



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

June 17, 2008



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Lake Oswego Plan Amendment
DLCD File Number 001-08

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: June 30, 2008

This amendment was submitted to DLCD for review 45 days 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 THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Christine Shirley, FEMA Specialist
Meg Fernekees, DLCD Regional Representative
Denny Egner, City of Lake Oswego

<paa> ya/email

JUN 10 2008

LAND CONSERVATION AND DEVELOPMENT

NOTICE OF ADOPTION
Must be filed within 5 Working Days
See OAR 660-18-040

Jurisdiction City of Lake Oswego Local File No. LU 07-0085 (Ord. 2507)
Date Mailed 06/09/08 Date of Approval 06/03/08
Date Proposal was Provided to DLCD 01/24/08
Type of Adopted Action (Check all that apply)

Comprehensive Land Use New Land Use
Plan Amendment Regulation Amendment Regulation
[checked] _____

Please complete (A) for text amendments and (B) for map amendments

A. Summary of Adopted Action (A brief description is adequate. Please avoid highly technical terms and zone code abbreviations. Please do not write "see attached"):

The City Council approved a proposal to adopt a new Flood Management Area Map and amendments to Community Development Code Articles 50.02 (Definitions) and 50.44 (Flood Management Area). The proposed code amendments are primarily in response to specific changes requested by the Federal Emergency Management Agency (FEMA) staff to assure that City code is in compliance with the National Flood Insurance Program. These changes are necessary for properties in the City to remain eligible for flood insurance through the National Flood Insurance Program.

Describe how the Adopted Amendment Differs from the Proposal (If it is the same, write "Same". If it was not proposed, write "N/A".):

Same

B. If the Action Amends the Plan or Zone Map, Provide the Following Information for Each Area Which was Changed (Provide a separate sheet for each area. Multiple sheets can be submitted as a single adoption action. Please include street address whenever possible. Do not use tax lot number alone.):

Previous Plan Designation: N/A New Plan Designation: N/A
Previous Zone: N/A New Zone: N/A
Location: citywide
Acreage involved:

Does this change include a Goal exception? Yes [checked] No

For Residential Changes, Please Indicate the Change in Allowed Density in Units Per Net Acre

Previous Density N/A New Density N/A

DLCD #001-08 (16664)

If Notice of Proposal was not sent to DLCD 45 Days Prior to the Final Hearing Please Indicate Why:

_____ **Statewide Planning Goals are Inapplicable**
_____ **Emergency Circumstances Required Expedited Review**

List Statewide Goals Which May Apply:

Goal 1: Citizen Development, Goal 2: Land Use Planning, and Goal 7: Natural Disasters and Hazards

List any State or Federal Agencies, Local Government or Local Special Service Districts Which May be Interested in or Impacted by the Adoption:

N/A

Direct Questions and Comments to:

Denny Egner, Assistant Planning Director
City of Lake Oswego
P. O. Box 369
Lake Oswego, OR 97034
(Phone) 503-697-6576

Send To: Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540

Attach one (1) copy of the Adopted Action to this form and/or three (3) copies of Bound Materials and Maps larger than 8-1/2 by 11 inches.

Note: If more copies of this form are needed, please contact the DLCD office at 503-373-0050, or this form may be duplicated on green paper. Failure to provide notice of an adopted plan or land use regulation amendment results in an extension of the appeal period. Appeals may be filed within 21 days of the date the proposal is mailed to DLCD. Statutes require mailing within 5 days of the action becoming final (See OAR 660-18-040).

*****FOR DLCD OFFICE USE*****

DLCD File Number _____

ORDINANCE No. 2507

AN ORDINANCE OF THE CITY OF LAKE OSWEGO ADOPTING A NEW FLOOD MANAGEMENT AREA MAP, AMENDING LAKE OSWEGO ARTICLES 50.44 (FLOOD MANAGEMENT AREA) AND 50.02 (DEFINITIONS) TO COMPLY WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) REGULATIONS RELATING TO FLOOD INSURANCE (LU 07-0085-1673), AND DECLARING AN EMERGENCY.

WHEREAS, a notice of public hearing for consideration of this Ordinance was duly given in the manner required by law; and,

WHEREAS, public hearings were held before the Planning Commission on March 10 and 24, 2008, and April 14, 2008 and the Lake Oswego City Council on May 20, 2008 to review the Planning Commission's recommendation to amend Articles 50.02 (Definitions) and 50.44 (Flood Management Area); and,

WHEREAS, the purpose of the following amendments to Articles 50.02 and 50.44 is to comply with the Federal Emergency Management Agency Regulations relating to flood insurance.

The City of Lake Oswego ordains as follows:

Section 1. The City Council hereby adopts the Findings and Conclusions (LU 07-0085-1673) attached as Exhibit 1.

Section 2. Section 50.02.005 of the Lake Oswego Code is hereby amended by adding the text shown in double underlined type and deleting the text shown in strikethrough type, as follows:

50.02.005 Definitions.

For the purposes of this Code certain terms and words are defined as follows: the words "used for" include "designed for" and vice-versa; words used in the present tense include the future, the singular tense includes the plural and vice-versa; the word "shall" is always mandatory; the word "may" is discretionary; the masculine gender includes the feminine gender, except as otherwise provided. The following terms shall mean:

* * *

Basement. Any area of a building having its floor subgrade (below ground level) on all sides.

~~FEMA Map. The Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map for the community issued by the Federal Emergency Management Agency (FEMA).~~

Flood Hazard Area, Special or "Areas of Special Flood Hazards." Area of special flood hazard shall be defined as stated in 44 Code of Federal Regulations Sec. 59.1:

The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V.

or as such definition is amended by the Federal Insurance Administration after [effective date of this Ordinance]. For purposes of LOC Article 50.44, Flood Management Area, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

Flood Insurance Rate Map (FIRM). The official FEMA map on which the Federal Insurance Administrator has delineated both the areas of special flood hazards and the risk premium zones applicable to the community. "Special Flood Hazard Area" shall be given the meaning as defined in 44 Code of Federal Regulations Sec. 59.1.

Recreational Vehicles. Towed or self-propelled vehicles such as motor homes, pickup campers and tent trailer campers, travel trailers, ~~intended for human occupancy for vacation and recreational purposes~~ designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of Construction. Start of construction is meant to ~~include~~ apply to new construction and 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 one hundred eighty days of the permit date.

a. For new construction. 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 a part of the main structure.

b. For substantial improvement: The actual start 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. That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. For purposes of LOC Article 50.44, a "structure" means ~~any structure that requires a building permit.~~ a walled and roofed building and a gas or liquid storage tank.

* * *

Section 3. Section 50.44.005 of the Lake Oswego Code is hereby amended by adding the text shown in double underlined type and deleting the text shown in strikethrough type, as follows:

50.44.005 Applicability.

1. This Article shall apply to all development within the "Flood Management Area".
2. The Flood Management Area includes:
 - a. The areas of special flood hazard, as identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Clackamas County, OR and Incorporated Cities" dated June 17, 2008, with the accompanying current Flood Insurance Rate Map (FIRM), which are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and the FIRM are on file at the Planning Division. Land within the 100 year flood boundary as depicted on the most recent Flood Insurance Rate Maps (FIRM) and Flood Boundary and Floodway Maps created for the National Flood Insurance Program by the Federal Emergency Management Agency (FEMA).
 - b. The area of inundation by the February 1996 flood along the Willamette River, ~~along the Tualatin River, and along the Oswego Canal south of Bryant Road.~~

3. The Flood Management Area is depicted on a Flood Management Area Maps included as Appendix 50.44.005-A-D. ~~If the 100-year flood boundary depicted on the City's Flood Management Area Map differs from the boundary depicted on the FEMA maps, the current FEMA maps and their supporting data shall be used to determine the boundary.~~

Section 4. Section 50.44.010 of the Lake Oswego Code reads as follows:

50.44.010 Purpose.

It is the purpose of this Article to:

1. Promote the public health, safety and general welfare;
2. Minimize public and private losses due to flood conditions in specific areas; and
3. Maintain eligibility of properties within the City to participate in the National Flood Insurance Program.

Section 5. Section 50.44.015 of the Lake Oswego Code is hereby amended by adding the text shown in double underlined type and deleting the text shown in strikethrough type, as follows:

50.44.015 Map Administration.

Amendments to the Map. The purpose of this section is to provide a process for amending the Flood Management Area Map.

1. ~~If amendments to the Flood Management Area Map would result in changes to the 100-year flood boundary~~ Special Flood Hazards Areas depicted on Flood Insurance Rate Maps of the National Flood Insurance Program, the City amendment shall be dependent upon successful compliance with the map amendment and revision process of the National Flood Insurance Program (40 CFR 65).

2. Within 90 days of receiving information establishing a possible error in the existence or location of a Flood Management Area, the City Manager shall provide notice of a public hearing at which the Planning Commission will review the error for compliance with LOC Article 50.44. Notice of the hearing shall be sent to property owners who have property that will be included or withdrawn from the Flood Management area as a result of the change. Notice shall also be sent to owners of property within 100 feet of the affected properties. Following the public hearing, the Planning Commission shall make a recommendation to the City Council as to whether the Flood Management Area boundaries should be changed.

3. The City Council shall amend the Flood Management Area Map if the information demonstrates that there is an error or that the boundaries of the Flood Management Area have changed since adoption of the Flood Management Area Map.

Section 6. Section 50.44.020 of the Lake Oswego Code is hereby amended by adding the text shown in double underlined type and deleting the text shown in strikethrough type, as follows:

50.44.020 Development Review.

1. Authority and Criteria. Development review is required for all development proposed within the Flood Management Area. The City Manager shall review all permit applications for development within the Flood Management Area as set forth in LOC Article 50.79. Development within a Flood Management Area may be allowed only when the following criteria are satisfied:

a. Compliance with Standards. The proposed development shall be consistent with the Flood Management Area – Development Standards (LOC 50.44.030) and the Standards for Construction (LOC 50.44.036). If proposed in the floodway, the development shall also be consistent with the Encroachment Within Floodway standards (LOC 50.44.024).

b. Compliance with Procedures and Submittal Requirements. The development proposal shall comply with the procedures and submittal requirements of this Article and all other relevant sections of the City Code.

c. Agency Permit Review. The applicant shall demonstrate that all necessary permits have been obtained from the Federal, State, or local governmental agencies from which prior approval is required. If applications for the necessary permits have been made but the permits have not yet been issued, the City may condition its approval on successful acquisition of the required permits.

2. Records. The City shall maintain, for public inspection, the record of proceedings subject to this Article.

3. Submittal Requirements. Applications for development permits within the Flood Management Area shall comply with the following submittal requirements:

a. Information Required - Habitable Structures. For development of a habitable structure, the Applicant shall submit a site plan and supporting information. Application materials shall be verified by an on-site survey by a Registered Professional Land Surveyor or Registered Professional Engineer and, at a minimum, shall provide survey information for the portion of the subject property within the Flood Management Area. The City Manager may require submittal of the following supporting information for the subject property:

- i. The boundary lines for the base flood and floodway;
- ii. The elevation, in relation to mean sea level, of the base flood and the datum used;
- iii. The existing and proposed topography at the two-foot contour interval in those areas where development is proposed (including fill, excavation, and stockpile areas);
- iv. The location and description of existing streams;
- v. The location of existing and proposed structures, utilities, streets, and other development; and
- vi. The elevation, in relation to mean sea level of the lowest floor of all proposed habitable structures.

b. Information Required – Non-Habitable Structures. For non-habitable structures, an applicant shall submit a site plan that includes, at a minimum, the following information for the subject property:

- i. The boundary lines for the base flood and floodway;
- ii. The elevation, in relation to mean sea level, of the base flood and the datum used; and
- iii. The location of existing and proposed structures, utilities, streets, and other development.

4. Certification of Elevation and Flood Proofing. Within the Flood Management Area, a Certificate of Elevation and Flood Proofing shall be obtained prior to the City's issuance of any occupancy permit. For all habitable structures, the following information shall be documented on the "Elevation Certificate" form provided by and recorded with the City:

a. The actual as-built elevation in relation to mean sea level, of the lowest floor (including basement) of all new and substantially improved structures. A Registered Professional Engineer, Architect, or Land Surveyor shall certify this information.

b. The actual as-built elevation in relation to mean sea level, to which any structure has been flood-proofed. A Registered Professional Engineer, Architect, or Land Surveyor shall certify this information.

c. The design and methods of construction for any habitable nonresidential structure are in accordance with the Flood Management Area standards for nonresidential construction. A Registered Professional Engineer or Architect shall provide this certification.

5. When base flood elevation data has not been provided (A Zones) in accordance with LOC 50.44.005 (Applicability), the applicant shall provide, subject to review by the City Manager, base flood elevation and floodway data available from a Federal, State or other source, in order for the City Manager to administer LOC 50.44.024 (Encroachment within Floodway), LOC 50.44.030 (Flood Management Area Development), and LOC 50.44.036 (Standards For Construction).

6. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (LOC 50.44.020(5)), applications for building permits for structures shall be reviewed to assure that the proposed construction will be reasonably safe from flooding. When designed for human habitation, a structure will be considered reasonably safe from flooding if the floor level is:

a. Elevated at least two feet above the highest adjacent grade in the A-zones. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure; or

b. Elevated at least one foot above the base flood level, as established by a study documenting the base flood level at the site of the structure. The study shall be prepared by a qualified licensed engineer, and shall use historical data, high water marks, photographs of past flooding, etc.

Section 7. Section 50.44.024 of the Lake Oswego Code is hereby amended by adding the text shown in double underlined type and deleting the text shown in strikethrough type, as follows:

50.44.024 Encroachment within Floodway.

The following standards apply only within the floodways depicted on FEMA maps. Encroachment, including fill, new construction, substantial improvements, or other development within a floodway shall be prohibited except under any of the following circumstances:

1. Certification by a Registered Professional Engineer is provided demonstrating that encroachment would not result in any increase in the flood level during the occurrence of the base flood.

2. A new structure may replace a previously existing structure provided the new structure occupies the same footprint as the previously existing structure and certification from a professional engineer demonstrates that the structure is designed to withstand hydrostatic and hydrodynamic forces.

3. All or any portion of a new structure below base flood elevation may replace a previously existing structure provided that it occupies an area that is no larger in area than the footprint of the previously existing structure or, if larger in area, will not increase the flood level during the occurrence of the base flood. Certification from a professional engineer shall be provided demonstrating that the structure is designed to withstand hydrostatic and hydrodynamic forces and that encroachment would not result in any increase in the flood level during the occurrence of the base flood.

4. Lake-related infrastructure or new water dependent uses such as boat houses, boat docks, decks, boat lifts, piers, or similar structures may be located within the floodway provided the structures are designed by a professional engineer to not increase flood levels. The following methods may be used to achieve this standard:

- a. Cutting and removal of material to mitigate water displacement;
- b. Use of floating structures that are anchored to eliminate lateral movement;
- c. Use of breakaway walls;
- d. Orientation of the structure so that openings are parallel to the flow; or
- e. Other appropriate engineering design techniques.

5. Along Tryon Creek, Springbrook Creek, and Oswego Creek in areas where a floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A and AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development [as "existing and anticipated development" is defined or interpreted by FEMA in 44 Code of Federal Regulation Sec. 60.3(c)(10)] will not increase the water surface elevation of the base flood more than one foot at any point.

The main lake dam and its ancillary facilities, including the hydroelectric facility, as operated and maintained by the Lake Oswego Corporation, shall be exempt from this section.

Section 8. Section 50.44.030 of the Lake Oswego Code is hereby amended by adding the text shown in double underlined type and deleting the text shown in strikethrough type, as follows:

50.44.030 Flood Management Area Development Standards.

The following standards apply to development within the Flood Management Area.

1. Permitted Development.

a. ~~Planting new trees or vegetation excluding plants listed on the City's Nuisance Plant List as~~ invasive plants.

b. Restoration or enhancement of floodplains, riparian areas, wetland, upland and streams that meet Federal and State standards provided that any restoration project which encroaches on the floodway complies with the requirements of LOC 50.44.024 Encroachment Within Floodways.

c. Work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies provided that within 180 days after the emergency has passed, an application has been filed to mitigate remaining adverse impacts in accordance with applicable standards.

d. Except as set forth in LOC 50.44.030 (2)(b), new culverts, stream crossings, and transportation projects may be permitted if designed as balanced cut and fill projects or designed to not significantly raise the base flood elevation.

e. Water dependent uses, such as boat houses, boat docks, decks, boat lifts, piers, or similar structures. When located within the floodway, water dependent uses shall meet the floodway encroachment standards of LOC 50.44.024.

f. All uses allowed in the base zone are allowed in the Flood Management Area subject to compliance with LOC Article 50.44.

g. Lake-related infrastructure.

2. Development Restrictions. Special standards apply as follows:

a. Fill.

i. Fill in the Floodway. Fill shall only be placed in the floodway when done in accordance with the floodway encroachment standards of LOC 50.44.024.

ii. Fill – General Provisions. The following standards apply throughout the Flood Management Area:

(1) Fill is allowed for the construction of stormwater detention facilities or structures, and other facilities such as levees specifically designed to reduce or mitigate flood impacts. Levees shall not be used to create vacant buildable lands.

(2) In areas outside of the floodway, fill is permitted under the following conditions:

(a) Fill in quantities of 10 cubic yards or less is permitted.

(b) Fill in quantities greater than 10 cubic yards is permitted within the floodplain of Oswego Lake and the developed areas of its outlets. Fill in quantities greater than 10 cubic yards is permitted elsewhere within the Flood Management Area when balanced with removal of an equal amount of material such as sand, gravel, soil, rock, and building material. Only removal of material below the base flood elevation shall be counted as compensating for fill.

(c) Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.

(3) Temporary fill during construction is permitted provided it is removed prior to final inspection.

b. Transportation Projects. New culverts, stream crossings, and transportation projects shall be designed to minimize the area of fill in the Flood Management Area and to minimize erosive velocities to the extent practicable. Stream crossing shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.

c. Storage.

i. Hazardous Materials. Uncontained hazardous material, as defined by the Department of Environment Quality, or development providing for the storage or processing of materials that are buoyant, flammable, explosive, toxic, or that could be injurious to human, animal, or plant life in time of flooding are prohibited in the Flood Management Area. Exceptions include:

(1) Materials that are typically used for household purposes and in quantities that are normal for household use.

(2) Materials that are typically used for recreational boat operation and maintenance. For a commercial marina or for sites used for lake maintenance, in flood conditions, hazardous materials below the base flood elevation must be contained in watertight and secured containers. For residential use, materials are only allowed in quantities that are typical for residence-based recreational boat activity.

ii. Other Storage. Storage of other materials or equipment are allowed in the Flood Management Area if materials or equipment are:

(1) Not subject to major damage due to flood;

(2) Firmly anchored to prevent flotation; or

(3) Readily removable from the area after flood warning.

d. Residential Construction.

i. New construction and substantial improvement of any habitable residential structure shall have the lowest floor elevated to at least one foot above elevation of the base flood or of the Flood Management Area as either applies to the subject property, whichever is higher elevation.

ii. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. This equalization shall not rely on human intervention. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or Architect or must meet or exceed the following minimum criteria:

(1) 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.

(2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

e. Nonresidential Construction. New construction and substantial improvement of any commercial, public use, industrial or habitable nonresidential structure shall:

i. Have the lowest floor (including a basement which is intended to be a regular workplace for people) elevated to at least one foot above the elevation of the base flood elevation or of the Flood Management Area as either applies to the subject property, whichever is higher, and shall meet the standards for enclosed areas below the lowest floor as described in Residential Construction (LOC 50.44.030 (2)(d)); or

ii. Together with attendant utility and sanitary facilities, shall:

(1) Be designed so that below the elevation of the base flood or of the Flood Management Area as either applies to the subject property, whichever is higher, elevation the structure is watertight with walls substantially impermeable to the passage of water; and flood proofed to the standards of the National Flood Insurance Program;

(2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) 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 City Manager; and

(4) Nonresidential structures that are elevated, rather than being flood proofed, must meet the same standards for space below the lowest floor as described in Section 50.44.030 (2)(d)(ii).

f. Utilities.

i. All new and replacement utilities, such as sanitary sewer, storm drain, water, gas, and power service line shall be designed, located, and constructed to minimize flood damage.

ii. All new and replacement water supply systems shall be designed and constructed to minimize infiltration of flood waters into the system.

iii. All new and replacement sanitary sewer systems shall be designed and constructed to minimize infiltration of flood waters into the systems and discharge from the systems into flood waters.

iv. Onsite waste disposal systems (onsite sewerage systems) shall be located to avoid impairment to them or contamination from them during flooding.

g. Manufactured Homes. All manufactured homes to be placed or substantially improved within a floodplain shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at least one foot above the elevation of the base flood elevation or of the Flood Management Area as either applies to the subject property, whichever is higher, and securely anchored to an anchored foundation system in accordance with the provisions of LOC 50.44.036 (1).

h. Lake-Related Infrastructure. New lake-related infrastructure and substantial improvements to lake-related infrastructure shall be permitted provided appropriate permits have been obtained from state and federal agencies.

i. Alteration Of Watercourses. When alteration of a watercourse is proposed within a riverine floodplain:

i. The City shall notify adjacent communities and the Oregon Department of Land Conservation and Development~~Division of State Lands~~ prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration; and

ii. The applicant shall:

(1) Demonstrate that the carrying capacity of the watercourse is not diminished, and

(2) Provide for City approval a plan to maintain the carrying capacity of the watercourse.

iii. For purposes of this section, alteration shall mean physically altering the direction of water flow.

j. Recreational Vehicles. A recreational vehicle placed on site within the Flood Management Area shall be required to be fully licensed and ready for highway use, be on its wheels or a jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions

[**Cross-References:** See LOC 50.02.005, definition for Lowest Floor. The definition states that an unfinished or flood resistant enclosure, usable solely for parking of vehicles, watercraft, building access or storage, in an area other than a basement, is not considered a building's lowest floor; See LOC 50.44.024, Encroachment Within Floodway for additional standards regulating development within floodways.]

Section 9. Section 50.44.036 of the Lake Oswego Code is hereby amended by adding the text shown in double underlined type and deleting the text shown in strikethrough type, as follows:

50.44.036 Standards For Construction.

The following standards apply within the Flood Management Area.

1. Anchoring.

a. All new construction, including manufactured homes, and substantial improvements in the Flood Management Area shall be anchored to prevent flotation, collapse, or lateral movement of the structure. Any structure or portion thereof specifically designed to float shall be anchored to prevent lateral movement. Manufactured homes 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.

2. Construction Materials and Methods.

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

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

c. For all new construction and substantial improvements to habitable structures, electrical, heating, ventilation, plumbing, and air-conditioning equipment and other utility 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.

Section 10. Section 50.44.040 of the Lake Oswego Code reads as follows:

50.44.040 Flood Management Area Variances.

The purpose of this section is to ensure that compliance with this Article does not cause an exceptional hardship. To avoid such instances, the requirements of this Article may be modified based on good and sufficient cause as demonstrated through compliance with the requirements of this section.

1. Variances to the requirements of LOC Article 50.44 shall not be granted under the standards of LOC 50.68.010. Variances to LOC Article 50.44 shall only be allowed through variances authorized under LOC 50.44.040.

2. To vary from the requirements of this Article, the applicant shall demonstrate the following:

a. Failure to grant the variance would result in an exceptional hardship to the applicant;

b. The variance does not materially increase danger to life and property due to flooding or erosion;

c. The variance will not materially increase the cost of providing and maintaining public services during and after flood conditions so as to unduly burden public agencies and taxpayers; and

d. The variance is the minimum necessary, considering the flood hazard, to afford relief.

Section 11. Section 50.44.045 of the Lake Oswego Code reads as follows:

50.44.045 Calculations for Determining Substantial Improvements.

1. For purposes of determining substantial improvements, the City shall base real market value estimates of the structure on one of the following methods selected by the applicant:

a. The most recent real market building values listed in the county assessment records plus any improvements made since the last county appraisal. The value of recent improvements shall be based on building permit documents; or

b. An appraisal provided by the applicant conducted by a licensed real estate appraiser selected by the applicant. Such appraisal must provide building market value separate from land value.

2. When determining if any reconstruction of an existing structure, or an alteration or addition to an existing structure is a substantial improvement, the City will consider construction improvement values on a calendar year basis and not calculate these values in a cumulative manner. Improvement values shall be based on standard methodologies used to determine building permit values.

Section 12. LOC Appendix 50.44-A of the Lake Oswego Community Development Code Appendix is hereby amended to delete the current map and to substitute the Flood Management Areas Maps (LOC 50.44.005-A-D) as shown in Exhibit 2.

Section 13. Emergency; Effective Date. The City Council hereby finds and declares that, because the Federal Emergency Management Agency (FEMA) requires that Code amendments consistent with the new Flood Insurance Rate Map and other FEMA requirements be adopted by June 17, 2008 in order to assure that the City remains in compliance with the National Flood Insurance Program requirements, and because compliance with such requirements is necessary to assure that flood insurance coverage as supported by that program is available within the City, an emergency exists as defined in Section 34B of Chapter VIII of the Lake Oswego Charter (consisting of a deadline imposed by the federal government) that cannot be adequately addressed by adoption of a regular ordinance. Pursuant to Section 35D of Chapter VIII of the Lake Oswego Charter, this ordinance shall be effective immediately upon its enactment.

Read by title only and enacted at the regular meeting of the City Council of the City of Lake Oswego held on 3rd day of June, 2008.

AYES: Mayor Hammerstad, Groznik, Hennagin, Johnson, Jordan, McPeak, Turchi

NOES: None

ABSENT: None

ABSTAIN: None



Judie Hammerstad, Mayor

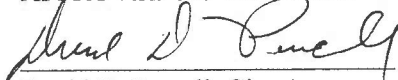
Dated: 6/3/08

ATTEST:



Robyn Christie, City Recorder

APPROVED AS TO FORM:



David D. Powell, City Attorney

BEFORE THE CITY COUNCIL
OF THE CITY OF LAKE OSWEGO

A REQUEST TO AMEND) LU 07-0085-1673
LAKE OSWEGO DEVELOPMENT) (City of Lake Oswego)
CODE ARTICLES 50.02 (DEFINITIONS))
AND 50.44 (FLOOD MANAGEMENT) FINDINGS AND CONCLUSIONS
AREA); ORDINANCE No. 2507)

NATURE OF PROCEEDING

This matter came before the City Council pursuant to a recommendation by the Lake Oswego Planning Commission to amend the text of the Lake Oswego Development Code, Article 50.44 (Flood Management Area) and Article 50.02 (Definitions), and to adopt a new Flood Management Area Maps in order to assure that City code is in compliance with the National Flood Insurance Program. The changes are necessary for properties in the City to remain eligible for insurance through the National Flood Insurance Program.

HEARINGS

The Planning Commission held a public hearing and considered this application at its meetings of March 10 and 24, 2008 and April 14, 2008. The City Council held a public hearing and considered the Planning Commission's recommendation at its meeting of May 20, 2008.

CRITERIA AND STANDARDS

LOC Section 50.75.010 of the Community Development Code sets forth the criteria for legislative decisions involving map and code text amendments. The section states:

A legislative decision is generally a policy decision which is up to the discretion of the City Council, but shall:
1. *Comply with any applicable state law;*

- 1 2. *Comply with any applicable Statewide Planning Goal or Administrative Rule*
2 *adopted pursuant to ORS Chapter 197; and*
3 3. *In the case of a legislative amendment to this Community Development Code,*
4 *comply with any applicable provision of the Lake Oswego Comprehensive Plan.*

5 The applicable laws, goals, policies, and code requirements are listed below.

6 **A. City of Lake Oswego Comprehensive Plan**

7 Goal 1: Citizen Involvement – Policies 1, 2 & 5

8 Goal 7: Natural Disasters and Hazards (Section 1 Flood Hazards),
9 Policies 1, 2, 3, 4, 6 & 12

10 **B. State Wide Planning Goals**

11 Goal 1: Citizen Involvement

12 Goal 7: Natural Hazards

13 **C. City of Lake Oswego Community Development Code**

14 LOC 50.01.010 Purpose

15 LOC 50.05.005 Zoning Districts

16 LOC 50.05.010 Zoning Map

17 LOC 50.79.030 Major Development

18 LOC 50.77.007 Burden of Proof

19 LOC 50.77.030 Application Procedures

20 LOC 50.82.005-020 Review of Major Development Applications and Appeals

21 LOC 50.83.005-040 Hearings before a Hearing Body

22 LOC 50.75.005 Legislative Decision Defined

23 LOC 50.75.010 Criteria for Legislative Decision

24 LOC 50.75.015 Required Notice to DLCD

25 LOC 50.79.020 Planning Commission Recommendation Required

26 LOC 50.79.025 City Council Review and Decision

27 **D. Metro Urban Growth Management Functional Plan**

28 Title 3: Water Quality, Flood Management and Fish and Wildlife Conservation.

29 **FINDINGS AND REASONS**

30 The City Council incorporates the staff Council Report dated May 9, 2008 and May 27,

31 2008, and Planning the Commission Staff Report dated February 29, 2008, for LU 07-0085 (with

32 all exhibits) as support for its decision, together with the minutes of the Planning Commission

33 meeting of April 4, 10 and 28, 2008, the entire record of the proceedings before the Planning

34 meeting of April 4, 10 and 28, 2008, the entire record of the proceedings before the Planning

1 Commission and the entire record of the proceedings before the City Council, as modified by the
2 Findings and Conclusions herein. To the extent they are consistent with the approval granted
3 herein, the City Council adopts by reference the Findings and Conclusions of the Planning
4 Commission.

5 The City Council finds that, in order to meet the deadline established by the Federal
6 Emergency Management Agency (FEMA), it is appropriate to adopt at this time only those
7 changes necessary to assure compliance with National Flood Insurance Program Requirements.
8 The changes as generally proposed in the draft ordinance presented as "Option 2" (Exhibit F-1.4)
9 will accomplish this and should be implemented. Proposed changes that are not necessary in
10 order to meet FEMA compliance deadlines, as generally presented in "Option 1" (Exhibit F-1.3),
11 may be considered at a later date.
12

13 The City Council also finds that certain adjustments to proposed Flood Area Management
14 Map D in order to more accurately reflect current elevations in Foothills Park, as well as
15 adjustments to the proposed amendments to LOC 50.44.020(6) in order meet FEMA concerns,
16 should also be made as proposed in the May 27, 2008 Council Report by Assistant Planning
17 Director Dennis Egner.
18

19 Finally, the City Council finds and declares that, because FEMA requires that Code
20 amendments consistent with the new Flood Insurance Rate Map and other FEMA requirements
21 be adopted by June 17, 2008 in order to assure that the City remains in compliance with National
22 Flood Insurance Program requirements, and because compliance with such requirements is
23 necessary to assure that flood insurance coverage as support by that program is available within
24 the City, an emergency exists as defined in Section 34B of the Lake Oswego Charter (consisting
25
26

1 of a deadline imposed by the federal government) that cannot be adequately addressed by
2 adoption of a regular ordinance. Pursuant to Section 35D of Chapter VIII of the Charter,
3 Ordinance 2507 will be effective immediately upon its enactment.

4 **CONCLUSION**

5 The City Council concludes that LU 07-0085-1673, as modified herein, complies with all
6 applicable criteria and is consistent with applicable Statewide Goals and Lake Oswego
7 Comprehensive Plan Policies.
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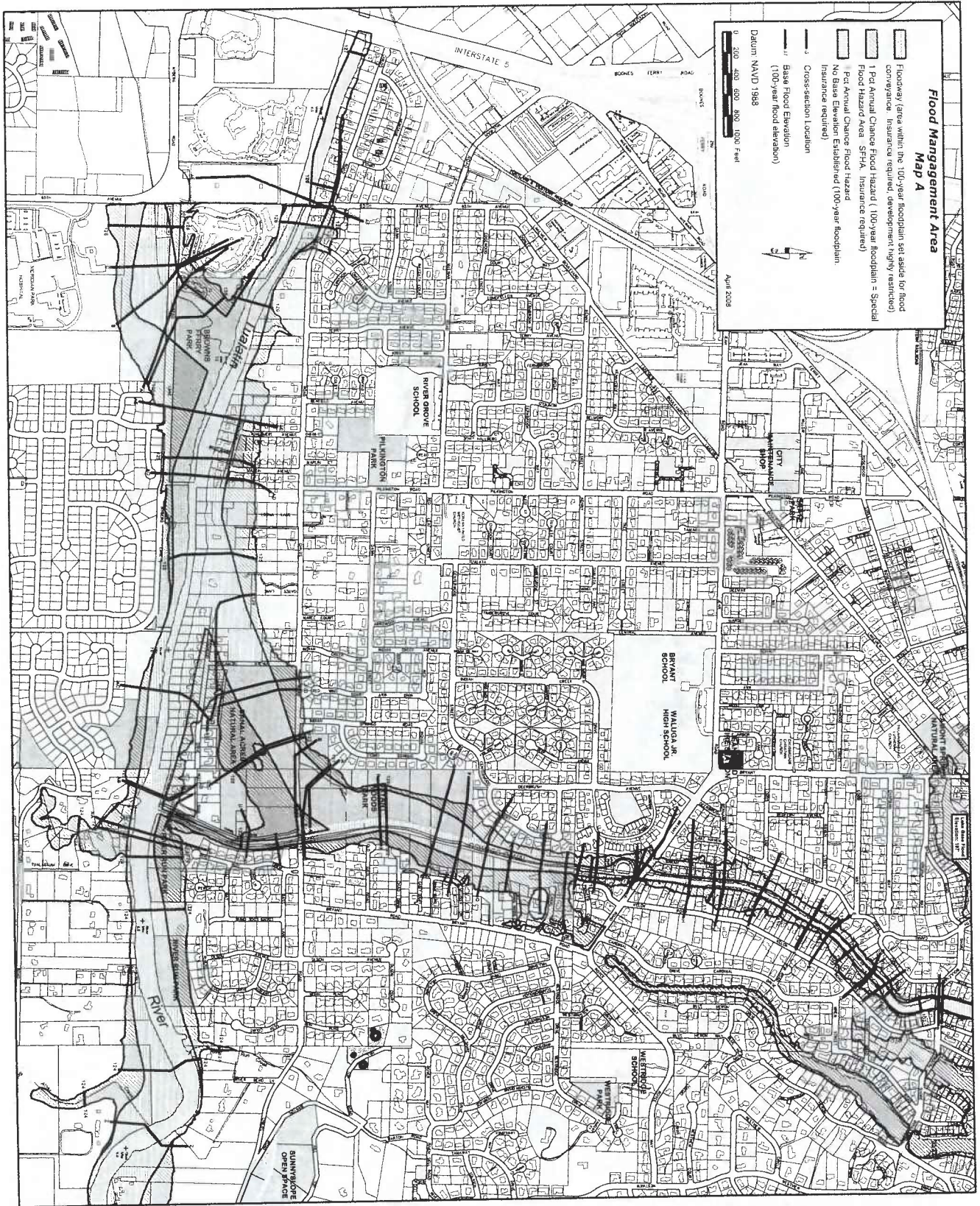
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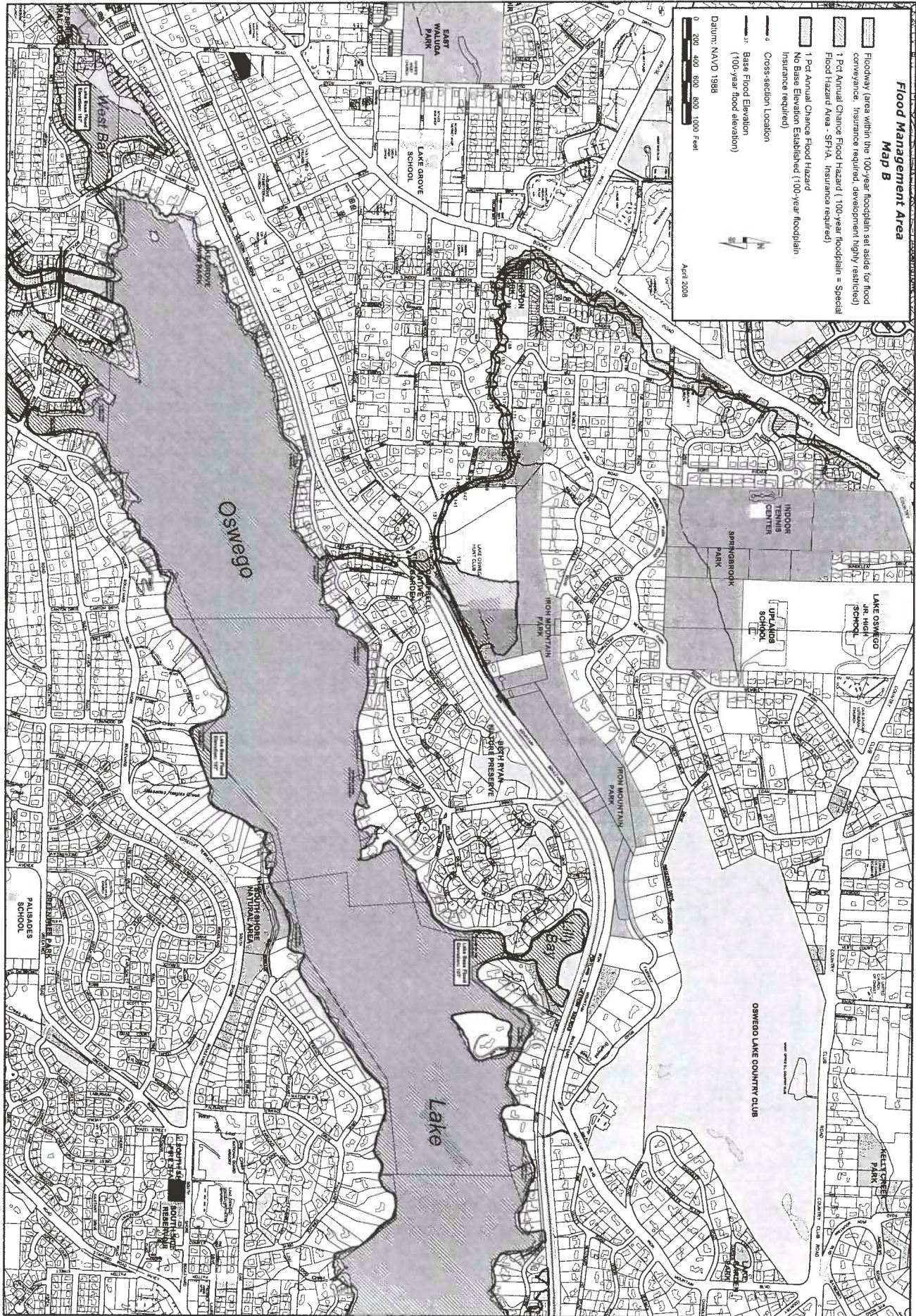
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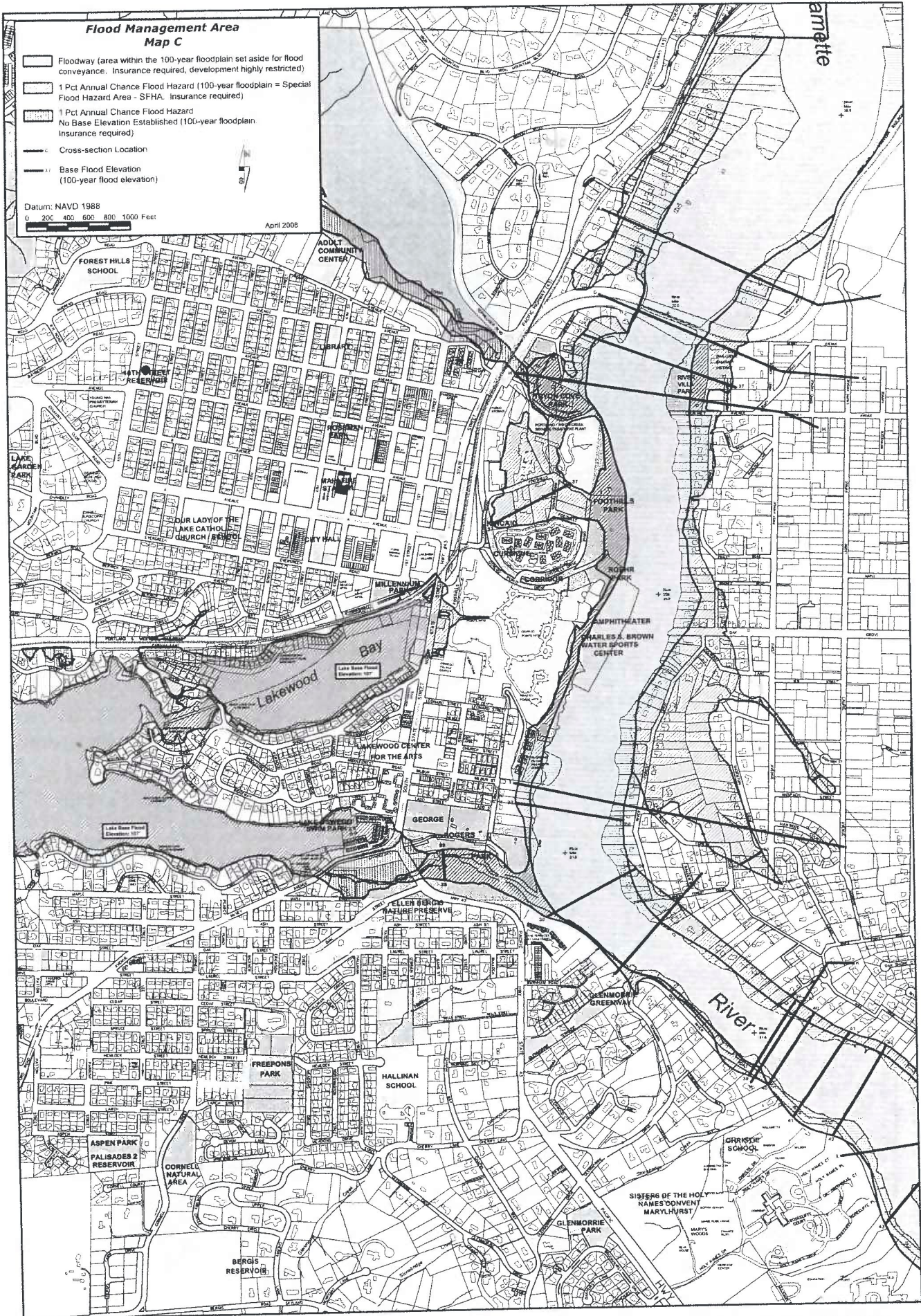


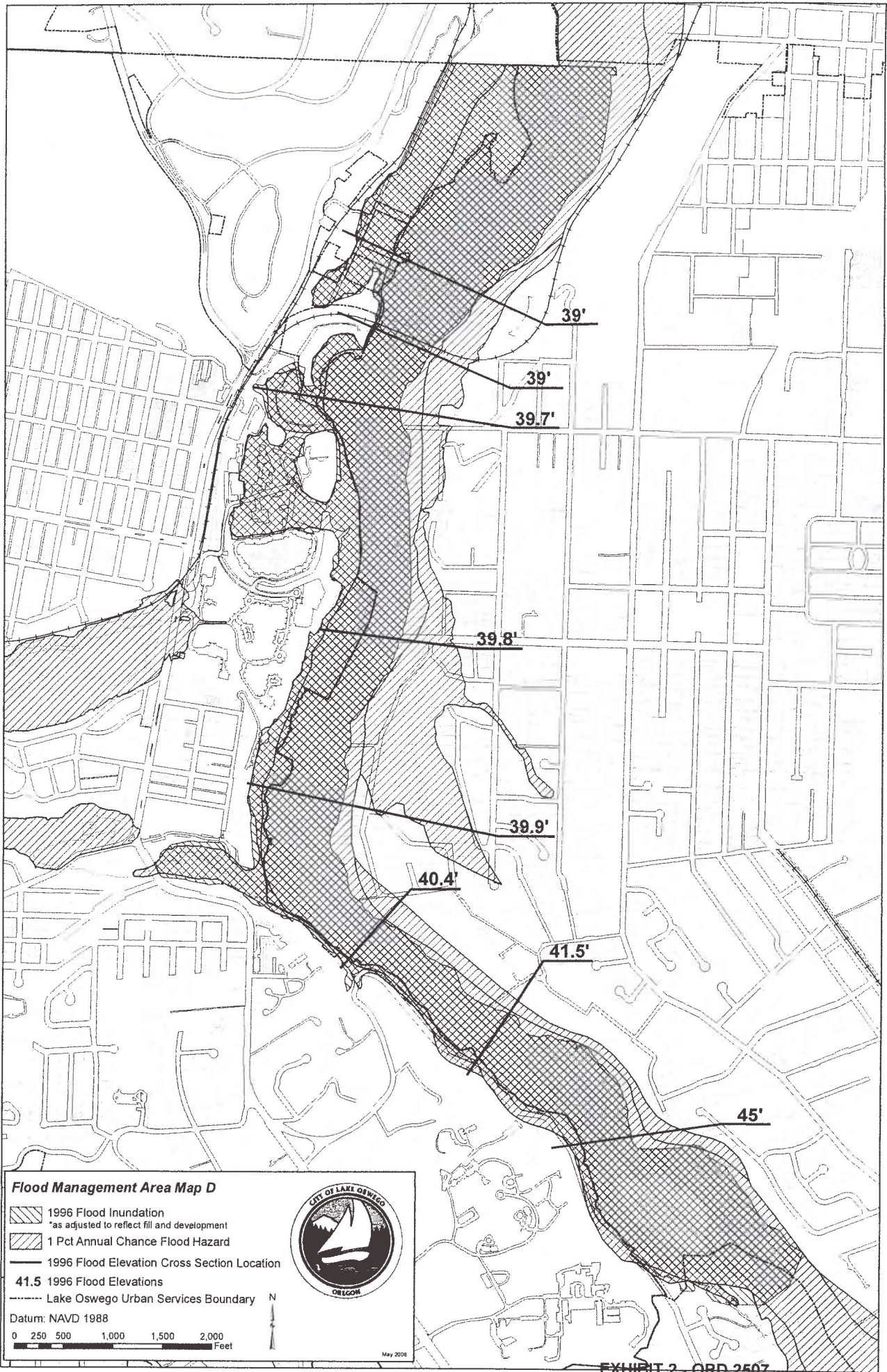
APPENDIX 50.44-A MAP A



APPENDIX 50.44-A MAP B

EXHIBIT 2 - ORD 2507





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06/09/2008

Mailed From: 97034

US POSTAGE

Hasler



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PO Box 369
Lake Oswego, OR 97034

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Salem OR 97301-2540



Hasler