

## CHAPTER 126 WETLANDS

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**126.010. Intent and Purpose.** The intent and purpose of this ordinance is to identify those wetlands located within the City of Salem which are significant and non-significant, and to establish the foundation for a wetlands protection program that will provide for the long-term protection of wetlands within the City of Salem. (Ord No. 78-2002)

**126.020. Definitions.** As used in this chapter, except where the context otherwise clearly requires:

- (a) **“Best Available Information”** means information used in making the classification of a wetland as Locally Significant, including, but not limited to the Salem-Keizer Local Wetland Inventory, aerial photos taken in 2000; Oregon Natural Heritage Program data; Department of Environmental Quality data for streams listed under the Clean Water Act (CWA, 33 U.S.C. 1250, *et seq.*, at 1313 (d)), Section 303(d); Geographic Information System (GIS) data from the City of Salem, including, but not limited to location of city parks, local waterways, tax lot data and property ownership, fish-bearing streams, FEMA and floodplain data; and any other data or information from a trustworthy source which may be verified by observation, investigation, or research, or which is considered authoritative by professionals in the scientific community.
- (b) **“Director”** means the Community Development Director for the City of Salem or the Director’s designee.
- (c) **“Indigenous Salmonids”** means members of the family Salmonidae which are listed as sensitive, threatened or endangered by a federal or state authority, including Chum, Sockeye, Chinook and Coho salmon, and steelhead and cutthroat trout.
- (d) **“Inhabited by”** means the plant or animal species uses the site for rearing, feeding, or breeding, or as a migration or dispersal corridor. As used in this definition, “inhabited by” does not include the incidental use of the site by an animal species.
- (e) **“Locally Significant Wetland”** means a wetland which provides functions or exhibit characteristics that are pertinent to planning decisions, including planning decisions within the UGB, and which has been determined to be significant under the criteria listed in OAR 141-086-0350.
- (f) **“Local Wetland Inventory”** means a systematic survey of an area to identify, classify, and map the approximate boundaries of wetlands, and that includes the supporting documentation required by OAR 141-86-180.
- (g) **“Native Plant Community”** means a recognized assemblage of plant species indigenous to Oregon, as identified in the “Classification and Catalog of Native Wetland Plant Communities in Oregon,” published by the Oregon Natural Heritage Program.
- (h) **“Non-significant Wetland”** means those wetlands that are part of the Salem-Keizer Local Wetland Inventory which were not identified as Locally Significant Wetlands using the OFWAM analysis.
- (i) **“Oregon Freshwater Wetland Assessment Methodology (OFWAM)”** means a wetland function and quality assessment methodology developed by the Oregon Division of State Lands. Local governments are required to use OFWAM, or an equivalent methodology that is approved in writing by the Director of the Oregon Division of State Lands, to assess wetland functions and determine significance.

(j) **“Rare Plant Communities”** means plants which are uncommon, unique or relictual in Oregon, as determined by the number of occurrences and threats according to Oregon Natural Heritage Program criteria. Listings of wetland communities in Oregon which meet this standard for rarity may be found in “Oregon Freshwater Wetland Assessment Methodology,” Appendix G (1996), published by the Oregon Division of State Lands, and the Classification and Catalog of Native Wetland Plant Communities in Oregon, published by the Oregon Natural Heritage Program.

(k) **“UGB”** means the City of Salem Urban Growth Boundary.

(l) **“Wetland”** means 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. (Ord No. 78-2002)

**126.030. Criteria for Identification.** Using the Local Wetlands Inventory, a functional and quality assessment of all inventoried wetlands within the city and the UGB, and the best available information, the Director shall identify local wetlands as Locally Significant or Non-Significant.

(a) A wetland shall be identified as Locally Significant if it meets one or more of the following criteria:

(1) The wetland performs any of the following functions according to the OFWAM:

(A) Provides diverse wildlife habitat;

(B) Provides intact fish habitat;

(C) Provides intact water quality function; or

(D) Provides intact hydrologic control function.

(2) The wetland or a portion of the wetland occurs within a horizontal distance of less than one-fourth mile from a water body listed by the Department of Environmental Quality as a water quality limited water body under Clean Water Act (CWA, 33 U.S.C. 1250, *et seq.*, at 1313(d)), Section 303 (d), 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) do not meet state water quality standards for each listed water body. The Director may determine a wetland is Not Significant under this paragraph upon documentation that the wetland does not provide water quality improvements for the specified parameter or parameters.

(3) The wetland contains one or more rare plant communities, as defined in this rule.

(4) 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.

(A) 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 sites during the local wetlands inventory and functional assessments, and existing information on rare species occurrences at maintained by agencies, including, but not limited to, the Oregon Natural Heritage Program, Oregon Department of Fish and Wildlife, Oregon Department of Agriculture, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(B) Input originating from other locally knowledgeable sources constitutes documentation for the purposes of this paragraph if it is verified by one of the agencies identified under paragraph (A) of this subsection, or in a university or college reference collection.

(5) 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 salmonids, and the wetland is determined to have "intact" or "impacted or degraded" fish habitat function using

OFWAM.

(b) A wetland may be identified as Locally Significant if the wetland meets one or more of the following criteria:

(1) The wetland represents a locally unique native plant community or, if the entire UGB has been inventoried, the wetland contains the only representative of a particular native wetland plant community in the UGB. To be identified as Locally Significant under this paragraph, the wetland must also have been assessed to perform at least one of the following functions according to OFWAM:

- (A) The wetland provides diverse habitat, or provides habitat for some wildlife species;
- (B) Its fish habitat is either intact, or impacted or degraded;
- (C) Its water quality function is either intact, or impacted or degraded ; or
- (D) Its hydrologic control function is either intact, or impacted or degraded.

(2) 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.

(c) Exclusions. Notwithstanding subsections (a) and (b) of this section, 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 141-085-0010(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
- (E) 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 under the following conditions:

- (A) The wetland is documented as contaminated on either the U.S. Environmental Protection Agency's National Priority List ("Superfund List"), or the Oregon Department of Environmental Quality's Inventory of Hazardous Substance Sites.
- (B) Only that portion of the wetland affected by such hazardous substances or wastes shall be excluded from the Locally Significant Wetland 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 Locally Significant Wetlands criteria no later than the City of Salem's next periodic review. (Ord No. 78-2002)

#### **126.040. Notification of Identification; Request for Redesignations; Delineations.**

(a) Each property owner whose property contains a wetland which is identified under SRC 126.030, and each person owning property within one hundred feet of such affected property, shall receive written notice of such designation. The notice shall contain the following:

- (1) A description of the affected property;
- (2) A statement that a wetland exists on the property, with a map of the approximate location of the wetland, which has been subject to evaluation and identification as Locally Significant or Non-Significant;

- (3) A statement that such identification was performed according to the requirements of the Oregon Division of State Lands and the Department of Land Conservation and Development pursuant to ORS 197.279(3)(b);
- (4) A statement that the wetlands may be subject to local, state, or federal regulation.
- (5) The name and phone number of a City of Salem staff person to contact for further information.

(b) Any property owner who receives a notice under subsection (a) of this section may file a request for redesignation or delineation with the Director within 90 days of the date the notice is issued. No redesignation shall occur unless the property owner can show, using the best available information the designation fails to satisfy the criteria for “local significance under SRC 126.030(a) or (b). No adjustment to the official map based on a delineation shall be made unless the delineation has been approved by the Oregon Division of State Lands. (Ord No. 78-2002; Ord No. 1-10)

**126.050. Locally Significant and Non-Significant Wetlands Maps; Adoption and Amendment.**

(a) The Director shall develop a map depicting each wetland, using the criteria under SRC 126.030. The map shall show the boundary of the wetland, based on the best available information and shall identify each wetland as Locally Significant or Non-Significant. The wetland map shall be adopted or amended by resolution of the city council. Any wetland identified as Locally Significant on the official map shall be subject to the regulations for Locally Significant Wetlands under SRC Chapter 68.

(b) Wetlands not identified in the Local Wetlands Inventory shall be assessed for local significance pursuant to SRC 126.030 as soon as practicable after discovery, and added to the official wetland map, if determined by the Director to be locally significant.

(c) Amendments to the official wetland map may be made if the property owner demonstrates, using the best available information, that the designation fails to satisfy the criteria for a locally significant wetland under SRC 126.030(a) and (b), or the delineation is no longer accurate. No adjustment to the official map based on the accuracy of a delineation shall be made unless a redelineation has been approved by the Oregon Division of State Lands.

(d) Notice of proposed amendments to the official wetlands map shall be made pursuant to SRC 126.040(a). Any property owner who receives a notice of under subsection (d) of this section may file a request for redesignation or delineation with the Director within 90 days of the date the notice is issued. Appeals from the decisions amending the official wetlands map shall be made to the hearings officer pursuant to SRC 114.020(b). (Ord No. 78-2002)

**126.060. Required Notification of the Oregon Division of State Lands.** Within 5 working days of receiving a completed application for development or land use in an area designated as a wetland on the official wetlands map, the City shall:

(a) Send a Wetland Land Use Notification form to the Division of State Lands of any application for development or land use in an area designated as a wetland on the official wetlands map; and

(b) Send a letter to the applicant, and, if different the owner of the real property, and the watershed council functioning in the area within which the wetland lies, stating that Division of State Lands is being notified, along with a copy of the completed Wetland Land Use Notification form. (Ord No. 78-2002)

(CHAPTERS 127-129 RESERVED FOR EXPANSION)