

**AN ORDER ADOPTING NEW AND COMPREHENSIVE FLOODPLAIN MANAGEMENT REGULATIONS IN ACCORDANCE WITH SECTION 60.3(D) OF THE NATIONAL FLOOD INSURANCE PROGRAM WHICH ARE DESIGNED TO MINIMIZE FLOOD DAMAGE AND LOSSES IN COMPLIANCE WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S NATIONAL FLOOD INSURANCE PROGRAM**

**THE STATE OF TEXAS §**

**COUNTY OF HIDALGO §**

WHEREAS, the County of Hidalgo is a participant in the National Flood Insurance Program (the "Program");

WHEREAS, the Federal Emergency Management Agency (FEMA) recently completed a re-evaluation of the flood hazards within the County of Hidalgo and issued a new Flood Insurance Rate Map (FIRM) that identified the current special flood hazard areas within the unincorporated land areas of Hidalgo County;

WHEREAS, the new FIRM went into effect June 6, 2000.

WHEREAS, as a result of the re-evaluation by FEMA, the County of Hidalgo is now subject to additional regulations under Section 60.3(d) of the Program.

WHEREAS, continued participation in the Program is conditioned upon the County of Hidalgo adopting all of the standards of Section 60.3(d) of the Program as the County of Hidalgo's new and comprehensive set of regulations on floodplain management in the unincorporated land areas of the county of Hidalgo; and

WHEREAS, the Commissioners Court of Hidalgo County desires to adopt all of the standards of Section 60.3(d) of the Program as the County of Hidalgo's new and comprehensive set of regulations on floodplain management in the unincorporated land areas of the County of Hidalgo;

NOW THEREFORE, on the 17th day of February, 2015, in a meeting of the Commissioners Court of Hidalgo County, Texas duly convened and acting in its capacity as the governing body of Hidalgo County, it is ORDERED by the Commissioners Court of Hidalgo County, Texas that the regulations attached and appended hereto entitled "REGULATIONS FOR FLOODPLAIN MANAGEMENT, HIDALGO COUNTY, TEXAS" are made a part of this Order and are adopted as the regulations of Hidalgo County, hereby superseding all prior floodplain regulations and all officials of Hidalgo County having duties under said regulations are ORDERED and DIRECTED to perform such duties as required of them under said regulations. This Order shall be effective upon its passage and execution in accordance with the law.

Signed this 17th day of February, 2015

COUNTY OF HIDALGO

BY: Ramon Garcia  
Ramon Garcia, County Judge

ATTEST:

BY: Arturo Guajardo, Jr.  
Arturo Guajardo, Jr., County Clerk

APPROVED BY  
COMMISSIONERS' COURT  
ON: 2/17/15

**REGULATIONS FOR FLOODPLAIN MANAGEMENT  
HIDALGO COUNTY, TEXAS**

**ARTICLE I**

**STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS**

**SECTION A. STATUTORY AUTHORIZATION**

The Legislature of the State of Texas has in Section 16.313, 16.3145 and 16.315 of the Texas Water Code delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Commissioners Court of Hidalgo County, Texas does order as follows:

**SECTION B. FINDING OF FACT**

1. The flood hazard areas of Hidalgo County, Texas are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood proofed or otherwise protected from flood damage.

**SECTION C. STATEMENT OF PURPOSE**

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

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
6. Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize future flood blight areas; and
7. Ensure that potential buyers are notified that property is in a flood area.

**SECTION D. METHOD OF REDUCING FLOOD LOSSES**

In order to accomplish its purpose this order uses the following methods:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses be protected against flood damage at the time of initial construction;

3. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood waters;
4. Control filling, grading, dredging and other development which may increase flood damage and
5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

## **ARTICLE II**

### **DEFINITIONS**

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

**ALLUVIAL FAN FLOODING** – means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high velocity flows; active processes or erosion sediment transport, and deposition; and unpredictable flow paths.

**APEX** – means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

**APPEAL BOARD** – means the Hidalgo County Subdivision Advisory Board, which is established pursuant to the Hidalgo County Subdivision Rules.

**AREA OF SHALLOW FLOODING** – means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent change or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD HAZARD** - is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, AI-99, VO, VI-30, VE or V.

**BASE FLOOD** – means the flood having a one percent chance of being equaled or exceeded in any given year.

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

**CRITICAL FEATURE** - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

**DEVELOPMENT** – means any man-made change in improved and 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.

**ELEVATED BUILDING** – means a non-basement building built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor, or in the case of a building in Zones V, A1-A30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In

the case of Zones A1-A30, AE, A A99, AO, AH, B, C, X and D, “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with opening sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones VI-30, VE or V, “elevated building” also includes a building otherwise meeting the definition of “elevated building” even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3(e) (5) of the National Flood Insurance Program Regulations.

**EXISTING CONSTRUCTION** – means for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975 for FIRMS’s effective before that date. “Existing Construction” may also be referred to as “existing structures”.

**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 floodplain management regulations adopted by a community.

**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; or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM)** – means an official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY** – is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary Floodway Map.

**FLOODPLAIN OR FLOOD PRONE AREA** – means any land area susceptible to being inundated by water from any source (see definition of flooding).

**FLOODPLAIN MANAGEMENT** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS** – means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations in any combination thereof which provide standards for the purpose of flood damage prevention and reduction.

**FLOOD PROTECTION SYSTEM** – means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a “special flood hazard” and the extent of the depths of associated

flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**FLOOD PROOFING** – means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY (REGULATORY FLOODWAY)** – means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to charge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**FUNCTIONALLY DEPENDENT USE** – means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities but does not include long term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE** – means the highest natural elevation of the ground surface prior to construction next to proposed walls of a structure.

**HISTORIC STRUCTURE** – means any structure that is

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
  - a) By an approved state program determined by the Secretary of the Interior, or
  - b) Directly by the Secretary of the Interior in states without approved programs.

**LEVEE** – means a man made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**LEVEE SYSTEM** – means a flood protection system which consists of a levee or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR** – means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure usable solely for parking or 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 requirement of Section 60.3 of the National Flood Insurance Program Regulations.

**MANUFACTURED HOME** – means a structure transportable in one or more sections which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. 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.

**MEAN SEA LEVEL** – means for purpose of the National Flood Insurance Program the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Map are referenced.

**NEW CONSTRUCTION** – means, for the purpose of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvement to such structures.

**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 floodplain management regulations adopted by a community.

**RECREATIONAL VEHICLE** – means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projections;
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** – (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348) includes substantial improvements and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition, 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 footing, 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 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** – means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**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 reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. This includes structures which have incurred “substantial damage” regardless of the actual repair work performed. The term does not however, include either:

1. 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 codes enforcement official and which are the minimum necessary conditions or
2. Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

**VARIANCE** – is a grant of relief to a person from the requirement of this order when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this order. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

**VIOLATION** – means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3 (b)(5), (c)(4), (d)(3), (e)(2), (e)(4), or (e )(5) is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** – means the height in relation to the National Geodetic Vertical Datum (NGVD) OF 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain of coastal or rivertine areas.

### **ARTICLE III**

#### **GENERAL PROVISIONS**

##### **SECTION A. LANDS TO WHICH THIS ORDER APPLIES**

The order shall apply to all areas of special flood hazard within the jurisdiction of Hidalgo County, Texas. For the purpose of this order, the jurisdiction of Hidalgo County, Texas extends to those areas included in any Hidalgo County community panel in the Flood Insurance Rate Maps, Flood Boundary Floodway Maps, or to areas not mapped as flood hazard areas but which may be considered “risk areas” by the Floodplain Administrator.

##### **SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitles, “The Flood Insurance Study for Hidalgo County, Texas” dated June 6, 2000 with accompanying Flood Insurance Rate Maps and Flood Boundary Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this order.

### **SECTION C. ESTABLISHMENT OF DEVELOPMENT PERMIT**

A Development Permit shall be required to ensure conformance with the provisions of this order. The Commissioners Court of Hidalgo County, Texas with the assistance of the Floodplain Administrator will promulgate the necessary permits and forms and any additional forms as may be necessary for the implementation of this order, and may change these forms at any time. The Commissioners Court with the assistance of the Floodplain Administrator will establish fees commensurate with the service rendered by the County. As part of this order, the fee adopted by Hidalgo County shall be \$50 and shall cover the cost of administrative reviews and field inspections.

### **SECTION D. COMPLIANCE**

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this order and other applicable regulations.

### **SECTION E. PENALTIES FOR NONCOMPLIANCE.**

1. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this order and other applicable regulations. Violation of the provision of this order by failure to comply with any of its requirements (including violation of conditions and safeguards established in connection with conditions) shall constitute contempt of the Commissioners' Court of Hidalgo County, Texas. Each such person, firm, corporation or agent shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this regulation is committed or continued. The Commissioners' Court may file suit for injunctive relief or civil penalties or both for any violation or threatened violation of this order.
2. The Floodplain Administrator or his duly authorized representative, is authorized to file with the County Clerk a Motion alleging contempt for failure to comply with this order. After filing, said Motion shall be presented to the County Judge who shall set a day and time for the Respondent to appear and show cause why Respondent should not be held in contempt, which time shall not be less than ten (10) nor more than twenty (20) days from the date of filing of said Motion, whereupon the County Clerk shall issue a citation and notice of setting for service upon said Respondent. At said hearing, Respondent shall be accorded the right to counsel, the right of confrontation, the right to summon and examine witnesses, and the right to testify and offer evidence on Respondent's behalf. If after such hearing before the Commissioners' Court of Hidalgo County, Texas, Respondent should be held in violation of the regulations and in contempt of the orders of this Court as expressed in these regulations, then he may be punished by a civil penalty not to exceed \$100.00 for each act of violation and for each day of violation, and in addition shall pay all costs and expenses involved in the case including the attorneys fees incurred by the Commissioners' Court of Hidalgo County, Texas.
3. The Floodplain Administrator, or his duly authorized representative, may enter any building, structure, or premises to perform any duties imposed upon him by this order. If the Floodplain Administrator is denied access or admission to the building, structure, or premises, the Floodplain Administrator must seek a search warrant based on probable cause to believe that a violation of this order has occurred or is occurring within the building, structure, or premises.
4. Upon notice from the Floodplain Administrator, or his duly authorized representative, work on any building, structure, dike, bridge, or any improvement which would affect water drainage, that is being done contrary to the provisions of this order, or in a dangerous or unsafe manner, such work shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property or to his agent, or to the

person doing the work, and shall state the conditions, if any, under which work may be resumed. Where an emergency exists, no written notice shall be required to be given by the Floodplain Administrator, or his duly authorized representative, provided, written notice shall follow within twenty – four (24) hours from the time oral notice to stop work is issued.

5. The Floodplain Administrator or his duly authorized representative may revoke a permit or approval issued under the provisions of this order, in cases where there has been any false statement or misrepresentation as to a material fact in the application or plans upon which the permit or approval was based.
6. Nothing herein contained shall prevent the Commissioners Court of Hidalgo County, Texas from taking such other lawful action as is necessary to prevent or remedy any violation.

#### **SECTION F. ABROGATION AND GREATER RESTRICTIONS**

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

#### **SECTION G. INTERPRETATION**

In the interpretation and application of this order, 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.

#### **SECTION H. WARNING AND DISCLAIMER OR LIABILITY**

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

**ARTICLE IV**  
**ADMINISTRATION**

**SECTION A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR**

**Raul E. Sesin, PE, CFM** is hereby appointed the Floodplain Administrator, to administer and implement the provisions of this order and other appropriate Sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

**SECTION B. DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

Duties and responsibilities of the Floodplain Administrator shall include but not be limited to the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this order;
2. Review permit application to determine whether proposed building site including the placement of manufactured homes will be reasonably safe from flooding;
3. Review, approve or deny all applications for development permits required by adoption of this order;
4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval are required;
5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation;
6. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Natural Resource Conservation Commission, prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency;
7. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;
8. When base flood elevation data has not been provided in accordance with Article III, Section B , the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State, or other source in order to administer the provisions of Article V;
9. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-A30 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 and
10. Under the provisions of 44 CFT Chapter 1, Section 65.12 of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-A30, AE, AH on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

## **SECTION C. PERMIT PROCEDURES**

1. Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not limited to, plans in duplicate drawn to scales showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
  - a. Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;
  - b. Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;
  - c. A certificate from a registered professional engineer or architect that the nonresidential flood proofed structure shall meet the flood proofing criteria of Article V, Section B (2);
  - d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development and
  - e. Maintain a record of all such information in accordance with Article IV, Section (B) (1).
2. Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this order and the following relevant factors:
  - a. The danger to life and property due to flooding or erosion damage;
  - b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - c. The danger that materials may be swept onto other lands to the injury of others;
  - d. The compatibility of the proposed use with existing and anticipated development;
  - e. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - f. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges and public utilities and facilities such as sewer, gas, electrical and water systems;
  - g. 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;
  - h. The necessity to the facility of a waterfront location where applicable;
  - i. The availability of alternative locations, not subject to flooding or erosion damage for the proposed use; and
  - j. The relationship of the proposed use to the comprehensive plan for that area.

## **SECTION D. VARIANCE PROCEDURES**

1. The Appeal Board as established by the community shall hear and render judgment on requests for variances from the requirements of this order.
2. The Appeal Board shall hear and render judgment on an appeal only 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 order.
3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this order.
6. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided the relevant factors in Section C (2) (b) of this Article have been fully considered. As the lot size increases beyond the one half acre, the technical justification required for issuing the variance increases.
7. Upon consideration of the factors noted above and the intent of this order, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this order (Article I, Section C).
8. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
9. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
10. Prerequisites for granting variances:
  - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazards, to afford relief.
  - b. Variances shall only be issued upon:
    1. Showing a good and sufficient cause;
    2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
    3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or orders.
  - c. Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
11. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
  - a. The criteria outlined in Article IV, Section D (1)-(9) are met and
  - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

## **ARTICLE V**

### **PROVISIONS FOR FLOOD HAZARD REDUCTION**

#### **SECTION A. GENERAL STANDARDS**

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and
7. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

## **SECTION B. SPECIFIC STANDARDS**

In all areas of special flood hazards where base flood elevation date has been provided as set forth in (i) Article III, Section B (ii) Article IV, Section B (8) or (iii) Article V, Section C (3) the following provisions are required;

1. **Residential Construction** – new construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation. A Registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Article IV, Section C (1)(a) is satisfied.
2. **Nonresidential Construction** – new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are flood proofed shall be maintained by the Floodplain Administrator.
3. **Enclosures** - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding 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 meet or exceed the following minimum criteria;
  - a. 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;
  - b. The bottom of all openings shall be no higher than one foot above grade; and
  - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

#### **4. Manufactured Homes-**

- a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices, which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- b. Require that manufactured homes that are placed or substantially improved within Zones A1-A30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision (iii) in an expansion to an existing manufactured home park or subdivision or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- c. Require that manufacture homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-A30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:
  1. The lowest floor of the manufactured home is at or above the base flood elevation; or
  2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

#### **5. Recreational Vehicles –** Require that recreational vehicles placed on sites within Zones A1-A30, AH and AE on the community's FIRM either:

- a. Be on the site for fewer than 180 consecutive days;
- b. Be fully licensed and ready for highway use; or
- c. Meet the permit requirements of Article IV, Section C and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

### **SECTION C. STANDARDS FOR SUBDIVISION PROPOSALS**

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article I, Sections B, C, and D of this order.
2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Article III, Section C; Article IV, Section C; and the provisions of Article V of this order.
3. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Article III, Section B or Article IV, Section B (8) of this order.
4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

#### **SECTION D. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)**

Located within the areas of special flood hazard established in Article III, Section B, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow, therefore, the following provisions apply:

1. All new construction and substantial improvements or **residential** structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
2. All new construction and substantial improvements of **non-residential** structures:
  - a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or
  - b. Together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
3. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Article IV, Section C (1), are satisfied.
4. Require within Zones AH or AO adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

#### **SECTION E. FLOODWAYS**

Floodways located within areas of special flood hazard established in Article III, Section B are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters, which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

1. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway **unless** it has been demonstrated 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 within the community during the occurrence of the base flood discharge.
2. If Article V, Section E (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V.
3. Under the provision of 44 CFR Chapter I, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through FEMA.