

**CITY OF SULTAN  
WASHINGTON  
ORDINANCE NO. 1109-11**

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**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, MODIFYING THE  
SULTAN MUNICIPAL CODE BY AMENDING CHAPTER 16.16, GENERAL  
REGULATIONS TO ADD SECTION 16.16.035, COMPLIANCE WITH FEMA BI-OP  
PROVISIONS REQUIRED FOR CERTAIN DEVELOPMENT APPLICATIONS;  
PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the Federal Emergency Management Agency (FEMA) has been ordered by Federal Court to adopt floodplain management measures in compliance with the Federal Endangered Species Act, said measures collectively referred to as the "FEMA Bi-Op"; and

WHEREAS, effective not later than September 22, 2011, the City of Sultan was required by the Bi-Op to adopt one of three options that will be the City's implementing mechanism for the Bi-Op requirements; and

WHEREAS, at its regular meeting of July 14, 2011, the City Council adopted Resolution 11-08, directing that the City will adopt provisions to implement the "Door 3" option from the FEMA Bi-Op, said option requiring that developers address the requirements of the Bi-Op on a case-by-case basis as part of their development application; and

WHEREAS, the City provided FEMA formal notice of said decision to adopt "Door 3" via a letter signed by the Mayor prior to September 22, 2011 as required by the Bi-Op; and

WHEREAS, full implementation of the Bi-Op requires adoption of development standards in the Unified Development Code by ordinance; and

WHEREAS, the Planning Board held a public hearing on the proposed development standards to be included in the Unified Development Code at new Section 16.16.035 at its regular meeting of September 20, 2011; and

WHEREAS, the Planning Board voted unanimously to forward a recommendation of approval of the proposed provisions to the City Council, and that the Council conduct a second public hearing to provide the fullest possible public notification of the procedures required by Federal Court order; and

WHEREAS, the City Council has held an additional public hearing at its regular meeting of October 13, 2011, and fully considered the public input offered at this hearing and the recommendation of the Planning Board;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON,  
DO ORDAIN AS FOLLOWS:

Section 1. Amend existing Chapter 16.16. by adding New Section 16.16.035 as follows:

**16.16.035 Compliance with FEMA Bi-Op Provisions Required for Certain Development Applications**

In response to Federal requirements expressed through the Federal Emergency Management Agency (FEMA) Biological Opinion (Bi-Op) as a Federal condition of maintaining eligibility for community participation in the National Flood Insurance Program (NFIP), certain developments as described in this section must undertake appropriate environmental analysis and document compliance with the Federal Endangered Species Act (ESA) as follows:

- A. Development subject to FEMA Bi-Op provisions is as the term "Development" is defined in the 2010 FEMA Region X "Floodplain Management and the Endangered Species Act, A Model Ordinance April, 2011", Section 2. Definitions.
- B. Properties in the following areas are required to address the standards of the FEMA Bi-Op. Terms are as defined in the FEMA Region X "Floodplain Management and the Endangered Species Act, A Model Ordinance April, 2011", Section 2. Definitions.
  1. Floodway
  2. Channel Migration Zone plus 50-feet
  3. Riparian Habitat Zone (Riparian Buffer Zone)
  4. Other portions of the 100-year floodplain determined to be in the "Protected Area"
- C. Development Applications for development within the "Protected Area" shall be accompanied by studies, reports, findings, and conclusions by qualified professional specialists as appropriate and necessary to document that the proposed development in the FEMA designated floodway, the Channel Migration Zone plus 50 feet (as identified according to Ecology 2003), and the Riparian Buffer Zone (as described by the Department of Natural Resources 2007 stream typing system and the Washington Department of Fish and Wildlife's 1997 stream buffer guidelines) does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and or floodplain refugia for listed salmonids (As required by the Biological Opinion Reasonable and Prudent Alternative (RPA) Element 3 –Floodplain Management Criteria, Item A. 2.).
- D. Development applications for development within the FEMA designated 100-year floodplain but outside of the Riparian Buffer Zone shall avoid, rectify, or compensate for any loss of floodplain storage. (As required by the Biological Opinion Reasonable and Prudent Alternative (RPA) Element 3 –Floodplain Management Criteria, Item A. 3.b.).
- E. Indirect adverse effects of development in the floodplain to stormwater, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, etc. must be mitigated such that equivalent or better salmon habitat protection is provided (As required by the Biological Opinion Reasonable and Prudent Alternative (RPA) Element 3 –Floodplain Management Criteria, Item A. 3.b.).

- F. Development applications for development within the FEMA designated 100-year floodplain as provided in item D. above shall use Low Impact Development methods (generally requiring infiltration of all on-site stormwater), such as those methods described in the Low Impact Development Technical Guidance manual for Puget Sound (Puget Sound Action Team and WSU/Pierce County Extension 2002) to minimize or avoid storm water effects (As required by the Biological Opinion Reasonable and Prudent Alternative (RPA) Element 3 –Floodplain Management Criteria, Item A. 3.b.).
- G. Any improvements or repairs to existing structures that result in a greater than 10% (ten percent) increase of the structure footprint must mitigate for any adverse effects to endangered species or their habitat as described in Items D. and E. above (As required by the Biological Opinion Reasonable and Prudent Alternative (RPA) Element 3 – Floodplain Management Criteria, Item A.


Section 2. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 26<sup>th</sup> DAY OF January, 2012.


CITY OF SULTAN:

  
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Mayor Carolyn Eslick

ATTEST/AUTHENTICATED:

  
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Laura Koenig, Clerk-Treasurer

Approved as to form:

  
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Margaret King, City Attorney

Passed: 1-26-12

Published: 2-6-12

Effective Date: 2-11-12