

Ordinance 59

FLOOD PLAIN MANAGEMENT ORDINANCE

ARTICLE I

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

SECTION A. STATUTORY AUTHORIZATION

The Legislature has, in New Mexico Statutes Amended 1978 Section 3-18-7, required that a county or municipality with identified flood or mudslide hazard areas shall by ordinance:

1. designate and regulate flood plain areas having special flood or mudslide hazards;
2. prescribe standards for constructing, altering, installing or repairing buildings and other improvements under a permit system within a designated flood or mudslide hazard area;
3. require review by the local flood plain manager for development within a designated flood or mudslide hazard area provided final decisions are approved by the local governing body;
4. review subdivision proposals and other new developments within a designated flood or mudslide hazard area to ensure that:
 - a. all such proposals are consistent with the need to minimize flood damage;
 - b. all public utilities and facilities such as sewer, gas, electrical and water systems are designed to minimize or eliminate flood damage; and
 - c. adequate drainage is provided so as to reduce exposure to flood hazards;
5. require new or replacement water supply systems or sanitary sewage systems within a designated flood or mudslide hazard area to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding; and
6. designate and regulate floodways for the passage of flood waters. Therefore, the Board of County Commissioners of Eddy County, New Mexico does ordain:

SECTION B. FINDINGS OF FACT

1. The flood hazard areas of Eddy County, New Mexico 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 ordinance 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. Insure that potential buyers are notified that property is in a flood area.

SECTION D. METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance 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 that 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 ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance 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 of 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.

APPURTENANT STRUCTURE – means a structure which is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

AREA OF FUTURE CONDITIONS FLOOD HAZARD – means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

AREA OF SHALLOW FLOODING -means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent chance 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, A1-30, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE OR V.

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

BASE FLOOD ELEVATION (BFE) – The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

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 structure.

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

1. built, in the case of a building in Zones A, AE, AH, AO, A1-99, B, C, X, D, and V to have the top of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and
2. 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.

"Elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

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 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 ELEVATION STUDY – means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.

FLOOD OR FLOODING -means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. the overflow of waters.
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 (FIS) -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 a 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 discharge 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 the 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 of historic places in communities with historic preservation programs that have been certified either:
 - a. by an approved state program as 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.

LEEVE 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. Manufactured home also applies to homes that are built at an off-site location, moved to a permanent foundation, but do not have a permanent chassis. 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 purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate 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 improvements 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 motor vehicle; and
4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

RIVERINE – means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

START OF CONSTRUCTION -(for other than new construction or substantial improvements under the Coastal Barrier Resources Act (pub. 1. 97-348)), includes substantial improvement 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 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 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 tanks that are principally above ground, communication tower utility buildings, as well as manufactured homes.

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 code 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 ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (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), (c)(10), (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 North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

ARTICLE III

GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of Eddy County, and other floodplain areas that are adopted by the Board of County Commissioners.

SECTION B. BASIS FOR ESTABLISHING THE LANDS TO WHICH THIS ORDINANCE APPLIES

1. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Eddy County, New Mexico Unincorporated Areas," revision dated June 4, 2010, with accompanying Flood Insurance Rate Maps (FIRM).
2. Other floodplain areas may be designated by the Eddy County Board of County Commissioners upon request by the Floodplain Administrator. These floodplain areas may be determined in one of two ways:
 - a. Floodplains may be delineated by accepted hydrologic and hydraulic practices; or
 - b. Floodplains may be areas flooded by a historic flood.
3. Floodplains other than special flood hazard areas designated by the Federal Emergency Management Agency may be adopted.

SECTION C. ESTABLISHMENT OF FLOODPLAIN PRE-DETERMINATION AND USE PERMITS

1. A Floodplain Pre-Determination Permit shall be required to determine if the proposed location is in a designated floodplain area. This permit shall be issued prior to issuance of any building permit for any structure, or location or relocation of a manufactured home in all unincorporated areas of Eddy County. There shall be no fees charged for a Pre-Determination Permit.

2. A Floodplain Use permit shall be required to ensure conformance with the provisions of this ordinance when a proposed site is determined to be located in a designated floodplain area. This permit shall be issued prior to issuance of any building permit for any structure, or location or relocation of a manufactured home. Fees for Use Permit shall be set by resolution by the Eddy County Board of County Commissioners.

SECTION D. COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. PENALTIES FOR NON-COMPLIANCE

Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$ 300.00 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent Eddy County from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION F. 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

SECTION G. 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.

SECTION H. 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. On rare occasions greater floods can and will occur and 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 Eddy County or any official or any employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

ARTICLE IV

ADMINISTRATION

SECTION A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The Special Services Department is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance 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. Maintaining and holding open for public inspection all records pertaining to the provisions of this ordinance.
2. Ensuring that all floodplain pre-determination and use permit applications are reviewed by a Certified Floodplain Manager.
3. Reviewing development permit applications to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
4. Reviewing and approving or denying all applications for floodplain use permits required by adoption of this ordinance.
5. Reviewing 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 is required.
6. 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.
7. Notifying, in riverine situations, adjacent communities and the New Mexico Department of Homeland Security and Emergency Management prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
8. Assuring that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
9. 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.

10. 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 A1-30 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.
11. Under the provisions of 44 CFR Chapter I, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, 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. FLOODPLAIN USE PERMIT PROCEDURES

Application for a Floodplain Use Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale 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:

1. In Zones A or AO or other designated floodplains where no base flood elevation is provided:
 - a. The elevation of the lowest floor of any building above the highest adjacent grade.
 - b. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
 - c. Maintain a record of all such information in accordance with Article IV, Section (B)(1).
2. In Zones AE, AH or A1-A30 or other designated floodplains where a base flood elevation is provided:
 - 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 floodproofed;
 - c. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing 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.
 - e. Maintain a record of all such information in accordance with Article IV, Section (B)(1).

Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

1. The danger to life and property due to flooding or erosion damage;
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
3. The danger that materials may be swept onto other lands to the injury of others;
4. The compatibility of the proposed use with existing and anticipated development;
5. The safety of access to the property in times of flood for ordinary and emergency vehicles;
6. 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;
7. 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;
8. The necessity to the facility of a waterfront location, where applicable;
9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
10. The relationship of the proposed use to the comprehensive plan for that area, if applicable.

SECTION D. ELEVATION CERTIFICATES AND FLOODPROOFING CERTIFICATES

1. The Floodplain Administrator shall require that the owner of a new or substantially improved building in a floodplain provide a FEMA Elevation Certificate or a FEMA Floodproofing Certificate for such building prior to issuance of a Certificate of Occupancy.
2. The Floodplain Administrator will review all FEMA Elevation Certificates and Floodproofing Certificates for completeness and correctness.
3. The floodplain Administrator shall maintain a file of all FEMA Elevation Certificates and Floodproofing Certificates and make them available to the public upon request.

SECTION E. VARIANCE PROCEDURES

1. The Special Services Department shall hear and render judgment on requests for variances from the requirements of this ordinance.
2. The Board of County Commissioners 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 ordinance.

3. Any person or persons aggrieved by the decision of the Board of County Commissioners 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 ordinance.
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, providing that the relevant factors in Section C(2) 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 ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (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 hazard, 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 ordinances.
 - 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.

SECTION B. SPECIFIC STANDARDS

1. In A Zones and other designated floodplains where no base flood elevation is provided, the following provisions are provided:
 - a. **All New Construction** -new construction and substantial improvement of any structure, including manufactured housing, shall be built or placed on compacted fill that is at least two (2.0) feet above the highest adjacent grade prior to any disturbance of the building site. Such fill shall extend at least 10 feet from the walls of the structure before it drops below the two foot elevation. All residential structures shall have positive drainage away

from the buildings. The finished floor of the structure shall be at least one (1.0) foot above the elevation of the fill.

- b. **Enclosures** -new construction and substantial improvements, with 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 is subject to flooding shall not be enclosed.
2. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Article III, Section B, Article IV, Section B(8), or Article V, Section C(3), the following provisions are required:
- a. **All New Construction** -new construction and substantial improvement of any structure, including manufactured housing, shall be built or placed on compacted fill that is at least as high as the base flood elevation. Such fill shall extend at least 10 feet from the walls of the structure before it drops below the base flood elevation. All residential structures shall have positive drainage away from the buildings.
 - b. **Residential Construction** -new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to at least one foot 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.
 - c. **Nonresidential Construction** -new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall meet the requirements for residential construction.
 - d. **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 is subject to flooding shall not be enclosed.
 - e. **Manufactured Homes**
 - (1) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM, or in any floodplain area where no base flood elevation is provided, shall be installed using methods and practices that 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.
 - (2) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AE, AO, and AH on the community's FIRM, or in any floodplain where base flood elevations are provided, on sites:
 - (a) outside of an existing manufactured home park or subdivision,

- (b) in a new manufactured home park or subdivision,
 - (c) in an expansion to an existing manufactured home park or subdivision, or
 - (d) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, comply with the provisions of Article V, Section B.1 and be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at least one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (3) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AE, AO, and AH on the community's FIRM, or in any floodplain where base flood elevations are provided, that are not subject to the provisions of paragraph e.(2)(d) of this section be elevated so that either:
- (a) the lowest floor of the manufactured home is at least one foot above the base flood elevation, or
 - (b) 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.

f. Recreational Vehicles -Require that recreational vehicles placed on sites within Zones A1-30 and AE on the community's FIRM, or in any floodplain where base flood elevations are provided, either:

- (1) be on the site for fewer than 180 consecutive days, or
- (2) be fully licensed and ready for highway use, or
- (3) meet the permit requirements of Article IV, Section C(1), and the elevation and anchoring requirements for "manufactured homes" in paragraph e.(2)(d) 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 ordinance.
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 ordinance.

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 are 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 ordinance.
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 UTILITIES

1. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
 - a. infiltration of flood waters into the systems, and
 - b. discharge from the systems into flood waters.
2. All new water wells shall:
 - a. Either
 - (1) Have the casing extend at least one foot above the base flood elevation; or
 - (2) be sealed so that flood water cannot enter the casing.
 - b. Have all electrical controls and devices elevated at least one foot above the base flood elevation or have such electrical controls and devices floodproofed to at least one foot above the base flood elevation.
3. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.
4. Septic tanks located within floodplains shall:
 - a. Be anchored to prevent flotation in the event that the ground is saturated from the bottom of the tank to ground level;
 - b. Be sealed so that water will not infiltrate the tank;
 - c. Be sealed so that sewage will not escape the tank; and
 - d. Have one-way valves to prevent sewage from leaving the tank if the tank is inundated and the ground is saturated from the bottom of the tank to ground level.

SECTION E. 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 of **residential** structures including manufactured houses have the lowest floor (including basement) elevated above the highest adjacent grade at least one foot higher than the depth number specified in feet on the community's FIRM (at least three 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 one foot higher than the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified), or;
 - b. together with attendant utility and sanitary facilities be designed so that 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 to an elevation at least one foot higher than the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified)
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)a., 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 F. 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:

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 provisions of 44 CFR Chapter 1, 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.

ARTICLE VI

SEVERABILITY

This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

SUCCESSION

This ordinance supersedes Ordinance 44 and any other ordinance or provisions as applicable to floodplain management adopted prior to date of adoption of Ordinance 59.

CERTIFICATION

It is hereby found and declared by Eddy County, New Mexico that severe flooding has occurred in the past within its jurisdiction and will certainly occur within the future; that flooding is likely to result in infliction of serious personal injury or death, and is likely to result in substantial injury or destruction of property within its jurisdiction; in order to effectively comply with minimum standards for coverage under the National Flood Insurance Program; and in order to effectively remedy the situation described herein, it is necessary that this ordinance become effective thirty (30) days after being duly recorded by the Eddy County Clerk's Office.

APPROVED: _____

Jack Volpato
Jack Volpato - Chairman Eddy County Board of Commissioners

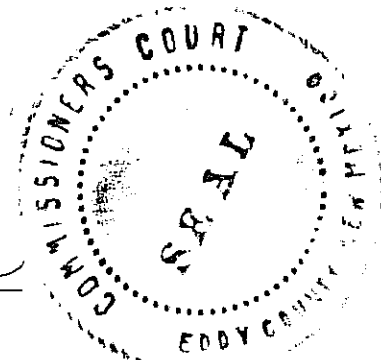
PASSED: _____

Date

May 18, 2010

ATTEST: _____

Darlene Rosprim
Darlene Rosprim - Eddy County Clerk



Affidavit of Publication

Copy of Publication:

NO. 21121

STATE OF NEW MEXICO

County of Eddy:

GARY D. SCOTT being duly

sworn,says: That he is the PUBLISHER of The

Artesia Daily Press, a daily newspaper of general circulation, published in English at Artesia, said county and county and state, and that the here to attached

Legal Notice

was published in a regular and entire issue of the said Artesia Daily Press,a daily newspaper duly qualified for that purpose within the meaning of Chapter 167 of the 1937 Session Laws of the state of New Mexico for

1 Consecutive week/days on the same

day as follows:

First Publication April 25, 2010

Second Publication _____

Third Publication _____

Fourth Publication _____

Fifth Publication _____

Subscribed and sworn to before me this

25 Day April 2010



OFFICIAL SEAL
Jo Morgan
NOTARY PUBLIC STATE OF NEW MEXICO

My commission expires: 4/26/2010

Jo Morgan
Jo Morgan
Notary Public, Eddy County, New Mexico

Legal Notice

NOTICE OF PUBLIC HEARING

The Eddy County Board of Commissioners will hold a public hearing on Tuesday, May 18, 2010 at 8:30 a.m. at the Eddy County Commission Chambers, 101 W. Greene Street, Room 211, Carlsbad, NM. Eddy County is considering revisions to the existing Flood Plain Ordinance as required by FEMA.

Copies of the revised ordinance are available at the GIS Office, W. Greene St., Room 127, Carlsbad, NM. For further information special accommodations for this meeting, please contact Gay W at 887-9511.

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Affidavit of Publication

EDDY COUNTY PROBATE COURT.

2010 APR 29 PM 2:22

State of New Mexico
County of Eddy, ss.

Kathy McCarroll, being first duly sworn, on oath says:

That she is the Classified Supervisor of the Carlsbad Current-Argus, a newspaper published daily at the City of Carlsbad, in said county of Eddy, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof on the date as follows, to wit:

April 25 _____ 2010

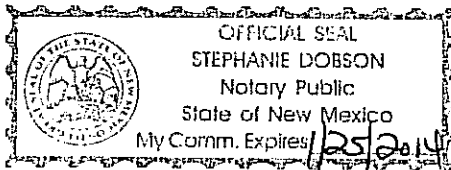
That the cost of publication is \$38.41 and that payment thereof has been made and will be assessed as court costs.

Kathy McCarroll

Subscribed and sworn to before me this 27th day of April, 2010

Stephanie Dobson

My commission expires 1/25/2014
Notary Public



STATE OF NEW MEXICO COUNTY OF EDDY
RECORDED ON MAY 19, 2010 AT 2:31 PM
IN BOOK 2 PAGE 92 OF THE ORDINANCE
RECORDS
Darlene Rosprim
DARLENE ROSPRIM, COUNTY CLERK



CLERK'S CERTIFICATE
Certified this 19th day of MAY
2010, as a true and correct copy of the
original recorded in this office.
Darlene Rosprim
Clerk of Eddy County, N. Mex.

Deputy

