

Apache County, Arizona
Flood Damage Prevention Ordinance

SECTION 1
STATUTORY AUTHORIZATION, FINDINGS OF FACT,
PURPOSE AND METHODS

1.1 STATUTORY AUTHORIZATION

- A. The Legislature of the State of Arizona has in A.R.S & 48-3601 through 48-3627 delegated the responsibility to each county flood control district to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Flood Control District Board of Directors of Apache County, Arizona, ordains as follows:

1.2 FINDINGS OF FACT

- A. The flood hazard areas of Apache County are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare of Apache County and its citizens.
- B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

1.3 STATEMENT OF PURPOSE

- A. 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:
1. To protect human life and health;
 2. To minimize expenditure of public money for costly flood control projects;
 3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 4. To minimize prolonged business interruptions;

5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the secondary use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. To insure that those potential buyers are notified that property is in an area of special flood hazard;
8. To insure that those who occupy the areas of special flood hazard assume responsibility for their actions; and,
9. To maintain eligibility for state disaster relief.

1.4 METHODS OF REDUCING FLOOD LOSSES

A. In order to accomplish its purpose, this ordinance includes methods and provisions for:

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

SECTION 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.

“Accessory Use” means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

“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.

“Appeal” means a request for a review of the Floodplain Administrator’s interpretation of any provision of this ordinance or a request for a variance.

“Area of shallow flooding” means a designated AO Zone on the Flood Insurance Rate Map (FIRM). The base depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident.

“Area of special flood hazard” means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. This area is designated as Zone A, AO, AH, and A1-30 on the FIRM and other areas determined by the criteria adopted by the Director of Water Resources.

“Backfill” means the placement of fill material within a specified depression, hole or excavation pit below the surrounding adjacent ground level as a means of improving flood water conveyance or to restore the land to the natural contours existing prior to evacuation.

“Base flood” means the flood having one percent chance of being equaled or exceeded in any given year.

“Basement” means any area of the building having its floor subgrade (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 supporting foundation system.

“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.

“Curvilinear Line” means the border on either a FHBM or FIRM that delineated the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

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

“Encroachment” means the advance or infringement of use, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

“Erosion” means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program. (See Flood-related erosion.)

“Financial assistance” means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to the States.

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of flood waters, (2) the unusual and rapid accumulation or runoff of surface waters from any source, and/or (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

“Flood elevation determination” means any determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

“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 Hazard Boundary Map” (FHBM) means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and or E.

“Flood Insurance Rate Map” (FIRM). The official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

“Flood Insurance Study” (FIS). The official report provided by the Federal Emergency Management Agency that includes flood profiles, Flood Insurance Rate Maps, Flood Boundary and Floodway Maps and the water surface elevation of the base flood.

“Floodplain or flood-prone area” means the areas adjoining the channel of a water course including areas where drainage is or may be restricted by man-made structures which have been or may be covered partially or wholly by floodwater from the one hundred-year flood.

“Floodplain Administrator” means the Director of County Development and Community Services who is hereby authorized by the Floodplain Board to administer and implement the provisions of this ordinance.

“Floodplain Board” means the Board of Directors of the Flood Control District of Apache County, Arizona at such times as they are engaged in the enforcement of this ordinance.

“Floodplain management” means the operation of an overall program of corrective and proven measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

“Floodplain regulations means” the codes, ordinances and other regulations adopted pursuant to this article relating to the use of land and construction within the floodway and floodplain areas.

“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 area 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.

“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.

“Flood-related erosion” means the collapse or subsidence of land along the shore of a lake or other body as a result of undermining caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

“Flood-related erosion area management” means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including, but not limited to, emergency preparedness plans, flood-related erosion control works, and floodplain management regulations.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas necessary in order to discharge the one hundred-year flood without cumulatively increasing the water surface elevation.

“Free board” means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for as selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effects of urbanization of the watershed.

“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:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminary determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register.
- b. Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of registered historic district or a district preliminary determined by the Secretary to qualify as a registered historic district.

- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either;
 - 1. By an approved state program as determined by the Secretary of the Interior or
 - 2. Directly by the Secretary of the Interior on states without approved programs

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

“Levee System” means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

“Lowest Floor” means the lowest floor of the lowest enclosed area of a building or structure (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

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

“Manufactured home park or subdivision” mean a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for sale or rent.

“Mean sea level” means, 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.

“Mudslide” (i.e., mudflow) describes a condition where there is a river, flow or induction of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the

Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

“Mudslide (i.e., mudflow) area management” means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including, but not limited to, emergency preparedness plans, mudslide control works, and floodplain management regulations.

“Mudslide (i.e., mudflow) prone area” means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

“New construction” means, for the purposes 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.

“One Hundred Year Flood” means the flood having one percent chance of being equaled or exceeded in any given year (see “base flood”)

“Person” means an individual or his agent, firm, partnership, association or corporation, or agent of the aforementioned groups, or this state or its agencies or political subdivisions.

“Principally above ground” means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

“Program” means the National Flood Insurance Program authorized by 42 U.S. C. 4001-4128.

“Program deficiency” means a defect in a community’s floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the NF standards.

“Recreational vehicle” means a vehicle which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection;
- c. designed to be self-propelled or permanently towable by a light duty truck; and

- d. designed primarily not use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel or seasonal use.

“Registered Engineer; Registered Land Surveyor, Registered Architect” means an engineer, land surveyor, or architect officially registered in the State of Arizona.

“Regulatory flood elevation” means an elevation one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be as determined by the criteria developed by the director of water resources for all other watercourses.

“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.

“Remedy a violation” means to bring the structure or other development into compliance with State or local floodplain 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 exposures with regard to the structure or other development.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook etc.

“60-year setback” means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.

“Special flood hazard area” (SFHA). An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on a Flood Boundary and Floodway Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, or, AH.

“Start of construction.” Includes substantial improvement and other proposed new development 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 from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first

alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

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

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

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

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

“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 this ordinance is presumed to be in violation until such time as that documentation is provided.

“Water surface elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

“Watercourse” means a lake, river, creek, stream wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

“Watercourse master plan” means a hydraulic plan for a watercourse that examines the cumulative impacts of existing development and future encroachment in the floodplain and future development in the watershed on potential flood damages, and establishes technical criteria for subsequent development so as to minimize potential flood damages for all flood events up to and including the one hundred-year flood.

SECTION 3
GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

A. This ordinance shall apply to all areas of special flood hazards within the boundaries of Apache County, Arizona except those incorporated cities and town which have adopted a resolution in accordance with A.R.S 48-3610.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

A. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled “The Flood Insurance Study (FIS) for **{Apache County}** dated **{September 18th 2007}**, with accompanying Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs) dated **{date}**, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this ordinance. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the Floodplain Board by the Floodplain Administrator. The Floodplain Board, within its area of jurisdiction, shall delineate (or may, by rule, require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by the Federal Emergency Management Agency and the Director of the Arizona Department of Water Resources. The FIS and FIRM panels are on file at **{75 West Cleveland, St. Johns AZ. 85936 (i.e. County Annex Building, Engineering Department)}**.

3.3 COMPLIANCE

A. All development of land, construction of residential, commercial or industrial structures or future development within delineated floodplain areas is subject to the terms of this ordinance and other applicable regulations.

3.4 ABROGATION AND GREATER RESTRICTIONS

A. 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.

3.5 INTERPRETATION

A. 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.

3.6 WARNING AND DISCLAIMER OF LIABILITY

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

3.7 STATUTORY EXEMPTIONS

- A. In accordance with A.R.S. §48-3609.H, unless expressly provided, this and any regulation adopted pursuant to A.R.S. §48-3601 et seq. does not affect:
1. Existing legal uses of property or the right to continuation of such legal use. However, if a nonconforming use of land, building, or structure is discontinued for twelve months or destroyed to the extent of fifty percent of its value, as determined by a competent appraiser, any further use shall comply with A.R.S. §48-3601 et seq., and the regulations of this district.
 2. Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984, or on the date any regulations affecting such property take effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by fifty percent or more shall be either flood proofed or elevated to or above the regulatory flood elevation.
 3. Reasonable repair of structures constructed with the written authorization required by A.R.S. §48-3613.
 4. Facilities constructed or installed pursuant to a certificate of environmental compatibility is pursuant to title 40, chapter 2, article 6.2, (A.R.S. §40-3 60 et seq.).
- B. In accordance with A.R.S §48-3613, written authorization is not required nor shall the Floodplain Board prohibit.
1. The construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, roads and streets intersecting or crossing a watercourse.
 2. The construction of storage dams for watering livestock or wildlife and structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse or darns for the conservation of flood waters as permitted by title 45, chapter 6 (A.R.S. §45-120 1 Ct seq.).

3. Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations which will divert, retard or obstruct the flow of waters in a watercourse from complying with and acquiring authorization from the board pursuant to regulations adopted by the board under A.R.S. §48-3601 et seq.
 4. Other construction if it is determined by the board that written authorization is unnecessary.
 5. Any flood control district, county, city, town, or other political subdivision from exercising powers granted to it under A.R.S. §48-3601 et seq.
 6. The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision.
 7. The construction and erection of poles, towers, foundations, support structures, guy wires, and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.
- C. Before any construction authorized by Subsection B of this Section may begin, the responsible person must submit plans for the construction to the Floodplain Board for review and comment.

3.8 DECLARATION OF PUBLIC NUISANCE

- A. All development located or maintained within any area of special flood hazard after August 8, 1973, in violation of this ordinance, is a public nuisance per se and may be abated, prevented or restrained by action of this political subdivision.

3.9 ABATEMENT OF VIOLATIONS

- A. Within 30 days of discovery of a violation of this ordinance, the Floodplain Administrator shall submit a report to the Floodplain Board which shall include all information available to the Floodplain Administrator which is pertinent to said violation. Within 30 days of receipt of this report, the Floodplain Board shall either:
1. Take any necessary action to effect the abatement of such violation; or
 2. Issue a variance to this ordinance in accordance with the provisions of section 6.0 herein; or
 3. Order the owner of the property upon which the violation exists to provide whatever additional information may be required for their determination. Such information must be provided to the Floodplain Administrator within 30 days of such order, and he shall submit an amended report to the

Floodplain Board within 30 days for consideration At their next scheduled meeting, the Flood Board shall either order the abatement of said violation or they shall grant a variance in accordance with the provisions of Section 6.0 herein; or

4. Submit to the Administrator of Federal Insurance Administrator a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation or ordinance, pursuant to section 13 16 of the National Flood Insurance Act of 1968 as amended.
- B. In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate A.R.S. §48- 3613 or regulations adopted pursuant to A.R.S. §48-3601 et seq. If a person is found to be in violation of A.R.S. §48-36 13, the court shall require the violator to either comply with at statute if authorized by the board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting parties resulting from the violation including reasonable costs and attorney fees.

3.10 UNLAWFUL ACTS

- A. It is unlawful for any person to divert, retard, or obstruct the flow of waters in any watercourse whenever it creates a hazard to life or property without securing the written authorization of the Floodplain Board. Where the watercourse is a delineated floodplain, it is unlawful to excavate or build any structure affecting the flow of waters without securing written authorization of the Floodplain Board.
- B. Any person violating the provisions of this section shall be guilty of a class 2 misdemeanor.

3.11 SEVERABILITY

- A. 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 the ordinance as a whole, or any portion thereof other than the specific language declared to be unconstitutional or invalid.

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SECTION 4
ADMINISTRATION

4.1 FLOOD HAZARD DEVELOPMENT PERMIT

A. A Flood Hazard Development Permit shall be obtained from the Floodplain Board before construction or development, including placement of manufactured homes, begins within any area of special flood hazard established in Section 3.2.

Application for a Development Permit shall be made on forms furnished by the Floodplain Administrator, and must include, but is not limited to:

1. plans in duplicate, drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of material, drainage facilities; and the location of the foregoing.
2. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; in areas Zone AO, elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures.
3. Proposed elevation in relation to mean sea level, to which any non-residential structure will be flood proofed;
4. Certification by an Arizona registered professional engineer or architect that the Flood proofing methods for any nonresidential structure meet the Flood proofing criteria in Section 5.1.C.3; and,
5. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development, certified by an Arizona registered professional engineer
6. Payment of fees established in Section 7, and any other submittals, which, in the view of the Floodplain Administrator, are necessary to make a determination of the merits of the applications.

4.2 BOARD ACTION

A. After proper review, the Board shall make a decision on an application. In providing decision, the Board may continue, deny, approve, or approve with modifications the application.

4.3 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINTSTRATOR

A. Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review all development permits to determine that:
 - a. The permit requirements of this ordinance have been satisfied;
 - b. All other required state and federal permits have been obtained;

- c. The site is reasonably safe from flooding.
 - d. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For the purposes of this ordinance, “adversely affects” means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one foot at any point.
- 2. Use of other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 3.2, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, st or other source, in order to administrator Section 5.0. Any such information shall be consistent with the requirements of the Federal Emergency Management Agency and the Director of Water Resources and shall be submitted to the Floodplain Board for adoption.
- 3. Obtain and Maintain for public inspection and make available as needed for Flood Insurance Policies:
 - a. the certified elevation required in Section 5.1.C.1;
 - b. the certification required in Section 5.1.C.2;
 - c. the Flood proofing certification required in Section 5.1.C.3; and
 - d. the certified elevation required in Section 5.4.B.
- 4. Whenever a watercourse is to be altered or relocated:
 - a. Notify the adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration through appropriate notification means;
 - b. Require that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.
- 5. Advise in writing and provide a copy of any development plan, to any city or town having assumed jurisdiction over its floodplains in accordance with A.R.S. 48-3610, of any application for a floodplain use permit or variance to develop land in a floodplain or floodway within one mile of the corporate limits of such city or town. The district shall also advise such city or town in writing and provide a copy of any development plan of any major development proposed within a floodplain of floodway which could

affect floodplains, floodways, or watercourses within such city's or town's area of jurisdiction. Written notice and a copy of the plan of development shall be sent to such city or town no later than three working days after having been received by the district.

6. Make written map or field interpretations where needed or requested, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be conflict between a mapped boundary and actual field conditions) Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 6.0.
7. Review all conditional use and building permit applications to determine whether the proposed development is located within a special flood hazard area.
8. Review all lots in preliminary subdivision plans to determine whether any are located within a special flood hazard area.
9. Take actions on violations of this ordinance as required in Section 3.9 herein.
10. Notify the Administrator and Director of Water Resources of acquisition by means of annexation, corporation, or otherwise, of additional areas of jurisdiction

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SECTION 5
PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 STANDARDS OF CONSTRUCTION

In all areas of special flood hazards, the following standards shall apply.

A. Anchoring

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. All manufacture homes shall meet the anchoring standards of Section 5.5.B.

B. Construction Materials and Methods

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. All new construction, substantial improvement and other proposed new development 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.
4. Within Zones AH or AO construct adequate drainage paths around structures on slopes in order to guide flood waters around and away from proposed or existing structures.

C. Elevation and Flood proofing

1. In new construction and substantial improvement of any structure shall have the lowest floor, including the basement, elevated to or above the regulatory flood elevation. Nonresidential structures may meet the standards in Section 5.1C.3. Upon the completion of the structure the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.
2. New construction and substantial improvement of any structure in Zone AO the lowest floor, including basement, shall be higher than the highest adjacent grade by at least one foot higher than the depth number on the FII or at least two feet if no depth number specified. Nonresidential structures may meet the standards in Section 5.1.C. Upon completion of the structure a registered professional engineer shall certify the Floodplain Administrator that the elevation of the structure meets this standard.

3. Nonresidential construction shall either be elevated in conformance with Section 5.1.C.1. or 2. or together with attendant utility and sanitary facilities:
 - a. be flood proofed so that below the regulatory flood level the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - c. be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the Floodplain Administrator.

 4. All new construction and substantial improvements of non-residential structures, that fully enclosed areas below the lowest floor that are useable 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 floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect to meet or exceed the following minimum criteria:
 - a. A minimum of two openings have 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.
 - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

 5. Manufactured homes shall meet the above standards and also the standards in Section 5.5.
- D. Within one hundred twenty one days after completion of construction of any flood control protective works which the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all flood plains affected by the project. The new delineation shall be done according to the criteria adopted by the Director of Water Resources.

5.2 STANDARDS FOR STORAGE OF MATERIALS AND EQUIPMENT

- A. The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
- B. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- C. Waste disposal systems shall not be installed in a regulatory floodway.

5.3 STANDARDS FOR UTILITIES

- A. All new or replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.

5.4.1 ADDITIONAL DEVELOPMENT STANDARDS, INCLUDING SUBDIVISIONS STANDARDS FOR SUBDIVISIONS

- A. All new subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions), greater than 50 lots or 5 acres, whichever is the lesser, shall: identify the flood hazard are and the elevation of the base flood.
- B. All final subdivision plans will provide the elevation(s) of proposed structure(s) and pads. If the site is filled the base flood, the final lowest floor and pad elevation shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.
- C. All subdivision proposals shall be consistent with the need to minimize flood damage.
- D. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- E. All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

5.5 STANDARDS FOR MANUFACTURED HOMES

All new and replacement manufactured homes, additions to manufactured homes and recreational vehicles which are left on site for more than 180 days or are not licensed and ready for highway use shall:

- A. Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation; and
- B. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are rare not to be 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.

5.6 FLOOD WAYS

- A. Located within areas of special flood hazards 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:
 - 1. Encroachments, including fill, new construction, substantial improvements, and other development, are prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.
 - 2. If subsection 1 of this section is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of section 5.



SECTION 6
VARIANCE PROCEDURE

6.1 APPEAL BOARD

- A. The floodplain Board of Apache County, Arizona shall hear and decide appeals and requests for variances from the requirements of this ordinance. These appeals shall be made on applications provided by the Floodplain Administrator, along with the necessary fees established in Section 7.1.
- B. The Floodplain Board shall hear and decide appeals 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.
- C. In passing upon such applications, the Floodplain Board shall consider all technical evaluations, relevant factors, and standards specified in other sections of this ordinance, as well as:
1. the danger that materials may be swept onto other lands to the injury of others;
 2. the danger of life and property due to flooding or erosion damage;
 3. the susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;
 4. the importance of the services provided by the proposed facility to the community;
 5. the necessity to the facility of a waterfront location, where applicable;
 6. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 7. the compatibility of the proposed use with existing and anticipated development.
 8. the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 9. the safety of access to the property in time of flood for ordinary and emergency vehicles;
 10. the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwater expected at the site; and,
 11. the costs of providing governmental services during and after flood conditions,
- D. Generally, 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 6.I.C.1. through 11 have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

- E. Upon consideration of the factors of Section 6.1, and the purposes of this ordinance, the Floodplain Board may attach such conditions to the granting of variances as it deems necessary to Further the purposes of this ordinance.
- F. The Floodplain Administrator shall maintain tile records of all appeal actions and report on variances to the Federal Emergency Management Agency upon request.

6.2 CONDITIONS FOR VARIANCES

- A. Variances may be issued for the repair, rehabilitation or restoration of structures listed in the National Register of Historic Places or the Sate Inventory of Historic Places, upon the 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.
- B. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief:
 - 1. a showing of good and sufficient cause;
 - 2. a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - 3. a showing that the use cannot perform its purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in Section 2.0 of this ordinance in the definition of "Functionally Dependent Use."
 - 4. a determination that the granting variance vill 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.
- E. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:
 - 1. the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$110 of insurance coverage, and
 - 2. such construction below the base flood level increases risk to life and property.

Such notification shall be maintained with a record of all variance actions as required in Paragraph 6.1.E. of this ordinance. Such notice will also state that the land U; on which the variance is granted shall be ineligible for exchange of land pursuant to any flood relocation and land exchange program. A copy of the notice shall be recorded by the Floodplain Board in the office of the Apache County Recorder and shall be recorded in a manner so that it appears in the chain title of the affected parcel of land.

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SECTION 7
FEES

7.1 ESTABLISHMENT OF FEES

A. The following fees, payable to the Apache County Flood Control District, are hereby established. All fees must be paid at the time of application or request submittal.

1.	Flood Hazard Development Permit Application	\$250
2.	Variance Application	\$ 50
3.	Special Flood Hazard Area Map Review Requests	\$ 10
4.	Requested Special Flood Hazard Area Field Verifications	\$ 20
5.	Building Permit Special Flood Hazard Area Review	\$ 10
6.	Conditional Use Permit Review	\$ 10
7.	Subdivision Preliminary Plat Review	\$ 5 per lot



SECTION 8.0
ENACTMENT

8.1 - PROVISION

WHEREAS, the effect of this ordinance is intended to benefit the present and future citizens of Apache County by providing for the health, welfare, safety, convenience, and proper assurances of appropriate growth and development;

THEREFORE BE IT RESOLVED that the Board of Directors, after review by public hearing, does provide by complete amendment a new Apache County Flood Damage Prevention Ordinance.

THEREFORE, BE IT RESOLVED that the Board of Directors declares that an emergency does exist for which remedy the text of this Flood Damage Prevention Ordinance is providing.

| Adopted this _____ day of _____ 2007.