



**PLANNING COMMISSION AGENDA**  
**Special Meeting Date: 4/22/2020**

**BY REMOTE PARTICIPATION ONLY**

**JOIN THE MEETING**

**DIAL IN TO THE MEETING:**  
**253 215 8782, Meeting ID: 831 1521 5456**

- **CALL TO ORDER** 7:00pm  
Pledge of Allegiance
- **ROLL CALL**
- **GUEST BUSINESS**
- **ACTION ITEMS**
  1. Approve minutes for 02-19-2020
- **DISCUSSION ITEMS**
  2. Briefing- Floodplain Title 14 update

Director Wright
- **COMMISSIONER REPORTS**
- **PLANNING DIRECTOR'S REPORT**
- **ADJOURN**

***SPECIAL NEEDS***

*The City of Lake Stevens strives to provide accessible opportunities for individuals with disabilities. Please contact City of Lake Stevens ADA Coordinator, at (425) 622-9419 at least five business days prior to any City meeting or event if any accommodations are needed. For TDD users, please use the state's toll-free relay service.*

**PLANNING COMMISSION REGULAR MEETING MINUTES**  
Police Department Conference Center  
10518 – 18<sup>th</sup> Street SE, Lake Stevens, WA 98258  
Wednesday, February 19, 2020

CALL TO ORDER: 7:00 pm by Chair Jennifer Davis

MEMBERS PRESENT: Janice Huxford, Vicki Oslund, Jennifer Davis, Linda Hoult, and John Cronin

MEMBERS ABSENT: None

STAFF PRESENT: Community Development Director Russ Wright, Sabrina Harris, Associate Planner and Jennie Fenrich, Clerk

OTHERS PRESENT: Councilmembers Gary Petershagen and Steve Ewing

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Chair Davis called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

**Roll Call:** All present.

**Guest business:** None.

**Action Items:**

**Approval of Minutes:** Motion by Commissioner Huxford, seconded by Commissioner Cronin, to approve the minutes of the January 19 meeting as amended. The motion carried (5-0-0-0).

**Public Hearing:**

**2020 Comprehensive Plan Ratification:**

**MOTION:** Chair Davis opened the Public meeting.

Staff Report: Director Wright presented a staff report on the Comprehensive Plan Docket for 2020. The proposed requests meet the criteria for docketing. There will be a map amendment for a piece of property near the boat launch that the City has recently purchased. The Commission will revisit the Waterfront Residential in the Comp Plan as well.

Commission comments: None

Public Comment: None

Action: Vicki Oslund made a motion to recommend the Docket Items be forwarded to council for the 2020 Docket. Commissioner Cronin seconded. On vote the motion carried (5-0-0-0)

**LUA2019-0129 Code amendment to zoning standards:**

Chair Davis opened the hearing for LUA2019-0159 Code amendment to zoning standards.

Director Wright gave an overview of this amendment. This process began in 2018. This is the sixth meeting that the Planning Commission has had input on these proposals, broken down in sections. There are two sections of this amendment. The first is mainly housekeeping items to include code clean up language and definition clarification. The second part is regarding Chapter section 14.48 zoning standards. The second item under consideration has been prompted by the State. This is looking at lot sizes. One change would reduce the required 150% lot size for duplexes to 125%. HB 1923 has to do with lot-size averaging to help the irregular sized lots that are still available.

Non-Residential Use and Residential Use chart has been split out for clarity. One challenge that has occurred with the current guidelines are side setbacks and impervious surface allowances. This has been addressed by allowing collective averaging within a plat. Impervious surface allowances will be graduated by lot size and allowable amounts. Height alliance is unchanged. As for Waterfront residential, only side-setbacks are being considered now. Front and rear setbacks will be addressed in this year's work plan.

Non-Residential standards are being adjusted for consistency inside and outside the subareas.

**Comments from the Audience:**

Dylan Sluder representing Master Builders association. This code makes more tools and simplifies and makes clear standards. Supportive of plan.

Sally Jo Sebring submitted a comment regarding impervious surface and referenced an article about this topic. She also spoke about lot size recalculation and how the Land Use Advisory Committee did speak at length on this and she thinks its inconsistent with the work they did. She asked for clarification on dwellings per lot, net density calculations, lot width and impervious surface allowance. She also has concerns on setbacks and how they got changed to be less than 10 feet and doesn't believe this was the intention of land Use committee.

David Toyer of Toyer Strategies says he believes we are up for massive challenge ahead, with Growth Management in the Puget Sound Region is going to be under pressure to build affordable housing. There will have to be a balance between single family residences and apartment homes. He also commented on allowed uses outside the scope of the project.

Mark Villwock says balancing growth in the region is huge challenge. Lake Stevens is not as dense as some communities. Impervious surface in SFR community is actually greater when you have to build wider lots and add use more. When calculating impervious surface for townhomes with smaller lots, the impervious goes down per unit as the road requirements lessen.

Chair Davis closed public portion of the meeting

**Commission comments:**

Commissioner Huxford would like to see Lake Stevens develop responsibly. Cronin is in favor of the amendment. Hoult believes staff did a thorough job and is ready to move this to City Council with Ms. Sebring letter. Oslund and Cronin agreed.

Commissioner Huxford made a motion to approve Zoning Code updates, including Commissioner's comments, public comments and written comments to Council. Commissioner Hoult seconded – on vote the motion carried (5-0-0-0).

**Code Amendment Infill Lot**

Associate Planner Gassaway presented a brief recap of the proposed code amendment. She said the goal of this amendment was to increase housing diversity, define what new housing developments could look like in existing neighborhoods, define innovative housing tool kit for building in underutilized parcels. The first half of the amendment fully contained within Chapter LSCM 14.46 has mostly procedural changes, removing duplicate processes that exist in other areas of the zoning code. Planner Gassaway indicated that minimal changes were made to the Cottage Housing and that the code has been updated to include all utilities instead of sewer only. It also states developers can have a neighborhood meeting prior to application but not mandatory. Commissioner Cronin asked about pre-application process and the wording change from requirement to optional. Director Wright clarified pre-applications are not binding and therefore requiring them sets a different standard for pre-applications that are intended to be a tool for applicants. He indicated staff would prefer having them be recommended versus required.

Chair Davis asked about the requirement of an applicant to host a neighborhood meeting prior to submittal. Planner Gassaway indicated that public meetings are required for projects within existing review processes. She indicated that staff found that the duplicate meeting with one outside of staff purview was more a hurdle and cause for potential confusion than a benefit and recommended its removal.

Planner Gassaway presented the second half of the amendment that creates Part III, Infill Housing, that allows for the creation of infill housing projects. She explains the eligibility criteria that included, minimum lot size and minimum dwelling unit creation, that has been created for this section.

Part III includes residential standards for infill house. These standards also include density and dimensional bonuses that can be apply to projects that are based on the underlying zoning district standards. Planner Gassaway continues stating that the amendment includes Infill Housing design standards that work to ensure a project's compatibility with the existing neighborhood. These standards include parking standards, landscaping, building façade, and site design requirements. Additional requirements have been created for what are newly designated Garden / Courtyard apartments within this section.

Chair Davis asked for clarification on the dimension of lot size of 1600 sq. ft lot and how we came to use that number. Planner Gassaway said it was based on average bedroom count that is average for Single Family Residences. Her second question was regarding open space for Cottage Housing. Planner Gassaway indicated that the required open

space exceeded many other jurisdictions. Janice Huxford asked about development bonuses. Planner Gassaway clarified this is for this chapter only. Commissioner Huxford asked if this will apply to properties that are on septic. Director Wright said this is only for Cottage Housing which is intense development and would max out drain fields for septic so it wouldn't be feasible. Planner Gassaway reiterated that this is for Infill lots and are for existing neighborhoods. Commissioner Huxford also asked about Administrative Decision on minor site plan improvements on as-builts. She asked wow is minor defined. Director Wright said it is defined as 10% of planning standards requirement. Her final question has to do with parking reduction allowances for development done on transit lines. Director Wright explained this was Olympia driven and although not applicable now, it needs to be in place for the future.

**Comments from the Public:**

Dylan Sluder representing the Master Builders Association is supportive of these tools to use for in-fill lot development.

**Discussion Items:** The commission had a brief discussion with Commissioner Hoult making a motion to approve this amendment and send to City Council. Commissioner Cronin Seconded. Upon vote, the motion passed, 5-0-0-0.

**Commissioner Reports:**

Commissioner Hoult thanked the City Staff for their hard work.

Commissioner Huxford appreciated the City acknowledged the City for recognizing the high-water level of the lake and asking people to adhere to no wake during this time. She also stated she hoped the City would be kind to people who needed to do repairs after water damage.

Commissioner Davis said she is excited for a full commission.

Commissioner Cronin thanked the City for all the hard work they do. He also reported that he has had comments asked of him regarding the new speed limit on Lundein Parkway.

**Planning Director's Report:**

Director Wright shared what bills Olympia is working on. He also announced that two new Planning Commissioners have been selected. Todd Welch and Michael Duerr. They will be sworn in at next Council meeting.

**Adjourn:**

**MOTION:** Moved by Commissioner Hoult, seconded by Commissioner Huxford to adjourn the meeting at 9:02 p.m. On vote the motion carried (5-0-0-0).

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Jennie Fenrich, Planning Commission Clerk



Staff Report  
Lake Stevens Planning Commission

Planning Commission Briefing

Date: April 22, 2020

Subject: **Amendments to the City of Lake Stevens Floodplain Regulations**

Contact Person/Department: **Russ Wright**, Community Development Director

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**SUMMARY:**

A scope and schedule for proposed amendments to the City of Lake Stevens Floodplain regulations as recommended by FEMA review.

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**ACTION REQUESTED OF PLANNING COMMISSION:**

This is an informational briefing and no action is requested at this time.

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**BACKGROUND / DISCUSSION:**

The purpose of this briefing is to present periodic amendments to the city's flood hazard regulations based on recommendations from FEMA. The last update was completed in 2016. The updated flood hazard regulations must be completed by June 19, 2020 for the city to remain eligible for national flood insurance. Changes are shown in edit mode – underlines are new information and strikethroughs are deletions. The following list summarizes proposed changes to code:

- Moved Floodplain definitions Chapter 14.08 LSMC to LSMC 14.64.060 to eliminate confusion with general zoning definitions and added new definitions based on FEMA review to comply with the model ordinance.
- Updated Basis section and the date on the current Flood Insurance Study in LSMC 14.64.005 based on FEMA review;
- Add new subsections (d), (e) and (f) to LSMC 14.64.010 to provide mandatory language from model ordinance based on FEMA review;
- Add minor updates to LSMC 14.64.015 based on FEMA review to be consistent with the model ordinance;
- Add minor updates to LSMC 14.64.040 based on FEMA review to be consistent with the model ordinance; and
- Add minor updates to LSMC 14.64.050 based on FEMA review to be consistent with the model ordinance – specifically substituting “subdivision” to “development” and adding variance language.

As the proposed changes are not discretionary, staff is requesting that the Planning Commission hold a Public Hearing in May after the city issues its SEPA determination and sends the draft regulations to FEMA, the Department of Ecology (DOE) and Department of Commerce for review and comment. Additional changes may be forthcoming based on DOE's review and to ensure internal consistency.

**Attachments:**

1. Draft Code Amendments to Chapter 14.64 LSMC

## Attachment 1

### Chapter 14.64 SPECIAL FLOOD HAZARD AREAS

#### Sections:

- 14.64.005 Basis for Establishing Special Flood Hazard Areas
- 14.64.010 Application of Regulations
- 14.64.015 Authority and Duties of the Floodplain Administrator
- 14.64.020 Administrative Procedures
- 14.64.025 Conformance with Chapter 14.88 (Critical Areas), Chapter 14.92 (Shoreline Management), Section 14.16C.100 (Shoreline Permits), and the Shoreline Master Program
- 14.64.030 Exemptions and Allowed Activities
- 14.64.035 Other Activities
- 14.64.040 Development Standards
- 14.64.045 Construction Standards for Protection of Structures
- 14.64.050 Special Provisions for Subdivisions
- 14.64.055 Standards for Habitat Protection
- 14.64.060 Definitions

#### **14.64.005 Basis for Establishing Special Flood Hazard Areas.**

The City hereby adopts by reference the special flood hazard areas identified by the Federal Insurance Administrator in a scientific and engineering report titled "The Flood Insurance Study (FIS) for Snohomish County, Washington, and Incorporated Areas" dated June 19, 2020, and any revisions thereto, with the current accompanying Flood Insurance Rate Maps (FIRM), and any revisions thereto, and declare the same to be a part of the Lake Stevens Municipal Code. The FIS and FIRM are on file in the Planning and Community Development Department.

#### **14.64.010 Application of Regulations.**

- (a) All development in the regulatory floodplain, within the City of Lake Stevens, comprised of the special flood hazard area and all protected areas (i.e., lands within the boundaries of the floodway, the riparian habitat zone, and the channel migration area locally defined and mapped) shall comply with the terms of this chapter and other applicable local, state, and federal regulations including, but not limited to, obtaining necessary permits and approvals.
- (b) The degree of flood protection required 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 human-made or natural causes. This does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. There shall be no liability on the part of the City of Lake Stevens, any officer or employee thereof, or FEMA, for any flood damages that result from reliance on this code or any administrative decision lawfully made hereunder.
- (c) Under the provisions of this chapter, the City will allow an applicant to request permit specific review as consistent with National Flood Insurance Program regulation contained in 44 CFR 60.3(a)(2) to assess development impacts to floodplain and associated habitat functions and any requested deviations pursuant to the submission of a habitat impact assessment per Section 14.64.055(c) and, if necessary, a habitat mitigation plan per Section 14.64.055(d). Under a permit specific review, the

development proposal must otherwise follow the defined administrative review procedures and regulations of this chapter. (Ord. 1010, Sec. 3 (Exh. B), 2018; Ord. 860, Sec. 4 (Exh. 2), 2011)

- (d) This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (e) 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. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \_\_\_\_\_ or imprisoned for not more than \_\_\_ days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the \_\_\_\_\_ from taking such other lawful action as is necessary to prevent or remedy any violation.
- (f) This ordinance and the various parts thereof are hereby declared to be severable. Should any Section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the Section so declared to be unconstitutional or invalid.

#### **14.64.015 Authority and Duties of the Floodplain Administrator.**

- (a) The Floodplain Administrator shall be the Planning and Community Development Director, or the Director's designee, appointed to administer and implement this chapter by granting or denying floodplain development permits in accordance with its provisions.
- (b) Upon receipt of a floodplain development application, the Floodplain Administrator shall compare the project's site elevation to the base flood elevation. A development project is not subject to the requirements of this chapter if it is located on land outside the protected area and higher than the base flood elevation.
- (c) The Floodplain Administrator shall determine, where needed, the exact location of the boundaries of the regulatory floodplain, the special flood hazard area, and the protected area when there appears to be a conflict between the mapped special flood hazard area boundary and actual field conditions, as determined by the base flood elevation and ground elevations per the criteria found in Section 14.88.510. The applicant may appeal an administrative interpretation of the boundary location to the hearing examiner in accordance with Section 14.16A.265.
- (d) Where the adopted FIS or FIRM does not include base flood elevation and floodway data for special flood hazard areas, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from federal, state, and/or other sources.
- (e) The Floodplain Administrator shall obtain and maintain, for public inspection, all records pertaining to the provisions of this chapter and submit such reports as required for the National Flood Insurance Program.

**14.64.020 Administrative Procedures.**

- (a) The City shall require a floodplain development permit before construction and/or development begins within the regulatory floodplain.
- (b) The City shall 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, provided, the primary responsibility to identify and obtain required permits shall remain with the developer, and the City shall have no liability to the developer should it fail to identify any other permit that is determined to be required by the agency administering such permit.
- (c) Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures
- (d) For all new or substantially improved floodproofed nonresidential structures where base flood elevation data are provided through the FIS, FIRM, or as required in Section 14.64.015(d):
  - (1) the proposed elevation (in relation to mean sea level) to which the structure will be floodproofed;
  - (2) Where a structure is to be floodproofed, certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet floodproofing criteria in Section 14.64.045(c).
- (e) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development
- (f) Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (Section 4.3-2), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.
- (e) Applicants shall submit a floodplain development permit, on forms furnished by the City, and shall submit one or more site plans, drawn to scale, including, but not limited to, the following:
  - (1) The nature, location, dimensions, and elevations of the property in question;
  - (2) Names and locations of all lakes, water bodies, waterways and drainage facilities within 300 feet of the site;
  - (3) The elevations of the 10-, 50-, 100-, and 500-year floods, where the data are available;
  - (4) The boundaries of the regulatory floodplain, special flood hazard area, floodway, riparian habitat zone, and channel migration area, as appropriate;
  - (5) The proposed drainage system including, but not limited to, storm sewers, overland flow paths, detention facilities and roads;
  - (6) Existing and proposed structures, fill, pavement and other impervious surfaces, and sites for storage of materials;
  - (7) Critical areas per Chapter 14.88; and
  - (8) Existing native vegetation and proposed revegetation.

- (f) The applicant must record a notice on title that the property contains land within the regulatory floodplain including special flood hazard areas and protected areas, as applicable, before the City issues the floodplain development permit.
- (g) The City shall notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (h) The City shall assure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained..
- (i) Base Flood Elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
- (j) Notify the Federal Insurance Administrator in writing of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

**14.64.025 Conformance with Chapter 14.88 (Critical Areas), Chapter 14.92 (Shoreline Management), Section 14.16C.100 (Shoreline Permits), and the Shoreline Master Program.**

Uses permitted within regulatory floodplain must also be consistent with Chapter 14.88, Chapter 14.92, Section 14.16C.100 and the Shoreline Master Program. Wherever regulations conflict in these chapters, the more restrictive provisions shall prevail. The intent of this section is to prevent development that is inconsistent with Chapter 14.88, Chapter 14.92, Section 14.16C.100 and the Shoreline Master Program even though it may seem permissible according to the regulations of this chapter.

**14.64.030 Exemptions and Allowed Activities.**

- (a) Nondevelopment Activities. Activities in the regulatory floodplain that do not meet the definition of "development" are exempt activities and do not require a floodplain development permit if the activity meets all other federal, state, and local requirements. The following are examples of activities not considered development:
  - (1) Routine maintenance of landscaping that does not involve grading, excavation, and/or filling;
  - (2) Removal of noxious weeds and hazard trees and replacement of nonnative vegetation with native vegetation;
  - (3) Normal maintenance of structures, such as reroofing and replacing siding, provided such work does not qualify as a substantial improvement;
  - (4) Normal maintenance of above ground utilities and facilities, such as replacing downed power lines and utility poles;
  - (5) Normal maintenance of streets and roads including filling potholes, repaving, and/or installing signs and traffic signals, but not including expansion of paved areas;

- (6) Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control facility. Normal maintenance does not include repair from flood damage, expansion of the prism, expansion of the face or toe or addition for protection on the face or toe with rock armor; and
- (7) Plowing and other normal farm practices (other than structures or filling) on farms in the regulatory floodplain and in existence as of the effective date of the ordinance establishing this chapter do not require a floodplain development permit. Clearing additional land for agriculture after the effective date of Ordinance No. 860 shall require a floodplain development permit.

(b) Activities Allowed with a Floodplain Development Permit. The City will allow the activities listed below in the regulatory floodplain, without a habitat impact assessment per Section 14.64.055(c), when the activity meets all other requirements of this chapter:

- (1) Repairing and/or remodeling existing structures if the repairs and/or remodels are not a substantial improvement or a repair of substantial damage;
- (2) Maintenance and/or repair of shoreline stabilization structures pursuant to the Shoreline Master Program that does not involve grading, excavation and/or filling;
- (3) Maintenance, repair, remodel and/or new over-water structures pursuant to the Shoreline Master Program that does not involve grading, excavation and/or filling;
- (4) Expansion of existing structures when the expansion does not increase the existing footprint more than 10 percent. The expansion measurement is counted cumulatively from the effective date of Ordinance No. 860. If the structure is in the floodway, there shall be no change in the dimensions perpendicular to flow;
- (5) Activities with the sole purpose of creating, restoring and/or enhancing natural functions associated with floodplains, streams, lakes, estuaries, marine areas, habitat, and riparian areas that meet federal and state standards, if the activities do not include the creation of structures and/or impervious surfaces;
- (6) Development of open space and recreational facilities, such as parks, trails, and hunting grounds, that do not include fill, the creation of structures and/or impervious surfaces, and/or removal of more than five percent of the native vegetation on that portion of the property in the regulatory floodplain; and
- (7) Maintenance and/or repair to on-site septic systems provided the ground disturbance is the minimum necessary to carry out the maintenance and/or repair.

#### **14.64.035 Other Activities.**

All other activities not listed in Sections 14.64.030(a) and (b) that are allowed by Chapter 14.44 are allowed, provided they meet all the other requirements of this chapter, including providing a habitat impact assessment pursuant to Section 14.64.055(c) and obtaining a floodplain development permit prior to the activity.

#### **14.64.040 Development Standards.**

- (a) Structures, impervious surfaces, and other development shall be located to avoid flood damage.

- (1) If a lot has a buildable site out of the regulatory floodplain, when possible, all new structures, impervious surfaces, and other development shall be located in that area.
- (2) If a lot does not have a buildable site out of the regulatory floodplain, all new structures, impervious surfaces, and other development must be sited in the location that has the least impact on habitat by locating the structures, impervious surfaces, and other development as far from the water body as possible and/or placing the structures, impervious surfaces, and other development on the highest land on the lot.
- (3) If the proposed project cannot meet the criteria of subsection (a)(1) or (2) of this section, a habitat impact assessment shall be conducted pursuant to Section 14.64.055(c) and, if necessary, a habitat mitigation plan shall be prepared and implemented pursuant to Section 14.64.055(d), prior to locating structures, impervious surfaces, and other development within the regulatory floodplain.

(b) Applicants shall design and locate all new structures, impervious surfaces, and other development to minimize the impact on flood flows, flood storage, water quality, and habitat.

- (1) To the extent feasible, stormwater and drainage features shall incorporate low impact development techniques that mimic predevelopment hydrologic conditions, such as stormwater infiltration, rain gardens, grass swales, filter strips, disconnected impervious areas, permeable pavement, and vegetative roof systems, pursuant to Chapter 11.06.
- (2) If a project proposes to create new impervious surfaces on more than 10 percent of that portion of the lot in the regulatory floodplain, the applicant shall demonstrate that there will be no net increase in the rate and volume of the stormwater surface runoff leaving the site or mitigate the adverse impacts, pursuant to Chapter 11.06.

(c) Hazardous Materials. New development shall not create a threat to public health, public safety, and/or water quality. Chemicals, explosives, gasoline, propane, buoyant materials, animal wastes, fertilizers, flammable liquids, pollutants, and other materials that are hazardous, toxic, or a threat to water quality are prohibited from the regulatory floodplain. This prohibition does not apply to small quantities of these materials kept for normal household use, or to the continued operations of existing facilities and structures, reuse of existing facilities and structures, or functionally dependent facilities or structures.

- (1) If the proposed development cannot meet the criteria of subsection (c) of this section, the applicant must provide a habitat impact assessment pursuant to Section 14.64.055(c) prior to any approval of the proposed development.

(d) Critical Facilities.

- (1) To the extent possible, construction of new critical facilities shall be located outside the limits of the regulatory floodplain.
- (2) Construction of new critical facilities in the regulatory floodplain shall be permissible if no feasible alternative site is available, provided:
  - (i) Critical facilities shall have the lowest floor elevated three feet above the base flood elevation or to the height of the 500-year flood, whichever is higher. If there is no available data on the 500-year flood, the permit applicants shall develop the needed data in accordance with FEMA mapping guidelines.
  - (ii) Access to and from the critical facility shall be protected to the elevation of the 500-year flood.

#### **14.64.045 Construction Standards for Protection of Structures.**

The provisions of this section shall apply in the special flood hazard area. All new structures and substantial improvements shall be protected from flood damage below the flood protection elevation.

- (a) Applicability. The protection requirements of this section apply to all new structures and substantial improvements, which include:
  - (1) Construction or placement of a new structure, including over-water structures and shoreline stabilization;
  - (2) Reconstruction, rehabilitation, and/or other improvement that will result in a substantially improved structure, including over-water structures and shoreline stabilization;
  - (3) Repairs to an existing structure that has been substantially damaged;
  - (4) Placing a manufactured home on a site; and
  - (5) Placing a recreational vehicle or travel trailer on a site for more than 180 days.
- (b) Flood Protection Standards.
  - (1) All new structures and substantial improvements shall have the lowest floor including basements elevated at least one foot above the flood protection elevation. Upon completion of the structure, certification by a registered professional engineer or surveyor that the elevation requirements of the lowest floor, including basement, of this section have been satisfied shall be provided to the Floodplain Administrator for verification.(2) Where practicable, new structures shall align parallel with the direction of flood flows.
  - (3) To prevent flotation, collapse, and/or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, all new structures shall provide anchoring.
  - (4) All materials below the flood protection elevation shall be resistant to flood damage; provided, however, that materials harmful to aquatic wildlife, such as creosote, are prohibited below the flood protection elevation.
  - (5) Electrical, heating, ventilation, ductwork, plumbing, and air-conditioning equipment and other service facilities shall be elevated above the flood protection elevation. Water, sewage, electrical, and other utility lines below the flood protection elevation shall be constructed so as to prevent water from entering or accumulating within them during conditions of flooding.
  - (6) Fully enclosed areas below the lowest floor that are subject to flooding shall be used only for parking, storage, and/or building access and shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a registered professional engineer or licensed architect or meet or exceed the following minimum criteria:
    - (i) Fully enclosed areas shall provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
    - (ii) The bottom of all openings shall be no higher than one foot above grade.

- (iii) 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 be elevated in accordance with subsection (b) of this section. As an alternative to elevation, a new or substantial improvement to a commercial, industrial, or other nonresidential structure and its attendant utility and sanitary facilities may be dry flood-proofed if the following criteria are met:
  - (1) The structure is below the flood protection elevation and the structure is watertight with walls substantially impermeable to the passage of water;
  - (2) The structural components are capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  - (3) A registered professional engineer or licensed architect certifies that the design and methods of construction conform to accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. The applicant shall provide such certifications with their floodplain development application.
  - (4) Upon completion of the structure, certification by a registered professional engineer or surveyor that the elevation requirements of the lowest floor, including basement, of this section have been satisfied shall be provided to the Floodplain Administrator for verification; or certification by a registered professional engineer or architect that the floodproofing design of this section is satisfied, including the specific elevation in relation to mean sea level to which such structures are floodproofed, shall be provided to the Floodplain Administrator for verification.
- (d) Manufactured Homes. The placing of all manufactured homes or substantial improvements to existing manufactured homes on sites shall be:
  - (1) Elevated on a permanent foundation in accordance with subsection (b) of this section; and
  - (2) Securely anchored to a foundation/foundation system to resist flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to other applicable anchoring requirements for resisting wind forces.

(3) Upon completion of installation of the manufactured home, certification by a registered professional engineer or surveyor that the elevation requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification.
- (e) Recreational Vehicles. Recreational vehicles placed on sites shall:
  - (1) Be on the site for fewer than 180 consecutive days; or
  - (2) Be fully licensed and ready for highway use, on their wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
  - (3) Meet the requirements of subsection (d) of this section.
- (f) Appurtenant Structures. A structure on the same parcel as the principal structure, when the use is incidental to the use of the principal structure and is not used for human habitation, may be exempt from the elevation requirement of subsection (b) of this section, provided:

- (1) It is used only for parking or storage;
- (2) It is constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters;
- (3) It is anchored to prevent flotation which may result in damage to other structures;
- (4) All portions of the structure below the flood protection elevation must be constructed of flood-resistant materials;
- (5) Service utilities such as electrical and heating equipment meet the standards of subsections (b) and (g) of this section;
- (6) It has openings to allow free flowage of water that meet the criteria in subsection (b)(6) of this section; and
- (7) The project meets all the other requirements of this chapter.
- (8) Upon completion of the structure, certification that the requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

(g) Utilities.

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
- (2) Water wells shall be located outside the floodway and shall be protected to the flood protection elevation;
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. As a condition of approval for an on-site waste disposal system within the regulatory floodplain, the applicant must prepare and provide a habitat impact assessment in accordance with Section 14.64.055(c).

**14.64.050 Special Provisions for Development Proposals.**

- (a) This section applies to all development proposals including but not limited to manufactured home parks, subdivisions, short subdivisions, planned developments, and binding site plans per Chapter 14.18 LSMC.
- (b) All proposals shall be consistent with the need to minimize flood damage.
- (c) All proposals shall have utilities and facilities, such as sewer, gas, electrical, and water systems, located and constructed to minimize or eliminate flood damage.
- (d) All proposals shall provide adequate drainage to reduce exposure to flood damage.
- (e) Wherever possible, all proposals shall provide at least one access road connected to land outside the regulatory floodplain with the surface of the road at or above the flood protection elevation.

- (f) Where base flood elevation data has not been provided or is not available from another authorized source, it shall be generated for development proposals greater than 50 lots or five acres (whichever is the lesser).
- (g) The final recorded plat, short plat, or binding site plan shall include a note that a portion of the property contains land within the regulatory floodplain including special flood hazard areas and protected areas, as applicable.

#### 14.64.053 Variances

- (a) Variances shall only be issued:
  - (1) Upon 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 or conflict with existing local laws or ordinances;
  - (2) For the repair, rehabilitation or restoration of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure; \*\*
  - (3) Upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
  - (4) Upon a showing of good and sufficient cause;
  - (5) Upon a determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - (6) Upon a showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in Section 2.0 {or the numbering system used by the community} of this ordinance in the definition of "Functionally Dependent Use."

\*\* Per FEMA P-467-2 (May 2008) Floodplain Management Bulletin Historic Structures and FEMA P-993 (July 2014) Floodplain Management Bulletin Variances and the National Flood Insurance Program, communities have the option of using either the Substantial Improvement Definition exclusion or the Variance criteria per 44CFR 60.6(a) to regulate Historic Structures.

- (b) Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.
- (c) Generally, variances may be issued 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 Elevation, provided the procedures of Sections 4.0 and 5.0 {or the numbering system used by the community} of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- (d) In considering variance applications, the Hearing Examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
  - (1) The danger that materials may be swept onto other lands to the injury of others;

- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in time of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and,
- (11) 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, water system and streets and bridges.

(e) Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
- (2) Such construction below the base flood elevation increases risks to life and property; and
- (3) The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance.

#### **14.64.055 Standards for Habitat Protection.**

The provisions of this section shall apply in the regulatory floodplain.

(a) Native Vegetation.

- (1) In the riparian habitat zone (required buffers per Chapter 14.88 and the Shoreline Master Program), native vegetation shall be left undisturbed, except as provided in Section 14.64.030.
- (2) Outside the riparian habitat zone, removal of native vegetation shall not exceed 35 percent of the surface area of the portion of the site in the regulatory floodplain. The applicant can count native vegetation in the riparian habitat zone portion of the property (required buffers per Chapter 14.88 and the Shoreline Master Program) toward this requirement.
- (3) If the proposed project does not meet the criteria of Section 14.64.030(a) and (b), the applicant shall provide a habitat impact assessment pursuant to subsection (c) of this section, and, if

necessary, a habitat mitigation plan pursuant to subsection (d) of this section, prior to any approval of the proposed project.

- (b) Compensatory Storage. New development shall not reduce the effective flood storage volume of the regulatory floodplain. A development proposal shall provide compensatory storage if grading or other activity eliminates any effective flood storage volume. Compensatory storage areas shall:
  - (1) Provide equivalent volume at equivalent elevations to that being displaced. For this purpose, "equivalent elevation" means having similar relationship to ordinary high water and to the best available 10-year, 50-year and 100-year water surface profiles;
  - (2) Be hydraulically connected to the source of flooding;
  - (3) Provide compensatory storage in the same construction season as when the displacement of flood storage volume occurs and before the flood season begins; and
  - (4) The newly created storage area shall be graded and vegetated to allow fish access during flood events without creating fish stranding sites.
- (c) Habitat Impact Assessment. Unless allowed under Section 14.64.030(a) and (b), a permit application to develop in the regulatory floodplain shall include an assessment of the impact of the project on federal, state and/or locally protected species and habitat, water quality and aquatic and riparian habitat. The assessment shall be one of the following:
  - (1) A biological evaluation or biological assessment developed per 50 CFR 402.12 to initiate federal interagency consultation under Section 7(a)(2) of the Endangered Species Act; or
  - (2) Documentation that the activity fits within Section 4(d) of the Endangered Species Act; or
  - (3) Documentation that the activity fits within a habitat conservation plan approved pursuant to Section 10 of the Endangered Species Act, where any such assessment has been prepared or is otherwise made available; or
  - (4) An assessment prepared in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA Region X, 2010. The assessment shall determine if the project would adversely affect:
    - (i) Species that are federal, state or local listed as threatened or endangered;
    - (ii) The primary constituent elements for critical habitat, when designated;
    - (iii) Essential fish habitat designated by the National Marine Fisheries Service;
    - (iv) Fish and wildlife habitat conservation areas, per Chapter 14.88, Part IV, or the Shoreline Master Program Appendix B; and
    - (v) Other protected areas and elements necessary for species conservation.
- (d) Habitat Mitigation Plan.
  - (1) If the assessment, conducted under subsection (c) of this section, concludes the project will have an adverse effect on water quality and/or aquatic or riparian habitat or habitat functions, the applicant shall provide a plan to mitigate those impacts, in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA Region X, 2010.

- (i) If the project is located outside the protected area, the mitigation plan shall include such avoidance, minimization, restoration, or compensation measures as are appropriate for the situation.
- (ii) If the project is located in the protected area, the mitigation plan shall stipulate avoidance measures as are needed to ensure that there is no adverse effect during any phase of the project.

(2) The proposed project shall incorporate the plan's habitat mitigation activities. The redesigned project and its mitigation components shall be the basis for the floodplain development permit.

(3) The Floodplain Administrator shall not issue a certification of use and/or occupancy until the applicant completes all the work identified in the biological evaluation, biological assessment, and/or mitigation plan or provides the necessary assurance to complete unfinished portions of the project, in accordance with Section 14.16A.180.

#### **14.64.060 Definitions**

**Appeal.** A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

**Area of shallow flooding.** A designated Zone AO, AH, AR/AO or AR/AH (or VO) on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of special flood hazard.** The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR (V, VO, V1-30, VE). "Special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

**Base flood.** The flood having a one percent chance of being equaled or exceeded in any given year.

**Base flood elevation (BFE).** The elevation to which floodwater is anticipated to rise during the base flood.

**Basement.** Any area of the building having its floor sub-grade - i.e., below ground level - on all sides.

**Building.** See "Structure."

**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.

**Flood or Flooding.**

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters.
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.
  - c. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of

normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

**Flood elevation study.** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**Flood Insurance Rate Map (FIRM).** The official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

**Flood Insurance Study (FIS).** See "Flood elevation study".

**Floodplain or flood-prone area.** Any land area susceptible to being inundated by water from any source. See "Flood or flooding."

**Floodplain administrator.** The community official designated by title to administer and enforce the floodplain management regulations.

**Floodplain management.** The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodplain management regulations.** Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance and erosion control ordinance) and other application of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Flood proofing.** Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

**Floodway.** 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 a designated height. Also referred to as "Regulatory Floodway."

**Functionally dependent use.** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

**Highest adjacent grade.** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure. Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior or
  - b. Directly by the Secretary of the Interior in states without approved programs.

Lowest floor. The lowest floor of the lowest enclosed area (including "Basement"). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured home. 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 attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

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

Mean sea level. For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

One-hundred-year flood or 100-year flood. See "Base flood."

Recreational vehicle. A vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for

recreational, camping, travel, or seasonal use.

Regulatory floodway. See "Floodway".

Sheet flow area. See "Area of shallow flooding".

Special Flood Hazard Area (SFHA). See "Area of special flood hazard".

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

Structure. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

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 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 term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. *Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." \*\**

Variance. A grant of relief by a community from the terms of a flood plain management regulation.

Violation. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Water surface elevation. The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

