

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY
STATE OF OREGON**

In the Matter of Amending the Benton County Zoning Map and Amending the Benton County Development Code.)))	ORDINANCE No. 2016-0276
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WHEREAS, the Federal Emergency Management Agency has provided Benton County with five revised Flood Insurance Rate Map panels and has directed Benton County to adopt the revised Flood Insurance Rate Maps by December 8, 2016; and

WHEREAS, the amendments contained in this ordinance are intended to protect the health and safety of current and future residents of Benton County through more accurate identification of flood hazard areas; and

WHEREAS, the proposed amendments provide for clarification of documentation submittal requirements with regard to development activities within designated floodway areas; and

WHEREAS, the proposed amendments provide for clarification of documentation submittal requirements with regard to division of land within the Special Flood Hazard Area; and

WHEREAS, additional minor amendments to the Development Code improve the clarity and function of the flood hazard regulations; and

WHEREAS, the Benton County Planning Commission held a duly advertised public hearing on October 4, 2016, received public testimony, and voted to recommend that the Board of Commissioners approve the Zoning Map and Development Code amendments; and

WHEREAS, the Benton County Board of Commissioners held a duly advertised public hearing on October 18, 2016, and received public testimony; and

WHEREAS, the Board of County Commissioners finds that the proposed Zoning Map and Development Code amendments comply with the criteria of Benton County Code 53.505 through 53.625, and are consistent with the applicable policies and procedures of the Benton County Comprehensive Plan; and

WHEREAS, the Benton County Board of Commissioners has considered the staff report, the application materials, the recommendation of the Benton County Planning Commission, and the record as a whole. The Board of Commissioners deliberated, approved the proposed amendments to the Zoning Map and Development Code, and conducted the First Reading of the Ordinance on October 18, 2016, and

WHEREAS, the Benton County Board of Commissioners conducted the Second Reading of the proposed Ordinance on November 1, 2016.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY ORDAINS AS FOLLOWS:

- PART I.** Short Title. Amendments to the Floodplain Management Overlay Zone portion of the Benton County Zoning Map.
- PART II.** Short Title. Amendments to the Benton County Development Code Regarding Floodplain Development.
- PART III.** Authority. The Board of County Commissioners of Benton County has authority to amend the Zoning Map and the Development Code pursuant to ORS Chapter 215 and the Benton County Charter.
- PART IV.** The Zoning Map amendment proposed in Planning File No. LU-16-057 is hereby approved, based on the Findings and Conclusions contained in the attached “Exhibit 1” and hereby adopted and incorporated herein.
- PART V.** The Development Code amendments proposed in Planning File No. LU-16-057 are hereby approved, based on the Findings and Conclusions contained in the attached “Exhibit 1” and hereby adopted and incorporated herein.
- PART VI.** Benton County Zoning Map is hereby amended as shown in “Exhibit 2”.
- PART VII.** Benton County Development Code is hereby amended as shown in “Exhibit 3”.
- PART IIX.** The effective date for these amendments to the Benton County Development Code will be:

First Reading: October 18, 2016
 Second Reading: November 1, 2016
 Effective Date: December 8, 2016

BENTON COUNTY BOARD OF COMMISSIONERS

 Chair

 Commissioner

 Commissioner

Approved as to Form:

 County Counsel

 Recording Secretary

Exhibit 1

Findings of Fact and Conclusions of Law Zoning Map and Development Code Amendments; File No. LU-16-057

A. GENERAL FINDINGS

General History

In October 2002, Benton County began participating in the National Flood Insurance Program's (NFIP) Community Rating System (CRS). The Community Rating System is a program designed to encourage local governments to go beyond the minimum floodplain requirements identified by the Federal Emergency Management Agency (FEMA) in an effort to decrease damage to structures during a flood event. Some of the things Benton County does are:

- Require the first habitable floor of all new, substantially improved, and substantially damaged dwellings to be elevated at least 18 inches above the Base Flood Elevation.
- Require all electrical, mechanical, and plumbing equipment servicing a structure to be elevated at least 12 inches above the Base Flood Elevation.
- Provide information regarding the location of properties in relation to FEMA-identified Special Flood Hazard Areas to property owners, lending institutions, insurance companies, realtors, or any other interested person.
- Provide information regarding flooding and flood hazards to members of the public and county residents. Examples of this type of information include historic flooding and sources of flooding in Benton County; steps to take before, during and after a flood event; the importance of having flood insurance; floodplain construction standards; elevation certificate review; flood retrofitting options for structures; and contact information for various agencies that deal with floodplain development activities and flood events.

In exchange for Benton County's adherence to stricter development standards within designated floodplains and provision of educational information to the public on a daily and annual basis, Benton County has been awarded a Class 6 rating in the Community Rating System. The result is an automatic 20% discount for all flood insurance premiums for properties located in FEMA-identified floodplains in unincorporated Benton County.¹

Benton County's Flood Insurance Rate Map Adoption Process

In June 2015 the Federal Emergency Management Agency provided Benton County with preliminary copies of five revised panels for the Benton County Flood Insurance Rate Maps

¹ A 10% discount is also automatically given to insurance policies for properties located *outside* FEMA-designated floodplains in unincorporated Benton County.

(FIRMs) in the North Albany area. Final copies of the revised panels were provided to Benton County on June 8, 2016.

It is now Benton County's responsibility to incorporate the revised FIRM panels into the Development Code and Zoning Map and to use them, beginning December 8, 2016, for regulation of floodplain development in the county. In light of the need to adopt the revised panels, staff has taken this opportunity to include some additional amendments to the Benton County process.

Notice of the FIRM panel revisions was provided to affected property owners on September 20, 2016. Notice of the proposed Zoning Map and Development Code amendments was provided in the Corvallis Gazette-Times on September 23, 2016.

On October 4, 2016, the Planning Commission held a public hearing, heard testimony, and voted to recommend approval of the map revisions and proposed amendments to the Benton County Zoning Map and Benton County Development Code.

On October 18, 2016, the Board of Commissioners held a public hearing, heard testimony, voted to accept the proposed Zoning Map and Development Code revisions, and conducted the First Reading of the Ordinance.

Purpose of the Proposed Code Amendments:

- Clarification of the type of information required to be submitted to document compliance with access standards for division of land within a Special Flood Hazard Area; and
- Clarification of the type of information required to be submitted to document no-rise in water surface elevation during a base flood event for project proposals within a designated floodway.

B. PROPOSED MAP AMENDMENTS

North Albany Flood Insurance Rate Map Panel Revisions:

On June 8, 2016, the Federal Emergency Management Agency (FEMA) issued a Letter of Final Determination stating that the five revised Flood Insurance Rater Map (FIRM) panels for the North Albany area will become effective on December 8, 2016. As such, the revised panels are required to be adopted by affected communities by the effective date.

The process leading up to the Letter of Final Determination issuance was initially started by the City of Albany in 2010. At that time, the city was concerned that the Flood Insurance Rate Maps in effect did not accurately reflect the flooding patterns and depths that would occur during a base flood event. This concern was based on aerial imagery of historic flood events that were determined to be close to base flood events and new flood study information being submitted for prospective development projects in the North Albany area. Of particular concern was the possibility of an unmapped floodway through the Thornton Lakes System. The city chose to hire

a consultant to prepare a flood study for the North Albany area help resolve the discrepancies between the FIRM panels and the historic and new flood information.

The flood study prepared for the North Albany area found that the city's concerns were correct: the Thornton Lakes System does have floodways that are not identified on the FIRM panels issued by FEMA and, in addition to that, the flood depths and flood locations were found to be inaccurate as well. Approximately 100 acres of land was mapped as being within the Special Flood Hazard Area (SFHA) that shouldn't be and approximately the same amount was mapped as being outside of the SFHA that should be. The study also found that some areas had Base Flood Elevations (BFEs) identified as more than 4 feet higher than they should be and some areas had BFEs identified as up to 2 feet lower than they should be.²

The results of the North Albany Flood Study were submitted to FEMA through the Letter of Map Revision (LOMR) process but, because the study affected more five FIRM panels, the application was changed to a Physical Map Revision (PMR). As part of the map revision and outreach process, the City of Albany held a public information night in 2011 and invited all property owners, both city and county, affected by the proposed FIRM revisions. At the meeting, city staff explained the reasons for the flood study, explained the study findings and how they might affect flood insurance costs, and provided information about flood insurance policies and options. Staff from the consulting firm that created the flood study, county staff, and an insurance agent who specializes in flood insurance policies, and additional city staff who could print out maps showing the flood revisions were also available at the meeting to discuss property-specific questions with people after the initial presentation.

Over the next few years, the PMR process involved review between FEMA, the consultant, and city staff. Because the flood study also affected county properties, the city invited county staff to participate in the entire process. In January 2015, the city authorized \$100,000 in funding to provide elevation certificates for structures within the flood study area that would be negatively impacted by the findings of the study.³ In February 2015, the city again hosted a community meeting North Albany area residents to update them of the changes and expected timeline for completion of the map revisions, provide an opportunity for property-specific discussions, provide information about the elevation certificate program, and provide access to flood insurance information. In June 2015, FEMA notified the city and county that preliminary FIRM panels would be provided. The 90-day appeal period for review of the preliminary FIRM panels began on July 15, 2015 and ended October 13, 2015. The final step in the FEMA review process occurred with the issuance of the LFD on June 8, 2016.

Oak Creek Letter of Map Revision:

Because the Oak Creek Letter of Map Revision (LOMR) affected only a portion of a single FIRM panel, it was not processed as a Physical Map Revision and, therefore, there is no

² More detailed information about the flood study, reasons for the study, etc. are available on the City of Albany's website at: <https://www.cityofalbany.net/departments/public-works/engineering/north-albany-floodplain-study>.

³ The funding for elevation certificate preparation was available until the close of FEMA's 90-day appeal period. According to a recent conversation with city staff, approximately half of the property owners who likely qualified for the free elevation certificates requested them.

requirement by FEMA to formally adopt it. However, although the LOMR affects only two county properties, staff felt that the revisions to this portion of the Oak Creek Special Flood Hazard Area were substantial enough to warrant identifying the LOMR specifically in the text of the Floodplain Management Overlay chapter of the Development Code.

The Oak Creek study was prepared in 2014 in conjunction with a nearby development proposal (now known as The Retreat) by a private consultant and became effective on July 14, 2014. The study found that the Special Flood Hazard Area for this section of Oak Creek was incorrectly mapped and should be significantly wider as it passes through a field at the northeast corner of 35th Street and Western Boulevard and significantly narrower as it continues on from the west side of 35th Street to the north side of the railroad tracks.

C. PROPOSED TEXT AMENDMENTS

The following is a summary of the amendments to Chapter 83 (Floodplain Management Overlay) of the Benton County Development Code:

- BCC 83.010(1) – Incorporation of the revised Flood Insurance Rate Map panels and Letter of Map Revision into the chapter. This is required by FEMA in order for Benton County residents to continue to be eligible for federal flood insurance.
- BCC 83.205(1) – Clarification of method for documenting that a proposed project will not result in any increase in flood levels during a base flood event. This will make clear what the evaluation process is for certain development proposals, and by having FEMA review them, will ensure consistent and expert evaluation.
- BCC 83.605(2)(b) – Clarification of the method for providing documentation and review process to determine whether or not newly created parcels will have adequate access by standard emergency vehicles during a base flood event. This will create a more certain and reliable process for review by fire agencies, ensuring that the intent of this code provision is carried through.
- BCC 83.010(2) & (3) – Removal of outdated language regarding the 0.2-foot floodway identified within the Corvallis Urban Fringe. This is a redundant provision now, because the recently adopted flood maps for the Corvallis area utilize the 0.2-foot floodway.
- BCC 83.010(3)(b)(C) – Correction of the term Letter of Map Revision
- BCC 83.210(1) – Correction of when a Post-Construction Elevation Certificate is required to be submitted
- BCC 83.310(2) – Spelling correction
- BCC 83.605(2) – Clarification of what is meant by the term non-residential, as used in this section

D. FINDINGS APPLYING CODE CRITERIA

Development Code Provisions for Zone Change:

The Official Zoning Map may be amended if:

BCC 53.505(1). *The proposed zoning for the property is more appropriate than the current zoning, when considering existing uses, changes in circumstances since the current zoning was applied, or information that indicates that the current zoning was not properly applied.*

Findings: As explained in Section IV above, the revised Benton County Flood Insurance Rate Map panels issued by the Federal Emergency Management Agency are based on more accurate flood studies of the Thornton Lakes System, Willamette River, and Oak Creek floodplains, which incorporate current development conditions within these floodplains and result in increased accuracy of base flood elevations and flood hazard boundary locations.

Conclusion: The proposed revisions to the Floodplain Management Overlay zone are more appropriate than the current location of this overlay zone.

BCC 53.505(2). *The impact on adjacent properties will be minimal.*

Findings: The intent in establishing a Floodplain Management Overlay zone is to ensure that development in this area is performed in a manner that reduces property and structural damage during flood events; thereby minimizing the impacts of such development on adjacent properties.

Conclusion: Adoption of the revised Flood Insurance Rate Map panels will allow Benton County to continue working towards minimizing structural and property damage as a result of flood events in the county. Properties outside the proposed revised Special Flood Hazard Area will not be affected by the change to the Zoning Map.

BCC 53.505(3). *Any significant increase in the level of public services which would be demanded as a result of the proposed zone change can be made available to the area.*

Findings: It is not expected that the proposed revisions to the Special Flood Hazard Area will cause any increase in the demand for public services to properties located in this zone.

Conclusion: No increase in the level of public services is expected as a result of the proposed adoption of the revised Flood Insurance Rate Map panels prepared by FEMA.

Development Code Provisions for Text Amendments:

BCC 53.605. *On occasion, it may be appropriate to amend sections of the Comprehensive Plan or Development Code to respond to changing policies and conditions, or to clarify text.*

Findings: The proposed code amendments are intended to correct and clarify existing code language, improving the public's understanding of documentation requirements concerning development within the floodplain.

Conclusion: Text clarifications are needed to better inform applicants and the public. The proposed amendments meet the general criteria for consideration.

Process for Zoning Map and Development Code Text Amendments:

BCC 53.510(2). The Board of County Commissioners may initiate a zone change. The Board shall direct the Planning Official to prepare maps, drawings, data, and other information supporting the zone change.

BCC 53.610(1). The Board of County Commissioners may initiate an amendment to this code. The Board shall direct the Planning Official to prepare a background report discussing the justification for the proposed amendment.

Findings: On September 20, 2016, the Board of Commissioners reviewed background information from staff, discussed the matter, and voted to initiate the amendments.

Conclusion: The proposed amendments were properly initiated.

BCC 53.520. The Planning Commission shall conduct a public hearing to review a proposed zone change. Following the close of the public hearing, the Planning Commission shall make a recommendation to the Board of Commissioners to approve, deny, or modify the proposed zone change. The commission shall include findings in support of its recommendation.

BCC 53.620. The Planning Commission shall conduct a public hearing to review a proposed text amendment. Following the public hearing, the Planning Commission shall make a recommendation to the Board to approve, deny, or modify the proposed amendment.

Findings: The Planning Commission will conduct a hearing on October 4, 2016, and will forward a recommendation to the Board of Commissioners. Findings in support of the Planning Commission's decision will be included in the recommendation to the Board of Commissioners.

Conclusion: The scheduled hearing will comply with the procedure stipulated in the above code sections.

BCC 53.525. The Board of County Commissioners shall conduct a public hearing to review a proposed zone change. The Board may approve, modify, or deny the proposed zone change. The Board shall include findings in support of its decision. If the Board approves the zone change, the Board shall amend the Official Zoning Map by ordinance pursuant to the provisions of the Benton County Charter.

BCC 53.625. The Board of County Commissioners shall hold a public hearing to review a proposed text amendment. The Board may accept, reject, or modify the proposed text amendment in whole or in part. Incorporation of any text amendment into the Development Code shall proceed pursuant to the Ordinance adoption provisions of the Benton County Charter.

Findings: The Board of Commissioners will conduct a hearing on October 18, 2016 to consider the proposed map and text amendments and the recommendation of the Planning Commission. Findings supporting the Board's decision will be included in the Ordinance.

Conclusion: The scheduled hearing will comply with the procedure stipulated in the above code sections.

Conclusion Regarding Development Code Criteria: The proposed amendments to the Benton County Zoning Map and the Floodplain Management Overlay chapter of the Development Code are consistent with the applicable Development Code criteria.

E. APPLICABLE COMPREHENSIVE PLAN POLICIES

Floodplain

7.2.1 Benton County's floodplain management policies and actions will continue to emphasize more preventive than corrective measures. Flood damage prevention methods shall be non-structural to the degree possible, and include a combination of land use and code regulations, non-regulatory practices such as incentives, and a comprehensive emergency preparedness program.

Findings: Benton County floodplain management regulations continue to emphasize more preventive than corrective measures. The proposed code amendments will not alter current the balance between preventive and corrective measures for floodplain management.

7.2.2 Benton County shall allow accessory structures to be constructed within the floodplain; however, new primary structures shall not be allowed within the floodplain unless a parcel has insufficient buildable land outside the floodplain. Accessory structures shall not be located in the floodway.

Findings: This issue is already addressed in the current floodplain code and will not be altered by any of the proposed code revisions.

7.2.3 Benton County shall only allow land divisions within the floodplain when it can be demonstrated that each buildable lot or parcel has a suitable site for development outside of the floodplain boundary. Non-residential uses shall be excepted.

Findings: The proposed code amendments, in Section 83.605(2), clarify the method for providing adequate documentation to evaluate land division proposals for compliance with the standards that implement this policy.

7.2.8 Benton County shall take measures to assure that wetland mitigation does not compromise existing stormwater functions of the land being used for the mitigation.

Findings: Any wetland mitigation that proposed to be located within a Special Flood Hazard Area requires land use review pursuant to the provisions regulating land development activities in a floodplain. This issue is already addressed in the current floodplain code and will not be altered by any of the proposed code revisions.

7.2.10 Benton County shall restrict development for human occupancy in those areas where access by standard emergency vehicles such as fire or ambulance is prevented by flood waters of 100-year flood levels.

Findings: The proposed code amendments, in Section 83.605(2), clarify the method for providing adequate documentation to evaluate land division proposals for compliance with the standards that implement this policy.

Conclusion Regarding Comprehensive Plan Policies: The proposed amendments to the Zoning Map and Floodplain Management Overlay chapter of the Development Code are consistent with the applicable Comprehensive Plan policies.

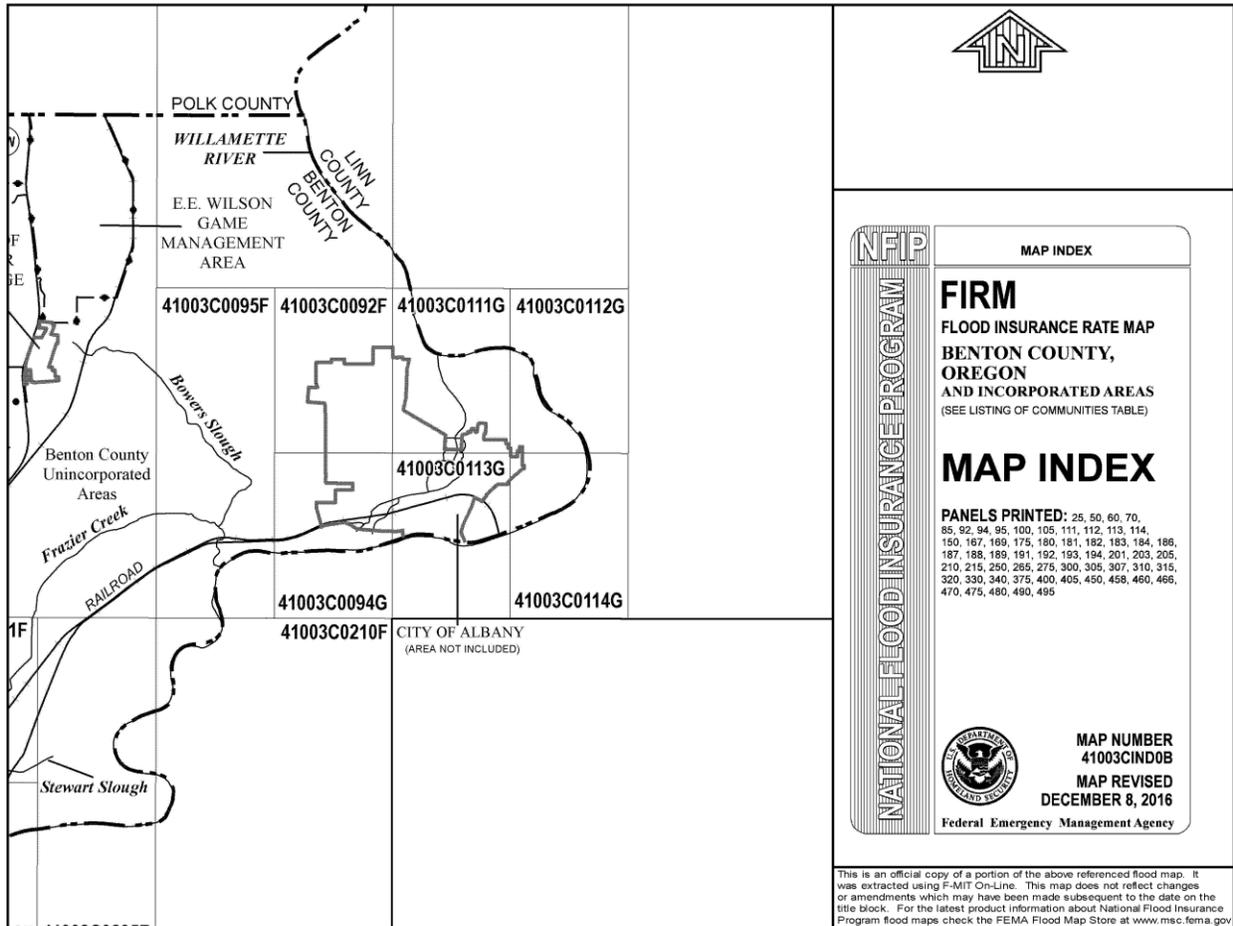
F. SUMMARY AND CONCLUSION

The Board of Commissioners concludes that the proposed map revisions and text amendments comply with the Benton County Development Code and the Benton County Comprehensive Plan.

Exhibit 2

Amendments to the Benton County Zoning Map
Zoning Map and Development Code Amendments; File No. LU-16-057

The Floodplain Overlay on the Benton County Zoning Map is hereby amended to reflect the floodplain designations as shown on the following images.



This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov.

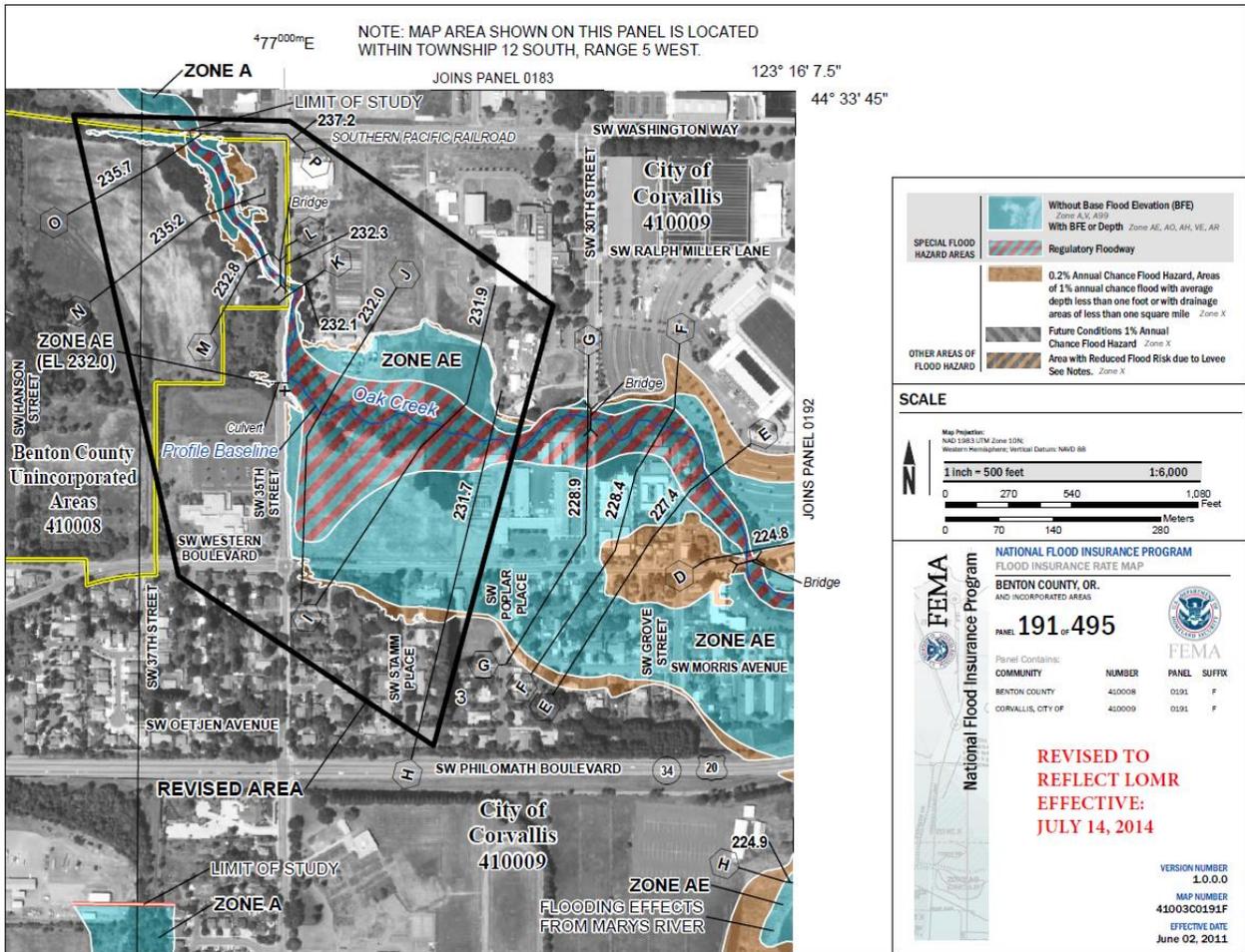


Exhibit 3

**Amendments to the Benton County Development Code
Zoning Map and Development Code Amendments; File No. LU-16-057**

**Added text is underlined.
Deleted text is ~~struck through~~.**