

ORDINANCE NUMBER 153

AN ORDINANCE AMENDING ORDINANCE NO. 50, THE DUNES CITY ZONING ORDINANCE, SETTING OUT REGULATIONS IMPLEMENTING THE DUNES CITY LOCAL WETLAND INVENTORY AND RIPARIAN INVENTORY, AND DECLARING AN EMERGENCY.

WHEREAS, House Bill 2707 directed the Oregon Division of State Lands (DSL) to adopt rules that establish procedures and criteria for identifying significant wetlands within local planning areas; and

WHEREAS, the Land Conservation and Development Commission (LCDC) has amended Statewide Planning Goal 5 and LCDC's administrative rules pertaining to Goal 5 resources, including wetlands and riparian resources; and

WHEREAS, Dunes City has adopted the Dunes City Local Wetlands Inventory and Riparian Inventory (November, 1996), which identifies and qualifies wetlands and riparian resources, through its periodic review ordinance; and

WHEREAS, the Dunes City periodic review work program task #5 required the city to develop/revise regulations to protect significant riparian and wetland areas, including standards and procedures relating to setbacks, vegetation removal, and wetlands notification to the Division of State Lands;

THEREFORE DUNES CITY ORDAINS AS FOLLOWS:

I. SECTION I. ORDINANCE 50, SHALL BE AMENDED TO READ AS FOLLOWS:

ADD TO SECTION 11, DEFINITIONS:

Wetland(s). Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

ADD SECTION 5.3:

Section 5.3. WETLAND and RIPARIAN OVERLAY ZONE:

I. Procedures for Identifying Locally Significant Wetlands

- A. Locally Significant Wetlands (LSW) criteria are applied by Dunes City.
- B. The following base information is required prior to applying the Locally Significant Wetlands criteria:

1. Wetlands Determination.
 - a. A wetland identified in Dunes City Local Wetlands Inventory and Riparian Inventory (DCLWIRI), Pacific Habitat Services, Inc., November, 1996; or
 - b. For wetlands not included in the DCLWIRI, a wetland determination using methodology approved by Oregon Division of State Lands (DSL).
2. A function and quality assessment of all inventoried wetlands using the Oregon Freshwater Wetland Assessment Methodology (OFWAM; DSL, 1996).

II. Locally Significant Wetlands Criteria

- A. Exclusions. Regardless of their standing in relation to the criteria in Section III, below, wetlands shall not be designated as locally significant if they fall within any one of the following categories:
 1. Wetlands artificially created entirely from upland that are:
 - a. Created for the purpose of controlling, storing, or maintaining stormwater; or
 - b. Active surface mining or active log ponds; or
 - c. Ditches without a free and open connection to natural waters of the state (as defined in OAR 141-85-010(9) and which do not contain food or game fish (as defined in ORS 496.009; or
 - d. Less than one acre in size and created unintentionally as the result of:
 - i. irrigation water overflow or leakage; or
 - ii. construction activity not related to compensatory mitigation for permitted wetland impacts; or
 - iii. of any size and created for the purpose of wastewater treatment, cranberry production, farm or stock watering, settling of sediment, cooling industrial water, or as a golf course hazard.

2. Wetlands or portions of wetlands that are contaminated by hazardous substances, materials or wastes as per the following conditions:
 - a. The wetland is documented as contaminated on either the U.S. Environmental Protection Agency's National Priority List (Superfund), or the Department of Environmental Quality's (DEQ) Inventory of Hazardous Substance Sites (ORS 456.225).
 - b. Only the portion of the wetland affected by such hazardous substances or wastes shall be excluded from the LSW analysis. Affected portions shall be delineated in consultation with EPA and DEQ, and shall include areas potentially disturbed by clean-up activities.
 - c. Contaminated wetlands that have subsequently been removed from the NPL or DEQ inventory following clean-up shall be re-evaluated under the LSW criteria at the next periodic review.

III. Mandatory LSW Criteria.

A local government shall identify a wetland as locally significant if it meets one or more of the following criteria:

- A. The wetland performs any of the following functions at the levels indicated below using the Oregon Freshwater Wetland Assessment Methodology:
 1. Diverse wildlife habitat; or
 2. Intact fish habitat; or
 3. Intact water quality function; or
 4. Intact hydrologic control function.
- B. The wetland or a portion of the wetland occurs within a horizontal distance less than one-fourth mile from a water body listed by the Department of Environmental Quality as a water quality limited water body (303 (d) list) and the wetland's water quality function is described as intact or impacted or degraded using OFWAM. The 303 (d) list specifies which parameters (e.g., temperature, pH, etc.) do not meet state water quality standards for each water body. However, the city may determine that a wetland is not significant

under this subsection upon documentation that the wetland does not provide water quality improvements for the specified parameter(s).

- C. The wetland contains one or more rare plant communities, as defined by DSL Administrative Rules.
- D. The wetland is inhabited by any species listed by the federal government as threatened or endangered, or listed by the state as sensitive, threatened or endangered, unless the appropriate state or federal agency indicates that the wetland is not important for the maintenance of the species.
 - 1. The use of the site by listed species must be documented, not anecdotal. Acceptable sources of documentation may include but are not limited to: field observations at the wetland site during the local wetlands inventory and functional assessments, and existing information on rare species occurrences at agencies such as the Oregon Natural Heritage Program, Oregon Department of Fish and Wildlife, Oregon Department of Agriculture and the U.S. Fish and Wildlife Service.
 - 2. Input originating from other locally knowledgeable sources constitutes documentation if verified by one of the above agencies or a university or college reference collection.
- E. The wetland has a direct surface water connection to a stream segment mapped by the Oregon Department of Fish and Wildlife as habitat for indigenous anadromous salmonids, and the wetland is determined to have an intact or impacted or degraded fish habitat function using OFWAM.

IV. Optional LSW Criteria.

Wetlands that meet one or more of the following criteria may be identified as locally significant wetlands.

- A. The wetland represents a locally unique native plant community: wetland is or contains the only representative of a particular native wetland plant community in the UGB. To be identified as a LSW, such a wetland must also have been assessed to perform at least one of the following functions at the levels indicated below using OFWAM:

1. Its wildlife habitat descriptor provides diverse habitat, or provides habitat for some wildlife species; or
 2. Its water quality function descriptor is either intact, or impacted or degraded; or
 3. Its water quality function descriptor is either intact, or impacted or degraded; or
 4. Its hydrologic control function descriptor is either intact, or impacted or degraded.
- B. The wetland is publicly owned and determined to have educational uses using OFWAM, and such use by a school or organization is documented for that site.

V. Development Setbacks.

Grading, excavation, placement of fill, and vegetation removal in LSW's other than perimeter mowing and other cutting necessary for hazard prevention shall be prohibited except in the following instances:

- A. Where a hardship is shown through a successful variance application, the setback may be allowed to average 50' provided that the design of the development minimizes impact to the wetland.
- B. For existing parcels that, through application of the requirements of this Section, have no usable building site, a variance may be granted to allow a building site on the parcel, provided that the design of the development minimizes impact to the wetland.
(See OAR 660-23-100 (4)(b)(A)).

VI. Riparian Areas.

- A. Riparian areas listed in the DCLWIRI shall be protected as follows:
 1. There are no streams in Dunes City that exceed an average annual flow of 1000 cubic feet per second (cfs).
 2. Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.
 3. Riparian areas along lakes are regulated under Section 5.1 (III), Shorelands.

- B. Where the riparian corridor includes all or portions of a LSW the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.
- C. "Top of bank" shall have the same meaning as "bankfull stage" defined in OAR 141-85-010(2). In areas where the top of the bank is not clearly defined, or where the predominant terrain consists of steep cliffs, the city shall apply the standards of OAR 660-23-030.
- D. Within the riparian corridor setback grading or the placement of structures or impervious surfaces shall not be allowed except for the following and provided that they are designed to minimize intrusion into the riparian area:
 - 1. Streets, roads, and paths;
 - 2. Drainage facilities, utilities, and pumps;
 - 3. Water-dependent and water-related uses; and
 - 4. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.
- E. Where a hardship is shown through a successful variance application, the setback may be allowed to average 50' provided that the design of the development minimizes impact to the riparian corridor.
- F. For existing parcels that, through application of the requirements of this Section, have no usable building site, a variance may be granted to allow a building site on the parcel, provided that the design of the development minimizes impact to the riparian corridor.
- G. Within the riparian corridor riparian vegetation shall not be removed except:
 - 1. Removal on non-native vegetation and replacement with native plant species shall be allowed.
 - 2. Riparian vegetation may be removed if necessary for the development of water-dependent or water-related uses or specified in VI (D.), above, provided such removal is minimized to reduce impact to the riparian corridor and to protect water quality.

VII. Application of Ordinance Requirements, Conflicts.

To best protect important values of wetlands, streams, lakes and riparian areas, in the event that the requirements of this Section conflict with other ordinance requirements, the City shall apply the requirements that best provide for the protection of the resource.

SECTION II. SEVERABILITY.

The sections and subsections of this ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.


SECTION III. EMERGENCY CLAUSE.

The City hereby declares the adoption of this Ordinance to be an emergency. This Ordinance shall become effective immediately.

SECTION IV. ADOPTION.

Adopted unanimously by the City Council of Dunes City, Oregon, this 23rd day of January, 1997.

Ayes: R. Micklewright, R. Petersdorf, D. Jackson, J. Buehler
Absent: R. Parent
Nays: None
Vacancy: One



Robert B. Ward, Jr., Mayor

ATTEST:



Joyce Phillips, City Recorder