



ROAD & BRIDGE DEPARTMENT  
**COUNTY OF EL PASO**

500 E. SAN ANTONIO, RM. 407  
EL PASO, TEXAS  
79901

December 11, 2006

TO: COMMISSIONERS' COURT

FROM: ROBERT RIVERA  
COUNTY ENGINEER/PUBLIC WORKS DIRECTOR

SUBJECT: COURT ORDER FOR AGENDA ON DECEMBER 18, 2006

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**COURT ORDER:**

Discuss and take appropriate action on the adoption of the El Paso County Flood Damage Prevention Order and approve related resolution.



COUNTY OF EL PASO  
ROAD & BRIDGE DEPARTMENT

MEMORANDUM FROM:  
**ROBERT RIVERA, P.E.**  
COUNTY PUBLIC WORKS DIRECTOR

TO: COUNTY COMMISSIONERS COURT

DATE: December 12, 2006

RE: ADOPTION OF THE EL PASO COUNTY FLOOD DAMAGE PREVENTION  
ORDER



As part of FEMA's 2006 Flood review they are recommending that the County adopt a new order for flood damage prevention. This is required for participation in FEMA's flood insurance program.

The County is operating on an order that was approved in 1987. This new order reaffirms construction standards that are required for property owner to follow and to obtain flood insurance in a flood zone. Enclosed is the resolution new order and implementation plan for the administration of the order.

If you have any questions on this matter please call me 546-2015.

Enclosure

## **FLOOD INSURANCE IMPLEMENTATION PLAN**

### **A. First Year**

1. Road & Bridge will obtain the ownership of all tracts of land located within the flood plans.
2. Certified letters will be send to all property owner of tracts identified being within flood plan notifying them of the new regulations.
3. Utilize existing inspectors to provide surveillance of areas and existing office personnel to process permits.

### **B. Second Year**

1. Analyze affect of utilization of existing personnel on permit processing and inspections if additional personnel are required, they will be requested for FY08 Budget.
2. Continue with area surveillance for noncompliance of regulations and work with County Attorney's office on prosecution if necessary.

### **C. Third Year**

1. Combine duties and responsibility with new staff required to administer the new state mandated storm water Phase II Regulation.

RESOLUTION REGARDING ADOPTION OF THE  
EL PASO COUNTY FLOOD DAMAGE PREVENTION ORDER

STATE OF TEXAS:

COUNTY OF EL PASO:

WHEREAS, certain areas of El Paso County, ("flood hazard areas") are subject to periodic inundation, which results in the loss of life and property, creates health and safety hazards, disrupts commerce and governmental services and requires extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare of El Paso County residents; and

WHEREAS, these flood losses are created by the cumulative effects of obstructions in and destruction of 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 or otherwise protected from flood damage; and

WHEREAS, the El Paso County Commissioners Court recognizes the personal hardships and economic distress caused by flooding, desires to promote the public interest by providing appropriate protection against the perils of flooding, and encourage sound land use by minimizing exposure of property to flood losses; and

WHEREAS, the Legislature of the State of Texas has authorized local governmental units, including the County of El Paso to take all necessary and reasonable actions to comply with the requirements and criteria of the National Flood Insurance Program and granted legal authority to adopt and enforce floodplain management criteria to reduce future flood losses pursuant to Texas Water Code Ann. § 16.311 et seq.; and Texas Local Government Code Chapter 232; and

WHEREAS, pursuant to the National Flood Insurance Act of 1968, Title 42 United States Code, § 4001-4127, as amended, County residents may purchase federally subsidized flood insurance if the County qualifies for and participates in the National Flood Insurance Program; and

WHEREAS, it is the intent of the El Paso County Commissioners Court to protect human life and health, reduce the hazards to public health, safety, and welfare from flooding, to require the recognition and evaluation of flood hazards for all proposed developments within the identified floodplains of El Paso County; and to qualify for participation in the National Flood Insurance Program; and

NOW, THEREFORE, BE IT RESOLVED that the Commissioners Court hereby:

- 1) Assures the Federal Emergency Management Agency that El Paso County will enact as necessary, and maintain in force in those areas having flood hazards, adequate floodplain management standards with effective enforcement provisions consistent with the minimum criteria set forth in Section 60.3 of the National Flood Insurance Program Regulations; and
- 2) Appoints the County Engineer as the Flood Plain Administrator and vests the Administrator with the responsibility and authority to:
  - a. To gather information to identify and delineate areas having special flood hazards;
  - b. Implement and enforce the regulations contained in the attached El Paso County Flood Damage Prevention Order and to request assistance in the implementation and enforcement of the regulations as necessary;
  - c. Cooperate with Federal, State and local agencies and private firms, which undertake to study, survey, map, and identify floodplain areas, and cooperate with neighboring political subdivisions with respect to management of adjoining floodplain arrears in order to prevent aggravation of existing flood hazards;
  - d. Submit as requested by the Commissioners Court an annual report on the progress made during the past year within the County in the development and implementation of floodplain management measures.
  - e. Establish a fee schedule for issuance of permits, review of plans, and related matters associated with implementation and enforcement of this Order.

**NOW, THEREFORE**, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, in a public meeting of the Commissioners Court of El Paso County, Texas, duly convened and posted in accordance with the Texas Open Meetings Act, and acting in its capacity as governing body of El Paso County, Texas the following members being present:

Dolores Briones, County Judge; \_\_\_\_\_

Larry Medina, Commissioner Precinct 1 \_\_\_\_\_ Betti Flores, Commissioner Precinct 2 \_\_\_\_\_

Miguel Teran, Commissioner Precinct 3 \_\_\_\_\_ Daniel R. Haggerty, Commissioner Precinct 4 \_\_\_\_\_

On motion of Commissioner \_\_\_\_\_, seconded by  
 Commissioner \_\_\_\_\_, duly put and carried, this Resolution is  
 hereby adopted.

# EL PASO COUNTY FLOOD DAMAGE PREVENTION ORDER

## ARTICLE I

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

#### SECTION A. STATUTORY AUTHORIZATION

The Legislature of the State of Texas pursuant to Texas Water Code Ann. § 16.311 et seq. and Texas Local Government Code Chapter 232 has delegated authority to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Commissioners Court of El Paso County, Texas, as the governing body of El Paso County Texas does hereby find and order as follows:

#### SECTION B. FINDINGS OF FACT

1. Certain areas of El Paso County ("flood hazard areas") are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are created by the cumulative effect of obstructions in and destruction of 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 or otherwise protected from flood damage.

#### SECTION C. STATEMENT OF PURPOSE

It is the purpose of this El Paso County Flood Damage Prevention Order (hereafter the "Order") to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in floodplains;

6. Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and
7. Ensure that potential buyers are notified that property is in a flood area.

#### **SECTION D. METHODS OF REDUCING FLOOD LOSSES**

In order to accomplish its purposes, this Order uses the following methods:

1. Engaging in flood plain management and adopting and enforcing permanent control measures consistent with the criteria established under the National Flood Insurance Act;
2. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
3. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
4. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
5. Control filling, grading, dredging and other development which may increase flood damage;
6. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
7. Notify property owners of flood areas.

## ARTICLE 2

### DEFINITIONS

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

**ALLUVIAL FAN FLOODING** – means flooding occurring on the surface of an alluvial fan or similar landform, which originates at the apex and is characterized by high-velocity flows; active processes 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 BOARD** – the board appointed by the El Paso County Commissioners Court to hear and decide variances to the regulations described in this Order.

**APPURTENANT STRUCTURE** - A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

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

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

**AREA OF SPECIAL FLOOD HAZARD** – means the land area that would 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 may be refined further including but not limited to Zones A, AE, AII, AO A99 V or VE .

**ARROYO** - means a channel, ephemeral creek bed, or similar landform characterized by typically dry beds except during, and for a period of time after, rainstorms which produce high-velocity flows, active processes of erosion, sediment transport, and deposition and unpredictable flow paths.

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



**BASE FLOOD ELEVATION** – means the height of the base (100-year) flood in relation to a specified datum, usually the National Geodetic Vertical Datum of 1929. Generally speaking, this is the elevation of the 100-year floodwaters relative to "mean sea level".

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

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

**CUMULATIVE DAMAGE** – means when a structure which has been damaged, regardless of the source of the damage, has reached 50% of the appraised value according to the El Paso Central Appraisal District. Upon reaching the 50% threshold, the structure must be brought into compliance with this Order.

**CUMULATIVE IMPROVEMENT** – means when improvement to a structure reached 50% or more of its appraised (according to the El Paso Central Appraisal District) value. Upon reaching the 50% threshold, the structure must be brought into compliance with this Order.

**DEVELOPMENT** – means any man-made change in improved and unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**ELEVATED BUILDING** – means a non-basement building

1. built, in the case of a building in Zones 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
2. adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. 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** – means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before September 4, 1991 for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures".

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** – means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or pouring of concrete pads) is completed before the effective date of the floodplain management regulations hereby adopted.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** – means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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

1. The overflow of inland waters and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

**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 (e.g., mudflow) and/or flood-related erosion hazards.

**FLOOD HAZARD BOUNDARY MAP (FHBM)** - means an official map of El Paso County, issued by the Administrator, where the boundaries of the flood, mudslide (e.g., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

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

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

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

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

**FLOODPLAIN MANAGEMENT REGULATIONS** – means zoning orders, subdivision regulations, building codes, health regulations, special purpose orders (such as a floodplain order, grading order and erosion control order) and other applications of police power. The term

describes such state or local regulations, in any combination therefore, which provide standards for the purpose of flood damage prevention and reduction.

**FLOOD PROTECTION SYSTEM** – means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in Order to reduce the extent of the areas within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes 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 real estate or improved real property, water and sanitary facilities, structures and their contents.

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

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

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

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

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

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

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

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

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

**MEAN SEA LEVEL** – means, for the 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.

**NATIONAL FLOOD INSURANCE PROGRAM** – the national federal program established pursuant to the National Flood Insurance Act of 1968, and the Flood Disaster Act of 1973 and their respective amendments and modifications.

**NEW CONSTRUCTION** – means, for the purpose of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of the El Paso County of 1991 is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION** – means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this floodplain management Order.

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

- Built on a single chassis;
- 400 square feet or less when measured at the largest horizontal projections;
- Designed to be self-propelled or permanently towable by a light duty truck; and

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

**SPECIAL FLOOD HAZARD AREA – see definition of AREA OF SPECIAL FLOOD HAZARD**

**START OF CONSTRUCTION** – includes substantial improvement and means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. If it was not within 180 days of the date of issuance of the Permit then 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 site.

**Permanent construction does not include:**

- Land preparation, such as clearing, grading and filling,
- The installation of streets and/or walkways,
- Excavation for basement, footings, piers or foundations or 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 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 or roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**SUBDIVISION** – means any tract of land divided into two or more parts that results in the creation of two or more lots or any addition or laying out of lots, suburban lots, or building lots intended for sale or lease. A subdivision includes the re-subdivision (re-plat) of land which has been previously divided.

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

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

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which are the minimum necessary conditions, or
2. Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure".

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

**VIOLATION** – means the failure of a structure or other development to be fully compliant with El Paso County floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 Code of Federal Regulations including Sections 60.3 (b) (5), (c) (4), (c) (10), (d) (3), (e) (2), (e) (4), or (e) (5) as amended, 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 coastal or riverine areas.

## ARTICLE 3

### GENERAL PROVISIONS

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

This Order shall apply to all areas of special flood hazard in the un-incorporated areas of El Paso County within the jurisdiction of the Commissioners Court of El Paso County.

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

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for El Paso County," dated September 4, 1991, with accompanying Flood Insurance Rate Maps, (FIRM) and any revisions thereto are hereby adopted by reference and declared to be a part of this Order.

#### SECTION C. ESTABLISHMENT OF DEVELOPMENT PERMIT

To ensure conformance with this Order, a Floodplain Development Permit shall be required for any structure to be constructed, altered, extended, or substantially improved which is located within a special flood hazard area in all unincorporated areas within El Paso County Texas.

#### SECTION D. COMPLIANCE

No structure or land within the unincorporated geographical areas special flood hazard areas of El Paso County shall hereafter be constructed, located, extended, altered or have its use changed without full compliance with the terms of this Order and other applicable regulations.

#### SECTION E. ABROGATION AND GREATER RESTRICTIONS; SEVERABILITY

This Order is not intended to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this Order and another order, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions, shall prevail. If any section, clause, sentence, provision, or phrase of this Order is held to be invalid or unconstitutional, then said holding shall in no way affect the validity of the remaining portions of this Order.

#### SECTION F. INTERPRETATION

In the interpretation and application of this Order, 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 G. WARNING AND DISCLAIMER OR LIABILITY**

The degree of flood protection required by this Order is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. This Order does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Order shall not create liability on the part of the County of El Paso or any official or employee thereof for any flood damages that result from reliance on this Order or any administration decision lawfully made thereunder, nor does it waive any immunities or defenses the County may have.

## **SECTION H. PENALTIES FOR NON-COMPLIANCE**

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

Any infraction of the provisions of the Order by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of a permit, shall constitute a violation or non-compliance.

1. **Civil Penalty:** A person who violates this Order is subject to a civil penalty of \$100.00 for each act of violation and for each day of violation and in addition, shall pay all costs and expenses involved in pursuit of the case.
2. **Criminal Penalty:** A person who violates this Order commits an offense. An offense under this Order is a Class C Misdemeanor punishable by a fine. Each act of violation and each day of a continuing violation constitutes a separate offense.

## **SECTION I. ENFORCEMENT**

If it appears that a person or entity has violated, is violating, or is threatening to violate this Order or rule adopted or order issued under this Order, El Paso County may institute a civil suit in the appropriate court for:

- 1) injunctive relief to restrain the person or entity from a continuing violation or threat of violation, including an order directing the person or entity to remove illegal improvements and restore preexisting conditions;
- 2) the assessment and recovery of the civil penalty provided by Section H; or
- 3) both the injunctive relief and the civil penalty.

If it appears that a person or entity has violated, is violating, or is threatening to violate this Order or a rule adopted or order issued under this Order, El Paso County may charge the person with an offense.



Nothing herein shall prevent the El Paso County Floodplain Administrator from taking such other lawful action as is necessary to prevent or remedy non-compliance and violations.

In the event of conflict between the provisions of this Order and any other ordinance, law, code or order, the most restrictive shall apply.

## **ARTICLE 4**

### **ADMINISTRATION**

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

The El Paso County Commissioners County hereby appoints the County Engineer as the Floodplain Administrator to administer and implement the provisions of this Order and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management as well as the Texas Flood Control and Insurance Act.

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

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

- 1) Maintain and hold open for inspection public records pertaining to the provisions of this Order.
- 2) Review permit application to determine whether proposed building sites, including the placement of manufactured homes, will be reasonably safe from flooding.
- 3) Review and approve or deny all applications for development permits required by adoption of this Order.
- 4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- 5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
- 6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency, which is the Texas Commission on Environmental Quality, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- 7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- 8) When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain administrator shall obtain, review and reasonably utilize any

base flood elevation data and floodway data available from a Federal, State or other source (including Registered Professional Land Surveyors and Engineers), in order to administer the provisions of Article 5.

- 9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 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.
- 10) Under the provisions of 44 CFR, Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, the County may approve certain development in Zones A1-30, AE, AH, on the FIRM issued for El Paso county, Texas, which increases the water surface elevation of the base flood by more than one foot, provided that the County first applies for a conditional FIRM revision through FEMA.
- 11) Any structure found not compliant with the requirements of this Order for which the developer and/or owner has not applied and received an approved variance under Article IV, Section D will be declared non-compliant and the Floodplain Administrator will send notification to the Federal Emergency Management Agency.

### **SECTION C. PERMIT PROCEDURES**

- 1) Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by the Administrator and may include, but not be limited to, plans drawn to scale by a professional engineer or land surveyor (depending on the type of development, multiple copies may be required) showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
  - a. For tracts of land consisting of one acre or less, a signed, sealed and dated survey indicating:
    - i. The footprint of all improvements;
    - ii. Delineation of the floodplain and 10' floodplain easement;
    - iii. The base flood elevation;
    - iv. The elevation in relation to mean sea level, of the lowest floor (including basement) of all new and substantially improved residential structures;
    - v. The elevation in relation to mean sea level, to which any non-residential structure shall be floodproofed;
  - b. A completed Elevation Certificate based on construction drawings that the proposed development will be at least two-feet (2') above the base flood elevation as indicated on the survey;

- c. A certificate from a registered professional engineer or registered land surveyor that the non-residential floodproofed structure shall meet the floodproofing criteria in Article 5, Section B (2);
  - d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
  - e. Maintain a record of all such information in accordance with Article 4, Section B (1).
- 2) Approval or denial of a Development permit by the Floodplain Administrator shall be based on all of the provisions of this Order and the following relevant factors;
- a. The danger to life and property due to flooding or erosion damage;
  - b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - c. The danger that materials may be swept onto other lands to the injury of others;
  - d. The compatibility of the proposed use with existing and anticipated development;
  - e. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - f. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas electrical and water systems;
  - g. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
  - h. The availability of alternative locations, not subject to flooding or erosion damage, for the purposes use;
  - i. The relationship of the proposed use to the comprehensive plan for that area.

### 3) Conditions Attached To Permit

The Floodplain Administrator may recommend that conditions be attached to Development Permits, including:

- a. Requirements for construction a minimum of two feet above the base flood elevation and other compliance requirements.
- b. Requirements for construction in accordance to approved site plans.

- c. Limitations on period of use and operation.
- d. Modification of the flood-proofing plan to include additional flood-proofing elements.
- e. Any other reasonable requirement necessary to ensure compliance with Federal, State, and County regulations.

#### 4) Suspension Of Permit

- a. The Floodplain Administrator may suspend a Development Permit for failure to comply with Federal, State, or County requirements or for failing to comply with conditions placed on the Development Permit, including:
  - i. Refusal to make corrections as may be required by the Floodplain Administrator, allowing work to be covered so an inspection cannot be made, or denial of access for inspections to the Floodplain Administrator or his/her agent.
  - ii. Failure to comply with conditions placed upon the Development Permit.
  - iii. Failure to develop according to the approved plans and specifications.
- b. A suspension is in effect when a written suspension notice is posted at the development site or notice of suspension is sent certified mail return receipt requested to the permittee or his/her agent.
- c. Appeal of permit suspensions may be made to the Appeal Board.
- d. The permittee shall have fourteen (14) days to appeal suspension or commence work to complete action necessary to abate suspension, or the penalties of this Order will be applied. The suspension will be abated when corrective work is performed and has passed inspection and received approval by the Flood Administrator.

#### 5) Certificate of Flood Order Compliance will be issued after receipt of:

- a. Elevation Certificate from a registered professional land surveyor that the lowest floor of the Finished Construction is at least two-feet (2') above the base flood elevation.
- b. Flood Proof Certificate from a registered professional engineer that the non-residential floodproofed structure has meet the floodproofing criteria in Article 5, Section B (2).

## SECTION D. VARIANCE PROCEDURES

- 1) The Appeal Board shall hear and render judgment on requests for variances from the requirements of this Order.
- 2) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Order.
- 3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- 4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- 5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Order.
- 6) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance shall increase.
- 7) Upon consideration of the factors noted above and the intent of this Order, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Order (Article 1, Section C).
- 8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- 9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- 10) Prerequisites for granting variances:
  - a. Variances shall only be issued upon,
    - i. a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
    - ii. Showing a good and sufficient cause;

- iii. a determination that failure to grant the variance would result in exceptional hardship to the applicant, and
  - iv. A determination that the granting of a variance will not: result in increased flood heights, create additional threats to public safety, require extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing orders.
- b. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

11) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

- a. The criteria outlined in Article 4, Section D (1) – (10) are met, and
- b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

## ARTICLE 5

### PROVISIONS FOR FLOOD HAZARD REDUCTION

#### SECTION A. GENERAL STANDARDS

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

- 1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- 2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- 3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- 4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- 5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- 6) 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
- 7) All on-site wastewater disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- 8) All new roadways shall be designed and constructed at a minimum to avoid subjecting any vehicle to a direct streamflow equal to or greater than eight inches in height with a velocity equal to or greater than three cubic feet per second.

#### SECTION B. SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided as set forth in; Article 3, Section B; Article 4, Section B (8); or Article 5, Section C (3), the following provisions are required:

- 1) **Residential Construction** – new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated at least 2



feet above the base flood elevation. A registered professional engineer, or registered land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Article 4, Section C (1) (a), is satisfied.

- 2) **Non-residential Construction** – new construction and substantial improvements of any commercial, industrial or other non-residential structure shall either have the lowest floor (including basement) elevated at least 2 feet above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level plus the additional 2 feet, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of buoyancy. A registered professional engineer 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 and copies submitted to the Floodplain Administrator.
- 3) **Compensatory Storage** – for non-single family residential development greater than 5,000 square feet within the 100-year floodplain; new construction is required to demonstrate through an engineering study that it will cause no increase in the water surface elevation of the 100-year flood. Compensatory storage must be hydraulically equivalent and at a ratio of 1.5 to 1 for volume of flood storage lost to fill or structures in the 100-year floodplain
- 4) **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 be certified by a registered professional engineer 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;
  - c. The openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
  - d. Placement of the structure will not create any increase in the base water elevation.
- 5) **Manufactured Homes** –
  - a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices,

which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated at least two feet above the base flood elevation 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 any applicable State and local requirements for resisting wind forces.

- b. Require that manufactured homes that are placed or substantially improved on sites within Zones A1-30, AH, and AE on the community's FIRM:
  - i. Outside of a manufactured home park or subdivision,
  - ii. In a new manufactured home park or subdivision,
  - iii. In an expansion to an existing manufactured home park or subdivision, or
  - iv. In an existing manufactured home park or subdivision or which a manufactured home has incurred "substantial damage" as a result of a flood;

be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- c. Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:
  - i. The lowest floor of the manufactured home is at least 2 feet above the base flood elevation, or
  - ii. 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 floatation, collapse, and lateral movement.

- 6) **Cumulative Damage/Substantial Improvement Threshold** – applies to residential, commercial, or industrial structures within the floodplain. When an improvement is made to a structure that is equal to or greater than 50% of its appraised value (according to the El Paso County Appraisal District), the entire structure must be brought into compliance with floodplain regulations. Each separate improvement is considered individually relative to the 50% threshold.

- 7) **Recreation Vehicles** -- Require that recreational vehicles placed on site within Zones A1-30, AH, and AE on the community's FIRM either:
- i. Be on the site for fewer than 180 consecutive days within 365 days,
  - ii. Be fully licensed and ready for highway use, or
  - iii. Meet the permit requirements of Article 4, Section C (1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

### **SECTION C. STANDARDS FOR SUBDIVISION PROPOSALS WITHIN AREAS OF SPECIAL FLOOD HAZARDS**

- 1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Section B, C, and D of this Order.
- 2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this Order.
- 3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions.
- 4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- 5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
- 6) All subdivision proposals within areas of Special Flood Hazards must include survey benchmarks and/or monuments as required by the Flood Plain Administrator.
- 7) All subdivision proposals including the placement of manufactured home parks and subdivisions containing floodplain lots shall indicate the Base Flood Elevation, finished Ground Elevation and a Finished Floor Elevation) for each lot within areas of Special Flood Hazards.
- 8) All subdivision proposals including the placement of manufactured home parks and subdivisions containing floodplain shall delineate a ten-foot (10') easement along the 100-year floodplain to be preserved and maintained.

- 9) *Adverse Effects To Adjoining Property* – If required by the Floodplain Administrator, all subdivision proposals (including the placement of manufactured home parks and subdivisions) shall submit a technical analysis determining whether the proposed development may result in physical damage to adjacent property or any future effect (e.g. impervious cover) that may later adversely affect any floodway, channel, or floodwaters.
- 10) *Containment of Areas of Special Flood Hazard and Drainage* – All subdivision proposals shall include an agreement with an appropriate political subdivision (e.g. MUD's) to build, maintain and preserve a system or systems necessary for the containment of areas of special flood hazard and drainage within the subdivision.
- 11) Additional information and/or criteria, including stormwater pollution prevention plans during construction and upon completion, may be required based on development criteria. (Example: temporary and/or permanent erosion controls)
- 12) Areas of Special Flood Hazards shall be shaded to indicate the location of the areas.

#### **SECTION D. FLOODWAYS**

Areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- 1) No residential development will be allowed within the floodway as designated on the community's FIRM.
- 2) Encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the designated regulatory floodway unless it is proven 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.
- 3) All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 5.
- 4) Pursuant to the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations may be permitted, provided that the community first applies for and receives a conditional FIRM and floodway revision through FEMA.

**CERTIFICATION**

It is hereby found and declared by the Commissioners Court of El Paso County, that severe flooding has occurred in the past within its jurisdiction and will certainly occur within the future; that flooding is likely to result in infliction of serious personal injury or death, and is likely to result in substantial injury or destruction of property within its jurisdiction; in order to effectively comply with minimum standards for coverage under the National Flood Insurance Program; and in order to effectively remedy the situation described herein, it is necessary that this Order become effective immediately.

Therefore, this Order, 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:**

Dolores Briones, County Judge

**PASSED:**

(Date)

I, the undersigned, \_\_\_\_\_, do hereby  
certify that the above is a true and correct copy of an Order duly adopted by the El Paso County  
Commissioners Court at a regular meeting duly convened on \_\_\_\_\_ 2006.

Waldo Alarcon, County Clerk

(Seal)