RIO ARRIBA COUNTY FLOOD DAMAGE PREVENTION ORDINANCE
2012-004

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Article I. Statutory Authorization, Findings of Fact, Purpose and Method

Section 1.01 Statutory Authorization

The Legislature of the State of New Mexico, through Section 4-37-1 NMSA 1978, delegated the responsibility to local government units to adopt regulations designed to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of its citizenry. Therefore, the Rio Arriba County Board of County Commissioners (BOCC) does hereby adopt the following floodplain management regulations:

Section 1.02 Findings of Fact

A. The flood hazard areas of Rio Arriba County 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, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

B. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damage.

Section 1.03 Statement of Purpose

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

A. Protect human life, health, safety and welfare;

B. Minimize expenditures of public money for costly flood control projects;

C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D. Minimize prolonged business interruptions;

E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, roadways, and bridges and culverts located in floodplains;

F. Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and

G. Ensure that potential homebuyers are notified that property is in a flood hazard area.
Section 1.04  Methods of Reducing Flood Loss

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

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

B. Requiring that uses vulnerable to floods including facilities which serve such uses be protected against flood damage throughout their intended life span;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

D. Controlling filling, grading, dredging, and other development which may increase flood damage;

E. Preventing or regulating the construction of flood barriers that will unnaturally divert flood waters or may increase flood hazards in other areas;

F. Providing a system by which water within a subject property will be removed without causing damage or harm to the surrounding natural environment, including the property of persons within the surrounding areas; and

G. Assuring that waters drained from the subject property are substantially free of pollutants, including sedimentary material, of any greater quantity than would occur in the absence of a development; and

H. Assuring that waters are drained from a development in such a manner that they will not cause erosion outside of the subject property.

Section 1.05  Floodplain buffer areas further defined in the Design and Development Ordinance:

Please refer to the Design and Development Ordinance for additional restrictions that apply to the floodplain buffer areas of water courses described as the Riparian Floodplain and Headwaters Overlay Zoning District.

Article II. 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.
**Appurtenant structure** means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure.

**Area of shallow flooding** means a designated AO or AH Zone on the community’s Flood Insurance Rate Map (FIRM) with base of flood average depths 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 sheet flow or ponding.

**Area of special flood hazard** is the land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. The term “special flood hazard area,” for purposes of these regulations, is synonymous with the phrase “area of special flood hazard.”

**Base flood** means the flood having a 1% chance of being equaled or exceeded in any given year (also called the “regulatory flood”).

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

**Breakaway wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or the supporting foundation system.

**Building — see Structure**

**Certification** means a certification by a registered professional engineer or other party does not constitute a warranty or guarantee of performance, expressed, or implied. Certification of data is a statement that the data is accurate to the best of the certifier’s knowledge. Certification of analyses is a statement that the analyses have been performed correctly and in accordance with sound engineering practices. Certification of structural works is a statement that the works are designed in accordance with sound engineering practices to provide protection from the base flood. Certification of “as built” conditions is a statement that the structure(s) has been built according to the plans being certified, is in place, and is fully functioning.

**Certified Floodplain Manager** means the person appointed by the Rio Arriba County BOCC as the responsible person for administering and implementing the provisions of this ordinance, sometimes referred to as the Floodplain Management Administrator.

**Critical facility** means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

**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, excavating, drilling operations, or storage of materials or equipment.
*Elevated building* means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, shear walls, posts, piers, piling, or columns.

*Existing Construction* means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before January 5, 1989. This term may also be referred to as “existing structures”.

*Existing manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations first adopted by Rio Arriba County August 5, 1987.

*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).

*Federal Emergency Management Agency (FEMA)* is an independent agency of the United States government that provides a single point of accountability for all federal emergency preparedness and mitigation and response activities.

*Flood or flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. The overflow of inland or tidal waters;
  2. The unusual and rapid accumulation or runoff of surface waters from any source.

*Flood Boundary and Floodway Map (FBFM)* means the official map of a community, on which the Federal Emergency Management Agency (FEMA) has delineated the areas of flood hazards and regulatory floodway.

*Flood Hazard Boundary Map (FHBM)* means an official map of a community, issued by FEMA, where the boundaries of the special flood hazard areas have been identified as Zone A.

*Flood Insurance Rate Map (FIRM)* means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

*Flood Insurance Study (FIS)* means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

*Floodplain* means any land area susceptible to being inundated by water from any source (see definition of “flooding”).
**Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations.

**Floodplain management regulations** means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide provisions for the purpose of flood damage prevention and reduction.

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

**Floodway** 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 of one foot. The term is also referred to as “regulatory floodway”.

**Freeboard** 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 a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

**Functionally dependent facility** means a facility cannot be used for its intended purpose unless it is location 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 shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Highest adjacent grade** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Historic Structure** means any structure that is;

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic 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 the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
- By an approved state program as determined by the Secretary of the Interior.

**Increased Cost of Compliance (ICC)** means the coverage by a standard flood insurance policy under the NFIP that provides for the payment of a claim for the cost to comply with the State of New Mexico and Rio Arriba County floodplain management ordinances after a direct physical loss by flood, when Rio Arriba County declares the structure to be “substantially” or “repetitively” flood-damaged. ICC Coverage is provided for in every standard NFIP flood insurance policy, and will help pay for the cost to floodproof, relocate, elevate, or demolish the structure.

**Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking or vehicles, building access, or storage, in an area other than a basement, 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 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 vehicles”.

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

**Map** means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Agency.

**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 (BFEs) shown on a community’s Flood Insurance Rate Map are referenced.

**New Construction** means, for floodplain management purposes, structures for which the “start of construction” commenced on or after the effective date of the floodplain management regulations first adopted by Rio Arriba County August 5, 1987 and includes any subsequent improvements to such structures.

**New manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by Rio Arriba County.

**Participating community**, also known as an eligible community, means a community in which FEMA has authorized the sale of flood insurance.
**Principally above ground** means that at least 51% of the actual cash value of the structure is above ground.

**Recreational vehicle** means a vehicle which is:
1. Built on a single chassis;
2. Designed to be self-propelled or permanently towable by a light duty truck; and
3. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Reasonably safe from flooding** means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface water related to the base flood will not damage existing or proposed buildings.

**Repetitive Loss** means flood-related damages sustained by a structure on two separate occasions during at 10-year period ending on the date for the event for which the second claim is made, for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damages occurred.

**Special flood hazard area (SFHA)** (see Area of Special Flood Hazard) means an area having special flood hazard and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V1-30, VE, or V.

**Start of Construction** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include 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, for floodplain management purposes, 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% of the market value of the structure before the damage occurred. Substantial damage also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which
the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damages occurred.

**Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, during the *life* of the building, the cumulative cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. The term includes structures that have incurred "substantial damage", regardless of the actual work performed, or "repetitive loss." The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
2. Any alteration of a "historic structure" provided that the alteration would not preclude the structure's continued designation as a "historic structure."

**Variance** means a grant of relief by Rio Arriba County from the requirements of this ordinance.

**Violation** means the failure of a structure or other development to be fully compliant with this ordinance. 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 coastal or riverine areas.

## Article III. General Provisions

### Section 3.01 Lands to which this Ordinance Applies

This ordinance shall apply to all areas of special flood hazard within the jurisdiction of Rio Arriba County.

### Section 3.02 Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by FEMA Flood Insurance Study (FIS) for Rio Arriba County, dated March 15, 2012 with the accompanying maps and other supporting data, and any subsequent revisions thereto, are hereby adopted by reference and declared to be a part of this ordinance.

### Section 3.03 Designation of Flood Damage Prevention Ordinance Administrator

The Board of County Commissioners and the Planning and Zoning Department of Rio Arriba County hereby appoints the Community Development Director to appoint a certified designee to administer and implement the provisions of this ordinance, and is hereinafter referred to as the Certified Floodplain Manager or Floodplain Management Administrator.
Establishment of a Floodplain Development Permit

A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in conformance with the provisions of this ordinance. Applicants are responsible for submitting all the required information and fees associated with a floodplain development permit.

Compliance

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

Abrogation and Greater Restrictions

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

Interpretation

In the interpretation and application of this ordinance all provisions shall be:

A. Considered as minimum requirements;

B. Liberally construed in favor of the governing body, and

C. Deemed neither to limit nor repeal any other powers granted under New Mexico State Statutes.

Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. 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 hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Rio Arriba County BOC or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Penalties for Violation

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with granting of
variances or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $1,000.00 or imprisoned for not more than 30 days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the County of Rio Arriba from taking such other lawful actions as are necessary to prevent or remedy any violation.

Article IV. Administration

Section 4.01 Permit Procedures

A Floodplain Development Permit Application shall be submitted, prior to undertaking any development activities, to the Certified Floodplain Manager on forms furnished by him or her, and must include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area under consideration for development; existing structure(s) and other features; proposed structure(s), earthen fill, storage of materials or equipment, drainage facilities, perimeter setbacks, environmental features such as base floodplain areas, wetlands, and other protected areas; and the location of the foregoing. Specifically, the following information, certified by a professional who is authorized to certify such information in the State of New Mexico, is required:

A. Application Stage:

1. Elevations of the area of development in relation to mean sea level (such as a contour map) for both existing and proposed development,
2. Elevation in relation to mean sea level of the lowest floors of all proposed structures,
3. Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed,
4. Floodproofing Certificate, meeting the floodproofing criteria in Section 5.04-2;
5. Elevation, in relation to mean sea level, of the bottom of the lowest horizontal structural member in V-Zones,
6. Existing and proposed infrastructure, and
7. Description of the extent to which any watercourse will be altered or relocated as result of proposed development.

B. Construction Stage:

Upon placement of the lowest floor, or floodproofing by whatever construction means, it shall be the duty of the permit holder to submit to the Certified Floodplain Manager a certification of the elevation of the lowest floor or floodproofed elevation, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer who is authorized to certify such information in the State of New Mexico, and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk.
The Certified Floodplain Manager shall review the lowest floor elevation and floodproofing Certificate. Should these documents be found not in conformance with the requirements of this ordinance, the permit holder shall immediately cease further work, and shall correct any deficiencies. Failure of the permit holder to submit the surveyed lowest floor elevation and floodproofing certificate, and failure to correct said deficiencies required hereby, shall be the cause to issue a stop-work order for the project.

Section 4.02 Duties and Responsibilities of the Certified Floodplain Manager

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

A. Review all floodplain development permits to assure that the requirements of this ordinance have been fully met;

B. Review proposed development to assure that all necessary permits have been obtained from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act, as amended, or by wide-area agencies, prior to issuing a floodplain development permit. Such documentation is to be maintained on file with the floodplain development permit;

C. Review certified plans and specifications for compliance with the requirements of this ordinance;

D. Verify and record the actual elevation (in relation to mean sea level) of the lowest floor of all new construction and substantial improvements, in accordance with Section 4.01-B;

E. Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved nonresidential structures in A-Zones have been floodproofed, in accordance with Section 4.01-B;

F. Interpret the exact location of boundaries of the areas of special flood hazard and regulatory floodway. When there appears to be a conflict between a mapped boundary and actual field conditions, the Certified Floodplain Manager shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided for in this ordinance;

G. When BFE data or floodway data have not been provided in accordance with Section 3.02, the Certified Floodplain Manager shall obtain, review and reasonably utilize any BFE and floodway data available from a federal, state, or any other source, in order to administer the provisions of this ordinance;

H. Notify, in riverine situations, adjacent communities and the New Mexico Department of Homeland Security and Emergency Management (NMDHSEM) State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA, and assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;
I. Coordinate with the Public Works and other Departments in the Rio Arriba County to assure that the requirements of this ordinance are fully met;

J. Participate actively in evaluating the variance requests and provide input and recommendations in variance hearings; and

K. Coordinate all change requests to the FIS and FIRM or FBFM, or both, with the requester, State, and FEMA.

L. Requirement to submit new technical data.

Rio Arriba County's BFEs may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, Rio Arriba County shall notify FEMA of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data. The Planning & Zoning Department may require the applicant to submit additional data and review fees for FEMA.

Article V. Standards for Flood Hazard Reduction

Section 5.01 General Standards

In all areas of special flood hazard, determined by FEMA and by the community where FEMA has not determined the areas of special flood hazard, the following shall apply:

A. Review permits for proposed construction or other development, including the placement of manufactured homes, so that a determination may be made whether or not such construction or other development is proposed within flood-prone areas.

B. New construction, substantial improvements, and other development proposals shall assure that all necessary permits have been obtained from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act, as amended, or by wide-area agencies.

C. All new construction and 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.

D. All new construction and substantial improvements shall be constructed with materials and utility elements resistant to flood damage.

E. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
F. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

G. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, shall be assured that they will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that:
   1. All such proposals are consistent with the need to minimize flood damage within the flood-prone area;
   2. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
   3. Adequate drainage is provided to reduce exposure to flood hazards.

H. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

I. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

J. New construction and substantial improvements, when located in multiple flood zones with varying BFEs or in same flood zone with multiple BFEs shall meet the requirements for the flood zone with the most stringent requirements and the highest BFE.

Section 5.02 Standards for Approximate A-Zones

Located within the areas of special flood hazard established in Section 3.02, where streams exist for which no BFE data or regulatory floodway has been provided by FEMA, the following provisions shall apply:

A. Standards of Section 5.01.

B. All new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals BFE data;

C. The Certified Floodplain Manager shall obtain, review, and reasonably utilize any BFE and floodway data available from a Federal, State, or other source, including data developed pursuant to paragraph B of this Section. When such BFE data is utilized, the new construction, substantial improvements, or other development shall meet the elevation and non-elevation requirements of Section 5.03 & Section 5.04.

D. Where the BFE data are utilized, the Certified Floodplain Manager shall:
1. Obtain the elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures;
2. Obtain, if the structure has been floodproofed in accordance with the requirements of paragraph B of this Section, the elevation in relation to the mean sea level to which the structure has been floodproofed; and
3. Maintain a record of all such information.

E. Notify, in riverine situations, adjacent communities and the NMDHSEM State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.

F. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

G. Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

H. When the BFE data is not available from any source or as in paragraph B of this Section, the lowest floor of the new construction and substantial improvements shall be elevated 3 feet or above the highest adjacent grade.

I. Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance; and

J. Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.

Section 5.03  Specific Standards for Non-Coastal High Hazard Areas

In all non-coastal areas of special flood hazard where BFE data have been provided, as set forth in Section 3.02, but no regulatory floodways have been delineated, the following provisions shall apply:

A. Standards of Section 5.02.

B. Residential Structures:
   1. All new construction or substantial improvements of residential structures within Zones AI-30, AE, and AH (including substantially damaged manufactured homes by flood) shall have the lowest floor (including basement) elevated to or above the BFE; and
2. All new construction and substantial improvements of residential structures within AO Zone shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least two feet if no depth number is specified).

C. **Nonresidential Structures:**

1. All new construction or substantial improvements of non-residential structures shall have the lowest floor (including basement) elevated to or above the BFE. Nonresidential structures within Zones A1-30, AE, and AH may be flood-proofed in lieu of being elevated provided that together with all attendant utility and sanitary facilities, be designed so that below the BFE plus one foot the structure is water-tight with walls substantially impermeable to the passage of water, and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect, who is authorized to certify such information in the State of New Mexico, shall certify that the provisions of this subsection are satisfied. The FEMA Floodproofing Certificate shall be prepared and submitted to the Certified Floodplain Manager along with the corresponding operational and maintenance plans.

2. All new construction and substantial improvements of nonresidential structures within Zone AO shall:
   a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least two feet if no depth number is specified); or
   b. Together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standards specified in Section 5.03-B-1.

D. **Elevated Structures.** For all new construction or substantial improvements, fully enclosed areas below the lowest floor elevation shall be usable solely for parking of vehicles, building access, or storage. These enclosed areas shall be designed and constructed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

1. Designs for meeting with this requirement must either be certified by a professional engineer or architect, who is authorized to such information in the State of New Mexico, or meet or exceed the following minimum criteria:
   a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
   b. The bottom of all openings shall be no higher than one foot above grade; and
   c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic entry and exit of floodwaters.

2. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in
connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

3. The interior portion of such enclosed areas shall not be partitioned, temperature-controlled, or finished into separate rooms.

E. Provisions for Manufactured Homes and Recreational Vehicles.

1. All manufactured homes that are placed, or substantially improved within Zones A1-30, AH, and AE, on sites (i) outside of an existing manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation and be securely anchored to an adequately anchored foundation system to resist foundation collapse and lateral movement.

2. All manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision within Zones AI -30, AH, and AE, that are not subject to the provisions of Section 5.03-E-1, must be elevated so that either:
   a. The lowest floor of the manufactured home is elevated to or above the BFE; or
   b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength that are no less than 36 inches in height above the grade and be securely anchored to an adequate foundation system to resist flotation, collapse, and lateral movement.

3. All recreational vehicles placed on sites within Zones A1-30, AH, and AE must either:
   a. Be on the site for fewer than 180 consecutive days;
   b. Be fully licensed and ready for highway use (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); or
   c. Meet the requirements for new construction, including anchoring and elevation requirements for manufactured homes in Section 5.03-D-1, Section 5.03-D-2, or Section 5.03-E-2.

4. Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the 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.

5. Within Zones AH and AO on the FIRM, adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.
Section 5.04 Standards for Floodways

Located within areas of special flood hazard established in Section 3.02, are areas designated as floodways, since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris, potential projectiles and have significant erosion potential, the following provisions shall apply:

A. Standards of Section 5.03.

B. Prohibit encroachments, including fill, new construction, substantial improvements and other developments within the regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

Section 5.05 Critical Facilities

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA, preferably outside the 0.2% annual chance floodplain. Construction of new critical facilities may be permissible within the SFHA if feasible alternative sites are unavailable. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the BFE at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the BFE shall be provided to all critical facilities to the maximum extent possible.

Article VI. Variances

Section 6.01 Designation of Variance and Appeals

The Planning & Zoning (P&Z) Committee, as established by the Rio Arriba County BOCC shall hear and decide appeals and requests for variances from the requirements of this ordinance.

Section 6.02 Duties of the P&Z Committee

The P&Z Committee shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Certified Floodplain Manager in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the P&Z Committee may appeal such decision to the BOCC, as provided in the Rio Arriba County Design and Development Regulations System Ordinance.

Section 6.03 Considerations in Granting Variance Requests

In acting upon such applications, the P&Z Committee shall consider all technical evaluations, all relevant factors, provisions specified in other sections of this ordinance, and:
A. The danger that materials may be swept onto other lands to the injury of others;
B. The danger of life and property due to flooding or erosion damage;
C. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
D. The importance of the services provided by the proposed facility to the community;
E. The necessity to the facility of a waterfront location, where applicable;
F. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
G. The compatibility of the proposed use with existing and anticipated development;
H. The relationship of the proposed use to the Rio Arriba County Comprehensive Plan and floodplain management program for that area;
I. The safety of access to the property in times of flood for ordinary and emergency vehicles;
J. The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site;
K. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges; and
L. The request for variance is not an after-the-fact request.

Section 6.04 Conditions for Variances

A. Variances may only be issued when there is:
   1. A showing of good and sufficient cause;
   2. A determination that failure to grant the variance would result in exceptional hardship; and
   3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or Rio Arriba County ordinances.

B. Variances may only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this ordinance.
C. Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

D. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.

E. 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:
   1. The criteria of paragraphs A through C of this Section are met; and
   2. 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.

Section 6.05  Variance Notification

Any applicant to whom a variance is granted shall be notified in writing over the signature of the Certified Flood Plain Manager that:

A. The issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage; and

B. Such construction below the base flood level increases risks to life and property.

A copy of the notice shall be recorded by the Certified Floodplain Manager in the Office of the Rio Arriba County Clerk and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

C. The Certified Floodplain Manager shall maintain a record of all variance actions, including justification for their issuance or denial, and report such variances issued in its annual biennial report submitted to FEMA.

Section 6.06  Special Conditions

Upon consideration of the factors listed in Article VI, and the purposes of this ordinance, the P&Z Committee may attach such conditions to the granting of variances, as it deems necessary to further the purposes of this ordinance.

Article VII. Severability

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.
Article VIII. Certification of Adoption

PASSED, ADOPTED AND APPROVED THIS 26th DAY OF JANUARY, 2012.

BOARD OF COUNTY COMMISSIONERS
RIO ARRIBA COUNTY, NEW MEXICO

Felipe D. Martinez, Chairman
Commissioner, District III

Barney Trujillo
Commissioner, District I

Alfredo L. Montoya
Commissioner, District II

ATTEST:

Moises A. Morales, Jr. Rio Arriba County Clerk