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LEGAL COUNSEL

88-18191

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as Amended, Revising Provisions Concerning Flood Plain Zone, and Declaring an Emergency. *

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MARY SUE PENHOLLOW
COUNTY CLERK
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ORDINANCE NO. 88-030

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

Section 1. Paragraphs (40), "Flood Hazard Area", (41), "Flood Hazard Boundary Map", (42), "Flood Plain Profile", of Section 1.030, "Definitions", of Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, are hereby repealed.

Section 2. Paragraphs (125A), "Substantially Shaded", and (125B), "Sunchart", of Section 1.030, "Definitions", of Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, are renumbered Paragraphs (125B) and (125C), respectively.

Section 3. Section 1.030, "Definitions", of Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended to include the following new and amended definitions.

"(10A) Area of Shallow Flooding. Such areas are designated 'AO' or 'AH' Zone on the Flood Insurance Rate Map (FIRM). In such areas, the base flood depths range from one to three feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident. For purposes of this definition, 'AO' is characterized as sheet flow and 'AH' indicates ponding.

"(10B) Area of Special Flood Hazard. The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Such areas are designated by the letter 'A' or 'V' on the Flood Insurance Rate Map (FIRM).

"(38) Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters; and/or

- B. The unusual and rapid accumulation of runoff of surface waters from any source.

"(39) Flood, Base. The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the '100-year flood'. Such areas are designated by the letter 'A' or 'V' on the Flood Insurance Rate Map (FIRM).

"(40A) Flood Insurance Rate Map. (FIRM). The official map on which the United States Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community. The FIRM is adopted by reference in Ordinance No. 88-031.

"(41A) Flood Insurance Study. The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood condition of partial or complete inundation of normally dry land areas. The Study is adopted by reference in Ordinance No. 88-031.

"(42A) Flood Plain Development. 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, located within the area of special flood hazard.

"(43) Floodway. The channel of a river or other water course, and the adjacent land areas, that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"(67J) Lowest Floor. The lowest floor of the lowest enclosed area of a structure, including the basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 4.210(6) this Ordinance.

"(76) New Construction. Any structure for which the start of construction commenced on or after the effective date of this Ordinance. 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.

"(125A) Substantial Improvement. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- A. before the improvement or repair is started; or
- B. if the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition, 'substantial improvement' is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- C. any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
- D. any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places."

Section 4. Section 4.210, "Flood Plain Zone (FP)", of Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended to read as follows:

- "1. Purposes. The purposes of the Flood Plain Zone are: to implement the Comprehensive Plan Flooding Section; to protect the public from the hazards associated with flood plains; to conserve important riparian areas along rivers and streams for the maintenance of the fish and wildlife resources; and to preserve significant scenic and natural resources while balancing the public interests with those of individual property owners in the designated areas.
- "2. The Flood Plain Zone shall include all areas designated as "Base Flood" areas by the Flood Insurance Study for Deschutes County. When flood base elevation data has not been provided in the flood insurance study, the Planning Division will obtain, review and reasonably utilize any base

flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway.

"3. Uses Permitted Outright.

- A. Agricultural use conducted without establishing or utilizing a structure. For purposes of this paragraph, a 'structure' does not include a boundary fence as long as such fence is designed to impede as little as possible the movement of floodwaters and flood-carried material.
- B. Management, propagation and harvesting of a forest product.
- C. Open space.
- D. Portions of a residential use that do not contain structures, such as lawn, garden or play areas.

"4. Conditional Uses Permitted.

- A. A roadway, bridge or utility structure, except a landfill, that will not impede the waters of a base flood.
- 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 dwellings on an individual lot, and manufactured housing on an individual lot in compliance with Sections 5.100, 5.110, 5.120, 5.130, 5.140 and 5.150 of this Ordinance.
- D. Agricultural or residential related accessory buildings.

- E. Hydroelectric facilities in accordance with Sections 5.210 and 8.050(22) of this Ordinance.
 - F. Excavation, grading and fill and removal in accordance with Sections 6.060 and 8.050(23) of this Ordinance.
 - 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.
 - H. Subdividing or partitioning land in accordance with the provisions of this Ordinance and Title 17 of the Deschutes County Code.
 - I. Expansion or substantial improvement of an existing dwelling, agricultural related structure or accessory building.
- "5. Limitations on Conditional Uses. The following limitations shall apply to all uses allowed by subsection 4 of this Section:
- A. No dwelling units, including manufactured housing, accessory buildings and farm use structures, shall be allowed, or additions to such structures allowed, in the floodway of any river or stream.
 - B. No dwelling unit, including manufactured housing, accessory structures and farm use buildings, shall be located in the flood plain unless it can be demonstrated by the applicant that no alternative exists on the subject 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.
 - D. No subdivision or partition shall be allowed which creates the potential for additional residential dwelling units in the flood plain.

- E. A land use which would alter or relocate a water course shall not be allowed.
 - 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 in any point.
 - G. Development which involves new construction or fill or removal in the floodway shall not be allowed unless certification by a registered professional engineer is provided, demonstrating that the proposal shall not result in any increase in flood levels during occurrence of a base flood discharge, that all necessary state and federal permits have or can be obtained, and that all other criteria and standards of this Ordinance have been satisfied.
- "6. An application for a conditional use in an FP Zone shall, at a minimum, contain the following information:
- A. A detailed explanation of why it is necessary to conduct the proposed use in the flood plain zone.
 - B. A site plan, drawn to scale and accompanied by such drawings, sketches and descriptions as are necessary to describe and illustrate the proposed use. This site plan shall include, at a minimum, existing and proposed site contours in relation to the base flood elevation, existing and proposed structures, drainage facilities, and an explanation of how erosion will be dealt with during and after construction of the use.
 - C. The location of the property with regard to the channel of the river or stream.
 - D. The location of existing and proposed diking or abutments, if any.
 - E. The level of the lowest habitable floor and of any basement floor, for any dwelling unit or structure.
 - F. The level to which the structure is to be floodproofed, if applicable.

- G. Elevations on the site plan shall be established by a licensed surveyor or engineer, and shall be in relation to mean sea level.
- H. Certification by a registered professional engineer or architect that the floodproofing methods for any structure meet the floodproofing criteria established by the Federal Emergency Management Agency and set forth in subsection 7 of this Section.
- I. A description of the extent to which the watercourse will be altered or relocated as a result of the proposed development.
- J. All other elements or information which will assist in the evaluation of the proposed development and conformance with the applicable criteria.
- K. Certification by a registered professional engineer verifying the floodproofing of structures shall be obtained showing the actual elevation in relation to mean sea level of the lowest floor, (including basement), of all new or substantially improved structures prior to occupancy or use of a structure.
- L. All records of any application for a conditional use and all certification of elevations shall be maintained in the records of the Planning Division for public inspection.

"7. Criteria to Evaluate Conditional Uses.

- A. A conditional use permit in a Flood Plain Zone shall not be approved unless all standards established by the Federal Emergency Management Agency and this Ordinance are addressed and findings made by the hearings body that each of the standards and criteria are satisfied.
- B. A conditional use permit shall be based upon findings which relate to the property and existing and proposed structure. They shall not pertain to the property owner, inhabitants, economic or financial circumstances.
- C. All structures in the flood plain shall meet the following standards.

a. Anchoring.

i. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

ii. All manufactured homes must be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (see FEMA's 'Manufactured Home Installation in Flood Hazard Areas' guidebook for additional techniques, on file with the Planning Division).

b. Construction Materials and Methods.

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

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

iii. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

c. Utilities.

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

ii. New and replacement sanitary systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into flood waters.

iii. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision and Partition Proposals.

- a. All subdivision and partition proposals shall be consistent with the need to minimize flood damage.
- b. All subdivision and partition proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- c. All subdivision and partition proposals shall have adequate drainage provided to reduce exposure to flood damage.

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

F. Specific Standards. In the Flood Plain Zone, the following requirements must be met:

a. Residential Construction.

i. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.

ii. Fully enclosed areas below the lower floor that are subject to flooding are prohibited, unless they are 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 either be certified by a registered professional engineer or architect, or must meet or exceed the following 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 or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- b. Non-Residential Construction. New construction and substantial improvements of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to 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 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 County as set forth in subsection 6(H) of this Ordinance.

iv. Non-residential structures that are elevated, but not floodproofed, must meet the same standards for space below the lowest floor as described in subsection 7(F) of this Section.

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).

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 above the base flood elevation. Such manufactured homes shall be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection 7(C) of this Section.

G. Floodways. In floodways where potential extreme hazards exists due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

a. Encroachments, including fill, new construction, substantial improvements and other development, are prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

b. If subsection (G)(a) of this Section is satisfied, all new construction and substantial improvements shall comply with all applicable sections of this Ordinance.

"8. Yard and Setback Requirements: In an FP Zone, the following yard and setback requirements shall be maintained:

- A. The front setback shall be a minimum of 20 feet from a property line fronting on a local street, 30 feet from a property line fronting on a collector and 50 feet from an arterial.
 - B. There shall be a minimum side yard of 10 feet for all uses.
 - C. The minimum rear yard shall be 20 feet.
 - D. The setback from a northern lot line shall meet the solar setback requirements in Section 5.300.
 - E. The minimum yard setback for a non-farm use from the property line adjacent to a farm use not owned by the applicant shall be 100 feet.
- "9. Stream Setback. To permit better light, air, vision, stream and pollution control, to protect fish and wildlife areas and to preserve the natural scenic amenities along streams and lakes, the following setbacks shall apply:
- A. All sewage disposal installations such as septic tanks or septic drainfields shall be setback from the mean high-water line or mark along all streams or lakes a minimum of 100 feet, measured at right angles to the high-water line or mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet, and the County Sanitarian finds that a closer location will not endanger public health or safety, a setback exception may be permitted to locate these facilities closer to the stream or lake, but in no case closer than 25 feet.
 - B. All structures, buildings or similar permanent fixtures shall be set back from the high-water line or mark along all streams or lakes a minimum of 100 feet measured at right angles from the high-water line or mark.
- "10. Dimensional Standards. In an FP zone, the following dimensional standards shall apply:
- A. Lot Coverage. The main building and accessory buildings located on any building site or lot shall not cover in excess of 30% of the total lot area.

- B. Building Height. No non-agricultural building or structure shall be erected or enlarged to exceed 2 stories or more than 30 feet in height.
- C. Minimum lot size shall be 10 acres for all areas which have received an exception to the Statewide Planning Goals for resource uses. Areas which have not received an exception to the Statewide Planning Goals shall have a minimum lot size of 80 acres.

"11. Warning and Disclaimer of Liability. The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based upon scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Ordinance shall not create liability on the part of Deschutes County, any officer, agent or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this Ordinance or any decision lawfully made hereunder.

"12. Use variances or variances to the standards established by subsections 5 and 7 of this Section shall not be allowed."

Section 5. 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 17th day of August, 1988.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Lois Bristow Prante
LOIS BRISTOW PRANTE, Commissioner

Tom Throop
TOM THROOP, Commissioner

Dick Maudlin
DICK MAUDLIN, Chairman

ATTEST:

Susan L. Courtain
Recording Secretary