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LEGAL COUNSEL

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BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Chapter 18.96, Flood *
Plain Zone, of the Deschutes County Code *
regarding Standards and Criteria in Flood *
Hazard Areas and Declaring an Emergency. *

95 APR -6 AM 9:12
MARY SUE FENICHELLO
COUNTY CLERK

ORDINANCE NO. 95-022

WHEREAS, Deschutes County has participated in the National Flood Insurance Program (NFIP) since 1988, and,

WHEREAS, the Flood Insurance Study for Deschutes County completed by the Federal Emergency Management Agency (FEMA) on August 16, 1988, describes the existence and severity of flood hazards in Deschutes County, and,

WHEREAS, FEMA conducted an audit of the County's administration of the NFIP standards in July, 1994, and recommended certain amendments to Title 18 of the County Code to ensure compliance with federally mandated requirements in designated flood hazard areas, and,

WHEREAS, additional amendments are intended to improve consistency and clarity in the overall management in flood hazard areas, and,

WHEREAS, the Planning Commission, after reviewing the proposed ordinance amendments at a public meeting on March 8, 1995, recommends adoption of said amendments; now therefore,

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

Section 1. **ADOPTION OF AMENDMENTS TO CHAPTER 18.96 OF THE DESCHUTES COUNTY CODE.** Chapter 18.96 of the Deschutes County Code, as amended, is further amended as follows in Exhibit "A" attached.

Section 2. **ADDITIONS AND DELETIONS.** Additions are set forth in bold and underlined, and deletions are bracketed.

Section 3. **SEVERABILITY.** The provisions of this ordinance are severable. If any section, sentence, clause, or phrase of this ordinance or any exhibit thereto is adjudged to be invalid by a court of competent jurisdiction that decision shall not affect the validity of the remaining

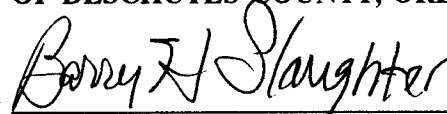
portions of this ordinance or exhibit thereto.

Section 4. **CODIFICATION.** County Legal Counsel shall have the authority to format the provisions contained herein in a manner that will integrate them into the County Code consistent with the County Legal Counsel form and style for ordinance codification. Such codification shall include the authority to make format changes, to make changes in numbering systems and to make such numbering changes consistent with interrelated code section. In addition, as part of codification of these ordinances, County Legal Counsel may insert appropriate legislative history reference. Any legislative history references included herein are not adopted as part of the substance of this ordinance, but are included for administrative convenience and as a reference. They may be changed to correct errors and to conform to proper style without action of the Board of County Commissioners.

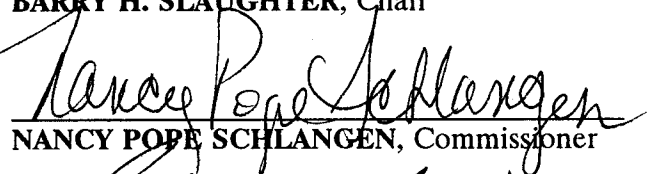
Section 5. **EMERGENCY.** This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 5 day of APRIL, 1995.

**BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON**



BARRY H. SLAUGHTER, Chair



NANCY POPE SCHLANGEN, Commissioner



ROBERT L. NIPPER, Commissioner

ATTEST:


Anita Mitchell
Recording Secretary

NOTE: Additions are in **bold** and underlined; deletions are bracketed [].

EXHIBIT "A"

Chapter 18.96

FLOOD PLAIN - FP ZONE

Sections:

- 18.96.010 **Purposes**
- 18.96.020 **Designated Areas**
- 18.96.030 **Uses Permitted Outright**
- 18.96.040 **Conditional Uses Permitted**
- 18.96.050 **Prohibited Uses**
- 18.96.060 **Limitations on Conditional Uses**
- 18.96.070 **Application for Conditional Use**
- 18.96.080 **Criteria to Evaluate Conditional Uses**
- 18.96.085 **Elevation Certification**
- 18.96.090 **Yard and Setback Requirements**
- 18.96.100 **Stream Setback**
- 18.96.110 **Dimensional Standards**
- 18.96.120 **Warning and Disclaimer of Liability**
- 18.96.130 **Use Variances**

18.96.010 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. (Ord. 88-030 § 4, 1988)

18.96.020 Designated Areas.

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas" dated August 16, 1988, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The

Flood Insurance Study is on file at the Deschutes County Community Development Department.

The Flood Plain Zone shall include all areas designated as "Special Flood Hazard Areas" ["Base Flood" areas] by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been provided in the F[f]lood I[i]nsurance S[s]tudy, 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. (Ord. 88-030 § 4, 1988)

18.96.030 Uses Permitted Outright.

The following uses and their accessory uses are permitted outright: (Ord. 91-020 § 1, 1991)

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. (Ord. 88-030 § 4, 1988)

E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by Section 18.116.230.

F. Class III road or street project. (Ord. 93-043 § 15, 1993)

18.96.040 Conditional Uses Permitted.

The following uses may be allowed subject to applicable sections of this title: (Ord. 93-002 § 4, 1993; Ord. 91-038 § 1, 1991)

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

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

C. Single-family dwelling, or a manufactured home subject to Section 18.116.070, on an individual lot. In addition to the other requirements of this Chapter, single family dwellings proposed to be sited in areas of the flood plain zone designated "Agriculture" on the Comprehensive Plan Map may be approved only as uses identified by Sections 18.16.030(A), (B), (D) or (E) and subject to the applicable provisions of Chapter 18.16 governing those uses. In addition to the other requirements of this Chapter, single family dwellings proposed to be sited in areas of the flood plain zone designated "Forest" on the Comprehensive Plan Map may be approved only as uses identified by Sections 18.36.030(Y), 18.040.030(X) or 18.040.030(Y) and subject to the applicable provision of Chapters 18.36 and 18.40 governing those uses. (Ord. 93-045, § 1, 1993; Ord. 91-005 § 37, 1991; Ord. 89-009 § 3, 1989)

D. Agricultural accessory buildings.

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

F. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to Section 18.120.050 and 18.128.040(W). **Excavation, grading and fill within any area of special flood hazard identified in Section 18.96.020 of this title.** (Ord. 93-045 § 1, 1993)

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 launching ramps, swimming areas, wildlife or nature preserves and hunting or fishing areas subject to Section 18.128, except in areas designated "Forest" or "Agriculture" on the Comprehensive Plan Map. (Ord. 93-045 § 1, 1993; Ord. 93-002 § 4, 1993).

H. Subdividing or partitioning **of land**, any portion of which is located in a flood plain, subject to the provisions of this title and Deschutes County Code Title 17, the Subdivision/Partition Ordinance. (Ord. 93-002 § 4, 1993; Ord. 88-030 § 4, 1988)

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

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

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

b. On the Deschutes River between miles 217.5 and 216.5. This area is identified in the Scenic Waterway Management Plan as the Pringle Falls River Community Area; and

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

K. Those recreational uses described in Section 18.36.030, "F-1 - Conditional Uses," having an insignificant effect on flood waters where the subject Flood Plain-zoned site is designated by the Comprehensive Plan Map as "Forest" and is adjacent to land zoned F-1. (Ord. 93-045 § 1, 1993)

L. Those recreational uses described in Section 18.040.030, "F-2 - Conditional Uses," having an insignificant effect on flood waters where the subject Flood Plain-zoned site is designated by the Comprehensive Plan Map as

"Forest" and is adjacent to land zoned F-2." (Ord. 93-045 § 1, 1993)

18.96.050 Prohibited Uses.

Marinas, boat slips and boat houses on private property. (Ord. 89-009 § 5, 1989)

18.96.060 Limitations on Conditional Uses.

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

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

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

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

D. All necessary State and Federal permits shall be obtained. [A land use which would alter or relocate a water course shall not be allowed.]

[E. The cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.] (Ord. 93-002 § 5, 1993; Ord. 91-020 § 1, 1991)

18.96.070 Application for Conditional Use.

All records of any application for a conditional use permit and all certification of

elevations shall be maintained in the records of the Community Development Department for public inspection. An application for a conditional use permit in the Flood Plain 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. Where base flood elevation data is not available from the Flood Insurance Study or from another authoritative source, it shall be generated and submitted with the application for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

B. A site plan, drawn to scale and accompanied by drawings, sketches and descriptions which 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. (Ord. 91-020 § 1, 1991)

C. The location of the property relative to the channel of the river or stream. (Ord. 91-020 § 1, 1991)

D. The location of existing and proposed diking or abutments, if any.

E. The elevation [level] of the lowest habitable floor and of any basement floor for any dwelling unit or structure.

F. The elevation [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 the applicable standards in this chapter [those set forth in this subsection]. (Ord. 91-020 § 1, 1991)

I. A description of the extent to which a [the] watercourse will be altered or relocated as a result of the proposed development and an explanation of how the flood carrying capacity within the altered or relocated portion of any watercourse will be maintained.

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.]
(Ord. 93-043 § 15A, 1993; 88-030 § 4, 1988)

18.96.080 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 title 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(s). 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, including replacement and substantial improvement of any residential structure shall have the lowest floor of the entire structure, including basement, elevated at least one (1) foot above base flood elevation. (Ord. 93-002 § 6, 1993)

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 improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated at least one (1) foot above the level of the base flood elevation, or, together with attendant

utility and sanitary facilities, shall:

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

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

iii. Be certified by a registered professional engineer or architect that the design and methods of construction are subject to accepted standards of practice for meeting provisions of this subsection, based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the county as set forth in 18.96.070(H), above.

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

v. Applicants for floodproofing non-residential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the flood level will be rated as one foot below that level.) (Ord. 93-002 § 7, 1993)

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 least one (1) foot above the base flood elevation. Such manufactured homes shall be securely anchored to an adequately anchored foundation system subject to the provisions of Section 18.96.080(C)(a), above. (Ord. 93-002 § 8, 1993; Ord. 88-039 § 4, 1988)

d. Docks, Piers and Walkways.

i. No individual boat dock or pier shall be allowed on any lot with less than two hundred (200) feet of river frontage.

ii. No community boat dock or pier shall be allowed on any lot with less than one hundred (100) feet of river frontage.

iii. No individual boat dock or pier shall be more than 20 feet in length or more than

8 feet in width. The total surface area shall not exceed 160 square feet.

iv. No community boat dock or pier shall be more than 20 feet in length. The total surface area shall not exceed 320 square feet.

v. A boat dock or pier shall not extend into or over the water more than 20 feet as measured from the ordinary high water mark (OHM), or 5% of the distance between the ordinary low water mark (OLM) on each river or stream bank measured at right angles to the shoreline, whichever is less, unless it can be shown that a greater extension:

1. is necessary to allow access to the OHM;
 2. will not increase flood hazard; and
 3. will not cause the deterioration or destruction of marine life or wildlife habitat.
- When the lines of ordinary high or low water cannot be determined by survey or inspection, then such lines shall be determined by a registered professional engineer using the annual mean high or low water for the preceding year, using data from the State of Oregon Watermaster.

vi. Individual boat docks and piers shall have a minimum 5 foot setback from adjoining property boundaries projected over the water surface.

vii. Dock, pier and walkway structures shall not be covered or enclosed.

viii. All materials used in dock, pier or walkway construction must be in compliance with all DEQ and EPA regulations.

ix. Docks, piers and walkways shall use either pilings or styrofoam floats if such floats are fully enclosed and sealed.

x. Docks, piers and walkways shall not impede water movement or cause deposition on waterway beds.

xi. Docks, piers and walkways containing concrete or wood preservatives shall be fully cured or dried prior to placement in the water.

xii. No walkway shall be more than 4 feet in width. The length of the walkway shall be no more than the minimum required to allow access to a dock.

xiii. Walkways shall include at least one handrail if the structure is elevated 30 inches or more from ground level.

xiv. All docks, piers and walkways shall meet the test of non-interference with navigation.

e. Parking Facilities. No parking facility shall be located within 20 feet (measured at right angles) of the ordinary high water mark (OHM). (Ord. 89-009 § 7, 1989)

G. Floodways. In floodways the following provisions shall apply:

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

b. The applicant must demonstrate that all necessary state and federal permits have been or can be obtained and that all other applicable sections of this title have been satisfied.

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

d. No replacement of a dwelling shall be allowed if the use of the pre-existing dwelling has been abandoned or otherwise terminated for a period of over one (1) year. (Ord. 93-043 § 15B, 1993; 93-002 § 9, 1993)

18.96.085 Elevation Certification.

Elevation of all new construction, including replacement and substantial improvements, relative to mean sea level of the lowest floor shall be documented **before the framing inspection** [after construction] with a survey certified by a State of Oregon registered professional engineer or land surveyor. (Ord. 93-002 § 10, 1993)

18.96.090 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 north lot line shall meet the solar setback requirements in Section 18.116.180.

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. (Ord. 88-030 § 4, 1988)

F. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under Chapter 15.04 of this title shall be met. (Ord. 94-008 § 25, 1994)

18.96.100 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 ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water 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

ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles from the ordinary high water mark. (Ord. 91-020 § 1, 1991; Ord. 88-030 § 4, 1988)

18.96.110 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 thirty (30) percent of the total lot area.

B. Building Height. No non-agricultural building or structure shall be erected or enlarged to exceed thirty (30) feet in height, except as approved under Section 18.120.040. (Ord. 92-055 § 8, 1992)

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.

18.96.120 Warning and Disclaimer of Liability.

The degree of flood protection required by this title 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 title 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 title or any decision lawfully made hereunder. (Ord. 88-030 § 4, 1988)

18.96.130 Use Variances.

Use variances or variances to the standards established by Sections 18.96.060 and 18.96.080 shall not be allowed. (Ord. 88-030 § 4, 1988)