

Realtor/Land Use Consultants

Jim Belknap, Broker

Territorial Land Company, Inc.

Lane County Home Builders Association

Laura Potter, Director of Government Affairs

Thom Lanfear,

Lanfear Consulting, LLC

Bill Kloos, Land Use Attorney

Law Offices of Bill Kloos

Private Water Providers

Springfield Utility Board

Chuck Davis

Amy E. Chinitz, Water Quality Protection Coordinator

Cottage Grove

Jan Wellman, Public Works Director

South Coast Water District

Dan Reitz

Environmental Groups

McKenzie River Trust,

Joe Moll, Executive Director

Land Watch, Lane County

Robert Emmons, President

Local Activist

Tom Bowerman,

Residential Landowners

George Grier

Wesley Voth

Anglers

Chris Daughters - Owner

Caddis Fly Angling Shop

River Guides:

Dana Burwell

Timber Interests

Cary Hart

Giustina Land & Timber

2010 Lane Code Floodplain & Riparian Ordinance Updates - Tentative Project Meeting Calendar

Phase 1 - Oregon Consensus Stakeholder Issue Identification Process

January 2010							February 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
							1	2	3	4	5	6	
3	4	5	6	7	8	9	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27
24	25	26	27	28	29	30	28						
31													

DATE	MEETING/PRODUCT	TOPICS
January 13, 2010	BCC Meeting Regarding Cedar Creek	Direction to LMD on Future Project Status Reports

March 2010							April 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6		1	2	3	4	5	6	
7	8	9	10	11	12	13	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28	29	30	

DATE	MEETING/PRODUCT	TOPICS
March 17, 2010	Report to BCC	Project Status Overview of Project
March 30, 2010	Technical Advisory Comm. Meeting #1	TBD
TBD	Technical Advisory Comm. Meeting #2	Project Status
April 28, 2010	Report to BCC	

May 2010							June 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6		1	2	3	4	5	6	
7	8	9	10	11	12	13	6	7	8	9	10	11	12
14	15	16	17	18	19	20	13	14	15	16	17	18	19
21	22	23	24	25	26	27	20	21	22	23	24	25	26
28	29	30	31				27	28	29	30			

DATE	MEETING/PRODUCT	TOPICS
TBD	Technical Advisory Comm. Meeting #3	TBD
TBD	Technical Advisory Comm. Meeting #4	TBD

Phase 3 - Post Acknowledgment Plan Amendment Process

August 2010							September 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7	1	2	3	4	5	6	7
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30	31	

DATE	MEETING/PRODUCT	TOPICS
August 6, 2010	45 Day Notice to DLCD Due	Notice for 9/21 1st Evidentiary Hearing
August 17, 2010	Work Session w/ LCPC	Project Overview and Draft Code Language Review

October 2010							November 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7	3	4	5	6	7	8	9
8	9	10	11	12	13	14	10	11	12	13	14	15	16
15	16	17	18	19	20	21	17	18	19	20	21	22	23
22	23	24	25	26	27	28	24	25	26	27	28	29	30
29	30	31					31						

DATE	MEETING/PRODUCT	TOPICS
September 21, 2010	Public Hearing w/ LCPC	Proposed PAPA Hearing and Deliberations
September 22, 2010	Board of Commissioners Meeting	1st Reading and Setting of Public Hearing
October 5, 2010	Public Hearing w/ LCPC	Continuation of 7/6 Hearing, if Necessary
October 12, 2010	Public Hearing w/ BCC	2nd Reading/ Public Hearing and Deliberations
October 26, 2010	Public Hearing w/ BCC	3rd Reading/ Continued Public Hearing, if Necessary

Key

Technical Advisory Committee Meeting
Board of Commissioners Down Weeks

W. S. B.

Attachment "C"



Oregon Consensus Program
National Policy Consensus Center | Hatfield School of Government

780G Urban Center
506 SW Mill Street
Post Office Box 751
Portland, Oregon 97207-0751

503-725-9070 tel
503-725-9099 fax
Consensus@pdx.edu

**Lane County
Drinking Water Source Protection
ASSESSMENT REPORT
March 4, 2010**

SUMMARY OF RECOMMENDATIONS

Based on the interview findings, Oregon Consensus recommends a two-step process for proceeding with a collaborative process. First the county could bring together a group of the stakeholders to see if agreement can be reached on the scope of the issues to be addressed and the design of a collaborative process (including process timing and duration). The interviews indicate a willingness by stakeholders to discuss certain issues, including:

- Enforcement of county regulations
- Setbacks, and what is allowed within the setbacks, for the riparian areas
- Limits on development in the floodplain
- The use of incentives, in addition to or in replacement of prescriptive regulations
- Increased public education efforts

If stakeholders can reach agreement on the scope of the issues to be addressed and the design of a collaborative process, the indications are that there is potential for a successful collaborative effort to develop recommendations to the Board of County Commissioners to address protection of drinking water sources and life and property in the riparian areas and flood plains of Lane County

I. Introduction

In 2009, two studies initiated by EWEB were completed as part of efforts to evaluate the potential impacts of development on water quality in the McKenzie River watershed: 1) an analysis by the University of Oregon Community Planning Workshop of the Lane County Development Code, how the code is interpreted and applied to development, and the implications for drinking water quality; and 2) a septic system study focusing on the impacts on drinking water quality from septic system cluster areas. Lane County concluded that, although these studies focused on the McKenzie Watershed, the results are applicable across the County. Recognizing that safe drinking water is vital to the economic health and

Attachment "C"

livability of Lane County communities, the County Board of Commissioners requested that all potential stakeholders be included in future discussions regarding ordinance changes or other measures to be taken in order to protect drinking water and life and safety in floodplains, riparian areas, channel migration zones, and surface or groundwater source zones.

In December, 2009, Lane County and EWEB requested assistance from Oregon Consensus (OC) in assessing the potential for convening a collaborative process for reviewing and revising the applicable county ordinances. Oregon Consensus, a program of the National Policy Consensus Center at Portland State University, is Oregon's official program for public policy consensus building. OC provides assessment, consensus building, facilitation, mediation and other collaborative governance services to public entities and their stakeholders throughout Oregon.

The assessment phase is intended to answer the question of *whether* a collaborative process is appropriate or useful, and if the answer to the first question is "yes," answer the question of *how* the interested parties might move forward with such a process. Funds for this assessment were contributed by EWEB.

As part of the assessment, between January 25 and February 12, 2010, OC interviewed 27 key individuals and agencies to assess their general level of engagement with the relevant issues and to explore potential tools for moving forward. The list of interviewees is included with this report as Attachment A.

This Assessment Report summarizes the issues, concerns, ideas and suggestions explored in the assessment interviews, analyzes that information, and makes recommendations as to the potential for a successful collaborative process and how a collaborative process could be structured and implemented.

OC would like to express its appreciation to all the interviewees who gave willingly of their time to share information and ideas and without whom this report would not be possible.

II. Assessment Process and Approach

A feasibility assessment is a method to assess and potentially assist stakeholders in organizing and convening a collaborative process. An assessment provides the opportunity for stakeholders to gather information, learn about each other's interests, better understand the varying perspectives on critical issues and concerns, test assumptions regarding the anticipated barriers or obstacles, and begin to develop a range of ideas and suggestions for addressing the identified issues and concerns.

In January, 2010, OC sent background materials to potential interviewees and began scheduling interviews. The background materials consisted of the two studies identified in the introduction of this report. The interview process took place in January and February, with individual, group, phone and in-person interviews.

Attachment "C"

OC conducted each interview utilizing the same set of questions to provide for consistency throughout the process. The interview questions have been included in this report as Attachment B.

OC was especially interested in identifying the similarities and differences of opinions on issues, looking for areas of commonality as well as areas of conflicting opinions. The interviewees shared their perspectives on the issues, and their understanding of the challenges and complexity of this subject. Every interviewee was considerate in the time and attention they provided during the interview, their preparedness for the conversation, and their willingness to be forthright, honest, engaged and constructive in their remarks.

Interviews lasted about one hour. Based on interviewee suggestions, a significant number of people were added to the interview list as the process progressed. Due to limited resources and time to complete the assessment, OC was not able to interview every individual or organization that was suggested for an interview.

The interview process produced a significant amount of information, a rich diversity of perspectives, creative, and pragmatic insights, and thoughtful ideas and suggestions. This report represents highlights of the key issues, concerns and ideas offered during the interview process. Because it is a summary it does not include every idea raised during the interviews.

OC is providing this report to, and seeking comments from, all the interviewees both for the value of sharing this information broadly and to ensure there are no significant errors or major omissions. No confidential information has been included in this report, nor are any names attributed to statements made during the interview process.

III. Summary of Assessment Interviews

Interviewees expressed a wide range of opinions throughout the interview process. Some overarching themes wove their way into the conversations and are summarized here to provide a context for this portion of the assessment report.

Drinking water comes from many sources in Lane County, including major rivers, smaller creeks and streams, lakes, reservoirs, surface seeps, springs and general ground water. Interviewees, with their focus on different sources, also have differing opinions about the current quality of the water which vary from "the best in the world" to "meets minimum standards." All interviewees expressed concern that the quality of the drinking water, no matter what the source, would deteriorate unless further steps are taken now to protect it for the future. Interviewees also recognized the need to regulate development in the floodplains in order to protect the quality of drinking water and the safety of life and property.

It is generally accepted by interviewees that the pressure for more residential development along rivers and lakes will grow with the continuing growth of population in Lane County, and that this pressure has implications for the quality of drinking water and the future of the riparian and flood plain areas.

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All interviewees asserted that current enforcement of the riparian and flood plain regulations by the county is not adequate, and that enforcement needs to be addressed in any review of the riparian and flood plain regulations.

Many expressed a preference for the use of incentives in addition to or as replacement for prescriptive regulations. The need for public education regarding riparian area and flood plain issues was also an often repeated priority.

Interviewees appreciated the County's effort to engage stakeholders in a collaborative process. Many have concerns about the amount of time needed for a collaborative process, and the ability to reach consensus with the wide range of interests and opinions represented by the stakeholders. However, for the most part, interviewees were hopeful that such a process might succeed at producing some recommendations that could be adopted by the County and address some or all of the important issues related to drinking water quality and the protection of life and property in the flood plains.

A. Interviewee Background, Involvement and Interests in drinking water quality, and the safety of life and property in the flood plains.

OC was fortunate to have the opportunity to interview a diverse, thoughtful, and articulate group of individuals with interests, both personal and professional, in the quality of drinking water, and the safety of life and property in the flood plains in Lane County. Interviewees included people from state and county government; soil and water conservation districts; residential landowners, the building industry, the timber industry, septic systems installers, farmers, public and private water providers; environmental groups; watershed councils, recreational interests, land use consultants, and attorneys. Interviewees brought to the interviews a significant depth and breadth of experience and expertise in relation to the issues.

Interviewees described a variety of interests relating to revisions to the riparian and flood plain ordinances. All reflected an overarching interest, either personal or professional, in protecting the quality of drinking water and the health of the residents of Lane County. Many expressed their personal or professional interest in providing for the safety of persons and property in relation to flood events in the flood plains. Many interviewees also expressed an interest in minimizing the costs of maintaining their businesses, homes and property, and the amount of government interference in their businesses and personal lives. Some interviewees reflected on their interest in protecting their livelihoods or jobs. Some interviewees focused on their interest in protecting private property rights, not increasing the cost of development, and maintaining the availability of land for development. Some interviewees reported the strong interest of many residents in being able to live near and have views of rivers and lakes. Some interviewees expressed an interest in protecting ecosystems and the habitats for fish and wildlife that depend on the rivers, lakes, and watersheds as a whole. Other interviewees focused on their interest in maintaining recreational boating and fishing opportunities that the rivers provide. Another interest expressed was in the fairness of how county regulations are implemented and enforced.

B. Major Issues, Concerns, and Challenges in relation to the County ordinances regulating the quality of drinking water and the safety of life and property in the flood plains in Lane County.

1. Threats to the quality of Lane County drinking water.

Everyone interviewed acknowledged that there are “impurities” in the Lane County drinking water, whether the source is surface or ground water. The particular “impurities” vary by location and source, and perceptions vary as to the extent to which each impurity constitutes a threat to drinking water. Individuals and groups also vary in what level of concern they have for particular contaminants and sources of problems.

The list of contaminants identified includes (order of the listing does not reflect any order of priority or importance): toxic metals, herbicides, pesticides, fertilizers, bacteria, algae, pharmaceuticals and other chemicals, nitrates and phosphates, arsenic, calcium, sulfur, petroleum products, and sediment.

The sources identified include (again not reflecting any order of importance): surface runoff, septic systems, maintenance of urban lawns and landscaping, storage of chemicals, erosion from removal of riparian vegetation and addition of impervious surfaces, toxic spills, gravel extraction, dams, and forest and agricultural practices.

Interviewees reflected considerable debate about the extent to which future development of residential uses along the rivers and lakes is a significant issue. There is more, though not complete agreement that there are significant negative impacts from existing residential development in riparian areas and flood plains.

2. Septic system issues

Interviewees agree that septic systems in the riparian areas and flood plains are having or will have negative impacts on the quality of drinking water in Lane County. The views vary as to the extent of the problem and the causes of the problems.

Interviewees identified many drinking water contaminants that come from septic systems including: pharmaceuticals; nitrates, phosphates and other chemicals from detergents, personal care products and human waste; and e-Coli and other bacteria and viruses from human waste. Many interviewees described how these contaminants are discharged directly or indirectly from the septic systems into ground and surface waters that are the source of drinking water. It was pointed out that problems are exacerbated in riparian areas and flood plains because of the permeability of the soils in those areas.

Old and/or inadequate septic systems have been identified by interviewees as a significant source of contaminants, for several reasons. They pointed out that many septic systems were installed before there was any regulation, and that many systems are old and failing. It was also pointed out that it is relatively easy to obtain and install unapproved and inadequate septic systems without permits.

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There are differing views amongst the interviewees as to whether or not new development presents a problem. Some assert that the threat to drinking water is minimal from future development because modern septic systems and regulations ensure that effluent will be adequately treated and dispersed, and because there is not much more land available for development along waterways. Others point out that new and advanced technology systems cannot treat for pharmaceuticals and other chemicals, and that even new systems fail. Some reported that many homeowners simply do not maintain their septic systems, and the County has no process for monitoring them after the initial permit is issued. Another issue that was often raised is that the current regulations do not require consideration of cumulative impacts, only taking into account impacts on the particular lot where a septic system will be or is installed.

Opinions vary quite widely as to the proper approach to resolve the challenges presented by septic systems. Some believe enforcement, and not new regulations, will solve the problem. Some propose prohibiting, or at least creating special rules to limit new septic systems in riparian areas and flood plains. Others assert that focusing on new development will limit land available for development and increase development costs, while doing little to address the problem, which they believe is created largely by old, inadequate and/or unpermitted systems. Some believe that septic systems are being incorrectly blamed for contamination problems that come from other sources.

Few stakeholders support mandatory septic system inspections. Some asserted that inspections should be imposed on a statewide, rather than local basis, and it was pointed out that DEQ may be asking the legislature at the next legislative session for statewide mandatory inspections at the time of property transfers. Several interviewees believe that homeowners and installers will object to mandatory inspections because of the costs and also simply because it is additional government intrusion.

Incentives, rather than prescriptive requirements, were recommended by many when discussing ways to address the need to repair/replace old or inadequate septic systems. Incentives, such as grants, loans, tax reductions, transferable development rights and conservation easements were identified as a way to reduce objections regarding costs, loss of development rights, and government interference.

3. Perceptions of the existing Lane County riparian regulations.

Some interviewees find that the current riparian ordinance is unwieldy and/or ineffective in protecting drinking water quality. Others believe that the current riparian regulations are “a good balance” and seem to be working. Those who believe the regulations are working adequately, also agreed that there is room for improvement.

Inadequate enforcement of the regulations was consistently identified as a significant issue, which is discussed in a separate section later in this report.

There is not a clear understanding by all of the current setbacks and vegetation removal requirements. In addition, interviewees have differing views about whether the existing setback and vegetation removal limitations are adequately protecting the riparian areas. This includes differing views on the effectiveness of the regulations regarding the locations for septic systems and wells within the riparian areas. There is a perception by some that vegetation is still being removed and riprap and revetments are still being added along the river banks on a significant scale. The frequency with which exceptions or variances are granted to the setback regulations was an often cited cause for concern.

4. Potential changes to the riparian regulations.

Some interviewees believe that no further development or new lots should be allowed in riparian areas. Others asserted that the ordinances should allow development, but ensure that the development is harmless. Some will object to any increase in setbacks or more limits on removal of vegetation. Some interviewees suggested specific distances for setbacks that range from 35 to 200 feet; while others proposed a regulatory strategy which defines the "functions" of a healthy riparian area, and provides for protection of those functions, without imposing any specific setbacks. Some interviewees want any decisions about the regulations to take into account the impact on individual property rights, the amount of available developable land, and the costs to developers and property owners.

Some suggested the adoption of strong disincentives to development, such as higher fees and technical engineering requirements. Another discussed approach is providing positive incentives to not developing, including: transferable development rights, conservation easement programs, or tax exemptions. Some suggested combining incentives with "recommended best practices", rather than imposing mandatory restrictions.

Some pointed out the need to look at individual watersheds and ecosystems, in that one set of criteria will not necessarily work for all areas.

Many interviewees expressed a willingness to review the setbacks and consider the need for changes. However, the opinions regarding the size and manner of measuring setbacks vary widely. It was often pointed out that "blanket" setbacks cannot be established, because the appropriate setback is determined by many factors such as the size of the adjacent water body, slope and soil types.

Some prefer to keep the existing process for approving exceptions/variances, whereas others asserted that there should be a firm riparian zone with no removal of vegetation, or that at least the exceptions should be harder to obtain. Some would require replacement of vegetation in other areas to mitigate for any vegetation removed in riparian setbacks. Some interviewees also expressed interest in finding ways to restore previously lost riparian vegetation.

5. Identified impacts from development in floodplains.

Lane County has many rivers, and therefore a considerable amount of land that has been identified as within floodplains. There are differing opinions as to how much land is actually in the floodplains and floodways, based on differing perceptions about the accuracy of the FEMA maps and the appropriate method for determining the boundaries of the floodplains.

Interviewees identified development in both the floodway and floodplain as being at risk for damage to life and property and as presenting risks for the quality of drinking water. The risks are created from flood events that impact persons and property within the floodplains and the quality of drinking water both within and beyond the floodplains. Perceptions of the interviewees vary as to the level of risk that exists for both existing and future development.

The storage of chemicals and hazardous materials is a major cause of concern related to development in the floodplains. During a flood event, these materials end up in the surface and ground water that is the source for drinking water. Septic systems also were identified as a significant cause for concern because of the ease with which discharge gets into surface and ground water in the floodplains.

Interviewees pointed out that development within the flood plain effectively narrows the floodplain, increasing the level of floodwaters. It was also pointed out that because rivers naturally shift their locations, existing development in the flood plain can end up in the active floodway.

Some interviewees pointed out that some of the rivers in Lane County are controlled by dams, so flooding has not been an issue on those rivers for long enough that residents have forgotten the dangers of living in the flood plain. However, those stakeholders also point out that weather changes may bring more flooding even where dams currently protect surrounding flood plains.

6. Perceptions of the existing Lane County floodplain regulations.

Some of the interviewees find that the existing floodplain regulations work reasonably well in regulating development within the floodplains. Others describe the regulations as inadequate because they believe that new and inappropriate construction is allowed regularly in the floodplain. Those who believe the regulations are inadequate, often pointed out that there are too many exceptions or variances permitted under the current ordinance, so that the intent of the regulation is undermined.

There appears to be differing understandings of what the current regulations permit within the floodplains. Some interviewees distinguished between the floodway and the floodplain, asserting that no development is allowed within the floodways, but development that is one foot above the 100 year floodplain and that does not interfere with the flow of floodwaters can be permitted within the floodplain. However, there are some who report that even the

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floodway can be developed if you have the 'know how'. Others who support development in the floodway under certain circumstances, object that the existing regulations raise costs to the extent that development is precluded. Opinions vary to the same extent as to how much development the regulations should allow in the floodways and floodplains.

Another significant concern was that the existing FEMA flood maps are old and outdated. It was asserted that the County must rely on those maps, but that the inaccurate maps result in approval of development that is contrary to the intent of the regulations.

Another often expressed concern was that the existing regulations permit development in the floodplain without taking into account all the potential impacts. This was explained further in that once a permit is granted for development in the floodplain, many additional permits for the addition of rip rap or revetments must later be approved in order to protect the initial development, which further contributes to a hardening of the river channel and increasing flood risk. This was also identified by many interviewees as an issue in the implementation of the riparian regulations.

7. Potential changes to the floodplain regulations.

The proposals for regulating development in the floodways and floodplains vary with the concerns discussed above regarding the perceptions of the existing regulations. There appears to be a general acceptance of the drinking water quality and life and property safety risks from development within the floodway and floodplain, and agreement that further development should be limited. However, the opinions vary considerably on the extent to which development should be allowed in the floodway and floodplains.

As previously pointed out, there are a group of stakeholders who find the current parameters for getting an exception to be acceptable. A certain number of other stakeholders asserted that the "best practice" to protect life and property would be to have no more development within the floodplains, but acknowledge that some development may need to be allowed to avoid "takings" claims. Some propose simply that it be made more difficult to get an exception than under the current regulations. It has also been proposed that certain kinds of facilities be absolutely prohibited in the floodplain. It was also pointed out that it is important that there be agreement on how to define and measure the floodplain.

The need to look at the cumulative impacts of development was discussed by many interviewees. They believe the regulations should ensure that there is "no net increase" in flood level as a result of any new development, and fill and removal needs to be regulated to this end. Other interviewees believe the existing regulations already accomplish this goal.

Concern about the existing development in the floodways and floodplains was also expressed. Some pointed out that it would be best to remove even the existing houses because of the dangers to the residents and to others, but acknowledged that, realistically, existing development needs to be grandfathered. Some would like the county regulations

to include a threshold of improvements to existing development that would trigger a requirement to bring the development into compliance with current regulations.

8. Current Enforcement of County Riparian and Floodplain Regulations.

There is consensus amongst all interviewees that current enforcement efforts are inadequate. Development done without permits and inappropriately permitted development were identified as having a significant impact in the riparian areas and flood plains. Some expressed the opinion that improving enforcement is more important than, or at least as important as making changes to the substance of the regulations.

It has been asserted that current enforcement efforts are inconsistent in how, and against whom, the regulations and penalties are applied. Interviewees also reported that the public generally perceives that the County does not have the political will or adequate resources to properly enforce the ordinances. Interviewees reported that many county residents find it easier, faster and/or cheaper to proceed without permits. It is “easier to ask for forgiveness than permission”, because they believe they probably won’t get caught, and that there will be no significant consequences if they are caught.

Recognizing that the county has limited resources for enforcement, some interviewees suggested that the ordinances should include means of enforcement that require minimal staff or other resources, such as outright prohibitions on development or vegetation removal that are easy to implement and monitor. Another suggestion was that water providers or other entities contribute to enforcement costs, or that volunteers be used to assist in the enforcement efforts.

Interviewees expressed some concerns that implementation and enforcement is hampered because the flood plain and riparian ordinances, as well as the regulations for septic systems, are too complicated and the processes are too costly. They request that any new ordinance provisions be clear and comprehensible, to reduce costs and make implementation and enforcement more consistent and efficient.

9. Non-regulatory options for addressing issues.

The interview discussions included alternatives to prescriptive regulations for addressing the challenges presented. Some of the suggestions were expressed as alternatives to regulation by ordinance; others were proposed as additions to prescriptive regulations.

Incentives were a recommended approach to improve acceptance of and compliance with regulations, or to reduce the need for regulations. One suggestion included development of “recommended best practices” with incentives for complying, rather than mandatory requirements.

Financial incentives were identified as particularly important for the elderly and others on fixed incomes. Examples include outright grants, low interest loans, or tax reductions to motivate property owners to enhance or maintain riparian vegetation, repair or replace

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inadequate septic systems, or to limit development in certain areas. Transferable development rights and conservation easements were other suggested incentives. Some suggested the County consider buying out or doing land swaps with property owners in the flood plains and riparian areas.

A need for understandable educational materials was identified. Interviewees expressed the value of and need for more education of the public, and the view that many landowners are not familiar with the needs of riparian and floodplain areas, or with the impacts their actions have on those areas. Several interviewees believe that some landowners will voluntarily comply with regulatory and non-regulatory measures to protect the riparian areas or to limit development in the floodplains when they understand the impacts on drinking water and the safety of life and property.

C. Potential Obstacles to Addressing the Identified Issues and Concerns

Substantive Obstacles

Wide variety of sources of contaminants. Although interviewees agree that drinking water quality is an issue that needs to be addressed, they identified a wide variety of sources of contaminants, everything from naturally occurring sulfur, to septic systems to gravel removal from river beds. The wide variety of sources of problems could make it difficult to narrow the scope of the collaborative process so that it is manageable, can be completed within an acceptable time period, and can result in solutions that can be adopted by the County.

Varying opinions on significance of some issues. There is also a wide variety of opinions as to the seriousness of the impacts of some of the identified problems. This includes a dispute between some interviewees as to whether or not future residential development in riparian areas poses a threat to drinking water quality. A related, but not identical issue, is whether or not the county should regulate installation and maintenance of new septic systems, or just address problems created by old systems.

Varying opinions on need for amendments. The interviewees are not in agreement on whether or not there is a real need to change either the riparian or floodplain ordinances. Some of the interviewees believe that improved enforcement would essentially resolve whatever weaknesses have been identified regarding either ordinance. Some interviewees expressed concern that those who do not believe changes are needed do not have strong motivation to fully engage in a collaborative process.

Legal Obstacles

Measure 37/Property rights issues. In light of Ballot Measure 49, there is concern that any new regulations will be subject to claims for compensation for loss of property value. Several interviewees pointed out a need to frame any ordinance amendments as “for the protection of public health and safety” in order for the county to not be subject to claims, and that this may make it difficult to address issues that are typically perceived as “land use” issues.

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County authority. Interviewees have pointed out that some of the identified problems are not within the authority of the county to regulate, such as forest practices and dams on the rivers. Others are difficult to regulate through county ordinance, such as the use of chemicals to maintain lawns/landscaping.

Process Obstacles

Timing. Some interviewees perceive that there is a narrow window of opportunity to pass ordinance changes, and expressed concern that a collaborative process will be too slow. Some of those interviewed also expressed concern that a collaborative process could cause a loss of the momentum that has been created by the recently completed Land Use Decision Analysis. It has also been pointed out that a previous collaborative effort to revise the riparian and floodplain ordinances took a very long time and resulted in an unwieldy, ineffective ordinance that was not adopted by the county.

Some of the interviewees believe that it would be relatively easy to draft an acceptable proposal of amendments, without the need for a potentially lengthy and possibly unsuccessful collaborative process.

Perceived lack of public support. Others raised the concern that there is not currently broad public support for changes to the county regulations. Some believe that the heightened awareness of individual property rights in Oregon will make it difficult to develop public support for any proposed amendments. Some interviewees believe that education is needed to get the cooperation of the public, but point out that the education process will take a considerable amount of time. Some interviewees expressed doubt about the ability of the stakeholders to communicate with the general public and build the support that would be needed to prevent public opposition to any proposed amendments.

Limited time/resources of stakeholders. Several individuals indicated they would like to participate in a collaborative process, but have limited time and/or resources to commit to it. They agreed that their involvement in the process is contingent upon the process being well organized, productive, narrow focused and short term. Some requested that meetings be held during business hours. Others pointed out that scheduling of meetings needs to take into account those who must travel distances to meetings.

Scope of the process. Some also are concerned at how "wide a net" the county intends to cast with the proposed collaborative process. Some issues, such as regulation of the use of pesticides by the timber industry, are perceived by some to be state issues that the County should not attempt to address through local ordinance provisions. Support for the process by some stakeholders will be contingent on the parameters of the issues to be addressed.

Too many stakeholder interests. Many interviewees pointed out that it is crucial to include all stakeholders in the process. But some are concerned that if all potential stakeholders are included in the decision-making group, there will be such a diversity of interests that consensus will not be possible.

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Missing stakeholders. Several interviewees identified themselves as farmers with property in a flood plain or riparian area in Lane County, and the representative of the Soil and Water Conservation District does in some ways represent farmers. However, none of those interviewed came to the interview process because they were primarily farmers. Some stakeholders believe that it will be important to have strong representation of the farming interests.

Some stakeholders have reported that at the time of previous attempts to rewrite the riparian ordinance, the homeowners on the McKenzie River organized and strongly opposed the changes. Evidently, that homeowners' association has since disbanded, and the interview group does not include anyone who represents that specific interest group.

Perceptions of polarized opinions. Some stakeholders believe that certain groups have strongly held interests and opinions that are directly in conflict with others, and that have been so well established through previous experiences, that it will be difficult for them to work together in a collaborative process.

C. Information needed for decision-making

Interviewees generally reported that the background materials provided to interviewees, the July 8, 2009 EWEB Memo regarding Recommendations for Onsite Program Changes with attachments, and the Report from the EWEB Source Water Protection Land Use Analysis, provides useful and reliable information. It was pointed out that the data may not be as black and white as some have implied, and the situation on the McKenzie River may be somewhat different than in the county as a whole. But there appears to be agreement that generally the information provided and issues raised regarding impacts on downstream users can be applied to the County as a whole, and will be useful for a decision making process.

Some interviewees pointed out that the existing FEMA maps are old and no longer accurate for determining floodplain locations. However, it was also pointed out that DOGAMI has 'LIDAR' based maps for most, if not all, of the Willamette basin. Many interviewees believe that the other pertinent data and mapping that will be needed are available through the County and LCOG, and the GIS. Some interviewees would like to see the development of more data and research, while others assert that it will take too much time to gather more data, and that the existing data is adequate for making decisions regarding the riparian and flood plain ordinances.

Some interviewees requested information regarding the likelihood of contamination for the various water systems. Others pointed out that this information may be available from DEQ who has source water assessments for almost every water system in Lane County.

Other requested information includes:

- Analysis of the costs to homeowners/developers/public of each proposed regulation or incentive program.

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- Analysis of the impact of proposed regulations on the amount of land available for development.
- A land values assessment to address claims for loss of value.
- A legal analysis of what is legally defensible in relation to property rights.

Several interviewees pointed out that there are ordinances from other jurisdictions within and outside Oregon that could be used as models for Lane County, so that this group does not have to “reinvent the wheel.” Some suggested that models from Oregon, that have already received LCDC approval would be best. The 2001, Version 1, draft ordinance that was created in an earlier process for revising the county regulations was also identified as a source of good information and ordinance language.

As there appear to be differing understandings of the substance of the current riparian and floodplain ordinances, it would be valuable for a stakeholder group to receive, early in the process, some explanation of the current regulations and the process through which those regulations are implemented.

IV. Process Recommendations

A. Criteria for assessment

This analysis and recommendations are provided as a proposal for whether and how to move forward with a collaborative approach. The parties can accept, reject, or modify these process recommendations. Oregon Consensus will work with the parties in making the decisions on whether and/or how to move forward with a collaborative approach.

In assessing whether the Lane County riparian and flood plain issues are amendable to a collaborative resolution, it is important to identify whether the key elements or characteristics are present that are likely to make collaboration productive and successful. A consensus-seeking, agreement-focused process is more likely to succeed if it has the following characteristics:

- Clear Objectives. The parties can agree on the overall objectives for the collaborative process (whether it be an agreement on a course of action, the identification of new options, a joint fact finding on the impacts of various options, joint projects, improved communication about interests and concerns, or another clearly articulated objective.)
- Manageable Issues. The parties can agree on a manageable number of interdependent or related issues. There must also be a sufficiently well developed factual basis on which to hold a meaningful discussion and resolution of the issues.
- Identifiable representative parties. The parties interested in or affected by the outcome of the collaboration are readily identifiable, capable of identifying from among themselves the participants that can adequately represent all affected

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interests, and few enough in number to allow for a manageable process. Participants are able to represent and reflect the interests of their constituencies.

- Good Faith Participation. The parties can come to the table with genuine interest in participating in good faith. They feel themselves as likely, if not more likely, to achieve their overall goals using a collaborative approach as they would through whatever alternatives are available to them.
- Adequate Resources and Time. The parties can obtain adequate resources to participate, including technical support and there is adequate time to conduct a meaningful and well designed process.
- Action-Forcing Deadline. There is some sort of legislative, administrative or judicial deadline or opportunity, or some other forcing mechanism requiring a decision within the foreseeable future.
- No Delay. The collaborative effort will not cause unreasonable delay.
- Implementation Mechanism. A mechanism exists to implement a consensus agreement, if one is reached.

OC considered the above elements as it analyzed the assessment interview results and utilized these characteristics to assist in evaluating the feasibility of initiating a proposed collaboration as well as the capacity of the parties to complete the process successfully. It is clear from the information obtained through the interviews that there are challenges to many of these elements. However, the interviewees consistently expressed a willingness to engage in a collaborative process, so OC is making the following recommendations.

B. Recommendations for Proceeding with a Collaborative Process

In the interviews stakeholders identified a wide range of problems, causes for the problems, and approaches to addressing those problems. An initial task for a stakeholder group will be to reach agreement on the issues that will be addressed by the group in a collaborative process. In determining which issues can and should be addressed, the available time and resources for the process will be significant factors, as will the scope of authority of the County.

Two-step Process. The first step would be to bring together a group of stakeholders to accomplish this initial task of identifying the issues that will be addressed, before actually initiating a full collaborative process. This preliminary meeting would allow the group to explore the potential for working together without actually convening a full-fledged process, and could address the concerns many stakeholders expressed about the potential for the group to work together.

There are several essential process elements that stakeholders typically address in the initial stages of a collaborative group process.

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Identifying the issues, objectives and outcomes is one of those essential elements, which could be addressed in an initial meeting. At this time, there appears to be a willingness by the stakeholders to discuss certain issues, including:

- Enforcement of county regulations
- Setbacks, and what is allowed within the setbacks, for the riparian areas
- Limits on development in the floodplain
- The use of incentives, in addition to or in replacement of prescriptive regulations
- Increased public education efforts

As enforcement of the county regulations was consistently identified as a significant issue, it will be important that the extent to which enforcement can be reviewed be agreed upon at the beginning of the process.

Other essential process elements that could be addressed at this initial meeting could be:

Establishing process leadership to keep the group functioning in an organized, constructive and productive manner. As Lane County asked OC to assist in the convening of a collaborative process, and the county staff have the capacity to provide the organizational management needed, it is appropriate for the County to act as the convenor for the process. It is not unusual for the convenor to also participate in the collaborative process, so being the convenor will not prevent Lane County from full participation.

Ensuring good faith participation, by making sure that all necessary parties have something to gain by participating in a collaborative process. Some parties identified an attractive alternative to a collaboratively negotiated agreement as a means to accomplish their goals. It will be necessary to craft a process that will offer enough likelihood of meeting or exceeding their goals or expectations to bring them to and keep them at the table.

For some interviewees, the belief that there is a very short timeline for accomplishing their goals is a serious, but not insurmountable barrier to participation in a collaborative process. Some stakeholders interests in maintaining the current regulations or minimizing government involvement in their businesses and lives has some interviewees concerned that those stakeholders will use the process to delay or prevent any changes being adopted. The initial process meeting can help assure stakeholders that a timely process can be developed and ensure that all stakeholders agree to good faith participation with the intent to work for a collective outcome.

OC could provide facilitation services for this first step. Upon completion of this initial step, the facilitator can help the parties decide whether to and how to proceed with convening a full collaborative process.

Who Should Participate?

In the initial first step, OC recommends that all the interviewees be invited to participate.

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In the full collaborative process, the stakeholder group should include at least one representative from each of the interest groups, including relevant state and local government agencies, environmental groups, residential property owners, the development industry, private and public water providers, septic system provider/servicers, recreational interests, watershed councils and farmers. The stakeholder group should also include representatives from the coastal, central and valley portions of the county.

Several of the potential stakeholders who were interviewed indicated that their participation in a collaborative process may be best limited to providing information and/or technical support. If a full collaborative process is convened, the stakeholders may want to create a technical support/advisory group from these stakeholders, and others who are willing and able to support the process.

Some of the interviewees prefer not to take positions on proposed county regulations. They do want to be kept informed of the process, and are willing to provide technical assistance, and to help educate the public during and after completion of the process.

Some interviewees indicated that they do not have an interest in or stake in the outcome of the proposed collaborative process as long as the issues are limited to changes to the riparian and flood plain ordinances, and any riparian setback regulations are no more limiting than those imposed by the Forest Practices Act.

Attachment A

Lane County Assessment Report

ASSESSMENT INTERVIEWEES

- Middle Fork Willamette Watershed Council, Eve Montanaro, Executive Director
- Coast Fork Willamette Watershed Council, Pam Reber, Executive Director:
- McKenzie Watershed Council, Larry Six, Executive Director,
- Siuslaw Watershed Council, Liz Vollmer-Buhl, Executive Director:
- Soil & Water Conservation District, Upper Willamette, Paul Reed, Director
- Oregon Department of Environmental Quality, Randy Trox, Onsite Program Coordinator
- City of Cottage Grove, Amanda Ferguson, Planner
- Oregon Department of Human Services, Tom Pattee, and Shawn Stevenson, Drinking Water Program
- Cottage Grove Department of Public Works, Jan Wellman, Director
- Lane County Department of Public Works, George Ehlers, Environmental Health Specialist
- Territorial Land Company, Inc., Jim Belknap, Principal Broker
- Lane County Home Builders Association, Laura Potter, Director of Government Affairs
- Lanfear Consulting, Thom Lanfear, Planning Consultant
- Law Office of Bill Kloos, PC., Bill Kloos, Attorney
- Springfield Utility Board
 - Chuck Davis, Water Quality Manager
 - Amy E. Chinitz, Water Quality Protection Coordinator
 - Doug Keeler, Water Engineering Operations Manager
- South Coast Water District & Oregon Water Services, Dan Reitz
- McKenzie River Trust, Joe Moll, Executive Director
- Land Watch, Lane County, Robert Emmons, President
- Nena Lovinger, Fall Creek, OR
- Giustina Land & Timber Co., Cary Hart, Chief Forester
- Tom Bowerman, Lane County, OR
- George Grier, Springfield, OR
- Wesley Voth, Mapleton, OR
- Caddis Fly Angling Shop, Chris Daughters
- McKenzie River Guides, Dana Burwell
- Leisure Excavating, L.L.C., Gary Rose

Attachment B

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Interview Questions

1. Do you believe your drinking water or the drinking water in Lane County in general is currently safe and will continue to be safe in the future? Why or why not?
2. What, if any, are the threats to safe drinking water in Lane County?
3. Do you believe that development near rivers currently poses a threat to life or safety as a result of flooding or other natural river movement, or that it will pose a threat in the future? Why or why not?
4. Are current county regulations effectively dealing with these issues? Why or why not?
5. What, if any, changes should be made to county ordinances to address these issues?
6. Are there other ways these issues could be addressed and who should be responsible for addressing/resolving these issues?
7. You've been given some background information. Would you rely on this information in developing solutions? Why or why not?
8. What other information is needed to resolve these issues? Where would you obtain this other information?
9. What kinds of information can you/your agency provide to a stakeholders group?
10. If a collaborative process were initiated, would you/your group want to participate? Why or why not?
11. Do you have specific concerns you would like to address before you will agree to participate?
12. Who else do you think should be involved to make the effort successful?
13. How do you think the other stakeholders would answer the above questions?
14. Do you have any questions for Oregon Consensus?