



**City of Willamina  
Planning Commission & City Council  
Work Session**

Tuesday February 25, 2025, 6:00 p.m.  
West Valley Fire Station  
825 NE Main Street  
Willamina, OR 97396

In-person attendance is allowed at the Planning Commission Meeting. The city also provides access via the Zoom platform. Zoom access information is available at the end of this Agenda.

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. FLAG SALUTE**
- IV. AGENDA ADDITIONS, DELETIONS, AND CORRECTIONS**
- V. REGULAR AGENDA**
  - a. Stormwater Maintenance Agreement
  - b. FEMA NFIP
  - c. Commission and Council Roles and Ethics
- IX. ADJOURN**

Comments may be given verbally via Zoom, in-person, or submitted to the Deputy City Recorder at [stevensk@ci.willamina.or.us](mailto:stevensk@ci.willamina.or.us) in advance of the meeting.

**Join The Webinar:**

<https://us02web.zoom.us/j/82672912699>

Webinar ID: 826 7191 2699

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Next Planning Commission Meeting March 25, 2025

THIS IS AN OPEN PUBLIC MEETING

*Persons with hearing, visual or manual impairments who wish to participate in the meeting should contact the City of Willamina at least 48 hours prior to the meeting date in order that appropriate communication assistance can be arranged. The City of Willamina Council meetings are accessible to the disabled. Please let us know if you need any special accommodations to attend this meeting. Contact Deputy City Recorder Krystal Stevens at [stevensk@ci.willamina.or.us](mailto:stevensk@ci.willamina.or.us) or call 503-876-2242.*

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February 21, 2025

City of Willamina  
411 NE C St, Willamina, OR 97396

**Re: Proposed Modifications to the WDC for Compliance with New FEMA-NFIP Floodplain Management Policies**

Dear Members of Willamina's City Council & Planning Commission,

I am writing to provide a professional recommendation regarding the long-term maintenance of new stormwater facilities constructed as part of new subdivision development.

**Introduction**

This memo outlines proposed modifications to the Willamina Development Code (WDC) to better align it with the NFIP Model Floodplain Management Ordinance from FEMA. These changes aim to ensure compliance with federal and state requirements and to protect the built environment from flood damage while minimizing potential impacts on public health and safety, property, water quality, and aquatic and riparian habitats.

The Federal Emergency Management Agency (FEMA) developed this model ordinance to address the requirements outlined in the Draft Implementation Plan for National Flood Insurance Program (NFIP)-Endangered Species Act (ESA) Integration in Oregon. The National Marine Fisheries Service (NMFS) issued a Biological Opinion (BiOp) in 2016, recommending changes to the implementation of the NFIP in Oregon to protect listed species and their habitats. As a result, communities are required to demonstrate how floodplain development complies with the Endangered Species Act (ESA) while the 2024 Draft Implementation Plan undergoes an Environmental Impact Statement (EIS).

The 2024 model ordinance provides tools for communities to implement "Path A" of the Draft Implementation Plan and serves as one of three actions a community can take under Pre-Implementation Compliance Measures (PICM). It includes provisions to protect floodplain functions such as flood storage, water quality, and vegetation, ensuring no net loss of these functions through mitigation measures.

**Key Points from the Model Ordinance**

1. **No Net Loss Standards:** Ensuring no net loss of floodplain functions, including undeveloped space, impervious surfaces, and large trees.
2. **Stormwater Management:** Implementing requirements for water quality and quantity treatment to manage stormwater runoff.
3. **Riparian Buffer Zone (RBZ):** Defining and protecting RBZs to maintain habitat and floodplain functions.

4. **Specific Standards for Different Flood Zones:** Providing tailored standards for riverine and coastal high hazard areas.
5. **Administration and Permits:** Clarifying the duties of the Floodplain Administrator and the permit review process.
6. **Variances and Appeals:** Criteria for granting variances and proper documentation and notification.

### **Proposed Modifications to the WDC**

To align the WDC with the model ordinance, the following high-level additions or modifications are recommended:

#### **B. Definitions**

Expand the definitions section to include:

- **No Net Loss:** A standard requiring that adverse impacts to floodplain functions are avoided or offset so that there is no net change in function from the existing condition.
- **Riparian Buffer Zone (RBZ):** The area adjacent to water bodies that provides critical habitat and floodplain functions, measured from the ordinary high-water line to 170 feet horizontally on each side of the stream.
- **Ordinary High Water Line:** The line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
- Other relevant definitions as needed to cover all terms used.

#### **C. General Provisions**

##### **3. No Net Loss Standards**

- **Undeveloped Space:** Development proposals shall not reduce the fish-accessible and egress-able undeveloped space within the special flood hazard area (SFHA). Lost undeveloped space must be replaced with compensatory volume based on the ratio in Table 1 (from the model ordinance) and at the same flood level at which the development causes an impact.
- **Impervious Surfaces:** Development proposals shall not result in a net increase in impervious surface area within the SFHA. Mitigation can be achieved through low impact development (LID) or green infrastructure.
- **Trees:** Development proposals shall result in no net loss of trees 6 inches diameter at breast height (dbh) or greater within the SFHA. Replacement trees must be native species that would occur naturally in the Level III ecoregion of the impact area.
- **Exemptions:** Certain activities are exempt from the no net loss standards, including:
  - Normal maintenance of structures, such as re-roofing and replacing siding, provided there is no change in the footprint or expansion of the roof of the structure.
  - Routine maintenance of landscaping that does not involve grading, excavation, or filling.
  - Routine agricultural practices such as tilling, plowing, harvesting, soil amendments, and ditch cleaning that does not alter the ditch configuration.

- Removal of noxious weeds and hazard trees, and replacement of non-native vegetation with native vegetation.

#### **4. Stormwater Management**

- **Water Quality Treatment:** Implement water quality treatment for post-construction stormwater runoff from any net increase in impervious area.
- **Water Quantity Treatment:** Require retention/detention facilities to limit discharge to match pre-development peak discharge rates and treat stormwater to remove at least 80% of suspended solids.

#### **5. Riparian Buffer Zone (RBZ)**

- **Mitigation Requirements:** Any development within the RBZ must achieve no net loss of floodplain functions and include beneficial gain standards.

#### **6. Floodway Encroachments**

- Prohibit encroachments within the floodway unless it is demonstrated that there will be no increase in flood levels.

### **Conclusion**

I look forward to discussing these recommendations further and working together to implement these changes.

Sincerely,

Peter Olsen, PE  
Austin Emerick, EI  
KELLER ASSOCIATES, INC.



February 21, 2025

City of Willamina  
411 NE C St, Willamina, OR 97396

**Re: Long-Term Stormwater Maintenance Recommendations**

Dear Members of Willamina's City Council & Planning Commission,

I am writing to provide a professional recommendation regarding the long-term maintenance of new stormwater facilities constructed as part of new subdivision development.

**Recommended Revisions to the Willamina Development Code**

The recently constructed Ridgeview Subdivision features stormwater detention pipes. The maintenance for this system was taken on by the City as they are located within the public right-of-way, while other proposed subdivisions have had pipes on private property. While detention pipes offer benefits such as efficient use of space and reduced routine maintenance, they still require annual inspections and do not provide the same type of water quality treatment as detention ponds, which the City prefers. Detention ponds, although requiring regular mowing and maintenance, offer better water quality treatment and comparable detention properties.

The Public Works Director, Jeff Brown, recommends that future developments that include stormwater detention and quality infrastructure include maintenance agreements, ensuring that developers, some kind of property owner group, or other responsible parties handle maintenance. We support Jeff's request.

To address these concerns and prevent similar issues in future developments, we propose amending the Willamina Development Code (WDC). Specifically, we recommend that all future developments include an operation and maintenance agreement, unless constructed to City standards and explicitly accepted by the City for maintenance. The default responsibility for maintenance should rest with the property owner, developer, or HOA.

**Recommendation for the City to Consider Implementing a Long-Term Stormwater Utility**

The most sustainable long-term solution would be the implementation of a stormwater utility. This utility would generate ongoing revenue generated from single family residential, commercial, and industrial properties, specifically for the operation and maintenance of stormwater infrastructure. Currently, the City only imposes a stormwater system development charge, a one-time fee assessed at the time of development or at the time building permits are issued, which funds capital improvement projects but not ongoing maintenance. Implementing a stormwater utility would necessitate updating the City's Stormwater Master Plan (from 1999) to accurately assess the current system and recommend a utility rate.

**Conclusions**

The Planning Commission should consider whether this is a concern that should be elevated to City Council. If so, the Planning Commission may make a motion directing staff to present the issue to the City Council. The Council can then determine whether they want to initiate a Legislative Amendment (LA) process, because that would involve costs of staff time.

We respectfully request the Planning Commission support these proposed changes to the WDC and collaborate with us to implement them before approving any further developments. This proactive approach will help ensure the sustainability and efficiency of the city's stormwater system.

We look forward to working together to achieve these important goals.

Sincerely,

Peter Olsen, PE  
Austin Emerick, EI  
KELLER ASSOCIATES, INC.

Addition to WDC section 2.204

## **Section 2.204.5 - Maintenance of Stormwater Facilities**

### **A. Responsibility for Maintenance**

1. **Public Stormwater Facilities:** The developer is responsible for the operation and maintenance of public stormwater facilities unless the facility is constructed by the City of Willamina as part of the development.
2. **Private Stormwater Facilities:** The persons owning, operating, or occupying property upon which private stormwater facilities are located is responsible for the operation and maintenance of the private stormwater facilities. Developers must ensure long-term maintenance of private stormwater facilities either through the creation of a Homeowners Association (HOA) or some other mechanism that will ensure ongoing maintenance of private stormwater facilities.

### **B. Conditions for City Assumption of Responsibility**

1. The City of Willamina may assume responsibility for operating and maintaining a stormwater facility under certain conditions. Until the City assumes responsibilities, the person owning, operating, or occupying the property remains responsible for operation and maintenance.
2. Any stormwater facility to be operated and maintained by the City must comply with the Willamina Development Code and the Public Works Design Standards.
3. The City will assume responsibility for operating and maintaining stormwater facilities only after the design and construction requirements have been fully met, as determined by the City through submitted documentation and on-site inspection. The City may require remedies for unsatisfactory design, construction, or maintenance activities as a condition of assuming responsibility for the stormwater facility. After final approval and acceptance of a stormwater facility, the City will assume maintenance activities.
4. The decision to assume responsibility for a stormwater facility is at the sole discretion of the City Engineers and the Public Works Director, even if the above conditions are met.

### **C. Operating and Maintaining Private Stormwater Facilities**

Persons or HOAs responsible for operating and maintaining a private stormwater facility within a development must:

1. Periodically inspect the stormwater facility to ensure it is in proper operation for effective pollutant removal, infiltration, and/or flow control.
2. Maintain a record of the construction of, and all inspection, maintenance, and repair activities to, the stormwater facility.
3. Make plans, records, procedures, and schedules of maintenance available to the Public Works Director during inspection of the stormwater facility, and at other reasonable times upon request of the Public Works Director.



4. If a change of ownership of the stormwater facility occurs, transfer all records of installation, inspection, repair, and maintenance of the stormwater facility to the new property owner.
5. Inform future purchasers and other successors and assignees of:
  - The existence of the stormwater facility.
  - The requirements for continued inspection and maintenance of the stormwater facility.

#### **D. Private Stormwater Facility Agreement**

A Private Stormwater Facility Agreement is required for any development that includes the construction of a stormwater facility that will be privately operated and maintained. The agreement must be submitted as part of the development permit application process. At a minimum, the agreement must:

1. Provide the property address and contact information for the property owner.
2. Document the number, types, and locations of stormwater facilities.
3. Establish the responsibility of the owner to inspect, operate, and maintain stormwater facilities in accordance with approved standards.
4. Identify the maintenance and operating standards and activities that will be implemented to ensure long-term functioning of the stormwater facilities.
5. Grant the City access for the purpose of inspecting stormwater facilities and, in the event any deficiencies are not corrected in a timely manner by the owner, for the purpose of correcting deficiencies.
6. Grant the City access if the City has reasonably determined that emergency measures are necessary to remedy a threat to public health, safety, or welfare caused by stormwater facilities.

#### **E. Minimum Requirements for Operations and Maintenance**

The City will provide Stormwater Facility Maintenance Forms for all developers which Stormwater Facility Maintenance Forms contain minimum requirements for inspection, maintenance, and repair activities for stormwater facilities. These forms provide a means to document required activities. For any stormwater facility not addressed under this Section 204.5, a maintenance form or similar documentation must be provided to the Public Works Director describing operating standards, maintenance activities, condition criteria, and schedules that will be implemented to ensure long-term functioning of the stormwater facility.

#### **F. City Intervention for Maintenance**

1. If a stormwater facility is not maintained to the proper standard, the City of Willamina has the authority to perform the necessary maintenance.
2. The cost of such maintenance performed by the City will be billed to the responsible party.
3. If the bill is not paid within the specified time frame, the cost will become a lien on the property or properties associated with the stormwater facility.



NFIP Oregon Implementation Program Guidance

# Model Floodplain Management Ordinance

For Participating Communities in the  
Implementation Plan Area



**FEMA**

Federal Emergency Management Agency  
Region 10  
Department of Homeland Security  
130 - 228<sup>th</sup> Street SW  
Bothell, WA 98021

Note to Communities: This document presents the draft model ordinance that for the Pre-Implementation Compliance Measures and is intended to closely represent most of the language that will be presented as Pathway A of the Draft Implementation Plan. It is built off the 2020 State of Oregon Model Flood Hazard Management Ordinance and the 2018 iteration of the Oregon Model ordinance for ESA Integration. It reflects the NMFS 2016 Biological Opinion (BiOp) (except where noted) and is informed by the 2023 NEPA Scoping effort.

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## Acronyms and Abbreviations

BiOp	Biological Opinion
CFR	Code of Federal Regulations
CLOMR	Conditional Letter of Map Revision
CRS	Community Rating System
dbh	diameter breast height
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
LID	Low-Impact Development
LOMR	Letter of Map Revision
MHHW	Marine Higher-High Water line
NFIP	National Flood Insurance Program
NMFS	National Marine Fisheries Service
OHWL	Ordinary High Water Mark
ORS	Oregon Revised Statutes
ORSC	Oregon Residential Specialty Code
OSSC	Oregon Structural Specialty Code
RBZ	Riparian buffer zone
SFHA	Special Flood Hazard Area
TB	Technical Bulletin

# SECTION 1. Introduction

FEMA has developed this model flood hazard management ordinance (“2024 model ordinance”) to address the requirements outlined in the Draft Implementation Plan for National Flood Insurance Program (NFIP)-Endangered Species Act (ESA) Integration in Oregon (“Oregon Implementation Plan”). The Federal Emergency Management Agency (FEMA) consulted with the National Marine Fisheries Service (NMFS) on potential effects of the implementation of the NFIP in Oregon on listed species under NMFS authority. In 2016, NMFS issued a Biological Opinion (BiOp), which recommended changes to the implementation of the NFIP in Oregon within the plan area (see the 2024 Draft Oregon Implementation Plan for NFIP-ESA Integration [2024 Draft Implementation Plan] for a description of the plan area).

As a result of the BiOp issued by NMFS, communities are required to demonstrate how floodplain development is compliant with the Endangered Species Act in the SFHA while the 2024 Draft Implementation Plan undergoes an Environmental Impact Statement (EIS). The 2024 model ordinance provides the tools a community would need to implement “Path A” of the 2024 Draft Implementation Plan and serves as one of three actions a community can take under Pre-Implementation Compliance Measures (PICM).

The regulatory language contained within the 2024 model ordinance can be adopted verbatim and incorporated into local floodplain and land use regulations, or a community may select those sections that are missing from its current floodplain ordinance and adopt those sections. The State of Oregon’s Model Flood Hazard Management Ordinance (2020) was used as a starting point, with additions to provide compliance with the Oregon Implementation Plan. The additional sections are clearly noted with yellow highlighting to simplify implementation for Oregon communities in the plan area that have already adopted the Oregon Model Flood Hazard Management Ordinance (2020).

This 2024 model ordinance provides a set of provisions to protect the built environment from flood damage and to minimize potential impacts of construction and reconstruction on public health and safety, property, water quality, and aquatic and riparian habitats. The requirements pertain to new development in Special Flood Hazard Area (see definitions), which includes the maintenance, repair, or remodel of existing structures and utilities when the existing footprint is expanded and/or the floodplain is further encroached upon.

The Oregon Implementation Plan and this model ordinance do not change the definition of development in 44 Code of Federal Regulations [CFR] 59.1.

“Development” is defined as “any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.” (44 C.F.R. 59.1)

The 2024 model ordinance provides compliance with federal and state statutes and with the Oregon Implementation Plan. The 2024 model ordinance conforms to the following:

- 37 1. The requirements of the NFIP, as specified in 44 CFR 59 and 60.
- 38 2. Oregon State codes to protect structures from flood damage that are specified in Oregon  
39 Structural Specialty Code (OSSC), Section 1612 and Oregon Residential Specialty Code  
40 (ORSC), Section R322.
- 41 3. Oregon Statewide Land Use Planning Goals
- 42 4. Provisions needed to meet the requirements of the Oregon Implementation Plan for NFIP-ESA  
43 Integration. These sections are highlighted in yellow in the model ordinance.

44 This 2024 model ordinance provides communities with ordinance language that complies with the  
45 NFIP-ESA Integration Implementation Plan. Adoption of the ordinance language will ensure  
46 compliance with the minimum standards for participation in the NFIP in the plan area in Oregon.  
47 Prior to adoption of the ordinance language, communities must have their locally proposed draft  
48 language reviewed by FEMA and/or the Oregon Department of Land Conservation and Development.

49 The model flood hazard ordinance includes standards and provisions that encourage sound  
50 floodplain management. The language is based on the minimum requirements of the NFIP found in  
51 44 CFR 59 and 60, Oregon's statewide land use planning Goal 7, and Oregon specialty codes. The  
52 new language added to the state model floodplain ordinance, highlighted in yellow, provides  
53 compliance with the ESA for floodplain development in the plan area.

54 Adherent to the NMFS 2016 Biological Opinion, mitigation is necessary to ensure a no net loss in  
55 floodplain functions. FEMA's 2024 Draft Oregon Implementation Plan identifies proxies that provide  
56 measurable actions that can prevent the no net loss of the parent floodplain functions. These  
57 proxies include undeveloped space, pervious surfaces, and trees to account for a no net loss in  
58 respective floodplain functions of floodplain storage, water quality, and vegetation. Mitigation of  
59 these proxies must be completed to ensure compliance with no net loss standards. No net loss  
60 applies to the net change in floodplain functions as compared to existing conditions at the time of  
61 proposed development and mitigation must be addressed to the floodplain function that is receiving  
62 the detrimental impact.

### 63 **1.1. How to Use this Document**

64 This 2024 model ordinance includes a Table of Contents and a Regulatory Crosswalk that identifies  
65 the federal and state standards that align to and are reflected in each section. Communities will  
66 need to review their ordinances and ensure that all the required components are included.

67 Please refer to [FEMA's website](#) for information on how to determine whether or not your community  
68 is within the plan area.

### 69 1.1.1. ORDINANCE LANGUAGE LEGEND:

70 The colors are used in the text in the model ordinance to denote specific actions or sections with  
71 specific applicability.

- 72 • Black: Represents the existing NFIP and current state minimum requirements that are found  
73 in the 2020 Oregon Model Flood Hazard Management Ordinance.
- 74 • Red: Represents language that must be replaced with community specific information. Only  
75 include the appropriate language for your community.
- 76 • Purple: Represents language required for communities with Coastal High Hazard Areas  
77 mapped by FEMA (V Zones or Coastal A Zones). (DELETE ALL PURPLE LANGUAGE IF NOT A  
78 COASTAL COMMUNITY).
- 79 • Blue: Represents hyperlinks to other sections of the document or external websites.
- 80 • Yellow highlighting: Represents new ordinance language not in the 2020 Oregon Model Flood  
81 Hazard Management Ordinance. Communities that have previously adopted the state model  
82 ordinance may focus on the yellow highlighted sections.

### 83 1.2. Changes from the 2020 Oregon Model Flood Hazard Management 84 Ordinance

85 This 2024 version of the Oregon Model Flood Hazard Ordinance (to be referred to herein as the  
86 “2024 Model Ordinance”), varies from the 2020 Oregon Model Flood Hazard Management  
87 Ordinance. with the addition of new content to be included for ESA compliance for NFIP-participating  
88 communities in the plan area. If no part of the Special Flood Hazard Area (SFHA) in your NFIP-  
89 participating community is in the Oregon NFIP-ESA Integration plan area, your community may  
90 continue to use the 2020 Oregon Model Flood Hazard Management Ordinance.

91 In general, the ordinance was revised to ensure that the implementation of the NFIP-ESA integration  
92 no net loss standards avoids or offsets adverse impacts on threatened and endangered species and  
93 their critical habitat. A summary of the primary changes found in the 2024 model ordinance is  
94 provided below:

- 95 1. New language has been added to incorporate the following no net loss standards:
  - 96 a. No net loss of undeveloped space (see Section 6.1.1).
  - 97 b. No net loss of pervious surface. (see Section 6.1.2).
  - 98 c. No net loss of trees equal to or greater than 6 inches dbh (i.e., tree diameter  
99 measured at 4.5 feet from the ground surface). (see Section 6.1.3).



- 100 2. Some definitions (see 2.0) have been added to provide context for the new no net loss  
101 standards from the Oregon Implementation Plan.
- 102 3. Language has been added:
- 103 a. (see 6.3) to address activities that may require a floodplain development permit but  
104 are exempt from the no net loss requirement per the BiOp.
- 105 b. (see 6.4) to address the specific requirements of the Riparian Buffer Zone (RBZ).
- 106 4. In general, the language in the 2024 model ordinance mirrors the language from the 2020  
107 Oregon Model Flood Hazard Management Ordinance. Minor edits to the 2020 language have  
108 been made for clarity, punctuation, and grammar.

### 109 1.3. Community Rating System

110 Implementation of the new no net loss standards related to NFIP-ESA integration may be eligible for  
111 credit under the Community Rating System (CRS). The CRS is explained further in CRS Credit for  
112 Habitat Protection, available online at: [https://crsresources.org/files/guides/crs-credit-for-habitat-  
113 protection.pdf](https://crsresources.org/files/guides/crs-credit-for-habitat-protection.pdf), and the 2017 CRS Coordinators' Manual, available online at:  
114 [https://www.fema.gov/sites/default/files/documents/fema\\_community-rating-system\\_coordinators-  
115 manual\\_2017.pdf](https://www.fema.gov/sites/default/files/documents/fema_community-rating-system_coordinators-manual_2017.pdf), and the 2021 Addendum to the 2017 CRS Coordinator's Manual, available  
116 online at: [https://www.fema.gov/sites/default/files/documents/fema\\_community-rating-  
117 system\\_coordinator-manual\\_addendum-2021.pdf](https://www.fema.gov/sites/default/files/documents/fema_community-rating-system_coordinator-manual_addendum-2021.pdf). The Association of State Floodplain Managers'  
118 Green Guide, also provides useful information on development techniques that avoid impacts on  
119 natural functions and values of floodplains. This document is available at:  
120 [www.floodsciencecenter.org/products/crs-community-resilience/green-guide/](http://www.floodsciencecenter.org/products/crs-community-resilience/green-guide/). Communities  
121 interested in CRS credits should contact their CRS specialist for additional information and review.

122 Implementation of the no net loss standards would most likely contribute to credits under the  
123 following CRS activities:

- 124 • Activity 430 Higher Regulatory Standards
- 125 ○ Development Limitations
- 126 ■ Prohibition of all fill (DL1a): This credit is for prohibiting all filling in the regulatory  
127 floodplain. To meet this standard, communities may NOT approve Conditional  
128 Letters or Letters of Map Revision based on Fill (CLOMR-F or LOMR-F). If a  
129 CLOMR-F or LOMR-F is issued for a property in a community, then DL1 credit will  
130 be denied. This applies to CLOMRs and LOMRs that include filling as part of the  
131 reason for requesting a map change. Minor filling may be allowed where needed  
132 to protect or restore natural floodplain functions, such as part of a channel  
133 restoration project.

- 134
- 135
- 136
- 137
- 138       ▪ The CRS manual describes a number of regulatory approaches that do not  
139       warrant credit under DL1; however, because the Oregon NFIP-ESA integration no  
140       net loss standards exceed the approaches described in the manual, a community  
141       meeting the Oregon no net loss standards should qualify for credit under DL1.
  
  - 142       ▪ Compensatory storage (DL1b): This credit is for regulations that require new  
143       development to provide compensatory storage at hydraulically equivalent sites up  
144       to a ratio of 1.5:1. Credit is not provided for:
    - 145           • Compensatory storage requirements in floodways only or in V Zones only,  
146           or
    - 147           • Stormwater management regulations that require a developer to  
148           compensate for any increase in runoff created by the development. This  
149           is credited under Activity 450.
  
  - 150       • Activity 450 Stormwater Management
    - 151           ○ Stormwater management regulations (SMR – 452a): This credit is the sum of four  
152           sub-elements: Size of development (Section 452.a(1), SZ); design storm used (Section  
153           452.a(2), DS); low-impact development (LID) regulations (Section 452.a(3), LID); and  
154           public agency authority to inspect and maintain, at the owner’s expense, private  
155           facilities constructed to comply with the ordinance (Section 452.a.(4), PUB).
  
    - 156           ▪ LID credits the community’s regulatory language that requires the  
157           implementation of LID techniques to the maximum extent feasible to control  
158           peak runoff when new development occurs. LID techniques can significantly  
159           reduce or eliminate the increase in stormwater runoff created by traditional  
160           development, encourage aquifer recharge, and promote better water quality.

1

## SECTION 2. Regulatory Crosswalk

2 The following table presents a crosswalk of the model ordinance sections against the relevant  
 3 federal and state laws, regulations, and policies. The new sections related to the Oregon NFIP-ESA  
 4 integration implementation (yellow highlighted sections of the model ordinance) are not listed in this  
 5 table and are related to compliance with the ESA.

Ordinance Section	44 CFR and Technical Bulletin (TB) Citation(s)	State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS])
1.1 Statutory Authorization	59.22(a)(2)	Goal 7; ORS 203.035 (Counties), ORS 197.175 (Cities)
1.2 Findings of Fact	59.22(a)(1)	Goal 7
1.3 Statement of Purpose	59.2; 59.22(a)(1) and (8); 60.22	Goal 7
1.4 Methods of Reducing Flood Losses	60.22	Goal 7
2.0 Definitions	59.1; 33 CFR 328.3(c)(7)	Goal 7
3.1 Lands to Which this Ordinance Applies	59.22(a)	Goal 7
3.2 Basis for Establishing the Special Flood Hazard Areas	59.22(a)(6); 60.2(h)	Goal 7
3.3 Coordination with Specialty Codes Adopted by the State of Oregon Building Codes Division		ORS 455
3.4.1 Compliance	60.1(b) – (d)	Goal 7
3.4.2 Penalties for Noncompliance	60.1(b) – (d)	Goal 7
3.5.1 Abrogation	60.1(b) – (d)	Goal 7
3.5.2 Severability		
3.6 Interpretation	60.1(b) – (d)	Goal 7
3.7.1 Warning		
3.7.2 Disclaimer of Liability		
4.1 Designation of the Floodplain Administrator	59.22(b)(1)	Goal 7
4.2.1 Permit Review	60.3(a)(1) – (3); 60.3(c)(10)	Goal 7
4.2.2 Information to be Obtained and Maintained	59.22(a)(9)(iii); 60.3(b)(5)(i) and (iii); 60.3(c)(4); 60.3(b)(3); 60.6(a)(6)	Goal 7; 105.9; 110.33; R106.1.4; R109.1.3; R109.1.6.1; R322.1.10; R322.3.6

## Regulatory Crosswalk

Ordinance Section	44 CFR and Technical Bulletin (TB) Citation(s)	State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS])
4.2.3.1 Community Boundary Alterations	59.22(a)(9)(v)	Goal 7
4.2.3.2 Watercourse Alterations	60.3(b)(6) – (7), 65.6(12-13)	Goal 7
4.2.3.3 Requirement to Submit New Technical Data	65.3, 65.6, 65.7, 65.12	Goal 7
4.2.4 Substantial Improvement and Substantial Damage Assessments and Determinations	59.1; 60.3(a)(3); 60.3(b)(2); 60.3(b)(5)(i); 60.3(c)(1), (2), (3), (5) – (8), (10), (12); 60.3(d)(3); 60.3(e)(4), (5), (8)	Goal 7
4.3.1 Floodplain Development Permit Required	60.3(a)(1)	Goal 7
4.3.2 Application for Development Permit	60.3(a)(1); 60.3(b)(3); 60.3(c)(4)	Goal 7; Oregon Residential Specialty Code (R) 106.1.4; R322.3.6
4.4 Variance Procedure	60.6(a)	Goal 7
4.4.1 Conditions for Variances	60.6(a)	Goal 7
4.4.2 Variance Notification	60.6(a)(5)	Goal 7
5.1.1 Alteration of Watercourses	60.3(b)(6) and (7)	Goal 7
5.1.2 Anchoring	60.3(a)(3); 60.3(b)(1), (2), and (8)	Goal 7; R322.1.2
5.1.3 Construction Materials and Methods	60.3(a)(3), TB 2; TB 11	Goal 7; R322.1.3; R322.1.3
5.1.4.1 Water Supply, Sanitary Sewer, and On-Site Waste Disposal Systems	60.3(a)(5) and (6)	Goal 7; R322.1.7
5.1.4.2 Electrical, Mechanical, Plumbing, and Other Equipment	60.3(a)(3)	Goal 7; R322.1.6;
5.1.5 Tanks		R322.2.4; R322.3.7
5.1.6 Subdivision Proposals	60.3(a)(4)(i) – (iii); 60.3(b)(3)	Goal 7
5.1.7 Use of Other Base Flood Data	60.3(a)(3); 60.3(b)(4); 60.3(b)(3); TB 10-01	Goal 7; R322.3.2
5.1.8 Structures Located in Multiple or Partial Flood Zones		R322.1
5.2.1 Flood Openings	60.3(c)(5); TB 1; TB 11	Goal 7; R322.2.2;

## Regulatory Crosswalk

Ordinance Section	44 CFR and Technical Bulletin (TB) Citation(s)	State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS])
		R322.2.2.1
5.2.2 Garages	TB 7-93	R309
5.2.3.1 Before Regulatory Floodway	60.3(c)(10)	Goal 7
5.2.3.2 Residential Construction	60.3(c)(2)	Goal 7
5.2.3.3 Non-residential Construction	60.3(c)(3) - (5); TB 3	Goal 7; R322.2.2; R322.2.2.1
5.2.3.4 Manufactured Dwellings	60.3(b)(8); 60.3(c)(6)(iv); 60.3(c)(12)(ii)	Goal 7; State of OR Manufactured Dwelling Installation Specialty Code (MDISC) and associated statewide Code Interpretation dated 1/1/2011
5.2.3.5 Recreational Vehicles	60.3(c)(14)(i) - (iii)	Goal 7
5.2.3.6 Appurtenant (Accessory) Structures	60.3(c)(5); TB 1; TB 7-93	Oregon Structural Specialty Code (S) 105.2; R105.2
5.2.4 Floodways	60.3(d); FEMA Region X Fish Enhancement Memo (Mark Riebau)	Goal 7
5.2.5 Standards for Shallow Flooding Areas	60.3(c)(7), (8), (11), and (14)	Goal 7
5.3 Specific Standards for Coastal High Hazard Flood Zones, and 5.3.1 Development Standards	60.3(e); TB 5; TB 8; TB 9	Goal 7; R322.3.1; R322.3.2; R322.3.3; R322.3.4; R322.3.5
5.3.1.1 Manufactured Dwelling Standards for Coastal High Hazard Zones	60.3(e)(8)(i) - (iii)	Goal 7; RR322.3.2; State of OR Manufactured Dwelling Installation Specialty Code (MDISC) and associated statewide Code Interpretation dated 1/1/2011

**Regulatory Crosswalk**

Ordinance Section	44 CFR and Technical Bulletin (TB) Citation(s)	State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS])
5.3.1.2 Recreational Vehicle Standards for Coastal High Hazard Zones	60.3(e)(9)(i)- (iii)	Goal 7
5.3.1.3 Tank Standards for Coastal High Hazard Zones		R322.2.4; R322.3.7

\*[Link to Oregon Specialty Codes \(https://www.oregon.gov/bcd/codes-stand/Pages/adopted-codes.aspx\)](https://www.oregon.gov/bcd/codes-stand/Pages/adopted-codes.aspx)

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# SECTION 3. Model Ordinance Language

## 1.0 STATUTORY AUTHORITY, FINDINGS OF FACT, PURPOSE, AND METHODS

### 1.1 STATUTORY AUTHORIZATION

The State of Oregon has in **ORS 203.035 (COUNTIES) OR ORS 197.175 (CITIES)** delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the **COMMUNITY NAME** does ordain as follows:

### 1.2 FINDINGS OF FACT

- A. The flood hazard areas of **COMMUNITY NAME** **preserve the natural and beneficial values served by floodplains but** are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. These flood losses may be caused by the cumulative effect of obstructions in special flood hazard areas which increase flood heights and velocities, and when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

### 1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in special flood hazard areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Preserve natural and beneficial floodplain functions;**
- D. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- E. Minimize prolonged business interruptions;

- 31 F. Minimize damage to public facilities and utilities such as water and gas mains;  
32 electric, telephone and sewer lines; and streets and bridges located in special flood  
33 hazard areas;
- 34 G. Help maintain a stable tax base by providing for the sound use and development of  
35 flood hazard areas so as to minimize blight areas caused by flooding;
- 36 H. Notify potential buyers that the property is in a special flood hazard area;
- 37 I. Notify those who occupy special flood hazard areas that they assume responsibility  
38 for their actions;
- 39 J. Participate in and maintain eligibility for flood insurance and disaster relief.

40 **1.4 METHODS OF REDUCING FLOOD LOSSES**

41 In order to accomplish its purposes, this ordinance includes methods and provisions for:

- 42 A. Restricting or prohibiting development which is dangerous to health, safety, and  
43 property due to water or erosion hazards, or which result in damaging increases in  
44 erosion or in flood heights or velocities;
- 45 B. Requiring that development vulnerable to floods, including facilities which serve such  
46 uses, be protected against flood damage at the time of initial construction;
- 47 C. Controlling the alteration of natural floodplains, stream channels, and natural  
48 protective barriers, which help accommodate or channel flood waters;
- 49 D. Controlling filling, grading, dredging, and other development which may increase  
50 flood damage;
- 51 E. Preventing or regulating the construction of flood barriers which will unnaturally divert  
52 flood waters or may increase flood hazards in other areas.
- 53 F. Employing a standard of “no net loss” of natural and beneficial floodplain functions.

54 **2.0 DEFINITIONS**

55 Unless specifically defined below, words or phrases used in this ordinance shall be  
56 interpreted so as to give them the meaning they have in common usage.

57 **Appeal:** A request for a review of the interpretation of any provision of this ordinance or a  
58 request for a variance.

59 **Area of shallow flooding:** A designated Zone AO, AH, AR/AO or AR/AH on a community’s  
60 Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of  
61 flooding to an average depth of one to three feet where a clearly defined channel



62 does not exist, where the path of flooding is unpredictable, and where velocity  
63 flow may be evident. Such flooding is characterized by ponding or sheet flow.

64 **Area of special flood hazard:** The land in the floodplain within a community subject to a 1  
65 percent or greater chance of flooding in any given year. It is shown on the Flood  
66 Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR (V, V1-30, VE).  
67 “Special flood hazard area” is synonymous in meaning and definition with the  
68 phrase “area of special flood hazard.”

69 **Base flood:** The flood having a one percent chance of being equaled or exceeded in any  
70 given year.

71 **Base flood elevation (BFE):** The elevation to which floodwater is anticipated to rise during  
72 the base flood.

73 **Basement:** Any area of the building having its floor subgrade (below ground level) on all  
74 sides.

75 **Breakaway wall:** A wall that is not part of the structural support of the building and is  
76 intended through its design and construction to collapse under specific lateral  
77 loading forces, without causing damage to the elevated portion of the building or  
78 supporting foundation system.

79 **Coastal high hazard area:** An area of special flood hazard extending from offshore to the  
80 inland limit of a primary frontal dune along an open coast and any other area  
81 subject to high velocity wave action from storms or seismic sources.

82 **Development:** Any man-made change to improved or unimproved real estate, including  
83 but not limited to buildings or other structures, mining, dredging, filling, grading,  
84 paving, excavation or drilling operations or storage of equipment or materials.

85 **Fill:** Placement of any materials such as soil, gravel, crushed stone, or other materials  
86 that change the elevation of the floodplain. The placement of fill is considered  
87 “development.”

88 **Fish Accessible Space:** The volumetric space available to fish to access.

89 **Fish Egress-able Space:** The volumetric space available to fish to exit or leave from.

90 **Flood or Flooding:**

91 (a) A general and temporary condition of partial or complete inundation of normally  
92 dry land areas from:

93 (1) The overflow of inland or tidal waters.

94 (2) The unusual and rapid accumulation or runoff of surface waters from any  
95 source.

96 (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as  
97 defined in paragraph (a)(2) of this definition and are akin to a river of liquid  
98 and flowing mud on the surfaces of normally dry land areas, as when earth is  
99 carried by a current of water and deposited along the path of the current.

100 (b) The collapse or subsidence of land along the shore of a lake or other body of  
101 water as a result of erosion or undermining caused by waves or currents of water  
102 exceeding anticipated cyclical levels or suddenly caused by an unusually high  
103 water level in a natural body of water, accompanied by a severe storm, or by an  
104 unanticipated force of nature, such as flash flood or an abnormal tidal surge, or  
105 by some similarly unusual and unforeseeable event which results in flooding as  
106 defined in paragraph (a)(1) of this definition.

107 **Flood elevation study:** an examination, evaluation and determination of flood hazards  
108 and, if appropriate, corresponding water surface elevations, or an examination,  
109 evaluation and determination of mudslide (i.e., mudflow) and/or flood-related  
110 erosion hazards.

111 **Flood Insurance Rate Map (FIRM):** The official map of a community, on which the Federal  
112 Insurance Administrator has delineated both the special hazard areas and the  
113 risk premium zones applicable to the community. A FIRM that has been made  
114 available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

115 **Flood Insurance Study (FIS):** See "Flood elevation study."

116 **Floodway:** The channel of a river or other watercourse and the adjacent land areas that  
117 must be reserved in order to discharge the base flood without cumulatively  
118 increasing the water surface elevation more than a designated height. Also  
119 referred to as "Regulatory Floodway."

120 **Functionally Dependent Use:** A use which cannot perform its intended purpose unless it  
121 is located or carried out in proximity to water. The term includes only docking  
122 facilities, port facilities that are necessary for the loading and unloading of cargo  
123 or passengers, and ship building and ship repair facilities, but does not include  
124 long-term storage or related manufacturing facilities.

125 **Green Infrastructure:** Use of natural or human-made hydrologic features to manage  
126 water and provide environmental and community benefits. Green infrastructure  
127 uses management approaches and technologies that use, enhance, and/or  
128 mimic the natural hydrologic cycle processes of infiltration, evapotranspiration,  
129 and reuse. At a large scale, it is an interconnected network of green space that  
130 conserves natural systems and provides assorted benefits to human populations.  
131 At a local scale, it manages stormwater by infiltrating it into the ground where it is  
132 generated using vegetation or porous surfaces, or by capturing it for later reuse.  
133 Green infrastructure practices can be used to achieve no net loss of pervious  
134 surface by creating infiltration of stormwater in an amount equal to or greater  
135 than the infiltration lost by the placement of new impervious surface.

136 **Habitat Restoration Activities:** Activities with the sole purpose of restoring habitats that  
137 have only temporary impacts and long-term benefits to habitat. Such projects  
138 cannot include ancillary structures such as a storage shed for maintenance  
139 equipment, must demonstrate that no rise in the BFE would occur as a result of  
140 the project and obtain a CLOMR and LOMR, and have obtained any other  
141 required permits (e.g., CWA Section 404 permit).

142 **Hazard Trees:** Standing dead, dying, or diseased trees or ones with a structural defect  
143 that makes it likely to fail in whole or in part and that present a potential hazard  
144 to a structure or as defined by the community.

145 **Highest adjacent grade:** The highest natural elevation of the ground surface prior to  
146 construction next to the proposed walls of a structure.

147 **Historic structure:** Any structure that is:

148 (a) Listed individually in the National Register of Historic Places (a listing maintained  
149 by the Department of Interior) or preliminarily determined by the Secretary of the  
150 Interior as meeting the requirements for individual listing on the National  
151 Register;

152 (b) Certified or preliminarily determined by the Secretary of the Interior as  
153 contributing to the historical significance of a registered historic district or a  
154 district preliminarily determined by the Secretary to qualify as a registered  
155 historic district;

156 (c) Individually listed on a state inventory of historic places in states with historic  
157 preservation programs which have been approved by the Secretary of Interior; or

158 (d) Individually listed on a local inventory of historic places in communities with  
159 historic preservation programs that have been certified either:

160 (1) By an approved state program as determined by the Secretary of the Interior  
161 or

162 (2) Directly by the Secretary of the Interior in states without approved programs.

163 **Hydraulically Equivalent Elevation:** A location (e.g., a site where no net loss standards are  
164 implemented) that is approximately equivalent to another (e.g., the impacted  
165 site) relative to the same 100-year water surface elevation contour or base flood  
166 elevation. This may be estimated based on a point that is along the same  
167 approximate line perpendicular to the direction of flow.

168 **Hydrologically Connected:** The interconnection of groundwater and surface water such  
169 that they constitute one water supply and use of either results in an impact to  
170 both.

171 **Impervious Surface:** A surface that cannot be penetrated by water and thereby prevents  
172 infiltration and increases the amount and rate of surface water runoff, leading to  
173 erosion of stream banks, degradation of habitat, and increased sediment loads  
174 in streams. Such surfaces can accumulate large amounts of pollutants that are  
175 then “flushed” into local water bodies during storms and can also interfere with  
176 recharge of groundwater and the base flows to water bodies.

177 **Low Impact Development:** An approach to land development (or redevelopment) that  
178 works with nature to manage stormwater as close to its source as possible. It  
179 employs principles such as preserving and recreating natural landscape features  
180 and minimizing effective imperviousness to create functional and appealing site  
181 drainage that treats stormwater as a resource rather than a waste product. Low  
182 Impact Development refers to designing and implementing practices that can be  
183 employed at the site level to control stormwater and help replicate the  
184 predevelopment hydrology of the site. Low impact development helps achieve no  
185 net loss of pervious surface by infiltrating stormwater in an amount equal to or  
186 greater than the infiltration lost by the placement of new impervious surface. LID  
187 is a subset of green infrastructure.

188 **Lowest floor:** The lowest floor of the lowest enclosed area (including basement). An  
189 unfinished or flood resistant enclosure, usable solely for parking of vehicles,  
190 building access or storage in an area other than a basement area is not  
191 considered a building’s lowest floor, provided that such enclosure is not built so  
192 as to render the structure in violation of the applicable non-elevation design  
193 requirements of this ordinance.

194 **Manufactured dwelling:** A structure, transportable in one or more sections, which is built  
195 on a permanent chassis and is designed for use with or without a permanent  
196 foundation when attached to the required utilities. The term "manufactured  
197 dwelling" does not include a "recreational vehicle" and is synonymous with  
198 “manufactured home.”

199 **Manufactured dwelling park or subdivision:** A parcel (or contiguous parcels) of land  
200 divided into two or more manufactured dwelling lots for rent or sale.

201 **Mean Higher-High Water:** The average of the higher-high water height of each tidal day  
202 observed over the National Tidal Datum Epoch.

203 **Mean sea level:** For purposes of the National Flood Insurance Program, the National  
204 Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which Base Flood  
205 Elevations shown on a community's Flood Insurance Rate Map are referenced.

206 **New construction:** For floodplain management purposes, “new construction” means  
207 structures for which the “start of construction” commenced on or after the effective  
208 date of a floodplain management regulation adopted by **COMMUNITY NAME** and  
209 includes any subsequent improvements to such structures.

210 **No Net Loss:** A standard where adverse impacts must be avoided or offset through  
211 adherence to certain requirements so that there is no net change in the function

212 from the existing condition when a development application is submitted to the state,  
213 tribal, or local jurisdiction. The floodplain functions of floodplain storage, water  
214 quality, and vegetation must be maintained.

215 **Offsite:** Mitigation occurring outside of the project area.

216 **Onsite:** Mitigation occurring within the project area.

217 **Ordinary High Water Mark:** The line on the shore established by the fluctuations of water  
218 and indicated by physical characteristics such as a clear, natural line impressed  
219 on the bank; shelving; changes in the character of soil; destruction of terrestrial  
220 vegetation; the presence of litter and debris; or other appropriate means that  
221 consider the characteristics of the surrounding areas.

222 **Qualified Professional:** Appropriate subject matter expert that is defined by the  
223 community.

224 **Reach:** A section of a stream or river along which similar hydrologic conditions exist, such  
225 as discharge, depth, area, and slope. It can also be the length of a stream or river  
226 (with varying conditions) between major tributaries or two stream gages, or a  
227 length of river for which the characteristics are well described by readings at a  
228 single stream gage.

229 **Recreational vehicle:** A vehicle which is:

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

235 **Riparian:** Of, adjacent to, or living on, the bank of a river, lake, pond, or other water body.

236 **Riparian Buffer Zone (RBZ):** The outer boundary of the riparian buffer zone is measured  
237 from the ordinary high water line of a fresh waterbody (lake; pond; ephemeral,  
238 intermittent, or perennial stream) or mean higher-high water line of a marine  
239 shoreline or tidally influenced river reach to 170 feet horizontally on each side of  
240 the stream or 170 feet inland from the MHHW. The riparian buffer zone includes  
241 the area between these outer boundaries on each side of the stream, including  
242 the stream channel. Where the RBZ is larger than the special flood hazard area,  
243 the no net loss standards shall only apply to the area within the special flood  
244 hazard area.

245 **Riparian Buffer Zone Fringe:** The area outside of the RBZ and floodway but still within the  
246 SFHA.

247 **Silviculture:** The art and science of controlling the establishment, growth, composition,  
248 health, and quality of forests and woodlands.

249 **Special flood hazard area:** See “Area of special flood hazard” for this definition.

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

266 **Structure:** For floodplain management purposes, a walled and roofed building, including  
267 a gas or liquid storage tank, that is principally above ground, as well as a  
268 manufactured dwelling.

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

272 **Substantial improvement:** Any reconstruction, rehabilitation, addition, or other  
273 improvement of a structure, the cost of which equals or exceeds 50 percent of  
274 the market value of the structure before the "start of construction" of the  
275 improvement. This term includes structures which have incurred "substantial  
276 damage," regardless of the actual repair work performed. The term does not,  
277 however, include either:

278 (a) Any project for improvement of a structure to correct existing violations of state or  
279 local health, sanitary, or safety code specifications which have been identified by  
280 the local code enforcement official and which are the minimum necessary to  
281 assure safe living conditions; or

282 (b) Any alteration of a "historic structure," provided that the alteration will not  
283 preclude the structure's continued designation as a "historic structure."

284 **Undeveloped Space:** The volume of flood capacity and fish-accessible/egress-able  
285 habitat from the existing ground to the Base Flood Elevation that is undeveloped. Any  
286 form of development including, but not limited to, the addition of fill, structures, concrete

287 structures (vaults or tanks), pilings, levees and dikes, or any other development that  
288 reduces flood storage volume and fish accessible/egress-able habitat must achieve no  
289 net loss.

290 **Variance:** A grant of relief by **COMMUNITY NAME** from the terms of a floodplain  
291 management regulation.

292 **Violation:** The failure of a structure or other development to be fully compliant with the  
293 community's floodplain management regulations. A structure or other  
294 development without the elevation certificate, other certifications, or other  
295 evidence of compliance required in this ordinance is presumed to be in violation  
296 until such time as that documentation is provided.

297 **3.0 GENERAL PROVISIONS**

298 **3.1 LANDS TO WHICH THIS ORDINANCE APPLIES**

299 This ordinance shall apply to all special flood hazard areas within the jurisdiction of  
300 **COMMUNITY NAME**.

301 **3.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS**

302 The special flood hazard areas identified by the Federal Insurance Administrator in a  
303 scientific and engineering report entitled "The Flood Insurance Study (FIS) for "**EXACT**  
304 **TITLE OF FLOOD INSURANCE STUDY FOR COMMUNITY**", dated **DATE (MONTH DAY, FOUR**  
305 **DIGIT YEAR)**, with accompanying Flood Insurance Rate Maps (FIRMs) **LIST ALL EFFECTIVE**  
306 **FIRM PANELS HERE (UNLESS ALL PANELS ARE BEING REPLACED THROUGH A NEW**  
307 **COUNTY\_WIDE MAP THAT INCORPORATES ALL PREVIOUS PANELS/VERSIONS, IN THAT**  
308 **SITUATION PANELS DO NOT NEED TO BE INDIVIDUALLY LISTED)** are hereby adopted by  
309 reference and declared to be a part of this ordinance. The FIS and FIRM panels are on  
310 file at **INSERT THE LOCATION (I.E. COMMUNITY PLANNING DEPARTMENT LOCATED IN**  
311 **THE COMMUNITY ADMINISTRATIVE BUILDING)**.

312 **3.3 COORDINATION WITH STATE OF OREGON SPECIALTY CODES**

313 Pursuant to the requirement established in ORS 455 that the **COMMUNITY NAME**  
314 administers and enforces the State of Oregon Specialty Codes, the **COMMUNITY NAME**  
315 does hereby acknowledge that the Oregon Specialty Codes contain certain provisions  
316 that apply to the design and construction of buildings and structures located in special  
317 flood hazard areas. Therefore, this ordinance is intended to be administered and  
318 enforced in conjunction with the Oregon Specialty Codes.

319 **3.4 COMPLIANCE AND PENALTIES FOR NONCOMPLIANCE**

320 **3.4.1 COMPLIANCE**

321 All development within special flood hazard areas is subject to the terms of this  
322 ordinance and required to comply with its provisions and all other applicable  
323 regulations.



324 **3.4.2 PENALTIES FOR NONCOMPLIANCE**

325 No structure or land shall hereafter be constructed, located, extended,  
326 converted, or altered without full compliance with the terms of this ordinance and  
327 other applicable regulations. Violations of the provisions of this ordinance by  
328 failure to comply with any of its requirements (including violations of conditions  
329 and safeguards established in connection with conditions) shall constitute a  
330 (INFRACTION TYPE (I.E. MISDEMEANOR) AND PENALTIES PER STATE/LOCAL LAW  
331 ASSOCIATED WITH SPECIFIED INFRACTION TYPE (I.E. ANY PERSON WHO  
332 VIOLATES THE REQUIREMENTS OF THIS ORDINANCE SHALL UPON CONVICTION  
333 THEREOF BE FINED NOT MORE THAN A SPECIFIED AMOUNT OF MONEY...)  
334 Nothing contained herein shall prevent the COMMUNITY NAME from taking such  
335 other lawful action as is necessary to prevent or remedy any violation.

336 **3.5 ABROGATION AND SEVERABILITY**

337 **3.5.1 ABROGATION**

338 This ordinance is not intended to repeal, abrogate, or impair any existing  
339 easements, covenants, or deed restrictions. However, where this ordinance and  
340 another ordinance, easement, covenant, or deed restriction conflict or overlap,  
341 whichever imposes the more stringent restrictions shall prevail.

342 **3.5.2 SEVERABILITY**

343 This ordinance and the various parts thereof are hereby declared to be  
344 severable. If any section clause, sentence, or phrase of the Ordinance is held to  
345 be invalid or unconstitutional by any court of competent jurisdiction, then said  
346 holding shall in no way effect the validity of the remaining portions of this  
347 Ordinance.

348 **3.6 INTERPRETATION**

349 In the interpretation and application of this ordinance, all provisions shall be:

- 350 A. Considered as minimum requirements;
- 351 B. Liberally construed in favor of the governing body; and
- 352 C. Deemed neither to limit nor repeal any other powers granted under state statutes.

353 **3.7 WARNING AND DISCLAIMER OF LIABILITY**

354 **3.7.1 WARNING**

355 The degree of flood protection required by this ordinance is considered  
356 reasonable for regulatory purposes and is based on scientific and engineering  
357 considerations. Larger floods can and will occur on rare occasions. Flood heights  
358 may be increased by man-made or natural causes. This ordinance does not imply



359 that land outside the areas of special flood hazards or uses permitted within  
360 such areas will be free from flooding or flood damages.

361 **3.7.2 DISCLAIMER OF LIABILITY**

362 This ordinance shall not create liability on the part of the **COMMUNITY NAME**, any  
363 officer or employee thereof, or the Federal Insurance Administrator for any flood  
364 damages that result from reliance on this ordinance or any administrative  
365 decision lawfully made hereunder.

366 **4.0 ADMINISTRATION**

367 **4.1 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR**

368 The **INDIVIDUAL JOB TITLE** is hereby appointed to administer, implement, and enforce  
369 this ordinance by granting or denying development permits in accordance with its  
370 provisions. The Floodplain Administrator may delegate authority to implement these  
371 provisions.

372 [Additional Recommended Language Provided in Appendix B](#)

373 **4.2 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

374 Duties of the floodplain administrator, or their designee, shall include, but not be limited  
375 to:

376 **4.2.1 PERMIT REVIEW**

377 Review all development permits to:

- 378 A. Determine that the permit requirements of this ordinance have been  
379 satisfied;
- 380 B. Determine that all other required local, state, and federal permits have been  
381 obtained and approved;
- 382 C. Determine if the proposed development is located in a floodway.
- 383 i. If located in the floodway assure that the floodway provisions of this  
384 ordinance in section **5.2.4** are met; and
- 385 ii. Determine if the proposed development is located in an area where  
386 Base Flood Elevation (BFE) data is available either through the Flood  
387 Insurance Study (FIS) or from another authoritative source. If BFE data  
388 is not available then ensure compliance with the provisions of sections  
389 **5.1.7**; and

390                                   iii.    Provide to building officials the Base Flood Elevation (BFE) (ADD  
391    **FREEBOARD IF COMMUNITY HAS HIGHER ELEVATION STANDARDS**)  
392    applicable to any building requiring a development permit.

393                                   D.    Determine if the proposed development qualifies as a substantial  
394    improvement as defined in section **2.0**.

395                                   E.    Determine if the proposed development activity is a watercourse alteration.  
396    If a watercourse alteration is proposed, ensure compliance with the  
397    provisions in section **5.1.1**.

398                                   F.    Determine if the proposed development activity includes the placement of  
399    fill or excavation.

400                                   **G. Determine whether the proposed development activity complies with the no**  
401    **net loss standards in Section 6.0.**

402                                   **4.2.2 INFORMATION TO BE OBTAINED AND MAINTAINED**

403                                   The following information shall be obtained and maintained and shall be made  
404    available for public inspection as needed:

405                                   A.    The actual elevation (in relation to mean sea level) of the lowest floor  
406    (including basements) and all attendant utilities of all new or substantially  
407    improved structures where Base Flood Elevation (BFE) data is provided  
408    through the Flood Insurance Study (FIS), Flood Insurance Rate Map (FIRM),  
409    or obtained in accordance with section **5.1.7**.

410                                   B.    The elevation (in relation to mean sea level) of the natural grade of the  
411    building site for a structure prior to the start of construction and the  
412    placement of any fill and ensure that the requirements of sections **4.2.1(B)**,  
413    **5.2.4, and 5.3.1(F)**, are adhered to.

414                                   C.    Upon placement of the lowest floor of a structure (including basement) but  
415    prior to further vertical construction, documentation, prepared and sealed  
416    by a professional licensed surveyor or engineer, certifying the elevation (in  
417    relation to mean sea level) of the lowest floor (including basement).

418                                   D.    Where base flood elevation data are utilized, As-built certification of the  
419    elevation (in relation to mean sea level) of the lowest floor (including  
420    basement) prepared and sealed by a professional licensed surveyor or  
421    engineer, prior to the final inspection.

422                                   E.    Maintain all Elevation Certificates (EC) submitted to the community.

423                                   F.    The elevation (in relation to mean sea level) to which the structure and all  
424    attendant utilities were floodproofed for all new or substantially improved  
425    floodproofed structures where allowed under this ordinance and where

426 Base Flood Elevation (BFE) data is provided through the FIS, FIRM, or  
427 obtained in accordance with section 5.1.7.

428 G. All floodproofing certificates required under this ordinance.

429 H. All variance actions, including justification for their issuance.

430 I. All hydrologic and hydraulic analyses performed as required under section  
431 5.2.4.

432 J. All Substantial Improvement and Substantial Damage calculations and  
433 determinations as required under section 4.2.4.

434 K. Documentation of how no net loss standards have been met (see Section  
435 6.0)

436 L. All records pertaining to the provisions of this ordinance.

437 **4.2.3 REQUIREMENT TO NOTIFY OTHER ENTITIES AND SUBMIT NEW TECHNICAL**  
438 **DATA**

439 **4.2.3.1 COMMUNITY BOUNDARY ALTERATIONS**

440 The Floodplain Administrator shall notify the Federal Insurance Administrator in  
441 writing whenever the boundaries of the community have been modified by  
442 annexation or the community has otherwise assumed authority or no longer has  
443 authority to adopt and enforce floodplain management regulations for a  
444 particular area, to ensure that all Flood Hazard Boundary Maps (FHBM) and  
445 Flood Insurance Rate Maps (FIRM) accurately represent the community's  
446 boundaries. Include within such notification a copy of a map of the community  
447 suitable for reproduction, clearly delineating the new corporate limits or new  
448 area for which the community has assumed or relinquished floodplain  
449 management regulatory authority.

450 **4.2.3.2 WATERCOURSE ALTERATIONS**

451 A. Notify adjacent communities, the Department of Land Conservation and  
452 Development, and other appropriate state and federal agencies, prior to  
453 any alteration or relocation of a watercourse, and submit evidence of  
454 such notification to the Federal Insurance Administration. This  
455 notification shall be provided by the applicant to the Federal Insurance  
456 Administration as a Letter of Map Revision (LOMR) along with either:

457 i. A proposed maintenance plan to assure the flood carrying  
458 capacity within the altered or relocated portion of the  
459 watercourse is maintained; or

460                   ii. Certification by a registered professional engineer that the  
461                   project has been designed to retain its flood carrying capacity  
462                   without periodic maintenance.

463                   B. The applicant shall be required to submit a Conditional Letter of Map  
464                   Revision (CLOMR) when required under section 4.2.3.3. Ensure  
465                   compliance with all applicable requirements in sections 4.2.3.3 and  
466                   5.1.1.

467                   **4.2.3.3 REQUIREMENT TO SUBMIT NEW TECHNICAL DATA**

468                   A. A community's base flood elevations may increase or decrease resulting  
469                   from physical changes affecting flooding conditions. As soon as  
470                   practicable, but not later than six months after the date such  
471                   information becomes available, a community shall notify the Federal  
472                   Insurance Administrator of the changes by submitting technical or  
473                   scientific data in accordance with Title 44 of the Code of Federal  
474                   Regulations (CFR), Section 65.3. The community may require the  
475                   applicant to submit such data and review fees required for compliance  
476                   with this section through the applicable FEMA Letter of Map Change  
477                   (LOMC) process.

478                   B. The Floodplain Administrator shall require a Conditional Letter of Map  
479                   Revision prior to the issuance of a floodplain development permit for:

480                   i. Proposed floodway encroachments that increase the base flood  
481                   elevation; and

482                   ii. Proposed development which increases the base flood elevation  
483                   by more than one foot in areas where FEMA has provided base  
484                   flood elevations but no floodway.

485                   C. An applicant shall notify FEMA within six (6) months of project  
486                   completion when an applicant has obtained a Conditional Letter of Map  
487                   Revision (CLOMR) from FEMA. This notification to FEMA shall be  
488                   provided as a Letter of Map Revision (LOMR).

489                   [Additional Recommended Language Provided in Appendix B](#)

490                   **4.2.4 SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE ASSESSMENTS**  
491                   **AND DETERMINATIONS**

492                   Conduct Substantial Improvement (SI) (as defined in section 2.0) reviews for all  
493                   structural development proposal applications and maintain a record of SI  
494                   calculations within permit files in accordance with section 4.2.2. Conduct  
495                   Substantial Damage (SD) (as defined in section 2.0) assessments when  
496                   structures are damaged due to a natural hazard event or other causes. Make SD  
497                   determinations whenever structures within the special flood hazard area (as  
498                   established in section 3.2) are damaged to the extent that the cost of restoring

499 the structure to its before damaged condition would equal or exceed 50 percent  
500 of the market value of the structure before the damage occurred.

501 **4.3 ESTABLISHMENT OF DEVELOPMENT PERMIT**

502 **4.3.1 FLOODPLAIN DEVELOPMENT PERMIT REQUIRED**

503 A development permit shall be obtained before construction or development  
504 begins within any area horizontally within the special flood hazard area  
505 established in section 3.2. The development permit shall be required for all  
506 structures, including manufactured dwellings, and for all other development, as  
507 defined in section 2.0, including fill and other development activities.

508 **4.3.2 APPLICATION FOR DEVELOPMENT PERMIT**

509 Application for a development permit may be made on forms furnished by the  
510 Floodplain Administrator and may include, but not be limited to, plans in  
511 duplicate drawn to scale showing the nature, location, dimensions, and  
512 elevations of the area in question; existing or proposed structures, fill, storage of  
513 materials, drainage facilities, and the location of the foregoing. Specifically, the  
514 following information is required:

- 515 A. In riverine flood zones, the proposed elevation (in relation to mean sea  
516 level), of the lowest floor (including basement) and all attendant utilities of  
517 all new and substantially improved structures; in accordance with the  
518 requirements of section 4.2.2.
- 519 B. In coastal flood zones (V zones and coastal A zones), the proposed elevation  
520 in relation to mean sea level of the bottom of the lowest structural member  
521 of the lowest floor (excluding pilings and columns) of all structures, and  
522 whether such structures contain a basement.
- 523 C. Proposed elevation in relation to mean sea level to which any non-  
524 residential structure will be floodproofed.
- 525 D. Certification by a registered professional engineer or architect licensed in  
526 the State of Oregon that the floodproofing methods proposed for any non-  
527 residential structure meet the floodproofing criteria for non-residential  
528 structures in section 5.2.3.3.
- 529 E. Description of the extent to which any watercourse will be altered or  
530 relocated.
- 531 F. Base Flood Elevation data for subdivision proposals or other development  
532 when required per sections 4.2.1 and 5.1.6.
- 533 G. Substantial improvement calculation for any improvement, addition,  
534 reconstruction, renovation, or rehabilitation of an existing structure.

535 H. The amount and location of any fill or excavation activities proposed.

536 **4.4 VARIANCE PROCEDURE**

537 The issuance of a variance is for floodplain management purposes only. Flood insurance  
538 premium rates are determined by federal statute according to actuarial risk and will not  
539 be modified by the granting of a variance.

540 **4.4.1 CONDITIONS FOR VARIANCES**

541 A. Generally, variances may be issued for new construction and substantial  
542 improvements to be erected on a lot of one-half acre or less in size  
543 contiguous to and surrounded by lots with existing structures constructed  
544 below the base flood level, in conformance with the provisions of sections  
545 **4.4.1 (C) and (E), and 4.4.2**. As the lot size increases beyond one-half acre,  
546 the technical justification required for issuing a variance increases.

547 B. Variances shall only be issued upon a determination that the variance is the  
548 minimum necessary, considering the flood hazard, to afford relief.

549 C. Variances shall not be issued within any floodway if any increase in flood  
550 levels during the base flood discharge would result.

551 D. Variances shall only be issued upon:

552 i. A showing of good and sufficient cause;

553 ii. A determination that failure to grant the variance would result in  
554 exceptional hardship to the applicant; and,

555 iii. A determination that the granting of a variance will not result in  
556 increased flood heights, additional threats to public safety,  
557 extraordinary public expense, create nuisances, cause fraud on or  
558 victimization of the public, or conflict with existing laws or  
559 ordinances.

560 E. Variances may be issued by a community for new construction and  
561 substantial improvements and for other development necessary for the  
562 conduct of a functionally dependent use provided that the criteria of section  
563 **4.4.1 (B) – (D)** are met, and the structure or other development is protected  
564 by methods that minimize flood damages during the base flood and create  
565 no additional threats to public safety.

566 F. **Variances shall not be issued unless it is demonstrated that the**  
567 **development will not result in net loss of the following proxies for the three**  
568 **floodplain functions in the SFHA: undeveloped space; pervious surface; or**  
569 **trees 6 inches dbh or greater (see Section 6.0 and associated options in**  
570 **Table 1).**

571 [Additional Optional Language Provided in Appendix B.](#)

572 **4.4.2 VARIANCE NOTIFICATION**

573 Any applicant to whom a variance is granted shall be given written notice that the  
574 issuance of a variance to construct a structure below the Base Flood Elevation  
575 will result in increased premium rates for flood insurance and that such  
576 construction below the base flood elevation increases risks to life and property.  
577 Such notification and a record of all variance actions, including justification for  
578 their issuance shall be maintained in accordance with section 4.2.2.

579 **5.0 PROVISIONS FOR FLOOD HAZARD REDUCTION**

580 **5.1 GENERAL STANDARDS**

581 In all special flood hazard areas, the **no net loss standards (see Section 6.0) and the**  
582 following standards shall be adhered to:

583 **5.1.1 ALTERATION OF WATERCOURSES**

584 Require that the flood carrying capacity within the altered or relocated portion of  
585 said watercourse is maintained. Require that maintenance is provided within the  
586 altered or relocated portion of said watercourse to ensure that the flood carrying  
587 capacity is not diminished. Require compliance with sections 4.2.3.2 and  
588 4.2.3.3.

589 **5.1.2 ANCHORING**

590 A. All new construction and substantial improvements shall be anchored to  
591 prevent flotation, collapse, or lateral movement of the structure resulting  
592 from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

593 B. All manufactured dwellings shall be anchored per section 5.2.3.4.

594 **5.1.3 CONSTRUCTION MATERIALS AND METHODS**

595 A. All new construction and substantial improvements shall be constructed  
596 with materials and utility equipment resistant to flood damage.

597 B. All new construction and substantial improvements shall be constructed  
598 using methods and practices that minimize flood damage.

599 **5.1.4 UTILITIES AND EQUIPMENT**

600 **5.1.4.1 WATER SUPPLY, SANITARY SEWER, AND ON-SITE WASTE**  
601 **DISPOSAL SYSTEMS**

602 A. All new and replacement water supply systems shall be designed to  
603 minimize or eliminate infiltration of flood waters into the system.



604 B. New and replacement sanitary sewage systems shall be designed to  
605 minimize or eliminate infiltration of flood waters into the systems and  
606 discharge from the systems into flood waters.

607 C. On-site waste disposal systems shall be located to avoid impairment to  
608 them or contamination from them during flooding consistent with the  
609 Oregon Department of Environmental Quality.

610 **5.1.4.2 ELECTRICAL, MECHANICAL, PLUMBING, AND OTHER**  
611 **EQUIPMENT**

612 Electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and  
613 other equipment and service facilities shall be elevated at or above the base  
614 flood level (ANY COMMUNITY FREEBOARD REQUIREMENT) or shall be designed  
615 and installed to prevent water from entering or accumulating within the  
616 components and to resist hydrostatic and hydrodynamic loads and stresses,  
617 including the effects of buoyancy, during conditions of flooding. In addition,  
618 electrical, heating, ventilating, air- conditioning, plumbing, duct systems, and  
619 other equipment and service facilities shall:

620 A. If replaced as part of a substantial improvement shall meet all the  
621 requirements of this section.

622 B. Not be mounted on or penetrate through breakaway walls.

623 **5.1.5 TANKS**

624 A. Underground tanks shall be anchored to prevent flotation, collapse and  
625 lateral movement under conditions of the base flood.

626 B. Above-ground tanks shall be installed at or above the base flood level  
627 (COMMUNITY FREEBOARD REQUIREMENT) or shall be anchored to prevent  
628 flotation, collapse, and lateral movement under conditions of the base flood.

629 C. In coastal flood zones (V Zones or coastal A Zones) when elevated on  
630 platforms, the platforms shall be cantilevered from or knee braced to the  
631 building or shall be supported on foundations that conform to the  
632 requirements of the State of Oregon Specialty Code.

633 **5.1.6 SUBDIVISION PROPOSALS AND OTHER PROPOSED DEVELOPMENTS**

634 A. All new subdivision proposals and other proposed new developments  
635 (including proposals for manufactured dwelling parks and subdivisions)  
636 greater than 50 lots or 5 acres, whichever is the lesser, shall include within  
637 such proposals Base Flood Elevation data.



638 B. All new subdivision proposals and other proposed new developments  
639 (including proposals for manufactured dwelling parks and subdivisions)  
640 shall:

641 i. Be consistent with the need to minimize flood damage.

642 ii. Have public utilities and facilities such as sewer, gas, electrical, and  
643 water systems located and constructed to minimize or eliminate  
644 flood damage.

645 iii. Have adequate drainage provided to reduce exposure to flood  
646 hazards.

647 iv. Comply with no net loss standards in section 6.0.

648 **5.1.7 USE OF OTHER BASE FLOOD ELEVATION DATA**

649 A. When Base Flood Elevation data has not been provided in accordance with  
650 section 3.2 the local floodplain administrator shall obtain, review, and  
651 reasonably utilize any Base Flood Elevation data available from a federal,  
652 state, or other source, in order to administer section 5.0. All new subdivision  
653 proposals and other proposed new developments (including proposals for  
654 manufactured dwelling parks and subdivisions) must meet the requirements  
655 of section 5.1.6.

656 B. Base Flood Elevations shall be determined for development proposals that  
657 are 5 acres or more in size or are 50 lots or more, whichever is lesser in any  
658 A zone that does not have an established base flood elevation.  
659 Development proposals located within a riverine unnumbered A Zone shall  
660 be reasonably safe from flooding; the test of reasonableness includes use of  
661 historical data, high water marks, FEMA provided Base Level Engineering  
662 data, and photographs of past flooding, etc... where available. (REFERENCE  
663 TO ANY OF THIS TYPE OF INFORMATION TO BE USED FOR REGULATORY  
664 PURPOSES BY YOUR COMMUNITY, I.E. BASE LEVEL ENGINEERING DATA,  
665 HIGH WATER MARKS, HISTORICAL OR OTHER DATA THAT WILL BE  
666 REGULATED TO. THIS MAY BE NECESSARY TO ENSURE THAT THE  
667 STANDARDS APPLIED TO RESIDENTIAL STRUCTURES ARE CLEAR AND  
668 OBJECTIVE. IF UNCERTAIN SEEK LEGAL ADVICE, AT A MINIMUM REQUIRE  
669 THE ELEVATION OF RESIDENTIAL STRUCTURES AND NON-RESIDENTIAL  
670 STRUCTURES THAT ARE NOT DRY FLOODPROOFED TO BE 2 FEET ABOVE  
671 HIGHEST ADJACENT GRADE). Failure to elevate at least two feet above  
672 grade in these zones may result in higher insurance rates.

673 **5.1.8 STRUCTURES LOCATED IN MULTIPLE OR PARTIAL FLOOD ZONES**

674 In coordination with the State of Oregon Specialty Codes:

675 A. When a structure is located in multiple flood zones on the community's  
676 Flood Insurance Rate Maps (FIRM) the provisions for the more restrictive  
677 flood zone shall apply.

678 B. When a structure is partially located in a special flood hazard area, the  
679 entire structure shall meet the requirements for new construction and  
680 substantial improvements.

681 [Additional Recommended Language Provided in Appendix B.](#)

682 **5.2 SPECIFIC STANDARDS FOR RIVERINE (INCLUDING ALL NON-COASTAL) FLOOD**  
683 **ZONES**

684 These specific standards shall apply to all new construction and substantial  
685 improvements in addition to the General Standards contained in section 5.1 of this  
686 ordinance **and the no net loss standards (see Section 6.0).**

687 **5.2.1 FLOOD OPENINGS**

688 All new construction and substantial improvements with fully enclosed areas  
689 below the lowest floor (excluding basements) are subject to the following  
690 requirements. Enclosed areas below the Base Flood Elevation, including crawl  
691 spaces shall:

692 A. Be designed to automatically equalize hydrostatic flood forces on walls by  
693 allowing for the entry and exit of floodwaters;

694 B. Be used solely for parking, storage, or building access;

695 C. Be certified by a registered professional engineer or architect or meet or  
696 exceed all of the following minimum criteria:

697 i. A minimum of two openings;

698 ii. The total net area of non-engineered openings shall be not less than  
699 one square inch for each square foot of enclosed area, where the  
700 enclosed area is measured on the exterior of the enclosure walls;

701 iii. The bottom of all openings shall be no higher than one foot above  
702 grade;

703 iv. Openings may be equipped with screens, louvers, valves, or other  
704 coverings or devices provided that they shall allow the automatic  
705 flow of floodwater into and out of the enclosed areas and shall be  
706 accounted for in the determination of the net open area; and,

707 v. All additional higher standards for flood openings in the State of  
708 Oregon Residential Specialty Codes Section R322.2.2 shall be  
709 complied with when applicable.

710 **5.2.2 GARAGES**

- 711 A. Attached garages may be constructed with the garage floor slab below the  
712 Base Flood Elevation (BFE) in riverine flood zones, if the following  
713 requirements are met:
- 714 i. If located within a floodway the proposed garage must comply with  
715 the requirements of section 5.2.4;
  - 716 ii. The floors are at or above grade on not less than one side;
  - 717 iii. The garage is used solely for parking, building access, and/or  
718 storage;
  - 719 iv. The garage is constructed with flood openings in compliance with  
720 section 5.2.1 to equalize hydrostatic flood forces on exterior walls by  
721 allowing for the automatic entry and exit of floodwater;
  - 722 v. The portions of the garage constructed below the BFE are  
723 constructed with materials resistant to flood damage;
  - 724 vi. The garage is constructed in compliance with the standards in  
725 section 5.1; and,
  - 726 vii. The garage is constructed with electrical, and other service facilities  
727 located and installed so as to prevent water from entering or  
728 accumulating within the components during conditions of the base  
729 flood.
- 730 B. Detached garages must be constructed in compliance with the standards  
731 for appurtenant structures in section 5.2.3.6 or non-residential structures in  
732 section 5.2.3.3 depending on the square footage of the garage.

733 **5.2.3 FOR RIVERINE (NON-COASTAL) SPECIAL FLOOD HAZARD AREAS WITH**  
734 **BASE FLOOD ELEVATIONS**

735 In addition to the general standards listed in section 5.1 the following specific  
736 standards shall apply in Riverine (non-coastal) special flood hazard areas with  
737 Base Flood Elevations (BFE): Zones A1-A30, AH, and AE.

738 **5.2.3.1 BEFORE REGULATORY FLOODWAY**

739 In areas where a regulatory floodway has not been designated, no new  
740 construction, substantial improvement, or other development (including fill)  
741 shall be permitted within Zones A1-30 and AE on the community's Flood  
742 Insurance Rate Map (FIRM), unless it is demonstrated that the cumulative effect  
743 of the proposed development, when combined with all other existing and  
744 anticipated development, will not increase the water surface elevation of the  
745 base flood more than one foot at any point within the community and will not

746 result in the net loss of flood storage volume. When determined that structural  
747 elevation is not possible and where the placement of fill cannot meet the above  
748 standard, impacts to undeveloped space must adhere to the no net loss  
749 standards in section 6.1.C.

750 **5.2.3.2 RESIDENTIAL CONSTRUCTION**

- 751 A. New construction, conversion to, and substantial improvement of any  
752 residential structure shall have the lowest floor, including basement,  
753 elevated at or above the Base Flood Elevation (BFE) (ADDITIONAL  
754 FREEBOARD FOR YOUR COMMUNITY – RECOMMEND MINIMUM OF 1FT  
755 ABOVE BFE).
- 756 B. Enclosed areas below the lowest floor shall comply with the flood  
757 opening requirements in section 5.2.1.

758 **5.2.3.3 NON-RESIDENTIAL CONSTRUCTION**

- 759 A. New construction, conversion to, and substantial improvement of any  
760 commercial, industrial, or other non-residential structure shall:
- 761 i. Have the lowest floor, including basement elevated at or above  
762 the Base Flood Elevation (BFE) (ANY ADDITIONAL FREEBOARD  
763 REQUIREMENTS FOR YOUR COMMUNITY); or
- 764 ii. Together with attendant utility and sanitary facilities:
- 765 a. Be floodproofed so that below the base flood level the  
766 structure is watertight with walls substantially  
767 impermeable to the passage of water;
- 768 b. Have structural components capable of resisting  
769 hydrostatic and hydrodynamic loads and effects of  
770 buoyancy; and,
- 771 c. Be certified by a registered professional engineer or  
772 architect that the design and methods of construction  
773 are in accordance with accepted standards of practice  
774 for meeting provisions of this section based on their  
775 development and/or review of the structural design,  
776 specifications and plans. Such certifications shall be  
777 provided to the Floodplain Administrator as set forth  
778 section 4.2.2.
- 779 B. Non-residential structures that are elevated, not floodproofed, shall  
780 comply with the standards for enclosed areas below the lowest floor in  
781 section 5.2.1.

- 782 C. Applicants floodproofing non-residential buildings shall be notified that
- 783 flood insurance premiums will be based on rates that are one (1) foot
- 784 below the floodproofed level (e.g. a building floodproofed to the base
- 785 flood level will be rated as one (1) foot below.

**5.2.3.4 MANUFACTURED DWELLINGS**

- 786
- 787 A. Manufactured dwellings to be placed (new or replacement) or
- 788 substantially improved that are supported on solid foundation walls
- 789 shall be constructed with flood openings that comply with section 5.2.1;
- 790 B. The bottom of the longitudinal chassis frame beam shall be at or above
- 791 Base Flood Elevation;
- 792 C. Manufactured dwellings to be placed (new or replacement) or
- 793 substantially improved shall be anchored to prevent flotation, collapse,
- 794 and lateral movement during the base flood. Anchoring methods may
- 795 include, but are not limited to, use of over-the-top or frame ties to
- 796 ground anchors (Reference FEMA’s “Manufactured Home Installation in
- 797 Flood Hazard Areas” guidebook for additional techniques), and;
- 798 D. Electrical crossover connections shall be a minimum of twelve (12)
- 799 inches above Base Flood Elevation (BFE).

**5.2.3.5 RECREATIONAL VEHICLES**

Recreational vehicles placed on sites are required to:

- 800
- 801
- 802 A. Be on the site for fewer than 180 consecutive days, and
- 803 B. Be fully licensed and ready for highway use, on its wheels or jacking
- 804 system, is attached to the site only by quick disconnect type utilities and
- 805 security devices, and has no permanently attached additions; or
- 806 C. Meet the requirements of section 5.2.3.4, including the anchoring and
- 807 elevation requirements for manufactured dwellings.

**5.2.3.6 APPURTENANT (ACCESSORY) STRUCTURES**

Relief from elevation or floodproofing requirements for residential and non-residential structures in Riverine (Non-Coastal) flood zones may be granted for appurtenant structures that meet the following requirements:

- 812 A. Appurtenant structures located partially or entirely within the floodway
- 813 must comply with requirements for development within a floodway
- 814 found in section 5.2.4;
- 815 B. Appurtenant structures must only be used for parking, access, and/or
- 816 storage and shall not be used for human habitation;

- 817 C. In compliance with State of Oregon Specialty Codes, appurtenant  
818 structures on properties that are zoned residential are limited to one-  
819 story structures less than 200 square feet, or 400 square feet if the  
820 property is greater than two (2) acres in area and the proposed  
821 appurtenant structure will be located a minimum of 20 feet from all  
822 property lines. Appurtenant structures on properties that are zoned as  
823 non-residential are limited in size to 120 square feet;
  
- 824 D. The portions of the appurtenant structure located below the Base Flood  
825 Elevation must be built using flood resistant materials;
  
- 826 E. The appurtenant structure must be adequately anchored to prevent  
827 flotation, collapse, and lateral movement of the structure resulting from  
828 hydrodynamic and hydrostatic loads, including the effects of buoyancy,  
829 during conditions of the base flood;
  
- 830 F. The appurtenant structure must be designed and constructed to  
831 equalize hydrostatic flood forces on exterior walls and comply with the  
832 requirements for flood openings in section 5.2.1;
  
- 833 G. Appurtenant structures shall be located and constructed to have low  
834 damage potential;
  
- 835 H. Appurtenant structures shall not be used to store toxic material, oil, or  
836 gasoline, or any priority persistent pollutant identified by the Oregon  
837 Department of Environmental Quality unless confined in a tank installed  
838 in compliance with section 5.1.5; and,
  
- 839 I. Appurtenant structures shall be constructed with electrical, mechanical,  
840 and other service facilities located and installed so as to prevent water  
841 from entering or accumulating within the components during conditions  
842 of the base flood.

843 **5.2.4 FLOODWAYS**

844 Located within the special flood hazard areas established in section 3.2 are  
845 areas designated as floodways. Since the floodway is an extremely hazardous  
846 area due to the velocity of the floodwaters which carry debris, potential  
847 projectiles, and erosion potential, the following provisions apply:

- 848 A. Prohibit encroachments, including fill, new construction, substantial  
849 improvements, and other development within the adopted regulatory  
850 floodway unless:
  - 851 i. Certification by a registered professional civil engineer is provided  
852 demonstrating through hydrologic and hydraulic analyses performed  
853 in accordance with standard engineering practice that the proposed  
854 encroachment shall not result in any increase in flood levels within  
855 the community during the occurrence of the base flood discharge; or

856 ii. A community may permit encroachments within the adopted  
857 regulatory floodway that would result in an increase in base flood  
858 elevations, provided that conditional approval has been obtained by  
859 the Federal Insurance Administrator through the Conditional Letter  
860 of Map Revision (CLOMR) application process, all requirements  
861 established under 44 CFR 65.12 are fulfilled, and the  
862 encroachment(s) comply with the no net loss standards in section  
863 6.0.

864 B. If the requirements of section 5.2.4 (A) are satisfied, all new construction,  
865 substantial improvements, and other development shall comply with all  
866 other applicable flood hazard reduction provisions of section 5.0 and 6.0.

867 **5.2.5 STANDARDS FOR SHALLOW FLOODING AREAS**

868 Shallow flooding areas appear on FIRMs as AO zones with depth designations or  
869 as AH zones with Base Flood Elevations. For AO zones the base flood depths  
870 range from one (1) to three (3) feet above ground where a clearly defined  
871 channel does not exist, or where the path of flooding is unpredictable and where  
872 velocity flow may be evident. Such flooding is usually characterized as sheet flow.  
873 For both AO and AH zones, adequate drainage paths are required around  
874 structures on slopes to guide floodwaters around and away from proposed  
875 structures.

876 **5.2.5.1 STANDARDS FOR AH ZONES**

877 Development within AH Zones must comply with the standards in sections 5.1,  
878 5.2, and 5.2.5.

879 **5.2.5.2 STANDARDS FOR AO ZONES**

880 In AO zones, the following provisions apply in addition to the requirements in  
881 sections 5.1 and 5.2.5:

882 A. New construction, conversion to, and substantial improvement of  
883 residential structures and manufactured dwellings within AO zones shall  
884 have the lowest floor, including basement, elevated above the highest  
885 grade adjacent to the building, at minimum to or above the depth  
886 number specified on the Flood Insurance Rate Maps (FIRM)  
887 (COMMUNITY FREEBOARD REQUIREMENT) (at least two (2) feet if no  
888 depth number is specified). For manufactured dwellings the lowest floor  
889 is considered to be the bottom of the longitudinal chassis frame beam.

890 B. New construction, conversion to, and substantial improvements of non-  
891 residential structures within AO zones shall either:

892 i. Have the lowest floor (including basement) elevated above the  
893 highest adjacent grade of the building site, at minimum to or  
894 above the depth number specified on the Flood Insurance Rate

- 895 Maps (FIRMS) (**COMMUNITY FREE BOARD REQUIREMENT**) (at  
896 least two (2) feet if no depth number is specified); or
- 897 ii. Together with attendant utility and sanitary facilities, be  
898 completely floodproofed to or above the depth number specified  
899 on the FIRM (**COMMUNITY FREEBOARD REQUIREMENT**) or a  
900 minimum of two (2) feet above the highest adjacent grade if no  
901 depth number is specified, so that any space below that level is  
902 watertight with walls substantially impermeable to the passage  
903 of water and with structural components having the capability of  
904 resisting hydrostatic and hydrodynamic loads and the effects of  
905 buoyancy. If this method is used, compliance shall be certified  
906 by a registered professional engineer or architect as stated in  
907 section **5.2.3.3(A)(4)**.
- 908 C. Recreational vehicles placed on sites within AO Zones on the  
909 community's Flood Insurance Rate Maps (FIRM) shall either:
- 910 i. Be on the site for fewer than 180 consecutive days, and
- 911 ii. Be fully licensed and ready for highway use, on its wheels or  
912 jacking system, is attached to the site only by quick disconnect  
913 type utilities and security devices, and has no permanently  
914 attached additions; or
- 915 iii. Meet the elevation requirements of section **5.2.5.2(A)**, and the  
916 anchoring and other requirements for manufactured dwellings of  
917 section **5.2.3.4**.
- 918 D. In AO zones, new and substantially improved appurtenant structures  
919 must comply with the standards in section **5.2.3.6**.
- 920 E. In AO zones, enclosed areas beneath elevated structures shall comply  
921 with the requirements in section **5.2.1**.

### 5.3 SPECIFIC STANDARDS FOR COASTAL HIGH HAZARD FLOOD ZONES

923 Located within special flood hazard areas established in section **3.2** are Coastal High  
924 Hazard Areas, designated as Zones V1-V30, VE, V, or coastal A zones as identified on the  
925 FIRMs as the area between the Limit of Moderate Wave Action (LiMWA) and the Zone V  
926 boundary. These areas have special flood hazards associated with high velocity waters  
927 from surges and, therefore, in addition to meeting all provisions of this ordinance and the  
928 State of Oregon Specialty Codes, the following provisions shall apply in addition to the  
929 general standards provisions in section **5.1**.



930 **5.3.1 DEVELOPMENT STANDARDS**

931 A. All new construction and substantial improvements in Zones V1-V30 and VE,  
932 V, and coastal A zones (where base flood elevation data is available) shall  
933 be elevated on pilings and columns such that:

934 i. The bottom of the lowest horizontal structural member of the lowest  
935 floor (excluding the pilings or columns) is elevated a minimum of  
936 one foot above the base flood level; and

937 ii. The pile or column foundation and structure attached thereto is  
938 anchored to resist flotation, collapse and lateral movement due to  
939 the effects of wind and water loads acting simultaneously on all  
940 building components. Water loading values used shall be those  
941 associated with the base flood. Wind loading values used shall be  
942 those specified by the State of Oregon Specialty Codes;

943 B. A registered professional engineer or architect shall develop or review the  
944 structural design, specifications and plans for the construction, and shall  
945 certify that the design and methods of construction to be used are in  
946 accordance with accepted standards of practice for meeting the provisions  
947 of this section.

948 C. Obtain the elevation (in relation to mean sea level) of the bottom of the  
949 lowest horizontal structural member of the lowest floor (excluding pilings  
950 and columns) of all new and substantially improved structures and whether  
951 or not such structures contain a basement. The floodplain administrator  
952 shall maintain a record of all such information in accordance with section  
953 **4.2.2.**

954 D. Provide that all new construction and substantial improvements have the  
955 space below the lowest floor either free of obstruction or constructed with  
956 non- supporting breakaway walls, open wood lattice-work, or insect  
957 screening intended to collapse under wind and water loads without causing  
958 collapse, displacement, or other structural damage to the elevated portion  
959 of the building or supporting foundation system.

960 For the purpose of this section, a breakaway wall shall have a design safe  
961 loading resistance of not less than 10 and no more than 20 pounds per  
962 square foot. Use of breakaway walls which exceed a design safe loading  
963 resistance of 20 pounds per square foot (either by design or when so  
964 required by local or state codes) may be permitted only if a registered  
965 professional engineer or architect certifies that the designs proposed meet  
966 the following conditions:

967 i. Breakaway wall collapse shall result from water load less than that  
968 which would occur during the base flood; and

969                   ii. Such enclosed space created by breakaway walls shall be useable  
970                   solely for parking of vehicles, building access, or storage. Such  
971                   space shall not be used for human habitation.

972                   iii. Walls intended to break away under flood loads shall have flood  
973                   openings that meet or exceed the criteria for flood openings in  
974                   section **5.2.1**.

975                   E. The elevated portion of the building and supporting foundation system shall  
976                   not be subject to collapse, displacement, or other structural damage due to  
977                   the effects of wind and water loads acting simultaneously on all building  
978                   components (structural and nonstructural). Maximum water loading values  
979                   to be used in this determination shall be those associated with the base  
980                   flood. Maximum wind loading values used shall be those specified by the  
981                   State of Oregon Specialty Codes.

982                   F. Prohibit the use of fill for structural support of buildings.

983                   G. All new construction shall be located landward of the reach of mean high  
984                   tide.

985                   H. Prohibit man-made alteration of sand dunes which would increase potential  
986                   flood damage.

987                   I. All structures, including but not limited to residential structures, non-  
988                   residential structures, appurtenant structures, and attached garages shall  
989                   comply with all the requirements of section **5.3.1** Floodproofing of non-  
990                   residential structures is prohibited.

**5.3.1.1 MANUFACTURED DWELLING STANDARDS FOR COASTAL HIGH  
HAZARD ZONES**

All manufactured dwellings to be placed (new or replacement) or substantially  
improved within Coastal High Hazard Areas (Zones V, V1-30, VE, or Coastal A)  
shall meet the following requirements:

A. Comply with all of the standards within section **5.3**

B. The bottom of the longitudinal chassis frame beam shall be elevated to  
a minimum of one foot above the Base Flood Elevation (BFE); and

C. Electrical crossover connections shall be a minimum of 12 inches above  
the BFE.

**5.3.1.2 RECREATIONAL VEHICLE STANDARDS FOR COASTAL HIGH  
HAZARD ZONES**

Recreational Vehicles within Coastal High Hazard Areas (Zones V, V1-30, VE, or  
Coastal A) shall either:

- 1005 A. Be on the site for fewer than 180 consecutive days, and
- 1006 B. Be fully licensed and ready for highway use, on wheels or jacking
- 1007 system, is attached to the site only by quick disconnect type utilities and
- 1008 security devices, and has no permanently attached additions.

**5.3.1.3 TANK STANDARDS FOR COASTAL HIGH HAZARD ZONES**

Tanks shall meet the requirements of section 5.1.5 and 6.0.

**6.0 STANDARDS FOR PROTECTION OF SFHA FLOODPLAIN FUNCTIONS**

The standards described below apply to all special flood hazard areas as defined in Section 2.0.

**6.1 NO NET LOSS STANDARDS**

A. No net loss of the three proxies for the floodplain functions mentioned in Section 1 is required for development in the special flood hazard area that would reduce undeveloped space, increase impervious surface, or result in a loss of trees that are 6-inches dbh or greater. No net loss can be achieved by first avoiding negative effects to floodplain functions to the degree possible, then minimizing remaining effects, then replacing and/or otherwise compensating for, offsetting, or rectifying the residual adverse effects to the three floodplain functions. Prior to the issuance of any development authorization, the applicant shall:

i. Demonstrate a legal right by the project proponent to implement the proposed activities to achieve no net loss (e.g., property owner agreement);

ii. Demonstrate that financial assurances are in place for the long-term maintenance and monitoring of all projects to achieve no net loss;

iii. Include a management plan that identifies the responsible site manager, stipulates what activities are allowed on site, and requires the posting of signage identifying the site as a mitigation area.

B. Compliance with no net loss for undeveloped space or impervious surface is preferred to occur prior to the loss of habitat function but, at a minimum, shall occur concurrent with the loss. To offset the impacts of delay in implementing no net loss, a 25 percent increase in the required minimum area is added for each year no net loss implementation is delayed.

C. No net loss must be provided within, in order of preference: 1) the lot or parcel that floodplain functions were removed from, 2) the same reach of the waterbody where the development is proposed, or 3) the special flood hazard area within the same hydrologically connected area as the proposed development. Table 1 presents the no net loss ratios, which increase based on the preferences listed above.

1040 **6.1.1 UNDEVELOPED SPACE**

1041 A. Development proposals shall not reduce the fish-accessible and egress-able  
1042 undeveloped space within the special flood hazard area.

1043 B. A development proposal with an activity that would impact undeveloped  
1044 space shall achieve no net loss of fish-accessible and egress-able space.

1045 C. Lost undeveloped space must be replaced with fish-accessible and egress-  
1046 able compensatory volume based on the ratio in Table 1 and at the same  
1047 flood level at which the development causes an impact (i.e., plus or minus 1  
1048 foot of the hydraulically equivalent elevation).

1049 i. Hydraulically equivalent sites must be found within either the  
1050 equivalent 1-foot elevations or the same flood elevation bands of  
1051 the development proposal. The flood elevation bands are identified  
1052 as follows:

1053 (1) Ordinary High Water Mark to 10-year,

1054 (2) 10-year to 25-year,

1055 (3) 25-year to 50-year,

1056 (4) And 50-year to 100-year

1057 ii. Hydrologically connected to the waterbody that is the flooding source;

1058 iii. Designed so that there is no increase in velocity; and

1059 iv. Designed to fill and drain in a manner that minimizes anadromous  
1060 fish stranding to the greatest extent possible.

1061 **6.1.2 IMPERVIOUS SURFACES**

1062 Impervious surface mitigation shall be mitigated through any of the following  
1063 options:

1064 A. Development proposals shall not result in a net increase in impervious  
1065 surface area within the SFHA, or

1066 B. use low impact development or green infrastructure to infiltrate and treat  
1067 stormwater produced by the new impervious surface, as documented by a  
1068 qualified professional, or

1069 C. If prior methods are not feasible and documented by a qualified  
1070 professional stormwater retention is required to ensure no increase in peak  
1071 volume or flow and to maximize infiltration, and treatment is required to

1072 minimize pollutant loading. See section 6.2.C for stormwater retention  
1073 specifications.

1074 **6.1.3 TREES**

1075 A. Development proposals shall result in no net loss of trees 6-inches dbh or  
1076 greater within the special flood hazard area. This requirement does not  
1077 apply to silviculture where there is no development.

1078 i. Trees of or exceeding 6-inches dbh that are removed from the RBZ,  
1079 Floodway, or RBZ-fringe must be replaced at the ratios in Table 1.

1080 ii. Replacement trees must be native species that would occur naturally  
1081 in the Level III ecoregion of the impact area.

1082 **6.2 STORMWATER MANAGEMENT**

1083 Any development proposal that cannot mitigate as specified in 6.1.2(A)-(B) must include  
1084 the following:

1085 A. Water quality (pollution reduction) treatment for post-construction  
1086 stormwater runoff from any net increase in impervious area; and

1087 B. Water quantity treatment (retention facilities) unless the outfall discharges  
1088 into the ocean.

1089 C. Retention facilities must:

1090 i. Limit discharge to match the pre-development peak discharge rate  
1091 (i.e., the discharge rate of the site based on its natural groundcover  
1092 and grade before any development occurred) for the 10-year peak  
1093 flow using a continuous simulation for flows between 50 percent of  
1094 the 2-year event and the 10-year flow event (annual series).

1095 ii. Treat stormwater to remove sediment and pollutants from impervious  
1096 surfaces such that at least 80 percent of the suspended solids are  
1097 removed from the stormwater prior to discharging to the receiving  
1098 water body.

1099 iii. Be designed to not entrap fish and drain to the source of flooding.

1100 iv. Be certified by a qualified professional.

1101 D. Stormwater treatment practices for multi-parcel facilities, including  
1102 subdivisions, shall have an enforceable operation and maintenance  
1103 agreement to ensure the system functions as designed. This agreement will  
1104 include:

- 1105 i. Access to stormwater treatment facilities at the site by the  
1106 **COMMUNITY TYPE (e.g., city, county)** for the purpose of inspection  
1107 and repair.
- 1108 ii. A legally binding document specifying the parties responsible for the  
1109 proper maintenance of the stormwater treatment facilities. The  
1110 agreement will be recorded and bind subsequent purchasers and  
1111 sellers even if they were not party to the original agreement.
- 1112 iii. For stormwater controls that include vegetation and/or soil  
1113 permeability, the operation and maintenance manual must include  
1114 maintenance of these elements to maintain the functionality of the  
1115 feature.
- 1116 iv. The responsible party for the operation and maintenance of the  
1117 stormwater facility shall have the operation and maintenance  
1118 manual on site and available at all times. Records of the  
1119 maintenance and repairs shall be retained and made available for  
1120 inspection by the **COMMUNITY TYPE (e.g., city, county)** for five years

1121 **6.3 ACTIVITIES EXEMPT FROM NO NET LOSS STANDARDS**

1122 The following activities are not subject to the no net loss standards in Section 6.1;  
1123 however, they may not be exempt from floodplain development permit requirements.

1124 A. Normal maintenance of structures, such as re-roofing and replacing siding,  
1125 provided there is no change in the footprint or expansion of the roof of the  
1126 structure;

1127 B. Normal street, sidewalk, and road maintenance, including filling potholes,  
1128 repaving, and installing signs and traffic signals, that does not alter  
1129 contours, use, or alter culverts. Activities exempt do not include expansion  
1130 of paved areas;

1131 C. Routine maintenance of landscaping that does not involve grading,  
1132 excavation, or filling;

1133 D. Routine agricultural practices such as tilling, plowing, harvesting, soil  
1134 amendments, and ditch cleaning that does not alter the ditch configuration  
1135 provided the spoils are removed from special flood hazard area or tilled into  
1136 fields as a soil amendment;

1137 E. Routine silviculture practices that do not meet the definition of  
1138 development, including harvesting of trees as long as root balls are left in  
1139 place and forest road construction or maintenance that does not alter  
1140 contours, use, or alter culverts;

1141 F. Removal of noxious weeds and hazard trees, and replacement of non-native  
1142 vegetation with native vegetation;

- 1143 G. Normal maintenance of above ground utilities and facilities, such as
- 1144 replacing downed power lines and utility poles provided there is no net
- 1145 change in footprint;
  
- 1146 H. Normal maintenance of a levee or other flood control facility prescribed in
- 1147 the operations and maintenance plan for the levee or flood control facility.
- 1148 Normal maintenance does not include repair from flood damage, expansion
- 1149 of the prism, expansion of the face or toe or addition of protection on the
- 1150 face or toe with rock armor.
  
- 1151 I. Habitat restoration activities.

**6.4 RIPARIAN BUFFER ZONE (RBZ)**

- 1153 A. The Riparian Buffer Zone is measured from the ordinary high-water line of a
- 1154 fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream)
- 1155 or mean higher-high water of a marine shoreline or tidally influenced river
- 1156 reach to 170 feet horizontally on each side of the stream or inland of the
- 1157 MHHW. The riparian buffer zone includes the area between these outer
- 1158 boundaries on each side of the stream, including the stream channel.
  
- 1159 B. Habitat restoration activities in the RBZ are considered self-mitigating and
- 1160 are not subject to the no net loss standards described above.
  
- 1161 C. Functionally dependent uses are only subject to the no net loss standards for
- 1162 development in the RBZ. Ancillary features that are associated with but do
- 1163 not directly impact the functionally dependent use in the RBZ (including
- 1164 manufacturing support facilities and restrooms) are subject to the beneficial
- 1165 gain standard in addition to no net loss standards.
  
- 1166 D. Any other use of the RBZ requires a greater offset to achieve no net loss of
- 1167 floodplain functions, on top of the no net loss standards described above,
- 1168 through the beneficial gain standard.
  
- 1169 E. Under FEMA's beneficial gain standard, an area within the same reach of
- 1170 the project and equivalent to 5% of the total project area within the RBZ
- 1171 shall be planted with native herbaceous and shrub vegetation and
- 1172 designated as open space.
- 1173

1174 Table 1 No Net Loss Standards

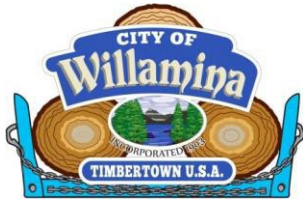
<b>Basic Mitigate Ratios</b>	<b>Undeveloped Space (ft<sup>3</sup>)</b>	<b>Impervious Surface (ft<sup>2</sup>)</b>	<b>Trees (6" &lt; dbh ≤ 20")</b>	<b>Trees (20" &lt; dbh ≤ 39")</b>	<b>Trees (39" &lt; dbh)</b>
<b>RBZ and Floodway</b>	2:1*	1:1	3:1*	5:1	6:1
<b>RBZ-Fringe</b>	1.5:1*	1:1	2:1*	4:1	5:1

<b>Mitigation multipliers</b>					
<b>Mitigation onsite to Mitigation offsite, same reach</b>	100%	100%	100%	100%	100%
<b>Mitigation onsite to Mitigation offsite, different reach, same watershed (5<sup>th</sup> field)</b>	200% *	200%*	200%*	200%	200%

1175 Notes:

- 1176 1. Ratios with asterisks are indicated in the BiOp
- 1177 2. Mitigation multipliers of 100% result in the required mitigation occurring at the same value
- 1178 described by the ratios above, while multipliers of 200% result in the required mitigation
- 1179 being doubled.
- 1180 a. For example, if only 500 ft<sup>2</sup> of the total 1000 ft<sup>2</sup> of required pervious surface
- 1181 mitigation can be conducted onsite and in the same reach, the remaining 500 ft<sup>2</sup> of
- 1182 required pervious surface mitigation occurring offsite at a different reach would
- 1183 double because of the 200% multiplier.
- 1184 3. RBZ impacts must be offset in the RBZ, on-site or off-site.
- 1185 4. Additional standards may apply in the RBZ (See 6.4 Riparian Buffer Zone)





**Mayor Vickie Hernandez**

**Council Members:**

Rita Baller, Council President  
Craig Johnson  
Barry Wilson  
Jennifer Eckels  
Karl Klym  
Jennifer Pederson

**City Management:**

City Manager: *Bridget Meneley*  
Finance/HR Manager: *Marissa Matias*  
Public Works Director: *Jeff Brown*  
Library Director: *Sarah Frost*

## **Planning Commissioner Roles and Responsibilities**

The Planning Commission serves an important role in guiding the development of Willamina's built and natural environments to improve the quality of life for all residents and support a diverse economy.

**Primary Staff Contacts:**

- City of Willamina Planning Team, [planning@ci.willamina.or.us](mailto:planning@ci.willamina.or.us)

### **Planning Commission Description**

The Planning Commission is an appointed, seven-member panel that is responsible for making recommendations to the City Council on all legislative land-use and planning matters.

Commissioners serve as vital volunteers, who bring vital community-led solutions and critical oversight to local government.

City Planning requires focus on the physical form, economic functions, and social impacts of the urban environment – and on the location of different activities within it – to promote the public health, safety, and welfare of all community members. Planning involves technical analysis and solutions as well as citizen involvement so that City projects meet the needs and interests of the public.

The roles and responsibilities of the Planning Commission include evaluating new and existing policies and plans that guide and regulate future growth and development in Willamina in a way that furthers the community's existing goals and commitments to sustainability, inclusivity, economic vitality, and livability.

The Planning Commission ensures new policy recommendations are consistent with the City's existing planning policies, and reviews and makes recommendations on all proposed amendments to the Comprehensive Plan, development policies and zoning code. As such, Commissioners are expected to gain in-depth knowledge of applicable City Code provisions.

- The City's Comprehensive Plan is an official statement of the goals, policies, implementation measures, and physical plan for the development of the city.
- The City's Development Code helps the community realize the vision, by regulating the design, uses, and development of land, including residential, commercial, industrial, public facilities, natural and open spaces.
- Master Plans cover one or more distinct areas in the city, providing detailed components for development in those areas. Thus, the Planning Commission's recommendations, at times, include transportation and public transit improvements, including the layout and location of

streets, sidewalks and bike lanes, improvements to housing conditions, and the establishment of regulations that might apply to specific zones or districts, including building design and landscape standards.

The Comprehensive Plan, City Code, and master plans are periodically reviewed to make sure that they comply with any modified Federal, State, and County standards and policies, and to make sure that they still meet the needs of the community. A legislative review process to amend the City's governing land use documents or to adopt a new Plan is first undertaken by the Planning Commission, which then makes a recommendation to the City Council. Throughout this process, citizens are invited to participate.

Given the important role of the Planning Commission, the City seeks to appoint membership that accurately represents the diversity of Willamina's population. Planning Commissioners represent the citizenry and work directly with members of the community. Diversity within the Commission is critical to ensure that City policies, programs and services serve people of every race, ethnicity, gender, sexual orientation, religion and ability.

The Planning Commission may include no more than two non-resident members. To be considered, a non-resident must work, operate a business or own property within Willamina, Oregon and provide relevant expertise.

Members of the Planning Commission typically serve a term of three years; those appointed to replace a Commissioner who vacates a seat are appointed until the conclusion of the existing term.

Planning Commissioners are expected to attend all Planning Commission meetings and to devote time for study of relevant issues prior to each meeting. Commissioners receive staff support from the contracted City Planner, Contract Engineers, Public Work Director, and City Planning team, which provides in-depth reports and supporting material for Commissioners to review.

We seek a diverse group of individuals that, collectively, have the following skills and qualifications:

- A history of working successfully within a consensus-building framework.
- An ability to establish, maintain, and foster positive working relationships and work constructively with people having significantly differing perspectives.
- Skills to address difficult or contentious issues in a constructive manner.
- Sufficient engagement within Willamina to understand the special and valued attributes of our community, neighborhoods, people, and businesses.
- A willingness to engage fully in long-term policy discussion and development, understanding that the outcomes may not occur or become apparent until years in the future.
- The desire to seek out answers to questions first; an ability to listen, understand, and clarify to gain understanding of the issues and policies at hand. An ability to read English-language text and review information provided by staff in preparation of meetings.
- Critical thinking, using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions, or approaches to problems, considering the impacts of potential actions, and making sound recommendations.
- Effective communication and community-building skills; an ability to represent ideas and recommendations clearly in public at both formal hearings and informal events.
- Experience incorporating the perspectives of multiple communities, in the consideration of impacts and outcomes of a decision-making process.

- Experience presenting to / working directly with people from diverse racial, ethnic, and socioeconomic backgrounds. Ability to respond to issues and concerns of the public and City Council.
- Ability to speak a second language.
- An understanding of the concepts of institutional and structural racism and bias and their impact on underserved and under-represented communities.
- Knowledge of (professional, educational, or volunteer experience in) urban planning, architecture, public policy or administration, geography, environmental sciences, or a closely related field of study.
- Knowledge of comprehensive planning and/or the development process; prior experience serving on a board or commission in the City or elsewhere.
- Knowledge of the legislative process and/or applicable Federal, State, and local laws, codes, and regulations.

Meeting Schedule

Evening: 6 pm – until meeting conclusion (typically one – 2 hours)  
 Day of the week: Tuesday  
 Date range: The fourth (4<sup>th</sup>) Tuesday of each month  
 Volunteers needed: Total 7 person commission panel  
 Hours needed: Dependent on Meeting Agendas (typically 2-4 hours including meeting)  
 Term: Three year term, unless fulfilling the completion of term

In closing, thank you to all the Planning Commissioner's for their willingness to dedicate their time and being committed to assist with the land use process while providing guidance with the navigation of future growth & development in the City of Willamina.

Many of the City staff have grown up, left, returned, or have lived in the area for many years. Please know we are building a tremendous team. As with each of you, we are very passionate about creating trusting relationships with our community and collaborating agencies.

Planning Commission meetings are traditionally held on an as needed basis; if we have a land use application that requires of the Planning Commissions approval, a meeting is required. Regular meetings and Public hearings are very costly to the applicant(s) and to the City. Without a quorum, the meetings and/or Public Hearings need to be continued to a future date - incurring costly financial impacts due to the prices of additional publications, neighbor notices, staff time for both the City & the COG, and create significant financial impact due to delays for the Developer.

We never want to mistakenly create a false perception that could potentially jeopardize the integrity of the Planning Commission. Thank you again to all of you who are just beginning their journey as a public servant to the City of Willamina and to those who continue to be dedicated to the future development and growth of our beautiful community.

Thank you,

*Bridget Meneley*  
 Bridget Meneley  
 City Manager



## Planning Commissioner Training 2024

Facilitators: Jim Jacks; MWVCOG and City Planner for the City of Lafayette,  
Scott Whyte; MWCOG and City Planner for the City of Carlton,  
Tyler Yeoman-Millette; Haugeberg, Rueter, Gowell, Fredricks & Higgins,  
City Attorney for Carlton, Yamhill and Sheridan

## Planning Commissioner Training 2024

### Training Synopsis

#### **Jim Jacks** (first 20 minutes)

- 1,000-foot level overview of the Statewide Planning System
- The State and Local Relationship
- Codified / Un-codified Role of the Planning Commission

#### **Tyler Yeoman-Millette** (another 20 minutes + time for questions)

- Public Meeting Procedures, including declarations of ex parte contact, bias and conflicts of interest
- Questions about procedures

#### **Scott Whyte** (final 20 minutes)

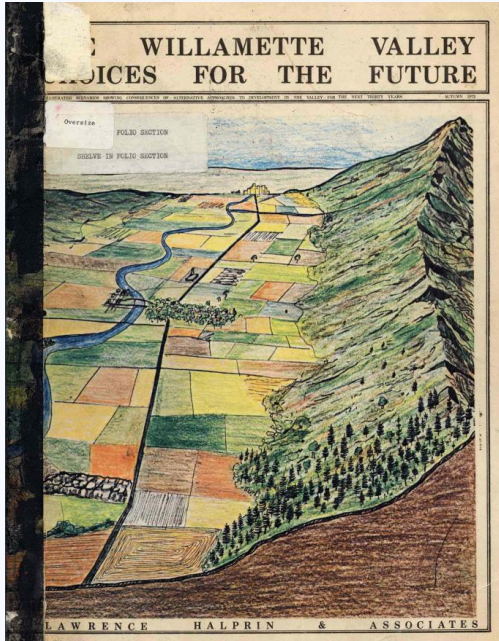
- Inactive exercise – You are the Chair...

Finish by 7:30p.m



# PLANNING IN OREGON Prior to Statewide Planning

Presented by Jim Jacks, MWVCOG



Left: Influential publication of 1972 (*The Willamette Valley – Choices for the Future*) endorsed by Governor Tom McCall, illustrating consequences – if choice is no planning.

## Northwest population to double

SPOKANE, Wash. (AP) — Population of the four Pacific Northwest states will double within 50 years, the Pacific Northwest River Basins Commission's economic studies committee said here Thursday.

Population projections made by the committee are considered vital to development of state water and river basin development plans in Washington, Oregon, Idaho and Montana.

Oregon's current 2,091,385 population is expected to grow to 4,021,000 by 2020 for an average increase of 400,000 each decade.



Above: Aerial photo looking north, I-5 crossing the Willamette River at Wilsonville – Charbonneau is right of I-5 (southeast corner of photo)

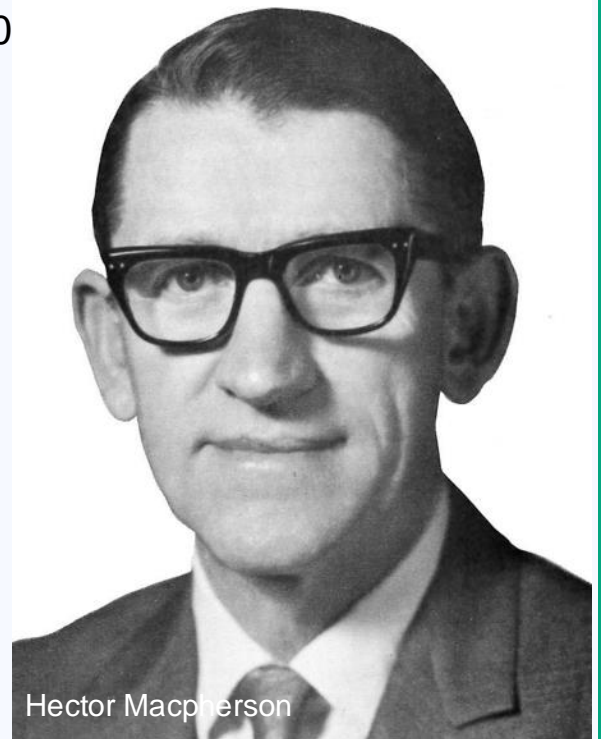
Left: Newspaper article from 1972

## Oregon Land Use Act of 1973 –Senate Bill 100 (SB 100)

### ITS ABOUT FARMLAND PROTECTION

*“...This bill speaks to the problem we’re all concerned about – we know that Oregon’s prime agricultural land is rapidly being urbanized – these limited high value agricultural soil resources should be kept in agricultural production as long as possible because of the important contribution they make to Oregon’s economy and other important social considerations such as open space and ascetic enjoyment...”*

Oregon Senator Hector Macpherson, message to the Oregon Legislature, describing the purpose of SB 100 in 1973



Hector Macpherson

Photo: non-copyright DLCD



Enrolled  
**Senate Bill 100**

Sponsored by Senators MACPHERSON, HALLOCK

CHAPTER.....

AN ACT

Relating to land use; creating new provisions; amending ORS 215.055, 215.510, 215.515, 215.535 and 453.345; and appropriating money.

Be It Enacted by the People of the State of Oregon:

**PART I INTRODUCTION  
PREAMBLE**

**SECTION 1.** The Legislative Assembly finds that:

(1) Uncoordinated use of lands within this state threaten the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state.

(2) To promote coordinated administration of land uses consistent with comprehensive plans adopted throughout the state, it is necessary to establish a process for the review of state agency, city, county and special district land conservation and development plans for compliance with state-wide planning goals and guidelines.

(3) Except as otherwise provided in subsection (4) of this section, cities and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions.

(4) The promotion of coordinated state-wide land conservation and development requires the creation of a state-wide planning agency to prescribe planning goals and objectives to be applied by state agencies, cities, counties and special districts throughout the state.

(5) The impact of proposed development projects, constituting activities of state-wide significance upon the public health, safety and welfare, requires a system of permits reviewed by a state-wide agency to carry out state-wide planning goals and guidelines prescribed for application for activities of state-wide significance throughout this state.

**POLICY STATEMENT**

**SECTION 2.** The Legislative Assembly declares that, in order to assure the highest possible level of liveability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

(1) Must be adopted by the appropriate governing body at the local and state levels;

(2) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;

(3) Shall be the basis for more specific rules, regulations and ordinances which implement the policies expressed through the comprehensive plans;

(4) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and

## Core Elements of SB 100

- ❖ Created statewide protections for farmland with amendments to the Exclusive Farm Use zone.
- ❖ Created – the Land Conservation & Development Commission (LCDC) and the Department of Land Conservation & Development (DLCD)
- ❖ Set in motion -- creation of statewide goals and implementation measures for the base structure of the current land use program.

## SB 100 did not ...

- ❖ Establish the existing Statewide Planning Goals
- ❖ Enact key statute & rules we've come to know.

1. Citizen Involvement
2. Land Use Planning
3. Agricultural Lands
4. Forest Lands
5. Natural Resources, Scenic and Historic Areas, and Open Space
6. Air, Water and Land Resources Quality
7. Areas Subject to Natural Hazards
8. Recreational Needs
9. Economic Development
10. Housing
11. Public Facilities and Services
12. Transportation
13. Energy Conservation
14. Urbanization
15. Willamette River Greenway
16. Estuarine Resources
17. Coastal Shorelands
18. Beaches and Dunes
19. Ocean Resources

## 19 Statewide Planning Goals

Goals 1 and 2 – the procedural goals

Goals 3 and 4 – the farmland / forestry goals

Goals 5, 6 & 7 – the environmental resource goals

Goals 8 through 14 – urban / infrastructure goals

Goal 15 through 19 – area-specific / coastal goals

Goals 1 – 14 were adopted in 1974 after passage of SB 100  
Goals 15 -19 were adopted later in 1977.

# Additional Information

Department of Land Conservation & Development (DLCD) website:

[https://www.oregon.gov/lcd/Publications/compilation\\_of\\_statewide\\_planning\\_goals\\_July2019.pdf](https://www.oregon.gov/lcd/Publications/compilation_of_statewide_planning_goals_July2019.pdf)

## Oregon's Statewide Land Use Planning Goals

## DLCD webpage

### OREGON PLANNING

Oregon's Statewide Land Use Planning Goals

History of Land Use Planning

Get Involved in Local Planning

Required City and County Reporting

50th Anniversary of Oregon's Land Use Planning Program

The foundation of statewide program for land use planning in Oregon is a set of 19 Statewide Land Use Planning Goals. The goals express the state's policies on land use and related topics, like citizen involvement, housing, and natural resources.

Most goals are accompanied by guidelines, which are suggestions about how a goal may be applied. As noted in [Goal 2](#), guidelines are not mandatory.

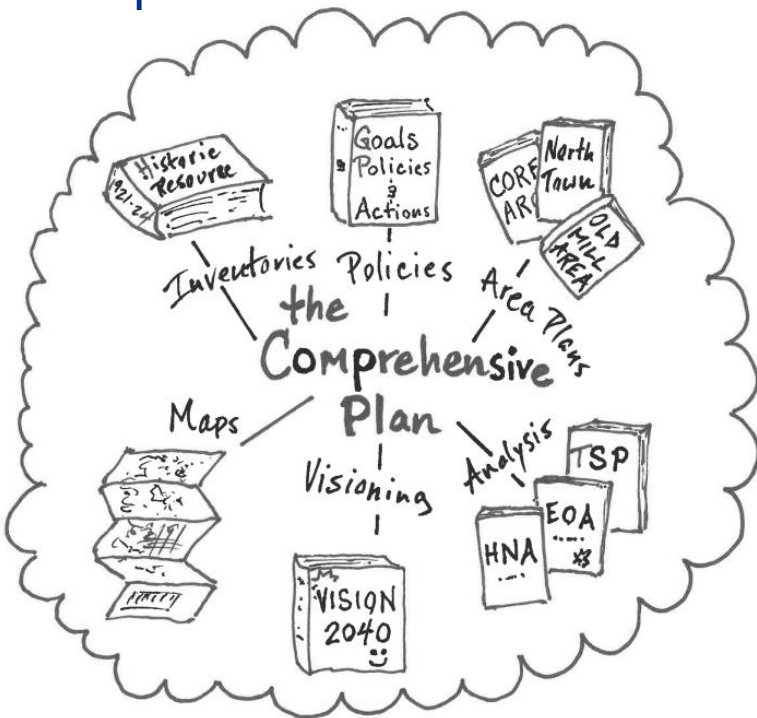
Oregon's statewide goals are achieved through local comprehensive planning. State law requires each city and county to adopt a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect.

Local comprehensive plans must be consistent with the Statewide Planning Goals. Plans are reviewed for such consistency by the state's Land Conservation and Development Commission (LCDC). When LCDC officially approves a local government's plan, the plan is said to be acknowledged. It then becomes the controlling document for land use in the area covered by that plan.

Oregon's planning laws apply not only to local governments but also to special districts and state agencies. The laws strongly emphasize coordination -- keeping plans and programs consistent with each other, with the goals, as statutes are updated, and with acknowledged local plans.



## Comprehensive Plan Structure



Comprehensive Plan Elements (common to most city Comp Plans)	Statewide Goal
Citizen Involvement	1
Land Use Planning	2
Natural / Historic Resources	5
Air, Water & Land Resources	6
Areas Subject to Nat. Hazards	7
Recreational Needs	8
Economic Development	9
Housing	10
Public Facilities and Services	11
Transportation	12
Energy Conservation	13
Urbanization	14

Related Note: "Comprehensive Plan" is defined by statute in ORS 197.015(5) and is not limited to policy statements of the local jurisdiction.

# PLANNING IN OREGON



## State & Local Relationship



State (LCDC, DLCD)	Local (Cities and Counties)
Sets land use policy based on the 19 Goals LCDC adopts Oregon Administrative Rules.	Prepares local vision and assessment of local needs - based on <u>relevant</u> Goals.
Provides technical assistance / grants	Adopts and amends plans, maps and codes in compliance with relevant Goals.
Reviews local Comprehensive Plan and Development Code amendments and map amendments (Comp. Plan & Zoning)	Administers and enforces codes and ordinances. Makes land use decisions.

### How DLCD is made aware of proposed changes.

Required steps for legislative amendment:

1. Notice of Proposed Change
2. Notice of Adopted Change

After adopting change, city / county staff upload the adopted Ordinance and exhibits to DLCD's web-based system.

### “Post-Acknowledged Plan Amendment” (or PAPA)

Snapshot from current DLCD website

Received Date: 2/22/2023 to 03/01/2023 Jurisdiction: --All Jurisdictions-- Go  
(Note: Due to the time lag in processing of proposals received, the most recent date you can select is two days prior to today's date.)

Adopted Post-Acknowledgement Plan Amendments

March 04, 2023

The Department of Land Conservation and Development (DLCD) received notice of the following adopted amendments to comprehensive plans or land use regulations. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

**Appeal Procedures**

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0000 or plan.amendments@dlcd.oregon.gov.

**Adopted Amendments** (02/22/2023 - 03/01/2023)

All Oregon cities & counties have “acknowledged” Comprehensive Plans.



# The “Codified” Structure of the City Planning Commission

From Oregon Revised Statutes (ORS) 227 – City Planning and Zoning

## 227.030 Membership of planning commission

- (1) Not more than two members of a city planning commission may be city officers, who shall serve as ex officio nonvoting members.
- (2) A member of such a commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.
- (3) Any vacancy in such a commission shall be filled by the appointing authority for the unexpired term of the predecessor in the office.
- (4) **No more than two voting members of the commission may engage principally in the buying, selling or developing of real estate for profit** as individuals, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit. **No more than two members shall be engaged in the same kind of occupation, business, trade or profession.**



\*\*\*\*\*

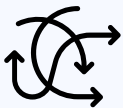
Related Note: Most local codes or City Commission Bylaws incorporate the membership provisions of ORS 227.030, above.

# The “Codified” Role of the City Planning Commission

More from ORS 227 – City Planning and Zoning

## ORS 227.090 Powers and duties of commission

- (1) Except as otherwise provided by the city council, a city planning commission may:
  - (a) **Recommend and make suggestions to the council** and to other public authorities concerning:
    - (A) The laying out, widening, extending and locating of public thoroughfares, parking of vehicles, relief of traffic;
    - (B) Betterment of housing and sanitation conditions;
    - (C) Establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development;
    - (D) Protection and assurance of access to incident solar radiation; and
    - (E) Protection and assurance of access to wind for potential future electrical generation ...
  - (b) **Recommend to the council** and other public authorities plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds...
  - (c) **Recommend to the council** and other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to industrial pursuits.



\*\*\*\*\*

Related Note: Most local codes incorporate certain powers & duties provisions of ORS 227.

# The “Codified” Role of the City Planning Commission continued...

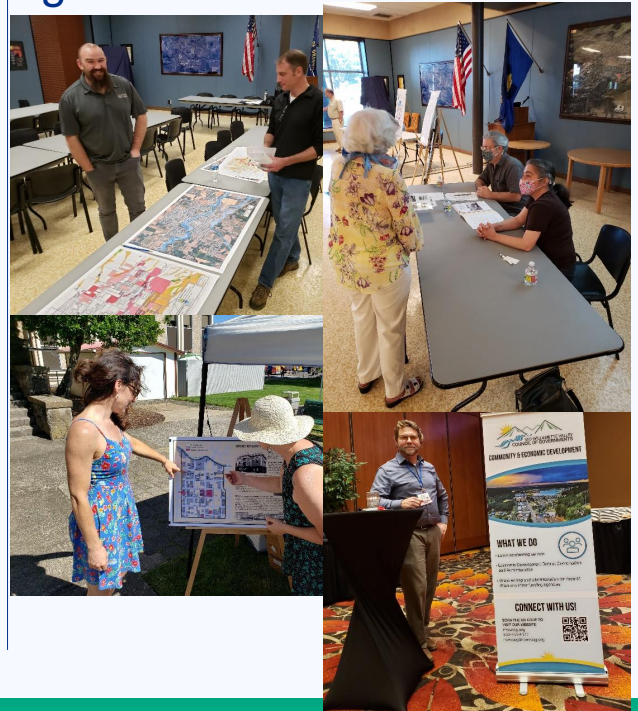
City Ordinances vary, but role & duties of Planning Commission may include:

- Quasi-Judicial decision making (explained in local ordinance and this presentation)
- Similar use determinations (if code does not describe but proposed use is similar)
- Service on Advisory Committee (early development of draft policy / code update, etc.)



## The Un-codified Role of a Local Planning Commission

- Consider all documents of the record.
- Ask questions of staff – if unsure or need clarification.
- Ensure conditions are sound, clear and reasonable.
- Be respectful of other Planning Commissioners.
- Stay to the role, be informed, self educate.
- Educate the public as necessary / when appropriate.
- Find ways to participate, create and inspire others.
- Enjoy your time!



# PUBLIC MEETING PROCEDURES

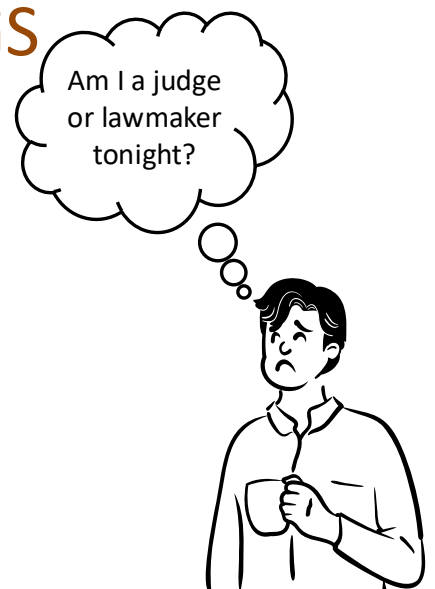
Presented by Tyler Yeoman-Millette, Attorney at Law

Haugeberg, Rueter, Gowell, Fredricks & Higgins;  
City Attorney for Carlton, Yamhill and Sheridan



## TYPES OF HEARINGS

- **LEGISLATIVE HEARINGS:**
  - Creating or amending policies / code
  - Large geographic area  
(e.g., obsolete zone is replaced with new)
- **QUASI-JUDICIAL HEARINGS:**
  - Decision maker acts as the judge
  - Apply facts to applicable criteria



Related Note: The criteria to be considered in determining if a decision process is legislative or quasi-judicial comes from case law: *Strawberry Hill 4-Wheelers v. Benton County Board of Commissioners*, a 1979 Oregon Supreme Court decision.

# LEGISLATIVE

## Item before Planning Commission is:

- Amendment to Comprehensive Plan (e.g., change in goals and policies)
- Changes to land use ordinance (e.g., Development Code)
- Major map amendments (all properties zoned X to become Y zone)
- Disclosure of ex parte contacts not required.
- Conflict of interest disclosure required (if have one).
- No decision required.



# QUASI-JUDICIAL

## Item before a Planning Commission is:

- Limited to a small number of property owners
- Decision is bound to apply preexisting standards and criteria to facts; and
- Process is bound to result in a decision (i.e., decision needed).



Staff Report for Quasi Judicial decision should describe:

- Project description & location
- Applicable standards & criteria
- Options for making decision (i.e., approve, denial)

Related Note: Continuing a public hearing to date certain is not a decision.

# QUASI-JUDICIAL HEARING PROCEDURES

## Procedure is governed by time constraints:

- Cities and counties must take final action within 120 days after the application is deemed complete (ORS 215.435 / ORS 227.178)
- Applicant controls the 120-day clock (to stop / re-start) and this includes time necessary to conduct an appeal hearing.



## Procedure is governed by ORS 197.797:

- Fairness
- Due Process
- Open and Transparent Process
- Unbiased Decision Makers



# QUASI-JUDICIAL HEARING PROCEDURE

## Role of the Chair (key tasks):

- Read the pre-hearing ORS 197 statement (typically via script)
- Poll Commissioners for bias, conflicts of interest & ex parte contacts
- Explain order of proceedings – 1) staff oral report, 2) applicant testimony, 3) proponent/opponent testimony, 4) applicant rebuttal.
- Open public hearing to ensure opportunity for testimony.
- Close the hearing, deliberate and vote.

Deliberate and vote only in an open meeting, per Oregon Public Meetings Law.

... precludes appeal to the Land Use Board of Appeals based on that issue... zzzz.

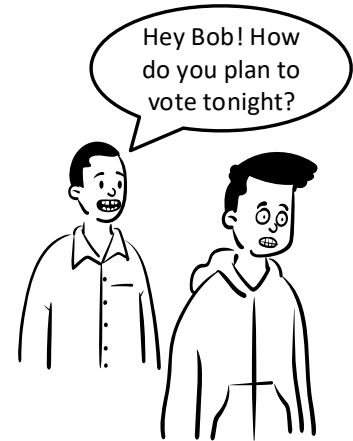


Related Note: Chair can instruct staff to read the pre-hearing statement required by ORS 197.797.

# EX PARTE CONTACT

## What is it?

- Any contact or communication outside of the record regarding the matter before you.
- A site visit after application received (possibly).
- Can be written or verbal.
- Discussion with staff is not ex parte contact.

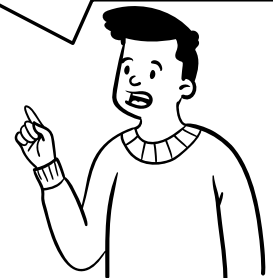


# DISCLOSURE OF EX PARTE CONTACT

## Before opening the public hearing:

- Report the contact including a summary of what was learned.
- Failure to disclose, or to adequately summarize, is substantive error.
- Objections to disclosure must be raised by interested parties before the record is closed.

Earlier today my neighbor Bill approached me and asked how I plan to vote. I told him I'm unsure. We did not discuss the project further.




Related Note: Disclosing ex parte contact does not disqualify a Commissioner from participating / deliberating and voting at the hearing.

# CONFLICT OF INTEREST - ACTUAL

“Actual Conflict of Interest” means:

Any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which **would be** to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated....




I’m not a relative of the applicant and we don’t do business.

Related Note: ORS 244.020(1) Government Ethics, is where to find the full definition of “Actual Conflict of Interest.”

# CONFLICT OF INTEREST- POTENTIAL

“Potential Conflict of Interest” means:

Any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which **could be** to the private pecuniary benefit or detriment of the person or the person’s relative, or a business... [certain exceptions apply]



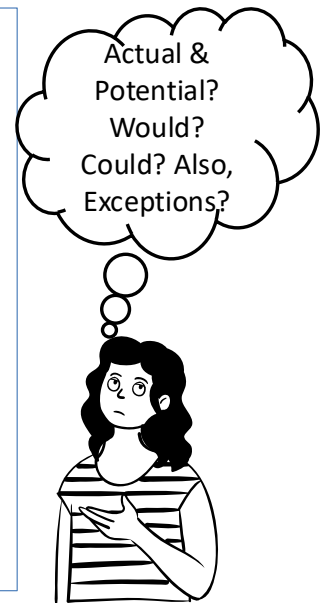
Not a relative and I don’t do business with, but I live near the project site & could be impacted by vehicle trips.

Related Note: ORS 244.020(13) Government Ethics, is where to find the full definition of “Potential Conflict of Interest.” Disclosing a “potential” conflict does not disqualify a Commissioner from participating / deliberating in the hearing. Chair should ask follow-up question of the Commissioner - if capable of making fair & impartial decision.

# CONFLICT – Exceptions

No conflict if potential benefit or detriment arises from:

- An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
- The effect of the decision equally affects all persons in that class such as all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group
- membership in or on the board of directors of a nonprofit corporation that is tax exempt...



**Related Note:** Recommend consulting your City Attorney if uncertain about actual or potential conflict of interest. Above are (a)(b)&(c) from ORS 244.020(13). Also, ORS 192.690 (Public Meetings Law) identifies exceptions.

# DISCLOSURE OF CONFLICTS

What to do – if you have one...

- Potential Conflict of Interest:
  - Announce publicly the nature of the potential conflict prior to taking any action thereon.
- Actual Conflict of Interest:
  - Refrain from participating as a public official in any discussion, debate, or vote.

My employer is a subcontractor for this project. I therefore recuse myself from participating.

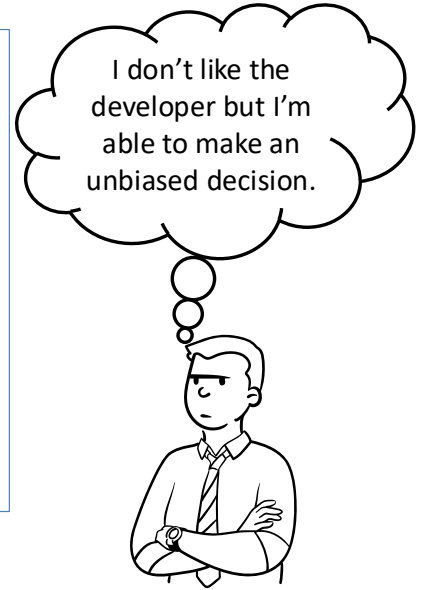


**Related Note:** If you have an actual conflict, check with city staff (or designated Commission liaison) to see if a scheduled meeting has the minimum number of Commissioners able to form a quorum. Can declare conflict at the commencement of a hearing, then recuse self.



# BIAS

- Prejudice or prejudgment of the facts to such a degree that an official is **incapable** of making an objective decision based on the merits of the case.
- Does not require recusal unless it is an actual bias to the degree that the decision maker cannot make a decision based on the record.



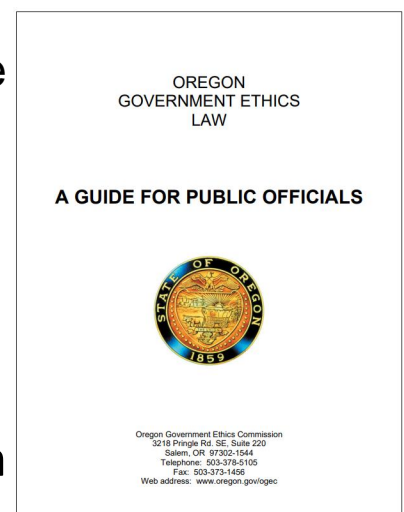
Related Note: After all Commissioners have disclosed bias, ex parte contacts or conflicts of interest (actual / potential) the Chair is then to ask those attending "Is there anyone who like to challenge the right of a Commissioner to participate in this hearing?" (Chair script should state).

# RESOURCES

Oregon Government Ethics Commission has a guide

- Includes several "What if..." scenarios.
- More on Conflicts of Interest
- Use of position / government-issued items
- Gifts that can be accepted
- Nepotism

Additional  
Information



Website & page: <https://www.oregon.gov/ogec/pages/guide-for-public-officials.aspx>

# FINDINGS IN A STAFF REPORT

## Why Important

- Essential to support the decision and for review upon appeal.
- Key elements:
  - Identify all relevant approval standards
  - Identify all facts on which you rely in making your decision: **If decision is appealed, LUBA will need to know the findings that substantiate.**
  - As a Commissioner – if you notice competing criteria, it is important to identify these criteria to the record.



Related Note: Typically, staff reports include findings in response to approval criteria. When standards / approval criteria are clear and objective, and when the applicant's plans and materials clearly show compliance, alternative findings for denial are very difficult to make.

## FINDINGS AS RELATED TO CONDITIONS

- Consider how conditions of approval are related to the project scope (i.e., a “nexus” must exist between condition imposed and impacts of the project).
- Consider “rough proportionality” in imposing conditions and consult with legal counsel as needed.
- Consider the matter of feasibility (e.g., is condition under applicant's control to execute?)

Related Note: *Dolan v. City of Tigard*, 512 U.S. 374 (from year 1994) is a landmark United States Supreme Court case pertaining to the extent to which government agencies can apply conditions of approval as related to the project scope and impacts. The “rough proportionality” test in *Dolan v. City of Tigard* is cited in Oregon Land Use Board of Appeals decisions, and other case law.

# REQUESTS TO KEEP RECORD OPEN

- Before conclusion of an initial hearing, any participant can request time to submit additional evidence or testimony.
- Planning commission or Council must grant request and can either:
  - 1) continue the hearing to a date certain, or
  - 2) keep the record open.
- Avoid ex parte contact after record is closed.
- 120-day clock does not stop unless applicant voluntarily agrees to it.

...for the last part of my testimony, I request this hearing be continued...



## ACTION OPTIONS

**Example (one) from Staff Report, identifying Planning Commission action options – Quasi –Judicial hearing:**

- A. Motion to approve case file number XX:
  1. Based on the findings as presented in the staff report and subject to the condition(s) of approval as described therein, OR
  2. Based on the findings as presented in the staff report and subject to the conditions of approval as described therein, and as further amended by the Planning Commission as follows [describe modification(s) to condition(s)].
- B. Motion to deny case file number XX
- C. Motion to continue case file XX to a date certain [stating the date].

# Questions on Procedures

Remaining training time is devoted to an exercise (some scenarios on procedure).

Are there questions about procedures?

## You are the Chair What would you do...

Next part will describe six scenarios.

**You are the Chair of your local Planning Commission. What would do if faced with the following...**



Facilitated by Scott Whyte

Mid-Willamette Valley Council of Governments

Contract Planner for the City of Carlton

# You are the Chair

## What would you do...

### Scenario # 1

I'm a friend of the applicant and I can be fair & impartial, but..."



**The Scene:** Commencement of a Public Hearing.

**The Situation:** The Chair asks Commissioners if they have any bias, ex-parte contact, conflict of interest or site visits to declare. One Commissioner responds by disclosing a long-standing friendship with the applicant.

Upon hearing this, you (as Chair) promptly ask the Commissioner about the ability to exercise fairness and impartiality. The Commissioner responds by saying:

*Yes, I can be fair and impartial. I also thought about recusing myself, but I'm concerned that my friend's proposal will not receive the true fairness and impartiality it deserves from other Commissioners. So, I'm not stepping down.*

**As the Chair of the Planning Commission, what would you do?**

35

# You are the Chair

## What would you do...

### Scenario # 2

"My friend is unable to attend this evening..."



**The Scene:** Commencement of a public hearing.

**The Situation:** The Chair asks Commissioners if they have any bias, ex-parte contact, conflict of interest or site visits. One Commissioner reveals having just received a text message from a friend who lives near the project site that is subject to hearing.

The Commissioner explains how the friend had planned to testify tonight but is unable to do so, having been rushed to the hospital for emergency care. The Commissioner then states:

*Under the circumstances, it only feels right for me to help my friend. I have her notes in my phone (what she planned to say tonight). My friend should be provided an opportunity to testify. What should I do?*

**As the Chair of the Planning Commission, what would you do?**

36

# You are the Chair

## What would you do...

### Scenario # 3

“I didn’t receive a notice...”



**The Scene:** Hearing is Open. Period of Public Testimony.

**The Situation:** The first person to testify in opposition to the project is upset not having received a notice in the mail about the hearing. This person explains:

*I only learned about this project yesterday, through my neighbor – who received a notice.*

As Chair, you ask the staff planner for the mailing affidavit. In review you see the person’s name and address is shown and explain how notice appears to have been mailed.

The person replies:

*That doesn’t mean I received the notice.*

**As the Chair of the Planning Commission, what would you do?**

37

# You are the Chair

## What would you do...

### Scenario # 4

“I request that this hearing be continued...”



**The Scene:** Hearing is Open. Period of Public Testimony.

**The Situation:** The second person to testify in opposition to the project conveys a need for presenting additional arguments, and so states:

*I hereby request that this hearing be continued.*

Upon hearing this, you ask the staff planner - how much time remains on the state-mandated processing clock of 120 days.

The staff planner replies:

*We’re at day **116** of the 120-day clock.*

Applying quick math, you realize the 120-day clock will expire in four days, and that the minimum period required by state law (for leaving the record open) is seven days.

**As the Chair of the Planning Commission, what would you do?**

38

# You are the Chair

## What would you do...

### Scenario # 5

I'm voting no because I don't like your attitude.



**The Scene:** Hearing is Open. Applicant Rebuttal Period.

**The Situation:** After receiving public testimony, the applicant is provided an opportunity for rebuttal.

On rebuttal, the applicant states:

*All testimony has been emotional, irrational and reactionary. My housing project meets all clear and objective code standards. The staff report indicates so and opposition testimony has not addressed these standards. Therefore, you are obligated under ORS & your code to approve it!*

One Commission responds to this statement by saying:

*We're not "obligated" to approve anything. It's a privilege to develop in our town! - I'm voting no because you have not shown any respect.*

**As the Chair of the Planning Commission, what would you do?**

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# You are the Chair

## What would you do...

### Scenario # 6

I found something missing

...



**The Scene:** Hearing is Closed. Commission deliberation.

**The Situation:** Deliberation begins with Commissioner explaining how the applicant's plans do not show the place where receptacles for recycling will be stored and how the code was amended last year to require these receptacles - with standards for size, dimensions, enclosure, etc.

The Commissioner continues to explain how staff is at fault for deeming the application "complete" when the code clearly requires recycling areas to be shown to a site plan and how it would be premature for the Commission to decide on this project - until more information is known on this topic.

**As the Chair of the Planning Commission, what would you do?**

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# You are the Chair

## What would you do...

### Scenario # 7

It's your turn.

What scenarios have you encountered?

OR

Do you have questions about scenarios 1 - 6?

**The Scene:** Describe a scene (e.g., Hearing is Open. and it's during public testimony, etc.).

**The Situation:** Provided a brief synopsis of the situation (e.g., the person claimed the city / county had not issued any notice, etc.).

**What made the situation uncomfortable?**



## Planning Commissioner Training 2024

Facilitators: Jim Jacks, Tyler Yeoman-Millette and Scott Whyte

**Thank you for attending!**

**And, thanks to the City of Carlton for hosting!**