

ORDINANCE NO. 5746

AN ORDINANCE AMENDING ORDINANCE NO. 4447, WHICH ADOPTED THE CITY OF ALBANY COMPREHENSIVE PLAN AND MAP, AND AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE COMPREHENSIVE PLAN TEXT AND MAP, AND DEVELOPMENT CODE TEXT RELATING TO FLOODPLAIN MANAGEMENT, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILES CP-01-10 AND DC-04-10).

WHEREAS, the State of Oregon has delegated the responsibility to local government units to adopt regulations designed to promote public health, safety, and the general welfare of its citizenry; and

WHEREAS, from time to time it is appropriate to amend the Comprehensive Plan and Development Code based on new data; and

WHEREAS, the City of Albany is a member in good standing of the National Flood Insurance Program (NFIP), which enables the community to be eligible for flood insurance through NFIP; and

WHEREAS, the Federal Emergency Management Agency (FEMA) has published a revised Flood Insurance Study for Linn County and accompanying Flood Insurance Rate Maps, dated September 29, 2010; and

WHEREAS, the current Albany Development Code does not meet the minimum requirements of the NFIP; and

WHEREAS, the City of Albany must adopt floodplain management measures that meet or exceed the minimum NFIP requirements, including reference to the new Flood Insurance Study and Flood Insurance Rate maps, by September 29, 2010, to avoid suspension from the NFIP; and

WHEREAS, if suspended from NFIP, the community becomes ineligible for flood insurance through the NFIP thereby precluding new insurance policies from being sold, and existing policies renewed; and

WHEREAS, the City of Albany also participates in FEMA's Community Rating System Program, whereby flood protection and mitigation activities above and beyond the minimum NFIP requirements enables properties in floodprone areas to receive discounts on their flood insurance premiums; and

WHEREAS, on July 19, 2010, the City mailed notice of the Planning Commission and City Council public hearings on the proposed amendments to all owners of property within the Special Flood Hazard Area (100-year floodplain); and

WHEREAS, on August 1, 2010, notice of the Planning Commission and City Council public hearings was published in the Albany Democrat Herald; and

WHEREAS, on August 9, 2010, the Planning Commission held a public hearing on the proposed amendments, and recommended City Council approval of the proposed amendments based on findings contained in the staff report and testimony presented at the public hearing; and

WHEREAS, on August 25, 2010, the City Council held a public hearing concerning the proposed amendments; and

WHEREAS, the City Council reviewed the amendments recommended by the Planning Commission, and subsequent amendments proposed by staff, heard testimony presented at the public hearing, decided to continue the public hearing until September 8, 2010, and directed staff to revise the amendments based on public testimony and guidance from FEMA; and

WHEREAS, on September 8, 2010, the City Council continued the public hearing concerning the proposed amendments, including subsequent revisions to the Albany Development Code text amendments; and

WHEREAS, the City Council reviewed the subsequent revisions as directed by the City Council, heard testimony presented at the public hearing, and then deliberated.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Albany Comprehensive Plan Plate 5 is hereby amended as shown on attached Exhibit A.

Section 2: The Albany Comprehensive Plan text is hereby amended as shown on attached Exhibit B.

Section 3: The Albany Development Code text is hereby amended as shown on attached REVISED Exhibit C.

Section 4: The Findings of Fact contained in the staff report and attached as Exhibit D are hereby adopted in support of this decision.

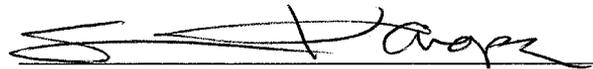
Section 5: Adopt, by reference, the Linn County Flood Insurance Study and accompanying Flood Insurance Rate Maps specific to the City of Albany dated September 29, 2010.

IT IS HEREBY adjudged and declared that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany, and an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect on September 29, 2010, when signed by the Mayor.

Passed by Council: September 8, 2010

Approved by Mayor: September 8, 2010

Effective Date: September 29, 2010

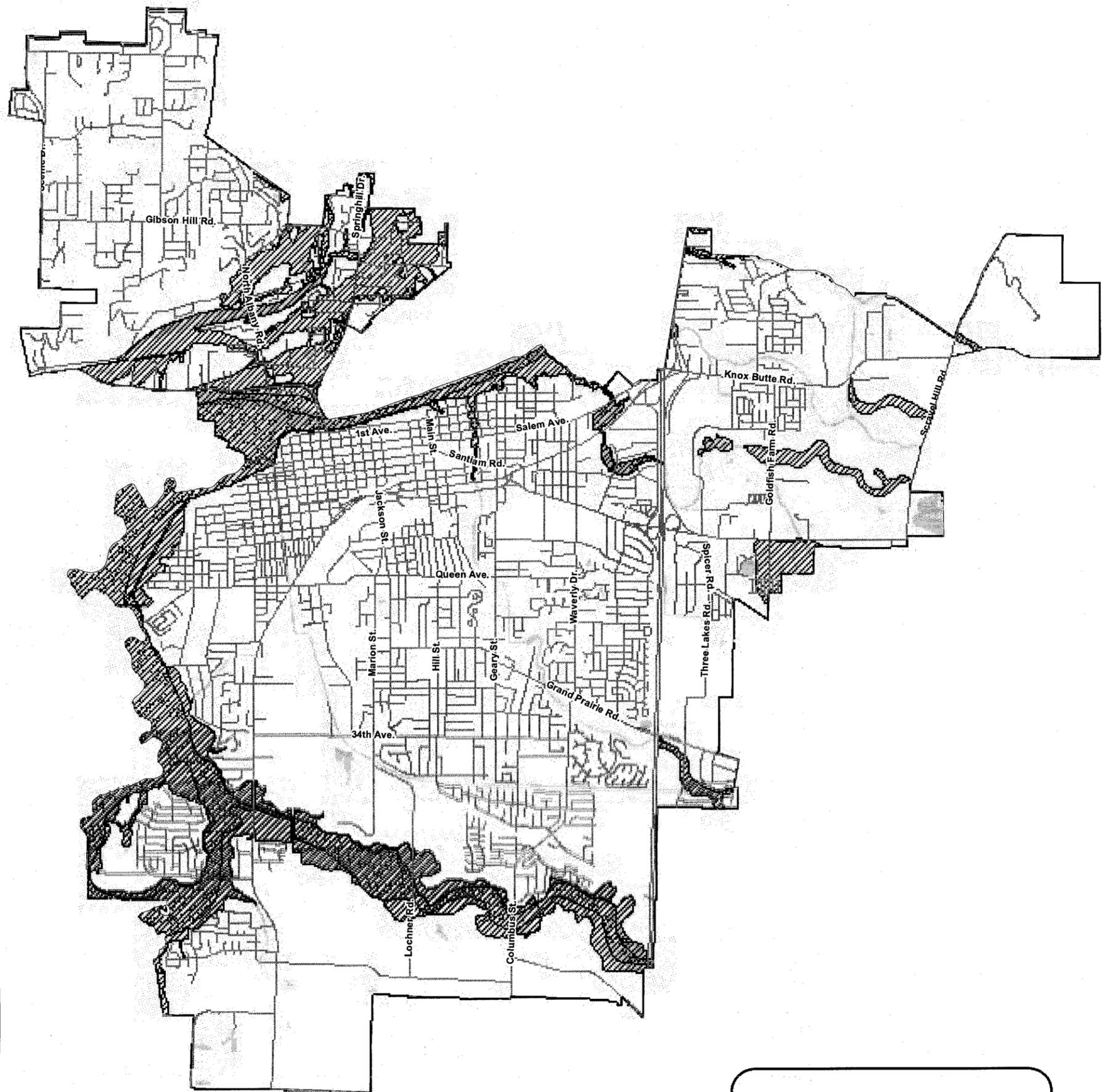


Mayor

ATTEST:



Betty Longwell
City Recorder



Legend

-  Floodway
-  Flood Fringe
-  Urban Growth Boundary

PLATE 5: 100-Year Floodplain

 The City of Albany's historical records, drawings, and other documents have been gathered over many decades, using differing standards for quality control, documentation, and verification. All the information provided represents current information in a readily available format. While the information provided is generally believed to be accurate, occasionally this information proves to be incorrect, and thus its accuracy is not warranted. Prior to making any property purchases or other investments based in full or in part upon the information provided, it is specifically advised that you independently field verify the information contained within our records.

Project File Location: U:\Shared\GIS\Planning\Flood Plains.mxd

City of Albany - 333 Broadalbin St. SW Albany, Oregon 97321 (541 917-7676)

0 1,250 2,500 5,000 7,500 10,000
Feet

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NOTE: Letters of Map Change (LOMRs and LOMAs) from FEMA supercede the floodplain boundaries shown on this map.

CHAPTER 2: SPECIAL AREAS

GOAL 7: FLOOD HAZARDS & HILLSIDES

HAZARDS BACKGROUND SUMMARY

FLOOD HAZARDS

Flooding is ~~the most~~ a serious natural hazard in the Albany area with its effects ranging from simple annoyance to loss of life and property. The annual flood season extends from October to April with the majority of floods occurring during December and January when ~~soaked~~ **saturated** soils and rivers can no longer handle the overland runoff from the heavy winter rains.

Each of the three major waterways, the Willamette and Calapooia Rivers and Oak Creek, have experienced major floods and many smaller floods within the past century. Since 1878, there have been 13 major floods on the Willamette as high or higher than the 1964 flood elevation. Upstream flood control dams regulate the peak flood crest elevation but do not reduce the chances of major flooding, although the chances of smaller floods have been reduced.

Approximately 24 percent of the land within the Albany Urban Growth Boundary is within the 100-year floodplain. Floodplains within the Albany Urban Growth Boundary are mapped on Plate 5 in Chapter 4. A 100-year flood has a one percent chance of occurring in any one year and its floodplain is used to determine the base flood levels and flood prone area. ~~The Army Corps of Engineers~~ **Federal Emergency Management Agency** provides the City with mapped floodplain data which is periodically updated as circumstances change.

For floodplain management purposes, the floodplain is divided into the floodway and the flood fringe. The floodway is defined as the minimum area needed for the passage of flood waters in order that flood heights upstream are not increased beyond an acceptable amount. In Albany, the floodway is the channel and adjacent land areas which must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot. The flood fringe is that area bordering the floodway subject to flooding but not contributing appreciably to the passage of flood flows.

The City of Albany ~~participates in~~ **joined** the National Flood Insurance Program (NFIP) of the **Federal Emergency Management Agency in 1985**, which NFIP requires participating communities to adopt land use controls ~~meeting Federal Emergency Management Agency~~ **that meet the minimum requirements of the program standards**. Participation in the program by local jurisdictions enables property owners to obtain federally subsidized flood insurance and makes the area eligible for federal disaster relief if extensive damages ever occur.

The City also participates in the Community Rating System (CRS) program of NFIP. CRS is an optional program that rewards communities that implement programs that exceed the minimum standards of NFIP by providing discounts to residents in participating communities. The City of Albany joined the CRS program in 1991. The more the City does to protect the community from flooding, the higher the discount residents and businesses are able to get on their flood insurance (up to 45%).

Historically, there have been three major flood hazard areas within the Urban Growth Boundary, each with different problems and characteristics. The east Albany area was subject to ponding because of flow restrictions occurring on Cox, Burkhart, and Truax Creeks. The Soil and Water Conservation District implemented flood control improvements on these drainageways which removed the flooding problem. The remaining problem areas are the floodplains along the Willamette River, particularly within North Albany and the floodplains along the Calapooia River and Oak Creek in South Albany. Improvement of the Oak Creek drainageway is being evaluated by the Soil and Water Conservation District but no project has been scheduled.

A large proportion (27 percent) of North Albany is within the floodplain, much of which ~~was~~ already developed

when it was annexed into the City in 1991. During flood times, emergency and service vehicles cannot reach areas in North Albany because access roads are flooded and inaccessible.

There is little development on the floodplains along the Calapooia River and Oak Creek in South Albany. Increased development costs and flooding have served as a sufficient deterrent; but as the community develops, these floodplains will see increased development pressure. (Note: no projects have been identified within the floodway, floodplain, or channel.)

Encroaching on the floodplain by filling or with buildings or with other structures decreases the area available for the conveyance of excess water. Such filling may increase both upstream and downstream flooding or displace floodwaters onto land which is not within the floodplain. Buildings and bridges within the floodway may dam floodwaters and cause higher flood stages and create upstream inundation. The removal of vegetation along riverbanks and in the floodplain increases the likelihood of erosion damage.

Future floodplain levels can never be exactly predicted and the Army Corps of Engineers periodically updates flood level information as new studies and information becomes available. As this information is provided, it will be incorporated into the City's information base and appropriate land use regulations will be applied.

HIGH WATER AND PONDING

The clay-rich soils and generally flat topography found within the Albany Urban Growth Boundary combine with the alternating wet/dry weather cycle to produce poor drainage conditions throughout the area. These soil conditions result in ponding, a high water table, and some localized flooding during the winter which poses limits to construction methods and septic tank use. Disturbance of the natural drainage patterns and the removal of protective vegetative ground cover by urban development and upstream agricultural and forest practices have aggravated these soil conditions and have increased surface runoff.

Generally, soils within the Albany area are of low permeability. The infiltration rate of rainwater is slow and flat surfaces provide no natural gradient for the resulting overland runoff. Ponding occurs when soaked soils can no longer absorb heavy amounts of rainwater or when the rising groundwater table has actually surfaced. Buoyancy associated with a high groundwater table can crack basements, lift swimming pools, and cause underground storage tanks to surface.

Nearly all of the area soils are subject to severe shrink-swell limitations. These clay soils dry out and crack in summer months and then with the first winter rains swell shut and become impermeable, thus increasing surface runoff. These shrinking and expanding soils provide poor foundations for large structures and promote caving-in of deep excavations. Building foundations must be designed to resist swell pressures.

There are fourteen drainage basins within the urban growth boundary area. Four of these basins are within the North Albany portion of the Urban Growth Boundary while the remaining ten encompass the remainder of the Urban Growth Boundary. The Oak Creek drainage area, containing four basins, extends into the foothills beyond the cities of Lebanon and Sodaville. Periwinkle Creek is one of the largest and most developed drainage areas within the Urban Growth Boundary area. This area is divided into four basins. The Truax, Burkhart and Cox Creek basins are currently largely undeveloped, with the majority of the basins outside the Urban Growth Boundary. The Calapooia River Basin is located in the western area of the Urban Growth Boundary.

GOAL 7: FLOOD HAZARDS & HILLSIDES

GOALS, POLICIES, & IMPLEMENTATION METHODS

GOAL

Protect life and property from natural disasters and hazards.

POLICIES

1. Continue to participate in the National Flood Insurance Program and comply with applicable standards.
2. **Review any development that could potentially affect the floodway or increase the area subject to the Special Flood Hazard Area (100-year floodplain), unless otherwise exempted.**
Staff Comment: This is intended to clarify the purpose and need for a floodplain development permit, which is an NFIP requirement.
23. Restrict new development (**including grading, fill, excavation, and paving**) from locating within floodways ~~which~~ **that** would result in an increase in base-year flood levels. If it can be determined that there will be no increase in base-year flood levels, then the following uses may be considered:
 - a. Public and private parks and recreational uses.
 - b. Other uses which would not involve the construction of permanent or habitable structures.
 - c. Water-dependent structures such as docks, piers, bridges, and floating marinas.
34. Concurrent with new development, and when appropriate, secure dedications and easements adequate for channel maintenance and conveyance of storm water along natural drainageways and where identified on adopted master plans, secure easements for public open space, and future recreation use along all floodways and natural permanent drainageways.
45. Recognize that development within areas subject to flooding is subject to regulations to protect life and property and that certain types of development may not be allowed.
56. Ensure that development proposals in the flood fringe and adjacent to drainageways are consistent with Federal Emergency Management Agency (FEMA) and other applicable local regulations in order to minimize potential flood damage. Development proposals in areas subject to flooding may be reviewed according to the following criteria:
 - a. Proposed development activities shall not change the flow of surface water during flooding so as to endanger property in the area. Special engineering reports on the changes in water flow and potential damage which may be caused as a result of proposed activities may be required. If necessary, local drainage shall be improved to control increased runoff that might increase the danger of flooding to other property.
 - b. Impacts on significant fish and wildlife habitat have been considered and appropriate protection measures included in project design.
 - c. Problems of ponding, poor drainage, high water table, soil instability, or exposure to other flood hazards have been identified and mitigated. Evaluations and mitigating measures shall be based on a base year flood and wet season characteristics.
 - d. If adjacent to a designated floodway, the development shall be designed to use the natural amenities of the floodway including open space, scenic views and vegetation in accordance with an approved site plan.

67. Locate and construct all public utilities and facilities such as sewer, gas, electrical, and water systems to minimize or eliminate flood damage. Require that new or replacement water supply systems and/or sanitary sewer systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located to avoid impairment of them or contamination from them during flooding.

8. **Locate and construct critical facilities to minimize or eliminate flood damage and to facilitate emergency operations. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and other emergency responders, and installations that produce, use or store hazardous materials. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. New critical facilities must be floodproofed to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.**

Staff Comment: An interdepartmental floodplain management team recommends restricting the siting of critical facilities in the floodplain because of the potential risk to public health and safety if such facilities and surrounding areas were to be flooded.

79. Ensure that any filling or construction within the floodplain meets the following criteria:

a. Require that a ~~fill~~ **floodplain development** permit is issued prior to any **grading (fill)** activity, **unless otherwise exempted**, and that all **grading (fill)** is engineered and compacted to applicable standards. **Grading (fill)** areas for dwellings shall have engineering certification that loading rates are adequate for dwellings.

[Ord. 5042, 4/14/1993]

b. The lowest finished floor elevation shall be built at least one (1) foot above the base-year flood level. Special engineering reports or structural work may be required.

c. Require property owners or developers to file a elevation certification approved by the local community permit official, registered professional engineer, architect, or surveyor indicating elevation of the surrounding grade or lowest habitable floor (including basement) of all new residential structures. This information shall be maintained to indicate compliance with Federal Emergency Management Agency (FEMA) regulations.

810. For construction, remodeling, or major repairs to structures (including prefabricated and mobile homes) within the floodplain, review building permits to ensure that:

a. Building location and grading are designed to protect the structure during a base year flood.

b. Construction materials and utility equipment are resistant to flood damage.

c. Construction methods and practices will minimize flood damage.

d. Where appropriate, structures are designed or modified to prevent flotation, collapse, or lateral movement of the structure.

911. Development approval within the flood fringe shall be reviewed to protect property and public safety and significant natural values.

1012. The City may provide density bonuses which encourage the protection and preservation of flood fringe areas.

1113. Prior to annexation of hillside areas, adopt hillside development regulations for slope areas in excess of 12% in order to protect against geologic mass movement, excessive erosion and storm water runoff, and protection of important natural vegetation.

1214. Require land divisions and planned developments in slope areas to:

[Ord 5042, 4/14/1993]

a. Minimize cut and fill requirements.

cover (rock, masonry, etc.) must be maintained in perpetuity.

89. In all slope areas, collect, control, and direct all impervious surface drainage from roofs, driveways, and parking areas to a City storm drain or other City-approved drainage system.

910. Require that all excavation and fill work and structural foundation work be approved by a registered engineer whenever the slope is greater than 30% or where there exists probability of geologic hazards such as perched water tables and/or landslide areas. Where appropriate, such approval shall include information from a soils engineer and engineering geologist.

1011. Increase minimum lot sizes (or minimum lot area per unit) on hillside areas, allowing higher densities for cluster developments approved through Planned Development as outlined in the following table:

<u>Slope %</u>	<u>Standard Dev.</u>	<u>(RS 6.5 Lot)</u>	<u>PUD Devel.</u>	<u>(RS 6.5 Avg)</u>
13 to 20	1.25	8125	1.00	6500
21 to 25	1.50	9750	1.15	7475
26 to 30	2.00	13000	1.40	9100
31 & above	3.00	19500	2.00	13000

1112. Review development proposals in areas subject to flooding on the basis of adopted flood regulations. [Ord 5042, 4/14/1993]

1213. ~~When necessary~~ **If applicable**, apply conditions of approval for development within the flood fringe such as:

- a. Regulations of site grading including measures to balance cut and fill.
- b. Protection of significant open space areas, wildlife habitat, and existing vegetation.
- c. Dedication of public access, rights of way, or easements.
- d. Channel improvements and stabilization.
- e. Special construction or construction measures such as flood proofing.

1314. As a part of a Storm Water Drainage Master Plan for North Albany, identify, as needing protection, key swales and drainages that serve a vital role in the overall storm water drainage and flood water management system in North Albany. [Ord 5042, 4/14/1993]

**ARTICLE 6
SPECIAL PURPOSE DISTRICTS
FLOODPLAIN**

6.070 Purpose. The floodplain standards are intended to manage development in the floodplain in a way that promotes public and environmental health and safety and minimizes the economic loss and social disruption caused by impending flood events. ~~It is the purpose of these regulations to promote the public health, safety and general welfare, and to minimize public and private losses to due flood conditions in specific locations~~

~~6.071 Development to Which These Regulations Apply. Staff Comment: Replaced with Section 6.080.~~

6.075 Definitions. As used in this Code Article the following words and phrases have the following meanings:

Staff Comment: Moved from Section 6.085.

Base Flood or 100-year Flood: The flood having a one percent chance of being equaled or exceeded occurring in any given year. ~~Map designation always includes the letter "A" (e.g. A, AE, AO).~~

Base Flood Elevation (BFE): The BFE is the elevation, expressed in feet above sea level, that the base flood is expected to reach.

Basement: The portion of a structure with its floor sub grade (below ground level) on all sides.

Continuous Storage Operations: Operations that continuously store equipment or materials, including, but not limited to lumber yards, automobile junkyards, logging or sawmill operations, storage yards for heavy equipment, automobile dealership lots, and other storage operations with similar impacts. These operations are included in the definition of floodplain development.

Critical Facility: A facility that needs to be operable during a flood, or for which even a slight chance of flooding might pose unacceptable risk to health and safety. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and other emergency responders, and installations that produce, use or store hazardous materials.

Datum: Until recently, the FIRMs have referenced the National Geodetic Vertical Datum of 1929 (NGVD 29). A newer more accurate vertical datum, the North American Vertical Datum of 1988 (NAVD 88), will be used for all FIRM updates. The 2010 Albany FIRMs reference the NAVD 88 datum.

NAVD 88 will be used for floodplain management purposes in the City of Albany. The conversion factor from NGVD 29 to NAVD 88 for all flooding sources in Albany is +3.38 feet. This represents an average conversion offset. This simplified uniform conversion procedure can be used for entire counties when the maximum error is not more than 0.25 feet (3 inches) for that county, which is the case for the City of Albany.

Federal Emergency Management Agency (FEMA): The federal agency charged with implementing the National Flood Insurance Program. FEMA provides floodplain maps to the City of Albany.

Flood: A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) the overflow of inland or tidal waters; and/or
- (b) the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Fringe: Those areas on either side of the floodway within the 100-year floodplain **Special Flood Hazard Area (100-year floodplain)**. This area is subject to inundation by the base flood but conveys little or no velocity flows. Zone designations on Flood Insurance Rate Maps for Albany include A; and AE, and AO. Note Floodplain Relationships diagram Fig. 6-3.

Flood Insurance Rate Map (FIRM): The official map on which FEMA has delineated both the areas of sBase Flood Elevations, regulatory floodways, and Special Flood Hazards Areas and the insurance risk premium zones.

Flood Insurance Study (FIS): The official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles, floodway boundaries and water surface elevations of the base flood.

Floodplain: The combined area of the floodway and the flood fringe. Also known as the 100-year floodplain, and the Special Flood Hazard Area. Note Floodplain Relationships diagram in Figure 6-3.

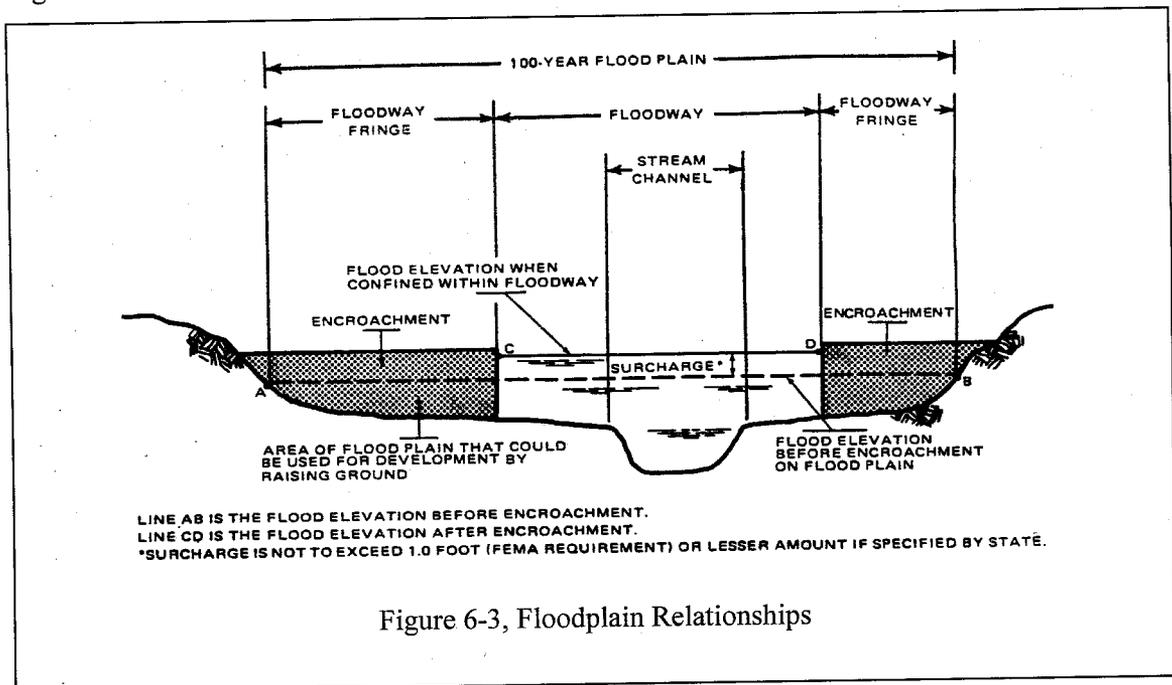


Figure 6-3, Floodplain Relationships

Floodplain Development: Any man-made change to real property, including but not limited to, construction or placement of buildings or other structures, fencing, mining, dredging, filling, grading, paving, excavating, land clearing, drilling, or Continuous Storage Operations in the Special Flood Hazard Area (100-year floodplain).

Floodproofing: Any combination of structural or nonstructural provisions, changes or adjustments to structures, land or waterway for the reduction or elimination of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents during a 100-year flood.

Floodway: The regulatory floodway is the stream channel plus that portion of the overbanks that must be kept free from encroachment in order to discharge the 1-percent-annual-chance flood without increasing flood levels by more than 1.0 foot. ~~The area must be reserved in order to discharge the base flood without increasing the water surface elevation more than one foot.~~ Note Floodplain Relationships diagram in Figure 6-3.

Staff Comment: Replaced definition with new one from FEMA.

Hazardous Material: The Oregon Department of Environmental Quality defines hazardous materials to include any of the following:

- (a) Hazardous waste as defined in ORS 466.005;
- (b) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under 469.605 and radioactive substances as defined in 453.005;
- (c) Communicable disease agents as regulated by the Health Division under ORS Chapter 431 and 433.010 to 433.045 and 433.106 to 433.990;
- (d) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;
- (e) Substances listed by the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 302 -- Table 302.4 (List of Hazardous Substances and Reportable Quantities) and amendments;
- (f) Material regulated as a Chemical Agent under ORS 465.550;
- (g) Material used as a weapon of mass destruction, or biological weapon;
- (h) Pesticide residue;
- (i) Dry cleaning solvent as defined by ORS 465.200(9).

Staff Comment: Removed introductory paragraph: "Any item or agent (biological, chemical, physical) that has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors, when transported, used incorrectly, or if not properly stored or contained."

Letter of Map Change (LOMC) means an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps and Flood Insurance Studies. LOMCs are issued in the following categories:

Letter of Map Amendment (LOMA): A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area;

Letter of Map Revision (LOMR): A revision based on technical data showing that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric (horizontal) features. One common type of LOMR, a LOMR-F, is a determination that a structure or parcel has been elevated by fill above the Base Flood Elevation and is excluded from the special flood hazard area;

Conditional Letter of Map Revision (CLOMR): A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria. A CLOMR does NOT amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

Lowest Floor: The lowest floor of the lowest enclosed habitable area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage, in any area other than a basement area, is not considered a building's lowest floor,

provided that the enclosure is not built so as to render the structure in violation of the applicable design requirements of this Article found in Section 6.134(1)25(1).

National Flood Insurance Program: FEMA's National Flood Insurance Program (NFIP) has three basic components – flood hazard mapping, flood insurance, and floodplain regulations. The combination of the three all work together to reduce flood damages. NFIP is founded on a mutual agreement between the federal government and each participating community. Local, state and federal governments and private insurance companies must share roles and responsibilities to meet the goals and objectives of the NFIP. The City of Albany joined the NFIP in 1985. The community's role is of paramount importance. Residents and property owners can get federally-backed flood insurance only if the community carries out its responsibilities. The community enacts and implements the floodplain regulations required for participation in NFIP. The community's regulations must meet the regulations set by its state, as well as the NFIP criteria.

Nonresidential: For the purposes of development in the floodplain, FEMA defines nonresidential construction to include structures not used for human habitation. This includes parking, limited storage, and building access associated with residential uses, as well as commercial, industrial, and institutional uses. This differs from the definition of nonresidential in other Articles and Sections of this Code, and from the definition in the locally adopted State Building Codes.

Staff Comment: Clarification was needed since FEMA defines this differently.

Oregon Drainage Law: Oregon, through court decisions, has adopted a civil law doctrine of drainage. Generally, under this doctrine, adjoining landowners are entitled to have the normal course of natural drainage maintained. The lower landowner must accept water that naturally comes to his land from above, but he is entitled not to have the normal drainage changed or substantially increased. The lower landowner may not obstruct the runoff from the upper land, if the upper landowner is properly discharging the water. The drainage law has developed without legislative action, therefore there are no Oregon Revised Statutes, rules or other laws to cite. Note that this definition is intended to provide general information and should not be used as the basis for legal advice or legal decisions.

Staff Comment: Added definition so it is more evident that Oregon Drainage Law applies to development activities that impact drainage.

Permanent Foundation: A natural or manufactured support system to which a structure is anchored or attached. A permanent foundation is capable of resisting flood forces and may include posts, piles, poured concrete or reinforced block walls, properly compacted fill, or other systems of comparable flood resistivity and strength.

Recreational Vehicle: A vehicle that is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towed by a light duty truck, and;
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Staff Comment: Missing definition per latest DRAFT Oregon Model Flood Damage Prevention Ordinance.

Residential: For the purposes of development in the floodplain, FEMA defines residential construction to include the entire habitable structure, including bathroom, laundry rooms, hobby rooms, workshops, etc. Residential accessory structures are considered residential

construction. This differs from the definition of residential in other Articles and Sections of this Code, and from the definition of residential and habitable in the locally adopted State Building Codes.

Staff Comment: Clarification was needed since FEMA defines this differently.

Special Flood Hazard Area: Areas subject to inundation during the occurrence of the 100-year flood 1 percent annual flood. These areas include both the flood fringe and the floodway and are collectively commonly referred to as the "100-year floodplain."

Staff Comment: DLCD suggested changing to "1% annual flood".

Start of Construction: Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of a building.

Staff Comment: Missing definition per latest DRAFT Oregon Model Flood Damage Prevention Ordinance.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 49 percent of the market value of the structure before the damage occurred.

Substantial Improvement: For the purposes of this section, ~~and notwithstanding the provisions for nonconforming use and development in Sections 2.300 through 2.400395,~~ any and all repairs, reconstruction, additions or improvements of a structure occurring within the ten years prior to the date of the application for the current improvement, the cost of which, when cumulatively added to the costs of prior improvements, equals or exceeds 50 49 percent of the market value of the structure before the start of construction of the improvement. Cumulative value will be computed by adding the valuations of all improvements within the ten-year period as calculated on the associated building permit plus the valuations that would have applied for improvements requiring permits but for which no permit was actually issued. This cumulative value shall be used in comparing the value of improvements against the current market value of the structure before the start of construction of the new improvement. The market value determination shall be based upon the county assessor's most recent computation of real market value at the time of the current application. This term includes structures which that have incurred "substantial damage", regardless of the actual repair work performed.

The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which that are the minimum necessary to assure safe living conditions; or
- (b) Any ~~alteration~~ restoration or rehabilitation of a structure identified on the City's adopted Historic Inventory, ~~provided that the alteration will not preclude the structure's~~

~~continued designation as a historic structure (additions and new construction are not exempt);~~

(c) **Maintenance, replacement, or repair of prior lawfully constructed improvements.**

Staff Comment: Recommended by interdepartmental floodplain management team. The language above is a higher regulatory standard that is not required by NFIP, but would allow for an additional 45 points in the NFIP's Community Rating System for adding language that requires the tracking of cumulative substantial improvement over ten years, and an additional 10 points for changing a substantial improvement from 50 percent to 49 percent.

Watercourse: Any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, and has a definite channel, bed and banks; including any adjacent area subject to inundation by reason of overflow or flood water. This also includes any topographic feature not meeting the above definition that is identified in the Storm Water Drainage Master Plan for North Albany as needing preservation.

GENERAL PROVISIONS

6.080 Lands to Which These Regulations Apply. These regulations apply to all areas in the City of Albany that are subject to inundation from a 100-year flood. These areas have been identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study for Albany (July 7, 1999), for Benton County (August 5, 1986), and for Linn County, Oregon and Incorporated Areas (September 29, 1986 2010), and associated Flood Insurance Rate Maps (FIRMs) with Community Number 410137. These areas are depicted on the Flood Insurance Rate Maps (FIRMs) and Floodway Maps by the letter A₁ and AE₁ or AO. The Flood Insurance Study and FIRMs are on file at the City of Albany, Community Development Department at 333 Broadalbin Street SW.

In addition, the City Council may adopt by resolution more current studies or boundary information approved by the Federal Emergency Management Agency (FEMA). **The most recent adopted FEMA information shall apply in the event of a conflict with prior studies or information.**

~~Precise floodplain district-Special Flood Hazard Area (100-year floodplain) boundaries may be difficult to determine from the maps referred to above due to their large scale and lack of site specific studies. In such instances, the Floodplain Administrator may apply FEMA base flood elevations to topographic maps or site surveys in order to determine actual boundaries. In the absence of FEMA base flood elevations, the Floodplain Administrator shall reasonably use other sources of floodplain and floodway data to determine base flood elevations and boundaries. However, when elevation data is not available through FEMA or another authoritative source and the development consists of 4 or more lots, 4 or more structures, or 4 or more acres, the applicant shall generate and have certified by a registered engineer the base flood elevation. Any decision of the Director regarding a determination of a base flood elevation or interpretation of a district Special Flood Hazard Area boundary may be appealed in accordance with Section 1.520 of this Code. [Ord. 5146, 9/14/94; Ord. 5410, 7/28/99]~~

Staff Comment: Moved to Section 6.091.

~~6.081 Variances *Staff Comment: Moved to Section 6.092.*~~

6.081 Warning and Disclaimer of Liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased as a result of failure of manmade structures and/or natural causes. This Article does not imply that

the land outside the area of Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This Article does not create liability on the part of the City of Albany or any officer or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

Staff Comment: Moved from Section 6.160.

6.082 Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, Building Codes, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Staff Comment: Optional per latest DRAFT Oregon Model Flood Damage Prevention Ordinance, but staff recommends addition.

ADMINISTRATION

6.090 Floodplain Administrator. The Community Development Director is appointed to administer and implement this Article in accordance with its provisions. Duties of the local floodplain administrator shall include, but are not be limited to:

- (1) Review all development permit applications to determine whether proposed new development will be located in Areas of Special Flood Hazard.**
- (2) Review applications for modifications of any existing development in Areas of Special Flood Hazard for compliance with the requirements of this Article.**
- (3) Interpret flood hazard area boundaries, provide available flood hazard information, and provide Base Flood Elevations, where they exist.**
- (4) Review proposed development to assure that necessary permits have been received from governmental agencies from which approval is required by federal or state law, including but not limited to section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334; the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; and State of Oregon Removal-Fill permits. Copies of such permits shall be maintained on file.**
- (5) Review all development permit applications to determine if the proposed development is located in the floodway, and if so, ensure that the standards in Sections 6.100 through 6.110 are met.**
- (6) When Base Flood Elevation data or floodway data are not available, then the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation and floodway data available from a federal, state or other authoritative source in order to administer the provisions of this Article.**
- (7) When Base Flood Elevations or other engineering data are not available from an authoritative source, the Floodplain Administrator shall take into account the flood hazards, to the extent they are known, to determine whether a proposed building site or subdivision will be reasonably safe from flooding.**

Staff Comment: Oregon Residential Specialty Code R324.1.3 authorizes the building official to require the applicant to determine a Base Flood Elevation where none exists.

- (8) Where interpretation is needed of the exact location of the Special Flood Hazard Boundary, including regulatory floodway, the Floodplain Administrator shall make the**

interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 6.088.

- (9) Issue floodplain development permits when the provisions of this Article have been met, or disapprove the same in the event of noncompliance.
- (10) Coordinate with the Building Official to assure that applications for building permits comply with the requirements of this Article.
- (11) Obtain, verify and record the actual elevation in relation to the vertical datum used on the effective FIRM, or highest adjacent grade where no BFE is available, of the lowest floor level, including basement, of all new construction or substantially improved buildings and structures.
- (12) Obtain, verify and record the actual elevation, in relation to the vertical datum used on the effective FIRM, or highest adjacent grade where no BFE is available, to which any new or substantially improved buildings or structures have been flood-proofed. When flood-proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of design criteria from a registered professional engineer or architect.
- (13) Ensure that all records pertaining to the provisions of this Article are permanently maintained in the Community Development Department and shall be open for public inspection.
Staff Comment: Clarifies responsibilities of the Floodplain Administrator. Source: 44 CFR 60.3
- (14) Make inspections in Areas of Special Flood Hazard to determine whether development has been undertaken without issuance of a floodplain development permit, ensure that development is undertaken in accordance with a the floodplain development permit and this Article, and verify that existing buildings and structures maintain compliance with this Article.
- (15) Coordinate with the Building Official to inspect areas where buildings and structures in flood hazard areas have been damaged, regardless of the cause of damage, and notify owners that permits may be required prior to repair, rehabilitation, demolition, relocation, or reconstruction of the building or structure.
- (16) Make Substantial Improvement or Substantial Damage determinations based on the definitions described in Section 6.075.

Staff Comment: Clarifies responsibilities of the Floodplain Administrator related to Building Codes. Source: 44 CFR 59.24

6.091 Appeals. Appeals to the interpretations of the Floodplain Administrator shall be reviewed by the Hearings Board as a Type II procedure in accordance with Sections 1.040 and 1.520 of this Code. Appeals to the land use decisions (Types I-L, II, and III) resulting from the Floodplain Development Permit applications shall be reviewed in accordance with Section 1.520 of this Code.

6.092 Variances. Variances from the terms of this section shall be granted only, when because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this section deprives such property of privileges enjoyed by other property in vicinity and under identical zoning classifications. Variances as interpreted in the National Flood Insurance Program are based on the physical characteristics of the land and are not dependent upon the occupants, type, or use of a structure. They primarily

address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

Staff Comment: Existing language moved from 6.081. The bold language is required per NFIP (Source: DRAFT Oregon Model Flood Damage Prevention Ordinance)

No variance will be given to the standards for development in a floodway.

Variances from the floodplain management regulations of this section shall be reviewed as a Type II procedure and shall be approved if the review body finds that all of the following criteria have been met:

- (1) The applicant can show good and sufficient cause; and
- (2) Failure to grant the variance would result in exceptional, ~~non-financial~~ hardship to the applicant; and
- (3) Issuing the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
- (4) The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances from the required lowest floor elevation **for new construction and substantial improvements** may be granted if the review body find that the request meets criteria (1)-(4) and the parcel is one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. **As the lot size increases the technical justification required for issuing the variance increases.**
- (6) **Variances may be granted for a water dependent use provided that the structure or other development meets criteria (1)-(4) and is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety**
- (7) **Variances may be granted for the reconstruction, rehabilitation, or restoration of structures listed on Albany's Local Historic Inventory, without regard to the procedures set forth in this section.**
- (8) **Variances may be granted for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria and otherwise complies with Building Codes.**

Staff Comment: New additions are FEMA requirements per latest DRAFT Oregon Model Flood Damage Prevention Ordinance.

Upon issuing the variance, the Floodplain Administrator will notify the applicant in writing that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

6.093 Floodplain Development Permit Required. ~~Development to Which These Regulations Apply.~~ ~~Development~~, as defined in Article 22, includes, but is not limited to, residential and non-residential construction, manufactured housing, and land divisions. Excavation, and fill (grading), is specifically excluded from the definition of development as used in this section. Grading is regulated by Albany Municipal Code Title 12. [Ord. 5647, 5/10/06] **A Floodplain Development Permit is required prior to initiating floodplain development activities, as defined in Section 6.075, in the Special Flood Hazard Area. This Article cannot anticipate all development**

activities that may be located within the Special Flood Hazard Area. The floodplain development permit shall expire 180 days after issuance unless the permitted activity has been substantially begun and thereafter pursued to completion.

Staff Comment: Needed to add fencing, mining, dredging, paving, drilling operations and storage of equipment and materials to comply with NFIP regulations. (Source: DRAFT Oregon Model Flood Damage Prevention Ordinance). Moved from Section 6.071.

All development activities that require a Floodplain Development Permit shall be processed in accordance with ADC Section 1.200, Land Use Application Procedures. When ambiguity exists concerning the appropriate classification of a particular activity, the use may be reviewed as a conditional use when the Floodplain Administrator determines that the proposed activity is consistent with other activities allowable within the subject district due to similar characteristics and impacts. When a development proposal involves a combination of activities, the more restrictive provisions of this Code shall apply.

A. The following activities will be processed through a Type I procedure as established in ADC 1.320:

- (1) Any structure over 200 square feet.
- (2) Any substantial improvement to an existing structure as defined in this code.
- (3) Placement of a recreational vehicle more than 180 consecutive days, as described in 6.132(2)-(3).
- (4) Solid fences and walls that require a permit as listed in Section 6.125.

Staff Comment: Removed other type of fences, as well as retaining walls not associated with grading, fill, excavation, and paving permit – these are now exempt.

B. The following activities will be processed through a Type I-L procedure as established in ADC 1.330:

- (1) Any development in the floodway, allowed by Sections 6.100-6.101, that does not require a Site Plan Review Option A, will be reviewed through the Site Plan Review Option B process.
- (2) Grading, excavation, fill, and paving that cumulatively impacts more than 50 cubic yards of the native elevation and contours of the site or that otherwise requires a permit per this Article, and any associated retaining walls.
- (3) Mining and drilling operations that result in sledge, slag, or other materials remaining in the Special Flood Hazard area will be considered fill for the purposes of this Article, and will be reviewed through the applicable criteria in Section 6.111.
- (4) Additions or expansions of Continuous Storage Operations pursuant to Section 6.112 will be reviewed through the Site Plan Review Option B process.
- (5) New Continuous Storage Operations pursuant to Section 6.112 will be reviewed through the Site Plan Review Option A process.
- (6) Any Site Plan Review for development in the floodplain pursuant to Section 6.110 that is not exempt under Section 6.094 and does not already require a permit elsewhere in this Section of the Code.

Staff Comment: Site improvements in general were missing from this Article.

C. The following activities will be processed through a Type II procedure as established in ADC 1.350:

- (1) Any alteration of a Watercourse, pursuant to 6.101 and the applicable criteria in Section 6.112.

D. The following will be processed through a Type III procedure as established in ADC 1.360:

- (1) Land Division and Planned Developments pursuant to Section 6.110 will be reviewed through the Planned Development or appropriate Land Division process.
- (2) Manufactured home parks pursuant to Section 6.110 will be reviewed through the Manufactured Home Park application process.

6.094 **Floodplain Development Permit Exemptions.** The following development activities in the flood fringe do not require a Floodplain Development Permit. These exemptions do not apply to development in the floodway. *(Note: Federal and State laws and regulations, including Oregon Drainage Law, may still apply to exempted development activities that affect drainage.)*

- (1) Structures less than 200 square feet that meet the provisions of 6.122.
- (2) Grading, excavation, fill or paving less than 50 cubic yards (cumulative).
- (3) Retaining walls not associated with a grading, fill, excavation, and paving review.
- (4) Open barbless wire, pipe, rail, chain link, or wood fences that meet the design guidelines in Section 6.125 of this Article.
- (5) Agricultural activities, not including structures.
- (6) Short-term storage of equipment or materials that in time of flooding could either be removed from the area, or would not cause harm to property, humans, animals or the environment by becoming buoyant or hazardous.
- (7) Signs, markers, aids, etc., placed by a public agency to serve the public.
- (8) Minor repairs or improvements to existing structures provided that the alterations do not increase the size or intensity of use, and do not constitute repair of substantial damage, or substantial improvement as defined in this Article.
- (9) Customary dredging to maintain existing channel capacity consistent with State or Federal laws and permits.
- (10) Replacement of utility facilities that are necessary to serve established and permitted uses, and that are of equal or lesser size and impact.
- (11) Subsurface public utility projects that will not ultimately result in modification to existing topography.
- (12) Transportation facility rehabilitation and maintenance projects that will not result in modifications to existing topography.

Staff Comment: Cities are allowed to exempt development from the required permit based on the type and magnitude of the activity as well as the location. (Source: A Summary of NFIP Policy for Local Officials, FEMA Region 10, January 2004). (1) is okay as long as we apply the accessory structure provisions from 6.122; (2) is the community's de minimus standard, and this applies to (3) as well since the volume of fill associated with the retaining wall would be less than 50 cubic yards; (11) and (12) were added to exempt typical infrastructure projects that do not change the topography of the land.

6.095 General Information Requirements. In addition to the information required in other sections of this code, the application for any development proposed in the ~~floodplain district~~ **Special Flood Hazard Area (100-year floodplain)** must include the following information:

- (1) Elevations of the original contours.
- (2) Final elevations of proposed fills and excavations.
- (3) Base flood (100-year flood) elevations of the site.
- (4) Location of any designated floodway and base flood boundary. If no floodway is designated, estimate the location of the floodway boundary per Section 6.100
- (5) Location of any designated wetlands and/or wildlife habitat (if applicable).
- (6) Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures (if applicable).
- (7) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development (if applicable).
- (8) If floodproofing is required, the proposed description and elevation of floodproofing.

Staff Comment: Moved from Section 6.120.

6.096 Flood Insurance Rate Map (FIRM) Revisions. Requirements to Submit New Technical Data:

- (1) It is the responsibility of the applicant to have technical data prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision and to submit such data to FEMA on the appropriate application forms. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
- (2) Applicants shall be responsible for all costs associated with obtaining a Conditional Letter of Map Amendment (CLOMR) or Letter of Map Revision from FEMA.
- (3) The City of Albany shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, without evaluation and concurrence with the information presented.
- (4) Within six months of project completion, an applicant who obtains an approved CLOMR from FEMA, or whose development modifies floodplain boundaries or Base Flood Elevations shall obtain from FEMA a Letter of Map Revision (LOMR) reflecting the as-built changes to the FIRM.

Staff Comment: Added to clarify process. (Source: DLCD); language was added to clarify that the City is not required to automatically sign the CAF – it needs to be warranted.

6.090 ~~State and Federal Approval~~ *Staff Comment: Moved to Section 6.087.*

PROVISIONS FOR FLOOD HAZARD REDUCTION

6.100 Floodway Restrictions. No development is allowed in any floodway except where when the review body finds that the development will not result in any increase in flood levels during the occurrence of the 100-year flood. The finding shall be based upon applicant-supplied evidence certified by a registered professional engineer and upon documentation that one of the following three criteria has been met:

- (1) The development does not involve the construction of permanent or habitable structures (including fences).

- (2) The development is a public or private park or recreational use or municipal utility use.
- (3) The development is a water-dependent structure such as a dock, pier, bridge, or floating marina.
- (4) The temporary storage or processing of materials will not become buoyant, flammable, **hazardous** explosive or otherwise **potentially** injurious to human, animal, or plant life in times of flooding.
- (5) The **temporary storage of** material or equipment are not subject to major damage by floods and is firmly anchored to prevent flotation or is readily removable from the area within the time available after flood warning.

Staff Comment: (4) and (5) were moved from the 6.165. Continuous storage facilities are not allowed in the floodway.

If a floodway boundary is not designated on an official FEMA map available to the City, the floodway boundary can be estimated from available data and new studies. Proposed development along the estimated floodway boundary shall not result in an increase of the base flood level greater than one foot as certified by a registered professional engineer.

6.1401 ~~Alteration of the flood carrying capacity of a Watercourse prohibited.~~ **A Watercourse is considered altered when any changes occur within its banks, including installation of new culverts and bridges, or size modifications to existing culverts and bridges.**

- (1) No development shall diminish the flood-carrying capacity of a watercourse.
- (2) Subject to the foregoing regulation, no person shall alter or relocate a watercourse **without necessary approval from the Floodplain Administrator,** ~~without having first provided~~
- (3) **Prior to approval, the applicant shall provide a 30-day written notice to the City, any adjacent community, the Natural Hazards Mitigation Office of the Program of the Oregon Department of Land Conservation and Development, and the Oregon Department of State Lands.**
- (4) **The applicant shall be responsible for ensuring necessary maintenance of the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.**

Staff Comment: Clarification added that the applicant is responsible for making it happen; they don't need to do it themselves.

6.110 ~~Site Improvement, Land Division and Manufactured Home Park Planned Development Standards. Site improvements, land divisions, and manufactured home parks in the floodplain district Special Flood Hazard Area (100-year floodplain) shall be reviewed by the Planning Division as a part of the land use planning review process. Notwithstanding other provisions of this code, all land division, and manufactured home park planned development applications which propose actual development within a floodplain district shall be processed under the Type III process.~~ **An application to develop property which that has floodplain on it, but where no development is proposed in that floodplain will be processed as otherwise required in this Code. In the case of a land division, "no actual development" means the floodplain area has been excluded from the land division. This can be done by setting the property aside for some other purpose than later development (for example, as a public drainage right-of-way).**

Staff Comment: Sentence removed is redundant. The type of land use process is covered in 6.093. Manufactured Home Park criteria from Section 6.131 (now 6.123) were combined with the subdivision criteria. Site improvements were added because they were missing from elsewhere in this section.

In addition to the general review criteria for **site improvements**, land divisions and **manufactured home parks** ~~planned developments in Article 11~~, applications ~~which~~**that** propose actual development within the ~~floodplain district~~ **Special Flood Hazard Area** shall also be subject to the following standards: [Ord. 5338, 1/28/98]

- (1) ~~All land division proposals shall be consistent with the need designed to minimize flood damage.~~ **All proposed new development and land divisions shall be consistent with the need to minimize flood damage and ensure that building sites will be reasonably safe from flooding.**
- (2) All **new development and** land division proposals shall have ~~public~~ utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) **On-site waste disposal systems shall be located and constructed to avoid functional impairment, or contamination from them, during flooding.**
- (4) All ~~land division development~~ proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (5) Any lot created for development purposes must have adequate area created outside of the floodway to maintain a buildable site area meeting the minimum requirements of this Article.
- (6) Any new public or private street providing access to a residential development shall have a roadway crown elevation not lower than one foot below the 100-year flood elevation.
- (7) All ~~land divisions or planned developments,~~ **development proposals in the floodplain district** shall show the location of the 100-year flood contour line followed by the date the flood elevation was established. When elevation data is not available, either through the Flood Insurance Study or from another authoritative source, and the development is four or more acres or results in four or more lots or structures, the elevation shall be determined and certified by a registered engineer. In addition, a statement located on or attached to the recorded map or plat shall read as follows: "Development of property within the **Special Flood Hazard Area 100-year floodplain** as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City." [Ord. 5338, 1/28/98]

Staff Comment: All of the above were moved from Section 6.130. Changes to (1)-(3) are FEMA requirements per the latest DRAFT Oregon Model Flood Damage Prevention Ordinance.

- (8) In addition to the general review criteria applicable to manufactured home parks in Article 10, applications ~~which~~**that** propose actual development within the ~~floodplain district~~ **Special Flood Hazard Area** shall include an evacuation plan indicating alternate vehicular access and escape routes.

Staff Comment: Moved from Section 6.131.

6.111 Grading, Fill, Excavation, and Paving. A floodplain development permit is required for **grading, fill, excavation, and paving in the Special Flood Hazard Area (100-year floodplain)**, except activities exempted in Section 6.094 of this Article. No grading will be permitted in a floodway, except when the applicant has supplied evidence prepared by a professional engineer that demonstrates the proposal will not result in any increase in flood levels during the occurrence of the 100-year flood. The permit will be approved if the applicant has shown that each of the following criteria that are applicable have been met:

- (1) Provisions have been made to maintain adequate flood-carrying capacity of existing watercourses, including future maintenance of that capacity.

- (2) The proposal will be approved only where adequate provisions for stormwater runoff have been made that are consistent with the Public Works Engineering standards, or as otherwise approved by the City Engineer.
- (23) The proposal will not increase the existing velocity of flood flows so as to exceed the erosive velocity limits of soils in the flood area.
- (34) No grading, fill, excavation, or paving will be permitted over an existing public storm drain, sanitary sewer, or water line unless it can be demonstrated to the satisfaction of the City Engineer that the proposed grading, fill, excavation, or paving will not be detrimental to the anticipated service life, operation and maintenance of the existing utility.
- (45) In areas where no floodway has been designated on the applicable FIRM, grading will not be permitted unless it is demonstrated by the applicant that the cumulative effect of the proposed grading, fill, excavation, or paving when combined with all other existing and planned development, will not increase the water surface elevation of the base flood more than a maximum of one foot (cumulative) at any point within the community.
- (56) The applicant shall notify the City of Albany, any adjacent community, and the Natural Hazards Mitigation Office of the Oregon Department of Land Conservation and Development of any proposed grading, fill, excavation, or paving activity that will result in alteration or relocation of a watercourse.
- (67) All drainage facilities shall be designed to carry waters to the nearest practicable watercourse approved by the designee as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive down spouts and diffusers or other devices.
- (78) Building pads shall have a drainage gradient of two percent toward approved drainage facilities, unless waived by the Building Official or designee.

Staff Comment: Fill permits in the floodplain were moved from Albany Municipal Code (AMC) Title 12. Most of the language comes from the AMC. Per the latest DRAFT Oregon Model Flood Damage Prevention Ordinance, FEMA requires that any change in topography resulting to grading, fill, excavation, and paving are regulated

6.112 Continuous Storage Operations. The regulation of storage in the flood fringe focuses on long-term storage activities associated with continuous operations as defined in this Article. A continuous storage operation is allowed if it can be shown that:

- (1) The materials or equipment will not be flammable, hazardous, explosive or otherwise potentially injurious to human, animal, or plant life in times of flooding; and
- (2) The materials or equipment are not subject to major damage by flood and are firmly anchored to prevent flotation or is readily removable from the area within the time available after flood warning.

Staff Comment: The intent is to regulate continuous storage operations as "development" that is subject to permit requirements. (Source: A Summary of NFIP Policy for Local Officials, FEMA Region 10, January 2004).

~~6.120 General Information Requirements~~ *Staff Comment: Moved to Section 6.084.*

6.113 Critical Facility Standards. Construction of new critical facilities, and additions to critical facilities built after September 29, 2010, shall be, to the maximum extent feasible, located outside the limits of the Special Flood Hazard Area (100-year floodplain). Construction of new critical facilities shall be permissible within the Special Flood Hazard Area if no feasible

alternative site is available. Critical facilities constructed within the Special Flood Hazard Area shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility shall also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that hazardous materials will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

Staff Comment: Recommended by interdepartmental floodplain management team. This regulation is worth up to 100 points in the CRS. (Source: DRAFT Oregon Model Flood Damage Prevention Ordinance 5.6)

6.120 Building Standards. Applications for building permits ~~in the floodplain district~~ **within the Special Flood Hazard Area, as established in Section 6.080,** shall be reviewed by the Building Official pursuant to locally adopted state building codes. In addition to building code criteria, all development in the ~~floodplain district~~ **Special Flood Hazard Area,** except that exempted in Section 6.150 ~~below,~~ is subject to the following building standards:

- (1) Property owners or developers shall file with the City **two elevation certificates** whose in a format **that is acceptable to FEMA.** ~~This~~ **These** certificates must be approved by the Building Official, prepared by a registered surveyor or professional engineer, architect or surveyor, and maintained for public inspection. **A Pre-Construction Elevation Certificate shall be submitted and approved prior to setback and foundation inspection approval. A Post-Construction Elevation Certificate shall be submitted and approved prior to final inspection approval for all building permits when the Pre-Construction Elevation Certificate shows the building site to be within a Special Flood Hazard Area and lowest adjacent grade to be at or below the base flood elevation (BFE).** The Post-Construction certificate must contain: 1) the actual elevation (in relation to mean sea level) of the lowest floor including basement of all new or substantially improved structures; 2) the elevation of any flood proofing; and 3) whether or not the structure contains a basement.

Staff Comment: The language above updates the code to the current procedures for elevation certificates.

- (2) The lowest floor, including basement, of any proposed structure (including **residential and manufactured homes** and non-residential structures) shall be placed at least one (1) foot above the 100-year flood as determined by the latest Federal Insurance Study.
- (3) **When elevation data is not available either through the Flood Insurance Study, FIRM, or from other sources of floodplain and floodway data as described in Section 6.080, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., when available.**

Staff Comment: DLCD staff noted the language above was needed. (Source: DRAFT Oregon Model Flood Damage Prevention Ordinance)

- (4) ~~(3)~~ All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (5) ~~(4)~~ All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (6) ~~(5)~~ Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during a flood.
- (7) ~~All manufactured homes shall be on an adequately anchored, permanent foundations, be anchored to prevent flotation, collapse or lateral movement, and shall be installed using~~

~~methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, over the top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional details).~~

Staff Comment: DLCD staff noted "you can delete all the language about existing and new manufactured dwelling parks. All installations, anywhere, are the same now. Again per 2010 Manufactured Dwelling Specialty Code."

- (7) ~~(6)~~All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement and shall be installed or constructed using materials, methods, and practices that minimize flood damage.
- (8) ~~(7)~~All new and replacement public water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (9) ~~(8)~~All new and replacement public sanitary sewer systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood water. On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- ~~(9) Property owners or developers shall file with the City a certificate whose format is acceptable to FEMA. This certificate must be approved by the Building Official, prepared by a registered surveyor or professional engineer, architect or surveyor, and maintained for public inspection. The certificate must contain: 1) the actual elevation (in relation to mean sea level) of the lowest floor including basement of all new or substantially improved structures; 2) the elevation of any flood proofing; and 3) whether or not the structure contains a basement.~~
Staff Comment: Now covered in 6.120(1)
- (10) If floodproofing methods are required as per Section 6.140~~25~~(2), the property owners or developers shall file with the City a certification by a registered professional engineer or architect that the floodproofing methods meet or exceed FEMA standards. **The City will maintain the certification available for public inspection.** [Ord. 5146, 9/14/94; Ord. 5281, 3/26/97]
Staff Comment: NFIP requires language that states a local administrator shall: "maintain the floodproofing certifications required...and maintain for public inspection" The language "that will maintain" is added to match DRAFT Oregon Model Flood Damage Prevention Ordinance 4.3-3(2)(ii). Moved from Section 6.133.

6.121 Flood Hazard Reduction Standards for Structures. All applicable flood hazard reduction measures are required and must be certified as required in 6.133~~20~~ (9)(1) and (10) above to at least meet the following standards (these standards do not apply to structures exempted in Section 6.150~~22~~ below):

- (1) In all structures **that will not be floodproofed, as described in 6.121(2)**, fully enclosed areas below the lowest floor (**crawl spaces, parking areas or building access**) and lower than 1 foot above the 100-year flood level must meet or exceed the following criteria:
 - (a) At least two openings, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, shall be provided.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
 - (d) **The interior grade below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.**
 - (e) **The height of the below-grade area, measured from the interior grade to the top of**

the foundation wall must not exceed four (4) feet at any point.

- (f) There must be an adequate drainage system that removes floodwaters from the interior area. The enclosed area should be drained within a reasonable time after a flood event.
- (g) It will be used solely for parking vehicles, limited storage, or access to the building and will never be used for human habitation.

Staff Comment: DLCD staff noted "if Albany permits below grade crawlspaces then this language must be added to your flood hazard ordinance, otherwise the below-grade crawlspace will be considered a basement, and basements are not allowed in floodplain." (Source: DRAFT Oregon Model Flood Damage Prevention Ordinance)

- (h) The property owner of the building shall sign and record on the title to the property a nonconversion agreement, guaranteeing not to improve, finish, or otherwise convert the enclosed area below the lowest floor and lower than 1-foot above the 100-year flood level and granting the City the right to inspect the enclosed area.

Staff Comment: Recommended by interdepartmental floodplain management team. The language above is a higher regulatory standard that is not required by NFIP, but would allow for an additional 50 points in the CRS program.

- (2) ~~Non-habitable~~ **Nonresidential** construction meeting the certification requirements of 6.13320 (91) and (10) can have the lowest floor and attendant utility and sanitary facilities located lower than one foot above the 100-year flood elevation if:

- (a) The structure is floodproofed so that areas lower than one foot above the 100-year flood level are watertight with walls substantially impermeable to the passage of water.
- (b) The structure has structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (c) The applicant is notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level.
- (d) The applicant files a certification by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. The certification shall be provided to the Building Official as set forth in 6.133(9)120(1). [Ord. 5146, 9/14/94; Ord. 5281, 3/26/97]

Staff Comment: DLCD staff asked for clarification regarding nonresidential versus non-habitable. This section was moved from Section 6.140.

6.15022 Accessory Buildings. **Accessory structures** in floodplain districts-Special Flood Hazard Areas (100-year floodplain) that represent a minimal investment are exempt from the standards of ADC 6.13320 and 6.14021. The following standards and all other regulations that apply to development in floodplain areas apply to those buildings. The definition of "minimal investment" for the purposes of this section is a building that costs less than \$10,000 in labor and materials to construct. The value of a proposed building will be the value stated on the application for building permits.

- (1) Accessory structures shall not be used for human habitation.
- (2) Accessory structures shall be designed to have low flood damage potential.
- (3) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

- (4) Accessory structures shall be firmly anchored to prevent flotation ~~which that~~ may result in damage to other structures.
- (5) Service facilities such as electrical and heating equipment shall be elevated and/or floodproofed. [Ord. 5281, 3/26/97]

Staff Comment: Moved from 6.150.

~~6.130 Land Division and Planned Development~~ *Staff Comment: Moved to 6.110.*

~~6.131-23~~ **Manufactured Home Parks.** ~~New and replacement manufactured dwellings fall within the scope of the Building Codes. Manufactured home parks and manufactured home subdivisions proposed in the floodplain district shall be reviewed by the Planning Division. Notwithstanding other provisions of this code, all manufactured home park and subdivision applications which propose actual development within the floodplain district shall be processed under a Type III process. An application to develop property that has floodplain on it, but where no development is proposed in that floodplain, will be processed as otherwise required in this Code. In the case of a land division, "no actual development" means the floodplain area has been excluded from the land division. This can be done by setting the property aside for some other purpose than later development (for example, as a public drainage right of way). In addition to the general review criteria applicable to manufactured home parks in Article 10, applications which propose actual development within the floodplain district shall include an evacuation plan indicating alternate vehicular access and escape routes.~~ [Ord. 5338, 1/28/98]

Staff Comment: Combined Manufactured Home Parks with Subdivisions in Section 6.110. Left language about Manufactured Homes here.

All new manufactured dwellings and replacement manufactured dwellings shall be installed using methods and practices that minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

Staff Comment: DLCD staff noted "you can delete all the language about existing and new manufactured dwelling parks. All installations, anywhere, are the same now. Again per 2010 Manufactured Dwelling Specialty Code."

6.124 Recreational Vehicles. Recreational vehicles placed on sites within the flood fringe are required to either:

- (1) Be on the site for fewer than 180 consecutive days; or
- (2) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (3) Meet the requirements of Section 6.131 and the elevation and anchoring requirements for manufactured homes.

Staff Comment: Required per NFIP. (Source: DRAFT Oregon Model Flood Damage Prevention Ordinance)

~~6.133 Building Standards.~~ *Staff Comment: Moved to Section 6.120.*

~~6.140 Flood Hazard Reduction Standards.~~ *Staff Comment: Moved to Section 6.121.*

~~6.150 Accessory buildings in floodplain districts.~~ *Staff Comment: Moved to Section 6.122.*

~~6.160 Warning and Disclaimer of Liability.~~ *Staff Comment: Moved to Section 6.081.*

6.165 ~~Storage of Material and Equipment.~~ *Staff Comment: Incorporated in to Section 6.100.*

6.125 **Flood Fringe Fencing and Wall Standards.** Certain types of fences and garden walls may be allowed in the flood fringe of the Special Flood Hazard Area (100-year floodplain). All fences and garden walls constructed within the flood fringe must not obstruct the entry and exit of floodwater, through their design and construction. All fences and walls are prohibited in the floodway.

The following table is provided to assist in selecting appropriate fencing in the flood fringe. All fences and walls also must meet the standards in other sections of the Code.

Fence Type	Flood Fringe Areas
Open barbless wire; Open pipe or rail; Other wire, pipe or rail (e.g. field fence, chicken wire, etc.); Chain link (1)	No permit required
Wood fences (2)	No permit required
Solid fences and freestanding walls, such as masonry (3)	Permit required, must have openings at and below BFE
Other fences (4)	Permit required, must have openings at and below BFE

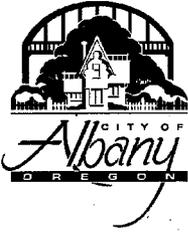
- (1) Acceptable are materials and installation methods that allow for the entry and exit of floodwater.
- (2) Wood fence boards should be spaced to allow for the entry and exit of floodwater.
- (3) Solid fences and freestanding walls must include a flap or opening in the areas at or below the Base Flood Elevation at least once every three fence panels or 24 feet, whichever is less. Fences less than 24 feet in length shall have at least one flap or opening in the areas at or below the Base Flood elevation. The minimum dimensions of the flap or opening shall not be less than 12"x12" or 8"x18". Openings shall not include any screening of any type or size. If flaps are used, they may be secured to allow closure during normal use, but must be capable of self release and opening to full dimensions when under pressure of no greater than 30 pounds per sq. ft. These standards do not apply to retaining walls which shall meet the same standards as other building, paving, and grading activities.

Solid fences and walls constructed within Zone A, where the base flood elevation has not been determined, can use other sources of floodplain and floodway data to determine base flood elevations and boundaries as described in Section 6.080, or the openings can be placed within one foot of the finished grade along the fence alignment.

- (4) Other fence materials and construction that would restrict the flow of floodwaters will require a permit so they can be reviewed and adapted to meet the intent of this section of the Code.

Staff Comment: Standards for fences were needed so it is clear which fences are allowed, which require a floodplain development permit, and how they need to be built. (Source: modified from DLCD and Colorado)

G:\Current\2010\CP.01.10-DC.04.10\City Council\Exhibit C_ADC Floodplain Amendments CC (Take 3).doc



Community Development Department

333 Broadalbin Street SW, P.O. Box 490
Albany, OR 97321

Phone: 541-917-7550 Facsimile: 541-917-7598
www.cityofalbany.net

STAFF REPORT

Comprehensive Plan and Development Code Amendments

HEARING BODY

CITY COUNCIL

HEARING DATE

Wednesday, August 25, 2010

HEARING TIME

7:15 p.m.

HEARING LOCATION

Council Chambers, Albany City Hall, 333 Broadalbin Street SW

GENERAL INFORMATION

DATE OF REPORT:

August 18, 2010

FILES:

CP-01-10; DC-04-10

TYPE OF APPLICATION:

Legislative amendments to the following:

(1) Comprehensive Plan (CP-01-10)

Plate 5: 100-Year Floodplain (Exhibit A) – Replace with new Federal Emergency Management Agency (FEMA) floodplain layers

Chapter 2 – Special Areas – Flood Hazards & Hillside (Statewide Planning Goal 7) – Flood Hazards (Exhibit B):

- National Flood Insurance Program (NFIP) compliance: Text amendments that update information and add references to the required floodplain development permit.
- Community Rating System (CRS) activities: Adds rationale for siting critical facilities outside the 100-year floodplain; changes definition of 'substantial improvement'; and adds requirement for nonconversion agreement for portions of homes below base flood elevation.

(2) Development Code (DC-04-10) Article 6 – Floodplain (Exhibit C):

- NFIP compliance: Amendments to comply with the minimum requirements; Clarifying edits to existing code language: Additional definitions of terms.
- CRS Activities: Three additional amendments that will increase the discount on flood insurance available inside the Albany city limits – siting critical facilities outside the 100-year floodplain, changing definition of 'substantial improvements,' and requiring a nonconversion agreement for areas in homes that are below base flood elevation.

REVIEW BODY:

Planning Commission and City Council

APPLICANT:

City of Albany, Planning Division

APPLICANT REP:

Heather Hansen, Planning Manager

ADDRESS/LOCATION:

Applies to all properties within the 100-year floodplain, as designated by FEMA. Does NOT affect properties with floodplain boundaries revised through FEMA Letters of Map Revision or Letters of Map Amendment.

BACKGROUND INFORMATION

Floodplain Maps: FEMA recently updated their flood hazard maps with newer topographical data provided by the City. The maps include the base flood elevations, floodway, and 100-year floodplain boundary. In the process, some properties were removed from the floodplain and some were added. FEMA sent Albany the new floodplain maps on March 29, 2010. Federal regulations require the City to adopt a new floodplain development ordinance that references the new maps and brings our codes into compliance with the current minimum National Flood Insurance Program (NFIP) requirements by September 29, 2010.

Minimum NFIP Requirements: The intent of the regulations is to reduce loss of life and property and regulate activities that may obstruct or change the flow of water. In order to be in compliance with the NFIP requirements, the City of Albany has to update its existing floodplain regulations to meet the minimum criteria set by the State of Oregon and the NFIP. If we do not adopt new regulations by September 29, 2010, we will no longer be eligible to participate in the NFIP, and residents and businesses would not be able to buy flood insurance and would have great difficulty getting financing for existing development in the floodplain.

Community Rating System: Floodplain development regulations or management activities that are above the minimum NFIP requirements are assigned points through the CRS program of NFIP. The more points accrued, the higher the potential discount on flood insurance rates for businesses and residences in flood hazard areas. The City currently has a CRS classification of 7, which translates to a 15% discount. An interdepartmental team has been working toward a classification of 5, which would result in a 25% discount. In addition to our current level of points, we'd need about 900 more to achieve the level 5 classification. Most of the points will come from documentation of existing departmental policies and procedures. The points that would be gained by the three proposed amendments in this packet will result in approximately 200 additional points.

Oregon Department of Land Conservation and Development: DLCD serves as the state's coordinating agency for the NFIP through an agreement with FEMA. Oregon has 258 cities and counties that are subject to flooding, and all participate in the NFIP thereby making flood insurance available to their residents and businesses. DLCD reviewed our existing Development Code and Municipal Code and compared it to the Oregon Model Flood Damage Prevention Ordinance, which was developed to help Oregon communities comply with NFIP. Many of the proposed amendments come directly from that review.

NOTICE INFORMATION

A notice of public hearing was published in the *Albany Democrat Herald* August 1, 2010. Notices of public hearings were sent to over 1,000 property owners on July 19, 2010. The proposed Development Code amendments were posted on the City's Web site on July 20, 2010. At the time this staff report was completed, staff has received numerous phone calls and emails, but no written testimony.

The Planning Commission held a public hearing on the proposed amendments on August 9, 2010. One person, Jack Burrell, testified. He requested that the Floodplain Development Permit portion of the ordinance be pulled out and considered on a separate timeframe to enable for time for a more thorough review. Staff responded that the Floodplain Development Permit is one of the minimum requirements of the National Flood Insurance Program (NFIP). If it is not adopted with the Ordinance by September 29, 2010 we would not be considered to be in compliance with the NFIP and would risk suspension from the program.

PLANNING COMMISSION RECOMMENDATION

RECOMMEND that the City Council APPROVE the proposed Comprehensive Plan and Development Code amendments.

SUGGESTED CITY COUNCIL MOTION

Adoption of the attached Ordinance that would amend Albany Comprehensive Plan Plate 5-Floodplain and Chapter 2-Special Areas-Flood Hazard, and Albany Development Code Article 6-Floodplain.

MOTION TO APPROVE

If the City Council wishes to approve the proposed amendments as written, the Council may approve the amendments based on the findings and conclusions of the staff report.

I MOVE that the City Council APPROVE the proposed Comprehensive Plan and Development Code amendments as summarized in the staff report (Files CP-01-10 and DC-04-10). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

OR

MOTION TO APPROVE AS MODIFIED

If the City Council wishes modify the proposed amendments, the Council may approve the amendments as modified based on the findings and conclusions of the staff report.

I MOVE that the City Council APPROVE AS MODIFIED (*Insert modification(s) here*) the proposed Comprehensive Plan and Development Code amendments as summarized in the staff report (Files CP-01-10 and DC-04-10). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

APPEALS

A City Council decision can be appealed to the Oregon Land Use Board of Appeals by filing a Notice of Intent to Appeal within 21 days of the Council decision.

STAFF ANALYSIS

Comprehensive Plan Amendment File CP-01-10

The Albany Development Code (ADC) contains review criteria for Albany Comprehensive Plan amendments. Amendments to the Comprehensive Plan will be approved if the City Council finds that the applicant has shown that the following applicable criteria have been met. NOTE: Code criteria are written in *bold italics* and are followed by the findings and conclusions.

(1) *A legislative amendment is consistent with the goals and policies of the Comprehensive Plan, the statewide planning goals, and any relevant area plans adopted by the City Council.*

The applicable Comprehensive Plan goals and policies are identified in *italic* type.

FINDINGS OF FACT

1.1 Albany Comprehensive Plan, Chapter 2—Special Areas—Flood Hazards & Hillsides (Statewide Planning Goal 7)—Flood Hazards:

Goal: Protect life and property from natural disasters and hazards.

The proposed amendments clarify the existing NFIP requirements and add a policy on restricting the siting of critical facilities in the floodplain.

Policy 1: Continue to participate in the National Flood Insurance Program and comply with applicable standards.

The proposed amendment to Plate 5-Floodplain updates the map with the new floodplain data provided by FEMA. Using the floodplain data provided by FEMA is a requirement for participation in NFIP.

Policy 4: Recognize that development within areas subject to flooding is subject to regulations to protect life and property and that certain types of development may not be allowed.

The proposed amendments add a policy on restricting the siting of critical facilities in the floodplain because

these facilities either need to be operable during a flood, or would pose unacceptable risk to health and safety during flood events.

Policy 9: *Development approval within the flood fringe shall be reviewed to protect property and public safety and significant natural values.*

The proposed text amendments correct information that is no longer current, clarify the NFIP requirements for development permits, acknowledge the City's participation in the Community Rating System program of NFIP, and describes the rationale for siting critical facilities outside the 100-year floodplain.

1.2 Albany Comprehensive Plan, Chapter 9 – Land Use Planning (Statewide Planning Goal 2) – Updating and Amending the Plan:

Goal: *Undertake Periodic Review and Update of the Albany Comprehensive Plan to ensure the Plan: (1) Remains current and responsive to community needs; (2) Retains long-range reliability; (3) Incorporates the most recent reliable information; (4) Remains consistent with state laws and administrative rules.*

We received updated floodplain data from FEMA on March 29, 2010. We are required to adopt it by September 29, 2010, in order to remain in the National Flood Insurance Program.

Policy 2: *Base approval of Comprehensive Plan Amendments upon consideration of the following: (a) Conformance with goals and policies of the Plan; (b) Citizen review and comment; (c) Applicable Statewide Planning Goals; (d) Input from affected governmental units and other agencies; (e) Short- and long-term impacts of proposed change; (f) Demonstration of public need for the change; (g) Demonstration that the proposed amendment will best meet the identified public need versus other available alternatives; (h) Any additional information as required by the Planning Commission or City Council.*

The City currently regulates development in the floodplain. The new maps and regulations will not greatly impact development in the floodplain but should result in lower risk to life and property and lower insurance rates. The proposed amendments will enable us to comply with Statewide Planning Goal 7-Natural Hazards (see 1.3).

1.3 Statewide Planning Goal 7, C. Implementation (4) states "*Local governments will be deemed to comply with Goal 7 for coastal and riverine flood hazards by adopting and implementing local floodplain regulations that meet the minimum National Flood Insurance Program (NFIP) requirements.*"

The proposed amendments update and correct information on floodplains and NFIP in Comprehensive Plan, Chapter 2, Flood Hazards.

CONCLUSIONS

- 1.1 The proposed amendments are consistent with the goals and policies in Chapter 2 regarding flood hazards.
- 1.2 The proposed amendments are consistent with the goals and policies in Chapter 9 regarding updating the comprehensive plan.
- 1.3 The proposed amendments correct information regarding FEMA data and NFIP regulations and revise Plate 5 so it reflects the newer FEMA floodplain data, therefore they are consistent with Statewide Planning Goal 7.

(2) *A legislative amendment is needed to meet changing conditions or new laws.*

FINDINGS OF FACT

- 2.1 FEMA provided us with new floodplain data in the updated Flood Insurance Study (FIS) and associated Flood Insurance Rate Maps (FIRMs) on March 29, 2010.
- 2.2 We are required to adopt the new FIS and FIRMs by September 29, 2010 in order to continue participation in the National Flood Insurance Program.

- 2.3 The proposed revisions to Plate 5: 100-Year Floodplain, reflect the new floodplain data provided by FEMA.
- 2.4 Information related to FEMA and NFIP was updated and corrected to reflect current regulations and requirements.

CONCLUSIONS

- 2.1 The legislative amendment to Plate 5: 100-Year Floodplain is needed meet NFIP requirements.
- 2.2 The legislative amendment to Chapter 2 is needed to reflect current FEMA information and NFIP requirements.

Development Code Amendment File DC-04-10

The Albany Development Code (ADC) contains review criteria for Albany Comprehensive Plan amendments. Amendments to the Comprehensive Plan will be approved if the City Council finds that the applicant has shown that the following applicable criteria have been met. NOTE: Code criteria are written in *bold italics* and are followed by the findings and conclusions.

- (1) *The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.*

The applicable Comprehensive Plan goals and policies are identified in *italic* type.

FINDINGS OF FACT

- 1.1 Albany Comprehensive Plan, Chapter 2--Special Areas--Flood Hazards & Hillside (Statewide Planning Goal 7)--Flood Hazards:

Goal: *Protect life and property from natural disasters and hazards.*

Policy 4: *Recognize that development within areas subject to flooding is subject to regulations to protect life and property and that certain types of development may not be allowed.*

The proposed amendments clarify and strengthen the existing floodplain regulations, add restrictions to the siting of critical facilities in the floodplain and are intended to manage development in the floodplain in a way that promotes public and environmental health and safety.

Policy 1: *Continue to participate in the National Flood Insurance Program and comply with applicable standards.*

The proposed amendments will bring the City into compliance with the NFIP requirements, and enable the City to continue participation in NFIP.

Policy 2: *Restrict new development (fill) from locating within floodways which would result in an increase in base-year flood levels. If it can be determined that there will be no increase in base-year flood levels, then the following uses may be considered: (a) Public and private parks and recreational use; (b) Other uses which would not involve the construction of permanent or habitable structures; (c) Water-dependent structures such as docks, piers, bridges, and floating marinas.*

The proposed amendments continue to restrict development in the floodway in a manner that complies with NFIP.

Policy 5: *Ensure that development proposals in the flood fringe and adjacent to drainageways are consistent with Federal Emergency Management Agency (FEMA) and other applicable local regulations in order to minimize potential flood damage. Development proposals in areas subject to flooding may be reviewed according to the following criteria: (a) Proposed development activities shall not change the flow of surface water during flooding so as to endanger property in the area. Special engineering reports on the changes in water flow and potential damage which may be caused as a result of proposed activities may be required. If necessary, local drainage shall be improved to control increased runoff that might increase the danger of*

flooding to other property; (b) Impacts on significant fish and wildlife habitat have been considered and appropriate protection measures included in project design; (c) Problems of ponding, poor drainage, high water table, soil instability, or exposure to other flood hazards have been identified and mitigated. Evaluations and mitigating measures shall be based on a base year flood and wet season characteristics; (d) If adjacent to a designated floodway, the development shall be designed to use the natural amenities of the floodway including open space, scenic views and vegetation in accordance with an approved site plan.

The proposed amendments clarify and strengthen the existing floodplain regulations and bring the City into compliance with NFIP.

Policy 7: *Ensure that any filling or construction within the floodplain meets the following criteria: (a) Require that a fill permit is issued prior to any fill activity and all fill is engineered and compacted to applicable standards. Fill areas for dwellings shall have engineering certification that loading rates are adequate for dwellings. [Ord. 5042, 4/14/1993]; (b) The lowest finished floor elevation shall be built at least one (1) foot above the base-year flood level. Special engineering reports or structural work may be required; (c) Require property owners or developers to file an elevation certification approved by the local community permit official, registered professional engineer, architect, or surveyor indicating elevation of the surrounding grade or lowest habitable floor (including basement) of all new residential structures. This information shall be maintained to indicate compliance with Federal Emergency Management Agency (FEMA) regulations.*

The proposed amendments clarify that a floodplain development permit is required for ANY development in the floodplain, including fill. They also clarify the requirements for elevation certificates.

Policy 8: *For construction, remodeling, or major repairs to structures (including prefabricated and mobile homes) within the floodplain, review building permits to ensure that: (a) Building location and grading are designed to protect the structure during a base year flood; (b) Construction materials and utility equipment are resistant to flood damage; (c) Construction methods and practices will minimize flood damage; (d) Where appropriate, structures are designed or modified to prevent flotation, collapse, or lateral movement of the structure.*

The proposed amendments include building standards and requirements that are consistent with this policy.

Policy 9: *Development approval within the flood fringe shall be reviewed to protect property and public safety and significant natural values.*

The proposed amendments include a new floodplain development permit process that will expand the types of development in the floodplain that will be reviewed relative to protection of property and public safety.

1.2 Albany Comprehensive Plan, Chapter 8–Urbanization (Statewide Planning Goal 14)–Development Review:

Goal: *Ensure that all new developments are reviewed expeditiously.*

Policy 3: *Give special attention to proposals in areas identified as in need of special review (greenway, floodplains, floodways, open space, airport, etc), ensuring that developments in these areas are specially designed in recognition of the particular concern for that area.*

The proposed amendments provide construction and design guidelines that are intended to minimize the impact of development in the floodplain.

1.3 Albany Comprehensive Plan, Chapter 8–Urbanization (Statewide Planning Goal 14)–North Albany Planning Area–Natural and Cultural Resources:

Policy 1: *Minimize potential impacts to riparian vegetations, stream hydrology, and adjacent land uses.*

Policy 2: *Protect wetlands, floodplains, riparian corridors and other critical natural resources.*

The proposed amendments are intended to minimize impacts to stream hydrology and protect floodplains to the extent possible by managing development in the floodplain.

CONCLUSIONS

- 1.1 The proposed amendments better achieve the goals and policies of Chapter 2 related to flood hazards by clarifying and strengthening existing regulations, ensuring the City is in compliance with NFIP, and expanding the types of development in the floodplain that will be reviewed relative to protection of property and public safety.
 - 1.2 The proposed amendments better achieve the goals and policies of Chapter 8 related to development review and North Albany by providing design guidelines and restrictions that minimize the impacts of development in the floodplain.
- (2) *The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.*

The applicable Development Code policies and purposes are identified in *italic* type.

FINDINGS OF FACT

- 2.1 ADC Article 1–General Administration–Section 1.020 says *the general purpose of this Code is to set forth and coordinate City regulations governing the development and use of land. The Code is more specifically intended to do the following:*

- (1) *Serve as the principal vehicle for implementation of the City's Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.*

The proposed amendments are intended to manage development in the floodplain in a way that promotes public and environmental health and safety and minimizes economic loss and social disruption caused by flood events.

- (2) *Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.*

The proposed amendments bring us into compliance with NFIP and Statewide Planning Goal 7.

- (3) *Facilitate prompt review of development proposals and the application of clear and specific standards.*

The proposed amendments clarify NFIP requirements, provide exemptions for smaller scale projects, and include development standards for fences, other structures, fill, and the storage of materials.

- (4) *Provide for public information, review, and comment on development proposals that may have a significant impact on the community.*

On July 19, notices of public hearings were sent to over 1,000 owners of properties that contain the 100-year floodplain per the updated FEMA maps. The proposed Development Code amendments were posted on the City's Web site on July 20, 2010. A notice of public hearing was published in the *Albany Democrat-Herald* on August 1, 2010.

- (6) *Establish procedures and standards requiring that the design of site improvements and building improvements (are) consistent with applicable standards and design guidelines.*

The proposed floodplain development permit process will ensure that development in the floodplain will be reviewed against the floodplain standards as well as other applicable sections of the Code.

- (8) *Require that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards, as well as prevent the spread of blight, and help prevent crime.*

The intent of the proposed amendments is to manage development in the floodplain in order to promote public and environmental health and safety and to minimize the economic loss and social disruption caused by flood events.

(10) *Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests in making land use decisions.*

The proposed amendments include a description of the FEMA process for removing property from the floodplain, as well as provisions for exemptions and variances. The amendments are intended to minimize impacts of development in the floodplain to all properties in and near flood hazard areas. Above the minimum NFIP requirements, three additional amendments are included that will increase the discount on flood insurance available inside the Albany city limits – siting critical facilities outside the 100-year floodplain, changing definition of 'substantial improvements,' and requiring a nonconversion agreement for areas in homes that are below base flood elevation. The impact to property owners of these amendments is minimal, and the benefits will be passed on to all flood insurance holders through discounted insurance rates.

2.2 ADC Article 6–Floodplain–Section 6.070 states that *it is the purpose of these regulations to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas.*

The proposed amendments strengthen existing regulations, which are intended to promote public and environmental health and safety and minimize the economic loss and social disruption caused by flooding.

CONCLUSIONS

2.1 The proposed amendments are consistent Article 1–General Administration–Purpose by protecting public health and safety, complying with the federal requirements of NFIP, providing standards for development in the floodplain, and notifying the public and property owners of the proposed amendments.

2.2 The proposed amendments are consistent Article 6–Floodplain–Purpose because they strengthen the existing floodplain development regulations, which are intended to promote public and environmental health and safety and minimize the economic loss and social disruption caused by flooding.