

**Title 13**  
**FLOOD CONTROL**

Chapter 1  
**FLOODPLAIN DEVELOPMENT MANAGEMENT**

**SECTION:**

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**13-1-1. General**

**13-1-1(1). Statutory Authorization**

The City of Roy (Roy) adopts the rules and regulations under the authority of the Legislature of the State of Washington, which has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

**13-1-1(2). Findings of Fact**

- A. Areas of Roy may be subject to periodic inundation and channel migration which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for protection and relief from flooding and channel migration, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. When floodplains and watersheds are developed without taking appropriate care and precautions, flood heights, frequencies, and velocities increase, causing a greater threat to humans, damage to property, destruction of natural floodplain functions, and adverse impacts to water quality and habitat.
- C. Rivers, streams, lakes, estuarine and marine areas and their floodplains are major elements of healthy aquatic and riparian habitats and conveyance of flood waters. If water-sheds, rivers, streams, lakes, estuaries, floodplains and other systems are not viewed holistically as biological and geomorphologic units, it can lead to serious degradation of habitat and increased flood hazards to people and human development.
- D. Over the years, natural processes have evolved that manage flood waters and channel flows in the most effective and efficient manner. Disruption of these processes by altering land cover, stream channels, wetlands, and other water bodies leads to increased flood hazards, loss of life and property, threats to public health, and loss of habitat.

**13-1-1(3). Purpose**

It is the purpose of this Chapter to promote the public health, safety, and general welfare by managing development in order to:

- A. Protect human life, health and property from the dangers of flooding;

- B. Minimize the need for publicly funded and hazardous rescue efforts to save those who are isolated by flood waters;
- C. Minimize expenditure of public money for costly flood damage repair and flood control projects;
- D. Minimize disruption of commerce and governmental services;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in the floodplain;
- F. Maintain a stable tax base by providing for the sound use of flood prone areas so as to minimize future flood blight areas;
- G. Encourage that those who occupy areas subject to flooding and channel migration assume responsibility for their actions;
- H. Qualify Roy for participation in the National Flood Insurance Program, thereby giving citizens and businesses the opportunity to purchase flood insurance;
- I. Maintain the quality of water in rivers, streams, lakes, estuaries, and marine areas and their floodplains so as to protect public water supplies, areas of the Public Trust, and wildlife habitat protected by the Endangered Species Act;
- J. Retain the natural channel, shoreline, and floodplain creation processes and other natural floodplain functions that protect, create, and maintain habitat for threatened and endangered species.
- K. Prevent or minimize loss of hydraulic, geomorphic, and ecological functions of floodplains and stream channels.

**13-1-1(4). Lands to Which This Chapter Applies**

This Chapter shall apply to the Regulatory Floodplain, which is comprised of the Special Flood Hazard Area and all Protected Areas within the jurisdiction of Roy, as defined in Section 13-1-3.

**13-1-1(5). Approach**

In order to achieve the listed purposes, this Chapter:

- A. Defines and clarifies the terms and phrases used in this Chapter in Section 13-1-2.
- B. Identifies in Section 13-1-3 the Regulatory Floodplain, the Special Flood Hazard Area, and the Protected Area and the supporting technical data needed to delineate those areas.
- C. Establishes a permit requirement in Section 13-1-4 so that all human development that may affect flood hazards, water quality, and habitat are reviewed before it is constructed.
- D. Sets minimum protection standards in Section 13-1-5 for all development to ensure that the development will not increase the potential for flood damage or adversely affect natural floodplain functions.
- E. Sets minimum standards to protect new and substantially improved structures from flood damage in Section 13-1-6.
- F. Specifies additional habitat protection criteria in Section 13-1-7. Some small projects do not need a permit. For all other development projects, the applicant must assess their impact on those factors that contribute to increased flood hazard and degradation of habitat. If the assessment concludes that the project

will cause an adverse effect outside the Protected Area, the permit will be denied unless the project impacts are mitigated.

#### **13-1-1(6). Penalties for Noncompliance**

A. No development shall be undertaken or placed in the areas regulated by this Chapter without full compliance with the terms of this Chapter and other applicable regulations of Roy. Violations of the provisions of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a misdemeanor. Any person who violates this Chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$1,000 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent Roy from taking such other lawful action as is necessary to prevent or remedy any violation. Each violation or each day of continued unlawful activity shall constitute a separate violation.

B. This subsection, *Penalties for Noncompliance*, shall control over any conflicting provision of the Roy City Code (RCC) for violations of RCC Title 13, Chapter 1.

#### **13-1-1(7). Interpretation**

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

A. Considered as minimum requirements;

B. Liberally construed in favor of Roy; and,

C. Deemed neither to limit nor repeal any other powers granted under State statutes.

D. The provisions of this Chapter control whenever the provisions herein conflict with or are inconsistent with any other provision of the Code or other City provisions, regardless of whether said Code provision expressly so states. Any disputes over inconsistent or conflicting provisions shall be resolved by the Floodplain Administrator.

#### **13-1-1(8). Abrogation and Greater Restrictions**

This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, codes or ordinances. However, where this Chapter and another code, ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **13-1-1(9). Warning and Disclaimer of Liability**

The degree of property and habitat protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods and movement of channels outside of mapped channel migration areas 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 regulated areas or development permitted within such areas will be free from flood or erosion damage. This Chapter shall not create liability on the part of Roy or any officer or employee thereof for any damage to property or habitat that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

#### **13-1-1(10). Severability**

The provisions and sections of this Chapter shall be deemed separable and the invalidity of any portion of this Chapter shall not affect the validity of the remainder.

## 13-1-2. Definitions

Unless specifically defined below, terms 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. Where any terms defined here are also defined in 44 CFR 59.1, those definitions as now existing or hereafter amended, shall control.

**Adversely affect/Adverse effect:** effects that are a direct or indirect result of the proposed action or its interrelated or interdependent actions and the effect is not discountable, insignificant or beneficial. Discountable effects are extremely unlikely to occur. Insignificant effects relate to the size of the impact and should never reach the scale where a take occurs. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. Beneficial effects are contemporaneous positive effects without any adverse effects. In the event that the overall effect of the proposed action is beneficial, but is also likely to cause some adverse effects, then the proposed action is considered to result in an adverse effect.

**Appurtenant structure:** A structure which is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principle structure.

**Base Flood:** the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the "100-year flood"). The area subject to the base flood is the Special Flood Hazard Area designated on Flood Insurance Rate Maps as Zones "A" or "V" including AE, AO, AH, A1-99 and VE. Please refer also to the definitions under "Zone."

**Base Flood Elevation:** the elevation of the base flood above the datum of the effective FIRM.

**Basement:** any area of the structure having its floor sub-grade (below ground level) on all sides.

**Channel Migration Zone:** the area within the lateral extent of likely stream channel movement due to stream bank destabilization and erosion, rapid stream incision, aggradation, avulsions, and shifts in location of stream channels.

**Critical Facility:** a facility necessary to protect the public health, safety and welfare during a flood. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency operations installations, water and wastewater treatment plants, electric power stations, and installations which produce, use, or store hazardous materials or hazardous waste (other than consumer products containing hazardous substances or hazardous waste intended for household use).

**Development:** any man-made change to improved or unimproved real estate in the Regulatory Floodplain, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, subdivision of land, removal of more than 5% of the native vegetation on the property, or alteration of natural site characteristics.

**Dry Floodproofing:** any combination of structural and non-structural measures that prevent flood waters from entering a structure.

**Elevation Certificate:** the official form (FEMA Form 81-31) used to provide elevation information necessary to ensure compliance with provisions of this Chapter and determine the proper flood insurance premium rate.

**FEMA:** the Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

**Fish and Wildlife Habitat Conservation Area:** lands needed to maintain species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. These areas are designated by Roy pursuant to the Washington State Growth Management Act (WAC 365-190-080).

**Flood or Flooding:** 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 Insurance Rate Map (FIRM) or DFIRM (digital):** the official map on which FEMA has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the community.

**Flood Protection Elevation (FPE):** the elevation above the datum of the effective FIRM to which new and substantially improved structures must be protected from flood damage.

**Flood Insurance Study:** the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.

**Floodway:** the channel of a stream 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 at any point.

**Functionally Dependant Use:** a use that must be located or carried out close to water, e.g. docking or port facilities necessary for the unloading of cargo or passengers or shipbuilding and ship repair.

**Historic Structure:** a structure that

A. Is listed on the National Register of Historic Places, the Washington Heritage Register, or the Washington Heritage Barn Register, or any list of historical sites promulgated by Roy or

B. Has been certified to contribute to the historical significance of a registered historic district.

**Hyporheic Zone:** a saturated layer of rock or sediment beneath and/or adjacent to a stream channel that contains some proportion of channel water or that has been altered by channel water infiltration.

**Impervious Surface:** a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of storm water.

**Lowest Floor:** the lowest floor of the lowest enclosed area (including basement or crawlspace). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a structure's lowest floor, provided that such enclosure is compliant with Section 13-1-6(2)(F), (i.e. provided there are adequate openings to allow floodwaters into the area).

**Manufactured Home:** 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 attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

**Manufactured Home Park or Subdivision:** a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Native Vegetation:** plant species that are indigenous to the community's area and that reasonably could be expected to naturally occur on the site.

**Natural Floodplain Functions:** the contribution that a flood-plain makes to support habitat, including, but not limited to providing flood storage and conveyance, reducing flood velocities, reducing sedimentation, filtering nutrients and impurities from runoff, processing organic wastes, moderating temperature fluctuations, and providing breeding and feeding grounds, shelter, and refugia, for aquatic or riparian species

**New Construction:** structures for which the "start of construction" commenced on or after the effective date of this Chapter.

**Protected Area:** the lands that lie within the boundaries of the floodway, the riparian habitat zone, and the channel migration area. Because of the impact that development can have on flood heights and velocities and habitat, special rules apply in the Protected Area. For purposes of this Chapter, protected areas covered by the Code regulatory scheme may extend outside of Special Flood Hazard areas

**Recreational Vehicle:** a vehicle,

A. Built on a single chassis; and

B. 400 square feet or less when measured at the largest horizontal projection; and

C. Designed to be self-propelled or permanently towable by an automobile or light duty truck; and

D. Designed primarily for use as temporary living quarters for recreational, camping, travel, or seasonal use, not as a permanent dwelling.

**Regulatory Floodplain:** the area of the Special Flood Hazard Area plus the Protected Area, as defined in Section 13-1-3. The term also includes newly designated areas that are delineated pursuant to Section 13-1-3(5).

**Riparian:** Of, adjacent to, or living on, the bank of a river, lake, pond, ocean, sound, or other water body.

**Riparian Habitat Zone:** the water body and adjacent land areas that are likely to support aquatic and riparian habitat as detailed in Section 13-1-3(4)(C) of this Chapter. For purposes of this Chapter, a "riparian habitat zone shall not mean "a riparian buffer zone" as that term is defined by Washington law.

**Special Flood Hazard Area (SFHA):** the land subject to inundation by the base flood. Special Flood Hazard Areas are designated on Flood Insurance Rate Maps with the letters "A" or "V" including AE, AO, AH, A1-99 and VE. The Special Flood Hazard Area is also referred to as the "area of special flood hazard."

**Start of Construction:** includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit's expiration date. The actual start is 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. For purposes of defining "start of construction," 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 structures not occupied as dwelling units or not part of the main structure. Substantial improvement, for purposes of "start of construction," shall mean the *actual* start of construction, meaning the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure:** a walled and roofed building, including a gas or liquid storage tank that is principally above ground. See Section 13-1-6.

**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 50 percent of the market value of the structure before the damage occurred.

Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

**Substantial Improvement:** any repair, reconstruction, rehabilitation, addition, replacement, or other improvement of a structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not include any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

**Variance:** a grant of relief from the requirements of this Code provision which permits construction in a manner that would otherwise be prohibited by this Chapter.

**Water Typing:** a system for classifying water bodies according to their size and fish habitat characteristics. The Washington Department of Natural Resources' Forest Practices Water Typing classification system is hereby adopted by reference. The system defines four water types:

- A. Type "S" = Shoreline: Streams that are designated "shorelines of the State," including marine shorelines
- B. Type "F" = Fish: Streams that are known to be used by fish or meet the physical criteria to be potentially used by fish.
- C. Type "Np" = Non-Fish Perennial streams
- D. Type "Ns" = Non-Fish Seasonal streams

**Zone:** one or more areas delineated on a FIRM, whether or not identified on Roy's current FIRM. The following zones may be used on the adopted FIRM. The Special Flood Hazard Area is comprised of the A and V Zones.

- A: SFHA where no base flood elevation is provided.
- A#: numbered A Zones (e.g., A7 or A14), SFHA with a base flood elevation.
- AE: SFHA with a base flood elevation.
- AO: SFHA subject to inundation by shallow flooding usually resulting from sheet flow on sloping terrain, with average depths between one and three feet. Average flood depths are shown.
- AH: SFHA subject to inundation by shallow flooding (usually areas of ponding) with average depths between one and three feet. Base flood elevations are shown.
- B: the area between the SFHA and the 500-year flood of the primary source of flooding. It may also be an area with a local, shallow flooding problem or an area protected by a levee.
- C: an area of minimal flood hazard, as above the 500-year flood level of the primary source of flooding. B and C Zones may have flooding that does not meet the criteria to be mapped as a Special Flood Hazard Area, especially ponding and local drainage problems.
- D: area of undetermined but possible flood hazard.

- V: the SFHA subject to coastal high hazard flooding including waves of 3' or greater in height. There are three types of V Zones: V, V#, and VE, and they correspond to the A Zone designations.
- X: the area outside the mapped SFHA.
- Shaded X: the same as a Zone B, above.

### **13-1-3. Regulatory Data**

#### **13-1-3(1). Regulatory Floodplain**

The Regulatory Floodplain is comprised of the Special Flood Hazard Area and all Protected Areas within the jurisdiction of Roy. The term also includes areas delineated pursuant to Section 13-1-3(5).

#### **13-1-3(2). Special Flood Hazard Area**

A. The Special Flood Hazard Area (SFHA) is the area subject to flooding by the base flood and subject to the provisions of this Code provision. It is identified by the Federal Emergency Management Agency pursuant to 44 CFR 60.3(c)(1)(d)(2), in a scientific and engineering report entitled "Flood Insurance Study for Roy dated 1982 and Pierce County dated 1987, and any revisions thereto, with accompanying Flood Insurance Rate Maps (FIRM) for Roy and Pierce County dated 1982 and 87 and any revisions thereto. These documents are hereby adopted by reference and declared to be a part of this Code provision. The Flood Insurance Study and the FIRM are on file at the office of the Roy City Clerk/Treasurer, 216 McNaught St. S., Roy, WA 98580.

B. Upon receipt of a floodplain development permit application, the Roy agent or employee designated by the Mayor (designee) shall compare the elevation of the site to the base flood elevation. A development project is not subject to the requirements of this Code provision if it is located on land that can be shown to be

1. Outside the Protected Area and
2. Higher than the base flood elevation.

The designee shall inform the applicant that the project may still be subject to the flood insurance purchase requirements unless the owner receives a Letter of Map Amendment from FEMA.

C. The designee shall make interpretations where needed, as to the exact location of the boundaries of the Regulatory Floodplain, the SFHA and the Protected Area (e.g., where there appears to be a conflict between the mapped SFHA boundary and actual field conditions as determined by the base flood elevation and ground elevations). The applicant may appeal the designee's interpretation of the location of the boundary to Hearing Examiner.

#### **13-1-3(3). Flood Hazard Data**

A. The base flood elevation for the SFHAs of Roy shall be as delineated on the 100-year flood profiles in the Flood Insurance Study for Roy.

B. The base flood elevation for each SFHA delineated as a "Zone AH" or "Zone AO" shall be that elevation (or depth) delineated on the Flood Insurance Rate Map. Where base flood depths are not available in Zone AO, the base flood elevation shall be considered to be two feet above the highest grade adjacent to the structure.

C. The base flood elevation for all other SFHAs shall be as defined in Sections 13-1-3(3)(F) and 13-1-3(5)(C).

D. The Flood Protection Elevation (FPE) shall be the base flood elevation plus one foot.

E. The floodway shall be as delineated on the Flood Insurance Rate Map as now in effect or hereafter amended, or in accordance with Sections 13-1-3(3)(F) and 13-1-3(5)(D).

F. Where base flood elevation and floodway data have not been provided in Special Flood Hazard Areas, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source.

#### **13-1-3(4). Protected Area**

A. The Protected Area is comprised of those lands that lie within the boundaries of the floodway, the riparian habitat zone, and the channel migration area.

B. In riverine areas, where a floodway has not been designated in accordance with Sections 13-1-3(3)(E), 13-1-3(3)(F), or 13-1-3(5)(D), the Protected Area is comprised of those lands that lie within the boundaries of the riparian habitat zone, the channel migration area, and the SFHA.

C. Riparian habitat zone: The riparian habitat zone includes those watercourses within the SFHA and adjacent land areas that are likely to support aquatic and riparian habitat.

1. The size and location of the riparian habitat zone is dependent on the type of water body. The riparian habitat zone includes the water body and adjacent lands, measured perpendicularly from ordinary high water on both sides of the water body:

(a) Type S streams that are designated "shores of the State:" 250 feet.

(b) Type F streams (fish bearing) streams greater than 5 feet wide and marine shorelines: 200 feet.

(c) Type F streams less than 5 feet wide and lakes: 150 feet.

(d) Type N (nonsalmonid-bearing) perennial and seasonal streams with unstable slopes: 225 feet.

(e) All other Type N (nonsalmonid-bearing) perennial and seasonal streams: 150 feet.

2. The riparian habitat zone shall be delineated on the site plan by the applicant at the time of application for sub-division approval or floodplain development permit for all development proposals within 300 feet of any stream or shoreline. See also Section 13-1-4(2)(A).

D. Channel Migration Area:

1. The channel migration area shall be the channel migration zone as delineated on the map most recently adopted by Roy for purposes of this Chapter plus 50 feet.

2. Where more than one channel migration zone has been delineated, the Mayor or designee shall use the delineation that has been adopted for other local regulatory purposes.

3. Where a channel migration zone has not yet been mapped, the provisions of Section 13-1-3(5)(E) shall apply at the time of permit application.

#### **13-1-3(5). New Regulatory Data**

A. All requests to revise or change the flood hazard data, including requests for a Letter of Map Revision and a Conditional Letter of Map Revision shall be reviewed by the Roy Mayor or designee.

1. The Roy Mayor or designee will not sign the Community Acknowledgement Form for any requests based on filling or other development, unless the applicant for the letter documents that such filling or development is in compliance with this Chapter.

2. The Roy Mayor or designee will not approve a request to revise or change a floodway delineation until FEMA has issued a Conditional Letter of Map Revision that approves the change.

B. If an applicant disagrees with the regulatory data prescribed by this Chapter, he/she may submit a detailed technical study needed to replace existing data with better data in accordance with FEMA mapping guidelines or *Regional Guidance for Hydrologic and Hydraulic Studies in Support of the Model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act*

FEMA Region X, 2010. If the data in question are shown on the published FIRM, the submittal must also include a request to FEMA for a Conditional Letter of Map Revision.

C. Where base flood elevation data are not available in accordance with Section 13-1-3(3), applicants for approval of new subdivisions and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall include such data with their permit applications.

D. Where floodway delineation is not available in accordance with Section 13-1-3(3), the floodway will be designated to be one-half the distance of the mapped 100 year floodplain at any point, and the prohibition on floodway development adheres, unless a floodway study indicates otherwise. This provision applies to any floodplain development permit, including those for substantial improvements.

E. Where channel migration zone data are not available in accordance with Section 13-1-3(4)(D), the permit applicant shall either:

1. Designate the entire SFHA as the channel migration zone or
2. Identify the channel migration area in accordance with the most current *Regional Guidance for NFIP-ESA Floodplain Mapping*, published by FEMA Region X.

F. All new hydrologic and hydraulic flood studies conducted pursuant to this Section 13-1-3(5) shall consider future conditions and the cumulative effects from anticipated future land use changes in accordance with *Regional Guidance for Hydrologic and Hydraulic Studies in Support of the Model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act*, FEMA Region X, 2010.

## **13-1-4. Administration**

### **13-1-4(1). Establishment of Floodplain Development Permit**

A floodplain development permit shall be obtained before construction or development begins within the Regulatory Floodplain. The permit shall be for all development as set forth in Section 13-1-2, Definitions.

### **13-1-4(2). Floodplain Development Permit Application**

Application for a floodplain development permit shall be made on forms furnished by the Mayor or designee and shall include, but not be limited to,

A. One or more site plans, drawn to scale, showing:

1. The nature, location, dimensions, and elevations of the property in question,
2. Names and location of all lakes, water bodies, water-ways and drainage facilities within 300 feet of the site,
3. The elevations of the 10-, 50-, 100-, and 500-year floods, where the data are available,
4. The boundaries of the Regulatory Floodplain, SFHA, floodway, riparian habitat zone, and channel migration area, delineated in accordance with Section 13-1-3,
5. The proposed drainage system including, but not limited to storm sewers, overland flow paths, detention facilities and roads,
6. Existing and proposed structures, fill, pavement and other impervious surfaces, and sites for storage of materials,
7. All wetlands,
8. Designated fish and wildlife habitat conservation areas (see definitions section), and habitat areas identified for conservation or protection under state or federal or local laws or regulations (e.g.: Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Growth Management Act, Shorelines Management Act, Priority Habitat and Species List), and
9. Existing native vegetation and proposed revegetation.

B. If the proposed project involves grading, excavation, or filling, the site plan shall include proposed post-development terrain at one foot contour intervals.

C. If the proposed project includes a new structure, substantial improvement, or repairs to a substantially damaged structure that will be elevated, the application shall include the Flood Protection Elevation for the building site and the proposed elevations of the following:

1. The top of bottom floor (including basement, crawlspace, or enclosure floor)
2. The top of the next higher floor
3. The top of the slab of an attached garage
4. The lowest elevation of machinery or equipment servicing the structure
5. The lowest adjacent (finished) grade next to structure
6. The highest adjacent (finished) grade next to structure
7. The lowest adjacent grade at the lowest elevation of a deck or stairs, including structural support

D. If the proposed project includes a new structure, substantial improvement, or repairs to a substantially damaged nonresidential structure that will be dry flood-proofed, the application shall include the FPE for the building site and the elevation in relation to the datum of the effective FIRM to which the structure will be dry flood-proofed and a certification by a registered professional engineer or licensed architect that the dry flood-proofing methods meet the flood-proofing criteria in Section 13-1-6(3).

E. The proposed project must be designed and located so that new structural flood protection is not needed .

F. The application shall include a description of the extent to which a stream, lake, or other water body, including its shoreline, will be altered or relocated as a result of the proposed development.

G. The application shall include documentation that the applicant will apply for all necessary permits required by Federal, State, or local law. The application shall include written acknowledgment that the applicant understands that the final certification of use or certificate of occupancy will be issued only if the applicant provides copies of the required Federal, State, and local permits or letters stating that a permit is not required. The floodplain permit is not valid if those other permits and approvals are not obtained prior to any ground disturbing work or structural improvements.

H. The application shall include acknowledgment by the applicant that representatives of any Federal, State or local unit of government with regulatory authority over the project are authorized to enter upon the property to inspect the development.

#### **13-1-4(3). Floodplain Development Permit Expiration**

If there has been no start of construction (see definition section), a floodplain development permit shall expire 180 days after the date of issuance. Where the applicant documents a need for an extension beyond this period due to conditions beyond the applicant's control, the Mayor or designee may authorize one or more extensions.

#### **13-1-4(4). Designation of the Floodplain Administrator**

The Mayor or designee is hereby appointed the Roy Floodplain Administrator and empowered to administer and implement this Chapter by granting or denying floodplain development permit applications in accordance with its provisions.

#### **13-1-4(5). Duties of the Floodplain Administrator**

Duties of the Mayor or designee shall include, but not be limited to:

A. Review all floodplain development permits to determine that the permit requirements of this Chapter have been satisfied.

B. Review all floodplain development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required, including those local, State or Federal permits that may be required to assure compliance with the Endangered Species Act and/or other appropriate State or Federal laws. See also Section 13-1-4(2)(F).

C. Review all floodplain development permits to determine if the proposed development is located in the Protected Area. If located in the Protected Area, ensure that the provisions of Section 13-1-7 are met.

D. Ensure that all development activities within the Regulatory Floodplain of the jurisdiction of Roy meet the requirements of this Chapter.

E. Inspect all development projects before, during and after construction to ensure compliance with all provisions of this Chapter, including proper elevation of the structure.

F. Maintain for public inspection all records pertaining to the provisions of this Chapter.

G. Submit reports as required for the National Flood Insurance Program.

H. Notify FEMA of any proposed amendments to this Chapter.

I. Cooperate with State and Federal agencies to improve flood and other technical data and notify FEMA of any new data that would revise the FIRM.

#### **13-1-4(6). Records**

A. Where base flood elevation data have been obtained pursuant to Sections 13-1-3(3) and 13-1-3(5), the Floodplain Administrator shall obtain, record, and maintain the actual “finished construction” elevations for the locations listed in Section 13-1-4(2)(C). This information shall be recorded on a current FEMA Elevation Certificate (FEMA Form 81-31), signed and sealed by a professional land surveyor, currently licensed in the State of Washington. See also Section 13-1-4(7)(A)(1).

B. For all new or substantially improved dry flood-proofed nonresidential structures, where base flood elevation data has been obtained pursuant to Sections 13-1-3(3) and 13-1-3(5), the Floodplain Administrator shall obtain, record and maintain the elevation (in relation to the datum of the effective FIRM) to which the structure was flood-proofed. This information shall be recorded on a current FEMA Flood-proofing Certificate (FEMA Form 81-65), by a professional engineer currently licensed in the State of Washington. See also Sections 13-1-4(2)(D), 13-1-4(7)(A)(1), and 13-1-6(3)(D).

#### **13-1-4(7). Certificate of Occupancy**

A. A certification of use (permit) for the property or a certificate of occupancy (permit) for a new or substantially improved structure or an addition shall not be issued until:

1. The permit applicant provides a properly completed, signed and sealed Elevation or Floodproofing Certificate showing finished construction data as required by Section 13-1-4(6);
2. If a mitigation plan is required by Sections 13-1-7(7) and 13-1-7(8), all work identified in the plan has been completed according to the plan’s schedule;
3. The applicant provides copies of all required Federal, State, and local permits noted in the permit application per Section 13-1-4(2)(F);
4. All other provisions of this Chapter have been met.

B. The Floodplain Administrator may accept a performance bond or other security that will ensure that unfinished portions of the project will be completed after the certification of use or certificate of occupancy has been issued.

#### **13-1-4(8). Board of Appeals**

A. The Hearing Examiner as established by RCC 1-6A-4, *HEARING EXAMINER*, shall hear and decide appeals and requests for variances from the requirements of this Chapter.

B. The Hearing Examiner shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Chapter.

C. Those aggrieved by the decision of the Hearing Examiner may appeal such decision to the Superior Court of Pierce County, Washington.

D. Upon consideration of the factors of Section 13-1-4(9) and the purposes of this Chapter, the Hearing Examiner may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.

E. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

### **13-1-4(9). Variance Criteria**

A. In reviewing applications for a variance, the Hearing Examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Chapter, and:

1. The danger to life and property due to flooding or erosion damage; and
2. The danger that materials may be swept onto other lands to the injury of others; and
3. The safety of access to the property in times of flood for ordinary and emergency vehicles; and
4. 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
5. The susceptibility of the proposed facility and its contents to flood or erosion damage and the effect of such damage on the individual owner; and
6. The availability of alternative locations for the proposed use which are not subject to flooding or channel migration and are not in designated fish and wildlife habitat conservation areas; and
7. The relationship of the proposed use to the comprehensive plan, growth management regulations, critical area regulations, the shoreline management program, and floodplain management program for that area; and
8. 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; and
9. The potential of the proposed development project to destroy or adversely affect a fish and wildlife habitat conservation area or create an adverse effect to federal, state or locally protected species or habitat; and
10. The potential of the proposed development project to affect, or be affected by, channel migration; and
11. The necessity that the Hearing Examiner grant the minimum variance necessary to fashion relief; and
12. The necessity that the relief be compliant with the ESA.

B. No variance shall be granted to the requirements of this Chapter unless the applicant demonstrates that:

1. The development project cannot be located outside the Regulatory Floodplain;
2. An exceptional hardship would result if the variance were not granted;
3. The relief requested would be the minimum necessary;
4. The applicant's circumstances are unique and do not represent a problem faced by other area properties that would require consideration of a Chapter revision;
5. If the project is within a designated floodway, no increase in flood levels during the base flood discharge would result;
6. The project would not adversely affect features or quality of habitat - including but not limited to water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia - supporting local, state or federally protected fish or wildlife;

7. There would be no additional threat to public health, safety, beneficial stream or water uses and functions, or creation of a nuisance;

8. There would be no additional public expense for flood protection, lost environmental functions, rescue or relief operations, policing, or repairs to streambeds, shorelines, banks, roads, utilities, or other public facilities; and

9. All requirements of other permitting agencies will still be met.

C. Variances requested in connection with restoration of a historic site, building or structure may be granted using criteria more permissive than the above requirements, provided:

1. The repair or rehabilitation is the minimum necessary to preserve the historic character and design of the site, building or structure; and

2. The repair or rehabilitation will not result in the site, building or structure losing its historic designation.

D. Variances may be requested for new construction, substantial improvements, and other development necessary for the conduct of functionally dependant uses provided:

1. There is good and sufficient cause for providing relief;

2. The variance is the minimum necessary to provide relief;

3. The variance does not cause a rise in the 100 year flood level within the regulatory floodway;

4. The project will not adversely affect federal, state or locally protected fish, wildlife and their habitat.

E. Variances to the provisions of Section 13-1-6 of this Chapter may be issued for a structure on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the FPE, providing the other variance criteria are met. The applicant for such a variance shall be notified, in writing, that the structure (i) will be subject to increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the FPE increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

F. Variances pertain to a physical piece of property. They are not personal in nature and are not based on the inhabitants or their health, economic, or financial circumstances.

### **13-1-5. General Development Standards**

**13-1-5(0).** The provisions of this Section 5 shall apply in the Regulatory Floodplain:

#### **13-1-5(1). New Subdivisions**

This section applies to all subdivision proposals, short subdivisions, short plats, planned developments, and new and expansions to manufactured housing parks, and shall control over any Code provision that is inconsistent with the section.

A. All proposals shall be consistent with the need to minimize flood damage.

B. The proposed subdivision shall have one or more new lots in the Regulatory Floodplain set aside for open space use through deed restriction, easement, subdivision covenant, or donation to a public agency. The density of the development in the portion of the development outside the Regulatory Floodplain may be increased to compensate for the amount of land in the Regulatory Floodplain preserved as open space in accordance with all pertinent provisions of the RCC.

C. If a parcel has a buildable site outside the Regulatory Floodplain, it may subdivide to create a new lot, tract, or parcel within a binding site plan that does not have a buildable site outside the Regulatory Floodplain; provided, however, the Floodplain Administrator shall not issue a building permit for said new lots, tracts or parcels without expressly considering the criteria set forth in Section 13-1-4(9), Variance Criteria, and stating in writing that he/she has completed said evaluation.

D. All proposals shall have utilities and facilities, such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.

E. All proposals shall ensure that all subdivisions have at least one access road connected to land outside the Regulatory Floodplain with the surface of the road at or above the FPE wherever possible.

F. All proposals shall have adequate drainage provided to avoid exposure to water damage.

G. The final recorded subdivision plat shall include a notice that part of the property is in the SFHA, riparian habitat zone and/or channel migration area, as appropriate.

### **13-1-5(2). Site Design on Existing Lots**

A. Structures and other development shall be located to avoid flood damage.

1. If a lot has a buildable site out of the Regulatory Floodplain, all new structures shall be located in that area, when possible.

2. If a lot does not have a buildable site out of the Regulatory Floodplain, all new structures, pavement, and other development must be sited in the location that has the least impact on habitat by locating the structures as far from the water body as possible or placing the structures on the highest land on the lot.

3. A minimum setback of 15 feet from the Protected Area shall be required for all structures.

4. If the proposed project does not meet the criteria of Sections 13-1-5(2)(A) and (B), a habitat impact assessment shall be conducted pursuant to Section 13-1-7(7) and, if necessary, a habitat mitigation plan shall be prepared and implemented pursuant to Section 13-1-7(8).

B. All new development shall be designed and located to minimize the impact on flood flows, flood storage, water quality, and habitat.

1. Stormwater and drainage features shall incorporate low impact development techniques, if technically feasible, that mimic pre-development hydrologic conditions, such as stormwater infiltration, rain gardens, grass swales, filter strips, disconnected impervious areas, permeable pavement, and vegetative roof systems.

2. If the proposed project will create new impervious surfaces so that more than 10 percent of the portion of the lot in the Regulatory Floodplain is covered by impervious surface, the applicant shall demonstrate that there will be no net increase in the rate and volume of the stormwater surface runoff that leaves the site or that the adverse impact is mitigated, as provided by Sections 13-1-7(7) and 13-1-7(8).

C. The site plan required in Section 13-1-4(2) shall account for surface drainage to ensure that

1. Existing and new buildings on the site will be protected from stormwater runoff and

2. The project will not divert or increase surface water runoff onto neighboring properties.

### **13-1-5(3). Hazardous Materials**

A. No new development shall create a threat to public health, public safety, or water quality. Chemicals, explosives, gasoline, propane, buoyant materials, animal wastes, fertilizers, flammable liquids, pollutants, or other materials that are hazardous, toxic, or a threat to water quality are prohibited from the Regulatory Floodplain. This prohibition does not apply to small quantities of these materials kept for normal household use. This prohibition does not apply to the continued operations of existing facilities and structures, reuse of existing facilities and structures, functionally dependent facilities or structures, or to materials kept in approved containers above the FPE or in a dry floodproofed non-residential building.

B. If the proposed project cannot meet section 13-1-5(3)(A) of this Chapter then a habitat assessment must be conducted in accordance with Sections 13-1-7(7) and 13-1-7(8).

### **13-1-5(4). Critical Facilities**

A. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Regulatory Floodplain.

B. Construction of new critical facilities in the Regulatory Floodplain shall be permissible if no feasible alternative site is available, provided

1. Critical facilities shall have the lowest floor elevated three feet above the base flood elevation or to the height of the 500-year flood, whichever is higher. If there is no available data on the 500-year flood, the permit applicants shall develop the needed data in accordance with FEMA mapping guidelines.

2. Access to and from the critical facility shall be protected to the elevation of the 500-year flood.

### **13-1-5(5). Sand Dunes**

Man-made alterations of sand dunes within Zones V1-30, VE, and V which would increase potential flood damage are prohibited.

### **13-1-6. Standards for Protection of Structures**

**13-1-6(0)** The provisions of this Section shall apply in the Special Flood Hazard Area. All new structures and substantial improvements shall be protected from flood damage below the Flood Protection Elevation.

#### **13-1-6(1). Applicability**

This section's protection requirement applies to all new structures and substantial improvements, which include:

A. Construction or placement of a new structure.

B. Reconstruction, rehabilitation, or other improvement that will result in a substantially improved building.

C. Repairs to an existing building that has been substantially damaged.

D. Placing a manufactured home on a site; provided however that this provision does not apply to returning an existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damages, provided it is not enlarged or altered in any way.

E. Placing a recreational vehicle or travel trailer on a site for more than 180 days.

#### **13-1-6(2). Flood Protection Standards, Applicable to All Structures**

A. All new structures and improvements, if they are "substantial improvements," and all additions shall have the lowest floor, including basement, elevated above the FPE. See also, Sections 13-1-3(3)(D) and 13-1-6(6).

B. The structure shall be aligned parallel with the direction of flood flows where practicable.

C. The structure shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

D. All materials below the FPE shall be resistant to flood damage and firmly anchored to prevent flotation. Materials harmful to aquatic wildlife, such as creosote, are prohibited below the FPE.

E. Electrical, heating, ventilation, duct work, plumbing, and air-conditioning equipment and other service facilities shall be elevated above the FPE. Water, sewage, electrical, and other utility lines below the FPE shall be constructed so as to prevent water from entering or accumulating within them during conditions of flooding.

F. Fully enclosed areas, where allowed, below the lowest floor that are subject to flooding shall be used only for parking, storage, or building access and shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a registered professional engineer or licensed architect and/or meet or exceed the following minimum criteria:

1. A minimum of 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.
2. The bottom of all openings shall be no higher than one foot above grade.
3. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

G. In Zones V, V1-30 and VE, new structures and substantial improvements shall be elevated on pilings or columns so that:

1. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated above the FPE.
2. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a 1 percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).
3. The areas below the lowest floor that are subject to flooding shall be free of obstruction.
4. The structure or improvement shall be located landward of the reach of mean high tide obstruction.
5. The use of fill for structural support of a structure or addition is prohibited.
6. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting these provisions.

### **13-1-6(3). Nonresidential Construction**

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall be elevated in accordance with Section 13-1-6(2). As an alternative to elevation, a new or substantial improvement to a nonresidential structure and its attendant utility and sanitary facilities, may be dry floodproofed in A Zones. The project must meet the following:

- A. The structure is not located in Zones V, V1-30, or VE; and
- B. Below the FPE the structure is watertight with walls substantially impermeable to the passage of water; and
- C. The structural components are capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- D. The plans are certified by a registered professional engineer or licensed 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. Such certifications shall be provided to the Floodplain Administrator as set forth in Sections 13-1-4(6)(B) and 13-1-4(7)(A)(1).
- E. Applicants should note that flood insurance premiums maybe based on rates that are one foot below the floodproofed level and that floodproofing the building an additional foot may reduce insurance premiums significantly.

### **13-1-6(4). Manufactured Homes**

All manufactured homes to be placed or substantially improved on sites shall be:

A. Elevated on a permanent foundation in accordance with Section 13-1-6(2), and

B. Securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to other applicable anchoring requirements for resisting wind forces.

### **13-1-6(5). Recreational Vehicles**

Recreational vehicles placed on sites shall:

- A. Be on the site for fewer than 180 consecutive days, or
- B. Be fully licensed and ready for highway use, on their wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
- C. Meet the requirements of Section 13-1-6(4) above.

### **13-1-6(6). Appurtenant Structures**

A structure which is on the same parcel of property as the principle structure and the use of which is incidental to the use of the principle structure and is not used for human habitation may be exempt from the elevation requirement of Section 13-1-6(2)(A), provided:

- A. It is used only for parking or storage;
- B. It is constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters;
- C. It is anchored to prevent flotation which may result in damage to other structures;
- D. All portions of the structure below the FPE must be constructed of flood-resistant materials;
- E. Service utilities such as electrical and heating equipment meet the standards of Sections 13-1-6(2)(E) and 13-1-6(7);
- F. It has openings to allow free flowage of water that meet the criteria in Section 13-1-6(2)(F);
- G. The project meets all the other requirements of this Chapter, including Section 13-1-7.

### **13-1-6(7). Utilities**

- A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
- B. Water wells shall be located outside the floodway and shall be protected to the FPE;
- C. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- D. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. A habitat impact assessment shall be conducted in accordance with Section 13-1-7(7) as a condition of approval of an onsite waste disposal system to be located in the Regulatory Floodplain.

## **13-1-7. Standards for Habitat Protection**

**13-1-7(0).** The provisions of this Section shall apply in the Regulatory Floodplain.

### **13-1-7(1). Non-Development Activities**

Activities that do not meet the definition of “development” are allowed in the Regulatory Floodplain without the need for a floodplain development permit under this Chapter, provided all other Federal, State, and local requirements are met. The following are examples of activities not considered development or “man-made changes to improved or unimproved real estate.”

- A. Routine maintenance of landscaping that does not involve grading, excavation, or filling.
- B. Removal of noxious weeds and hazard trees and replacement of non-native vegetation with native vegetation.
- C. Normal maintenance of structures, such as re-roofing and replacing siding, provided such work does not qualify as a substantial improvement.
- D. Normal maintenance of above ground utilities and facilities, such as replacing downed power lines and utility poles but not to include below ground digging for utility and facility maintenance, which activities would require a permit.
- E. Normal street and road maintenance, including filling potholes, repaving, and installing signs and traffic signals, but not including expansion of paved areas.
- F. Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control facility are allowed in the Regulatory Floodplain without need for a floodplain development permit. Normal maintenance does not include repair from flood damage, expansion of the prism, expansion of the face or toe or addition for protection on the face or toe with rock armor.
- G. Plowing and other normal farm practices (other than structures or filling) on farms in the Regulatory Floodplain and in existence as of the effective date of this Chapter do not require a floodplain development permit. Clearing additional land for agriculture after the effective date of this Chapter will require a floodplain development permit.

**13-1-7(2). Activities Allowed With a Floodplain Permit But Exempt from Floodway Analysis and Habitat Impact Assessment (See Sections 13-1-7(7) and 13-1-7(8))**

The following activities are allowed in the Regulatory Floodplain without the analysis required in Section 13-1-7(5) or the habitat impact assessment required under Section 13-1-7(7), providing all other requirements of this Chapter are met, including obtaining a floodplain development permit:

- A. Repairs or remodeling of an existing structure, provided that the repairs or remodeling are not a substantial improvement or a repair of substantial damage.
- B. Expansion of an existing structure that is no greater than ten percent beyond its existing footprint, provided that the repairs or remodeling are not a “substantial improvement” or a repair of substantial damage. This measurement is counted cumulatively from the effective date of this Chapter or September 22, 2011, whichever is earlier. If the structure is in the floodway, there shall be no change in the dimensions perpendicular to flow.
- C. Activities with the sole purpose of creating, restoring or enhancing natural functions associated with floodplains, streams, lakes, estuaries, marine areas, habitat, and riparian areas that meet Federal and State standards, provided the activities do not include structures, grading, fill, or impervious surfaces.
- D. Development of open space and recreational facilities, such as parks, trails, and hunting grounds, that do not include structures, fill, impervious surfaces or removal of more than 5% of the native vegetation on that portion of the property in the Regulatory Floodplain.
- E. Repair to onsite Septic Systems provided the ground disturbance is the minimal necessary.

### **13-1-7(3). Other Activities**

All other activities not listed in Sections 13-1-7(1) or 13-1-7(2) that are allowed by Roy City Code in the following Chapters are allowed, provided they meet all the other requirements of this Chapter, including the analysis required in Section 13-1-7(5) and the habitat impact assessment required under Section 13-1-7(7), and a floodplain development permit is issued. The RCC Chapters are:

- A. Title 11, Land Development Code,
  - CHAPTER 11-4 *Types of Project Permit Applications*
  - CHAPTER 11-11 Zoning Districts, Maps and Boundaries
  - CHAPTER 11-12 Single Family Residential (SFR) District
  - CHAPTER 11-13 Traditional Residential Design (TRD) District
  - CHAPTER 11-14 Multi-Family Residential (MFR) District
  - CHAPTER 11-15 Commercial (C) District
  - CHAPTER 11-16 Light Industrial (LI) District
  - CHAPTER 11-17 Rodeo (R) District
  - CHAPTER 11-18 Mixed Use (MU) District
  - CHAPTER 11-19 Western Design Overlay (WDO) District
  - CHAPTER 11-20 Public Facilities Overlay (PFO)
  - CHAPTER 11-21 Railroad Overlay (RO)
  - CHAPTER 11-22 Specific Use and Structure Regulations
  - CHAPTER 11-23 Parking and Circulation
  - CHAPTER 11-24 Landscaping
  - CHAPTER 11-25 Wireless Communication Facilities
  - CHAPTER 11-26 Signs
  - CHAPTER 11-40 Land Divisions – General Provisions
  - CHAPTER 11-41 Boundary Line Adjustments
  - CHAPTER 11-46 General Requirements for Subdivision Approval
  - CHAPTER 11-47 Subdivision Improvements
- B. TITLE 10, Building Regulations,
  - CHAPTER 10-3, Manufactured Homes, Mobile Homes and Recreational Vehicles
  - CHAPTER 10-4, Mobile and Manufactured Home Parks
  - CHAPTER 10-5 Critical Areas
  - CHAPTER 10-6A Stormwater Management, Section 10-6A-9: Regulated Activities and Allowed Activities
    - CHAPTER 10-6A Section 10-6A-11: Small Parcel Minimum Requirements
    - CHAPTER 10-6A Section 10-6A-12: Large Development Minimum Requirements
- C. Other Code Provisions as applicable

### **13-1-7(4). Native Vegetation in New Development Projects**

The site plan required in Section 13-1-4(2) shall show existing native vegetation.

- A. In the riparian habitat zone, native vegetation shall be left undisturbed, except as provided in Sections 13-1-7(1) and 13-1-7(2)(C).
- B. Outside the riparian habitat zone, removal of native vegetation shall not exceed 35 percent of the surface area of the portion of the site in the Regulatory Floodplain. Native vegetation in the riparian habitat zone portion of the property can be counted toward this requirement.
- C. If the proposed project does not meet the criteria of Sections 13-1-7(4)(A) and (B), a habitat impact assessment shall be conducted pursuant to Section 13-1-7(7) and, if necessary, a habitat mitigation plan shall be prepared and implemented pursuant to Section 13-1-7(8).

### **13-1-7(5). Floodway Standards**

A. In addition to the other requirements of this Chapter, a project to develop in the floodway as delineated pursuant to Sections 13-1-3(3)(E), 13-1-3(3)(F) or 13-1-3(5)(D) shall meet the following criteria:

1. The applicant shall provide a certification by a registered professional engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed development would not result in any increase in flood levels during the occurrence of the base flood discharge.

2. Construction or reconstruction of residential structures is prohibited within designated floodways, except for the following. The following exceptions must still meet all other requirements in the Chapter, including Section 13-1-7(5)(A)(1).

(a) Repairs, reconstruction, or improvements to a residential structure which do not increase the ground floor area, providing the cost of which does not exceed 50 percent of the market value of the structure either, (a) before the repair, or reconstruction is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by a local code enforcement official and which are the minimum necessary to assure safe living conditions, or to an historic structure, may be excluded from the 50 percent calculations.

(b) Repairs, replacement, reconstruction, or improvements to existing farmhouses located in designated floodways and located on designated agricultural lands that do not increase the building's total square footage of encroachment and are consistent with all requirements of WAC 173-158-075;

(c) Repairs, replacement, reconstruction, or improvements to substantially damaged residential dwellings other than farmhouses that do not increase the building's total square footage of encroachment and are consistent with all requirements of WAC 173-158-076; or

(d) Repairs, reconstruction, or improvements to residential structures identified as historic structures that do not increase the building's dimensions.

B. In riverine Special Flood Hazard Areas where a floodway has not been delineated pursuant to Sections 13-1-3(3)(E), 13-1-3(3)(F) or 13-1-3(5)(D), the applicant for a project to develop in the SFHA shall provide a certification by a registered professional engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed development and all other past or future similar developments would not cumulatively result in an increase of flood levels during the occurrence of the base flood discharge by more than one foot.

### **13-1-7(6). Compensatory Storage**

New development shall not reduce the effective flood storage volume of the Regulatory Floodplain. A development proposal shall provide compensatory storage if grading or other activity eliminates any effective flood storage volume. Compensatory storage shall:

A. Provide equivalent volume at equivalent elevations to that being displaced. For this purpose, "equivalent elevation" means having similar relationship to ordinary high water and to the best available 10-year, 50-year and 100-year water surface profiles;

B. Be hydraulically connected to the source of flooding; and

C. Provide compensatory storage in the same construction season as when the displacement of flood storage volume occurs and before the flood season begins.

D. The newly created storage area shall be graded and vegetated to allow fish access during flood events without creating fish stranding sites.

### **13-1-7(7). Habitat Impact Assessment**

Unless allowed under Sections 13-1-7(1) – 13-1-7(2), a permit application to develop in the Regulatory Floodplain shall include an assessment of the impact of the project on federal, state or locally protected species and habitat, water quality and aquatic and riparian habitat. The assessment shall be:

- A. A Biological Evaluation or Biological Assessment developed per 50 CFR 402.12, as now enacted or hereafter amended, to initiate Federal Interagency consultation under Endangered Species Act section 7(a)(2), as now enacted or hereafter amended; or
- B. Documentation that the activity fits within Section 4(d) of the Endangered Species Act, as now enacted or hereafter amended; or
- C. Documentation that the activity fits within a Habitat Conservation Plan approved pursuant to Section 10 of the Endangered Species Act, as now enacted or hereafter amended, where any such assessment has been prepared or is otherwise made available; or
- D. An assessment prepared in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA Region X, 2010, as now enacted or hereafter amended. The assessment shall determine if the project would adversely affect:
1. Species that are Federal, state or local listed as threatened or endangered,
  2. The primary constituent elements for critical habitat, when designated,
  3. Essential Fish Habitat designated by the National Marine Fisheries Service,
  4. Fish and wildlife habitat conservation areas,
  5. Other protected areas and elements necessary for species conservation.
- E. 404 Permits shall be obtained from the Corps of Engineers and/or a consultation with NMFS or the US Fish & Wildlife Service conducted as necessary

#### **13-1-7(8). Habitat Mitigation Plan**

- A. If the assessment conducted under Section 13-1-7(7) concludes the project is expected to have an adverse effect on water quality and/or aquatic or riparian habitat or habitat functions, the applicant shall provide a plan to mitigate those impacts, in accordance with *Regional Guidance for Flood-plain Habitat Assessment and Mitigation*, FEMA Region X, 2010 or as hereafter amended.
1. If the USFWS or NMFS issues an Incidental Take Permit under Section 10 ESA, Biological Opinion under Section 7, ESA; then it can be considered to qualify as a plan to mitigate those impacts.
  2. If the project is located outside the Protected Area, the mitigation plan shall include such avoidance, minimization, restoration, or compensation measures so that indirect adverse effects of development in the floodplain (effects to storm water, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, etc.) are mitigated such that equivalent or better habitat protection is provided.
  3. No new stream crossings are allowed outside the Protected Area unless approval has been obtained as stated in Section 13-1-7(8)(A)(1).
  4. If the project is located in the Protected Area, the mitigation plan shall stipulate such avoidance measures as are needed to ensure that there is no adverse effect during any phase of the project.
- B. The plan's habitat mitigation activities shall be incorporated into the proposed project. The floodplain development permit shall be based on the redesigned project and its mitigation components.
- C. As required in Section 13-1-4(7), the Floodplain Administrator shall not issue a certification of use or a certificate of occupancy until all work identified in the Habitat Assessment and Mitigation Plan has been completed or the applicant has provided the necessary assurance that unfinished portions of the project will be completed, in accordance with Section 13-1-4(7)(B).

#### **13-1-7(9). Alteration of Watercourses**

- A. In addition to the other requirements in this Section 13-1-7, an applicant for a project that will alter or relocate a watercourse shall also submit a request for a Conditional Letter of Map Revision (CLOMR), where required by the Federal Emergency Management Agency. The project will not be approved unless FEMA issues the CLOMR (which requires ESA consultation) and the provisions of the letter are made part of the permit requirements.

B. The Floodplain Administrator shall notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

C. Maintenance shall be provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished. If the maintenance program does not call for cutting of native vegetation, the system shall be oversized at the time of construction to compensate for said vegetation growth or any other natural factor that may need future maintenance.

D. The applicant shall adhere to Section 13-1-7(7) as necessary.