

Chapter 16.65
HOW LAND MAY BE USED AND DEVELOPED
Floodplain Overlay DISTRICT (FP)

16.65.000 **Purpose**

The purpose of the Flood Plain Overlay District (FP) is 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:

- A. To protect human life and health;
- B. To minimize expenditure of public money and costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. 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;
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. To ensure that those who occupy the areas of special flood hazards assume responsibility for their actions.

16.65.005 **Definitions**

For the purpose of this Section, the following words, terms and expressions shall be interpreted in accordance with the following definitions, unless the context requires otherwise.

Appeal: A request for a review of the Planning Commission's interpretation of any provision of this Section or a request for a variance.

Area of Shallow Flooding: Area designated AO or AH on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and

indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

Area of Special Flood Hazard: The land in the Flood Plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letter A.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year. The base flood is also referred to as the "100-year flood." Designation on maps always includes the letter A.

Basement: Any area of the building having its floor subgrade (below ground level) on all sides.

Critical Facility: 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, installations which produce, use or store hazardous materials or hazardous waste.

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

Elevated Building: For insurance purposes, a non basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

Existing Manufactured Home Park or Subdivision: A manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the effective date of the adopted floodplain management regulations.

Expansion to An Existing Manufactured Home Park or Subdivision: The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from: The overflow of inland or tidal waters; and/or the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM): The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study: The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

Floodplain Administrator: The Planning Commission of the City of North Plains shall be

Flood Way: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Lowest Floor: 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 floor, provided that such enclosure allows the entry and exit of flood waters.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. 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.

Manufactured Home Park or Subdivision: A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

New Construction: Structures for which the start of construction commenced on or after January 18, 1982.

New Manufactured Home Park or Subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

Recreational Vehicle: A vehicle which 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 towable 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.

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 state 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 foundation 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.

Structure: A walled and roofed building including a gas or liquid storage tank that is principally above ground.

Substantial Damage: 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: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- A. Before the improvement or repair is started, or
- B. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

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

Variance: A grant of relief from the requirements of this section which permits construction in a manner that would otherwise be prohibited by the section.

16.65.010 General Provisions

A. Area of Application

All property, regardless of the underlying zoning designation, which falls within the boundaries of the 100-year Flood Plain, also known as the area of special flood hazard, shall be subject to the provisions of Zoning District (FP) of this Ordinance.

B. Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study of the City of North Plains, Oregon, Washington County, Oregon," dated March 16, 1989, with the accompanying Flood Insurance Maps are hereby adopted by reference and declared to be a part of this Ordinance. The Flood Insurance Study is on file at the City of North Plains, City Hall, North Plains, Oregon. The City shall utilize all authoritative information available in determining the location of special flood hazard areas.

C. Compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Ordinance and other applicable regulations.

D. Abrogation and Greater Restrictions

This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. Interpretation

In the interpretation and application of this section, all provisions shall be:

1. Considered as minimum requirements;
2. Literally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

F. 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 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 North Plains, 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 lawfully made thereunder.

G. Critical Facilities

Critical facilities as defined by this Chapter shall not be located in a flood way or flood plain.

H. Accessory Structures

Accessory structures shall not be located within a floodplain or floodway.

16.65.015 Administration

A. Development Permit Required

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Chapter 16.65.010 (A). The permit shall be required for all structures including manufactured homes, as set forth in the Definitions, and for all other development including fill and other activities, also as set forth in the Definitions.

B. Application for Development Permit

Application for a development permit shall be made on forms furnished by the City Recorder, and accompanied by the appropriate fee, and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials and drainage facilities. Specifically, the following information is required:

1. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
2. Elevation in relation to mean sea level to which the structure has been flood proofed;

3. Certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet the flood proofing criteria in Floodplain Overlay section of this code.
4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

C. Designation of Planning Commission as Administrative Body

The Planning Commission is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions. "Flood Plain Development Permits shall be subject to the public notice requirements and public hearing requirements of this chapter.

The duties of the Planning Commission shall include, but not be limited to:

1. Permit Review

- 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 flood way. If located in the flood way, assure that the encroachment provisions of Chapter 16.65.025 (D) are met.

2. Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Chapter 16.65.010 (B), the Planning Commission shall obtain, review and reasonably utilize any base flood elevation and flood way data available from federal, state, or other sources, in order to administer Chapter 16.65.025.

3. Information to be Obtained and Maintained

- a. Where base flood elevation data is provided through the Flood Insurance Study or required as in Chapter 16.65.015 (2), obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable 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 flood proofed structures:

- i. Verify and record the actual elevation (in relation to the mean sea level), and
- ii. Maintain the flood proofing certifications required in this Chapter.
- c. Maintain for public inspection all records pertaining to the provisions of this ordinance.

4. Alteration of Watercourses

- a. Notify adjacent communities and the Oregon Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- b. Require that maintenance is provided within the altered or relocation portion of said watercourse so that the flood carrying capacity is not diminished.

5. Interpretation of FIRM Boundaries

Make interpretations where needed as to 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). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation.

16.65.020 Provisions for Flood Hazard Protection

In all areas of special flood hazards the following standards are required:

A. 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).

B. 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 components during conditions of flooding.

C. Utilities

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and
3. On-site disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
4. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres, whichever is less.

E. Review of Building Permits

Where elevation data is not available, either through the Flood Insurance Study or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where

available. The City of North Plains has been notified that failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

16.65.025 Specific Standards

In all areas of special flood hazards where base flood elevations data has been provided as set forth in this Chapter, the following provisions are required:

A. All Development

All development within the boundaries of the 100-year Flood Plain shall conform to the following cut and fill standards:

1. No net fill in the flood plain is allowed. All fill placed in a flood plain shall be balanced within at least an equal amount of soil material removal;
2. Excavation areas shall not exceed fill areas by more than 50 percent of the area;
3. Any excavation below the bank full stage of No Name Creek or McKay Creek shall not compensate for fill;
4. Excavation to balance a fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation shall be located in the same drainage basin and as close as possible to the fill site, so long as the proposed excavation and fill in the Flood plain Overlay District and to minimize erosive velocities. Stream crossings shall be as close to perpendicular to stream flow as practicable. Bridges shall be used instead of culverts wherever practicable

B. Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to one foot above base flood elevations. Below grade crawl spaces shall not be permitted. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited. Parking, crawl spaces and storage is allowed below the lowest floor provided the area is designed to permit the entry and exit of flood waters. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

C. 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 one foot above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

1. Be flood proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
3. Be certified by a registered professional engineer or architect that the design and methods of construction in accordance with accepted standards of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Chapter 16.65.015 (B)(3).
4. Nonresidential structures that are elevated, not flood proofed, must meet the same standards for space below the lowest floor as described in Chapter 16.65.025 (A).
5. Applicants flood proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood proofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

D. Manufactured Home

All manufactured homes to be placed or substantially improved within Zones AI-30, AH, and AE (as defined by the Federal Emergency Management Agency) shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Chapter 16.65.020(A).

E. Flood Ways

Located within areas of special flood hazard established in Chapter 16.65.010(A) are areas designated as flood ways. Since the flood way is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions apply, these provisions apply to all floodways:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development within Zones A1 and A2 (as defined by the Federal Emergency Management Agency) unless certification by registered professional engineer or architect is provided demonstrating that

encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. If Chapter 16.65.025 (D)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Chapter 16.65.025.
3. Prohibit the placement of any mobile homes, except in an existing mobile home park or existing mobile home subdivision.
4. The placement of mobile homes in existing mobile home parks and subdivisions will comply with Subsections 16.65.025 (C) 1-3.

F. Recreational Vehicles

Recreational vehicles shall be prohibited from locating in flood hazard areas.

16.65.030 VARIANCE PROCEDURE

When a variance to the standards of this chapter is requested, the following provisions regarding a variance application and decision shall be followed instead of the provisions of the Variance section of this chapter.

A. Appeal Board

The Planning Commission as established by the zoning ordinance shall hear and decide appeals and requests for variances from the requirements of this Chapter.

1. The Planning Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the City in the enforcement or administration of this ordinance.
2. Those aggrieved by the decision of the Planning Commission, or any taxpayer, may appeal such decision to the City Council as set out in this chapter.
3. In considering such application, the Planning Commission and/or City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Zoning and Development Ordinance, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;

- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The 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;
 - k. The 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 conditions for variances below and the purposes of this ordinance, the Planning Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
 5. The City shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

B. Conditions for Variances

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 all other sections of this chapter have been considered. As the lot size increases the technical justification required for issuing the variance increases.

1. 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.
2. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
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. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - c. A 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 as identified in Chapter 16.65, or conflict with existing local laws or ordinances.
5. Variances as interpreted in the National Flood Insurance Program are based on the general zoning principle that they pertain to a physical piece of 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.
6. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria, and otherwise complies with development standards in this section.
7. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest flood elevation.