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REVIEWED  
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LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18 of the )  
Deschutes County Code, the Deschutes )  
County Zoning Ordinance, to Amend Pro- )  
visions in the Flood Plain Zone, and )  
Declaring an Emergency. )

93 FEB -6 AM 7:36  
HARRY SUE PERHOLLO  
CLERK

ORDINANCE NO. 93-002

Whereas, existing structures in the floodway are nonconforming structures with respect to the provisions of Title 18; and,

Whereas, the Deschutes County Hearings Officer has determined that under the provisions of Chapter 18.120 of this Title, the replacement of a nonconforming structure can only occur when a structure has been damaged or destroyed by fire, natural disaster or other casualty; and,

Whereas, the Deschutes County Planning Commission, after review conducted in accordance with applicable law, recommended that the Flood Plain Zone provisions be amended to allow replacement of dwellings in the floodway, require elevation of structures one foot above the base flood, and clarify existing provisions in Chapter 18.96; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. Section 18.04.030, Definitions, of Title 18 is amended to delete the definition of "Area of Shallow Flooding".

Section 2. Section 18.04.030, Definitions, of Title 18, is amended to add the following new definitions:

Flood Plain. The area adjoining a stream that is subject to inundation by the base flood discharge that is outside the floodway.

Mean Sea Level. The National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on the Flood Insurance Rate Map (FIRM) are referenced.

Section 3. Section 18.04.030, Definitions, of Title 18 is amended to change the definition of "New Construction" to read as follows:

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DATE 10/11/93 BY TM

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**New Construction.** Any structure for which the start of construction commenced on or after the effective date of **Ordinance PL-15** [this title]. For purposes of the Flood Plain Zone (FP), "new construction" means any structure for which the start of construction commenced on or after the date of adoption of the amendments to the Flood Plain Zone in Ordinance No. 88-030. (Ord. 88-030 ss 3, 1988)

**Section 4.** Section 18.96.040 of Title 18 is amended to read as follows:

Section 18.96.040 Conditional Uses Permitted.

The following uses may be allowed subject to [Chapter 18.128] **applicable sections** of this title: (Ord. 91-038 ss 1, 1991)

A. A roadway, bridge or utility structure, except a landfill, that will not impede the waters of a base flood[.] **subject to Chapter 18.128 of this title.**

B. Incidental storage of material or equipment that is either not subject to damage by flood, or is mobile and readily removable from the area within time available after flood warning. If such material is not readily removable, it shall be anchored to prevent flotation and shall not obstruct water flow. Material or equipment stored shall include only items which will not create a hazard to the health or safety of persons, property, animals or plant life should the storage area be inundated.

C. Single-family dwelling, or a manufactured home subject to Section 18.116.070, on an individual lot. (Ord. 91-005 ss 37, 1991; Ord. 89-009 ss 3, 1989)

D. Agricultural or residential related accessory buildings.

E. Hydroelectric facilities subject to Section 18.116.130 and 18.128.040(V).

F. Excavation, grading and fill and removal **within the bed and banks of a stream, river or lake, or in a wetland,** subject to Section 18.120.050 and 18.128.040(W).

G. Recreational uses requiring only structures having an insignificant effect on flood waters, such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launchings ramps, swimming areas, wildlife or nature preserves, game farms, fish hatcheries, shooting preserves and hunting or fishing areas **subject to Chapter 18.128.**

H. Subdividing or partitioning land, **any portion of which is located in a flood plain,** subject to the provisions of this title and Deschutes County Code Title 17, the Subdivision/ Partition Ordinance. (Ord. 88-030 ss 4, 1988)

I. Expansion or substantial improvement of an existing dwelling, agricultural related structure or accessory building.

J. A boat dock or pier, either individual or community, on private property which lies in the following areas:

a. On the Deschutes River between river miles 226.4 and 224.5. This area is identified in the Scenic Waterway Management Plan as the Wickiup River Community Area;

b. On the Deschutes River between miles 217.5 and 216.5.

This [A]area is identified in the Scenic Waterway Management Plan as the Pringle Falls River Community Area; and

c. On the Deschutes River between river miles 207 and 192. This area is identified in the Scenic Waterway Management Plan as River Community Areas and Recreational River Area respectively. (Ord. 89-009 ss 4, 1989)

[K. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to Sections 18.120.050 and 18.128.040(W). (Ord, 91-038 ss 1, 1991)]

Section 5. Section 18.96.060 of Title 18 is amended to read as follows:

Section 18.96.060 Limitations on Conditional Uses.

The following limitations shall apply to all uses allowed by Section 18.96.040, above:

A. No new construction of a dwelling [units,] (including manufactured housing), accessory structure[s and] or farm use structure[s], shall be allowed[, or additions to such structures allowed,] in the floodway of any river or stream[.] except for replacement in conformance with the applicable provisions of this chapter of a dwelling lawfully in existence as of the effective date of Ordinance 88-030. (Ord. 92-010 ss 1, 1991)

B. No new construction of a dwelling [units,] (including manufactured housing), accessory structure[s and] or farm use structure [buildings], shall be located in the flood plain unless it can be demonstrated by the applicant that no alternative exists on the subject property [lot] which would allow the structure to be placed outside of the flood plain.

[C. Dwelling units, including manufactured housing, accessory structures and farm use buildings, shall be allowed only in areas of shallow flooding.]

C.[D.] No subdivision or partition shall be allowed which creates the potential for additional residential dwellings [units] in the flood plain.

D.[E.] A land use which would alter or relocate a water course shall not be allowed.

E.[F.] The cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point. (Ord. 91-020 ss 1, 1991)

[G. Development which involves new construction, or fill or removal in the floodway shall not be allowed unless a registered professional engineer provides certification that the proposal shall not result in any increase in flood levels during a base flood discharge, that all necessary state and federal permits have been or can be obtained and that all other criteria and standards of this title have been satisfied. (Ord. 91-020 ss 1, 1991; Ord. 88-030 ss 4, 1988)]

Section 6. Paragraph (F)(a)(i) in Section 18.96.080 of Title 18 is amended to read as follows:

Ordinance No. 93-002 (02/03/93)

Page 3

i. New construction, including replacement, and substantial improvement of any residential structure shall have the lowest floor of the entire structure, including basement, elevated [to or] at least one (1) foot above base flood elevation.

Section 7. Paragraph (F)(b) in Section 18.96.080 of Title 18 is amended to read as follows:

b. Non-Residential Construction. New construction and substantial improvement[s] of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated [to] at least one (1) foot above the level of the base flood elevation, or, together with attendant utility and sanitary facilities, shall:

i. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.

ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

iii. Be certified by a registered professional engineer or architect that the design and methods of construction are subject to 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 county as set forth in 18.96.070(H), above.

iv. Non-residential structures that are elevated, but not floodproofed, must meet the same standards for space below the lowest floor as described in Section 18.96.080(F), above.

v. Applicants for floodproofing non-residential 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 constructed to the flood level will be rated as one foot below that level.)

Section 8. Paragraph (c) in Section 18.96.080 of Title 18 is amended to read as follows:

c. Manufactured Homes. All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at [or] least one (1) foot above the base flood elevation. Such manufactured homes shall be securely anchored to an adequately anchored foundation system subject to the provisions of Section 18.96.080(C)(a), above. (Ord. 88-039 ss 4, 1988)

Section 9. Paragraph (G) in Section 18.96.080 of Title 18 is amended to read as follows:

G. Floodways. In floodways [where potential extreme hazards exists due to the velocity of flood waters which carry debris,

potential projectiles or due to a high potential for erosion,] the following provisions shall apply:

0120-0639

a. Encroachments, including fill and removal, [new construction, substantial improvements] replacement of a dwelling lawfully in existence on the effective date of Ordinance 88-030 and other development[,] are prohibited unless certification by a registered professional engineer, [or architect] is provided demonstrating that the proposed encroachments [shall] will not result in any increase in flood levels during [the occurrence of the] a base flood discharge.

b. The applicant must demonstrate that all necessary state and federal permits have been or can be obtained [. If Section 18.96(G)(a) is satisfied, all new construction and substantial improvements shall comply with all] and that all other applicable sections of this title have been satisfied.

c. Replacement of a dwelling shall not increase the square footage or footprint of the structure by more than 20% of the square footage or footprint of such dwelling as of the effective date of Ordinance 88-030.

d. No replacement of a dwelling shall be allowed if the use of the pre-existing dwelling has been abandoned or otherwise terminated for a period of over one (1) year.

Section 10. Chapter 18.96 of Title 18 is amended to add the following new Section:

Section 18.96.085 Elevation Certification.

Elevation of all new construction, including replacement and substantial improvements, relative to mean sea level of the lowest floor shall be documented after construction with a survey certified by a State of Oregon registered professional engineer or land surveyor.

Section 11. REPEAL OF ORDINANCES AS AFFECTING EXISTING LIABILITIES. The repeal, express or implied, of any ordinance, ordinance provisions, or code section by this ordinance shall not release or extinguish any duty, condition, penalty, forfeiture, or liability incurred under such ordinance, unless a provision of this ordinance shall so expressly provide, and such ordinance repealed shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the endorsement of such duty, condition, penalty, forfeiture, or liability, and for the purpose of authorizing the prosecution, conviction and punishment of the person or persons who violated the repealed ordinance.

Section 12. SEVERABILITY. The provisions of this ordinance are severable. If any section, sentence, clause, or phrase of this ordinance or any exhibit thereto is adjudged to be invalid by a court or other reviewing body of competent jurisdiction that

decision shall not affect the validity of the remaining portions of this ordinance or exhibit thereto.

Section 13. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 3rd day of February, 1993.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Tom Throop  
TOM THROOP, Chair

Nancy Pope Schlanger  
NANCY POPE SCHLANGEN, Commissioner

Excused  
B. H. SLAUGHTER, Commissioner

ATTEST:

Malene M. Heck  
Recording Secretary