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May 5, 2017

By U.S. Mail and E-mail (matt.martin@deschutes.org)

Matthew Martin
Community Development Building
117 NW Lafayette Avenue
Bend, OR 97703

Re: Crosswater Homeowners Association Comments on Flood Plain Zone Code
Amendments

Dear Mr. Martin:

This office represents the Crosswater Homeowners Association (hereinafter referred to as "Crosswater"), comprised of the owners of property located in Deschutes County along Canoe Camp Road. On behalf of Crosswater, please consider the following comments and suggestions regarding the draft Deschutes County Code ("Code" or "DCC") amendments related to the proposed Flood Plain Combining Zone ("FP").

The following suggested edits pertain to language in the proposed definition and the permitted and conditional use sections, as well as other sections of the proposed Code. In addition, Exhibit 1, attached hereto contains a chart showing the County's proposed language, the proposed language from Crosswater with underlined additions and strikethrough deletions, and a clean set of Crosswater recommendations.

I. Definitions Section

The County's notification regarding the zoning code amendments explained that the changes were related to the designation of an FP overlay zone, to replace the base zone model that currently results in split-zoned property. Further, the amendments were described as limited in scope to only those code sections regulating floodplains. However, the proposed amendments offer a definition of the term "Development" that will have unanalyzed ramifications to the entirety of the zoning code.

The proposed definition of "Development" reads:

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

However, it appears that this proposed definition is the result of a scrivener's error because the term that is used elsewhere in the floodplain regulations and requires definition is the term "Floodplain Development." Under DCC 18.96.030.F, express reference is made to "Floodplain Development as defined in DCC 18.04.030."

The redline changes to the Code shown on the document "Exhibits B-L" on the County's Flood Plain Zone website show what appears to be an accidental deletion of the defined term "Floodplain Development" under DCC 18.04.030 and replacing it with the term "Development." In comparing the redline deletion of "Floodplain Development" with the proposed definition of "Development," no other aspect of the definition has changed.

Crosswater urges the County to change the terminology back to the required defined term of "Floodplain Development," by inserting the word "Floodplain" before the word "Development." The correction should read as follows:

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

If this correction is not made, Crosswater requests the County delay adoption of the Code until additional public notice and comment can take place regarding the definition of "development," because the term is used throughout the Code and should be more broadly defined than the limiting language of "special flood hazard" used at the end of the above definition.

II. The prefatory language in Code Sections 18.96.030 and 18.96.040 requires adjustment to provide consistency with the remainder of the Code.

As described in DCC 18.96.020, the areas designated as Flood Plain Combining Zone are those areas mapped as "Special Flood Hazard Areas" within the referenced Flood Insurance Study or as determined by the Planning Director upon requested review. Thus, a parcel may be only partially mapped within the FP overlay, but the remainder of the parcel will lie outside the FP overlay. Therefore, the proposed permitted and conditional use code sections under DCC Ch. 18.96 should be aimed at protecting the floodplain designated area, but should not override or limit the zoning requirements of the underlying primary zone. In order to achieve this goal, the proposed introductory language for FP code sections for the uses permitted outright (DCC 18.96.030) and conditional uses permitted (DCC 18.96.040) must be adjusted to ensure that the County is clear as to the meaning and applicability of the FP regulations.

Proposed Revisions to Section 18.96.030.

The County's full proposed introductory language to Section 18.96.030 states:

"The following uses and their accessory uses are permitted outright in the FP Combining Zone subject to the provisions in DCC 18.96 and all applicable sections of this title.

When there is a conflict between the primary zone and the provisions of DCC Title 18, the provisions of the FP Combining Zone shall control."

Thereafter, the Code section lists several uses permitted outright (DCC 18.96.030.A-I). However, this drafting does not make sense because, for example, many of the uses listed under DCC 18.96.030.A-I are not uses permitted in the Forest Zone (F-2). Thus, under the second sentence of the proposed language, on a parcel that is zoned F-2 and partially covered by the Flood Plain Combining Zone some of these permitted uses would be allowed in the FP Zone even though the uses are not permitted in the F-2 Zone. This should not be the outcome of a new overlay zone, when the primary zone is the true driver of allowed uses on a particular property.

The following underlined additions, and strikethroughs would resolve Crosswater's concerns:

"The following uses and their accessory uses are permitted outright in the FP Combining Zone, if such uses are permitted outright in the property's primary zone, subject to the provisions in DCC 18.96, and all applicable sections of this title. When there is a conflict between the primary zone, the provisions of DCC Title 18, ~~and~~ the provisions of DCC Ch. 18.96, whichever imposes the more stringent restriction shall prevail ~~the provisions of the FP Combining Zone shall control.~~"

These proposed changes reflect the need to protect the floodplain, while recognizing that the primary zone will still govern the scope of allowed uses for a particular property.

Proposed Revisions to DCC 18.96.040.

The County's full proposed introductory language to Section 18.96.040 states:

"The following uses and their accessory uses may be allowed in the FP Combining Zone subject to the provisions of DCC 18.96 and all applicable sections of this title:"

Thereafter, the Code section lists several uses permitted outright (DCC 18.96.040.A-N). However, this drafting would be inconsistent with the County's treatment of overlay zones, as well as inconsistent with the proposed change above for DCC 18.60.030.

The following underlined additions, and strikethroughs would resolve Crosswater's concerns:

"In a zone with which the FP Zone is combined, the conditional uses listed below may be permitted if those uses are permitted conditionally in the property's primary zone, subject to the provisions of DCC Ch. 18.96, DCC Ch. 18.128, and all other applicable sections of DCC Title 18. When there is a conflict between the primary zone, the provisions of DCC Ch. 18.96, DCC Ch. 18.128, or other applicable provisions of DCC Title 18, whichever imposes the more stringent restriction shall prevail. ~~The following uses and their~~

~~accessory uses may be allowed in the FP Combining Zone subject to the provisions of DCC 18.96 and all applicable sections of this title:"~~

The proposed language would more closely align with the rest of the County Code and more clearly track the intent to add protections to those areas that fall within the floodplain without affecting the uses allowed outside the floodplain. Further, as noted above in the discussion of DCC 18.96.030, Crosswater's proposed language specifies that only those conditional uses allowed in the property's underlying primary zone would be allowed in the area that is combined with the floodplain.

Related changes to other proposed sections of the Code would then be required as follows. Under proposed DCC 18.96.045.B, an exception to use limitations may be allowed, but the limitation should still be subject to the allowed conditional uses in the underlying zone. Therefore, Crosswater requests the following underlined addition to DCC 18.96.045.B:

"Exception: An exception to the provisions of DCC 18.96 may be approved for uses listed under DCC 18.96.040 upon finding under 18.96.130 that the use is located outside all areas designated as "Special Flood Hazards" on the Federal Flood Insurance Rate Maps (FIRM), and that the use is permitted conditionally in the property's primary zone."

The foregoing changes will ensure that conditional uses are carefully analyzed under all applicable Code sections, and that the County does not inadvertently expand potential types of conditional uses on a property where the underlying primary zone would not otherwise allow such use.

III. Other Errata

For the benefit of consistent drafting, Crosswater suggests the following other changes to the code:

- Under proposed DCC 18.113.060, add the word "combining" in the fourth line down, between "floodplain" and "zones."
- Under proposed DCC 18.96.080.G.2.f, change "to include but not limited to" to "that shall include, but not be limited to..."
- Under proposed DCC 18.96.080.G.3.d, change "BFE" to "base flood elevation (BFE)." The acronym BFE is used again under other Code sections and this change will clarify the meaning of the term.
- Under proposed DCC 18.96.080.G.6.d, change "toxic material" to "hazardous or toxic substances." Also, add a semicolon at the end of this subsection.
- Under proposed DCC 18.96.080.G.6.h.ii., add "and" after the semicolon.
- Under DCC 18.96.080.G.7, add "hazardous or" before "toxic substances" and after "toxic substances" add ", oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality" to be consistent with DCC 18.96.080.G.6.d.

TOMASI SALYER MARTIN

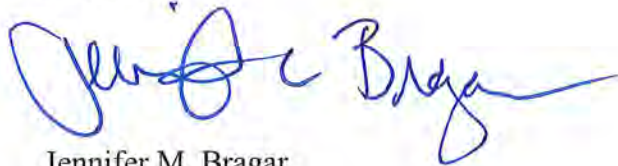
Matthew Martin

Page 5

CONCLUSION

If the County makes the changes proposed by Crosswater, then the Code amendments will move toward the County's goals to protect floodplain areas from improper development, as well as move toward better consistency with the existing Code. If you would like to discuss any of the foregoing suggestions, please contact me at 503-894-9900. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer M. Bragar". The signature is fluid and cursive, with the first name "Jennifer" written in a stylized, looped manner, followed by "M." and "Bragar".

Jennifer M. Bragar

JMB/dh

Exhibit 1:
Crosswater's Proposed Flood Plain Combining Zone Code Language

County Code Section	Proposed Deschutes County Code Language	Proposed Crosswater County Code Language with underlined additions and strikethrough deletions	Proposed Clean Version of Crosswater Recommended Language
18.113.060.H (standards for destination resorts)	Floodplain requirements. The floodplain combining zone (FP) requirements of DCC 18.96 shall apply to all developed portions of a destination resort in an FP Zone in addition to any applicable criteria of DCC 18.113. Except for floodplain areas which have been granted an exception to LCDC goals 3 and 4, floodplain zones shall not be considered part of a destination resort when determining compliance with the following standards;	Floodplain requirements. The floodplain combining zone (FP) requirements of DCC 18.96 shall apply to all developed portions of a destination resort in an FP Zone in addition to any applicable criteria of DCC 18.113. Except for floodplain areas which have been granted an exception to LCDC goals 3 and 4, floodplain <u>combining</u> zones shall not be considered part of a destination resort when determining compliance with the following standards;	Floodplain requirements. The floodplain combining zone (FP) requirements of DCC 18.96 shall apply to all developed portions of a destination resort in an FP Zone in addition to any applicable criteria of DCC 18.113. Except for floodplain areas which have been granted an exception to LCDC goals 3 and 4, floodplain combining zones shall not be considered part of a destination resort when determining compliance with the following standards;
18.04.030 (definitions)	"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.	" <u>Floodplain</u> Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.	"Floodplain Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

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County Code Section	Proposed Deschutes County Code Language	Proposed Crosswater County Code Language with underlined additions and strikethrough deletions	Proposed Clean Version of Crosswater Recommended Language
18.96.030 (permitted uses)	The following uses and their accessory uses are permitted outright in the FP Combining Zone subject to the provisions in DCC 18.96 and all applicable sections of this title. When there is a conflict between the primary zone and the provisions of DCC Title 18, the provisions of the FP Combining Zone shall control.	The following uses and their accessory uses are permitted outright in the FP Combining Zone, <u>if such uses are permitted outright in the property's primary zone,</u> subject to the provisions in DCC 18.96, and all applicable sections of this title. When there is a conflict between the primary zone, the provisions of DCC Title 18, <u>and the provisions of DCC Ch. 18.96, whichever imposes the more stringent restriction shall prevail</u> the provisions of the FP Combining Zone shall control.	The following uses and their accessory uses are permitted outright in the FP Combining Zone, if such uses are permitted outright in the property's primary zone, subject to the provisions in DCC 18.96, and all applicable sections of this title. When there is a conflict between the primary zone, the provisions of DCC Title 18, or the provisions of DCC Ch. 18.96, whichever imposes the more stringent restriction shall prevail.
18.96.040	The following uses and their accessory uses may be allowed in the FP Combining Zone subject to the provisions of DCC 18.96 and all applicable sections of this title:	<u>In a zone with which the FP Zone is combined, the conditional uses listed below may be permitted if those uses are permitted conditionally in the property's primary zone, subject to the provisions of DCC Ch. 18.96, DCC Ch. 18.128, and all other applicable sections of DCC Title 18. When there is a conflict between the primary zone, the provisions of DCC Ch. 18.96, DCC Ch. 18.128, or other applicable provisions of DCC Title 18, whichever imposes the more stringent restriction shall prevail.</u> The following uses and their accessory uses may be allowed in the FP Combining Zone subject to the provisions of DCC 18.96 and all applicable sections of this title:	In a zone with which the FP Zone is combined, the conditional uses listed below may be permitted if those uses are permitted conditionally in the property's primary zone, subject to the provisions of DCC Ch. 18.96, DCC Ch. 18.128, and all other applicable sections of DCC Title 18. When there is a conflict between the primary zone, the provisions of DCC Ch. 18.96, DCC Ch. 18.128, or other applicable provisions of DCC Title 18, whichever imposes the more stringent restriction shall prevail.

County Code Section	Proposed Deschutes County Code Language	Proposed Crosswater County Code Language with underlined additions and strikethrough deletions	Proposed Clean Version of Crosswater Recommended Language
18.96.045.B (use limitations)	Exception: An exception to the provisions of DCC 18.96 may be approved for uses listed under DCC 18.96.040 upon finding under 18.96.130 that the use is located outside all areas designated as "Special Flood Hazards" on the Federal Flood Insurance Rate Maps (FIRM).	Exception: An exception to the provisions of DCC 18.96 may be approved for uses listed under DCC 18.96.040 upon finding under 18.96.130 that the use is located outside all areas designated as "Special Flood Hazards" on the Federal Flood Insurance Rate Maps (FIRM), <u>and that the use is permitted conditionally in the property's primary zone.</u>	Exception: An exception to the provisions of DCC 18.96 may be approved for uses listed under DCC 18.96.040 upon finding under 18.96.130 that the use is located outside all areas designated as "Special Flood Hazards" on the Federal Flood Insurance Rate Maps (FIRM), and that the use is permitted conditionally in the property's primary zone.
18.96.080.G.2.f (criteria to evaluate conditional uses)	Applicants shall supply a comprehensive Maintenance Plan for the entire structure to include but not limited to: exterior envelope of structure; all penetrations to the exterior of the structure; all shields, gates, barriers, or components designed to provide floodproofing protection to the structure; all seals or gaskets for shields, gates, barriers, or components; and, the location of all shields, gates, barriers, and components as well as all associated hardware, and any materials or specialized tools necessary to seal the structure.	Applicants shall supply a comprehensive Maintenance Plan for the entire structure <u>that shall include,</u> to include, but not be limited to: exterior envelope of structure; all penetrations to the exterior of the structure; all shields, gates, barriers, or components designed to provide floodproofing protection to the structure; all seals or gaskets for shields, gates, barriers, or components; and, the location of all shields, gates, barriers, and components as well as all associated hardware, and any materials or specialized tools necessary to seal the structure.	Applicants shall supply a comprehensive Maintenance Plan for the entire structure that shall include, but not be limited to: exterior envelope of structure; all penetrations to the exterior of the structure; all shields, gates, barriers, or components designed to provide floodproofing protection to the structure; all seals or gaskets for shields, gates, barriers, or components; and, the location of all shields, gates, barriers, and components as well as all associated hardware, and any materials or specialized tools necessary to seal the structure.
18.96.080.G.3.d (criteria to evaluate conditional uses)	Electrical crossover connections shall be a minimum of 12 inches above BFE.	Electrical crossover connections shall be a minimum of 12 inches above <u>base flood elevation</u> (BFE).	Electrical crossover connections shall be a minimum of 12 inches above base flood elevation (BFE).

County Code Section	Proposed Deschutes County Code Language	Proposed Crosswater County Code Language with underlined additions and strikethrough deletions	Proposed Clean Version of Crosswater Recommended Language
18.96.080.G.6.d (criteria to evaluate conditional uses)	Not used to store toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall unless confined in a tank installed in compliance with this ordinance or stored at least one foot above Base Flood Elevation	Not used to store toxic material <u>or hazardous substances</u> , oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall unless confined in a tank installed in compliance with this ordinance or stored at least one foot above Base Flood Elevation;	Not used to store toxic or hazardous substances, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall unless confined in a tank installed in compliance with this ordinance or stored at least one foot above Base Flood Elevation;
18.96.080.G.6.h.ii. (criteria to evaluate conditional uses)	The bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening;	The bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening; <u>and</u>	The bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening; and

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County Code Section	Proposed Deschutes County Code Language	Proposed Crosswater County Code Language with <u>underlined additions</u> and strikethrough deletions	Proposed Clean Version of Crosswater Recommended Language
18.96.080.G.7 (criteria to evaluate conditional uses)	Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.	Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that <u>hazardous or toxic substances, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality</u> will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.	Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that hazardous or toxic substances, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

May 5, 2017

Tia M. Lewis
T: 541-749-4048
tlewis@schwabe.com

VIA E-MAIL AND FIRST CLASS MAIL

Deschutes County Planning Commission
c/o Mr. Matt Martin, Associate Planner
Deschutes County Planning Division
Community Development Department
117 NW Lafayette Avenue
Bend, Oregon 97703

RE: Flood Plain Zone Amendments
County Land Use File Nos. 247-17-140-ZC/141-PA/142-TA
Our File No.: 116094-150752

Dear Planning Commissioners:

As a follow-up to the April 13, 2017 public hearing before the Deschutes County Planning Commission, we would like to offer our comments regarding the proposed Flood Plain Zone Overlay Zone.

Summary: We recommend the County utilize the traditional combining zone concept of allowing those uses which are allowed outright or conditionally in the underlying zones and then include special provisions regulating those uses for the floodplain. This will simplify the combining zone and make it consistent with the other combining zones in the County. We also suggest adding a separate section for definitions in the Floodplain Combining Zone which gives meaning to those terms specifically to the floodplain (and not generally to Title 18). Subdivisions are currently treated as a conditional use in the Flood Plain Combining Zone which does not make sense since subdivisions, by definition, are not structural developments. We recommend the County add a separate section regulating subdivision applications. Finally, we suggest adding fences which do not impact, prevent, or otherwise obstruct the flow of water as a permitted use.

DISCUSSION

I. An Overlay Zone Versus a Base Zone

The Planning Division describes an "Overlay Zone" on its website under "Frequently Asked Questions" as follows:

What is an Overlay Zone?

An “overlay zone,” or sometimes referred to as a “combining zone,” is a special zoning district, placed over an existing base zone(s), which identifies unique conditions and regulatory standards in addition to those in the underlying base zone. The most common overlay zones in the county include the Landscape Management (LM), Surface Mining Impact Area (SMIA), Airport Safety (AS), and Wildlife Area (WA).

And a “Base Zone” as:

What is a Base Zone?

A “base zone” is a county zone that specifies allowable uses for real property and land use requirements including minimum parcel size and development standards. The most common base zones in the County include Exclusive Farm Use (EFU), Forest Use (F-1/F-2), Rural Residential (RR-10), and Multiple Use Agriculture (MUA-10).

The distinction between these two zones is important because an overlay zone does not replace an underlying base zone. This distinction is affirmed by the Oregon Department of Land Conservation and Development (DLCD) 2007 guide called, An Introductory Guide to Land Use Planning for Small Cities and Counties in Oregon. In Chapter 10, “Other Land Use Considerations,” DLCD describes “Overlay Zones” as follows:

Overlay Zones

Zoning ordinances often contain one or more “overlay zones” (sometimes called “combining zones”). An overlay zone is, as the name implies, a zone that adds requirements or considerations regarding the use of affected land. They do not replace the underlying zone. [Emphasis added.]

* * *

Overlay zones may make an otherwise permitted use into a conditional use, alter setback or height requirements, or add other types of approval criteria, depending on the purpose of the zone. Overlay zones must be shown on the official zoning map, and they apply only to the land so designated.

Reviewing the proposed Flood Plain Combining Zone, the Planning Division proposes to take the existing Flood Plain base zone and essentially rename it a Flood Plain “Combining” zone.¹

¹ Not only does this make the proposal inconsistent with all other combining zones in the County, it does not address the multitude of problems with the current language in the Flood Plain zone.

The Planning Division's description of an overlay zone above lists several common overlay zones in the County including LM, SMIA, AS and WA. As shown below, each of these combining zones refer to the underlying zones for what uses are permitted outright or conditionally:

➤ Landscape Management Zone (LM), 18.84:

18.84.030. Uses permitted outright.

Uses permitted in the underlying zone with which the LM Zone is combined shall be permitted in the LM Zone, subject to the provisions in DCC 18.84.

18.84.040. Uses permitted conditionally.

Uses permitted conditionally in the underlying zone with which the LM Zone is combined shall be permitted as conditional uses in the LM Zone, subject to the provisions in DCC 18.84.

➤ Surface Mining Impact Area Combining Zone (SMIA), 18.56

18.56.040. Uses Permitted Outright.

Uses permitted outright shall be those identified in the underlying zone(s) with which the SMIA Zone is combined.

18.56.050. Conditional Uses Permitted.

Uses permitted conditionally shall be those identified as conditional uses in the underlying zone(s) with which the SMIA Zone is combined and shall be subject to all conditions of the underlying zone(s) as well as the conditions of the SMIA Zone.

➤ Airport Safety Combining Zone (AS), 18.80

18.80.050. Uses Permitted Outright.

Any uses permitted outright in the underlying zone with which the AS Zone is combined shall be allowed except as provided in DCC 18.80.044.

18.80.050. Uses Permitted Outright.

Any uses permitted outright in the underlying zone with which the AS Zone is combined shall be allowed except as provided in DCC 18.80.044.

➤ Wildlife Area Combining Zone (WA) 18.88

18.88.030. Uses Permitted Outright.

In a zone with which the WA Zone is combined, the uses permitted outright shall be those permitted outright by the underlying zone.

18.88.040. Uses Permitted Conditionally.

A. Except as provided in DCC 18.88.040(B), in a zone with which the WA Zone is combined, the conditional uses permitted shall be those permitted conditionally by the underlying zone subject to the provisions of the Comprehensive Plan, DCC 18.128 and other applicable sections of this title.

We suggest the County simplify the Floodplain Combining Zone such that the underlying zone dictates the predominant permitted and conditional uses allowed in the FP Combining Zone. Rather than spell-out all the permitted and/or conditional uses allowed in the Flood Plain Combining Zone which is what the County proposes now, we recommend the following language replace Sections 18.96.030, Uses Permitted Outright and 18.96.040, Conditional Uses Permitted:

18.96.030, Uses Permitted Outright

Uses permitted in the underlying zone with which the FP Zone is combined shall be permitted in the FP Zone, subject to the provisions in DCC 18.96.

18.96.040, Conditional Uses Permitted

Uses permitted conditionally in the underlying zone with which the FP Zone is combined shall be permitted as conditional uses in the FP Zone, subject to the provisions in DCC 18.96 and Chapter 18.128 (Conditional Use).

If the County finds it wants to prohibit certain uses in the FP Combining Zone, the County could expand on the existing list of prohibited uses in section 18.96.050.²

II. Definitions

Included in the Oregon Model Flood Damage Prevention Code that the County is modeling its code after is a separate section for definitions. It makes sense to include a definition section tailored to the specifics of developing in the Floodplain Combining Zone. The Planning Division instead is proposing to modify the definition section of Title 18.04 to include, eliminate, or change definitions related to the Floodplain Combining zone (see Planning Division's Exhibit F of the April 13, 2017 Planning Commission meeting). Adding a separate section for definitions in the Floodplain Combining Zone will give meaning to those terms specifically to the Floodplain Combining zone and not generally to all zones or Title 18 code language.

III. Subdivisions in the Flood Plain Combining Zone

Currently, the proposed rules treat subdivisions and partitions as a "use" in the Floodplain Combining Zone and require a Conditional Use Permit. In addition, the proposed code includes

² Section 18.96.050. Prohibited Uses.
Marinas, boat slips and boat houses on private property.

criteria to evaluate conditional uses, including subdivision and partition proposals, in Section 18.96.080:

18.96.040 Conditional Use Permitted

H. Subdividing or partitioning of land, any portion of which is located in a flood plain, subject to the provisions of DCC Title 18 and DCC Title 17, the Subdivision/Partition Ordinance.

18.96.080, Criteria to Evaluate Conditional Uses

- E. Subdivision and Partition Proposals.
1. All subdivision and partition proposals shall be consistent with the need to minimize flood damage.
 2. All subdivision and partition proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
 3. All subdivision and partition proposals shall have adequate drainage provided to reduce exposure to flood damage.
 4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

The Oregon Model Flood Damage Prevention Code, however, does not treat subdivisions or partitions as a use, but adds a separate section addressing standards for “Subdivision Proposals” similar to the Criteria to Evaluate Conditional Uses:

5.1-4 Subdivision Proposals

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

Rather than regulate subdivisions and partitions as a “use” in the Floodplain Combining Zone, we suggest adding a separate section similar to the Model Code that addresses the review of subdivision applications and delete the requirement of a Conditional Use permit for subdivisions and partitions. Suggested language includes:

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less) subject to the exceptions below:

(A) If a planned subdivision shows the floodplain is contained entirely within an open space tract, a detailed engineering analysis to develop base flood elevation data is not required.

(B) In large-lot subdivisions or single-lot subdivisions where the building sites area clearly outside of the Special Flood Hazard Areas, a detailed engineering analysis to develop base flood elevation data is not required. An example is where a subdivision proposal indicates a steep grade between the approximate Special Flood Hazard Areas and the building sites which are located on natural high ground.

The underlined language above is from the FEMA Guidelines for Managing Floodplain Development in Approximate Zone A Areas (April 1995).

IV. Fence Development in the Flood Plain Combining Zone

Add as a use permitted outright (assuming the County retains the list of permitted uses), “fences which do not impact the flow of water”:

18.96.030. Uses Permitted Outright.

The following uses and their accessory uses are permitted outright in the FP Combining Zone subject to the provisions in DCC 18.96 and all applicable sections of this title. When there is a conflict between the primary zone and the

provisions of DCC Title 18, the provisions of the FP Combining Zone shall control.

* * *

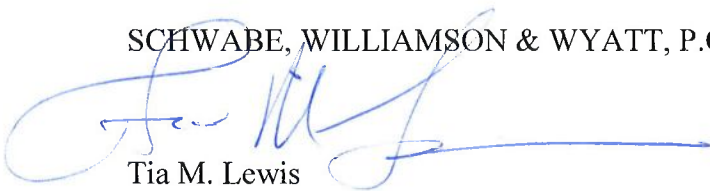
J. Fences which do not impact, prevent or otherwise obstruct the flow of water.

Fences are a necessary component of protecting riparian vegetation yet the current code language is unclear and has been the subject of much debate regarding whether fences are structures and whether they are subject to setback standards or allowed in the Flood Plain zone. This suggested language is taken from the City of Portland Code under Johnson Creek Flood Zones. It is simple and easy to apply and will resolve the current code ambiguities for this important issue. We have also seen code provisions in other areas which specifically allow "open wire" or "open rail" fencing as outright uses. This would be another unambiguous way to address this issue.

Thank you for the opportunity to submit comments.

Sincerely,

SCHWABE, WILLIAMSON & WYATT, P.C.



Tia M. Lewis

TML