

CHAPTER 3.26
FLOOD DAMAGE PREVENTION

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3.26.020 APPLICABILITY. This chapter shall apply to all areas of special flood hazards within the unincorporated areas of Benton County. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full

compliance with the terms of this chapter and other applicable regulations.

[Ord. 208 (1987) § 2]

3.26.030 STATUTORY AUTHORIZATION AND PURPOSE.

The Legislature of the State of Washington has delegated the responsibility to local communities to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry.

(a) Statement of Purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare; reduce the annual cost of flood insurance; and minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities, such as water and gas mains; electric, telephone, and sewer lines; and streets and bridges located in flood hazard areas;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas so as to minimize blight areas caused by flooding;
- (7) Notify potential buyers that the property is in a Special Flood Hazard Area;
- (8) Notify those who occupy flood hazard areas that they assume responsibility for their actions; and
- (9) Participate in and maintain eligibility for flood insurance and disaster relief.

(b) Methods of Reducing Flood Losses. In order to accomplish its purposes, this chapter includes methods and provisions for:

(1) Restricting or prohibiting development that is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(2) Requiring that development vulnerable to floods be protected against flood damage at the time of initial construction;

(3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(4) Controlling filling, grading, dredging, and other development, which may increase flood damage; and

(5) Preventing or regulating the construction of flood barriers that unnaturally divert floodwaters or may increase flood hazards in other areas.

[Ord. 208 (1987) § 3; Ord. 419 (2005) § 1; Ord. 627 (2020) § 1]

3.26.040 DEFINITIONS. Whenever the words and phrases in this section appear in this chapter, they shall be given the meanings attributed them by this section. When not inconsistent with the context, words used in the present tense shall include the future, singular shall include the plural, and the plural, singular.

(1) "Accessory Structure" means a subordinate use or building clearly incidental to and located upon the same lot occupied by the main use or building.

(2) "Agricultural Structure" means a structure designed and constructed to store farm implements or hay, grain, poultry, livestock, fruit and other agricultural products.

(3) "Alteration of Watercourse" means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

(4) "Appeal" means a request for a review of the interpretation of any provision of this chapter or a request for a variance.

(5) "Area of Shallow Flooding" means a designated AO or AH Zone on the Flood Insurance Rate Map: 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 characterizes sheet flow and AH indicates ponding.

(6) "Area of Special Flood Hazard", which designation on the Flood Insurance Rate Maps always includes the letter A or V, means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

(7) "Base Flood", or "100-year Flood", which designation on the Flood Insurance Rate Maps always includes the letter A or V, means the flood having a one percent chance of being equalled or exceeded in any given year.

(8) "Base Flood Elevation" or "BFE" means the elevation to which floodwater is anticipated to rise during the base flood.

(9) "Basement" means any area of the structure which has its floor subgrade (i.e. below ground level) on all sides.

(10) "Conditional Letter of Map Revision" or "CLOMR" means the Federal Emergency Management Agency's formal review and comment as to whether a proposed project complies with the minimum National Flood Insurance Program requirements for such projects that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the delineation of the Area of Special Flood Hazard (SFHA). The CLOMR does not revise an effective Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS) and a Letter of Map Revision (LOMR) is required upon completion of the project to change the FIRM and/or FIS.

(11) "Crawlspace" means an under-floor space with solid walls that has its interior floor area (finished or not) no more than five feet below the top of the next-higher floor.

(12) "Critical Facility" means the following facilities deemed critical because of the significant danger associated with their flooding:

(a) Police stations, fire stations, and emergency operations centers needed for flood response activities before, during, or after a flood;

(b) Medical facilities, including hospitals, nursing homes, blood banks, and health care facilities (including those storing vital medical records);

(c) Schools and day care centers;

(d) Power generating stations and other public and private utility facilities vital to maintaining or restoring normal services to flooded areas before, during, and after a flood;

(e) Drinking water and wastewater treatment plants; and

(f) Structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, and/or water-reactive materials.

(13) "Development" means any man-made change to improved or unimproved real estate, including but not limited to structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

(14) "Elevation Certificate" means an administrative tool of the National Flood Insurance Program (NFIP) that can be used to track development, provide elevation information, to determine the proper insurance premium rate with Section B completed by Floodplain Administrator, and to support a request for a Letter of Map Amendment (LOMA) or Letter of Map Revision - Based on Fill (LOMR-F) which are issued by the Federal Emergency Management Agency (FEMA).

(15) "Farmhouse" means a single-family dwelling located on a farm site where resulting agricultural products are not produced for the primary consumption or use by the occupants and the farm owner.

(16) "Federal Insurance Administrator" means the official title under the law of the person that is in charge of the Federal

Insurance and Mitigation Administration that is responsible for providing the data upon which flood plain management regulations shall be based and providing a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AO zones, AH zones, A99 zones, and A zones on the community's FIRM, and, if appropriate, has provided data from which the community shall designate its regulatory floodway.

(17) "Flood" or "Flooding" means any of the following;

(a) a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; or

(2) The unusual and rapid accumulation of runoff of surface waters from any source; or

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in sub-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; or

(b) 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.

(18) "Flood Boundary and Floodway Map" means the official map, dated July 19, 1982, on which the Federal Insurance Administrator has delineated flood risk zones, floodways, and base flood elevations applicable to the community.

(19) "Flood Insurance Rate Map" or "FIRM" means the official maps, dated July 19, 1982 and June 15, 1994 on which the Federal Insurance Administrator has delineated both the areas of special

flood hazards 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).

(20) "Flood Insurance Study" or "FIS" means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface evaluations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also known as Flood Elevation Study.

(21) "Floodplain Administrator" means the Benton County Planning Manager, the community official designated to administer and enforce the floodplain management regulations.

(22) "Floodplain or Flood-Prone Area" means any land area susceptible to being inundated by water from any source.

(23) "Floodplain Management" means 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.

(24) "Floodproofing" means a combination of structural and non-structural 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. Floodproofed structures are those that have the structural integrity and design to be impervious to floodwater below the Base Flood Elevation.

(25) "Floodway" means the channels of all rivers or other watercourses 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.

(26) "Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(27) "Historic Structure" means any structure that is:

(a) Listed individually on 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;

(b) 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;

(c) 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

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) by an approved state program as determined by the Secretary of the Interior, or

(2) directly by the Secretary of the Interior in states without approved programs.

(28) "Letter of Map Amendment" or "LOMA" means an amendment, requested by the public, based on technical data showing that a property was incorrectly included in a designated area of special flood hazard. A LOMA is approved by the Federal Emergency Management Agency and amends the current effective Flood Insurance Rate Map and establishes that a specific property or structure or portion of property is not located in an area of special flood hazard.

(29) "Letter of Map Revision" or "LOMR" means the Federal Emergency Management Agency's official revision of an effective Flood Insurance Rate Map (FIRM), Flood Insurance Study (FIS), or Flood Boundary and Floodway Map, or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the area of Special Flood Hazard.

(30) "Lowest Floor" means 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 set forth herein.

(31) "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle.

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

(33) "New Construction" means for floodplain management purposes structures for which the "start of construction" commenced on or after April 6, 1987, which is the date this floodplain management regulation was initially adopted by Benton County, and includes any subsequent improvements to such structures. For insurance purposes, "new construction" means structures for which the "start of construction" commenced on or after July 19, 1982, the effective date of Benton County's initial Flood Insurance Rate Map (FIRM).

(34) "Recreational Vehicle" means a vehicle which is:

(a) built on a single chassis;

(b) four hundred (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 as temporary living quarters for recreational, camping, travel, or seasonal use. It is not designed primarily for use as a permanent dwelling.

(35) "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 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 foundation or the erection of temporary forms; nor does it include the installation on the property of structures, such as garages or sheds not occupied as dwelling units or not part of the main structure which are on the same parcel of property as the principal structure to be insured and the use of which are incidental to the use of the principal 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 structure, whether or not that alteration affects the external dimensions of the structure.

(36) "Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground as well as a manufactured home.

(37) "Substantial Damage" means damage of any origin to 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.

(38) "Substantial Improvement" means any repair, 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:

(a) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by a local code enforcement official and which are solely necessary to assure safe living conditions, or

(b) any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

(39) "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

(40) "Violation" means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

(41) "Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

(42) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands have one or more of the following three attributes: (a) At least periodically, the land supports predominantly hydrophytes; (b) the substrate is predominantly undrained hydric soil; and (c) the substrate is nonsoils and is saturated with water or covered by shallow water at some time during the growing season of each year. [Ord. 208 (1987) § 4; Ord. 224 (1988) § 1; Ord. 230 (1990) § 1; Ord. 376 (2001) § 1; Ord. 419 (2005) § 2; Ord. 471 (2009) § 1; Ord. 481 (2010) § 1; Ord. 627 (2020) § 2]

3.26.050 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD. The areas of special flood hazard are those areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled "The Flood Insurance Study for Benton County, Washington, Unincorporated Areas" dated June 15, 1994, and the accompanying Flood Insurance Rate Maps dated July 19, 1982 and June 15, 1994, and Flood Boundary and Floodway Maps dated July 19, 1982 and any subsequent revisions. The Flood Insurance Study, Flood Insurance Rate Maps and Flood Boundary and Floodway Maps are hereby adopted by reference and declared to be a part of this chapter and shall be kept on file at the Benton County Planning Department office location. [Ord. 208 (1987) § 5; Ord. 212 (1987) § 1; Ord. 230 (1990) § 2; Ord. 376 (2001) § 2; Ord. 627 (2020) § 3]

3.26.070 GENERAL STANDARDS. The following standards are required in all areas of special flood hazards:

(a) Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(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 airconditioning equipment and other service facilities shall be designed and/or otherwise elevated to or above the base flood elevation or located so as to prevent water from entering or accumulating within the 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;

(3) On-site waste disposal systems shall be located to avoid or minimize impairment to them or contamination from them during flooding; and

(4) Water wells for potable water or irrigation water shall be located on high ground outside all floodways.

(d) Project Permit Applications.

(1) All development needing a Project Permit Application, as defined in BCC 17.10.030 (f), shall be consistent with the need to minimize flood damage;

(2) All development needing a Project Permit Application, as defined in BCC 17.10.030 (f), shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(3) All development needing a Project Permit Application, as defined in BCC 17.10.030 (f), shall have adequate drainage provided to reduce exposure to flood damage; and,

(4) For subdivision and manufactured home park proposals that would create 50 or more lots or be located on parcels of 5 acres or more, base flood elevation data shall be provided.

(e) Construction in AE and A1-30 Zones With No Designated Floodway. Until a floodway review is completed and all floodways in an area are designated by the FIRM, no new construction, substantial improvements or other development (including fill) shall be permitted in such AE or A1-30 zone unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing development and the proposed new construction, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(f) 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. In unnumbered A Zones where flood elevation information is not available, construction shall be deemed reasonably safe from flooding if the lowest floor is at least two feet above the highest adjacent grade. Failure to elevate at least two (2) feet above the highest adjacent grade in these zones may result in higher insurance rates. [Ord. 208 (1987) § 7; Ord. 376 (2001) § 4; Ord. 419 (2005) § 3; Ord. 627 (2020) § 4]

3.26.080 SPECIFIC STANDARDS - CONSTRUCTION AND DEVELOPMENT.

The following provisions are required in all areas of special flood hazards where base flood elevation data has been provided as set forth herein:

(a) Residential Construction.

(1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to one foot or more above base flood elevation.

(2) Enclosed areas, including crawlspaces, below the lowest floor that are subject to flooding are prohibited unless used solely for parking, access, or storage, and are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or must meet or exceed the following minimum criteria:

- (i) 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 shall be provided.
- (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.

(3) Crawlspaces must meet the requirements of subsection (c) below.

[NOTE: This section is continued on the following page.]

(b) 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 or more above the base flood elevation or, together with attendant utility and sanitary facilities, shall:

(1) be floodproofed so that one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water (See note in subsection (b) (5) below.);

(2) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(3) be certified by a registered professional engineer that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions 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 herein;

(4) nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in BCC 3.26.080 (a) (2);

(5) applicants floodproofing nonresidential structures shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a structure constructed to the base flood level will be rated as one foot below that level); and

(6) must meet the criteria set forth in subsection (c) below for crawlspaces.

(c) Structures with Crawlspaces. Structures that are allowed to have below grade crawlspaces may have higher flood insurance premiums than structures that have the interior elevation of the crawlspace soil at or above the Base Flood Elevation. All crawlspaces that have floors below the Base Flood Elevation must:

(1) be designed and adequately anchored to resist flotation, collapse and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) have openings that allow for automatic entry and exit of floodwaters. The bottom of the flood opening can be no more than one (1) foot above the lowest adjacent exterior grade;

(3) use materials resistant to flood damage, including foundation walls, joists, or insulation, if such materials will be below Base Flood Elevation (BFE);

(4) be located in areas where flood velocities do not exceed five (5) feet per second as identified by a registered professional engineer;

(5) have all building utility systems elevated above the BFE or designed so the floodwaters cannot enter or accumulate with the system components during flood conditions;

(6) not have an interior grade more than two (2) feet below the lowest adjacent exterior grade

(7) must not have a height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, of more than four (4) feet at any point; and

(8) have an adequate drainage system to remove floodwaters from the interior area of the crawlspace.

Note: See FEMA Technical Bulletin 11 for further information.

Caution: Buildings that have below grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction, with the interior elevation of the crawlspace soil at or above the Base Flood Elevation (BFE).

(d) Accessory structures for parking or storage. Notwithstanding subsection (b) above, accessory structures that are 400 square feet or less in size and used solely for parking or storage only need to meet the following criteria in addition to those in BCC 3.26.070:

(1) The structure must be anchored to resist flotation, collapse, and lateral movement;

(2) The portions of the structure located below the BFE must be constructed with flood-resistant materials;

(3) Mechanical and utility equipment for the accessory structure must be elevated and floodproofed to or above the BFE;

(4) The structure shall not be located or encroach into a floodway; and

(5) The structure shall be floodproofed in a manner to protect the structure from hydrostatic pressure by allowing for the entry and exit of floodwaters, including providing 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. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(e) Manufactured Homes. All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of BCC 3.26.070(a)(2).

(f) Recreational Vehicles. Recreational vehicles must:

(1) be on the site for fewer than one hundred and eighty (180) consecutive days, or

(2) be fully licensed and ready for highway use, on its wheels or jacking system, be 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 BCC 3.26.080(e) and the elevation and anchoring requirements for manufactured homes.

(g) Critical Facilities. Critical facilities should be afforded additional flood protection due to their nature. Communities therefore shall impose minimum standards which are in addition to those used for other types of development. Construction of new critical facilities shall be located outside the limits of the one hundred year floodplain as identified on the community's FIRM. [Ord. 208 (1987) § 8; Ord. 224 (1988) § 2; Ord. 230 (1990) § 3; Ord. 376 (2001) § 5; Ord. 419 (2005) § 4; Ord. 471 (2009) § 2; Ord. 627 (2020) § 5]

3.26.090 FLOODWAYS. Located within areas of special flood hazards are floodways, including but not limited to designated floodways on the Flood Insurance Rate Map (FIRM) and/or the Flood Boundary-Floodway Map (FBFM) of a Flood Insurance Study, dated June 15, 1994, for the area. Because a floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(a) Encroachments are prohibited, including: fill, new construction, substantial improvements, and other development unless, certification by a registered professional engineer is provided. Such certification must demonstrate through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.

(b) If BCC 3.26.090(a) is satisfied, all new construction and substantial improvements shall comply with flood hazard reduction provisions set forth herein.

(c) Construction or reconstruction of residential structures are prohibited except under any of the three (3) circumstances below:

(1) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and either:

(i) the cost of the repairs, reconstruction, or improvements to a structure does not exceed fifty percent of the market value of the structure before the repair, reconstruction, or improvement is started; or

(ii) the structure is substantially damaged and was being restored before the substantial damage occurred; or

(iii) the repairs, reconstruction or improvements are to a historic structure.

(2) Improvements of structures to correct existing violations of state or local health, sanitary, or safety code specifications identified by the local code enforcement official and that are the minimum necessary to assure safe living conditions.

(3) Repairs, reconstruction, replacement, or improvements to existing farmhouse structures located in designated floodways and that are located on lands designated as agricultural lands of long-term significance under RCW 36.70A.170 may be permitted subject to the following:

(i) The new farmhouse is a replacement for an existing farmhouse on the same farm site;

(ii) There is no potential building site for a replacement farmhouse on the same farm outside the designated floodway;

(iii) Repairs, reconstruction, or improvements to a farmhouse shall not increase the total square footage of encroachment of the existing farmhouse;

(iv) A replacement farmhouse shall not exceed the total square footage of encroachment of the farmhouse it is replacing;

(v) A farmhouse being replaced shall be removed, in its entirety, including foundation, from the floodway within ninety days after occupancy of a new farmhouse;

(vi) For substantial improvements and replacement farmhouses, the elevation of the lowest floor of the improvement and farmhouse respectively, including basement, is a minimum of one foot higher than the BFE;

(vii) New and replacement water supply systems are designed to eliminate or minimize infiltration of flood waters into the system;

(viii) New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters; and

(ix) All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.

[Ord. 208 (1987) § 9; Ord. 212 (1987) § 2; Ord. 224 (1988) § 3; Ord. 376 (2001) § 6; Ord. 419 (2005) § 5; Ord. 627 (2020) § 6]

3.26.100 CONFLICTS WITH OTHER ORDINANCES, EASEMENTS, COVENANTS, DEED RESTRICTIONS. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

[Ord. 208 (1987) § 10]

3.26.110 INTERPRETATION. In the interpretation and application of this chapter, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and,
- (c) Deemed neither to limit nor repeal any other powers granted under state statutes.

[Ord. 208 (1987) § 11]

3.26.120 WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this chapter 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 chapter 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 chapter shall not create liability on the part of Benton County, any officer or employee thereof, or

the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

[Ord. 208 (1987) §12]

3.26.130 DEVELOPMENT PERMIT REQUIRED - INFORMATION NECESSARY.

(a) Development Permit. Unless a permit is obtained under subsection (b) below, a development permit shall be obtained before construction or development begins within any area of special flood hazard. The permit shall be for all structures including manufactured homes, and for all other development including fill and other activities.

Applications for a development permit shall be made on forms furnished by the Planning or Building Department and shall 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, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation, in relation to mean sea level of the lowest floor (including basement) of all structures recorded on a current elevation certificate.
- (2) Elevation in relation to mean sea level to which any structure has been floodproofed;
- (3) Certification by a registered professional engineer that the floodproofing methods for any nonresidential structure meet the floodproofing criteria herein; and,
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(b) Public Utility Permit. A public utility agency may, in lieu of a development permit under subsection (a) above, apply for a public utility permit to cover all of its proposed construction or development for a calendar year that will be within any area of special flood hazard. Only the development activities listed below are eligible for a public utility permit. Applications for a public utility permit shall be made on forms furnished by the Planning or Building Department and shall include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question with a description of the development activity. For any construction or development not listed in an approved public utility permit, a development permit under subsection (a) above must be obtained. The development activities for which a public utility permit may be obtained are:

(1) Dredging and grading of irrigation and drainage channels, provided that fill from dredging or grading is not deposited on the banks of channels or anywhere within an area of special flood hazard for longer than 10 days;

(2) Seasonal grading within natural stream channels to check or direct water into irrigation facilities;

(3) Deposition of fill within an area of special flood hazard area for less than 10 days. After 10 days, deposited fill must be removed from the area of special flood hazard, or graded and compacted to existing grade within ± 0.2 feet of existing grade. Deposition of fill includes deposition of material resulting from grading or excavating irrigation or drainage channels. Deposition of fill within the mapped floodway requires a development permit under subsection (a) above be obtained and compliance with floodway requirements in Section 3.26.090;

(4) Construction of new underground utilities that do not permanently alter the topography;

(5) In-kind replacement of irrigation and drainage works or components including but not limited to control gates or head gates, measuring devices and their housing structures/stilling wells, culverts, pumps, pipes, flumes, siphons and similar works. A public agency and utility permit cannot authorize the In-kind replacement of dams or bridge structures;

(6) New driveways, trails, sidewalks, roads and streets constructed completely at-or-below existing grade;

(7) New underground utilities that do not permanently alter the existing grade elevations by ± 0.5 feet; and

(8) Armoring, stabilizing, securing, or in-kind replacement of existing infrastructure within the channel banks (such as bridge piers, sewer/utility supports and storm water/sewer drainage outfalls/headwalls) provided the dimensions (bank slopes, channel location, channel elevation) of the channel are not altered. This should not involve replacement with larger or additional above ground infrastructure.

[Ord. 208 (1987) § 13; Ord. 376 (2001) § 7; Ord. 419 (2005) § 6; Ord. 539 (2014) § 1; Ord. 627 (2020) § 7]

3.26.135 DEVELOPMENT PERMIT NOT REQUIRED-ACTIVITIES. (a) The proponent of the development activity described in subsection (b) below may submit a written request to the Floodplain Administrator for an exemption to the requirement to obtain a permit under BCC 3.26.130. The request shall be submitted on a form furnished by the Planning or Building Department. The Floodplain Administrator shall review the exemption request to verify that it complies with this chapter and approve or deny the exemption. If the exemption is denied, the proponent may continue in the review process and shall be subject to all applicable requirements of this chapter.

(b) Activities that do not require a development permit or public utility permit required by BCC 3.26.130:

(1) Cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works;

(2) General farming, pasture, clearing/grubbing and horticultural activities which do not involve earthwork that permanently alters the topography;

(3) Grading of existing roads or easements along or near channels and within an area of special flood hazard, provided that the grading does not add fill within an area of special flood hazard;

(4) Maintenance of underground utilities where the maintenance work will not permanently alter topography;

(5) Replacement of existing piers or posts supporting a conforming deck;

(6) Activities associated with land-surface construction stormwater best management practices, provided the activities are not in place for longer than 180 days and do not increase the base flood elevation. Examples of stormwater best management practices activities that do not require a permit include the following: dust control; materials and equipment covers; mulching; geotextile fabrics; matting; bio-filter bags; fiber rolls; silt fences; vegetative buffer strips; temporary swales; and temporary berms; and

(7) New installation or maintenance of non-solid fences constructed parallel to the flow of water during a flood event. Non-parallel or solid fences that block the flow will need to go through the individual permitting process.

[Ord. 627 (2020) § 8]

3.26.140 ADMINISTRATION. Prior to the issuance of a building permit required for any construction or development falling within an area of special flood hazard, the Building Department shall review the project for compliance with this chapter. Construction or development projects which do not require a building permit but involve some other local legislative or administrative approval (i.e., shorelines permit, special use permit, subdivision or short plat approval, etc.), shall be reviewed by the Planning Department for compliance with this chapter.

[Ord. 208 (1987) §14; Ord. 376 (2001) § 8; Ord. 539 (2014) § 2]

3.26.150 REVIEW OF CONSTRUCTION OR DEVELOPMENT PROJECTS.

Review of construction or development projects shall include, but not be limited to:

(a) Permit Review.

(1) Review of all development permits to determine that the permit requirements of this chapter have been satisfied.

(2) Review of 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.

(3) Review of all development permits to determine if the proposed development is located in a floodway. If located in a floodway, encroachment provisions shall be met.

(b) Use of Other Base Flood Data. When base flood elevation data has not been provided, the reviewing department shall obtain, review, and reasonably use any base flood elevation and floodway data available from a federal, state or other source.

(c) Information to be Obtained and Maintained.

(1) When base flood elevation data has been provided through the Flood Insurance Study, FIRM, or required as in BCC 3.26.150(b), the reviewing department shall obtain and maintain an elevation certificate to record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantial improved structures, and record whether the structure contains a basement.

(2) For all new or substantially improved floodproofed structures where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in BCC 3.26.150(b), the reviewing department shall:

(i) obtain and maintain the actual elevation (in relation to mean sea level) to which the structure was floodproofed, and

(ii) maintain the floodproofing certifications required herein.

(3) The reviewing department shall maintain for public inspection all records pertaining to the provisions of this chapter.

(d) Notice of Alteration of Watercourses. The reviewing department shall:

(1) Notify adjacent communities and the Washington State Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

(2) Confirm that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(e) Interpretation of FIRM Boundaries. The reviewing department shall 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.

(f) Changes to Area of Special Flood Hazard.

(1) If a project will alter the BFE or boundaries of the Area of Special Flood Hazard, then the project proponent shall provide the Floodplain Administrator with engineering documentation and analysis regarding the proposed change. If the change to the BFE or Area of Special Flood Hazard would normally require a Letter of Map Revision, then the project proponent shall initiate, and receive approval of, a Conditional Letter of Map Revision (CLOMR) prior to approval of the development permit. The project shall be constructed in a manner consistent with the approved CLOMR.

(2) If a CLOMR application is made, then the project proponent shall also supply the full CLOMR documentation package to the Floodplain Administrator to be attached to the floodplain development permit, including all required property owner modifications.

[Ord. 208 (1987) §15; Ord. 419 (2005 § 7; Ord. 471 (2009) § 3; Ord. 627 (2020) § 9]

3.26.160 VARIANCE PROCEDURE. (a) Except as provided in BCC 3.26.195, the Hearing Examiner shall hear and decide appeals and requests for variances from the requirements of this chapter.

(b) The Hearing Examiner shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the reviewing department in the enforcement or administration of this chapter.

(c) Decisions of the Hearing Examiner may be appealed to the Superior Court, pursuant to Chapter 36.70C RCW, or as otherwise permitted under Washington State law.

(d) In reviewing applications, the Hearing Examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, 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 flood plain management program for that area;
- (9) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) 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; 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, and water systems, and streets and bridges.

(e) 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 level, providing items 1 through 11 in BCC 3.26.160(d) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance shall also increase.

(f) Upon consideration of the factors of BCC 3.26.160(d) and the purposes of this chapter, the Hearing Examiner may add reasonable conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(g) The Planning Department shall maintain the records of appeals to the Hearing Examiner and report variances to the Federal Insurance Administrator, including justification for issuing the variance, upon request.

[Ord. 208 (1987) § 16; Ord. 295 (1996) § 1; Ord. 376 (2001) § 9; Ord. 539 (2014) § 3; Ord. 627 (2020) § 10]

3.26.170 CONDITIONS FOR VARIANCES. (a) Variances may be issued for the reconstruction, rehabilitation or restoration of historic structures without regard to the requirements of the rest of this section, provided, the Hearings Examiner makes a determination that the proposed repair, reconstruction, rehabilitation or restoration of the historic structure 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.

(b) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances shall only be issued upon:

(1) a showing of good and sufficient cause; and

(2) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

(3) 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; and

(4) written approval from the Washington State Department of Ecology approving the replacement or reconstruction of any structure within the floodway.

(e) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law 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. Variances primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

(f) 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 except BCC 3.26.160(e), and otherwise complies with BCC 3.26.070.

(g) Variances may be issued for agricultural structures of any size which are not used by the public or for human habitation, or the process, treating or packing of agricultural products and for accessory structures subject to the following:

(i) the structure must be anchored to resist flotation, collapse, and lateral movement;

(ii) the portions of the structure located below the BFE must be constructed with flood-resistant materials;

(iii) mechanical and utility equipment for the accessory structure must be elevated and floodproofed to or above the BFE;

(iv) the structure shall not be located in or encroach into a floodway;

(v) the structure shall be floodproofed in a manner to protect the structure from hydrostatic pressure by allowing for the automatic entry and exit of floodwaters, including providing 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. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;

(vi) the structure must be located in an A Zone (A, AE, AH, A1-A30, AR or A99) as reflected in the Flood Insurance Rate Map (FIRM); and

(vii) compliance with variance criteria in BCC 3.26.170(c) and 3.26.170 (d).

(h) Any applicant to whom a variance is granted shall be given written notice over the signature of the Floodplain Administrator that the issuance of a variance to construct a structure with a lowest floor elevation below the base flood elevation will result in increased premium rates for flood insurance and that such construction below the base flood elevation increases risks to life and property.
[Ord. 208 (1987) § 17; Ord. 295 (1996) § 2; Ord. 627 (2020) § 11]

3.26.180 APPLICATIONS FOR VARIANCES. All variance applications must be made in writing and submitted to the Floodplain Administrator. Applications must be made on the form provided, with all information filled in and the necessary signatures obtained. A non-refundable application fee as established by resolution of the Board of Benton County Commissioners must be submitted with the application.
[Ord. 208 (1987) § 18; Ord. 376 (2001) § 10; Ord. 539 (2014) § 4; Ord. 627 (2020) § 12]

3.26.190 HEARINGS, DATES, AND NOTICE OF VARIANCES. When an application has been filed in proper form and with the required information, the Planning Department shall present the application to the Hearing Examiner. The Hearing Examiner shall set the time and place for a public hearing. Notification of hearing shall be made in the following ways:

(a) A written notice of hearing shall be sent by United States mail to all property owners of record within a radius of three-hundred (300) feet of the exterior boundary of the subject property. The written notice shall be mailed not less than ten (10) days prior to the hearing. The County Assessors' records shall be used to determine property owners of record, and

(b) A legal notice shall be placed in the official county newspaper as designated by the Hearing Examiner at least ten (10) days prior to the hearing date.
[Ord. 208 (1987) § 19; Ord. 376 (2001) § 11; Ord. 539 (2014) § 5]

3.26.195 FLOODPLAIN ADMINISTRATOR APPROVAL OF VARIANCES. (a)

When the Benton County Board of Commissioners has declared a state of emergency as a result of a major flood within Benton County, the Floodplain Administrator or his/her designee is authorized to approve requests for variances to the requirements of this chapter relating to the replacement or reconstruction of dwellings within a floodway in unincorporated Benton County, provided the replacement or reconstruction shall not increase the footprint of the previous structure and is not considered a substantial improvement.

(b) The Floodplain Administrator or his/her designee may issue such a variance without a public hearing, but only after considering the factors set forth in BCC 3.26.160(d) and in accordance with the conditions set forth in BCC 3.26.170.

(c) The decision of the Floodplain Administrator or his/her designee to issue or deny a variance is appealable to the Hearing Examiner within ten (10) days from the date of the decision. A written request for appeal shall be submitted to the Hearing Examiner who will then hold a public hearing and review the decision of the Floodplain Administrator.

[Ord. 295 (1996) § 3; Ord. 376 (2001) § 12; Ord. 539 (2014) § 6; Ord. 627 (2020) § 13]

3.26.200 VIOLATIONS - PENALTIES. (a) Upon a finding of a first violation of any provision of this chapter, any person or contractor shall be punished by a civil penalty not to exceed five hundred dollars (\$500) for said violation, shall be responsible for court costs, if applicable, and shall be ordered to pay restitution for any damages caused by said violation.

(b) Upon the court's finding of a second or subsequent violation of the same provision of this chapter, any person or contractor and shall be found guilty of a misdemeanor.

[Ord. 208 (1987) §20; Ord. 224 (1988) § 4; Ord. 304 (1997) § 10]

3.26.210 INJUNCTIVE RELIEF. Notwithstanding the existence or use of any other remedy or means of enforcement of the provisions hereof, Benton County may seek legal or equitable relief to enjoin any acts or practices which constitute a violation of any of the provisions hereof and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person violating the provisions of this chapter. The Planning Department may accept a written assurance of discontinuance of any act in violation of this chapter from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this chapter.

[Ord. 208 (1987) § 21; Ord. 376 (2001) § 13; Ord. 627 (2020) § 14]

3.26.220 SEVERABILITY. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.
[Ord. 208 (1987) § 22]