

An Ordinance of the City of Shady Cove, Oregon
An Oregon Municipal Corporation

ORDINANCE NO. 259

Establishing Regulations To Prevent Flood Damage Within The City Of Shady Cove, Oregon, Adopting Related Firm Maps And "The Flood Insurance Study (FIS) For Jackson County And Incorporated Areas" And Amending Chapter 151 Of The City Of Shady Cove Municipal Code

WHEREAS, the State of Oregon has, pursuant to state law and the municipal home rule provisions of the state constitution, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry, and

WHEREAS, portions of the City of Shady Cove, Oregon (hereinafter referred to as the "City") lie within federally mapped flood hazard zones, and

WHEREAS, the flood hazard areas of the City are subject to periodic inundation which may result in loss of life and property, health, and causes 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, and

WHEREAS, these adverse impacts are caused by the cumulative effect of obstructions in areas of special hazard, which increase water flow heights and velocities and when inadequately constructed and/or anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage also contribute to flood loss, and

WHEREAS, 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 the following provisions which are designed;

- a. To protect human life and health;
- b. To minimize expenditure of public funds and the necessity of costly flood control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. To minimize negative economic impacts of prolonged business interruptions;
- e. To minimize damage to public facilities and utilities (water, gas, power, phone, sewer, streets and bridges) in flood hazard areas;
- f. To maintain a stable tax base by ensuring sound use and development of flood hazard areas to minimize potential future blight areas;
- g. To ensure that potential buyers are notified that a property is located in an area of specific flood hazard;

- h. To ensure that property owners in said areas assume responsibility for appropriate development standards, and
- i. To manage the alteration of flood hazard areas, stream channels and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain, and

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

- a. Restricting or prohibiting uses which are dangerous to health, safety and property due to water erosion hazards or which result in damaging increases in erosion, flood heights or velocities;
- b. Requiring that development that is vulnerable to floods, including structures and facilities necessary for the general health, safety and welfare of citizens, be protected against flood damage at the time of initial construction;
- c. Reserving and restoring natural floodplains, stream channels, and natural protective barriers which carry and store flood waters, and;
- c. Controlling filling, grading, dredging and other development which may increase flood damage;
- e. Preventing or regulating construction of flood barriers which will unnaturally divert flood waters or increase flood hazards in other areas, and
- f. Coordinating and supplementing the provisions of the State Building Code with local land use and development ordinances; now, therefore,

THE CITY OF SHADY COVE ORDAINS AS FOLLOWS:

The City of Shady Cove Municipal Code Chapter 151: Floods is hereby repealed and replaced with the new Chapter 151: Floods as attached. As directed by the Federal Government, this ordinance shall take effect on May 3, 2011.

Adopted by the Shady Cove City Council on this _____ day of _____, 2011.

Approved:

Attest:

Ronald Holthusen, Mayor

Debby Jermain, Deputy Recorder

Council Vote:

Councilor Hayes _____ Councilor Hughes _____ Councilor Kyle _____
 Councilor Ulrich _____ Mayor Holthusen _____

Chapter 151: Flood Damage Prevention

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Authorization, Findings of Fact, Purpose, and Objectives

§ 151.01 *Statutory Authorization*

The State of Oregon has in ORS 215.515 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 Shady Cove ordains and sets out the provisions of this chapter.

§ 151.02 *Findings of Fact*

- (A) The flood hazard areas of Shady Cove are subject to periodic inundation that may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (B) These flood losses are caused by structures in flood hazard areas, which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in flood hazard area causing increases in flood heights and velocities.
- (C) The City of Shady Cove has the primary responsibility for planning, adoption and enforcement of land use regulations to accomplish proper management of special flood hazard areas.

§ 151.03 *Statement of Purpose*

It is the purpose of this Chapter 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 to,

- (A) Protect human life, health and property;
- (B) Minimize damage to public facilities and utilities such as water purification and sewage treatment plants, water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (C) Help maintain a stable tax base by providing for the sound use and development of flood prone areas;
- (D) Minimize expenditure of public money for costly flood control projects;
- (E) Minimize the need for rescue, emergency services, and relief associated with flooding and generally undertaken at the expense of the general public;

- (F) Minimize prolonged business interruptions, unnecessary disruption of commerce, access and public service during times of flood;
- (G) Ensure that potential buyers are notified that property is in an area of special flood hazard;
- (H) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions, and;
- (I) Manage the alteration of areas of special flood hazard, stream channels and shorelines to minimize the impact of development on the natural and beneficial functions.

§ 151.04 *Methods of Reducing Flood Losses*

In order to accomplish its purpose, this Chapter includes methods and provisions to,

- (A) Require development that is vulnerable to floods, including structures and facilities necessary for the general health, safety and welfare of citizens, to be protected against flood damage at the time of initial construction;
- (B) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;
- (C) Control filling, grading, dredging and other development which may increase flood damage or erosion;
- (D) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards to other lands;
- (E) Preserve and restore natural floodplains, stream channels, and natural protective barriers which carry and store flood waters, and;
- (F) Coordinate with and supplement provisions of State of Oregon Specialty Codes enforced by the State of Oregon Building Codes Division.

Definitions

§ 151.05 *Definitions*

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted according to the meaning they have in common usage.

“Accessory Structure” means a structure on the same or adjacent parcel as a principal structure, the use of which is incidental and subordinate to the principal structure.

“Alteration of a Watercourse” includes, but is not limited to, any dam, culvert, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area or capacity, which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

“Appeal” means a request for review of the Floodplain Administrator’s interpretation of provisions of this Chapter.

“Area of Special Flood Hazard” (also called the Special Flood Hazard Area (SFHA) means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Zone designation on the FIRM begins with the letter A. “Base Flood” means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. Also called the “one percent annual chance flood” (1% ACF).

“Base Flood Elevation (BFE)” means the water surface elevation during the base flood in relation to a specified datum. The Base Flood Elevation (BFE) is depicted on the FIRM to the nearest foot and in the FIS to the nearest 0.1 foot.

“Basement” means any area of a building having its floor subgrade (below ground level) on all sides.

“Below-grade Crawlspace” means an enclosed area below the Base Flood Elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.

“Building” means a building or structure, including manufactured dwelling, subject to Building Codes.

“Critical Facility” means a facility that needs to be operable during a flood, or for which even a slight chance of flooding might pose unacceptable risk to health and safety. Critical facilities include, but are not limited to:

- Schools
- Nursing Homes
- Hospitals and other medical facilities having surgery and emergency treatment areas;
- Fire and police stations;
- Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
- Emergency vehicle shelters and garages;

- Structures and equipment in emergency-preparedness centers;
- Standby power generating equipment for essential facilities; and
- Structures and equipment in government communication centers and other facilities required for emergency response.

“Cumulative Substantial Improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure that equals or exceeds 50 percent of the market value of the structure at the time of the improvement or repair when counted cumulatively for 10 years. See “Substantial Improvement”.

“Datum” The vertical datum is a base measurement point (or set of points) from which all elevations are determined. Historically, that common set of points has been the National Geodetic Vertical Datum of 1929 (NGVD29). The vertical datum currently adopted by the federal government as a basis for measuring heights is the North American Vertical Datum of 1988 (NAVD88).

“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. Development does not include signs, markers, aids, etc. placed by a public agency to serve the public.

“Digital FIRM (DFIRM)” means Digital Flood Insurance Rate Map. It depicts flood risk zones and flood risk information. The DFIRM presents the flood risk information in a format suitable for electronic mapping applications.

“Encroachment” means the advancement or infringement of uses, fill, excavation, buildings, permanent structures or other development into Regulatory Floodway which may impede or alter the flow capacity of a floodplain.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

“Existing Building or Structure” means a structure for which the “start of construction” commenced before September 30, 1980.

“Federal Emergency Management Agency (FEMA)” means the agency with the overall responsibility for administering the National Flood Insurance Program.

“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; or

- 2) the unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

“Flood Insurance Study (FIS)” means the official report by the Federal Emergency Management Agency evaluating flood hazards in a community and containing flood profiles, Regulatory Floodway boundaries and water surface elevations of the base flood.

“Floodway (Regulatory Floodway)” means the channel of a river or other watercourse and those portions of the floodplain adjoining the channel required and reserved to discharge the base flood without cumulatively increasing water surface elevation more than one foot.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface prior to construction, adjacent to the proposed walls of a structure. Refer to the Elevation Certificate, FEMA Form 81-31, for more information.

“Historic Structure” means a structure that is:

- 1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or to a district preliminarily determined by the Secretary to qualify as a registered historic district;
- 3) Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior, or;
- 4) Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
- 5) By an approved state program as determined by the Secretary of the Interior, or;
- 6) Directly by the Secretary of the Interior in states without approved programs.

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

“Letter of Map Amendment (LOMA)” means a revision based on technical data showing that a property was inadvertently included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific structure, property, or portion of a property is not located in a Special Flood Hazard Area;

“Letter of Map Revision (LOMR)” means a revision based on technical data showing, due to manmade alterations, changes to flood zones, flood elevations, or floodplain and Regulatory Floodway delineations. One common type of LOMR, a LOMR-F, is a determination that a structure or parcel has been elevated by fill above the Base Flood Elevation and is excluded from the Special Flood Hazard Area;

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

“Limited storage” means storage of equipment or materials which is incidental and accessory to the principal use of a structure such as lawn and garden equipment and snow tires, which cannot be conveniently stored in the elevated portion of the structure.

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure used solely for parking of vehicles, building access, or limited storage, in an area other than a basement, is not considered a structure’s lowest floor provided that the enclosed area is built and maintained in accordance with the applicable design requirements of the Specialty Codes and this Chapter. The lowest floor of a manufactured dwelling is the bottom of the longitudinal chassis frame beam.

“Manufactured Dwelling” or “Manufactured Home” means a structure, transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “Manufactured Dwelling” does not include a “Recreational Vehicle.”

“New Construction” means a structure for which the “start of construction” commenced after May 3, 2011, and includes subsequent substantial improvements to the structure.

“Reasonably safe from flooding” means that base flood waters will not inundate the land or damage structures and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

“Recreational Vehicle” means a vehicle that is:

- 1) Built on a single chassis;
- 2) 400 square feet or less when measured at the largest horizontal projection;

- 3) Designed to be self-propelled or permanently towed by a light duty truck, and;
- 4) Designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use and not for use as a permanent dwelling.

“Specialty Codes” means the combined specialty codes adopted under ORS 446.062, 446.185, 447.020 (2), 455.020 (2), 455.496, 455.610, 455.680, 460.085, 460.360, 479.730 (1) or 480.545, but does not include regulations adopted by the State Fire Marshal pursuant to ORS Chapter 476 or ORS 479.015 to 479.200 and 479.210 to 479.220. The combined specialty codes are often referred to as building codes.

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

“Structure” means a walled and roofed building, a manufactured dwelling, a modular or temporary building, or 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 its market value before the damage occurred. Substantial damage also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. “Substantial improvement” also means “cumulative substantial improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The market value of the structure is:

- 1) The real market value of the structure prior to the start of the initial repair or improvement, or
- 2) In the case of damage, the real market value of the structure prior to the damage occurring. The term does not include either:
 - a. A 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
 - b. Alteration of an Historic Structure, provided that the alteration will not preclude the structure's continued designation as an Historic Structure.

"Variance" means a grant of relief from a requirement of this Chapter.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the Elevation Certificate, other certifications, or other evidence of compliance is presumed to be in violation until such time as that documentation is provided.

"Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature in, on, through, or over which water flows at least periodically.

"Water Dependent Use" means a facility that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

"Water Surface Elevation" means the height, in relation to a specific datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

General Provisions

§ 151.06 Lands to Which This Chapter Applies

This Chapter shall apply to all Areas of Special Flood Hazard within the jurisdiction of the City of Shady Cove. Nothing in this Chapter is intended to allow uses or structures that are otherwise prohibited by the zoning chapter or Specialty Codes.

§ 151.07 Basis for Area of Special Flood Hazard

The Area of Special Flood Hazard identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS) for Jackson County, Oregon and Incorporated Areas, dated May 3, 2011, with accompanying Flood Insurance Rate Maps (FIRM) or Digital Flood Insurance Rate Maps

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(DFIRM) are adopted by reference and declared a part of this ordinance. The FIS and the FIRM are on file at the office of the City of Shady Cove, 22451 Highway 62, Shady Cove, Oregon.

§ 151.08 *Coordination with Specialty Codes Adopted by the State of Oregon*
Building Codes Division

Pursuant to the requirement established in ORS 455 that the City of Shady Cove administers and enforces the State of Oregon Specialty Codes, the Shady Cove City Council does hereby acknowledge that the Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in Areas of Special Flood Hazard. Therefore, this ordinance is intended to be administered and enforced in conjunction with the Specialty Codes.

§ 151.09 *Establishment of a Development Permit*

- (A) A development permit shall be obtained prior to initiating development activities in any Areas of Special Flood Hazard established in § 151.07. The permit shall be for all improvements or structures including the placement of manufactured homes, fences, and fill.
- (B) Any such development permit application that requires engineering analysis, calculations or modeling to establish a base flood elevation or Regulatory Floodway, or to demonstrate no increase in base flood elevation in an established Regulatory Floodway shall be considered a land use action requiring an opportunity for a quasi-judicial land use hearing.
- (C) Replacement of public bridges and/or culverts located in the floodway that necessitate a "No-rise" Certification are allowed through a Type I Review process, provided the replacement bridge/culvert is located along a similar or parallel alignment and contributes no additional material to the floodway.

§ 151.10 *Interpretation*

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

- (A) Considered as minimum requirements;
- (B) Liberally construed in favor of the governing body, and;
- (C) Deemed neither to limit nor repeal any other powers granted under state statutes, including state Specialty Codes.

§ 151.11 *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. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside Areas of Special Flood Hazard 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 Shady Cove or any officer, employee, or agent thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or an administrative decision lawfully made hereunder.

Administration

§ 151.12 *Designation of Floodplain Administrator*

The City Administrator or his /her designee is hereby appointed as the Floodplain Administrator who is responsible for administering and implementing the provisions of this ordinance.

§ 151.13 *Duties and Responsibilities of the Floodplain Administrator*

Duties of the Floodplain Administrator shall include, but shall not be limited to:

- (A) Review all proposed development to determine whether it will be located in Areas of Special Flood Hazard or other flood-prone areas;
- (B) Review applications for new development or modifications of any existing development in Areas of Special Flood Hazard for compliance with the requirements of this ordinance;
- (C) Interpret flood hazard area boundaries, provide available flood hazard information, and provide Base Flood Elevations, where they exist;
- (D) Review proposed development to ensure that necessary permits have been received from governmental agencies from which approval is required by Federal or state law. Copies of such permits shall be maintained on file.
- (E) Review all development permit applications to determine if proposed development is located in the Regulatory Floodway, and if so, ensure that the encroachment standards of § 151.20 are met.
- (F) When Base Flood Elevation data or floodway data have not been established in § 151.07, the Floodplain Administrator shall obtain, review, and reasonably utilize any Base Flood Elevation and floodway data available from a Federal, state or other authoritative source in order to administer the provisions of this ordinance.
- (G) When Base Flood Elevations are not available from an authoritative source, the Floodplain Administrator shall require Base Flood Elevations to be developed in accordance with § 151.19 (D) of this Chapter or take into account the flood hazards, to the extent they are known, to determine whether a proposed building site or subdivision will be reasonably safe from flooding.

- (H) Where a determination is needed of the exact location of boundaries of the Areas of Special Flood Hazard including Regulatory Floodway (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the determination. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the determination.
- (I) Issue floodplain development permits when the provisions of this Chapter have been met, or deny the same in the event of noncompliance;
- (J) Coordinate with the Building Official to ensure that applications for building permits comply with the requirements of this Chapter;
- (K) Obtain, verify and record the actual elevation in relation to the vertical datum used on the effective FIRM, or in relation to the highest adjacent grade where no Base Flood Elevation is available, of the lowest floor level, including basement, of all new construction or substantially improved buildings and structures, including manufactured dwellings
- (L) Obtain, verify and record the actual elevation of finished construction, in relation to the vertical datum used on the effective FIRM, or highest adjacent grade where no Base Flood Elevation is available, to which any new or substantially improved non-residential buildings or structures have been flood-proofed. When flood-proofing is utilized for a non-residential structure, the Floodplain Administrator shall obtain certification of elevation to which the structure was flood-proofed from a registered professional engineer or architect;
- (M) Ensure that all records and certifications pertaining to the provisions of this Chapter are permanently maintained at City Hall and available for public inspection.
- (N) Make periodic inspections of Areas of Special Flood Hazard to establish that development activities are being performed in compliance with this Chapter, and to verify that existing buildings and structures maintain compliance with this Chapter;
- (O) Inspect areas where buildings and structures in Areas of Special Flood Hazard have been damaged, regardless of the cause of damage, and notify owners that permits may be required prior to repair, rehabilitation, demolition, relocation, or reconstruction of the building or structure;
- (P) Make substantial improvement and substantial damage determinations for all structures located in Areas of Special Flood Hazard in accordance with § 151.15 .

§ 151.14 *Permit Procedures*

Application for a Development Permit shall be made to the Floodplain Administrator or designee on forms furnished by the Floodplain Administrator or designee prior to starting development activities.

- (A) Information required at Application Stage
 - (1) Plans in triplicate drawn to scale with elevations of the project area and the nature, location, dimensions of existing and proposed structures, earthen fill placement, storage of materials or equipment and drainage facilities;
 - (2) Delineation by a licensed surveyor or registered professional engineer of Areas of Special Flood Hazard, Regulatory Floodway boundaries including Base Flood Elevations;
 - (3) For all proposed structures, elevation in relation to Base Flood Elevation and to the highest adjacent grade of the
 - (a) lowest enclosed area, including crawlspace or basement floor;
 - (b) top of the proposed garage slab, if any, and;
 - (c) next highest floor
 - (4) Locations and sizes of all flood openings, if required, in any proposed building;
 - (5) Elevation to which any non-residential structure will be flood-proofed;
 - (6) Certification from a registered professional engineer or architect that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of the NFIP and Specialty Codes;
 - (7) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development;
 - (8) Proof that application has been made for necessary permits from other governmental agencies from which approval is required by Federal or state law.
- (B) Information required at Construction Stage
 - (1) Copies of all necessary permits from other governmental agencies from which approval is required by Federal or state law must be provided prior to start of construction.
 - (2) For all new construction and substantial improvements, an as-built certification of the floor elevation or flood-proofing level immediately after the lowest floor or flood-proofing is placed and prior to further vertical construction;

- (3) For all new construction, certification by a licensed surveyor or registered professional engineer that the location of any structure in relation to the Regulatory Floodway in order to demonstrate no encroachment.
- (C) Information required to receive a Certificate of Compliance
- (1) In addition to the requirements of the Specialty Codes pertaining to certificate of occupancy, and prior to the final inspection, the owner or authorized agent shall submit the following documentation for finished construction that has been signed and sealed by a licensed surveyor or registered professional engineer:
 - (a) For elevated buildings and structures in Areas of Special Flood Hazard, the elevation of the lowest floor, including basement or where no Base Flood Elevation is available the height above highest adjacent grade of the lowest floor;
 - (b) For non-residential buildings and structures that have been floodproofed, the elevation to which the building or structure was floodproofed.
 - (2) Any deficiencies identified by the Floodplain Administrator shall be corrected by the permit holder immediately and prior to work proceeding. Failure to submit certification or failure to make the corrections shall be cause for the Floodplain Administrator to issue a stop-work order for the project. Failure to submit certification or failure to correct violations shall be cause for the Floodplain Administrator to withhold the Certificate of Compliance until such deficiencies are corrected.
- (D) Expiration of Floodplain Development Permit
- (1) A floodplain development permit shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences.
 - (a) Except for replacement of public bridges and/or culverts, which shall expire after 12 months, and can be extended upon written request.
 - (2) Extensions for periods of not more than 180 days each shall be requested in writing to the Floodplain Administrator and may be subject to review and additional permit fees.

§ 151.15 *Substantial Improvement and Substantial Damage Determinations*

For applications for permits to improve buildings and structures, including additions, repairs, renovations, and alterations, the Floodplain Administrator, shall:

- (A) Estimate the market value, or require the applicant to obtain a professional appraisal of the market value, of the building or structure before the proposed work is performed. When repair of damage is proposed, the market value of the building or structure shall be the market value before the damage occurred;
- (B) Compare the cost of improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
 - (1) Except as indicated in subsections (2) and (3) below, all costs to repair substantial damage, including emergency repairs, and the cost of complying with any county, state, or federal regulation, must be included;
 - (2) The costs associated with the correction of pre-existing violations of state or local health, sanitary, or safety code specifications that were identified by the building official, the director of environmental health, or any other local code enforcement official prior to the improvement or repair, and that are the minimum necessary to ensure safe living conditions, shall not be included;
 - (3) Costs associated with the following items are not included:
 - (a) The preparation and approval of all required plans, calculations, certifications, and specifications;
 - (b) The performance of surveys or other geotechnical or engineering studies and resulting reports;
 - (c) Permit and review fees, and;
 - (d) The construction, demolition, repair, or modification of outdoor improvements, including landscaping, fences, swimming pools, detached garages and sheds, etc.;
 - (4) Proposed alterations to a designated historic building or structure are not to be considered a substantial improvement unless the alteration causes a loss of said designation.
- (C) The Floodplain Administrator shall make the final determination of whether the proposed improvement and/or repairs constitute a substantial improvement or substantial damage.
- (D) The Floodplain Administrator shall notify the applicant of the results of the determination in writing.
- (E) The applicant has the right to appeal the determination pursuant to § 151.32.

§ 151.16 Watercourse Alterations

- (A) Development shall not diminish the flood carrying capacity of a water course. If any water course will be altered or relocated as a result of the proposed development

the applicant must submit certification by a registered professional engineer that the flood carrying capacity of the water course will not be diminished.

- (B) Applicant will be responsible for obtaining all necessary permits from governmental agencies from which approval is required by Federal or state law, including but not limited to section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334; the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; and State of Oregon Division of State Lands regulations.
- (C) If the altered or relocated watercourse is part of an Area of Special Flood Hazard, the applicant shall notify adjacent communities and Oregon Department of Land Conservation and Development prior to any alteration or relocation of the watercourse. Evidence of notification must be submitted to the Floodplain Administrator and to the Federal Emergency Management Agency as set forth in § 151.17.
- (D) The applicant shall be responsible for ensuring necessary maintenance for the altered or relocated portion of the water course is provided so that the flood carrying capacity will not be diminished.
- (E) The applicant shall meet the requirements to submit technical data in § 151.17 when an alteration of a watercourse results in the expansion, relocation or elimination of the Special Flood Hazard Area.

§ 151.17 Requirement to Submit New Technical Data

- (A) Within six months of project completion, an applicant who obtains an approved Conditional Letter of Map Revision from FEMA, or whose development alters a watercourse or modifies floodplain boundaries or Base Flood Elevations, shall obtain from FEMA a Letter of Map Revision reflecting the as-built changes to the FIRM and FIS.
- (B) It is the responsibility of the applicant to have technical data prepared in a format required for a Conditional Letter of Map Amendment or Letter of Map Revision and to submit such data to FEMA on the appropriate application forms. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
- (C) Applicants shall be responsible for all costs associated with obtaining a Conditional Letter of Map Amendment or Letter of Map Revision from FEMA.
- (D) The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met all applicable requirements of this Chapter

§ 151.18 *Non-Conversion of Enclosed Areas below the Lowest Floor*

To ensure that enclosed areas that are less than one foot above the BFE continue to be used solely for parking vehicles, limited storage, or access to the building and not be finished for use as human habitation, the Floodplain Administrator shall:

- (A) Determine which applicants for new construction and/or substantial improvements have fully enclosed areas below the lowest floor that are 5 feet or higher;
- (B) Require that the property owner record a "Non-Conversion Declaration" with the Jackson County Clerk as a deed restriction. The non-conversion declaration shall be in a form acceptable to the Floodplain Administrator and County Counsel;
- (C) Have the authority to inspect any area of a structure that is less than one foot above the BFE to ensure compliance upon prior notice of at least 72 hours.

Provisions for Flood Hazard Reduction

§ 151.19 *Site Improvements and Subdivisions*

- (A) All plans and permits for proposed new site improvements, subdivisions, and manufactured home parks shall be consistent with the need to minimize flood damage and ensure that building sites will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes historical data, high water marks, photographs of past flooding, etc.
- (B) Building lots shall have adequate buildable area outside of Regulatory Floodways.
- (C) Site improvement proposals, subdivision development plans, and manufactured home park plans shall include the mapped flood hazard zones and Regulatory Floodway boundaries from the effective FIRM.
- (D) Where base flood elevation data has not been provided or is not available from another authorized source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).
- (E) Site improvements, subdivisions, and manufactured home parks shall have public utilities and facilities such as sewer, gas, electric and water systems located and constructed to minimize or eliminate damage and infiltration of floodwaters. Replacement public utilities and facilities such as sewer, gas, electric and water systems, likewise shall be sited and designed to minimize or eliminate damage and infiltration of floodwaters.
- (F) New and replacement on-site waste disposal systems and sanitary sewerage systems shall be located and constructed to avoid functional impairment, contamination, or discharges from them, during flooding.
- (G) Subdivisions and manufactured home parks shall have adequate drainage provided to reduce exposure to flood hazards.

§ 151.20 *Development in Regulatory Floodways*

- (A) Except as provided in section (E), below, encroachments, including fill, new construction, substantial improvements, fences and other development are prohibited in the Regulatory Floodway unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that such encroachment will not result in any increase in flood levels during the occurrence of the base flood discharge.
- (B) Any fill permitted to be placed in the Regulatory Floodway shall be designed to be stable under conditions of flooding, including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and flood-related erosion and scour.
- (C) Fences shall not cause any rise in Base Flood Elevation and are subject to the no-rise and CLOMR provisions of paragraphs (A) and (D) of this section.
- (D) Applicants shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA before an encroachment, including fill, new construction, substantial improvement, fences, or other development, in the Regulatory Floodway is permitted that will cause any increase in the Base Flood Elevation unless the development causes a temporary encroachment and the conditions in section (E), below, are satisfied.
- (E) Temporary encroachments in the Regulatory Floodway for the purposes of capital improvement projects (including bridges) may be allowed even if the encroachment results in an increase in flood levels during the occurrence of the base flood discharge, and without obtaining a CLOMR, when:
 - (1) the project is limited as to duration with the days and dates that the structure or other development will be in the Regulatory Floodway specified in the development permit;
 - (2) accessory structures (i.e. construction trailers) are restricted from the Regulatory Floodway;
 - (3) the project limits placement of equipment and material in the Regulatory Floodway to that which is absolutely necessary for the purposes of the project;
 - (4) the project includes a flood warning system sufficient to allow equipment to be evacuated from the Regulatory Floodway and placed outside the area of special flood hazard in the event of imminent flood;
 - (5) the project applicant identifies any insurable structures affected by temporary changes to the area of special flood hazard or base flood elevation and notifies owners of any increased risk of flooding;
 - (6) the project applicant is provided with written notification that they may be liable for any flood damages resulting from the temporary encroachment.

- (F) Projects for stream habitat restoration may be allowed without certification by a registered professional civil engineer provided:
- (1) The project qualifies for a Department of the Army, Portland District Regional General Permit for Stream Habitat Restoration (NWP-2007-1023); and,
 - (2) A qualified professional (a registered professional engineer; or staff of Natural Resources Conservation Service; 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,
 - (3) No structures would be impacted by a potential rise in flood elevation; and,
 - (4) An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.

§ 151.21 Building Design and Construction

- (A) In all areas of special flood hazards,
- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
 - (2) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
 - (3) New construction and substantial improvements shall be constructed using methods and practices that minimize flood damage, and;
 - (4) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities, including duct work, 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.
- (B) Specific Building Design and Construction Standards for Residential Construction
- (1) In addition to § 151.21(A) above,
 - (a) New construction and substantial improvement of residential structures shall have the lowest floor, including basement, elevated a minimum of one foot above the Base Flood Elevation or three feet above highest adjacent grade where no BFE is defined, and;
 - (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:

- (c) A minimum of two openings, installed on at least two sides of each enclosed area, 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;
 - (i) The bottom of all openings shall be no higher than one foot above grade, and;
 - (ii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - (iii) Engineered openings are permitted if the applicant submits certification from a registered professional engineer that the openings are sufficient to meet the design requirements of American Society of Civil Engineers, Flood Resistant Design and Construction Standard (ASCE 24).

(C) Specific Building Design and Construction Standards for Nonresidential Construction

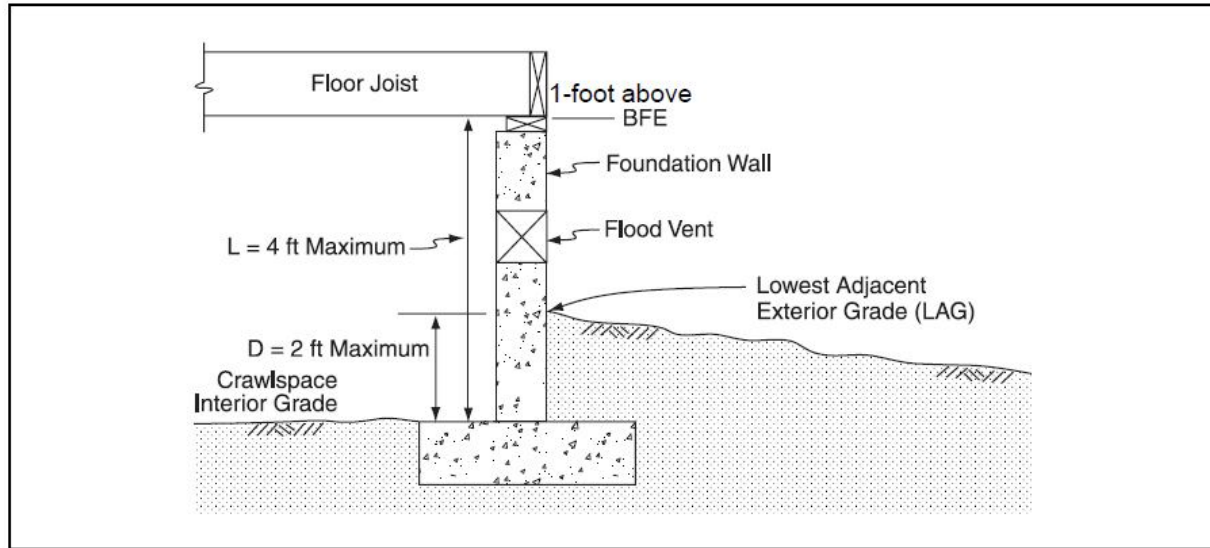
- (1) In addition to § 151.21(A) above, new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated according to Table 2-1 the American Society of Civil Engineers, Flood Resistant Design and Construction Standard (ASCE 24); 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 Floodplain Administrator;
- (2) Nonresidential structures that are elevated, not floodproofed, must meet residential standards described in (A) and (B) above;

- (3) 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).
- (D) Specific Building Design and Construction Standards for Manufactured Dwellings
- (1) In addition to § 151.21(A) and (B) above, new, replacement, and substantially improved manufactured dwellings are subject to the following standards,
 - (a) If the manufactured dwelling is supported on solid foundation walls, the ground area reserved for the placement of a manufactured dwelling shall be a minimum of one foot above BFE unless the foundation walls are designed to automatically equalize hydrostatic forces by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - (i) A minimum of two openings, on at least two sides, 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, and;
 - (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - (b) The bottom of the longitudinal chassis frame shall be at or above BFE
 - (c) The manufactured dwelling shall be anchored to prevent flotation collapse and lateral movement during the base flood. 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), and;
 - (d) Electrical crossover connections shall be a minimum of 12 inches above BFE.
 - (e) Any utility systems must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters. Only the crossover duct is exempt from this provision.

§ 151.22 *Below Grade Crawlspace*

Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11, CrawlSpace Construction for Buildings Located in Special Flood Hazard Areas. Residents should note that there is an increased cost for flood insurance associated with below-grade crawlspaces. There is a charge added to the basic policy premium for a below-grade crawlspace versus a standard, at grade, crawlspace foundation.

- (A) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.
- (B) The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.
- (C) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.
- (D) Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
- (E) The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.
- (F) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.



- (G) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.
- (H) The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

§ 151.23 Accessory Structures

Relief from the elevation or dry flood-proofing standards may be granted for new and replacement accessory structures containing no more than 200 square feet. Such a structure must meet the following standards:

- (A) It shall not be subject to Specialty Codes;
- (B) The accessory structure shall be located on a property, or an adjacent property with same owner, as a dwelling;
- (C) It shall not be used for human habitation and may be used solely for parking of vehicles or storage of items having low damage potential when submerged;
- (D) Toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall not be stored below BFE, or where no BFE is available lower than three feet above grade, unless confined in a tank installed in compliance with this Chapter;

- (E) It shall be constructed of flood resistant materials;
- (F) It shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
- (G) It shall be firmly anchored to prevent flotation;
- (H) Services such as electrical and heating equipment shall be elevated or flood-proofed to or above the Base Flood Elevation;
- (I) It shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. Designs for complying with this requirement must be certified by a licensed professional engineer or architect or (a) provide a minimum of two openings, on at least two sides, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (1) the bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening; and
 - (2) openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both directions without manual intervention.

§ 151.24 *Recreational Vehicles*

In all Areas of Special Flood Hazard, Recreational Vehicles that are an allowed use or structure under the zoning chapter must either:

- (A) Be placed on the site for fewer than 180 consecutive days;
- (B) Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or addition, or
- (C) Meet all the requirements of § 151.21(D) including the anchoring and elevation requirements.

§ 151.25 *Temporary Structures and Temporary Storage*

- (A) Temporary structures placed in Areas of Special Flood Hazard: Relief from dry flood-proofing standards may be granted for non-residential structures erected during the dry season (June – October) or for a period of less than 90 days. Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood. A plan for the evacuating the temporary structure and disconnecting all utilities shall be provided if the structure is allowed to be placed during the wet season (November – May).

- (B) Temporary storage in Areas of Special Flood Hazard. Temporary storage of goods and materials is allowed during the dry season (June – October) or for a period of less than 90 days. Stored materials shall not include hazardous materials. A plan for removing the stored materials shall be provided if the material is allowed to be placed during the wet season (November – May).
- (C) The placement of any temporary structures within the regulatory floodway shall be limited to the dry season (June – October) and require an approved special use permit.

§ 151.26 *Critical Facilities*

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Area of Special Flood Hazard. Construction of new critical facilities shall be permissible within the Area of Special Flood Hazard if no feasible alternative site is available. Floodproofing and sealing measures must be taken to ensure that toxic substances or priority organic pollutants as defined by the Oregon Department of Environmental Quality 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 maximum extent possible.

§ 151.27 *Tanks*

- (A) New and replacement tanks in flood hazard areas shall either be elevated above the Base Flood Elevation on a supporting structure designed to prevent flotation, collapse or lateral movement during conditions of the base flood, or be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of 1.5 times the buoyant forces assuming the tank is empty, during conditions of the base flood, in accordance with ASCE 24.
- (B) New and replacement tank inlets, fill openings, outlets and vents shall be placed a minimum of 2 feet above Base Flood Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tank during conditions of the base flood.

§ 151.28 *Fences and Walls*

- (A) Fences are a form of development and require a floodplain development permit pursuant to § 151.09. Evaluation of floodplain development permit applications for proposed fences will be based on the following criteria:
 - (1) Fencing that consists of solid walls, creates a barrier impervious to stream flow or fencing that greatly restricts the passage of water will not be allowed. These include masonry walls, retaining walls, chain link fencing, space board-type fencing or similar fencing that creates a solid wall either by design or the accumulation of debris.

- (2) Fencing outside the floodway but within the special flood hazard area will be restricted to the least flow-restrictive types of open fencing that allows the passage of water.
 - (3) Barbed wire fencing or other like material, which creates an unreasonable or unnecessary risk of injury are prohibited in the Special Flood Hazard Area.
- (B) New and replacement fencing shall be designed to collapse under conditions of the base flood or to allow the passage of water and debris. The following provisions shall apply to all fences permitted in the SFHA:
- (1) Fences in the regulatory Floodway are prohibited;
 - (2) Fences must be setback a minimum of 5-feet from the top-of-bank;
 - (3) Fencing must be built in removable sections;
 - (4) Fencing that consists of solid walls, creates a barrier impervious to stream flow or fencing that greatly restricts the flow of water is prohibited.
 - (5) Fences that are significantly damaged or destroyed by a flood shall require a floodplain development permit pursuant to § 151.09 to ensure that reconstruction methods are consistent with the need to minimize future flood damages.

Variance Procedures and Criteria

§ 151.29 *Variance*

The City Council shall hear and decide appeals from the interpretations of the Floodplain Administrator.

- (A) An application for a variance must be submitted to the City of Shady Cove on the form provided by the City of Shady Cove and include at a minimum the same information required for a development permit and an explanation for the basis for the variance request.
- (B) The burden to show that the variance is warranted and meets the criteria set out herein is on the applicant.
- (C) Upon consideration of the criteria in § 151.30 and the purposes of this Chapter, the City of Shady Cove may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.
- (D) The Floodplain Administrator shall maintain a permanent record of all variances and report any variances to the Federal Emergency Management Agency upon request.

§ 151.30 *Criteria for Variances*

- (A) Variances shall not be issued within a designated Regulatory Floodway if any increase in flood levels during the base flood discharge would result.
- (B) 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 1-11 of Paragraph (H), below, have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
- (C) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (D) Variances shall only be issued upon a:
 - (1) showing of good and sufficient cause;
 - (2) determination that failure to grant the variance would result in exceptional hardship to the applicant, and;
 - (3) 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 or conflict with existing local laws or ordinances.
- (E) Variances may be issued for a water dependent use provided that
 - (1) the criteria of paragraphs (A) through (D) of this section are met, and;
 - (2) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (F) 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.
- (G) 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.

- (H) When reviewing such applications, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Chapter, and the:
- (1) danger that materials may be swept onto other lands to the injury of others;
 - (2) danger to life and property due to flooding or erosion damage;
 - (3) susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) importance of the services provided by the proposed facility to the community;
 - (5) necessity to the facility of a waterfront location, where applicable;
 - (6) availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (7) compatibility of the proposed use with existing and anticipated development;
 - (8) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (9) safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) 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,
 - (11) 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.

§ 151.31 Variance Decision

The decision to either grant or deny a variance shall be in writing and shall set forth the reasons for such approval and denial. If the variance is granted, the property owner shall be put on notice along with the written decision that the permitted building will have its lowest floor below the Base Flood Elevation and that the cost of flood insurance likely will be commensurate with the increased flood damage risk.

§ 151.32 Appeals

The City Council shall hear and decide appeals from the interpretations of the Floodplain Administrator.

- (A) An appeal must be filed with the City Administrator within 30 days of the date of any permit denial or interpretation of the Floodplain Administrator. Failure to timely file an appeal shall be considered a failure to exhaust the administrative remedies. The appeal must set out the interpretation or decision of the Floodplain Administrator and a narrative setting forth the facts relied upon by the appellant and the appellants claim regarding the error in the interpretation or decision.
- (B) Upon receipt of a completed appeal, the appeal will be scheduled for the next available City Council meeting to be heard. The City Council shall consider criteria set forth in § 151.30 as the basis for evaluating the appeal.

The City Council's decision on an appeal shall be in writing and set out the facts, technical information and the legal basis for the decision.

Flood Hazard Disclosure

§ 151.33 *Flood Hazard Disclosure*

This section applies to the transfer on or after May 3, 2011, by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of any real property, improved with or consisting of one or more dwelling units.

- (A) A person who is acting as an agent for a transferor of real property that is located within an Area of Special Flood Hazard, or the transferor if he or she is acting without an agent, shall disclose, in writing, to any prospective transferee the fact that the property is located within a Special Flood Hazard Area and is subject to the provisions of this Chapter if either:
 - (1) The transferor, or the transferor's agent, has actual knowledge that the property is within a Special Flood Hazard Area; or
 - (2) The property has been identified by the Floodplain Administrator as being within the Special Flood Hazard Area.
- (B) Any waiver of the requirements of this article is void as against public policy.
- (C) After a transferor and his or her agent comply with this section, they shall be relieved of further duty with respect to those items of information. The transferor and his or her agent shall not be required to provide notice to the transferee if the information provided subsequently becomes inaccurate as a result of any governmental action, map revision, changed information, or other act or occurrence, unless the transferor or agent has actual knowledge that the information has become inaccurate.
- (D) If information disclosed in accordance with this article is subsequently rendered inaccurate as a result of any governmental action, map revision, changed information, or other act or occurrence subsequent to the delivery of the required

disclosures, the inaccuracy resulting therefrom does not constitute a violation of this Chapter.

- (E) Each disclosure required by this section and each act that may be performed in making the disclosure shall be made in good faith. For purposes of this article, "good faith" means honesty in fact in the conduct of the transaction.

Penalties for Violation

§ 151.34 Penalties for Violation

- (A) No structure or land shall hereafter be located, extended, converted or altered unless in full compliance with the terms of this Chapter and other applicable regulations.
- (B) Violation of the provisions of this Chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. Any person who violates this Chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500 or imprisoned for not more than 30 days, or both. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Shady Cove from taking such other lawful actions as is necessary to prevent or remedy any violation.

§ 151.35 Severability

The Chapter is hereby declared to be severable. Should any portion of this Chapter be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the Chapter before the declaration of partial invalidity.

§ 151.36 Abrogation and Greater Restrictions

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