

## ORDINANCE NO. 9

EFFECTIVE DATE

FEBRUARY 2, 1983

## REVISION NO. 2

EFFECTIVE DATE

MARCH 10, 2003

# **CHAVES COUNTY, NEW MEXICO FLOOD DAMAGE PREVENTION ORDINANCE NO. 9**

This Ordinance of Chaves County is created for the purpose of adopting the flood zones designated by the Flood Insurance Rate Maps (FIRMs) and the Flood Boundary and Floodway Maps (FBFMs), regulating flood hazard area land use and prescribing central measures, defining certain terms, providing for administrative duties and appeal procedures, prescribing penalties, repealing all ordinances or parts of ordinances in conflict herewith, providing for severability, and fixing the effective date of this Ordinance.

**WHEREAS**, the flood hazard areas of Chaves 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; and

**WHEREAS**, 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, floodproofed, or otherwise protected from flood damage; and

**WHEREAS**, by way of reparation for flood damage, federal underwriter relief is available to local public bodies under and by virtue of the National Flood Insurance Act of 1968, subject and conditioned upon the County of Chaves' compliance with prescribed minimum flood plain management standards for designated flood prone areas as set forth in Section 1910.3 of the National Flood Insurance Program (NFIP); and

**WHEREAS**, the Federal Emergency Management Agency (FEMA) has issued Flood Insurance Rate Maps (FIRMs), Flood Boundary and Floodway Maps (FBFMs), and Flood Insurance Studies (FISs) designating flood hazard areas within Chaves County;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF CHAVES COUNTY COMMISSIONERS, CHAVES COUNTY, NEW MEXICO AS FOLLOWS:**

## **ARTICLE 1 GENERAL STATEMENTS**

### **Section 1.1 TITLE**

This Ordinance is known as the "Chaves County Flood Damage Prevention Ordinance" and is referred to elsewhere herein as "this Ordinance".

## **Section 1.2 AUTHORITY**

The Legislature of the State of New Mexico has, in Chapter 3-18-7 NMSA, 1978 as amended, delegated the responsibility of adopting regulations designed to minimize damage from floods and mudslides to counties and municipalities.

## **Section 1.3 EFFECTIVE DATE**

This Ordinance shall be and become effective in and after February 2, 1983.

## **Section 1.4 APPLICATION**

This Ordinance shall have no application prior to the effective date hereinafter stated.

## **Section 1.5 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:

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

## **Section 1.6 METHODS OF REDUCING FLOOD LOSSES**

In order to accomplish its purpose, this Ordinance includes methods and provisions for:

- a. restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

- b. requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;**
- c. controlling the alteration of natural flood plains, stream channels, and natural protective barriers which help accommodate or channel flood waters;**
- d. controlling filling, grading, dredging, and other development which may increase flood damage; and**
- e. preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.**

## **ARTICLE 2 DEFINITIONS**

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

**ALLUVIAL FAN FLOODING** 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** 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** a request for a review of the Floodplain Manager's interpretations of any provision of this Ordinance or a request for a variance

**AREA OF SHALLOW FLOODING** a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with one percent 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** 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, or A1-99.

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

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

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

**ELEVATED BUILDING** a nonbasement building (a) built, in the case of a building in Zones A1-30, 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 V1-30, 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 (b) 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 A1-30, 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 openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, 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** (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 FIRM's effective before that date. "Existing construction" may also be referred to as "existing structures".

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** 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** 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)

**FEMA** the Federal Emergency Management Agency

**FLOOD** or **FLOODING** a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters or from the unusual and rapid accumulation or runoff of surface waters from any source

**FLOOD INSURANCE RATE MAP (FIRM)** an official map of a community on which FEMA has delineated both the areas of special flood hazards and the risk premium zones applicable to the community

**FLOOD INSURANCE STUDY** the official report in which FEMA has provided flood profiles, as well as the Flood Boundary-Floodway Map and the water surface elevation of the base flood.

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

**FLOODPLAIN MANAGEMENT** 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 MANAGER** the local community official authorized to administer and implement the provisions of the community's flood damage prevention ordinance and other appropriate sections of 44 CFR (NFIP Regulations) pertaining to floodplain management

**FLOODPLAIN MANAGEMENT REGULATIONS** zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinances, grading ordinances, and erosion control ordinances) 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 PROOFING** 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, or structures and their contents

**FLOOD PROTECTION SYSTEM** 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 dams, reservoirs, levees, or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**FLOODWAY (REGULATORY FLOODWAY)** 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

**HABITABLE FLOOR** any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation, or a combination thereof. A floor used only for storage purposes is not a "habitable floor."

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

**HISTORIC STRUCTURE** 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 of 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 by an approved state program as determined by the Secretary of the Interior or that are approved directly by the Secretary of the Interior in states without approved state programs.

**LEEVE** 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** 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** the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor; **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

**MANUFACTURED HOME** a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include "recreational vehicles".

**MANUFACTURED HOME PARK OR SUBDIVISION** a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent, sale, or lease

**MEAN SEA LEVEL** for purposes 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 Rate Map are referenced

**MOBILE HOME** a manufactured home

**NEW CONSTRUCTION** 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** 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, final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of floodplain management regulations adopted by a community

**NFIP** the National Flood Insurance Program

**PROGRAM DEFICIENCY** a defect in a community's flood plain management regulations or administrative procedures that impairs effective implementation of those flood plain management regulations or of the Federal Emergency Management Agency standards

**RECREATIONAL VEHICLE** a vehicle which is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projections, is designed to be self-propelled or permanently



towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use

**REMEDY A VIOLATION** to bring the structure or other development into compliance with State or local flood plain management regulations or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

**START OF CONSTRUCTION** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act, Pub. L. 97-348) the first placement of permanent construction of a structure on a site, such as the pouring of slabs 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, the installation of streets and/or walkways, excavation for a basement, footings, piers, or foundations or the erection of temporary forms, or the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not as part of the main structure. "Start of Construction" includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE** a walled and roofed building, manufactured home, or gas or liquid storage tank that is principally above ground

**SUBSTANTIAL DAMAGE** damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred

**SUBSTANTIAL IMPROVEMENT** 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 include (1) projects 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) alterations of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**VARIANCE** a grant of relief from the requirements 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** the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the

elevation certificate, or 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** 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 flood plains of riverine areas.

## **ARTICLE 3 GENERAL PROVISIONS**

### **Section 3.1 LAND TO WHICH THIS ORDINANCE APPLIES**

This Ordinance shall apply to all areas of special flood hazard within the jurisdiction of Chaves County, New Mexico.

### **Section 3.2 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 entitled "Flood Insurance Study for Chaves County, New Mexico Unincorporated Areas" dated August 2, 1982, and the "Flood Insurance Study for Chaves County, New Mexico Unincorporated Areas" dated March 17, 2003, with accompanying Flood Insurance Rate Maps (FIRMs) and Flood Boundary-Floodway Maps (FBFMs), and any revisions thereto, are hereby adopted by reference and declared to be a part of this Ordinance. The Flood Insurance Study and all FIRMs and FBFMs are on file in the Planning and Zoning Department of the Chaves County Administrative Center, #1 St. Mary's Place, Roswell, New Mexico.

### **Section 3.3 ENFORCEMENT**

**3.3.1** This Ordinance may be enforced by prosecution for violations in any court of competent jurisdiction of Chaves County.

**3.3.2** 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. 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.

**3.3.3** Any person who violates this Ordinance or fails to comply with any of its requirements may be punished by a fine not exceeding three hundred dollars (\$300) or imprisonment not to exceed ninety (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 Chaves County from taking such other lawful action as is necessary to prevent or remedy any violation.

### **Section 3.4 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 other ordinance, easement, covenant, or deed restriction conflicts or overlaps, whichever imposes the more stringent restrictions shall prevail.

### **Section 3.5 INTERPRETATION**

In the interpretation and application of this Ordinance, all provisions shall be considered as minimum requirements; liberally construed in favor of the governing body; and deemed neither to limit nor repeal any other powers granted under state statutes.

### **Section 3.6 SEVERABILITY**

If any section, paragraph, clause, or provision of this Ordinance shall be held for any reason to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any other part of this Ordinance.

### **Section 3.7 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 hazard or uses permitted within such areas will be free from flooding or flood damage. This Ordinance shall not create liability on the part of the County of Chaves, any official or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

## **ARTICLE 4 ADMINISTRATION**

### **Section 4.1 DESIGNATION OF THE ADMINISTRATOR**

The locally appointed Floodplain Manager is responsible for the administration and implementation of this Ordinance.

### **Section 4.2 DUTIES AND RESPONSIBILITIES**

Duties of the Floodplain Manager shall include, but not be limited to:

- a. Review all development to determine that the permit requirements of this Ordinance will be satisfied and approve or deny development permit (floodplain use permit) applications in accordance with the provisions of this Ordinance;
- b. Review floodplain use permit applications to determine whether proposed building sites, including the placement of manufactured homes, will be reasonably safe from flooding;
- c. Review all floodplain use permit applications to determine that all other 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;
- d. When base flood elevation data has not been provided in accordance with Section 4.3 of this Ordinance, 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 this Ordinance;
- e. Maintain all records of new development, substantial improvements, floodproofed structures, and water course alterations in flood hazard areas required by this Ordinance and provide for public accessibility to all records;
- f. Make interpretations, where 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); and
- g. Notify, in riverine situations, adjacent communities and the State NFIP Coordinating Agency (Department of Public Safety) prior to any alteration or relocation of a watercourse, submit evidence of such notification to FEMA, and assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;
- h. When a regulatory floodway has not been designated, the Floodplain Manager 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.

i. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the NFIP 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 Letter of Map Revision (CLOMR) through FEMA.

### **Section 4.3 DEVELOPMENT PERMIT**

**4.3.1** A development permit (floodplain use permit) shall be obtained before construction or development begins within any areas of special flood hazard established in Article 3. Application for a floodplain use permit shall be made on official forms furnished by the Floodplain Manager and shall include, but not be limited to:

- a. a site plan, drawn to scale showing the location of all new and substantially improved structures (including manufactured homes), fill, storage, landscaping, and drainage facilities;
- b. the elevation, in relation to mean sea level, of the lowest floor (including basement) of all new and substantially improved structures;
- c. the elevation, in relation to mean sea level, to which any structure is proposed to be floodproofed, provided by a surveyor or engineer;
- d. certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 5.2.2; and
- e. a description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

**4.3.2** Approval or denial of a floodplain use permit shall be based on all of the provisions of this Ordinance 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 expected at the site;
- h.** the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and
- i.** the relationship of the proposed use to the comprehensive plan for that area.

**4.3.3** The Floodplain Manager shall maintain a record of all submitted information in accordance with Section 4.2.e.

#### **Section 4.4 APPEAL**

**4.4.1** The Chaves County Commissioners shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Manager in the enforcement or administration of this Ordinance.

**4.4.2** Any person aggrieved by the decision of the Chaves County Commissioners may appeal such decision to any court of competent jurisdiction for review within the time and in the manner required by law.

#### **Section 4.5 VARIANCE**

**4.5.1** The Chaves County Commissioners shall hear and render judgment on requests for variances from the requirements of this Ordinance.

**4.5.2** 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 items in Section 4.3.2 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

**4.5.3** 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 section if it is determined 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

**4.5.4** Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

**4.5.5** Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; that good and sufficient cause has been shown; that failure to grant the variance would result in exceptional hardship to the applicant; and that 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.

**4.5.6** Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a 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.

**4.5.7** 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 the criteria outlined in Section 4.5 are met, and that 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.

**4.5.8** Upon consideration of the factors noted above and the intent of this Ordinance, the Chaves County Commissioners may attach such conditions to the granting of variances as they deem necessary to further the purpose and objectives of this Ordinance.

**4.5.9** 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.



## ARTICLE 5

### DEVELOPMENT STANDARDS

#### Section 5.1 GENERAL STANDARDS

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

- a. 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;
- b. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- c. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- d. 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;
- e. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. All wells shall be finished with the top of the well casing a minimum of one (1) foot above the Base Flood Elevation (BFE) and shall be protected by a concrete slab with a minimum size of four (4) feet by four (4) feet by eighteen (18) inches deep;
- f. All 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
- g. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

#### Section 5.2 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 3.2, Section 4.2.d, or Section 5.3.c, the following provisions are required:

**5.2.1 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 Manager that the standard of this subsection as proposed in Section 4.3.1.b is satisfied.

**5.2.2 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 floodproofed shall be maintained by the Floodplain Administrator.

**5.2.3 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.

**5.2.4 Manufactured Homes** – all manufactured homes that are placed or substantially improved:

- a. 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. within Zones A1-30, AH, and AE on the community's FIRM on sites (1) outside of a manufactured home park or subdivision, (2) in a new manufactured home park or subdivision, (3) in an expansion to an existing manufactured home park or subdivision, or (4) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, shall 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. on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of Section 5.2.4, manufactured homes shall 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.

**5.2.5 Recreational Vehicles** - recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM shall 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 Section 4.3.1.b, and the elevation and anchoring requirements for "manufactured homes" in Section 5.2.4. 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 5.3. STANDARDS FOR SUBDIVISION PROPOSALS**

- a. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1 of this Ordinance.
- b. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Section 4.3 and Article 5 of this Ordinance.
- c. 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 Section 3.2 and Section 4.2.d of this Ordinance.
- d. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- e. 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 5.4 STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)**

Located within the areas of special flood hazard established in Section 3.2 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 and, therefore, the following provisions apply:

a. All new construction and substantial improvements of residential structures shall 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).

b. All new construction and substantial improvements of non-residential structures:

1. shall 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

2. together with attendant utility and sanitary facilities shall 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.

c. A registered professional engineer or architect shall submit a certification to the Floodplain Manager that the standards of this Section, as proposed in Section 4.3 are satisfied.

d. Within Zones AH or AO, adequate drainage paths shall be provided around structures on slopes to guide flood waters around and away from proposed structures.

## Section 5.5 FLOODWAYS

Located within areas of special flood hazard established in Section 3.2 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:

a. 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.

b. If Section 5.5.a above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 5.

c. 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.

It is hereby found and declared by the Board of Chaves County Commissioners that severe flooding has occurred in the past within its jurisdiction and may occur within the future and 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 to effectively remedy the situation described herein, it is necessary that this Ordinance become effective immediately.

Therefore, an emergency is hereby declared to exist, and this Ordinance, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

APPROVED, PASSED, AND ADOPTED, this 10th day of March, 2003

CHAVES COUNTY BOARD OF COMMISSIONERS

*Jerry Wood*  
\_\_\_\_\_  
Jerry Wood, Chairman

*Alice Eppers*  
\_\_\_\_\_  
Alice Eppers, Vice Chairman

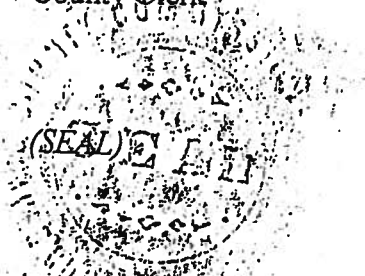
*Michael A. Trujillo*  
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Michael A. Trujillo, Member

*Harold Hobson*  
\_\_\_\_\_  
Harold Hobson, Member

*Sue Gutierrez*  
\_\_\_\_\_  
Sue Gutierrez, Member

ATTEST:

*David A. Kunko*  
\_\_\_\_\_  
David A. Kunko  
County Clerk



This is to certify that the requirement of Section 10-15-1(c) NMSA (1978) concerning notice, public hearings and necessary coordination have been met.