



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



## NOTICE OF ADOPTED AMENDMENT

05/12/2009

**TO:** Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

**FROM:** Plan Amendment Program Specialist

**SUBJECT:** City of Brookings Plan Amendment  
DLCD File Number 007-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

**DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL:** Wednesday, May 20, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the 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). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

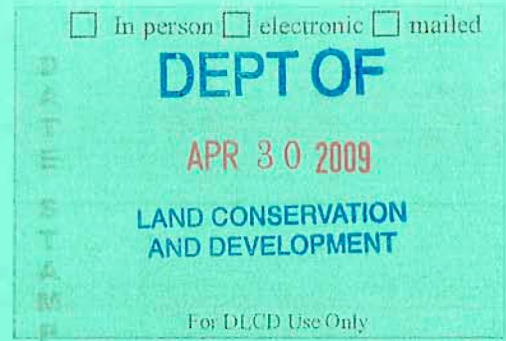
**\*NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

**Cc:** LauraLee Gray, City of Brookings  
Gloria Gardiner, DLCD Urban Planning Specialist  
Chris Shirley, FEMA Specialist  
Dave Perry, DLCD Regional Representative

<paa> YA

# Notice of Adoption

THIS FORM **MUST BE MAILED TO DLCD**  
**WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION**  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: **City of Brookings**

Local file number: **CP-01-09**

Date of Adoption: **4/27/2009**

Date Mailed: **4/29/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: 2/13/2009

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Ordinance to adopt revisions to Floodplain Ordinance to meet new FEMA requirements. Revisions to Goal 7 of the Brookings Comprehensive Plan.

Does the Adoption differ from proposal? Yes, Please explain below:

Houskeeping changes: In Findings 1, "steep terrain and sandy soils" changed to "terrain that exceeds 15% slope" and correction of typo in findings 2, "many time actions can" changed to "many times action may"

Plan Map Changed from: **N/A**

to:

Zone Map Changed from: **N/A**

to:

Location: **N/A**

Acres Involved:

Specify Density: Previous: **N/A**

New:

Applicable statewide planning goals:

**1**  **2**  **3**  **4**  **5**  **6**  **7**  **8**  **9**  **10**  **11**  **12**  **13**  **14**  **15**  **16**  **17**  **18**  **19**

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

**DLCD file No.** See First Page

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

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Local Contact: **LauraLee Gray**

Phone: (541) 469-1131 Extension:

Address: **898 Elk Dr**

Fax Number: **541-469-3650**

City: **Brookings**

Zip: **97415-**

E-mail Address: **lgray@brookings.or.us**

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## **ADOPTION SUBMITTAL REQUIREMENTS**

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**IN AND FOR THE CITY OF BROOKINGS  
STATE OF OREGON**

**ORDINANCE NO. 09-O-634**

**IN THE MATTER OF ORDINANCE 09-O-634, AN ORDINANCE ADOPTING REVISIONS TO GOAL 7 OF THE CITY OF BROOKINGS COMPREHENSIVE PLAN AND AMENDING, IN ITS ENTIRETY, CHAPTER 15.15, FLOOD DAMAGE PREVENTION, OF TITLE 15, BUILDING AND CONSTRUCTION, OF THE BROOKINGS MUNICIPAL CODE.**

- Section 1. Ordinance Identified
- Section 2. Revises Goal 7 of the City of Brookings Comprehensive Plan
- Section 3. Amends Chapter 15.15, of the Brookings Municipal Code, in its entirety

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance adopts revisions to Goal 7 of the City of Brookings Comprehensive Plan, and amends, in its entirety, Chapter 15.15, Flood Damage Prevention, of Title 15, Building and Construction, of the Brookings Municipal Code.

Section 2. Amends Goal 7 of the City of Brookings Comprehensive Plan. Goal 7 of the City of Brookings Comprehensive Plan is hereby amended to read as follows:

**GOAL 7 AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS**

**GOAL:**

To protect life and property from natural disasters and hazards.

**FINDINGS:**

1. Because of terrain that exceed 15% slope and number of waterways that flow through the Brookings area, there are various areas that require careful handling if they are to be developed.
2. Many times action may be taken to prevent damage or injury or to mitigate problems and, therefore, identification and consideration of geologic hazards is an appropriate part of the planning process.

**POLICIES:**

1. When development is located in areas of known natural hazards, the density or intensity of the development shall be limited by the degree of the natural hazard.
2. When development is planned in areas of identified hazards, the developer will be required to show that property development will not be endangered by the hazard and that appropriate safeguards will be taken.
3. The City will participate in the National Flood Insurance Program as well as consider methods to control stream banks erosion. Additional measures will include utilization of the authority of the building inspector to require a soils report

and foundation design to safeguard construction in areas of questionable geologic hazards.

**IMPLEMENTATION:**

1. The City will utilize the Zoning Ordinance which specifically addresses development planned for known areas of natural hazards.
  2. The City will utilize the Flood Damage Prevention Ordinance, No. 09-O-634, adopted by the Brookings City Council on April 27, 2009.
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Section 3. Amends Chapter 15.15, of the Brookings Municipal Code, in its entirety:  
Chapter 15.15, Flood Damage Prevention, is hereby amended to read as follows:

**Chapter 15.15  
FLOOD DAMAGE PREVENTION**

Sections:

- 15.15.010 Statutory authorization
- 15.15.020 Findings of fact
- 15.15.030 Statement of purpose
- 15.15.040 Methods of reducing flood losses
- 15.15.050 Definitions
- 15.15.060 Lands to which this ordinance applies
- 15.15.070 Basis for establishing the areas of special flood hazard
- 15.15.080 Penalties for noncompliance
- 15.15.090 Abrogation and greater restrictions
- 15.15.100 Interpretation
- 15.15.110 Warning and disclaimer of liability
- 15.15.120 Severability
- 15.15.130 Development permit required
- 15.15.140 Application for Development permit
- 15.15.150 Designation of the City Manager
- 15.15.160 Duties and responsibilities of the City Manager
- 15.15.170 Use of Other Base Flood Data (In A Zones)
- 15.15.180 Information to be obtained and maintained
- 15.15.190 Alteration of watercourses
- 15.15.200 Interpretation of FIRM Boundaries
- 15.15.210 Appeal Board
- 15.15.220 Conditions for variances
- 15.15.230 Provisions for flood hazard reduction
- 15.15.240 Specific standards
- 15.15.250 Before regulatory floodway
- 15.15.260 Floodways
- 15.15.270 Critical facility

**15.15.010 STATUTORY AUTHORIZATION.**

The State of Oregon has in Article XI, Section 2 of the Oregon Constitution delegated

the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Brookings, does ordain as follows:

#### 15.15.020 FINDING OF FACT.

- (1) The flood hazard areas of the City of Brookings are subject to periodic inundation which results 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.
- (2) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

#### 15.15.030 STATEMENT OF PURPOSE.

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

- (1) To protect human life and health;
- (2) To minimize expenditure of public money and costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

#### 15.15.040 METHODS OF REDUCING FLOOD LOSSES

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

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

- (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.

#### 15.15.050 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"APPEAL" means a request for a review of the interpretation of any provision of this ordinance or a request for a variance.

"AREA OF SPECIAL FLOOD HAZARD" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letter A.

"BASE FLOOD" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letter A.

"BASEMENT" means any area of the building having its floor subgrade (below ground level) on all sides.

"CRITICAL FACILITY" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

"DEVELOPMENT" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

"ELEVATED BUILDING" means for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

"EXISTING MANUFACTURED HOME PARK OR SUBDIVISION" means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

"EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"FLOOD" OR "FLOODING" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

"FLOOD INSURANCE RATE MAP (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"FLOOD INSURANCE STUDY" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

"FLOODWAY" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"LOWEST FLOOR" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance found at Section **15.15.240 (1B)**.

"MANUFACTURED HOME" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"MANUFACTURED HOME PARK OR SUBDIVISION" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"NEW CONSTRUCTION" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

"NEW MANUFACTURED HOME PARK OR SUBDIVISION" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

"RECREATIONAL VEHICLE" means a vehicle which is:

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



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

**“STRUCTURE”** means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

**“SUBSTANTIAL DAMAGE”** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**“SUBSTANTIAL IMPROVEMENT”** means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) Before the improvement or repair is started; or
- (2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**“VARIANCE”** means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

**“WATER DEPENDENT”** means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

#### 15.15.060 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the City of Brookings.

#### 15.15.070 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Curry County and incorporated areas," dated September 29, 2008, with accompanying Flood Insurance Maps are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at 898 Elk Drive. The best available information for flood hazard area identification as outlined in Section **15.15.170** shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under section **15.15.170**

#### 15.15.080 PENALTIES FOR NONCOMPLIANCE

As per Brookings Municipal Code Section 1.05.010.

#### 15.15.090 ABROGATION AND GREATER RESTRICTIONS

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

#### 15.15.100 INTERPRETATION

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

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit or repeal any other powers granted under State statutes.

#### 15.15.110 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Brookings, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

#### 15.15.120 SEVERABILITY

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or

unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

#### 15.15.130 DEVELOPMENT PERMIT REQUIRED

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section **15.15.070**. The permit shall be for all structures including manufactured homes, as set forth in the "DEFINITIONS," and for all development including fill and other activities, also as set forth in the "DEFINITIONS."

#### 15.15.140 APPLICATION FOR DEVELOPMENT PERMIT

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

- (1) Elevation in relation to North American Vertical Datum of 1988 (NAVD 88), of the lowest floor (including basement) of all structures;
- (2) Elevation in relation to NAVD 88 to which any structure has been floodproofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section **15.15.240 (2)**; and
- (4) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

#### 15.15.150 DESIGNATION OF THE CITY MANAGER

The City Manager, or his designee, is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

#### 15.15.160 DUTIES AND RESPONSIBILITIES OF THE CITY MANAGER

Duties of the City manager or his designee shall include, but not be limited to permit review as follows:

- (1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- (2) Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
- (3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section **15.15.260 (1)** are met.

#### 15.15.170 USE OF OTHER BASE FLOOD DATA (In A Zones)

When base flood elevation data has not been provided (A Zones) in accordance with Section **15.15.070**, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the **local administrator** shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections **15.15.240**, SPECIFIC STANDARDS, and **15.15.260** FLOODWAYS.

#### 15.15.180 INFORMATION TO BE OBTAINED AND MAINTAINED

- (1) Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Section **15.15.170**, obtain and record the actual elevation (in relation to NAVD 88) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) For all new or substantially improved floodproofed structures where base flood elevation data is provided through the Flood Insurance Study, FIRM, or as required in Section **15.15.170**:
  - (i) Verify and record the actual elevation (in relation to NAVD 88) to which the **structure was floodproofed**, and
  - (ii) Maintain the floodproofing certifications required in Section **15.15.140 (3)**.
- (3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

#### 15.15.190 ALTERATION OF WATERCOURSES

- (1) Notify adjacent communities and the Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

#### 15.15.200 INTERPRETATION OF FIRM BOUNDARIES

Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.15.210

#### 15.15.210 APPEAL BOARD

- (1) The City Council shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- (2) The City Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the City of Brookings in the enforcement or administration of this ordinance.
- (3) Those aggrieved by the decision of the City council, or any taxpayer, may appeal such decision to the District Court, as provided in Brookings Municipal Code 15.15.220.

- (4) In passing upon such applications, the city Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
- (i) The danger that materials may be swept onto other lands to the injury of others;
  - (ii) The danger to life and property due to flooding or erosion damage;
  - (iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (iv) The importance of the services provided by the proposed facility to the community;
  - (v) The necessity to the facility of a waterfront location, where applicable;
  - (vi) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - (vii) The compatibility of the proposed use with existing and anticipated development;
  - (viii) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
  - (ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (x) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - (xi) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (5) Upon consideration of the factors of Section **15.15.210 (4)** and the purposes of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (6) The Building Department shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

#### 15.15.220 CONDITIONS FOR VARIANCES

- (1) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section **15.15.210 (4)** have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, without regard to the procedures set forth in this section.
- (3) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall only be issued upon:

- (i) A showing of good and sufficient cause;
  - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as **identified in 15.15.210 (4)**, or conflict with existing local laws or ordinances.
- (6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- (7) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except **15.15.210 (1)**, and otherwise complies with **Section 15.15.230 (1)**.
- (8) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

#### 15.15.230 PROVISIONS FOR FLOOD HAZARD REDUCTION

In all areas of special flood hazards, the following standards are required:

##### 1. Anchoring

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (2) All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

##### 2. Construction Materials and Methods

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (3) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

##### 3. Utilities

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

#### 4. Subdivision Proposals

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

#### 5. Review of Building Permits

Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (**Section 15.15.170**), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

#### 15.15.240 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided (Zones A1-30 and AE) as set forth in **Section 15.15.070**, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or **Section 15.15.170**, Use of Other Base Flood Data (In A Zones), the following provisions are required:

##### 1. Residential Construction

(A) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation.

(B) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be either certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- (ii) The bottom of all openings shall be no higher than one foot above grade.
- (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

## 2. Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at or above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- (A) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- (B) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- (C) Be certified by a registered professional **engineer** or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in **Section 15.15.180 (2)**;
- (D) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in **15.15.240 (B)**;
- (E) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below **the base flood level**).

## 3. Manufactured Homes

(1) All manufactured homes to be placed or substantially improved on sites:

- (i) Outside of a manufactured home park or subdivision,
- (ii) In a new manufactured home park or subdivision,
- (iii) In an expansion to an existing manufactured home park or subdivision, or
- (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to a **minimum of 18 inches (46 cm) above** the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

(2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30 and AE on the



community's FIRM that are not subject to the above manufactured home provisions be elevated so that either:

- (i) The lowest floor of the manufactured home is **18 inches (46 cm)** above the base flood elevation, or
- (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

#### 4. Recreational Vehicles

Recreational vehicles placed on sites are required to either:

- (i) Be on the site for fewer than 180 consecutive days,
- (ii) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (iii) Meet the requirements of **15.15.240 (3)** above and the elevation and anchoring requirements for manufactured homes.

#### 15.15.250 BEFORE REGULATORY FLOODWAY

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

#### 15.15.260 FLOODWAYS

Located within areas of special flood hazard established in **Section 15.15.070** are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(1) **Except as provided in paragraph (3)**, prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) If Section (1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section **15.15.230, PROVISIONS FOR FLOOD HAZARD REDUCTION.**

(3) Projects for stream habitat restoration may be permitted in the floodway provided:

- (i) The project qualifies for a Department of the Army, Portland District *Regional General Permit for Stream Habitat Restoration* (NWP-2007-1023); and,
- (ii) A qualified professional (a Registered Professional Engineer; or staff of NRCS; the county; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible given the goals of the project; and,
- (iii) No structures would be impacted by a potential rise in flood elevation; and,
- (iv) An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.

(4) New installation of manufactured dwellings are prohibited (2002 Oregon Manufactured Dwelling and Park Specialty Code). Manufactured dwellings may only be located in floodways according to one of the following conditions:

- (i) If the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general welfare of the public; or
- (ii) A new manufactured dwelling is replacing an existing manufactured dwelling whose original placement was permitted at the time of installation and the replacement home will not be a threat to life, health, property, or the general welfare of the public and it meets the following criteria

(iii) As required by **44 CFR Chapter 1, Subpart 60.3(d)(3)**, it must be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge;

(iv) The replacement manufactured dwelling and any accessory buildings or accessory structures (encroachments) shall have the finished floor elevated a minimum of 18 inches (46 cm) above the BFE as identified on the Flood Insurance Rate Map;

(v) The replacement manufactured dwelling is placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction;

(vi) The replacement manufactured dwelling, its foundation supports, and any accessory buildings, accessory structures, or property improvements (encroachments) do not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties;

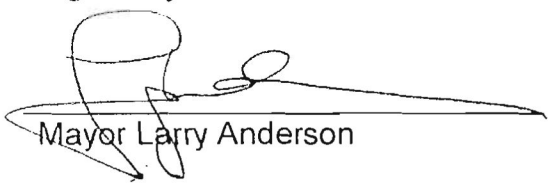
- (vii) The location of a replacement manufactured dwelling is allowed by the local planning department's ordinances;
- and
- (viii) Any other requirements deemed necessary by the authority having jurisdiction.

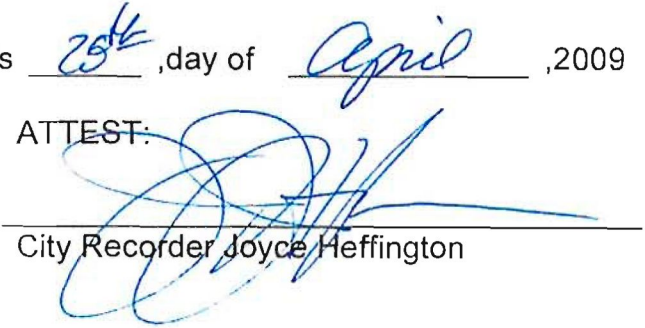
15.15.270 CRITICAL FACILITY

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

First Reading: April 27, 2009  
Second Reading: April 27, 2009  
Passage: April 27, 2009  
Effective Date: May 27, 2009

Signed by me in authentication of its passage this 25<sup>th</sup> day of April, 2009

  
Mayor Larry Anderson

ATTEST:   
City Recorder Joyce Heffington

POSTNET barcode



**CITY OF BROOKINGS**

898 Elk Drive  
Brookings, OR 97415  
Ph: (541)469-2163 Fax: (541)469-3650

**TO:**

Plan Amendment Specialist  
DLCD  
635 Capitol St. NE, Suite 150  
Salem, OR 97301-2540