

RESOLUTION NO. 1110

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF PRINEVILLE AND THE OCHOCO LUMBER COMPANY

WHEREAS, Ochoco Lumber Company, as part of a voluntary effort to redevelop a key brownfield site, proposes the Ochoco Creek Restoration and Enhancement Project ("the Project") which will significantly improve fish and wildlife habitat, increase flood storage, and create additional wetland area in and along the portion of Ochoco Creek through the Ochoco Lumber Site (described in Exhibit A and B of the attached agreement); and

WHEREAS, Ochoco Lumber Company requests the building setbacks defined by the Project be established by a formal agreement to ensure that the voluntary improvements to the creek do not create a hindrance to future development of the site due to the increased setbacks proposed in the State Planning Goal 5, 6 and 7 standards currently under consideration by the City Council; and

WHEREAS, the riparian area proposed in the Project provide approximately the same area as would be protected in the draft State Planning Goal 5, 6, and 7 standards while significantly increasing the quality of the riparian corridor; and

WHEREAS, Ochoco Lumber Company has committed to maintaining the Project and taking all necessary and reasonable steps to prevent degradation and erosion of the riparian area; and

WHEREAS, the City of Prineville Planning Commission reviewed the Project at a public hearing on July 7, 2009, and unanimously recommended that the City Council approve the Ochoco Creek Restoration and Enhancement Agreement, attached hereto as Attachment A and by this reference made a part hereof.

NOW THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF PRINEVILLE THAT THE OCHOCO CREEK RESTORATION AND ENHANCEMENT AGREEMENT IS HEREBY APPROVED AND THE CITY MANAGER IS AUTHORIZED TO SIGN THE AGREEMENT.

PASSED BY THE CITY COUNCIL THIS _____ DAY OF JULY, 2009.

SIGNED BY THE MAYOR THIS _____ DAY OF JULY, 2009.

MIKE K. WENDEL, MAYOR

ATTEST:

STEVE FORRESTER, CITY MANAGER/RECORDER

proposed in the new State Goal 5, 6 and 7 measures, currently under review by Prineville City Council, hinder the planned development of the site. In order to move forward with this project, Ochoco Lumber has requested an agreement with the City that would identify a riparian area that would take precedence over the setbacks to be adopted in the Goal 5, 6 and 7 standards. Based on the findings below, it is the opinion of City staff that the proposed project meets the intent of these standards and would be a significant asset to the community's natural resource inventory.

The Planning Commission reviewed the proposed agreement at a public hearing on July 7, 2009. At the close of that hearing, the Planning Commission voted unanimously to recommend that City Council approve the Ochoco Creek Restoration and Enhancement Agreement based on staff findings and testimony provided by project representatives.

Staff Findings Based on Existing City Code

The following excerpt from the Prineville Code of Ordinances (153.088) is the regulation in place at the time of this staff report. As such, the proposed agreement must be found to be in compliance.

§ 153.088 RIPARIAN HABITAT.

In addition to the provisions set forth by § 153.064(E)(2), the provisions of this section shall, at a minimum within areas already extensively developed for urban uses, apply within an area of 25 feet measured horizontally from the ordinary high water line or identified stream channel of Ochoco Creek, and 50 feet from the ordinary high water line or identified stream channel of the Crooked River, the areas are identified as the riparian habitat areas of the respective stream ways.

(A) Roadways and structures shall not be located within the identified riparian areas, except for the following.

- (1) For an approved bridge or other stream crossing.
- (2) Direct water access is required in conjunction with a water-dependent use.
- (3) Because of natural features such as topography, a narrower riparian area protects equivalent habitat values; or that a narrower or wider riparian area exists naturally; or no significant amount of riparian vegetation is present.

(4) Roadway access is required for an otherwise approved use.

(B) All trees, and at least 50% of the underscore vegetation shall be retained within identified riparian habitat areas, with the following exceptions.

- (1) Removal of dead, diseased or dying trees or leaning trees which pose an erosion or safety hazard.
- (2) The mowing, planting or maintenance of existing lawns, parks, recreation areas, pastures and other croplands, including the control of noxious weeds.
- (3) Vegetation removal necessary to provide direct access for a water-dependent use, or for new bridge construction, or for routine repair, operation, or maintenance of bridges and highway or for the necessary construction of a street or highway improvement within an existing right-of-way, or an otherwise approved use.

(4) Vegetation removal necessary for maintenance of clear vision areas and the removal of roadside hazards.

(5) Vegetation removal necessary in conjunction with an approved in-water project, such as bridge, rip-rapping, stream bank or structural shoreland stabilization and the like.

(C) All proposals and activities within the identified areas set forth in this section shall be reviewed and approved by the city. The reviewing authority, prior to the approval of an application for the habitat removal, shall provide an opportunity for the Oregon Department of Fish & Wildlife (ODFW) to review, comment and make recommendations relative to the subject proposal. Only the City Planning Commission may approve the application if recommendations received from ODFW cannot be resolved at another level of review.

(D) There shall be no permit fee for the special applications, except that if an evaluation of the situation by a qualified expert is required, the applicant shall be responsible for the costs. (Ord. 1057, passed 3-24-98)

Finding 1: The riparian corridor is identified as the area within 25 feet of the high water line of Ochoco Creek. The proposed agreement and Preliminary Grading Plan show that development on this property will be consistent with this standard by maintaining a minimum 25 foot setback from the new ordinary high water mark of the creek. The activities proposed by Ochoco Lumber within the riparian habitat area consist of habitat restoration and the creation of flood storage and wetlands which are consistent with this section.

Staff Findings Based on Goal 5, 6 and 7 Standards Being Considered by the City

The following excerpts are from the proposed Goal 5, 6 and 7 Standards which are currently under review by the City Council. As they have not been adopted, they could not be applied to a land use application if filed prior to the date of adoption. However, since this is a proposed agreement for future land use applications, the Council may consider these standards in making a decision.

155.030 Exemptions

This Section lists six exemptions from the provisions of this Chapter.

2. Setback adjustments. In limited circumstances, required setbacks may be modified based on site-specific studies, as determined under the applicable standards of this Chapter. Once a setback area adjustment has been approved by the Director, the applicant may proceed with development of the remainder of the property outside the adjusted setback area as provided under Section 155.020.

2.1 Improvements to river, creek or wetland function and wildlife habitat that are professionally designed and constructed may not cause an increase in the required setback from the original boundary of the surface water feature as stated in section 5 of 155.020. Provided the improvements do not increase the risk of flooding and it is determined by the Director to meet the intent of the surface water setback.

Finding 2: The primary reason that Ochoco Lumber has requested this agreement is to ensure that their efforts to restore and improve the riparian habitat will not have a detrimental effect on their ability to develop the land. The proposed improvements to the riparian corridor include creating significant amount of wetland and flood storage areas on the southern side of the creek. At certain points, this would increase the setback from the creek by as much as 80 to 125 feet. Based on the exemption listed above, the setbacks should be measured to the existing creek itself and not to the border of the additional wetland and flood storage area created by Ochoco Lumber. The proposed agreement is consistent with this exception.

5. City development agreements. The provisions of any development agreement with the City approved prior to the effective date of this Chapter shall prevail over the provisions of this Chapter, with the exception of any regulation related directly to public health and safety.

Finding 3: Ochoco Lumber has proposed this agreement in advance of the City adopting the Goal 5, 6 and 7 provisions in order to obtain surety that these provisions will not create unforeseen limitations on the development of their property beyond those that will result from their self-initiated creek improvements. If this agreement is approved by City Council, it would take precedence over the setbacks defined in the Goal 5, 6 and 7 measures. It is important to note that the Goal 5, 6 and 7 standards do include significant provisions that would allow/encourage riparian habitat improvements such as this. It is the opinion of staff that the proposed project would fit within the exemptions (155.030) discussed above and the alternative setback provisions that can be allowed through a Type III process (155.060) discussed below.

155.060 Surface Water Features

4. Type III Permitted Uses. The Planning Commission may approve alternative setbacks in cases where restoration projects increase the size of the resource. Such projects shall be professionally designed and constructed and have State or Federal Agency support.

Finding 4: The proposed Ochoco Creek Restoration and Enhancement Project will significantly increase the size of the resource by adding wetland and flood storage areas to the south side of the creek. This activity will widen the resource in certain areas by 80 to 125 feet. Under the proposed Goal 5, 6 and 7 standards, this would give the Planning Commission the authority to approve the alternate setbacks. Since these standards are not in place, City Council will make a decision on the proposed agreement based, in part, on a recommendation from the Planning Commission. The basis for this decision should be whether or not the proposed agreement meets the intent of the Goal 5, 6 and 7 standards while allowing alternatives to the setbacks prescribed in those standards.

Ochoco Lumber has obtained all necessary permits for this project from the following agencies:

US Army Corp of Engineers
Department of State Lands
National Oceanic and Atmospheric Administration
Department of Environmental Quality

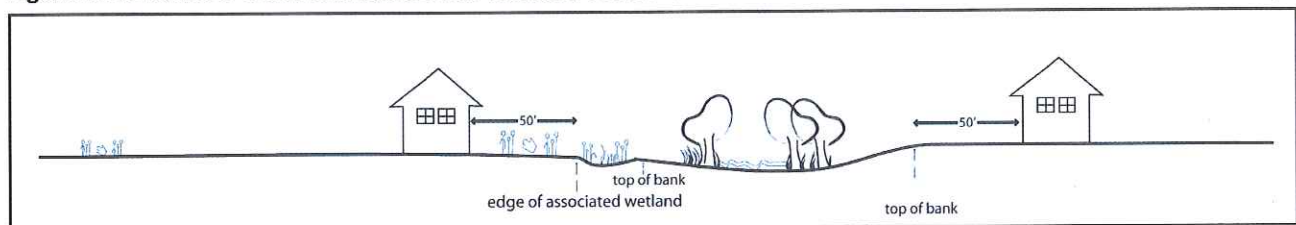
5. Required setback areas. At a minimum, setback areas shall be required to protect significant surface water features and their riparian areas from development impacts, and to protect approved development from potential natural hazards. Setbacks are measured horizontally from and parallel to the boundary of the protected surface water feature, as indicated in Table 155.1.

TABLE 155.1: REQUIRED SURFACE WATER SETBACK AREAS

Surface Water Feature	Location	Measured From	Distance
Required Setback from Water Features			
5. Ochoco Creek	Within entire UGB	Top of river bank or edge of associated wetland	50 feet

Figures 155.1 – 155.4 illustrate the required setbacks listed in Table 155.1.

Figure 155.2 Ochoco Creek and Associated Wetland Setbacks



Finding 5: According to the draft Goal 5, 6 and 7 standards, currently under review by City Council, the minimum setback from Ochoco Creek would be increased from 25 feet to 50 feet. The setbacks proposed by Ochoco Lumber in the agreement are 25 feet on the north side of the creek and 50 to 125 feet on the south side of the creek. Overall, it is the opinion of staff that the total amount of setback proposed to the north and south of the creek, including the additional flood storage and wetland areas, meets the intent of the setbacks in the proposed Goal 5, 6 and 7 standards.

STAFF CONCLUSIONS AND RECOMMENDATION

The setbacks proposed in the agreement requested by Ochoco Lumber are consistent with the 25 foot minimum setbacks required in the Prineville City Code as of the date of this staff report, therefore, it is appropriate for the City to consider entering into a agreement related to these setbacks. On May 5, 2009, the Planning Commission made a formal recommendation to City Council regarding proposed standards related to State Planning Goals 5, 6 and 7. These standards were the result of several years of work by City staff and the Planning Commission through an open community process. Therefore, the primary consideration for the City Council should be whether or not the Ochoco Creek Restoration and Enhancement Agreement is

consistent with the intent of the Goal 5, 6 and 7 provisions. It is the opinion of staff and the Planning Commission that the proposed project meets the intent of these provisions based on the following elements of the Ochoco Creek Restoration and Enhancement Plan:

1. Although the proposed setback is 25 feet on the north side of the creek, short of the 50 feet that would be required in the Goal 5, 6 and 7 standards, the setback from the south side of the creek would range from 50 feet to 125 feet, creating a significant riparian corridor through the Ochoco Lumber property.
2. The project would improve the natural habitat on the site by restoring the existing riparian area.
3. The project would expand the riparian area by creating significant new wetland and flood storage areas that would have direct benefit to the entire community.

Exhibit "A"

A parcel of land located in a portion of the West One-Half (W1/2) of Section 4, Township 15 South, Range 16 East, Willamette Meridian, Crook County, Oregon, being more particularly described as follows:

Beginning at a point on the south right-of-way line of the Ochoco Highway at engineer's station 64+09.9, thence along said south right-of-way line, South 89°48'29" East a distance of 193.98 feet; thence leaving said right-of-way line, South 00°14'56" West a distance of 529.94 feet; thence South 79°50'45" East a distance of 144.95 feet; thence North 69°08'05" East a distance of 153.09 feet; thence North 00°14'33" East a distance of 148.06 feet; thence South 89°48'56" East a distance of 150.50 feet; thence South 00°15'03" West a distance of 8.71 feet; thence South 89°48'52" East a distance of 44.45 feet to the west right-of-way line of Willowdale Road; thence along said west right-of-way line, South 00°17'51" West a distance of 304.26 feet; thence leaving said west right-of-way line, South 80°07'27" West a distance of 200.23 feet; thence North 89°49'30" West a distance of 175.18 feet; thence South 00°14'00" West a distance of 165.58 feet; thence North 86°39'11" West a distance of 108.22 feet; thence South 00°15'29" West a distance of 947.16 feet to the Center-West One-Sixteenth corner of said Section 5; thence South 00°11'58" West a distance of 142.51 feet; thence South 86°41'01" East a distance of 499.09 feet to said west right-of-way line of Willowdale Road; thence along said west right-of-way line, South 00°04'58" West a distance of 87.95 feet; thence leaving said west right-of-way line, North 86°41'28" West a distance of 499.37 feet; thence South 00°15'27" West a distance of 427.39 feet; thence North 89°45'07" West a distance of 264.34 feet; thence North 89°23'11" West a distance of 1013.00 feet to the east right-of-way line of the Paulina Highway; thence along said east right-of-way line the following three (3) courses:

North 00°12'36" East a distance of 659.91 feet;

North 00°13'01" East a distance of 1751.55 feet;

North 45°40'36" East a distance of 64.47 feet to said south right-of-way line of the Ochoco Highway;

thence along said south right-of-way line, South 89°49'20" East a distance of 1039.00 feet to the point of beginning, the terminus of this description.

Subject to: All easements, restrictions and right-of-ways of record and those common and apparent on the land.

See attached map titled "EXHIBIT B", hereby incorporated by reference.

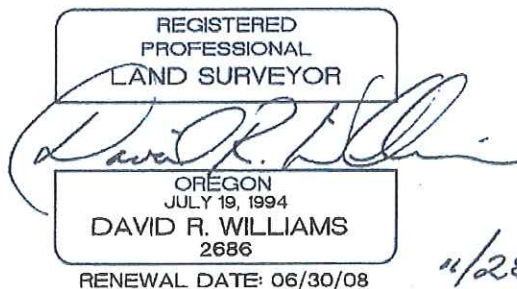
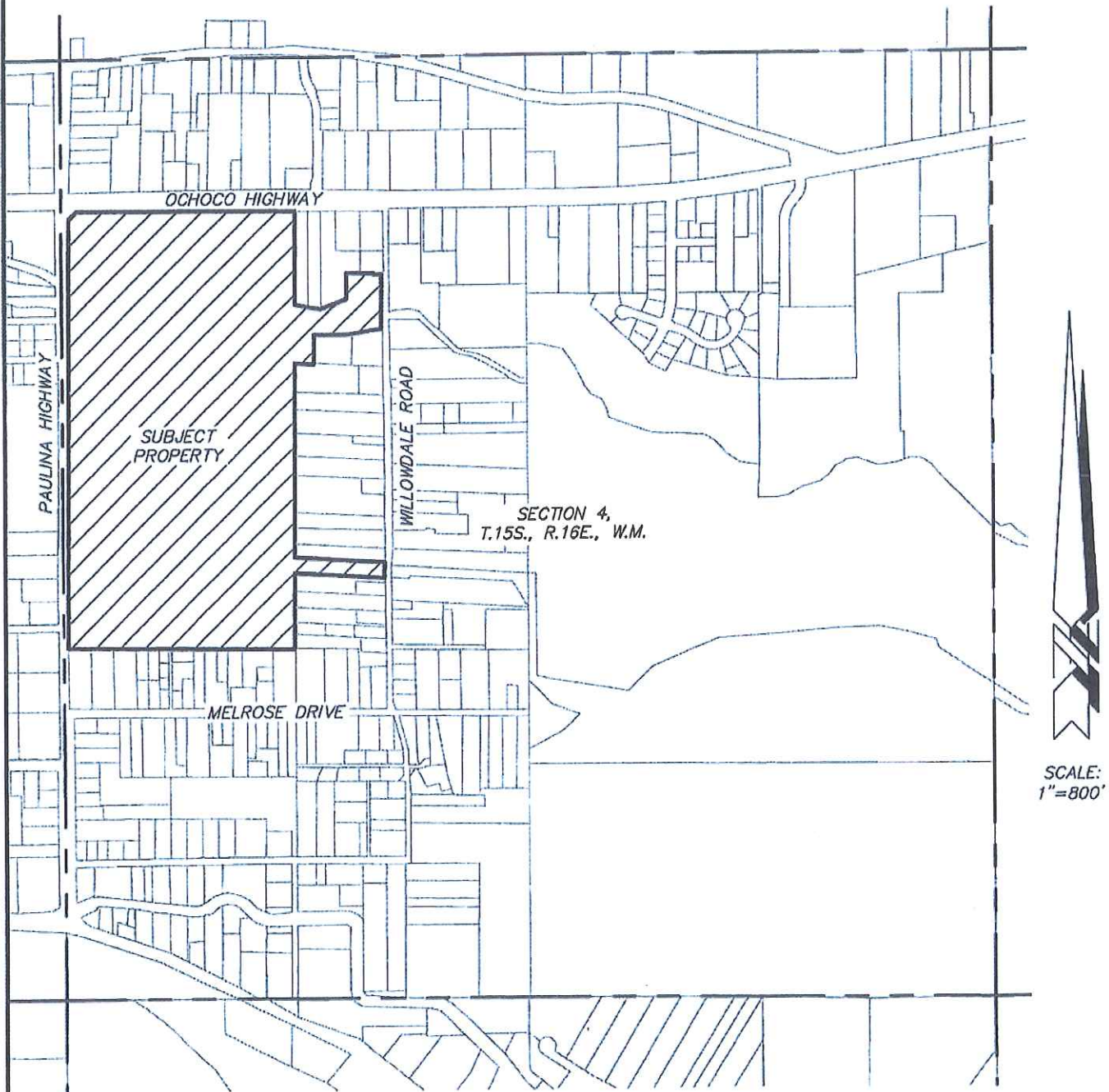


EXHIBIT "B"

LOCATED IN THE W1/2 OF SECTION 4, TOWNSHIP 15 SOUTH, RANGE 16 EAST, W.M.,
CROOK COUNTY, OREGON



PREPARED BY:



SURVEYORS, ENGINEERS
& PLANNERS

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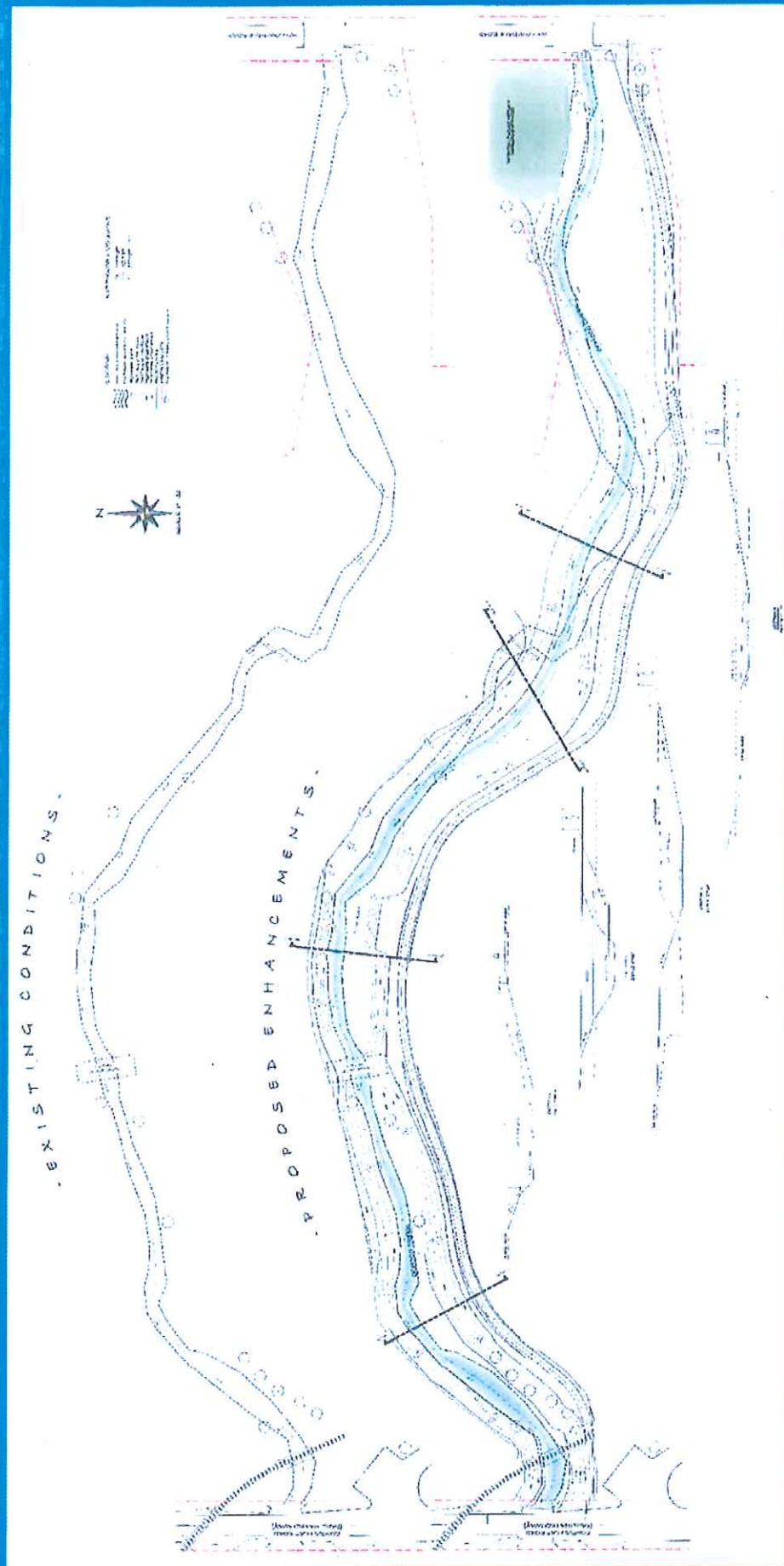
REGISTERED
PROFESSIONAL
LAND SURVEYOR

David R. Williams
OREGON
JULY 19, 1994
DAVID R. WILLIAMS
2686
11/28/07

RENEWAL DATE: 06/30/08

070709-ANNEXATION.DWG

Ochoco Creek Restoration and Enhancement Agreement "Restoration Area" Exhibit C



Ochoco Middle
 Creek County
 Prineville, Oregon
 September 20, 2007

Ochoco Creek Preliminary Grading and Enhancements



**Landscape Standards
for the Ochoco Creek Restoration and Enhancement Project Area
Exhibit D**

Purpose

The purpose of these landscape standards is to describe the proposed management and maintenance activities associated with the proposed Ochoco Creek enhancements located within the property owned by the Ochoco Lumber Company located on Combs Flat Road, T15S, R16E, Sec 4, NW¼ W.M.

The natural resources addressed in the Landscape Standards are the keystone to future development on the Ochoco Mill property. Therefore, this plan was explicitly designed to provide visual and physical access to Ochoco Creek, while enhancing and conserving the natural ecology and ecosystem function within this resource area.

Creek Enhancement Goal

To transform an industrially impacted section of the Ochoco Creek into a sustainable and diverse landscape which provides an attractive and functional vegetation interface between the Creek and mixed-use development. Create an environment that attracts the community to the mill property (once developed) and allows individuals to see and interact with the Ochoco Creek and engage in non-destructive use of natural resources in this area. Increasing in-stream habitat complexity and stability of in-stream habitat, and re-establishing hydrologic conditions favorable for restoration of emergent wetland conditions will provide the opportunity for visitors to encounter wildlife species in their natural surroundings. Re-vegetation of the riparian corridor will improve stream channel function by stabilizing banks and reducing sediment loads, improve water quality by filtering pollutants, and increase quantity and complexity of fish and wildlife habitat. Implicit in this goal is the understanding that the existing condition of Ochoco Creek and associated riparian habitats are disturbed, and the stream channel was realigned in the mid 1900's from its historic location.

Existing Conditions

Currently, this 3/8 mile portion of Ochoco Creek is incised between 7 and 11 feet for approximately 75% of the project area limiting physical and visual access. In-stream habitat structure is minimal, primarily characterized by riffles with relatively few pools, in-stream wood or other habitat structure. Riparian vegetation varies through the site from forest canopy dominated areas to a noxious weed invaded former emergent wetland area. The south bank of the channel is actively eroding along an approximate 330-foot segment from the footbridge upstream to where the terrace height abruptly jumps from 4 to 7 feet. Reed canary grass dominates much of the riparian banks, with some fragmented willow galleries.

Recreational use and Public Access to the Creek

We are committed to providing reasonable public access to the Creek and encourage non-destructive use of the Creek and adjacent plant communities. This plan provides for the eventual development of a separated pedestrian path paralleling the creek and public access points to the creek. Our intent is to concentrate public access to the Creek at developed sites and to reduce dispersed access points. This is in an effort to minimize the degree and extent of potential

recreational impacts and to advance our objectives for protecting soil and limiting the encroachment of invasive plant species.

Invasive Plant Species

Many of the plant species that currently exist along the riparian corridor are non-native noxious weeds. The list of noxious weeds includes: leafy spurge, spotted and Russian knapweed, teasel, Canada thistle, and common mullein. The mitigation and control of invasive plant species will be a critical management challenge for the restoration of the Ochoco Creek area. This plan provides for an aggressive and integrated approach to managing the establishment and encroachment of invasive plant species. Our weed control strategy is founded on the observation that the only sustainable means for long term control of invasive plant species is to reduce available habitats (bare ground and upland plant communities) and to optimize inter-specific competition with desirable herbaceous species. Consequently, the enhancements are intended to create a majority of the greenway as a riparian ecosystem that has minimal invasive species encroachment (as upland habitat has more potential for invasive species competition). Riparian habitats and plant communities have proven to be particularly effective at limiting available habitat for weed encroachment, and successfully out competing existing undesirable species. The planting design will include a natural transition of plantings consisting of low ground native grass and sedge species, low native shrubs with ornamental qualities and hardwood native riparian trees.

Management Strategy

This reach proposes the a possible future walking path on the south side of the creek and provides for a scenic resource which is an integral component of the anticipated future mixed-use development of the property. Accordingly, this area will be intensively managed (when the mixed-use development is completed) to remain aesthetically pleasing, and to provide an attractive and functional interface between the Creek and the development.

Management Objectives

1. Maintain visual access to and through the Ochoco Creek Enhancement Area in an effort to achieve shading of the creek while allowing visual access through the enhancement area; large woody plants will be concentrated along the creek edge, which is located approximately 8-10' lower than the adjacent development area. Similarly, no more than 20% of the visual plane, as viewed from the north development area (north of the creek) to the south development area (south of the creek), shall be obstructed.
2. To promote adequate and efficient plant establishment and maintenance.
3. Control existing invasive plant species and discourage the establishment and encroachment of new invasive species by maintaining a vigorous herbaceous plant community. Chemical and mechanical treatments of invasive plants will be used as needed and where appropriate.