

# TOWN OF EATONVILLE

## Agenda Staff Report

Agenda Item No.:	_____	Meeting Date:	<u>August 14, 2017</u>
Subject:	<u>Ordinance No. 2017-10 Adopting</u>	Prepared by:	<u>Gregory A. Jacoby</u>
	<u>Regulations Regarding Flood Damage</u>		<u>Town Attorney</u>
	<u>Prevention</u>	Atty Routing No:	<u>002-17</u>
	_____	Atty Review Date:	<u>August 8, 2017</u>

**Summary:** The Town of Eatonville is mandated by the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) to adopt floodplain management measures that meet or exceed the minimum National Flood Insurance Program (NFIP) requirements. FEMA provided the Town with the Washington State Model Ordinance for adoption, which staff has used as the basis for the proposed regulations. Pursuant to RCW 36.70A.390 the Town of Eatonville adopted interim flood damage prevention controls on February 27, 2017 for a period not longer than six months, which will expire August 27, 2017.

Prior to expiration of the interim controls, the Town needs to adopt permanent flood damage prevention regulations in order to remain eligible under the NFIP. With the exception of minor changes, that are not substantive, the permanent flood damage prevention regulations are consistent with the interim controls previously adopted in Ordinance 2017-2. Within Title 15, Environmental Protection, this amendment proposes the removal of the Floodplain regulations administered under EMC 15.16 and adopt updated Flood Damage Prevention regulations under Chapter 15.24. The Town of Eatonville issued a SEPA determination of non-significance for the proposal, and both public and agency notices have been provided.

Following adoption of the interim regulations, the Council directed the Planning Commission to review the interim regulations, conduct a public hearing, and forward a recommendation for the adoption of permanent flood damage prevention regulations. At a public meeting on July 31, 2017 the Planning Commission voted unanimously to recommend the Town Council adopt permanent flood damage prevention regulations by amending Eatonville Municipal Code (EMC) Chapter 15.16 "Critical Areas" and adding a new Chapter 15.24 "Flood Damage Prevention." See the Recommendation attached hereto.

**Recommendation:** Staff recommends adoption of Ordinance No. 2017-10 adopting regulations regarding flood damage prevention by amending Eatonville Municipal Code Chapter 15.16 "Critical Areas" and adding a new Chapter 15.24 "Flood Damage Prevention."

**Motion for consideration:** I move to waive the second reading and adopt Ordinance No. 2017-10 adopting regulations regarding flood damage prevention by amending Eatonville

Municipal Code Chapter 15.16 “Critical Areas” and adding a new Chapter 15.24 “Flood Damage Prevention.”

**Fiscal Impact:**

**Attachments:** Planning Commission Recommendation and Ordinance No. 2017-10 with Exhibit A.

**ORDINANCE NO. 2017-10**

**AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, ADOPTING REGULATIONS REGARDING FLOOD DAMAGE PREVENTION BY AMENDING EATONVILLE MUNICIPAL CODE CHAPTER 15.16 “CRITICAL AREAS” AND ADDING A NEW CHAPTER 15.24 “FLOOD DAMAGE PREVENTION”**

**WHEREAS**, the Town of Eatonville is mandated by the U.S. Department of Homeland Security’s Federal Emergency Management Agency (FEMA) to adopt floodplain management measures that meet or exceed the minimum National Flood Insurance Program (NFIP) requirements; and

**WHEREAS**, FEMA has provided the Town with the Washington State Model Ordinance for adoption, entitled “Region X Flood Damage Prevention Ordinance Washington Model” in order to comply with FEMA’s NFIP requirements; and

**WHEREAS**, pursuant to RCW 36.70A.390, on February 27, 2017 the Town of Eatonville adopted interim regulations concerning flood damage prevention for a period not longer than six months; and

**WHEREAS**, the Town of Eatonville Council directed the Planning Commission to review the interim regulations, conduct a public hearing, and forward a recommendation for the adoption of permanent flood damage prevention regulations; and

**WHEREAS**, at a public meeting on July 31, 2017 the Town of Eatonville Planning Commission voted unanimously to recommend the Town Council adopt permanent flood damage prevention regulations by amending Eatonville Municipal Code (EMC) Chapter 15.16 “Critical Areas” and adding a new Chapter 15.24 “Flood Damage Prevention,” in the form attached to this Ordinance as Exhibit A; and

**WHEREAS**, the Town of Eatonville has conducted a SEPA review and issued a determination of non-significance on July 23, 2017, for the adoption of permanent flood damage prevention regulations; and

**WHEREAS**, on August 14, 2017 the Town of Eatonville Council held a duly noticed public hearing to receive testimony regarding the adoption of permanent flood damage prevention regulations; and

**WHEREAS**, the timely adoption of FEMA and State of Washington compliant flood damage prevention regulations is in the interest of the public's health, safety and general welfare in order to insure that affected property owners remain eligible under the NFIP; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF EATONVILLE AS FOLLOWS:**

**Section 1.** The Town Council adopts all of the "Whereas" sections of this Ordinance as findings in support of this Ordinance.

**Section 2.** The Eatonville Town Council, having considered the Planning Commission's recommendation, and having heard from the public, finds that the adoption of permanent flood damage preventions regulations is necessary to meet FEMA's requirements and furthers the public health, safety, and general welfare of the citizens of Eatonville.

**Section 3.** The Eatonville Town Council hereby adopts permanent flood damage prevention regulations by amending EMC Chapter 15.16 "Critical Areas" and adding a new Chapter 15.24 "Flood Damage Prevention," as set forth in the attached Exhibit A.

**Section 4.** This Ordinance shall take effect after publication of a summary of its contents, pursuant to RCW 35.27.300.

**Section 5.** Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

1ST READING: 08/14/2017

2ND READING: Waived

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this 14th day of August, 2017.

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Mike Schaub  
Mayor

ATTEST:

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Kathy Linnemeyer  
Town Clerk

APPROVED AS TO FORM:

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Gregory A. Jacoby  
Town Attorney

## TITLE 15 ENVIRONMENTAL PROTECTION

### Chapter 15.16 CRITICAL AREAS CODE

#### Sections:

- 15.16.101 Finding.
- 15.16.102 Purpose.
- 15.16.103 Definitions.
- 15.16.104 Critical areas code – Title.
- 15.16.105 Fees.
- 15.16.106 Applicability.
- 15.16.107 Exemptions.
- 15.16.108 Review process.
- 15.16.109 Critical areas reports.
- 15.16.110 Previous studies.
- 15.16.111 Mitigation plan requirements.
- 15.16.112 Independent review of critical areas report.
- 15.16.113 Substantive requirements.
- 15.16.114 Variances.
- 15.16.115 Enforcement and inspections.
- 15.16.116 Record per WAC 365-195-915 and 365-195-920.
- 15.16.117 Nonconforming uses.
- 15.16.121 Wetlands – Designation.
- 15.16.122 Wetlands – Rating.
- 15.16.123 Wetlands – Contents of critical areas reports.
- 15.16.124 Wetlands – Substantive requirements.
- 15.16.125 Wetlands – Mitigation.
- 15.16.141 Critical aquifer recharge areas – Designation and susceptibility ating.
- 15.16.142 Critical aquifer recharge areas – Exemptions.
- 15.16.144 Critical aquifer recharge areas – Hydrogeologic assessments – Level 1.
- 15.16.145 Critical aquifer recharge areas – Hydrogeologic assessments – Level 2.
- 15.16.146 Critical aquifer recharge areas – Substantive requirements.
- 15.16.147 Critical aquifer recharge areas – Uses prohibited from critical aquifer recharge areas.
- ~~15.16.151 Floodplains – Designation.~~
- ~~15.16.152 Floodplains – Critical areas report.~~
- ~~15.16.153 Floodplains – Substantive requirements.~~
- ~~15.16.154 Floodplains – Substantive requirements in floodway.~~
- ~~15.16.155 Floodplains – Records.~~
- ~~15.16.156 Floodplains – Warning and disclaimer of liability.~~
- 15.16.161 Geologically hazardous areas – Designation.
- 15.16.162 Geologically hazardous areas – Mapping.
- 15.16.163 Geologically hazardous areas – Exemptions.
- 15.16.164 Geologically hazardous areas – Contents of critical areas reports.
- 15.16.165 Geologically hazardous areas – Substantive requirements.
- 15.16.171 Habitat conservation areas – Designation.
- 15.16.172 Habitat conservation areas – Designation of habitats and species of local importance.
- 15.16.173 Habitat conservation areas – Mapping.
- 15.16.174 Habitat conservation areas – Content of critical areas reports.

15.16.175 Habitat conservation areas – Substantive requirements.

15.16.180 References.

15.16.101 Finding.

The town finds that critical areas' biological and physical functions benefit the town by protecting water quality, providing fish and wildlife habitat, supporting the food chain, ~~storing and conveying flood waters~~, recharging ground water, controlling erosion, and providing aesthetic values and recreation. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.102 Purpose.

The purpose of this critical areas code is to:

A. Protect the functions and values of ecologically sensitive areas while allowing for reasonable use of private property, through the application of the best available science;

B. Implement the Growth Management Act and the goals of the comprehensive plan; and

C. Protect the public from injury and loss due to slope failures, erosion, seismic events, or volcanic eruptions, ~~or flooding~~. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.103 Definitions.

“Alter” means to change a critical area or its buffer, including grading, filling, dredging, clearing, construction, compaction, excavation, and pollution.

“Anadromous” refers to fish that spawn and rear in freshwater and mature in saltwater.

“Applicant” means a person who applies for a development permit from the town.

“Aquifer” means a geological formation capable of yielding water to a well or spring.

“Best available science” means scientific information applicable to the critical area prepared by local, state, or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through 365-195-925.

“Best management practices” means actions known to protect soil, water quality, vegetation, and critical areas.

“Buffer” means an area contiguous to and required for protection of a critical area.

“Channel migration zone” means the lateral extent of likely movement of a stream or river during the next 100 years as evidenced by movement over the past 100 years.

“Conservation easement” means a legal agreement that the property owner enters into to restrict uses of the land in a manner that conserves natural functions.

“Critical aquifer recharge area” means an area with a critical recharging effect on aquifers used for potable water, as discussed in WAC 365-190-080(2). Within such areas, pollutants seeping into the ground are likely to contaminate the water supply.

“Critical area” includes the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; and

~~(d) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company (RCW 36.70a.030(5)) means those areas listed in EMC 16.20.060. Frequently flooded areas shall be administered under EMC Chapter 15.24.~~

"Development" means any land use or action that alters a critical area or its buffer, including town approvals that establish patterns of use such as subdivisions, short subdivisions, rezones, and conditional use permits.

"Director" means the town planner or any other person designated by the mayor for the purposes of administering and interpreting the critical areas code, EMC 15.16.101 through 15.16.180.

"Fish habitat" means habitat used by fish at any life stage at any time of the year.

~~"Floodplain" means the land area subject to inundation by a 100-year flood.~~

~~"Floodway" means the watercourse channel and adjacent land area that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water elevation more than one foot.~~

"Functions and values" means the benefits conferred by critical areas, including water quality protection, fish and wildlife habitat, flood storage and conveyance, ground water recharge, erosion control, and protection from hazards.

"Hazardous substance" means a liquid, solid, or gas that exhibits any of the properties described in WAC 173-303-090 or 173-303-100.

"Historic" means existing before the area was altered by human activity.

"Impact" means to adversely affect a natural system or increase the hazard which a natural system poses to human life and property.

"Impervious" refers to a hard surface area that retards the entry of water into the soil.

~~"Lowest floor" excludes unfinished enclosures usable only for parking, building access, or storage.~~

"Monitoring" means assessing the performance of mitigation measures by collection and analysis of data on changes in natural systems.

~~"One hundred year flood" means a flood having a one percent chance of being equaled or exceeded in any given year.~~

"Ordinary high water mark" means that mark on the bed or bank below which inundation is so common in ordinary years that the soil and/or vegetation are distinct from that of the abutting upland.

"Person" means any person, organization, or other group.

"Primary association" means a relationship between a species and a habitat area whereby the species regularly uses or otherwise needs the habitat area to thrive.

"Rill" means a small, steep-sided channel caused by erosion.



“Riparian habitat” means stream-side areas that influence the aquatic ecosystem by providing shade, debris, or insects and provide habitat for riparian wildlife.

“Species” means a group of animals commonly classified by the scientific community as a species or subspecies.

“Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which exceeds 50 percent of the structure’s market value before the improvement, or, if the structure was damaged, before the damage occurred.

“Watercourse” means flowing waters of the state, perennial or intermittent, excluding artificial waterways such as ditches or canals not created by human alteration of a natural watercourse.

“Wetland mitigation bank” means a site where wetlands are restored, created, or enhanced to mitigate in advance authorized impacts to similar resources. (Ord. 2005-10 § 3 (Exh. A), 2005).

#### 15.16.106 Applicability.

Unless exempted in EMC 15.16.107, this critical areas code shall apply to all developments (see definition in EMC 15.16.103) within one or more of the following critical areas or their associated buffers or building setback areas, regardless of whether the site has been previously identified as a critical area:

A. Wetlands as designated in EMC 15.16.121 through 15.16.125;

B. Critical aquifer recharge areas as designated in EMC 15.16.141 through 15.16.147;

~~C. Floodplains as designated in EMC 15.16.151 through 15.16.156;~~

~~DC.~~ Geologically hazardous areas as designated in EMC 15.16.161 through 15.16.165; and

~~ED.~~ Fish and wildlife habitat conservation areas as designated in EMC 15.16.171 through 15.16.175. (Ord. 2005-10 § 3 (Exh. A), 2005).

#### 15.16.109 Critical areas reports.

Unless waived by the director, critical areas reports shall be prepared for nonexempt proposed developments located within critical areas or their buffers. Said critical areas reports shall:

A. Be prepared by qualified professionals as defined in WAC 365-195-905(4). The following list shows the type of critical areas report and the related professional discipline:

1. Wetlands: wetland biologist.

2. Critical aquifer recharge areas: hydrogeologist, geologist, or engineer.

~~3. Floodplains: hydrologist or engineer.~~

~~4.~~ Geologically hazardous areas: engineer or geologist.

~~5.~~ Fish and wildlife habitats: biologist.

B. Incorporate best available science.

C. Cover a study area large enough to understand relationships with important off-site factors and identify any nearby critical area whose buffer extends onto the project site.

D. Contain the following unless waived by the director:

1. Name and contact information of the applicant, description of the proposed development, and identification of required permits;
2. Site plan drawn to scale showing critical areas, buffers, existing structures, and proposed structures, clearing, grading, and stormwater management;
3. Characterization of critical areas and buffers;
4. Assessment of the probable impact to critical areas;
5. Analysis of site development alternatives;
6. Description of efforts to avoid, minimize, and mitigate impacts to critical areas pursuant to EMC 15.16.113 (“sequencing”);
7. Mitigation plans as needed, in accordance with EMC 15.16.111;
8. Evaluation of compliance with this critical areas code’s substantive requirements applicable to the proposed development;
9. Financial guarantees to ensure compliance, such as a performance bond or deposit, if necessary;
10. Additional information as required in the chapter corresponding to the type of critical area;
11. Documentation of who prepared the report and when, with fieldwork and data sheets;
12. Statement specifying the accuracy of the report and assumptions relied upon; and
13. Additional information as required by the director. (Ord. 2005-10 § 3 (Exh. A), 2005).

#### 15.16.115 Enforcement and inspections.

A. In enforcing this critical areas code per Chapter 18.10 EMC, the director may require a restoration plan prepared by a qualified professional. Historic functions and values, soil configurations, and native vegetation shall be used as a guide for restoration. ~~Flood and~~ gGeological hazards shall be reduced to the predevelopment level.

B. Reasonable access to the development shall be provided to agents of the town for critical area inspections, monitoring, restoration, or emergency action. (Ord. 2005-10 § 3 (Exh. A), 2005).

#### ~~15.16.151 Floodplains—Designation.~~

~~Floodplains are those areas with a one percent or greater chance of flooding in any given year. The director shall use the "areas of special flood hazard" as identified on the Federal Emergency Management Administration's most current Flood Insurance Rate Map for the town as the indicator of where floodplains exist, unless more detailed, current, and convincing evidence indicates a different geographic distribution of areas with a one percent or greater chance of flooding in any given year. (Ord. 2005-10 § 3 (Exh. A), 2005).~~

~~15.16.152 Floodplains—Critical areas report.~~

~~The director may waive the critical areas report required in EMC 15.16.109 for developments proposed in the floodplain, but not in the floodway, if the applicable permit application contains sufficient data to verify compliance with the substantive requirements. The critical areas report shall not be waived for watercourse alterations. (Ord. 2005-10 § 3 (Exh. A), 2005).~~

~~15.16.153 Floodplains—Substantive requirements.~~

~~In addition to the substantive requirements of EMC 15.16.113, the following requirements shall apply to floodplains:~~

~~A. To the extent possible consistent with the development objective, all improvements shall be located on the nonfloodplain portion of the site, if any, or on the highest ground on the site, as far as possible from the flood source.~~

~~B. New and substantially improved residential structures shall have the lowest floor, including basement, elevated one foot or more above the 100-year flood elevation. In addition, new and substantially improved manufactured homes (see EMC 18.02.262) shall be securely anchored to resist flotation, collapse, and lateral movement.~~

~~C. New and substantially improved nonresidential structures shall either:~~

~~1. Have the lowest floor, including basement, elevated one foot or more above the 100-year flood elevation; or~~

~~2. Together with utilities and sanitary facilities, be certified by a registered professional engineer or architect as being floodproofed, so that below one foot or more above the 100-year flood level the structure is watertight and capable of resisting hydrostatic and hydrodynamic loads and buoyancy.~~

~~D. Fully enclosed areas below the lowest habitable floor that are not floodproofed shall be certified by a registered professional engineer or architect as designed to resist hydrostatic flood forces.~~

~~E. New and replacement water supply systems shall be designed to minimize infiltration of flood waters into the systems.~~

~~F. New and replacement sanitary sewage systems and on-site septic systems shall be designed to minimize infiltration of flood waters into and discharges from the system.~~

~~G. All new construction and substantial improvements, including electrical, heating, ventilation, plumbing, and air conditioning equipment, shall be constructed using flood-resistant materials and methods.~~

~~H. Alteration of natural watercourses shall be avoided if feasible. If unavoidable, the director shall notify adjacent communities, the Department of Ecology, and FEMA prior to alteration. Any stream bank stabilization shall use soft armoring (bioengineering). Removal of vegetation and woody debris shall be minimized. The alteration shall not block side channels or diminish flood-carrying capacity.~~

~~I. Development in floodplains shall be designed to minimize impacts to such ecological functions as wildlife movement and aquifer recharge. Fill and grading may be placed in areas which in the event of a 100-year flood would be covered with relatively static floodwaters but not in a manner which would block side channels or inhibit channel migration.~~

~~J. Recreational vehicles shall either be on the site for fewer than 180 consecutive days or be fully licensed and ready for highway use. (Ord. 2005-10 § 3 (Exh. A), 2005).~~

~~15.16.154 Floodplains—Substantive requirements in floodway.~~

~~All developments capable of blocking floodwaters, including new construction, substantial improvements, and fill, but excluding underground improvements and conservation or habitat enhancement projects, are prohibited in the floodway unless a registered professional engineer certifies that the proposed encroachment will not result in any increase in flood levels during a 100-year flood. (Ord. 2005-10 § 3 (Exh. A), 2005).~~

~~15.16.155 Floodplains—Records.~~

~~The director shall record:~~

~~A. The as-built elevation above mean sea level of the lowest habitable floor, including basement, of all new or substantially improved structures, and whether the structure contains a basement;~~

~~B. Certificates of floodproofing and flood elevation; and~~

~~C. Permits and variances issued in accordance with this chapter. (Ord. 2005-10 § 3 (Exh. A), 2005).~~

~~15.16.156 Floodplains—Warning and disclaimer of liability.~~

~~Because larger floods than the 100-year flood occur occasionally, and flood heights may be increased by manmade or natural causes, compliance with this chapter does not entirely guarantee against flood damages, and the town shall not be liable for flood damages that result from reliance on this chapter. (Ord. 2005-10 § 3 (Exh. A), 2005).~~

Chapter 15.24

FLOOD DAMAGE PREVENTION

~~(Repealed by Ord. 2005-10)~~

Sections:

15.24.101 Floodplain Statutory Authorization, Findings of Fact, Purpose, and Objectives.

15.24.102 Floodplain Definitions.

15.24.103 Floodplain General Provisions.

15.24.104 Floodplain Administration.

15.24.105 Floodplain Provisions for Flood Hazard Reduction.

**15.24.101 Floodplain Statutory Authorization, Findings of Fact, Purpose, and Objectives**

**A. Statutory Authorization**

The Legislature of the State of Washington has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Eatonville, does ordain as follows:

**B. Findings of Fact**

1. The flood hazard areas of Eatonville are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

**C. Statement of Purpose**

It is the purpose of this ordinance to promote the public health, safety, and general welfare; reduce the annual cost of flood insurance; and minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money and costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. To ensure that potential buyers are notified that property is in an area of special flood hazard;
8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

**D. Methods of Reducing Flood Losses**

In order to accomplish its purposes, this ordinance includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging, and other development which may increase flood damage; and
5. Preventing or regulating the construction of flood barriers that unnaturally divert floodwaters or may increase flood hazards in other areas.

#### **15.24.102 Floodplain Definitions**

Appeal: a request for a review of the interpretation of any provision of this ordinance or a request for a variance.

Area of Shallow Flooding: designated as AO, or AH Zone on the Flood Insurance Rate Map (FIRM). AO zones have base flood depths that range from one to three feet above the natural ground; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow; AH indicates ponding, and is shown with standard base flood elevations.

Area of Special Flood Hazard: is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

Base Flood: the flood having a 1% chance of being equaled or exceeded in any given year (also referred to as the "100-year flood"). Designated on Flood Insurance Rate Maps by the letters A or V.

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

Breakaway Wall: means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

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

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

Elevation Certificate: means the official form (FEMA Form 086-0-33) used to track development, provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine the proper insurance premium rate with Section B completed by Community Officials.

Elevated Building: means for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

Existing Manufactured Home Park or Subdivision: means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

Expansion to an Existing Manufactured Home Park or Subdivision: means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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

1. The overflow of inland or tidal waters and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM): means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study (FIS): means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Maps, and the water surface elevation of the base flood.

Floodway: means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Lowest Floor: means the lowest floor of the lowest enclosed area (including basement). 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 building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance found at Section 15.24.105.B.1., (i.e. provided there are adequate flood ventilation openings).

Manufactured Home: means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

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

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

New Manufactured Home Park or Subdivision: means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

Recreational Vehicle: means a vehicle,

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

Start of Construction: includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not 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.

Substantial Damage: means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement: means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

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

The term can exclude:

1. Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Variance: means a grant of relief from the requirements of this ordinance that permits construction in a manner that would otherwise be prohibited by this ordinance.

Water Dependent: means a structure for commerce or industry that cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

#### **15.24.103 Floodplain General Provisions**

##### **A. Lands to Which This Ordinance Applies**

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Eatonville.

##### **B. Basis For Establishing The Areas of Special Flood Hazard**

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Pierce County and Incorporated Areas “dated March 7, 2017, and any revisions thereto, with an accompanying Flood Insurance Rate Map (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and the FIRM are on file at 201 Center Street West, Eatonville Washington 98328. The best available information for flood hazard area identification as outlined in Section 15.24.104.C.2. shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under Section 15.24.104.C.2.

##### **C. Abrogation and Greater Restrictions**

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

##### **D. Interpretation**

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

1. Considered as minimum requirements;



2. Liberally construed in favor of the governing body; and,
3. Deemed neither to limit nor repeal any other powers granted under State statutes.

E. Warning And Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Eatonville, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

F. Severability

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

**15.24.104 Floodplain Administration**

A. Establishment of Development Permit

1. Development Permit Required

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 15.24.103.B. The permit shall be for all structures including manufactured homes, as set forth in the "Definitions," and for all development including fill and other activities, also as set forth in the "Definitions."

2. Application for Development Permit

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

- a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures recorded on a current elevation certificate (FF 086-0-33) with Section B completed by the local official.
- b. Elevation in relation to mean sea level to which any structure has been floodproofed;
- c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet floodproofing criteria in Section 15.24.105.B.2;
- d. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

B. Designation of the Local Administrator

The Town Planner is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

C. Duties & Responsibilities of the Local Administrator

Duties of the Town Planner shall include, but not be limited to:

1. Permit Review

- a. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- b. Review all 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.
- c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 15.24.105.D.1. are met.

2. Use of Other Base Flood Data (In A and V Zones)

When base flood elevation data has not been provided (in A or V Zones) in accordance with Section 15.24.103.B., Basis for Establishing the Areas of Special Flood Hazard, the Town Planner shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 15.24.105.B., Specific Standards, and 15.24.105.D. Floodways.

3. Information to be Obtained and Maintained

- a. Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Section 15.24.104.C.2., obtain and record the actual (as-built) elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement. Recorded on a current elevation certificate (FF 086-0-33) with Section B completed by the local official.
- b. For all new or substantially improved floodproofed nonresidential structures where base flood elevation data is provided through the FIS, FIRM, or as required in Section 15.24.104.C.2.:
  - i. Obtain and record the elevation (in relation to mean sea level) to which the structure was floodproofed
  - ii. Maintain the floodproofing certifications required in Section 15.24.104.A.2.c.
- c. Maintain for public inspection all records pertaining to the provisions of this ordinance.

4. Alteration of Watercourses

- a. 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 Insurance Administration.
- b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

5. Interpretation of FIRM Boundaries

Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (e.g. where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the Rules and Regulations of the National Flood Insurance Program (44 CFR 59-76).

6. Administration of Title 15 Conflicts

In the event of internal conflict(s) within Title 15 Critical Areas regulations and the more specific floodplain regulations contained therein (EMC 15.24.101 through 15.24.105), the floodplain regulations shall take precedence and the Administrator shall implement the floodplain regulations as written.

D. Conditions for Variances

1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.
2. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4. Variances shall only be issued upon:
  - a. A showing of good and sufficient cause;
  - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
5. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from flood elevations should be quite rare.
6. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except 15.24.104.D.1., and otherwise complies with Sections 15.24.105.A.1., 15.24.105.A.3., and 15.24.105.A.4. of the General Standards.
7. Any applicant to whom a variance is granted shall be given written notice that the permitted structure will be built with its lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk.

**15.24.105 Floodplain Provisions for Flood Hazard Reduction**

A. General Standards

In all areas of special flood hazards, the following standards are required:

1. Anchoring
  - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
  - b. All manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
2. Construction Materials and Methods
  - a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - b. All new construction and substantial improvements shall be constructed using methods and

practices that minimize flood damage.

- c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Locating such equipment below the base flood elevation may cause annual flood insurance premiums to be increased.

### 3. 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 on high ground that is not in the floodway;
- 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.

### 4. Subdivision Proposals

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

### 5. Review of Building Permits

Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (Section 15.24.104.C.2.), applications for building permits shall be reviewed to assure that proposed construction will be *reasonably safe from flooding*. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

## B. Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 15.24.103.B., Basis for Establishing the Areas of Special Flood Hazard, or Section 15.24.104.C.2., Use of Other Base Flood Data. The following provisions are required:

### 1. Residential Construction

- a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more\* above the base flood elevation (BFE).
- b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

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

2. Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot or more above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- a. Be floodproofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 15.24.104.C.3.b.;
- d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in 15.24.105.B.1.b.;

3. Manufactured Homes

- a. All manufactured homes in the floodplain to be placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

4. Recreational Vehicles

Recreational vehicles placed on sites are required to either:

- a. Be on the site for fewer than 180 consecutive days, (or)
- b. Be fully licensed and ready for highway use, on 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 15.24.105.B.3. above and the elevation and anchoring requirements for manufactured homes.

C. AE and A1-30 Zones with Base Flood Elevations but No Floodways

In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

D. Floodways

Located within areas of special flood hazard established in Section 15.24.103.B. are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris, and increase erosion potential, the following provisions

apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.
2. Construction or reconstruction of residential structures is prohibited within designated floodways, except for (i) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction or improvements to a structure, 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 the local code enforcement official and which are the minimum necessary to assure safe living conditions, or to structures identified as historic places, may be excluded in the 50 percent.
3. If Section 15.24.105.D.1. is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 15.24.105, Provisions for Flood Hazard Reduction.

E. Critical Facility

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

# TOWN OF EATONVILLE

## Planning Commission Recommendation

Agenda Item No.:	
Subject:	An Ordinance adopting FEMA and State of Washington compliant flood damage prevention regulations

Meeting Date:	July 31, 2017
Prepared By:	Scott Clark, Planner
Atty Routing No:	
Atty Review Date:	

**Summary:**

The Town of Eatonville is mandated by the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) to adopt floodplain management measures that meet or exceed the minimum National Flood Insurance Program (NFIP) requirements. As such, FEMA has provided the Town with the Washington State Model Ordinance for adoption, which is included in Exhibit A (*as modified for Town use*). Pursuant to RCW 36.70A.390 the Town of Eatonville adopted interim official flood damage prevention controls on February 27, 2017 for a period not longer than six months, which will expire August 27, 2017. Prior to expiration of the interim controls, the Town needs to adopt permanent flood damage prevention regulations in order to continue eligibility under the NFIP. With the exception of minor changes to the flood damage prevention table of contents, as well as the removal of floodplain related text contained in Chapter 15.16, the remaining flood damage prevention text is consistent with the interim controls previously adopted in interim Ordinance 2017-2. Within Title 15, Environmental Protection, this amendment proposes the removal of the Floodplain regulations administered under EMC 15.16 and adopt updated Flood Damage Prevention regulations under Chapter 15.24. The Town of Eatonville issued a determination of non-significance for the proposal, and both public and agency notices have been provided.

**Staff Recommendation:**

Staff recommends approval of amendments proposed in Chapter 15.16 and the adoption of the FEMA and State of Washington approved flood damage prevention regulations under Chapter 15.24, as presented in Attachment A.

**Planning Commission Findings:**

Whereas, the Town of Eatonville is mandated by the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) to adopt floodplain management measures that meet or exceed the minimum National Flood Insurance Program (NFIP) requirements; and

Whereas, FEMA has provided the Town with the Washington State Model Ordinance for adoption, entitles "Region X Flood Damage Prevention Ordinance Washington Model" in order to comply with FEMA's NFIP requirements; and

Whereas, pursuant to RCW 36.70A.390, on February 27, 2017 the Town of Eatonville adopted interim official flood damage prevention controls for a period not longer than six months; and

Whereas, the Town of Eatonville Council directed the Planning Commission review the interim regulations, conduct a public hearing and forward a recommendation for the adoption of permanent flood damage prevention regulations; and

Whereas, the Town of Eatonville issued a determination of non-significance on July 23, 2017, for the adoption of updated Flood Damage Prevention regulations; and

Whereas, Town Staff, the general public and agencies of interest have been notified and been provided opportunity for review and comment; and

Whereas, there were no general public or agencies of interest comment received for consideration; and

Whereas, the Planning Commission conducted an open record public hearing on the matter on July 31, 2017 to consider the adoption of permanent flood damage prevention regulations; now, therefore

**Planning Commission Recommendation:**

Having reviewed the entire record, and after having conducted public hearing on July 31, 2017, the Town of Eatonville Planning Commission voted unanimously to recommend **APPROVAL** of the Flood Damage Prevention regulations contained in Exhibit A, as required by FEMA and the State of Washington.

  
\_\_\_\_\_  
*Judy Justice, Planning Commission Chair (Pro-Tem)*

8-2-17  
*Date*

**Fiscal Impact:** None

**Attachments:**

Attachment A – Title 15 Environmental Protection; Chapters 15.16 & 15.24

Attachment B – DNS

Attachment C – Draft Ordinance Text