

ARTICLE 6

NATURAL RESOURCE DISTRICTS

6.010 Overview. The natural resource districts are intended to protect valuable natural resources within the City of Albany while allowing reasonable economic use of property.

The Open Space zoning district is a base zone that specifies allowed land uses adjacent to some water resources in Albany.

The Natural Resource overlay districts address development activities within specific natural resource areas and are applied over a base zone. The overlay district requirements are in addition to the requirements of the base zone and other City of Albany ordinances.

The following zoning and overlay districts are included in this article:

- Open Space Zoning District (OS)
- Floodplain Overlay District (/FP)
- Hillside Development Overlay District (/HD)
- Significant Natural Resource Overlay Districts
 - o Riparian Corridor Overlay (/RC)
 - o Significant Wetland Overlay (/SW)
 - o Habitat Assessment Overlay (/HA)
- Willamette River Greenway Overlay District (/WG)

[Ord. 5562, 10/10/03; Ord. 5668, 4/11/07; Ord. 5764, 12/1/11]

OPEN SPACE ZONING DISTRICT (OS)

6.020 Purpose and Intent. The Open Space zoning district is intended for the continuation and preservation of existing agricultural uses, park and recreation areas, wildlife habitats, wetlands, natural areas, flood conveyance, and uses that do not involve the construction of structures other than minor accessory facilities required to conduct the principal use. [Ord. 5764, 12/1/11]

6.030 Uses Permitted. The following uses are permitted outright in Open Space zoning districts if they meet the requirements of any applicable Natural Resource Overlay districts:

- (1) One single-family dwelling on a lot legally created before July 1, 1991, or on a lot that meets the requirements of 6.310(B)(1) and other standards in Article 6.
- (2) Paths and bridges for pedestrians and bicycles.
- (3) Parks and recreational facilities identified in the City's Parks, Recreation & Open Space master plan.
- (4) New agricultural uses, where trees and native vegetation are not removed and where no buildings are constructed.
- (5) Water-dependent and water-related uses.
- (6) Removal of native vegetation in conjunction with an approved use.
- (7) Vegetated post-construction stormwater quality facilities planted with native plants, with design approval from the City Engineer. [Ord. 5764, 12/1/11; Ord. 5842, 1/01/15]

6.040 Conditional Uses. The following uses are permitted with Conditional Use Type II approval if they are located outside of the Riparian and Significant Wetland overlay districts:

- (1) Accessory buildings.
- (2) Temporary on-site retail sales of site-produced seasonal goods up to 119 days.
- (3) Plant nurseries and greenhouses.
- (4) Low impact outdoor recreational facilities (e.g. equestrian trails, etc.), and parks and related facilities, where trees and native vegetation removal are minimized and where no buildings are constructed.
- (5) Private construction of transportation facilities and utilities not identified in master plans that meet a public need.
- (6) Development within wetlands not locally regulated as designated in the Local Wetland Inventories adopted by the City and on Plate 6 of the Comprehensive Plan, if approved by the Oregon Department of State Lands (DSL), U.S. Army Corps of Engineers (ACE), and other applicable federal or state agencies. [Ord. 5764, 12/1/11]

6.050 Exempt Uses.

- (1) Emergency procedures necessary for the immediate safety or protection of life or property, including removing hazardous trees and stream bank stabilization.
- (2) Removal of refuse or any fill that is in violation of local, state or federal regulation and in-channel erosion and sedimentation control measures approved by the City of Albany, DSL, ACE and any other applicable local, state or federal regulatory agency.
- (3) City construction of public infrastructure, such as transportation, stormwater, sewer, and water utilities. This exemption requires unimproved but disturbed areas to be replanted with native vegetation, provided that the species are appropriate for the site and are planted at similar compositions and densities to native plant communities within the same drainage basin.
- (4) Private construction of public infrastructure. The location and construction of public transportation and utility facilities and structures as identified in a City-adopted master plan. This exemption requires that unimproved but disturbed areas are replanted with native vegetation, provided that the species are appropriate for the site and are planted at similar compositions and densities to native plant communities within the same drainage basin.
- (5) The use of pre-existing right-of-way or easements for public infrastructure, franchise utilities, and railroads. Planting and maintaining native vegetation is encouraged.
- (6) Implementation of erosion prevention or flood control measures provided the measures have received any required approvals and permits from local, state or federal regulatory agencies with jurisdiction over the proposed activity.
- (7) Farming practices such as grazing, plowing, planting, cultivating and harvesting, that either existed on the property prior to the date of adoption of these provisions or do not include new or expanded structures, roads, or other facilities involving grading, excavation, fill, native vegetation removal, or new drainage measures.
- (8) Maintenance of existing structures, impervious surfaces, and landscaped areas as described below:
 - (a) Ongoing maintenance of pre-existing landscaped areas, including perimeter mowing, as long as natural vegetation is not disturbed and there is no excavation, filling or reduction of natural resource area. Use of integrated pest management methods is encouraged.
 - (b) Ongoing maintenance of existing development, such as repair, replacement, and use of existing buildings, roads, paths, utilities, bridges, culverts, fences, flood control structures, drainageways or facilities, detention facilities, water quality facilities, and other structures and impervious surfaces, provided that such practices avoid sedimentation and other discharges into streams, lakes, or wetlands and do not add impervious surface or remove additional vegetation.

- (9) Removal of live vegetation for the following purposes:
 - (a) Restoration and enhancement projects that have received required approvals from the appropriate local, state, or federal agency.
 - (b) Removal of non-native and invasive plants, including noxious weeds if consistent with local, state, and federal regulations, and replanted with species on the City's native plant list.
 - (c) Planting native vegetation, per the City's native plant list, provided that the requirements in the Significant Natural Resource overlay districts are met.
 - (d) Felling of trees planted as Christmas trees or orchard trees. [Ord. 5764, 12/1/11]

6.065 District Boundary Refinements. An amendment to reduce the boundary of the OS zoning district may be requested for land that does not include any of the following: the Significant Wetland (/SW), Riparian Corridor (/RC), Habitat Assessment (/HA), Willamette River Greenway (/WG), or Floodplain (/FP) overlay districts; waterways; or shown as wetlands on the Local Wetland Inventory. Wetlands or floodplain areas that were unlawfully filled or filled after December 1, 2011 are not eligible. District boundary refinements will be processed administratively; no formal variance or plan amendment is needed.

FLOODPLAIN

6.070 Purpose. The Floodplain overlay district (/FP) standards are intended to manage development in the floodplain in a way that promotes public and environmental health and safety and minimizes the economic loss and social disruption caused by impending flood events. [Ord. 5746, 9/29/10]

6.075 Definitions. As used in this Article the following words and phrases have the following meanings: [Ord. 5746, 9/29/10]

Base Flood or 100-year Flood: The flood having a one percent chance of occurring in any given year.

Base Flood Elevation (BFE): The BFE is the elevation, expressed in feet above sea level, that the base flood is expected to reach.

Basement: The portion of a structure with its floor sub grade (below ground level) on all sides.

Continuous Storage Operations: Operations that continuously store equipment or materials, including, but not limited to lumber yards, automobile junkyards, logging or sawmill operations, storage yards for heavy equipment, automobile dealership lots, and other storage operations with similar impacts. These operations are included in the definition of floodplain development.

Critical Facility: A facility that needs to be operable during a flood, or for which even a slight chance of flooding might pose unacceptable risk to health and safety. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and other emergency responders, and installations that produce, use or store hazardous materials.

Datum: Until recently, the FIRMs have referenced the National Geodetic Vertical Datum of 1929 (NGVD 29). A newer more accurate vertical datum, the North American Vertical Datum of 1988 (NAVD 88), will be used for all FIRM updates. The 2010 Albany FIRMs reference the NAVD 88 datum.

NAVD 88 will be used for floodplain management purposes in the City of Albany. The conversion factor from NGVD 29 to NAVD 88 for all flooding sources in Albany is +3.38 feet. This represents an average conversion offset. This simplified uniform conversion procedure can be used for entire counties when the maximum error is not more than 0.25 feet (3 inches) for that county, which is the case for the City of Albany.

Federal Emergency Management Agency (FEMA): The federal agency charged with implementing the National Flood Insurance Program. FEMA provides floodplain maps to the City of Albany.

Flood: A general and temporary condition of partial or complete inundation of normally dry land areas from:

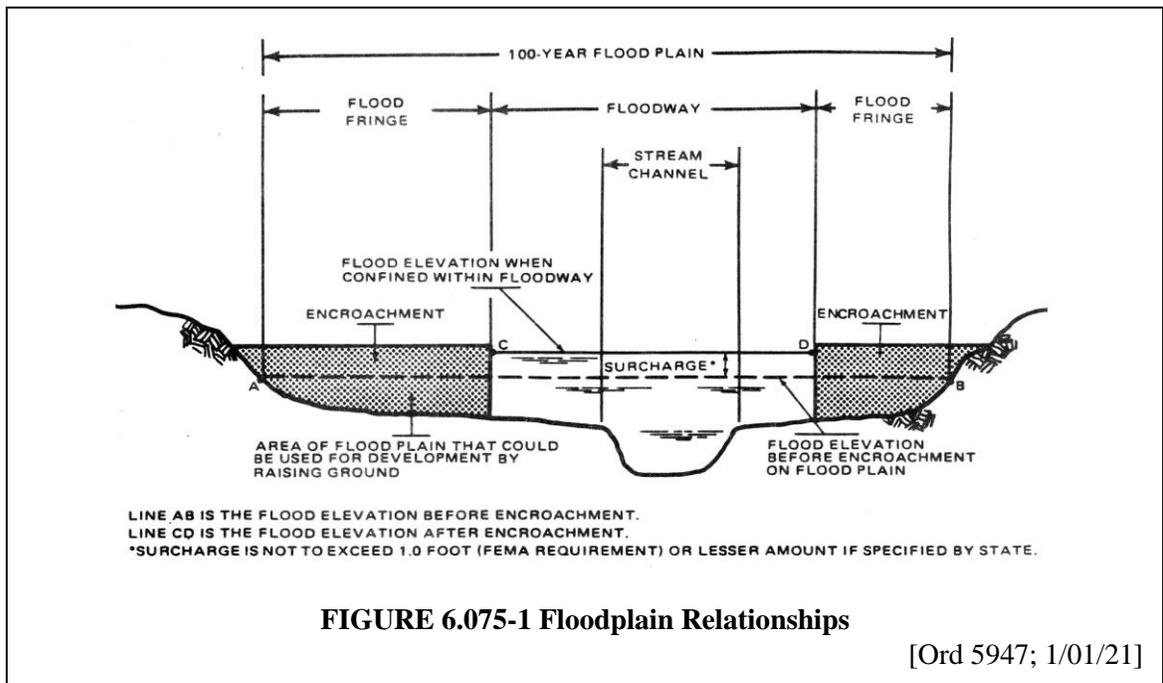
- (a) the overflow of inland or tidal waters; and/or
- (b) the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Fringe: Those areas on either side of the floodway within the Special Flood Hazard Area (100-year floodplain). This area is subject to inundation by the base flood but conveys little or no velocity flows. Zone designations on Flood Insurance Rate Maps for Albany include A and AE. Note Floodplain Relationships diagram (Figure 6.075-1). [Ord. 5947, 1/01/21]

Flood Insurance Rate Map (FIRM): The official map on which FEMA has delineated the Base Flood Elevations, regulatory floodways, and Special Flood Hazard Areas.

Flood Insurance Study (FIS): The official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles, floodway boundaries and water surface elevations of the base flood.

Floodplain: The combined area of the floodway and the flood fringe. Also known as the 100-year floodplain, and the Special Flood Hazard Area. Note Floodplain Relationships diagram in Figure 6.075-1. [Ord. 5947, 1/01/21]



Floodplain Development: Any man-made change to real property, including but not limited to, construction or placement of buildings or other structures, fencing, mining, dredging, filling, grading, paving, excavating, land clearing, drilling, or Continuous Storage Operations in the Special Flood Hazard Area (100-year floodplain).

Floodproofing: Any combination of structural or nonstructural provisions, changes or adjustments to structures, land or waterway for the reduction or elimination of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents during a 100-year flood.

Floodway: The regulatory floodway is the stream channel plus that portion of the overbanks that must be kept free from encroachment in order to discharge the 1-percent-annual-chance flood without increasing flood levels by more than 1.0 foot. Note Floodplain Relationships diagram in Figure 6.075-1. [Ord. 5947, 1/01/21]

Hazardous Material: The Oregon Department of Environmental Quality defines hazardous materials to include any of the following:

- (a) Hazardous waste as defined in ORS 466.005;
- (b) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under 469.605 and radioactive substances as defined in 453.005;

- (c) Communicable disease agents as regulated by the Health Division under ORS Chapter 431 and 433.010 to 433.045 and 433.106 to 433.990;
- (d) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;
- (e) Substances listed by the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 302 -- Table 302.4 (List of Hazardous Substances and Reportable Quantities) and amendments;
- (f) Material regulated as a Chemical Agent under ORS 465.550;
- (g) Material used as a weapon of mass destruction, or biological weapon;
- (h) Pesticide residue;
- (i) Dry cleaning solvent as defined by ORS 465.200(9).

Letter of Map Change (LOMC) means an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps and Flood Insurance Studies. LOMCs are issued in the following categories:

Letter of Map Amendment (LOMA): A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area;

Letter of Map Revision (LOMR): A revision based on technical data showing that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric (horizontal) features. One common type of LOMR, a LOMR-F, is a determination that a structure or parcel has been elevated by fill above the Base Flood Elevation and is excluded from the special flood hazard area; and

Conditional Letter of Map Revision (CLOMR): A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria. A CLOMR does NOT amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage, in any area other than a basement area, is not considered a building's lowest floor, provided that the enclosure is not built so as to render the structure in violation of the applicable design requirements of this Article found in Section 6.121(1).

National Flood Insurance Program: FEMA's National Flood Insurance Program (NFIP) has three basic components – flood hazard mapping, flood insurance, and floodplain regulations. The combination of the three all work together to reduce flood damages. NFIP is founded on a mutual agreement between the federal government and each participating community. Local, state and federal governments and private insurance companies must share roles and responsibilities to meet the goals and objectives of the NFIP. The City of Albany joined the NFIP in 1985. The community's role is of paramount importance. Residents and property owners can get federally-backed flood insurance only if the community carries out its responsibilities. The community enacts and implements the floodplain regulations required for participation in NFIP. The community's regulations must meet the regulations set by its state, as well as the NFIP criteria.

Nonresidential: For the purposes of development in the floodplain, FEMA defines nonresidential construction to include structures not used for human habitation. This includes parking, limited storage, and building access associated with residential uses, as well as commercial, industrial, and institutional uses. This differs from the definition of nonresidential in other Articles and Sections of this Code, and from the definition in the locally adopted State Building Codes.

Oregon Drainage Law: Oregon, through court decisions, has adopted a civil law doctrine of drainage. Generally, under this doctrine, adjoining landowners are entitled to have the normal course of natural drainage maintained. The lower landowner must accept water that naturally comes to his land from above, but he is entitled not to have the normal drainage changed or substantially increased. The lower landowner may not obstruct the runoff from the upper land, if the upper landowner is properly discharging the water. The drainage law has developed without legislative action; therefore there are no Oregon Revised Statutes, rules or other laws to cite. Note that this definition is intended to provide general information and should not be used as the basis for legal advice or legal decisions.

Permanent Foundation: A natural or manufactured support system to which a structure is anchored or attached. A permanent foundation is capable of resisting flood forces and may include posts, piles, poured concrete or reinforced block walls, properly compacted fill, or other systems of comparable flood resistivity and strength.

Recreational Vehicle: A vehicle that is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towed by a light duty truck, and;
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Residential: For the purposes of development in the floodplain, FEMA defines residential construction to include the entire habitable structure, including bathroom, laundry rooms, hobby rooms, workshops, etc. Residential accessory structures are considered residential construction. This differs from the definition of residential in other Articles and Sections of this Code, and from the definition of residential and habitable in the locally adopted State Building Codes.

Special Flood Hazard Area: Areas subject to inundation during the occurrence of the 1 percent annual flood. These areas include both the flood fringe and the floodway and are collectively commonly referred to as the "100-year floodplain."

Start of Construction: Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or 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 foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of a building.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 49 percent of the market value of the structure before the damage occurred.

Substantial Improvement: For the purposes of this section any and all repairs, reconstruction, additions or improvements of a structure occurring within the ten years prior to the date of the application for the current improvement, the cost of which, when cumulatively added to the costs of prior improvements, equals or exceeds 49 percent of the market value of the structure before the start of construction of the improvement. Cumulative value will be computed by adding the valuations of all improvements within the ten-year period as calculated on the associated building permit plus the valuations that would have applied for improvements requiring permits but for which no permit was actually issued. This cumulative value shall be used in comparing the value of improvements against the current market value of the structure before the start of construction of the new improvement. The market value determination shall be based upon the county assessor's most recent computation of real market value at the time of the current application. This term includes structures that 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 that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or
- (b) Any restoration or rehabilitation of a structure on the City's Local Historic Inventory or the National Register of Historic Places (additions and new construction are not exempt);
[Ord. 5875, 10/28/16]
- (c) Maintenance, replacement, or repair of prior lawfully constructed improvements.

Watercourse: Any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, and has a definite channel, bed and banks; including any adjacent area subject to inundation by reason of overflow or flood water. This also includes any topographic feature not meeting the above definition that is identified in the City's Stormwater Master Plan as needing preservation.

GENERAL PROVISIONS

6.080 Lands to Which These Regulations Apply. These regulations apply to all areas in the City of Albany that are subject to inundation from a 100-year flood. These areas have been identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study for Linn County, Oregon and Incorporated Areas effective date September 29, 2010 and as revised effective date December 8, 2016, 2016, and associated Flood Insurance Rate Maps (FIRMs) with Community Number 410137. These areas are depicted on the FIRMs by the letter A and AE. The Flood Insurance Study and FIRMs are on file at the City of Albany, Community Development Department at 333 Broadalbin Street SW.

[Ord. 5875, 10/28/16]

In addition, the City Council may adopt by resolution more current floodplain studies or boundary information. If the new information conflicts with the current effective Flood Insurance Study of Flood Insurance Rate Maps, the more restrictive information will apply.

[Ord. 5773, 02/08/12]

Precise Special Flood Hazard Area (100-year floodplain) boundaries may be difficult to determine from the maps referred to above due to their large scale and lack of site specific studies. In such instances, the Floodplain Administrator may apply FEMA base flood elevations to topographic maps or site surveys in order to determine actual boundaries. In the absence of FEMA base flood elevations, the Floodplain Administrator shall reasonably use other sources of floodplain and floodway data to determine base flood elevations and boundaries. However, when elevation data is not available through FEMA or another authoritative source and the development consists of 4 or more lots, 4 or more structures, or 4 or more acres, the applicant shall generate and have certified by a registered engineer the base flood elevation.

[Ord. 5146, 9/14/94; Ord. 5410, 7/28/99; Ord. 5746, 9/29/10]

- 6.081 Warning and Disclaimer of Liability. The degree of flood protection required by this article 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 as a result of failure of manmade structures and/or natural causes. This article does not imply that the land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This article does not create any duty or liability on the part of the City of Albany or any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder. [Ord. 5746, 9/29/10]
- 6.082 Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, Building Codes, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. [Ord. 5746, 9/29/10]

ADMINISTRATION

- 6.090 Floodplain Administrator. The Community Development Director is appointed to administer and implement this Article in accordance with its provisions. Duties of the local floodplain administrator shall include, but are not limited to: [Ord. 5746, 9/29/10]
- (1) Review all development permit applications to determine whether proposed new development will be located in Areas of Special Flood Hazard.
 - (2) Review applications for modifications of any existing development in Areas of Special Flood Hazard for compliance with the requirements of this Article.
 - (3) Interpret flood hazard area boundaries, provide available flood hazard information, and provide Base Flood Elevations, where they exist.
 - (4) Review proposed development to assure that necessary permits have been received from governmental agencies from which approval is required by federal or state law, including but not limited to section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334; the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; and State of Oregon Removal-Fill permits. Copies of such permits shall be maintained on file.
 - (5) Review all development permit applications to determine if the proposed development is located in the floodway, and if so, ensure that the standards in Sections 6.100 through 6.110 are met.
 - (6) When Base Flood Elevation data or floodway data are not available, then the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation and floodway data available from a federal, state or other authoritative source in order to administer the provisions of this Article.
 - (7) When Base Flood Elevations or other engineering data are not available from an authoritative source, the Floodplain Administrator shall take into account the flood hazards, to the extent they are known, to determine whether a proposed building site or subdivision will be reasonably safe from flooding.
 - (8) Where interpretation is needed of the exact location of the Special Flood Hazard Boundary, including regulatory floodway, the Floodplain Administrator shall make the interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 6.091.
 - (9) Issue floodplain development permits when the provisions of this Article have been met, or disapprove the same in the event of noncompliance.
 - (10) Coordinate with the Building Official to assure that applications for building permits comply with the requirements of this Article.
 - (11) Obtain, verify and record the actual elevation in relation to the vertical datum used on the effective FIRM, or highest adjacent grade where no BFE is available, of the lowest floor level, including basement, of all new construction or substantially improved buildings and structures.

- (12) Obtain, verify and record the actual elevation, in relation to the vertical datum used on the effective FIRM, or highest adjacent grade where no BFE is available, to which any new or substantially improved buildings or structures have been flood-proofed. When flood-proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of design criteria from a registered professional engineer or architect.
- (13) Ensure that all records pertaining to the provisions of this Article are permanently maintained in the Community Development Department and shall be open for public inspection.
- (14) Make inspections in Areas of Special Flood Hazard to determine whether development has been undertaken without issuance of a floodplain development permit, ensure that development is undertaken in accordance with a the floodplain development permit and this Article, and verify that existing buildings and structures maintain compliance with this Article.
- (15) Coordinate with the Building Official to inspect areas where buildings and structures in flood hazard areas have been damaged, regardless of the cause of damage, and notify owners that permits may be required prior to repair, rehabilitation, demolition, relocation, or reconstruction of the building or structure.
- (16) Make Substantial Improvement or Substantial Damage determinations based on the definitions described in Section 6.075.

6.091 Appeals. Appeals to the interpretations of the Floodplain Administrator shall be reviewed by the Hearings Board as a Type II procedure in accordance with Sections 1.040 and 1.410 of this Code. Appeals to the land use decisions (Types I-L, II, and III) resulting from the Floodplain Development Permit applications shall be reviewed in accordance with Section 1.410 of this Code.

[Ord. 5746, 9/29/10; Ord. 5947, 01/01/21]

6.092 Variances. Variances from the terms of this section shall be granted only, when because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this section deprives such property of privileges enjoyed by other property in vicinity and under identical zoning classifications. Variances as interpreted in the National Flood Insurance Program are based on the physical characteristics of the land and are not dependent upon the occupants, type, or use of a structure. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

[Ord. 5746, 9/29/10]

No variance will be given to the standards for development in a floodway.

Variances from the floodplain management regulations of this section shall be reviewed using the Major Variance procedure (see Article 2) and shall be approved if the review body finds that all of the following criteria have been met:

[Ord. 5746, 9/29/10; Ord. 5947, 1/01/21]

- (1) The applicant can show good and sufficient cause; and
- (2) Failure to grant the variance would result in exceptional hardship to the applicant; and
- (3) Issuing the 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) The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances from the required lowest floor elevation for new construction and substantial improvements may be granted if the review body find that the request meets criteria (1)-(4) and the parcel is one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.
- (6) Variances may be granted for a water dependent use provided that the structure or other development meets criteria (1)-(4) and is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety

- (7) Variances may be granted for the reconstruction, rehabilitation, or restoration of structures listed on Albany’s Local Historic Inventory or the National Register of Historic Places, without regard to the procedures set forth in this section. [Ord. 5875, 10/28/16]
- (8) Variances may be granted 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 and otherwise complies with Building Codes.

Upon issuing the variance, the Floodplain Administrator will notify the applicant in writing that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

[Ord. 5746, 9/29/10]

6.093 Floodplain Development Permit Required. A Floodplain Development Permit is required prior to initiating floodplain development activities, as defined in Section 6.075, in the Special Flood Hazard Area. This Article cannot anticipate all development activities that may be located within the Special Flood Hazard Area. The floodplain development permit shall expire 180 days after issuance unless the permitted activity has been substantially begun and thereafter pursued to completion.

[Ord. 5746, 9/29/10]

All development activities that require a Floodplain Development Permit shall be processed in accordance with ADC Section 1.100, Land Use Application Procedures. When ambiguity exists concerning the appropriate classification of a particular activity, the use may be reviewed as a conditional use when the Floodplain Administrator determines that the proposed activity is consistent with other activities allowable within the subject district due to similar characteristics and impacts. When a development proposal involves a combination of activities, the more restrictive provisions of this Code shall apply.

[Ord. 5746, 9/29/10; Ord. 5947, 1/01/21]

A. The following activities will be processed through a Type I procedure as established in ADC 1.210:

[Ord. 5947, 1/01/21]

- (1) Any structure 200 square feet or more.
- (2) Any substantial improvement to an existing structure as defined in this code.
- (3) Placement of a recreational vehicle more than 180 consecutive days, as described in 6.124(2)-(3).
- (4) Solid fences and walls that require a permit as listed in Section 6.125.
- (5) Any site improvement for development in the floodplain pursuant to Section 6.110 that is not exempt under Section 6.094 and does not already require a permit elsewhere in this Section of the Code. [Ord. 5875, 10/28/16]

B. The following activities will be processed through a Type I-L procedure as established in ADC 1.220:

[Ord. 5947, 1/01/21]

- (1) Any development in the floodway allowed by Sections 6.100-6.101.
- (2) Grading, excavation, fill, and paving pursuant to Section 6.111 that cumulatively impacts more than 50 cubic yards of the native elevation and contours of the site or that otherwise requires a permit per this Article, and any associated retaining walls.
- (3) Mining and drilling operations that result in sledge, slag, or other materials remaining in the Special Flood Hazard area will be considered fill for the purposes of this Article and will be reviewed through the applicable criteria in Section 6.111.
- (4) Additions or expansions of Continuous Storage Operations pursuant to Section 6.112.
- (5) New Continuous Storage Operations pursuant to Section 6.112.
- (6) Land Divisions of 19 lots or less pursuant to Section 6.110.

[Ord. 5767, 12/7/11; Ord. 5875, 10/28/16]

C. The following activities will be processed through a Type II procedure as established in ADC 1.230:
[Ord. 5947, 1/01/21]

- (1) Any alteration of a Watercourse, pursuant to 6.101 and the applicable criteria in Section 6.111.

D. The following will be processed through a Type III procedure as established in ADC 1.240:

Ord. 5947, 1/01/21

- (1) Land Divisions of 20 or more lots, Cluster Developments and Planned Developments pursuant to Section 6.110.
[Ord. 5875, 10/28/16]
- (2) Manufactured home parks pursuant to Section 6.110 will be reviewed through the Manufactured Home Park application process.

6.094 Floodplain Development Permit Exemptions. The following development activities in the flood fringe do not require a Floodplain Development Permit. These exemptions do not apply to development in the floodway. *(Note: Federal and State laws and regulations, including Oregon Drainage Law, may still apply to exempted development activities.)*
[Ord. 5746, 9/29/10]

- (1) Structures less than 200 square feet that meet the provisions of 6.122.
- (2) Grading, excavation, fill or paving less than 50 cubic yards (cumulative).
- (3) Retaining walls not associated with a grading, fill, excavation, and paving review.
- (4) Open barbless wire, pipe, rail, chain link, or wood fences that meet the design guidelines in Section 6.125 of this Article.
- (5) Agricultural activities, not including structures.
- (6) Short-term storage of equipment or materials that in time of flooding could either be removed from the area, or would not cause harm to property, humans, animals or the environment by becoming buoyant or hazardous.
- (7) Signs, markers, aids, etc., placed by a public agency to serve the public.
- (8) Minor repairs or improvements to existing structures provided that the alterations do not increase the size or intensity of use, and do not constitute repair of substantial damage, or substantial improvement as defined in this Article.
- (9) Customary dredging to maintain existing channel capacity consistent with State or Federal laws and permits.
- (10) Replacement of utility facilities that are necessary to serve established and permitted uses, and that are of equal or lesser size and impact.
- (11) Subsurface public utility projects that will not ultimately result in modification to existing topography.
- (12) Transportation facility rehabilitation and maintenance projects that will not result in modifications to existing topography.

6.095 General Information Requirements. In addition to the information required in other sections of this code, the application for any development proposed in the Special Flood Hazard Area (100-year floodplain) must include the following information:

- (1) Elevations of the original contours.
- (2) Final elevations of proposed fills and excavations.
- (3) Base flood (100-year flood) elevations of the site based on North American Vertical Datum (NAVD) 1988.
- (4) Location of any designated floodway and base flood boundary. If no floodway is designated, estimate the location of the floodway boundary per Section 6.100
- (5) Location of any designated wetlands and/or wildlife habitat (if applicable).

- (6) Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures (if applicable).
- (7) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development (if applicable).
- (8) If floodproofing is required, the proposed description and elevation of floodproofing.
- (9) Elevation certificate. The base flood elevation shall be determined based on the applicable flood insurance study and flood profile. A copy of the flood profile with the base flood elevation identified on the flood profile shall be included with the elevation certificate as evidence for determining the base flood elevation. [Ord. 5875, 10/28/16]

6.096 Flood Insurance Rate Map (FIRM) Revisions. Requirements to Submit New Technical Data: [Ord. 5746, 9/29/10]

- (1) It is the responsibility of the applicant to have technical data prepared in a format required for a CLOMR or LOMR and to submit such data to FEMA on the appropriate application forms. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
- (2) Applicants shall be responsible for all costs associated with obtaining a CLOMR or LOMR from FEMA.
- (3) The City of Albany shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, without evaluation and concurrence with the information presented.
- (4) Within six months of project completion, an applicant who obtains an approved CLOMR from FEMA or whose development modifies floodplain boundaries or Base Flood Elevations shall obtain from FEMA a LOMR reflecting the as-built changes to the FIRM.

PROVISIONS FOR FLOOD HAZARD REDUCTION

6.100 Floodway Restrictions. No development is allowed in any floodway except when the review body finds that the development will not result in any increase in flood levels during the occurrence of the 100-year flood. The finding shall be based upon applicant-supplied evidence prepared in accordance with standard engineering methodology approved by FEMA and certified by a registered professional engineer and upon documentation that one of the following criteria has been met: [Ord. 5875, 10/28/16]

- (1) The development does not involve the construction of permanent or habitable structures (including fences). [Ord. 5746, 9/29/10]
- (2) The development is a public or private park or recreational use or municipal utility use.
- (3) The development is a water-dependent structure such as a dock, pier, bridge, or floating marina.

For temporary storage of materials or equipment:

- (4) The temporary storage or processing of materials will not become buoyant, flammable, hazardous explosive or otherwise potentially injurious to human, animal or plant life in times of flooding. [Ord. 5746, 9/29/10]
- (5) The temporary storage of material or equipment are not subject to major damage by floods and is firmly anchored to prevent flotation or is readily removable from the area within the time available after flood warning. [Ord. 5746, 9/29/10]

If a floodway boundary is not designated on an official FEMA map available to the City, the floodway boundary can be estimated from available data and new studies. Proposed development along the estimated floodway boundary shall not result in an increase of the base flood level greater than one foot as certified by a registered professional engineer.

6.101 Alteration of a Watercourse. A Watercourse is considered altered when any changes occur within its banks, including installation of new culverts and bridges, or size modifications to existing culverts and bridges. [Ord. 5746, 9/29/10]

- (1) No development shall diminish the flood-carrying capacity of a watercourse.
- (2) Subject to the foregoing regulation, no person shall alter or relocate a watercourse without necessary approval from the Floodplain Administrator. [Ord. 5746, 9/29/10]
- (3) Prior to approval, the applicant shall provide a 30-day written notice to the City, any adjacent community, the Natural Hazards Program of the Oregon Department of Land Conservation and Development, and the DSL. [Ord. 5746, 9/29/10]
- (4) The applicant shall be responsible for ensuring necessary maintenance of the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished. [Ord. 5746, 9/29/10]

6.109 Residential Development Standards. Applications proposing new residential dwelling units or the creation of residential lots or parcels on property with Special Flood Hazard Area (100-year floodplain) on it must comply with either the clear and objective standard in subsection (1) or the discretionary standard in subsection (2), below.

- (1) Clear and objective standard. No new dwelling units or new residential lots or parcels are allowed within the floodplain. An application to develop property that has floodplain on it, but where no development is proposed within the boundaries of that floodplain will be processed as otherwise required in this Code. In case of land divisions, “no development” means the floodplain area has been excluded from the land division. This can be done by setting the property aside for some other purpose than later development (for example, as a public drainage right-of-way).
- (2) Alternative review. Residential development is allowed within the floodplain subject to the provisions of this Floodplain overlay district and the standards in Sections 6.100 through 6.125. [Ord. 5947, 1/01/21]

6.110 Site Improvement, Land Division and Manufactured Home Park Standards. Site improvements, land divisions, and manufactured home parks in the Special Flood Hazard Area (100-year floodplain) shall be reviewed by the Planning Division as a part of the land use review process. An application to develop property that has floodplain on it, but where no development is proposed in that floodplain will be processed as otherwise required in this Code. In the case of a land division, “no actual development” means the floodplain area has been excluded from the land division. This can be done by setting the property aside for some other purpose than later development (for example, as a public drainage right-of-way). [Ord. 5746, 9/29/10]

In addition to the general review criteria for site improvements, land divisions and manufactured home parks, applications that propose actual development within the Special Flood Hazard Area shall also be subject to the following standards: [Ord. 5338, 1/28/98; Ord. 5746, 9/29/10]

- (1) All proposed new development and land divisions shall be consistent with the need to minimize flood damage and ensure that building sites will be reasonably safe from flooding.
- (2) All new development and land division proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) On-site waste disposal systems shall be located and constructed to avoid functional impairment, or contamination from them, during flooding.
- (4) All development proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (5) Any lot created for development purposes must have adequate area created outside of the floodway to maintain a buildable site area meeting the minimum requirements of this Article.
- (6) Any new public or private street providing access to a residential development shall have a roadway crown elevation not lower than one foot below the 100-year flood elevation.
- (7) All development proposals shall show the location of the 100-year flood contour line followed by the date the flood elevation was established. When elevation data is not available, either through the Flood Insurance Study or from another authoritative source, and the development is four or more acres or results in four or more lots or structures, the elevation shall be determined and certified by a

registered engineer. In addition, a statement located on or attached to the recorded map or plat shall read as follows: "Development of property within the Special Flood Hazard Area as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City." [Ord. 5338, 1/28/98]

- (8) In addition to the general review criteria applicable to manufactured home parks in Article 10, applications that propose actual development within a Special Flood Hazard Area shall include an evacuation plan indicating alternate vehicular access and escape routes.

6.111 Grading, Fill, Excavation, and Paving. A floodplain development permit is required for grading, fill, excavation, and paving in the Special Flood Hazard Area (100-year floodplain), except activities exempted in Section 6.094 of this Article. No grading will be permitted in a floodway, except when the applicant has supplied evidence prepared by a professional engineer that demonstrates the proposal will not result in any increase in flood levels during the occurrence of the 100-year flood. The permit will be approved if the applicant has shown that each of the following criteria that are applicable have been met:

[Ord. 5746, 9/29/10; Ord. 5929, 7/26/19]

- (1) Provisions have been made to maintain adequate flood-carrying capacity of existing watercourses, including future maintenance of that capacity.
- (2) The proposal will be approved only where adequate provisions for stormwater runoff have been made that are consistent with the Public Works Engineering standards, or as otherwise approved by the City Engineer.
- (3) No grading, fill, excavation, or paving will be permitted over an existing public storm drain, sanitary sewer, or water line unless it can be demonstrated to the satisfaction of the City Engineer that the proposed grading, fill, excavation, or paving will not be detrimental to the anticipated service life, operation and maintenance of the existing utility.
- (4) In areas where no floodway has been designated on the applicable FIRM, grading will not be permitted unless it is demonstrated by the applicant that the cumulative effect of the proposed grading, fill, excavation, or paving when combined with all other existing and planned development, will not increase the water surface elevation of the base flood more than a maximum of one foot (cumulative) at any point within the community.
- (5) The applicant shall notify the City of Albany, any adjacent community, and the Natural Hazards Mitigation Office of the Oregon Department of Land Conservation and Development of any proposed grading, fill, excavation, or paving activity that will result in alteration or relocation of a watercourse (see Section 6.101).
- (6) All drainage facilities shall be designed to carry waters to the nearest practicable watercourse approved by the designee as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive down spouts and diffusers or other devices.
- (7) Building pads shall have a drainage gradient of two percent toward approved drainage facilities, unless waived by the Building Official or designee.

6.112 Continuous Storage Operations. The regulation of storage in the flood fringe focuses on long-term storage activities associated with continuous operations as defined in this Article. [Ord. 5746, 9/29/10]

A continuous storage operation is allowed if it can be shown that:

- (1) The materials or equipment will not be flammable, hazardous, explosive or otherwise potentially injurious to human, animal, or plant life in times of flooding; and
- (2) The materials or equipment are not subject to major damage by flood and are firmly anchored to prevent flotation or is readily removable from the area within the time available after flood warning.

6.113 Critical Facility Standards. Construction of new critical facilities, and additions to critical facilities built after September 29, 2010, shall be, to the maximum extent feasible, located outside the limits of the Special Flood Hazard Area (100-year floodplain). [Ord. 5746, 9/29/10]

Construction of new critical facilities shall be permissible within the Special Flood Hazard Area if no feasible alternative site is available. Critical facilities constructed within the Special Flood Hazard Area 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 shall also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that hazardous materials 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. [Ord. 5746, 9/29/10]

6.120 Building Standards. Applications for building permits within the Special Flood Hazard Area, as established in Section 6.080, shall be reviewed by the Building Official pursuant to locally adopted state building codes. In addition to building code criteria, all development in the Special Flood Hazard Area, except that exempted in Section 6.094, is subject to the following building standards:

[Ord. 5746, 9/29/10]

- (1) Property owners or developers shall file with the City two elevation certificates in a format that is acceptable to FEMA. These certificates must be approved by the Building Official, prepared by a registered surveyor or professional engineer, architect or surveyor, and maintained for public inspection. A Pre-Construction Elevation Certificate shall be submitted and approved prior to setback and foundation inspection approval. A Post-Construction Elevation Certificate shall be submitted and approved prior to final inspection approval for all building permits when the Pre-Construction Elevation Certificate shows the building site to be within a Special Flood Hazard Area and lowest adjacent grade to be at or below the base flood elevation (BFE). The Post-Construction certificate must contain: 1) the actual elevation (in relation to mean sea level) of the lowest floor including basement of all new or substantially improved structures; 2) the elevation of any flood proofing; and 3) whether or not the structure contains a basement.
- (2) The lowest floor, including basement, of any proposed structure (including residential and non-residential structures) shall be placed at least one (1) foot above the 100-year flood as determined by the latest Flood Insurance Study.
- (3) When elevation data is not available either through the Flood Insurance Study, FIRM, or from other sources of floodplain and floodway data as described in Section 6.080, 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., when available.
- (4) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (5) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (6) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during a flood.
- (7) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement and shall be installed or constructed using materials, methods, and practices that minimize flood damage.
- (8) All new and replacement public water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (9) All new and replacement public sanitary sewer systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood water. On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (10) If floodproofing methods are required as per Section 6.121(2), the property owners or developers shall file with the City a certification by a registered professional engineer or architect that the floodproofing methods meet or exceed FEMA standards. The City will maintain the certification available for public inspection. [Ord. 5146, 9/14/94; Ord. 5281, 3/26/97]

6.121 Flood Hazard Reduction Standards for Structures. All applicable flood hazard reduction measures are required and must be certified as required in 6.120 (1) and (10) above to at least meet the following standards (these standards do not apply to structures exempted in Section 6.122):

[Ord. 5746, 9/29/10]

- (1) In all structures that will not be floodproofed, as described in 6.121(2), fully enclosed areas below the lowest floor (crawl spaces, parking areas or building access) and lower than 1 foot above the 100-year flood level must meet or exceed the following criteria:
 - (a) At least 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.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
 - (d) The interior grade below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.
 - (e) The height of the below-grade area, measured from the interior grade to the top of the foundation wall must not exceed four (4) feet at any point.
 - (f) There must be an adequate drainage system that removes floodwaters from the interior area. The enclosed area should be drained within a reasonable time after a flood event.
 - (g) It will be used solely for parking vehicles, limited storage, or access to the building and will never be used for human habitation.
 - (h) The property owner of the building shall sign and record on the title to the property a nonconversion agreement, guaranteeing not to improve, finish, or otherwise convert the enclosed area below the lowest floor and lower than 1-foot above the 100-year flood level and granting the City the right to inspect the enclosed area.
- (2) Nonresidential construction meeting the certification requirements of 6.120 (1) and (10) can have the lowest floor and attendant utility and sanitary facilities located lower than one foot above the 100-year flood elevation if all of the following is met:
 - (a) The structure is floodproofed so that areas lower than one foot above the 100-year flood level are watertight with walls substantially impermeable to the passage of water.
 - (b) The structure has structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - (c) The applicant is notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level.
 - (d) The applicant files a certification by a registered professional engineer or architect 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. The certification shall be provided to the Building Official as set forth in 6.120(1). [Ord. 5146, 9/14/94; Ord. 5281, 3/26/97]
 - (e) Applicants supply a 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.
 - (f) Applicants supply an Emergency Action Plan (EAP) for the installation and sealing of the structure prior to a flooding event that clearly identifies what triggers the EAP and who is responsible for enacting the EAP. [Ord. 5875, 10/28/16]

6.122 Accessory Buildings. Accessory structures in Special Flood Hazard Areas (100-year floodplain) that represent a minimal investment are exempt from the standards of ADC 6.120 and 6.121. The following standards and all other regulations that apply to development in floodplain areas apply to those buildings. The definition of “minimal investment” for the purposes of this section is a building that costs less than \$10,000 in labor and materials to construct. The value of a proposed building will be the value stated on the application for building permits.

- (1) Accessory structures shall not be used for human habitation.
- (2) Accessory structures shall be designed to have low flood damage potential.
- (3) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
- (4) Accessory structures shall be firmly anchored to prevent flotation that may result in damage to other structures.
- (5) Service facilities such as electrical and heating equipment shall be elevated and/or floodproofed.
[Ord. 5281, 3/26/97]

6.123 Manufactured Homes. New and replacement manufactured dwellings fall within the scope of the Building Codes. All new manufactured dwellings and replacement manufactured dwellings shall be installed using methods and practices that minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
[Ord. 5338, 1/28/98; Ord. 5746, 9/29/10]

6.124 Recreational Vehicles. Recreational vehicles placed on sites within the flood fringe are required to either:
[Ord. 5746, 9/29/10]

- (1) Be on the site for fewer than 180 consecutive days; or
- (2) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (3) Meet the requirements of Section 6.123 for manufactured homes.

6.125 Flood Fringe Fencing and Wall Standards. Certain types of fences and garden walls may be allowed in the flood fringe of the Special Flood Hazard Area (100-year floodplain). All fences and garden walls constructed within the flood fringe must not obstruct the entry and exit of floodwater, through their design and construction. All fences and walls are prohibited in the floodway.
[Ord. 5746, 9/29/10]

Table 6.125-1 below is provided to assist in selecting appropriate fencing in the flood fringe. All fences and walls also must meet the standards in other sections of the Code.
[Ord. 5746, 9/29/10; Ord. 5947, 1/01/21]

TABLE 6.125-1. Fence type selection for flood fringe areas.

Fence Type	Flood Fringe Areas
Open barbless wire; Open pipe or rail; Other wire, pipe or rail (e.g. field fence, chicken wire, etc.); Chain link (1)	No permit required
Wood fences (2)	No permit required
Solid fences and freestanding walls, such as masonry (3)	Permit required, must have openings at and below BFE
Other fences (4)	Permit required, must have openings at and below BFE

[Ord. 5947, 1/01/21]

- (1) Acceptable are materials and installation methods that allow for the entry and exit of floodwater.
- (2) Wood fence boards should be spaced to allow for the entry and exit of floodwater.
- (3) Solid fences and freestanding walls must include a flap or opening in the areas at or below the Base Flood Elevation at least once every three fence panels or 24 feet, whichever is less. Fences less than 24 feet in length shall have at least one flap or opening in the areas at or below the Base Flood elevation. The minimum dimensions of the flap or opening shall not be less than 12"x12" or 8"x18". Openings shall not include any screening of any type or size. If flaps are used, they may be secured to allow closure during normal use, but must be capable of self-release and opening to full dimensions when under pressure of no greater than 30 pounds per sq. ft. These standards do not apply to retaining walls which shall meet the same standards as other building, paving, and grading activities.

Solid fences and walls constructed within Zone A, where the base flood elevation has not been determined, can use other sources of floodplain and floodway data to determine base flood elevations and boundaries as described in Section 6.080, or the openings can be placed within one foot of the finished grade along the fence alignment.

- (4) Other fence materials and construction that would restrict the flow of floodwaters will require a permit so they can be reviewed and adapted to meet the intent of this section of the Code.

HILLSIDE DEVELOPMENT

6.170 Purpose. The Hillside Development overlay district (/HD) is intended to regulate the development of potentially hazardous terrain, minimize public and private losses due to earth movement hazards in specified areas, and minimize erosion and related environmental damage. It is not the intent of Hillside Development standards to transfer density within a development. [Ord. 5668, 4/11/2007]

6.180 Applicability. Except as specified below, the Hillside Development standards apply to any property proposed for development that has slopes of 12 percent or greater as shown on Plate 7 of the Albany Comprehensive Plan. Where Plate 7 shows that there are slopes 12 percent or greater on a property, the applicant may choose to submit a topographic survey, prepared and stamped by a licensed surveyor or civil engineer, showing two-foot contour intervals for the entire site. If the applicant chooses to submit survey information, and the survey indicates that the property does not contain slopes 12 percent or greater, the Hillside Development standards will not apply. [Ord. 5668, 4/11/2007; Ord. 5947, 1/01/21]

The interior remodeling of existing buildings, including the creation of additional dwellings units within an existing dwelling, is exempt from the requirements of the Hillside Development overlay District provided there is no increase in the building footprint. [Ord. 5947, 1/01/21]

6.190 Procedure. Hillside Development is reviewed concurrently with the land use application(s) required for the development and is processed using the same procedure as the primary land use application. Hillside Development that only requires a building permit is reviewed administratively as a Type I procedure. [Ord. 5668, 4/11/2007; Ord. 5886, 1/6/17; Ord. 5923, 2/8/19; Ord. 5947, 1/01/21]

6.200 Geotechnical Report Required. For any development subject to the applicability criterion in ADC 6.180, an applicant shall provide a geologic and soils report prepared and stamped by a certified engineering geologist or a licensed civil engineer, licensed in the specialty of geotechnical engineering with the State of Oregon.

The report must identify the following:

- (1) All geologic and soils hazards and certify that the site, and each individual lot if land division is proposed, are suitable for the proposed development.
- (2) Area(s) suitable for building and describe how slopes will be stabilized.
- (3) Suitable building footprint(s) for development on each lot.
- (4) Any requirements that must be met from the time construction begins to the time construction is completed.

(5) Any requirements that must be met after construction is completed (e.g., maintenance requirements for continued slope stabilization). [Ord. 5668, 4/11/07]

6.210 Drainage. In all slope areas, impervious surface drainage from roofs, driveways, and parking areas must be directed to a City storm drain or other City-approved drainage system. Development activities must not block the flow of stormwater in natural drainageways without prior approval from the Public Works Director. [Ord. 5265, 12/18/96]

6.220 Street and Driveway Standards. Street grades shall generally be 12 percent or less. Grades on Arterial or Collector streets must be no more than 6 percent and 10 percent respectively (see Section 12.210). Street grades of up to 15 percent may be permitted for a distance of no more than 200 feet. No intersections are permitted where street grades exceed 12 percent. Where practical, streets must be contoured to hillside areas in order to minimize environmental and scenic disruption. Driveways must have a grade of 15 percent or less, unless the Public Works Director approves a greater slope.

6.230 Modification of Standards. The following Development Code standards may be modified through the application process, if approved by the review body:

(1) Front, side and rear yards may be reduced if the geotechnical report explains why the reduction is warranted. The reduction must be approved by the review body. A variance application is not required, but a developer must make a specific written request for the reduction to the City for consideration.

(2) Building height limitations may be exceeded on hillside lots, if the geotechnical report explains why the additional height is warranted. The additional height requires approval by the review body, provided it does not exceed 45 feet. [Ord. 5668, 4/11/07]

6.235 Applications for Residential Development. For the construction of new residential dwelling units within the Hillside Development overlay district that meet the applicability criteria in ADC 6.180, in lieu of compliance with sections 6.200 through 6.230, applicants may choose to provide a certification from an Oregon licensed Engineering Geologists (CEG) or an Oregon licensed Geotechnical Engineer (GE) stating:

(1) That the proposed development activity will not impact or be impacted by existing or potential stability problems or any of the following site conditions: springs or seeps, depth of soil bedrock, variations in soil types, or a combination of these conditions; or

(2) If proposed development activity will impact or be impacted by any of the conditions listed in (1), the methods for safely addressing the impact of the conditions.

If a certification is submitted under subsection (2), the certification shall also include a signed and notarized statement from the property owner, and applicant, that all development will occur in accordance with the Engineer's certification [Ord. 5947, 1/01/21]

SIGNIFICANT NATURAL RESOURCE OVERLAY DISTRICTS

6.260 Overview. The Significant Natural Resource overlay districts include Riparian Corridors (/RC) and Significant Wetlands (/SW) and fish-bearing waterways throughout the city, and a Habitat Assessment area (/HA) designated specifically for turtle habitat in and around Thornton Lakes in North Albany.

- Purpose and Intent (6.270)
- Land to which these Regulations Apply (6.280)
- Exempt Activities (6.290)
- Activities Subject to Natural Resource Impact Review (6.300)
- Natural Resource Impact Review Standards (6.310)
- Mitigation Standards (6.400)
- Local Mitigation Plans (6.410)
- Albany Native Plant List (6.420)

- District Boundary Corrections and Refinements (6.430)
- District Amendments (6.440)
- Minor and Major Variances (6.450)
- Compliance with State and Federal Regulations (6.460)
- Violations (6.470)

Per OAR 660-023-0040, two studies were conducted that analyze the Economic, Social, Environmental, and Energy (ESEE) consequences of allowing, limiting, or prohibiting conflicting uses within the three resource areas. The protection programs for the three significant resources are informed by these two ESEE Analyses. [Ord. 5947, 1/01/21]

6.270 Purpose and Intent. The intent of these supplemental Significant Natural Resource overlay districts is to protect significant natural resources within the City of Albany as designated under Statewide Planning Goal 5 and the provisions of the Goal 5 administrative rule (OAR 660, Division 23), while ensuring reasonable economic use of property.

More specifically, the purpose and intent of each Significant Natural Resource overlay district is as follows:

A. Riparian Corridor overlay district (/RC): To protect and enhance Albany's riparian areas, thereby protecting and restoring the hydrologic, ecological, and land conservation functions these areas provide. Significant riparian corridors support valuable fish and wildlife habitat; improve water quality by regulating stream temperatures, trapping sediment, and stabilizing streambanks; and reduce the effects of flooding.

A healthy riparian corridor is comprised of a multi-storied forest of native species of trees, shrubs, and ground cover. Many riparian corridors in Albany have the potential to be restored to higher function and value.

B. Significant Wetland overlay district (/SW): To protect and enhance the integrity, function and value of Albany's significant wetlands and fish-bearing waterways. Wetlands and waterways provide hydrologic and ecologic functions; and reduce adverse effects of flooding. The vast majority of significant wetlands are in riparian areas. There are a small number of isolated significant wetlands. The higher quality isolated wetlands will be regulated locally (as identified in the Citywide ESEE Analysis); and the lower quality isolated wetlands will not be regulated locally, but must comply with state and federal wetland regulations.

C. Habitat Assessment overlay district (/HA): To protect habitat for northwestern pond and western painted turtles in and around Thornton Lakes by reviewing and limiting the impacts of development activities on their habitat. This was the only area in Albany where there is a documented presence of a species listed by either the federal government or the State of Oregon. The State lists the species as "sensitive, critical." The overlay identifies an area of high likelihood of turtle nesting, foraging, or migration routes. The overlay district regulations provide a limited level of protection (as identified in the Thornton Lakes ESEE Analysis). Voluntary methods of turtle habitat protection and enhancement are encouraged and essential.

6.280 Lands to Which These Regulations Apply. The procedures and requirements of this section apply only to property that is within a Significant Natural Resource overlay district.

A. Riparian Corridor overlay district (/RC): The Riparian Corridor overlay district extends 50 feet upland from the Ordinary High Water mark, measured horizontally.

If the Riparian Corridor overlay district area includes all or portions of a significant wetland, the district extends upland 50 feet, measured horizontally from the edge of the significant wetland. Fish-bearing waterways, and the significant wetlands associated with such waterways, are included in the Significant Wetland overlay district.

- (1) The Riparian Corridor boundary applies to the following Albany water resources (and in-stream lakes):
 - o Calapooia River
 - o Burkhart Creek
 - o Cathey Creek
 - o Cox Creek
 - o Crocker Creek
 - o Horseshoe Creek
 - o Oak Creek
 - o Periwinkle Creek
 - o Thornton Lakes
 - o Truax Creek
- (2) The Willamette River Riparian Corridor is located within the Willamette River Greenway District boundary. All development on properties within the Willamette River Greenway District is subject to the regulations beginning in Section 6.500, but is not subject to the riparian corridor overlay regulations.

B. Significant Wetland overlay district (/SW): The Significant Wetland overlay district is comprised of fish-bearing waterways below the Ordinary High Water Mark, the wetlands associated with riparian corridors, and higher quality isolated significant wetlands, in the City's Local Wetland Inventory (LWI), and as amended through wetland delineations approved by the DSL and the ACE, if applicable. Notice to, and potentially permits from, DSL and ACE are still required for potential impact to all wetlands regulated by DSL or ACE.

C. Habitat Assessment overlay district (/HA): This overlay district extends 75 feet from the Ordinary High Water mark upland from East and West Thornton Lakes.

6.290 Exempt Activities. The following activities are exempt from Natural Resource Impact Review as would otherwise be required within the Significant Natural Resource overlay districts. Many of these exemptions are provided in recognition of the Albany ESEE analyses and pre-existing uses. Land use reviews as required by other sections of this Code and compliance with other local (floodplain, fill, encroachment, etc.), state, and federal regulations is still required. As a result, these activities should still be conducted in a manner that minimizes impact to Albany's significant natural resources.

- (1) Emergency procedures necessary for the immediate safety or protection of life or property, including removing hazardous trees and stream bank stabilization.
- (2) Removal of refuse or any fill that is in violation of local, state or federal regulations or in-channel erosion or flood control measures approved by City of Albany Public Works, DSL, ACE and any other applicable state or federal regulatory agency. Removal or placement of material in waters of the State must be consistent with State of Oregon Removal-Fill regulations (ORS 196.795-990) and the ACE fill regulations.
- (3) City construction of public infrastructure, such as transportation, stormwater, sewer, and water utilities. This exemption requires unimproved but disturbed areas to be replanted with native vegetation.
- (4) Private construction of public infrastructure. The location and construction of public transportation and utility facilities and structures as identified in a City-adopted master plan. This exemption requires that unimproved but disturbed areas are replanted with native vegetation.
- (5) The use of pre-existing right-of-way or easements for public infrastructure, franchise utilities, and railroads. Planting and maintaining native vegetation is encouraged.

- (6) Implementation of erosion prevention or flood control measures provided the measures have received any required approvals and permits from local, state or federal regulatory agencies with jurisdiction over the proposed activity.
- (7) Farming practices such as grazing, plowing, planting, cultivating and harvesting, that either existed on the property prior to the date of adoption of these provisions or do not include new or expanded structures, roads, or other facilities involving grading, excavation, fill, native vegetation removal, or new drainage measures.
- (8) Maintenance of existing structures, impervious surfaces, and landscaped areas as described below:
 - (a) Ongoing maintenance of pre-existing landscaped areas, including perimeter mowing, as long as natural vegetation is not disturbed and there is no excavation, filling or reduction of natural resource area. Use of integrated pest management methods is encouraged.
 - (b) Ongoing maintenance of existing development, such as repair, replacement, and use of existing buildings, roads, paths, utilities, bridges, culverts, fences, flood control structures, drainageways or facilities, detention facilities, water quality facilities, and other structures and impervious surfaces, provided that such practices avoid sedimentation and other discharges into streams, lakes, or wetlands and do not add impervious surface or remove additional vegetation.
- (9) Removal of live vegetation for the following purposes:
 - (a) Restoration and enhancement projects that have received required approvals from the appropriate local, state, or federal agency.
 - (b) Removal of non-native and invasive plants, including noxious weeds if consistent with local, state, and federal regulations, and replanted with species on the City's native plant list.
 - (c) Planting native vegetation on the City's native plant list.
 - (d) Felling of trees planted as Christmas trees or orchard trees.
- (10) Residential development activities, such as construction of home additions, decks, patios, sheds, gardens, landscaping, etc., that impact no more than 2,000 square feet (cumulatively), or 20 percent of the Habitat Assessment overlay district area within a property, whichever is less. Development activities will be reviewed at the time of application for building permits when applicable.

Regardless of the exemption to the local Natural Resource Impact Review requirements, protection of the turtle species is regulated by the State of Oregon.

This exemption only applies to the Habitat Assessment overlay district. If the proposed activity is also located within other Significant Natural Resource overlay districts the requirements of those districts still apply.

- (11) Construction of an approved, vegetated post-construction stormwater quality facility (e.g. swale), located in a portion of the Riparian Corridor that is in Degraded Quality condition and planted with native plants. [Ord. 5842, 1/01/15]

6.300 Activities Subject to Natural Resource Impact Review. A Natural Resource Impact Review will be required for proposed development activities in the Significant Natural Resource overlay districts that are not specifically exempted from review. The review will take place concurrent with any land use application or building permit. In instances when neither is required, the Natural Resource Impact Review will be conducted independently through either a Type I or I-L process as designated below. The standards for reviewing proposed development activities in the Significant Natural Resource overlay districts are found in Section 6.305 and Section 6.310. [Ord. 5947, 1/01/21]

A. Activities subject to review include:

- (1) Land divisions;
- (2) New structures, or exterior expansion of the footprint of any structure or driveways (Type I);
- (3) Increases in impervious surfaces (Type I-L);
- (4) Site modifications, including grading, excavation, fill or native vegetation removal (Type I-L);

- (5) Private construction of public and privately owned transportation facilities and utilities not exempt through 6.290(4) or 6.290(11) (Type I-L); and
 - (6) Activities within the Habitat Assessment overlay district not exempt under ADC 6.290 (Type I).
- B. When a proposed use or activity requires a Natural Resource Impact Review, in addition to what is required for any concurrent land use applications or building permits, the applicant shall submit a scaled site plan to the City that that shows:
- (1) Topographic contours at two-foot intervals;
 - (2) Ordinary high water (OHW) mark of all lakes, streams, or other waterways;
 - (3) Location of Riparian Corridor and Habitat Assessment overlay districts based on OHW;
 - (4) Location of Significant Wetland overlay district based on the LWI or DSL-approved delineation or determination;
 - (5) The 100-year flood boundary and elevation;
 - (6) Existing vegetative cover and species composition;
 - (7) Existing and proposed site improvements;
 - (8) How the requirements of the applicable review standards in ADC 6.310 will be met; and
 - (9) A mitigation plan if required per ADC 6.400-6.410.

6.305 Residential Development Standards. Applications subject to natural resource review that are proposing new residential dwelling units or the creation of residential lots or parcels on properties that include one or more Significant Natural Resource overlay districts must comply with either the clear and objective standard in subsection (1) or the discretionary standard in subsection (2), below. As used in these subsections, the proposed division of land with a Significant Natural Resource overlay district on it is considered development “within a Significant Natural resource overlay district.”

- (1) Clear and objective standard. No development, including creation of lots or parcels, is permitted within a Significant Natural Resource overlay district. An application to develop property that has one or more Significant Natural Resource overlay districts on it, but where no development is proposed within the boundaries of a Natural Resource Overlay will be processed as otherwise required in this Code.
- (2) Alternative review. Residential development is permitted within a Significant Natural Resource overlay district subject to the provisions of the applicable overlay district(s) and the standards in Sections 6.300 through 6.460. [Ord. 5947, 1/01/21]

6.310 Natural Resource Impact Review Standards.

- A. General Requirements for Significant Natural Resource overlay districts. A proposed activity will not be approved unless all of the following are true:
- (1) The proposed activity is allowed under the requirements of the base zone.
 - (2) There are no other reasonably feasible options or locations outside the Significant Natural Resource overlay districts for the proposed activity on the subject parcel.
 - (3) The proposed activity is designed, located and constructed to minimize excavation, grading, structures, impervious surfaces, loss of native vegetation, erosion, and adverse hydrological impacts on water resources. All activities are located as far from the water resources, and use as little of the surface area of the Significant Natural Resource overlay districts, to the extent reasonably feasible.
 - (4) Any proposed impacts to significant natural resources will be mitigated per the standards in Sections 6.400 and 6.410.
 - (5) Any applicable local, state, and federal permits are secured.
 - (6) The additional requirements of ADC 6.310 (B) will be met.

B. Additional Requirements, Limitations, and Exceptions for Specific Activities in Riparian Corridor and Significant Wetland overlay districts. In addition to the general requirements listed above, the following requirements, limitations, and exceptions apply to development activities within the Riparian Corridor and Significant Wetland overlay districts. [Ord. 5947, 1/01/21]

(1) Land Divisions. In addition to the regulations in Article 11, land partially situated in one of the City's natural resource districts can be divided only if there is sufficient land outside of any Significant Natural Resource overlay district to establish a development site area and/or separate a developed area from the natural resource areas. For the purposes of this section, for residential land divisions, "sufficient land" means a minimum of 2,000 square feet per proposed lot or parcel. Applicants may also elect to follow the Cluster Development standards for land divisions in Article 11. [Ord. 5947, 1/01/21]

(2) Structures and Land Altering Activities. The placement of structures and other impervious surfaces, as well as grading, excavation, placement of fill, and vegetation removal, are prohibited. Exceptions may be made for the purposes identified in items a-f of this Section, provided they are necessary to accommodate an approved activity and comply with any stated requirements for the activity or use.

(a) Water-Related and Water-Dependent Uses. Development of water-related and water-dependent uses.

(b) Permanent Alteration Within the Riparian Corridor. Disturbance or development within the Riparian Corridor overlay district shall be allowed under the following circumstances:

(i) The resource is characterized as 'marginal' or 'degraded' using the standards found in 6.410(5).

(ii) Demonstration that equal or better protection will be ensured through riparian corridor restoration and enhancement within the remaining overlay district area per the mitigation requirements in Sections 6.400 and 6.410. If the site is encumbered by easements or rights-of-way that would preclude onsite restoration or enhancement, an "in-lieu of payment" may be made to the City in the amount equal to the cost of onsite mitigation.

Residentially zoned lots that were created prior to December 1, 2011, that are less than 20,000 square feet and can't be further subdivided are allowed to encroach up to 25 feet into the Riparian Corridor overlay district without the requirement for restoration or enhancement of the remaining 25 feet. The mitigation requirements in Section 6.400 still apply.

(iii) In no case shall the site improvements be any closer than 25 feet from the Ordinary High Water mark or upland edge of the wetland, unless the improvements are otherwise allowed or exempted per this Section of the Code.

(c) Vegetation Removal. Removal of live vegetation that is not exempt under 6.290(9) is only allowed to accommodate an approved use or development activity under this section of the Code.

(d) Private Construction of Public Non-Master Planned Transportation Facilities and Privately Owned Transportation Facilities. In addition to other City standards, the following standards shall apply to the location and construction of public non-master planned and/or private transportation facilities and structures, such as driveways, local streets, bridges, bridge crossing support structures, culverts, and pedestrian and bike paths. In addition to other City standards, the following standards shall apply to privately constructed transportation facilities and structures:

(i) The facility is designed to be the minimum width necessary to allow for safe passage of vehicles, bicycles and/or pedestrians, and to meet minimum width requirements.

(ii) Where reasonably feasible, crossings of significant natural resources shall be aligned to minimize impact area.

- (iii) The number of crossings is the minimum amount necessary to afford safe and efficient access.
 - (iv) The number of crossings is minimized where reasonably feasible through use and creation of shared access for abutting lots and access through easements for adjacent lots.
 - (v) Crossing structures have a natural bottom or other design that meets ODFW fish passage requirements.
- (e) Private Construction of Public Non-Master Planned Utilities and Privately Owned Utilities. In addition to other City standards, the following standards shall apply to permitted crossing, trenching, or boring for the purpose of developing a corridor for public non-master planned utilities and private utilities, within or crossing parcels in Significant Natural Resource overlay districts, as well as any above-ground utility structures.

In addition to other City standards, the following standards shall apply to privately constructed utility projects:

- (i) Boring under the waterway, directional drilling, or aerial crossing is preferable to trenching. If trenching is the only feasible alternative, it shall be conducted in a dry or dewatered area with stream flow diverted around the construction area to prevent turbidity.
- (ii) Common trenches for private utilities, to the extent allowed by the building code, shall be required where reasonably feasible in order to minimize disturbance of the protected resource.
- (iii) Topsoil and sod shall be conserved during trench construction or maintenance, and replaced on top of the trench. Side-casting and storage of excavated material prior to replacement on top of trench is permitted. Any side-cast material not placed back on top of the trench shall be removed and may not be stored in the Significant Natural Resource overlay district after the construction or maintenance work is completed.
- (iv) Hydraulic impacts on protected resources are minimized.
- (v) Where reasonably feasible, crossings of significant natural resources shall be aligned to minimize impact area.
- (vi) Above-ground utilities that cause ground disturbance in the Significant Natural Resource overlay district and are not within an existing right-of-way or easement, and are not shown in an approved master plan, will only be allowed in limited circumstances, and if they meet the general requirements in 6.310(A).

- (f) Minor or Major Variance. Development associated with an approved Minor or Major Variance. [Ord. 5947, 1/01/21]

C. Activities within Habitat Assessment overlay district. A wildlife habitat assessment is required if proposed development exceeds the minimum thresholds in 6.290(10). If the wildlife habitat assessment finds evidence of habitat for either the northwestern pond turtle or the western painted turtle within the overlay district, the following standards apply:

- (1) New development, expansion of existing development, landscaping and other ground disturbances shall be located outside of the designated turtle habitat areas as determined by the habitat assessment; or
- (2) If impacts are approved, the development/use has been proposed in a manner that will minimize the impact of the development on wildlife habitat. The Oregon Department of Fish and Wildlife (ODFW) has reviewed and approved a mitigation plan for any impacts to the habitat area for the proposed development. Local mitigation is not required in addition to that required by ODFW or other state and federal agencies. [Ord. 5947, 1/01/21]

6.400 Mitigation Standards. Mitigation is a way of compensating for adverse impacts to the functions and values of natural resources caused by development. In many cases, mitigation may result in resource area restoration or enhancement.

If a State or Federal agency has jurisdiction regarding development impacts within the Riparian Corridor and Significant Wetland overlay districts, and they require mitigation for those impacts, the City will not impose additional mitigation requirements over the same area. Those portions of development impacts not mitigated through a State or Federal agency will be subject to local mitigation requirements. Mitigation for impacts to turtle habitat in the Habitat Assessment overlay district will be solely managed by ODFW.

The need for mitigation, restoration, or enhancement will be determined during the Natural Resource Impact Review process. The Director may allow some degree of flexibility to the standards based on the specific location and level of impact.

(1) When Mitigation is Required: Mitigation will be required under the following circumstances:

- (a) Removal of one or more native trees greater than 25 inches in circumference, which requires replacement per section (2)(c).
- (b) Disturbance of more than 2,000 square feet of vegetated surface area. This level of impact will require a mitigation plan per 6.410.
- (c) When a request is made to develop or impact the Riparian Corridor overlay district area per 6.310(B)(2)(b), a mitigation plan will be required for enhancement of the remaining area per 6.410.

(2) Local Mitigation Standards:

- (a) On-site enhancement is required when the 50-foot area of the Riparian Corridor overlay district is impacted per 6.310(B)(2)(b), unless the activity is otherwise exempted per this section of the Code.
- (b) For other mitigation options, on-site mitigation shall occur within the relevant Significant Resource overlay district as close to the impact area as reasonably feasible, taking into consideration the existing natural and human-made features of the site.

If on-site mitigation is not reasonably feasible, off-site mitigation shall be permitted in other locations inside the city in the following priority order:

- (i) Within the impacted Significant Resource overlay district in the same drainage system; or
- (ii) Outside the impacted Significant Resource overlay district, but within 100 feet of a Significant Resource overlay district in the same drainage system; or
- (iii) Outside the same drainage system, but within a Significant Resource overlay district.
- (c) Tree replacement requires planting a minimum 1½-inch caliper healthy and well-branched native deciduous tree or a 5-6 foot tall native evergreen tree for each tree removed. The replanted tree shall be of a species that will eventually equal or exceed the removed tree in size if appropriate for the new location.
- (d) Mitigation for impacts shall require a mitigation area ratio of 1:1; however if the quality of the resource is enhanced or restored per 6.410(5) the ratio may be lowered with Director approval.
- (e) Planting densities and species composition shall be consistent with native wetland and riparian area plant communities currently or historically found in the drainage basin. Use of a reference site as guidance for developing a revegetation plan is recommended.
- (f) Any mitigation requirements resulting from a proposed land division, shall require a mitigation plan concurrent with the land division process.

6.410 Local Mitigation Plan. When a local mitigation plan for impact to a significant natural resource is proposed or required as part of a development application, the applicant shall submit a mitigation plan prepared by a qualified professional with demonstrated experience in developing mitigation plans for the specific impacted resource.

- (1) The mitigation plan shall document the location of the impact, the existing conditions of the resource prior to impact, presence of invasive species, the location of the proposed mitigation area, a detailed planting plan of the proposed mitigation area with species and density, and a narrative describing how the resource will be replaced, and how debris and invasive species will be removed.
- (2) The mitigation plan shall comply with all applicable State and Federal regulations, in addition to the City's standards. The City may approve a development but shall not issue a building permit until all required State and Federal permit approvals have been granted and copies of those approvals have been submitted to the City.
- (3) The applicant or property owner of a development subject to an approved mitigation plan shall provide assurance of completion in the form of a surety or performance bond, cash, negotiable security deposit, letter of credit, or other guarantees approved by the City Attorney that is equal to 120% of the value of the improvements installed pursuant to the plan for a 2-year period. The assurance shall be in place before the issuance of development permits to ensure the success of mitigation improvements and the survival of the plants. The assurance will be released by the City upon receiving satisfactory proof that the mitigation measures have been successfully implemented per (4) below. If mitigation improvements fail during the 2-year period, the assurance shall both be forfeited and used by the City to correct the problem pursuant to the approved mitigation plan, or the bond period may be extended for a 2½-year period with Director's approval to allow for another replanting strategy. When the City of Albany, or another unit of government, is the applicant, it must adhere to the standards in this section, but an assurance is not required.
- (4) A report on the survival and health of planted vegetation, and the status of invasive species, shall be performed by a qualified professional at the expense of the applicant, and will be provided to the Community Development Department between 18 and 24 months from the initial planting that describes the health of all vegetation and shows pictures of the vegetation. The City may arrange an on-site inspection to verify information contained in the report. If the survival rate for tree and shrub species is below 80%, a replanting strategy shall be prepared, approved, and executed within 6 months of the report, with a subsequent report on survival provided to the Department between 12 and 18 months from the time of the second planting. At this point, if the survival rate is still below 80%, the bond described in (3) will either be forfeited or extended for a 2½-year period with Director's approval. If at the end of the extension period, the survival rate is still less than 80%, the bond will be forfeited.
- (5) Table 6.410-1 below summarizes the quality levels, mitigation requirements and expected condition of the significant wetlands and riparian corridor areas after successful completion of the mitigation plan; ODFW will solely determine the requirements for mitigation of significant wildlife habitat.

[Ord. 5947, 1/01/21]

TABLE 6.410-1

Quality levels, mitigation requirements and expected condition of the significant wetlands and riparian corridor areas after successful completion of the mitigation plan.

Existing Resource Quality	Mitigation Requirements/Expected Future Resource Quality
<u>Waterways & Significant Wetlands</u> (riparian and isolated)	
<i>Good Quality:</i> Little enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional. City staff will verify existing condition.	Preserve or enhance per approved mitigation plan; Invasive species are removed and are not persisting.
<i>Marginal Quality:</i> Moderate enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional. City staff will verify existing condition.	Restore to Good Quality per approved mitigation plan; Invasive species are removed and are not persisting.
<i>Degraded Quality:</i> High enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional; Farmed or otherwise converted. City staff will verify existing condition.	Enhance to at least Marginal Quality; A smaller ratio of 1.0 (impact area) to 0.5 (mitigation area) may be allowed for restoration to Good Quality.
<u>Riparian Corridor Overlay</u>	
<i>Good Quality:</i> Combination of native trees, shrubs, and groundcover are at least 80% of the overlay area, and there will be more than 50% tree canopy coverage at maturity.	Preserve or enhance per approved mitigation plan; Invasive species are removed and are not persisting.
<i>Marginal Quality:</i> Combination of native trees, shrubs, and groundcover are at least 80% of the overlay area, and there will be 25%-50% tree canopy coverage at maturity.	Restore to Good Quality with an approved plan (mature overlay area coverage will be estimated); Invasive species are removed and are not persisting;
<i>Degraded Quality:</i> Less vegetation and canopy coverage than Marginal Quality, and/or greater than 10% coverage of any non-native species.	Enhance to at least Marginal Quality with an approved plan (mature overlay area coverage will be estimated); A smaller ratio of 1.0 (impact area) to 0.5 (mitigation area) may be allowed for restoration to Good Quality.

[Ord. 5947, 1/01/21]

6.420 Native Plant List. The City will establish a native plant list, which includes plants that were historically found in the area at the time of European contact. If a modification is requested, the Director will determine if the modification is warranted based on consultation with knowledgeable people with backgrounds in botany or landscape architecture, as well as scientific documents. [Ord. 5947, 1/01/21]

6.430 District Boundary Corrections and Refinements. The boundaries for the Significant Natural overlay districts are approximate.

The boundaries of the Significant Wetland overlay district are based on the locations of the significant wetlands identified in the City's Local Wetland Inventory, as reflected in Plate 6 of the Comprehensive Plan. The Riparian Corridor overlay and Habitat Assessment overlay districts were estimated by measuring from the edge of the water, which is based on an aerial photograph.

District boundary corrections and refinements will be processed administratively. District corrections will be made to correct map errors, such as when the map does not properly reflect the Local Wetland Inventory data. A district boundary refinement is an alteration made, based on professional analyses, to refine the boundary of the Significant Natural Resource overlay districts. District refinements must be made in accordance with the provisions in this code to determine the location and extent of the following:

[Ord. 5947, 1/01/21]

- Riparian Corridor overlay districts as measured from the Ordinary High Water (OHW) mark of rivers, lakes, and streams, and from the upland edge of adjacent significant wetlands. If a DSL-approved wetland delineation or determination results in a change to the boundary of the significant wetland adjacent to the riparian corridor, the Riparian Corridor overlay boundary will be adjusted accordingly.
- Habitat Assessment overlay districts as measured from the OHW mark of East and West Thornton Lakes. If an ODFW-approved habitat assessment results in a change to the boundary of the habitat area, the habitat assessment overlay boundary will be adjusted accordingly.
- Ordinary High Water Mark: Changes to the Riparian Corridor or Habitat Assessment overlay boundaries must be based on the location of the OHW that includes supporting information submitted by a qualified professional hydrologist or professional land surveyor.
- Significant Wetlands overlay district by delineations of significant wetlands that are approved by the DSL or by onsite wetland determinations by DSL when delineations are not needed for other purposes. DSL-approved delineations or determinations shall be required when development is proposed within 30 feet of the overlay district and will supersede the LWI mapping.

6.440 District Amendments. To amend the resource inventories or the program to protect significant natural resources on land within any of the Significant Natural Resource overlay districts requires Comprehensive Plan and Development Code amendments per the requirements in Article 2. In all instances the amendments must be based on new site-specific information. The proposed amendments are reviewed by the Oregon Department of Land Conservation and Development (DLCD), with consultation from other State agencies such as ODFW or DSL.

6.450 Minor Variances and Major Variances. The City may grant Minor Variances or Major Variances to the standards in the Significant Natural Resource overlay districts in order to avoid rendering a property not buildable through application of this ordinance. Requests that cannot meet the provisions and review criteria for Minor Variances will be processed as a Major Variance. Minor Variance applications will be processed through the Type I-L land use process using the criteria in Section 6.450(2) below. Major Variance applications will be processed through the Type II process using the criteria in Section 2.690. The proposed activity or use must be allowed within the base zoning district in order to be considered for a Minor or Major Variance.

- (1) General Standard. In evaluating any Minor or Major Variance request, the decision maker may require the applicant to incorporate design options to reduce the impact on the protected resource. These may include, without limitation, multi-story construction, alternate siting of structures, limiting the length of impervious driveway and other surfaces, and maximizing the use of native landscape materials.
- (2) Minor Variances. In order for the Director to approve a Minor Variance application, the applicant shall demonstrate that all the following criteria are fully satisfied:
 - (a) It is an existing legal lot and there is insufficient space outside the resource area to construct a use permitted in the underlying zoning district.
 - (b) The development site area, including all structures and impervious surfaces, encroaches on the resource area a total of 3,000 square feet or less.
 - (c) The Minor Variance is the minimum necessary to allow a permitted use or achieve the minimum buildable area outlined above, while at the same time minimizing disturbance to the significant natural resources. The Director may require modifications to site development standards to enable avoidance of the resource.
 - (d) The encroachment does not result in a new structure or impervious surface being located closer than 25 feet from the Ordinary High Water mark. Bridges are an exception to this requirement.
- (3) Major Variances. For any existing lot or parcel whose hardship cannot be alleviated with a Minor Variance application, the property owner may apply for a Major Variance per Section 2.690.

[Ord. 5947, 1/01/21]

- 6.460 Compliance with State and Federal Regulations. Activities wholly or partially within the Significant Natural Resource Overlay district(s) are subject to all applicable federal and state regulations. The following regulations commonly apply within the resource areas. (Note: other regulations not listed may also apply; it is the property owner's responsibility to adhere to all applicable State and Federal regulations):
- (1) Oregon Department of State Lands permit requirements under the Removal-Fill Law.
 - (2) U.S. Army Corps of Engineers permit for fill activities as required under Section 404 of the Clean Water Act.
 - (3) Department of Environmental Quality permit requirements for stormwater under the Clean Water Act and state water quality regulations.
 - (4) Oregon Department of Fish and Wildlife regulations may apply to development activities that could impact one of the sensitive, threatened, critical, or endangered species indigenous to the region.
 - (5) The federal Endangered Species Act prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife.
 - (6) The federal Migratory Bird Treaty Act prohibits taking, harming or moving any migratory bird, nest, or egg.
- 6.470 Violations. Activities within Significant Natural Resource Overlay districts not authorized under this Article are unlawful. The City shall seek compliance with the requirements of this Article and the resolution of violations through the procedures below. These procedures are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized under law; and may be exercised in any order.
- (1) Voluntary cooperation to resolve violations is the preferred enforcement procedure when appropriate to the circumstances. Violations causing ongoing degradation of natural resources or repeated violations by the same individual, firm or corporation are not appropriate for voluntary enforcement procedures.
 - (2) Natural resource restoration shall be required for violations that result in unauthorized construction, grading, excavation, placement of fill material, or removal of native vegetation in a Significant Natural Resource Overlay district. The purpose of the restoration requirements shall be to mitigate impacts to vegetation, soils and hydrology and may include vegetation planting, fill removal, backfilling of excavated areas, restoration of ground surface contours, restoration of hydrological processes or other actions. Restoration recommendations shall be solicited from the Oregon Department of Fish and Wildlife and the Linn or Benton County Soil and Water Conservation Districts.
 - (3) Violations involving placement of fill material, excavation, grading or alteration of material within a stream or in a wetland shall be reported to the DSL and the U.S. Army Corps of Engineers, in addition to any local actions taken per this section of the code.
 - (4) Failure of an individual, firm, or corporation to remedy a documented violation may be processed in accordance with the enforcement provision in Article 1.
 - (5) Criminal or civil sanctions.

WILLAMETTE RIVER GREENWAY

- 6.500 Purpose. The Willamette River Greenway district is intended to guide development along the Willamette River so as to preserve the existing scenic, use and natural features. The procedures and criteria of this district implement the requirements of Goal 15 and ORS 390.314. Pursuant to ORS 174.020(2), the requirements of ORS 390.314 (and by extension Goal 15) take precedence over the requirement for clear and objective standards for housing in ORS 197.307. [Ord. 5947, 1/01/21]
- 6.510 Applicability. The area of the City within the Willamette River Greenway District is the area so designated by the boundary shown on Figure 6.510-1 [Ord. 5947, 1/01/21]



FIGURE 6.510-1. Willamette River Greenway.

[Ord. 5947, 1/01/21]

- 6.520 Procedure. Except for land use developments and uses exempted in Section 6.530 below, an application for development approval in the Willamette River Greenway District will be approved under the Type II procedure. Approval of a Willamette River Greenway use application will be granted only if the proposal complies with all applicable sections of this Code. In case of conflict between the provisions of this Article and the provisions of any other Article of this ordinance, the more restrictive provisions shall apply.
- 6.530 Use Permit Exceptions. The following developments and uses are not subject to the provisions of this Article but shall comply with other applicable provisions of this Code:
- (1) Customary dredging and channel maintenance conducted under a permit from the State of Oregon.
 - (2) Gravel removal from the bed of the Willamette River conducted under a permit from the State of Oregon or a seasonal increase in gravel operations.
 - (3) The placing by a public agency of signs, markers, aids, to serve the public.
 - (4) Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses of public lands; except that a substantial increase in the level of development of existing public recreational, scenic, historical, or natural uses on public lands shall require review as provided by this Article.
 - (5) Agriculture as allowed within the subject major zoning district.
 - (6) Reasonable emergency procedures necessary for the safety or protection of property and not in conflict with the provisions of this Code.
 - (7) Maintenance and repair usual and necessary for the continuance of an existing use.
 - (8) Landscaping, construction of driveways, repair or maintenance of existing structures, and the construction or placement of accessory structures less than 250 square feet, provided that such activities are conducted in conjunction with uses already existing on the same property and that they are accomplished in a manner compatible with the purpose of this Article.
- 6.540 Criteria. An application for a Willamette River Greenway use development will be granted if the review body finds that the proposal conforms to the following applicable criteria:
- (1) Lands designated on the Comprehensive Plan as Open Space are preserved and maintained in open space use.
 - (2) Significant air, water and land resources including but not limited to natural and scenic areas, viewpoints, vistas, fish and wildlife habitats, etc. in and adjacent to the Willamette River Greenway are protected, preserved, restored, or enhanced to the maximum extent possible.
 - (3) Areas of annual flooding, floodplains, and wetlands are preserved in their natural state to the maximum possible extent to protect water retention, overflow, and other natural functions.
 - (4) The natural vegetative fringe along the river is maintained to the maximum extent that is practical in order to assure scenic quality, protection of wildlife, and protection from erosion.
 - (5) The harvesting of timber will be done in a manner which ensures that wildlife habitat and the natural scenic qualities of the Willamette River Greenway are maintained or will be restored.

- (6) The proposed development, change, or intensification of use is compatible with existing uses on the site and the surrounding area and provides the maximum possible landscaped area, open space, or vegetation between the activity and the river.
- (7) Extraction of aggregate deposits shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise and safety, and necessary reclamation will be guaranteed.
- (8) Any public recreational use of facility will be developed, maintained, and operated in such a way as to minimize adverse effects on adjacent properties.
- (9) Building setbacks from the floodway line shall be determined by the setback and height plane as defined in Sections 5.200 through 5.207 of this Code. [Ord. 5947, 1/01/21]
- (10) Public access will be provided to and along the Willamette River by appropriate legal means for all development in conformance with plans approved by the City.

6.550 Conditions of Approval. The review body has the power to impose conditions, restriction, or limitations upon any use proposed in the Willamette River Greenway District if such conditions, restrictions, or limitations are found to be necessary in order to satisfy the criteria of Section 6.540.

6.560 Special Notification. Notification regarding requests for Use Permits will be sent to the Oregon Parks and Recreation Department. Notification of the Oregon Parks and Recreation Department will be given by certified mail (return receipt requested) and sent within seven days of the receipt of the application for the conditional use. Notice of the decision on the Willamette River Greenway use permit application will be mailed to the Oregon Parks and Recreation Department within ten days of such decision.

CLUSTER DEVELOPMENT

6.570 Cluster Development. See Article 11, Land Divisions and Planned Developments, Sections 11.400 to 11.530, for Cluster Development standards. [Ord. 5668, 4/11/07; Ord. 5947, 1/01/21]