

August 7, 2023

Lane County Board of Commissioners
125 E 8th Avenue
Eugene, Oregon 97401

Cc: Erosion Prevention staff at the Land Management Customer Service Center

Cc: Heather Buch, Commissioner - District 5 East Lane County

Subject: Public comment for meeting date 08/08/2023 on Ordinance No. 23-06 and amendment of Lane Code 9.090 – Erosion Prevention Regulation

Dear Lane County Board of Commissioners,

Thank you for the opportunity to provide comments on Ordinance No. 23-06 and the proposed erosion prevention regulations, which will apply county-wide to a wide array of activities broadly defined as land disturbance. The Freshwater Trust (TFT) is an Oregon-based nonprofit organization founded in 1983 with a mission to preserve and restore freshwater ecosystems. As an organization dedicated to protecting and improving habitat for wild salmonids, TFT applauds Lane County's efforts to improve water quality and habitat for aquatic life in the Willamette River watershed. However, we submit these comments to respectfully request that ecological restoration and improvement be added to the list of activities exempted from the provisions of LC chapter 9.090. This will ensure that the proposed regulations do not stand in the way of restoration actions that directly improve the health of the watershed.

TFT shares the County's goal of improving watershed health, and to advance this goal, TFT has developed a number of riparian reforestation programs. Most recently, in 2023, TFT partnered with the McKenzie Watershed Council, the Coast Fork Willamette Watershed Council, the Middle Fork Willamette Watershed Council, the Metropolitan Wastewater Management Commission and others to launch a riparian reforestation program in Lane County and the Upper Willamette watershed. As part of this program, TFT removes invasive vegetation then plants native trees and shrubs at project sites to improve wildlife habitat and water quality. In addition to shading rivers, these projects improve water quality by reducing runoff and bank erosion, provide important riverside forest habitat, and supporting river processes that are essential to salmonids and other aquatic organisms. When implementation is complete in 2027, we expect to have replanted native forests on the streambanks of up to 30 sites in Lane County, which TFT will then actively steward for 20 years after planting.

In light of the importance and benefits of riparian restoration projects, we urge the Commission to exempt such restoration from the proposed regulations. As currently defined in the draft ordinance, land disturbance includes changing the physical condition of vegetation within floodplains and within 50 feet of a water feature. This definition would include riparian restoration projects with weed suppression and

planting activities. While weed control and stewardship activities do temporarily remove some, primarily non-native vegetation in the riparian area—and such actions are undertaken in compliance with separate permits secured from the County or other relevant entities—ground disturbance from these activities is minimal because the focus is on removing the aboveground portions of the weeds. Restoration projects are designed to rapidly replace weeds with native vegetation that stabilizes the soil and improves water quality treatment functions on site. Further, installation of native trees and shrubs typically involves minimal soil disturbance: small bare root plants are generally the preferred stock type and are installed with a planting spade that creates a slit in the ground into which roots are inserted before it is pressed closed. Container plants are less commonly used but holes are dug that typically displace a gallon or less of soil that is immediately replaced around the plant and pressed around the roots.

Ecological restoration projects do not create substantial erosion and sedimentation risk because they do not typically change the physical condition of landforms or include grading, excavating, or fill; create large bare areas; or move many cubic yards of soil. Rather than being the type of action that should be further regulated to protect the watershed, these types of riparian restoration activities directly advance the goals of the proposed ordinance and code amendments and, therefore, should not be subject to further regulations. We respectfully request that weed removal and planting for the purposes of ecological restoration and improvement be added to the list of activities exempted or excepted from the provisions of LC chapter 9.090.

We are happy to respond to any questions or provide additional information. Thank you for your consideration.

Sincerely,

Meg Belais
Northwest Programs Director
The Freshwater Trust

Amanda Gilbert
Executive Director
Coast Fork Willamette Watershed Council

Dov Weinman
Executive Director
Middle Fork Willamette Watershed Council

Jared Weybright
Executive Director
McKenzie Watershed Council



Dear Louranah and Board of Commissioners,

The six habitat restoration and conservation groups of the Upper Willamette Stewardship Network are writing to express strong concerns about the scope of Lane County's proposed erosion control ordinance. While we generally support practical regulatory actions that protect and improve habitat and water quality in Lane County, we're concerned that the proposed ordinance, as currently written, will have a disproportionate negative impact on the important restoration work that we do. The ordinance, as proposed, goes above and beyond the requirements of the County's MS4 NPDES permit and DEQ's Willamette Basin TMDL for mercury (confirmed to us by a DEQ staff person), and would add additional administrative processes and cost to the habitat restoration and water quality improvement projects that we implement that benefit the people of Lane County.

Potential erosion and water quality impacts of the work that we implement are already heavily regulated by the Oregon Department of Environmental Quality through the 1200-C permitting program (for projects with >1 acre of ground disturbance) and by the US Army Corps of Engineers and DEQ through the Clean Water Act Section 401 water quality certification that is required for all ground disturbing projects below ordinary high water or within wetlands. The CWA 401 permits are triggered whenever we submit joint permits or pre-construction notifications to the Army Corps, which we do for every project.

The proposed ordinance would add significant cost to our projects, with the anticipated permit fees to be charged by Lane County and by the added staff time it will take our project managers to prepare applications and material to submit to Lane County planning for review and approval. Perhaps even more impactful would be the additional time that this review will take. Lane County staff already have challenges managing the volume of permit reviews under the current regulatory framework. Adding another layer will further complicate those challenges while also delaying projects in the public's interest.

We have noted the existing exemptions in the proposed ordinance for forestry, mining, and agriculture activities, and for work done on Lane County rights-of-way. It would make sense then to consider additional exemptions for restoration projects being carried out in the public interest.

We would like to propose the following for your consideration in the ordinance:

- Add an exemption in section 9.090.020 of the proposed ordinance for habitat restoration projects. Similar to the other exemptions offered in the ordinance, our projects are already required to acquire a number of other regulatory permits. They are also vetted by a variety of government agencies and competitive grant review teams staffed with interdisciplinary teams of scientists that are natural resources experts looking out for the public interest. Additionally, ORS 215.213(o) and 215.283(m) identify "Creation, restoration or enhancement of wetlands" as an approved use of lands zoned EFU, so the wetland restoration projects that we implement should be considered farm use and therefore exempt as per the proposed ordinance.
- If necessary, you could implement an exemption review process similar to the riparian modification ordinance, that requires sign-off by a Soil and Water Conservation District and the Oregon Department of Fish and Wildlife.
- If necessary you could also choose to exempt only projects with approved 1200-C permits or CWA section 401 Water Quality Certifications, and require proof of those permits to be submitted to Lane County prior to approval of an exemption. In discussions with DEQ staff, we have confirmed that if a project already has a 1200-C permit, it would not need an additional permit from Lane County to satisfy Willamette Basin Mercury TMDL rules.

We hope that you consider our request for these exemptions. We greatly appreciate the increased attention that Lane County is giving to floodplain and river health. Our Partnership is committed to such work. We ask that you consider the

full range of impacts of the proposed erosion control measures, including how it might unnecessarily restrict good projects in the public interest.

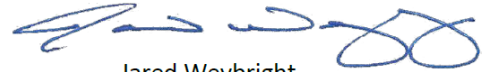
Thank you for your consideration,

A handwritten signature in black ink, appearing to read 'Sydney Nilan'.

Sydney Nilan
UWSN Director

A handwritten signature in blue ink, appearing to read 'Amanda Gilbert'.

Amanda Gilbert
CFWWC Executive Director

A handwritten signature in blue ink, appearing to read 'Jared Weybright'.

Jared Weybright
MWA Executive Director

A handwritten signature in black ink, appearing to read 'Dov Weinman'.

Dov Weinman
MFWWC Executive Director

A handwritten signature in black ink, appearing to read 'Steve Dear'.

Steve Dear
LTWC Executive Director

A handwritten signature in purple ink, appearing to read 'Joe Moll'.

Joe Moll
MRT Executive Director