

CITY OF GEARHART PLANNING COMMISSION
STAFF REPORT

April 5, 2018

To: Gearhart Planning Commission
From: Carole Connell, City Planner
Re: Legislative Zone Code Text Amendments to Article 5 Flood Hazard Overlay Zone
City File #18-005ZTA

I. Background

The City of Gearhart is included in a revision process of Flood Insurance Rate Maps for coastal Clatsop County. This is part of a national effort to improve flood map data in coastal areas, and every other Oregon coastal county will also see their flood maps improved within the next two years. The Clatsop County maps will become effective on **June 20, 2018**. This is the culmination of a multi-year process of map study and public outreach, including a public open house and appeal period. When new maps become effective all communities included in the revision area must formally adopt the new maps in their floodplain development ordinance to give legal standing for local regulation. This is done by simply updating the existing map reference date with the new date of the revised Flood Insurance Study.

At the same time, local ordinances must also be reviewed to check their consistency with Title 44 of the Code of Federal Regulations and any existing higher standards in place in the State of Oregon. This review only occurs when new maps are adopted or when a community has an NFIP program audit, so it is common for these reviews to happen every ten years or more. Changes to State and Federal code that have happened since the last review are then incorporated into the revised ordinance.

Communities must have compliant ordinances *in effect* the same day the new maps become effective. FEMA will suspend communities from the National Flood Insurance Program immediately if amended ordinances have not been adopted or are not yet in effect. While a community is suspended from the NFIP, no new NFIP policies may be purchased in the community and existing policy holders will not be able to renew their flood insurance. The City will lose access to disaster relief and hazard mitigation grants and no Federal mortgages will be allowed in mapped flood hazard areas.

Currently, there are 190 National Flood Insurance Program policies in Gearhart, providing over \$55 million in insurance coverage. The State of Oregon provides a model floodplain development ordinance which can be used to apply new or modified ordinance language required by this process. The model code is considered to meet all State and Federal minimum standards.

The City of Gearhart Planning Commission is considering a legislative amendment to the Gearhart Zoning Ordinance Article 5 Flood Hazard Overlay Zone in order to comply with federal regulatory requirements. Staff recommends approval of the suggested revisions by the state Department of Land Conservation and Development (DLCD) staff dated March 15, 2018.

The amendments to the Gearhart Zoning Ordinance are attached as Exhibit A.

II. APPLICABLE REVIEW CRITERIA AND PROCEDURES

A. Applicable Criteria of the Gearhart Zoning Ordinance (GZO)

1. Article 5 Flood Hazard Overlay Zone
2. Article 11 Amendments
3. Article 13 Administrative Provisions
4. Gearhart Comprehensive Plan

B. Amendment Process

An amendment to the Gearhart Zoning Code text is a legislative amendment. Before amendments to the text of the zoning code are approved, findings will be made that the amendments are consistent with the goals and policies of the Comprehensive Plan, and that there is a public need for the proposed amendment in accordance with Article 11 Amendments.

In accordance with Article 13 the Planning Commission will conduct the first legislative public hearing on April 12, 2018. Their recommendation will be sent to the City Council who renders a decision by ordinance. On March 20, 2018 Public Notice was posted and mailed to all property owners affected by the Flood Hazard Zone. The notice advertised the Planning Commission hearing and a City Council hearing on 5-2-18.

III. ATTACHMENTS

- A. Exhibit A Draft GZO Article 5 Amendments
- B. FEMA letter dated 3-20-18

IV. PROPOSED AMENDMENT LANGUAGE

Please see the text amendments to GZO Article 5 Flood Hazard Overlay Zone in the attached Exhibit A.

V. FINDINGS OF COMPLIANCE FOR THE PROPOSED CODE AMENDMENTS

GZO Section 10.040 Amendment Criteria.

The following is a response to the code amendment approval criteria:

A. *Is the amendment consistent with the policies of the Gearhart Comprehensive Plan?*

The proposed code amendment relates to the Comprehensive Plan as follows:

(1) Citizen Involvement, Revision, Implementation and Process Goals (LCDC Goal 1 & 2)

Plan Goals 1 and 2 are intended to assure citizen involvement is provided in the amendment process. Policy 1 states *“the City will ensure that citizens, including residents and property owners, have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and development of policies.”*

The process also requires an advertised public hearing with a recommendation by the Planning Commission and a decision by the City Council based on findings that there is a public need for the amendments and that the amendments are in compliance with the Gearhart Comprehensive Plan.

FINDINGS: The City finds that notice of a public hearing of the amendment was published, posted and mailed to affected property owners on March 20, 2018 advertising both the Planning Commission and City Council hearings. The DLCD was notified more than 35 days before the initial Planning Commission hearing scheduled for April 12, 2018, in accordance with GZO Article 11 Administrative Provisions. All meetings are taped to maintain a record.

(2) Open Space, Scenic Areas, Historic and Natural Resources (LCDC Goal 5)

The Gearhart Open Space, Scenic Areas, Historic and Natural Resources (Goal 5) and Goal policies strive to conserve, preserve, and protect open space, scenic areas, historic and natural resources in and around the Gearhart Community for future generations.

FINDINGS: The City finds the code amendments support the goal to conserve, preserve and protect open space and natural resource lands needed to retain flood waters based on the most current mapping conducted by FEMA.

(3) Air, Water, and Land Resource Quality (LCDC Goal 6)

The Air Water and Land Resource Quality policies assure there will be standards that protect air, water, and land resource quality including laws that prevent noise pollution.

FINDINGS: The City finds the amendments protect water quantity and quality policies by prohibiting development that is not in compliance with current federal and state flood hazard regulations.

(4) Flood Hazards (LCDC Goal 7)

City flood protection policies are established in coordination with applicable local, state and federal standards to identify geologic hazard areas and flood hazard zone identified by the FEMA Flood Rate Insurance Map. In particular,

Plan Policy 2. *The city will rely on the requirements of its Flood Hazard Overlay Zone to regulate development in flood hazard areas to ensure that provisions of the National Flood Insurance program are met.*

FINDINGS: The City finds the code amendments to Article 5 bring the City’s flood hazard protection requirements up to date with June 20 2018 FEMA mapping for Clatsop County and current federal development regulations.

(5) Recreation (LCDC Goal 8)

The Gearhart Recreation Goal policies encourage further development of recreation facilities in the Gearhart area that are commensurate with air, land, water, environmental, and scenic resources.

FINDING: The City finds the flood protection amendments are not directly related to city or state recreation goals.

(6) Economy and Energy (LCDC Goal 9 and 13)

The Gearhart Economy and Energy Goal policies ensure a stable and healthy economy in Gearhart through all available resources, both human and natural resources.

FINDING: The City finds the code amendment does not directly relate to this goal.

(7) Housing (LCDC Goal 10)

The Gearhart Housing Goal policies ensure decent, affordable housing and housing availability for all residents of the Gearhart area.

FINDING: The City finds the code amendments do not directly relate to this goal.

(8) Public Facilities and Services (LCDC Goal 11)

The Gearhart Public Facilities and Services Goal policies assure compliance with applicable local, state, and federal environmental noise, air, water, and solid waste standards.

FINDING: The City finds the code amendments do not directly relate to this goal.

(9) Transportation (LCDC Goal 12)

The Gearhart Transportation Goal policies are established to provide and encourage safe, convenient, and economic systems for all modes of transportation in the Gearhart area.

FINDING: The City finds the code amendments do not directly relate to this goal.

(10) Urban Growth (LCDC Goal 14)

The Gearhart Urban Growth Goal policies are established to manage urban growth.

FINDING: The City finds the code amendments do not directly relate to this goal.

(11) Necanicum Estuary (LCDC Goals 16)

The Gearhart Necanicum Estuary is a conservation estuary designated for long term uses that do not require major alteration of the estuary except for purposes of restoration. Necanicum Estuary goals and policies are established to maintain all identified marsh areas in their natural, productive condition and protect the integrity of the marshes themselves. Under this goal is the following relevant policy:

Plan Policy 1. Page 27 Development that takes place in areas upland from the estuary shall respect the natural functions of the adjacent water areas. Development of adjacent shoreland areas should, at a minimum give consideration to the control of vegetation removal, storm water runoff and public access. A general rule should be the more intensive the adjacent shoreland development, the more careful the control of it potential adverse impacts.

FINDINGS: The City finds the FEMA maps and flood control provisions regulate shoreland development from Necanicum Estuary flooding. Property owners adjoining the estuary benefit from the NFIP insurance policies and periodic updating of flood boundary maps and methods of flood damage protection provided by FEMA. The proposed amendments help to protect the natural functions of the estuary and the shoreland property owners.

(12) Coastal Shorelands (LCDC Goal 17)

The Gearhart Coastal Shorelands Goal is to conserve, protect, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for

protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. In particular,

Plan Policy 4 page 32: *The City will rely on the requirements of its Flood Hazard Overlay Zone to regulate development in flood hazard areas to ensure that the provisions of the National Flood Insurance Program are met.*

FINDING: The City finds the proposed amendments comply with current NFIP and FEMA regulations as required by the above city shorelands policy.

(13) Beaches and Dunes (LCDC Goal 18)

The Gearhart Beaches and Dunes Goal is to conserve, protect, and where appropriate restore the resources and benefits of coastal beach and dune area. In addition, the goal is to reduce the hazard to human life and property from actual or man-induced actions associated with coastal beach and dune area. In particular:

Plan page 36 Policy 7: *All construction shall be in conformance with applicable FEMA Flood Management requirements.*

FINDING: The City finds the amendments assure the city flood regulations are in conformance with current FEMA flood management requirements.

(14) Ocean Resources (LCDC Goal 19)

The Gearhart Ocean Resources Goal policies are established to assure cooperation with appropriate state and federal agencies in conserving the long term values, benefits and natural resources of the near-shore ocean and the continental shelf.

FINDING: The City finds the code amendments do not directly relate to this goal.

B. *Is there are public need for the amendments?*

FINDING: There is a public need for flood prone property owners to be eligible for the National Flood Insurance Program (NFIP). If the amendments are not adopted by June 20, 2018 affected property owners will be suspended from NFIP policies. There is a need to assure new development complies with updated flood hazard regulations. There is an urgent need to meet the deadline.

VI. RECOMMENDATION

Motion: Based on federal regulatory requirements and the findings in this report I move to recommend approval of the proposed amendments and forward this decision to City Council.

Requested Changes to City of Gearhart Floodplain Development Ordinance

March 15, 2018

David Lentzner, Risk MAP Coordinator, Oregon Department of Land Conservation and Development

Joint FEMA/DLCD review with Roxanne Pilkenton, FEMA Region X, Seattle, Washington

~~Deletions requested~~

Insertions requested

5.010 DEFINITIONS

“AREA OF SPECIAL FLOOD HAZARD” The land in the flood~~ing~~ plain subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letter A or V.

“BASEMENT” means any area of the building having its floor subgrade (below ground level) on all sides.

“BREAKAWAY WALLS” Means a wall that is not a part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated~~ed~~ portion of the building or supporting foundation system.

“COASTAL HIGH HAZARD AREAS” Means an area of special flood hazard extending from offshore to the inland limit of primary frontal dune along an open coast and any other areas subject to high velocity wave action from storms or seismic sources. ~~The area subject to high velocity waters, including but not limited to, storm surge or tsunamis.~~ The area is designated on FIRM as Zone V1-30 or VE Zone.

“CRITICAL FACILITY” means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

“ELEVATED BUILDING” means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

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

“FLOOD INSURANCE RATE MAP (FIRM)” means the official map on which the Federal Insurance ~~Administration~~ Administrator has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

“MEAN SEA LEVEL” ~~The average height of the sea for all stages of the tide.~~ Means for the purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

“STRUCTURE” means a walled and roofed building, a modular or temporary building, or a gas or liquid storage tank that is principally above ground.

“SUBSTANTIAL DAMAGE” ~~Pertains to flood-related damage where the cost of restoring the structure would equal or exceed 50 percent of the market value of the structure before the damage occurred.~~ Means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“SUBSTANTIAL IMPROVEMENT” Any ~~repair~~, reconstruction, rehabilitation, addition or ~~other~~ improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) Before the improvement or repair is started; or
- (2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:
 - (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
 - (b) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of Historic Places ~~provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”~~

5.030 GENERAL PROVISIONS

1. Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for the City of Gearhart” dated ~~May 15, 1978~~ June 20, 2018, with accompanying Flood Insurance Rate Maps ~~and Flood Boundary Maps~~ and any

revision hereto is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at Gearhart City Hall.

5.040 ADMINISTRATION

7. Variance Procedures

~~A. Variances shall be issued or denied in accordance with Article 9 and any amendment thereto.~~

B. The administrative procedure for hearing a variance shall be as established in Section 9.060

C. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the criteria for granting variances in Section 9.030 have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.

D. Variances may be issued for the rehabilitation or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, without regard to the variance criteria and standards set forth in this section provided that the alteration will not preclude the structure's continued designation as a "historic structure."

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

F. Variances shall only be issued upon:

(i) A showing of good and sufficient cause;

(ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant;

A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 9.030, or conflict with existing local laws or ordinances.

G. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential

neighborhoods. As such, variances from the flood elevations should be quite rare.

H. 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 5.040(7)(C) and otherwise complies with Sections 5.050(1)(A), (B), and (C).

I. When a variance is granted, the City Auditor shall give written notice that the structure or manufactured home will be allowed to be built or placed with the lowest floor elevation at or below the base flood elevation and that:

(1) The issuance of the variance to construct a structure below the base flood elevation will result in ~~increased premium rates for flood insurance as high as \$25 for every \$100 of insurance coverage~~ flood insurance rates that will be commensurate with the increased risk resulting from the reduced lowest floor elevation; and

(2) Such construction below the base flood level increases risk to life and property. Such notification shall be maintained with a record of all variance actions.

5.050 STANDARDS FOR FLOOD HAZARD REDUCTION

(2)(C) Manufactured Homes

(1) All manufactured homes to be placed or substantially improved within Zones A1-30, AH and AE shall be elevated on a permanent foundation such that the bottom of the longitudinal chassis frame beam in A zones, shall be at or above BFE ~~lowest floor of the manufactured home is elevated to one foot above the base flood elevation~~ and securely anchored to an adequately anchored foundation system.

~~(2) All manufactured homes placed or substantially improved in existing manufactured home parks or subdivisions shall be elevated on reinforced piers or other foundation elements that are no less than 36 inches in height above grade or have their lowest floor at or above the base flood elevation, if this allows for the use of a lower foundation.~~

~~(3) A manufactured home which incurs substantial damage as the result of a flood, must be elevated to or above the base flood elevation.~~

(2) Manufactured dwellings supported on solid foundation walls shall be constructed with flood openings that comply with Section 5.050(A).

(3) Electrical crossover connections shall be a minimum of 12 inches above BFE.

(3) Coastal high hazard area

(H) All manufactured homes to be replaced or substantially improved within Zones V1-V30, V, and VE on the community's FIRM shall meet the standards of paragraphs 5.6(1) through (8) of this section.

(5) Critical Facilities

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.



FEMA

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 20 2018

The Honorable Matt J. Brown
Mayor, City of Gearhart
City Hall
Post Office Box 2510
Gearhart, Oregon 97138-2510

Dear Mayor Brown:

I commend you for the efforts that have been put forth in implementing the floodplain management measures for the City of Gearhart, Oregon, to participate in the National Flood Insurance Program (NFIP). As you implement these measures, I want to emphasize the following:

- a Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) have been completed for your community;
- the FIS and FIRM will become effective on June 20, 2018; and
- by the FIS and FIRM effective date, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office is required to approve the legally enforceable floodplain management measures your community adopts in accordance with Title 44 Code of Federal Regulations Section 60.3(e).

As noted in FEMA's letter dated December 20, 2017, no significant changes have been made to the flood hazard data on the Preliminary and/or revised Preliminary copies of the FIRM for Clatsop County. Therefore, the City of Gearhart should use the Preliminary and/or revised Preliminary copies of the FIRM as the basis for adopting the required floodplain management measures. Final printed copies of the FIRM for the City of Gearhart will be sent to you within the next few months.

If you encounter difficulties in enacting the measures, I recommend you contact the Oregon Department of Land Conservation and Development. You may contact Christine Shirley, CFM, the NFIP State Coordinator, by telephone at (503) 373-0050, in writing at 635 Capitol Street, Northeast, Suite 150, Salem, Oregon 97301-2540, or by electronic mail at christine.shirley@state.or.us.

The FEMA Regional staff in Bothell, Washington, is also available to provide technical assistance and guidance in the development of floodplain management measures. The adoption of compliant floodplain management measures will provide protection for the City of Gearhart and will ensure its participation in the NFIP. The Regional Office may be contacted by telephone at (425) 487-4600 or in writing. Please send your written inquiries to the Director, Federal Insurance and Mitigation Division, FEMA Region X, at 130 - 228th Street, Southwest, Bothell, Washington 98021-8627.

The Honorable Matt J. Brown

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You may have already contacted the NFIP State Coordinator and/or the FEMA Regional Office, and may be in the final adoption process or recently adopted the appropriate measures. However, in the event your community has not adopted the appropriate measures, this letter is FEMA's official notification that you only have until June 20, 2018, to adopt and/or submit a floodplain management ordinance that meets or exceeds the minimum NFIP requirements, and request approval from the FEMA Regional Office by the effective date. Your community's adopted measures will be reviewed upon receipt and the FEMA Regional Office will notify you when the measures are approved.

I appreciate your cooperation to ensure that your community's floodplain management measures are approved by the FEMA Regional Office by June 20, 2018. Your compliance with these mandatory program requirements will enable your community to avoid suspension from the NFIP.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel Sears", with a long horizontal flourish extending to the right.

Rachel Sears, Director
Floodplain Management Division
Mitigation Directorate | FEMA

cc: Mike O'Hare, Regional Administrator, FEMA Region X
Christine Shirley, CFM, NFIP State Coordinator, Oregon Department of Land Conservation
and Development
Chad Sweet, City Administrator and Floodplain Administrator, City of Gearhart