



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

February 21, 2012

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

FROM: Angela Houck, Plan Amendment Program Specialist

SUBJECT: City of Albany Plan Amendment
DLCD File Number 001-12

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.

Appeal Procedures*

DLCD ACKNOWLEDGMENT OR DEADLINE TO APPEAL: Tuesday, March 6, 2012

This amendment was not submitted to DLCD for review prior to adoption because the jurisdiction determined that emergency circumstances required expedited review. Pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

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 DATE SPECIFIED ABOVE.**

Cc: Heather Hanson, City of Albany
Ed Moore, DLCD Regional Representative
Angela Lazarean, DLCD Urban Planner

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FORM 2

DLCD

Notice of Adoption

In person electronic mailed

DATE
STAMP

DEPT OF

FEB 15 2012

LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

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

Jurisdiction: **City of Albany**

Local file number: **DC-01-12**

Date of Adoption: **2/8/2012**

Date Mailed: **2/13/2012**

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".

Albany Development Code amendment to Article 6-Floodplain to allow for the use of best available information (floodplain studies and boundaries) if adopted by the City Council by resolution. FEMA approval is no longer required. This will enable the use of the North Albany Floodplain Study, which was recently completed, and which differs significantly from the FEMA dFIRMs in both the depth and extent of flooding, as well as the presence of an unmapped floodway.

Does the Adoption differ from proposal? Please select one

NA

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

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...

35-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. 001-12 (19189) [16940]

DLCD file No. _____

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

DLCD-Natural Hazards

Local Contact: **Heather Hansen**

Phone: (541) 917-7564 Extension:

Address: **PO Box 490**

Fax Number: **541-791-150**

City: **Albany**

Zip: **97321-**

E-mail Address:

heather.hansen@cityofalbany.net

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working 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 the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail **plan.amendments@state.or.us**.

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE DEVELOPMENT CODE TEXT RELATING TO FLOODPLAIN MANAGEMENT, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILE DC-01-12)

WHEREAS, the state of Oregon has delegated the responsibility to local government units to adopt regulations designed to promote public health, safety, and the general welfare of its citizenry; and

WHEREAS, floodplain studies are completed from time to time that provide more detailed and accurate information than the current effective Federal Emergency Management Agency (FEMA) Flood Insurance Study and Flood Insurance Rate Maps; and

WHEREAS, Article 6 of the Albany Development Code does not allow the use of new information regarding the floodway fringe unless it is approved by FEMA and adopted by City Council resolution; and

WHEREAS, development will be proposed in areas affected by new information prior to FEMA approval of the new information; and

WHEREAS, using the current effective FEMA information to regulate new development could result in new structures being built at elevations too low to be protected from floodwaters or built without adequate flood protection; and

WHEREAS, the City of Albany is a member in good standing of FEMA's National Flood Insurance Program (NFIP), which enables the community to be eligible for flood insurance through NFIP; and

WHEREAS, NFIP participation requires Albany to review floodplain development permit applications to determine if sites are reasonably safe from flooding, and if new structures and substantial improvements are adequately protected from floodwaters; and

WHEREAS, FEMA recommends using the best available information in instances where it indicates that the flood elevations are higher than the current effective FEMA information; and

WHEREAS, on January 12, 2012, notice of the Planning Commission and City Council public hearings was published in the *Albany Democrat-Herald*; and

WHEREAS, on January 17, 2012, the Planning Commission held a public hearing on the proposed amendments and recommended City Council approval of the proposed amendments based on findings contained in the staff report; and

WHEREAS, on February 8, 2012, the City Council held a public hearing concerning the proposed amendments and then deliberated.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Albany Development Code text is hereby amended as shown on attached Exhibit A.

Section 2: The Findings of Fact contained in the staff report and attached as Exhibit B are hereby adopted in support of this decision.

Section 3: It is hereby adjudged and declared that this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany and an emergency is hereby declared to exist and this ordinance shall be in full force and effect on February 8, 2012, when signed by the Mayor.

Passed by the Council: Feb 8, 2012

Approved by the Mayor: Feb 8, 2012

Effective Date: Feb 8, 2012

ATTEST:


Mary A. Dobbie
Deputy City Clerk

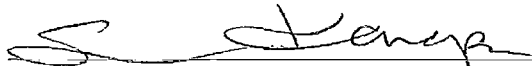

Mayor

EXHIBIT A

ARTICLE 6

SPECIAL PURPOSE DISTRICTS

FLOODPLAIN

Staff Note: No changes to other sections of the Floodplain regulations

6.080 Lands to Which These Regulations Apply. These regulations apply to all areas in the City of Albany that are subject to inundation from a 100-year flood. These areas have been identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study for Linn County, Oregon and Incorporated Areas (September 29, 2010), and associated Flood Insurance Rate Maps (FIRMs) with Community Number 410137. These areas are depicted on the FIRMs by the letter A and AE. The Flood Insurance Study and FIRMs are on file at the City of Albany, Community Development Department at 333 Broadalbin Street SW.

In addition, the City Council may adopt by resolution more current **floodplain** studies or boundary information ~~approved by FEMA~~. **If the new information conflicts with the current effective Flood Insurance Study of Flood Insurance Rate Maps, the more restrictive information will apply** ~~The most recent adopted FEMA information shall apply in the event of a conflict with prior studies or information.~~

Precise Special Flood Hazard Area (100-year floodplain) boundaries may be difficult to determine from the maps referred to above due to their large scale and lack of site specific studies. In such instances, the Floodplain Administrator may apply FEMA base flood elevations to topographic maps or site surveys in order to determine actual boundaries. In the absence of FEMA base flood elevations, the Floodplain Administrator shall reasonably use other sources of floodplain and floodway data to determine base flood elevations and boundaries. However, when elevation data is not available through FEMA or another authoritative source and the development consists of 4 or more lots, 4 or more structures, or 4 or more acres, the applicant shall generate and have certified by a registered engineer the base flood elevation. [Ord. 5146, 9/14/94; Ord. 5410, 7/28/99; Ord. 5746, 9/29/10]

EXHIBIT B



Community Development Department

333 Broadalbin Street SW, P.O. Box 490
Albany, OR 97321

Phone: 541-917-7550 Facsimile: 541-917-7598
www.cityofalbany.net

STAFF REPORT Development Code Amendments (DC-01-12)

<u>HEARING BODY</u>	CITY COUNCIL
<u>HEARING DATE</u>	Wednesday, February 8, 2012
<u>HEARING TIME</u>	7:15 p.m.
<u>HEARING LOCATION</u>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW

EXECUTIVE SUMMARY

The Public Works Department commissioned the North Albany Floodplain Study to have a better understanding of the floodplain so staff could adequately review development applications in North Albany. The study was a priority because of the expectation that an unmapped floodway existed in North Albany. The study confirmed the existence of a previously unmapped floodway and also unexpectedly identified significant differences in both the extent and depth of flooding during a 100-year event (1% chance of happening in any given year).

Currently, the Development Code allows the use of available data and new studies when a *floodway* is not designated on the official Federal Emergency Management Agency (FEMA) map, but the existing code language restricts the use of more current studies and information elsewhere in the floodplain (*floodway fringe*) to those that have been approved by FEMA.

The study will be submitted to FEMA for review this winter. The time period for their review and approval is expected to be 12-18 months, followed by a 6-month community review period. FEMA recommends using both the adopted FEMA information and the new study results, and to regulate to the "worst case" when reviewing land use applications until FEMA has completed their review and the new study is in effect.

At the August 8, 2011 City Council Work Session, the Council directed staff to do public outreach regarding the North Albany Floodplain Study, then begin the public hearing process to adopt a Development Code amendment that addresses the use of best available information for floodplain development purposes. An open house was held in North Albany on November 8, 2011.

On January 17, 2012 the Planning Commission held a public hearing, deliberated, then voted unanimously to recommend City Council approval of the proposed Development Code amendments. There was no public testimony.

The proposed amendment would enable the City to use floodplain information that the Council adopts by resolution while awaiting FEMA approval. This would provide more certainty to developers and homeowners in the interim, as well as a higher level of protection for new structures built in areas where the floodwaters are expected to be higher than the current effective FEMA maps indicate. This practice is consistent with FEMA's recommended approach.

PLANNING COMMISSION AND STAFF RECOMMENDATION

APPROVE the proposed Development Code amendments.

GENERAL INFORMATION

DATE OF REPORT: February 1, 2012
FILE: DC-01-12
TYPE OF APPLICATION: Legislative amendment to Article 6, Special Purpose Districts – Floodplain – Section 6.080 (Exhibit A).
REVIEW BODIES: Planning Commission and City Council
APPLICANT: City of Albany, Planning Division
APPLICANT REP: Heather Hansen, Planning Division Manager
ADDRESS/LOCATION: Not Applicable

BACKGROUND

In early 2010 the Public Works Department retained a specialized engineering firm to model the floodplain of the Willamette River in North Albany. The study was initiated because reviews of past development proposals indicated that the current FEMA floodplain maps for North Albany were inaccurate. The most significant discrepancy was an unmapped floodway. In order to adequately review future development proposals, staff believed it was important to have a more accurate understanding of floodplain characteristics throughout North Albany. In addition, by having this study completed in advance of development proposals, property owners and the development community will be more aware of the flood risks that may exist on an existing parcel prior to beginning predevelopment activities.

The consultants concluded their study in July 2011. The study verified that there was a significant unmapped floodway through North Albany. This floodway is essentially an overflow channel from the Willamette River. It is estimated that during a 100-year flood event approximately 5,600 cubic feet per second (cfs) of water flows through this floodway at a maximum speed in excess of five feet per second. To put that amount of water in perspective, it is typically what flows in the Willamette River itself in September. At five feet per second, water with very little depth can apply enough force to push a car off of the road.

The study also unexpectedly identified significant differences in the amount of flooding throughout the study area. These differences were seen in both the extents and depths of flooding. When compared to FEMA’s most recent dFIRM floodplain maps, the study identified approximately 190 acres of property mapped as being in the floodplain that should not be and approximately 125 acres of property that should be shown in the floodplain, that is not. Differences in the depths of flooding ranged from as much as five feet less than what FEMA predicts to as much as three feet more than FEMA predicts.

The concern being addressed by the proposed amendment is that structures would be built at elevations too low to be protected from a flood or built without adequate flood protection. This could put the current and future owners at risk during a flood. Developers would also be at a disadvantage when pursuing projects because the study results would not be available in the standard floodplain reference materials.

NOTICE INFORMATION

A notice of public hearing was published in the *Albany Democrat Herald* January 12, 2012. There has been no written input on the proposed amendments at the time of this staff report.

PROCESS

Within five working days of the City Council decision, the Director shall notify any person who participated in the proceedings leading to the decision. The notice shall briefly describe the final action taken, state the date and effective date of the decision, and explain the requirements for appealing the action under ORS 197.830 to 197.845. The City Council decision can be appealed to the Oregon Land Use Board of Appeals by filing a Notice of Intent to Appeal within 21 days of the Council decision.

FINDINGS AND CONCLUSIONS

Development Code Amendment File DC-01-12

The Albany Development Code (ADC) contains review criteria for amendments. Amendments to the Development Code will be approved if the City Council finds that the applicant has shown that the following applicable criteria have been met. NOTE: Code criteria are written in *bold italics* and are followed by the findings and conclusions.

CRITERION 1: The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.

The applicable Comprehensive Plan goals and policies are identified in *italic type*.

FINDINGS OF FACT

1.1 Albany Comprehensive Plan, Chapter 2--Special Areas--Flood Hazards & Hillside (Statewide Planning Goal 7)--Flood Hazards:

Goal: *Protect life and property from natural disasters and hazards.*

Policy 5: *Ensure that development proposals in the flood fringe and adjacent to drainageways are consistent with Federal Emergency Management Agency (FEMA) and other applicable local regulations in order to minimize potential flood damage.*

Policy 7: *Ensure that any filling or construction within the floodplain meets the following criteria: (a) Require that a fill permit is issued prior to any fill activity and all fill is engineered and compacted to applicable standards. Fill areas for dwellings shall have engineering certification that loading rates are adequate for dwellings; (b) The lowest finished floor elevation shall be built at least one (1) foot above the base-year flood level. Special engineering reports or structural work may be required; (c) Require property owners or developers to file an elevation certification approved by the local community permit official, registered professional engineer, architect, or surveyor indicating elevation of the surrounding grade or lowest habitable floor (including basement) of all new residential structures. This information shall be maintained to indicate compliance with Federal Emergency Management Agency (FEMA) regulations.*

Policy 8: *For construction, remodeling, or major repairs to structures (including prefabricated and mobile homes) within the floodplain, review building permits to ensure that: (a) Building location and grading are designed to protect the structure during a base year flood; (b) Construction materials and utility equipment are resistant to flood damage; (c) Construction methods and practices will minimize flood damage; (d) Where appropriate, structures are designed or modified to prevent flotation, collapse, or lateral movement of the structure.*

Policy 9: *Development approval within the flood fringe shall be reviewed to protect property and public safety and significant natural values.*

The primary purpose of the proposed amendments is to protect life and property. FEMA recommends that jurisdictions use the best available information and regulate to the most stringent standard until the time that the new information becomes effective. The proposed amendments will allow the best available information to be used to ensure that the lowest finished floor will be at least one foot above the base flood elevation and the structures will be built to minimize flood damage.

1.2 Albany Comprehensive Plan, Chapter 8--Urbanization (Statewide Planning Goal 14)--Development Review:

Goal: *Ensure that all new developments are reviewed expeditiously and thoroughly and result in compliance with Comprehensive Plan goals and policies and ordinance standards.*

Policy 3: *Give special attention to proposals in areas identified as in need of special review (greenway, floodplains, floodways, open space, airport, etc), ensuring that developments in these areas are specially designed in recognition of the particular concern for that area.*

The proposed amendments would enable the use of best available information in protecting life and property in the floodplain, and would provide more certainty in the review process.

- 1.3 Albany Comprehensive Plan, Chapter 8–Urbanization (Statewide Planning Goal 14)–North Albany Planning Area–Natural and Cultural Resources:

Policy 1: Minimize potential impacts to riparian vegetations, stream hydrology, and adjacent land uses.

Policy 2: Protect wetlands, floodplains, riparian corridors and other critical natural resources.

The proposed amendments would allow the use of new information that identifies the extent and depth of flooding that differs from the current effective FEMA information. This would support protection of floodplains to the extent possible by managing development in the floodplain with better information.

CONCLUSIONS

- 1.1 The proposed amendments better achieve the goals and policies of Chapter 2 related to flood hazards by clarifying and strengthening existing regulations, ensuring the City is in compliance with NFIP, and expanding the types of development in the floodplain that will be reviewed relative to protection of property and public safety.
- 1.2 The proposed amendments better achieve the goals and policies of Chapter 8 related to development review by providing more certainty in the review process.
- 1.3 The proposed amendments better achieve the goals and policies of Chapter 8 related to North Albany by using of the best available information to manage development in the floodplain.

CRITERION 2: The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.

The applicable Development Code policies and purposes are identified in *italic* type.

FINDINGS OF FACT

- 2.1 ADC Article 1–General Administration–Section 1.020 states *the general purpose of this Code is to set forth and coordinate City regulations governing the development and use of land. The Code is more specifically intended to do the following:*

(1) Serve as the principal vehicle for implementation of the City's Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.

The proposed amendments are intended to manage development in the floodplain in a way that promotes public and environmental health and safety and minimizes economic loss and social disruption caused by flood events.

(2) Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.

One of the City's roles in participating in FEMA's National Flood Insurance Program is to review proposed development to ensure that it is reasonably safe from flooding using the base flood elevations and 100-year floodplain boundary (1% chance flood) as the basis. It would be difficult for the City to do this without using the best available information.

(3) Facilitate prompt review of development proposals and the application of clear and specific standards.

The proposed amendment would allow the use of newer information that is adopted by the City Council by resolution. This provides more certainty during the review process.

- (4) *Provide for public information, review, and comment on development proposals that may have a significant impact on the community.*

A notice of public hearing was published in the *Albany Democrat-Herald* on January 12, 2012.

- (6) *Establish procedures and standards requiring that the design of site improvements and building improvements (are) consistent with applicable standards and design guidelines.*

The proposed amendments would enable the City to require that the development will meet the floodplain development standards for new construction, such as the elevation of the lowest floor and utilities, floodproofing, and other standards that are intended to minimize flood damage.

- (8) *Require that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards, as well as prevent the spread of blight, and help prevent crime.*

The intent of the proposed amendments is to use the best available information to manage development in the floodplain in order to promote public and environmental health and safety and to minimize the economic loss and social disruption caused by flood events.

- (10) *Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests in making land use decisions.*

Affected property owners' interests are at the heart of these proposed amendments. Unless the best available information is used, new structures may be built at elevations too low to be protected from a flood or built without adequate flood protection. This could put current and future owners at risk during a flood event. In some cases the flooding could be far less than the 1% chance flood (100-year).

- 2.2 ADC Article 6–Floodplain–Section 6.070 states that the *Floodplain overlay district (FP) standards are intended to manage development in the floodplain in a way that promotes public and environmental health and safety and minimizes the economic loss and social disruption caused by impending flood events.*

The proposed amendments that allow the use of the best available information strengthen the ability of the City to manage development in the floodplain in a way that promotes public and environmental health and safety and minimizes the economic loss and social disruption caused by flooding.

CONCLUSIONS

- 2.1 The proposed amendments are consistent Article 1–General Administration–Purpose by protecting public health and safety, complying with the federal requirements of NFIP, using existing standards for development in the known floodplain, providing more certainty in the development review process, and notifying the public of the proposed amendments.
- 2.2 The proposed amendments are consistent Article 6–Floodplain–Purpose because they allow the use of the best available information to apply the existing floodplain development regulations, which are intended to promote public and environmental health and safety and minimize the economic loss and social disruption caused by flooding.

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