



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

## AMENDED NOTICE OF ADOPTED AMENDMENT

October 5, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment  
DLCD File Number 012-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: October 19, 2007**

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Christine Shirley, FEMA Specialist  
Mark Darienzo, DLCD Flood Map Modernization Program Coordinator  
Aaron Henson, City of Bend

<paa> ya/email

NRDF 2

# DLCD

## Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD  
**WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION**  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: **City of Bend**

Local file number: **PZ 07-383**

Date of Adoption: **9/19/2007**

Date Mailed: **9/28/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **6/27/2007**

- |   |   |
|---|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment        | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment             |
| <input type="checkbox"/> New Land Use Regulation                  | <input type="checkbox"/> Other:                           |

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".  
Update to definitions and flood hazard regulations to comply with state and federal requirements, and to maintain continued eligibility in the National Flood Insurance Program.

Does the Adoption differ from proposal? **Yes**, Please explain below:

A new definition for "recreational vehicle" was added.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location: **Along the Deschutes River and Tumalo Creek.**

Acres Involved: **0**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

- |                                     |                                     |                          |                          |                                     |                                     |                                     |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>1</b>                            | <b>2</b>                            | <b>3</b>                 | <b>4</b>                 | <b>5</b>                            | <b>6</b>                            | <b>7</b>                            | <b>8</b>                 | <b>9</b>                 | <b>10</b>                | <b>11</b>                | <b>12</b>                | <b>13</b>                | <b>14</b>                | <b>15</b>                | <b>16</b>                | <b>17</b>                | <b>18</b>                | <b>19</b>                |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

**DLCD # 012-07 (16200)**

**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Federal Emergency Management Agency, Bend Metro Park & Recreation District

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Local Contact: **Aaron Henson, AICP**

Phone: **(541) 383-4885** Extension: **0**

Address: **710 NW Wall Street**

Fax Number: **541-388-5519**

City: **Bend**

Zip: **97701-**

E-mail Address: **ahenson@ci.bend.or.us**

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### **ADOPTION SUBMITTAL REQUIREMENTS**

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**ORDINANCE NO. NS-2072**

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE (ORDINANCE NO. NS-2016) BY CHANGING THE TEXT OF CHAPTER 1.2, (*Definitions*) AND CHAPTER 2.7 (*Special Planned Districts*) OF THE BEND DEVELOPMENT CODE AND DECLARING AN EMERGENCY AND PRESCRIBING AN EFFECTIVE DATE OF SEPTEMBER 28, 2007.

THE CITY OF BEND ORDAINS AS FOLLOWS:

- Section 1. The Bend City Council has held a public hearing, considered the testimony, the record, and the Planning Commission's recommendation, and has found that there is a public need and benefit for the proposed text amendments to the City of Bend Development Code. The Bend City Council adopts the Recommendation of the Planning Commission, approved on August 13, 2007, file number PZ 07-383.
- Section 2. Chapter 1.2 and Chapter 2.7 of the City of Bend Development Code (Ordinance NS-2016) are amended by changing the text therein as detailed in "Exhibit A".
- Section 3. The Bend City Council adopts the Staff Findings for Recommended Development Code Text Amendment, attached as "Exhibit B", as findings in support of this ordinance.
- Section 4. This ordinance being necessary for the preservation of public safety and health, an emergency is declared to exist and this ordinance takes effect on September 28, 2007.

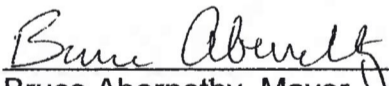
Read for the first time the 5th day of September, 2007.

Read for the second time the 19th day of September, 2007.

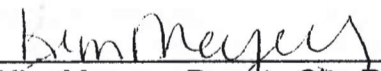
Placed into effect upon the 28th day of September, 2007.

YES: 6                      NO: 0                      ABSTAIN: 0

Authenticated by the Mayor the 19th day of September, 2007.

  
Bruce Abernethy, Mayor

Attest:

  
Kim Meyers, Deputy City Recorder

## Chapter 1.2 Definitions

**Appeal** means to make a formal challenge to an official decision.

**Basement** means any area of the building having its floor subgrade (below ground level) on all sides.

**Critical facility** means, for the purpose of flood standards, a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use or store hazardous materials or hazardous waste.

**Elevated building** means, for flood insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

**Floor, lowest habitable** means the lowest floor of the lowest enclosed area (including 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 habitable floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

**Manufactured home** means (for land use purposes) a portable single family residence constructed after 1976 that conforms to the Manufactured Housing Construction and Safety Standards Code of the US Dept. of Housing and Urban Development but is not regulated by the Oregon State Structural Specialty Code and Fire Life Safety Regulations, and is intended for permanent occupancy. See Chapter 2.1. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. ~~For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.~~

**New construction** means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

**Recreational vehicle** means, for flood plain management purposes, a vehicle which 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 towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Start of construction** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 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 that alteration affects the external dimensions of the building.

**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 the market value of the structure before the damage occurred.

**Substantial improvement** means 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:

- (1) Before the improvement or repair is started; or

- (2) 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:

- (1) Any 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
- (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

## **Chapter 2.7 Special Planned Districts**

### **Chapter 2.7.600 Waterway Overlay Zone (WOZ)**

#### **2.7.640 Flood Plain Combining Zone**

**A. Purpose.** It is the purpose of this zone 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:

1. To protect human life and health;
2. To minimize expenditure of public money and costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazards so as to minimize future flood blight areas;
7. To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

#### **B. Application of FP Zone.**

1. The FP Combining Zone shall apply to the areas identified on the Flood Insurance Rate Map (FIRM), as special flood hazard areas inundated by 100-year flood and floodway areas. The FIA Flood Insurance Study for Bend "Deschutes County, Oregon and Incorporated Areas" and the FIRM map dated September 28, 2007 are hereby adopted and by this reference included herein. The Flood Insurance Study is on file at the Planning Division. The A and AE zones shown on the FIRM map are hereby zoned FP.
2. The Planning Director is hereby appointed to administer and implement the Flood Plain Combining Zone by granting or denying development permit applications in accordance with its provisions. Duties and responsibilities of the Planning Director shall include, but not be limited to:
  - a. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
  - b. Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
  - c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section M.1 are met.
  - d. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). A person contesting the

location of the special flood hazard boundary shall be given an opportunity to seek a declaratory ruling or to appeal the interpretation as provided in Chapter 4.1.

2- 3. When base flood elevation data has not been provided on the FIRM, the Planning Director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, State or other source, in order to administer this section.

3- 4. Information to be Obtained and Maintained.

a. Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Subsection B(2)(3), above, verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

b. For all new or substantially improved floodproofed structures, verify and record the actual elevation (in relation to mean sea level) of the structure's lowest floor to which the structure was floodproofed. Obtain and maintain the floodproofing certifications required in Section G.2, below.

**C. Warning and Disclaimer of Liability.** The degree of flood protection required by this Section is considered reasonable for regulatory purposes and is based on 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 does not imply that land outside the areas of special flood hazards 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 Bend, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision made hereunder.

**D. Alteration of Watercourses.**

1. Prior to any alteration or relocation of a watercourse, notice of the proposed alteration shall be given to affected, adjacent communities and appropriate state agencies such as the Department of Land Conservation and Development and the State Department of Water Resources, and The Planning Director shall also submit evidence of such notification to the Federal Insurance Administration.

2. The applicant shall maintain the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

**E. Permit for Use or Development in an FP Zone.** No development shall occur in an FP zone unless a permit has been received for the work. Except for improvement of an existing structure which is less than substantial, as determined by the City, no permit shall be issued unless the work will be reasonably safe from flooding, otherwise complies with this ordinance, and all necessary state, federal, and local permits will be obtained as a condition of approval on any permit in an FP zone. The following information shall be submitted with the permit application:

1. The location of the property with reference to channel stations and flood profile elevations.

2. The existing topography and proposed grading plan for the property. Contour intervals shall not be more than one-foot for ground slopes up to five percent and, for areas immediately adjacent to a stream, two-foot for ground slopes between five and ten percent, and five-foot for greater slopes.

3. The location of existing and proposed diking or revetments, if any.

4. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study, FIRM, 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 the highest adjacent grade in these zones may result in higher flood insurance rates.

**F. Structural Elevation Data Required.**

1. A building permit application for substantial improvement to an existing structure or for a new structure within an FP zone shall contain the following data referenced to mean sea level:
  - a. The level of the lowest habitable floor and of any basement floor whether or not intended to be habitable. This information shall be submitted on FEMA Form 81-31.
  - b. The level to which the structure is to be floodproofed, if applicable.
2. A statement which notes whether the structure contains a basement.
3. The information required by this subsection shall be maintained in the files of the Building Department with the subject building permit.

**G. Regulation of Structures in an FP Zone.**

1. Residential Construction.
  - a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated a minimum of 1 foot above base flood elevation.
  - 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 either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
    - i. 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.
    - 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. The bottom of all openings shall be no higher than one foot above grade.
    - iv. ~~Nonresidential Construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential 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:~~
2. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential 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:
  - 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 City's Building Official.
  - d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in Section G (1)(b) above.
  - e. 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 constructed to the base flood level will be rated as one foot below that level).
3. Crawlspace Construction. Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas:
  - 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.
- 3- 4. **Manufactured Homes.** All manufactured homes to be placed or substantially improved within Zones A1-30, AH or AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is ~~at or~~ a minimum of 1 foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section I(2) below.
5. Recreational Vehicles. Recreational vehicles placed on sites are required to either:
- a. Be on the site for fewer than 180 consecutive days,
  - b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
  - c. Meet the requirements of G.3. above and the elevation and anchoring requirements for manufactured homes.

**H. Construction Materials and Methods.**

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. 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.

**I. Anchoring.**

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
2. All manufactured homes must likewise 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 (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

**J. Land Development Standards in a Flood Hazard Area.**

1. In addition to the terms of Subsections J and K of this section, a subdivision or other land development, including all utility facilities, within an FP zone shall be designed, located and constructed to minimize flood damage, including special provisions for adequate drainage to reduce exposure to flood hazards.
2. A land development which will alter or relocate a watercourse shall be designed, constructed and maintained to retain the flood-carrying capacity of the watercourse.
- ~~3. A proposed land development of greater than either 50 lots or 5 acres shall include data showing the base flood elevation. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).~~

**K. Manufactured Home Development Standards.**

1. All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is ~~at or~~ a minimum of one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section I(2) above.
2. The placement of a manufactured home in the floodway is prohibited.

**L. Utilities Standards in a Flood Hazard Area.**

1. A public utility or facility associated with a land development within a FP zone shall be designed, located and constructed to minimize or eliminate flood damage and to avoid raising the water elevation in a regulatory floodway.
2. Any new or replacement water supply system shall be designed, located and constructed to minimize or eliminate infiltration of floodwaters into the system.
3. Any new or replacement sewerage system shall be designed, located and constructed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into the flood waters.

**M. Floodways.** Located within areas of special flood hazard established in Section B(1), Application of FP Zone, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer or architect is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. If Subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section G, Regulations of Structures in an FP Zone.

**N. Before Regulatory Floodway.** In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the community's FIRM, unless it is demonstrated

that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

**O. Critical Facilities.** Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances 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 extent possible.

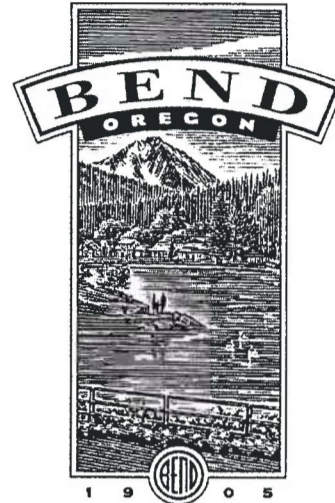
**N. P. Technical Variances.** A technical variance from the requirements of Section 2.7.640, Flood Plain Combining Zone, may be granted by the Hearings Body for new construction and for improvements to existing structures which could not otherwise be authorized, provided the construction or improvements are to be erected or installed on a parcel of land one-half acre or less in size, contiguous to or more or less surrounded by lots with existing structures constructed below the minimum floor elevation established for flood protection purposes. A parcel of land in excess of the one-half acre in single ownership on the effective date of this ordinance is not excluded from the granting of a technical variance, but the burden of proof required for issuing the variance increases as the size of the property under single ownership increases, and the variance shall be granted only if required to equalize circumstances, considering previously developed land adjacent to the parcel for which a variance is sought.

**Q. Historic Variance.** A variance for historic preservation may be granted for the reconstruction, rehabilitation or restoration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

**P. R. Other Variances.** All other variance applications shall be considered according to the terms of Chapter 5.1 of this ordinance.

1. Applicants for a variance shall include with their application the following information:
  - a. The location of the property with reference to channel station and flood profile elevation.
  - b. The existing topography and proposed grading plan for the property. Contour intervals shall not be more than one foot for ground slopes up to five percent and for areas immediately adjacent to a stream, two feet for ground slopes between five and ten percent, and five feet for greater slopes.
  - c. The location of existing and proposed diking or revetments if any.

**BEND CITY COUNCIL FINDINGS  
FOR DEVELOPMENT CODE TEXT AMENDMENT**



**PROJECT  
NUMBER:**

**07-383**

**CITY COUNCIL  
HEARING DATE:** Wednesday, September 5, 2007  
City of Bend Council Chambers  
710 NW Wall Street  
Bend, OR 97701

**APPLICANT:** City of Bend  
710 NW Wall Street  
Bend, OR 97701

**REQUEST:** Consider a Planning Commission recommendation to amend the text of Chapter 1.2 and Chapter 2.7 of the Bend Development Code (Ordinance NS-2016).

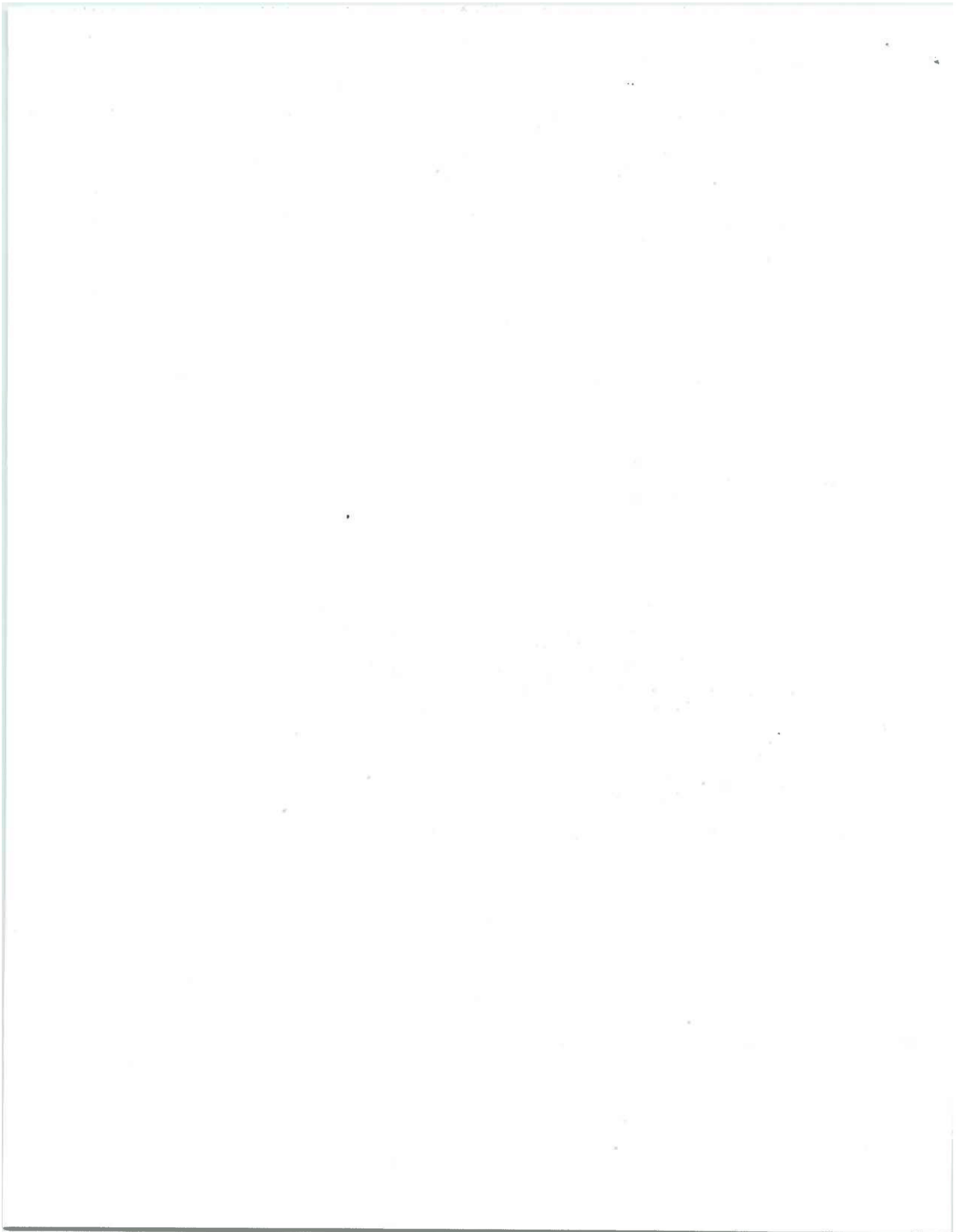
**STAFF:** Aaron Henson, AICP, Senior Planner  
Heidi Kennedy, AICP, Senior Planner

**I. APPLICABLE CRITERIA:**

- (1) The Bend Area General Plan
- (2) Bend Code Chapter 10; City of Bend Development Code, Ordinance NS-2016
  - (a) Chapter 4.1; Land Use Review and Procedures
  - (b) Chapter 4.6; Land Use District Map and Text Amendments

**II. FINDINGS OF FACT:**

- 1. PLANNING COMMISSION RECOMMENDATION:** A package of amendments to the text of Chapter 1.2 and Chapter 2.7 of the Bend Development Code (Ordinance NS-2016), which are intended to update the City's floodplain regulations as required by the Federal Emergency Management Agency (FEMA). The recommended text amendments are attached as Exhibit A.
- 2. PUBLIC NOTICE AND COMMENTS:** The Bend Planning Division published notice of the public hearings for the proposed Development Code text amendment in the Bend Bulletin on July 29, 2007 and August 26, 2007 and sent notice to all affected landowners and the recognized Neighborhood Associations within the 100-year floodplain.



**FINDING:** The proposed amendments will revise the definitions and floodplain regulations contained in Bend's Development Code to satisfy State requirements for natural hazard planning and FEMA flood damage prevention standards. In particular, the proposed amendments will satisfy Goal 1, Citizen Involvement; Goal 2, Land Use Planning; Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources; Goal 6, Air, Water and Land Resource Quality; and Goal 7, Areas Subject to Natural Disasters and Hazards.

- Goal 1 will be satisfied through the City's text amendment process that includes a Planning Commission work session, followed by a Planning Commission public hearing, completed with a City Council public hearing.
- Goal 2 was reviewed by Planning Division staff for compliance and determined to be consistent with the City's policies regarding natural hazards as contained in Chapter 10, Natural Forces of the Bend Area General Plan.
- Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources, and
- Goal 6, Air, Water and Land Resource Quality; and
- Goal 7, Areas Subject to Natural Disasters and Hazards will be satisfied by revising current flood plain management definitions and standards to meet the regulations established by FEMA.
- The other Statewide Goals 3, 4, and 8 through 14 were reviewed and are not applicable to this proposal.

Based on the above discussion, staff finds that the recommended text amendments to the Development Code comply with the above criterion.

**2. The request is consistent with the applicable Bend Area General Plan goals and policies;**

**FINDINGS:** The "goals" established in the general plan express the desires of the residents of Bend as the City progresses into the future. The "goals" are generally carried out through "policies", which are statements of public policy. Staff reviewed the Comprehensive Plan and found only Chapter 10 to be directly applicable to the proposed text amendment.

Chapter 10 of the Bend Area General Plan includes the following goal:

- to work with state and federal agencies to develop new, more accurate mapping data on flood plains, faults, and other local natural hazards within the urban areas.

Chapter 10 also includes the following statement of public policy:

1. The city shall continue to apply their Flood Plain zoning regulations along the Deschutes River and Tumalo Creek based on the best available data.

Chapter 4.1 and 4.6 of the Development Code together require that the Planning Commission and the City Council both hold public hearings prior to acting on

In association with the Planning Commission public hearing, the City received comments from two individuals, and prior to the City Council Hearing, as of the writing of this report, no public comments have been received.

### **III. CONCLUSIONARY FINDINGS:**

#### **CONFORMANCE WITH CITY OF BEND COMMUNITY DEVELOPMENT CODE, CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS**

##### **4.6.100 Purpose.**

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code, the Bend Area General Plan, the Bend Area General Plan map and the land use district map. These will be referred to as “map and text amendments.” Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

**FINDING:** As detailed in Section 4.6.200(B) below, the Development Code text amendments as recommended by the Planning Commission are necessary to meet FEMA requirements, and are consistent with the purpose of this Chapter.

##### **4.6.200 Legislative Amendments.**

**A. Applicability, Procedure and Authority.** Legislative amendments generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plan and map, Development Code and changes in the zoning map not directed at a small number of properties. They are reviewed using the Type IV procedure in accordance with Chapter 4.1, Land Use Review and Procedures and shall conform to Section 4.6.600, Transportation Planning Rule Compliance. A Legislative Amendment may be approved or denied.

**FINDING:** The recommended amendments to the text of the Development Code involve broad public policy rather than an individual property owner. Therefore, the Legislative Amendment Procedures of this section are the appropriate procedures from which to review the Planning Commission’s recommendation.

**B. Criteria for Legislative Amendments.** The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

- 1. The request is consistent with the applicable State land use law;**

**FINDING:** In the event the Development Code text amendment is adopted by ordinance, compliance with this Section will be required.

**4.6.600 Transportation Planning Rule Compliance.**

**When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.**

**FINDING:** The Planning Commission recommendation is for a text amendment to the Bend Development Code; it is not a comprehensive plan amendment or a land use district change, therefore the criteria of this section is not applicable.

**IV. CONCLUSIONS:**

Based on the above Findings of Fact and Conclusionary Findings, staff finds the Planning Commission recommended Development Code text amendment can meet, with maintenance of a record, all applicable criteria of the Development Code.

**V. RECOMMENDATION:**

Staff recommends that the City Council conduct a public hearing and receive public testimony on the Planning Commission's recommended amendments to the text of Chapter 1.2 and Chapter 2.7 of the Bend Development Code.

Staff will ask the City Council to consider a first reading for **approval** of an ordinance to amend the Development Code as recommended by the Planning Commission.



amendments to the text of the Development Code. The Planning Commission public hearing on this amendment was held on August 13, 2007. A City Council public hearing on the amendment will be held on September 5, 2007. Implementation of the public involvement procedures identified in the Development Code will ensure compliance with the Citizen Involvement Goals and Policies of the Bend Area General Plan.

Based on the findings stated above, staff concludes that the recommended text amendment is consistent with the applicable Bend Area General Plan goals and policies.

**3. The applicant can demonstrate a public need or benefit for the proposed amendment.**

**FINDING:** Section 2.7.640(A) of the Development Code states the public need and benefit of updated flood plain regulations for the Flood Plain Combining Zone:

It is the purpose of this zone 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:

1. To protect human life and health;
2. To minimize expenditure of public money and costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazards so as to minimize future flood blight areas;
7. To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

The proposed text amendments, which will allow the City to carry out the stated purposes of the Flood Plain Combining Zone, have a clear public need and benefit.

**4.6.500 Record of Amendments.**

**The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.**