



# Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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## NOTICE OF ADOPTED AMENDMENT

October 29, 2013

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Cottage Grove Plan Amendment  
DLCD File Number 003-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. The submitted ordinance was adopted by the City of Cottage Grove on October 21, 2013, per ORS 197.615 (3) and DLCD did not notify within five working days of receipt, any persons who requested notification.

Appeal Procedures\*

### **DLCD DEADLINE TO APPEAL:**

**Acknowledged under ORS Sections 197.615, 197.625, and 197.830 (9)**

This amendment was submitted to DLCD for review 35 days prior to adoption. Pursuant to ORS 197.625 if no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.

Under ORS 197.830 (9) a notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.

Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Amanda Ferguson, City of Cottage Grove  
Gordon Howard, DLCD Urban Planning Specialist  
Ed Moore, DLCD Regional Representative  
Amanda Punton, DLCD Natural Resources Specialist

<paa> YA

**FORM 2****DLCD**

# Notice of Adoption

This Form 2 must be mailed to DLCD within **20-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

☐ In person ☐ electronic ☐ mailed

**DATE STAMP**

**DEPT OF**

**OCT 21 2013**

**LAND CONSERVATION AND DEVELOPMENT**

For Office Use Only

Jurisdiction: **City of Cottage Grove**Local file number: **DCTA 3-13**Date of Adoption: **10/14/2013**Date Mailed: **10/18/2013**Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 6/26/2013☐ Comprehensive Plan Text Amendment☐ Comprehensive Plan Map Amendment☒ Land Use Regulation Amendment☐ Zoning Map Amendment☐ New Land Use Regulation☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Adopted Wetland Protection Code that is intended to guide development and protection of locally significant wetlands as determined by the Economic, Social, Environmental, and Energy (ESEE) analysis. This application adopts amendments to Title 14 Cottage Grove Development Code that identifies the purpose of the Wetlands Protection Code, activities allowed in LWT's, and development standards for locally significant wetland areas to satisfy requirements for Oregon Statewide Planning Goal 5.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

**1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19**

☐ ☐ ☐ ☐ ☒ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD File No. 003-13 (19902) [17645]

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**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Department of State Lands

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Local Contact: **Amanda Ferguson**

Phone: **(541) 942-3340** Extension:

Address: **400 Main Street**

Fax Number: **541-942-1267**

City: **Cottage Grove**

Zip: **97424-**

E-mail Address: **planner@cottagegrove.org**

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## **ADOPTION SUBMITTAL REQUIREMENTS**

**This Form 2 must be received by DLCD no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)**

per ORS [197.615](#) and [OAR Chapter 660, Division 18](#)

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and **one complete paper copy** (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information ([ORS 197.615](#)).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption ([ORS 197.830 to 197.845](#)).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. ([ORS 197.615](#)).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us).

Ordinance No. 3035

AN ORDINANCE AMENDING TITLE 14  
OF THE COTTAGE GROVE MUNICIPAL CODE  
ADOPTING WETLANDS PROTECTION CODE SECTION 14.3.7.500.

THE CITY OF COTTAGE GROVE ORDAINS AS FOLLOWS:

Section 1. Purpose. The purpose of this ordinance is to amend the Cottage Grove Municipal Code Title 14 Cottage Grove Development Code to create a Wetlands Protection Code Chapter 14.3.7.500.

Section 2. Natural Resources Element. The City Council adopted the Cottage Grove Comprehensive Plan Natural Resources Element through Resolution 3020. The NRE recommends the adoption of plans for managing wetlands within city limits in order to preserve natural features, prevent negative impacts on habitat, and prevent loss of significant wetland acreage and/or function. This application recommends the adoption of a Wetland Protection ordinance that makes those changes to the Cottage Grove Development Code necessary to implement the NRE recommendations.

Section 3. Wetlands Protection Code. The Wetlands Protection Code is intended for use upon properties within the City Limits of Cottage Grove. The Wetlands Protection Code is intended to allow for three protection options, allowing conflicting uses, limiting conflicting uses and prohibiting conflicting uses within locally significant wetlands as determined by the Economic, Social, Environmental and Energy (ESEE) analysis. This ordinance adopts amendments to Title 14 Cottage Grove Development Code that identify the purpose of the Wetlands Protection Code, activities allowed in locally significant wetlands, and development standards for locally significant wetland areas. Appendices include ESEE and Wetland Inventory Map, which will be adopted as formal Wetland Inventory Map replacing the National Wetland Inventory.


Section 4. Procedural Compliance. This amendment is in compliance with 14.4.7.500-600 of the Municipal Code of the City of Cottage Grove and is based upon the City Council determination, after a Planning Commission public hearing and recommendation, that this amendment is a proper implementation of the comprehensive land use plan and, therefore, is in the public interest and for the health, safety and welfare of the residents of the City of Cottage Grove.

Section 5. Amendment. Title 14 of the Cottage Grove Municipal Code is hereby

amended by establishing Section 3.7.500 which shall read as shown in the attached Exhibit A, which shall form a part of this ordinance.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR THIS 14th DAY OF OCTOBER, 2013.

ATTEST:

  
Richard Meyers, City Manager

APPROVED:


  
Thomas C. Munroe, Mayor

Exhibit A to Ord. 3035

3.7.500 WETLAND PROTECTION ORDINANCE

A. **Background.** The City of Cottage Grove completed a Local Wetland inventory (LWI) in 2011 in accordance with Department of State Lands (DSL) administrative rules (OAR). DSL approved this inventory on 1/5/2012. The LWI report describes the location, quantity, and quality of a total of 47 wetlands within the study area including 27 wetlands not previously on file with DSL. The study area consisted of Cottage Grove's Urban Growth Boundary with potential expansion properties to the South. Of these 47 wetlands, 37 met state criteria for locally significant wetland (LSW) qualification. 35 of the wetlands designated as locally significant lie partially or entirely within the City of Cottage Grove's urban growth boundary. These 35 LSW were the subject of a 2012 Economic, Social, Environmental, and Energy (ESEE) analysis. Review LWI map for specific wetland designations.

B. **Applicability.** This ordinance is applicable to any activity within any wetlands within the corporate limits of the City of Cottage Grove, whether on the LWI map or not.

Unless otherwise stated, the City of Cottage Grove shall apply the following provisions in conjunction and concurrently with the requirements of any other development permit being sought by an applicant. If no other permit is being sought, the Community Development Director shall serve as the approving authority through a Type I or II process.

C. **Purpose.** It is the purpose of this chapter to promote the health, safety, and general welfare of the present and future residents of the City of Cottage Grove by providing for the protection, preservation, proper maintenance, and use of the wetland areas within the City of Cottage Grove. This code is designed to:

1. Implement the goals and policies of the City of Cottage Grove's Comprehensive Plan;
2. Satisfy the requirements of Statewide Planning Goals 5 and 6;
3. Protect Cottage Grove wetland areas, thereby protecting the hydrologic and ecologic functions wetlands provide, including reduced adverse effects of erosion and flooding;
4. Protect fish and wildlife habitat;
5. Protect the amenity values and educational opportunities of wetlands;
6. Improve and promote coordination among local, state, and federal agencies regarding development activities in and near wetlands.

**D. Determination of Locally Significant Wetlands.** In accordance with rules adopted by DSL (OAR 141-086-3000), wetlands within the City of Cottage Grove have been assessed and a local significance determination made. Locally significant wetlands are identified as such on the City of Cottage Grove LWI map.

All wetlands, mapped or not, remain subject to DSL review and permitting. Oregon's Removal-Fill Law (ORS 196.795-990) requires people who plan to remove or fill material in waters of the state to obtain a permit from the DSL. The City of Cottage Grove shall notify the Oregon DSL in writing of all applications to the City of Cottage Grove for development that occurs in, or within 20 feet of, any wetland identified on the Local Wetlands Inventory map whether locally significant or not.

**E. Definitions.** As used in this chapter:

1. Economic, Social, Environmental, Energy (ESEE) Analysis – Analysis required of local governments in developing a program to achieve Goal 5 compliance for all significant resource sites. “ESEE consequences” are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. [See OAR 660-023-0040 for more detail on ESEE Decision Process.]
2. Jurisdictional Delineation – A current delineation of a wetland's boundaries that is approved by DSL. A delineation is a precise map and documentation of actual wetland boundaries on a parcel, whereas a LWI boundary may only be a rough map with an accuracy target of 5 meters (approximately 16.5 feet). [See OAR 141-90-005 et seq. for specifications for wetland delineation reports.]
3. Jurisdictional Determination – A written decision by DSL that waters of the state subject to regulation and authorization requirements of OAR 141-085, 141-089, 141-0100 and 141-0102 are present or not present on a land parcel. The Jurisdictional Determination may include a determination of the geographic boundaries of the area subject to state jurisdiction. A Jurisdictional Determination may, but does not necessarily, include a determination that a particular activity is subject to DSL permitting requirements.
4. Jurisdictional Wetland – Wetlands regulated by the U.S. Environmental Protection Agency, the Army Corps of Engineers, and the DSL. This includes all wetlands on the City of Cottage Grove LWI map. Activities that may affect these wetlands are subject to agency review and may be restricted or require state/local permits before work may be done.

5. Locally Significant Wetland – Wetlands determined to be Locally Significant Wetlands based on Oregon Administrative Rules for Identifying Significant Wetlands (OAR 141-86-300 through 141-86-350). If the assessed wetland unit provides “diverse” wildlife habitat, “intact” fish habitat, “intact” water quality function, or “intact” hydrologic control function, then the wetland is locally significant. Locally Significant Wetlands are identified on the City of Cottage Grove LWI. Locally Significant Wetlands also constitute the Wetland Protection Area (unless otherwise indicated in this ordinance).
6. Local Wetlands Inventory (LWI) – *Cottage Grove Local Wetland Inventory Report* and LWI map produced by Environmental Science Associates (ESA) in 2011 and approved by DSL in 2012, and any subsequent revisions as approved by the DSL. The LWI is a comprehensive survey and assessment of all wetlands over a half acre in size within the urbanizing area. This includes both locally significant wetlands, and wetlands that are not identified as locally significant (including probable wetlands).
7. Probable Wetlands (PW) – An area noted during the course of LWI field work that appears to meet, or does meet, wetland criteria but is small or of undetermined size, and is mapped as a point rather than a polygon on the LWI maps.
8. Qualified Wetland Professional – A professional with a background in wetland science and experience with conducting wetland delineations and determinations.
9. Wetland – An area inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
10. Wetland Protection Area – An area subject to the provisions of this chapter that is constituted by wetlands determined to be locally significant as shown on the LWI (unless otherwise indicated under Section H.5). The wetland protection area extends 20 feet from the mapped LWI boundary unless an onsite or off site determination or wetland delineation provides a more refined estimation of the wetland boundary.

**F. Prohibited Uses.** Except as exempted or allowed in Sections G-H, the following uses are prohibited within a wetland protection area:

1. Placement of new structures or impervious surfaces;
2. Excavation, drainage, grading, fill, or removal of vegetation;

3. Expansion of areas of landscaping with non-native species, such as a lawn or garden, into the wetland protection area;
4. Disposal or temporary storage of refuse, yard debris, or other material;
5. Discharge or direct runoff of untreated stormwater unless as a conditional use meeting requirements in Section H; or
6. Any use not specifically allowed in Section H.

**G. Exempt Uses.** The following activities and maintenance thereof are exempted from wetland protection area regulations, provided that any applicable state or federal permits are secured:

1. Maintenance of any use or development that was lawfully existing on the date of adoption of this ordinance, [October 14, 2013] per the standards for Non-Conforming Development in Chapter 14.5.2;
2. The maintenance and alteration of pre-existing ornamental landscaping so long as no additional native vegetation is disturbed;
3. Wetland restoration and enhancement of native vegetation;
4. Cutting and removal of trees that pose a hazard to life or property due to threat of falling;
5. Cutting and removal of trees to establish and maintain defensible space for fire protection;
6. Removal of non-native vegetation;
7. Maintenance and repair of existing utilities;
8. Maintenance of existing drainage ways, ditches, or other water control structures, as approved by DSL;
9. Emergency stream bank stabilization approved by DSL, to remedy immediate threats to life or property; or
10. Non-motorized, passive outdoor recreational activities, including hiking, mountain biking, wildlife viewing, picnicking, etc.

**H. Allowed Uses.** The following activities and maintenance thereof are allowed within a wetland protection area upon City review and approval through a Type I or II process and provided any applicable state or federal permits are secured:

1. Replacement of a permanent, legal, nonconforming structure in existence on the date of adoption of this ordinance with a structure on the same building footprint, or expansion of the original building footprint, and in accordance with the provisions of Sections 3.7.2, 3.7.3, and 5.2.
2. Expansion of existing roads and streets in adopted Transportation System Plan provided that such practices avoid sedimentation and other discharges into the wetland or waterway.
3. Installation of interpretive/educational displays.
4. New fencing, provided:
  - a. The fencing does not affect the hydrology of the site;
  - b. The fencing does not present an obstruction that would increase flood velocity or intensity; and,
  - c. Fish habitat is not adversely affected by the fencing.
5. The following activities are also allowed on wetlands receiving Limited Protection as identified in the ESEE Analysis with varying development buffers of 25 or 50 feet also provided impacts to the wetland are minimized or mitigated (Type II review):
  - a. Wetland restoration and enhancement activities including:
    - i. Non-native vegetation removal.
    - ii. Invasive species removal.
    - iii. Native plantings.
    - iv. Endangered species habitat restoration.
    - v. Maintenance of wetland functions.

- b. Trails and low impact recreational and educational park uses including:
  - i. Expanded and new multi-use trails.
  - ii. Information signs and kiosks.
  - iii. Wildlife viewing platforms.
  - iv. Active recreational activities.
- c. Adopted Master Plan activities.
- d. Unavoidable planned public roads.
- e. Limited access points when no others exist.
- g. Culvert replacement, meeting Oregon Department of Fish and Wildlife (ODFW) guidelines and criteria, to:
  - i. Remove barriers to fish passage.
  - ii. Reduce upstream flooding.
  - iii. Improve water quality.
  - iv. Maintain or repair culvert function.

- I. Notification and Coordination with State Agencies.** The City of Cottage Grove shall notify the Oregon DSL in writing of all applications to the City of Cottage Grove for development activities - including development applications, building permits, and other development proposals - that occur in, or within 20 feet of, any wetland identified on the Local Wetlands Inventory map.
- J. Violations and Penalty.** When a wetland has been altered in violation of this Chapter, enforcement shall be conducted as outlined in Chapter 1.5 of the Development Code. In instances where violations of DSL requirements have occurred, DSL enforcement mechanisms apply. In some cases, both local and DSL enforcements may occur.
- K. Application requirements for Wetland Review.** Where Wetland Review is applicable to approve any Allowed Uses under Section H., applicants shall submit the following materials:

1. A scale drawing that clearly depicts any LWI map wetland boundary within the subject parcel and any wetland within 20 feet of the development on an adjacent parcel, all surface water sources, existing trees and vegetation, property boundaries, and proposed site alterations including proposed excavation, fill, structures, and paved areas.
2. Written statement of compliance demonstrating consistency with approval criteria for any proposed Allowed Use(s).
3. Demonstration of avoidance of impacts to wetland protection area (if applicable). This can be demonstrated by any one of the following:
  - a. Submitting an offsite determination, conducted by DSL, that concludes the proposed activities will occur outside the wetland; or
  - b. Submitting an onsite determination, conducted by a qualified wetland professional, that concludes the proposed activities will occur outside the wetland protection area; or
  - c. Submitting a current wetland delineation (completed within the last five years), certified by DSL, that shows the proposed activities will occur outside the wetland protection area.

**L. Approval Criteria for Wetland Review.** In approving Allowed Uses under Section H, and/or ensuring compliance with Prohibited Uses, the approval body shall base its decision on the following criteria through a Type I or II process:

1. The proposed project will not result in excavation or filling of a wetland or reduction of wetland protection area, except as allowed elsewhere in this code;
2. Specified criteria for proposed use in Section H. Allowed Uses; and
3. Comments and recommendations on proposed uses received from DSL and ODFW.

**M. Variances.** The Planning Commission shall be the approval body for applications for variances to the Wetland protection provisions. Variances shall be processed as a Type III land use procedure following sections 4.1.400 of the Development Code. The Planning Commission may approve or approve with conditions a request for a Variance based upon findings that all of the following approval criteria have been satisfied:

1. The applicant has exhausted all other options available under this chapter to relieve the hardship;

2. The variance is the minimum necessary to alleviate the hardship;
3. All state and federal permits required for authorization of wetland impacts are obtained;
4. There is no feasible on-site alternative to the proposed activities, including but not necessarily limited to: reduction in size, density or intensity; phasing of project implementation; change in timing of activities, revision of road and lot layout; and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts;
5. The proposal utilizes to the maximum extent possible innovative construction, design, and development techniques, including pervious surfaces, which minimize to the greatest extent possible net loss of wetland functions and values; and
6. The area of disturbance is limited to the area that has the least practical impact on the wetland functions and values.

**N. Mapping Boundary Corrections.** The boundaries of locally significant wetlands are based on the City's LWI.

1. Wetland boundary corrections will be processed administratively. The Community Development Director may correct the location of the wetland boundary when the applicant has shown that a mapping error has occurred and the error has been verified by the DSL.
2. Delineations verified by DSL shall be used to automatically update and replace LWI mapping.
3. No formal variance application or plan amendment is needed for map corrections where approved delineations are provided.



Association

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10/18/2013

Mailed From 97424  
US POSTAGE



TO:



Attn: Plan Amendment Specialist  
DLCD  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540

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