

City of Brookings
MEETING AGENDA

**SPECIAL CITY COUNCIL/PLANNING
COMMISSION WORKSHOP**

Thursday, March 29, 2018 7:00pm

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

A. Call to Order

B. Roll Call

C. Topics

1. Riparian Ordinance presentation [Planning, Pg. 2]
 - a. LCOG Riparian Ordinance presentation [Pg. 3]

D. Council Member Requests for Workshop Topics

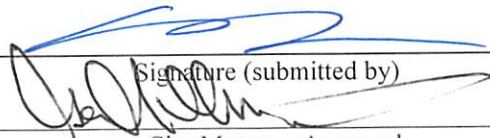
E. Adjournment

All public City meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 72 hours advance notification. Please contact 469-1102 if you have any questions regarding this notice.

CITY OF BROOKINGS
Council Special Joint
WORKSHOP Report

Workshop Date: March 29, 2018

Originating Dept: Planning



Signature (submitted by)

City Manager Approval

Subject: Riparian Ordinance presentation

Recommendation:

Direction to staff regarding creation of a Riparian Ordinance

Background/Discussion:

On March 7, staff attended a presentation by Lane Council of Governments (LCOG) regarding its ability to assist the City with creation of a Riparian Ordinance.

At the presentation, staff determined it would be prudent to offer the same presentation to both Council and Planning Commission in a joint workshop setting. There are several process alternatives to choose between. Staff seeks direction regarding next steps.

Attachment(s):

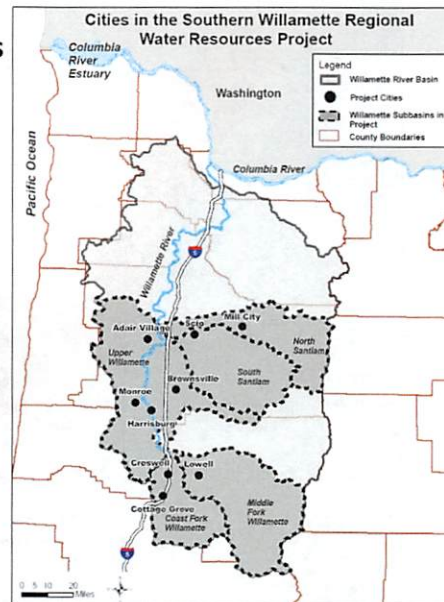
- a. LCOG Riparian Ordinance presentation

Brookings Riparian Area Ordinance



March 7, 2018

Lane Council of Governments received funding to assist 8 cities in 3 counties in local wetland and riparian inventories, assessment, and protection.

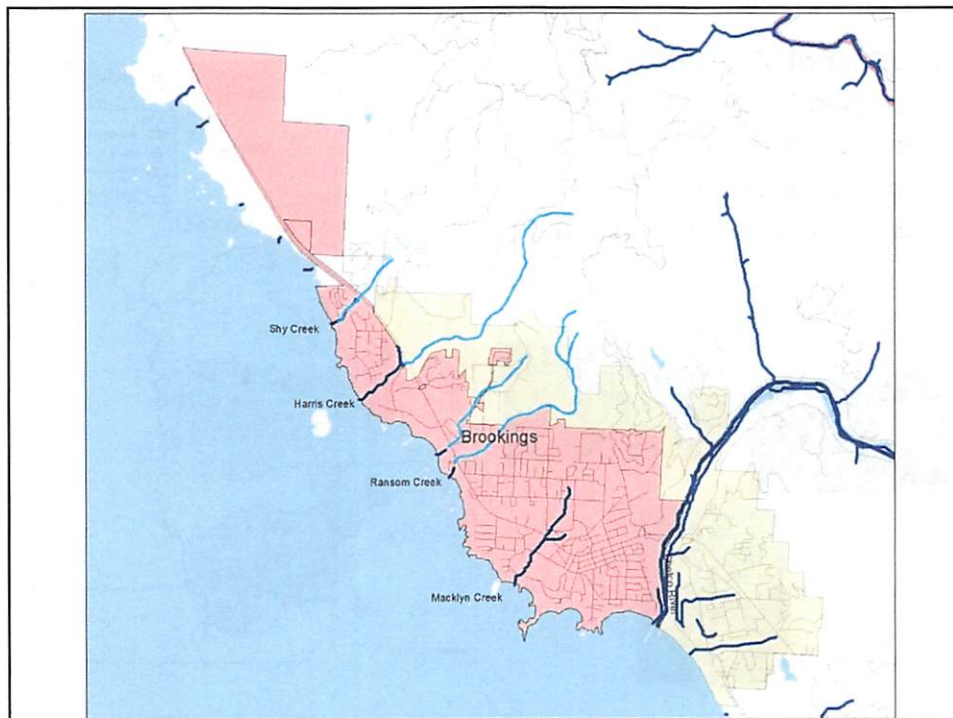


Riparian Resources

Riparian areas are the lands directly adjacent to water resources including rivers, streams, lakes and wetlands. Riparian areas are important terrestrial connections to aquatic resources and serve to buffer aquatic ecosystems from human impacts. These areas are important corridors that link terrestrial and aquatic ecosystems, their importance is far greater than their minor proportion of the land base would suggest. Healthy riparian areas can provide a number of important functions including:



- Enhancing **water quality** by buffering water resources from sediment, pollutants and urban runoff.
- Reducing erosion by maintaining riparian vegetation that **stabilizes stream banks**
- **Moderating water temperature** and **flooding** by maintaining undeveloped riparian areas with native vegetation
- Providing habitat for **fish and wildlife**



Existing Regulatory Framework

- Chapter 17.72 MARINE ACTIVITY (MA)
DISTRICT 17.72.060 Shoreland and aquatic development standards – Chetco Estuary.
- Chapter 17.98 FLOOD DAMAGE PREVENTION
- **More?**

Riparian Areas *Decision Points:*

**Do you have a current “RIPARIAN INVENTORY” with “Significant” Riparian areas identified?
If you do, are you satisfied with it?**

Do you want to protect only fish bearing waterbodies?

The Goal 5 Safe Harbor approach requires buffers on all fish bearing waterbodies. Bare minimum under Goal 5 but may or may not be sufficient to meet total maximum daily load (TMDL) or Endangered Species Act (ESA) needs.

Do you want to protect other waterways (e.g. seasonal) for water quality using buffers?

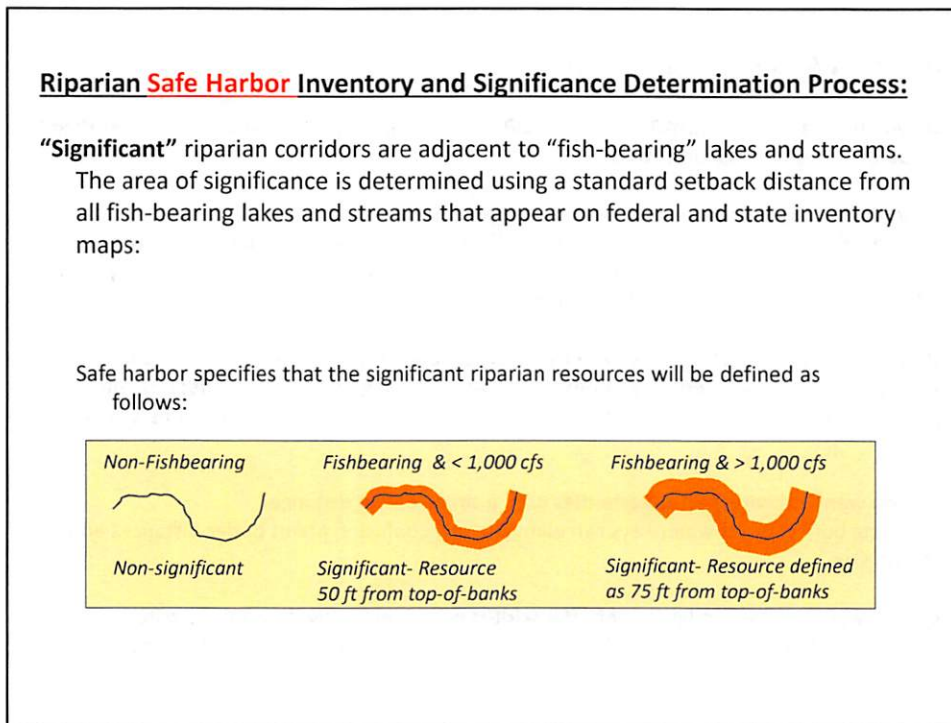
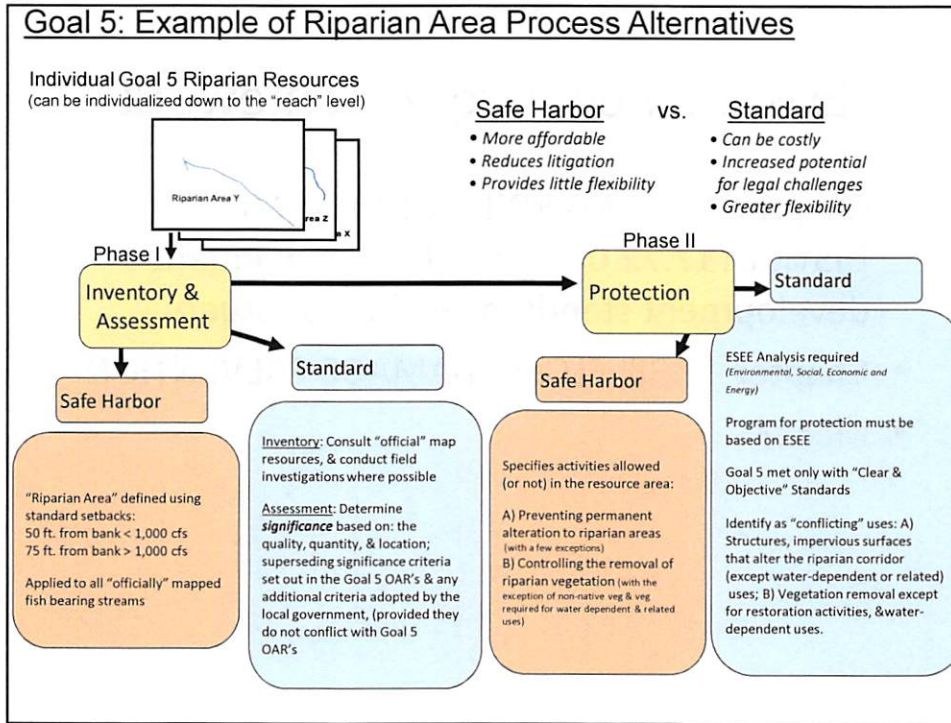
This approach involves adopting buffers on non-fish bearing waterways. Doing this will provide substantial benefits to water quality programs and will support TMDL implementation plans.

Do you want to protect all waterbodies with a single buffer distance?

Adopting buffers on all waterways can eliminate any confusion about buffer distances and stream size.

Do you want to have a mixture of buffer widths based on locally determined criteria?

This option allows for some flexibility and application of buffer widths based on the waterway attributes that you are trying to protect.



Riparian **Standard** Inventory and Significance Determination Process:

The **standard inventory approach** requires a local government to demonstrate that the inventory process was “**adequate**” and justify the decision to identify some resources as “**significant**.”

The process involves collecting information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors. Conducting field investigations to verify location, quality, and quantity of resources within the riparian corridor is encouraged, but optional. At a minimum, the inventory must include resources shown on federal and state inventory maps.



For the **protection** phase, the OAR’s direct local governments to adopt comprehensive plan provisions and land use regulations to achieve Goal 5 protection for all significant riparian areas.

As with the Inventory process, Local governments may meet these Goal 5 requirements through either a **standard** process (ESEE analysis) or the **safe harbor** provision.

Riparian Safe Harbor Program to Protect

Specifies activities **allowed** or not **allowed** in the riparian area. Local governments may meet riparian corridor Goal 5 requirements by adopting an ordinance that protects significant riparian corridors by:

1) Preventing permanent alteration to riparian areas from grading or the placement of structures or impervious surfaces. The following uses are permitted, provided they are designed and constructed to minimize intrusion into the riparian area:

- *Streets, roads, and paths;*
- *Drainage facilities, utilities, and irrigation pumps;*
- *Water-related and water-dependent uses; and*
- *Replacement of existing structures in the same location.*

2) Controlling the removal of riparian vegetation, except for removal of:

- *Non-native vegetation and replacement with native plant-species; and*
- *Vegetation necessary for the development of water-related or water-dependent uses.*

Ord. must include hardship variances, claims of map error, and reduction or removal of restrictions for parcels that have been rendered unbuildable by the riparian protection ordinance. Ordinance may permit permanent alteration of significant riparian areas from the placement of structures or impervious surfaces if restoration, enhancement of buffers, or similar measures offset the permanently altered area. Such alteration shall not occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor.

Riparian Standard Process Program to Protect

Allows for the valuable functions of riparian areas to be **considered along side other priority local policy issues** through the ESEE (economic, social, environmental, and energy) analysis evaluating the consequences of allowing, limiting or prohibiting uses that conflict with each significant resource site. The steps in an ESEE process include the following:

- *Identify conflicting uses;*
- *Determine the impact area;*
- *Analyze the economic, social, environmental, and energy consequences of allowing, partially allowing, or not allowing the conflicting use; and*
- *Develop a program to achieve Goal 5*

Compliance under Goal 5 is achieved using the ESEE process when at least the following activities are identified as **conflicting uses** in riparian corridors:

- 1) Placement of structures or impervious surfaces that permanently alter the riparian corridor except for water-dependent or water-related uses and replacement of existing structures in the same location that do not disturb additional riparian surface area; and
- 2) Vegetation removal except on lands designated for agricultural or forest use outside the UGB, for restoration activities, and for the development of water-related or water-dependent uses.

Model Riparian Code

Riparian Protection Overlay (From the model code guidebook)

Problem

Local jurisdictions must address their riparian and wetland resources per Goal 5 requirements. In addition, the presence of a stream on DEQ's 303(d) list, or liability concerns resulting from an ESA listing may necessitate more stringent riparian protection (see Chapter 2 for more details). In some cases the riparian buffer required by the Goal 5 safe harbor provision may be adequate to address the water quality impact issues that led to a 303(d) listing. In other cases, such as when temperature is a factor, a Goal 5 buffer, especially the safe harbor buffer, may not provide enough protection for the riparian area.

Objective

Promote stream health and protect and enhance water quality by establishing riparian protection areas along streams that have been identified through a Goal 5 process, are listed on DEQ's 303(d) list, or are within a watershed affected by an ESA listing for an aquatic species.

Strategy

Identify significant riparian resources by conducting an inventory process described by the standard Goal 5 rule. Conduct an analysis of conflicting uses and the consequences of prohibiting, limiting, or allowing these conflicting uses as described in the Goal 5 rule and develop a program to protect the resource based on the findings of this analysis. Or or apply the safe harbor inventory provision under the rule for fish-bearing lakes and streams. Implement the following Goal 5 safe harbor model ordinance for the areas identified as a Goal 5 significant riparian resource. If a greater level of management is required to meet water quality regulations, develop findings under Goal 6 and implement the supplemental provisions found after the safe harbor model code.

Discussion

The Goal 5 rule separates the identification of the significant riparian resource, from the process of determining the appropriate protection for that identified resource. For each item the state gives two options:

- The Goal 5 standard process that allows a lot of flexibility but requires more work, and/or
- A safe harbor process that allows no flexibility, but is often a faster and less expensive approach to complying with Goal 5. The safe harbor options were developed at the state level. They represent one approach to finding a compromise between protecting natural resources and pursuing other urban development objectives. A local government may divide the riparian corridor into a series of stream reaches and regard these as individual Goal 5 resource sites. A standard process could then be applied to some reaches and the safe harbor process to other reaches.

Resource inventory – The standard inventory process described in the Goal 5 rule for riparian areas requires that certain sources of information be consulted, but otherwise

and streams shown on the documents listed in subsections (a) through (f) of Section (4) of this rule, as follows:

- (a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.
- (b) 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.
- (c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-23-100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.
- (d) In areas where the top of each bank is not clearly defined, or where the predominant terrain consists of steep cliffs, local governments shall apply OAR 660-23-010 rather than apply the safe harbor provisions of this section.

The Documents referred to in Section (4) of this rule are

- (i) As a minimum, local governments shall consult the following sources, where available, in order to inventory riparian corridors along rivers, lakes, and streams within the jurisdiction:
 - (a) Oregon Department of Forestry stream classification maps;
 - (b) United States Geological Service (USGS) 7.5 minute quadrangle maps;
 - (c) National Wetlands Inventory maps;
 - (d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;
 - (e) Federal Emergency Management Agency (FEMA) flood maps; and
 - (f) Aerial photographs.

Draft Safe Harbor Ordinance Language:**I. Purpose**

The purpose of this ordinance is to protect and restore water bodies and their associated riparian areas, thereby protecting and restoring the hydrologic, ecological and land conservation functions these areas provide. Specifically, this ordinance is intended to protect habitat for fish and other aquatic life, protect habitat for wildlife, protect water quality for human uses and for aquatic life, control erosion and limit sedimentation, and reduce the effects of flooding. This ordinance attempts to meet these goals by excluding structures from areas adjacent to fish-bearing lakes and streams, and their associated wetlands, and by prohibiting vegetation removal or other alterations in those areas.

II. Definitions

- (A) "Fish Use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts. Fish use is determined from Oregon Department of Forestry Stream Classification maps.

Cost Variables

Inventory

(Do you have something in place?)

Inventory Approach

(Safe Harbor vs Standard)

Outreach

(Legal Minimum (Hearings) vs Community/Stakeholder Meetings)

Protection Approach

(Safe Harbor vs Standard)

Program Development Process

(Decision Makers Alone – Advisory Committee?)

Adoption Complexity

(i.e. opposition)

Brookings Staff vs LCOG

\$5,000

\$20,000

\$50,000

“Surprise” Findings of Study:

“a strong correlation between quality of water and happiness”

Dan Buettner - National Geographic Explorer

