

Chapter 15.10

NATIONAL FLOOD INSURANCE PROGRAM

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15.10.010 - Definitions. Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

- A. **"APPEAL"** means a request for a review of the Administrator's interpretation of any provision of this Chapter.
- B. **"AREA OF SHALLOW FLOODING"** means a designated AO or AH zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one (1') to three (3') feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AR indicates ponding.
- C. **"AREA OF SPECIAL FLOOD HAZARD"** means the land in the flood plain within a community subject to a one (1%) percent or greater chance of flooding in any given

year. Designation on maps always includes the letter "A" or "V".

- D. **"BASEMENT"** means any area of the building having its floor subgrade (below ground) on all sides.
- E. **"BASE FLOOD"** means the flood having a one (1%) percent chance of being equaled or exceeded in any given year. Also referred to as the "100 Flood". Designation on maps always includes the letter "A" or "V".
- F. **"CRITICAL FACILITY"** means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use, or store hazardous materials or hazardous waste.
- G. **"DEVELOPMENT"** means any man-made change to improved or unimproved real estate, including but not limited to buildings or storage of equipment or materials, or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the are of special flood hazard.
- H. **"FLOOD"** or **"FLOODING"** means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - 1. The overflow of inland or tidal waters and/or
 - 2. The unusual and rapid accumulation of runoff of surface waters from any source.
- I. **"FLOOD INSURANCE RATE MAP"** (FIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
- J. **"FLOOD INSURANCE STUDY"** means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.
- K. **"FLOODWAY"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1') foot.
- L. **"LOWEST FLOOR"** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant structure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements found in Section 15.10.050.
- M. **"MANUFACTURED HOME"** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a

permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. For insurance purposes the term "manufactured home" does not include park or trailers, travel trailers, and other similar vehicles.

N. **"MANUFACTURED HOME, PARK, OR SUBDIVISION"** means a parcel (contiguous parcels) of land divided into two (or) more manufactured mobile home lots for rent or sale.

O. **"RECREATIONAL VEHICLE"** means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

P. **"START OF CONSTRUCTION"** includes substantial improvement, and means the date the building permit is issued, PROVIDED the actual start of construction, repair, reconstruction, replacement or other improvement was within one hundred eighty (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 of footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation of the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Q. **"STRUCTURE"** means a walled and roofed building or mobile home that is principally above ground.

R. **"SUBSTANTIAL IMPROVEMENT"** means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50%) percent of the market value of the structure either:

1. Before the improvement or repair is started, or,
2. If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

S. **"VARIANCE"** means a grant of relief from the requirements of this Chapter which permits construction in a manner that would otherwise be prohibited by this Chapter.

T. **"WATER DEPENDENT"** means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

[Ord. 570 §1, 2003; Ord. 441 §6, 1996; Ord. 309 §1, 1988; Ord. 288 §1, 1987; Ord. 224 §1, 1982]

15.10.020 Lands to Which This Chapter Applies. This Chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Nooksack.

[Ord. 224 §1, 1982]

15.10.021 Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the City of Nooksack, Whatcom County, Washington", dated September 2, 1982, with accompanying Flood Insurance Maps and any subsequent amendments thereto, is hereby adopted by reference and declared to be a part of this Chapter. The Flood Insurance Study is on file at City of Nooksack, City Hall, 103 W. Madison Street, Nooksack, Washington, and is incorporated by this reference as if fully set forth herein.

[Ord. 570 §1, 2003; Ord. 224 §1, 1982]

15.10.022 Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and other applicable regulations. [Ord. 224 §1, 1982]

15.10.023 Abrogation and Greater Restrictions. This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter and another code provision, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. [Ord. 224 §1, 1982]

15.10.024 Interpretation. In the interpretation and application of this Chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

[Ord. 224 §1, 1982]

15.10.025 Warning and Disclaimer of Liability. The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This

Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City of Nooksack, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder. [Ord. 288 §2, 1987; Ord. 224 §1, 1982]

15.10.030 Development Permits Required - Fee. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 15.10.021 hereof. The permit shall be for all structures, including mobile homes, as set forth in Section 15.10.010(N), and for all other development including fill and other activities, also as set forth in Section 15.10.010, DEFINITIONS. The permit shall be processed as a Class I action pursuant to the provisions of Chapter 16.01, and the permit application shall be accompanied by a fee as established in Section 16.01.085. [Ord. 441 §7, 1996; Ord. 288 §3, 1987; Ord. 224 §1, 1982]

15.10.031 Application. Application for a development permit shall be made on forms furnished by the City and shall include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of material, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures, and whether such elevation will be certified by a licensed professional surveyor;
- B. Elevation in relation to mean sea level to which any structure has been floodproofed;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 15.10.050; and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

[Ord. 288 §4, 1989; Ord. 224 §1, 1982]

15.10.032 Designation of Administrator for Chapter. The City of Nooksack Public Works Director is hereby appointed to administer and implement this Chapter by granting or denying development permit applications in accordance with its provisions.

[Ord. 288 §5, 1987; Ord. 224 §1, 1982]

15.10.033 Duties and Responsibilities of Administrator. Duties of the Administrator shall include, but not be limited to:

- A. Permit Review
 - 1. Review all development permits to determine that the permit requirements of this Chapter have been satisfied.
 - 2. Review all development permits to determine that all necessary permits have been obtained from federal, state or local governmental agencies from which prior approval is required.

3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 15.10.060(A) are met.
- B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 15.10.021, Bases for Establishing the Areas of Special Flood Hazard, the Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer Sections 15.10.050, Specific Standards, and 15.10.060, Floodways.
- C. Information to be Obtained and Maintained
1. Where base flood elevation data is provided through the Flood Insurance Study or as required in the preceding subsection, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
 2. For all new or substantially improved flood-proofed structures:
 - a. verify and record the actual elevation (in relation to mean sea level), and
 - b. maintain the floodproofing certifications required in Section 15.10.030(3).
 3. Maintain for public inspection all records pertaining to the provisions of this Chapter.
- D. Alteration of Watercourses
1. Notify adjacent communities and the State of Washington Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
 2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- E. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Sections 15.10.034-035.

[Ord. 570 §1, 2003; Ord. 315 §1, 1989; Ord. 288 §6, 1987; Ord. 224 §1, 1982]

15.10.034 Variances - Appeal Authority.

- A. A request for a variance from the requirements of this Chapter shall be processed as a Class III action pursuant to the provisions of Chapter 16.01, and the variance application shall be accompanied by a fee as established in Section 16.01.085.
- B. An appeal of any requirement, decision, or determination made by the Administrator in the enforcement or administration of this Chapter shall be processed pursuant to

the provisions of section 16.01.160.

- C. In passing upon such applications, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Chapter, and shall also consider:
1. the danger that materials may be swept onto other lands to the injury of others;
 2. the danger to life and property due to flooding or erosion damage;
 3. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 4. the importance of the services provided by the proposed facility to the community;
 5. the necessity to the facility of the waterfront location where applicable;
 6. the availability of alternative locations, for the proposed uses which are not subject to flooding or erosion damage;
 7. the compatibility of the proposed use with existing and anticipated development;
 8. the relationship of the proposed use to the comprehensive plan and flood plan management program for that area;
 9. the safety of access to the property in times of flood for ordinary and emergency vehicles;
 10. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 11. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- D. Upon consideration of the factors of Section 15.10.034(C) and the purposes of this Chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.
- E. The Administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.
[Ord. 441 §8, 1996; Ord. 288 §7, 1987; Ord. 224 §1, 1982]

15.10.035 Conditions for Variances.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the based flood level, providing items (1-11) in Section 15.10.034(D) have been fully considered. As the lot size increases beyond the one-half (½) acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for their reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this Section.

- C. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. Variances shall only be issued upon:
 1. a showing of good and sufficient cause;
 2. a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 3. a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 15.10.034(D), or conflict with existing local laws or this Code.
- F. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principal that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- G. Variances may be issued for non-residential buildings in very limited circumstances to allow a lesser degree of flood-proofing than water tight or dry flood proofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except Part "A" of this Section, and otherwise complies with Section 15.10.040 and 15.10.041.
- H. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

[Ord. 309 §2, 1988; Ord. 288 §8, 1988; Ord. 224 §1, 1982]

15.10.040 Anchoring. In all areas of special flood hazards:

- A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- B. All mobile homes shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

[Ord. 288 §9, 1987; Ord. 224 §1, 1982]

15.10.041 Construction Materials and Methods. In all areas of special flood hazards:

- A. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

- B. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- C. 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 conditions of flooding

[Ord. 570 §1, 2003; Ord. 288 §10, 1987; Ord. 224 §1, 1982]

15.10.042 Utilities. In all areas of special flood hazards:

- A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- B. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
- C. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

[Ord. 224 §1, 1982]

15.10.043 Subdivision Proposals. In all areas of special flood hazards:

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

E. Recreational Vehicles.

Recreational vehicles placed on sites are required to either:

1. Be on the site for fewer than 180 consecutive days;
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 15.10.050 (D)

[Ord. 570 §1, 2003; Ord. 288 §11, 1987; Ord. 224 §1, 1982]

15.10.044 Review of Building Permits. Where elevation data is not available, either through the flood insurance study or through another authoritative source,

applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two (2') feet above grade in these zones may result in higher insurance rates.

[Ord. 288 §12, 1988; Ord. 224 §1, 1982]

15.10.050 Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 15.10.021, **Basis for establishing the areas of Special Flood Hazard** or Section 15.10.033(B), **Use of other Base Flood Data**, the following provisions are required:

A. Residential Construction

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one (1') foot or more above base flood elevation.
2. Crawl Spaces.
 - a. The interior grade of a crawlspace below the base flood elevation must not be more than 2 feet below the lowest adjacent exterior grade;
 - b. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed 4 feet at any point;
 - c. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas (refer to FEMA Technical Bulletin 11-01 page 7, Guidance for Pre-Engineered Crawlspaces). This limitation is intended to prevent these crawlspaces from being converted into habitable spaces;
 - d. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainages tiles, or gravel or crushed stone drainage by gravity or mechanical means;
 - e. The velocity of floodwaters at the site should not exceed 5 feet per second for any crawlspace. For velocities in excess of 5 feet per second, other foundation types should be used.
3. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - a. A minimum of two (2) openings having a total net area of not less than one square inch for each square foot of enclosed area subject to flooding shall be provided;

- b. The bottom of all openings shall be no higher than one (1') foot above grade;
 - c. Openings may be equipped with screen, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.
- B. Nonresidential Construction.** New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated on (1') foot or more above the base flood elevation level; or, together with attendant utility and sanitary facilities, shall:
- 1. be flood proofed so that below one (1') foot above the base flood level the structure is watertight with walls substantially impermeable to the passage or water;
 - 2. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
 - 3. be certified 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 plan. Such certifications shall be provided to the official as set forth in Section 15.10.033(C)(2)(ii);
 - 4. non-residential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in the proceeding subsection;
 - 5. applicants floodproofing non-residential buildings shall be notified that flood insurance premiums will be based on rates that are one (1') foot below the floodproof level (e.g., a building constructed to one (1') foot above the base flood level will be rated as at the base flood level).
- C. Critical Facility.** Construction of new critical facilities shall be, to the extent possible, located outside the limits of the base flood plain. Construction of new critical facilities shall be permissible within the base flood plain if no feasible alternative site is available. Critical facilities constructed within the base flood plain shall have the lowest floor elevated to three (3') feet or more above the level of the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters. Access routes elevated to or above the level of the base flood plain shall be provided to all critical facilities to the extent possible.
- D. Manufactured Homes.** All manufactured homes to be placed or substantially improved within Zones A1-30, AH and AE on the community's FIRM shall be elevated on a permanent foundation, such that the lowest floor of the manufactured home is one (1') foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 15.10.040(B).

[Ord. 650 §1, 2011; Ord. 611 §1, 2007; Ord. 570 § 1, 2003; Ord. 309 §3, 1988; Ord. 288 §13, 1988; Ord. 224 §1, 1982]

15.10.060 Floodways. Located within areas of special flood hazard established in Sections 15.10.020-021 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. Section 15.10.060(A) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 15.10.040-044,050.
- C. Construction or reconstruction of residential structures is prohibited within designated floodways, EXCEPT for repairs, re-construction or improvements to a structure which do not increase the ground floor area; and to repairs, reconstruction or improvements to a structure, the cost of which does not exceed fifty (50%) percent of the market value of the structure either, (a) before the repair, reconstruction is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures identified as historic places may be excluded in the 50% requirement.

[Ord. 570 §1, 2003; Ord. 309 §4, 1988; Ord. 224 §1, 1982]

15.10.065 Wetlands Management. [REPEALED]

[Ord. 441 §9, 1996; Ord. 309 §5, 1988; Ord. 368 §5, 1988]

15.10.075 Violation as Public Nuisance - Abatement. Any structure or site the subject of construction or development in violation of the provisions of this Chapter is declared to be a public nuisance subject to abatement by the City.

[Ord. 259 §21, 1982]