

ORDINANCE 1681

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO CRITICAL AREA DEFINITIONS AND FLOODPLAIN MANAGEMENT; AMENDING NBMC SUBSECTIONS 14.05.200(P) AND 14.05.200(R); AMENDING NBMC SECTIONS 14.12.030, 14.12.070, AND 14.12.210; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of North Bend (“City”) participates in the National Flood Insurance Program (“NFIP”) administered by the Federal Emergency Management Agency (“FEMA”) and has adopted North Bend Municipal Code (“NBMC”) Chapter 14.12, *Floodplain Management*, in compliance with FEMA requirements; and

WHEREAS, as a result of a lawsuit filed by the National Wildlife Federation against FEMA for failing to consult on the effects of the NFIP on threatened and endangered species within the Puget Sound Region, the National Marine Fisheries Service issued a Biological Opinion on the NFIP, which requires all communities within the Puget Sound region to comply with provisions outlined in the Biological Opinion to address compliance with the Endangered Species Act; and

WHEREAS, the City’s Floodplain Management consultant has identified and prepared amendments to the City’s Floodplain Management Regulations in NBMC Chapter 14.12 and associated amendments to the Critical Area definitions in NBMC 14.05.200 to address compliance with provisions of the Biological Opinion and the NFIP; and

WHEREAS, the draft amendments were forwarded to Commerce Growth Management Services on October 1, 2018, in accordance with Revised Code of Washington (“RCW”) 36.70A.106; and

WHEREAS, a State Environmental Policy Act Determination of Non-Significance (“SEPA DNS”) was issued on the draft amendments on October 12, 2018, and no comments were received on the SEPA DNS; and

WHEREAS, the City’s Planning Commission reviewed the draft amendments at its October 11 and October 25, 2018, meetings and recommended approval of the draft amendments on October 25, 2018; and

WHEREAS, the City’s Planning Commission held a public hearing on the draft amendments at its October 25, 2018, meeting and received no comment on the amendments; and

WHEREAS, the City Council finds that the draft amendments address and are consistent with the requirements of Chapter 36.70A RCW, the Growth Management Act; and

WHEREAS, the City Council finds that the City followed the procedural requirements of Chapter 20.08 NBMC to notify and advertise amendments of the Code to the public and interested agencies, and finds that both the Planning Commission and the City Council considered all written and verbal comments received during their respective public participation processes;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. NBMC Subsection 14.05.200(P) (“P” Definitions), Amended: North Bend Municipal Code Subsection 14.05.200(P) (“P” Definitions) is hereby amended to read as follows:

P. “P” Definitions.

1. “Practical alternative” means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impact to critical areas.

2. “Priority habitat” means habitat types or elements with unique or significant value to one or more species as classified by the State Department of Fish and Wildlife.

3. “Protected area” means the Floodway, Riparian Habitat Zone, and/or Channel Migration Zone (CMZ). If no CMZ is identified in a riverine system, the Protected Area extends to the outer limits of the floodplain.

43. “Public agency” means every city, county, state, or federal office, every officer, every institution, whether educational, correctional, or other, and every department, division, board, and commission that provides services or recommendations to the public or other such agencies.

54. “Public utility” means a public service corporation performing some public service subject to special governmental regulations, or a governmental agency performing similar public services, either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, gas, and transportation for persons and freight.

Section 2. NBMC Subsection 14.05.200(R) (“R” Definitions), Amended: North Bend Municipal Code Subsection 14.05.200(R) (“R” Definitions) is hereby amended to read as follows:

R. “R” Definitions.

1. “Reasonable use” means a legal concept articulated by federal and state courts in regulatory taking cases.

2. “Recreational vehicle” means a vehicle that is built on a single chassis; and 400 square feet or less when measured at the largest horizontal projection; and

designed to be self-propelled or permanently towable by an automobile or light duty truck; and designed primarily for use as temporary living quarters for recreational, camping, travel, or seasonal use, not as a permanent dwelling.

3. “Riparian habitat” means areas adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems that mutually influence each other.

4. “Riparian habitat zone” means the land adjacent to streams and other bodies of water where vegetation is strongly influenced by the presence of water. The Riparian habitat zone includes lands within:

a. 250 feet of the ordinary high-water mark of Type S streams;

b. 200 feet of the ordinary high-water mark of Type F streams greater than 5 feet wide;

c. 150 feet of the ordinary high-water mark of Type F streams less than 5 feet wide or lakes; and

d. 150 feet to 225 feet of the ordinary high-water mark of Type N perennial and seasonal streams depending on slope stability.

Section 3. NBMC Section 14.12.030 (Floodplain Development Permit), Amended: North Bend Municipal Code Section 14.12.030 (Floodplain development permit) is hereby amended to read as follows:

14.12.030 Floodplain development permit.

A. A floodplain development permit shall be obtained before new construction, substantial improvement, or development begins within any SFHA. The permit shall be for all structures, including mobile and manufactured homes or nonlicensed recreational vehicles on site for more than 180 days, as set forth in NBMC 14.12.140 and 14.12.150, and for all other development including fill and other activities as defined in NBMC 14.05.200.

B. The fee and/or review cost for a floodplain development permit shall be as set forth in the city’s taxes, rates and fees schedule, as now adopted or as may be amended from time to time.

C. The fee and/or review cost for a floodplain development permit shall be waived by the city when the permit is for a structure under 200 square feet in size.

D. The fee and/or review cost for a floodplain development permit shall be waived by the city when the permit is associated with a building permit for any of the following improvements:

1. Electrical repairs;

2. Furnace repairs or replacements;
3. Water heater or boiler repairs or replacements;
4. Air conditioner repairs or replacements;
5. Re-roofs;
6. Re-siding;
7. Insulation or simple weatherization or energy efficiency upgrades;
8. Roof-mounted or existing structure mounted solar collectors;
9. Window and door replacements; or
10. Renovation or remodel projects that cost less than ~~\$750.00~~\$2,500;

provided, that waiver under this subsection D shall not apply if the project includes other improvements that are not listed above, increases the structure's floor area or footprint, causes a floodplain encroachment, or constitutes a substantial improvement under NBMC 14.12.170.

The cost of improvements that qualify for a waiver under this subsection D shall not be included in the cumulative calculation required by NBMC 14.12.170, unless the improvements are part of a substantial damage calculation or estimate.

E. Permit Application. Application for a floodplain development permit shall be made on forms furnished by the director. Required application materials may include:

1. Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, native vegetation, existing or proposed structures, fill, storage of materials, drainage facilities, and other information as identified on the application information sheet. These documents shall be maintained by the city for inspection of all records pertaining to the provisions of these critical areas regulations;:-
2. A critical areas report, ~~which, when if required, shall include:~~pursuant to NBMC Ch. 14.05;:-
3. Habitat assessment, if required, pursuant to NBMC Ch. 14.12;:-
4. ~~a.~~The base flood elevation in relation to the lowest floor (including basement) of all structures located in the AE zone or within the AO zone. Identify the highest adjacent natural grade next to the building prior to construction;
5. ~~b.~~Proposed floodproofing elevation in relation to the base flood elevation or highest adjacent natural grade next to the building prior to construction;

~~6. e.~~ Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in NBMC 14.12.130;

~~7. d.~~ A description of the extent to which a watercourse will be altered or relocated as a result of a proposed development; and

~~8. e.~~ ~~The accuracy of said elevation as proposed and as built shall be certified by a licensed professional engineer and/or a professional land surveyor; and~~ An elevation certificate for all new or substantially improved structures. The elevation certificate must be certified by a licensed professional land surveyor.

~~F. f.~~ All development permits for the site must be reviewed to ensure all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required, prior to floodplain development permit issuance.

Section 4. NBMC Section 14.12.070 (Performance Standards – Flood Hazard Areas), Amended: North Bend Municipal Code Section 14.12.070 (Performance standards – Flood hazard areas) is hereby amended to read as follows:

14.12.070 Performance standards – Flood hazard areas.

The following standards apply to development proposals and alterations on sites within special flood hazard areas:

A. A development proposal shall not increase the base flood elevation unless revisions to the FIRM are approved by FEMA in accordance with 44 CFR 70, and appropriate legal arrangements have been made and documents filed prior to issuance of a construction permit;:-

B. The following circumstances are presumed to produce no increase in base flood elevation and shall not require special studies to establish this fact:

1. Reconstruction or remodeling of existing structures in the floodway where the structure's footprint is not increased;
2. Development of new residential structures outside the FEMA floodway on lots in existence before November 17, 1998;
3. Substantial improvements to existing residential structures in the floodplain but outside the FEMA floodway;
4. New development or substantial improvement in the area identified in the downtown commercial zoning district which is within the AO-1, AO-2, AO-3 or AE (outside the floodway) flood zone; provided, that in the AE flood zone the difference between the highest adjacent grade of the site and the base flood elevation as measured on the Flood Insurance Rate Map is no greater than two feet; and/or

5. Minor accessory structures exempt from building permits under the International Building Code;:-

C. The cumulative effect of any proposed development, where combined with all other existing and anticipated development on the site, shall not reduce the effective base flood storage volume of the floodplain. Except as exempted in subsection B of this section, grading or other activity that would reduce the effective storage volume shall be mitigated by creating compensatory storage on site, or off site if legal arrangements can be made, to assure that the effective compensatory storage volume will be preserved over time; provided, however, that no increased upstream or downstream flood hazard shall be created by any fill authorized in the floodplain by this chapter or other applicable chapters;:-

D. If a lot has a buildable site or sites out of the special flood hazard area, all new structures shall be located there, when feasible. ~~If the a~~ lot is fully in the floodplain, structures must be located to have the least impact on riparian habitat and listed species. All structures must be set back at least 15 feet from the protected area, as practicable. The City has prepared maps identifying the approximate boundaries of the protected area and the riparian habitat zone used to establish the protected area are available on the City's website. The protected area has been defined using the CMZs identified in the study titled Channel Migration in the Three-Forks Area of the Snoqualmie River, prepared by King County in January 1996. This study identified that little channel migration is expected to occur on the Middle Fork upstream from Tanner due to channel stability, nor on the South Fork upstream of the Burlington Northern Railroad (Snoqualmie Valley Trail) due to levee channelization. Therefore, channel migration was not used as a factor to determine the protected area within these reaches;:-

E. If the proposed project will create new impervious surfaces so that more than 10 percent of the portion of the lot in the regulatory floodplain is covered by impervious surface, the applicant shall demonstrate that there will be no net increase in the rate and volume of the stormwater surface runoff that leaves the site or that the adverse impact is mitigated per the approved habitat mitigation assessment;:-

F. When fill is proposed to achieve elevated construction, a report by a registered professional engineer is required demonstrating that the proposal will not increase the base flood elevation;:-

G. If grading or other activity will displace any effective flood storage volume, compensatory storage shall be created on site, or off site if legal arrangements can be made, to assure that the effective compensatory storage volume will be preserved over time, in equivalent volume, at equivalent elevations to that being displaced. Compensatory storage areas must be hydraulically connected to the source of

flooding. Alternatively, if feasible, the applicant may provide an increase in side channel habitat as mitigation for floodway alterations;:-

H. Approved alterations shall not block side channel habitats; and-

I. An analysis of bioengineering and/or vegetation enhancements will be required when existing levees or dikes are proposed to be repaired or renovated as specified in King County's Guidelines for Bank Stabilization.

Section 5. NBMC Section 14.12.210 (Floodplain Habitat Assessment), Amended: North Bend Municipal Code Section 14.12.210 (Floodplain habitat assessment) is hereby amended to read as follows:

14.12.210 Floodplain habitat assessment.

A. Assessment Required. A Floodplain habitat assessment is required unless the project is exempt under subsection B of this section 14.12.210. A habitat assessment determines if the project is likely to have No Effect, Not Likely to Adversely Affect, or Likely to Adversely Affect critical habitat or threatened and endangered species. A floodplain habitat assessment and mitigation plan shall be required for all new construction or substantial improvement within the special flood hazard area unless exempted under subsection B of this section, or unless the CED director makes and documents a determination of no adverse effect on any species listed under the Endangered Species Act. If required, the habitat assessment and mitigation plan shall be prepared at the applicant's sole expense by a qualified consultant in accordance with the requirements of the Floodplain Habitat Assessment and Mitigation Regional Guidance 2013 prepared by FEMA Region X, or any successor guidance document approved by FEMA for habitat assessment and mitigation. The Ceity's actual costs of review of applicant's habitat assessment and mitigation plan shall be paid by the applicant pursuant to per the City's adopted taxes, rates and fee schedule.

B. Exemptions. Any of the following activities do not require the preparation of a floodplain habitat assessment or consideration of associated mitigation measures, even if they may require a floodplain permit:

1. Nondevelopment activities, including, but not limited to:

a. Routine maintenance of existing landscaping that does not involve grading, excavation, or filling;

b. Removal of noxious weeds and hazard trees and replacement of non-native vegetation with native vegetation;

c. Normal maintenance of above ground utilities and facilities, such as replacing power lines and utility poles;

d. Normal road maintenance, including filling potholes, repaving, and installing signs and traffic signals, but not including expansion of paved areas;

e. Normal maintenance of a levee or other flood control facility as prescribed in the operations and maintenance plan for the facility. Normal maintenance does not include repair from flood damage, and expansion of the prism, face or toe expansion, or the addition of material for protection or armor; and

f. Plowing and other normal farm practices (other than new structures or filling) on legally existing agricultural areas, excluding clearing additional land for expanded agricultural use;

2. Repairs or remodeling of an existing structure that qualifies for a fee exemption pursuant to NBMC 14.12.030(D), provided such work does not constitute a substantial improvement;

3. Expansion of an existing structure that is no greater than 10 percent beyond its existing footprint, provided that the repairs or remodeling are not a substantial improvement or repair of substantial damage;

4. Activities with the sole purpose of creating, restoring or enhancing natural functions associated with floodplains, streams, lakes, estuaries, marine areas, habitats, and riparian areas that meet federal and state standards, provided the activities do not include structures, grading, fill, or impervious surfaces;

5. Development of open space and recreational facilities, such as parks and trails, that do not include structures, net fill, impervious surfaces, or removal of more than five percent of the native vegetation on that portion of the property in the special flood hazard area;

6. Repair to onsite septic systems provided the ground disturbance is minimal and best management practices to prevent stormwater runoff and soil erosion are used;

7. Projects that have already received concurrence under another permit or other consultation with the US Fish and Wildlife Service and/or the National Marine Fisheries Service, either through Section 7, Section 4d, or Section 10 of the Endangered Species Act that addresses the entirety of the project in the floodplain (such as an Army Corps 404 permit or non-conversation Forest Practice activities including any interrelated and interdependent activities);=

8. Repair of an existing, functional bulkhead in the same location and footprint with the same materials when the Ordinary High Water Mark is still outside the face of the bulkhead (i.e. if the work qualifies for a Corps exemption from Section 404 coverage);

~~Critical area habitat enhancement and restoration projects that are exempt from critical areas review pursuant to NBMC 14.05.085(A)(2).~~

C. If the assessment conducted under NBMC 14.12.210(A) concludes the project is expected to have an adverse effect on Endangered Species Act (“ESA”) listed

species and/or their critical habitat, the applicant shall provide a plan to mitigate those impacts, in accordance with the Floodplain Habitat Assessment and Mitigation Regional Guidance 2013 prepared by FEMA Region X.

1. If the USFWS or NMFS issues an Incidental Take Permit under Section 10 of the ESA or a Biological Opinion under Section 7 of the ESA for the project in its entirety; then such may be considered to qualify as a plan to mitigate those impacts.

2. No compensatory mitigation is allowed within the protected area. Projects within the protected area must avoid short and long term effects.

3. If the project is located outside of the protected area, the mitigation plan shall include such avoidance, minimization, restoration, or compensation measure so that indirect adverse effects of development in the floodplain are mitigated such that equivalent or better habitat protection is provided.

4. The plan's habitat mitigation activities shall be incorporated into the proposed project. The floodplain development permit shall be based on the redesign of the project and its mitigation components.

5. All work identified in the habitat assessment and mitigation plan shall be completed or assurances provided according to NBMC 14.05.045 (bonds or performance security) prior to issuance of the certificate of occupancy or final approval.

Section 6. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 7. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 22ND DAY OF JANUARY 2019.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Eileen Keiffer, City Attorney

ATTEST/AUTHENTICATED:

Published: February 1, 2019

Effective: February 6, 2019

Susie Oppedal, City Clerk