



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

April 20, 2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Prescott Plan Amendment
DLCD File Number 001-11

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office. The submitted ordinance was adopted by the City of Prescott on October 20, 2010, per ORS 197.615 (3) and DLCD did not notify within five working days of receipt, any persons who requested notification.

Appeal Procedures*

DLCD DEADLINE TO APPEAL:

Acknowledged under ORS Sections 197.615, 197.625, and 197.830 (9)

This amendment was not submitted to DLCD for review prior to adoption. Pursuant to ORS 197.625 if no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.

Under ORS 197.830 (9) a notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.

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 ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Kevin Miller, City of Prescott
Gloria Gardiner, DLCD Urban Planning Specialist
Anne Debbaut, DLCD Regional Representative
Chris Shirley, FEMA Specialist

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FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

DATE STAMP

DEPT OF
OCT 20 2010
LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

Jurisdiction: **City of Prescott**

Local file number:

Date of Adoption:

Date Mailed:

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date:

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

As required by Federal Emergency Management Agency, the city of Clatskanie updated its floodplain ordinance and adopted new digital floodplain maps in order to maintain compliance with the National Flood Insurance Program.

The adopted ordinance is attached, and the floodplain maps were incorporated by reference as "The Flood Insurance Study for Columbia County, Oregon and Incorporated Areas, dated November 26, 2010.

The floodplain study and new floodplain maps for the city of Clatskanie are available at DLCD through the Natural Hazard Coordinator.

Does the Adoption differ from proposal? Please select one

No

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location: **The new maps apply to the identified floodplain for Clatskanie Acres Involved:**

Specify Density: Previous:

New:

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

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 file No. 001-11 (18789) [16606]

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

Local Contact: **Kevin Miller**

Phone: **(503)**

Extension:

Address: **P.O. Box 130**

City: **Prescott**

Zip: **970**

Fax Number: **(503)**

E-mail Address: ckmiller@opusnet.com

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS [197.615](#) and [OAR Chapter 660, Division 18](#)

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light **green paper if available**.
3. Send this Form 2 and **One (1) Complete Paper Copy and One (1) Electronic Digital CD** (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD 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**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see [ORS 197.615](#)).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see [ORS 197.830 to 197.845](#)).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see [ORS 197.615](#)).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

Updated December 22, 2009

City of Prescott Flood Damage Prevention Ordinance No. 15

An ordinance establishing regulations and requirements for Development within a Floodplain within the City of Prescott.

The City of Prescott does ordain as follows:

I. AUTHORIZATION

The **City of Prescott** has the primary responsibility for planning, adoption and enforcement of land use regulations to accomplish proper floodplain management.

II. DEFINITIONS Used for Development within the Special Flood Hazard Area

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

“Base Flood” means the flood having a one percent (1%) chance of being equaled or exceeded in any given year year.

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

“Basement” means the portion of a structure with its floor sub grade (below ground level) on all sides.

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

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

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard. Development does not include¹:

- A. Signs, markers, aids, etc. placed by a public agency to serve the public
- B. Driveways, parking lots, or other open space use areas where no alteration of topography occurs;

“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) the overflow of inland or tidal waters; or

¹ Work exempt from Oregon Residential Specialty Code, Section R105.2 requires a Floodplain Development Permit unless specifically exempted by definition in this ordinance.

City of Prescott Flood Damage Prevention Ordinance No. 15

(b) the unusual and rapid accumulation or runoff of surface waters from any source.

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

“Flood Insurance Study (FIS)” means the official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles, floodway boundaries and water surface elevations of the base flood.

“Floodway (Regulatory Floodway)” means the channel of a river or other watercourse and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with the regulatory flood.

“Historic Structure” means a structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or to a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior, or;

(d) Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:

i. By an approved state program as determined by the Secretary of the Interior, or;

ii. Directly by the Secretary of the Interior in states without approved programs.

“Lowest Floor” is the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a structure's lowest floor provided that the enclosed area is built and maintained in accordance with the applicable design requirements of the Building Codes. The lowest floor of a structure in a V-zone is the bottom of the lowest horizontal structural member supporting the structure. The lowest floor of a manufactured dwelling is the bottom of the longitudinal chassis frame beam in A zones and the bottom of the lowest horizontal structural member supporting the dwelling in the V zone [*Manufactured Dwelling Specialty Code, page 13*]

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

“Recreational Vehicle” means a vehicle that is:

(a) Built on a single chassis;

(b) 400 square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towed by a light duty truck, and;

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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

“Structure” means a walled and roofed building, a manufactured dwelling, a modular or temporary building, or a gas or liquid storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of its market value before the damage occurred.

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

- (1) The appraised real market value of the structure prior to the start of the initial repair or improvement, or
- (2) In the case of damage, the appraised real market value of the structure prior to the damage occurring. The term does not include either:
 - (a) A project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
 - (b) Alteration of an Historic Structure, provided that the alteration will not preclude the structure's continued designation as an Historic Structure.

“Variance” means a grant of relief from a requirement of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance is presumed to be in violation until such time as that documentation is provided.

City of Prescott Flood Damage Prevention Ordinance No. 15

III. GENERAL PROVISIONS

A. Lands to Which This Ordinance Applies

This ordinance shall apply to all Areas of Special Flood Hazard within the jurisdiction of City of Prescott. Nothing in this Ordinance is intended to allow uses or structures that are otherwise prohibited by the zoning ordinance or Building Codes.

B. Basis for Area of Special Flood Hazard

The Area of Special Flood Hazard identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS) for Columbia County, Oregon and Incorporated Areas, dated November 26, 2010, with accompanying Flood Insurance Rate Maps (FIRM) or Digital Flood Insurance Rate Maps (DFIRM), and other supporting data, are adopted by reference and declared a part of this ordinance. The FIS and the FIRM are on file at the office of the Columbia County Land Development Services Department at the Columbia County Courthouse in St. Helens, Oregon.

C. Coordination with Building Codes.

Pursuant to the requirement established in ORS 455 that the **City of Prescott as assisted by Columbia County Land Development Services** administers and enforces the State of Oregon Building Codes (“Building Codes”), the **City Council of Prescott** does hereby acknowledge that the Building Codes contain certain provisions that apply to the design and construction of buildings and structures located in Areas of Special Flood Hazard. Therefore, this ordinance is intended to be administered and enforced in conjunction with the Building Codes.

D. Establishment of Floodplain Development Permit

A Floodplain Development Permit shall be required prior to initiating development activities in any Areas of Special Flood Hazard established in Chapter III Section B. Any Floodplain Development Permit application that requires engineering analysis, calculations or modeling to establish a base flood elevation or floodway, or to demonstrate no increase to base flood elevation in an established floodway shall be considered a land use action requiring an opportunity for a quasi-judicial land use hearing. [*LUBA No. 2009-007 and ORS 197.763*]

E. Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside Areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Prescott or any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or an administrative decision lawfully made hereunder.

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IV. ADMINISTRATION

A. Designation of Floodplain Ordinance Administrator

The **Prescott Building Committee** is hereby appointed as the Floodplain Administrator who is responsible for administering and implementing the provisions of this ordinance. This ordinance shall allow the Prescott Building Committee to consult with and take advice from the Columbia County Land Development Services department to insure complete compliance with any State or Federal requirements.

B. Duties and Responsibilities of the Floodplain Administrator

Duties of the **Prescott Building Committee** shall include, but shall not be limited to:

- (1) Review all proposed development to determine whether it will be located in Areas of Special Flood Hazard or other flood-prone areas;
- (2) Review applications for modifications of any existing development in Areas of Special Flood Hazard for compliance with the requirements of this ordinance;
- (3) Review proposed development to assure that necessary permits have been received from governmental agencies from which approval is required by federal or state law. Copies of such permits shall be maintained on file.
- (4) Review all development permit applications to determine if proposed development is located in the floodway, and if so, ensure that the encroachment standards of Chapter V, Section B are met.
- (5) When Base Flood Elevation data or floodway data have not been established in Chapter III, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation and floodway data available from a federal, state or other authoritative source in order to administer the provisions of this ordinance.
- (6) When Base Flood Elevations are not available from an authoritative source, the **Prescott Building Committee** shall require Base Flood Elevations to be developed in accordance with 0 to Section V.A.(4) of this ordinance or take into account the flood hazards, to the extent they are known, to determine whether a proposed building site or subdivision will be reasonably safe from flooding². *Note: Oregon Residential Specialty Code R324.1.3 authorizes the building official to require the applicant to determine a Base Flood Elevation where none exists.*
- (7) Where interpretation is needed of the exact location of boundaries of the Areas of Special Flood Hazard including regulatory floodway (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Chapter VI.
- (8) Issue floodplain development permits when the provisions of this ordinance have been met, or deny the same in the event of noncompliance;

² 44 CFR Part 65.2 defines “reasonably safe from flooding” as base flood waters will not inundate the land or damage structures ... and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

City of Prescott Flood Damage Prevention Ordinance No. 15

- (9) Coordinate with Columbia County Land Development Services to assure that applications for building permits comply with the requirements of this ordinance; *[44 CFR 59.24]*
- (10) Obtain, verify and record the actual elevation in relation to the vertical datum used on the effective FIRM, or in relation to the highest adjacent grade where no Base Flood Elevation is available, of the lowest floor level, including basement, of all new construction or substantially improved buildings and structures.]
- (11) Obtain, verify and record the actual elevation, in relation to the vertical datum used on the effective FIRM, or highest adjacent grade where no Base Flood Elevation is available, to which any new or substantially improved buildings or structures have been flood-proofed. When flood-proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of design criteria from a registered professional engineer or architect;
- (12) Ensure that all records pertaining to the provisions of this ordinance are permanently maintained in the office of the city/county clerk or his/her designee and shall be open for public inspection.
- (13) Make inspections in Areas of Special Flood Hazard to determine whether development has been undertaken without issuance of a floodplain development permit, ensure that development is undertaken in accordance with a the floodplain development permit and this ordinance, and verify that existing buildings and structures maintain compliance with this ordinance;
- (14) Coordinate with Columbia County Land Development Services to inspect areas where buildings and structures in flood hazard areas have been damaged, regardless of the cause of damage, and notify owners that permits may be required prior to repair, rehabilitation, demolition, relocation, or reconstruction of the building or structure;
- (15) Make Substantial Improvement or Substantial Damage determinations based on criteria set forth in Chapter IV, Section D of this ordinance.

C. Permit Procedures

Application for a Floodplain Development Permit shall be made to the **Prescott Building Committee** on forms furnished by **the Columbia County Land Development Services Department at their office in St. Helens** prior to starting development activities. Specifically, the following information is required:

(1) Application Stage

- (a) Plans in duplicate drawn to scale with elevations of the project area and the nature, location, dimensions of existing and proposed structures, earthen fill placement, storage of materials or equipment and drainage facilities; *[Oregon Residential Specialty Code R106.5 requires one set to be retained and the second to be returned to the applicant]*
- (b) Delineation of flood hazard areas, floodway boundaries including Base Flood Elevations, or flood depth in AO zones, where available; *[Oregon Residential Specialty Code R106.1.3]*
- (c) For all proposed structures, elevation in relation to the highest adjacent grade and the Base Flood Elevation, or flood depth in AO zones, of the:
 - (i) lowest enclosed area, including crawlspace or basement floor; *[Oregon Residential Specialty Code R106.1.3]*
 - (ii) bottom of the lowest horizontal structural member in coastal high hazard areas (V Zones); *[Oregon Residential Specialty Code R106.1.3]*

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- (iii) top of the proposed garage slab, if any, and;
- (iv) next highest floor [*Good Practice*]
- (d) Locations and sizes of all flood openings in any proposed building;
- (e) Elevation to which any non-residential structure will be flood-proofed;
- (f) Certification from a registered professional engineer or architect that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of the NFIP and Building Codes;
- (g) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development;
- (h) Proof that application has been made for necessary permits from other governmental agencies from which approval is required by federal or state law.

(2) Construction Stage

- (a) Copies of necessary permits from other governmental agencies from which approval is required by federal or state law must be provided prior to start of construction.
- (b) For all new construction and substantial improvements, the permit holder shall provide to the **Prescott Building Committee** an as-built certification of the floor elevation or flood-proofing level immediately after the lowest floor or flood-proofing is placed and prior to further vertical construction; [*Oregon Residential Specialty Code R109*]
- (c) Any deficiencies identified by the **Prescott Building Committee** or Columbia County Land Development Services shall be corrected by the permit holder immediately and prior to work proceeding. Failure to submit certification or failure to make the corrections shall be cause for the **Prescott Building Committee** and or Columbia County Land Development Services to issue a stop-work order for the project.

(3) Certificate of Occupancy

- (a) In addition to the requirements of the Building Codes pertaining to certificate of occupancy, prior to the final inspection the owner or authorized agent shall submit the following documentation that has been prepared and sealed by a registered surveyor or engineer,
 - i. For elevated buildings and structures in non-coastal Areas of Special Flood Hazard (A zones), the as-built elevation of the lowest floor, including basement or where no Base Flood Elevation is available the height above highest adjacent grade of the lowest floor;
 - ii. For buildings and structures in coastal Areas of Special Flood Hazard (V zones), the elevation of the bottom of the lowest horizontal structural member supporting the lowest floor, and;
 - iii. For buildings and structures that have been floodproofed, the elevation to which the building or structure was floodproofed.
- (b) Failure to submit certification or failure to correct violations shall be cause for the **Prescott Building Committee and or Columbia County Land Development Services** to withhold a certificate of occupancy until such deficiencies are corrected.

(4) Expiration of Floodplain Development Permit

- (a) A floodplain development permit shall expire 180 days after issuance unless the permitted activity has been substantially begun and thereafter is pursued to completion.
- (b) Commencement of work includes start of construction, when the permitted work requires a building permit./

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D. Substantial Damage and Substantial Improvement Determination

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

(1) Estimate the market value, or require the applicant to obtain a professional appraisal of the market value, of the building or structure before the proposed work is performed; when repair of damage is proposed, the market value of the building or structure shall be the market value before the damage occurred;

(2) Compare the cost of improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

- (a) Except as indicated in subsections (b) through (d) below, all costs to repair substantial damage, including emergency repairs, including the costs of complying with any county, state or federal regulation must be included;
- (b) The costs associated with the correction of pre-existing violations of state or local health, sanitary, or safety code specifications that were identified by the building official, the director of environmental health, or any other local code enforcement official prior to the improvement or repair and that are the minimum necessary to ensure safe living conditions shall not be included;
- (c) Costs associated with the following items are not included:
 - (i) The preparation and approval of all required plans, calculations, certifications, and specifications;
 - (ii) The performance of surveys or other geotechnical or engineering studies and resulting reports;
 - (iii) Permit and review fees, and;
 - (iv) The construction, demolition, repair, or modification of outdoor improvements, including landscaping, fences, swimming pools, detached garages and sheds, etc.;
- (d) Proposed alterations of a designated historic building or structure is not to be considered substantial improvement unless the alteration causes a loss of said designation.

(3) The **City of Prescott** shall make the final determination of whether the proposed improvement and/or repair constitute a substantial improvement or substantial damage.

(4) The **City of Prescott** shall notify the applicant of the results of the determination by letter.

(5) Applicant has the right to appeal the determination by providing the **City of Prescott** with either or both an appraisal conducted by a licensed appraiser to establish the market value of the building immediately prior to the damage or proposed improvement, or a signed contractor's estimate to establish cost to repair or improve the building.

E. Temporary Encroachments into the Floodway

A floodplain development permit is required for construction or placement of temporary structures, temporary storage associated with non-residential uses, and temporary bridges located in areas of special flood hazard:

(1) Temporary structures, not including bridges, shall be limited as to time of service, but shall not be permitted for more than 90 days. The Floodplain Administrator is authorized to grant extensions for

City of Prescott Flood Damage Prevention Ordinance No. 15

demonstrated cause; such cause shall reaffirm the temporary nature of the structure. Temporary structures shall be anchored to prevent flotation, collapse, or lateral movement. *[Note: the Building Codes allow temporary structures for no more than 180 days.]*

(2) Temporary storage **200 cubic yards** or more shall be limited as to time of service, but shall not be permitted for more than 90 days. The **Prescott Building Committee** is authorized to grant extensions for demonstrated cause; such cause shall reaffirm the temporary nature of the storage. Stored material shall be anchored or contained to prevent flotation or release outside the assigned storage area. Hazardous materials priority persistent pollutants identified by the Oregon Department of Environmental Quality shall not be stored in the floodway.

(3) Temporary encroachments in the floodway for the purposes of capitol improvement projects (including bridges) require a floodplain development permit³. No CLOMR/LOMR is required⁴

F. Watercourse Alterations

(1) Development shall not diminish the carrying capacity of a water course. If any water course will be altered or relocated as a result of the proposed development the applicant must submit certification by a registered professional engineer that the carrying capacity of the water course will not be diminished.

(2) Applicant will be responsible for obtaining all necessary permits from governmental agencies from which approval is required by federal or state law, including but not limited to section 404 of the Federal Water

³ The permit should stipulate the days and dates the structure or other development will be on site. If a longer period is required, a new permit should be issued.

A flood warning system for the project should be in place to allow equipment to be evacuated from the site and placed outside the floodplain.

Placement of equipment in the floodway should be restricted to only that equipment which is absolutely necessary for the purposes of the project. All other accessory equipment and temporary structures (i.e. construction trailers) should be restricted from the floodway. Structures should be placed on site so that flood damages are minimized. The community may want to consider such things as anchoring construction trailers in case evacuation isn't practical.

The following conditions should be included in the permit:

- Identification of the temporary changes to the floodplain under a 1% chance flood event (100-year flood)
- Identification of all insurable structures affected by any increase in BFE during a 1% chance flood event (100-year flood)
- Written notification to the applicant that they may be liable for any flood damages resulting from the temporary structure
- The length of time the structure or encroachment will be allowed.

4

No CLOMR/LOMR will be required because there is no need to modify the FIRM due to the temporary condition of the encroachment, but the community should disclose to all owners of insurable structures and all applicants for permits in the affected area that there is an increased risk of flooding for the duration of the temporary encroachment.

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Pollution Control Act Amendments of 1972, 33 U.S.C. 1334; the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; and State of Oregon Division of State Lands regulations.

(3) If the altered or relocated watercourse is part of an Area of Special Flood Hazard, the applicant shall notify adjacent communities and Oregon Department of Land Conservation and Development prior to any alteration or relocation of the watercourse. Evidence of notification must be submitted to the floodplain administrator and to the Federal Emergency Management Agency.

(4) The applicant shall be responsible for ensuring necessary maintenance for the altered or relocated portion of the water course is provided so that the flood carrying capacity will not be diminished.

(5) The applicant shall meet the requirements to submit technical data in Section IV.G when an alteration of a watercourse results in the expansion, relocation or elimination of the special flood hazard area.

G Requirement to Submit New Technical Data

Within six months of project completion, an applicant who obtains an approved Conditional Letter of Map Revision from FEMA, or whose development modifies floodplain boundaries or Base Flood Elevations shall obtain from FEMA a Letter of Map Revision reflecting the as-built changes to the FIRM.

V. PROVISIONS FOR FLOOD HAZARD REDUCTION

A. Site Improvements and Subdivisions

(1) All plans for proposed new site improvements, subdivisions, and manufactured home parks shall be consistent with the need to minimize flood damage and ensure that building sites will be reasonably safe from flooding.

(2) Building lots shall have adequate buildable area outside of floodways.

(3) Site improvement proposals, subdivision development plans, and manufactured home park plans shall include the mapped flood hazard zones from the effective FIRM, if available. [*Oregon Residential Specialty Code R106.1.3*]

(4) In Areas of Special Flood Hazard where Base Flood Elevations have not been established in Chapter III, Section B of this ordinance, Base Flood Elevations shall be generated and/or provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than fifty lots or five acres, whichever is less.

(5) Site improvements, subdivisions, and manufactured home parks shall have public utilities and facilities such as sewer, gas, electric and water systems located and constructed to minimize or eliminate damage and infiltration of floodwaters. Replacement public utilities and facilities such as sewer, gas, electric and water systems, likewise shall be sited and designed to minimize or eliminate damage and infiltration of floodwaters.

(6) New and replacement on-site waste disposal systems shall be located and constructed to avoid functional impairment, or contamination from them, during flooding.

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(7) Subdivisions and manufactured home parks shall have adequate drainage provided to reduce exposure to flood hazards. In AO and AH zones, drainage paths shall be provided to guide floodwater around and away from all proposed and existing structures.

B. Development in Floodways

(1) Except as provided in paragraph (4), encroachments, including fill, new construction, substantial improvements, and other development are prohibited in the regulatory Floodway unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) Any fill permitted to be placed in the floodway shall be designed to be stable under conditions of flooding, including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and flood-related erosion and scour.

(3) Applicants shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA before an encroachment, including fill, new construction, substantial improvement, and other development, in the floodway is permitted that will cause any increase in the Base Flood Elevation. *[44 CFR Part 60.3(d)(4)].*

C. Building Design and Construction

Buildings and structures, including manufactured dwellings, within the scope of the Building Codes, including repair of substantial damage and substantial improvement of such existing buildings and structures, shall be designed and constructed in accordance with the flood-resistant construction provisions of these codes, including but not limited to Section R324 of the Residential Specialty Code and Section 1612 of the Structural Specialty Code. *[This Section links local ordinance to Building Codes. Communities may include specific building design and construction standards, such as those found in Appendix A, in this section. Specific construction standards must equal or exceed those published in 44 CFR Part 60.3 and Oregon building codes.]*

D. Manufactured Dwellings

(1) Manufactured dwellings to be newly placed or replaced on sites, or substantially improved are within the scope of the Building Codes; and,

(2) Manufactured dwellings to be newly placed or replaced on sites, or substantially improved shall be installed using methods and practices that minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

I. Recreational Vehicles

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

(1) Be placed on the site for fewer than 180 consecutive days;

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(2) Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or addition, or

(3) Meet all the requirements of Chapter V, Section F: Manufactured Dwellings, including the anchoring and elevation requirements.

VI. VARIANCE PROCEDURES AND CRITERIA

A. Variance

(1) An application for a variance must be submitted to the **Prescott City Council** on the form provided by the **City of Prescott** and include at a minimum the same information required for a development permit and an explanation for the basis for the variance request.

(2) The burden to show that the variance is warranted and meets the criteria set out herein is on the applicant.

(3) In passing upon such applications, the **Prescott City Council** shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and the:

- (a) danger that materials may be swept onto other lands to the injury of others;
- (b) danger to life and property due to flooding or erosion damage;
- (c) susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) importance of the services provided by the proposed facility to the community;
- (e) necessity to the facility of a waterfront location, where applicable;
- (f) availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (g) compatibility of the proposed use with existing and anticipated development;
The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
- (h) safety of access to the property in times of flood for ordinary and emergency vehicles;
- (i) expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- (j) costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(4) Upon consideration of the criteria in Section B (Criteria for Variances) and the purposes of this ordinance, the **Prescott City Council** may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(5) The **City of Prescott** shall maintain a permanent record of all variances and report any variances to the Federal Emergency Management Agency upon request.

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B. Criteria for Variances

- (1) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- (2) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items a-j in Section VI.A.5 have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued upon a:
 - (a) showing of good and sufficient cause;
 - (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and;
 - (c) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (5) Variances may be issued for a water dependent use provided that the
 - (a) criteria of paragraphs (a)(1) through (a)(4) of this section are met, and;
 - (b) structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (6) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, without regard to the procedures set forth in this section.
- (7) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

C. Variance Decision

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

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VIII. SEVERABILITY

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

First reading: September 14, 2010

Second reading: October 12, 2010

City Council passed and authorized the Mayor to sign on October 12, 2010.

Kevin Miller/Mayor _____ Date _____

Attested:

City Recorder/Coy Oliver _____

City of Prescott Flood Damage Prevention
Ordinance No. 15

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KI Pelt

10-12-2010

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10-12-10

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