

**AN ORDINANCE OF THE MACON COUNTY BOARD OF COMMISSIONERS FOR  
AN AMENDED AND RESTATED "FLOOD DAMAGE PREVENTION ORDINANCE OF  
MACON COUNTY"**

**WHEREAS**, the Macon County Board of Commissioners originally adopted the Flood Ordinance of Macon County on August 7, 2000; and

**WHEREAS**, the same has been amended and/or restated from time to time in order to make changes to the same; and

**WHEREAS**, the Board of Commissioners wishes to make certain specific amendments to the Ordinance in order to bring the Ordinance into compliance with G.S. 160D and Part 6, Article 21 of Chapter 143, and restate such Ordinance in its entirety as set forth hereinafter; and

**WHEREAS**, the Board of Commissioners has the authority to make such amendments to the Ordinance pursuant to Part 6, Article 21 of Chapter 143 and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes; and

**WHEREAS**, the required Notice of Public Hearing has been duly given and duly published in accordance with the law and the required Public Hearing in connection with such amendments has been duly held in accordance with law.

**NOW, THEREFORE, BE IT ORDAINED** by the Macon County Board of Commissioners that:

The Flood Ordinance of Macon County, originally adopted on August 7, 2000 and which has been amended and/or restated from time to time is hereby amended and restated so that the same will hereafter read as follows:

See Exhibit A attached hereto which is incorporated herein by reference as if more fully set forth herein.

This the 14th day of December, 2021.

  
Chairman, Macon County Board of Commissioner

ATTEST:

  
Clerk to the Macon County Board of Commissioners



**AMENDED AND RESTATED FLOOD DAMAGE PREVENTION ORDINANCE OF  
MACON COUNTY**

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**ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES**

**SECTION A. STATUTORY AUTHORIZATION**

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; and Article 7, 9 and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of Commissioners of Macon County, North Carolina, does ordain as follows:

**SECTION B. FINDINGS OF FACT**

- (1) The flood prone areas within the jurisdiction of Macon County are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) 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 prone areas of uses vulnerable to floods or other hazards.

**SECTION C. STATEMENT OF PURPOSE**

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

- (1) Restrict or prohibit uses that are dangerous to health, safety and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural flood plains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

**SECTION D.           OBJECTIVES**

The objectives of this ordinance are to:

- (1) Protect human life, safety, 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 losses and interruptions;
- (5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets and bridges) that are located in flood prone areas;
- (6) Minimize damage to private and public property due to flooding;
- (7) Make flood insurance available to the community through the National Flood Insurance Program;
- (8) Maintain the natural and beneficial functions of floodplains;
- (9) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (10)       Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

**ARTICLE 2.           DEFINITIONS**

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

“Accessory Structure (Appurtenant Structure)” means a structure 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. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like

qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Alteration of a watercourse” means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

“Appeal” means a request to the Macon County Planning Board for a review of the Floodplain Administrator’s interpretation of any provision of this ordinance.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Design Flood” See “Regulatory Flood Protection Elevation.”

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

“Development Activity” means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

“Digital Flood Insurance Rate Map (DFIRM)” means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a special flood hazard area, which may impede or alter the flow capacity of a floodplain.

“Existing building and existing structure” means any building and/or structure for which the “start of construction” commenced before August 7, 2000, the initial effective date of the floodplain management regulations adopted by Macon County.

“Existing Manufactured Home Park or Manufactured Home 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) was completed before August 7, 2000, the initial effective date of the floodplain management regulations adopted by the County .

“Existing Recreational Vehicle Park or Subdivision” means a recreational vehicle park or subdivision for which the construction of facilities for servicing the RV parking sites (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before August 7, 2000, the initial effective date of the floodplain management regulations adopted by the County.

“Fill” means any material placed in or on top of the ground to replace, augment, or to build up the in situ, earth, rock, or other natural material which results in an increase of the final grade elevation above the original grade elevation existing prior to any development activity. Material placed in or on top of the ground which is incidental to a development activity will not be considered as fill. Incidental materials are defined as those located on the same parcel within the SFHA and are necessary for driveways, parking areas, drainage culverts, and walls designed under NFIP guidelines, and other similar improvements necessary for access to and occupation of developments within the SFHA.

“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; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated (see also DFIRM).

“Flood Insurance Study (FIS)” means an examination, evaluation and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Flood Prone Area” see “Floodplain”.

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventative measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this ordinance, and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. The term describes Federal, State or local regulations, in any combination thereof, which provides standards for preventing and reducing flood loss and damage.

“Floodproofing” 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 sanitation facilities, structures, and their contents.

“Flood-resistant material” means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbars are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Refer to Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

“Floodway” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved, as shown on the Flood Insurance Rate Map in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot ~~as shown on the Flood Insurance Rate Map.~~

“Floodway encroachment analysis” means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirements of the National Flood Insurance Program.

“Freeboard” means the height added to the Base Flood Elevation (BFE) to account 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, blockage of bridge or culvert openings, precipitation exceeding the base flood, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long term storage, manufacture, sales or service facilities.

“Hazardous Waste Management Facility” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“High Impact Land Use” means the use of property considered by the Ordinance Regulating High-Impact Land Uses in Macon County as High-Impact uses including the following:

- (1) Airfields/Airstrips
- (2) Asphalt plants
- (3) Bulk Inflammables, Chemicals and Explosives Manufacturers or Storage Facilities
- (4) Chipmills (wood grinding operations)
- (5) Commercial Incinerators
- (6) Concrete Suppliers
- (7) Helicopter Sightseeing Operations
- (8) Mining and Extraction Operations and Quarries
- (9) Motor Sports Activities
- (10) Sawmills
- (11) Slaughtering and Processing Plants
- (12) Solid Waste Management Facilities

“Historic Structure” means any structure that is:



- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of 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;
- (c) Individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a “Certified Level Government (CLG) Program”.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Letter of Map Change (LOMC)” means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective national flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (b) Letter of Map Revisions (LOMR): A revisions based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community’s floodplain management regulations.
- (d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

“Light Duty Truck” means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or

- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

“Lowest Adjacent Grade (“LAG)” means the lowest elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

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

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the 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 sale or rent.

“Map Repository” means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products have the same authority as hard copy products. Therefore, the NCEM’s Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

“Materials” means the elements, constituents, or substances of which something is composed or can be made.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after August 7, 2000, the initial effective date of the initial floodplain management regulations adopted by the County and includes any subsequent improvements to such structures.

“Non-Encroachment Area (NEA)” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, 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 one (1) foot as designated in the Flood Insurance Study report.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map (i.e August 7, 2000).

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map (i.e. August 7, 2000).

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use, and
- (e) Is fully licensed and ready for highway use.

“Recreation Vehicle Park or Subdivision” means a tract or parcel (or contiguous parcels) of land divided into two or more lots or RV parking sites for rent or sale for occupancy by recreational vehicles used as a temporary living quarters or for storage of a recreational vehicle.

“Reference Level” is the bottom of the lowest horizontal structural member of the lowest floor for structures within all the Special Flood Hazard Areas.

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas”, this elevation shall be the BFE plus two (2) feet of freeboard.

“Remedy a Violation” means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impact may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

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

“Salvage Yard” shall mean any non-residential property used for the storage, collection and/or recycling of any type of equipment, including but not limited to vehicles, appliances, and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

“Start of Construction” 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 date means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Storage” means non-transitory, semi-permanent or long-term, containment, holding, leaving, or placement of objects, usually with the intention of retrieving them at a later time.

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

“Substantial Damage” means damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”. Substantial damage also means flood-related damage 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 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any correction of existing violations of State or community health, sanitary or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

“Technical Bulletin and Technical Fact Sheet” means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

“Temperature Controlled” means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

“Variance” means a grant of relief from the requirements of this ordinance.

“Vehicle and Mobile Equipment Storage Facilities” means any commercial land use, excluding agriculture and silviculture, that includes the temporary or long term parking or storage of three (3) or more un-anchored vehicles, boats, trailers, campers, model homes, or any other item capable of becoming buoyant under Base Flood conditions.

“Violation” means the failure of a structure or other development to be fully compliant with the ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

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

### **ARTICLE 3. GENERAL PROVISIONS**

#### **SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES**

This ordinance shall apply to all Special Flood Hazard Areas within Macon County excluding the extra-territorial jurisdictions (ETJs) and areas within the corporate limits of the Town of Franklin and the Town of Highlands.

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

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), and associated DFIRM panels, including any digital data developed as part of the FIS for Macon County dated May 4, 2009, which are adopted by reference and declared to be a part of this ordinance, and all revisions thereto.

**SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT**

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Article 3, Section B of this ordinance.

**SECTION D. COMPLIANCE**

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

**SECTION E. 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.

**SECTION F. 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 State statutes.

**SECTION G. 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. Actual flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Macon County or by any office or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

**SECTION H. 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 grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NCGS 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not

more than \$5,000.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Macon County from taking such other lawful action including civil and equitable enforcement, as is necessary to prevent or remedy any violation.

#### **ARTICLE 4. ADMINISTRATION**

##### **SECTION A. DESIGNATION OF FLOODPLAIN ADMINSTRATOR**

The Director of Planning, Permitting and Development, or his or her designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

##### **SECTION B. FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS**

(1) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. No Land Disturbance Permit, Improvement Permit for the installation of a subsurface wastewater disposal system or Building Permit shall be issued for the improvement or development of any lot or parcel of land subject to the application of this ordinance unless proposed development or improvement has been permitted with a current Floodplain Development Permit. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

- (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
  - (i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
  - (ii) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
  - (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;
  - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
  - (v) The Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C; or Article 5, Section D;
  - (vi) The old and new location of any watercourse that will be altered or relocated as a result of the proposed development; and
  - (vii) The certification of the plot plan by a registered land surveyor or professional engineer.

- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
  - (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
  - (ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE or A will be floodproofed; and
  - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- (c) If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures, and an inspection and maintenance plan that includes, not is not limited to, installation, exercise and maintenance of floodproofing measures.
- (d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include, but are not limited to:
  - (i) The proposed method of elevation, if applicable (i.e. solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
  - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(d) when solid foundation perimeter walls are used in Zone A or AE.
- (e) Usage details of any enclosed areas below the lowest floor.
- (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical and water systems to be located and constructed to minimize flood damage.
- (g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (8) of this ordinance are met.
- (i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
- (j) Emergency Evacuation Plan for RV Park.



(2) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc).
- (b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Subsection B.
- (c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
- (d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the Special Flood Hazard area, the floodway or non-encroachment area of any watercourse unless the requirements of Article 5, Section F have been met.
- (g) The flood openings requirements.
- (h) Limitations of below BFE enclosure uses (*i.e. parking, building access and limited storage only*).
- (i) A statement, that all materials below BFE/RFPE must be flood resistant materials.
- (j) Approved Emergency Evacuation Plan for RV Park.

(3) **Certification Requirements.**

- (a) Elevation Certificates
  - i. An Elevation Certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such a review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
  - ii. An Elevation Certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean seal level. Any work done within the seven (7) day calendar period and prior to the submission of the certification shall be

at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such a review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make the required corrections shall be cause to issue a stop-work order for the project.

- iii. A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to the Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such a review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. IN addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" x 3". Digital photographs are acceptable.

(b) Floodproofing Certificate

- (i) If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 86-0-34) with supporting data, an operational plan and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such a review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(ii) A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operation plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level NAVD-1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such a review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

(c) If a manufactured home is placed within Zone A or AE, and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5, Section B(3)(b).

(d) If a watercourse is to be altered or relocated, a description of the extent of the watercourse alteration or relocation; a professional engineer's certified report on the effect of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(e) Certification Exemptions. The following structures, if located in Zone A or AE, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:

- i. Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
- ii. Temporary Structures meeting requirements of Article 5, Section B(8); and
- iii. Accessory Structures less than 150 square feet meeting requirements of Article 5, Section B(9).

(4) **Determinations for existing buildings and structures.**

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs or substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of

construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

- (b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

### **SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (3) Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section F are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Article 4, Section B(3).

- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Article 4, Section B(3), and Article 5, Section B(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation provided in this ordinance, Article 4, Section D(4).
- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with Article 3, Section B, obtain, review and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2), in order to administer the provisions of this ordinance.
- (12) When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (14) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the County at any reasonable hour for the purposes of inspection or other enforcement action, in accordance with G.S. 160D-403(e).
- (15) Issue stop-work orders as required and in accordance with G.S. 160D-404(b). Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The Stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (16) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reasons of the revocation. Permits shall be revoked for any substantial departure from the approved application, plans and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing

the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked. Revocation of a floodplain development permit shall be in accordance with G.S. 160D-403(f).

- (17) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the County. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action, and in accordance with G.S. 160D-403(e).
- (18) Follow through with the corrective procedures of Article 4, Section D.
- (19) Review, provide input, and make recommendations regarding requests for variance requests.
- (20) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM, and other official floods maps and studies adopted in accordance with the provisions of Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (21) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

#### **SECTION D. CORRECTIVE PROCEDURES**

- (1) Violations to be corrected: when the Floodplain Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the permit holder and to the landowner of the property involved, if the landowner is not the permit holder, of the violation in accordance with G.S. 160D-404. The permit holder or landowner shall immediately remedy each of the violations of law cited in notification.
- (2) Actions in Event of Failure to Take Corrective Actions: If the permit holder or landowner fails to take prompt corrective action, the Floodplain Administrator shall give the permit holder and landowner, if the landowner is not the permit holder, written notice, by personal delivery, electronic delivery, or first-class mail, stating:
  - (a) That the building or property is in violation of the floodplain management regulations;
  - (b) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the permit holder and/or landowner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
  - (c) That following the hearing, the Floodplain Administrator may issue a written order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood

Damage Prevention Ordinance, he or she shall issue an order in writing to the permit holder and landowner, if the landowner is not the permit holder, requiring the owner to remedy the violations within a specified time period, not less than sixty (60) calendar days, nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Macon County Planning Board by giving notice of appeal in writing to the Floodplain Administrator and the clerk within thirty (30) days following issuance of the final order in accordance with G.S. 160D-405. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Planning Board shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to N.C.G.S. 143-215.58 and shall be punished at the discretion of the court.

#### **SECTION E. VARIANCE PROCEDURES**

- (1) The Macon County Planning Board, hereinafter referred to as the “appeal board” shall hear and decide requests for variances to the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the Planning Board may appeal such decision to the superior court, as provided in G.S. 160D-406(k).
- (3) Variances may be issued for:
  - (a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
  - (b) Functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Article 4, Section E(9)(b), (c) and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - (c) Any other type of development, provided it meets the requirements in this Section.
- (4) In passing upon variances, the Planning board shall consider all technical evaluations, all relevant factors, all standards that 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 to 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 in the community;
  - (e) The necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
  - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (g) The compatibility of the proposed use with the existing and anticipated development;
  - (h) The relationship of the proposed use to the 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 transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (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 waters systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the Planning Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. The decision shall be in accordance with G.S. 160D-406(j). Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) Conditions for Variances:



- (a) Variances shall not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.
- (b) Variances shall not be allowed within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
- (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (d) Variances shall only be issued prior to development permit approval.
- (e) Variances shall only be issued upon:
  - i. A showing of good and sufficient cause;
  - ii. A determination that failure to grant the variance would result in unusual hardship to the owner of the property that was not caused, in whole or in major part, by the property owner; and
  - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met:

- (a) The use serves a critical need in the community.
- (b) No feasible location exists for the use outside the Special Flood Hazard Area.
- (c) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
- (d) The use complies with all other applicable federal, state and local laws.
- (e) The County has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance as least thirty (30) calendar days prior to granting the variance.

**ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION**

**SECTION A. GENERAL STANDARDS**

In all Special Flood Hazard Areas, the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
  - (a) Replacements part of substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
  - (b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate the infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance (i.e. prior to August 7, 2000) and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the requirements of this ordinance.
- (9) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article 4, Section E(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Article 4, Section B(3).

- (10) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (13) All subdivision proposals and other development proposals shall have received all necessary permits from those government agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (14) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (15) When a structure is located in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevations shall apply.
- (16) Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area.
- (17) The placement of fill material of any nature and for any purpose shall be prohibited except in accordance with and pursuant to a plan approved by the Natural Resources Conservation Service or the Soil Conservation Service of the United States Department of Agriculture for the purposes of conservation, stream bank restoration, or watershed protection; or in furtherance of, and to implement the installation of, measures designed by a licensed engineer and permitted with a Macon County Land Disturbance Permit to comply with the *Macon County Soil Erosion and Sedimentation Control Ordinance* or the *Sedimentation Pollution Control Act of 1973 of the State of North Carolina*.
- (18) No new high impact land uses as defined in the *Ordinance Regulating High Impact Land Uses in Macon County* shall be permitted in the SFHA. "Substantial Improvement" of existing high impact land uses shall be prohibited in the SFHA.
- (19) Vehicle and Mobile Equipment Storage Facilities located in the SFHA shall be subject to the same requirements for RV's and RV Parks set forth in Article 5, Section B(6) and (7), unless the subject items are elevated to or above the Regulatory Flood Protection Elevation or securely anchored in place at all times while on the site. For the purposes of this section, wherever the term RV is used it shall also include and may be substituted with vehicles and mobile equipment as applicable.

- (20) All fuel oil storage tanks, including propane gas tanks, must be either elevated above BFE or securely anchored to prevent flotation in accordance with the National Fire Protection Code 58, Section 3-2.2.7 and Article 5, Section B (10).

## **SECTION B. SPECIFIC STANDARDS**

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 5, Section D, the following provisions, in addition to the provisions of Article 5, Section A, are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection elevation, as defined in Article 2 of this ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection elevation, as defined in Article 2 of this ordinance. Structures located in A or AE Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Article 4, Section B(3), along with the operational plan and inspection and maintenance plan.
- (3) Manufactured Homes.
  - (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
  - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
  - (c) All enclosures or skirting below the lowest floor shall meet the requirements of Article 5, Section B(4).

- (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved, or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Macon County Floodplain Administrator and the Macon County Emergency Management Department.
  - (e) The owner of an existing manufactured home park or subdivision for which any part of the property is located in the Special Flood Hazard Area shall prepare an Emergency Evacuation Plan and file it with the Macon County Floodplain Administrator no later than twelve (12) months after the effective date of this ordinance, (i.e. August 7, 2000). After receiving approval of the Emergency Evacuation Plan, the owner or manager/operator of the facility will have seven (7) years to bring the existing manufactured home park or subdivision into compliance with all the requirements of the ordinance. Failure to file an Emergency Evacuation Plan for approval shall be a Violation and subject to the penalties defined in Article 3, Section H.
- (4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- (a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The inner portion of such enclosed areas shall not be finished or partitioned into separate rooms, except to enclose storage areas;
  - (b) Shall not be temperature-controlled or conditioned;
  - (c) Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
  - (d) Shall include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
    - i. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
    - ii. The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
    - iii. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
    - iv. The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;

- v. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
- vi. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(e) Fill/Grading. Fill is prohibited in the SFHA in accordance-with Article 5, Section A(17).

(5) Additions/Improvements

- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - i. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - ii. A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.
- (b) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - i. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
  - ii. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during five (5) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the five (5) year period begins on the date of the first improvement or repair of that building or structure. Substantial damage also means flood-related damage 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 percent of the market value

of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

- (i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
- (ii) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

(6) Recreational Vehicles. Recreational vehicles shall

Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on wheels or a jacking system and is attached to the site only by quick disconnect type utilities, and has no permanently attached additions) and be capable of exiting the Special Flood Hazard Area during a flood event.

(7) Recreational Vehicle Parks or Subdivisions

(a) Prior to the issuance of a floodplain development permit for a Recreational Vehicle Park:

- i. RV Park Developers, Owners, and Operators shall prepare and maintain current a comprehensive Emergency Evacuation Plan defining how, when and where all vehicles are to be removed to a safe location during an approaching storm, flood, or hazard events. The Emergency Evacuation Plan shall be submitted to the Macon County Emergency Management Department and approved prior to the issuance of a floodplain development permit.
- ii. All RV Park Emergency Evacuation Plans must be updated annually and submitted to the Macon County Emergency Management Department for approval.
- iii. The Emergency Evacuation Plan for each RV Park having property in the Special Flood Hazard Area shall be implemented and supported by a written set of park regulations. The park regulations shall be submitted for review and approval along with the Emergency Evacuation Plan prior to the issuance of a floodplain development permit.
- iv. Approval of the Emergency Evacuation Plan and the park regulations do not relieve the RV Park Owner or Land Owner of any responsibility or liability for providing the maximum practical extent of protection against downstream loss of life or property when RV's are resident on the site. Neither does approval of the Emergency Evacuation Plan and the park regulations create or transfer any liability to the County of Macon, any of its employees or agents.

(b) The park regulations shall include at a minimum the following requirements:

- i. A set of keys to the RV and a current contact telephone number must be in the possession of the RV Park Owner or Operator at all times the RV is parked on a site in the Special Flood Hazard area.
  - ii. The owner of the RV must sign a Release of Liability available from the RV Park Owner giving the RV Park Owner or Operator the right to evacuate the owner's RV(s) to a safe location or to anchor/tether the RV(s) in case of a Flood Warning and the owner is away from the site. The release form shall notify the RV owner that under flooding conditions, the RV may be damaged or destroyed.
- (c) Known Hazards Disclosure. The RV Park Owner is responsible for posting a sign at the utility connection station on each RV parking site advising the RV owner that the site is located within a FEMA-designated Special Flood Hazard Area and is subject to damage or loss to property and life during a flood event. Further, the sign on each site shall advise the RV owner of the potential water depth at the site during a Base Flood event (Base Flood Elevation minus the local grade elevation where the RV is parked). If the RV Park Owner elects to state a single water depth to standardize the signs, the maximum water depth on the entire RV Park shall be listed.
- (d) Inspections.
- i. Macon County has the right to access all RV Parks and all RV parking sites at any time for the purpose of a compliance inspection in accordance with G.S. 160D-403(e). A compliance inspection will determine if the requirements of the Emergency Evacuation Plan and the park regulations are current and being enforced by the RV Park Owner or Operator.
  - ii. Non-conforming items or a finding of non-compliance shall result in a written Notice of Violation (NOV), in accordance with Article 4, Section D of the ordinance.
  - iii. Failure to correct an NOV in the prescribed time limit shall result in a fine not to exceed \$5,000 per day for every calendar day that the RV Park is found to be out of compliance with the approved plans and regulations.
  - iv. Nothing herein shall prevent the County from seeking other enforcement remedies as provided in Article 3, Section H.
- (e) The Owner of an existing RV Park or Subdivision for which any part of the property is located in a Special Hazard Flood Area shall prepare an Emergency Evacuation Plan and file it with the Floodplain Administrator and Macon County Emergency Management Coordinator for review and approval no later than twelve months after the effective date of this ordinance (i.e. August 7, 2000). The Known Hazards Disclosure requirements of Article 5, Section B(7)(c) shall be met no later than twelve months after the effective date of this ordinance (i.e. August 7, 2000). After receiving approval of the Emergency Evacuation Plan, the owner (or



manager/operator) of the facility shall have seven (7) years to bring the existing RV Park or Subdivision into compliance with all the requirements of the ordinance (i.e. August 7, 2000). Failure to file an Emergency Evacuation Plan for approval shall be a Violation and subject to the penalties defined in Article 3, Section H.

- (8) Temporary Non-Residential Structures and Stockpiling or Storage of Bulk Materials. Prior to the issuance of a floodplain development permit for a temporary structure or for stockpiling or storing bulk materials, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) or materials in the event of a hurricane, flash flood, or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
- (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
  - (b) The name, address, and phone number of the individual responsible for the removal of a temporary structure or materials;
  - (c) The time frame prior to the event at which a structure or materials will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
  - (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure or materials; and
  - (e) Designation, accompanied by documentation, or a location outside the Special Flood Hazard Area, to which the temporary structure or material will be moved.
- (9) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking, or restroom areas);
  - (b) Accessory structures shall not be temperature controlled;
  - (c) Accessory structures shall be designed to have low flood damage potential;
  - (d) Accessory structures shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters;
  - (e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A(1);
  - (f) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A(4); and

- (g) Flood openings to facilitate automatic equalization of the hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Article 5, Section B(4)(d).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Article 5, Section B(2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

- (10) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

- (b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

- (c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section B(2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

- (d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

- (i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

- (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

- (11) Other Development.

- (a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Article 5, Section F of this ordinance.

- (b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.
- (c) Roads and watercourse crossing in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.
- (d) Commercial storage facilities are not considered "limited storage" as noted in this ordinance, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

**SECTION C. RESERVED**

**SECTION D. STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS**

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Article 5, Section A, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements, or new development shall be permitted within a distance of fifty (50) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
  - (a) When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 5, Sections A and B.
  - (b) When floodway or non-encroachment area data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Article 5, Sections B and F.
  - (c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.

- (d) When Base Flood Elevation (BFE) data is not available from a Federal, State or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Article 5, Section B shall also apply.

**SECTION E. STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS**

Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of Article 5, Sections A and B; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating 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 (1) foot at any point.

**SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS**

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
  - (a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Flood Plain Administrator prior to issuance of floodplain development permit; or
  - (b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within six (6) months of completion of the proposed encroachment.
- (2) If Article 5, Section F(1) above is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No manufactured homes nor RVs shall be permitted in floodways or non-encroachment areas.

**ARTICLE 6. LEGAL STATUS PROVISIONS**

**SECTION A. EFFECT ON RIGHTS AND LIABILITES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE**

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted August 7, 2000, as amended, and it is not the intention to repeal, but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Macon County enacted on August 7, 2000, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Macon County is August 7, 2000.

**SECTION B. SEVERABILITY**

If any section, clause, sentence, or phase of this 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.

**SECTION C. EFFECTIVE DATE**

This ordinance shall become effective upon adoption.

**SECTION D. ADOPTION CERTIFICATION**

I hereby certify that this is a true and correct copy of the amended and restated flood damage prevention ordinance as adopted by the Macon County Board of Commissioners of Macon County, North Carolina, on the 12<sup>th</sup> of December, 2021.

WITNESS my hand and the official seal of Macon County,, NC, this, the 14<sup>th</sup> day of December, 2021.

  
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County Manager  
Clerk to the Board of Commissioners